

DOCUMENT  
FOLDER

R-00973593, R-009739530001-  
0007  
etal  
Phila 11/17/97 Enron St. 6.0 SR  
E.H

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SURREBUTTAL TESTIMONY OF **DOCKETED**  
NOV 20 1997

**MICHAEL D. DIRMEIER**

ON BEHALF OF  
ENRON POWER MARKETING INC.

DOCKET NO. R-00973953  
RE: PECO RESTRUCTURING

RECEIVED  
97 NOV 20 PM 1:02  
F.A.P.U.C.  
PROTHEROTARY'S OFFICE

AUGUST 1, 1997

DOCKET NO. R-00973953  
SURREBUTTAL TESTIMONY OF MICHAEL D. DIRMEIER

TABLE OF CONTENTS

|  | <u>PAGE</u> |
|--|-------------|
| I. SCOPE AND PURPOSE OF SURREBUTTAL TESTIMONY . . . . .          | 1           |
| II. CONCLUSIONS AND RECOMMENDATIONS . . . . .                    | 2           |
| III. DISCUSSION OF ISSUES RAISED BY REBUTTAL WITNESSES . . . . . | 3           |
| 1. J. Gregory Sidak . . . . .                                    | 3           |
| 2. Gregory A. Cucchi . . . . .                                   | 13          |
| 3. Thomas P. Hill, Jr. . . . .                                   | 15          |
| 4. Alfred A. Miller . . . . .                                    | 16          |
| 5. Stephen J. Baron . . . . .                                    | 18          |

1 **I. SCOPE AND PURPOSE OF SURREBUTTAL TESTIMONY**

2 **Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?**

3 A. The purpose of this surrebuttal testimony is to respond to the rebuttal testimony of  
4 PECO witnesses Sidak, Cucchi, Hill and Miller, and Philadelphia Area Industrial  
5 Energy Users Group (PAIEUG) witness Baron concerning my positions on  
6 competitive safeguards and the appropriate code of conduct that should be adopted  
7 by the Pennsylvania Public Utility Commission (“Commission” or “PUC”) in the  
8 transition from a monopoly to competitive structure for electric generation.

9 **Q. WAS THIS TESTIMONY PREPARED BY YOU OR UNDER YOUR**  
10 **DIRECT SUPERVISION?**

11 A. Yes, it was; and, I was assisted by Richard J. Koda, a Senior Consultant at  
12 Georgetown.

1 **II. CONCLUSIONS AND RECOMMENDATIONS**

2 **Q. WHAT HAVE YOU CONCLUDED REGARDING PECO'S REBUTTAL**  
3 **TESTIMONY IN THIS PROCEEDING?**

4 A. I have concluded that, far from seeking an "approach which fairly balances the  
5 interests of all constituencies, as contemplated by the Competition Act," PECO  
6 seeks to advance its own interests and the interests of the incumbent electric  
7 utilities in Pennsylvania. PECO implores the Commission to maintain the  
8 inherent advantages of the EDCs over their potential competition. PECO's  
9 inherent advantages are derived from its monopoly position, not from a  
10 competitive process as opined by PECO witnesses.

11 **Q. DO YOUR RECOMMENDATIONS DIFFER FROM THOSE YOU**  
12 **ORIGINALLY RECOMMENDED IN THIS PROCEEDING?**

13 A. No. The Commission should adopt a code of conduct that goes beyond the code  
14 of conduct proposed by PECO and embodies the additions and enhancements  
15 recommended in my direct testimony.

1 **III. DISCUSSION OF ISSUES RAISED BY REBUTTAL WITNESSES**

2 **Q. WHAT CONCLUSIONS DOES MR. SIDAK REACH IN HIS REBUTTAL**  
3 **(PECO STATEMENT NO. 10-R) REGARDING YOUR DIRECT**  
4 **TESTIMONY?**

5 **A.** On page 5 of his rebuttal testimony Mr. Sidak opines that I, and other intervenor  
6 witnesses in this proceeding, fail to distinguish the advantages of vertically  
7 integrated utilities that legitimately need to be addressed by transition rules and  
8 codes of conduct from the advantages which are pro-competitive or are of  
9 transitory duration and ought not be a part of such codes. He goes on to state that  
10 these codes of conduct would place unjustified burdens on incumbent utilities,  
11 reduce their ability to compete and result in a denial of customer choices that a  
12 competitive market would give them.

13 **Q. IS THERE A FLAW IN MR. SIDAK'S OPINIONS USED IN REACHING**  
14 **HIS CONCLUSION REFERRED TO ABOVE?**

15 **A.** In reaching his conclusion, Mr. Sidak inappropriately treats monopoly-derived  
16 advantages of the EDCs as competitive advantages achieved in the competitive  
17 marketplace. Mr. Sidak admits the existence of "initial advantages" of incumbent  
18 utilities on page 7, line 7 of his rebuttal, but in the context of this proceeding,  
19 erroneously categorizes brand name, goodwill and established sales channels as  
20 competitive advantages that are not derived from the monopoly operation of  
21 incumbent utilities (page 14, lines 9 through 11 of his rebuttal). In fact, the brand  
22 name, goodwill and sales channels of PECO have all been established specifically

1 through the provision of monopoly electric service in its Pennsylvania service  
2 territory and paid for by Pennsylvania ratepayers over the past multitude of years.

3 Mr. Sidak contends that “[t]rue deregulation requires removing both barriers  
4 to entry *and* incumbent burdens.”<sup>11</sup> While this statement may be true *in the*  
5 *future*, when it is hoped that the market actually will be competitive, it would be  
6 inappropriate to implement deregulation without an effective competitive market  
7 being in place in the first place. To do so would deter the establishment of a  
8 truly competitive market and could have disastrous results for customers by  
9 creating an unregulated monopoly. I disagree with the basic premise of Mr.  
10 Sidak’s rebuttal that the market should be treated as if it were competitive before  
11 it is. I would agree, however, that restrictions on the incumbent EDCs should  
12 recede in proportion to the level of competition in effect. As stated on page 20 of  
13 Mr. Sidak’s rebuttal testimony:

14 regulators should recognize that achieving market outcomes requires  
15 removing regulatory restrictions as electric power markets become  
16 increasingly competitive.

17 My disagreement concerns what the regulators should do *before* the markets  
18 become competitive. Mr. Sidak would have the Commission do little-to-nothing  
19 to promote the development of a competitive market. He equates “allowance of  
20 entry” with competition, even though one competitor, PECO, would be granted

---

<sup>11</sup> PECO Statement No. 10-R, Rebuttal Testimony of J. Gregory Sidak, at 16, line 16 and at 17, line 1.

1 and start with decided advantages as the incumbent monopoly. For example, on  
2 page 27 line 22 to page 28 line 1 of his rebuttal, Mr. Sidak states:

3 There is no legal or economic justification to handicap the advantaged  
4 competitor as long as markets are open and accessible to potential  
5 entrants.

6 My position does not handicap anyone; rather, it is intended to place all  
7 competitors on the same initial footing, recognizing that, in reality, PECO has a  
8 decided initial advantage that it seeks to prolong. I recommend that the  
9 Commission take actions to ensure the development of a competitive market, so  
10 that the removal of restrictions advocated by Mr. Sidak can then occur.

11 **Q. PLEASE COMMENT ON MR. SIDAK'S CHARACTERIZATION OF**  
12 **YOUR TESTIMONY BEGINNING ON PAGE 27 OF HIS REBUTTAL.**

13 A. Mr. Sidak alleges that I fail to understand the competitive process and stresses that  
14 the competitive process

15 is one in which firms continually strive to maximize their own returns  
16 by offering consumers products and services at prices, quality levels, and  
17 reliability standards that are more attractive than those offered by rival  
18 firms.<sup>12</sup>

19 If the above-quoted methods used by firms to maximize their returns encompass  
20 all of those in Mr. Sidak's knowledge and imagination, then it is he who does not  
21 fully comprehend all of the facets of the competitive process. Firms can and do  
22 use other means to maximize their own returns, including but not limited to, using

---

<sup>12</sup> PECO Statement No. 10-R, Rebuttal Testimony of J. Gregory Sidak, at 27, lines 17 through 19.

1 their monopoly position in an attempt inappropriately to increase their returns,  
2 especially during a period in which monopoly and competitive services may be  
3 offered by entities in the same corporate structure. To be very clear about this,  
4 Mr. Sidak should have stated that firms will do anything possible to maximize  
5 their returns, not only by offering consumers products and services at prices,  
6 quality levels and reliability standards that are more attractive than those offered  
7 by rival firms, but also by preventing rival firms from accessing their customers  
8 and by exploiting any advantage possible over such rivals.

9 The Pennsylvania Public Utility Commission recognized this problem in  
10 Docket No. R-811819 involving Bell Telephone Company of Pennsylvania. In  
11 its Long Form Opinion and Order pertaining to the Public Meeting held  
12 September 3, 1982, the Commission rejected over \$6 million of charges related to  
13 parent company or non-regulated operations that the regulated utility claimed  
14 pertained to the provision of telephone utility service. Bell of Pennsylvania was  
15 attempting to maximize its profit by transferring the cost of its non-regulated  
16 services to its monopoly operation. This condition was found to exist prior to the  
17 divestiture of AT&T.

18 Even after the divestiture of the local exchange carriers from AT&T, there  
19 have been problems with the integration of monopoly and competitive services  
20 within the Regional Bell Holding Companies. In its Report on NYNEX  
21 Corporation and Affiliates, the Office of Accounting and Finance of the New

1 York State Public Service Commission found that there was the prospect for  
2 diversion of telephone company resources to enhance corporate profits, that  
3 compensation to the local operating telephone companies for personnel or services  
4 provided to affiliates was inadequate and that the allocation of costs among  
5 affiliates benefited the emerging non-regulated companies at the expense of the  
6 regulated monopoly local exchange telephone companies.

7 Recent recognition of various companies' attempts to inappropriately increase  
8 their return using their monopoly position includes the following: US West Inc.,  
9 Docket No. 95-049-05, Utah Public Service Commission, November 6, 1995, 165  
10 PUR 4th 235; Washington Utilities and Transportation Commission v. US West  
11 Communications, Inc., Docket No. UT-950200, 15th Supplemental Order,  
12 Washington Utilities and Transportation Commission, April 11, 1996,  
13 169 PUR 4th 417; and, Pennsylvania Public Utility Commission v. Citizens  
14 Utilities Water Company of Pennsylvania, Docket No. R-00953300, R-  
15 00953300C0001-0072, Pennsylvania Public Utility Commission, Order entered  
16 March 29, 1996.

17 **Q. HAS MR. SIDAK MISCHARACTERIZED YOUR TESTIMONY IN OTHER**  
18 **RESPECTS?**

19 **A.** Yes, he has. For example, on page 28 of his rebuttal, Mr. Sidak states:

20 Because regulatory decisions rather than market forces would determine  
21 whether and when the incumbent firm would be allowed to compete in  
22 lucrative markets, one can expect the recurring regulatory proceedings to  
23 be fiercely contested.

1 That suggests that my position is that the Commission should restrict PECO's  
2 entry into markets, which is untrue. I am not saying that PECO should not be  
3 allowed to compete, or that PECO's unregulated generation subsidiary should not  
4 be allowed to compete. In fact, it should be allowed to enter any market it  
5 wishes. It simply should not be allowed to enter those markets arm in arm with  
6 the regulated T&D company providing decided advantages to the unregulated  
7 generation business.

8 **Q. MR. SIDAK DISAGREES WITH YOUR RECOMMENDATION FOR**  
9 **REQUIRING THAT MONOPOLY AND NON-MONOPOLY ACTIVITIES**  
10 **SHOULD BE AS SEPARATE AS POSSIBLE AND HE BELIEVES THAT**  
11 **SUCH A RECOMMENDATION INVITES STRATEGIC ABUSE OF THE**  
12 **REGULATORY PROCESS BY COMPETITORS. PLEASE COMMENT.**

13 A. Obviously Mr. Sidak and I disagree on this point and I refer the Commission to  
14 the well-documented history of abuse by entities who have not had their  
15 monopoly and non-monopoly activities adequately separated, including but not  
16 limited to the previously cited documents. With regard to Mr. Sidak's comment  
17 that "structural separation in the U.S. telecommunications industry shows that  
18 regulatory mistakes take years to correct,"<sup>13</sup> there are those who believe that the  
19 requirement for waivers regarding line-of-business restrictions was not a mistake,  
20 but rather, that it provided necessary and appropriate time for analysis and  
21 considered judgment to prevail to prevent additional abuses by a formidable  
22 monopolist.

---

<sup>13</sup> PECO Statement No. 10-R, Rebuttal Testimony of J. Gregory Sidak, at 28, lines 17 & 18.

1 Mr. Sidak also states his view that PECO's proposed code of conduct already  
2 sacrifices some economies through the segregation of certain employees, facilities,  
3 and access to customer data. He goes on to contend that even the elimination of  
4 the economies of scope and vertical integration resulting from PECO's proposal is  
5 a net loss to customers

6 because of the very low risk that anticompetitive behavior by an  
7 incumbent firm could ever occur and escape detection, prosecution, and  
8 punishment under existing public and private enforcement of the antitrust  
9 laws.<sup>4</sup>

10 I could not disagree more with Mr. Sidak on this point. The fact of the matter is  
11 that the degree of risk is unknown concerning whether anticompetitive behavior  
12 by an incumbent monopoly provider of utility service will ever be detected,  
13 prosecuted or punished under existing public and private enforcement of the  
14 antitrust laws. While Mr. Sidak believes that there is a low risk that  
15 anticompetitive behavior would go unchecked, there are those who believe that  
16 anticompetitive behavior in fact would remain unchecked for protracted periods of  
17 time, if not indefinitely.

18 Without question, however, proving violation of the antitrust laws is a  
19 difficult and time-consuming undertaking. It is wrong to suggest that the  
20 Commission should rely on reactive after-the-fact means to ensure the

---

<sup>4</sup> PECO Statement No. 10-R, Rebuttal Testimony of J. Gregory Sidak, at 29, lines 15 through 18.

1 development of a competitive market, particularly when it takes years to detect,  
2 prosecute or punish anticompetitive behavior:

3 Take for example the antitrust history of AT&T. A civil antitrust suit was  
4 instituted against AT&T and the Western Electric Company in 1949 by the United  
5 States alleging that these companies had restrained and monopolized commerce in  
6 the telephone equipment and supplies. This initial suit was concluded by a  
7 consent judgment that was entered in January 1956. Although the judgment  
8 contained provisions that limited the business of AT&T and its telephone  
9 subsidiaries to communication activities subject to regulation and limited the  
10 business of Western Electric to manufacturing and other activities, the  
11 fundamental relationships between AT&T, its telephone subsidiaries and Western  
12 Electric Co. were not altered. In spite of the fact that it was subject to regulation  
13 after the consent judgment, AT&T and certain of its subsidiaries were accused of  
14 unlawful conspiracy to monopolize, attempt to monopolize and monopolization of  
15 interstate and commerce in telecommunications service and equipment almost 19  
16 years later.

17 In November 1974, the Department of Justice ("DOJ") initiated Civil Action  
18 No. 74-1698, United States of America, *Plaintiff* v. American Telegraph  
19 Company; Western Electric Company, Inc.; and Bell Telephone Laboratories, Inc.  
20 *Defendants*. In its First Statement of Contentions and Proof, the DOJ documented  
21 that AT&T had been engaged in anticompetitive behavior since the mid 1940s.

1 This suit ended in 1982 when AT&T agreed to a Consent Decree which required  
2 AT&T to divest the local portions of its 22 wholly-owned local operating  
3 companies. The government, in turn, agreed to remove restrictions of the old  
4 decree limiting AT&T to the regulated telecommunications business, and the  
5 antitrust suit filed in 1974 was dismissed.

6 On August 24, 1982, the United States District Court for the District of  
7 Columbia approved and entered as in the public interest the proposed Modification  
8 of Final Judgment ("MFJ"). The MFJ was agreed to by AT&T and the  
9 Department of Justice with certain modifications which the Court had required.  
10 The divestiture was effective January 1, 1984.

11 So for a period of approximately 35 years the consumers of  
12 telecommunications services in the United States were subject to the  
13 anticompetitive behavior of AT&T. And even subsequent to 1984, certain  
14 telecommunications users have been subjected to the inappropriate behaviors of  
15 certain monopoly providers, including the progeny of AT&T, attempting to  
16 maximize their returns using their monopoly position. If anything, the process  
17 certainly appears to be abused more by the monopolists than by competitors. That  
18 is because the monopolists have a position that is capable of being abused, and  
19 competitors do not.

1 Q. ON PAGE 31 OF HIS REBUTTAL, MR. SIDAK CONTINUES HIS  
2 CRITICISM OF YOUR TESTIMONY BY STATING THAT YOUR  
3 CONCERNS REGARDING THE USE OF AN ELECTRIC DISTRIBUTION  
4 COMPANY'S NAME ARE MISPLACED. PLEASE COMMENT.

5 A. Mr. Sidak believes that the use of brand names does not restrict entry, even if the  
6 incumbent had developed name recognition and goodwill through past advertising.  
7 He further contends that a potential competitor is not deterred from entering the  
8 jurisdiction of the incumbent if that potential entrant can advertise as effectively  
9 as an incumbent can. Again, I must disagree with Mr. Sidak's contention. First,  
10 the established reputation, goodwill and brand loyalty of an incumbent electric  
11 utility is the direct result of its providing regulated monopoly service under  
12 quality of service guidelines established, in this jurisdiction, by the Pennsylvania  
13 Public Utility Commission; these assets were not obtained by PECO in the  
14 competitive marketplace, but were financed virtually entirely by ratepayers.  
15 Second, potential entrants cannot simply overcome, in an advertising blitz, what  
16 took the incumbent electric utility almost 100 years to develop. The day-in and  
17 day-out provision of quality electric service for many customers for decades  
18 solidifies the position of the incumbent utility in the view of many of its  
19 jurisdictional customers.

20 I do agree with Mr. Sidak that brand names do contain valuable information  
21 and that through their brand names, firms signal quality to consumers. The  
22 problem is that PECO's valuable information was derived from its incumbent

1 electric utility status and operations, and PECO has not proposed to provide any  
2 compensation to its firm monopoly ratepayers for the competitive use of this  
3 resource. To the extent that PECO is able to exploit the monopoly-derived value  
4 from its name, ratepayers deserve compensation, something, I expect Mr. Sidak  
5 would oppose.

6 **Q. ON PAGES 34 AND 35 OF MR. SIDAK'S REBUTTAL AND PAGE 18 OF**  
7 **MR. CUCCHI'S REBUTTAL (PECO STATEMENT NO. 15-R), THE**  
8 **COMPANY WITNESSES EXPRESS A CONCERN REGARDING THE**  
9 **INTERESTS OF CONSUMERS AND PROVIDING CONSUMERS WITH**  
10 **THE FULL BENEFITS OF THE COMPETITIVE PROCESS. DO PECO'S**  
11 **PROPOSALS TAKE THE INTERESTS OF CONSUMERS SERIOUSLY SO**  
12 **AS TO PROVIDE THEM WITH THE FULL BENEFITS OF THE**  
13 **COMPETITIVE PROCESS?**

14 A. No, they do not. For example, Mr. Miller has stated that PECO adamantly  
15 opposes allowing customers that entered into contracts subsequent to the passage  
16 of the Competition Act to rescind their contracts, and PECO also opposes  
17 allowing alternative suppliers to bid for the customers' business. Obviously,  
18 PECO does not view the competitive process favorably if the competitive process  
19 negatively affects the Company. While the Company does not want its  
20 competitive supply groups or affiliates burdened with certain elements of a code  
21 of conduct that will appropriately advance competition, it apparently does not  
22 mind burdening customers by proposing that they be kept out of the competitive  
23 process for as long as possible.

1 Q. ON PAGE 22 OF HIS REBUTTAL, MR. CUCCHI DISCUSSES THE USE  
2 OF THE PECO NAME BY HORIZON ENERGY. DO YOU AGREE WITH  
3 HIS COMMENTS?

4 A. No, I do not. The reasons for my disagreement are the same as those I have  
5 previously enumerated in this testimony with reference to Mr. Sidak's views on  
6 the use of PECO name.

7 Q. ON PAGE 15 OF HIS REBUTTAL, MR. CUCCHI DISCUSSES HIS  
8 EXHIBIT GAC-6, AN AMENDED VERSION OF PECO'S PROPOSED  
9 CODE OF CONDUCT, AS CONTAINING ONLY MINOR CHANGES TO  
10 THE ORIGINAL CODE THAT HE PROPOSED. DO YOU AGREE THAT  
11 THE CHANGES ARE MINOR?

12 A. I agree that most of the individual changes are minor except for the change to  
13 item 7, the use of PECO's name. Originally item 7 in PECO's proposed code of  
14 conduct specifically dealt with the manner in which PECO's name was to be used.  
15 Under the original proposal, the Company was prohibited from specifically having  
16 its *name* imply, for example, that the service a customer obtained from the PECO  
17 supply group was actually from or had the same quality as the service provided by  
18 the PECO delivery group, i.e. the embedded monopoly EDC.

19 Under the revision, as set forth in GAC-6, use of the *name* is deleted from  
20 the prohibition requirement and replaced by the *representations* of the PECO EDC  
21 and/or PECO Supplier. Although this is a subtle change, I believe that it lessens  
22 the effect of item 7 in the Company's proposed code of conduct. I believe that  
23 the use of PECO's name by the affiliated supplier or marketer of PECO, even  
24 without any representations made by either the EDC or Supplier, is enough to

1 confuse potential customers, especially residential customers, as to the entity that  
2 will be supplying the electricity. Mr. Sidak states on page 31 of his rebuttal that  
3 firms signal quality to customers through their brand names. The PECO supply  
4 group would be attempting to ride the monopoly coat tails of the PECO delivery  
5 group if the supply group used the PECO name.

6 If the PECO name is to be used by unregulated affiliates or divisions, PECO  
7 should compensate ratepayers for that use and the Company should have to  
8 indicate — clearly and precisely — that the PECO affiliate is not the regulated  
9 utility company that PECO customers expect.

10 **Q. ON PAGE 6 OF HIS REBUTTAL (PECO STATEMENT NO. 1-R), MR.**  
11 **HILL BRINGS UP SIZE AND FINANCIAL STRENGTH OF**  
12 **ALTERNATIVE SUPPLIERS AS A RATIONALIZATION FOR**  
13 **MAINTAINING THE INHERENT ADVANTAGES OF EDCS DERIVED**  
14 **FROM THEIR MONOPOLY POSITIONS IN PENNSYLVANIA. DO YOU**  
15 **CONCUR WITH HIS ASSESSMENT?**

16 A. No, I do not. Mr. Hill misses the point of the need for a level playing field in the  
17 jurisdiction subject to this Commission's purview. Size and financial strength of  
18 competitors are not the issues, especially to the degree that they were obtained  
19 from a competitive process. What is the issue is the overwhelming recognition by  
20 jurisdictional customers that the EDCs have obtained from their many years of  
21 providing monopoly electric service in their franchise service territories. This  
22 recognition creates a reluctance in customers to try an alternative provider. This  
23 was true in the transition to competition in the telecommunications and gas

1 industries and it will be even more so with regard to the electric industry because  
2 of the importance of electric service in today's environment. Without competitive  
3 safeguards and a code of conduct that will effectively allow entry of alternative  
4 suppliers and marketers into the Pennsylvania jurisdiction, competition may not  
5 survive the transition stage. The transition period is critical for competition to  
6 obtain a foothold and nurture itself to the point where it is fully robust. At that  
7 point there will no longer be a need for the competitive safeguards I have  
8 recommended in this proceeding.

9 **Q. ON PAGE 12 OF HIS REBUTTAL (PECO STATEMENT NO. 2-R), MR.**  
10 **MILLER PRESENTS PECO'S POSITION REGARDING YOUR**  
11 **CONTRACT-RELATED PROPOSALS. PLEASE COMMENT ON THE**  
12 **POSITION HE ELUCIDATES.**

13 **A.** On lines 6 through 8, Mr. Miller states that PECO adamantly opposes allowing  
14 Enron and other suppliers to learn the details of outstanding PECO contract  
15 proposals and to bid for the customers' business. There is nothing in my  
16 testimony that would provide Enron or any other supplier access to details  
17 concerning PECO's outstanding contract proposals. The following is what I  
18 specifically recommended on page 37 of my direct testimony:

19 In the time before the direct access begins to be phased in, PECO should  
20 not be permitted to enter into "market priced" contracts unless PECO  
21 first offers to competitive suppliers the opportunity to bid to provide  
22 service to the customer. In any event, if PECO is permitted to and  
23 intends to enter into such a contract, PECO should be required to  
24 demonstrate that its price at least covers the cost of the unbundled  
25 delivery service elements (T&D, etc.) that are determined to be

1 applicable to PECO plus the incremental cost of the additional  
2 generation (i.e. imputation).<sup>15</sup>

3 Mr. Miller goes on to recommend that rather than permit a competitive bid  
4 by alternative suppliers, the burden of waiting for the beginning of the phase-in of  
5 Direct Access on January 1, 1999 should be placed on the potential customer.  
6 This is a contradictory position for a Company that purports to be  
7 pro-competitive. PECO would be granted an inherent monopoly advantage if Mr.  
8 Miller's recommendation is adopted by the Commission.

9 On lines 18 through 21, Mr. Miller opines that there is no need to assign  
10 market priced contracts to PECO's competitive supply group or division because  
11 customers' contracts will be unbundled and delivery and CTC charges will be  
12 accounted for appropriately by PECO. But the simple fact that unbundling will  
13 take place and delivery and CTC charges may be accounted for appropriately by  
14 PECO does not remove the risk embedded in the market based contracts. As  
15 indicated on page 37 of my direct testimony, these

16 agreements should be negotiated by and become the risk of  
17 non-monopoly business units once direct access begins. Those business  
18 units should be required to obtain their own source of supply and, if they  
19 purchase from the monopoly utility, they should make such purchases at  
20 standard tariffed rates. The affiliate should be required to pay all  
21 delivery or other charges that would apply to non-affiliates. In that

---

<sup>15</sup> Enron Statement No. 6, Direct Testimony of Michael D. Dirmeier, at 37, lines 12 through 19.

1 manner, the risk of these agreements, if PECO decides to enter into  
2 them, should be borne fully by shareholders.<sup>16</sup>

3 It is the *risk* of the market based contracts which comprises the crux of the issue  
4 and which must be removed from the regulated EDC.

5 **Q. ON PAGES 11 THROUGH 13 OF PAIEUG STATEMENT NO. 1R,  
6 MR. BARON ALSO DISCUSSES YOUR RECOMMENDATION THAT  
7 PECO SHOULD NOT BE ALLOWED TO ENTER INTO "MARKET  
8 PRICED" CONTRACTS UNLESS PECO FIRST OFFERS TO  
9 COMPETITIVE SUPPLIERS THE OPPORTUNITY TO BID TO PROVIDE  
10 SERVICE TO THE CUSTOMER. DO YOU HAVE ANY COMMENTS  
11 REGARDING HIS CONCERNS?**

12 **A.** Yes. It appears that Mr. Baron is concerned with the potential of customers being  
13 precluded from negotiating with suppliers regarding market contracts under  
14 PECO's current tariffs that will stretch into the future "direct access" era. I  
15 understand that concern, but my recommendation is that to encourage competition  
16 potential customers should be given more options than solely dealing with PECO  
17 or its supply group. I have also recommended that the Commission should  
18 provide customers, who have entered into long-term market-priced contracts  
19 subsequent to the date on which the Competition Act was passed, a penalty-free  
20 right to cancel such contracts, at their option, and negotiate with alternative  
21 suppliers for the period of time when direct access is in effect. However,  
22 contracts entered into *after* a customer is subject to direct access should not be  
23 subject to this provision, nor should contracts entered into prior to passage of the

---

<sup>16</sup> Enron Statement No. 6, Direct Testimony of Michael D. Dirmeier, at 37, lines 5 through 11.

1 Act. In addition, as I previously testified, the option to cancel should be given to  
2 the customer only, and not to PECO or its supply group.

3 My recommendation to not permit PECO to enter into "market priced"  
4 contracts unless it first offers to competitive suppliers the opportunity to bid to  
5 provide service to the customer pertains to providing a level playing field which  
6 will benefit all customers in the long run, and will not restrict industrial customers  
7 from discussions or negotiations with PECO under its existing tariffs.

8 **Q. DOES THIS CONCLUDE YOUR PREFILED SURREBUTTAL**  
9 **TESTIMONY?**

10 A. Yes, it does.

R-00973593, R-009735930001-  
0001  
etal

11/17/97 Phila  
C.H.

Enron St. 6.0

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DIRECT TESTIMONY OF **DOCKETED**  
NOV 20 1997

**MICHAEL D. DIRMEIER**

ON BEHALF OF **DOCUMENT**  
**FOLDER**  
ENRON POWER MARKETING INC.

DOCKET NO. R-00973953  
RE: PECO RESTRUCTURING

RECEIVED  
97 NOV 20 PM 1:02  
PA.P.U.C.  
PROTHONOTARY'S OFFICE

JUNE 20, 1997

DOCKET NO. R-00973953  
TESTIMONY OF MICHAEL D. DIRMEIER

TABLE OF CONTENTS

|  | <u>PAGE</u> |
|--|-------------|
| I. STATEMENT OF QUALIFICATIONS .....                 | 1           |
| II. SCOPE AND PURPOSE OF TESTIMONY .....             | 3           |
| III. CONCLUSIONS AND RECOMMENDATIONS .....           | 3           |
| IV. BASIS FOR RECOMMENDATIONS .....                  | 7           |
| V. REQUIREMENTS TO SAFEGUARD COMPETITION .....       | 14          |
| 1. Separation of Business Units .....                | 14          |
| 2. Use of EDC Name .....                             | 22          |
| 3. EDC Has No Agency Role .....                      | 27          |
| 4. Prohibition Against Transfer of Information ..... | 30          |
| 5. Restrictions on Sharing of Employees .....        | 34          |
| 6. Assured Right of Access .....                     | 34          |
| 7. "Market-Based" Tariff Rates .....                 | 36          |
| 8. Application of Code to All Business Units .....   | 38          |
| 9. Application and Enforcement of Code .....         | 39          |

Appendix - Prior Regulatory Experience

1 **I. STATEMENT OF QUALIFICATIONS**

2 **Q. WHAT IS YOUR NAME AND ADDRESS?**

3 A. My name is Michael D. Dirmeier and my business address is 456 Main Street,  
4 Ridgefield, Connecticut 06877.

5 **Q. BY WHOM ARE YOU EMPLOYED?**

6 A. I am a principal in the management consulting firm of Georgetown Consulting  
7 Group, Inc.

8 **Q. WHAT IS THE NATURE OF THE SERVICES PROVIDED BY YOUR**  
9 **FIRM?**

10 A. Our firm offers services in financial and management consulting, principally in the  
11 area of utility regulation. Members of our firm have performed analyses of  
12 petitioners' testimonies and have presented testimony before many commissions  
13 and boards in regulatory cases involving telephone companies, air carriers,  
14 pipeline companies, and electric, gas and water utility companies.

15 **Q. WHAT IS YOUR EXPERIENCE INVOLVING PUBLIC UTILITIES?**

16 A. I have analyzed utility companies' testimonies, managed the preparation of  
17 testimony or testified in the following jurisdictions: Arkansas, Colorado, Florida,  
18 Georgia, Maryland, Mississippi, New Jersey, New Mexico, New York, Ohio,  
19 Oklahoma, Pennsylvania, South Carolina, Vermont, Virginia, the U.S. Virgin  
20 Islands, the District of Columbia, the Federal Energy Regulatory Commission and  
21 the U.S. Nuclear Regulatory Commission. The Exhibit to this testimony provides

1 a complete listing of the jurisdictions and proceedings in which I have been  
2 involved.

3 **Q. WHAT OTHER PROFESSIONAL EXPERIENCE HAVE YOU HAD?**

4 A. Before joining Georgetown Consulting Group, Inc., I was employed by Touche  
5 Ross and Co. and the Bendix Corporation. My consulting experience includes  
6 operations reviews, design and implementation of procedures and product-line  
7 analysis. I have prepared and made presentations regarding the Tax Reform Act  
8 of 1986. My corporate work included capital budgeting, investment analysis,  
9 financial modeling and planning, analysis of acquisitions and divestitures, and  
10 preparation of financial reports for the Board of Directors.

11 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

12 A. I graduated from Texas A&M University in 1971 with a Bachelor of Science  
13 Degree in physics. I received a Master of Business Administration Degree in  
14 finance from the University of Chicago in 1973. In 1979, I received a Certificate  
15 in Management Accounting, which is a professional certification for management  
16 accountants and financial managers awarded by the Institute of Certified  
17 Management Accountants.

18 I am a member of the Institute of Management Accountants and the National  
19 Association of Accountants.

1 **II. SCOPE AND PURPOSE OF TESTIMONY**

2 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

3 A. The purpose of this testimony is to present to the Pennsylvania Public Utility  
4 Commission ("Commission" or "PUC") my findings and recommendations  
5 concerning the appropriate code of conduct and standards that should be  
6 established to create competitive safeguards to assist in the transition from a  
7 monopoly to competitive structure for electric generation.

8 In preparing this testimony, I reviewed the direct testimonies and exhibits  
9 filed by PECO Energy Company ("PECO" or "Company") witnesses, their  
10 responses to data requests, and other documents pertaining to the issues of  
11 competitive safeguards and code of conduct.

12 **Q. WAS THIS TESTIMONY PREPARED BY YOU OR UNDER YOUR  
13 DIRECT SUPERVISION?**

14 A. Yes, it was; and, I was assisted by Richard J. Koda, a Senior Consultant at  
15 Georgetown.

16 **III. CONCLUSIONS AND RECOMMENDATIONS**

17 **Q. WHAT ARE YOUR RECOMMENDATIONS IN THIS PROCEEDING?**

18 A. The Commission should adopt a code of conduct that goes beyond the code of  
19 conduct proposed by PECO and embodies the following additions and  
20 enhancements:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20

1. There should be meaningful functional, financial and flow-of-information separation of the operations of the Electric Distribution Company ("EDC"); functional separation must be maintained between the offices, employees and contractors of the EDC and the offices, employees and contracts of affiliated non-monopoly business units, if any; contacts between personnel and contractors of the EDC and of non-monopoly affiliates should be strictly limited and controlled to ensure that the EDC confers no advantage on its affiliate; and no preference or advantage should be given to an affiliate/divisional supplier of an EDC compared to a non-affiliate. There should be an appropriate system for assigning and allocating costs between regulated and non-regulated activities; and no non-monopoly business unit should be allowed to use the EDC's name. If a unit is allowed to use the name, such use must not in any manner imply superior quality of service from the affiliate or that the services of a non-affiliated supplier may be inferior or that the customer may suffer any adverse effect from utilizing the services of a non-affiliated supplier.
2. The provision of unregulated services or market based rates or contracts should occur only through the EDC's separate affiliate/divisional supplier.

- 1           3. The EDC should not act as agent for any supplier of any competitive  
2           service.
- 3           4. Any service<sup>11</sup> that an EDC provides to participants<sup>12</sup> in the electric  
4           industry must be made available under the same notice, terms, prices and  
5           conditions to all; an EDC with excess power or capacity, when offering  
6           such power and/or capacity to its affiliate or divisional supplier, must  
7           offer it to the market at the same time and under the same conditions  
8           that would be provided to its affiliate or division; and no supplier,  
9           should be either hindered or aided by the EDC with respect to any other  
10          supplier when pursuing electric power customers.
- 11          5. All information developed by or acquired by the EDC, regardless of  
12          source, should be subject to strict standards of confidentiality including:
- 13           • customer credit, usage and billing information must be maintained  
14           with utmost confidentiality;
- 15           • all information concerning actual or potential customers, markets,  
16           market trends, economic indicators or anything else, if made  
17           available to any entity outside of the EDC, shall be equally

---

<sup>11</sup> In this context, "service" should include the provision of any information, the taking of any action or the utilization of any resource, whether or not undertaken for compensation.

<sup>12</sup> "Participant in the electric industry" should include all generation and non-utility activities, whether undertaken by non-affiliated companies or affiliates of the EDC. It should also apply to any generation, transmission, distribution or electric service activity of any non-affiliated entity.

- 1 available to all entities (*i.e.*, same manner, format, cost, timing);
- 2 and
- 3 • EDCs should be required to develop and maintain a contact log
- 4 listing all contacts with competitors and suppliers, whether or not
- 5 affiliated, as part of a program intended to enable the Commission
- 6 to verify that all participants have had equal access to information
- 7 and services made available by the EDC.
- 8 6. There should be no derogation of the right of electric generation
- 9 suppliers or end-users to direct access; all tying arrangements between
- 10 generation/supply services and EDC services should be prohibited.
- 11 7. The code of conduct should be applied to all persons employed by the
- 12 EDC and any operations affiliated with the EDC. A failure to comply
- 13 with the code of conduct should be construed as non-compliance by the
- 14 EDC.
- 15 8. The Commission should modify the code of conduct proposed by PECO
- 16 consistent with the above recommendations and this testimony and the
- 17 code of conduct should be implemented immediately.

1 **IV. BASIS FOR RECOMMENDATIONS**

2 **Q. WHAT IS THE OVERRIDING RECOMMENDATION REFLECTED IN**  
3 **YOUR TESTIMONY?**

4 A. The fundamental prerequisite to true and effective competition is that regulated  
5 and non-regulated activities should be as physically, financially and legally  
6 separated as is possible under the Act. Ideally, the EDC would no longer have  
7 any relationship, other than as between totally separate companies, with its present  
8 affiliated generation and marketing businesses. The Commission should mandate  
9 the maximum level of separation possible to ensure that EDCs treat all  
10 participants in the electric markets, including generation undertaken by related  
11 companies, in precisely the same manner.

12 **Q. WHAT IS THE BASIS FOR THIS RECOMMENDATION?**

13 A. In my view, the Commission is given the responsibility to implement these  
14 competitive safeguard principles by the Electricity Generation Customer Choice  
15 and Competition Act of 1996 ("Act"):

16           The purpose of the Act is to provide for an orderly transition  
17           of the Pennsylvania electric industry from a vertically  
18           integrated monopoly to a structure which would support the  
19           development of a competitive retail electric generation market  
20           while retaining a natural monopoly in the transmission and  
21           distribution markets.<sup>3</sup>

---

<sup>3</sup> Proposed Rulemaking Order, Docket No. L-00970122 at 1 (Pa. P.U.C. entered April 10, 1997).

1       Furthermore,

2               This Commonwealth must begin the transition from  
3               regulation to greater competition in the electricity  
4               generation market to benefit all classes of customers and to  
5               protect this Commonwealth's ability to compete in the  
6               national and international marketplace for industry and  
7               jobs.<sup>14</sup>

8               My recommendations in this proceeding are intended to meet the goal of  
9               supporting the development of a competitive retail electric market, consistent with  
10              the Act's purpose. Appropriate policies and standards are needed to bring and  
11              protect robust competition and customer choice to the retail electric market in  
12              Pennsylvania, because customers will benefit from the transition only if there is  
13              strong competition. Competition, customer choice and customer benefits will be  
14              enhanced only if the Commission adopts policies and standards that safeguard and  
15              enhance the development of a truly effective competitive environment for electric  
16              services.

17 **Q. WHY DOES THE COMMISSION HAVE A ROLE IN PREVENTING AND**  
18 **REMEDATING THE ABUSE OF MARKET POWER IN**  
19 **RESTRUCTURING THE ELECTRIC INDUSTRY IN PENNSYLVANIA?**

20 A. PECO's management has a fiduciary responsibility to attempt to set up the future  
21              market in a way that advantages PECO and its investors, even if such activities  
22              are inconsistent with the development of competitive markets. Left unchecked,  
23              PECO would lock-up customers and undertake transactions between its regulated

---

<sup>14</sup> Act §2802(7), "Declaration of Policy."

1 and non-regulated business sectors, all designed to gain the greatest advantage for  
2 PECO without consideration of their effect on the development of a competitive  
3 market. The Commission must act now and in the future, so long as PECO  
4 controls bottleneck facilities and has market power, to ensure that others are given  
5 a fair chance to compete and succeed in competition with PECO.

6 The establishment of appropriate policies and standards at the outset of direct  
7 access of retail customers to electric generation supply is necessary to ensure that  
8 the pro-competitive goals of the Act are met. They will also result in time and  
9 money saved by reducing, if not eliminating, the requirement to investigate and  
10 respond to the inappropriate use of market power after the fact.

11 **Q. HAS THE COMMISSION RECOGNIZED THE NEED TO ESTABLISH A**  
12 **CODE OF CONDUCT IN ORDER TO EFFECTUATE A COMPETITIVE**  
13 **MARKET?**

14 A. Yes. The Commission has recognized a need for a code of conduct when it  
15 promulgated a sample code of conduct in its February 13, 1997 Order, "Licensing  
16 Requirements for Electric Generation Suppliers," and imposed this code on  
17 PECO in its Preliminary Opinion and Order concerning PECO's Pilot program.<sup>15</sup>

---

<sup>15</sup> Petition of PECO Energy Company for Approval of a Retail Access Pilot Program, Docket No. P-00971170 at 16 (Pa. P.U.C., May 8, 1997).

1 Q. CAN THE COMMISSION SIMPLY DECIDE TO PROCEED WITH THE  
2 SAMPLE CODE OF CONDUCT THAT ALREADY HAS BEEN  
3 PROPOSED?

4 A. The code of conduct so far adopted by the PUC was a starting point but does not  
5 complete the task of ensuring and enhancing the development of competition. It  
6 is critical that the Commission recognize the difficulty of establishing a code of  
7 conduct that clearly delineates activities that the monopoly and its affiliates can,  
8 and cannot, undertake. Without question, the adopted code of conduct will be  
9 scrutinized in extreme detail in order for the monopoly to determine what types of  
10 conduct can be undertaken without clearly violating the code. Language that  
11 seemingly prohibits activities will be found to have unintended limitations that  
12 allows certain activities to occur, when to the contrary they should be prohibited  
13 because the original intent was to prohibit them. This is only understandable,  
14 because the utility's managers have a fiduciary responsibility to their investors to  
15 produce the best possible return.

16 Q. WHAT MUST THE COMMISSION DO IN RECOGNITION OF THESE  
17 TENDENCIES?

18 As the Commission adopts and enforces its code of conduct, it must take care  
19 to consider the ways that actions not specifically addressed can still be  
20 anticompetitive or inconsistent with the goals of the Act. The Commission should  
21 be specific and concrete about what utilities and their affiliates can and cannot do,  
22 and it should recognize that there likely will be unanticipated circumstances where

1 activities are undertaken to forestall competition. Since the ultimate goal of  
2 competitors is to eliminate other competitors and to eliminate competition, the  
3 code of conduct must be an effective mechanism helping both to achieve and to  
4 maintain competition in a situation where one competitor — the EDC — has  
5 market power.

6 **Q. SHOULD THE RULES THAT YOU RECOMMEND BE IMPLEMENTED**  
7 **IMMEDIATELY, OR SHOULD THEY AWAIT THE FIRST PHASE OF**  
8 **COMPETITION WHICH IS TO BEGIN JANUARY 1, 1999?**

9 A. The rules should apply immediately to PECO and to any affiliate operating in  
10 PECO's service territory. Immediate application is necessary because of the  
11 ability of PECO to circumvent the rules if their application is delayed. For  
12 example, if PECO and its affiliate, Horizon Energy, were able to freely exchange  
13 information today and for the next 1-½ years until the first phase-in period of  
14 direct access begins, Horizon would be in a position of obtaining a wealth of  
15 customer-specific information that would enable it to get the jump on its future  
16 competitors. If competition is to flourish, the Commission must establish and  
17 begin immediate enforcement of prohibitions against special dealing between the  
18 monopoly business unit and any affiliated business unit engaged in non-monopoly  
19 products and services, including but not limited to generation.

1 Q. ARE THERE ANY ACTIVITIES TAKING PLACE AT THIS TIME ABOUT  
2 WHICH THE COMMISSION SHOULD BE CONCERNED?

3 A. Yes, there are. PECO intends to use, and may be using, its Economic Efficiency  
4 Rider ("EER") and Electric Tariff Rule 4.6 to negotiate with customers who are  
5 pursuing competitive options.<sup>16</sup> While customer retention efforts are valid  
6 undertakings in a competitive market, they are not valid when one opponent is  
7 allowed to compete and the other is not allowed to compete for another 18  
8 months, and even then only on a partial basis. PECO should not be allowed to  
9 utilize its present monopoly and "market-priced" tariff arrangements to "lock-up"  
10 customers. As I explain in greater detail later in my testimony, in the interim  
11 period before direct access begins to be implemented, PECO should not be  
12 permitted to enter into "market priced" contracts unless PECO first offers to  
13 competitive suppliers the opportunity to bid to provide service to the customer and  
14 demonstrates that its price at least covers the imputed cost of the unbundled  
15 delivery service elements (T&D, etc.) plus the incremental cost of the generation  
16 to be sold. At the initiation of direct access, all such "market priced" contracts  
17 should be required to be transferred to PECO's unregulated supplier affiliate and  
18 the affiliated supplier should be required to remit to PECO all delivery service  
19 and other charges that would be applicable to any other non-affiliated supplier  
20 providing similar service. Last, the Commission should provide a "fresh start" to

---

<sup>16</sup> See for example PECO's response to Interrogatory OCA IX-19.

1 customers who have entered into long-term contracts to purchase power from  
2 PECO Energy subsequent to the date on which the Act was passed to permit them  
3 to switch to a competitive supplier if they wish without penalty.

4 **Q. SHOULD THE COMMISSION REVIEW ITS CODE OF CONDUCT IN**  
5 **THE FUTURE?**

6 A. Yes, it should. A strong code of conduct is needed at this time because PECO  
7 controls bottleneck facilities and has a pervasive presence in its service territory.  
8 As conditions change in the future, then it may be appropriate at that time to  
9 reconsider what rules would then be appropriate. As competition takes hold and  
10 PECO truly separates competitive businesses from the EDC operations, there may  
11 be reasons to restructure these rules.

12 **Q. HOW DO YOU USE THE TERMS "EDC" AND "AFFILIATE" IN YOUR**  
13 **TESTIMONY?**

14 A. In this testimony, the term "electric distribution company" or "EDC" *means* the  
15 *monopoly* transmission and distribution function. That function can be provided  
16 either as a division of a vertically integrated electric utility, as a separate  
17 subsidiary, or as the remaining utility company after divestiture of generation  
18 activities. Moreover, EDC does not include ancillary energy services that may be  
19 provided by the T&D utility, but which are subject to competition. "Affiliate"  
20 includes divisions and subsidiaries of the EDC, any operating unit within the  
21 EDC, and any entity under common ownership or control with the EDC.

1 **V. REQUIREMENTS TO SAFEGUARD COMPETITION**

2 **I. SEPARATION OF BUSINESS UNITS**

3 **Q. WHAT STANDARDS AND POLICIES SHOULD THE COMMISSION**  
4 **ADOPT TO SAFEGUARD COMPETITION IN THE PENNSYLVANIA**  
5 **ELECTRIC INDUSTRY?**

6 A. The first and foremost requirement is that monopoly and non-monopoly activities  
7 should be as separate as possible. The purpose of the Act is to provide for a  
8 transition from monopoly to competitive provision of retail electric generation.  
9 However, whenever monopoly and non-monopoly services are commonly owned,  
10 controlled or operated, there is the potential to leverage the monopoly functions to  
11 gain an advantage in non-monopoly services, thereby delaying the advent of  
12 effective competition and limiting the benefits of competition realized by  
13 customers.<sup>17</sup>

14 Where the goal is to provide for a *transition* to competition from monopoly,  
15 it is especially important to ensure that such a goal is achieved by taking steps to  
16 prevent the use of monopoly power in any market other than the specific markets

---

<sup>17</sup> A May 15, 1997 *Public Utilities Fortnightly* news brief notes that a U.S. federal district court will allow a jury to hear antitrust complaints against Pennsylvania Power and Light Co.

The court sent substantial aspects of the oil dealer's complaint to trial. It found that in entering the "all-electric" agreements with developers, the utility had used its position to establish itself in the new construction market by excluding others on some basis other than superior efficiency.

The proceeding citation is *Yeager's Fuel, Inc., et al. v. PP&L, Civil Action Nos. 91-5176, 92-2539, Jan. 31, 1997 (E.D. Pa)*.

1 for which the monopoly is to be retained. In that regard, the Act prescribes only  
2 that it is in the public interest for the transmission and delivery of electricity to  
3 continue to be regulated as a natural monopoly.<sup>18</sup>

4 **Q. WHAT DO YOU MEAN BY SEPARATION?**

5 A. By separation, I mean that the EDC must be functionally disaggregated to the  
6 greatest extent possible so that the EDC's competitive affiliates do not gain any  
7 discriminatory advantage over competitors. This separation includes products,  
8 services, money, information, and anything else that would not normally be shared  
9 with a competitor.

10 **Q. DOES PECO AGREE TO SEPARATION OF EDC AND NON-MONOPOLY**  
11 **BUSINESS ACTIVITIES?**

12 A. Not to the degree necessary. For example, in response to Interrogatory Enron I-8,  
13 PECO stated that the EDC should be allowed to direct customers to PECO's  
14 competitive services:

15 PECO believes that LDU CSRs [Customer Service Representatives]  
16 should not be allowed to "point" or channel new customers  
17 exclusively to its competitive retail energy supply group or affiliate.  
18 PECO believes also, however, that as is common in the telephone  
19 industry, where LEC CSRs often recommend competitive offerings  
20 such as inside wire maintenance plans and answer call services,  
21 PECO's CSRs *may recommend* to its customers that contact them  
22 other competitive products that it offers.<sup>19</sup> [italics added]

---

<sup>18</sup> Act §2802(16). The Act makes no other use of the term "monopoly."

<sup>19</sup> PECO response to Interrogatory Enron I-8.

1 In other words, PECO believes that it should be allowed to utilize its bottleneck  
2 access to customers to promote its competitive services. That would provide it  
3 with a significant competitive advantage which, if allowed and utilized, would  
4 certainly delay the advent of effective competition in Pennsylvania.

5 **Q. WHAT STEPS ARE NECESSARY TO REDUCE THE CHANCES THAT**  
6 **PECO WILL BE ABLE TO EXPLOIT ITS POWER ASSOCIATED WITH**  
7 **ITS POSITION AS THE PROVIDER OF MONOPOLY, BOTTLENECK**  
8 **FACILITIES?**

9 There are two ways to reduce PECO's potential competitive advantage from  
10 this bottleneck control and the Commission should implement both of them. The  
11 *first* is to implement procedures that reduce the EDC's hold on customers. When  
12 arranging service, end-use customers should be allowed to authorize competitive  
13 service providers to contact and, as necessary, negotiate with the EDC to arrange  
14 service to the customer. This would allow competitors to increase their service  
15 offerings and not subject customers to the potential abuse of market power that  
16 would occur if a CSR were to attempt to reverse a customer's decision to change  
17 suppliers. Of course, customers should also have the right to arrange their own  
18 services.

19 The *second* response to abuse by the EDC should be a code of conduct, as  
20 recommended herein, that does not allow the EDC's CSRs to act as agent for  
21 competitive services by attempting to market such services.

1 **Q. ARE THERE OTHER AVENUES IN WHICH PECO WOULD CONFER AN**  
2 **ADVANTAGE ON ITS AFFILIATES BY IMPROPERLY OR**  
3 **INCOMPLETELY SEPARATING ITS BUSINESS UNITS?**

4 A. Yes, there are. In response to Interrogatory Enron I-10, PECO stated that it  
5 requires its "Service Advantage Program and Surge Suppression program" to pay  
6 incremental direct mailing costs associated with bill inserts. While incremental  
7 cost *may* represent the out-of-pocket *additional* cost incurred for the bill inserts, it  
8 represents a significant advantage to PECO's non-monopoly business units by not  
9 requiring them to pay the entire cost that they would incur if they were separate  
10 entities. Thus, PECO's non-monopoly businesses have a substantial head-start  
11 over the businesses of other competitive companies. Certainly, PECO's position  
12 does not create the level playing field to which Mr. Cucchi refers on page 5 of his  
13 prefiled testimony [PECO Statement 15].

14 **Q. DOES PECO PROPOSE TO PERMIT NON-AFFILIATED SUPPLIERS OF**  
15 **SUCH SERVICES TO HAVE THE SAME ACCESS TO THE BILL?**

16 A. No. PECO stated, "PECO would not agree to allow non-affiliates this same  
17 access [to bill inserts or advertising channels]."<sup>10</sup> It should be clear that PECO  
18 intends to retain the advantage that its non-monopoly businesses have of being  
19 able to utilize PECO's bills as an avenue for self-promotion. PECO also pointed  
20 out in its response:

---

<sup>10</sup> PECO response to Interrogatory Enron I-10.b.

1 Non-affiliates may use their own marketing vehicles, and PECO's  
2 competitive businesses would similarly have no right of access to  
3 those [non-affiliate] vehicles.

4 What PECO is saying is that since it cannot advertise in competitors' bills,  
5 competitors should not be allowed to advertise in PECO's bills. While that  
6 statement could be reasonable in other circumstances, it ignores the fact that  
7 PECO's competitive businesses would have access not only to the normal  
8 promotional vehicles available to any competitor, but also to vehicles associated  
9 with monopoly, bottleneck service *not available* to anyone else. The  
10 Commission's position should be to declare that PECO's approach is  
11 discriminatory, is not in the public interest and is contrary to the Act.

12 If PECO's affiliates are to have any access to billing inserts, then PECO's  
13 competitors must have the same access under the same terms, conditions and  
14 pricing. This does not mean that PECO must allow competitors to place bill  
15 inserts; it simply declares that if PECO wishes to grant that privilege to its  
16 affiliate, it must grant it to competitors of the affiliate. The principle is that if  
17 anyone has access to bottleneck facilities such as the EDC bill, then everyone  
18 should have equal access to those bottleneck facilities.

1 Q. WOULD CORPORATE SEPARATION RESOLVE THESE ISSUES?

2 A. To guarantee completely the prevention of horizontal and vertical market power,  
3 full separation (*i.e.*, divestiture) may be necessary if a level playing field is ever  
4 to be achieved, depending on the utility response to the Commission's prescribed  
5 rules. For example, the Ohio Public Utilities Commission Chairman, Craig A.  
6 Glazer, has stated:

7 "[O]n the one hand, if a level playing field among competitors can  
8 ever be achieved, it can be argued that full disaggregation is  
9 necessary. So long as the disco, transco and genco presidents all  
10 report to a single chief executive officer and board of directors, the  
11 temptation to favor one's own generation is so overwhelming that  
12 no Chinese Wall or accounting separation could ever control it."<sup>11</sup>

13 Also, the United States Department of Justice could be said to have agreed  
14 with the above sentiment in the 1980's when it forced AT&T to spin-off its  
15 regulated businesses. The DOJ believed, along with others who were involved  
16 with Local Exchange Carrier regulation, that relying solely on regulation to  
17 prevent the regulated monopoly from favoring its unregulated operations was  
18 problematic. The DOJ believed that no matter what guidelines and auditing  
19 mechanisms it put in place, AT&T could devise clever technological and financial  
20 games to circumvent regulation.<sup>12</sup>

---

<sup>11</sup> Fitch Special Report, "Regulators on Disaggregation and Mergers," October 30, 1995, p.14 as cited in the Conclusion to the Comments of the Division of Energy Resources on the Department's Proposed Rules Governing Restructuring, Commonwealth of Massachusetts, Department of Public Utilities, Docket No. D.P.U. 96-100.

<sup>12</sup> Economic Report of the President, transmitted to the Congress, February 1996, pp.163 and 171 as  
(continued...)

1           Nonetheless, the Act as I understand it, provides that the Commission may  
2           permit but not require the utilities to divest or reorganize their corporate  
3           structure.<sup>113</sup> Accordingly, there are a number of ways in which the utilities may  
4           be structured in the future. They may elect to divest themselves of their  
5           generation holdings, and the Commission may approve such divestiture. They  
6           could subsequently decide to re-enter the generation markets. Or they could  
7           decide to divest portions of their generation, transfer some portions to affiliated  
8           subsidiaries, and retain some portion within the existing company.

9 **Q. ARE THERE FUNDAMENTAL REQUIREMENTS THAT MUST BE**  
10 **IMPOSED REGARDLESS OF THE STRUCTURE ULTIMATELY**  
11 **ADOPTED?**

12 A. Yes. As noted, there are a variety of possible structures that could be mandated  
13 but, in any event, the Commission should ensure that any future structure should  
14 focus on developing more competition, not less. The Commission should also  
15 understand that, while generation may be a large non-monopoly activity in which  
16 EDCs will be affiliated, it is not the only such endeavor. Any non-monopoly  
17 activity undertaken by an affiliate of an EDC, which was defined earlier to mean  
18 the *monopoly* transmission and distribution functions, should be subject to strict

---

<sup>112</sup>(...continued)

cited in the Conclusion to the Comments of the Division of Energy Resources on the Department's Proposed Rules Governing Restructuring, Commonwealth of Massachusetts, Department of Public Utilities, Docket No. D.P.U. 96-100.

<sup>113</sup> Act §2804(5).

1 rules preventing the monopoly EDC from conferring any advantage to the non-  
2 monopoly activity.

3 In any event, so long as the utilities have the potential for providing  
4 monopoly and non-monopoly services under common control or ownership, no  
5 matter how structured, the relationships between such activities should mimic as  
6 closely as possible the relationship that would exist if they were not commonly  
7 owned or controlled. In other words, no action should be taken by a T&D  
8 business unit on behalf of an affiliate under any term, circumstance or condition  
9 that differs from an action it would taken on behalf of a non-affiliate. In applying  
10 this rule, the term "affiliate" should be broadly defined as any person, company,  
11 division or operating unit that is providing non-monopoly services (not limited to  
12 electric generation).

13 **Q. WILL YOUR RECOMMENDATION REDUCE THE BENEFITS OF**  
14 **ECONOMY OF SCOPE?**

15 A. It may. However, the pro-competitive goals of the Act cannot be met by allowing  
16 information to flow between monopoly and non-monopoly business units.

17 **Q. SHOULD THE COMMISSION MANDATE THAT JOINT AND COMMON**  
18 **COSTS, IF ANY, BE ALLOCATED BETWEEN MONOPOLY AND NON-**  
19 **MONOPOLY ACTIVITIES?**

20 A. Yes, it should. Ideally, as noted above, the EDC would have no affiliated non-  
21 monopoly activities. If there are such activities, then the Commission should take  
22 care to ensure that common costs are held to a minimum and, where they occur,

1 that a reasonable share are allocated, particularly to ensure that no advantage is  
2 conferred by the monopoly to the non-monopoly activity.

3 **Q. SHOULD THE BOOKS AND RECORDS OF AFFILIATES BE**  
4 **AVAILABLE TO THE COMMISSION?**

5 A. Yes, they should. The EDC and its affiliated competitive providers should keep  
6 separate books and records, which should be subject to review by the  
7 Commission. Moreover, the books and records of the competitive affiliates should  
8 be available to the Commission for its review to ensure that all costs are properly  
9 accounted for and assigned and allocated appropriately.

10 **2. USE OF EDC NAME**

11 **Q. SHOULD NON-MONOPOLY ACTIVITIES BE ALLOWED TO UTILIZE A**  
12 **COMMON CORPORATE NAME WITH THE EDC?**

13 A. Preferably not. The concept that should be foremost is that there should be no  
14 preference, of any type, conferred by the EDC to affiliated non-monopoly  
15 business units. If there is value in the existing name, then the advantage of that  
16 value should not be conferred on the non-monopoly businesses without  
17 compensation.

18 **Q. WHAT IS PECO'S POSITION CONCERNING THE NAME IT INTENDS**  
19 **TO APPLY TO ITS GENERATION BUSINESS?**

20 A. PECO responded to discovery that, "The Company has not yet determined if its  
21 generation and distribution businesses will operate under the same name."<sup>14</sup>

---

<sup>14</sup> PECO response to Interrogatory OCA-VIII-25.

1        However, the Company is using the PECO name in at least one other state.  
2        PECO has cross-licensed the PECO and Horizon Energy names and Horizon is  
3        authorized to do business in Pennsylvania.<sup>115</sup> PECO's position is that its name  
4        may be of value.<sup>116</sup> PECO has also stated:

5            If a utility division or affiliate has advantages due to the expertise  
6            of its personnel, or due to the intangible benefit or goodwill that the  
7            affiliate or division may have due to its association with the utility,  
8            it is fair for the utility division or affiliate to capitalize on such  
9            advantages.<sup>117</sup>

10        This latter statement is similar to that of the Pennsylvania Electric Association,  
11        which stated:

12            Mandating use of a different name would deprive consumers of the  
13            added assurance of quality and price derived from putting the  
14            parent's reputation at stake.<sup>118</sup>

15        While it is understandable that PECO would want its non-monopoly business units  
16        to use the PECO name, if the name has value then use of the name confers an  
17        advantage on those non-monopoly business units. Until there is effective  
18        competition, no advantage should be conferred on PECO's non-monopoly business

---

<sup>115</sup> PECO response to Interrogatories Enron I-7.d and I-4.

<sup>116</sup> PECO response to Interrogatory Enron I-7.

<sup>117</sup> PECO response to Interrogatory Enron I-3.

<sup>118</sup> Petition for Approval of Retail Access Pilot Program, Docket Nos. P-00971172, P-00871175, P-00971168, P-00971169, P-00971183, P-00970070 at 12 ("PEA Comments on Preliminary Opinions and Orders," May 22, 1997).

1 units, and any such advantage will serve only to delay the advent of effective  
2 competition.

3 **Q. WHY DO YOU BELIEVE THAT NON-MONOPOLY USE OF THE EDC'S**  
4 **NAME IS IMPORTANT?**

5 A. If it were not important, then the utilities would not so adamantly argue that they  
6 should be able to use their name in any manner they want. The principal concern  
7 is that an affiliate of an EDC will use its relationship with the EDC to imply to  
8 customers that its quality of service will be better, as a result of its affiliation with  
9 the EDC. For example, some automobile dealers advertise that their repair  
10 services are better than others because of their relationship with the manufacturer.  
11 Similarly, a generation affiliate could allege that its customers will get preferential  
12 T&D treatment, such as faster hookups and more rapid restoration of service after  
13 storms, or just superior "electric service" overall because of the affiliation with the  
14 EDC. Even with the prohibition of implying superior service by the affiliate or  
15 division of the local utility or inferior service by a non-affiliated supplier, use of  
16 the utility's name in and of itself creates a value that alters the playing field  
17 relative to that entity using the name, logo or affiliation in its market offering.

18 Because utilities have historically provided customers with electric services as  
19 a single product with all the necessary functions and ancillary services bundled  
20 into one package, utilities have a great influence over the electric services market.  
21 Utilities have played a dominant role in the electric industry from the design,

1 location and usage of transmission and distribution systems, to planning and  
2 operating major generation facilities, to deciding what products are ultimately  
3 delivered to the consumer. As a result of this dominant role, incumbent utilities  
4 are in a good position to either directly or indirectly influence the development of  
5 competition through their own standing and reputation in their monopoly.

6 With the name recognition of the EDC and its reputation developed over the  
7 years of providing regulated electric utility service, the user of that name for the  
8 provision of a variety of electric services will have a distinct advantage over its  
9 competition in the local jurisdiction of the EDC.

10 **Q. DOES PECO'S PROPOSED CODE OF CONDUCT PROVIDE SUPPORT**  
11 **FOR YOUR POSITION WITH RESPECT TO THE USE OF THE EDC'S**  
12 **NAME BY AFFILIATE SUPPLIERS?**

13 A. Yes. In my view, PECO's position, as reflected in its discovery response quoted  
14 above, contradicts part of item #7 of PECO's proposed code of conduct:

15 7. PECO shall not allow a PECO Supplier to utilize  
16 PECO's name in a manner such that customers can  
17 reasonably imply from that use:

18 \* \* \*

- 19 • that the merchant services (for power) are  
20 being provided by PECO as the LDU rather  
21 than a PECO Supplier; . . .<sup>119</sup>

22 PECO's position appears to be that customers will be able to distinguish and  
23 understand that the energy purchased from an affiliate is not being provided by

---

<sup>119</sup> PECO Exhibit GAC-2.

1 the EDC. In fact, however, so long as energy and T&D services are provided by  
2 companies with the same name (*i.e.*, "PECO"), few customers will do anything  
3 other than conclude that the merchant service for power is being provided by  
4 PECO, and few will understand that there is any distinction between the EDC and  
5 the power supplier. Moreover, as long as the services are provided by companies  
6 under common control and ownership, as a practical matter there will in fact be  
7 very little distinction between the source of energy and the source of T&D  
8 services.

9 **Q. SHOULD THE GENERATING OR NON-MONOPOLY BUSINESS**  
10 **ACTIVITIES BE ALLOWED TO TAKE THE PRESENT UTILITY'S**  
11 **NAME, WITH THE T&D BUSINESS UNITS TAKING ON A NEW NAME?**

12 A. No, they should not. While that might appear to be one way around the "name"  
13 issue, retail customers, for whom competition is being implemented, would know  
14 that their provider of T&D services has not changed and is the same company that  
15 it had been in the past. The business that is being made subject to competition,  
16 the retail generation business, is the activity that should be prohibited from, or at  
17 least limited in, using the existing corporate name.

18 **Q. WHAT IS YOUR RECOMMENDATION CONCERNING THE USE OF**  
19 **THE PECO NAME BY NON-MONOPOLY BUSINESS UNITS?**

20 A. The Commission should recognize that if the PECO name has value, then  
21 allowing non-monopoly units to use that name confers an advantage to them. If  
22 the name has no value, then the non-monopoly units simply will decide not to use

1 it. Therefore, the Commission should not allow non-monopoly business units to  
2 use the EDC's name. If the Commission finds that it cannot refuse the use of the  
3 EDC's name, then it should ensure that such use does not, in any manner, imply  
4 superior quality of service from the affiliate, that the services of a non-affiliated  
5 supplier may be inferior or that the customer may suffer any adverse effect from  
6 utilizing the services of a non-affiliated supplier.

7 **3. EDC HAS NO AGENCY ROLE**

8 **Q. SHOULD THE EDC BE ALLOWED TO ACT AS AGENT FOR ITS**  
9 **AFFILIATES?**

10 A. No. Moreover, the EDC should not be allowed to act as agent for any supplier or  
11 provider of competitive service, whether or not that supplier is affiliated with the  
12 EDC. The Commission should recognize the special position that the EDC has in  
13 its service territory. Every customer of every supplier is required to utilize the  
14 services of the EDC, whether or not he or she wants to in order to receive electric  
15 service. As such, the EDC and its employees must be supervised so that every  
16 supplier has an equal opportunity to access customers. The EDC should display  
17 favoritism to no one.

18 In general, any transaction between the EDC and affiliated non-monopoly  
19 business units should be permitted to occur only if the same transaction would  
20 occur with a non-related entity and is made available to all non-related entities  
21 under the same terms and conditions. If the monopoly unit is unwilling or unable

1 to offer a resource or service to a competitor of its affiliate, then it should not be  
2 allowed to offer the service to its own affiliate. In other words, the EDC is not to  
3 act as an agent, in any manner, for its affiliated non-monopoly business units.

4 **Q. DOES YOUR RECOMMENDATION APPLY TO ALL ACTIVITIES THAT**  
5 **MAY BE UNDERTAKEN BETWEEN THE EDC AND ITS AFFILIATES?**

6 A. Yes, it does. The Commission should adopt a policy that no preference or  
7 advantage may be given to an affiliate or divisional supplier compared to a non-  
8 affiliate or third party supplier. Competitive services provided by PECO should  
9 be treated in the same manner that a non-affiliate or third party supplier would be  
10 treated by the EDC. In this regard, the use by competitive business units of  
11 PECO's name confers advantages on those units.

12 In matters related to the transmission and distribution of electricity, there  
13 must be no preference offered to affiliates, including but not limited to:  
14 scheduling, balancing, metering, stand-by and curtailment policy. If PECO offers  
15 its generation or supply affiliate or division a discount or rebate or fee waiver for  
16 transmission services, balancing, meters, meter installation, stand-by service or  
17 other services, it must contemporaneously offer the same discount, rebate or fee  
18 waiver to all similarly situated third party generators or suppliers by providing  
19 them with appropriate notification and offer of such market term adjustments.  
20 Also, joint promotions between the EDC and any generator and/or supplier, such  
21 as inclusion of fliers for the generator or supplier in the utility bills, should be

1 prohibited, unless such promotions are offered to all other generators and/or  
2 suppliers under the same terms and conditions. The EDC must not preferentially  
3 provide sales leads to any generator and/or supplier nor participate in joint  
4 solicitation calls on end-users by EDC personnel and any generator and/or  
5 supplier. Compliance with this standard should be monitored by the Commission.

6 **Q. SHOULD THE COMMISSION BE CONCERNED ABOUT JOINT**  
7 **MARKETING OF T&D AND GENERATION SERVICES?**

8 A. Yes, it should. There is considerable opportunity for anticompetitive conduct  
9 being carried out by the non-regulated affiliated generator in the form of  
10 undertaking agency activities that abuse its relationship with the EDC. For  
11 example, the non-regulated generator might make an offer to a potential customer  
12 for generator and or supply services that would be priced somewhat lower than  
13 current tariff levels of the EDC. If the non-regulated generator has and uses the  
14 same name and logo as the EDC, the customer may believe that the deal being  
15 offered is actually provided, or at least backed up, by the EDC. The potential for  
16 misunderstanding is significant.

17 One response to this problem would be to require that the non-regulated  
18 services not use the name or logo of the EDC when operating in the jurisdiction  
19 served by the EDC. Another method is that, if the name is allowed to be shared,  
20 then all contracts issued by non-regulated affiliates reflect a disclaimer, in  
21 conspicuous type, placing the customer on notice that the EDC has no standing or

1 responsibility and will not support or fulfill the agreement on behalf of its non-  
2 regulated affiliate.

3 **Q. IF AN EDC HAS SURPLUS ENERGY OR CAPACITY, SHOULD IT BE**  
4 **ALLOWED TO SELL IT TO AN AFFILIATED MARKETER?**

5 A. If an EDC either owns or has contracts for the purchase of capacity and energy  
6 and it makes any such capacity or energy available to an affiliate, then it should  
7 be required to offer it to the market at the same time and under the same  
8 conditions that would be provided to its affiliate. Such offering should be made  
9 by either a posting to an electronic bulletin board that is a well known source of  
10 market information or by otherwise placing an offering that would constitute an  
11 offering to the market. The goal here is not to prohibit the sale of economic  
12 energy by an EDC's affiliate; rather, it is to ensure that the EDC not play  
13 "favorites" and that all transactions with affiliates be on an arms-length basis.

14 **4. PROHIBITION AGAINST TRANSFER OF INFORMATION**

15 **Q. IS THERE ANY PARTICULAR TYPE OF SEPARATION ON WHICH THE**  
16 **COMMISSION SHOULD FOCUS?**

17 A. Yes, there is. The transfer of information between monopoly and non-monopoly  
18 activities can critically and unfairly impair the development of effective  
19 competition. The monopoly EDCs will have important information not only  
20 concerning existing customers, but also concerning potential new customers,  
21 sources of generation, offer prices for generation, transmission constraints,  
22 economic conditions and potentially many other types of information that are of

1 responsibility and will not support or fulfill the agreement on behalf of its non-  
2 regulated affiliate.

3 **Q. IF AN EDC HAS SURPLUS ENERGY OR CAPACITY, SHOULD IT BE**  
4 **ALLOWED TO SELL IT TO AN AFFILIATED MARKETER?**

5 A. If an EDC either owns or has contracts for the purchase of capacity and energy  
6 and it makes any such capacity or energy available to an affiliate, then it should  
7 be required to offer it to the market at the same time and under the same  
8 conditions that would be provided to its affiliate. Such offering should be made  
9 by either a posting to an electronic bulletin board that is a well known source of  
10 market information or by otherwise placing an offering that would constitute an  
11 offering to the market. The goal here is not to prohibit the sale of economic  
12 energy by an EDC's affiliate; rather, it is to ensure that the EDC not play  
13 "favorites" and that all transactions with affiliates be on an arms-length basis.

14 **4. PROHIBITION AGAINST TRANSFER OF INFORMATION**

15 **Q. IS THERE ANY PARTICULAR TYPE OF SEPARATION ON WHICH THE**  
16 **COMMISSION SHOULD FOCUS?**

17 A. Yes, there is. The transfer of information between monopoly and non-monopoly  
18 activities can critically and unfairly impair the development of effective  
19 competition. The monopoly EDCs will have important information not only  
20 concerning existing customers, but also concerning potential new customers,  
21 sources of generation, offer prices for generation, transmission constraints,  
22 economic conditions and potentially many other types of information that are of

1 commercial and competitive value. The Commission should ensure that no  
2 information is made available by the EDC to non-monopoly business units, unless  
3 such information is also made available at the same time, in the same form, and  
4 under the same terms and conditions, to all competitors of the non-monopoly  
5 business units. The goal of the "separation" recommendation is intended primarily  
6 to ensure that information changes hands only in that manner.

7 **Q. WHAT ARE YOUR RECOMMENDATIONS CONCERNING THE**  
8 **TREATMENT OF CUSTOMER INFORMATION?**

9 A. Customer information should be retained by the EDC and not be shared with any  
10 supplier, whether or not the supplier is affiliated with the EDC. The Commission  
11 should determine that, without the prior written consent of the customer, no utility  
12 employee shall disclose to any non-monopoly business unit, including a generator,  
13 supplier or marketer, whether it is an affiliate, division or third party, any  
14 information that the EDC receives from any of the following entities:

- 15 • a customer or supplier;
- 16 • a potential customer or supplier;
- 17 • an agent of a customer or supplier, or potential customer or supplier;
- 18 • a marketer or other supply entity seeking to supply electricity to a  
19 customer or potential customer that is located in the EDC's service  
20 territory.

1 However, the EDC may disclose information that is aggregated so that specific  
2 customer or supply contract information can not be ascertained, so long as such  
3 information is made available to all non-monopoly entities in the same format and  
4 under the same terms and conditions.

5 **Q. DOES PECO AGREE THAT SHARING OF INFORMATION SHOULD BE**  
6 **SIMULTANEOUS TO ALL COMPETITORS?**

7 A. No, it does not. PECO's response to a question on this issue was:

8 Q. – Does PECO agree that electric utilities should simultaneously  
9 make available to the market and all competitive suppliers any and  
10 all information they provide to affiliated competitive suppliers? If  
11 not, state the basis for this position.

12 A. – Yes, except that this rule should be limited to all “market” or  
13 commercially useful information. Competitively neutral or  
14 extraneous information or communications need not be shared  
15 simultaneously, or at all.<sup>120</sup>

16 The problem raised by PECO's position is that it requires someone at PECO to  
17 make the determination of what information is competitively neutral or  
18 extraneous. The potential for mischief is obvious and should be eliminated by a  
19 code of conduct requirement that any information made available from the EDC  
20 to any affiliated non-monopoly business unit shall be available to all competitors.  
21 In addition, to put teeth in this proposal, PECO should be required, at a minimum,  
22 to create an Internet or other electronic bulletin board in which the date, time,  
23 charge for and type of information provided to affiliates is documented.

---

<sup>120</sup> PECO response to Interrogatory Enron I-12.

1 Q. WHY IS IT IMPORTANT THAT INFORMATION BE MADE  
2 AVAILABLE, IF AT ALL, IN THE SAME FORMAT AND UNDER THE  
3 SAME TERMS AND CONDITIONS?

4 A. An important attribute creating the value of information is its timeliness. If an  
5 EDC's affiliate always has information in advance of when that information is  
6 made available to competitors, it has the obvious advantage of being able to  
7 consider and respond to changing events first.

8 Another important attribute of information is its cost of collection. It takes  
9 time and resources to obtain, analyze and correlate data. If information is made  
10 available to an EDC's affiliate at one price, and to competitors at a higher price,  
11 the advantage to the affiliate should be obvious. The pro-competitive goals of the  
12 Act would not be met if differential pricing and unfavorable terms of service were  
13 offered to competitors versus affiliates.

14 A third attribute of information is the format in which it is given. If the  
15 EDC makes information available to its affiliate, then that information should be  
16 made available to competitors in the precise same format that it was made  
17 available to its affiliate. If the affiliate and the EDC had discussions or any  
18 documentation concerning how the information was structured or formatted, that  
19 should also be made available to competitors. It should also be noted that this  
20 testimony does not say that an EDC has to make information available to  
21 competitors; it merely means that, if any information is provided to an affiliate,  
22 then it must be made available to competitors.

1 **5. RESTRICTIONS ON SHARING OF EMPLOYEES**

2 **Q. SHOULD THE EDC AND ITS AFFILIATES BE ALLOWED TO SHARE**  
3 **EMPLOYEES?**

4 A. While it may be desirable, from the perspective of the EDC and its affiliates, to  
5 share information and be part of a team, such activities are not desirable from the  
6 point of view of advancing competition as called for under the Act. Therefore,  
7 contacts between system operation employees of the EDC and its affiliates should  
8 be limited in the same manner that normal caution and care is taken by  
9 competitors to ensure that they do not share information with their opponents.  
10 Moreover, crucial information can be transferred as easily, if not more easily, by  
11 transferring an employee rather than making data files available between affiliates.  
12 Accordingly, employees of the EDC should not be shared with and should be  
13 physically separated from those of affiliated competitive providers.<sup>121</sup> The  
14 Commission should not allow the EDC and its non-monopoly affiliates to have  
15 common officers or employees.

16 **6. ASSURED RIGHT OF ACCESS**

17 **Q. SHOULD THE COMMISSION BE CONCERNED THAT THE T&D**  
18 **UTILITY MAY IN OTHER MANNER PROVIDE ADVANTAGES TO ITS**  
19 **NON-MONOPOLY AFFILIATE?**

20 A. Yes, it should. The Commission should adopt a policy whereby the derogation of  
21 the right of electric generation suppliers or end-users to direct access is prohibited.

---

<sup>121</sup> The PUC could consider a waiver of this separation requirement if a utility could show that waiver would be in the public interest.

1 Transmission and distribution constraints for retail transactions may have to be  
2 addressed to mitigate a condition, such as failure to provide new distribution  
3 capacity when it is needed, which would effectively deny end-users direct access  
4 to multiple aggregators and, ultimately, generation suppliers. FERC Order 888  
5 has dealt with a similar problem by establishing an "expansion obligation" rule  
6 that requires a public utility to expand services when necessary to provide  
7 transmission service, or show good faith efforts to obtain the approvals necessary  
8 for that expansion. Distribution systems should be subject to the same type of  
9 standard to ensure access by all potential competitors.

10 **Q. WHAT OTHER MECHANISM COULD A T&D UTILITY USE TO**  
11 **ADVANTAGE ITS CORPORATE PARENT?**

12 A. The EDC could employ a tying arrangement. A tying arrangement is when a  
13 customer is faced with any barrier or condition to service contingent upon the  
14 taking of another service. For example, if the EDC were to suggest, in any  
15 manner, that a customer's access to T&D services would be conditioned or  
16 improved if the customer also took generation or any other non-monopoly services  
17 from the EDC's affiliate, that would be a tying arrangement. It would be a clear  
18 competitive advantage conferred on the EDC's non-monopoly affiliate. Such  
19 arrangements must be prohibited. Bottleneck monopoly services must not be  
20 allowed to inhibit competitive entry and activity.

1        7. "MARKET-BASED" TARIFF RATES

2 Q. MR. DIRMEIER, IS PECO MARKETING ENERGY IN COMPETITION  
3 WITH SUPPLIERS THAT PRESENTLY ARE NOT ALLOWED TO  
4 COMPETE?

5 A. Yes, it is. While the Act was passed in 1996, competitors of PECO will not be  
6 able to enter the market to compete for energy supply customers until January 1,  
7 1999. Moreover, competitors will not have full access to all customers until  
8 January 1, 2001, or later if the Commission decides to extend the transition  
9 period. Nonetheless, during this period of time in which competitors only can  
10 offer future service, PECO is actively engaging customers in contracts that will  
11 preclude competitors from accessing those customers even after direct access  
12 becomes available on January 1, 2001. Thus, PECO appears to be actively  
13 utilizing the transition period to its competitive advantage, by locking up  
14 customers to long-term contracts during a time in which competitors cannot do  
15 so.<sup>122</sup>

16            PECO appears to be viewing the transition period as a "competition-free  
17 zone." While that may be good for PECO, it has a stifling effect on future  
18 competition; it will limit the achievement of the greater competition called for  
19 under the Act.

---

<sup>122</sup> While competitors theoretically could sign customers for delivery in the future when those customers become eligible for direct access, as a practical matter PECO holds a significant competitive advantage because competitors cannot provide service under such contracts until that future date, and PECO can. More importantly, PECO currently has information that only a monopoly utility possesses.

1 Q. WHAT IS THE APPROPRIATE RESPONSE TO SUCH "FLEX-TARIFF"  
2 AGREEMENTS?

3 A. Competitive activities should not be undertaken by the monopoly T&D business  
4 unit, the "EDC" for purposes of this testimony. Accordingly, off-tariff  
5 agreements should be negotiated by and become the risk of non-monopoly  
6 business units once direct access begins. Those business units should be required  
7 to obtain their own source of supply and, if they purchase from the monopoly  
8 utility, they should make such purchases at standard tariffed rates. The affiliate  
9 should be required to pay all delivery or other charges that would apply to  
10 non-affiliates. In that manner, the risk of these agreements, if PECO decides to  
11 enter into them, should be borne fully by shareholders.

12 In the time before the direct access begins to be phased in, PECO should not  
13 be permitted to enter into "market priced" contracts unless PECO first offers to  
14 competitive suppliers the opportunity to bid to provide service to the customer. In  
15 any event, if PECO is permitted to and intends to enter into such a contract,  
16 PECO should be required to demonstrate that its price at least covers the cost of  
17 the unbundled delivery service elements (T&D, etc.) that are determined to be  
18 applicable to PECO plus the incremental cost of the additional generation (i.e.  
19 imputation).

20 In addition, the Commission should provide that customers who entered into  
21 such contracts subsequent to the date on which the Act was passed will have, in

1 the future, the penalty-free right to cancel such contract — a "fresh start."

2 Contracts entered into after a customer is subject to direct access would not be  
3 subject to this provision. Nor would contracts entered into prior to passage of the  
4 Act. But those contracts entered into during the PECO-declared competition-free  
5 zone should be subject to cancellation at the customer's option.

6 **8. APPLICATION OF CODE TO ALL BUSINESS UNITS**

7 **Q. WHY DO YOU RECOMMEND THAT THE CODE OF CONDUCT APPLY**  
8 **NOT ONLY TO THE EDC, BUT TO ITS AFFILIATES?**

9 A. The Commission's goal should be to ensure compliance with its rules and  
10 regulations. If the Commission were to determine that its rules applied only to  
11 the EDC and not to non-monopoly affiliates of the EDC, then the EDC could be  
12 in full compliance with the rules and regulations while the affiliates are in blatant  
13 disregard of them. Such a situation would be damaging to the public interest, or  
14 else the Commission should not have adopted the rules in the first place!

15 Accordingly, the Commission should take all appropriate actions to ensure  
16 adherence to the code of conduct, not only by the EDC, but by its affiliates.

17 Since the Commission may not have direct legal authority over non-regulated  
18 affiliates [and that is a legal issue], the Commission should maximize its leverage  
19 and authority over the EDC by declaring that the EDC will be held responsible for  
20 any failings by its affiliates.

1        **9. APPLICATION AND ENFORCEMENT OF CODE**

2 **Q. HOW SHOULD THE STANDARDS AND POLICIES WHICH WOULD BE**  
3 **ADOPTED BY THE COMMISSION BE APPLIED?**

4 A. It should be Commission policy that the above elements necessary for an effective  
5 code of conduct be applied to both the EDC and its generation and/or supply  
6 affiliates and divisions on a consistent basis and applied to all third party  
7 generators and suppliers as designated in the specific standard and/or policy. This  
8 is important in light of the market impact shown by both utilities and their  
9 affiliates in the home jurisdiction of the utility. The above standards of conduct  
10 are intended to ensure that all interested market participants have an opportunity  
11 to pursue electric supply customers on a competitively neutral basis with no abuse  
12 of the market by any party, especially those with the greatest potential to benefit  
13 by such abuse. The above standards will help to minimize any unfair competitive  
14 advantages that could result from the close relationship that exists between a  
15 utility and its affiliate or division.

16 **Q. SHOULD THESE STANDARDS AND POLICIES BE CONSIDERED ALL-**  
17 **ENCOMPASSING?**

18        The above standards, although intended to be all-encompassing, should be  
19 considered basic requirements which, if followed, should prevent preferential  
20 treatment to affiliates of the EDC. They are intended to promote the development  
21 of competitive markets. However, it may be appropriate for the Commission to  
22 apply more severe conditions on an individual basis if a specific utility appears to

1 be circumventing these standards or otherwise engaging in anti-competitive  
2 behavior. Individual circumstances will dictate what, if any, additional conditions  
3 may be necessary.

4 As the electric generation/supply market evolves it is expected that changes  
5 will occur that will require changes and modifications to these standards in order  
6 for them to remain an effective tool protecting ratepayers while allowing a truly  
7 competitive market to come to fruition. However, without these standards at this  
8 time, self-dealing abuses will likely arise. To deal with these abuses with after-  
9 the-fact admonitions or rejection of an agreement with an affiliate will not be  
10 particularly constructive. These important policy decisions should occur before  
11 direct access is established in order reduce litigation and increase the likelihood  
12 that an effective competitive market will develop.

13 **Q. HOW SHOULD THE COMMISSION ENFORCE THESE STANDARDS?**

14 A. Once these standards and policies are adopted, the Commission should enforce  
15 them consistently and equitably. Each transaction in violation of the standards of  
16 conduct should be considered to be a separate occurrence. When enforcing these  
17 standards, or any order of the Commission regarding the above standards, the  
18 Commission should avail itself of any of the following remedies:

- 19 • termination of any transaction that violates the standards;
- 20 • prospectively, limiting or restricting the amount, percentage or value  
21 of transactions that may be entered into between an EDC and a

1 generation and/or supplier affiliate or division for a violation of the  
2 standards; and

- 3 • application of any other remedies available to the Commission.

4 **Q. SHOULD THE COMMISSION MONITOR COMPLIANCE WITH THE**  
5 **COMPETITIVE SAFEGUARDS?**

6 A. Yes, it should. The Commission should require that a contact log be maintained  
7 by the EDC to verify that offers are made with the same terms and conditions. If  
8 an EDC provides any non-monopoly service, then it should be required to  
9 maintain complete and accurate records of all service requests, service refusals,  
10 and service transactions. The EDC should publicly disclose sales at discounted  
11 rates or transfers of electric supply or capacity or related services for all  
12 transactions that are not tariffed. The EDC should report all transactions within  
13 30 days following the end of the quarter in which the transaction occurred. For  
14 each transaction, the disclosure by the EDC should include the following:

- 15 • the date of the contract or arrangement;
- 16 • the period covered;
- 17 • the type of transaction (*e.g.*, commodity, capacity, balancing);
- 18 • the amount of transaction components sold or transferred;
- 19 • the conditions or restrictions placed on the transaction; and,
- 20 • the price for the transaction, including separate prices for each  
21 service offered on a stand-alone basis.

1 Q. PLEASE SUMMARIZE YOUR POSITION CONCERNING THE CODE OF  
2 CONDUCT.

3 A. The Commission's adopted code of conduct should ensure that an effectively  
4 competitive generation market can and does develop in Pennsylvania. The  
5 Commission should be very careful, when reading PECO's proposed code of  
6 conduct, to distinguish between what is written in the proposal from what PECO  
7 has stated in its responses to discovery that it would be allowed to do, as  
8 discussed previously throughout this testimony. PECO's position in this  
9 proceeding appears to contradict the statement made in its Pilot program that:

10 PECO Energy [as the LDU] shall supply services and apply the  
11 rules and other provisions of the Pilot to non-affiliates in the same  
12 manner it applies them to an affiliate and shall uniformly enforce  
13 the rules and other provisions of the Pilot.<sup>123</sup>

14 Applying rules to non-affiliates and affiliates in the same manner *should be* the  
15 operating rule. As discussed throughout this testimony, that is not the rule that  
16 PECO proposes for competition. In fact, the above rule in the Pilot program is  
17 relaxed in PECO's proposed code of conduct:<sup>124</sup>

18 PECO [as the LDU] shall supply services and apply the rules and  
19 other provisions of its Tariffs to non-affiliates in the same manner it  
20 applies them to a PECO Supplier.

21 Under the Pilot, all services provided to non-affiliates would be applied in the  
22 same manner as to affiliates. In contrast, in this proceeding, only tariffed services

---

<sup>123</sup> "PECO Energy Retail Access Pilot Program - Docket No. P-00971170," page 8, §IV.E.2.

<sup>124</sup> PECO Exhibit GAC-2.

1 would be applied in that same manner. PECO would permit itself to provide non-  
2 tariffed services in any discriminatory manner that it chooses.

3 It is incumbent on the Commission to ensure that the EDC treat all  
4 competitors in precisely the same arms-length manner. PECO's code of conduct  
5 does not achieve that goal.

6 **Q. DOES THIS CONCLUDE YOUR PREFILED TESTIMONY?**

7 **A.** Yes, it does.

1 Appendix – Mr. Dirmeier’s Prior Regulatory Experience

2 Arkansas

3 Arkansas Power & Light Company

- 4 • 1985 Grand Gulf proceeding

Docket No. 84-249-U

5 Colorado

6 Mountain Bell Telephone

- 7 • 1982 base rate  
8 • 1984 base rate  
9 • 1986 base rate  
10 • 1991 base rate

I&S 1575

I&S 1655

I&S 1700

Docket No. 90S-544T

11 Public Service Company of Colorado

- 12 • 1981 base rate  
13 • 1983 base rate

I&S 1525

I&S 1640

14 Delaware

15 Diamond State Telephone Company

- 16 • 1982  
17 • 1985 rate design

Docket No. 82-32

Docket No. 84-33

18 Intrastate competition

Regulation Docket No. 10

19 District of Columbia

20 Potomac Electric Power Co.

- 21 • 1987 Tax Reform Act  
22 • 1993 base rate – ERAM, DSM surcharge  
23 and clause treatment of purchase  
24 power costs  
25 • 1994 base rate – utility risk and costs from  
26 nonregulated affiliate

Formal Case Nos. 852-I & 852-II

Formal Case No. 929

Formal Case No. 939

27 C&P Telephone Company

- 28 • 1987 Tax Reform Act  
29 • 1991 base rate case  
30 • 1992 alternative regulation  
31 • 1993 base rate case

Formal Case Nos. 854-I & 854-II

Formal Case No. 850

Formal Case No. 814, Phase III

Formal Case No. 926

- |    |   |                               |
|----|---|-------------------------------|
| 1  | Bell Atlantic - D.C.                        |                               |
| 2  | • 1995 alternative regulation               | Formal Case No. 814, Phase IV |
| 3  | <u>Federal Energy Regulatory Commission</u> |                               |
| 4  | Public Service Company of Colorado          |                               |
| 5  | • 1984 base rate                            | Docket No. ER-84-472          |
| 6  | <u>Florida</u>                              |                               |
| 7  | Southern Bell Telephone Company             |                               |
| 8  | • 1984 divestiture case                     | Docket No. 820263-TP          |
| 9  | <u>Georgia</u>                              |                               |
| 10 | Georgia Power Company                       |                               |
| 11 | • Vogtle phase-in                           | Docket No. 3549-U             |
| 12 | • Base rate & phase-in                      |                               |
| 13 | 1987  | Docket No. 3673-U             |
| 14 | 1989  | Docket No. 3840-U             |
| 15 | 1991  | Docket No. 4007-U             |
| 16 | • 1993 (Clean Air Act allowances)           | Docket No. 4152-U             |
| 17 | Southern Bell Telephone Co.                 |                               |
| 18 | • 1990 Rule NiSi Proceeding                 | Docket No. 3905-U             |
| 19 | <u>Maine</u>                                |                               |
| 20 | New England Telephone Company               |                               |
| 21 | • 1995 base rate proceeding                 | Docket No. 94-254             |
| 22 | <u>Maryland</u>                             |                               |
| 23 | Delmarva Power & Light Company              | Case No. 7734                 |
| 24 | Baltimore Gas & Electric Company            |                               |
| 25 | • 1977 base rate                            | Docket No. 7070               |
| 26 | • 1983 base rate                            | Docket No. 7695               |
| 27 | Potomac Electric Power Company              |                               |
| 28 | • 1982 base rate                            | Docket No. 7662               |

- 1 Massachusetts
- 2 Massachusetts Electric Company
- 3 • 1996 Restructure of electric industry DPU 96-25
  
- 4 Minnesota
- 5 Northwestern Bell Telephone Company
- 6 • 1981 base rate Docket No. P-421/GR-80-911
- 7 • 1983/4 divestiture case Docket No. P-421/GR-83-600
  
- 8 Mississippi
- 9 South Central Bell Telephone Company
- 10 • 1984 Accounting and divestiture Docket No. U-4415
  
- 11 New Jersey
- 12 Atlantic City Electric Company
- 13 • 1982 base rate Docket No. 822-116
- 14 • 1984 Susquehanna phase-in Docket No. 822-116
- 15 • 1988 Tax Reform Act Docket No. ER8504434
- 16 • 1991 base rate (working capital) Docket No. ER90091090J
- 17 • 1994 levelized energy adjustment clause Docket No. ER94020033
  
- 18 AT&T Communications of New Jersey, Inc.
- 19 • 1985 Docket No. 8311-1035
  
- 20 Elizabethtown Gas Company
- 21 • 1981 Adjustment clause
  
- 22 Elizabethtown Water Company
- 23 • 1987 deposit requirements for
- 24 water main extensions OAL DKT. Nos. PUC
- 25 and PUC 5352-86 535386, PUC 5351-86, PUC 5354-86
  
- 26 Hackensack Water Company
- 27 • 1980 Docket No. 804-275
- 28 • 1981 Docket No. 815-447
- 29 • 1982 Docket No. 815-447
- 30 • 1985 base rate Docket No. WR8506-663
- 31 • 1990/1 base rate Docket No. WR90090792J

|    |  |                            |
|----|--|----------------------------|
| 1  | Jersey Central Power & Light Co.                           |                            |
| 2  | • 1979 & 1980 cases concerning TMI                         | Docket No. 795-427         |
| 3  | • 1991 proposal to purchase portion of                     | Docket No. EM91010067      |
| 4  | plant being restored to service, enter                     |                            |
| 5  | into long-term purchased power agreement                   |                            |
| 6  | and participate in construction of                         |                            |
| 7  | 500 kV transmission line                                   |                            |
| 8  | • 1991/2 investigation re economic retirement              |                            |
| 9  | of Oyster Creek Nuclear Generating Station                 |                            |
| 10 | Local Exchange Competition for Telecommunications Services |                            |
| 11 |  |                            |
| 12 | • 1996 Universal Service                                   | Docket No. TX95120631      |
| 13 | Middlesex Water Company                                    |                            |
| 14 | • 1979 and 1980 cases                                      | Docket No. 793-269         |
| 15 | New Jersey Bell Telephone Co.                              |                            |
| 16 | • 1978 base rate   | Docket No. 7711-1136       |
| 17 | • 1981 base rate   | Docket No. 815-458         |
| 18 | • Expensing Station Connections                            | Various Dockets            |
| 19 | • 1983 divestiture case                                    | Docket No. 8210-880        |
| 20 | • 1984/5 base rate   | Docket No. 848-856         |
| 21 | • 1992 Alternative regulation                              | BRC Docket No. TO92030358  |
| 22 | IntraLATA Toll Presubscription Docket (1995)               | BPU Docket No. TX94090388  |
| 23 | New Jersey Natural Gas Company                             | BPU Docket No. 815-459     |
| 24 | Public Service Electric & Gas Co.                          |                            |
| 25 | • 1980   | Docket No. ER8512-1163     |
| 26 | • 1985 LEAC  |                            |
| 27 | • 1986 base rate (working capital)                         | BPU Docket No. ER85121163  |
| 28 | • 1989 Rockport capacity purchase                          | BPU Docket No. ER85121163  |
| 29 | • 1992 Depreciation rates                                  | BRC Docket No. EE91081428  |
| 30 | • 1992 base rate (depreciation, nuclear                    | BRC Docket No. ER91111698J |
| 31 | decommissioning and treatment of                           |                            |
| 32 | retired plant)   |                            |
| 33 | PURPA Ratemaking Standards (1980)                          |                            |
| 34 | Rockland Electric Co.                                      |                            |
| 35 | • LEACs  |                            |
| 36 | 1979   | Docket No. 7911-920        |
| 37 | 1980   | Docket No. 7611-1100       |

- |  |                              |
|--|------------------------------|
| 1 Salem Nuclear Station Outage                 |                              |
| 2 • 1996 Interim rates                         | BPU Docket Nos. ES96030158 & |
| 3  | ES96030159                   |
| 4 Service Electric Cable TV of Hunterdon       |                              |
| 5 • 1994-5 cable rate proceeding               |                              |
| 6 South Jersey Gas Company                     |                              |
| 7 • 1981 Overearnings case                     | Docket No. 808-517           |
| 8 • 1987 base rate                             | Docket Nos. GR8704-329 &     |
| 9  | GR8608-902                   |
| 10 Storer Cable Communications (Comcast)       |                              |
| 11 • 1994-5 cable rate proceeding              |                              |
| 12 West Keansburg Water Co.                    |                              |
| 13 • 1978 base rate                            | Docket No. 7710-1026         |
| 14 <u>New Mexico</u>                           |                              |
| 15 El Paso Electric Company                    |                              |
| 16 • 1986 sale/leaseback                       | Case No. 2032                |
| 17 • 1986 phase-in                             | Case No. 2009                |
| 18 Gas Company of New Mexico                   |                              |
| 19 • 1985-6                                    | Lost gas investigation       |
| 20 • 1986 gas purchasing                       | Case No. 1971                |
| 21 Mountain States Telephone and Telegraph Co. |                              |
| 22 • 1979 base rate                            | Docket No. 877               |
| 23 Plains Electric Generation and Transmission |                              |
| 24 Cooperative, Inc.                           |                              |
| 25 • 1990 base rate                            | Case No. 2363                |

|    |  |                              |
|----|--|------------------------------|
| 1  | Public Service Company of New Mexico         |                              |
| 2  | • 1985 base rate                             | Case No. 1916                |
| 3  | • 1986 base rate rehearing                   | Case No. 1916                |
| 4  | • 1986 inventory treatment of sale/leaseback | Case No. 2011                |
| 5  | • 1986 line extension                        | Case Nos. 1988/1989          |
| 6  | • 1986 utility holding company               | Case No. 2019                |
| 7  | • 1986 inventory update                      | Case No. 2067                |
| 8  | • 1986 inventory filing                      | Case No. 2096                |
| 9  | • 1987 inventory filing                      | Case No. 2159                |
| 10 | • 1988 reorganization and treatment of       | Case No. 2146 - Parts I & II |
| 11 | excess capacity                              |                              |
| 12 | • 1989 base case & phase-in                  | Case No. 2262                |
| 13 | • 1990/1 investigation into prohibited       | Case No. 2326                |
| 14 | intercompany transactions                    |                              |
| 15 | • 1992 decertification of capacity           | Case No. 2408                |
| 16 | • 1992 asset disposition plan                | Case No. 2429                |
| 17 | • 1992 repurchase of capacity previously     | Case No. 2444                |
| 18 | sold and leased back                         |                              |
| 19 | • 1992 financing proceeding                  | Case No. 2469                |
| 20 | • 1994 voluntary rate reduction              | Case No. 2567                |
| 21 | • 1996 treatment of nonutility activities    | Case No. 2620                |
| 22 | Southwestern Public Service Company          |                              |
| 23 | • 1996 proposed merger with Public Service   | Case No. 2678                |
| 24 | Company of Colorado                          |                              |
| 25 | U S West Communications, Inc.                |                              |
| 26 | • 1991 Expansion of Albuquerque EAS          | Docket No. 90-255-TC         |
| 27 | • 1992 Application seeking approval of       |                              |
| 28 | CLASS tariffs                                | Docket No. 92-90-TC          |
| 29 | • 1992 base rate proceeding                  | Docket No. 92-227-TC         |
| 30 | • 1993 Expansion of Albuquerque EAS          | Docket No. 93-218-TC         |
| 31 | <u>New York</u>                              |                              |
| 32 | Consolidated Edison Company                  |                              |
| 33 | • 1980 base rate                             | Docket No. R-800-11069       |
| 34 | • 1991/2 base rate                           | Case No. 91-E-0462           |
| 35 | • 1994 gas & steam base rates                | Cases 93-G-0996 & 93-S-0997  |
| 36 | • 1994 electric base rates                   | Case No. 94-E-0334           |
| 37 | Long Island Lighting Company                 |                              |
| 38 | • 1980 base rate                             | Docket No. 27774             |
| 39 | • 1982/3 Shoreham phase-in                   | Docket No. 28252             |

|    |   |                               |
|----|---|-------------------------------|
| 1  | New York Telephone Company                      |                               |
| 2  | • 1979 base rate                                | Docket No. 27469              |
| 3  | • 1980 base rate                                | Docket No. 27710              |
|    |   |                               |
| 4  | <u>Nuclear Regulatory Commission</u>            |                               |
|    |   |                               |
| 5  | Long Island Lighting Company                    |                               |
| 6  | • 1984 Shoreham Nuclear Power Station           | Docket No. 50-322-OL-4        |
| 7  | licensing                                       |                               |
|    |   |                               |
| 8  | <u>Ohio</u>                                     |                               |
|    |   |                               |
| 9  | Columbus and Southern Ohio Electric Co.         |                               |
| 10 | • 1977/8 base rate                              | Docket No. 77-545-EL-AIR      |
| 11 | • 1978/9 base rate                              | Docket No. 78-1439-EL-AIR     |
|    |   |                               |
| 12 | Toledo Edison Electric Co.                      |                               |
| 13 | • 1979 base rate                                | Docket No. 79-143-EL-AIR      |
|    |   |                               |
| 14 | <u>Oklahoma</u>                                 |                               |
|    |   |                               |
| 15 | Oklahoma Gas and Electric Company               |                               |
| 16 | • 1991/2 show cause proceeding                  | Cause Nos. PUD 898 & 1055     |
|    |   |                               |
| 17 | <u>Pennsylvania</u>                             |                               |
|    |   |                               |
| 18 | Bell of Pennsylvania                            |                               |
| 19 | • 1982 base rate                                | RID 1819                      |
| 20 | • 1983 base rate & divestiture                  | Docket R-811319               |
|    |   |                               |
| 21 | Commonwealth Telephone Co. of Pennsylvania      |                               |
| 22 | • 1986 Alternative regulation and network       |                               |
| 23 | modernization plan                              | Docket No. P-00961024         |
|    |   |                               |
| 24 | Duquesne Light Company                          |                               |
| 25 | • 1982 regarding Beaver Valley                  | Docket No. R-21945            |
|    |   |                               |
| 26 | Metropolitan Edison & Pennsylvania Electric Co. |                               |
| 27 | • 1979 & 1980 TMI emergency cases               | Docket Nos. I-79 & M-79040129 |

|    |   |                       |
|----|---|-----------------------|
| 1  | Metropolitan Edison Company                         |                       |
| 2  | • 1980 base rate                                    | Docket No. R-80051196 |
| 3  | • 1981 base rate                                    | Docket No. R-80011601 |
| 4  | • 1983 base rate                                    | Docket No. R-822249   |
| 5  | • 1984 base rate                                    | Docket No. R-832549   |
| 6  | • 1986 base rate                                    | Docket No. R-860384   |
| 7  | North East Water / Pennsylvania Gas & Water Company |                       |
| 8  | • 1990 application to purchase water                | Docket No. A-210018   |
| 9  | assets  |                       |
| 10 | • 1990 ratemaking treatment of                      | Docket No. P-900453   |
| 11 | purchased assets                                    |                       |
| 12 | • 1990 base rate                                    | Docket No. R-901726   |
| 13 | Pennsylvania Electric Company                       |                       |
| 14 | • 1980 base rate                                    | Docket No. R-80051197 |
| 15 | • 1981 base rate                                    | Docket No. R-80011602 |
| 16 | • 1983 base rate                                    | Docket No. R-822250   |
| 17 | • 1984 base rate                                    | Docket No. R-832550   |
| 18 | UGI-Luzerne Electric Division                       |                       |
| 19 | • 1979 base rate proceeding                         | Docket No. R-78030572 |
| 20 | <u>Rhode Island</u>                                 |                       |
| 21 | Newport Electric Company                            |                       |
| 22 | • 1979 base rate proceeding                         | Docket No. 1410       |
| 23 | <u>South Carolina</u>                               |                       |
| 24 | • PURPA Ratemaking Standard (1980)                  |                       |
| 25 | <u>U.S. Virgin Islands</u>                          |                       |
| 26 | Virgin Islands Water & Power Authority              |                       |
| 27 | • Various rate cases                                |                       |
| 28 | • 1985 cost of service study                        |                       |
| 29 | Virgin Islands Telephone Company                    |                       |
| 30 | • 1978 depreciation rates                           | Docket No. 180        |
| 31 | • 1984 rate design                                  |                       |

1 Vermont

2 Central Vermont Pub. Ser. Co.

3 • 1989/90 base case

Docket No. 5372

4 Virginia

5 Telecommunications alternative regulation docket

Case No. PUC930038