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E. Gilbert

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKETED  
DIRECT TESTIMONY OF  
NOV 04 1997

DR. JOHN W. MAYO

JCUMEN  
FOLDER

ON BEHALF OF

ENRON POWER MARKETING INC.

DOCKET NO. R-00973953  
RE: PECO RESTRUCTURING

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JUNE 20, 1997

1 I. QUALIFICATIONS AND PURPOSE OF TESTIMONY

2 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

3 A. My name is John W. Mayo. My current business address is Department of Economics,  
4 The University of Tennessee, Knoxville, Tennessee, 37996.

5 Q. WHAT IS YOUR OCCUPATION?

6 A. I am an economist. My current position is Professor of Economics, College of  
7 Business, The University of Tennessee, Knoxville, Tennessee. Effective August 25,  
8 1997, my appointment will be as Visiting Professor of Economics, Business and Public  
9 Policy, Georgetown University, School of Business, Washington, D.C.

10 Q. WOULD YOU PLEASE SUMMARIZE YOUR QUALIFICATIONS?

11 A. Yes. I hold a Ph.D. in economics from Washington University, St. Louis (1982), with  
12 a principal field of concentration in industrial organization, which includes the analysis  
13 of antitrust and regulation. I also hold both an M.A. (Washington University, 1979)  
14 and a B.A. (Hendrix College, Conway, Arkansas, 1977) in economics.

15 I have taught economics at both the University of Tennessee and at Virginia  
16 Polytechnic Institute (VPI). Also, I have served as the Chief Economist, Democratic  
17 Staff of the U.S. Senate Small Business Committee. Both my research and teaching  
18 have centered on the relationship of government and business, with particular emphasis  
19 on regulated industries, including electricity and telecommunications. I have authored  
20 numerous articles and research monographs, and have written a comprehensive text  
21 entitled Government and Business: The Economics of Antitrust and Regulation, (with  
22 David L. Kaserman), Dryden Press, 1995. A more detailed accounting of my

1 education, publications and employment history is contained in Exhibit 2, JWM-1.

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

3 A. I have been asked by Enron to describe the prospective benefits that may flow from a  
4 policy of successfully introducing competition into electricity markets in Pennsylvania.  
5 I have also been asked to provide the economic principles and guideposts that may  
6 facilitate the successful transformation of the electric utility industry in Pennsylvania  
7 from a monopoly environment to a competitive marketplace. To do so, in Section II, I  
8 will first describe a set of economic principles surrounding competition and efficient  
9 pricing that must be kept in mind as the Commission fashions its policies toward the  
10 industry. In Section II, I also describe the risks to the development of competition that  
11 are created when a vertically integrated regulated monopoly is faced with emerging  
12 competition at one vertical stage of production. In particular, I point out that it is in  
13 these situations that incentives are created for the incumbent utility to engage in  
14 anticompetitive monopoly leveraging strategies that are designed to exploit or extend  
15 the firm's market power. Finally, Section II closes with a description of the  
16 alternative policy responses available to deal with the monopoly leveraging problems.  
17 Among these various alternatives, I find that an approach that I characterize as a  
18 *Competition-Enabling Policy* offers the best hope for successfully introducing  
19 competition and its coincident benefits into the electric utility industry in Pennsylvania.

20 Section III of the testimony describes a variety of parallels between the current  
21 effort to introduce competition into the electric utility industry and the deregulation  
22 efforts of several other industries including telecommunications, railroads, airlines and

1 trucking. The parallels suggest that there are several valuable lessons for the  
2 Commission as it heads into the process of attempting to introduce competition into  
3 the electric utility industry in Pennsylvania.

4 In Section IV of the testimony, I turn to the requirements and ramifications of  
5 a Competition Enabling Policy approach to fulfilling the requirements of the recently  
6 enacted Electricity Generation Customer Choice and Competition Act (hereafter, the  
7 "Competition Act"). In particular, I describe a variety of actions that the Commission  
8 should undertake to (1) promote the emergence of competition and (2) protect the  
9 competitive process (including a recommendation that, to the extent the PUC identifies  
10 stranded costs claimed by PECO that are deemed recoverable, such recovery should be  
11 made specifically contingent upon the actual progress made in opening PECO's market  
12 to competition).

13 Finally, Section V concludes the testimony.

## 14 **II. ECONOMIC FRAMEWORK AND PRINCIPLES**

### 15 *Economics of Competition*

16 **Q. DO ECONOMISTS GENERALLY FAVOR COMPETITION AS A MEANS OF**  
17 **PROMOTING THE PUBLIC INTEREST?**

18 A. Yes. Economists advocate competition because of a variety of salutary economic  
19 characteristics it exhibits. First, price will be driven toward equality with marginal  
20 cost. This property, known as allocative efficiency, is important because it leads to the  
21 optimal allocation of society's resources to the industry. Second, price will be driven  
22 to equality with the minimum point on firms' long-run average cost. This is referred  
23 to as productive efficiency. It implies that consumers are able to purchase the service

1 at the lowest price that is consistent with the long-run survivability of the firms in the  
2 industry. Such efficiencies are not, in general, achieved under monopoly, even when  
3 the monopolist is subjected to regulatory controls.

4 In addition to these static efficiency properties, there is reason to believe the  
5 markets in which active interfirm rivalry exists will foster a more rapid rate of  
6 technological advance than will a protected monopoly. Thus, costs will tend to fall  
7 and new products will tend to be introduced more rapidly in rivalrous, open-entry  
8 markets.

9 **Q. ARE THERE OTHER NON-ECONOMIC REASONS TO FAVOR**  
10 **COMPETITIVE MARKETS?**

11 **A.** Yes, there are many non-economic reasons why one may prefer competition over  
12 regulated monopoly. Competitive markets are sometimes valued because they are  
13 thought to provide the maximum freedom for entrepreneurs to take whatever business  
14 risks they wish and to reap the rewards of success (or, of course, pay the penalty for  
15 failure). They also provide consumers the maximum freedom to switch suppliers when  
16 the price/service combinations offered by a given firm are not satisfactory. In  
17 addition, competition among firms will act to maximize the choices from which  
18 consumers may best satisfy their individual needs. Finally, one may prefer  
19 competition because of an underlying Jeffersonian distrust of any significant  
20 accumulation of economic (and, therefore, political) power.

1 Q. **HAVE THE BENEFITS TO COMPETITION BEEN EMBRACED BY**  
2 **POLICYMAKERS IN PENNSYLVANIA?**

3 A. Yes. The recently enacted Competition Act states that, "Because of advances in  
4 electric generation technology and Federal initiatives to encourage greater competition  
5 in the wholesale electric market, it is now in the public interest to permit retail  
6 customers to obtain direct access to a competitive generation market as long as safe  
7 and affordable transmission and distribution service is available at levels of reliability  
8 that are currently enjoyed by the citizens and businesses of this Commonwealth."  
9 Section 2802(3).

10 Q. **ARE THESE BENEFITS OF COMPETITION READILY ACHIEVED?**

11 A. In most markets, yes. There are, however, potential difficulties in the market for  
12 electricity. Specifically, market and regulatory conditions may create or perpetuate  
13 significant amounts of market power for the incumbent provider of electric power.  
14 Such market power can lead to the denial or erosion of the benefits of competition.

15 Q. **BEFORE PROCEEDING, COULD YOU DEFINE THE TERM "MARKET**  
16 **POWER?"**

17 A. Yes. Market (or, interchangeably, monopoly) power is the ability of a firm to control  
18 prices or exclude competition. Excepting textbook cases of pure competition, virtually  
19 all firms have some degree of market power. Because government intervention in  
20 markets is costly, the small and transient amount of market power held by most firms  
21 does not warrant government regulation. It is only where market power is significant  
22 that government regulation becomes warranted. In the absence of such significant

1 monopoly power a firm is said to be subject to effective competition.<sup>1</sup> Where,  
2 however, a firm possesses significant monopoly power, the economic efficiencies that  
3 typically stem from competition will be denied to consumers. In such cases, the  
4 preservation of the economic benefits of competition requires government supervision  
5 and, perhaps, direct regulatory control of a market.

6 **Q. WILL THE OPENING OF THE RETAIL STAGE OF ELECTRICITY SUPPLY**  
7 **ELIMINATE THE MONOPOLY POWER PRESENTLY HELD BY PECO?**

8 A. Certainly PECO will retain significant monopoly power over the provision of the  
9 distribution-stage activities not explicitly made open to competition. Even where  
10 “non-wire” activities that have historically been treated as part of the distribution stage  
11 (e.g., metering, billing and customer information services) are opened to competitive  
12 supply, it is far from clear that market conditions will quickly eliminate PECO’s  
13 monopoly power over the provision of these activities. Moreover, and of perhaps  
14 larger consequence, the opening of electricity supply to retail-stage competition may or  
15 may not eliminate the significant monopoly power of PECO in the provision of either  
16 the retail or generation stage of electricity supply.

17 **Q. ON WHAT BASIS DO YOU SAY THAT PECO MAY RETAIN SIGNIFICANT**  
18 **MARKET POWER IN THE PROVISION OF ELECTRICITY AT EITHER THE**  
19 **GENERATION OR RETAIL-STAGE?**

20 A. Presently PECO provides the vast majority of its retail-stage power needs internally.  
21 When considered part of a generation-stage market for power, it is likely that PECO

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<sup>1</sup> For a more detailed discussion of monopoly power and effective competition, see David L. Kaserman and John W. Mayo Government and Business: The Economics of Antitrust and Regulation (Ft. Worth, TX: The Dryden Press, Harcourt Brace College Publishers, 1995), Chapter 4.

1 will (at least initially) supply the preponderance of the power demanded by retail-stage  
2 customers. That is, PECO's market share of the generated power consumed by retail  
3 customers in its service territory is likely to be quite high. Given this large market  
4 share, the issue of whether PECO retains significant market power at the generation  
5 stage will turn upon the extent of barriers to entry and expansion of generation  
6 services to customers residing in the PECO service territory.

7 If PECO has the ability to raise generation-stage prices of its power above  
8 competitive levels and its competitors do not have adequate capacity to expand their  
9 output (either through self-generation or by securing power from alternative generation  
10 sources), then PECO will retain significant monopoly power over the generation stage  
11 in its service territory. Constraints on the supply of generated power may arise, for  
12 instance, by physical capacity constraints on the transmission facilities to PECO's  
13 distribution grid.

14 In the absence of an effectively competitive supply of generation-stage power,  
15 PECO can raise and maintain prices of generated power above competitive levels.  
16 These price elevations, should they occur, are an anathema to the goals of the  
17 Competition Act. Specifically, the retention of market power by PECO at the  
18 generation stage can act to undermine the realization of the competitive benefits  
19 envisioned under the Competition Act for retail consumers of electricity.

1 *Monopoly Leveraging as a Threat to Competition*

2 **Q. ARE ANY SPECIAL CONCERNS RAISED IN SITUATIONS WHERE A FIRM**  
3 **PARTICIPATES IN MULTIPLE MARKETS, SOME OF WHICH ARE**  
4 **COMPETITIVE AND SOME OF WHICH ARE MONOPOLY?**

5 A. Yes. Issues of monopoly leveraging are raised in these situations. Specifically,  
6 *monopoly leveraging* is said to occur when a vertically integrated firm with monopoly  
7 power at one stage is able to extend or exploit that market power through strategic  
8 actions taken in related markets. That is, under certain conditions, it will be profitable  
9 for a firm with monopoly power in one or more markets to leverage that power into a  
10 similarly favorable position in some related market through various anticompetitive  
11 practices. An example of such conditions occurs when competitive and monopoly  
12 markets are linked vertically (i.e., one product is employed as an input in the  
13 production of another). The relevance of these vertical linkages becomes clear once it  
14 is recognized that the retail provider of electricity must rely upon the monopoly  
15 distribution facilities of the incumbent utility to be able to provide service to retail-  
16 stage customers. Thus, a vertical relationship exists between these services. In this  
17 case, a monopolist over distribution of electricity may be able to leverage this  
18 monopoly into an unfair advantage into either the related generation market or the  
19 market for retail provision of electricity. Where this occurs, the leveraging of the  
20 monopoly to an additional market serves as a device to exploit or extend the firm's  
21 existing monopoly power. Finally, aside from the potentially anti-competitive  
22 ramification of these practices, these same tactics may be used by partially regulated

1 firms to circumvent price regulations that extend only over monopoly services offered  
2 by the firm.

3 **Q. HOW MIGHT MONOPOLY LEVERAGING STRATEGIES SURFACE?**

4 A. Firms that have monopoly power will possess a natural desire to exploit that power.

5 In most situations this desire would be effectuated by monopoly pricing in the market  
6 in which the firm possesses that power. Economic and legal analysis has found,  
7 however, that under certain market conditions the desire to exploit extant market  
8 power can spill over to related markets.<sup>2</sup> When a firm with significant monopoly  
9 power in one market is able to exploit or extend that monopoly power in related  
10 markets the firm is said to have engaged in monopoly leveraging. The specific market  
11 conditions that have been shown to facilitate the emergence of monopoly leveraging  
12 practices are:

- 13 1. Significant monopoly power in one or more markets;
- 14 2. A complementary or vertical relationship between the products involved;
- 15 3. The presence of price or profit regulation;

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<sup>2</sup> See, e.g., Michael D. Whinston "Tying, Foreclosure, and Exclusion," American Economic Review, Vol. 80, March 1990, pp. 837-859; Jose Carbajo, David De Meza and Daniel Siedmann "A Strategic Motivation for Commodity Bundling," Journal of Industrial Economics, Vol. 38, 1990, pp. 283-298; J.A. Ordover, A.O. Sykes, and R.D. Willig "Nonprice Anticompetitive Behavior by Dominant Firms toward the Producers of Complementary Products," in F.M. Fisher (ed.) Antitrust and Regulation: Essays in Honor of John J. McGowan, The MIT Press, Cambridge, MA., 1985; and Louis Kaplow "Extensions of Monopoly Power Through Leveraging," Columbia Law Review, Vol. 85, No. 3, pp. 515-555.

- 1           4.     The monopoly firm's influence on entry/exit, pricing, or investment  
2                    decisions by rival firms; and
- 3           5.     Consumers' potential for alternative, but inferior, sources of supply of  
4                    the monopolistic good or service.

5           Beyond these market conditions that have been linked to the emergence of  
6           monopoly leveraging, a sixth factor is also likely to enhance the prospects for  
7           monopoly leveraging. Specifically, economic logic indicates that in markets where  
8           consumers prefer to consume a vertically related bundle of services from a single  
9           provider, conditions for monopoly leveraging are enhanced. That is, to the extent that  
10          consumers value a bundled offering over a comparable unbundled offering, the ability  
11          of a firm that is uniquely positioned to offer the bundled service in a single package to  
12          the customer can "multiply" the strategic influence of actions taken in one market to  
13          related markets. For instance, discriminatory actions taken by an incumbent electric  
14          utility such as PECO in the provision of distribution services will result in marketplace  
15          advantages in not only the directly affected market but also retail provision and  
16          perhaps generation-stage activities. Thus, discriminatory actions taken in one market  
17          will spill over to create profits from multiple markets.

18   **Q.    WHAT SPECIFIC TYPES OF MONOPOLY LEVERAGING STRATEGIES**  
19   **MIGHT BE UTILIZED BY A REGULATED FIRM WITH MONOPOLY**  
20   **POWER AT ONE VERTICAL STAGE OF THE PRODUCTION PROCESS?**

21   **A.    Anticompetitive monopoly leveraging strategies are numerous. The most common**  
22   **forms, however, are refusals to deal, tying and bundling, vertical price squeezes, price**  
23   **discrimination, and service/quality (nonprice) discrimination.**

1 Q. **WHAT ARE REFUSALS TO DEAL?**

2 A. Refusals to deal occur when a firm at one vertical stage refuses to engage in market  
3 transactions with a firm at a related vertical stage. If both the upstream and  
4 downstream markets are competitive, then refusals to deal have no anticompetitive  
5 consequences. If, however, a firm at one stage has significant monopoly power, say  
6 through control of the supply of one of the vertical stages of production, then refusals  
7 to deal may serve as a anticompetitive monopoly leveraging device. The most  
8 egregious case of such refusals to deal occur when a firm has control over an essential  
9 facility that competitors at a related vertical stage must rely upon to be viable. In such  
10 situations, refusals to provide the access to the monopoly service can irreparably harm  
11 competition in the related market.

12 Q. **HOW CAN BUNDLING OR TYING WORK TO HARM COMPETITION?**

13 A. Tying or bundling works as follows. Consider two products: A and B. Suppose a  
14 firm has a (legal) monopoly over product A, and, accordingly, is regulated in Market  
15 A. Suppose also that the firm is allowed to participate in an unregulated market, B.  
16 The monopolist over A can evade the profit-restraining influences of price regulation  
17 on A by requiring that purchases of A be accompanied by purchases of B as well. By  
18 increasing the price of B above the competitive level, it is possible for the partially  
19 regulated firm to capture significant monopoly profits despite regulation of its  
20 monopoly service.

21 Q. **HOW COULD A VERTICAL PRICE SQUEEZE OCCUR TO DAMAGE THE**  
22 **EMERGENCE OF COMPETITION?**

23 A. Vertical price squeezes can be an important leveraging strategy when the monopolized

1 product or service is employed as an important input into or outlet for the production  
2 process of the firm's competitors. The most typical form of a vertical price squeeze is  
3 said to occur whenever a vertically integrated upstream monopolist establishes a price  
4 for its downstream, potentially competitive, service at a level such that it could not  
5 profitably sell that service at the prevailing downstream price if were to pay the same  
6 price for the monopolized input as it charges to its downstream competitors. By  
7 controlling the price of the input (i.e., the cost to its downstream rivals), the vertically  
8 integrated monopolist may exclude competitors at the downstream stage by  
9 simultaneously raising their costs (by pricing the monopolized input high) and  
10 lowering their revenues (by pricing the output low). The resulting squeeze excludes  
11 retail-stage firms from successfully competing in the market even if they are as, or  
12 more, efficient than the vertically integrated upstream monopoly firm.

13 **Q. HOW DOES PRICE DISCRIMINATION HARM COMPETITION?**

14 A. Price discrimination can also be employed as a monopoly leveraging device. For  
15 instance, a firm providing a monopoly input to both its own affiliate and to  
16 competitors may charged different rates despite no cost differences in providing service  
17 to these different customers. For example, if not explicitly prohibited and enforced a  
18 distribution-stage affiliate of the vertically integrated electric utility may offer to  
19 provide the distribution function to its own retail operations at discriminatorily lower  
20 rates than to rival retail-stage firms. Alternatively, if overt price discrimination is not  
21 possible, it may be possible to accomplish this same effect by shifting "costs" between  
22 the upstream and downstream services. In such situations, the monopoly provider of

1 distribution facilities may claim to satisfy nondiscrimination pricing by nominally  
2 offering "cost-based" rates to retail-stage rivals and to itself. Yet, if these "cost-based"  
3 rates for distribution include costs that should properly be considered retail-stage or  
4 generation stage costs, then the rates are non-discriminatory in name only.

5 An additional discriminatory tactic is for a firm to offer a pricing scheme that  
6 is superficially equitable to all purchasers of the upstream input but is, in fact,  
7 discriminatory. For instance, a firm could provide a pricing schedule that provides  
8 discounts for firms that satisfy some condition of purchase, but in reality the condition  
9 is only satisfied by the affiliate of the monopoly. Thus, while in theory all firms are  
10 afforded the option of realizing discounts, the only competitor to qualify for such  
11 discounts is the affiliate of the upstream monopoly.

12 **Q. HOW MIGHT NONPRICE DISCRIMINATION BE EMPLOYED AS A**  
13 **MONOPOLY LEVERAGING DEVICE?**

14 A. The firm may employ variations in product quality or other nonprice terms of service  
15 to carry out a strategy of monopoly leveraging. For instance, if barred (say through  
16 regulation) from directly denying access to downstream competitors, an upstream  
17 monopolist may achieve virtually the same anticompetitive purpose by providing lower  
18 quality service or slower provisioning times to its downstream competitors.

19 **Q. ARE THERE ANY OTHER RISKS TO THE COMPETITIVE PROCESS**  
20 **ATTRIBUTABLE TO THE VERTICAL INTEGRATION OF THE MONOPOLY**  
21 **PROVIDER?**

22 A. Yes. If the vertically integrated firm can shift costs to the monopoly enterprise, then  
23 the result will be to collect costs that are incurred in the potentially competitive  
24 segment of the industry from monopoly ratepayers. In this event, at least two

1 pernicious effects occur. First, monopoly consumers of the monopoly service (e.g.,  
2 distribution) pay more than a competitive price for the distribution service they are  
3 provided. Second, the process of shifting costs away from the potentially competitive  
4 affiliate (e.g., generation or retail-stage activities) raises the specter of anticompetitive  
5 cross-subsidization that has the prospect of displacing sales of, or even the competitive  
6 presence of, rivals at the prospectively competitive stages.

7 **Q. CAN YOU PROVIDE AN EXAMPLE OF HOW THE MISASSIGNMENT OF**  
8 **COSTS ACROSS THE VERTICAL STAGES OF ELECTRICITY SUPPLY CAN**  
9 **CONFOUND THE EMERGENCE OF COMPETITION?**

10 A. Yes. Consider the activities that give rise to Sales Expenses (Accounts 911-916).  
11 According to PECO, approximately \$16 million of "Distribution" costs are incurred  
12 annually in these categories and are therefore reflected in the Company's proposed  
13 rates for Distribution Services.<sup>3</sup> But these activities are clearly associated with the sale  
14 of electricity not the distribution of electricity. Accordingly, any inclusion of the  
15 expenses associated with these activities in the rates for distribution which must be  
16 purchased by new entrants, such as Enron, on behalf of the customer is an affront to  
17 both economic efficiency and the emergence of competition. It is inconsistent with  
18 economic efficiency because prices (in this case, for distribution and retail-stage  
19 services) which play a critical role for allocating resources to their most efficient use  
20 are not based on the costs of providing these services. The affront to competition  
21 stems from the fact that, independent of the payments that new entrants must make to

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<sup>3</sup> See Exhibit RAC-1, page 55 of 83, Direct Testimony of Robert A. Clemmer, PECO Statement No. 12.

1 the incumbent, their participation as a retail-stage provider in Pennsylvania will require  
2 that they also engage in sales expense activities. Thus, if the new entrants pay for  
3 their own activities and are also required by regulation to reimburse the incumbent  
4 utility for incurring these expenses on behalf of the customer, they will effectively  
5 have paid for these activities twice. This double payment creates a fundamental cost  
6 asymmetry between the new entrant (which must incur all these expenses) and the  
7 incumbent (which after reimbursement from the new entrant pays none). Such cost  
8 asymmetries are a classic barrier to entry and a serious deterrent to the emergence of  
9 competition.<sup>4</sup> Fortunately, this is a regulatory barrier to entry that can be prevented  
10 through careful identification of expenses with the correct vertical-stage activities.

11 **Q. ARE THERE PARTICULAR COST CATEGORIES THAT ARE**  
12 **PARTICULARLY SUSCEPTIBLE TO MANIPULATION?**

13 A. Yes. Common costs are by their very nature more amorphous and difficult to quantify  
14 than direct costs. This leads to at least three potential treatments of such costs that can  
15 confound the emergence of competition: (1) misassignment of stage-specific common  
16 costs; (2) residual calculation of common costs; and (3) extrapolation of historically  
17 incurred common costs on a forward-looking basis. As documented by Mr. Reising,  
18 PECO's cost calculation errs in each of these dimensions.

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<sup>4</sup> For a formal definition of entry barriers in economics, see William J. Baumol, John C. Panzar, and Robert D. Willig Contestible Markets and the Theory of Industry Structure, Harcourt Brace Jovanovich, New York, 1982, p.201.

1 *Policy Options for dealing with Monopoly Leveraging*

2 **Q. WHAT ARE THE POLICY OPTIONS FOR DEALING WITH THE PROSPECT**  
3 **OF MONOPOLY LEVERAGING IN A MIXED MARKET ENVIRONMENT?**

4 A. Because the exercise of monopoly leveraging strategies unnecessarily extracts resources  
5 from consumers and/or excludes more efficient rivals from successfully competing in a  
6 marketplace, public policy must be fashioned, in so far as possible, to minimize the  
7 potential for the exercise of such tactics. Three public policy options approaches exist.  
8 The first is best described as a "Rules Approach." Under this approach, the  
9 underlying monopoly is permitted to participate in all vertical industry segments and  
10 any concerns regarding the propensity of the incumbent monopolist to stifle the  
11 emergence of competition are dealt with by a set of regulatory rules. Specifically,  
12 under the Rules Approach, the emergence of potential competition at one vertical stage  
13 necessarily gives rise to the need to design, implement and enforce a set of regulations  
14 to protect both consumers and competitors from monopoly leveraging tactics. This  
15 approach was used in the pre-divestiture era when AT&T was permitted to participate  
16 in both local exchange and long distance markets. It is now widely perceived that it  
17 was the failure of the Rules Approach, in fact, to ensure and promote the emergence  
18 of competition that gave rise to the need for the divestiture of AT&T from the local  
19 exchange bottleneck facilities controlled by the Bell operating companies.<sup>5</sup> Indeed,

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<sup>5</sup> Indeed, the Assistant Attorney General for Antitrust who oversaw the government's antitrust case against the Bell System concluded that "Regulation is *inherently incapable* of ferreting out the subtle means of access discrimination and cross-subsidization that a monopolist can employ." Testimony of William F. Baxter before the Senate Committee on the Judiciary, Subcommittee on Antitrust, Monopolies, and Business Rights, and the Subcommittee on Technology and the Law, 103d Congress, 2d Session, September 20, 1994, p. 7.

1 the vertically integrated monopoly over local exchange facilities was able to effectively  
2 engage in a host of monopoly leveraging practices despite the presence of a regulatory  
3 apparatus designed to prevent monopoly abuses.

4 The second approach to concerns regarding monopoly leveraging — adopted  
5 via the divestiture of the Bell operating companies from AT&T — is structural  
6 separation of the monopoly and competitive elements of the industry. The surgical  
7 separation embodied in this “Structural Separations Approach” drastically curtails the  
8 incentives and ability for the monopoly firm to engage in monopoly leveraging tactics.  
9 The reason, of course, is that where the monopoly firm is not in competition with the  
10 firms to whom it provides inputs, the monopolist will view the downstream firms  
11 primarily as *customers* rather than competitors. When the downstream firms are  
12 viewed in this light, it is clear that, under vertical separation, the regulated monopolist  
13 has an incentive to cooperate with its customers.

14 Neither of these two “solutions” to the problem of monopoly leveraging is  
15 without drawbacks. The Structural Separations approach successfully eliminates the  
16 wherewithal to engage in monopoly leveraging, but it sacrifices any economies of  
17 scope that may exist between the product lines that are separated. Thus, the freedom  
18 from monopoly leveraging may be purchased with the loss of cost economies that may  
19 spring from vertical integration. The Rules Approach allows for vertical integration  
20 and, therefore, would permit the achievement of any vertical economies that may be  
21 present; but, in so doing, it fails to eliminate the incentives for monopoly leveraging  
22 and imposes a burdensome and potentially very expensive regulatory apparatus to

1 control these incentives.

2 Costly, complex, and (in all likelihood) ultimately unsuccessful regulations  
3 must be adopted under the Rules Approach to attempt to prevent anticompetitive  
4 monopoly leveraging tactics on the part of the incumbent, vertically integrated  
5 monopolist.<sup>6</sup> For example, ongoing difficulties exist in many jurisdictions with the  
6 design, implementation and enforcement of an imputation standard that is meant to  
7 discourage the RBOCs from engaging in vertical price squeezes.<sup>7</sup> These, and other,  
8 examples of the quagmire of the extent of regulation required to seriously attempt to  
9 enforce pro-competitive nondiscriminatory behavior suggest that the Rules Approach is  
10 fundamentally inconsistent with the general policy effort in Pennsylvania toward a pro-  
11 competitive, deregulatory environment. Specifically, under the Rules Approach, the  
12 opening of one stage of the market, in this case retail sales, to competition may  
13 ironically lead to the imposition of *more* regulation.

14 The shortcomings of the Rules Approach and the Structural Separations  
15 Approach have given rise most recently to a third general, and I believe, superior  
16 approach to the issues raised by concerns over monopoly leveraging. This approach,  
17 which I refer to as the "Competition-Enabling Approach" is based on a fundamental  
18 premise. Specifically, it presumes (consistent with history) that as long as a regulated

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<sup>6</sup> The incredibly detailed contractual requirements and obligations of the various participants (both incumbents and new entrants) in the local exchange telephone market provide ample evidence of such complexity.

<sup>7</sup> See, for example, the lineage of the debate regarding imputation in Maryland. Order No. 71668, Case No. 8585, Maryland Public Service Commission, December 28, 1994.

1 utility retains significant monopoly power at one vertical stage of production,  
2 regulatory rules, however well-meaning and however earnestly applied, will ultimately  
3 succumb to the ingenuity of the vertically integrated firm to devise mechanisms that  
4 enable it to circumvent the rules and thereby exploit and/or extend its monopoly  
5 power. Thus, the ultimate solution to the problems posed by monopoly leveraging  
6 must involve public policies that maximize the likelihood that the underlying  
7 monopoly power, from which monopoly leveraging is made possible, is eliminated.  
8 That is, we should try to cure the disease (monopoly) while still treating the symptom  
9 (monopoly leveraging). This approach requires that policymakers actively pursue  
10 policies to *promote* the growth of competition in monopoly markets and to *protect* the  
11 incipient competitive process as it emerges in formerly monopolized markets.<sup>8</sup>

12 Under a Competition-Enabling Approach, regulators must tenaciously and at  
13 every opportunity seek to eliminate all regulatory and legal impediments to market  
14 entry. This quest to seek the removal of such barriers to entry is consistent with the  
15 Competition Act's mission. Moreover, it is critical that policymakers seek to eliminate  
16 any ability of the incumbent firms to engage in strategic actions designed to limit entry  
17 or engage in monopoly leveraging. Additionally, until such time that the monopolistic  
18 stage (in this case, distribution) of the traditional utility is subject to effective  
19 competition, the Competition-Enabling Approach dictates that these vital components

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<sup>8</sup> It is critical to note that the Competition-Enabling Approach advocated here seeks to promote and protect competition, not to promote or protect the interests of individual market participants. Regulators' allegiances must unwaveringly remain to the competitive *process* rather than to individual market participants.

1 be provided to alternative suppliers on efficient, pro-competitive terms. The challenge,  
2 then, is for policymakers to vigorously pursue the eradication of barriers to entry and  
3 to create an active policy that creates market conditions within which competition can  
4 flourish in formerly monopolized markets. To the extent that regulators are successful  
5 in this endeavor, competition will arise, first, in retail-stage and generation functions  
6 and then, perhaps, a variety of other dimensions of electricity supply.

7 **III. LESSONS FROM INTRODUCING COMPETITION INTO TRADITIONAL**  
8 **PUBLIC UTILITY INDUSTRIES**

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9 **Q. THE ELECTRIC UTILITY INDUSTRY HAS TRADITIONALLY BEEN**  
10 **REGULATED AS A FRANCHISE MONOPOLY, YET THE COMPETITION**  
11 **ACT INDICATES A PUBLIC POLICY EFFORT TO OPEN ELECTRICITY TO**  
12 **COMPETITION. IS IT POSSIBLE TO DRAW UPON EXPERIENCES FROM**  
13 **OTHER INDUSTRIES TO FASHION A SOUND COMPETITION-ENABLING**  
14 **SET OF POLICIES?**

15 A. Yes. Beginning in the 1970s, federal and state regulatory and legislative bodies began  
16 to introduce competition into a variety of what had been traditional public utility  
17 industries. Markets opened to competition include, among others, long-distance  
18 telecommunications, railroad, airlines, and trucking.

19 **Q. IS THERE ANY EVIDENCE THAT INCREASED COMPETITION IN**  
20 **TRADITIONAL UTILITY MARKETS HAS PRODUCED THE SORTS OF**  
21 **BENEFITS YOU HAVE INDICATED OCCUR WITH COMPETITION?**

22 A. Yes. There is substantial evidence of such benefits. For example, not too many years  
23 ago a single monopoly firm provided virtually the entire set of telecommunications  
24 services, ranging from Customer Premise Equipment ("CPE") to long distance calling.  
25 Policy decisions to open telecommunications services to competition have subsequently  
26 led to a host of consumer benefits in the affected markets. For example, the

1 competitive pricing and explosion of consumer choice that has occurred in the CPE  
2 market provide stellar examples of the benefits of competition. Similarly, the  
3 experience with interLATA 1+ competition (both interstate and intrastate) in  
4 telecommunications markets reflects favorably upon the merits of competition.<sup>9</sup> Here,  
5 the combination of the implementation of equal access, presubscription, and the entry of  
6 new firms have led to substantial price reductions and the rapid proliferation of new  
7 services. These benefits are driven by the competitive rivalry that firms experience as  
8 they independently strive for the patronage of long distance customers.

9 **Q. SPECIFICALLY WHAT ROLE DID THE PRESUBSCRIPTION PROCESS**  
10 **PLAY IN OPENING THE INTEREXCHANGE INDUSTRY TO**  
11 **COMPETITION?**

12 A. Presubscription played a vital role. Specifically, the presubscription process required  
13 that firms declare their interest in servicing customers, place their names on a ballot,  
14 and for consumers to proactively choose among the various carriers. Not only did this  
15 process promote the early development of consumer choice, but it also ensured that the  
16 traditional monopoly provider would not be guaranteed the business of customers  
17 simply by virtue of its historical affiliation with those customers.

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<sup>9</sup> See David L. Kaserman and John W. Mayo, "Long-Distance Telecommunications: Expectations and Realizations in the Post-Divestiture Period," in Michael A. Crew, Editor, Incentive Regulation for Public Utilities, (Boston: Kluwer Academic Publications), 1994. See also, R. Kaestner and B. Kahn, "The Effects of Regulation and Competition on the Price of AT&T Intrastate Telephone Service," Journal of Regulatory Economics, Vol. 2 (1990), pp. 1-15.

1 Q. IS THERE ANY INDICATION IN ELECTRICITY MARKETS THAT  
2 COMPETITION WILL LEAD TO CONSUMER BENEFITS?

3 A. Yes. Although the experience with electricity competition is more limited, it provides  
4 similar evidence of the benefits from opening markets to competition. Specifically,  
5 while the vast majority of electric power is provided today by vertically integrated  
6 monopoly providers, there are areas in the country where competition between firms to  
7 supply retail-stage power exists.<sup>10</sup> In a recent study of the effects of competition in the  
8 electric utility industry, Professor John Kwoka found considerable benefits.  
9 Specifically, after analyzing the effects of competition on both costs and prices,  
10 Professor Kwoka found:

11 The effect of competition on price ...[is]...a 3.4 percent decrease  
12 in average price by competitive utilities and is statistically  
13 significant.... Together with the previously estimated effect of  
14 competition on average costs (a 16 percent reduction), this  
15 implies a total competitive effect on cost plus price of nearly 20  
16 percent.<sup>11</sup>

17 Q. ASIDE FROM THE POTENTIAL BENEFITS OF COMPETITION, ARE THERE  
18 OTHER LESSONS TO BE GLEANED FROM THE EXPERIENCES OF  
19 OPENING OTHER MARKETS TO COMPETITION?

20 A. Yes. An important lesson is that as laudable as the end-state of competition may be,  
21 simple policy declarations embracing the concept of competition do not generate either  
22 competition or its attendant benefits. For example, policy efforts to open local

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<sup>10</sup> Cleveland, Ohio is the largest of the competitive jurisdictions in the United States. There, Cleveland Public Power and Cleveland Electric Illuminating Co. are engaged in direct competition for retail customers in roughly one-half the city.

<sup>11</sup> See John E. Kwoka, Jr. Power Structure: Ownership, Integration, and Competition in the U.S. Electricity Industry, Kluwer Academic Publishers, Boston, MA., 1996, p.91.

1 exchange telephone markets to competition have been going on for roughly a decade  
2 and yet local exchange telephone companies still retain significant monopoly power  
3 over the provision of a number of telephone services. Similarly, cable TV industry  
4 was deregulated in 1984 under the notion that competition and deregulation would  
5 provide consumer benefits. Yet many consumers faced vastly higher cable TV prices  
6 in the wake of that "competition" because while deregulating the pricing of cable TV  
7 services, policymakers neglected to fully remove barriers to entry into the industry.

8 Two very important policy conclusions emerge for the Commission in the  
9 present instance. First, especially in light of the embrace of competition by the  
10 Competition Act, the Commission must *vigorously* act to open as much of the  
11 electricity supply process as possible to competition. The Commission must do  
12 everything in its power to maximize the freedom of consumers to choose their  
13 electricity supplier and to ensure that the competitive process is protected. Moreover,  
14 given the prospective benefits to consumers, these actions should be undertaken as  
15 quickly as possible. Second, as the transition to competition occurs, it is very likely  
16 that the traditional monopoly provider will retain significant amounts of monopoly  
17 power. Accordingly, it is critical that the steps of the policy process proceed in the  
18 order of: (1) opening markets to the maximum extent feasible; (2) observing the  
19 growth of competition; and, (3) deregulating when supply is produced under conditions  
20 of effective competition. As shown by experience in other industries, this policy path  
21 will maximize the prospects for consumers to reap the ultimate benefits from  
22 competition. Conversely, if the Commission errs in this regard by granting

1 deregulation in the absence of the end of significant monopoly power, then the  
2 deregulation will be premature and the result will be that competition and its attendant  
3 benefits will vanish.

4 **IV. REQUIREMENTS OF A PRO-COMPETITIVE POLICY**

5 **Q. CAN YOU PLEASE DESCRIBE THE POLICIES YOU ENVISION AS**  
6 **NECESSARY TO PROMOTE COMPETITION IN THE SUPPLY OF**  
7 **ELECTRICITY?**

8 A. The first major task for the Commission is to minimize, if not eliminate, regulatory  
9 barriers to entry into electricity. Regulatory conditions for entry at the retail stage  
10 should be clearly specified and not burdensome. The Competition Act clearly supports  
11 this initiative to eliminate regulatory barriers to entry into the provision of retail-stage  
12 electricity. More generally though, there may be a variety of functions that are  
13 presently provided by the incumbent utility that could more efficiently be provided by  
14 an alternative supplier. For example, it is far from clear that the Revenue Cycle  
15 Services such as metering, meter reading, billing, and handling customer billing  
16 records are best handled by a single traditional public utility provider.<sup>12</sup> Consequently,  
17 it is critical that the Commission open the various activities of electricity supply to the  
18 maximum extent possible. By opening these functions to competition at least two  
19 benefits will occur. First, consumers will have choices regarding which of the various  
20 producers shall provide these services. And second, by opening these functions to

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<sup>12</sup> Indeed, these non-wire functions of the traditional electricity supply process do not appear to exhibit the traditional characteristics of natural monopoly supply and I am unaware of any economic research to have indicated that such functions are, indeed, naturally monopolistic.

1 competition, the Commission can enable markets to begin to provide competitive  
2 discipline on the supplier(s) of these functions to ensure that they are provided with  
3 maximum efficiency. To the extent that effective competition arises in the provision  
4 of these functions, consumers will enjoy the consequent benefits.

5 Yet another critical component of the elimination of barriers to entry is for the  
6 Commission to allow alternative electricity suppliers to opt to be the full service  
7 provider for customers. That is, under a Competition-Enabling Policy, alternative  
8 electricity companies such as Enron may choose to directly solicit retail-level  
9 customers and take responsibility for the quality of service provided to those retail  
10 customers. In this case, the alternative provider of retail-level power would have the  
11 option of serving as a customer's primary point of contact and would retain  
12 responsibility for ensuring that the customer is satisfied. The alternative supplier then  
13 should be able to provide retail-stage non-distribution functions along with generation  
14 while purchasing the wire-service distribution services of the traditional public utility  
15 (as agent for the end-user). The consequence of this is that alternative suppliers be  
16 given the latitude to serve as the primary, responsible point of contact for residential,  
17 commercial and industrial customers. That is, a necessary step on the path to full  
18 enabling competition is to grant alternative suppliers complete authority to provide  
19 (independent of the incumbent) all of the types of utility/supplier/residential customer  
20 interactions identified by the Commission in its "Tentative Order" entered on April 25,  
21 1997.<sup>13</sup>

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<sup>13</sup> See Tentative Order, Docket No. M-00960890F0011, p. 5.

1           This leads to a second critical component of the Competition-Enabling  
2 Approach. Specifically, the traditional public utility provider of electricity services  
3 should not be permitted to exclusively offer all non-generation services on a bundled  
4 basis. Because it is possible that alternative providers may be more efficient at retail-  
5 stage non-wire services (e.g., meter reading), the traditional public utility should be  
6 required to provide its various services on an unbundled basis. Unbundling of the  
7 non-generation functions can provide a number of benefits. For instance, unbundling  
8 permits suppliers to utilize the non-generation facilities of the traditional utility on  
9 either an aggregate, bundled basis or to utilize only those distribution functions that the  
10 alternative electricity company feels are being most efficiently provided by the  
11 incumbent.

12           By unbundling the distribution functions (Energy Delivery Services) from  
13 Revenue Cycle Services it is possible for the alternative supplier to purchase only the  
14 Energy Delivery functions which it needs. Decisions about whether to utilize the  
15 Revenue Cycle functions of the incumbent or to self-supply these functions can then  
16 be based on the price charged by the traditional supplier for these functions. If, based  
17 upon the prices charged by the traditional utility for these services, the new entrant  
18 decides that it can perform these functions more efficiently than the incumbent, then  
19 both the competitive process and consumers will be made better off by permitting the  
20 unbundling.

1 Q. YOU SAID THAT IF THE MARKET FOR ELECTRICITY SUPPLY IS  
2 OPENED TO COMPETITION AND UNBUNDLED IT WILL ALLOW NEW  
3 ENTRANTS TO OPT TO EITHER SELF-SUPPLY OR PURCHASE VARIOUS  
4 REVENUE CYCLE FUNCTIONS FROM THE INCUMBENT. WHAT DOES  
5 THIS SUGGEST ABOUT THE ROLE OF REGULATION AND PRICES  
6 REGARDING THESE REVENUE CYCLE FUNCTIONS?

7 A. Once opened to competition and available on an unbundled basis, it will be necessary  
8 for the Commission to: (1) establish a mechanism for distinguishing whether these  
9 functions are provided subject to conditions of significant monopoly power or,  
10 alternatively, under conditions of effective competition; and (2) establish a pricing  
11 policy that reflects the degree of competition in the provision of these functions.

12 Q. SPECIFICALLY WHY WILL IT BE NECESSARY FOR THE COMMISSION  
13 TO DISTINGUISH WHETHER THE NON-WIRE (REVENUE CYCLE)  
14 FUNCTIONS ARE SUBJECT TO SIGNIFICANT MONOPOLY POWER OR  
15 EFFECTIVE COMPETITION?

16 A. If these functions continue, as today, to be provided on a monopoly basis and are  
17 subject to regulatory or economic barriers to entry, then it will be necessary for the  
18 Commission to ensure supply under conditions that emulate competitive supply.  
19 Alternatively, if and when these functions become subject to effectively competitive  
20 supply, then the Commission can safely and confidently remove regulatory controls on  
21 the supply and price of these functions.

22 Q. ARE THERE OTHER POLICIES THAT THE COMMISSION SHOULD  
23 EMBRACE TO OPEN THE ELECTRICITY MARKET IN PENNSYLVANIA TO  
24 COMPETITION?

25 A. Yes. One of the major issues confronting the Commission in the quest to open  
26 electricity markets to competition arises due to the prospect for so called "stranded  
27 costs." These are costs that are presumed to arise as a direct consequence of the

1 introduction of competition into a formerly monopolistic industry. Several questions  
2 are, of course, raised by claims that the incumbent firm will suffer stranded costs.  
3 Will such stranded costs, in fact, arise? To the extent that they do arise, should the  
4 incumbent firm be provided compensation for these costs? And, if the Commission  
5 decides that some amount of compensation to the traditional utility provider is to be  
6 forthcoming, how should the compensation be structured? That is, from whom should  
7 the payment for such stranded costs be extracted?

8           While these and other questions will certainly continue to arise and be debated,  
9 it is important at this early stage of opening electricity markets to competition for the  
10 Commission to not lose sight of the basic premise of those who champion the  
11 collection of such stranded costs. Specifically, the presumption is that such costs arise  
12 from the emergence of competition. Testifying on behalf of PECO, Mr. Sidak has  
13 defined stranded costs as “[C]osts that a utility is permitted to recover through its rates  
14 but whose recovery will be impeded or prevented *by the advent of competition.*”<sup>14</sup>  
15 (emphasis added) Similarly, the 1996 Economic Report of the President defined  
16 stranded costs as “[T]hose unamortized costs of prior investments that are scheduled  
17 for recovery through regulated monopoly rates but would not be recovered *under*  
18 *competition.* (p. 186) (emphasis added) Clearly, it is “the advent of competition” that  
19 is seen as the catalyst of the creation of stranded costs. Thus, independent of the  
20 resolution of essentially any other issue surrounding stranded costs, the Commission

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<sup>14</sup> Direct Testimony of J. Gregory Sidak before the Pennsylvania Public Utility Commission, PECO Statement No. 10, undated, p. 6.

1 must condition the recovery of any stranded costs on an affirmative showing by the  
2 incumbent provider that it has, indeed, opened its markets fully to competitive supply.  
3 That is, if stranded costs arise because of competition then the recovery of any such  
4 costs must be forthcoming only if it can be clearly demonstrated that the competition  
5 that gives rise to such costs has, indeed, arisen.

6 **Q. ARE THERE SPECIFIC BENEFITS THAT ARISE BY CONDITIONING THE**  
7 **RECOVERY OF ANY STRANDED COSTS UPON A DEMONSTRATION**  
8 **THAT INCUMBENT UTILITIES HAVE FULLY OPENED THEIR MARKETS**  
9 **TO COMPETITION?**

10 A. Yes. By declaring now that the Commission will not permit the recovery of any  
11 stranded cost in the absence of a demonstration by the incumbent that commercially  
12 viable and significant competition has arisen, a considerable financial incentive is  
13 created for PECO to, in fact, open its markets to competition. This financial incentive  
14 is very important because of the countervailing and innate incentive on the part of the  
15 incumbent monopoly provider to resist relinquishing its monopoly power.

16 **Q. ARE THERE OTHER STEPS THAT THE COMMISSION CAN TAKE TO**  
17 **PROMOTE THE EMERGENCE OF COMPETITION IN THE PROVISION OF**  
18 **ELECTRICITY IN PENNSYLVANIA?**

19 A. Yes. Given the present monopoly-laden position of PECO in the provision of  
20 electricity and its participation in all vertical stages of electricity supply, the  
21 Commission should initiate proceedings to determine whether opening retail-stage sales  
22 to competition is adequate to ensure competitive provision.<sup>15</sup> Accurate knowledge of

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<sup>15</sup> In this regard, it is worth pointing out that the Competition Act explicitly notes that it is in the public interest to permit retail customers access "to a competitive generation market." [Section 2802(3)] This indicates that the Commission should act in whatever ways it can to ensure that consumers do, indeed, have access to *competitive* supply from the generation stage.

1 the status of competition – or the lack thereof – is critical because it provides  
2 important feedback to the Commission regarding additional affirmative steps that may  
3 be necessary to further open the market to competition. If under present policies  
4 effective competition has not emerged, then PECO's stranded cost recovery should be  
5 suspended while additional steps are taken to permit alternative suppliers full access to  
6 competitively supply power to customers in the PECO service territory. That is,  
7 should the Commission determine that insufficient amounts of competition have arisen  
8 it should presume that the reason is that public policy has simply not been vigorous  
9 enough in adopting policies that promote and protect competition and must redouble its  
10 efforts toward that end prior to allowing full recovery of costs otherwise determined to  
11 be stranded.

12 The importance of this recommendation stems in part from the Competition  
13 Act's requirement that at the end of the transition period the generation-stage of  
14 electricity will be deregulated.<sup>16</sup> Clearly, deregulation prior to the emergence of  
15 effective competition would leave consumers vulnerable to the pernicious consequences  
16 of significant monopoly power and would be antithetical to the public interest.  
17 Additionally, because the presence of properly defined stranded costs is conditional  
18 upon the presence of competition, it is absolutely critical that the Commission ensure  
19 that conditions of effective competition are, indeed, present as a precondition to the  
20 recovery of any so-called stranded costs.

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<sup>16</sup> Section 2806 (A).

1 Q. IS IT IMPORTANT THAT CONSUMERS BE GIVEN THE MAXIMUM  
2 OPPORTUNITY TO CHANGE THEIR RETAIL PROVIDER OF  
3 ELECTRICITY?

4 A. Yes. Consistent with the dictates of the Competition Act, consumers must be  
5 permitted every possible opportunity to switch to alternative providers of electricity.  
6 Alternative providers must be free to solicit retail customers and to receive the  
7 cooperation of PECO in making the transition as seamless as possible. Moreover,  
8 given the success of the presubscription process in telecommunications in accelerating  
9 the advent of effective competition, the Commission may wish to consider a similar  
10 mechanism at some point in the transition to competition in the electric utility industry.  
11 Specifically, because presubscription assures that customers are explicitly given a  
12 choice regarding their supplier, it provides a fresh opportunity for all competitors to  
13 vie for the patronage of electricity customers.

14 Q. WHAT POLICIES DO YOU BELIEVE ARE NECESSARY TO PROTECT  
15 COMPETITION?

16 A. As I noted earlier, the process of introducing competition into the provision of  
17 electricity in Pennsylvania faces a challenge because, for the foreseeable future, one of  
18 the vertical stages of production (namely, wire-services distribution functions) will be  
19 provided under conditions of significant monopoly power. This challenge is made  
20 more daunting because the incumbent provider of the monopoly functions is  
21 envisioned to participate in the other, potentially competitive, stages of electricity  
22 supply. Because of the incentives for monopoly leveraging in these circumstances, it  
23 is necessary for the Commission to design and implement a variety of safeguards to  
24 protect and maintain the integrity of the competitive process. Specifically, I

1 recommend that the Commission policy:

- 2 (1) mandate the separation of monopoly from potentially competitive  
3 functions of PECO to the maximum extent feasible, consistent with  
4 efficient and reliable provision of power and the dictates of the  
5 Competition Act;
- 6 (2) require complete and unconditional provision of necessary access by all  
7 competitors to remaining monopoly assets of the electric supply system  
8 in Pennsylvania;
- 9 (3) explicitly prohibit bundling of monopoly services or functions with  
10 potentially competitive services or functions;
- 11 (4) establish procedures to prevent anticompetitive price discrimination and  
12 cross-subsidization;
- 13 (5) establish economically sound guideposts for the measurement of costs so  
14 that "cost shifting" does not become a vehicle through which cross-  
15 subsidization may be carried out;
- 16 (6) establish procedures that aggressively seek to eliminate opportunities for  
17 nonprice discrimination by the incumbent provider; and
- 18 (7) condition initial and continued stranded cost recovery for PECO on the  
19 progress in achieving these goals and on the actual opening of PECO's  
20 retail market to competition.

1 V. CONCLUSION

2 Q. GIVEN THE DEARTH OF COMPETITION IN ELECTRICITY MARKETS  
3 SHOULDN'T THE COMMISSION PROCEED CAUTIOUSLY IN ITS  
4 IMPLEMENTATION OF COMPETITION IN PENNSYLVANIA'S RETAIL  
5 ELECTRICITY MARKET?

6 A. While the Commission should proceed judiciously, it should not delay even in the  
7 slightest in opening retail-stage electricity to competition. Specifically, it is vital to  
8 implement the full set of Competition-Enabling Policies to promote and protect  
9 competition as soon as feasible in Pennsylvania. Experience has shown that the  
10 introduction of competition, when complemented by the appropriate competition-  
11 enabling policies, is likely to yield considerable economic benefits for consumers.

12 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

13 A. Yes.

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"Comments on the Analysis and Methodology in 'Review of the TVA Load Growth/Plant Construction Situation.'" Contract Completion Report to the Tennessee Valley Authority, February 1982.

#### **CONGRESSIONAL AND REGULATORY TESTIMONIES:**

U.S. Senate (Energy and Natural Resources Committee, Subcommittee on Water and Power; Commerce, Science and Transportation Committee); Tennessee State Legislature (Senate Finance, Ways and Means Committee; Special Joint Legislative Committee on Business Taxation; and, Senate State and Local Government Committee); Federal Communications Commission (Ex Parte presentation); Pennsylvania Public Utility Commission; Michigan Public Service Commission; West Virginia Public Utility Commission; Wyoming Public Utility Commission; Washington Utilities and Transportation Commission; Utah Public Service Commission; Wisconsin Public Service Commission; California Public Utilities Commission; Florida Public Service Commission; Delaware Public Service Commission; Montana Public Service Commission; Maryland Public Service Commission; Massachusetts Department of Public Utilities; Georgia Public Service Commission; Colorado Public Utilities Commission; North Carolina Public Utilities Commission; Texas Public Utility Commission; Arkansas Public Service Commission; Connecticut Department of Public Utility Control; and New Jersey Board of Public Utility Commissioners.

#### **SELECTED CONFERENCE PRESENTATIONS:**

University of Minnesota, Annual Meeting of the Minnesota Economics Association, Minneapolis  
Presentation: "Policies for the Evolving Telecommunications Industry," September 1996.

University of Florida, Annual Public Utility Research Center Conference, Gainesville, Florida  
Presentation: "Universal Service in Competitive Telecommunications Markets," January

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1996.

University of Michigan, "Telecommunications Infrastructure and the Information Economy: Interactions Between Public Policy and Corporate Strategy," Ann Arbor, Michigan

Presentation "Regulatory Policies Toward Local Exchange Companies Under Emerging Competition: Guardrails or Speedbumps on the Information Highway" (with David L. Kaserman), March 1995.

Rutgers University "Advanced Workshop in Regulation and Public Utility Economics" (Thirteenth Annual Conference, Newport, Rhode Island)

Presentation: "Dominant Firm Pricing with Competitive Entry and Regulation" (with Larry R. Blank and David L. Kaserman), May 1994.

Twenty-first Annual Telecommunications Policy Research Conference, Solomons, Maryland

Presentation: "Open Entry and Local Telephone Rates: The Economics of IntraLATA Toll Competition," October 1993.

Vanderbilt University (Owen School of Management) Telecommunications Systems Modelling and Analysis Conference

Presentation: "Open Entry and Local Telephone Rates: The Economics of IntraLATA Toll Competition," March 1993.

Twentieth Annual Telecommunications Policy Research Conference, Solomons, Maryland

Presentation: "Demand and Pricing of Telecommunications Services: Evidence and Welfare Implications," September 1992.

Ohio State University (National Regulatory Research Institute) "Telecommunication Demand Conference"

Presentation: "The Economic Welfare Effects of Extended Area Telephone Service," August 1992.

University of Utah "Conference on New Directions for State Telecommunications Regulation"

Presentation: "Competition for Local Exchange Service--Is Nothing Sacred?" February 1991.

Rutgers University "Advanced Workshop in Regulation and Public Utility Economics" (Ninth Annual Conference, New Paltz, New York)

Paper presented: "Demand, Pricing and Regulation of Cable TV Services: Evidence From the Pre-Deregulation Period" (with Yasuji Otsuka), June 1990.

University of Kansas "Stakeholders' Symposium on Telecommunications"

Presentation: "The Modern History of Telecommunications Economics and Policy," Semi-

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annual February 1990-present.

Rutgers University "Advanced Workshop in Regulation and Public Utility Economics" (Eighth Annual Conference, Newport, Rhode Island)

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Southwestern Bell Corporation "Annual Regulatory Conference" (St. Louis, Missouri)

Presentation: "The New Regulatory Age - What Lies Ahead" April 1989.

University of Florida (Public Utility Research Center) Conference on "Beyond Traditional Regulation"

Presentation: "Expectations and Realizations in Post-Divestiture Telecommunications Policy," February 1989.

National Conference of State Legislatures and the U.S. Advisory Commission on Intergovernmental Relations "Conference on Telecommunications Policy" (Washington, D.C.)

Presentation: "Telecommunications Policy -- Past, Present and Future," November 1988.

University of Paris (Dauphine IX), Paris, France, EURO-TIMS, "Joint International Conference"

Presentation: "The Quantification of Entrepreneurship: The Determinants of Firm Entry, Exit, and Survival," July 1988.

University of Texas conference on "Current Issues in Telecommunications Regulation"

Papers Presented: "Deregulation and Market Power Criteria: An Evaluation of State Level Telecommunications Policy" (with David L. Kaserman), and "The Role of Cost Allocation Methodologies in the Deregulation of Long Distance Telecommunications," October 1987.

Rutgers University conference on "Interexchange Telecommunications and Regulatory Innovation"

Paper presented: "Long Distance Telecommunications Policy: Rationality on Hold" (with David L. Kaserman), October 1987.

University of Florida symposium on "Public Policy Toward Corporations"

Paper presented: "The Economics of Regulation: Theory and Evidence in the Post-Divestiture Telecommunications Industry" (with David L. Kaserman), March 1986.

#### **CONSULTING:**

U.S. Federal Trade Commission; Tennessee Valley Authority; AT&T; Sprint; MCI; Enron;

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Antitrust Division, Office of the Attorney General, State of Tennessee; U.S. Senator Howard Baker, Jr., U.S. Senate Majority Leader; Oak Ridge National Energy Laboratory; Arkansas Consumer Research; Division of Energy Conservation and Rate Advocacy, Office of the Arkansas Attorney General; U.S. Department of Energy

#### **PROFESSIONAL PRESENTATIONS:**

"Regulation and Investment: Evidence from the Electric Utility Industry." (with Thomas Lyon) Presented to the American Economic Association annual meetings, New Orleans, January 1997.

"Targeted and Untargeted Subsidy Schemes: Evidence from Post-Divestiture Efforts to Promote Universal Telephone Service." Presented to the Southern Economic Association Annual Meetings, New Orleans, November 1995.

"Dominant Firm Pricing with Competitive Entry and Regulation: The Case of IntraLATA Toll," with Larry Blank and David L. Kaserman. Presented to the Southern Economic Association Annual Meetings, Orlando, Florida, November 1994.

"The Economic Welfare Effects of Extended Area Telephone Service," with Carlos Martins-Filho. Presented to the Western Economic Association Annual Meetings, Seattle, Washington, July 1991.

"Demand, Pricing and Regulation of Cable TV Services: Evidence from the Pre-Deregulation Period," with Yasuji Otsuka. Presented to the Southern Economic Association annual meetings, New Orleans, Louisiana, November 1990.

"Market Contestability: Toward an Operational Index," with David L. Kaserman. Presented to the Western Economic Association annual meetings, Lake Tahoe, Nevada, June 1989.

"The Political Economy of Deregulation: The Case of Intrastate Long Distance," with David L. Kaserman and Patricia Pacey. Presented to the Southern Economic Association annual meetings, San Antonio, Texas, November 1988.

"Barriers to Trade and the Import Vulnerability of U.S. Manufacturing Industries," with Don Clark and David L. Kaserman. Presented to the Southern Economic Association annual meetings, San Antonio, Texas, November 1988.

"Cross-Subsidization in Telecommunications: Economic Theory Versus Regulatory Rhetoric" with David L. Kaserman, Western Economic Association annual meetings, Vancouver, British Columbia, July 1987. Also presented at the Southern Economic Association annual meetings, Washington, D.C., November 1987.

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"The Effects of Regulation on R&D: Theory and Evidence," Southern Economic Association annual meetings, New Orleans, Louisiana, November 1986.

"The Measurement of Vertical Economies and the Efficient Structure of the Electric Utility Industry" with David L. Kaserman, American Economic Association annual meetings, San Francisco, California, December 1983.

"Regulation, Advertising and Economic Welfare" (with David L. Kaserman), Southern Economic Association annual meetings, Washington, D.C.; November 1983.

"Multiproduct Monopoly, Regulation and Firm Costs," Southern Economic Association meetings, Atlanta, Georgia, November 1982.

"Forecasting Economic Activity in Tennessee with a Quarterly Econometric Model," Southeastern Economic Analysis Conference, Charlotte, North Carolina, September 1982.

"The Technological Determinants of U.S. Energy Industry Structure." Regulatory Workshop, Center for the Study of American Business and the Department of Economics, Washington University, December 1981.

#### **WORK IN PROGRESS:**

"Regulation, Vertical Integration and Sabotage," (with T.R. Beard and D.L. Kaserman), January 1997.

"Regulation and Investment: Evidence from the Electric Utility Industry," (with Thomas P. Lyon), March 1996.

"Regulatory Policies Toward Local Exchange Companies Under Emerging Competition: Guardrails or Speedbumps on the Information Highway," (with David L. Kaserman), revised June 1996.

"Targeted and Untargeted Subsidy Schemes: Evidence from Post-Divestiture Efforts to Promote Universal Telephone Service," (with Ross Eriksson and David L. Kaserman), revised November

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1996.

"Modeling Entry and Barriers to Entry: A Test of Alternative Specifications," (with Mark L. Burton and David L. Kaserman), mimeograph, revised, August 1995.

"Open Entry and Local Telephone Rates: The Economics of IntraLATA Toll Competition (with David L. Kaserman, Larry R. Blank, and Simran Kahai), November 1996.

"Efficient Industry Structure and the Scope of Banking-Nonbanking Activities" (with Atul Saxena and Harold Black), January 1993.

"An Asymptotically Efficient Estimator for Point-to-Point Demand Models with Adjacent Cross-Sectional Correlation" (with Carlos Martins-Filho), August 1993.

Dominant Firm Pricing with Competitive Entry and Regulation: The Case of IntraLATA Toll (with David L. Kaserman and Larry R. Blank), May 1994.

#### **EDITORIAL REVIEWER:**

National Science Foundation, The MIT Press, Federal Trade Commission, The Economic Journal, Journal of Business, RAND Journal of Economics, Journal of Regulatory Economics, Review of Economics and Statistics, Economic Inquiry, Journal of Industrial Economics, Review of Industrial Organization, Scandinavian Journal of Economics, Eastern Economic Journal, Southern Economic Journal, Contemporary Economic Policy, Industrial Relations, Growth and Change, Review of Regional Studies, Journal of Economics and Business, Quarterly Review of Economics and Business, Journal of Policy Analysis and Management, Quarterly Journal of Business and Economics, Regional Science and Urban Economics, Financial Review, Journal of Money, Credit, and Banking, Social Science Quarterly, Telecommunications Systems, Public Finance Quarterly

#### **PROFESSIONAL MEMBERSHIPS AND COMMITTEES:**

American Economic Association

Western Economic Association

Southern Economic Association

American Law and Economics Association

National Regulatory Research Institute, 1993-1997, Ohio State University, Research Advisory Committee

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Phila. 10/14, 15/14/97  
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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SURREBUTTAL TESTIMONY OF

**DR. JOHN W. MAYO**

ON BEHALF OF  
ENRON POWER MARKETING INC

**DOCKETED**  
Nov 04 1997

DOCKET NO. R-00973953  
RE: PECO RESTRUCTURING

**DOCUMENT  
FOLDER**

OCTOBER 10, 1997

**RECEIVED**  
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F.A. JUDGE  
PROTHONOTARY'S OFFICE

1 I. INTRODUCTION

2 Q. PLEASE STATE YOUR NAME.

3 A. My name is John W. Mayo.

4 Q. ARE YOU THE SAME JOHN MAYO THAT PREVIOUSLY PROVIDED  
5 TESTIMONY IN THIS PROCEEDING?

6 A. Yes.

7 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

8 A. The Commonwealth of Pennsylvania has embarked on an ambitious and important course  
9 aimed at bringing effective competition to retail markets for electricity. Quite  
10 expectedly, the different constituencies have differing ideas as to how this goal can and  
11 should be accomplished. Throughout the coming months myriad details must be debated  
12 and negotiated. If the overall process of developing retail level competition is to be  
13 successful, however, it is essential that the basic regulatory platform from which this  
14 effort is launched be grounded in sound economic principles. My purpose, then, in both  
15 this and my direct testimony is to assist the Commission in the process of identifying and  
16 applying these economic principles.

17 In this capacity, the focus of my present testimony centers on the comments of  
18 Mr. J. Gregory Sidak, an attorney who provided rebuttal testimony on behalf of PECO.  
19 Following this introductory discussion, I turn in Section II to the criticisms Mr. Sidak  
20 raised regarding my discussion of PECO's market power. Then in Section III, I turn to a  
21 discussion of several points raised by Mr. Sidak regarding the Competition-Enabling  
22 policy approach I recommended in my direct testimony.

1 Q. **BASED ON YOUR READING OF MR. SIDAK'S TESTIMONY IN THIS**  
2 **MATTER, ARE THERE ISSUES UPON WHICH YOU AGREE?**

3 A. Yes. I believe that both Mr. Sidak and I agree on the merits of bringing  
4 competition to retail markets for electricity. We both recognize that effective  
5 competition offers significant benefits to consumers, especially when compared to  
6 monopoly regulation. We would also both agree that as competition becomes effective,  
7 the need for regulation dissipates.

8 Q. **DESPITE YOUR AGREEMENT ON THESE FUNDAMENTAL POINTS, YOU**  
9 **NEVERTHELESS HAVE DIFFERENT PRESCRIPTIONS FOR REGULATORY**  
10 **POLICY TOWARD THE ELECTRIC UTILITY INDUSTRY IN**  
11 **PENNSYLVANIA. WHY?**

12 A. In my direct testimony, I recommended that the Commission adopt a Competition-  
13 Enabling Approach to the development of retail competition in the electricity industry in  
14 Pennsylvania. Under this approach, the Commission should adopt a two-pronged set of  
15 policies to the transition to a competitive market. First, the Commission must adopt a  
16 number of measures that promote competition. For instance, the Commission must do  
17 everything possible to minimize, if not eliminate, physical, legal, and "market power"  
18 barriers to entry. This will require that the Commission open to competition as many  
19 activities in the electricity supply process as possible.<sup>1</sup> Second, the Commission should  
20 adopt a set of competitive safeguards to protect the competitive process. In particular,  
21 economic theory indicates that where a regulated firm holds significant market power at  
22 one vertical stage of supply but faces the emergence of competition at other vertical

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<sup>1</sup> A more detailed discussion of the policies necessary to promote competition is contained in my direct testimony, pp. 24-31.

1 stages, it will have incentives to engage in a number of practices to exploit or extend that  
2 monopoly power in the related, potentially competitive, vertical stages. For reasons  
3 rooted in both economic theory and the history of the interplay between regulation and  
4 competition, a Competition-Enabling Approach holds considerable promise for  
5 Pennsylvania consumers of realizing the competitive benefits that Mr. Sidak and I agree  
6 are produced by effective competition.

7 In contrast to this policy approach, Mr. Sidak resists a proactive approach to  
8 fostering competition in favor of a policy that would do nothing to explicitly promote the  
9 competitive process and would instead rely *in toto* upon an anemic “Code of Conduct”  
10 proffered by PECO and an antitrust backdrop as the path to establish competition in the  
11 supply of electricity in Pennsylvania. In the meanwhile, regulators are advised to  
12 “rapidly phase out their industry oversight and regulatory activities to avoid the  
13 possibility of biasing competitive outcomes.”<sup>2</sup> For reasons that I hope to make clear, Mr.  
14 Sidak’s approach simply is inconsistent with an effective transition to competition and  
15 the several criticisms that he raises regarding the Competition-Enabling Approach are  
16 inconsistent with sound economics.

17 Indeed, while competition is fundamentally premised on the notion of vigorous  
18 rivalry and a strong reliance on the survival instinct, both economic theory and the  
19 history of network industries indicate that the sink-or-swim approach to competition  
20 championed by Mr. Sidak is in this case almost certain to produce a drowning — of the  
21 new competitors. Contrary to Mr. Sidak’s contention, incumbent sellers have a

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<sup>2</sup> Rebuttal testimony of J. Gregory Sidak, pp. 17-18.

1 tremendous incentive to use their remaining monopoly over distribution services to  
2 unfairly disadvantage market entrants and thwart the emergence of effective competition.  
3 The replacement of regulatory oversight with market forces is a highly desirable goal, but  
4 to abandon regulatory control while competition is still in an embryonic stage will almost  
5 certainly guarantee that Pennsylvanians will be robbed of the benefits associated with  
6 mature competitive markets. As market forces emerge, regulatory controls can and  
7 should be relaxed. Ultimately, oversight in any form may be entirely unnecessary.  
8 Today, however, a policy that fails to protect and promote the development of the  
9 competitive process is ill-advised.

10 **II. MARKET POWER**

11 **Q. MR. SIDAK IS CRITICAL OF YOUR TESTIMONY REGARDING MARKET**  
12 **POWER THAT MAY BE HELD BY PECO IN THE PROVISION OF**  
13 **ELECTRICITY. CAN YOU COMMENT ON THESE CRITICISMS?**

14 **A.** Yes. A careful reading of Mr. Sidak's testimony reveals essentially four criticisms of my  
15 testimony on the issue of monopoly power. First, Mr. Sidak suggests that my testimony  
16 is flawed because I did not describe the market definition exercise that is part of a formal  
17 monopoly power exercise, nor did I collect data or provide empirical support for my  
18 statements regarding PECO's market power. (pp. 8-9) Second, Mr. Sidak suggests that  
19 my testimony on market power is flawed as a result of "naive reliance on market shares."  
20 (p.9) Third, Mr. Sidak argues that my testimony is flawed because the FERC has already  
21 concluded that PECO has no market power in generation and transmission. (p.10)

1 Finally, Mr. Sidak suggests that my approach to measuring competition is flawed because  
2 it amounts to an "exercise in counting competitors." (p. 24)

3 **Q. TURNING TO THE FIRST OF THESE CRITICISMS, IS YOUR TESTIMONY IN**  
4 **ERROR BECAUSE YOU DID NOT PROVIDE A DISCUSSION OF THE**  
5 **RELEVANT MARKET OR PROVIDE DATA ON THE INDUSTRY TO**  
6 **SUPPORT YOUR STATEMENTS?**

7 A. No. PECO is presently the sole provider of retail electric service to consumers in its  
8 service territory and today enjoys complete regulatory barriers to entry. In light of this, a  
9 lengthy discussion of the formal market definition exercise is unnecessary to reach the  
10 conclusion that PECO has significant monopoly power in the provision of electricity  
11 within its service territory. The issue of whether PECO will continue to retain such  
12 monopoly power and for how long is, of course, more of an open matter. It is precisely  
13 for this reason that regulatory policy should be flexible enough to transition to more  
14 relaxed forms of regulation, including deregulation, as effective competition emerges.  
15 Once PECO is restructured, the Commission should be willing to entertain  
16 demonstrations by PECO that it does not have significant market power in the supply of  
17 electricity to retail customers in its service territory. At the time PECO chooses to make  
18 such a showing, a full discussion regarding the relevant market definition should occur,  
19 but such an analysis is neither necessary at this point nor is its absence from my direct  
20 testimony a relevant criticism of my earlier comments regarding market power.

21 **Q. MR. SIDAK ALSO SUGGESTS THAT YOUR APPROACH WOULD REST ON A**  
22 **"NAIVE RELIANCE ON MARKET SHARES." CAN YOU COMMENT?**

1 A. On this matter Mr. Sidak is simply wrong. Any assessment of market power by the  
2 Commission should rely upon the traditional market power methodology.<sup>3</sup> Such an  
3 approach includes an assessment of market share as part of the analysis. While important  
4 caveats to the use of market share data apply, economic theory clearly supports  
5 examining market share data along with other data on supply and market demand  
6 conditions as part of the market power exercise. Nothing in my testimony provides the  
7 basis for this criticism by Mr. Sidak

8 **Q. MR. SIDAK'S THIRD CRITICISM OF YOUR DISCUSSION OF PECO'S**  
9 **MARKET POWER IS THAT YOUR TESTIMONY IS CONTRADICTED BY THE**  
10 **FERC FINDING THAT PECO EITHER DOES NOT HAVE, OR HAS**  
11 **MITIGATED, ANY MARKET POWER IN GENERATION AND**  
12 **TRANSMISSION. CAN YOU COMMENT?**

13 A. Yes. The FERC order cited by Mr. Sidak (at page 10) in support of his criticism stems  
14 from an analysis of market power that PECO holds in the provision of electricity sold *to*  
15 *wholesale customers outside* the Pennsylvania-New Jersey-Maryland (PJM) control area.  
16 The issues before the Pennsylvania Commission, however, center on the market power  
17 held by PECO in the provision of electricity to *retail customers within its service*  
18 *territory*. It is an incredible leap to suggest as does Mr. Sidak that the FERC finding  
19 regarding a lack of market power in wholesale generation markets outside the PJM  
20 control area could be used to infer the lack of market power by PECO in the provision of  
21 retail electricity within its service territory. Indeed, the inference Mr. Sidak would have  
22 the Commission draw – that PECO does not possess significant monopoly power in the

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<sup>3</sup> See, e.g. William E. Landes and Richard A. Posner "Market Power in Antitrust Cases," Harvard Law Review Vol. 94, pp. \_\_\_\_\_.

1 provision of retail electricity within its service territory – is both imprudent and a *non*  
2 *sequitur*. Certainly, his criticism of my testimony in this regard is unjustified.

3 **Q. THE FOURTH CRITICISM MADE BY MR. SIDAK OF YOUR DISCUSSION**  
4 **REGARDING MARKET POWER IS THAT IN ANALYZING THE STATUS OF**  
5 **COMPETITION YOUR APPROACH WOULD AMOUNT TO AN “EXERCISE IN**  
6 **COUNTING COMPETITORS.” (P. 24) CAN YOU COMMENT?**

7 A. Yes. This specific criticism arises in the context of the standards under which the  
8 Commission should entertain the possibility of allowing PECO to recover “stranded  
9 costs.” In my direct testimony, I indicated that because the concept of “stranded costs” is  
10 predicated on losses that accrue to the incumbent due to the advent of competition, then  
11 the Commission should ensure that PECO is indeed subject to meaningful competition as  
12 a prerequisite to the recovery of any stranded costs. Mr. Sidak’s complaint (p. 24)  
13 initially is that I did not make this proposal operational. In this regard, Mr. Sidak first  
14 ponders whether I might propose that the Commission make this principle operational by  
15 counting the number of PECO’s competitors as a way of measuring the presence of  
16 competition. (p. 24, lines 13-14) Then, without one shred of support from my testimony,  
17 Mr. Sidak incredibly attributes directly to me the “exercise in counting competitors.” To  
18 be clear, nowhere in my testimony have I suggested any “exercise in counting  
19 competitors” as a methodology for determining the presence or absence of effective  
20 competition.<sup>4</sup>

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<sup>4</sup> Ironically, while nothing in my direct testimony even hints at an exercise in counting competitors as the basis from which to draw conclusions regarding competition, Mr. Sidak seems prepared to draw the conclusion of effective competition in the supply of electricity in Pennsylvania on the basis of counting *potential* competitors. See Mr. Sidak’s testimony at p. 10, lines 17-18.

1           Indeed, I wholly endorse the traditional market power methodology for the  
2           assessment of the extent of market power or, alternatively, effective competition faced by  
3           PECO.

4           In sum, this criticism has absolutely no foundation in my testimony, but rather  
5           represents a fabricated straw man for Mr. Sidak to attack. While he persuasively attacks  
6           the straw man, my initial point remains very much intact: that a prerequisite to the  
7           consideration of the recovery of any stranded costs should be the advent of effective  
8           competition in the provision of retail electricity within the PECO service territory.

9 **Q. MR. SIDAK SAYS THAT CONCERNS ABOUT MONOPOLY LEVERAGING**  
10 **ARE UNFOUNDED BECAUSE THE LEVERAGING ARGUMENT IS**  
11 **“GENERALLY FLAWED?” DO YOU AGREE?**

12 **A.** No. Mr. Sidak’s argument that monopoly leveraging theory is flawed rests itself on a  
13 flawed proposition. Specifically, Mr. Sidak argues that “Because a monopolist can  
14 always extract monopoly rents in the market it controls, it cannot increase its rents by  
15 expanding into a second market.” (p.12) This principle does not, however, apply to a  
16 monopoly that is subject to price regulation. As I demonstrated in my direct testimony,  
17 there are a variety of market conditions that have been shown to facilitate the emergence  
18 of monopoly leveraging. Among these – and directly pertinent to the case at hand – is  
19 the presence of price or profit regulation. Specifically, under the Competition Act,  
20 PECO’s distribution function activities over which it maintains complete monopoly  
21 control will remain subject to price regulation. To the extent that this regulation is  
22 binding, it will limit the ability of PECO to fully expropriate the monopoly profits that  
23 would otherwise be available to it at the distribution stage. Consequently, a financial

1 incentive is created for PECO to engage in actions in related markets that exploit its  
2 market power over the distribution stage of the electricity supply process. Mr. Sidak's  
3 conclusion regarding the threat of monopoly leveraging is wrong.

4 **III. COMPETITION-ENABLING POLICY**

5 **Q. MR. SIDAK'S PRINCIPAL CRITICISM OF YOUR RECOMMENDATION TO**  
6 **PROMOTE COMPETITION IS THAT IT IS TANTAMOUNT TO A POLICY OF**  
7 **INFANT INDUSTRY PROTECTION OR ONE OF ATTEMPTING TO**  
8 **"MANAGE" COMPETITION. IS IT ACCURATE TO SAY THAT A PROPER**  
9 **COMPETITION-ENABLING APPROACH IS DESIGNED TO "MANAGE"**  
10 **COMPETITION OR TO PROP UP INEFFICIENT COMPETITORS AT THE**  
11 **EXPENSE OF THE INCUMBENT?**

12 **A.** No. For reasons that I had hoped would be clear from my direct testimony, I believe that  
13 a regulatory policy built solely on the idea of establishing regulatory rules to protect  
14 consumers and competitors from abuses by a monopoly provider is unlikely to yield the  
15 full potential benefits of competition in this market. Instead, it is necessary for the  
16 Commission to go beyond this traditional regulatory role of simply establishing rules to  
17 parrot competitive outcomes to a more vigorous policy approach that seeks to open  
18 electricity markets as rapidly as possible to competition. It is, however, a gross  
19 mischaracterization to suggest that a policy designed to reduce regulatory barriers to  
20 entry and to foster consumer choice are tantamount to a policy of managed competition  
21 or one of asking regulators to play favorites among the various competitors. A policy of  
22 promoting competition by reducing regulatory barriers to entry and enabling consumer  
23 choice is consistent with expediting the emergence of effective competition and the  
24 consequent benefits of competition.

25 **Q. BUT MR. SIDAK ARGUES THAT A COMPETITION-ENABLING APPROACH**  
26 **IS ANTITHETICAL TO THE DEREGULATION PROCESS BECAUSE IT**

1       **WOULD CREATE THE NEED FOR MORE REGULATION. IS THIS**  
2       **CORRECT?**

3 A.     No. Mr. Sidak is wrong in this claim. PECO is a fully regulated monopoly supplier  
4       today. By statute, and consistent with a Competition-Enabling approach, regulation of  
5       PECO will be relaxed over the next few years as competition emerges. For instance,  
6       under the Competition Act PECO will transition from traditional earnings and price  
7       regulation to less onerous price cap regulation and unregulated pricing for generation.  
8       This change, together with the relaxation of regulation upon the emergence of effective  
9       competition, will ensure that regulatory controls are, in fact, being eased.

10             The relevant question, then, is not whether regulation increases or decreases, but  
11       whether regulatory safeguards and, in particular, the ones I proffered are necessary to  
12       protect the integrity of the competitive process. A close examination of the regulatory  
13       safeguards that I recommended in my direct testimony reveals that they are targeted to  
14       specific areas of competitive concerns that are indicated by sound economic theory.  
15       Moreover, they are supported by an examination of the history of the evolution of  
16       competition in industries in which a regulated incumbent provider retains significant  
17       monopoly power over the provision of inputs necessary for competitors to compete.  
18       Thus, Mr. Sidak's criticism is misplaced.

19             At the same time, one may legitimately ask whether the approach championed by  
20       Mr. Sidak is indeed as administratively parsimonious in regulation costs as he would  
21       have the Commission believe. Ironically, Mr. Sidak who is so critical of the notion of  
22       unnecessary regulation actually recommends several regulatory policies and principles  
23       that are likely to prove far more costly and unproductive than those embodied in a

1 Competition-Enabling Approach. For instance, Mr. Sidak recommends that regulatory  
2 controls be imposed on all firms – both new entrants and incumbents alike – if they are  
3 imposed at all. While I wholeheartedly agree that no firm, whether an incumbent or a  
4 new entrant, should be targeted for regulation simply because of its status as an  
5 incumbent or a new entrant, it is perfectly proper to impose a set of regulatory safeguards  
6 designed to deal with the potential exploitation of monopoly power — which in this case  
7 is held by the incumbent exclusively. The Competition-Enabling approach permits such  
8 a policy of targeted regulation to areas where it is needed. It does not indiscriminately  
9 and without economic foundation require regulators either to impose no regulatory  
10 safeguards or impose regulation on all firms even though the vast majority of these firms  
11 pose essentially no anticompetitive risk to society through their participation in the  
12 electricity market in Pennsylvania. As Mr. Sidak aptly notes in his rebuttal testimony  
13 “Imposing more regulation in the name of deregulation is counterproductive.”

14 **Q. ARE THERE OTHER INSTANCES WHERE MR. SIDAK IS CRITICAL OF**  
15 **REGULATORY SOLUTIONS TO PROBLEMS YET ACTUALLY PROPOSES**  
16 **POLICIES THAT REQUIRE MORE REGULATION?**

17  
18 **A.** Yes. Mr. Sidak’s testimony regarding the role of regulation as a tool to expedite the  
19 emergence of competition in the supply of electricity in Pennsylvania exhibits a certain  
20 amount of schizophrenia. On the one hand, we are told that a policy of promoting and  
21 protecting the competitive process is flawed because it relies upon regulation to protect  
22 the competitive process. Indeed, Mr. Sidak indicates that regulation is unnecessary  
23 because monopoly leveraging concerns are “generally flawed,” is counterproductive, and  
24 is inferior to antitrust as a policy instrument. Thus, the Commission is told that

1 “regulators should rapidly phase out their industry oversight and regulatory activities to  
2 avoid the possibility of biasing competitive outcomes.” (p. 3) On the other hand, Mr.  
3 Sidak implicitly acknowledges the monopoly leveraging problem that he elsewhere  
4 denies by pointing out that regulators can solve the problem by adopting imputation.  
5 Imputation is a regulatory policy of requiring a downstream competitive affiliate to  
6 reflect the input prices charged by an upstream monopoly in the competitive affiliate’s  
7 final prices. Thus, while Mr. Sidak is critical of a policy approach that embodies  
8 regulatory safeguards to protect competition, he incongruently appears to place great  
9 faith in regulation, and in imputation in particular, as a silver bullet that would eliminate  
10 any anticompetitive behavior on the part of PECO during the transition to a more  
11 competitive market.

12 **Q. WHILE WE ARE ON THE SUBJECT, IS MR. SIDAK CORRECT IN HIS**  
13 **ASSESSMENT THAT IMPUTATION WILL PURGE THE INCENTIVES OR**  
14 **ABILITY TO ENGAGE IN MONOPOLY LEVERAGING?**

15 **A.** No. While imputation is a regulatory tool that is available to help mitigate the potential  
16 for a price squeeze in the face of pricing distortions at the upstream stage, the superior  
17 approach is to establish the economically efficient price for the upstream input in the first  
18 place. To the extent that regulators, for whatever reason, fail to do so, imputation can  
19 provide minimal regulatory protections. But to be clear, imputation does not alter the  
20 incentives of a regulated monopolist at one stage to engage in monopoly leveraging  
21 toward unaffiliated rivals at related stages. In this important sense, then, imputation is  
22 more of a regulatory band-aid than the cure to monopoly leveraging incentives  
23 envisioned by Mr. Sidak.

1 Q. MR. SIDAK PLACES CONSIDERABLE WEIGHT ON ANTITRUST AS A  
2 PRIMARY POLICY INSTRUMENT AS PENNSYLVANIA TRANSITIONS TO A  
3 MORE COMPETITIVE ELECTRICITY SUPPLY PROCESS. CAN YOU  
4 COMMENT?

5 A. Yes. As Mr. Sidak recognizes within his testimony, antitrust laws are intended to protect  
6 the competitive process. Similarly, a purpose of regulatory safeguards is to protect the  
7 competitive process. Mr. Sidak argues that regulatory safeguards are redundant and that  
8 consequently the Commission should end regulatory oversight as quickly as possible so  
9 that the antitrust courts can take over this process of protecting competition.

10 Antitrust laws are not, however, designed to oversee the transition from monopoly  
11 to competition in regulated markets. In this respect, antitrust laws and enforcement  
12 represent a fundamentally different set of policy tools than a well-designed Commission  
13 policy of actively promoting the emergence of competition wherever possible and  
14 protecting the competitive process with targeted regulatory safeguards to protect the  
15 emergence of the competitive process. Antitrust laws, by their very nature, are designed  
16 to be applied in markets where competition is the norm and monopoly is an aberrant  
17 condition. Regulation is designed to be applied in situations where monopoly is the norm  
18 and competition the exception. In this regard, the electric utility industry has been  
19 characterized by monopoly as the standard industry structure for essentially its entire  
20 history.<sup>5</sup> Moreover, both economic theory and experience in industries with monopoly at  
21 one vertical stage and prospective competition at other stages indicate that absent

---

<sup>5</sup> Indeed to the extent that this monopoly structure has been created and preserved by active regulation (which is to say, virtually entirely), the electric utility industry and activities have been exempted from antitrust scrutiny as a result of the "State Action" doctrine.

1 structural separation regulated firms will have an ongoing incentive to exploit their  
2 monopoly power in a variety of subtle ways and on an ongoing basis. In this situation,  
3 the antitrust courts face a distinct disadvantage relative to regulation as a vehicle for  
4 effecting the transition to a competitive marketplace. The transition will require active  
5 and ongoing oversight and the maintenance of regulatory safeguards. Antitrust courts are  
6 ill-equipped for this day-to-day interaction and supervision. Accordingly, while antitrust  
7 enforcement should remain a part of the public policy process, it should not be the  
8 exclusive, or even primary, policy instrument as the Pennsylvania electricity markets are  
9 transitioned to greater competition.

10 **Q. CAN YOU SPECIFICALLY COMMENT ON MR. SIDAK'S**  
11 **RECOMMENDATION (P. 16) THAT REGULATIONS SHOULD "FALL**  
12 **EVENLY ON ENTRANTS AND INCUMBENTS"?**

13 **A.** Yes. At the most basic level, governments undertake the economic regulation of firms in  
14 order to prevent those firms from engaging in behavior that is not in the public's best  
15 interest. Whether or not firms face a particular regulation must, then, be determined  
16 based on whether or not they have both the motivation and the capacity to engage in the  
17 undesirable behavior the regulation is intended to prevent. Incumbent sellers of retail  
18 electricity have both the means and the incentive to use their monopoly control over  
19 distribution facilities and their complete retail generation market dominance to distort or  
20 forestall retail-level competition. New market entrants have no similar ability.  
21 Therefore, a policy of applying regulatory controls to all firms in a market — or to none  
22 — errs either by unnecessarily applying regulation where it is not needed or by failing to  
23 apply it where it is needed. In other words, regulatory "parity" does not mean precisely

1 equal regulations applied to all players. Clearly, the targeted approach to the application  
2 of regulatory safeguards that I have proffered is superior to the approach of Mr. Sidak.

3 **Q. MR. SIDAK CRITICIZES AND ALSO LEVELS SPECIFIC CRITICISM ON THE**  
4 **PROPOSED CODE OF CONDUCT RECOMMENDED BY MR. DIRMEIER ON**  
5 **BEHALF OF ENRON AS AN UNJUSTIFIED ATTEMPT TO "HANDICAP"**  
6 **PECO AND AS NOT CONSISTENT WITH YOUR RECOMMENDATIONS. IS**  
7 **MR. DIRMEIER'S PROPOSED CODE OF CONDUCT CONSISTENT WITH**  
8 **THE ECONOMIC PRINCIPLES YOU BELIEVE SHOULD BE ADOPTED?**

9 A. Yes. Mr. Sidak's criticisms again are grounded in his steadfast refusal to acknowledge  
10 that the incumbent EDC has a tremendous competitive advantage stemming from its  
11 historic position as a monopoly provider of retail generation services and its continued  
12 position as the monopoly provider of distribution services.

13 In order to permit the transition to a fully competitive market, it is well  
14 recognized that a series of rules and procedures are necessary to assure that the monopoly  
15 advantage and power that PECO has and will continue to enjoy do not preclude  
16 competitive development. Virtually every transition from full monopoly to competitive  
17 markets at both the federal and state levels has recognized this and has imposed rules of  
18 the type recommended by Mr. Dirmeier to attempt to prevent abuses of this historic and  
19 continued monopoly position.

20 In contrast, Mr. Sidak's position appears to be that no rules that apply to the  
21 incumbent are justified and therefore anything that PECO agrees to voluntarily is, by  
22 definition, more than sufficient. That position obviously cannot be supported.

23 **Q. HOW SHOULD ONE JUDGE WHETHER THE SPECIFIC CODE OF CONDUCT**  
24 **RULES ARE JUSTIFIED?**

1 A. The appropriate question to ask is whether the specific rule or restraint is either: designed  
2 to prevent unfair use or exploitation of the incumbent's historic position as the monopoly  
3 provider of retail generation services and its continued position as the monopoly provider  
4 of distribution services; or is necessary to assure equal access and opportunity to  
5 information, facilities or systems to which the incumbent or its unregulated electric  
6 supplier affiliate may have access principally because of its position as the incumbent or  
7 its affiliation with the incumbent.

8 Using this standard, it becomes quite apparent that Mr. Dirmeier's  
9 recommendations clearly are well grounded to respond to these forces that, left  
10 unchecked, would stymie the development of a competitive market.

11 Q. **MR. SIDAK CLAIMS THAT MR. DIRMEIER'S RECOMMENDATIONS**  
12 **REGARDING SEPARATION OF INCUMBENT AND EGS EMPLOYEES,**  
13 **PLANT AND ACTIVITIES ARE INCONSISTENT WITH YOUR DIRECT**  
14 **TESTIMONY. IS MR. SIDAK CORRECT?**

15 A. No. Mr. Sidak misconstrues my direct testimony regarding structural separation. I did  
16 not mean to suggest that structural separation can never be justified. The appropriate  
17 analysis when structural separation is considered is to attempt to balance the potential  
18 diseconomies created by the structural separation with the competition enhancing  
19 advantages resulting from such separation. There may well be instances in which such a  
20 structural separation would be justified. At any rate, as I understand Mr. Dirmeier's  
21 testimony he has not advocated the kind of divestiture or fully separate subsidiary that is  
22 usually envisioned when "structural separation" is at issue.

23 Q. **MR. SIDAK REPEATEDLY COMPLAINS THAT THE ADMINISTRATIVE**  
24 **COSTS OF ENABLING AND MONITORING THE EMERGENCE OF**

1           **COMPETITION ARE TOO HIGH. HOW WOULD YOU RESPOND TO THIS CRITIQUE?**

2 A.       Regulatory oversight does impose costs. However, the administrative costs  
3           associated with policies that facilitate and monitor the emergence of effective  
4           competition in retail electricity markets are almost certainly less than the cost of failed  
5           competition. Quite correctly, the final aim of the current process is less rather than more  
6           regulation and lower rather than higher administrative expenses, but the stakes for  
7           Pennsylvania's electricity consumers are far too high to simply *trust* that the process is  
8           working in order to avoid transitional monitoring and regulatory costs. Ultimately, as the  
9           competitive process matures, the need for regulatory oversight and the costs it imposes  
10          will diminish. This is one of the benefits of competition. However, this benefit cannot  
11          be realized until effective competition is in place.

12 Q.      **DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

13 A.      Yes.

KJR

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SURREBUTTAL TESTIMONY OF

PAUL D. REISING

RECEIVED  
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ON BEHALF OF

ENRON POWER MARKETING INC.

Statement  
ENRON EXHIBIT  
DATE 10-16-97 3SR  
MARY ELLEN WOLF, REPORTER  
Philadelphia  
R-00973953, etc

DOCKET NO. R-00973953

DOCUMENT  
FOLDER

RE: PECO RESTRUCTURING PLAN

DOCKETED  
OCT 22 1997

OCTOBER 8, 1997

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 **A.** Paul D. Reising, 550 Congressional Boulevard, Suite 290, Carmel, IN 46032.

3 **Q. DID YOU PREVIOUSLY SUBMIT DIRECT TESTIMONY IN THIS**  
4 **PROCEEDING?**

5 **A.** Yes, I submitted direct testimony in this proceeding on June 20, 1997.

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

7 **A.** In my surrebuttal testimony I will respond to comments made by several of PECO's  
8 witnesses in their rebuttal testimony in this proceeding. Specifically, I will respond to  
9 rebuttal testimony of PECO witnesses Miller, Sundermier, Clemmer and Pratzon.

10 **Q. WHAT AREAS WILL YOU COVER IN YOUR RESPONSE TO MR. MILLER'S**  
11 **REBUTTAL TESTIMONY?**

12  
13 **A.** There is one matter covered by Mr. Miller to which I wish to respond. At Pages 13, Line  
14 22 through Page 14, Line 6, Mr. Miller touches on the subject of the Distribution  
15 Services Tariff, or as PECO calls it, the "Customer Tariff." Mr. Miller takes the position  
16 that it would be more sensible to wait to develop such tariffs until all issues are decided  
17 in the context of this proceeding or considered by working groups and then set them to  
18 writing and submit them for approval in conjunction with the Company's compliance  
19 filing in this proceeding.

20 **Q. WHAT IS YOUR RESPONSE TO MR. MILLER'S STATED POSITION?**

21 **A.** I believe that the Distribution Services Tariff should be considered now rather than  
22 taking a "wait and see" approach. I am particularly concerned about the process that  
23 will be used if review of the tariff has to wait until PECO makes its compliance filing.

1 For example, will intervenors be given an opportunity to review and respond to a  
2 “compliance filing?” If so, how much time will they have to put together a meaningful  
3 response? Will the Commission itself have the opportunity or inclination to deal with the  
4 issues at that time given the mounting pressure to get the system in place before 1/1/99?

5 I would also comment that the FERC considered rates for open access  
6 transmission service in parallel with its consideration of the terms and conditions of such  
7 service. In my view that was an important decision because the true cost of transmission  
8 service to the customer can only be fully evaluated by examining rates in the context of  
9 the applicable terms and conditions of service. Such a parallel approach is warranted  
10 here as well.

11 **Q. WHAT AREAS OF MR. SUNDERMIER’S TESTIMONY WILL YOU BE**  
12 **RESPONDING TO?**

13  
14 **A.** I have several comments, falling in the following categories:

- 15 • the conceptual draft of a Distribution Services Tariff,
- 16 • rate design for transmission service,
- 17 • rate design for Energy Delivery Services,
- 18 • rate design for Revenue Cycle Services, and
- 19 • rate design for the CTC.

20 **Q. WHAT IS YOUR RESPONSE TO MR SUNDERMEIR’S COMMENTS ON THE**  
21 **DISTRIBUTION SERVICES TARIFF?**

22  
23 **A.** As a threshold comment, I would acknowledge that my direct testimony may require  
24 some clarification on the subject of the Distribution Services Tariff and the conceptual

1 rate design for Energy Delivery Services and Revenue Cycle Services as they may be  
2 applied for service under the Distribution Services Tariff. Before getting into the details  
3 of the clarifications and modifications of the Distribution Services Tariff, let me state at  
4 the outset my understanding of EPMI's intention in proposing the Distribution Services  
5 Tariff.

6 First, the Distribution Services Tariff was offered in the same spirit as that stated  
7 by PECO's lead witness, Mr. Hill -- recognizing "the fluid nature of the restructuring  
8 process" and in an effort "to work with the parties to resolve differences." (PECO St. No.  
9 1-R at 9-10). With that spirit in mind, I believe we can set aside Mr. Sundermier's  
10 pejorative comments and continue to make advancements in establishing, constructively,  
11 the basis for doing business in a competitive environment.

12 Second, the Distribution Services Tariff was intended to be a generic document,  
13 similar to the concept underlying the FERC's *pro forma* Open Access Transmission  
14 Tariff ("OATT"). The concept we had in mind is that the Distribution Services Tariff  
15 would set forth a common set of basic rules that would apply to retail open access across  
16 Pennsylvania. A Distribution Services Tariff is required in order to delineate all  
17 applicable charges so that suppliers will be able to determine their cost to deliver electric  
18 power and energy to their customers. We did not intend to suggest that the Distribution  
19 Services Tariff would cover all of the particulars that might have to be considered on a  
20 case-by-case, utility-specific basis -- for example, the utility's standard service voltages.  
21 This is why, for many elements of the tariff, we include the phrase "or such other  
22 standard as established by the EDC and as approved by the applicable regulatory  
23 authority." This is just like the FERC's OATT *pro forma* tariff, where the FERC left

1 room for modification to reflect the special circumstances unique to individual utilities,  
2 such as the service schedules to be appended to the *pro forma* tariff. In these schedules  
3 the FERC has established the basic framework, but leaves it up to individual utilities to  
4 set the basis for compensation, including the determination of service revenue  
5 requirements and rate design.

6 Third, it was intended that the Distribution Services Tariff would apply to all  
7 suppliers, including PECO as a supplier under competitive rates or under tariffed  
8 services. The Distribution Services Tariff should also apply to the supplier of last resort.

9 Finally, I would note that while the process of developing an appropriate  
10 Distribution Services Tariff may seem complicated, it is clearly an important process  
11 required for the implementation of a fully competitive electricity market. Given this  
12 apparent complexity and the dynamic process required to resolve tariff issues, it is  
13 appropriate to commence that process now.

14 **Q. HAVE YOU PREPARED A MODIFIED VERSION OF EXHIBIT 3, PDR-7**  
15 **WHICH REFLECTS THE CLARIFICATIONS AND MODIFICATIONS YOU**  
16 **MENTIONED?**

17  
18 **A.** Yes. Exhibit 3SR, PDR-9 is a revised version of Exhibit 3, PDR-7 which contains a  
19 number of changes intended to respond to Mr. Sundermier's comments. In addition, I  
20 have prepared three supplemental exhibits. Exhibit 3SR, PDR-10 describes each of the  
21 changes made to the Distribution Services Tariff and explains the reason for each change.  
22 Exhibit 3SR, PDR-11 is an extension of Mr. Sundermier's Exhibit WFS-5 showing my  
23 response to each of his comments to Exhibit 3, PDR-7. Finally, Exhibit 3SR, PDR-12  
24 responds to each of Mr. Sundermier's comments in Exhibit WFS-6.

1 Q. THE NEXT ISSUE ON YOUR LIST RELATES TO RATE DESIGN FOR  
2 TRANSMISSION SERVICE. WHAT ARE YOUR COMMENTS?

3  
4 A. Mr. Sundermier basically states that my comments on transmission rate design are moot  
5 given that transmission service will be provided under the PJM tariff under rates  
6 regulated by the FERC. While I do not necessarily agree with his specific criticisms of  
7 the transmission rate design contained in my testimony, I agree that, as a result of  
8 PECO's change of position on the issue, consideration of transmission rate design in this  
9 proceeding is now moot.

10 Q. MR. SUNDERMIER HAS A NUMBER OF CRITICISMS OF YOUR RATE  
11 DESIGN FOR ENERGY DELIVERY SERVICES, REVENUE CYCLE SERVICES  
12 AND THE CTC. WHAT ARE YOUR COMMENTS?

13  
14 A. As a general matter, I want to point out that the rate designs for these unbundled service  
15 elements, as presented in Exhibits 3, PDR-3, PDR-4, PDR-5 and PDR-6, were intended  
16 to be used in conjunction with the Distribution Services Tariff, where Suppliers would be  
17 the Customers and would be billed by PECO for Energy Delivery Services. The  
18 Suppliers would also be billed for Revenue Cycle Services to the extent that the Suppliers  
19 elect to have PECO, as EDC, perform such services. As such, I felt that the rate design  
20 for Energy Delivery Services, Revenue Cycle Services and the CTC could be greatly  
21 simplified for the reasons stated in my direct testimony.

22 Q. WHAT SPECIFIC COMMENTS DO YOU HAVE REGARDING ENERGY  
23 DELIVERY SERVICES?

24  
25 A. Mr. Sundermier criticized my rate design because:

- 26  
27 • it results in a single rate of return for all service voltage levels,  
28 • it does not reflect any demand charges, and

1 • it, along with the rate designed for Revenue Cycle Services, would result in a total  
2 fixed monthly charge of \$18.24 for single-phase customers taking service at  
3 secondary voltage.

4 First, it is true that my determination of revenue requirements resulted in the  
5 consistent application of the PECO average rate of return. I believe this is appropriate for  
6 the type of rate design I proposed, one that is based on service and rates differentiated on  
7 the basis of service voltage instead of traditional class of service distinctions. I have no  
8 basis on which to assume that service at one voltage level is more or less risky than  
9 service at a different voltage level such that a higher or lower rate of return would be  
10 warranted.

11 Second, I specifically stated at Page 30, Lines 10-14 of my direct testimony that I  
12 did not have the time or data to complete a rate design which would include a demand  
13 charge and that I recommended that PECO's compliance filing include development of  
14 demand-based charges where demand meters are in place to provide the necessary billing  
15 demand data. I continue to agree — with PECO — that voltage-differentiated Energy  
16 Delivery Service charges should include a demand component where appropriate.

17 Finally, while I may have computed monthly charges for Energy Delivery  
18 Services and Revenue Cycle Services for secondary voltage end-users that would have  
19 aggregated to a total monthly charge of \$18.24, I do not necessarily recommend  
20 application of an aggregate customer charge of that magnitude. In fact, for purposes of  
21 the illustrative rate design shown in Exhibit 3, PDR-3, Schedule 1, Page 4, I also  
22 computed at Column D, Line 59, an Energy Delivery Service charge of \$0.0256 per kWh  
23 applicable to all kWh, with no separate customer charge. Such a rate design, when

1 viewed in conjunction with the rate design for Revenue Cycle Services, would result in a  
2 charge of \$4.84 per customer per month (\$0.26 less than PECO's current monthly fixed  
3 charge for residential customers) and \$0.0256 per kWh for secondary voltage, single-  
4 phase end users (\$0.0223 per kWh less than PECO's revised average distribution charge  
5 for residential customers). I believe this would be an acceptable rate design for  
6 secondary voltage, single-phase end users which would avoid the cost shifting Mr.  
7 Sundermier is concerned with.

8 **Q. WHAT IS YOUR RESPONSE TO MR. SUNDERMIER'S OTHER COMMENTS**  
9 **ON REVENUE CYCLE SERVICES?**

10  
11 A. Mr. Sundermier's comments can be paraphrased as follows:

- 12  
13 • per Mr. Cucchi's testimony, PECO does not believe distribution services should  
14 be further unbundled into Energy Delivery and Revenue Cycle services, and  
15 • my rate design results in a single rate of return for all service voltage levels.

16 I understand that unbundling of Revenue Cycle services will be addressed in a  
17 different proceeding. I will, however, have something to say on this subject in my  
18 response to Mr. Clemmer's rebuttal testimony.

19 As to the uniform rate of return comment, my response is the same as that related  
20 to Energy Delivery Services. Further, I would note that differences in rate of return by  
21 voltage level would make very little difference in charges for Revenue Cycle Services,  
22 given that only 15% of the revenue requirements associated with these services are  
23 related to return and income taxes.

1           Mr. Sundermier also comments on the combination of fixed monthly charges for  
2 Energy Delivery Services plus Revenue Cycle Services. My answer to the previous  
3 question adequately covers this issue.

4 **Q.   WHAT OTHER COMMENTS DO YOU HAVE IN RESPONSE TO MR.**  
5 **SUNDERMIER'S REBUTTAL TESTIMONY?**

6  
7 A.   My final comment has to do with the rate design for the CTC charge. Mr. Sundermier  
8 criticizes my use of a single energy charge by existing rate class rather than the blocked  
9 charge proposed by PECO. He objects to this rate design proposal because it would  
10 result in intra-class cost shifting and could produce significant impacts on individual  
11 customer bills. In response, I would again point out that the rate design for the CTC,  
12 which was presented in my Exhibit 3, PDR-6, was intended to be used in conjunction  
13 with the Distribution Services Tariff which would, as proposed by Enron, determine the  
14 charges that Suppliers will pay on behalf of their customers for stranded and transition  
15 costs. Because such billings by or for Suppliers on behalf of their end-user customers  
16 would be aggregated, I believe that the simplifying step to a single energy charge should  
17 be acceptable.

18 **Q.   WHAT AREAS WILL YOU COVER IN YOUR RESPONSE TO MR.**  
19 **CLEMMER'S REBUTTAL TESTIMONY?**

20  
21 A.   My surrebuttal testimony will respond to Mr. Clemmer's comments in the following  
22 areas:

- 23       •    Functionalization of A&G expenses,
- 24       •    Functionalization of General and Common Plant,
- 25       •    Treatment of Uncollectibles Expense,

- 1 • Functionalization of Other Operating Revenue, and
- 2 • Revenue Cycle Services Unbundling.

3 **Q. WHAT ARE YOUR COMMENTS REGARDING THE FUNCTIONALIZATION**  
4 **OF A&G EXPENSES?**

5  
6 A. At Page 2, Lines 16-19 of his rebuttal testimony, Mr. Clemmer makes reference to a  
7 portion of my testimony purportedly related to the functionalization of A&G expenses.  
8 The testimony he references is in fact a question that has nothing to do with A&G  
9 expenses. Notwithstanding the incorrect reference, he mischaracterizes my testimony on  
10 the subject of A&G expense functionalization. The point of my testimony was that once  
11 retail competition begins, many of the elements of PECO's A&G expenses will continue  
12 to be required to support its production business; they should be assigned to that business  
13 and not shifted in their entirety to the transmission and distribution functions as PECO  
14 proposes. In fact, as I will subsequently describe, Mr. Clemmer's rebuttal exhibits  
15 support my position. Further, Mr. Clemmer states his belief that "when logic and reason  
16 suggest that a current A&G function will still need to be performed by PECO . . . then all  
17 of the associated A&G costs are distribution-related . . . or transmission-related." I  
18 would agree with that statement only to the extent that a particular A&G expense element  
19 now supports only the distribution and/or transmission functions. I do not believe that  
20 Mr. Clemmer's analyses of A&G functions and costs meet that test.

21 **Q. PLEASE EXPLAIN.**

22 A. From the description of the analysis performed by Mr. Clemmer and his colleagues and  
23 my review of Exhibits RAC-3 and RAC-4, it is not clear to me that the analyses they  
24 performed approach anywhere near the level of detail needed in order to reach the

1 conclusions stated by Mr. Clemmer. Mr. Clemmer states that “a detailed cost specific  
2 analysis for A&G is essential; only such an analysis can determine which costs PECO  
3 will continue to incur when its is only an EDC.” (PECO Statement No. 12-R at 8).  
4 However, Mr. Clemmer has not done the type of detailed analysis that is necessary to  
5 meet his own test. He admits that what is needed is “a time and materials study specific  
6 to each account to determine the costs incurred for each function,” but that such an  
7 analysis “cannot be performed in a timely manner in the context of this proceeding.” (Id.  
8 at 5-6).

9 It does not take very long to examine Mr. Clemmer’s exhibits and identify  
10 inadequacies in his analysis. For example, the very first two line items of his Exhibits  
11 RAC-3 (page 3) and RAC-4 (page 1) point out the problems with his analysis. In these  
12 two items Mr. Clemmer has assigned A&G salaries for the “Executive Department” and  
13 the “CFO” entirely to T&D functions and none to the production function. Clearly the  
14 Executive Department and the CFO do not now limit their activities to oversight and  
15 financial management of only the T&D parts of PECO’s integrated business. Clearly the  
16 production function will still require executive and CFO attention after deregulation. It  
17 would make sense to me that a portion of their time would continue to be allocated to  
18 PECO’s production business, even if that business is contained in a separate business  
19 unit. Even if there were a total separation of personnel managing the T&D and the  
20 generation business, it makes sense to me that there would be a reassignment of executive  
21 department personnel such that the amount of executive A&G salaries assigned to T&D  
22 would be less than the current level assumed by Mr. Clemmer.

1           The same is also true of the salaries associated with the “Secretary’s Office”  
2 (fourth line of Exhibit RAC-4) and “Public Policy” activities (fifth line of Exhibit RAC-  
3 4). Surely the corporate secretary’s duties and Public Policy activities are not now  
4 limited to the T&D business, nor would they be so limited upon the advent of  
5 competition. Here also it seems logical to me that the corporate secretary’s salary would  
6 be allocated to both businesses and that public policy personnel, even if not allocated,  
7 would be reassigned so that some of those personnel would continue to cover both  
8 business units.

9           Look also at the sixth line of Exhibit RAC-4 — “Claims Division.” Again it does  
10 not seem logical to me that the company now has no claims brought against it for the  
11 generation side of its business or that it will not need to reassign personnel to cover these  
12 aspects of its generation business unit. These same concerns arise on a great many of the  
13 line items listed in Exhibit RAC-4. Clearly, Mr. Clemmer’s analysis is inadequate and  
14 should not be relied upon for the purpose of functionalizing A&G expenses.

15           I would also point out that Mr. Clemmer does continue to assign significant  
16 portions of A&G expense items to all three functions, but he provides no supporting  
17 documentation to describe the function or the justification for functionalizing costs in that  
18 manner.

19 **Q. WHAT CONCLUSION DO YOU REACH WITH REGARD TO THE**  
20 **FUNCTIONALIZATION OF A&G EXPENSES?**

21  
22 **A.** I conclude that Mr. Clemmer’s analysis does not justify making a change in the  
23 functionalization of the labor-related A&G expenses in a manner different than that  
24 historically approved by the Commission using functional labor expenses.

1 **Q. WHAT ARE YOUR COMMENTS REGARDING THE FUNCTIONALIZATION**  
2 **OF GENERAL AND COMMON PLANT?**

3  
4 A. I have the same concerns with regard to General and Common Plant. Many of the line  
5 items identified by Mr. Clemmer in his Exhibits RAC-5 through RAC-8 appear to  
6 involve activities or facilities that would continue to house personnel and equipment  
7 applicable to all three functions. Main Office (DESG #503) is one example. Further, for  
8 many line items with substantial book cost there is no explanation of the basis for the  
9 split between production and T&D functions. One example is Common Plant DESG #  
10 601 -- Computer Systems. As a result, my conclusion regarding the functionalization of  
11 General and Common Plant is the same as that reached with regard to A&G expenses --  
12 these plant items should continue to be functionalized in the manner historically  
13 approved by the Commission using functional labor expenses. PECO has not  
14 satisfactorily demonstrated that they should be treated differently.

15 **Q. WHAT ARE YOUR COMMENTS REGARDING THE TREATMENT OF**  
16 **UNCOLLECTIBLES EXPENSE?**

17  
18 A. At Page 11, Line 16 through Page 13, Line 3 of his rebuttal testimony Mr. Clemmer takes  
19 issue with what he characterizes as my testimony on the subject of Uncollectibles  
20 Expense. I believe that Mr. Clemmer has misstated my testimony. It was not my  
21 intention to suggest that PECO, if it continues to provide billing services, would not  
22 continue to incur uncollectibles expense, or that PECO should not be permitted to recover  
23 such costs in its regulated rates. What I was saying is that Suppliers that are responsible  
24 for billing should not be charged for PECO's uncollectibles expense if the Suppliers have  
25 their own uncollectible accounts to contend with. Bundling costs associated with  
26 uncollectible accounts into the wires charge would result in such Suppliers (responsible

1 for billing) paying twice for uncollectibles. Thus I concluded that any charges for  
2 Uncollectible Accounts should be unbundled from the wires charge and collected only  
3 from those customers for whom PECO continues to provide billing services. I see no  
4 reason to modify that conclusion.

5 **Q. WHAT ARE YOUR COMMENTS REGARDING OTHER OPERATING**  
6 **REVENUE?**

7  
8 A. Although I have not studied Mr. Clemmer's updated cost of service study in great detail,  
9 I think the crediting adjustments he describes appear to have addressed most of the  
10 additional concerns I raised in my direct testimony. The one remaining area of concern  
11 relates to the treatment of COPCO and Class A&B revenues. If I understand his  
12 testimony correctly, Mr. Clemmer has taken the position that PECO's production assets  
13 should be assigned 100% to retail customers (PECO St. No. 12-R at 14). If that is the  
14 case, then any revenues (net of cost) derived from the use of those assets for other  
15 purposes should be treated as a revenue credit and thus offset revenue requirements. As a  
16 result, I continue to believe that these revenues should be allocated to retail customers on  
17 a functional basis in the manner I proposed in Exhibit 3, PDR-2, which allocation was  
18 derived from PECO's own analysis provided in response to PAIEUG interrogatories VII-  
19 2 and VII-3.

20 **Q. THE LAST AREA COVERED BY MR. CLEMMER IS THE SUBJECT OF**  
21 **REVENUE CYCLE SERVICES UNBUNDLING. WHAT IS YOUR RESPONSE?**  
22

23 A. In my direct testimony, I proposed that distribution services and costs should be further  
24 unbundled into Energy Delivery Services (or "wires" services) and Revenue Cycle  
25 Services (or "non-wires" services). PECO witnesses Cucchi and Clemmer take exception  
26 to my proposal. Mr. Clemmer states that it would be extremely difficult to determine the

1 “credit that PECO would have to remove from its rates to enable a market for such  
2 services to develop. . . .” (PECO Statement No. 12-R at 17).

3 Enron witnesses Dr. Mayo and Mr. Jacobson make a compelling case for the need  
4 to unbundle competitive services from monopoly services. Their testimony more than  
5 adequately supports the need for unbundling, and I will not repeat it here. The  
6 unbundled rate design which I proposed on Enron’s behalf assumes that all revenue cycle  
7 services will be provided competitively. To the extent that any portion of these services  
8 (e.g., meter installation) is not provided competitively, then the unbundled rates may  
9 require further refinement. Mr. Clemmer suggests that if revenue cycle services are to be  
10 competitive then it would be necessary to provide a “credit” against the cost of  
11 distribution services. It seems to me that regardless of whether revenue cycle services  
12 are opened to competition immediately or at a later date the current level of costs  
13 incurred for these services by PECO must be fully unbundled from Energy Delivery or  
14 “wires” services charges so that end-users using PECO’s distribution facilities pay  
15 specifically for costs of providing those services. The concept of a “credit” as proposed  
16 by Mr. Clemmer suggests that the result might leave some costs behind in the “wires”  
17 charge to make up the difference between PECO’s costs for revenue cycle services and  
18 the perceived competitive market price for such services. For Energy Delivery Services  
19 and Revenue Cycle Services, suppliers should only pay for non-bypassable costs, i.e.,  
20 costs for functions that the Commission has determined the EDC must provide.

21 **Q. WHAT COMMENTS DO YOU HAVE IN RESPONSE TO THE REBUTTAL**  
22 **TESTIMONY OF PECO WITNESS PRATZON?**  
23

1 A. I have comments on three portions of Mr. Pratzon's rebuttal testimony (PECO St. 21-R).  
2 First, at Page 10 of his rebuttal testimony, Mr. Pratzon states that my arguments  
3 regarding the need to unbundle and set rates for transmission and ancillary services on  
4 the basis of FERC-approved rates under the PJM Open Access Transmission Tariff are  
5 now moot. I agree. Now that PECO has agreed with Enron's recommendation in that  
6 regard, the issue is moot. I would point out however, that merely referencing the PJM  
7 Tariff does not eliminate the need properly to functionalize and remove PECO's  
8 transmission-related revenue requirements from retail rates. Further, PECO as a supplier  
9 should also be required to take and pay for transmission and ancillary services in  
10 accordance with the PJM tariff.

11 At Page 11, Mr. Pratzon comments on my testimony regarding ancillary services.  
12 He first notes that he does not understand what I meant by "retail ancillary services" as I  
13 used that term at Page 18 of my direct testimony. In point of fact, the testimony he  
14 references is a quote from the Commission's Preliminary Order and Opinion related to  
15 PECO's Retail Access Pilot Program. I took the Commission's use of that term to refer  
16 to those transmission-related ancillary services that would apply to retail end-users. In  
17 that same line of testimony (at Page 12), Mr. Pratzon further notes that PECO intends to  
18 completely remove ancillary services charges from bundled retail rates. He does not,  
19 however, indicate when PECO plans to complete that process and suggests that it is not  
20 ready for presentation as part of this proceeding. However, PECO should be required to  
21 submit its analysis and proposed rate adjustment in a timely manner so that all interested  
22 parties have an opportunity to comment before the record is closed in this proceeding.

1           Finally, at Page 25 Mr. Pratzon makes reference to comments I made regarding  
2           the PJM ISO. I am not certain what the point of Mr. Pratzon's testimony is, unless he is  
3           merely stating that the PJM OI (system operator) already functions much like an ISO and,  
4           as a result, there is not a need to wait for the ISO before unbundling ancillary service  
5           charges from retail rates. If that is the case, I agree.

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

7           **A. Yes, it does.**

DISTRIBUTION SERVICES TARIFF ("TARIFF")

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- Schedule 1 -- Energy Delivery Services
- Schedule 2 -- Revenue Cycle Services
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## **Attachments**

- Attachment A -- Customer Service Agreement
- Attachment B -- Line Extension and Reimbursement Policy
- Attachment C -- Standards for Underground Service in New Developments
- Attachment D -- Reimbursement Policy for Relocation of Electric Distribution Facilities

1. Definitions:

1.1 AC - alternating current

1.2 Aggregated Daily Load Curve - The hourly load curve provided by the EDC which establishes the amount of energy a Supplier will be obligated to supply in each hour of the month for those End Users for which hourly demand interval metering is not available.

1.3 Bad Credit - A Customer has bad credit if the Customer has been delinquent on two non-disputed consecutive bills or three or more non-disputed bills in the last twelve billing cycles or has tendered two or more checks which the drawee returns as unpaid within the past twelve billing cycles.

1.4 Billing Demand - The calculated or measured demand after correction, if any, for power factor; except that the billing demand may be limited to a minimum figure.

1.5 Capacity Charge - A charge based on demand, either with or without power factor correction.

1.6 Commission - The respective regulatory body in the state handling jurisdictional electric utilities.

1.7 Continuous Service - Service which the EDC endeavors to keep available at all times.

1.8 Control Area - An electric power system or combination of electric power systems to which a common automatic generation control scheme is applied.

1.9 Creditworthy - A creditworthy Customer pays the EDC's charges as and when due and otherwise complies with the rules and regulations.

1.10 Customer - An eligible Electric Generation Supplier acting on behalf of one or more End Users pursuant to a contractual arrangement between the End Users and the Electric Generation Supplier which expressly authorizes the Electric Generation Supplier to purchase service from this Tariff on the End Users' behalf.

1.11 Demand - The maximum rate-of-use of energy during a specified time interval, expressed in kilowatts.

1.12 EDC - The local Electric Distribution Company, "the wires company" that provides electric distribution service.

1.13 Electric Generation Supplier (or "Supplier") - a potential or actual supplier of electric power and/or energy. An eligible Supplier is one who meets Commission criteria to offer and is licensed to supply electric energy to End Users.

1.14 End User - Any person, partnership, association or corporation, lawfully receiving electric power and/or energy at a single meter location.

1.15 Energy Charge - A charge based upon kilowatt-hours of use.

1.16 Good Utility Practice - Any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period.

1.17 Host Control Area - The EDC, or if the EDC does not act as the Control Area, the appropriate Control Area for the Customer's load within the EDC's franchise area.

1.18 kV - kilovolts - 1000 volts.

1.19 kVA, kilovoltampere - Unit of measurement of rate of use which determines electrical capacity required.

1.20 kW, kilowatt - Unit of measurement of useful power.

1.21 kWh, kilowatt-hour - Unit of measurement of energy.

1.22 Meter Service Provider - the provider of the meter for measuring electrical energy and power use.

1.23 Month - A month means 1/12 of a year or a period approximately 30 days between two regular consecutive readings.

1.24 Open Access Transmission Tariff - The tariff filed with the Federal Energy Regulatory Commission (FERC) applicable to the Electric Distribution Company.

1.25 Point of Delivery - The single point at which the service-supply lines of the EDC terminate and the End User's facilities for receiving the service begin.

1.26 Power Factor - In a single-phase circuit the ratio of watts to the volt-amperes, and in a polyphase circuit, is the ratio of the total watts to the vector sum of the volt-amperes in the several phases.

## 2. Energy Delivery Service

2.1 Purpose. The purpose of this Distribution Services Tariff is to outline the various functions and services provided by the EDC to a Customer to make available direct access to End Users.

2.2 Electric Distribution Company Responsibilities. The EDC has the responsibility to provide non-discriminatory access to its distribution facilities in a safe and reliable manner using Good Utility Practice. The EDC may terminate service to a Point of Delivery without notice if the End User's installation has become hazardous or defective, or if the Customer's or End User's use of the distribution facilities might injuriously affect the equipment of the EDC or the service to other Customers or End Users.

2.3 End User Responsibilities. The Customer shall ensure that the End User is responsible for safekeeping of the property of the EDC. In the event of injury or destruction of any such property the Customer shall require that the End User pay the costs of repairs and replacement. The Customer shall obligate the End User to protect the equipment of the EDC and the Customer on the End User's premises and shall not permit any person, except an employee of either the EDC or the Customer, to break any seals upon or do any work on any apparatus of the EDC located on the End User's premises. The Customer shall require that the End User give notice of any changes that might affect safety of personnel or property of the EDC.

2.4 Customer Responsibilities. The Customer shall be responsible for ensuring that its and the End User's use of the EDC's facilities are in accordance with Good Utility Practice. The Customer shall be responsible of timely payment of services provided. The Customer shall give notice of any changes that might affect safety of personnel or property of the EDC.

2.5 Restrictions on Use of Service. Service is only to be used in the manner in which it is intended and within the applicable electric codes and standards.

## 3. Service Characteristics

3.1 Standard Single Phase, 60 Hertz, 24 hours/day. Standard single-phase secondary service is alternating current, 60 hertz, that is nominally 120/240 volts,

3 wires; or 120 volts, 2 wires to installations consisting of not more than two 15-ampere branch circuits or such other standard as established by the EDC and as approved by the Commission.

### 3.2. Standard Polyphase Nominal Service Voltages

3.2.1. Secondary Service, 60 Hertz, 24 hours/day. Nominally 240 volts, 3-phase, 3 wires with a fourth wire neutral extended for the supply of 120/240 volt single-phase equipment; or nominally 120/208 volts, 3-phase, 4 wires where 3-phase is available; or nominally 277/480 volts, 3-phase, 4 wires where 3-phase is available or such other standard as established by the EDC and as approved by the Commission.

3.2.2. Primary Service, 60 Hertz, 24 hours/day. Nominally 2,400 volts, 3-phase, 3 wires; 4,160 volts, 3-phase, 3 or 4 wires; 7,200/12,407 volts; or 7,620/13,200 volts, 4-wire, three phase service or such other standard as established by the EDC and as approved by the Commission.

3.2.3. Transmission Service (as appropriate). Nominally 34,500, 46,000, or 69,000 volts as available or such other standard as established by the EDC and as approved by the Commission.

### 3.3. Exceptional Service Requirements

3.3.1. Non-Standard Service Voltage. The Customer shall require the End User to pay the cost of any special installation necessary to meet the End User's unusual requirements for service, including but not limited to service at other than standard voltages, or for the supply of higher quality voltage regulation than required by standard service.

3.3.2. Non-Standard Facilities Configuration. The Customer shall require the End User to provide or pay the cost of any special installation necessary to meet the End User's unusual requirement for service in addition to standard service. If non-standard facilities are provided by the Customer or the End User, said facilities must be approved in advance by the EDC.

3.3.3. Underground Service. The Customer shall require the End User to bear the excess cost, if any, where the End User desires underground service from overhead wires.

3.4. Service Interruptions. The EDC shall use Good Utility Practice to minimize service interruptions whether planned (example: planned transformer

replacement) or unplanned (example: weather) and shall act with due diligence to restore interrupted or curtailed service..

#### 4. Service Availability

4.1. General Conditions. Energy Delivery Service shall be provided to one or more Points of Delivery as requested by the Customer.

4.2. Initiating Service. The Customer may contact the EDC for initiation of service.

4.3. Obligation to Extend or Modify Facilities. The EDC is obligated to extend or modify facilities to serve Customers consistent with the due diligence conditions in Section 6.2 of this Tariff.

#### 5. Procedures for Arranging Energy Delivery Service

5.1. Conditions Precedent for Receiving Service. The EDC should be advised by the Customer concerning the End User's premises to be equipped for electricity, giving exact location, and details of all current-consuming devices to be installed. The Customer shall supply the EDC any information regarding potential or actual contamination, waste or hazardous materials on the End User's premises.

5.2. Application Procedures. The Customer must inform the EDC of the request for service with at least 7 days notice and exact information concerning the location where service is to be delivered.

5.3. Creditworthiness. Before the EDC will render service or continue to render service, the EDC may require a current Customer that has Bad Credit or a new Customer whose credit is not established, to provide a cash deposit. In addition, the EDC may require Customers to post a deposit at any time if the EDC determines that the Customer is no longer Creditworthy or has Bad Credit.

5.4. Deposit. The deposit shall not be less than \$1,000.00 nor more than the estimated gross bill for the use of two months of service. The deposit shall either be applied with interest to the Customer's account or returned to the Customer with interest when the Customer becomes Creditworthy. Interest will be simple interest on cash deposits calculated at an annual rate determined by the average of 1-Year Treasury Bills for September, October and November of the previous year ("Interest Index").

5.5. End User Facilities. The Customer shall be responsible for assuring that construction or installation of all facilities on the End User's side of the Point of Delivery pass all required building inspections, meet the applicable requirements of the EDC and are in compliance with the National Electrical Safety Code.

5.6. Service Agreement for Energy Delivery Service. The Customer must sign a Service Agreement with the EDC prior to initiation of Energy Delivery Service.

5.7. Unauthorized Use. Unauthorized connection to the EDC's electric service facilities, and/or the use of service obtained from the EDC without authority, or under false pretense, may be terminated by the EDC.

5.8. Required Customer Arrangements for Open Access Transmission Service and Ancillary Services. The Customer shall be responsible for making all arrangements necessary for transmission and ancillary services pursuant to the Open Access Transmission Tariff applicable to Host Control Area.

6. Procedures for New or Modified Facilities

6.1. New Service Connections. The EDC shall have the right to inspect End User facilities and reserves the right to reject any wiring or appliances not in accordance with the EDC's standard requirements.

6.1.1. Line Extension Policy. Standards governing the extensions of overhead and underground lines to new Points of Delivery and related cost reimbursement policy are set forth in Attachment B of this Tariff.

6.1.2 Standards for Underground Facilities in New Developments. Specific standards and regulations applicable to underground service in new developments are provided in Attachment C to this Tariff.

6.2. Due Diligence in Completing New Facilities or Modifying Existing Facilities. The EDC has an obligation to provide access from the transmission grid to the Point of Delivery. The EDC will use Good Utility Practice to provide reliable access for the conveyance of energy and power to all Points of Delivery. If new or existing facilities require modification in order to provide reliable access, then the EDC shall apply due diligence in adding necessary facilities or modifying existing facilities.

6.3. Partial Interim Service. If the EDC determines that it will not have adequate distribution capability to satisfy the full amount of firm service required

for a Point of Delivery, the EDC nonetheless shall be obligated to offer the portion of requested service that can be accommodated.

6.4. **Non-Standard Facilities Requirements and Compensation.** *If non-standard facilities are required for the Customer then the directly assignable costs of the non-standard facilities shall be paid by the Customer prior to installation.*

## 7. Service Changes

### 7.1. Requests for Changes in Service

7.1.1. **Termination of Service.** In the event the Customer withdraws an application for either new or modified service to a Point of Delivery, the Customer shall reimburse the EDC for all reasonable costs incurred by the EDC in anticipation of supplying the new or modified service.

7.1.2. **Relocation of Service.** Except where provided by law, the cost to relocate service or poles and/or their associated equipment shall be borne by the Customer. The relocation cost shall include labor (including overhead), materials, storage expense and transportation, less the salvage value of any equipment replaced. The EDC will notify the Customer in writing of the relocation cost and advance payment to be made to the EDC prior to the relocation except in special circumstances. Reimbursements of costs, resulting from relocation of service shall be covered by the provision of Attachment D to this Tariff.

7.2. **Notification of Changes in Expected Use or Usage Patterns.** The Customer shall require that significant changes in either the amount of energy or the usage pattern shall be communicated from the End User to either the EDC or the Customer. If the End User communicates this information to the Customer, the Customer shall provide such information to the EDC in a timely manner. If the End User communicates this information to the EDC then the EDC shall provide such information to the Customer in a timely manner. If the End User does not provide notification of changes in expected use or usage patterns to either the Customer or EDC then the End User shall be liable for any damage to the meters or their auxiliary apparatus, or the transformers, or wires, of the EDC and Customer.

## 8. Operating Procedures

8.1. Cooperation. Cooperation is a necessary condition between the EDC, Customers, and other parties associated with supplying electric service to End Users. The EDC and the Customer shall negotiate in good faith to resolve service issues.

8.2. Energy Delivery Scheduling. The Customer is responsible for providing all information for energy scheduling required by the EDC or the Host Control Area.

8.3. Exchange of Load Shape Data. If the EDC is the Meter Service Provider, the EDC shall be responsible for providing load shape information to the Customer to the extent necessary in order for the Customer to meet its responsibility under Section 8.2. Fees for providing such load shape data are set forth in Schedule 6 appended to this Tariff.

8.4 Planned Outage Notification. The EDC and the Customer are required to inform each other as soon as reasonably achievable in the event of planned outages that may effect the Aggregated Daily Load Curve or other electric service functions.

## 9. Billing and Payment

9.1. Billing Procedure. The EDC shall render within 10 days following the end of the calendar month all charges as are applicable to the Customer. Unless otherwise stipulated, the EDC shall bill the Customer separately for each Point of Delivery based on the rates under this Tariff.

9.2. Payment Provisions. Bills are payable upon presentation. Payment for service received must be made on or before the due date shown on the bill. The payment period will not be extended because of the Customer's failure to receive a bill unless said failure is due to the fault of the party responsible for billing.

9.2.1. Late Payment Charge. For late payments a finance charge of 1 1/4 % per month will be charged on the outstanding amount of the bill. Interest on delinquent amounts shall be calculated from the due date of the bill to the date of payment. If the party responsible for collections files suit to collect a delinquent balance on an account or to ensure payment of current bills, the Customer will be required to pay the collections agent's out-of-pocket court costs.

9.3. Customer or End User Default. The EDC may terminate its service to a Point of Delivery, upon reasonable notice, and remove its equipment in case of non-payment of charges applicable to that Point of Delivery.

9.4. Limits on Liability. The EDC shall not have any duty or liability to a Customer arising out of or related to a contract or other relationship between a Customer and an End User. (See Section 16.2.)

10. Meters

10.1. Procurement, Type, Protection. The Customer, or at its election, the EDC shall be the Meter Service Provider and shall provide, own and maintain any meter or meters required in the supply of service. The Meter Service Provider shall provide the types of meters meeting the architecture required for the supply of service and such other standards as established by the Commission.

10.2. Location/Access. There shall be provided, free of expense to the Meter Service Provider, at a location which the Meter Service Provider will designate in writing upon request, outdoors at its option, a suitable place for the installation of the meter or meters and any other supply, protective or control equipment of the Meter Service Provider which may be required in the delivery of the electric service. The Meter Service Provider and EDC shall have access at all reasonable times for the purpose of installing, testing, inspecting, repairing, removing or changing any or all equipment belonging to the Meter Service Provider.

10.3. Installation / Removal. Upon a minimum of 7 days notice to either the EDC or the Customer, meters may be installed or removed by the Meter Service Provider unless a non-standard location or configuration is required.

10.4. Maintenance / Testing. The Meter Service Provider will make periodic tests and inspections of its meters in order to maintain them at a high standard of accuracy.

10.5. Meter Tampering /Unauthorized Use/Diversion of Supply. In the event of the meters or other property being tampered or interfered with, the Customer being supplied through such equipment shall be responsible for the cost of any repairs or replacements required, as well as for the costs of inspections, investigations, and protective installations. The Customer shall also be responsible for any energy and demand being supplied through such equipment which the EDC may estimate is due for service used but not registered on the meter.

11. Meter Reading

11.1 The Meter Service Provider shall be responsible for reading of meters for billing and all other purposes.

11.2. Access to Meter. The Meter Service Provider and EDC shall have access to the premises of the End User at all reasonable times for the purpose of reading meters.

11.3. Interval / Estimated Usage. Meters will be read at scheduled regular intervals of one month. Bills rendered in accordance with this Tariff shall be estimated for the amount of service supplied to the Point to Delivery where access to the meter is not available, and for installations at remote locations when warranted by the type of installation, regularity of usage or other circumstances. Where estimated bills are rendered, the Meter Service Provider shall be required to make an actual meter reading at least once every six months.

11.4. Historic Meter/Billing Data. The Meter Service Provider shall be responsible for data conversions necessary for translating the reading data collection format into the universal exchange data format. The Meter Service Provider shall provide the data processing system necessary to support the on-line storage, maintenance, and accessibility of these data. The billing data shall be maintained for three years or such other period as required by the Commission.

12. Authorization to Provide End User Data to Customers

12.1. Name, Address, Phone Number. Upon request by an End User, the EDC shall provide the End User's name, address and phone number to all Eligible Generation Suppliers. The EDC shall make available to Eligible Generation Suppliers, within 30 days and at cost, the names, addresses and phone numbers of End Users authorizing dissemination of such information.

12.2. Billing History. Upon request, the EDC shall make available to the Customer within 30 days, at cost, the End User's billing history including historical monthly demand and energy usage.

12.3. Load Patterns, Demand/Energy Data. The EDC or Meter Service Provider, whichever has and or retains the data, shall provide the End User's load pattern, demand and energy data, at cost, to the Customer within 30 days of a request by the Customer.

13. Ancillary Energy Delivery Services

13.1. Power Factor Correction Service. To the extent that the Customer does not correct its End Users' Power Factor to acceptable levels at an applicable Point of

Delivery, the EDC shall supply the necessary reactive power and bill the Customer for power factor correction according to Schedule 4.

13.2. Real Power Losses Compensation Service. Real Power Losses result from energy delivery at all voltage levels. The Customer shall be responsible for scheduling the delivery of sufficient amounts of power and energy to the EDC's system to cover all real power losses attributable to the EDC's service to the Customer. Procedures for determining the amount of losses attributable to the Customer are provided for in Schedule 5 to this Tariff.

14. Disconnection and Reconnection of Service. The physical disconnection and reconnection of service shall be performed by the EDC. However, the costs of disconnects and reconnects shall be borne by the Customer if the service was discontinued by reason or act of the Customer or the End User.

15. Load Shedding and Curtailments.

15.1. Procedures. In order to maintain electric grid reliability, events may cause the need for load shedding or load curtailments. Policies for load shedding of the respective NERC region and/or Commission shall apply.

15.2. Allocation of Curtailments. In the event that a curtailment of Energy Delivery Service is required to maintain reliable operation of the EDC's system, curtailments will be made on a non-discriminatory basis to those Points of Delivery that effectively relieve the constraint. All curtailments will be made on a non-discriminatory basis. The EDC or Host Control Area shall have the right to curtail delivery at its sole discretion, using Good Utility Practice, when an emergency or unforeseen conditions impairs or degrades the EDC's system or the regional transmission system.

16. Force Majeure and Indemnification

16.1 Force Majeure. An event of Force Majeure means any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any curtailment, order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a party's control. A Force Majeure event does not include an act of negligence or intentional wrongdoing. Neither the Customer nor the EDC will be considered in default as to any obligation if prevented from fulfilling the obligation due to an event of Force Majeure.

16.2 Indemnification. The Customer shall at all times indemnify and hold harmless the EDC from any and all damages, losses or claims, including death and injury or damage to property, court costs, attorney fees and other claims by third parties arising from the EDC's performance on behalf of the Customer, except in cases of the EDC's negligence or intentional wrongdoing.

17. Dispute Resolution Procedures

17.1. Internal Dispute Resolution. Upon the submission of any complaint, representatives of the respective parties shall attempt resolution on an informal basis as promptly as practicable.

17.2. External Arbitration Procedure. Disputes between the EDC and Customers below a certain dollar amount may be well suited for use of an external arbitration procedure. A single neutral arbitrator appointed by the respective parties should be called within 10 days of the referral of the dispute to arbitration.

17.3. Arbitration Decisions and Costs. The respective parties should have contracts in place to allow both arbitration and mandatory compliance with decisions and costs. The decision of the arbitrator shall be final and binding upon the parties unless the decision itself, violated the standards set forth in the Federal Arbitration Act.

18. Standards of Conduct

18.1. Electric Distribution Company.  
(Tariff language reflecting Commission ordered standards of conduct.)

**Schedule 1**

**Energy Delivery Services**

**Description of Service**

**Energy Delivery Services** are those services necessary to convey electric power and energy for Customers from any point(s) of receipt available to the Electric Distribution Company under the applicable Open Access Transmission Tariff to the End User's or Host Control Area Point(s) of Delivery.

**Compensation**

Secondary Voltage, Single-Phase Service

Secondary Voltage, Three-Phase Service

Primary Voltage Service

## Schedule 2

### Revenue Cycle Services

#### Description of Service

The Revenue Cycle Services include the provision of meters, meter reading, billing and collections. The meter service includes the selection, installation, calibration, maintenance, testing and replacement of meters appropriate to the Customer's service requirements. The meter reading service includes the accurate reading, retaining and appropriate transfer of End User energy and demand usage data to the Customer or Electric Distribution Company or both. The billing service is the accurate computing and transmitting End User bills for services rendered by the Electric Distribution Company or the Customer or both. The billing service includes the retention of necessary records and providing appropriate access to billing information. The collection service is the receiving of customer payments and applying payment to the correct specific service. The collection service includes assessing late charges, interest penalties, warning notices and reconnection charges.

#### Compensation

Secondary Voltage, Single-Phase Service

Secondary Voltage, Three-Phase Service

Primary Voltage Service

**Schedule 3**

**Competitive Transition Charge**

Description of Charge

The CTC shall apply during the transition period as follows:

## Schedule 4

### Power Factor Correction Service

#### Description of Service

Power Factor is the ratio of active power (kilowatts) to the apparent power (kilovolt-amperes) used by an electrical device in an AC circuit. When the active power consumed (watts) is divided by the product of voltage (volts) times current (amperes), and the quotient is multiplied by 100, the result equals the power factor. It is possible for a device to draw AC current without consuming energy. The power factor indicates how much of the total current is actually doing work.

Standard Power Factor values, based on measured demands, are as follows: i) for 0 kW to 185 kW then the standard power factor is 80 %; ii) for 186 kW to 2,500 kW then the standard power factor is 90 %; and iii) over 2,500 kW the standard power factor is 95 % or other standard as established by the EDC and approved by the Commission. Whenever the measured power factor of a Customer is less than the prescribed standard, the Customer's measured demand shall be increased by the ratio of the standard power factor to the measured power factor. The demand thus determined shall be used as a basis for calculating the Customer's billing demand.

#### Compensation

Secondary Voltage, Single-Phase Service

Secondary Voltage, Three-Phase Service

Primary Voltage Service

High Tension Service

## Schedule 5

### Real Power Losses Compensation Service

#### Description of Service

Energy is "lost" or consumed in the process of transmitting or moving the energy from the point of generation to the Point of Delivery. Real Power Losses that occur in the Transmission System are addressed in the FERC Open Access Transmission Tariffs. Real Power Losses that occur in the Distribution System need to be provided by the Customer.

The losses are included in the Aggregated Daily Load Curve as provided by the EDC or ISO.

#### Loss Factors

Secondary Voltage, Single-Phase Service

Secondary Voltage, Three-Phase Service

Primary Voltage Service

**Description of Changes to  
DISTRIBUTION SERVICES TARIFF ("DST")  
as Shown in EPMI Exhibit 3SR, PDR-9**

<b>DST Section Reference</b>	<b>Description of Change</b>
1.2	Changed language to add clarity concerning Customer bad credits.
1.8	Changed language in attempt to add clarity. This definition allows flexibility in future markets with full service options to End Users.
1.23	"End User" substituted for "Customer" to avoid confusion.
2.2, 2.3, 2.4	Minor changes in wording of responsibilities to add clarity between EDC, Customers and End Users.
3.3	Modified wording to add clarity concerning exceptional service requirements would be End User driven.
4.1	Clarified language concerning multiple delivery points.
5.3	Creditworthiness in this document addresses Customer, not End User creditworthiness.
5.5	Customer responsible for assuring meeting the appropriate codes.
5.5 and 5.6 (previous)	Merged into new 5.5.
6.1.1 and 6.1.2	EDC specific requirements concerning new or modified facilities can be attached as Attachment B (Line Extension) and Attachment C (Underground).
7.1.2	EDC specific reimbursements of costs can be attached as Attachment D.
7.2	Language clarified concerning the EDC being informed of End User load changes.
8.3	Language added to state the cost responsibility should be born by the Customers through a distribution ancillary service.
11.3	Required six months actual reading added.
12.1	Language clarified.
14.	Language changed concerning disconnection and reconnection costs.

**DISTRIBUTION SERVICES TARIFF ("DST")**  
**Summary of EPMI Response to PECO's Comments**

<b>DST Section Reference</b>	<b>PECO's Comments</b>	<b>Response of EPMI</b>
1.7 Creditworthy	Omits determination of Customer's credit	This section provides the definition of creditworthy only. The determination of creditworthiness is provided in Section 5.3 of the DST.
1.8 Customer	Only generation supplier is the Customer, local utility does not have end use Customers. Ignores local utility as supplier of last resort	The DST is intended to apply to all Suppliers, including PECO and the supplier of last resort. See Reising's Surrebuttal Testimony at 4.
1.12 EDC	Limits local utility to distribution service only	The EDC should be limited to providing distribution services. See also Reising's Surrebuttal Testimony at 4.
1.15 Host Control Area	Not clear that host control area is the local utility's franchise area	This definition is properly framed as the term is used in the DST. Note also modification of Section 1.15.
1.23 Point of Delivery	Generation supplier does not have facilities to receive service	Agreed. Will amend 1.23 to replace "Customer's" with "End-User's".
3.2.2 Primary Service	Redefines primary service voltage	See Reising's Surrebuttal Testimony at 3-4. Note also language in 3.2.2: "or such other standard as established by the EDC and approved by the applicable regulatory authority" provides any standards as used by PECO.
3.2.3 Subtransmission Service (as appropriate)	Redefines high tension voltage	See Reising's Surrebuttal Testimony at 3-4. Note also language in 3.2.3: "or such other standard as established by the EDC and approved by the applicable regulatory authority" provides any standards as used by PECO.
3.3 Exceptional Service Requirements	How can Customer (his definition) have unusual requirements for service	Agreed. Will amend 3.3 to change "Customer's" to "End-User's" where appropriate along with other corresponding changes.
4.1 General Conditions	Provides for multiple delivery points. Not consistent with Rule 1.23	It is intended that each End-User's Point of Delivery be a point of delivery of the Customer. Appropriate changes made to Sections 1.23 and 4.1.
5.3 Creditworthiness	Applicable to the credit status of the generation supplier - not the end user	The EDC's recourse under this Tariff is through the Customer.

**DISTRIBUTION SERVICES TARIFF ("DST")**  
**Summary of EPMI Response to PECO's Comments**

5.7	Service Agreement for Energy Delivery Service	Service agreement is between supplier and utility - not the end user.	The Service Agreement should be between the Customer and the EDC. The Customer will enter into the service agreements with End Users.
	<b>DST Section Reference</b>	<b>PECO's Comments</b>	<b>Response of EPMI</b>
6.1.1	Overhead Extension Policy	Expands line extension policy to include primary lines and eliminates revenue guarantees	This section has been revised to make reference to line extension policies as an Attachment to the Tariff. This will permit retention of policies unique to a particular EDC.
6.1.2	Underground Policy	Almost totally eliminates the requirements for underground service	Section 6.1.2 has been modified to make reference to underground facilities standards as an Attachment to the Tariff. This will permit retention of standards unique to a particular EDC.
6.2	Due Diligence in Completing New Facilities	Fails to define cost responsibility to provide access to transmission grid	This section is not intended to cover cost responsibility. Cost responsibility is covered in Section 6.4 for non-standard facilities, Attachment B governing line extension policy and Attachment C governing underground facilities in new developments.
7.1.2	Relocation of Service	Excludes details in PECO's Rules 10.7 and 10.8 including credits for developments	This section has been amended to make reference to an Attachment to the Tariff to cover requirements for reimbursement of costs resulting from a relocation of service.
7.2	Notification of Changes in Expected Use or Usage Patterns	Does not require notification of local utility if End-User changes use or use patterns	This section has been amended to require that notification be given to the EDC.
8.3	Exchange of Load Shape Data	Does not indicate cost responsibility for load shape data or metering	This section will be amended to provide that, to the extent the EDC is the Meter Service Provider, fees for provided such data are covered under a separate schedule appended to the Tariff.
9.2.1	Late Payment Charge	If the generation supplier is the Customer, the local utility should not be limited to an allocated payment for its services	If the Customer is a Supplier then the EDC receives full payment with or without the Customer receiving full payment from the End-User.

**DISTRIBUTION SERVICES TARIFF ("DST")**  
**Summary of EPMI Response to PECO's Comments**

9.3 Customer Default	Provides for termination of service if supplier defaults on payment	This section has been amended to permit the EDC to terminate service to a Point of Delivery in the event of non-payment of charges applicable to the Point of Delivery.
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**DISTRIBUTION SERVICES TARIFF ("DST")  
Summary of EPMI Response to PECO's Comments**

<b>DST Section Reference</b>	<b>PECO' s Comments</b>	<b>Response of EPMI</b>
10.1 Procurement, Type, Protection	The generation supplier is allowed to pick and choose Customers that it wants to meter	The EDC should be indifferent whether the meter is provided by the Customer or the EDC as long as its costs of providing the meter are recovered.
11.1 Access to Customer Meter	Same as comment for 10.1	Same as comment for 10.
11.3 Historic Meter/Billing Data	Eliminates Commission-mandated meter reading requirement of actual readings required in 6 month intervals	DST amended to address this concern.
14. Disconnection and Reconnection of Service	Disconnection and reconnection costs must be borne by the local utility unless caused by the generation supplier	DST amended to address this concern.

**COMPARISON OF DISTRIBUTION SERVICES TARIFF ("DST")  
To PECO's Current Rules and Regulations and  
EPMI's Response to PECO's Comments**

Reference to PECO's Current Rules and Regulations	PECO's Comments	Response of EPMI
Definitions	Omits some definitions. All should be included; "Service" definition in 3.1 and 3.2 is incorrect.	Many of the definitions contained in the current rules and regulations are unnecessary or outdated. Additional definitions can be added where the specific need for a defined term is identified.
1.1 through 1.7 1.1 Filing and Posting 1.2 Revisions 1.3 Application 1.4 Basis of Charge 1.5 Rules and Regulations 1.6 Use of Riders 1.7 Statement by Agents	Not included. Describes various aspects of tariff such as availability, applicability, revision, etc.	These items are of little substance. If needed they can be added to the Tariff in its final editing.
2.1 Character	Not included. Limits supply to standard characteristics.	Disagree. These matters are already defined in service characteristics and the clause "or such other standard as established by the EDC and approved by the applicable regulatory authority" in section 3.1.
2.2 Single-Point Delivery	Similar to 1.23 but different than 4.1. Limits supply to single delivery point.	Section 1.23, as amended, defines Point of Delivery. Section 4.1, as amended, applies to one or more Points of Delivery as requested by the Customer.
2.3 Single-Point Availability	Not included. Describes availability to one or more buildings.	This provision is not needed for this Tariff. Note also change to Section 1.23
2.4 Compliance with Availability	Somewhat similar to 2.5. Limits availability of service	Not user friendly in PECO document. States the use shall not be for any purpose other than covered.
2.5 through 2.7 2.5 Single-Phase up to 150 kVA 2.6 Poly-phase Loads Aggregating Less than 7 1/2 HP 2.7 Motors	Not included. Describes limits on availability of single-phase and poly-phase service.	PECO would be paid for service connection at voltage level and single versus poly-phase but not judge minimum levels of service for customer use. For example, PP&L does not have a similar limit. Do not support PECO judging level of service.

**COMPARISON OF DISTRIBUTION SERVICES TARIFF (“DST”)  
To PECO’s Current Rules and Regulations and  
EPMI’s Response to PECO’s Comments**

Reference to PECO’s Current Rules and Regulations	PECO’s Comments	Response of EPMI
2.8 Compliance with Building Energy Conservation Act Standards	Not included. Requires compliance with Pennsylvania Building Energy Conservation Act.	Can include in proposed pro forma depending on direction of Commission.
3.1 Information from Customer	Somewhat similar to 5.1., as information is required from end-user, but eliminates utility's right to inspect.	Only difference is continuing right of EDC to inspect Customer’s premises.
3.2 Meter Location	Included in 10.2. Covers meter location.	No material difference.
3.3 Point of Delivery	Not included. Establishes point of delivery and right of utility to avoid contaminated areas.	Point of delivery, request for service and contamination information already covered in Section 5.1. Do not need statement that EDC has the right to avoid contaminated areas (already in OSHA).
3.4 Service Entrance Equipment	Similar to 5.6. Cover's end-user's equipment beyond delivery point.	Primary difference is that the PECO rule states “The meter will be supplied, owned and sealed by the Company” (meter comment is mostly redundant to PECO section 14).
3.5 Secondary Service Connection	Not included. Describes location for connection of secondary service.	Predominately covered in section 10.2 (the meter point is the demarcation between customer and EDC delivery.
3.6 Underground Service	Similar to 3.3.3 which is the same as 6.1.2. Covers excess cost for underground service	3.3.3 is the same as PECO 3.6
3.7 Nonstandard Service	Similar to 3.3.1, 3.3.2 and 6.4 but omits environmental assessment non-standard service.	Can include in proposed pro forma environmental assessments
3.8 Relay Protection	Not included. Requires relay protection for specified uses.	Seems out of place in new rules for a restructured electric utility industry. Agree that elevators, hoists and cranes should be safe, but question if this section should be in this document. Various codes and safety documents for the very many electric uses should not find their way into the rules for electric service.
4.1 Place of Application	Similar to 4.2. Covers application for service.	Very similar.
4.2 Service Contract	Partially covered in 5.7. Requires service agreement between the utility and the supplier - not with the end-user.	Section 5.7 requires a customer to have an agreement with the EDC. The Supplier Tariff requires the Supplier and EDC to have an agreement. The “customer” may be the end-user so the comment is partially wrong. The end-user is covered either by himself or by an agent (Customer).

**COMPARISON OF DISTRIBUTION SERVICES TARIFF (“DST”)  
To PECO’s Current Rules and Regulations and  
EPMI’s Response to PECO’s Comments**

**COMPARISON OF DISTRIBUTION SERVICES TARIFF ("DST")  
To PECO's Current Rules and Regulations and  
EPMI's Response to PECO's Comments**

Reference to PECO's Current Rules and Regulations	PECO's Comments	Response of EPMI
4.3 Contract Data	Partially covered in 5.1 and 5.2, but does not include reference to rates and riders.	This section covers "contract data" and is redundant to the information in these rules.
4.4 Right to Reject	Not included. Gives the utility the right to reject service for specified reasons.	Gives the EDC right to refuse for "good and sufficient reasons." This section is contrary to "obligation to connect" and may require rewording if included in rules. This section is not user friendly.
4.5 Acceptance	Not included. Describes acceptance of contract between customer and utility.	Not user friendly in PECO document and not needed.
4.6 Special Contracts	Not included. Describes situations applicable to special contracts.	Contains clauses only applicable to PECO and its current rate activities in a monopoly arrangement. For example, covers self generation options for large customers (over 40 MW capacity). Is not appropriate in its current form for an EDC and customer rule.
4.7 Unauthorized Use	Partially covered in 5.8, but eliminates provision for liability for unauthorized use.	Unauthorized use is covered by sections 10.5 and 5.8. 10.5 covers compensation for any use not metered and unauthorized use.
4.8 Withdrawal of Application	Same as 7.1.1. Covers withdrawal of Application for Service.	Same.
5.1 Payment Obligation	Not included. Defines payment obligation including customers with gas service.	Gas service should not be included in a distribution pro forma for electric service. Payment for electric service is required.
5.2 Prior Debts	Not included. Deals with prior debts and disputed bills.	Agree there may be the need to address prior debt, but this area must be rewritten to correspond to the latest guidelines from the Commission (currently the latest Order is dated July 10, 1997)
5.3, 5.4, 5.5, 5.6 5.3 Guarantee of Payments 5.4 Amount of Deposit 5.5 Return on Deposit 5.6 Interest on Deposit	Partially covered in 5.4. Covers guarantee of payment and deposits.	Not user friendly in PECO document and may not be needed.
5.7 Credit Information	Not included. Requires customer to provide credit information.	May be required. However, language seems customer unfriendly.
5.8 Applicability to Customers Residing at Place of Business	Not included. Provides customers living in a place of business are not entitled to protection as residential customers.	The distribution pro forma tariff should concern itself with the wires business. Maybe special conditions can be added as an appendix.

**COMPARISON OF DISTRIBUTION SERVICES TARIFF ("DST")  
To PECO's Current Rules and Regulations and  
EPMI's Response to PECO's Comments**

Reference to PECO's Current Rules and Regulations	PECO's Comments	Response of EPMI
6.1 through 6.5 6.1 Company's Service Lines 6.2 Service-Supply Alterations 6.3 Customer's Service Extension 6.4 Meters and Transformers 6.5 Trailer Parks	Not included. Describes utility's obligation to provide service lines, transformers and meters	PECO Section 6.5 appears unique to PECO and addresses Trailer Parks. Other PECO sections (6.1 to 6.4) generally covered in due diligence clauses in sections 4.3 and 6.2. Specific numbers (example: "point approximately 18 inches inside the property line) appear to specific to PECO requirements. Maybe an appendix would allow some additional detail.
7.1 Trunk Line Construction	Not included. Describes utility's obligation to construct, own and maintain supply facilities.	Covered in section 4.3
7.2, 7.3 7.2 Line Extensions 7.3 Underground Electric Service in New Residential Developments	Falls far short in 6. 1.1 and 6.1.2. Details line extensions including obligations of the utility and the customer.	Very specific to PECO
7.4 Tax Accounting of Contributions in Aid of Construction and Customer Advances	Not included. Applies to tax accounting of contribution in aid of construction.	Details manner contributions in aid of construction and rate base treatment. Question if the distribution pro forma is the correct place for this rate case treatment statement.
8.1 through 8.3 8.1 Term and Rentals 8.2 Procurement by Customer 8.3 Delays	Not included. Applies when a right-of-way is required to provide service.	May require addition to distribution pro forma any new right-of-way expenses.
9.1 Wiring in Progress	Not included. Does not require service supply lines until customer's wiring is in progress.	Moot as to issue. PECO can continue whatever practice it has established such that service is not reduced.
9.2 through 9.6 9.2 Inspection 9.3 Company's Right to Inspect 9.4 Defective Installation 9.5 Unsatisfactory Installation 9.6 Final Connection	Partially covered in 5.6. Defines requirements for introduction of service and reasons for refusal.	Proposed distribution pro forma written in an more end-user friendly manner.

**COMPARISON OF DISTRIBUTION SERVICES TARIFF ("DST")  
To PECO's Current Rules and Regulations and  
EPMI's Response to PECO's Comments**

Reference to PECO's Current Rules and Regulations	PECO's Comments	Response of EPMI
9.7 New or Transfer Customer Charge	Not included. Provides for a charge for new or transferred customers.	Question \$ 6.00 transfer or initiation fee. Does this change with deregulation? Is this fee applicable only to PECO?
10.1 Company Maintenance	Not included. Requires utility to maintain its equipment on customer property.	
10.2, 10.3 10.2 Customer's Responsibility 10.3 Protection by Customer	Covered in 2.3. Pertains to customer's responsibility with regard to utility's equipment.	Covered
10.4 Tampering	Covered in 10.5. Applies to tampering with meters.	Covered
10.5, 10.6 10.5 Right of Access 10.6 Ownership and Removal	Not covered. Gives utility the right of access to customer's property and right to remove utility's equipment.	Covered in 10.2, 11.2 and 10.3
10.7, 10.8 10.7 Pole Removal or Relocation Requested by Residential Property Owners 10.8 Relocation of Company Facilities Requested by Non- Residential Property Owners	Falls short in 7. 1.2. Details pole removal or relocation requirements	Mostly covered in 7.1.2. Generic distribution pro forma may allow more costs to customer (overhead included and reduced maintenance not included).
10.9 Aerial Line Clearance	Not included. Gives utility the right to trim or remove trees.	Covered generally in 2.2 (safe and reliable service using good utility practice - conformance with National Electric Safety Code is implied by good utility practice).
11.1 through 11.3 11.1 Choice of Rate 11.2 Company Assistance 11.3 Rate Changes	Not included. Pertains to customer's choice of rate and rate changes.	Only one rate would apply to a Customer in the new proposal. Concerning PECO Section 11.2, common sense would seem to dictate that the EDC (PECO) would provide Customer assistance so that Section is assumed.

**COMPARISON OF DISTRIBUTION SERVICES TARIFF (“DST”)  
To PECO’s Current Rules and Regulations and  
EPMI’s Response to PECO’s Comments**

Reference to PECO’s Current Rules and Regulations	PECO’s Comments	Response of EPMI
12.1 Limitation of Liability for Service Interruptions and Variations	Not included. Limits liability for service interruptions and voltage variations.	Covered in 16.2
12.2, 12.3 12.2 Emergency Load Control 12.3 Emergency Energy Conservation	Very limited coverage in 15. 1 and 15.2 - both PECO rules mandated by Commission. Applies to emergency load control and energy conservation.	Responsibilities for reliability is transitioning to the ISO and Suppliers. Neither section 12.2 or 12.3 seem appropriate in the EDC distribution pro forma tariff since the EDC will not be the load provider. Limited fuel is not an EDC concern. Load control is not dictated by the EDC. Only good utility practice concerning the “wires” business is appropriate in the distribution pro forma.
12.4 Notice of Trouble	Not included. Requires customer to notify utility if service is interrupted or unsatisfactory.	May be some statement needs to be added but it seems reasonable that if service is interrupted or unsatisfactory then either the EDC or Supplier would be notified by the End-user.
12.5 Relocation of Delivery Point	Not included. Requires customers to change point of delivery if change is required by public authority.	May need to be added
13.1 Resale of Service	Not covered. Provides for resale of service by customer and requires individual metering of dwelling units.	Do not agree this is an EDC concern
13.2 Fluctuations	Not included. Restricts customers use that would cause disturbances on the system.	Partially covered in 2.3. Do not agree that supply considerations (Fluctuations) are a matter of EDC rules.
13.3 Type of Installations	Not included. Limits motor starting currents.	Do not agree that supply considerations (starting currents) are a matter of EDC concern provided the National Electric Safety Code is followed.
13.4 Unbalanced Load	Not included Requires customer to balance loads between phases.	Do not agree that supply considerations (unbalanced load) are a matter of EDC rules.
13.5 Additional Load	Not included. Requires utility consent for additional load.	Covered in 7.2
13.6, 13.7 13.6 Change of Installation 13.7 Failure to Give Notice	Not included. Requires that customer notify of change in installation or else liable for damage.	Covered in 7.2
14.1 Supply of Meters	Covered in 10.1 with supplier in control of provision of meters	Covered

**COMPARISON OF DISTRIBUTION SERVICES TARIFF ("DST")  
To PECO's Current Rules and Regulations and  
EPMI's Response to PECO's Comments**

Reference to PECO's Current Rules and Regulations	PECO's Comments	Response of EPMI
14.2 through 14.5 14.2 Special Measurements 14.3 Power Factor Measurements 14.4 Reverse Registration 14.5 Meter Elimination	Not included. Gives the utility right to make special measurements and eliminate meters.	PECO 14.2, 14.3 and 14.4 is covered by 10.4 (testing) and 10.1 (type). Meter elimination may be by agreement between Supplier, End-user and EDC.
14.6, 14.7 14.6 Meter Reading Intervals 14.7 Estimated Usage	Partially covered in 11.3 but omits Commission requirement for actual reading. Defines meter reading intervals and procedure for estimating usage.	Can add need for an actual reading at least once every six months.
15.1, 15.2 15.1 Measured Demands 15.2 Demand Determination	Not included. Defines measured demands and demand determination. Provides for waiver of demand.	Pro forma uses a concept that Customers are charged by voltage level and phases for delivery services. Other definitions such as billing demand may be added to schedules.
15.3 Power Factor Adjustment	Partially covered in 13.1 and Schedule 4, but omits how power factor is determined by customer size and applicability to LILR.	Covered in Schedule 4
16.1 Meter Tests	Covered in 10.4. Pertains to meter testing.	Covered
16.2 through 16.6 16.2 Request Tests 16.3 Adjustment for Error 16.4 Residence Meter Errors 16.5 Administration Tests 16.6 Testing Service	Not included. Applies to meter tests and adjustments for error.	Unnecessary detail for a generic distribution pro forma
17.1 Billing Period	Not included. Defines billing period.	Covered in 11.3
17.2 Payment	Slightly covered in 9.1 but omits details on bill payment, summary billing, disputed bills, etc.	Much detail covered in PECO rules. Question whether a distribution pro forma should be burdened with so much detail.
17.3 Finance Charge and Collection Costs	Partially covered in 9.2.1. Provides for finance charges and collection cost.	Covered
17.4 Budget Billing	Not included. Provides for budget billing.	
17.5, 17.6 17.5 Calculation of Finance Charge 17.6 Application of Payment	Partially covered in 9.2.1. Describes calculation of finance charge and order of application of payment.	Requires revision concerning Commission ruling on partial billing

**COMPARISON OF DISTRIBUTION SERVICES TARIFF ("DST")  
To PECO's Current Rules and Regulations and  
EPMI's Response to PECO's Comments**

Reference to PECO's Current Rules and Regulations	PECO's Comments	Response of EPMI
17.7, 17.8 17.7 Return Check Charge 17.8 Applicability to Customers Residing at Place of Business	Not included. Contains return check charge and lack of legal protection for customer residing in a place of business.	Does \$20 charge remain for EDC? Is this charge modified with separation of EDC from supply function? Are those conditions needed in generic pro forma. Both seem to narrow for generic distribution pro forma.
18.1 Non-Payment Shut- Off	Covered in 9.3 without reference to Commission regulations for non-payment shut-off.	Covered in 9.3.
18.2 through 18.5 18.2 Shut-Off for Cause 18.3 Safety Shut-Off 18.4 Defective Equipment Shut-Off 18.5 Shut-Off for Fraud	Not included. Allows utility to terminate service for specified reasons.	Covered in 2.2 and 5.8
18.6 Reconnection Charge	Covered in 14. Local utility is only compensated for reconnection if supplier is at fault	Covered
19.1, 19.2 19.1 Notice of Discontinuance by Customer 19.2 Completion of Term	Not included. Provides minimum payment obligations if contract terminated by action of the customer.	Contracts assumed to be honored.
20.1, 20.2 20.1 Termination Notice 20.2 Final Bill	Not included. Details termination notice and final bill.	Termination notice is addressed in section 10.3. Section 9.2 states bills are payable upon presentation and must be made on or before the due date shown. Do not see why this detail in PECO 20.2 is not already included in 9.2.
21.1 Office of the Company	Not included. Describes location of office of the utility.	Question the need for PECO to give its address in a generic distribution pro forma
21.2 No Prejudice of Rights	Not included. Contains utility rights to enforce tariff.	Question the need for this statement in a generic distribution pro forma
21.3 Gratuities to Employees	Not included. Forbids employees from accepting gratuities.	This statement seems more appropriate in the human resources area than in a distribution pro forma.
21.4 Billing Changes	Not included. Applies to billing changes resulting from an investigation.	Would not expect many billing changes for distribution services. This seems more appropriate for supplier/end-user contract.
21.5 Exceptional Cases	Not included. Allows utility to modify supply terms for exceptional cases.	Would assume exceptional cases would not need to be delineated

**COMPARISON OF DISTRIBUTION SERVICES TARIFF ("DST")  
To PECO's Current Rules and Regulations and  
EPMI's Response to PECO's Comments**

Reference to PECO's Current Rules and Regulations	PECO's Comments	Response of EPMI
21.6 Assignment	Not included. Pertains to the assignment of contracts made by utility.	Would assume contracts are binding.
21.7 Other Charges	Not included. Allows utility to charge for services not specified in the tariff.	This is not needed in a distribution pro forma.

R-00973953  
Enron St. 5.0

Philadelphia, PA 19104  
E. Holbert

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DIRECT TESTIMONY OF

**JACKETED**  
NOV 04 1997

**RAYMOND W. BOWEN, JR.**

ON BEHALF OF  
ENRON POWER MARKETING INC.

PROthonotary's OFFICE

97 OCT 20 AM 9:44

RECORDED

DOCKET NO. R-00973953  
RE: PECO RESTRUCTURING PLAN

**DOCUMENT  
FOLDER**

JUNE 20, 1997

1 Q. PLEASE STATE YOUR NAME AND TITLE?

2 A. My name is Raymond M. Bowen, Jr. I am Vice President of Enron Energy  
3 Services, Consumer Services Group, and am responsible for Enron's retail sales  
4 activities with residential consumers.

5 Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR EDUCATIONAL  
6 AND BUSINESS BACKGROUND?

7  
8 A. I have a Masters of Business Administration from Rice University and a Bachelor  
9 of Science in Mechanical Engineering from the University of Texas. I joined  
10 Enron Energy Services in February of 1996. Prior to that time, I was vice  
11 president and senior banker in Citicorp's Petroleum, Metals and Mining  
12 Department based in Houston. At Citibank, I was responsible for managing  
13 several of the major energy relationships of the bank. I joined Citibank in 1991  
14 from Bankers Trust Company where I managed major corporate relationships in  
15 the energy industry.

16 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

17 A. I will present Enron's testimony and respond to PECO's testimony pertaining to  
18 the following issues:

19 (1) The unbundling of billing and bill format that PECO should be  
20 required to implement as part of its restructuring.

21 (2) The billing options that should be permitted, including the "Supplier  
22 Complete Bill Option."

- 1 (3) Procedures governing the phase-in of competition.
- 2 (4) Customer selection and "slamming."
- 3 (5) "Customer Information" and its relationship to the "Customer
- 4 Education Program" required in connection with PECO's proposed
- 5 restructuring.
- 6 (6) PECO's Universal Service Program in a competitive environment.
- 7 (7) Several miscellaneous issues.

8 **I. BILLING**

9 **Q. WHAT IS ENRON'S CONCERN REGARDING BILLING?**

10 A. Billing is a critical component in the development of a truly competitive retail  
11 electric market. It is my understanding that the Electricity Generation Customer  
12 Choice and Competition Act ("Competition Act") expressly gives consumers the  
13 choice as to whether they want to be billed by their incumbent monopoly or by  
14 their electric generation supplier. The fact that the General Assembly expressly  
15 mandated customer choice for billing evidences support for a policy that  
16 recognizes that competition in the billing area can provide significant benefits to  
17 consumers, and that suppliers should be permitted to attract customers through  
18 their billing services as well as with other products and services.

19 **Q. HOW DOES BILLING PLAY A ROLE IN COMPETITION?**

20 A. Enron takes pride in its billing and customer service activities, and intends to  
21 provide Pennsylvania customers with the highest quality billing services possible.

1 Obviously, the customer's understanding of his or her bill is an important  
2 component of the service quality issue. If a customer does not understand a  
3 utility's or supplier's electric bill, the customer will seek a competitive option  
4 which provides a more understandable bill.

5 Accordingly, providing an understandable bill that meets all of the  
6 customer's needs is an important part of attracting customers to Enron's services.  
7 It is equally important that Enron's customers understand the nature of the  
8 products they are purchasing and the prices they are paying. If consumers do not  
9 or cannot understand their charges, they will likely stay with their incumbent  
10 provider.

11 **Q. SHOULD THE COMMISSION REQUIRE THAT BILLS BE BROKEN**  
12 **DOWN OR UNBUNDLED IN ANY SPECIFIC WAY?**

13  
14 A. Yes. It is my understanding that electric distribution companies are required to  
15 unbundle customer bills to the extent necessary to permit customers to determine  
16 what service and service functions they are paying for, and at what rate. This  
17 aspect of billing and customer information is also extremely important. It is  
18 Enron's view that unbundling or itemizing the charges on the distribution  
19 company's bill is one of the primary focal points of the competitive environment.

20 In order to provide consumers with adequate information to determine the  
21 basis for all of the various charges included in the distribution company's bill, the  
22 bill itself must be unbundled beyond the basic categories of distribution,

1 transmission and generation that PECO proposes. Proper unbundling requires a  
2 utility such as PECO to itemize charges for non-wire services like billing and  
3 collection, metering and other customer services, as well as for PECO's Intangible  
4 Transition Charges ("ITC"), Competitive Transition Charge ("CTC") and  
5 Universal Service Surcharge, so that consumers can fully understand what they are  
6 paying for and evaluate their various competitive options. Paul Reising discusses  
7 this concept and the specific amounts which are appropriately assessed for each  
8 component of the delivery charge in greater detail in his testimony.

9 **Q. ARE THERE OTHER REASONS WHY BILLING AND COLLECTION**  
10 **CHARGES AND OTHER NON-WIRE SERVICE CHARGES BE**  
11 **UNBUNDLED?**  
12

13 A. Billing and collection are themselves competitive functions that a generation  
14 supplier should have the option of providing. In order to do so, however, it is first  
15 necessary that PECO be required to separate and unbundle its billing and  
16 collection functions as part of its restructuring. Otherwise, customers would be  
17 required to pay for the utility's billing and collection activities even though they  
18 choose to receive billing services from their supplier. Furthermore, absent bill  
19 unbundling, consumers will be unaware of what amount they are presently paying  
20 the utility for the billing and collection function, and will have no basis of  
21 comparison for competitive billing options offered by suppliers. This would  
22 clearly frustrate the development of a competitive market.

1           The benefits of competitive choice clearly extend beyond generation  
2 services in their strictest form, and include many non-wire services. Instead of  
3 looking for competitive *exceptions* to the monopoly “rule,” the Commission should  
4 presume that all services and service functions are properly subject to competition,  
5 and should identify only those few and narrow areas where compelling  
6 circumstances may justify maintaining the service as a monopoly.

7     **Q. IS UNBUNDLING THE COST OF BILLING AS WELL AS OTHER NON-**  
8     **WIRE SERVICES AN IMPORTANT COMPONENT OF COMPETITION?**

9  
10    A. Yes. Unbundling the cost of providing all non-wire services, like billing and  
11 collection, metering, and consumer services, which support not only distribution  
12 but also transmission and generation, and transferring responsibility for their  
13 development and delivery from the monopoly to the marketplace is crucial to the  
14 success of retail restructuring. Because these types of distribution services  
15 represent such a large proportion of small consumers’ monthly bills, competitive  
16 suppliers may be unable to market effectively to these small customers without  
17 comprehensive unbundling. Given adequate protections for service reliability and  
18 assurances that the alternative supplier will adhere to all consumer protection  
19 requirements (an assurance which Enron, for one, is committed to providing), the  
20 Commission should recognize the need for competition in these service categories  
21 when market participants, like Enron, stand ready, willing and able to offer these

1 services. Mr. Jacobson discusses the competitive benefits from unbundling in  
2 greater detail in his testimony.

3 **Q. DO YOU AGREE WITH THE FORMAT THAT PECO PROPOSES TO**  
4 **OFFER SUPPLIERS FOR BILLING THEIR GENERATION?**

5  
6 A. No. PECO proposes to offer only three formats to suppliers on the generation  
7 portion of its bill: (1) dollars per kWh; (2) dollars per kWh and dollars per kW;  
8 and (3) fixed dollars per month (PECO St. No. 15 at 24). I believe that PECO  
9 must be more flexible in this regard. For suppliers which choose to utilize PECO's  
10 billing services, PECO should be required to offer billing services which meet the  
11 needs of its supplier customers. PECO should not be permitted to restrict  
12 inappropriately the generation portion of its billing format.

13 **Q. DO YOU AGREE WITH PECO'S PROPOSED APPLICATION OF**  
14 **PAYMENTS IT RECEIVES WHEN IT BILLS FOR BOTH ITSELF AND A**  
15 **SUPPLIER?**

16  
17 A. No. PECO states that it will apply payments received first to its own unbundled  
18 services, including the CTC and ITC charges, and then remit any remaining  
19 amounts received to the supplier. (PECO St. No. 15 at 25). PECO's proposal is  
20 clearly unfair to suppliers. Payments received from customers by PECO should be  
21 applied on a *pro rata* basis. There is no reason why PECO's charges should be  
22 given priority over a supplier's. Distribution, transmission, and generation are  
23 three necessary components of the same service. Without both the distribution and  
24 transmission service provided by the utility and the generation service provided by

1 the supplier, the customer cannot turn on his or her lights or heat his or her home.  
2 PECO should therefore be required to implement a billing system in its tariff  
3 which accommodates a *pro rata* application of payments between distribution,  
4 transmission and generation, independent of the supplier of that service.

5 **Q. WILL PRIORITY APPLICATION OF PAYMENTS HAVE AN ADVERSE**  
6 **EFFECT ON THE MARKETPLACE?**  
7

8 A. Yes. It is well known that many customers, particularly residential customers, do  
9 not pay their electric bills in full every month. If payments are not applied on a  
10 *pro rata* basis, a disproportionate amount of the customer's delinquencies will be  
11 allocated to the supplier. This potentially could lead to unnecessarily early  
12 discontinuance of service by the supplier for non-payment. Upon discontinuance  
13 of service by the supplier, the delinquent customer will return to the utility as the  
14 default generation supplier and will be deprived of the benefits of the marketplace.  
15 Furthermore, utilities, including PECO, are already recovering uncollectibles,  
16 including those uncollectibles associated with the generation portion of the bill, in  
17 current rates. In a competitive environment, suppliers will be assuming the risk of  
18 uncollectibles for the generation portion of the bill. Accordingly, to assign a  
19 disproportionate amount of potential uncollectibles to suppliers would result in  
20 double recovery of certain uncollectibles expense by PECO.

1     **II.     THE SUPPLIER SINGLE BILL OPTION**

2     **Q.     WHAT BILLING OPTIONS SHOULD BE IMPLEMENTED AS PART OF**  
3     **THE UNBUNDLING OF BILLING AND COLLECTION?**

4  
5     A.     The Commission should require PECO to implement and comply with full  
6           customer choice as part of its restructuring.  As applied to billing services, this  
7           objective requires that customers be permitted to choose one of the following  
8           billing options:

9           (1)     Single EDC bill. Under this option, PECO would provide all billing  
10           services — for the services PECO provides and on behalf of the  
11           customer’s supplier of choice — including billing for non-wire  
12           services and the generation portion of the bill;

13          (2)     The Two Bill Option. Under this option, PECO would continue to  
14           bill for its distribution, transmission and competitive transition  
15           charges (i.e., CTC and ITC charges), while suppliers would provide  
16           a separate bill for all services the customer chooses to receive from  
17           the supplier (including generation services and other non-wire  
18           services to the extent the customer chooses to utilize the supplier for  
19           such services);

20          (3)     The "Supplier Single or Complete Bill Option." Suppliers would  
21           provide a single or complete bill in which the supplier would bill not  
22           only for the services that it is providing (i.e., generation and, if  
23           chosen by the customer, non-wire services) but also for services  
24           provided by PECO including transmission, distribution, CTC and  
25           ITC.

1 **Q. WHAT ARE THE BENEFITS OF THE "THREE-OPTION" APPROACH?**

2 A. This "three option" approach would provide enormous benefits to consumers and, I  
3 believe, is fully consistent with the Act's mandate to bring competition to the  
4 electric generation market to the greatest extent possible. It is also consistent with  
5 the approach just recently adopted in California, one of the first states to make  
6 final determinations on these issues. Most importantly, it would allow the  
7 Commission to implement customer service and billing policies which not only  
8 serve to ensure present levels of service and customer protection, but which will  
9 allow the supplier to add value for customers by enhancing and improving present  
10 levels of customer service in furtherance of the objectives of customer choice in  
11 the first place. Overall, permitting the supplier to be the "single point of contact"  
12 by providing a single bill is one of the primary means of adding value to  
13 generation supply services, and is as important to meaningful market development  
14 as any other part of the competitive market restructuring.

15 **Q. WHY ARE COMPETITIVE BILLING OPTIONS SO IMPORTANT?**

16  
17 A. The "Supplier Complete Bill Option" will allow suppliers to offer a more  
18 comprehensive service to consumers, which would not only provide energy supply  
19 at competitive rates, but would also permit the supplier to add value to generation  
20 service through service functions such as metering, demand management,  
21 specialized or customized billing and "TLC" customer service. By identifying  
22 billing/customer service as a separate competitive service, competitors will have an

1 incentive to bring to the market products and services that consumers desire,  
2 providing added value at a total price which will provide real savings to customers.  
3 For example, suppliers or billing/customer service providers likely will be able to  
4 provide a whole host of heretofore unseen products and services in the billing area.  
5 Bills can provide not only required information but information customized to a  
6 customer's special needs, such as detailed information about electric use for  
7 customers who choose time-of-use pricing, information about the amount of  
8 electricity certain appliances utilize to help consumers conserve, automatic  
9 notification of customers when electric use reaches pre-specified levels, and many  
10 other products in which customers may find value.

11 While I believe Enron will be able to provide better billing/customer  
12 services at lower rates than utility customers presently are required to pay, at  
13 worst, directing that a "supplier complete bill option" be established and allowing  
14 suppliers to be the single point of contact with customers is a relatively simple and  
15 risk-free step which merely permits these opportunities to be offered to customers.  
16 No customer will be required to take a Supplier Complete Bill Option; it will be  
17 the supplier's obligation to show customers the benefits and value that would  
18 result from agreeing to allow a supplier to provide services beyond strictly defined  
19 generation supply, including billing, metering and customer service.

1 Q. WHAT STEPS MUST THE COMMISSION TAKE TO ALLOW THE  
2 COMPLETE BILL OPTION?  
3

4 A. To allow the three billing/customer service options to become a reality, the  
5 Commission must do the following:

- 6 1. Direct PECO to establish procedures to allow the three billing  
7 options. As the Commission has already indicated, it is likely that  
8 suppliers will offer service pursuant to any one of (or possibly a  
9 combination of) the three billing options simultaneously.
- 10 2. Require PECO to unbundle billing and collection services on its  
11 bills, and to credit customers electing alternative billing  
12 arrangements via suppliers in the amount of the unbundled billing  
13 charge.
- 14 3. Establish procedures to facilitate the "supplier complete bill option."  
15 Obviously, the Commission must be assured that suppliers providing  
16 complete billing and customer services will do so in compliance with  
17 established customer service rules and consumer protection  
18 requirements. Further, standards concerning remittance of charges  
19 for services which continue to be provided by PECO will have to be  
20 established.

1 Q. DOES THE SUPPLIER SINGLE BILL OPTION REQUIRE THE  
2 SUPPLIER TO ACT AS THE "SINGLE POINT OF CONTACT" OR  
3 AGENT FOR THE CUSTOMER VIS-A-VIS THE EDC?  
4

5 A. Yes. Enron (or any other supplier) would act, in effect, as the customer's agent for  
6 the provision of the total electric package, including the procurement of  
7 distribution, transmission, generation and non-wire services. Under such  
8 circumstances, Enron should be able to accept orders for service from customers  
9 and, upon the establishment of an agency agreement with a customer, assure the  
10 initiation of service at the customer's location. Nothing in the Act that I am aware  
11 of requires that only the EDC can provide connection for customers. Essentially,  
12 Enron, through the agency agreement, would become PECO's customer of record  
13 and would be directly responsible for payment to PECO of the EDC's charges  
14 associated with delivering electricity to the customer. Such an arrangement  
15 WOULD allow Enron and other suppliers to provide a "soup to nuts" service to  
16 customers and allow Enron to add the greatest value to the customer. This issue is  
17 of critical importance to Enron since it will allow Enron to bring the fullest  
18 benefits of competition to Pennsylvania consumers and businesses through lower  
19 prices and innovative services.

20 Q. HAS THE COMMISSION ACCEPTED THIS AGENCY ARRANGEMENT  
21 IN COMPETITIVE MARKETS FOR ANY OTHER UTILITY INDUSTRY?  
22

23 A. Yes. My understanding is that the Commission has accepted agency arrangements  
24 identical to what Enron is proposing here in the natural gas industry for

1 competitive suppliers. In fact, this relationship between customer and service  
2 provider is now prevalent in the natural gas industry for customers in markets  
3 subject to competition.

4 **Q. HOW WOULD CHAPTER 56 APPLY TO ENRON UNDER SUCH**  
5 **CIRCUMSTANCES?**

6  
7 A. Under such circumstances Enron would, as the agent of the customer, have the  
8 right to authorize discontinuance of service even though the actual physical  
9 disconnection may be provided by the EDC. In such a case Enron would, of  
10 course, agree that all provisions of Chapter 56 should be applicable to its activities.

11 **Q. WHAT IS PECO'S POSITION ON THIS MATTER?**

12  
13 A. I have not been able to ascertain whether PECO has presented any direct testimony  
14 on this issue.

15 **Q. WHAT ACTION BY THE COMMISSION IS REQUIRED TO ALLOW**  
16 **AGENCY ARRANGEMENTS?**

17  
18 A. In order to enable agency arrangements to be made between customers and  
19 suppliers, the Commission must direct PECO to include a provision in its tariff  
20 which allows customers to enter into an agency relationship with suppliers for  
21 purposes of procuring service from PECO.

22 **Q. WHAT PROTECTIONS COULD BE ADOPTED TO INSURE THAT PECO**  
23 **RECEIVES ITS REVENUES IN A TIMELY MANNER?**

24  
25 A. These standards could include additional bonding or other appropriate financial  
26 guarantees from the billing supplier in order to provide assurances that EDC

1 revenue as well as state taxes, etc., when collected by the single bill supplier, will  
2 be remitted in a timely and appropriate fashion.

3 A second, and potentially more efficient, approach would be for the  
4 Commission to establish the "supplier complete bill" option and then mandate  
5 EDCs, including PECO, to negotiate in good faith with suppliers who wish to offer  
6 such an option to customers residing in the EDC service territory. The EDCs  
7 would be required to enter into billing/customer service "interconnection  
8 agreements" with interested suppliers. The format, I understand, is mandated by  
9 the Telecommunications Act with respect to interconnection agreements for the  
10 provision of competitive local services, and would appear to provide a useful  
11 model. In fact, California has recently adopted this model for this purpose in  
12 implementing its decision to permit customers to choose a supplier single bill.  
13 This procedure would permit the supplier — the entity most interested in obtaining  
14 such an interconnection arrangement — and the EDC — the entity most interested  
15 in assuring remittance of all revenues and associated charges — to establish non-  
16 discriminatory and uniform rules to permit the single supplier complete bill option  
17 to be implemented. EDCs would, quite properly, demand financial assurances in  
18 the form of letters of credit, bonds or deposits in order to assure that T&D charges  
19 and other funds were remitted. Both parties would have an interest in assuring that  
20 neither violated applicable customer service rules and protections. If a supplier  
21 and an EDC were unable to negotiate such an interconnection arrangement, or

1 unable to agree on certain provisions, those portions could be brought before the  
2 Commission for either informal mediation or on-the-record adjudication. So long  
3 as care was taken to prevent unnecessary delay, this procedure could well result in  
4 an efficient resolution of all necessary issues by the market participants themselves  
5 rather than by regulatory fiat.

6 **Q. WHAT IS PECO'S POSITION REGARDING BILLING OPTIONS?**

7  
8 A. PECO assumes that it would normally be responsible for billing customers for both  
9 its unbundled, regulated services and for suppliers' charges unless a customer  
10 wishes to receive two bills. In no case does PECO's proposal permit a single  
11 supplier bill. (PECO Statement No. 15 at 22-23).

12 **Q. DOES PECO INTEND TO CHARGE A SUPPLIER FOR ITS BILLING**  
13 **SERVICE WHEN THE SUPPLIER USES PECO'S BILL?**

14  
15 A. Yes. PECO states that it will charge an amount per bill that is cost-based and has  
16 proposed a charge of 90¢ per bill.

17 **Q. WHAT IS ENRON'S POSITION REGARDING SUCH A CHARGE?**

18 A. I have no objection to a cost-based charge for billing to electric generation  
19 suppliers. In fact, it is clear that any charges permitted to be assessed on suppliers  
20 must be cost-based. Enron also agrees with PECO that its cost should be  
21 determined and, further, Enron submits that that cost should be used as a basis to  
22 unbundle the billing and collection service so that it can be provided  
23 competitively. It should be noted that PECO has not yet submitted evidence of a

1 cost-based charge in its testimony. The Commission must be certain that PECO's  
2 charge is, in fact, cost-based, and until PECO is able to provide evidence justifying  
3 the charge, it should not be assessed.

4 **Q. ARE ANY PROTECTIONS REQUIRED TO ASSURE THE**  
5 **REASONABLENESS OF PECO'S BILLING CHARGE?**  
6

7 A. Yes. During the early stages of direct access and competition, generation suppliers  
8 may not have the ability to direct-bill and may have no alternative but to purchase  
9 PECO's billing and collection services. Under those circumstances, given the lack  
10 of an alternative, generation suppliers will have little or no leverage in negotiating  
11 billing arrangements with PECO under non-discriminatory terms at reasonable and  
12 cost-based prices absent Commission oversight. During the initial period of  
13 competitive development, it would be counterproductive to allow utilities to  
14 demand that suppliers enter into unreasonable billing arrangements, as it would  
15 decrease the prospects for successful pilots and the development of competitive  
16 alternatives.

17 **III. PHASE-IN OF FULL DIRECT ACCESS**  
18

19 **Q. WHAT IS YOUR UNDERSTANDING OF HOW DIRECT ACCESS WILL**  
20 **BE PHASED-IN IN PENNSYLVANIA?**  
21

22 A. It is my understanding that there must be a transition and phase-in period, which  
23 ends, subject to the Commission's discretion, on January 1, 2001, at which point  
24 all customers with electric distribution companies shall have the opportunity to  
25 purchase electricity from their choice of electric generation suppliers.

1           Following the pilot programs, it is my understanding that the Competition  
2           Act, subject to the Commission's right to allow additional time, calls for the  
3           following phase-in schedule: as of January 1, 1999, 33% of the peak load of each  
4           customer class shall have the opportunity to obtain direct access; as of January 1,  
5           2000, a maximum of 66%; and as of January 1, 2001 all customers shall be able to  
6           obtain direct access. It is also my understanding that the Competition Act calls for  
7           selection of customers on a first-come-first-served basis unless the Commission  
8           determines that some other method is necessary to prevent competitive  
9           disadvantages among similarly situated customers within a customer class.

10   **Q.   WHAT HAS PECO RECOMMENDED?**

11   A.   PECO proposes to use the first-come-first-served approach for commercial and  
12       industrial customers, and a random selection approach for residential customers  
13       (PECO St. No. 15 at 8).

14   **Q.   DOES ENRON OBJECT TO THIS METHODOLOGY ?**

15   A.   Yes, totally.

16   **Q.   PLEASE EXPLAIN?**

17   A.   For residential customers, there is no reason to depart from the statutory first-  
18       come-first-served basis because, by definition, residential customers do not  
19       "compete" with each other. Clearly, there can be no "competitive disadvantages"  
20       to residential customers by accepting such customers on a first-come-first-served  
21       basis, and I do not believe that the Competition Act allows any discretion to depart

1 from first-come-first-served for such customers. Indeed, under PECO's proposed  
2 random selection of 33% of the residential customers each year, it is clear that the  
3 number of residential participants will be far less than 33%.

4 For residential customers, PECO should be required to use an open  
5 enrollment standard that is conducted on a first-come-first-served basis until 33%  
6 and 66% of residential customers respectively are included in the phase-in for each  
7 of the first two years.

8 **Q. WHAT ABOUT COMMERCIAL AND INDUSTRIAL CUSTOMERS?**

9 A. Here there is a reason to depart from first-come-first-served preference because  
10 competitive disadvantages within those classes are real and appropriate for  
11 consideration. Because of this, I would defer to the selection process advocated by  
12 many commercial and industrial customers. Enron would be willing to accept the  
13 "first through the meter" approach, where Enron would supply the first portion of  
14 the customer's electricity received in a given hour, and the EDC would supply the  
15 remainder. Some utilities have complained that this places all the risk of the  
16 variable part of the customer's load on them. Enron would therefore also be  
17 willing to "follow the customer's load" and provide a fixed percentage of its  
18 customers' load throughout the day.

19 In addition, the Commission should exempt commercial customers at or  
20 below 200 kW from *pro rata* or partial participation. It is impractical for a  
21 supplier to serve only a portion of these customers.

1           Finally, under PECO's proposal, a commercial or industrial customer that  
2           sends in a registration card after October 1, 1998 and is not selected because it did  
3           not come within the first-come-first-served quota would apparently be required to  
4           submit an additional registration card postmarked on or after October 1, 1999  
5           (PECO St. No. 15 at 12). This does not seem proper since even if first-come-first-  
6           served is to be the determinant, there is no reason why that customer should not  
7           already be considered to be qualified for participation at the next opportunity.

8           **IV. CUSTOMER SELECTION AND SLAMMING**

9           **Q. WHAT IS MEANT BY SLAMMING?**

10          A.    "Slamming" is when a supplier switches a particular customer to its service  
11          without having received that customer's consent. This term arose in the  
12          telecommunications industry with the problem of long distance carriers switching  
13          customers to their service without customer consent.

14          **Q. WHAT IS YOUR UNDERSTANDING OF WHAT THE COMPETITION  
15          ACT PROVIDES REGARDING "SLAMMING"?**

16  
17          A.    It is my understanding that the Commission is required to promulgate regulations  
18          to ensure that customer consent is obtained prior to a change of electric suppliers.

19          **Q. WHAT IS ENRON'S POSITION AS TO HOW THIS CONCERN SHOULD  
20          BE TREATED ?**

21  
22          A.    As the Commission is fully aware, slamming presented a relatively serious  
23          problem to telephone customers and regulators in the late 80's and early 90's when  
24          overaggressive marketing by long distance carriers led to frequent instances in

1 which a local exchange carrier implemented a change pursuant to the request of a  
2 long distance carrier without any — or at least without adequate — customer  
3 consent. It would seem obvious that the purpose of the provision in the Act is to  
4 avoid this type of slamming problem in Pennsylvania's competitive retail electric  
5 market.

6 In Enron's view, the situation in the competitive electric industry is very  
7 analogous to the situation in the telecommunications industry. Essentially, the  
8 electric distribution company plays the role of "gatekeeper" traditionally held by  
9 local exchange carriers. Generation suppliers — including the distribution utility's  
10 supplier affiliate or division — will submit change orders to that incumbent utility  
11 when a customer decides to switch its generation supplier service, much like long  
12 distance carriers place change orders with a local exchange carrier. The  
13 Commission's role in setting standards for restructured utilities should be designed  
14 to assure that the supplier receives and adequately documents the customer's  
15 consent prior to placing a change order with the utility.

16 **Q. HOW SHOULD THE COMMISSION DO THIS?**

17 A. It is imperative both to protect consumers and, as the Commission has  
18 acknowledged, "to make changing a carrier as easy and convenient as possible for  
19 customers."<sup>1</sup> My understanding is that the Act requires that the customer of

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<sup>1</sup> Proposed Rulemaking Order Establishing Standards for Changing a Customer's Electric  
(continued...)

1 record affirmatively choose to switch suppliers either through "direct oral  
2 confirmation" or "written evidence" of that choice.

3 **Q. HOW SHOULD THE PROTECTIONS DESIGNED TO PRECLUDE**  
4 **SLAMMING BE IMPLEMENTED?**

5  
6 A. Given the mandate of the Act, I believe there are two distinct methods which  
7 should be established to govern the customer selection process in order to deter  
8 unauthorized switching or slamming. First, the EDC will switch a customer's  
9 supplier if the customer provides "direct oral confirmation" of consent. Second,  
10 the EDC will switch a customer's supplier if the EDC is provided "written  
11 evidence of the customer's consent to a change of supplier."

12 Enron believes that "direct oral confirmation" exists whether the change is  
13 initiated by customer contact with the supplier or initiated by supplier contact with  
14 the customer. In either case, the supplier should be permitted to present "direct  
15 oral confirmation" of the customer's selection.

16 As for the term "written evidence," it is my understanding that the statute  
17 does not require "direct" written communications from the customer through a  
18 letter of authorization ("LOA") or an agency agreement; nor does it require that  
19 the customer execute the document submitted to the EDC. While LOAs and other  
20 agency agreements would be included within the term "written evidence," I

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<sup>1</sup>(...continued)

Supplier, Docket No. L-00970121 (Order entered April 25, 1997 at 2).

1 believe the term is broader and includes any document which evidences to the  
2 EDC that customer consent was received by the supplier. Requiring filing of an  
3 executed LOA or agency agreement prior to implementing the customer's choice  
4 will unnecessarily delay the process without any corresponding benefit.

5 Requiring an LOA or agency agreement to be filed directly with the EDC is  
6 particularly problematic in the residential market in which mailing documents back  
7 and forth could take weeks. Furthermore, many residential customers who  
8 sincerely desire to switch suppliers will either not pay close enough attention to  
9 their mail, will not bother to respond in a timely manner, or will simply conclude  
10 that all the paperwork is "too much trouble." Accordingly, requiring submission of  
11 an executed document for residential customers will be an extreme deterrent to  
12 customer choice.

13 Enron believes that "written evidence" would include a letter or other  
14 written communication from the supplier which affirmatively indicates that the  
15 supplier has received consent from the customer to switch the customer's service  
16 to the supplier and that an independent third party has verified that the customer  
17 has consented to the switch. If further evidence is required in a given case, a  
18 written statement could be provided by the entity conducting the third-party  
19 verification. Such communications would clearly meet the statutory requirement  
20 of "written evidence," which the EDC can keep on file documenting customer

1 consent. A statement of compliance with a third-party verification process  
2 provides further evidence that customer consent has been received by the supplier.

3 **Q. WHAT WOULD HAPPEN IF A SUPPLIER FURNISHED WRITTEN**  
4 **EVIDENCE TO AN EDC WHERE IT DID NOT, IN FACT OBTAIN THE**  
5 **CUSTOMER'S CONSENT?**

6 A. Enron would not oppose the imposition of strong penalties for suppliers that are  
7 found to expressly document customer consent in writing when such customer  
8 consent has not been received. Such fraudulent activity, if intentional, should be  
9 subject to penalties to the greatest extent permitted by law.

10 In addition, further action to eliminate the slammed customer's  
11 responsibility to pay the slamming supplier under such circumstances is  
12 appropriate, unless the switch was caused by an error. In combination, strong  
13 penalties and preclusion from payment will remove incentives for and establish  
14 strong deterrents to slamming, which I am certain will preclude those practices  
15 from occurring in Pennsylvania's retail electric markets. Accordingly, Enron's  
16 proposal fulfills the dual objectives of deterring slamming and making changing a  
17 carrier as easy and convenient as possible.

18 **Q. WHAT SHOULD HAPPEN IN THE EVENT OF A GOOD FAITH**  
19 **ERRONEOUS SWITCH?**

20  
21 A. In such a case there should be no penalty or non-payment. I believe the Act was  
22 designed to deter intentional slamming, not unintentional system error. Any  
23 benefit received from designing a completely foolproof system to counter the

1 potential for unintentional system error is clearly outweighed by the adverse  
2 impact on the customer switching process.

3 **Q. WHAT IS PECO'S POSITION ON THIS ISSUE?**

4 A. I do not believe that PECO has adequately addressed this issue in its testimony.  
5 Mr. Miller (PECO St. No. 2) submitted a *pro forma* tariff in his testimony that  
6 deals with rates, but contains no rules and regulations as to how customers may  
7 change and designate their suppliers.

8 Mr. Cucchi (PECO St. No. 15 at 11) states only that customers that  
9 participate in the phase-in will receive electric supply from a supplier the first  
10 billing month after they have "completed the necessary contractual arrangements  
11 and supply PECO with all required information." To the extent that his testimony  
12 is intended to require more than is required by my proposal, Enron opposes it.  
13 Mr. Cucchi also answers a question related to the establishment of a "Supplier's  
14 supply obligations" (PECO St. No. 15 at 31-32), where he suggests the methods  
15 proposed by PECO's Pilot be followed; he then goes on to discuss only the  
16 supplier's obligation to meet its supply obligations, but not how they should be  
17 established. To the extent that PECO is suggesting that the Pilot be used as the  
18 basis even to establish the supplier's right to furnish service, Enron would  
19 strenuously object, because supplier notification under the Pilot appropriately may  
20 require greater documentation of a notice to switch than will be required in a fully-  
21 implemented competitive environment.

1 V. MARKETING AND CONSUMER EDUCATION

2 Q. PLEASE DEFINE AND DISTINGUISH THE TWO TERMS.

3 A. The term "marketing" refers to activities which will be engaged in by generation  
4 suppliers to attract customers to select the supplier as the energy service provider.  
5 I expect that all generation suppliers, including Enron and PECO's affiliated  
6 supplier, will engage in widespread marketing through a variety of media to attract  
7 customers to their services. No regulatory mandates or incentives are necessary to  
8 require or stimulate marketing activity. Business incentive will be more than  
9 adequate to engage suppliers in marketing activity.

10 With respect to "consumer education," it is my understanding that the Act  
11 provides that, prior to the implementation of any restructuring plan, each electric  
12 distribution company, in conjunction with the Commission, must implement a  
13 consumer education program in order to educate customers about the introduction  
14 of competition into the generation supply market so that consumers can make  
15 educated and meaningful choices in the marketplace. My understanding is that  
16 under the Act, PECO's Customer Education Program requires Commission  
17 approval, and that the Commission can modify PECO's proposed program as it  
18 sees fit in order to accomplish the Act's objectives.

1 **Q. WHAT IS ENRON'S POSITION REGARDING THE NEED FOR**  
2 **CUSTOMER INFORMATION AND EDUCATION?**

3 A. Enron has a keen interest in the customer information and education issues  
4 presently being addressed by the Commission, both generically and in each  
5 restructuring case. As a competitive supplier, Enron relies on the quality and price  
6 of its products to attract customers. Accordingly, it is critical to Enron that  
7 Pennsylvania consumers receive objective, comprehensive and understandable  
8 marketing and educational information from the Commission, electric generation  
9 suppliers and electric distribution utilities. In Enron's view, the more informed the  
10 consumer, the more likely it is that the consumer will participate in the competitive  
11 choice process and will select the retail electric services and products that best  
12 meet his or her needs.

13 **Q. WHAT IS THE APPROPRIATE SEPARATION WHICH SHOULD BE**  
14 **IMPLEMENTED TO DISTINGUISH MARKETING FROM CONSUMER**  
15 **EDUCATION?**

16 A. If the Act's and the Commission's goals for educating consumers through the  
17 dissemination of objective information are to be met, a strictly enforced separation  
18 between marketing activity and the customer education process should be  
19 implemented by the Commission as a component of PECO's customer education  
20 program. In my view, the only meaningful separation which has any chance of  
21 being enforced is to preclude both utilities and suppliers from engaging in the  
22 preparation or dissemination of customer education information or materials within  
23

1 the context of restructuring the electric industry. Allowing utilities or suppliers to  
2 participate directly in the preparation or dissemination of consumer education  
3 information or materials will inevitably lead directly to problems with  
4 dissemination of biased information designed for marketing purposes. At the same  
5 time, given the purpose of such educational information — which is to inform all  
6 consumers of the changes in the electric utility industry and to provide them with  
7 the information necessary to make appropriate choices about their electric service  
8 — it makes the most sense to have this educational information prepared and  
9 disseminated on a centralized basis to consumers throughout the state by the  
10 Commission or an independent third party under the Commission's supervision,  
11 rather dividing the preparation and dissemination of customer education  
12 information and materials separately on a utility service territory by territory basis.

13 **Q. ARE YOU SUGGESTING THAT UTILITIES AND SUPPLIERS SHOULD**  
14 **NOT SUPPLY ANY INFORMATION TO CUSTOMERS?**

15  
16 **A.** No, I am not; but there should be a clear distinction between the educational  
17 component of restructuring — which is subject to the Commission's approval and  
18 supervision, and the cost of which is included in the regulated delivery charge —  
19 and marketing activity that will be engaged in by all suppliers, including the  
20 utility's affiliate — which is intended not to educate consumers but to attract  
21 business, and the cost of which should be reflected in supplier prices. Overall, the  
22 Commission and independent third parties should educate. Suppliers and market

1 participants should engage in marketing activity. The two should not be mixed  
2 under any circumstances. Because PECO is affiliated with and has a direct interest  
3 in the success of its supplier affiliate, PECO should be precluded from preparing or  
4 disseminating customer education information or materials.

5 **Q. ISN'T IT POSSIBLE TO DISTINGUISH BETWEEN MARKETING AND**  
6 **CONSUMER EDUCATION INFORMATION?**

7  
8 A. Attempting to label information as marketing or customer education oriented is  
9 completely unenforceable. The only effective answer is not to attempt to label  
10 information as being either marketing or consumer education oriented, but instead  
11 to centralize the consumer education effort and to eliminate both suppliers and  
12 utilities from direct involvement other than funding activities. Overall, Enron  
13 supports the notion of centralized administration of consumer education, whether  
14 the administration be conducted by the Commission or an objective third party  
15 administrator.

16 All utilities and suppliers should fund the centralized consumer education  
17 project on a fair, *pro rata* basis. Enron is willing and able to contribute to such an  
18 effort as long as Enron is satisfied that the resulting consumer education product  
19 will be unbiased, objective and meaningful. Allowing utilities or suppliers to  
20 participate directly in consumer education **will never** accomplish the purpose of  
21 objective consumer education.

1           Moreover, structurally separating consumer education from marketing will  
2           eliminate the potential for customer confusion. It will also reduce the overall cost  
3           if the effort is centralized for all Pennsylvania consumers. If conducted in this  
4           manner, PECO's consumer education program will provide unbiased, objective  
5           and meaningful information to consumers. Separately, suppliers and utilities will  
6           market their products and services to consumers. With these two sources of  
7           information effectively combined, educated consumers will exercise meaningful  
8           choice in the marketplace, and retail competition will develop in a fair and  
9           effective manner.

10   **Q.   HAVE YOU REVIEWED PECO'S CONSUMER EDUCATION**  
11   **PROPOSAL?**

12  
13   A.   Yes, as contained in PECO Statement No. 17. PECO proposes to be the primary  
14   disseminator of customer information in its customer education program and to be  
15   the author of the contents (with Commission consultation). Such a program will  
16   only result in the mixing of marketing and customer education and will not result  
17   in the dissemination of unbiased, objective information to PECO's customers. It  
18   will also result in customer confusion and will benefit no one but PECO. I also  
19   note that PECO is proposing to spend \$24 million in consumer education in the 4  
20   years between 1997 and 2000 and to recover these funds in its T&D rates. I  
21   believe these funds can better be used towards the funding of a centralized,  
22   statewide Commission-administered educational program.

1 Q. DOES PECO'S TESTIMONY CONTAIN EVIDENCE THAT ITS  
2 CUSTOMER EDUCATION WILL NOT BE UNBIASED?

3  
4 A. Yes. PECO states that it will put its own name or will brand all customer  
5 education communications and has proposed a special 800 number dedicated to  
6 customer education. There is no reason for PECO to place its name on any  
7 customer education communications. It is simply unrealistic to believe that  
8 customers will be able to distinguish between such "educational" information and  
9 marketing information bearing the same logo and furnished by an affiliated entity  
10 which will be associated in the public mind with PECO.

11 Q. DOES IT APPEAR THAT THE EDUCATIONAL INFORMATION WILL  
12 BE PROVIDED BY THE SAME PEOPLE WHO MARKET PECO'S  
13 PRODUCTS?

14  
15 A. Yes. In PECO's Consumer Education Program, Exhibit GSK-1 at 9, under the  
16 heading "employment communications," PECO identifies specific sectors,  
17 including "Sales & Marketing Employees," to receive materials to give to  
18 customers seeking information on electric competition. Obviously, those  
19 employees are supposed to sell or market PECO's products, including PECO's  
20 generation, to consumers. This a clear example of mixing marketing and customer  
21 education, and should be precluded by the Commission.

22 Q. DO YOU HAVE ANY BASIS TO SHOW WHY YOU BELIEVE PECO'S  
23 EDUCATIONAL PROGRAM WILL BE BIASED?

24  
25 A. Yes. It is evident in the "educational" materials PECO has already prepared. In  
26 Ms. King's testimony, she refers to a question and answer brochure

1 (Exhibit GSK-3), which PECO has already printed and distributed. One of the  
2 consumer questions states: “You mean I will have to sign a contract with someone  
3 to supply me with electricity?” This question suggests that consumers who choose  
4 competitive suppliers will face an additional and onerous burden in signing a  
5 contract, even though that is already a common existing “burden” ordinarily  
6 required in order to obtain service from their electric utilities. The implicit  
7 suggestion is: avoid the burden of a contract, and stay with your current utility.  
8 Ms. King avoided answering the question of whether PECO will also require such  
9 a contract,<sup>2</sup> but PECO’s current tariff does contain such a requirement.<sup>3</sup>

10 Another question in Exhibit GSK-3 asks: “Could my power supplier shut  
11 off my electricity while we dispute the bill?” The answer suggests that a customer  
12 may be at a disadvantage in the event of a dispute with the power supplier above  
13 and beyond that which the customer would be if there were a billing dispute with  
14 the distribution utility:

15 The power supplier can’t turn your electricity off or on; that is  
16 the responsibility of the local utility. However if the local  
17 utility is informed by the power supplier that your bill is  
18 unpaid and has followed all appropriate PUC regulations and  
19 requirements, your electricity could be shut off. That is why

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<sup>2</sup> See Answer to Interrogatory OCA-VIII-9.

<sup>3</sup> See PECO’s Electric Service Tariff (PA PUC No. 2), Exhibit AAM-2, Rule 4.2:

SERVICE CONTRACT. Every applicant for electric service may be required to sign a contract, agreement, or other form then in use by the Company. . . .

1           it is very important to fully understand the contract with your  
2           power supplier.<sup>4</sup>  
3

4           Both the question and the answer are misleading because, of course, an  
5           electric generation supplier has no authority to initiate a shut-off because of the  
6           existence of PECO as a default provider or carrier of last resort. Other examples  
7           include "speakers bureau" materials which contain extensive discussions of  
8           PECO's \$6.8 billion stranded cost recovery claim and never once mention the  
9           potential services other than generation that could be unbundled and offered  
10          competitively by suppliers. In fact, the names of specific suppliers are never  
11          mentioned— only PECO.

12           Nevertheless, this so-called "educational" brochure, and other materials, are  
13          still being disseminated by PECO. While PECO may, in good faith, have  
14          attempted to summarize its position at the time as to these issues, the problem is  
15          that educational materials should not reflect any single competitor's "position,"  
16          whether voiced through a market participant or the participant's affiliate.

17   **VI. UNIVERSAL SERVICE**

18   **Q.   WHAT IS ENRON'S POSITION AS TO THE NEED FOR A UNIVERSAL**  
19   **SERVICE PROGRAM IN A COMPETITIVE GENERATION MARKET?**

20  
21   **A.**   Enron strongly supports initiatives to establish a Universal Service Program to  
22          provide support to low income, payment troubled Pennsylvanians as long as the

---

<sup>4</sup>   Exhibit GSK-3 at 4 (emphasis added).

1 Program design is competitively neutral, as required by the Act. The objectives of  
2 a Universal Service Program in a competitive generation supply environment  
3 should be not only to ensure that all low-income Pennsylvanians receive required  
4 electric services, but also to secure all of the benefits of the competitive generation  
5 market for these same consumers. In fact, low-income consumers are the ones  
6 who stand to benefit most from the reduced energy prices which the competitive  
7 market will offer. Accordingly, it is extremely important for the Commission to  
8 establish a Universal Service Program for PECO which is consistent with  
9 competitively neutral universal service principles, assuring that universal service  
10 support flows towards the payment of distribution, transmission and generation  
11 services regardless of whom the customer chooses to provide his or her electric  
12 services. The goal should be to stimulate competition in low income markets and  
13 to comply with the competitive principles which are embodied in the Act while  
14 maintaining and, if possible, increasing the benefits to low-income customers  
15 provided by current universal service programs.

16 **Q. HOW SHOULD UNIVERSAL SUPPORT BE ALLOCATED?**

17 A. Distribution, transmission and generation are all components of a single electric  
18 service. Ensuring access to distribution alone will not enable a consumer to turn on  
19 a light bulb. Accordingly, universal service support must be portable and should  
20 be allocated to each component of a low-income customer's electric bill on a *pro*

1            *rata* basis in proportion to the average comparative level of charges on customer  
2            bills.

3            **Q.    WILL LOW INCOME CONSUMERS BE DISADVANTAGED IN ANY**  
4            **WAY IF PECO STRUCTURES ITS UNIVERSAL SERVICE PLAN TO**  
5            **INCLUDE PRO RATA ALLOCATION AND PORTABILITY OF FUNDS?**

6  
7            A.    No. Low-income consumers will receive the same amount of assistance regardless  
8            of how the funds are credited on the bill. Further, in no case will a customer's  
9            service be terminated more quickly under a Universal Service plan with portable  
10           support than it would be under a plan which did not include portability. There is,  
11           therefore, no downside risk to the consumer, but a considerable benefit in that  
12           active competition for the business of low-income consumers should serve to  
13           reduce their bills even further.

14           **Q.    WHAT IS PECO'S POSITION ON PORTABILITY AND PRO-RATA**  
15           **ASSIGNMENT OF UNIVERSAL SERVICE SUPPORT?**

16  
17           A.    In its answer to Interrogatory Enron-IV-6, PECO agreed that its Customer  
18           Assistance Program or other universal service funds should be allocated on a *pro*  
19           *rata* basis regardless of the supplier.

20           **VII.   MISCELLANEOUS ISSUES.**

21  
22           **Q.    ARE THERE ANY OTHER ISSUES PERTAINING TO PECO'S**  
23           **RESTRUCTURING WHICH YOU WISH TO COMMENT ON AT THIS**  
24           **TIME?**

25  
26           A.    Yes. There are three additional issues which require the Commission's attention in  
27           order to assure that PECO's restructuring plan will enable the meaningful

1 development of a competitive market. The first is that representative, historic  
2 usage data or demand profiles for each customer class must be provided by PECO  
3 to suppliers. The second pertains to PECO's proposal that customers that return to  
4 its generation service due to its status as the default provider must enter into a one-  
5 year contractual obligation as a condition of returning to PECO. The third relates  
6 to the information that PECO and other EDCs should be required to submit in  
7 advance of the initiation of phase-in to alert all parties of any potential request for  
8 a delay of the phase-in.

9 **Q. WHY IS IT NECESSARY FOR SUPPLIERS TO RECEIVE**  
10 **REPRESENTATIVE DEMAND PROFILES FOR EACH CUSTOMER**  
11 **CLASS?**

12  
13 A. One of the primary factors which Enron uses to develop prices and service  
14 arrangements for a given customer or customer type is the customer's estimated  
15 usage patterns. While ideally it would be preferable to review a given potential  
16 customer's actual demand profile, I realize that this information is proprietary to  
17 the customer and may not be released by PECO without customer consent.  
18 However, Enron can develop a reasonable estimate of a given customer's usage  
19 patterns by reviewing a representative demand profile for that consumer's  
20 customer class. It is critical that Enron be provided this information by PECO at  
21 least six months prior to the time of initiation of direct access and that the  
22 information be updated upon request. Accordingly, the Commission should ensure  
23 timely access to this information.

1 Q. **WHAT ARE YOUR CONCERNS REGARDING PECO'S PROPOSAL TO**  
2 **IMPOSE A ONE-YEAR COMMITMENT ON CUSTOMERS RETURNING**  
3 **TO PECO AS THE DEFAULT PROVIDER?**

4  
5 A. Requiring a term commitment to a default provider is inconsistent with the purpose  
6 of establishing a provider of last resort obligation. The purpose of the carrier of  
7 last resort obligation is to assure the existence of a default provider when no  
8 market alternative is available, or when the customer chooses not to participate in  
9 the competitive market. The one-year term proposed by PECO goes well beyond  
10 this purpose by imposing a condition that prevents customers from participating in  
11 the market whenever market alternatives are available. In this regard, a mandatory  
12 one-year term improperly detracts from customer choice and should be eliminated  
13 from PECO's restructuring plan. PECO's concerns about "gaming" by customers  
14 can be better addressed by permitting PECO to take account of past supplier  
15 arrearages when considering the level of deposit that can be imposed before a  
16 customer is reinstalled.

17 Q. **EARLIER, YOU MENTIONED THAT THE DIRECT ACCESS PHASE-IN**  
18 **IS SCHEDULED TO BEGIN ON JANUARY 1, 1999 BUT IS SUBJECT TO**  
19 **THE COMMISSION'S ABILITY TO DELAY THE IMPLEMENTATION**  
20 **DATE. DOES THIS POTENTIAL CAUSE CONCERNS FOR SUPPLIERS**  
21 **SUCH AS ENRON?**

22  
23 A. Yes. I understand that the Competition Act authorizes the Commission to delay  
24 the initiation of the phase-in for two additional six-month periods, and specifies  
25 certain circumstances that could justify the delay, including a finding that  
26 implementation would affect reliability, the failure of communications and

1 information systems to be installed, and "other considerations" that would affect  
2 the orderly implementation of the Competition Act. The Commission must make  
3 this determination at least 45 days prior to January 1, 1999. My concern is that  
4 utilities could request a delay a relatively short time before the 45-day notice  
5 period, and direct access could be delayed after Enron and other suppliers had  
6 expended enormous time and resources preparing to provide service and signing  
7 up customers.

8 In such circumstances, such a "surprise" delay would have a significant and  
9 extremely negative effect on the long-term development of competition in  
10 Pennsylvania.

11 **Q. WHAT DO YOU PROPOSE TO MITIGATE THIS POTENTIAL?**

12  
13 **A.** I propose that PECO and other EDCs be required to file with the Commission (and  
14 all participants in the relevant restructuring filings) monthly status reports on the  
15 efforts the EDC is making to be able to implement direct access on schedule. In  
16 this way, each of the Commission, customers and competitors will have regular  
17 and timely information about EDC progress in resolving technical and other  
18 unbundling issues mandated by the Commission. The Commission staff can work  
19 with the EDCs and other interested parties to determine the content of such reports.  
20 If problems are reported, the Commission, the utilities any competitors will be able  
21 to take actions early enough to mitigate any potential delay.

1 Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

2 A. Yes it does.

3

R-00973953  
Enron St. 6.0  
Phila. 10/14/97  
E Halben

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DIRECT TESTIMONY OF

**MICHAEL D. DIRMEIER**

RECEIVED  
97 OCT 20 AM 9:44  
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ON BEHALF OF  
ENRON POWER MARKETING INC.

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DOCKET NO. R-00973953  
RE: PECO RESTRUCTURING

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FOLDER

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TESTIMONY OF MICHAEL D. DIRMEIER

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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:

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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  
PPC { 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

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<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>13</sup>

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<sup>13</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>4</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

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<sup>4</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>

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<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

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<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 **1. 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

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<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 preceding 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]

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<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:

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<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 "On 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>

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<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>13</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

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<sup>12</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>13</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>

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<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

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<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

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<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 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.

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<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.

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<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.

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<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

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<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	<u>Appendix – Mr. Dirmeier’s Prior Regulatory Experience</u>	
2	<u>Arkansas</u>	
3	Arkansas Power & Light Company	
4	• 1985 Grand Gulf proceeding	Docket No. 84-249-U
5	<u>Colorado</u>	
6	Mountain Bell Telephone	
7	• 1982 base rate	I&S 1575
8	• 1984 base rate	I&S 1655
9	• 1986 base rate	I&S 1700
10	• 1991 base rate	Docket No. 90S-544T
11	Public Service Company of Colorado	
12	• 1981 base rate	I&S 1525
13	• 1983 base rate	I&S 1640
14	<u>Delaware</u>	
15	Diamond State Telephone Company	
16	• 1982	Docket No. 82-32
17	• 1985 rate design	Docket No. 84-33
18	Intrastate competition	Regulation Docket No. 10
19	<u>District of Columbia</u>	
20	Potomac Electric Power Co.	
21	• 1987 Tax Reform Act	Formal Case Nos. 852-I & 852-II
22	• 1993 base rate – ERAM, DSM surcharge	Formal Case No. 929
23	and clause treatment of purchase	
24	power costs	
25	• 1994 base rate – utility risk and costs from	Formal Case No. 939
26	nonregulated affiliate	
27	C&P Telephone Company	
28	• 1987 Tax Reform Act	Formal Case Nos. 854-I & 854-II
29	• 1991 base rate case	Formal Case No. 850
30	• 1992 alternative regulation	Formal Case No. 814, Phase III
31	• 1993 base rate case	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 535386, PUC 5351-86, PUC 5354-86  
and PUC 5352-86
- 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

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|----|---|------------------------------|
| 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