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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF PECO ENERGY COMPANY
FOR APPROVAL OF ITS RESTRUCTURING PLAN
UNDER SECTION 2806 OF THE PUBLIC UTILITY CODE

DOCKETED
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TESTIMONY

OF

THOMAS P. HILL, JR.
REGARDING THE ENRON PLAN

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Regarding Reasons Why The Enron Plan
Should Be Rejected And Responding To
Miscellaneous Criticisms Of The Partial Settlement

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**TESTIMONY OF THOMAS P. HILL, JR.
REGARDING THE ENRON PLAN**

I. INTRODUCTION AND PURPOSE OF TESTIMONY

1 Q. **Please state your name and business address.**

2 A. Thomas P. Hill, Jr., 2301 Market Street, Philadelphia, PA 19103.

3 Q. **By whom are you employed and in what capacity?**

4 A. I am employed by PECO Energy Company ("PECO" or the "Company") as Vice
5 President and Controller.

6 Q. **Have you previously participated in this proceeding?**

7 A. Yes. I submitted direct testimony (PECO St. 1) and various supporting exhibits (Exhibits
8 TPH-1 through TPH-14) with PECO's April 1, 1997 restructuring filing. A statement of
9 my qualifications is contained in my direct testimony. I later submitted supplemental
10 direct testimony (PECO St. 1-S) and an accompanying exhibit (TPH-15) in which I
11 responded to certain questions posed by Commissioner Hanger. On July 18, 1997, I
12 submitted rebuttal testimony (PECO St. 1-R) and accompanying exhibits (Exhibits
13 TPH-16 through TPH-25) in which I updated PECO's stranded cost claim and responded
14 to various proposals advanced by other parties to this proceeding. On September 17,
15 1997, I submitted supplemental rebuttal testimony (PECO St. 1-SR) and accompanying
16 exhibits (Exhibits TPH-26 through TPH-28) in which I explained why, in PECO's view,
17 approval of the August 27, 1997 Joint Petition For Partial Settlement Of PECO Energy

1 Company's Proposed Restructuring Plan And Application For A Qualified Rate Order
2 (the "Partial Settlement ") is in the public interest. Finally, on October 8 and 13, 1997,
3 respectively, I submitted rejoinder and supplemental rejoinder testimony (PECO
4 Sts. 1-RJ and 1-SRJ) and accompanying exhibits (Exhibits TPH-29 through TPH-31) in
5 which I responded to various objections to the Partial Settlement.

6 **Q. What is the purpose of your testimony?**

7 **A.** The purpose of this testimony is to respond to the Petition filed by Enron Energy Services
8 Power, Inc. ("Enron") on October 7, 1997 in which Enron requests that the Commission
9 (1) approve an alternative restructuring proposal (the "Enron Plan") in lieu of the Partial
10 Settlement; (2) designate Enron the provider of last resort ("PLR") in PECO's service
11 territory; and (3) direct PECO to issue transition bonds totaling \$5.461 billion at above-
12 market interest rates (the "Enron Petition"). I will first provide an overview of PECO's
13 principal objections to the Enron Plan. I will then explain why the Enron Plan cannot and
14 will not work and why the Partial Settlement should be approved to provide for customer
15 choice and significant rate relief. Finally, I will address miscellaneous criticisms of the
16 Partial Settlement offered by various Enron witnesses.

17 **II. OVERVIEW OF PRINCIPAL OBJECTIONS**
18 **TO THE ENRON PLAN**

19 **Q. Have you had an opportunity to review the Enron Plan and the testimony which**
20 **was submitted in support of it on October 24, 1997?**

21 **A.** Yes, I have.

1 Q. **Please summarize PECO's reaction to the various proposals that Enron has**
2 **advanced.**

3 A. On October 20, 1997, PECO formally responded to the Enron Plan. In its Answer (pp. 6,
4 12), PECO noted as follows:

5 Enron's latest salvo is nothing more than a public relations stunt designed
6 to confuse and mislead customers.

7 * * *

8 Enron has no interest in serving citizens of Southeastern Pennsylvania or
9 providing them any tangible benefits. Instead, the Enron Plan is a thinly-
10 veiled attempt to advance Enron's own corporate self-interest by scuttling
11 a well-conceived settlement package that has the unanimous support of the
12 consumer groups who will be most affected by electric utility restructuring
13 and by eliminating PECO as a competitor.

14 In the two and a half weeks which have elapsed since PECO filed its Answer, I
15 have become even more convinced that the Enron Plan cannot and will not work.

16 Q. **Why will the Enron Plan not work?**

17 A. Because it was dead on arrival. As I will summarize and other PECO witnesses will
18 explain, Enron's securitization scheme, which would allow it to pocket approximately
19 \$1.0 billion in present value benefits **without having to put up a dime**, is severely
20 flawed and totally unachievable. Because the proposed securitization fails, Enron will
21 have no money to "pay" PECO for its stranded costs and will be unable to deliver on its
22 offer to reduce rates by 20% -- the promised savings are simply illusory. More
23 fundamentally, however, the Enron Plan will not work because it is not in the best

1 interests of customers and employees, would stifle competition in the long-term and
2 would require the Commission to violate key provisions of the Competition Act.

3 **Q. How does Enron fare under the “Enron Plan”?**

4 A. Under Enron’s “Choice Plan”, an electric generation supplier (“EGS”), such as Enron,
5 could “choose” to terminate service without cause and leave customers high and dry with
6 only five days to find a new EGS. Or, Enron could “choose” to terminate its proposed
7 MBC (metering, billing and collections) Services Agreement with PECO, and thereby
8 potentially put hundreds of Pennsylvanians out of work, if it believed Commission action
9 had materially adversely affected its rights. Or, Enron could “choose” to engage in anti-
10 competitive behavior because its proposed Code of Conduct would allow it to share
11 customer-specific, insider information with its marketing affiliates.

12 **Q. How does the Enron Plan treat PECO and its customers?**

13 A. Not surprisingly, PECO and its customers do not fare nearly as well. Thus, PECO could
14 not “choose” to enter into short or long-term sales of energy and capacity because Enron
15 would have a “call” on its generation. PECO also could not “choose” how much of its
16 stranded costs to securitize, even though that right is expressly provided to PECO by the
17 Competition Act. Nor could customers “choose” to continue to receive generation
18 service from PECO because PECO would be barred from selling to them in its own
19 name. Similarly, low income customers would effectively be precluded from “choosing”
20 an EGS because the Enron Plan does not provide for the portability of all universal
21 service benefits. In short, under Enron’s vision of the future, prudent investment would

1 not be the only victim of electric utility restructuring -- vital consumer protections would
2 be "stranded" as well.

3 Q. **Are there any other reasons why the Enron Plan should be rejected?**

4 A. Yes, and they will be described in the next section of my testimony. At this point, it is
5 sufficient to state that Enron's goal is to cripple PECO financially without exposing itself
6 to any risk and without assuming any obligations whatsoever. Beyond that, however, the
7 Enron Plan is really no "plan" at all. Perhaps the best evidence of this may be found in
8 (1) Enron's insistence that the Commission declare that it is not a "public utility" and
9 (2) Enron's attempt to reserve unto itself the "choice" to unilaterally withdraw its "plan"
10 **at any time** -- i.e., even following Commission approval (see Exhibit TPH-33). In other
11 words, Enron wants to be able to step away should the deal it strikes in Pennsylvania not
12 meet its expectations.

13 **III. SPECIFIC REASONS WHY THE ENRON**
14 **PLAN SHOULD BE REJECTED**

15 A. **The Enron Plan Is Anti-Consumer**

16 Q. **Why is the Enron Plan contrary to consumers' best interests?**

17 A. The principal reason that the Enron Plan is anti-consumer is that it will not work -- the
18 promised 20% rate savings will never be delivered. Consequently, its consideration will
19 simply delay -- in fact, has already delayed -- the realization of the benefits that the
20 Partial Settlement offers customers.

1 Q. **You stated previously that Enron's securitization scheme is unachievable. Please**
2 **elaborate.**

3 A. Enron's proposal is fatally flawed in several key respects. First, and as explained by
4 Messrs. Mitchell and Hiller, in order for the transition bond financing to proceed, the
5 mortgage trustee of PECO's bonds -- in this instance, First Union National Bank -- would
6 have to release its lien on the Intangible Transition Property ("ITP") created by Enron's
7 proposed Qualified Rate Order ("QRO"). This cannot happen, however, because the
8 securitization outlined Enron witnesses Fastow and Voorhees would not provide PECO,
9 or its special purpose entity, the full fair value of its ITP. As noted previously, the Enron
10 Plan falls apart once the proposed securitization goes away.

11 Q. **Why would PECO not receive full fair value?**

12 A. Because a significant portion of that value -- approximately \$1.0 billion -- would be
13 siphoned off to Enron through the issuance of the Class B securities. As a result, I am
14 advised that the mortgage trustee could not release its lien without violating the Trust
15 Indenture Act of 1939. Significantly, Mr. Rayzis confirms in his testimony that First
16 Union could not proceed with the transaction in the absence of a statement from PECO --
17 which PECO could not give -- that it would receive full fair value for its ITP.

18 Q. **Are there other problems with Enron's securitization scheme?**

19 A. Yes. As Mr. Hiller points out, Enron's proposed Intangible Transition Charges ("ITCs")
20 will not generate sufficient revenues for PECO or its special purpose entity to service

1 (i.e. pay the interest on) the transition bonds in the first several years following their
2 issuance.

3 Q. **How do you reconcile Mr. Hiller's testimony with Mr. Kean's assertion to the**
4 **contrary?**

5 A. Mr. Kean ignores two important factors. First, the Competition Act limits the term of
6 transition bonds to ten years (i.e. 120 months) -- the Enron Plan assumes a 124-month
7 life. Second, Mr. Kean apparently fails to recognize that the ITC revenue stream will be
8 subject to Gross Receipts Tax. As such, Enron's proposed ITCs are understated by an
9 additional 4.4%.

10 Q. **What are the consequences of these shortfalls?**

11 A. Because the ITC revenue flows would not be sufficient to pay the interest on the Class A
12 and Class B securities, including related tax obligations, the specific purpose entity would
13 immediately be in default. Perhaps more importantly, as explained by Mr. Sharpe, the
14 Internal Revenue Service would likely view the transaction as a taxable sale from PECO
15 to Enron's grantor trust, rather than a non-taxable financing, and thereby expose PECO to
16 an immediate \$2.25 billion tax liability. Such tax treatment would completely wipe out
17 the benefits of securitization and would kill any possibility that PECO could proceed with
18 the deal even if all of the other flaws in the Enron Plan could be corrected.

19 Q. **Why is the proposed securitization so important to Enron?**

1 A. The proposed securitization is critical to Enron for two reasons: (1) it provides Enron the
2 cash to “pay” PECO for its stranded costs; and (2) it enables Enron to skim off the
3 approximate \$1.0 billion windfall calculated by Mr. Hiller. In contrast, under the Partial
4 Settlement, customers are guaranteed significant rate relief even if there proves to be a
5 legal impediment to securitization. Additionally, customers will receive the full rate
6 relief and will not bear any of the market risk which PECO retains under the Partial
7 Settlement.

8 Q. **Putting aside the issue of securitization, are there additional reasons why the Enron**
9 **Plan is anti-consumer?**

10 A. Yes. The Enron Plan is adverse to customers for **at least** five other reasons.

11 **Lack of Rate Certainty.** The Enron Plan exposes customers to the risk that the market
12 price of energy and capacity will exceed projected levels. Unlike the Partial Settlement,
13 the Enron Plan contains no absolute protections for customers, but rather permits Enron
14 to pass through to default customers its actual costs in the event they are greater than the
15 “generation credits” set forth in Enron’s Petition. Consequently, any savings customers
16 might experience in the first few years under the Enron Plan could easily erode or
17 disappear entirely.

18 **Upward Trending Stranded Cost Recovery.** Enron witness Bohi observes that a CTC
19 (or ITC) could be designed to increase, rather than decrease, and yet generate the same
20 level of stranded cost recovery. Under the Enron Plan, the recovery of stranded costs

1 trends upward. This backloading of the recovery of stranded costs is not in customers'
2 best interests. Indeed, the consumer groups that executed the Joint Petition insisted that
3 past investments be paid off earlier rather than later to reflect the transition to
4 competition, which explains why the CTCs set forth in the Partial Settlement decline over
5 time.

6 **Loss of System Reliability.** Under the Enron Plan, virtually all of the work required to
7 ensure that customers receive high quality electric service would continue to be
8 performed by PECO.^{1/} The net effect of Enron's proposals, however, would be to
9 paralyze PECO's generation function for the reasons discussed by Mr. Pratzon and, as
10 described by Mr. Mitchell, to cripple the Company financially. As such, PECO's ability
11 to maintain system reliability and to provide customers the high quality of service they
12 have come to expect -- i.e., the core values of the Competition Act -- would be severely
13 compromised.

14 **Lack of Consumer Protections.** Even though Enron claims that it only wants to "step
15 into PECO's shoes", the tariff it has proposed would completely redefine the
16 customer/utility relationship, "stranding" the Commission's role in the process. More
17 specifically, an EGS, like Enron, would become PECO's customer for all practical

^{1/} I say "virtually" because Enron attempts to insert itself into the emergency response process by requiring that end-users first contact an EGS-designated agent (e.g., in Enron's case, a telephone number in the Houston control room). Needless to say, a utility's emergency response capability is a vitally important customer service function and one can only imagine how an arrangement of the nature envisioned by Enron would have worked out during the ice storms and rolling brownouts of January 1994.

1 purposes and the EGS' dealings with end-users would be largely deregulated. Even if
2 Enron could be held generally accountable in its interactions with customers, as to which
3 there is considerable doubt, important consumer protections would be lost. Mr.
4 Sundermeir inventories the damage in his testimony.

5 **Loss of Extra-Statutory Concessions.** As PECO has pointed out throughout this
6 proceeding, there are several important benefits of the Partial Settlement which cannot be
7 realized absent PECO's consent. They include: (1) the 10% rate reduction on September
8 1, 1998; (2) the acceleration of customer choice; and (3) the extension of the transmission
9 and distribution and generation rate caps. Those benefits, as well as PECO's
10 commitment to expand significantly its existing universal service programs and the
11 agreement by other Joint Petitioners to withdraw certain pending appeals, would be lost if
12 the Partial Settlement is not approved without modification.

13 **B. The Enron Plan Is Anti-Competitive**

14 **Q. You previously stated that the Enron Plan would stifle competition in the long-term.**
15 **Please explain.**

16 **A.** The Enron Plan is anti-competitive in a number of significant respects. First, it is
17 designed to eliminate PECO as a competitive supplier in the Southeastern Pennsylvania
18 region. This is accomplished by (1) barring PECO from competing through a divisional
19 EGS; (2) precluding PECO from using its name or logo; and (3) requiring PECO to
20 commit a substantial portion of its generation output for sale without imposing on Enron

1 any obligation to buy. The anti-competitive effects of the first two restrictions are
2 discussed by Mr. Sidak; the wholly one-sided and non-compensatory nature of Enron's
3 proposed Power Sales Agreement is explored at length by Mr. Pratzon.

4 Q. **Please continue.**

5 A. A potentially more serious problem with the Enron Plan is that it would be virtually
6 impossible for **any** EGS to compete with Enron after the first few years of the transition
7 period. This is because the proposed generation credits in the latter years are set well
8 below the levels which every other market price witness, including Enron's own expert,
9 Mr. Mitnick,^{2/} has projected. Consequently, customers would have a tremendous
10 incentive to eventually return to their "default" provider and Enron, having locked up
11 PECO's generation at below-market prices, would be in a position to welcome them
12 back. Dr. Hieronymus describes this phenomenon in his testimony.

13 Q. **How does Enron justify its proposed generation credits?**

14 A. It doesn't. No witness explains how the figures set forth on page 13 or Exhibit 1 to the
15 Enron Petition were derived or why they depart so dramatically from the corresponding
16 figures which Mr. Mitnick, testifying on behalf of Enron, sought to defend in hearings
17 held one week **after** the Enron Petition was filed. Nor, for that matter, does any witness
18 explain why the generation credits set forth in Enron's proposed tariff vary from the

^{2/} A graphic presentation of the generation credits proposed by Mr. Mitnick when he appeared in mid-October and the generation credits under the Enron Plan is provided in Exhibit TPH-34.

1 figures listed in the Joint Petition. However, Enron's silence on this point is not
2 surprising -- as made clear by Dr. Hieronymus and Mr. Freeman, Enron's generation
3 credits have no evidentiary basis.

4 **Q. In what other respects is the Enron Plan anti-competitive?**

5 A. The Enron Plan would allow Enron to leverage its position as PLR to the detriment of
6 potential competitors. For example, Enron's MBC Services Agreement would require
7 PECO to furnish Enron with valuable information regarding the consumption and
8 payment patterns of customers. However, Enron's proposed Code of Conduct, which
9 prohibits the sharing of such information with affiliates, applies only to PECO **and not to**
10 **Enron**. Consequently, as Messrs. Crowe and Sidak point out, Enron could provide **its**
11 affiliated EGS with sensitive customer information to the exclusion of other competitors.

12 **C. The Enron Plan Is Contrary To The Letter And Spirit**
13 **Of The Competition Act**

14 **Q. Mr. Hill, you previously stated that the Enron Plan was contrary to the Competition**
15 **Act. Please explain.**

16 A. I believe the Enron Plan, if implemented, would violate certain provisions of the
17 Competition Act and contravene the General Assembly's intent in a number of areas,
18 including: (1) the role of the PLR; (2) the proposed unbundling of "non-wires" services;
19 (3) securitization; and (4) the treatment of employees.

1 Q. **Why is the Enron Plan at odds with the Competition Act's provisions regarding the**
2 **PLR or default service provider?**

3 A. As PECO noted in its Answer to the Enron Petition, Section 2807(e)(i) of the
4 Competition Act expressly provides that an electric distribution company, such as PECO,
5 shall have the full obligation to serve as long as it collects either a CTC or an ITC. I am
6 advised that the Commission therefore is powerless to entertain Enron's request at this
7 time. Moreover, I seriously doubt that the General Assembly intended to authorize the
8 Commission to hand over PLR responsibilities to an out-of-state marketer with no
9 facilities in the Commonwealth and, by all appearances, no assets whatsoever and which,
10 as Mr. Mitchell points out, would not be subject to the financial safeguards imposed on
11 "public utilities".

12 Q. **In his testimony, Mr. Kean implies that the necessary financial support could be**
13 **provided by Enron's "multi-billion dollar publicly-traded parent company". Would**
14 **not this be sufficient to allay any concerns which the Commission might have?**

15 A. There is no way of knowing because Enron has not identified any of the terms and
16 conditions under which that support would be provided. In fact, when asked in discovery
17 to describe in detail the appropriate financial support that Enron believes is needed to
18 demonstrate its financial wherewithal to serve as the PLR, Enron replied that "the precise
19 nature of the financial support would be left to the Commission to request in the first
20 instance. Enron would respond appropriately at that time." Thus, besides failing to
21 propose any financial assurance, Enron has not even committed to accept the financial

1 support that the Commission might deem appropriate. It is worth recalling that, under the
2 Enron Plan, the Commission has no jurisdiction over Enron or its parent, so the
3 Commission would be powerless to require any financial support. I would also note in
4 this regard that neither Enron's "multi-billion dollar publicly-traded parent company" nor
5 its other affiliates have any assets in Pennsylvania.

6 **Q. In what respects is Enron's proposed unbundling of "non-wires" services**
7 **inconsistent with the Competition Act?**

8 A. Section 2807(d) of the Competition Act clearly anticipates that the local electric
9 distribution company shall continue to provide customer service functions, such as meter
10 reading, complaint resolution and collections, and further requires that such services "be
11 maintained at the same level of quality under retail competition". In addition, as
12 explained by Mr. Crowe, the guidelines adopted by the Commission to ensure
13 compliance with this provision ("Folder 11 Guidelines") enumerate specific activities
14 which must continue to be performed by the EDC. Enron's proposal to unbundle and
15 deregulate these critical customer service functions therefore is contrary to the Act, the
16 Commission's guidelines and the public interest.

17 **Q. What concerns do you have regarding Enron's proposed securitization scheme?**

18 A. As I mentioned previously, the biggest problem with Enron's proposed securitization is
19 that it will not work for the reasons spelled out by Messrs. Mitchell, Hiller, Rayzis and
20 Sharpe. This is important because, as I previously indicated, securitization is the lynch-
21 pin of the Enron Plan. I would only add that Section 2812(b)(5) of the Competition Act

1 appears to provide that the EDC shall impose and collect ITCs and remit such recoveries
2 to or for the account of the financing party. Under Enron's proposal, these
3 responsibilities are turned over to all EGSs thereby raising credit and collection concerns
4 not envisioned by the Act.

5 Q. **You also alluded to the Enron Plan's treatment of employees. What concerns are**
6 **raised in this regard?**

7 A. In my direct testimony, I noted that PECO did not anticipate the need to lay off
8 employees as the result of the move to a competitive generation market. Even though the
9 Partial Settlement would require it to take a \$2.0 billion write-off, PECO continues to
10 believe that restructuring will not have a material effect on its workforce and that any
11 changes in staffing levels could be accomplished through attrition and transfers within the
12 Company. The same cannot be said of the Enron Plan.

13 Q. **Why?**

14 A. Principally for two reasons. First, as Mr. Mitchell explains, implementation of the Enron
15 Plan would leave PECO in a severely weakened financial condition. Under such
16 circumstances, PECO might have no other choice but to let employees go. Second,
17 Enron's proposed MBC Services Agreement runs for only five years and, as Mr. Crowe
18 points out, could arguably be terminated by Enron at its sole discretion before that date.

19 Q. **But Mr. Kean claims that the MBC Services Agreement is designed to avoid**
20 **employee "disruptions".**

1 A. Yes, he does. However, Enron's concern for employees is, at best, problematic in light of
2 the following comments reportedly offered by Enron President, Jeffrey Skilling, this past
3 Spring: "You must cut costs by 50 or 60 percent. Depopulate. Get rid of people. They
4 gum up the works." As such, I must question whether Enron takes seriously the General
5 Assembly's directive that the transition to competition be fair to all stakeholders,
6 including the employees of incumbent utilities (Section 2802(8)).

7 **IV. RESPONSE TO MISCELLANEOUS ENRON**
8 **CRITICISMS OF THE PARTIAL SETTLEMENT**

9 **Q. Messrs. Kean and Oliver contend that the Partial Settlement would allow PECO to**
10 **"overrecover" its stranded costs and that there is therefore "hidden value" which**
11 **can be released through securitization to provide even greater rate reductions. Are**
12 **they correct?**

13 A. No, they are not. The Partial Settlement is an integrated package of rights and
14 responsibilities, of which the recovery of a certain level of stranded costs is only one
15 element. Messrs. Kean and Oliver focus exclusively on the alleged benefits to PECO,
16 including securitization, while conveniently ignoring the costs of the obligations which
17 the Partial Settlement imposes upon it (i.e. the other "transition costs" embedded in the
18 Partial Settlement).

19 **Q. Please elaborate.**

20 A. Enron's claim of "overrecovery" assumes erroneously that the CTCs set forth in the
21 Partial Settlement were designed solely to provide PECO recovery of the present value

1 equivalent of \$5.461 billion of stranded costs. However, that was not how the Partial
2 Settlement was constructed. Rather, the other Joint Petitioners, particularly the consumer
3 representatives, recognized that there was value in rate certainty and rate stability, as well
4 as in other concessions made by PECO, and, on that basis, accepted higher CTCs to
5 obtain those benefits. In other words, the Partial Settlement's CTCs are intended to
6 recover not only the stipulated amount of stranded costs, but to fund other initiatives as
7 well.

8 **Q. Have you prepared an exhibit which quantifies the cost of these other undertakings?**

9 **A.** Yes. Exhibit TPH-35 first notes that the revenue requirement (i.e. return of and on)
10 associated with the recovery of \$5.461 billion equals \$6.024 billion excluding gross
11 receipts tax ("GRT") and \$6.301 billion inclusive of GRT. As indicated by the figures at
12 the bottom of the two columns, the projected CTC revenue streams under the Partial
13 Settlement, both exclusive and inclusive of GRT, fall short of the revenue requirements
14 on the \$5.461 billion of stranded costs. Taking the analysis one step further, in order to
15 fund its other obligations under the Partial Settlement (i.e., industrial rate concessions,
16 universal service expansion, early rate reduction and transmission and distribution rate
17 cap extension), PECO would have to recover an additional \$448 - \$632 million in present
18 value. Even after reflecting the projected benefit to PECO of securitization, PECO would
19 still need to recover between \$5.87 billion and \$6.66 billion on a present value basis
20 (exclusive of GRT). Under the Partial Settlement, PECO projects it will recover
21 approximately \$5.89 billion through the CTC revenues, the lower end of the range.

1 Hence, even after unlocking the “hidden value” of securitization, PECO will not
2 “overrecover” the costs of the integrated settlement package.

3 Q. **Mr. Oliver further implies that PECO may “overrecover” its costs due to so-called**
4 **price elasticities. Please comment.**

5 A. Mr. Oliver’s thesis is that the reduction in the cost of electricity, as provided for in the
6 Partial Settlement, will stimulate a rise in demand as customers increase their
7 consumption in response to lower prices. I can state from a practical review there is no
8 reason to believe that PECO’s customers will respond to lower prices as Mr. Oliver
9 postulates. Specifically, as indicated in Exhibit TPH-36, the real (i.e. inflation-adjusted)
10 price of electricity in PECO’s service territory has, in fact, declined over the past ten
11 years. Over that same period, retail sales have been flat. As such, I see no real evidence
12 of the theory espoused by Mr. Oliver.

13 Q. **Have you reviewed Mr. Oliver’s analysis of the relative benefits to customers of the**
14 **Partial Settlement and the Enron Plan?**

15 A. Yes. Mr. Oliver’s analysis suffers from the same deficiencies that I previously discussed.
16 More specifically, Mr. Oliver ignores the costs to PECO of all of the obligations it has
17 accepted under the Partial Settlement. Those costs are real and yet Enron presumes that
18 PECO’s shareholders will willingly absorb them **in addition to the \$2.0 billion write-off**
19 even if other terms of the Partial Settlement are not accepted.

1 Moreover, Mr. Oliver assumes that PECO will price all sales to default customers at the
2 “capped” rate levels. Although that apparently is Enron’s intent should **its** proposal be
3 accepted, PECO is obligated to offer default customers market-based prices, as required
4 under *Section 2807 of the Competition Act*. Thus, under the *Enron Plan*, default
5 customers will be required to pay above-market rates in the early years, while under the
6 Partial Settlement default customers will always enjoy the benefits of market rates
7 without having to shop for supply.

8 **Q. Mr. Kean insists that the Enron Plan permits PECO “the full and complete**
9 **stranded cost recovery of the \$5.461 billion amount contained in the Partial**
10 **Settlement”. Do you agree?**

11 **A.** No. As I previously explained, Messrs. Kean and Oliver ignore the other “transition
12 costs” embedded in the Partial Settlement which, as noted in Exhibit TPH-35, are
13 expected to range from \$450 million to \$660 million in net present value. Further, if
14 Enron’s various assumptions/proposals are accepted, PECO has substantially understated
15 its stranded costs and is being forced to forego recovery of an amount much larger than
16 the \$2.0 billion that it has agreed to write off as part of the Partial Settlement.

17 **Q. Why does the Enron Plan suggest that PECO has understated its stranded costs?**

18 **A.** Four reasons stand out. First, if Mr. Slater’s price projections are to be believed (and
19 PECO submits they should not), then PECO has overstated the market value of its
20 production plant and, correspondingly, understated its stranded generation-related costs.
21 Indeed, Dr. Hieronymus estimates that the use of Mr. Slater’s market price escalation rate

1 would increase PECO's stranded costs by a minimum of \$1.0 billion. Second, as
2 Messrs. Crowe and Sundermeir explain, Mr. Reisling's proposed non-wires credit is
3 grossly overstated and, if adopted, would result in additional stranded costs which would
4 have to be recovered through some other mechanism. Third, the Enron Plan fails to
5 provide for the recovery by PECO of issuance and redemption costs associated with
6 securitization, which Mr. Mitchell indicates could exceed \$500 million. Finally, the
7 Enron Plan initiates competition on September 1, 1998 and effectively would require
8 PECO to absorb approximately \$160 million of costs which would be stranded at that
9 date but would otherwise have been recovered during the last four months of 1998.

10 **Q. Enron criticizes the Partial Settlement because it makes no explicit provision for the**
11 **reconciliation of stranded cost recovery. Please comment.**

12 **A.** As PECO has indicated in response to discovery, it does not believe that the Competition
13 Act requires annual reconciliation in the form of actually recouping undercollections or
14 refunding overcollections. Rather, the statute invokes the provisions of Section 1307(e)
15 of the Code which, by its terms, gives the Commission broad discretion not to direct
16 additional recoveries or refunds for "good cause being shown".

17 "Good cause" is present here because the parties, in negotiating the Partial Settlement,
18 effectively pre-reconciled stranded cost recovery and, in doing so, incorporated a number
19 of other features (e.g., industrial rate concessions, expansion of universal service) which
20 provide value to customers. Indeed, the mechanical reconciliation envisioned by Enron
21 was specifically rejected by the consumer parties who favored rate certainty and stability

1 and wanted to shift sales risk to PECO. Specifically, Paragraph No. 11 of the Partial
2 Settlement states: “The Joint Petitioners expressly acknowledge that these countervailing
3 risks and potential benefits were taken into account and have been fully reflected in the
4 rates described in Paragraphs 8-10 above.” It was also recognized that sales have
5 declined over the past several years and that the impact of weather variations on rates
6 would be eliminated if the reconciliation were embedded in the prices established in
7 Paragraph 9 of the Partial Settlement.

8 **Q. Are there any other factors which the Commission should consider in evaluating the**
9 **question of reconciliation?**

10 A. As I mentioned earlier, the Partial Settlement is an integrated package of rights and
11 obligations, all of which were taken into account and reflected in the proposed CTCs.
12 Consequently, any “true-up” would need to reconcile each and every element set forth in
13 Exhibit TPH-35. This would be a virtually impossible process, as the parties to the
14 Partial Settlement recognized.

15 **Q. Are there any other issues that you would care to address?**

16 A. Yes. At page 28 of his testimony, Mr. Kean indicates that Enron intends to amend its
17 Petition and Plan to clarify its position with respect to universal service. To the best of
18 my knowledge, no such filing has yet been made. PECO obviously reserves the right to
19 supplement its responsive testimony once Enron’s position on this issue is known.

1 Q. **Mr. Hill, are you sponsoring PECO's responses to the Commission's**
2 **Interrogatories?**

3 A. Yes. The responses were previously submitted to the Commission and all parties on
4 October 31, 1997.

5 Q. **Does that conclude your testimony?**

6 A. Yes, it does.

Enron Energy Services Power, Inc.

Docket No. R-00973953

Docket No. P-00971265

SENATOR VINCENT J. FUMO

Interrogatories, Set II

Witness: Steven J. Kean

FUMO-II-6:

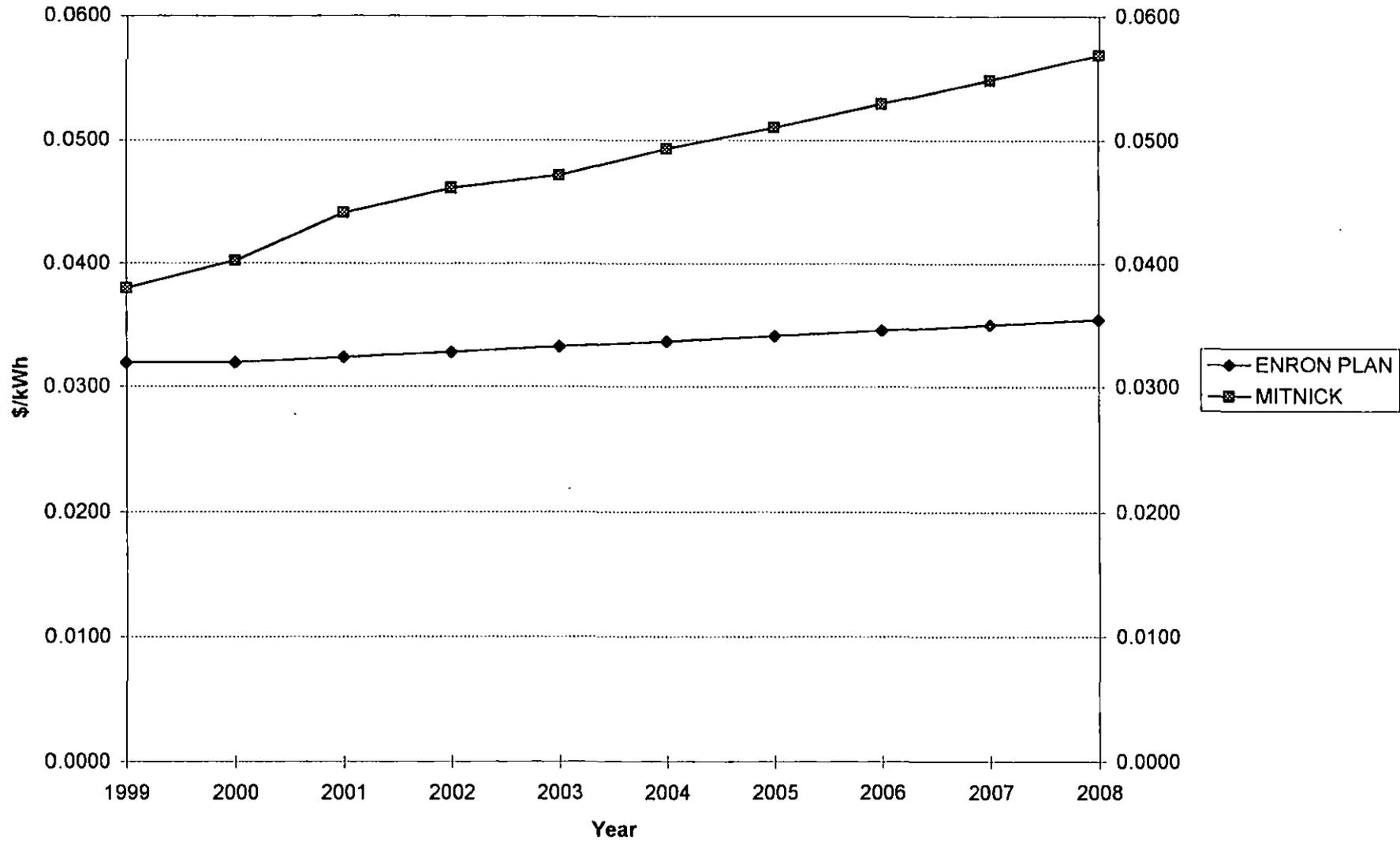
Please provide a detailed explanation of the meaning and consequence of paragraph 35(e) on page 29 of the Enron Petition. Please include a response to the following:

- a) What limitations, if any, are associated with the phrase "withdraw its Petition and the Choice Plan at any time" as used in paragraph 35(g)?
- b) Does Enron reserve the right to "withdraw its Petition and the Choice Plan at any time" following Commission approval? If so, would said withdrawal effect the professed 20% customer rate reduction? Would said withdrawal effect the remaining provisions of the Partial Settlement that are incorporated as part of the Enron Petition?

Response:

- a) Known limitations are identified in Section VI of Enron's Petition. There may be other limitations not known at this time.
- b) Yes; Yes; Yes.

Enron Plan vs Mitnick



PECO Energy Company
 Components Included in
CTC Revenue Recovery

	<u>Excluding GRT</u>	<u>With GRT</u>
Revenue Requirement on \$5.461 B	\$6,024 M (a)	\$6,301 M
Plus:		
Cost of LILR/EER Modifications	\$33 M - \$117 M (b)	\$35 M - \$122 M
Universal Service Program Improvements	108 M (b)	113 M
10% Reduction in Rates Effective 9/1/98	107 M (b)	112 M
T&D Rate Cap extension - i.e. to 1/1/2004	<u>200 M - 300 M (c)</u>	<u>209 M - \$314 M</u>
Total Additional Revenue Requirement	\$448 M - \$632 M	\$469 M - \$661 M
Total Revenue Requirement	\$6,472 M - \$6,656 M	\$6,770 M - \$6,962 M
Less:		
Value of Securitization (\$0-\$4 B)	(\$0 - \$600 M) (d)	(\$0 M - \$628 M)
Required CTC Recovery (PV @ 9/1/98)	<u>\$5,872 M (e) - \$6,656 M (f)</u>	<u>\$6,142 M - \$6,962 M</u>
Estimated CTC Revenue (PV @ 9/1/98)	\$5,893 M (g)	\$6,164 M

(a) Per PECO Statement 3RJ, Exhibit ABC-13

(b) Per PECO Response to PECC-R-9(a)

(c) Per PECO Response to PECC-R-9(a)

Note: The response calculates a specific amount, the above represents a range around that amount

(d) $(\$3/\text{MWH} \times 33,569,000 \text{ MWH}) \times (\text{P/A}, 8.71\%, 10 \text{ Yrs.}) \times (\text{P/F}, 8.71\%, 0.33 \text{ yrs.}) \times .956$

(e) \$6,472 M - \$600 M

(f) \$6,656 M - \$0

(g) Exhibit ABC-13

Exhibit TPH-36

Actual Unit Revenue versus 1988 Basis Unit Revenue
cents/kwh

	Actual Unit Revenue <u>cents/kwh</u>	1988 Basis Unit Revenue <u>cents/kwh</u>	Deflator <u>1988 base</u>
1988	8.66	8.66	100.00
1989	9.08	8.71	104.20
1990	9.76	8.98	108.71
1991	10.25	9.07	113.03
1992	10.29	8.86	116.14
1993	9.89	8.30	119.21
1994	9.84	8.06	122.06
1995	9.92	7.93	125.16
1996	9.95	7.77	128.00

A-00973953, R-00973953 00001 -00007
PECO STATEMENT NO. 1-S *etal*

Phila 11/17/97
C.H.

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF PECO ENERGY COMPANY
FOR APPROVAL OF ITS RESTRUCTURING PLAN
UNDER SECTION 2806 OF THE PUBLIC UTILITY CODE

KJR

DOCKETED
NOV 20 1997

SUPPLEMENTAL DIRECT TESTIMONY

OF

THOMAS P. HILL, JR.

**DOCUMENT
FOLDER**

Regarding Investment in Non-regulated Businesses

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1 SUPPLEMENTAL DIRECT TESTIMONY OF THOMAS P. HILL, JR.

2 I. INTRODUCTION

3 Q. Please state your name and address.

4 A. Thomas P. Hill, Jr., PECO Energy Company ("PECO" or the "Company"), 2301
5 Market Street, Philadelphia, PA 19103.

6
7 Q. Have you previously participated in this proceeding?

8 A. Yes. I submitted direct testimony (PECO St. No. 1) and various supporting
9 exhibits (Exhibits TPH-1 through TPH-14) with PECO's Restructuring
10 Application. A statement of my qualifications is contained in my direct testimony.

11
12 Q. Does this testimony supplement your prior direct testimony?

13 A. Yes. The purpose of this supplemental direct testimony is to respond to Question
14 No. 8 posed by Commissioner John Hanger in his Statement accompanying the
15 Commission's February 13, 1997 Order at Docket No. M-00960890F0003.

16
17 II. RESPONSE TO COMMISSIONER HANGER'S QUESTION

18 Q. Commissioner Hanger's Question No. 8 reads as follows: "Provide the date
19 and the amount of each investment in non-Pennsylvania PUC jurisdictional
20 companies for the last three years. Identify company revenues and assets
21 derived from such investments Please respond.

22 A. I have compiled the information requested as shown in Exhibit TPH-15.

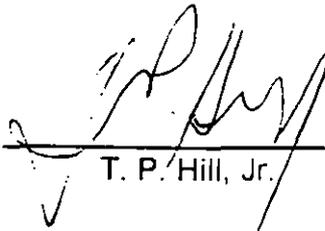
1 Q. **Does this conclude your supplemental direct testimony?**

2 A. Yes, it does.

VERIFICATION

I, T. P. Hill, Jr., hereby declare that I am Vice President and Controller of PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Application are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. §4904 pertaining to false statements to authorities.

Date: June 4, 1997



T. P. Hill, Jr.

<u>Description</u>	<u>Investment (Assets)</u>			<u>Net Income (Loss)</u>		
	<u>12/31/96</u>	<u>12/31/95</u>	<u>12/31/94</u>	<u>12/31/96</u>	<u>12/31/95</u>	<u>12/31/94</u>
PECO Wireless	50,962,644	0	0	78,000	0	0
Hyperion TeleCom- munications	8,784,500	0	0	(1,165,500)	0	0
Exelon	757,198	0	0	(1,404,770)	0	0
Energy Trading Co.	700,000	0	0	0	0	0
Eastern Pa. Development Corp.	38,540,383	40,778,781	42,298,769	(1,206,626)	(6,313,527)	(13,837,015)
NextWave Telecom	20,045,000	0	0	0	0	0
PECO Gas Supply Co.	2,252,568	100,000	0	(247,432)	0	0
Eastern PA Exploration Company	111,803	118,803	(722,339)	(7,000)	291,142	(347,811)

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etal

PECO STATEMENT NO. 15-S

Phila 11/17/97
E.H.

BEFORE THE

KJR

PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF PECO ENERGY COMPANY
FOR APPROVAL OF ITS RESTRUCTURING PLAN
UNDER SECTION 2806 OF THE PUBLIC UTILITY CODE

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SUPPLEMENTAL DIRECT TESTIMONY

OF

GREGORY A. CUCCHI

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Regarding Proposed Restructuring Procedures

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1 SUPPLEMENTAL DIRECT TESTIMONY OF GREGORY A. CUCCHI

2

3

4 I. INTRODUCTION

5

6

7 Q. Please state your name and address.

8 A. Gregory A. Cucchi, PECO Energy Company ("PECO" or the "Company"), 2301
9 Market Street, Philadelphia, PA 19103.

10

11 Q. Have you previously participated in this proceeding?

12 A. Yes. I submitted direct testimony (PECO St. No. 15) and various supporting
13 exhibits (Exhibits GAC-1 through GAC-5) with PECO's Restructuring
14 Application. A statement of my qualifications is contained in my direct testimony.

15

16 Q. Does this testimony supplement your prior direct?

17

18 A. Yes. The purpose of this supplemental direct testimony is to respond to certain
19 questions raised by Commissioner Hanger in his Statement accompanying the
20 Commission's February 13, 1997 Order at Docket No. M-00960890F0003.

21

22 II. RESPONSE TO COMMISSIONER HANGER QUESTIONS

23 Q. Describe the relevant control area for coordination of dispatch and
24 transmission facilities. How will the control area be managed? What form
25 will the control area operator take? Indicate how the control area operator
26 will consider lowest cost for all users of the transmission system.

1 A. For customers within PECO Energy Company's service territory, the
2 Pennsylvania-New Jersey-Maryland ("PJM") control area is the relevant control
3 area for the coordination of dispatch and transmission facilities. At present, the
4 Office of Interconnection of the PJM Interconnection, L.L.C. ("PJM OI") serves
5 as the control area operator for PJM. However, there are presently efforts
6 underway to establish an independent system operator for the PJM region. At this
7 stage, it is unclear what the ultimate form of an ISO will be. In any event, the PJM
8 OI or ISO will provide non-discriminatory transmission service to all customers.
9 That entity can minimize the cost of transmission usage for transmission customers
10 by (1) carefully controlling the expenses associated with its own operation and (2)
11 offering/developing the types of transmission products (e.g. off-peak v. peak) that
12 provide customers with price options and greater scheduling flexibility.

13
14 **Q. How will redispatch of generation to maintain the transmission system be**
15 **managed?**

16 A. The PJM OI is currently responsible for managing the redispatch of generation to
17 maintain transmission system reliability. Under the PJM Open Access
18 Transmission Tariff ("Tariff"), the PJM OI may take whatever actions, consistent
19 with Good Utility Practice, reasonably necessary to maintain the reliability of the
20 PJM transmission grid. This includes the redispatch of network resources. Under
21 current operations any such redispatch is done on a security-constrained least-cost
22 basis. The costs of this redispatch are shared by firm transmission customers on a
23 load ratio basis.

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Q. How will ancillary services to support transmission and dispatch be procured? Indicate why such services will be provided competitively, through regulated tariffs or otherwise.

A. FERC-jurisdictional public utilities are required to offer a wide array of ancillary services. All of these services must be specified as part of an open access tariff on file with the FERC. In PJM, the PJM OI, on behalf of transmission owners within the PJM area, coordinates the provision of ancillary services under the current Tariff. The Tariff further identifies which ancillary services must be purchased from the PJM OI (scheduling, system control and dispatch and reactive supply and voltage control services), and which can be supplied by the transmission customer (regulation and frequency response, spinning and supplemental reserve services and part of energy imbalance service).

Q. How will applicable standards of the North American Electric Reliability Council and/or regional reliability councils be implemented or enforced?

A. The Mid-Atlantic Area Council Agreement establishes a reliability council for the region covered by PJM. The adoption and implementation of standards of reliability has been and will continue to be a matter for MAAC, reinforced through industry-wide efforts under the auspices of the North American Electric Reliability Council (NERC). This approach to establishing and enforcing reliability criteria will continue going forward. Naturally, MAAC will adjust to reflect a changing regulatory environment and, in particular, the commencement of retail access.

1

2 For instance, NERC recently modified its bylaws to make conformance and
3 compliance with established NERC policies, standards, principles and guides
4 mandatory for all NERC members. Finally, the councils already include in their
5 membership and governance many of the new competitive suppliers and other
6 market participants.

7

8 The Commission should supply and reinforce the role of NERC and MAAC (or
9 ECAR, NPCC or any other legitimate reliability council covering load in
10 Pennsylvania) by requiring that all electric service providers, as a condition of their
11 being licensed in Pennsylvania, to have membership in these councils and agree to
12 abide by the reliability standards established by the councils. These reliability
13 standards would apply to all electric service providers, and, existing complaint
14 proceedings then could be used to enforce, monitor or investigate claims of non-
15 compliance with regional reliability standards. The Commission could fine or
16 revoke the license of a supplier that violates these standards.

17

18 **Q. How will transmission congestion be managed physically and financially?**

19 **On a congested system, how will available transmission capacity or capability**
20 **be apportioned?**

21 A. As stated above, the PJM OI presently manages transmission congestion through
22 the redispatch of generation. The costs associated with such redispatch are shared
23 among firm transmission customers on a load ratio basis. When the system is

1 congested. capacity is apportioned to new firm customers on a first-come, first-
2 served basis. Non-firm customers may pay redispatch costs to relieve congestion
3 needed to obtain service. In the alternative, the non-firm customer may elect to
4 interrupt its transaction to avoid such costs.

5
6 **Q. Describe how information regarding transmission system status, such as**
7 **constraints, load distribution, and line losses will be conveyed to interested**
8 **parties.**

9 A. In Order No. 889 FERC required each jurisdictional public utility to establish an
10 OASIS. The PJM OI presently maintains such an OASIS for the PJM regional
11 transmission facilities. Information relating to transmission service and system
12 availability is readily available to members of the general public who access the
13 PJM OASIS website online.

14
15 In accordance with Order No. 889, the PJM OI posts a great deal of information
16 on the OASIS relating to the status of the PJM transmission systems. Among the
17 information that must be posted on OASIS is the Available Transmission Capacity
18 (“ATC”) for any path between two control areas, for any path for which
19 transmission service has been denied, curtailed, or subject to interruption for 24
20 hours in the last 12 months, and for any transmission path requested by a
21 Transmission Customer. When a curtailment or interruption occurs, the PJM OI
22 must post, as soon as possible, the reason for the curtailment or interruption. It

1 also must post the line loss percentage that applies to transactions, rates for
2 transmission service, and rates for ancillary services.

3

4 **Q. Explain whether customers and suppliers will have access to a spot market in**
5 **the service territory. How will that market be administered?**

6 A. Suppliers presently have access to the wholesale spot energy market. This market
7 is bilateral in character and consists of the collective activity of buyers and sellers
8 arranged either directly or through others. Today, this market does not involve
9 any retail transactions for PJM. Retail access in Pennsylvania will allow competing
10 energy suppliers to deal directly with eligible Pennsylvania consumers rather than
11 through the utilities who serve them. PECO expects that large industrials with
12 retail access will negotiate their own energy transactions with generation suppliers
13 of their choice either directly or through intermediaries. Smaller customers will
14 most likely access this spot market through load aggregators.

15

16 There is no formal "administration" of the existing competitive, wholesale energy
17 marketplace. Instead, the existing regulatory framework will serve to provide
18 oversight over energy marketplace activity. At the retail level, the Commission
19 will continue to have jurisdiction over the service to retail customers and is in the
20 process of adopting licensing requirements for all energy suppliers serving load
21 within the Commonwealth. At the wholesale level, all sales and purchases of
22 energy for resale will continue to be subject the FERC's exclusive jurisdiction.

1

2

In addition, there are many information providers and brokers offering short-term

3

quotes for energy. This information is readily available to all consumers and will

4

likely expand in availability. PECO also expects the New York Mercantile

5

Exchange, or some other exchange, to establish an eastern electricity futures

6

product that will be exchange-traded and easily quotable and transparent to

7

consumers, as well as deliverable to users.

8

9

Q. Does this conclude your supplemental direct testimony?

10

A. Yes, it does.

VERIFICATION

I, G. A. Cucchi, hereby declare that I am Senior Vice President, PECO Energy Ventures; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing document are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. §4904 pertaining to false statements to authorities.

Date: June 5, 1997



G/A. Cucchi

R-00973953, R00973953 C0001
PECO STATEMENT NO. 10-E C0007
Phila E.H 11/17/97 etal

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF PECO ENERGY COMPANY
FOR APPROVAL OF ITS RESTRUCTURING PLAN
UNDER SECTION 2806 OF THE PUBLIC UTILITY CODE

TESTIMONY
OF

J. GREGORY SIDAK

REGARDING THE ENRON CHOICE PLAN

DOCUMENT
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NOV 20 1997

Regarding Enron's Proposed Competitive Safeguards

November 7, 1997

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TESTIMONY OF J. GREGORY SIDAK

REGARDING THE ENRON CHOICE PLAN

1

2 Q. What is your name?

3 A. My name is J. Gregory Sidak.

4

5 Q. Did you previously testify in this proceeding?

6 A. Yes. I provided prefiled direct testimony (PECO Statement No. 10) on April 1, 1997,
7 and prefiled rebuttal testimony (PECO Statement No. 10-R) on July 18, 1997.

8

9

PURPOSE AND SCOPE OF THE TESTIMONY

10 Q. What is the purpose of your testimony?

11 A. The purpose of my testimony is to address deficiencies in the code of conduct that Enron
12 has proposed that this Commission impose on PECO pursuant to Enron's "Choice
13 Plan."¹ Enron witness Harry J. Kingerski, in his testimony in support of the "Choice
14 Plan," states that the competitive safeguards proposed by Enron pursuant to its "Choice
15 Plan" are substantially identical to the competitive safeguards previously advocated by
16 Enron in this proceeding.² In defense of those previously advocated competitive
17 safeguards, Enron Power Marketing Inc. submitted on October 10, 1997, the surrebuttal

18 1. The code of conduct that Enron proposes appears as Rule 23, Competitive Safeguards, in the proposed
19 "PECO Energy Company Electric Service Tariff," submitted as Exhibit 1 of Enron's petition for approval of its
20 "Choice Plan."

21 2. Direct Testimony of Harry J. Kingerski on behalf of Enron Energy Services Power, Inc., October 24, 1997
22 (hereinafter "Kingerski Direct Testimony").

1 testimonies of Professor John W. Mayo and Mr. Michael D. Dirmeier.³ In those
2 testimonies, Professor Mayo and Mr. Dirmeier continue to argue that, at the outset of
3 restructuring, PECO will possess significant market power and that this Commission
4 therefore needs to take far-reaching steps to mitigate that alleged market power.⁴ In this
5 testimony, I explain why their approach, now embodied in Enron's "Choice Plan," is
6 extreme and unwarranted.

7
8 **CONCLUSION**

9 **Q. What are your major conclusions concerning the code of conduct proposed in the**
10 **Enron "Choice Plan," and the testimonies of Mr. Kingerski, Professor Mayo, and**
11 **Mr. Dirmeier?**

12 **A. Actual and potential competition, the backstop of the antitrust laws, and the code of**
13 **conduct developed by the Pennsylvania Public Utility Commission's Competitive**
14 **Safeguards Working Group will protect consumers in Pennsylvania's newly unregulated**
15 **retail markets.**

16 3. Surrebuttal Testimony of Dr. John W. Mayo on behalf of Enron Power Marketing, Inc., Docket No. R-
17 00973953 re: PECO Restructuring, October 10, 1997 (hereinafter "Mayo Surrebuttal Testimony"); Surrebuttal
18 Testimony of Michael D. Dirmeier on behalf of Enron Power Marketing, Inc., Docket No. R-00973953 re: PECO
19 Restructuring, October 10, 1997 (hereinafter "Dirmeier Surrebuttal Testimony").

20 4. Professor Mayo and Mr. Dirmeier originally set out their positions in their direct testimony on June 20, 1997.
21 Direct Testimony of Dr. John W. Mayo on behalf of Enron Power Marketing, Inc. (June 20, 1997); Direct
22 Testimony of Michael D. Dirmeier on behalf of Enron Power Marketing, Inc. (June 20, 1997). I rebutted that
23 testimony on July 18, 1997. Rebuttal Testimony of J. Gregory Sidak on behalf of PECO Energy Co. (July 18,
24 1997).

**I. ENRON'S PROPOSED CODE OF CONDUCT FOR TRANSACTIONS
BETWEEN PECO AND ITS AFFILIATES IS EXTREME AND
WOULD HARM CONSUMERS**

1
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5
6 **Q. Would the competitive safeguards that Enron proposes in its "Choice Plan" protect
7 or harm consumer welfare?**

8 A. Rule 23 would harm consumer welfare. First, Rule 23 would remove valuable product
9 attributes from the marketplace, thus limiting customers' choices. Second, as I will
10 explain in greater detail in part II of this testimony, some provisions appear to be
11 designed solely to "game" the regulatory process so that Enron would achieve artificial
12 advantages over PECO.

13
14 **Q. Are the proposed restrictions in Rule 23 of Enron's proposed tariff consistent with
15 what Enron and its witnesses have previously advocated in this proceeding?**

16 A. Yes. In his direct testimony of October 24, 1997, Mr. Kingerski stated that the
17 competitive safeguards embodied in Rule 23 of Enron's proposed tariff "are substantially
18 identical to the competitive safeguards filed previously by Enron in this case and in other
19 jurisdictions."⁵

20
21 **Q. How do you understand that statement by Mr. Kingerski to relate to the direct
22 testimony and rebuttal testimony by Professor Mayo and Mr. Dirmeier?**

23 A. I understand Mr. Kingerski to be saying that Rule 23 of Enron's proposed tariff

24 ⁵ Kingerski Direct Testimony at 10, lines 4-5.

1 embodies the principles advocated by Professor Mayo and Mr. Dirmeier in their direct
2 testimony and rebuttal testimony, previously filed in this proceeding.

3
4 **A. Enron Advocates an Extreme and Insupportable Position**
5 **Concerning PECO's Use of Its Brand Name**
6

7 **Q. How would Enron's proposed code of conduct harm consumer welfare?**

8 A. Rule 23.10, which Enron includes in its proposed code of conduct, would harm
9 consumers. Rule 23.10, in its entirety, reads:

10 **23.10 Corporate Identification.** The affiliate EGS [PECO's affiliated
11 electric generation supplier] shall not use the name, logo, service mark,
12 trademark, or trade name of the Company [PECO].

13 In other words, Enron would have the Commission impose a PECO tariff that would
14 forbid PECO from using its attributes such as its brand name to market its generation
15 services in what would otherwise be a competitive marketplace. A mandate of this type
16 would harm consumers because it would deprive them of the opportunity of availing
17 themselves of the attributes of PECO's service that they have considered valuable.

18
19 **Q. Does Enron also seek to apply this prohibition on use of the PECO name to**
20 **divisions as well as affiliates?**

21 A. Yes. Under the "Choice Plan," Enron would require that PECO participate in
22 competitive service offerings only through an affiliate separated from its distribution
23 company.⁶

24 ⁶. Direct Testimony of Steven J. Kean on behalf of Enron Energy Services Power, Inc., Oct. 24, 1997, at 21,
25 lines 16-17.

1 Q. **What testimony have Enron's witnesses submitted in support of such a restriction?**

2 A. In his surrebuttal testimony, Mr. Dirmeier states that "the established reputation,
3 goodwill and brand loyalty of an incumbent electric utility is the direct result of its
4 providing regulated monopoly service under quality of service guidelines established, in
5 this jurisdiction, by the Pennsylvania Public Utility Commission; these assets were not
6 obtained by PECO in the competitive marketplace, but were financed virtually entirely
7 by ratepayers."⁷

8

9 Q. **Is Enron's assessment, as articulated by Mr. Dirmeier, within the mainstream of**
10 **economic and legal analysis on public utility regulation?**

11 A. No. Enron's hostility to, and proposal for the deprivation of, the private property of a
12 regulated utility is an extreme and insupportable position that would harm consumers.

13

14 Q. **On what basis do you reach that conclusion?**

15 A. Three reasons support my conclusion. First, the benefits that a brand name can create
16 for a firm flow from investment in reputation, not from a state-conferred monopoly. A
17 state-conferred monopoly is neither a necessary nor a sufficient condition for a regulated
18 firm to create a valuable brand name. A regulated firm that fails to invest in providing
19 reputable service to its customers will not have a valuable brand name and service mark,
20 even if the utility holds a statutory monopoly to serve its customers.

21 Second, it is not clear in either theory or practice that a particular utility's brand

22 ⁷. Dirmeier Surrebuttal Testimony at 15, lines 3-7.

1 name will necessarily be a net benefit. Consumers (and financial markets) can just as
2 easily impute bad quality to a firm's brand name.⁸ A number of electric utilities have
3 changed their names in recent years: Enova (San Diego Gas & Electric), SCEcorp
4 (Southern California Edison), Conectiv (Delmarva Power), and Entergy (Louisiana
5 Power & Light). Obviously, those companies concluded that their former brand names
6 would be less advantageous in marketing their services than entirely new brand names
7 would be. The practical effect of section 23.10 of Enron's proposed tariff and of Mr.
8 Dirmeier's proposed restrictions on PECO's continued use of its brand name would be
9 to raise PECO's own marketing costs *only if the PECO brand name were a valuable*
10 *signal of quality to consumers*. If there were any serious question among PECO's
11 management concerning the marketing value of PECO's brand name, the company would
12 have sufficient incentive on its own to market its services under a new and different
13 name.

14 Third, Enron, through the testimony of Mr. Dirmeier, seems to imply that an
15 electricity customer in PECO's service territory has acquired an ownership interest in
16 PECO's brand name by virtue of his or her having paid regulated rates for service from
17 that investor-owned electric utility. Such reasoning is fallacious, for it fundamentally
18 misapprehends the legal and economic significance, traceable to *Munn v. Illinois*⁹ and
19 to earlier English common law, of dedicating *private* property to a public purpose.
20 Surely, no reasonable person would argue that a customer could expect to have acquired

21 8. See Jonathan M. Karpoff & John R. Lott, Jr., *The Reputational Penalty Firms Bear from Committing*
22 *Criminal Fraud*, 36 J.L. & ECON. 757 (1993); Michael T. Maloney & Mark L. Mitchell, *Crisis in the Cockpit? The*
23 *Role of Market Forces in Promoting Air Travel Safety*, 32 J.L. & ECON. 329 (1989).

24 9. 94 U.S. 113, 125-26 (1877).

1 an ownership interest in Texaco's brand name by virtue of having purchased gasoline
 2 from that company over a period of years.¹⁰ To be sure, there are significant
 3 differences between a regulated utility and an unregulated enterprise, but the principle
 4 that investors rather than customers own the firm's intangible assets and intellectual
 5 capital is not one of them.¹¹

6
 7 **Q. Has Enron proposed that a competitive affiliate or division of PECO be required**
 8 **to compensate PECO for the use of PECO's name?**

9 **A. Yes. Through the testimony of Mr. Dirmeier, Enron has made such a proposal.**¹²

10
 11 _____
 12 10. In addition, courts have explicitly rejected such a proposition. In 1996, the Minnesota Supreme Court
 13 reasoned in *Minnegasco v. Minnesota Public Utility Commission*:

14 It is . . . clear that the value of a gas utility's name and reputation, as represented by good
 15 will, is generally not considered to be a "cost" of rendering utility service and that the costs
 16 associated with creating the good will have not been borne by the ratepayers. Certainly,
 17 ratepayers are involved in building a gas utility's good will when they purchase utility service.
 18 However, ratepayers are no different in that regard than any consumer who purchases a
 19 product from a business. The simple act of purchasing a product or service from a business
 20 does not mean that the consumer becomes an owner of any of the business' assets. Nor does
 21 it mean that the consumer bears the cost of creating good will. The relationship between the
 22 ratepayer, as a consumer, and the gas utility, as a business, does not change just because the
 23 gas utility provides regulated utility services. The ratepayer remains a consumer and the assets
 24 remain the property of the utility.

25
 26 549 N.W.2d 904, 909 (Minn. 1996). Similarly, Justice Thurgood Marshall observed in 1986 in his concurrence in
 27 *Pacific Gas & Electric Company v. Public Utilities Commission of California*:

28
 29 [A] consumer who purchases food in a grocery store is "paying" for the store's rent, heat,
 30 electricity, wages, etc., but no one would seriously argue that the consumer thereby acquires
 31 a property interest in the store. That the utility passes its overhead to ratepayers at a rate fixed
 32 by law rather than the market cannot affect the utility's ownership of its property

33
 34 475 U.S. 1, 22 n.1 (1986).

35 11. See J. GREGORY SIDAK & DANIEL F. SPULBER, DEREGULATORY TAKINGS AND THE REGULATORY
 36 CONTRACT: THE COMPETITIVE TRANSFORMATION OF NETWORK INDUSTRIES IN THE UNITED STATES 113-29
 37 (Cambridge University Press 1997).

38 12. Dirmeier Direct Testimony at 22, lines 11-17.

1 Q. **Should a PECO affiliate or division of PECO be required to compensate PECO for**
2 **the use of PECO's name?**

3 A. No. Such compensation would be simply an added cost that PECO's competitive affiliate
4 or division—but no other firm—would have to recover through the prices that it charges
5 to consumers. Such a rule, therefore, would artificially “raise a rival's costs” and reduce
6 competition.¹³

7
8 Q. **Have the federal antitrust authorities commented on the competitive effects of the**
9 **use of a parent utility's brand name and service mark by a competitive affiliate or**
10 **division?**

11 A. Yes. In a 1995 report that it jointly wrote with the U.S. Department of Energy, the
12 Federal Trade Commission (FTC) addressed this question as follows:

13 If economies of scope give the utility a competitive advantage in an
14 unregulated business, consumers of both the regulated and unregulated products
15 would be better off by allowing the utility to use those economies. To be sure,
16 allowing the utility to take advantage of economies of scope and enter
17 unregulated businesses will threaten competitors in those businesses. But
18 excluding the utility from those non-regulated businesses for the sake of
19 providing a “level playing field” for the remaining firms may lead to higher
20 prices to consumers.¹⁴

21
22 Later in the same report, the FTC directly applied that analysis to the utility's brand
23 name and reputation: “If there are economies of scale in developing reputation, taking
24 advantage of these economies is in consumers' interests.”¹⁵

25 13. See Thomas G. Krattenmaker & Steven C. Salop, *Anticompetitive Exclusion: Raising Rivals' Costs to*
26 *Achieve Power over Price*, 96 YALE L.J. 209 (1986).

27 14. U.S. DEPARTMENT OF ENERGY, REPORT TO THE PRESIDENT AND CONGRESS OF THE UNITED STATES ON
28 THE CURRENT STATUS AND LIKELY IMPACTS OF INTEGRATED RESOURCE PLANNING 66 (Mar. 1995).

29 15. *Id.* at 69 n.35.

1 Q. Did the Competitive Safeguards Working Group consider prohibiting PECO's
2 affiliated electric generation supply unit from using PECO's name, logo, service
3 mark, trademark, or trade name?

4 A. Yes. The Competitive Safeguards Working Group explicitly considered and rejected such
5 a proposal made by Enron.¹⁶

6

7 **B. Enron Incorrectly Argues That the Code of Conduct**
8 **Should Consider PECO's Historic Position as the Sole**
9 **Provider of Electricity in Its Service Area**

7

8

9

10

11

Q. What is the essential difference between PECO and Enron as regards the proper
12 reach of a code of conduct?

12

13

A. Enron contends that, in the absence of the kind of code of conduct that it recommends
14 (such as Rule 23), PECO would have significant unconstrained market power simply due
15 to incumbency when open access commences.¹⁷ I do not agree.

16

17

Q. What does Enron contend would be PECO's sources of market power when open
18 access commences?

18

19

A. Enron asserts, through the testimony of Professor Mayo and Mr. Dirmeier, two reasons
20 to support its conclusion that PECO would have significant market power at the outset
21 of restructuring: (1) PECO's historic position as the sole provider of electricity in its
22 service territory and (2) PECO's continued ownership of distribution lines.¹⁸ I believe

20

21

22

23

16. PENNSYLVANIA PUBLIC UTILITY COMMISSION, FINAL REPORT TO THE COMMISSION OF THE COMPETITIVE
24 SAFEGUARDS WORKING GROUP 4 (Oct. 6, 1997).

25

17. See Dirmeier Surrebuttal Testimony at 4, lines 6-16; Mayo Surrebuttal Testimony at 5, lines 7-20.

26

18. See Dirmeier Surrebuttal Testimony at 3, lines 19-22; Mayo Surrebuttal Testimony at 16, lines 1-4.

1 that Enron is incorrect when it argues that the first of those factors would produce
2 market power for PECO in the future and should be addressed in the code of conduct.

3 With regard to the second factor, I believe that the Pennsylvania Commission's
4 Competitive Safeguards Working Group has crafted a code of conduct that answers all
5 of Enron's concerns about competitive abuses that might result from PECO's continued
6 ownership of distribution lines.

7

8 **Q. Does PECO propose a code of conduct based on the principles developed by the**
9 **Competitive Safeguards Working Group?**

10 A. Yes. PECO witness Brian D. Crowe sponsors a code of conduct that adopts the
11 principles developed by the Competitive Safeguards Working Group.¹⁹

12

13 **Q. Should a code of conduct limit PECO's ability to use attributes such as the**
14 **reputation and goodwill coming from its historic position as the sole provider of**
15 **electricity in its service territory?**

16 A. No. To the extent that attributes of that sort confer an initial competitive advantage on
17 PECO, the advantage would be sustainable only if it is procompetitive. By a
18 "procompetitive advantage" I mean an advantage that derives from PECO's product and
19 service attributes that have net positive value to consumers. Such a competitive
20 advantage is not a barrier to entry, for it can be replicated by an equally efficient
21 competitor. Moreover, if the advantage is due only to PECO's historic position as the

22 ¹⁹. Rebuttal Testimony of Brian D. Crowe on behalf of PECO Energy Company (Nov. 7, 1997).

1 sole provider of electricity and otherwise has no value to consumers, the advantage will
2 quickly dissipate in the face of new competition.

3

4 **Q. Do Enron witnesses Professor Mayo and Mr. Dirmeier disagree with you on this**
5 **point?**

6 A. Yes. Professor Mayo and Mr. Dirmeier would prohibit PECO's competitive division or
7 affiliate from using PECO's attributes such as name and reputation to which consumers
8 ascribe value.²⁰

9

10 **Q. Should Enron's power marketing affiliate or division be prohibited from using**
11 **Enron's name, logo, service mark, trademark, or trade name?**

12 A. No, for the same reasons that PECO's competitive affiliate or division should not be so
13 prohibited. Just as placing such restrictions on PECO would harm competition, so too
14 would placing such restrictions on Enron.

15

16 **C. Enron Ignores That Actual Competition**
17 **Will Protect Consumers in Unregulated Markets**

18

19 **Q. Would you rely solely on the antitrust laws to protect consumers in the newly**
20 **unregulated markets?**

21 A. No. The antitrust laws are a default safeguard against anticompetitive conduct by an
22 incumbent utility in the open-access environment. Once a code of conduct that addresses

23 20. See Dirmeier Surrebuttal Testimony at 14, line 23, to page 15, line 20; Professor Mayo's adoption of Mr.
24 Dirmeier's position at Mayo Surrebuttal Testimony at 16, lines 1-10.

1 PECO's continued ownership of distribution lines is in place, the first line of defense
2 against anticompetitive conduct in the newly unregulated markets, as in any unregulated
3 market, is the force of competition itself—from the many large, capable firms that have
4 applied to provide electric service in Pennsylvania, as indicated in Table One on page
5 11 of my rebuttal testimony. Those entrants, such as Enron, are not wallflowers. They
6 have significant resources and capabilities, including brand recognition and reputation.

7
8 **Q. Does Enron address the significance of competitive entry as a constraint on PECO's**
9 **ability to act anticompetitively?**

10 **A.** No. Nowhere in the testimonies of Mr. Kingerski, Professor Mayo, or Mr. Dirmeier
11 does Enron acknowledge that many qualified entrants are poised to become retail
12 suppliers of electricity in Pennsylvania. Enron simply ignores the competitive impact of
13 entrants and then urges this Commission to handicap PECO, much to the detriment of
14 consumers in Pennsylvania and to the benefit only of particular competitors.

15
16 **Q. Does Enron acknowledge that the Pennsylvania Public Utility Commission's**
17 **Competitive Safeguards Working Group has already produced a consensus code of**
18 **conduct that responds to the competitive concerns that it raises?**

19 **A.** No, it does not.

1 **II. ENRON'S PROPOSED CODE OF CONDUCT**
2 **WOULD IGNORE THE RELEVANT TRANSACTIONS**
3 **ENVISIONED BY ENRON'S "CHOICE PLAN"**
4

5 **Q. Are there other serious problems with the code of conduct, as set out in Rule 23,**
6 **that Enron proposes as part of its "Choice Plan"?**

7 A. Yes. Enron's proposed code of conduct would not apply to all of the relevant
8 relationships and transactions envisioned by Enron's "Choice Plan."
9

10 **Q. What is the relationship that Enron overlooks but should address in its proposed**
11 **code of conduct?**

12 A. The relevant relationship is the one between Enron (as default provider) and its own
13 power marketing unit.
14

15 **Q. Why does a code of conduct need to address that relationship?**

16 A. Under the "Choice Plan," Enron would step into PECO's shoes as the new default
17 provider. Enron would thus have access to the same information that PECO would have
18 had were it to remain as both the default provider and a retail supplier of electricity.

19 Section 2.6 of Enron's proposed MBC Services Agreement provides:

20 The Parties acknowledge and understand the EESP [Enron], as the default
21 service provider, will require access to metering, billing, collection and other
22 information relating to the Default Service Customers and the MBC Service.
23 PECO shall promptly furnish EESP [Enron] with complete and accurate
24 information in this respect during the Term.
25

26 Under those circumstances, it would be Enron—not PECO—that would have the
27 incentive and opportunity to commit anticompetitive abuses of customer information.

1 Earlier in this proceeding, Enron itself argued, through the testimony of Professor Mayo
2 and Mr. Dirmeier, that such anticompetitive abuse is a serious concern that needs to be
3 addressed in a code of conduct. It is therefore a self-serving non sequitur for Enron's
4 "Choice Plan" to propose limitations only on *PECO's* unregulated transfer of customer
5 information. Under Enron's "Choice Plan," PECO would be relegated to the role of a
6 subcontractor. The appropriate focus of competitive safeguards concerning information
7 transfer would be on *Enron's* discriminatory use of such information. In short, it would
8 be inconsistent and hypocritical for Enron not to offer, as a condition of its "Choice
9 Plan," to abide by all of the stringent competitive safeguards that it argued would be
10 necessary to impose on PECO.

11
12 **Q. What do you conclude about Enron's strategy in proposing Rule 23?**

13 **A.** Through Rule 23, Enron's "Choice Plan" seeks to "game" the regulatory process. That
14 objective becomes clear when one compares the current proceeding to what has
15 happened over the past year in the state PUC arbitrations concerning unbundled access
16 to the local telephone network. Enron's "Choice Plan" is a variation on "resale" of local
17 telephone services by a major entrant, such as AT&T. It is more aggressive than
18 anything observed in local telephony, however, because Enron proposes to be the
19 provider of last resort and to eliminate the incumbent utility (PECO) as a competitor and
20 eradicate its brand name.

21
22 **Q. Would other features of Enron's "Choice Plan" facilitate this strategic use of the**

1 **regulatory process by Enron?**

2 A. Yes. Section 2.6 of Enron's proposed MBC Services Agreement provides:

3 PECO's name, trademarks, tradenames, service marks or logos shall not appear
4 on the bills or envelopes, and Default Service Customers shall make their
5 payments to EESP [Enron] or such entity of Affiliate as EESP [Enron] may
6 designate.

7
8 This provision of Enron's "Choice Plan" combined with Rule 23.10 would produce a
9 result that would be analogous to the following in telecommunications: Imagine that
10 AT&T took over all of Bell Atlantic's retail services in Pennsylvania on a wholesale
11 basis, rebranded them as AT&T services, and convinced the Commission to prohibit Bell
12 Atlantic from marketing any competitive, unregulated services under the Bell Atlantic
13 name. Clearly, the substitution of one firm for another in that manner would not increase
14 competition.

15

16 **Q. The MBC Services Agreement also mentions "Competitive Safeguards" and states,**
17 **at Article 2.2, that "PECO and EESP shall comply with any and all applicable**
18 **Competitive Safeguards." Does that provision address the inadequate focus of**
19 **Enron's proposed code of conduct?**

20 A. No. As defined in the MBC Services Agreement, "Competitive Safeguards" would only
21 govern the relationship between PECO and Enron. That definition would fail to cover
22 the key relationship that I discussed above—namely, the relationship between Enron and
23 its competitive power marketing affiliate. Thus, my criticism, in this respect, of Rule
24 23 is also applicable to the so-called "Competitive Safeguards" contained in Enron's
25 proposed MBC Services Agreement.

1 Q. Does this conclude your testimony?

2 A. Yes.

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**APPLICATION OF PECO ENERGY COMPANY
FOR APPROVAL OF ITS RESTRUCTURING PLAN
UNDER SECTION 2806 OF THE PUBLIC UTILITY CODE**

KJR

**TESTIMONY
OF**

**DOCUMENT
FOLDER**

MICHAEL S. FREEMAN

REGARDING THE ENRON PROPOSAL

Regarding Retail and Wholesale Market Prices

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**TESTIMONY OF MICHAEL S. FREEMAN
REGARDING RETAIL AND WHOLESALE PRICES**

5 **Q. Please state your full name and business address.**

6 A. Michael S. Freeman, 2301 Market Street, S7-3, Philadelphia, PA 19103.

7

8 **Q. Have you testified previously in this proceeding?**

9 A. Yes. I submitted PECO Statement No. 26-RJ regarding wholesale and retail
10 market prices of energy and capacity.

11

12 **Q. What is the purpose of your testimony here?**

13 A. In response to statements about market prices for power and the development of
14 competitive markets contained in the testimony of Enron witnesses Steven J. Kean,
15 Kenneth J. Slater, Bruce R. Oliver, and Douglas R. Bohi, I provide an update to
16 my previous testimony on actual retail market prices and transactions. Since
17 October 16, when I last testified, more information has come to light on pricing
18 offers and innovative contracts that have been executed in PECO Energy's retail
19 access pilot program. In addition, I am able to present an update on wholesale
20 transactions in the PJM marketplace.

21

22 This new information strongly confirms my previous conclusion that a wholesale
23 and retail competitive market is in fact emerging.

24

1 Q. Which assertions of Enron witnesses Kean, Slater, Oliver, and Bohi will you
2 respond to?

3 A. Each witness, relying solely on Mr. Slater's long-run marginal cost basis for
4 valuing the future price of delivered retail power, asserts that the energy and
5 capacity caps contained in the Partial Settlement are not high enough and will
6 thwart competition.

7
8 Using actual, not theoretical, data from the retail access pilot programs, I will
9 show that the energy and capacity caps are not too low and that competition
10 manages to thrive despite Mr. Kean's prediction of a "chilling effect on the
11 development of meaningful competition." (Page 8, Line 8)

12
13 Moreover, I will discuss some of the cost-minimization and marketing strategies
14 that aggressive, innovative firms, such as Enron, can employ and are employing
15 right now in Pennsylvania and elsewhere. While Enron and other marketers
16 frequently talk about the business efficiencies that competition will unleash, such
17 strategies are notable by their absence in the testimony of all of the Enron
18 witnesses.

19
20 PECO witness Hieronymous separately will address Mr. Slater's marginal cost
21 analysis.

22

1 **Q. Please summarize your previous testimony.**

2 A. I explained that current wholesale energy and capacity transactions are in line with
3 or below the energy and capacity caps set forth in the Partial Settlement. On the
4 retail side, I found that the settlement's energy and capacity caps were above
5 offers to commercial and industrial customers that I was aware of with respect to
6 PECO's pilot program. Finally, I noted that unforeseen events that are driven by
7 competition can reduce wholesale prices. As evidence I cited the retail pilot
8 program standard offer made available to electric generation suppliers by PECO
9 Energy's Power Team, and the Power Team's solicitation for market-based bids
10 for energy and capacity.

11

12 **Q. Please explain the Power Team's standard offer and provide an update on**
13 **the results of the standard offer.**

14 A. As I explained in my previous testimony, the Power Team's standard offer is an
15 all-in wholesale product, including energy, installed capacity, delivery losses and
16 load-following. The cost of the standard offer is the market generation credits in
17 the unbundled pilot rates, less Pennsylvania Gross Receipts Tax. The standard
18 offer purchase will be for the entire 14-month term of the pilot.

19

20 As of November 7, four electric generation suppliers signed contracts with the
21 Power Team pursuant to the standard offer and will serve all of their customers in
22 the PECO pilot program with the energy and capacity they will purchase from the
23 Power Team. The average cost of the standard offer to the four marketers who

1 purchased it was 2.68¢/kWh. That is a delivered price. The other suppliers
2 participating in the PECO pilot purchased energy and capacity from other sources,
3 implying that they were able to get lower prices than the Power Team was
4 offering.

5
6 **Q. Please provide an update on retail prices in the pilot.**

7 A. I am aware of about 10 commercial and industrial customers obtaining quotes that
8 ranged from 2.25¢/kWh to 3.05¢/kWh. Residential customers have seen
9 Pennsylvania Power & Light Co. and Allegheny Energy Solutions increase
10 guaranteed savings from 10 percent to up to 12 percent. Conectiv is offering one
11 month's free energy, and QST Energy is offering a \$10 signing bonus along with
12 one month's free energy.

13
14 **Q. How do these retail offers and the Power Team standard offer compare with
15 the energy and capacity caps contained in the Partial Settlement?**

16 A. The offers are below the energy and capacity caps, both on a rate class basis and
17 an overall system average basis.

18
19 **Q. How have you become aware of information about the competitive market?**

20 A. As a member of the PECO National Energy Team, I speak with numerous
21 customers about their energy purchases. Competitive information sometimes
22 comes to light during those conversations. Additionally, I track our competition
23 through publicly available sources, such as industry publications. And we

1 frequently compete with companies such as Enron, Conectiv, NEV, and others in
2 states where there is retail access, and competitive information generally becomes
3 available during these competitions.

4 **Q. Has the National Energy Team signed contracts with any customers in the**
5 **Pennsylvania pilot programs?**

6 A. Yes. The National Energy Team has reached pilot agreements with six
7 commercial and industrial customers, from the small retail level to large
8 manufacturing. In all cases, the National Energy Team, acting as buying agent or
9 broker, was able to obtain energy and capacity for these customers at prices below
10 the PUC-mandated market generation credits of 3.0¢/kWh for commercial
11 customers and 2.7¢/kWh (in PJM; 2.4¢/kWh in ECAR) for industrial customers.
12 We have obtained wholesale energy and capacity from one of the companies that
13 intervened in this proceeding.

14
15 **Q. You stated during previous cross-examination that the National Energy**
16 **Team is operating in service territories other than PECO's. Can you clarify**
17 **that statement?**

18 A. The National Energy Team's objective is to reach agreements with customers that
19 have multiple facilities, generally outside of PECO's service territory. However,
20 some of the customers for whom we will broker energy and provide other services
21 have facilities in PECO's service territory, as well as other facilities across
22 Pennsylvania and in other states.

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Q. Besides the expected returns associated with the six contracts, why did the National Energy Team enter into the contracts?

A. If a group such as the National Energy Team, or suppliers such as Conectiv, Enron, or New Energy Ventures, can establish a strong relationship with a customer now, it will likely pay off as the competitive market develops. In the short term, the National Energy Team, along with its competitors, must develop approaches to the competitive market that will minimize cost and appeal to customers. Enron witness Bohi, who complains repeatedly that the proposed energy and capacity caps contained in the Partial Settlement will hinder competition because they are not high enough, nevertheless seems to agree with the outlook I describe. Writing in the October 1996 issue of *The Electricity Journal*, Dr. Bohi stated that “the pressures of competition will force marketing companies to represent the interests of their customers, simply because those companies that appeal to the diverse preferences among customers will be able to take customers away from firms that are less enterprising.” (Page 15)

I agree with his statement. Much of our time is spent trying to learn and understand the preferences of our customers with respect to power pricing and other products and services that may be of value. We then try to balance the interests and demands of our customers with our own economic interests.

1 **Q. Is there evidence that marketers share this approach and view of the market?**
2 A. Yes. Customers in Pennsylvania are demanding innovative products and services,
3 and the market is rapidly adapting to these demands. One of the National Energy
4 Team contracts, at the insistence of the customer, calls for a pilot metering project
5 on the customer side of the meter to determine the costs and benefits of more
6 sophisticated metering for purposes of load research. Another specifies an
7 elaborate shared-savings arrangement that the customer favored. Other marketers
8 have created innovative variations of performance-based pricing. In other cases,
9 marketers have packaged commodity pricing with demand-side services such as
10 peak reduction.

11
12 **Q. Does Dr. Bohi have other views regarding the energy markets with which you**
13 **agree?**

14 A. Yes. I agree with Dr. Bohi that less enterprising firms will fall behind. In the same
15 article, Dr. Bohi writes that “marketing companies that are the most successful in
16 negotiating terms that lower their power acquisition costs will be the most
17 successful in attracting and retaining customers. Firms that fail to obtain the best
18 terms will lose customers to the more enterprising competitors.” (Pages 15-16)

19
20 Michael R. Peevey, president and chief executive officer of NEV, has echoed Dr.
21 Bohi’s statement. “The competition in today’s energy services will be won by
22 those companies with world-class information and energy management services for

1 energy users,” Mr. Peevey stated in a company press release dated October 12,
2 1997.

3
4 **Q. Has Enron reflected these views of Dr. Bohi in its proposed “Choice Plan”?**

5 A. No. In their testimony, neither Dr. Bohi nor Enron witnesses Kean, Oliver, and
6 Slater give any credence to – or even mention – the importance of creativity and
7 enterprise in the energy markets. Instead, relying on Mr. Slater’s long-run
8 marginal cost analysis, they simply complain that the energy and capacity caps are
9 not high enough. They predict a moribund, dysfunctional market that excludes
10 new entrants. For instance, Mr. Kean states that the Partial Settlement will create
11 “anti-competitive road blocks.” (Page 11, Lines 6-7)

12
13 Nowhere in their testimony, however, can one find any reference to cost
14 minimization. There are no statements about negotiating the best terms with
15 generators to drive down costs, or about the risk management strategies for which
16 Enron can claim world-class expertise (“We are the recognized leader in
17 commodity risk management,” Enron’s home page declares) . The testimony is
18 silent on strategies to reduce transaction costs. And despite the oft-repeated
19 assertion of marketers that aggregations of retail loads will cut costs, Mr. Slater’s
20 analysis contains no mention of such efficiencies.

21
22 **Q. Do the claims of the Enron witnesses regarding the energy and capacity cap**
23 **suffer from any other significant flaw?**

1 A. Yes. Their claims reflect that they have completely ignored what is happening
2 right now in Pennsylvania, New England and California, including Enron's own
3 activities. The same claims about the unbundled energy and capacity prices were
4 raised before the pilot programs began. Witnesses for the marketers then
5 contended that residential load would cost approximately 4.0¢/kWh to serve.

6
7 **Q. You have stated that marketers have offered prices in the PECO pilot that**
8 **are below the market generation credits. How can they offer such prices**
9 **when Enron, Conectiv, New Energy Ventures, and other marketers have**
10 **claimed that the credits are below the delivered cost of retail power?**

11 A. Contrary to marketers' assertions, it is possible to obtain energy, installed capacity,
12 delivery losses, and the other cost items associated with retail power at prices
13 lower than the caps. As evidence, I cite my group's experience along with the
14 results of the Power Team's standard offer. Even if a marketer purchased its
15 power requirements from the Power Team, it is possible to design marketing
16 strategies that maximize profits.

17
18 **Q. Please explain what you mean when you say that marketers can design**
19 **strategies to maximize profits.**

20 A. I will use a simple example. Suppose a marketer signed up one commercial
21 customer who is served under PECO's General Service (GS) tariff. The
22 customer's market generation credit will be a function of the customer's load
23 factor, as the rate design of Rate GS is load factor-based. If the customer's load

1 factor is below the class average, the customer's market generation credit will be
2 more than 3.0¢/kWh. 3.0¢/kWh is the credit that results from applying average
3 load factor to the blocking of the market generation credit. At 40 percent load
4 factor, which is below the class average, the credit would be about 3.4¢/kWh. Let
5 us further suppose that this marketer buys all of its power requirements for the one
6 customer from the Power Team, which will charge the marketer approximately
7 2.7¢/kWh after GRT and losses have been accounted for. The market generation
8 credit that is extracted from the customer's bill will be 3.4¢/kWh; the marketer's
9 cost will be 2.7¢; and both parties can make money. The same holds true for
10 customers on Rate PD, which is load factor-based, and residential heating
11 customers, whose market generation price contains load factor blocking in the
12 eight heating months.

13
14 **Q. Are you suggesting that marketers target only low load factor GS and PD**
15 **customers, and residential heating customers?**

16 A. No, although some marketers have identified narrowly defined niches for
17 themselves (one marketer has targeted customers in Chester County only, for
18 example). My point is that with strategic planning, a marketer can amass a
19 balanced portfolio that will reduce its average cost. In fact, if a marketer were to
20 buy all its power requirements from the Power Team pursuant to the standard
21 offer, as several of the marketers did, it is quite easy to provide competitive pricing
22 for HT customers, even those with relatively high load factors. Marketers also can

1 strategically target those customers with whom they would like to establish long-
2 term relationships.

3
4 **Q. Has Enron been active in the pilot program?**

5 A. Yes. Although Enron witnesses Kean, Slater, Oliver, and Bohi claim that the
6 energy and capacity caps contained in the Partial Settlement will “thwart
7 competition in the generation of electricity for several years” (Kean, Page 5, Lines
8 8-9); and “would exclude new entrants from the market until at least 2003”
9 (Slater, Page 6, Lines 10-11), the company they represent has been aggressive in
10 the Pennsylvania pilot programs. In fact, the National Energy Team and Enron
11 competed head to head for a pilot contract with a major commercial customer
12 three weeks ago. Enron offered significantly more financial incentives than the
13 National Energy Team but lost the contract. Of course, Enron has been successful
14 with other customers.

15
16 **Q. Was Enron active in the New Hampshire pilot?**

17 A. Yes. In the two-year New Hampshire pilot programs, Enron is selling power for a
18 weight-averaged 2.5¢/kWh price to residential customers. The wholesale cost of
19 all-hours, spot market energy in the New England Power Pool has averaged in the
20 mid- to high 2.0¢/kWh range since the pilots began in the spring of 1996, year to
21 date. Jeffrey K. Skilling, Enron’s president, told *The New York Times* last
22 February that “once his company is able to compete for all the customers in the

1 state and build up a large base of customers, it will be able to recover its marketing
2 costs, make a profit and still keep the cost of power at the current low levels.”

3

4 **Q. Has Enron been active in the energy market in California?**

5 A. Yes. In California, where the retail market generation credit will be a rolling four-
6 week average of the wholesale Power Exchange hourly prices, which are forecast
7 to average about 2.4¢/kWh, all-hours, in 1998, applied to class average load
8 profiles, Enron has been particularly enterprising in trying to “appeal to the diverse
9 interests of their customers,” as Dr. Bohi wrote in *The Electricity Journal*. Enron
10 announced on October 23, 1997, that it would offer residential customers two
11 weeks of free electricity when California’s retail access program begins January 1,
12 1998, and that it had acquired an energy services company to enhance its product
13 offerings to customers.

14 **Q. Have other marketers been as enterprising as Enron in California?**

15 A. Yes. In addition to signing up customers for its Buyers Alliance and announcing
16 that it could produce “significant” savings for such customers, New Energy
17 Ventures is partnering with International Power & Light to offer customers small,
18 on-site generation to reduce reliance on the distribution company’s system and
19 reduce competitive transition charges.

20

21 **Q. Earlier you mentioned cost minimization. Can you provide an example of**
22 **ways that suppliers can reduce costs?**

1 A. Yes. There may be ways to reduce the cost of load balancing. Load balancing
2 costs are the economic penalties of under-delivery or over-delivery (in the
3 Pennsylvania pilot programs, there is no penalty for under- and over-delivery;
4 imbalances are cleared at PJM's market clearing price). For instance, the National
5 Energy Team has talked with generators in New England about purchasing
6 balancing "insurance" in an effort to drive down the cost. Also, installation of
7 more sophisticated metering may help reduce imbalances.

8

9 Indeed, in what was undoubtedly a decision to minimize the operational costs of
10 retail access, NEV has teamed up with LG&E Energy Marketing to provide
11 coordination of energy supplies, along with scheduling and billing services.

12

13 *Marketers also can consider curtailable load or peak reduction strategies that may*
14 *allow them to avoid installed capacity payments and therefore drive down their*
15 *offers to customers.*

16 **Q. What has your recent experience shown regarding the level, if any, of other**
17 **"retail business costs" for which customers will permit suppliers to charge?**

18 A. Many customers begin discussions about price by demanding an "index minus"
19 arrangement, under which the marketer and customer agree on an index of power
20 prices, and the customer then buys power for a fraction of the index price, say 95
21 percent. If a customer is willing to entertain a "cost plus" arrangement, under
22 which the marketer's acquisition costs and margin are transparent to the customer,
23 the baseline margin likely will be less than a mill. I am not aware of any customer

1 who would be willing to pay a markup of 15 percent, as other commenters have
2 testified to in this proceeding. I would also note that NEV, in its "New Energy
3 Buyers' Alliance Member Agreement," includes a charge of 4/100th of one cent per
4 kWh (i.e., 4/10ths of a mill) to cover the costs of "scheduling coordination,
5 procurement, meter reading and billing."

6
7 *Second, marketers routinely tell customers that aggregation will produce load*
8 *curves that more closely resemble wholesale load curves (that is, higher load*
9 *factor), and therefore will cost less to serve. The benefits of load aggregation will*
10 *then be passed on to customers. For example, New Energy Ventures has stated*
11 *that "by aggregating the buying power of all members of the consortium (New*
12 *Energy Buyers' Alliance), New Energy Ventures works to obtain the best possible*
13 *prices for electricity in competitive markets." Enron attorney Dan Allegretti,*
14 *commenting on load aggregation in New Hampshire in this month's Energy*
15 *Buyer's Guide home page, said, "Where it (load aggregation) makes sense is*
16 *where the aggregator adds value, and that is either in the form of an improved load*
17 *profile, where there are positive commitments from the constituents, or in the form*
18 *of an improved marketing relationship."*

19
20 **Q. Please summarize your testimony.**

21 **A.** I have stressed two points:

22

- 1 1. Marketers who approach retail access with innovative products and services,
2 who constantly seek ways to minimize costs, and who take a long-term
3 outlook, will win customers and save them money. In my view, it is not the
4 job of the Competition Act or the Commission to ensure the success of every
5 market intermediary who wishes to participate.
- 6 2. Prices that have been offered to retail customers in the PECO pilot program,
7 plus the availability of the PECO Power Team's standard offer, confirm that
8 wholesale and retail energy and capacity are available at costs below the caps
9 in the Partial Settlement.

10

11 **Q. Does this conclude your testimony?**

12 **A. Yes.**

PC-00973953, PC00973953, C000-C0007

PECO STATEMENT NO. 29-E *etal*

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e.H.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF PECO ENERGY COMPANY
FOR APPROVAL OF ITS RESTRUCTURING PLAN
UNDER SECTION 2806 OF THE PUBLIC UTILITY CODE

TESTIMONY
OF

BRIAN D. CROWE

REGARDING THE ENRON CHOICE PLAN

DOCUMENT
FOLDER

POCKETED
NOV 20 1997

Regarding Code of Conduct, Billing and Metering, and Enron's
Proposed Metering, Billing, and Collection Services Agreement

November 7, 1997

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TESTIMONY OF BRIAN D. CROWE

I. INTRODUCTION AND PURPOSE OF TESTIMONY

Q. Please state your full name and business address.

A. Brian D. Crowe, 2301 Market Street, Philadelphia, PA 19101.

Q. By whom are you employed, and in what capacity?

A. I am employed by PECO Energy Company ("PECO " or the "Company") as Director, Customer Choice Implementation.

Q. What is your educational background?

A. I received my Bachelor of Science in Electrical Engineering from Drexel University in Philadelphia, Pennsylvania. I also received my Master of Business Administration, with a concentration in finance, from Drexel University.

Q. Please describe your work experience with PECO.

A. I joined PECO in October, 1987 as an engineer in the Company's Controls Branch. In December, 1988, I took a position as a Project Engineer in the Company's Substation Branch where I worked on the construction of new transmission and distribution substations as well as additions to existing substations. In June, 1991, I joined the Company's Marketing and Sales Department as an Account Manager. I was responsible for managing daily interactions between a number of university and hospital customers and PECO. In June, 1995 I took a position as a Corporate

1 Strategist in the Company's Corporate Planning and Development Group. In
2 August, 1997, I was appointed Director, Customer Choice Implementation.

3
4 **Q. Please describe your former responsibilities as a Corporate Strategist for**
5 **Corporate Planning and Development, and your new responsibilities as**
6 **Director, Customer Choice Implementation.**

7 A. As a Corporate Strategist I was responsible for the review and analysis of retail
8 competition activities in the electric industry and their implication for the industry
9 and PECO. As the Director of Customer Choice Implementation, I am responsible
10 for implementing and managing the Company's retail electric pilot program and
11 the phase-in of customer choice. My responsibilities include overseeing customer
12 choice activities such as customer selection, supplier interface, training and
13 development, billing, pilot customer service and customer education.

14
15 **Q. Have you previously testified before the Commission?**

16 A. No.

17
18 **Q. Mr. Crowe, what is the purpose of your testimony?**

19 A. The purpose of my testimony is to respond to certain features of the Enron Plan.
20 Specifically, I will:

- 21 • Propose that, with one additional protection, the Commission adopt the
22 consensus Code of Conduct, as developed and approved by the Commission's
23 Competitive Safeguards Working Group;

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- Respond briefly to Enron’s new arguments regarding whether billing and metering should be competitively provided;
- Explain why Enron’s proposed MBC Services Agreement, under which PECO purportedly would provide to Enron metering, billing and collection services for default customers who would be served by Enron as the Provider-of-Last Resort (PLR), is anti-competitive, against the public interest and entirely one-sided to the detriment of PECO and benefit of Enron;

I am also adopting as my testimony the previously distributed testimony of PECO witness Mr. Gregory A. Cucchi (PECO St. 15 and PECO St. 15-R) regarding Code of Conduct and billing and metering.

Q. Why are you adopting Mr. Cucchi’s testimony on those issues?

A. Since shortly before he submitted his rebuttal testimony in mid-July of this year, Mr. Cucchi’s responsibilities have shifted from implementing the procedures and systems necessary to implement direct access to developing certain PECO competitive businesses. Implementation of customer choice for PECO is now my primary responsibility. In that role, I have overall responsibility for Code of Conduct implementation and for adaptation of PECO’s billing and metering systems to accommodate customer choice. In addition, in my previous position, I was responsible for assisting Mr. Cucchi, who was then Vice President for Corporate Planning, with the development of PECO’s policy with respect to billing and metering issues.

1
2
3 **II. PROPOSED CODE OF CONDUCT**

4 **Q. What Code of Conduct does PECO propose be adopted in this proceeding?**

5 A. PECO proposes that, with one additional protection, the Commission adopt the
6 Consensus Code of Conduct developed by the Commission's Competitive
7 Safeguards Working Group ("Consensus Code").

8 **Q. Please describe the additional provision you mentioned.**

9 A. To the Consensus Code, PECO has added Paragraph K, which contains cross-
10 subsidization protections and guidelines for the appropriate nature and degree of
11 functional separation between PECO's competitive generation and regulated
12 distribution functions, areas on which the Working Group was unable to reach
13 consensus.

14
15 **Q. Did you participate in the Working Group process?**

16 A. Yes, I attended several meetings and participated in one held by conference call.
17 The Working Group held numerous meetings from May to September all of which
18 were well attended by utilities, customers, electric generation suppliers
19 ("Suppliers"), and Commission representatives. In fact, the Group comprised 27
20 participants who had no connection with electric utilities and seven representatives
21 from the utilities. Following 18 weeks of diligent work, and through a broad
22 consensus, the Group developed the Consensus Code. As the Group's Chairman,
23 John A. Levin, noted in the Final Report to the Commission, the Group

1 recommended that the Consensus Code form the basis for the “establishment of an
2 enforceable code of conduct for the restructured electric power industry.” I have
3 attached to my testimony as Exhibit BDC-1 a copy of the Consensus Code with
4 PECO’s additional protection.
5

6 **Q. How does this code compare to the code PECO had previously proposed in
7 Mr. Cucchi’s rebuttal testimony?**

8 A. The two codes are comparable and contain reasonable prohibitions designed to
9 prevent potential anti-competitive abuses. This Consensus Code, however, is even
10 more explicit as it expressly addresses PECO’s implementation of the Code of
11 Conduct (Paragraph H); disclosure of customer information (Paragraph B); as well
12 as disclosure of non-public information about operational status and about the
13 availability of the distribution system (Paragraph F).
14

15 **III. RESPONSE TO ENRON’S PROPOSAL TO UNBUNDLE BILLING,
16 METERING AND OTHER CUSTOMER SERVICES**
17

18 **Q. What is PECO’s position on unbundling and deregulating billing, metering
19 and other customer services?**

20 A. To briefly summarize, PECO’s position is that the Commission should not
21 unbundle billing, metering and other customer services because to do so
22 contravenes the Competition Act and is against the best interest of the Company’s

1 customers.¹ To comply with the Competition Act and the Commission's
2 Guidelines on Maintaining Customer Service at the Same Level ("PUC Folder 11
3 Guidelines") PECO does not believe that any customer service functions should be
4 unbundled and offered as competitive services. In contrast, under its Plan, Enron
5 expands its original unbundling proposal that covered just metering and billing to
6 include all customer service functions.

7
8 As we have discovered in implementing our pilot program, customer choice for
9 generation supply is itself confusing and raises many questions and concerns for
10 customers. There are additional complex issues associated with unbundling and
11 deregulating metering, billing and other customer services. To unbundle and
12 deregulate these services now, simultaneously with introducing choice for
13 generation supply, adds unnecessary further complexity and confusion.

14
15 **Q. Has the Company changed its position after review of Enron's Plan?**

16 A. No. Enron's Plan does not offer any new or compelling reasons for unbundling
17 these services. In fact, Enron's Plan, and the testimony submitted in support of it,
18 merely assumes that unbundling of these services will occur.

19
20 **Q. Please elaborate on why these services should not be unbundled.**

21 A. The Competition Act requires that "[t]he electric distribution company shall
22 continue to provide customer service functions consistent with the regulations of

¹ PECO's position on unbundling billing and metering is discussed in the direct and rebuttal testimony of Mr. Cucchi (PECO St. 15, pp. 15-26 and PECO St. 15-R, pp. 2-14).

1 the commission, including meter reading, complaint resolution and collections.

2 Customer services *shall at a minimum, be maintained at the same level of quality*
3 *under retail competition.*” 66 Pa. C.S. §2807(D).(emphasis added). I do not
4 believe that customer service can be maintained at the same level of quality if all
5 customer service functions, including billing and metering, are unbundled and
6 deregulated.

7
8 For example, Enron proposes in (Rule 16.3(a)) of its Distribution Tariff that the
9 Meter Service Provider (MSP) perform meter readings at no less than 99%
10 accuracy level. PECO specifies a meter reading accuracy rate of one error per
11 3000 reads which is 99.97%. Likewise Rule 16.2 (Meter Tests of MSP Owned
12 Meters) allows the “MSP the option to make tests, upon request, to supply special
13 information regarding the end use of service,” in contrast to PECO’s tariff that
14 *requires* the Company to perform such tests when requested.

15
16 The proposed unbundling of all customer service functions also violates the PUC
17 Folder 11 Guidelines. In listing the types of customer service interactions between
18 the EDC, Supplier and residential customers, the guidelines provide that “all
19 physical activity relating to metering such as setting meters, testing, calibrating,
20 change-out, etc. are to remain EDC functions.” The guidelines also state that
21 because the EDC “retains the responsibility for provision of transmission and
22 distribution services, the requirements of 52 Pa. Code §56.191 and §56.192
23 relating to restoration of service, remains with the EDC.” As such the PUC

1 guidelines clearly do not permit these customer service functions to be performed
2 by Suppliers.

3
4 **Q. Please explain why unbundling and deregulating these services would be
5 against the best interest of customers?**

6 A. Enron's proposed Distribution Tariff (Rule 22) permits numerous providers to
7 perform customer service functions. Although Enron's plan purports to assume all
8 PECO's customer service responsibilities, it fails to explain how allowing customer
9 service activities to be split among many companies would work without any
10 adverse affects on customers. Under this rule, a customer may have one provider
11 for meter reading, one provider for complaint resolution, and another provider for
12 billing. I believe that this would be detrimental and lead in effect to a decrease in
13 customer service, a result prohibited by the Competition Act. For, with numerous
14 providers involved, customers will not be able to get answers to their questions on
15 the first call, but will have to be transferred repeatedly. As customer satisfaction is
16 directly linked to the ability of the Company to answer inquiries immediately, such
17 a situation will result in delayed responses and decreased customer satisfaction and
18 service. Secondly, if the Company cannot respond on the first call, the inquiry may
19 then be considered a dispute as defined by 52 Pa. Code §56.2, resulting in various
20 providers investigating a matter that could otherwise have been easily addressed.

21
22 In addition, if metering is made competitive and customers can switch Suppliers
23 monthly, changing meters when a customer changes Suppliers will produce

1 inefficiencies, inconvenience, additional costs to customers and customer
2 confusion. Consider the situation in which a customer questions his meter reading
3 and the customer has had numerous Suppliers and meters. How will the Company
4 and Suppliers respond to the inquiry? Who will the customer call to register his
5 dispute? Who will test the meter? What if a meter test is required and the meter
6 has been removed and relocated to another customer of the Supplier? As such,
7 with competitive metering a seemingly simple inquiry by a customer regarding his
8 meter reading can require a complex dispute investigation that would not be
9 necessary if the Company retained ownership and control of the billing meter.

10

11 **Q. Will the unbundling and deregulating of customer service affect service**
12 **reliability?**

13 A. Yes. Enron's Rule 22 provides that the EGS is to receive outage calls directly
14 from the customer and then refer the information to the Company. This creates a
15 risky, and potentially dangerous, situation if a report is delayed, lost or not
16 processed accurately. Speed in responding is critical in an emergency situation.
17 Any time you add intermediaries between the customer and the ultimate service
18 provider (in this case, PECO) you increase the potential for inaccuracies and the
19 length of response time.

20

21 **Q. Please respond to Mr. Reising's claims on the merits of unbundling and**
22 **deregulating billing, metering and other customer services.**

1 A. Although Mr. Reising claims that competition in billing, metering and other
2 customer services will lower the costs of these services, he offers no facts to
3 support this conclusion. In addition, Mr. Reising claims that the “monopoly” in
4 these services has inhibited any growth in technology. I do not agree. PECO
5 currently offers and uses real-time and remote meters that allow customers to
6 manage their use of electricity in low cost periods and also allow numerous pricing
7 options for the customer. There is no reason why PECO will not continue to take
8 advantage of new metering technology. I also have no doubt the Commission can
9 capably oversee this matter in the future.

10
11 Finally, Mr. Reising’s testimony on the merits of unbundling what he terms “non-
12 wire services” focuses strictly on competitive metering. He offers absolutely no
13 evidence that the deregulation of billing or of other customer services will produce
14 any benefits to consumers.

15
16 **IV. ENRON’S PROPOSED MBC SERVICES AGREEMENT**

17
18 **Q. Have you reviewed Enron’s proposed MBC Services Agreement?**

19 A. Yes, I have. I note that Enron has presented no witness to explain or support the
20 terms of the proposed MBC Services Agreement (“Agreement”). Therefore, my
21 testimony will be directed to the Agreement and not to any specific testimony.

22

23

1 Q. You have already explained PECO's objections to Enron's proposal to
2 unbundle and deregulate billing, metering and other customer services. Does
3 PECO have other objections to the Agreement?

4 A. Yes. Even if PECO did not fundamentally object to unbundling those services as it
5 does, PECO would not enter into the Agreement offered by Enron for numerous
6 reasons. First, the Agreement is grossly one-sided, insulating Enron from all
7 financial risks and shifting those risks to PECO. Under the Agreement, Enron
8 assumes the role of Provider of Last Resort ("PLR") in name only. Second, the
9 Agreement is against the public interest. For, the Agreement itself, as well as
10 Enron's requirement that it not be considered a public utility, would effectively
11 remove from the Commission its power to supervise Enron as PLR with respect to
12 metering, billing and customer service functions. In essence, either the
13 Commission (and PECO) do things Enron's way, or Enron will terminate the
14 agreement and abandon its PLR status. Third, the Agreement is anti-competitive
15 as it would enable Enron to share confidential information with affiliates and take
16 advantage of its PLR label to unfairly profit at PECO's and customers' expense.
17 Finally, the Agreement is ambiguous on a number of important matters.

18

19 1. The Agreement is Grossly One-Sided

20

21 Q. Please explain how the proposed MBC Services Agreement is one-sided and
22 insulates Enron from financial risks.

23 A. The entire Agreement is structured so that Enron does not have to invest any

1 capital, or risk losing even a penny through operations. Enron's only duty is to
2 receive money collected (by PECO) from Default Service customers, and to pay a
3 portion of that money to PECO at a specified amount per kWh delivered to such
4 customers. PECO provides all the service, incurs all costs, and all variations in
5 costs, and retains all the liability.

6
7 **Q. Doesn't PECO currently incur those costs?**

8 A. Yes. Currently PECO as the provider of generation incurs costs to provide
9 metering and billing and customer services, and faces the resulting financial risks.
10 Enron in contrast wants to assume the name of PLR, but none of the risks,
11 financial or otherwise.²

12
13 **Q. Please identify those portions of the Agreement that insulate Enron from
14 risk.**

15 A. Under Article 2.2, it would be PECO's responsibility to comply with all future
16 directives of the Commission and the Legislature in performing MBC Services
17 under the Agreement. Although such directives could increase the cost to provide
18 MBC Services, Enron has no responsibility to pay PECO for any increase in costs
19 resulting from changes in service required by law or regulation. Furthermore,
20 there is no provision in the Agreement that would allow PECO to recover from

² Rule 24.9 of the Default Service Tariff provides specific proof that Enron's goal is to assume merely the title of PLR but none of its actual obligations, risk or liability. Under that rule, Enron assumes absolutely no liability for any damages caused by any failure in the supply or delivery of electricity. Rather, PECO retains full liability for any such damages.

1 Default Service Customers any increases in costs resulting from such mandates.³

2
3 Similarly, under Article 3.1 it appears PECO, not Enron, would bear all the risk for
4 any increase in the gross receipts tax. If the tax liability exceeds the amount
5 reflected in the cost of service that forms the basis for PECO's current distribution
6 rates, PECO could bear the entire cost of that increase, even though Enron
7 nominally is the PLR. Furthermore, it is unclear whether and how PECO would be
8 made whole for any such increases.

9
10 **Q. Are there other risks that Enron avoids under the proposed Agreement, even**
11 **though it claims to be the PLR?**

12 A. Yes. Article 7.3 places all credit risk upon PECO, including not only customers'
13 failure to pay for the energy portion of their bills, but also their failure to pay for
14 transmission and distribution costs. PECO bears the entire risk of any increase in
15 uncollectible accounts expense for Default Service Customers, while Enron, as the
16 PLR, is assured total recovery of its energy costs to serve Default Service
17 Customers. I note, in particular, with regard to this provision that Enron now
18 proposes to treat CAP customers as Default Service Customers (Enron St. No. 5,
19 p. 11). As a result, the purported "safety net" offered by Enron for payment-
20 troubled customers costs Enron nothing, with all risks and costs borne by PECO.

21

³ Not only does Enron bear no risk for increases in costs resulting from regulatory action, under Article 4.4, it has a unilateral right to terminate the Agreement if regulatory action "materially adversely affects" its rights.

1 Q. **Please continue with your explanation of other one-sided provisions in the**
2 **Agreement designed to benefit Enron at PECO's expense.**

3 Articles 3.4 and 7.5 represent additional examples of how patently unfair and one-
4 sided the Agreement is. These articles require PECO to incur expenses to
5 "manage" the PECO-Enron "relationship" and to provide extensive reports to
6 Enron concerning the provision of MBC Services -- costs not currently incurred by
7 PECO and for which Enron pays nothing. Furthermore, PECO must bear all the
8 expense to change all of its bills and envelopes to reflect Enron's logo. These
9 additional activities required by the Agreement provide no value to customers.

10
11 Another one-sided provision is Article 3.2, which works in tandem with Article
12 7.2. Under the Agreement, PECO presumably will cycle the bill on a monthly
13 basis and receive payment from Default Service Customers in the same manner as
14 it does currently for all customers.⁴ However, PECO will not retain the portion of
15 customer payments related to MBC Services. Instead, under Article 7.2, PECO
16 must immediately remit to Enron the portion of customers' payments related to
17 MBC Services. PECO must then wait for 15 days after the end of the month to
18 receive payment for MBC services provided. Thus, Enron will have the use of the
19 portion of payments attributable to MBC Services for 15 to 45 days after payments
20 are made.

21

⁴ The agreement does not explain meter-reading and billing procedures. I assume nonetheless that cycle meter reading and billing is intended, only because PECO would have insufficient human resources to read all Default Service Customer meters on a single day.

1 In addition, PECO bears all the risks and costs in collecting and remitting such
2 payments, but receives no compensation from Enron for such activities.

3
4 Moreover, under Article 7.2 PECO has no right to deduct, retain or set off
5 amounts collected from customers, even if, for example, Enron fails to pay PECO
6 under the proposed Power Purchase Agreement. No similar restriction applies to
7 Enron. In fact, in the event of a PECO default under the Power Purchase
8 Agreement Article 8.3 provides that, Enron can collect *all* amounts due from
9 Default Service Customers (including amounts owed PECO for providing
10 distribution services) and use them to offset its costs.

11
12 The pervasive one-sidedness of the Agreement is apparent in numerous other
13 provisions including the following:

14 -- Enron, in its sole discretion, decides whether the Conditions Precedent to
15 the Agreement have been satisfied (Article 5).

16 -- Enron, in its sole discretion, can assign its responsibilities under the
17 Agreement to any affiliate it desires (Article 15.10).

18 -- Enron, in its sole discretion, decides whether to extend the Agreement
19 beyond December 31, 2003 (Article 4.3).

20 -- Enron, in its sole discretion, can terminate the Agreement if it decides that
21 PECO has failed to meet performance standards (Article 6.1), or if a law or
22 regulation or order "materially adversely affects" its rights (Article 4.4).

23 -- Enron claims to be the PLR, but PECO remains fully obligated and liable to

1 provide energy services in the PECO service territory (Article 12.3).

2 -- Because Enron's sole duty under the Agreement is to pay PECO, the
3 nominally parallel indemnification obligations are really only an indemnification of
4 Enron by PECO (Articles 12.1; 12.2).

5
6 **2. The Agreement Thwarts the Commission's Oversight**

7
8 **Q. Your second objection is that the Agreement effectively limits the**
9 **Commission's authority to supervise Enron as PLR. Please explain.**

10 **A.** In the Agreement, Enron has incorporated at least two provisions designed to
11 protect it against the possibility that the Commission could decide, or be asked, to
12 modify, expand or regulate Enron's duties or responsibilities as PLR.

13
14 The first provision is Article 4.4, which provides in pertinent part:

15 In the event that a final, non-appealable order, rule or regulation. . .
16 becomes effective, the effect of which is to materially adversely
17 affect the rights or obligations of EESP under the provisions of the
18 Distribution Tariff governing default service, EESP shall have the
19 right. . . to terminate this Agreement. . . .
20

21 This is a rather astonishing provision. Given that Enron's status as a non-utility is
22 a condition to acceptance of the Enron Plan, Enron in effect is trying to push the
23 Commission out of utility regulation and into contract enforcement. But
24 essentially in this contract provision, Enron has said to the Commission, "apply the
25 rules to us and we'll walk away." Although PECO, as a public utility, and as the
26 current PLR, must obey any final Commission order, rule or regulation, Enron

1 seeks to assume the title of PLR while avoiding regulation as a public utility *and*
2 claiming the right to negate any adverse Commission action by unilaterally
3 terminating the MBC Services Agreement without any further obligation.

4
5 And what happens when Enron chooses to terminate the Agreement? Does Enron
6 remain as the titular PLR, even though it has no assets or employees to actually
7 provide PLR service, or can Enron simply quit as PLR? Under Article 4.5, which
8 provides that termination of the Agreement does not release PECO⁵ from its
9 obligation to provide MBC Services, (see also Article 12.3) Enron apparently can
10 abandon its title of PLR leaving PECO in that role, a role PECO actually has
11 throughout the Agreement.

12
13 Article 13 is a second provision designed to thwart the Commission's oversight
14 authority. Under this provision, disputes about interpretation of the contract must
15 be submitted to arbitration, in apparent conflict with the Commission's power,
16 under Section 508 of the Public Utility Code, to supervise contracts entered into
17 by utilities.

18 **3. The Agreement is Anti-Competitive**

19
20 **Q. You also indicated that the Agreement would enable Enron to engage in anti-**
21 **competitive conduct. Please explain.**

22 **A. Article 2.6 of the Agreement requires PECO to furnish Enron with full information**

⁵ It is unclear how one party to a two-party Agreement can terminate the Agreement yet still bind the other party.

1 on metering, billing and collection relating to Default Service Customers.
2 Significantly, however, the Enron Plan Code of Conduct that prohibits sharing of
3 information with affiliates applies only to PECO, not to Enron. As a result, unlike
4 other PLRs, Enron may provide *its* competitive affiliates with sensitive customer
5 information to the exclusion of other suppliers. Thus, for example, Enron could
6 advise its affiliated electric generation supplier, Enron Power Marketing, Inc.,
7 whenever a customer terminates service with another generation supplier, thereby
8 giving Enron Power Marketing, Inc. impermissible leads to potential new
9 customers. Enron could also use its “insider information” to direct its affiliate’s
10 marketing efforts only to “good paying” customers, or to customers with
11 profitable load profiles. Enron’s affiliate would also not be prohibited from
12 claiming in public advertising that it has a “special” relationship with the PLR,
13 Enron. These are *all* restrictions that PECO is willing to apply against itself as
14 PLR, but to which Enron has not committed in the Enron Plan.

15 16 **4. The Agreement is Ambiguous**

17
18 **Q. Finally, you indicated that the Agreement is unclear and ambiguous in a**
19 **number of critical matters. Please explain.**

20 **A.** The largest single uncertainty relates to customer billing and service complaints.
21 Under Enron’s proposal, it claims to be the PLR. However, PECO performs the
22 services. If the customer files a complaint, who must undertake the defense --
23 PECO or Enron? Who must pay legal fees - PECO or Enron? If PECO must pay

1 for the defense, what portion of the payment for MBC Services is intended to
2 compensate for such costs? The Agreement answers none of these questions.

3
4 The Agreement also does not explain how PECO is to undertake meter-reading
5 and billing for Default Service Customers. Are they to be read and billed in cycles
6 chosen by PECO, or will Enron direct meter-reading and billing dates?

7
8 Other uncertainties in the Agreement include:

9 -- Who defines "materially adversely affect" for purposes of Enron's
10 unilateral termination right under Article 4.4.?

11 -- Is Enron designating PECO its affiliate because this Agreement
12 allows Enron to direct certain activities and policies of PECO?

13 -- If PECO cannot read a customer's meter when scheduled, due to
14 weather or other reasons outside PECO's control, must PECO provide written
15 notice to Enron? (Article 11.1)

16 -- Article 2.2 references the need to comply with "applicable
17 Competitive Safeguards," but no "Competitive Safeguards" apply to this
18 Agreement.

19 -- Exhibit A contains no "prices for non-wires services" for Rate SL-S
20 or CAP Rate.

21
22 **Q. Based upon all of the forgoing, in your opinion, would a reasonably prudent**
23 **utility manager enter into such a one-sided and flawed contract?**

1 A. Definitely not.

2

3

V. CONCLUSION

4

5 Q. Does that conclude your testimony?

6 A. Yes, it does.

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CODE OF CONDUCT

- A. An Electric Distribution Company (“EDC”) shall not give any Electric Generation Supplier (“EGS”), including without limitation its affiliate or division, any preference or advantage over any other EGS in processing a request by a distribution company customer for retail generation supply service.
- B. Subject to customer privacy or confidentiality constraints, an EDC shall not give an EGS, including without limitation its affiliate or division, any preference or advantage in the dissemination or disclosure of customer information and any such dissemination or disclosure shall occur at the same time and in a comparable manner. “Customer information” means all information pertaining to retail electric customer identity and current and future retail electric customer usage patterns, including appliance usage patterns, service requirements or service facilities.
- C. No EDC shall engage in false or deceptive advertising to customers with respect to the retail supply of electricity in the Commonwealth.
- D. An EDC shall, in cooperation with all stakeholders, establish and file with the Commission dispute resolution procedures to address alleged violations of this Code of Conduct.
- E. An EDC shall not illegally tie the provision of any electric distribution service within the jurisdiction of the Pennsylvania Public Utility Commission (“Commission”): (a) to the purchase, lease or use of any other goods or services offered by the EDC or its affiliates; or, (b) to a direct or indirect commitment not to deal with any competing EGS.
- F. An EDC shall not provide any preference or advantage to any EGS in the disclosure of information about operational status and availability of the distribution system.
- G. An EDC shall supply all regulated services and apply tariffs to non-affiliated EGSs in the same manner as it does for itself and its affiliated or division EGS, and shall uniformly supply all regulated services and apply its tariff provisions in a non-discriminatory manner.
- H. Every EDC and its affiliated or divisional EGS shall formally adopt and implement these provisions as company policy and shall take appropriate steps to train and instruct its employees in their content and application.
- I. In the event that an EDC customer requests information about EGSs, the EDC shall provide the latest list as compiled by the Commission to the customer over the telephone, or in written form or by other comparable means. In addition, an EDC may provide the address and telephone of an EGS if specifically requested by the customer by name. To enable electric distribution companies to fulfill this obligation, the Commission shall maintain a written list of licensed EGSs. The Commission shall regularly update this list and provide such updates to electric distribution companies as soon as reasonably practicable. The Commission shall

compile the list in a manner that is fair to all EGSs and that is not designed to provide any particular EGS with a competitive advantage.

- J. An EDC or its affiliate or division shall not state or imply that any delivery services provided to an affiliate or division or customer of either are inherently superior, solely on the basis of their affiliation with the EDC, to those provided to any other EGS or customer or that the EDC's delivery services are enhanced should supply services be procured from its affiliate or division.
- K. Employees of the EDC who have responsibility for operating the distribution system, such as receiving requests for power, purchasing power, scheduling delivery, or billing and metering, shall not be shared with its affiliated or divisional EGS, and their offices shall be physically separated from the office(s) used by those working for its affiliated or divisional EGS. Any shared facilities shall be fully and transparently allocated between the EDC function and the EGS function. EDC accounts and records shall be maintained such that the costs a EGS incurs may be clearly identified. Further, the EDC shall not: (1) sell non-power goods or services to an EGS affiliate or division at a price below the higher of cost or market price for said goods or services; and (2) purchase non-power good or services from an EGS affiliate or division at a price above the market price for said goods or services.