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BEFORE

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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In re: R-00973953 Pennsylvania Public Utility Commission v. PECO Energy Company Application for approval of a restructuring plan and Consumer Education Program.  
P-00971265 Petition of ENRON Energy Services Power, Inc. For approval of an electric competition and customer choice plan and for authority pursuant to section 2807(E)(3) of the Public Utility Code to serve as the provider of last resort in the service territory of PECO Energy Company. Further Hearings.

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HOLBERT ASSOCIATES  
EUGENE W. HOLBERT, RPR  
GLENDA S. TRAVITZ  
MARY ELLEN WOLF  
P. O. Box 6144  
Harrisburg, Pennsylvania 17112-0144

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CERTIFIED ORIGINAL

BEFORE

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

- - - - -

In re: R-00973953 R-00973953C0001-C0007 Pennsylvania Public Utility Commission v. PECO Energy Company Application for approval of a Restructuring Plan and Consumer Education Program.  
P-00971265 Petition of ENRON Energy Services Power, Inc. For approval of an electric competition and customer choice plan and for authority pursuant to section 2807(E)(3) of the Public Utility Code to serve as the provider of last resort in the service territory of PECO Energy Company. Further Hearings.

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

Wednesday,  
November 19, 1997  
at 9:00 o'clock a.m.

- - - - -

BEFORE

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

## APPEARANCES:

CHARLES DANIEL SHIELDS, ESQUIRE  
KENNETH L. MICKENS, ESQUIRE  
P. O. Box 3265  
Harrisburg, Pennsylvania 17105-3265  
Appearing on behalf of Pennsylvania Public  
Utility Commission Law Bureau

## APPEARANCES: (Continued)

WARD L. SMITH, ESQUIRE  
PAUL R. BONNEY, ESQUIRE  
NOEL TRASK, ESQUIRE  
MARY MCFALL HOPPER, ESQUIRE  
2301 Market Street  
Philadelphia, Pennsylvania 19101-8699  
Appearing on behalf of PECO Energy Company

WOLF, BLOCK, SCHORR & SOLIS-COHEN  
DANIEL CLEARFIELD, ESQUIRE  
GERALD GORNISH, ESQUIRE  
ALAN KOHLER, ESQUIRE  
305 North Front Street  
Harrisburg, Pennsylvania 17101  
AND  
JOHN J. GALLAGHER, ESQUIRE  
ZSUZSANNA BENEDEK, ESQUIRE  
BRUCE V. MILLER, ESQUIRE  
JOHN G. KLAUBERG, ESQUIRE  
Appearing on behalf of Enron Corp.

STEVEN P. HERSHEY, ESQUIRE  
PHIL BERTOCCI  
COMMUNITY LEGAL SERVICES  
1424 Chestnut Street  
Philadelphia, Pennsylvania 19102  
Appearing on behalf of CEPA, TAG, John W.  
Long, Jr.

CHRISTOPHER B. CRAIG, ESQUIRE  
Room 545 Main Capitol Building  
Harrisburg, Pennsylvania 17120  
Appearing on behalf of Senator Vincent J.  
Fumo

BERNARD RYAN, ESQUIRE  
Suite 1102, 300 North Second Street  
Harrisburg, Pennsylvania 17101  
Appearing on behalf of Office of Small  
Business Advocate

WALTER W. COHEN, ESQUIRE  
OBERMAYER, LEBMANN, MAXWELL & HIPPEL  
204 State Street  
Harrisburg, Pennsylvania 17101  
Appearing on behalf of Indianapolis Power  
and Light Co.

## APPEARANCES: (Continued)

WILLIAM T. HAWKE, ESQUIRE  
MALATESTA, HAWKE & MCKEON  
100 North Tenth Street  
P. O. Box 1778  
Harrisburg, Pennsylvania 17105  
Appearing on behalf of Mid-Atlantic Power  
Supply Association

DAVID M. KLEPPINGER, ESQUIRE  
MCNEES, WALLACE & NURICK  
100 Pine street  
Harrisburg, Pennsylvania 17101  
Appearing on behalf of Philadelphia Area  
Industrial Energy Users Group (PAIEUG)

PAUL E. RUSSELL, ESQUIRE  
Two North Ninth Street  
Allentown, Pennsylvania 18101  
AND

DONALD A. KAPLAN, ESQUIRE  
LISA HELPERT, ESQUIRE  
PRESTON, GATES & ELLIS  
1735 New York Avenue, N. W.  
Washington, D. C. 20006  
Appearing on behalf of Pennsylvania Power &  
Light Company

ROGER E. CLARK, ESQUIRE  
905 Denston Drive  
Ambler, Pennsylvania 19002  
Appearing on behalf of "Environmentalists"

STEVEN STEINMETZ, ESQUIRE  
1425 Strawberry Square  
Harrisburg, Pennsylvania 17120  
Appearing on behalf of Office of Consumer  
Advocate

PAUL NORDSTROM, ESQUIRE  
VERNEN, LIPPERT, BERNHOVEN, MCPHERSON and HAND  
901 15th Street, N. W., Suite 700  
Washington, D. C. 20005  
Appearing on behalf of Allegheny Power

## APPEARANCES: (Continued)

DAVID DESALLE, ESQUIRE  
RYAN, RUSSELL, OGDEN & SELTZER  
800 North Third Street, Suite 101  
Harrisburg, Pennsylvania 17102  
Appearing on behalf of GPU Energy

CRAIG A. DOLL, ESQUIRE  
214 State street  
Harrisburg, Pennsylvania 17101  
Appearing on behalf of Conectiv Energy

JOSEPH A. DWORETZKY, ESQUIRE  
HANGLEY ARONCHICK  
One Logan Square, Suite 1200  
Philadelphia, Pennsylvania 19103  
Appearing on behalf of New Energy Ventures

JOELLE OGG, ESQUIRE  
JOHN AND HENGERER  
1200 17th Street, N. W.  
Washington, D. C. 20036  
Appearing on behalf of Northern Energy  
Management, Inc., Duke Energy Trading &  
Marketing, Inc., Electric Clearinghouse,  
Inc, Vector Power Marketing, Inc.

LANCE HAVER  
6048 Ogontz Avenue  
Philadelphia, Pennsylvania 19141  
Appearing Pro Se

LINDA SMITH, ESQUIRE  
305 North Front Street  
Harrisburg, Pennsylvania 17108  
Appearing on behalf of AARP

- - - - -

HOLBERT ASSOCIATES  
EUGENE W. HOLBERT, RPR  
GLENDA S. TRAVITZ, RPR  
MARY ELLEN WOLF, RPR  
P. O. Box 6144  
Harrisburg, Pennsylvania 17112-0144

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1 JUDGE CHESTNUT: We'll go on the record. This is  
2 the further hearing in the matter of Pennsylvania Public  
3 Utility Commission versus PECO Energy Company at Docket  
4 Number R-00973593 and the petition of ENRON Energy Services  
5 Power, Inc. at Docket Number P-009671265. I am  
6 Administrative Law Judge Marlane R. Chestnut. With me is  
7 Administrative Law Judge Charles E. Rainey, Jr.

8 For the record, I would like the counsel present to  
9 identify themselves, stating your name and on whose behalf  
10 you are appearing and to make it easier on some of us, I am  
11 going to go in the order in which you signed the appearance  
12 sheet as opposed to physically sitting. So we'll start  
13 with Mr. Mickens.

14 MR. MICKENS: Go morning counsel for the Office of  
15 Trial Staff.

16 JUDGE CHESTNUT: Thank you, Mr. Doll.

17 MR. DOLL: Craig Doll, representing Connectiv  
18 Energy.

19 JUDGE CHESTNUT: Thank you. Mr. Steinmetz?

20 MR. STEINMETZ: Steve Steinmetz from the Office of  
21 Consumer Advocate.

22 JUDGE CHESTNUT: Thank you. Mr. Ryan?

23 MR. RYAN: Bernie Ryan, Office of Small Business  
24 Advocate.

25 JUDGE CHESTNUT: Thank you. Mr. Bonney?

1 MR. BONNEY: Paul Bonney, counsel for PECO Energy  
2 Company and with me today is Ward Smith and Noel Trask.

3 JUDGE CHESTNUT: Thank you. Mr. Hawke?

4 MR. HAWK: William Hawke, Your Honor, on behalf of  
5 Mid-Atlantic Power Supply Association.

6 JUDGE CHESTNUT: Mr. Hershey.

7 MR. HERSHEY: Steven Hershey for CEPA, TAG, ACORN  
8 and John W. Long, Jr. and with me is Phil Bertocci.

9 JUDGE CHESTNUT: Thank you. Mr. Kleppinger?

10 MR. KLEPPINGER: David Kleppinger from the Law Firm  
11 of McNees, Wallace & Nurick representing Philadelphia Area  
12 Industrial Energy Users Group.

13 JUDGE CHESTNUT: Thank you. Mr. Craig?

14 MR. CRAIG: Christopher Craig, representing State  
15 Senator Fumo.

16 JUDGE CHESTNUT: Thank you. Mr. Dworetzky.

17 MR. DWORETZKY: Joseph Dworetzky from Hangley  
18 Aronchick, Segal & Pudlin on behalf of New Energy Ventures.

19 JUDGE CHESTNUT: Thank you. Mr. Clearfield.

20 MR. CLEARFIELD: Daniel Clearfield -- good morning  
21 -- and with me -- from Wolf, Block Schorr and Solis-Cohen  
22 on behalf of ENRON.

23 JUDGE CHESTNUT: Thank, Mr. Gallagher.

24 MR. GALLAGHER: John Gallagher and Bruce Miller from  
25 LeBoeuf, Lamb, Green and MacRae representing ENRON.

1 JUDGE CHESTNUT: Thank you. Ms. Helpert?

2 MR. HELPERT: Lisa Helpert from Preston and Gates,  
3 representing PP&L.

4 JUDGE CHESTNUT: Is there any party present who did  
5 not sign the appearance sheet?

6 (No response.)

7 JUDGE CHESTNUT: Are there any procedural matters  
8 any party wishes to raise at this point?

9 (No response.)

10 JUDGE CHESTNUT: Okay. When we adjourned last  
11 night, we were in the midst of cross examination of Mr.  
12 Hill. Are we ready to resume with that? Mr. Bonney?

13 MR. BONNEY: Yes. We had just one point of  
14 clarification with respect to PECO Exhibit 6 which Mr. Hill  
15 identified yesterday and I would like to just ask him one  
16 question about that. It's going to be the subject of cross  
17 examination, as I understand it, today. So with your  
18 permission, I'd like to ask that question.

19 JUDGE CHESTNUT: Certainly.

20 THOMAS P. HILL, the witness on the stand at the time  
21 of recess, having been previously duly sworn, was examined  
22 and testified further as follows:

23 FURTHER DIRECT EXAMINATION

24 BY MR. BONNEY:

25 Q Mr. Hill, upon further examination of the

1 analysis that Mr. Oliver did of sales forecasts, do you  
2 have anything to add with respect to your PECO Exhibit 6?

3 A Yes. Overnight, we were again reviewing the PECO  
4 Exhibit 6 and in the process of that review I think we have  
5 uncovered where Mr. Oliver got his numbers from the  
6 Company's Annual Resource Planning Report.

7 It appears as if in each of the calendar years for,  
8 beginning in '98 as a partial year through 2008 it appears  
9 as if Mr. Oliver has added together the numbers for  
10 services, residential, commercial, industrial and others,  
11 which are shown in the annual resource plan on Exhibit  
12 IRP-ELEC 1-A and in addition to those sales it appears as  
13 if Mr. Oliver has added in the calendar year, that is the  
14 date, itself, as part of the sales so for instance, in  
15 calendar year 2008.

16 In addition to residential, commercial, industrial  
17 and other sales, Mr. Oliver has added in 2008 to that and  
18 apparently that error is consistent on all the kilowatt  
19 hour sales shown on Exhibit R.

20 My exhibit, PECO Exhibit 6 which shows both the base  
21 and the load forecast sales corrects that apparent error.

22 MR. BONNEY: Thank you, Your Honor. That's all we  
23 have. The witness is available for cross examination.

24 JUDGE CHESTNUT: Okay.

25 MR. CLEARFIELD: Your Honor, I understand this

1 process is very fluid but by presenting this this morning,  
2 it's put us at a considerable disadvantage since Mr. Oliver  
3 has left --

4 JUDGE CHESTNUT: I thought I saw him out there,  
5 didn't -- he's right here.

6 MR. CLEARFIELD: I am sorry. Strike that.

7 JUDGE CHESTNUT: If you'd like the chance to discuss  
8 this briefly with him that will be fine.

9 MR. CLEARFIELD: We can do that perhaps after we  
10 conclude and come back at an appropriate point to present a  
11 rejoinder and with that, I can also proceed with just a few  
12 remaining questions with respect to Mr. Hill's surrebuttal  
13 that he gave yesterday and today.

14 JUDGE CHESTNUT: All right.

15 CROSS EXAMINATION (Continued)

16 BY MR. CLEARFIELD:

17 Q Mr. Hill, PECO Exhibit 6, you show the low case  
18 and the base case. Have you calculated a similar schedule  
19 or for the high case that's shown in the IRP forecast.

20 A No, I didn't Mr. Clearfield.

21 Q Can you provide that for us, please?

22 A Certainly.

23 Q When did you prepare this exhibit?

24 A These exhibits were prepared yesterday prior to  
25 my cross examination.

1 Q Yesterday in your surrebuttal you discussed a  
2 number of copies that comprise PJM that had 1,000 megawatts  
3 or more of capacity. Do you recall that?

4 A Yes, I do.

5 Q How many of those companies -- and you stated  
6 that you believed there were 23 out of the 76 that had  
7 1,000 megawatts or more of capacity. Is that right?

8 A If you'll bear with me for a second.

9 (Pause.)

10 A Yes.

11 Q Is that napkin another one of your work papers?

12 A Yes, it is. I don't know what this is.

13 Q How many of the 23 companies are public utility  
14 service retail customers, if you know?

15 A I do not know, Mr. Clearfield.

16 Q How many of those actually owned the 1,000  
17 megawatts or more of capacity?

18 A I believe the companies that I cite own that  
19 capacity or have access to that capacity.

20 Q Access under what conditions?

21 A I do not know.

22 Q How many of the 23 are marketers, if you know?

23 A I do not know.

24 Q How many of the 23 have access to transmission  
25 capacity for rights in PJM, if you know?

1           A I am unaware of anyone not having access to  
2 transmission rights in PJM.

3           Q How many of the 76 total own no megawatts? Own  
4 or have access to no megawatts, if you know?

5           A I do not know.

6           Q With respect to your comments yesterday on the  
7 transmission and distribution adjustment, you provided some  
8 numbers. Am I right that your calculation -- and again, I  
9 was examining the work papers that you provided. This is a  
10 slip of paper.

11          A It looks familiar.

12          Q And -- you are to the point, Mr. Hill. Based on  
13 this it appears as though you took the difference in T&D  
14 rate multiplied it by fixed annual megawatt hours of sales  
15 and then you simply took that for ten years?

16          A Yes.

17          Q And then you took a net present value of that?

18          A Yes. At a discount rate of 8.71 percent.

19          Q In your rebuttal testimony, Mr. Hill, you make  
20 some comments about the need to consider the directive from  
21 the General Assembly that the transition to competition be  
22 fair to all stakeholders, including employees of incumbent  
23 utilities. That's on pages 15 and 16.

24          A Of 1-E.

25          Q Just in summary, Mr. Hill, PECO has engaged in

1 force reductions to -- which have resulted in considerable  
2 reductions in force for PECO to respond to competition or  
3 to prepare the company for a competitive environment.  
4 Isn't that right?

5 A The company has, in both calendar years '90 and  
6 '94, put in place a general retirement program but both  
7 those retirement programs predated any action by this  
8 Commission in moving from regulation to competition.

9 Q Isn't it your -- hasn't PECO reduced its force by  
10 approximately 37 percent since 1990?

11 A That's approximately correct, most of that  
12 occurring prior to the enactment of the Electric  
13 Competition Act.

14 JUDGE CHESTNUT: Excuse me. Mr. Hill, I would  
15 appreciate if you would just respond to the question.

16 THE WITNESS: I am, Your Honor. I am trying to.

17 JUDGE CHESTNUT: But I'd like you to be a little  
18 more direct in your answers. If you have something to add,  
19 you certainly can add that on redirect. If your counsel  
20 feels it's appropriate.

21 THE WITNESS: Yes.

22 BY MR. CLEARFIELD:

23 Q Isn't it true that the company or executives of  
24 the company have indicated that those force reductions were  
25 at least in part designed to allow the company to respond,

1 to be in a better position to compete in an environment in  
2 which the company was going to be subject to competition at  
3 the retail level?

4 A Again, I can't agree with that characterization,  
5 Mr. Clearfield, because those reductions occurred before  
6 there was any announcement or enactment of the Competition  
7 Act in Pennsylvania. In fact, the one significantly  
8 predated the Competition Act and I am referring to the 1990  
9 early retirement program.

10 MR. CLEARFIELD: Could I have just a moment, Your  
11 Honor.

12 (Pause.)

13 BY MR. CLEARFIELD:

14 Q Has the company made any commitments that it will  
15 not reduce its work force if such reductions are consistent  
16 with maintaining high quality service as competition goes  
17 forward?

18 A Could you repeat your question.

19 Q As of this time, has PECO made any commitments to  
20 not reduce, attempt to continue to reduce its work force to  
21 reduce costs, make it more efficient and allow it to better  
22 respond to competition in the future?

23 A I am not specifically aware. I believe that the  
24 company continues to look at the efficiency of its  
25 operation and if reductions in force can be accommodated

1 and still maintain a reliable system, both electric and  
2 gas, that we would continue to make such reductions. But  
3 at this point -- I'll end that with that answer.

4 MR. CLEARFIELD: Your Honor if -- could just have a  
5 moment? I am --

6 (Pause.)

7 BY MR. CLEARFIELD:

8 Q And -- Your Honor, I'll try to go on to another  
9 area and then -- just so it's clear, in your direct  
10 testimony, Mr. Hill, I believe on page 21, this is your  
11 original testimony from the restructuring. You testified  
12 that the company had, in fact, initiated substantial work  
13 force reductions which produced the 37 percent forced  
14 reduction since 1990, didn't you.

15 MR. BONNEY: Your Honor, it's now apparently on the  
16 record twice. In his direct testimony and during cross  
17 examination earlier today. So I am not sure why we need to  
18 repeat this a third time. I don't think there's any  
19 dispute, though.

20 MR. CLEARFIELD: Fine. We'll move on.

21 BY MR. CLEARFIELD:

22 Q Do you consider work force reductions of 67  
23 percent to be unreasonable or inconsistent with the  
24 admonitions from the General Assembly about concern for  
25 shareholders, including employees?

1 A Sixty-seven percent?

2 Q Yes. If there was a work force reduction of 67  
3 percent, is that, in your view, inconsistent with the  
4 admonition of the General Assembly to adequately consider  
5 the interests of employees in the restructuring?

6 A Sixty-seven percent work force reduction relative  
7 to where we are today. Is that what you are speaking of?

8 Q That number, just in any context.

9 A Well, I'll accept, my context is that the company  
10 could not sustain a work force reduction at 67 percent  
11 relative to the current level of employment and still  
12 maintain reliability of the system.

13 Q What about for a division? Of PECO?

14 A You'd have to define division. We have divisions  
15 which encompass six people. So --

16 Q So isn't it true that PECO has already realized a  
17 67 percent force reduction for fossil generation staffing  
18 levels since 1990?

19 A That wouldn't surprise me as a number because we  
20 have also had a closure of certain of our fossil  
21 facilities.

22 Q So in and of itself, reductions at that level  
23 could not tell you one way or another whether employees  
24 have been adequately accommodated or their interests have  
25 been adequately accommodated with respect to the transition

1 in competition, could they?

2 A I don't think I understand your question.

3 Q PECO -- can you make any conclusions with respect  
4 to work force reductions of 60 or 70 percent in and of  
5 itself, with respect to whether employees have been  
6 adequately -- employee interests have been adequately  
7 considered in the movement to competition?

8 A You have got quite a compound question there,  
9 but --

10 Q Just answer each part.

11 A I don't know if I have even got the whole concept  
12 you are delivering to me. But first off, the work force  
13 reductions that we have put in place previously were not  
14 the direct result of moving to competition. They were for  
15 other business reasons, most principally the reaction of  
16 the company to Limerick 1 and Limerick 2 rate orders and  
17 the results coming out of those proceedings in which case  
18 the company was prior to and after, a regulated industry.

19 Now we stand, as I have stated, at about 7,000 or  
20 7,200 employees and I have testified that the company could  
21 not withstand a 60 to 70 percent work force reduction in  
22 the face of competition or without the face of competition  
23 and maintain reliability of both the electric and gas  
24 systems.

25 Q But you have testified that, in fact, in the

1 past, the company has realized force reductions of that  
2 magnitude. Isn't that right for certain of its divisions  
3 at least?

4 A We have had reduction in certain divisions based  
5 upon unique circumstances that have accommodated  
6 significant reductions including retirement of existing  
7 facilities.

8 Q Did that threaten your ability to provide  
9 adequate service to your customers? Your service  
10 territory.

11 A I think obviously we have continued to maintain  
12 reliable service in this service territory.

13 Q So would that be --

14 A Yes.

15 Q I think you actually wanted to say no to that.  
16 It didn't threaten?

17 A It did not threaten.

18 MR. CLEARFIELD: Your Honor, that's all I have.

19 JUDGE CHESTNUT: Does anyone have any -- Mr.  
20 Dworetzky?

21 MR. CLEARFIELD: I apologize. There were two  
22 matters we had raised yesterday in our cross examination  
23 and that was the issue of the financial forecasts that we  
24 had discussed and had been discussed in the prior case.

25 I believe Judge Rainey had asked us to discuss the

1 matter off the record and Mr. Bonney and I have done that  
2 and Mr. Bonney obviously can speak for himself but Mr.  
3 Bonney continues to assert a privilege with respect to  
4 those documents and on various grounds and we, of course,  
5 have, in Mr. Kean's testimony, submitted similar privilege  
6 for certain financial calculations of a similar nature.

7           Rather than request a ruling at this time and in the  
8 interest of moving the proceeding along we have agreed that  
9 we'll defer requesting a ruling on that issue, see how the  
10 proceeding goes and raise it today if, or at a subsequent  
11 time, if necessary.

12           MR. BONNEY: I was fine until you said at a  
13 subsequent time. If we raise it today, then that's fine.  
14 That was my understanding and I am okay with what was  
15 saying I am not sure when the record closes today what time  
16 it was going to be.

17           JUDGE CHESTNUT: I thought the record wasn't going  
18 to close. I thought we had scheduled a hearing for  
19 Tuesday.

20           MR. BONNEY: I'd say -- thank you. I'd like this  
21 matter resolved today because we have Mr. Hill available.

22           JUDGE CHESTNUT: I'd like you to see if you can  
23 resolve it.

24           MR. BONNEY: I won't argue on that.

25           JUDGE CHESTNUT: I'm sure you put forth your best

1 efforts. Maybe a little bit more effort might accomplish  
2 something.

3 MR. DWORETZKY: Your Honors, I wasn't certain of  
4 those days but I have an interest in the outcome of that  
5 matter. What they have proposed is known, subject to  
6 revising it after the comment that was given to me this  
7 morning, that PECO intends to apparently introduce today  
8 from Mr. Mitchell.

9 JUDGE CHESTNUT: Okay. Mr. Clearfield, are you  
10 finished with Mr. Hill at this point?

11 MR. CLEARFIELD: Yes, Your Honor.

12 JUDGE CHESTNUT: Mr. Dworetzky?

13 MR. DWORETZKY: I have one follow-up on Exhibit PECO  
14 Number 6.

15 BY MR. DWORETZKY:

16 Q Would I be correct, Mr. Hill, that in your  
17 valuation, your methodology for determining net present  
18 value, you have done followed the end of the year  
19 convention?

20 A Yes. That's correct.

21 MR. DWORETZKY: Nothing further.

22 JUDGE CHESTNUT: Does anybody else have cross  
23 examination for Mr. Hill?

24 (No response.)

25 JUDGE CHESTNUT: Redirect?

1 MR. BONNEY: None, Your Honor. I am not sure if it  
2 had been previously admitted but for clarity let me move  
3 the admission of PECO Exhibit 6 at this time.

4 JUDGE CHESTNUT: Any objection?

5 (No response.)

6 JUDGE CHESTNUT: Document is admitted.

7 (PECO Exhibit No. 6 was admitted in evidence.)

8 MR. DWORETZKY: Sticking on that last point, I think  
9 you would agree, or Mr. Hill agreed to provide the third  
10 page for that PECO 6 which is the projections at a higher  
11 sales volume given the time, that may be after the record  
12 is closed. Can that be when it is provided, included in as  
13 part of the record.

14 JUDGE CHESTNUT: Mr. Bonney, can I interrupt you.

15 MR. BONNEY: We'll try to do it today. If not --

16 MR. DWORETZKY: Excellent.

17 MR. CLEARFIELD: We intended to put it in the record  
18 when it was provided.

19 MR. BONNEY: Would it be easier to make that as a  
20 third page of this Exhibit 6 that's acceptable?

21 JUDGE CHESTNUT: That's fine.

22 MR. BONNEY: Then well distribute that today.

23 JUDGE CHESTNUT: Are we going to take Ms. Voorhees  
24 or are we going to go with the lineup we had scheduled for  
25 today.

1 MS. MILLER: Your Honor --

2 JUDGE CHESTNUT: Yes, Mr. Miller.

3 MS. MILLER: We were thinking of putting on Mr.  
4 Oliver for a brief rejoinder to Mr. Hill. I think on cross  
5 Mr. Oliver agreed that he would do the exhibit, I think it  
6 was PECO 6 yesterday for the high case, the high forecast  
7 and if PECO is willing to do that we'll waive rejoinder.

8 JUDGE CHESTNUT: Didn't we just discuss that?

9 MR. HILL: We'll do that.

10 MR. MILLER: Then we won't bring Mr. Oliver.

11 JUDGE CHESTNUT: Are we going to go with Ms.  
12 Voorhees or are we going to go with Dr. Silkman? Ms.  
13 Voorhees --

14 MR. MILLER: What was the alternative?

15 JUDGE CHESTNUT: I have no preference in terms of  
16 who goes when. It's up to you folks.

17 MR. RYAN: We promised Ms. Voorhees we'd take her  
18 first.

19 JUDGE CHESTNUT: Sure. Unless she wants to stay.

20 MR. RYAN: Just a matter of courtesy I am talking  
21 about. I don't care.

22 JUDGE CHESTNUT: Miss Voorhees, would you raise your  
23 right hand, please.

24 SUSAN VOORHEES, called as a witness, having been  
25 duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

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

THE WITNESS: Susan P. Voorhees. V- as in Victor, o-o-r-h-e-e-s.

BY MR. CLEARFIELD:

Q Excuse me, Your Honor. While the parties are getting situated. EESPI Cross Examination Exhibit 1 wasn't moved into the record yesterday. May I move it in at this time?

JUDGE CHESTNUT: Any objection.

(No response.)

JUDGE CHESTNUT: The document is admitted.

(EESPI Cross Examination Exhibit No. 1 was admitted in evidence.)

MR. MILLER: Your Honor, Ms. Voorhees is sponsoring two statements, Statement Number 9 and Statement Number 9-R. Statement Number 9 has exhibits with it. We are continuing with the stipulation, I assume.

JUDGE CHESTNUT: Yes.

MR. MILLER: May we have these statements admitted into evidence, Your Honor?

JUDGE CHESTNUT: Any objection.

(No response.)

JUDGE CHESTNUT: The documents are admitted.

1 (ENRON Statements Nos. 9 and 9-R were produced and  
2 marked for identification and admitted in  
evidence.)

3 MR. MILLER: And Ms. Voorhees is available for cross  
4 examination.

5 JUDGE CHESTNUT: Mr. Smith?

6 MR. SMITH: Can I defer to Mr. Craig and have him go  
7 first?

8 JUDGE CHESTNUT: Sure.

9 MR. CRAIG: Good morning, Ms. Voorhees. My name is  
10 Christopher Craig and I represent State Senator Vincent  
11 Fumo.

12 BY MR. CRAIG:

13 Q Am I correct in my recollection that in response  
14 so interrogatories you were identified as participating in  
15 the drafting the ENRON petition?

16 A I was, yes. I participated in that.

17 Q Would you please describe your participation --

18 JUDGE RAINEY: I am sorry Ms. Voorhees. You'll have  
19 to keep your voice up.

20 THE WITNESS: Sure. We participated in numerous  
21 conference calls with our counsel, their counsel and ENRON  
22 in terms of coming up with the concepts for the ENRON  
23 Choice Plan.

24 BY MR. CRAIG:

25 Q How long have you been employed with Chase

1 Securities?

2 A I been employed by Chase Securities or one of its  
3 predecessors ever since 1990; June of 1990.

4 Q And during this time have you been involved in  
5 asset-backed transactions similar to the ones outlined in  
6 the settlement and in the ENRON petition?

7 A It would depend on your characterization of  
8 similar. I was involved in the Puget transaction in 1995.

9 Q On page 9 and 10 of your first statement,  
10 Statement Number 9, that is, you indicated that you were  
11 familiar with two particular lawsuits, lawsuit filed on  
12 behalf of the Utility Workers Union of America and a  
13 lawsuit filed on behalf of the Indianapolis Power and Light  
14 Company, that each challenge, independently and on separate  
15 grounds, the Constitutionality of the Pennsylvania  
16 Deregulation Act. Is this an accurate statement?

17 A I am aware of the existence of the lawsuits,  
18 yes.

19 Q Your statement was that you were familiar with  
20 the lawsuits. Is that correct?

21 A I am aware of the existence of the lawsuits,  
22 yes. I am familiar with that.

23 Q Have you personally reviewed any of the  
24 complaints filed in any of the two lawsuits?

25 A No, I have not.

1 Q Have you personally reviewed any the responsive  
2 pleadings in the lawsuits?

3 A No, I have not.

4 Q I assume that it's correct that you have  
5 personally not reviewed any briefs?

6 A No, I have not.

7 Q Would you please describe your familiarity with  
8 the lawsuits?

9 A As is customary, I have relied on the advice of  
10 counsel as to preparing the statements that I have put into  
11 my rebuttal testimony or my testimony.

12 Q Is it correct from my understanding that your  
13 familiarity is secondhand. You have been informed by  
14 someone else as to those two particular lawsuits?

15 A I am relying on the advice of counsel, yes.

16 Q Is it correct, then, that you do not personally  
17 have an opinion concerning the effect of the pendency of  
18 the two complaints that they will have on the marketing of  
19 the past --

20 A Not acting in the legal capacity so that my  
21 personal opinion doesn't matter. The advice that I receive  
22 of counsel, from counsel is what matters and that advice is  
23 put forth in my testimony.

24 Q I understand that, but am I correct that again in  
25 my statement that in your two statements you do not

1 personally proffer or assert an opinion concerning the  
2 effect of the pendency of the two complaints on the  
3 marketability of the transition volumes?

4 A Personally, no.

5 Q On page 10 of your first statement, you indicate  
6 that you were advised by counsel that each of the  
7 aforementioned lawsuits are, quote, without merit? Is that  
8 correct?

9 A Yes.

10 Q Could you please identify in each particular  
11 lawsuit, who the counsel was that provided that advice?

12 A Principally, the counsel was Pennsylvania counsel  
13 who I believe its Wolf, Block.

14 Q And that was for both of the complaints?

15 A That was for both of the complaints. They,  
16 together with Chase counsel, Wolf, Block and LeBoeuf were  
17 all involved.

18 Q Did you speak with a particular attorney to get  
19 an understanding of those two particular complaints?

20 A I do not recall the attorney's name, no. It with  
21 as conference call where --

22 Q You don't recall which attorney from Wolf Block  
23 provided that advice to you?

24 A No, I don't. It was in conjunction with a  
25 conference call.

1 Q Okay. As to the Utility Workers Union of America  
2 complaint, was that of counsel opinion rendered as a result  
3 of a careful review of the briefs filed in that case?

4 A It's my understanding that it was.

5 Q It was?

6 A It's my understanding that counsel reviewed the  
7 briefs and everything and gave us that opinion, or that  
8 advice.

9 MR. CRAIG: May I approach the witness, Your Honor?

10 JUDGE CHESTNUT: Certainly.

11 BY MR. CRAIG:

12 Q Is this your response to Senator Fumo's  
13 interrogatory Set 4, number 3?

14 A Yes, it is. No briefs have been reviewed. If  
15 that's the case, I am sorry.

16 MR. HERSHEY: I am sorry. I can't hear what the  
17 witness is saying. Could you remember to please keep your  
18 voice up? It's hard for people behind you to hear.

19 THE WITNESS: Sorry. I am a little bit hoarse this  
20 morning. My response that indicates that no briefs have  
21 been reviewed, it's my response. That's where I have  
22 relied on the advice of counsel. If that's the answer,  
23 that's the answer.

24 BY MR. CRAIG:

25 Q So again going back to my original question, at

1 least as to the Utility Workers Union of America complaint,  
2 that opinion was not then based on a careful review of the  
3 briefs filed in that case?

4 A That is what the answer to interrogatories says,  
5 that the briefs were not reviewed.

6 Q As to the Indianapolis Power and Light Company  
7 complaint. Could you please describe to me based on your  
8 knowledge the extent to which the pleadings and briefs were  
9 reviewed by counsel?

10 A Why don't you show me the answer to the  
11 interrogatory.

12 MR. CRAIG: May I?

13 JUDGE CHESTNUT: Yes.

14 THE WITNESS: No briefs were reviewed. That's what  
15 it says there.

16 BY MR. CRAIG:

17 Q No I am --

18 A Such briefs have been reviewed. Then briefs were  
19 reviewed in that case. Again, you should understand we  
20 have relied on the advice of counsel and that is a subject  
21 of my testimony.

22 Q I understand that. My question, however, is do  
23 you know to what extent those briefs were reviewed?

24 A No.

25 Q Significantly? Heavily? Are you personally

1 aware that that complaint has been scheduled for a hearing  
2 before Pennsylvania Commonwealth Court en banc? The whole  
3 court?

4 A En banc, yes. The whole court? Yes. Is that  
5 the Apelco?

6 Q Yes.

7 A Yes. That's December 8 or 11 or something like  
8 that. Is that right?

9 Q So you are aware of that?

10 A Yes.

11 Q Are you aware that -- do you have any knowledge  
12 as to whether or not that's a rare instance for a case to  
13 be scheduled before the court en banc?

14 A I have no idea.

15 Q Based on your professional experience, would you  
16 please explain to me the significance of the phrase, quote,  
17 without merit?

18 A I believe I answered that in an interrogatory  
19 where we said that the likelihood of its success and impact  
20 on marketability are not perceived to be consequential.

21 Q When you mean consequential, consequential to  
22 what?

23 A Let's what my answer to the interrogatories say.  
24 In my answer to interrogatory I said that without merit  
25 signifies an assessment that the allegations of the

1 litigation are not expected to be sustained or to have any  
2 material impact on the proposed transaction. That's my  
3 response.

4 Q In your experience, with Chase Securities, have  
5 you seen or reviewed other without-merit opinions?

6 A There have been other without-merit opinions  
7 given in other transactions, yes.

8 Q And you have viewed them or taken a look at those  
9 documents?

10 A Opinions -- specifically, I can't recall whether  
11 I have read all of those opinions, no.

12 Q I apologize. I don't mean thoroughly reviewed,  
13 but you are familiar with what the document entails, what  
14 it looks like? That sort of thing?

15 A I am familiar that those opinions would be  
16 obtained, yes.

17 Q Would you please describe what those opinions  
18 usually look like? Is it a thick document, a small  
19 document?

20 A Is it a thick document or a small -- it is  
21 depending on how much counsel has to say and whether the  
22 opinions are reasoned or cite case laws or go through a lot  
23 of analysis, they could be thick or thin.

24 Q But it's usually a document that goes through  
25 some sort of legal analysis citing some case law or

1 statutory law if it's applicable?

2 A That is typically, yes.

3 Q How common are without-merit opinions?

4 A I don't know that I am qualified to say that. I  
5 don't know.

6 Q What is -- based on your experience, what is  
7 normally associated with a without-merit opinion? Does it  
8 involve a review of the pleadings, and evaluation of the  
9 complaint. A review of the particular case's status, a  
10 consideration of the opposing briefs or responsive briefs?

11 A You seem to be telling me what it consists of. I  
12 can't tell you in terms of an opinion of counsel what the  
13 review entails. Customarily a counsel would go through all  
14 of the things that they deem necessary in order to give  
15 their opinion.

16 If that is inclusive of what you have outlined, that  
17 would be included.

18 Q Does counsel opinion of which you refer the twice  
19 on page 10 resemble that document?

20 A Resemble what document?

21 Q A without-merit document, a document that cites  
22 case law in opposition or against their position that  
23 reviewed briefs, that reviewed pleadings, that reviewed the  
24 complaint, et cetera?

25 A I don't know that I can answer that question as

1 to what it would resemble. It's going to be an opinion  
2 given at the time that is something that we rely upon that  
3 would say to merit --

4 Q I apologize. I was a not clear in my question.  
5 On page 10 of your first statement, you referred to the  
6 fact that you were advised by counsel that the referenced  
7 complaint was, quote, without merit.

8 A Yes.

9 Q Does that opinion by counsel resemble in any  
10 fashion a without-merit opinion that you typically  
11 described?

12 A It was a verbal. It was verbal advice. It was  
13 not reduced -- it was not memorialized.

14 Q So that was not a written document or was it an  
15 oral opinion?

16 A That is correct.

17 Q Do you personally have any idea as to how much  
18 time was associated with the rendering of that opinion?

19 A No.

20 Q On page 2 of your rebuttal testimony, line 10 and  
21 line 11, you state, quote, it is impossible to predict the  
22 consequences, if any, the pendency of litigation may have  
23 on the issues of a pass-through certificate -- of the  
24 pass-through certificates. Is that an accurate statement?

25 A Yes. At the time the pass-through certificates

1 would be issued we can't predict what status the litigation  
2 would have. We don't know. No one knows.

3 Q How does that compare with the following  
4 sentence, at the time the litigation is viewed as lacking  
5 merit?

6 A At this point in time based on the advice of  
7 counsel, it's my understanding that the litigation lacks  
8 merit as defined. Not that it's specious, not that it's  
9 brought frivolously, just that the likelihood that it would  
10 succeed gives counsel the chance to tell me that it's  
11 without merit.

12 Q But you still stand by your statement that it's  
13 impossible to predict what consequences, if any, the  
14 pendency of litigation will have on the issues of  
15 pass-through certificates?

16 A No. You have to take those sentences together  
17 and what we have said is at this point, the pendency of the  
18 litigation, the status and possible effects would be  
19 disclosed at the time. That's a third sentence. At the  
20 time you issue the pass-through certificates. At this  
21 point in time the litigation is viewed as lacking merit.  
22 At the point in time we issue the certificates, we would  
23 undertake a similar analysis.

24 Q Are you or Chase Securities aware the pendency of  
25 Senator Fumo's constitutional challenge to the Deregulation

1 Act?

2 A Are those either of the two questions that we  
3 have here? The Apelco litigation or other?

4 Q No.

5 A I am not familiar with that.

6 Q So as far as you are aware there's not been any  
7 sort of assessment as to the impact of that that complaint  
8 would have on the marketability of the transition bonds?

9 A Not as put to me yet.

10 MR. HERSHEY: Excuse me. Could we ask the witness  
11 to keep her voice up, please.

12 THE WITNESS: Yes. I'm sorry.

13 JUDGE CHESTNUT: Yes.

14 BY MR. CRAIG:

15 Q Do you know whether or not Chase Securities would  
16 rely on the two sets of counsel opinions on page 10 of your  
17 first statement and assume financial responsibility for  
18 securities that are issued prior to final resolution of the  
19 aforementioned complaints?

20 A I believe I have answered that in an  
21 interrogatory.

22 Q Your interrogatory response referred back to your  
23 statement. I didn't understand your statement. So that's  
24 why I am proffering the question now.

25 A Which statement didn't you understand?

1 Q Both. But --

2 A Which one? Where are you?

3 Q I am primarily concerned with just a response to  
4 that question. Will Chase Securities rely on those two  
5 counsel opinions that you cite on page 10 of your first  
6 statement for the securities that are issued and assume the  
7 responsibility for them prior to any final resolution of  
8 those two complaints?

9 A I believe that the answer is as adequately  
10 addressed in the response; in that we would assess at the  
11 time the bonds would be issued, both the transition bonds  
12 and pass-through certificates, the pendency of the  
13 litigation and the -- I believe what I say is that absent a  
14 -- an adverse non-final determination, the pass-through  
15 certificates would be issued and marketed in accordance  
16 with the terms of the Choice Plan.

17 Now, those are subject to the rating requirement and  
18 a written opinion of counsel. Acceptable able to me or to  
19 Chase Securities, rather.

20 Q Based on the two of counsel opinions that you  
21 have received on the telephone conference call, do you  
22 believe in your professional experience that Chase  
23 Securities will rely on those two opinions and assume  
24 financial responsibility for the securities that are  
25 issued?

1 MR. MILLER: Your Honor, that question was just  
2 answered.

3 JUDGE CHESTNUT: I'll allow the question.

4 THE WITNESS: My answer, again, is that the opinion,  
5 the advice we have received is not an opinion at this  
6 point. It's an advice of counsel that at this point in  
7 time the litigation lacks merit.

8 At the time the transition bonds would be issued,  
9 very close to the time but the day they would be issued or  
10 the day before we would receive an opinion from counsel,  
11 again, that the litigation -- absent this, an adverse  
12 non-binding determination, that if we received that opinion  
13 the bonds would be marketed with appropriate disclosure and  
14 a triple A rating provided those contingencies are  
15 satisfied.

16 We have talked about the marketability of the  
17 pass-through certificates but again, that's premature at  
18 this point in time we are talking about today versus the  
19 time the pass-through certificates would be issued.

20 Q Thank you. On page 2 of your rebuttal testimony,  
21 on lines 17 and 18 -- 16, 17 and 18, particular clause you  
22 have indicated states assuming the transition bonds  
23 received the required rating, and contain other provisions  
24 required by the market to address the effect of potential  
25 legal challenges as is being clarified in pending

1 transactions by California utilities, what is the meaning  
2 of the phrase contain other provisions required by the  
3 market to address the effect of potential legal  
4 challenges?

5 A Well, the market requires and certainly we  
6 require, Chase, that you could appropriate disclosure  
7 covering documents in the form of risk factors and more  
8 appropriate disclosure to talk about any potential risk  
9 inherent in the transaction. So that if we move forward --

10 Q What would that --

11 A -- you would address that in a discussion of risk  
12 factors.

13 Q What would those risk disclosures resemble?  
14 Would they say high risk? Low risk.

15 A Those would low risk. They typically talk about  
16 the risks associated with transactions both from a business  
17 perspective and a legal perspective.

18 Q If, for example, the Utility Workers Union of  
19 America complaint was still pending and unresolved, would  
20 one of those disclosures be that if an adverse  
21 determination in that case could affect the bonds and that  
22 you wouldn't -- holders of the bonds would not necessarily  
23 have a right to recover the money?

24 A It would depend on, again, at the time they are  
25 issued, what the status of the litigation would be. If

1 there was something still outstanding, that fact would be  
2 disclosed, yes.

3 Q Would that fact affect the marketability of the  
4 bonds?

5 A We don't really know what the fact is at this  
6 point in time. Again --

7 Q Assuming for the purposes of this question, that  
8 the lawsuit has, is still pending and has not been resolved  
9 by a Pennsylvania court, if it's still hanging out there,  
10 and assuming that the ENRON petition was approved by this  
11 Commission and that this disclosure was made, would that  
12 disclosure affect the marketability of the bonds?

13 A Potentially, yes.

14 Q Adversely?

15 A We would disclose it. If we chose to go forward,  
16 it would be our opinion that it would not affect the  
17 marketability of the bonds.

18 Q You indicated that it would potentially affect  
19 the -- that it could potentially affect the market- ability  
20 of the bonds. Is that effect an adverse effect?

21 A I have to take a step in time forward, again,  
22 that we really, it's not necessarily ripe at this point in  
23 time. Again, what you have asked me to do is assess what  
24 would happen on the day that the bonds are issued. We  
25 would put appropriate -- if we received the opinion of

1 counsel, if the bonds received the required rating, we  
2 would put appropriate disclosure in the bond offering  
3 memorandum that this litigation is pending.

4           What we have done to address it and you are right,  
5 talk about what the effect of an adverse determination  
6 would be. But at this point would the pass-through  
7 certificates that would be marketed we would speak with  
8 ENRON at that point in time and PECO, and assess the impact  
9 on the marketability of the bonds.

10           Q Based on your professional experience, what would  
11 be the typical or average fee associated with a firm such  
12 as but not necessarily Chase Securities would receive if  
13 they were selected by ENRON to market the full \$5.4 billion  
14 of pass-through certificates? What would the fee  
15 associated --

16           A It's impossible to determine what that fee would  
17 be at this time. There are fees that have been I believe  
18 there's fees in the California deals in the neighborhood of  
19 45 to 50 basis points.

20           Q Has Chase Securities been selected by ENRON to  
21 market any portion of the pass-through certificates if the  
22 PUC were to approve the ENRON petition?

23           A Again, it's premature to address that.

24           Q Have they been selected?

25           A Selected?

1 Q By ENRON, to participate or market any portion of  
2 the pass-through certificates if the PUC were to approve  
3 the ENRON petition?

4 A Going forward we would anticipate Chase would  
5 have a role but that's for ENRON to determine.

6 MR. CRAIG: Thank you. That's all.

7 JUDGE CHESTNUT: Mr. Steinmetz?

8 BY MR. STEINMETZ:

9 Q Good morning, Ms. Voorhees. My name is Steve  
10 Steinmetz. I am with the Office of Consumer Advocate?

11 A Good morning.

12 Q I just have one question for you. What was the  
13 amount of transition bonds issued in the Puget Sound Power  
14 and Light transaction?

15 A I think it was 200 -- 2,250,000.

16 MR. STEINMETZ: Thank you. That's all.

17 MR. RYAN: No.

18 JUDGE CHESTNUT: Mr. Ryan?

19 MR. RYAN: No.

20 JUDGE CHESTNUT: Mr. Smith?

21 BY MR. SMITH:

22 Q Good morning, Ms. Voorhees. My name is Ward  
23 Smith. I am an attorney for PECO Energy Company. I'd like  
24 to start with a few questions about your background.

25 A Okay.

1 Q You work for Chase Securities, Inc. Is that  
2 right?

3 A That's correct.

4 Q And what is the relationship between Chase  
5 Securities, Incorporated and Chase Manhattan Bank?

6 A It's what's termed a Section 20 affiliate. It's  
7 the securities arm of Chase.

8 Q So you are both part of the same corporate --

9 A The Chase Manhattan Corporation, yes.

10 Q Now, how long have you been with Chase  
11 Securities. You said since 1990?

12 A Or one of its predecessors. There's been a few  
13 mergers.

14 Q Have you also been in the asset-backed securities  
15 group since 1990?

16 A I believe when I was first hired I was hired into  
17 the mortgage-backed group. And that was merged with the  
18 assets-backed group prior to 1990.

19 Q How long have you been a lead banker -- is that  
20 what your position is? I am sorry?

21 A I am a managing director.

22 Q How long have you been managing director?

23 A I have been a managing director since March of  
24 1997.

25 Q Since you have been in the asset-backed

1 securities group, how many successful transactions has  
2 Chase been -- asset-backed security transactions has Chase  
3 been lead banker for?

4 A Since I have been in the group?

5 Q Yes.

6 A I don't know that I could estimate that. I mean  
7 I'd have to go back and just calculate for each year how  
8 many transactions we have done.

9 Q Subject to check, would you accept that in the  
10 range of about 55 transactions is the appropriate number  
11 for that time period?

12 A I'd have to go and calculate.

13 Q That's regularly published data.

14 A It would be. I would just have to check.

15 Q Subject to check will you accept that that is the  
16 correct range?

17 A I don't understand this whole subject to check  
18 thing.

19 Q What I mean by subject to check is do is are you  
20 able to accept for purposes of this proceeding, subject to  
21 check, that it is accurate?

22 A Yes.

23 JUDGE CHESTNUT: Excuse me. Is that all information  
24 you can check?

25 THE WITNESS: I believe that's why -- yes. It is a

1 number I can check. I would want to go back and verify  
2 that

3 BY MR. SMITH:

4 Q Of those approximately 45, approximately how many  
5 of them would have been for your affiliate corporation  
6 Chase Manhattan Bank?

7 A Substantial number of them.

8 Q Well over half; right?

9 A Shoe. Again, that's one I'd have to go back and  
10 look at.

11 Q Subject to check would you accept that 40 of the  
12 55 who were for Chase Manhattan?

13 A I don't know. I would have to go back -- I would  
14 prefer to just go back and look and be dealing with it.  
15 I'll tell there's a substantial number. You are right.

16 Q How many asset-backed security transactions in  
17 1996 and 1997, has Chase be lead banker or for entities  
18 other than Chase Manhattan Bank?

19 A Again, I would have to check. I would think  
20 probably less than ten. You should understand that the  
21 Chase Manhattan Bank deals are billion dollar deals plus.  
22 So they may be for the Chase Manhattan Bank, but we are an  
23 underwriter on a stand alone basis on those transactions.

24 Q I understand that.

25 A All right.

1 Q Now, in 1997, you did one deal for a truck loan  
2 for about \$500 million?

3 A One year for a truck loan? Navistar is what you  
4 are referring to?

5 Q Yes. Can you name one that you have done? I'm I  
6 am looking to see if there are others that you are aware  
7 of.

8 A We have done other asset-backed transactions that  
9 were a lead on other transactions that was commercial paper  
10 related. But again, whether it's a Chase deal or -- a  
11 non-Chase deal. I think the deals are the deals. They are  
12 not related -- yes, we do them for Chase. Sure, we do them  
13 for others, too. The quality, the issuance amount, all of  
14 that isn't materially different.

15 Q Could the deals that you have done for entities  
16 other than the parent, other than Chase, what would you  
17 estimate is the average size of those deals?

18 A Less than a billion dollars. We have done -- I  
19 think recently there's been another deal done but I want to  
20 talk about it. That's, I think, over a billion dollars but  
21 it was commercial paper. So you are talking about bond  
22 issuance here and that's less than a billion dollars.

23 Q What's the difference between commercial paper  
24 issues that you are talking about an asset-backed security?

25 A It's essentially -- it's just done through the

1 commercial paper market. It's not an underwritten --

2 Q It's not a bond; correct?

3 A That's correct.

4 Q In the deals that you did do as lead banker, was  
5 Chase the sole underwriter or were there other banks that  
6 took a portion of the underwriting responsibilities and  
7 costs? Or fees?

8 A Typically in deals that Chase does, in public  
9 managed deals there are other underwriters.

10 Q Since you joined Chase in 1990, has Chase, to  
11 your knowledge, closed any deals that involved two  
12 simultaneous no-merit opinions?

13 A No. I don't know. I don't know whether we  
14 have. But I don't know that we haven't.

15 Q To your knowledge, has Chase closed any deals  
16 during that time period on the basis of a single  
17 no-merit opinion?

18 A Again, I don't know that we have or have not.

19 Q In your testimony, you state that you have had  
20 participated or Chase has had participation in California  
21 financing for transition bonds?

22 A Chase will be a co-manager in two of those three  
23 deals, yes.

24 Q Have your responsibilities included to date  
25 interaction or interfacing with the rating agencies?

1 A No.

2 Q Have your responsibilities to date included  
3 production or development of primary authorship of the  
4 financing documents?

5 A No.

6 Q Your role in Puget was similarly limited to not  
7 including those factors?

8 A No. That's not true.

9 Q What was your role in Puget?

10 A We were co-lead manager in that transaction. We  
11 interfaced with the rating agencies. We participated in  
12 due diligence visits. I personally did and we went over  
13 all the documents.

14 Q On page 2 of your testimony -- and this is your  
15 direct testimony -- you state that quote, we are confident  
16 that given the necessary regulatory prudent -- I suppose I  
17 ought to find a line reference here for --

18 JUDGE CHESTNUT: Line 10.

19 BY MR. SMITH:

20 Q Beginning on line 10, we are confident that,  
21 given the necessary regulatory approvals, the inclusion of  
22 mechanisms necessary to obtain very high  
23 credit ratings and favorable tax treatment and the absence  
24 of a significant deterioration of the conditions in the  
25 bond market, we will be able to market the full \$5.461

1 billion of pass-through certificates within several  
2 months. Do you see that portion of your testimony?

3 A Yes.

4 Q Assuming that all of those conditions are met, do  
5 you expect to be able to issue a full \$5.461 billion in a  
6 single issue or do you anticipate that that would occur in  
7 transaction --

8 A The transaction is a little bit difficult. We  
9 would expect it to be done in a single instance issue  
10 within different classes of --

11 Q You would expect to issue \$5.4 billion of bonds  
12 on a single day?

13 A That's correct.

14 Q Now, the regulatory approvals that you are  
15 discussing, what did you have in mind when you said if PECO  
16 had the appropriate regulatory approval you thought this  
17 could happen?

18 A You would need the PUC -- we have the enabling  
19 legislation. You would need the PUC to go back and approve  
20 the transaction, the issue that we are --

21 Q Any other regulatory approvals?

22 A Approval of the SEC and the other mechanisms to  
23 obtain the requisite.

24 Q Do you need any approval from the Internal  
25 Revenue Service? Is that what you had in mind when you

1 were discussing regulatory approvals that you would be  
2 needing regulatory approvals.

3 A It's our understanding that PECO would want a  
4 debt for tax ruling. I believe Mr. Mitchell's testified  
5 that they have sought that ruling about the IRS. So that  
6 they have structured the transaction to accommodate and, I  
7 it's my understanding, through advice of counsel, that we  
8 would receive the requisite debt for tax.

9 Q So one of the things we were talking about here  
10 is you would need to have an IRS approval. That was one of  
11 the regulatory approvals that you were talking about at  
12 this point in time?

13 A I don't know. Let me just check that. But  
14 again, I don't know that that's a requisite or a required  
15 approval for issuance. That is something that PECO would  
16 like to have.

17 Q That's what I am asking is whether that is what  
18 you are referring at that point in your testimony?

19 A I don't believe so. But let me just check. No,  
20 that, as part of a regulatory approval, is not included.

21 Q Do you include any approvals from the Federal  
22 Energy Regulatory Commission?

23 A I believe ENRON may -- if those approvals would  
24 have to be obtained, then those would be included. I don't  
25 know.

1 Q What I am asking here is what you have in mind  
2 when you talk about the regulatory approvals. So do you  
3 know if F-E-R-C requirements would be required to make this  
4 transaction to go forward?

5 A That you would have to ask Mr. Fastow.

6 Q I think he has referred in his testimony that  
7 certain of those approvals may need to be obtained.

8 A My --

9 Q Your testimony is that Chase is confident that  
10 they could move forward, given the appropriate -- the  
11 necessary regulatory approvals and so my question is you,  
12 as the representative of Chase, what is your level of  
13 understanding of what those regulatory approvals are?

14 A I have articulated those for you. I have said  
15 that they include the PUC approval and other approvals  
16 incident to the PUC approval.

17 Q Would they include FERC approvals?

18 A If this is right, yes.

19 Q Do you know --

20 A No.

21 Q -- sitting here today whether that is a  
22 requirement?

23 A No. You would have to ask Mr. Fastow.

24 Q You do know whether SEC approvals would be  
25 required?

1           A   Again.  That isn't a part of the regulatory  
2 approval.  That is not part of the PUC approval that I am  
3 referring to.

4           Q   Thank you.  Are there any approvals that ENRON  
5 would be required to receive?

6           A   You would have to ask Mr. Fastow.

7           Q   What were you referring to at this point in your  
8 testimony?

9           A   ENRON regulatory approvals.  I think he's  
10 referred to FERC approvals.  But again, that would be  
11 something you would want to ask him.

12          Q   In your opinion, what impact would failure to  
13 acquire any of the regulatory approvals that you were  
14 talking about, what impact would that have on the ability  
15 to issue the bonds?

16          A   You wouldn't receive -- because those are  
17 conditions to approval of the -- or obtaining the required  
18 rating I don't think you would get the required rating so  
19 that you wouldn't be able to issue the bonds.

20          Q   You also listed as a second precondition, on page  
21 2, that there would need to be mechanisms to obtain high  
22 credit rating.  What mechanisms are you talking about  
23 there?  Is that just the true-up and the credit enhancement  
24 and the shortfall agreement?

25          A   No.  You would need the other things that have

1 been referred to. You would need the requirements that  
2 rating agencies have published with respect to putting  
3 these, the triple A rating on the transaction.

4 You would need, for example, a true sale. You would  
5 need the QRO, you would need some of the regulatory  
6 collateralization. You would need those types of things,  
7 yes. Regulatory true-up is one of them.

8 Q Does that include the ITC shortfall agreement  
9 aspect?

10 A No. That's a mechanism designed to protect  
11 the --

12 Q That's not one of the mechanisms that is  
13 necessary to obtain a high credit rating?

14 A No. No, it's not.

15 Q Okay. A third issue that you list on page 2 of  
16 your testimony as a precondition to successful issuance is  
17 favorable tax treatment of the bonds. I just want to  
18 confirm, it's your understanding, then, that the deal is  
19 not do-able or does another make economic sense in the ab  
20 accepts of that IRS ruling?

21 A We understood that PECO was desirous of debt for  
22 tax treatment so we have structured the transaction to  
23 accommodate that desire.

24 Q My question is slightly different than that. My  
25 question is as an expert in asset-backed security

1 financings, is it your opinion that this deal makes  
2 economic sense without the IRS ruling? In your opinion?

3 A Does the deal make economic sense -- the deal is  
4 going to get debt for tax treatment. So yes, it makes  
5 economic sense.

6 Q On the assumption that it does not get debt for  
7 tax treatment would it then make economic sense if the  
8 transaction were to be treated as a taxable event I have  
9 that's a question between ENRON and PECO. If it didn't  
10 receive debt for tax treatment there would be tax  
11 consequences and ENRON and PECO to determine whether or not  
12 that consequences is adverse PECO has said that it is.

13 Do you have an opinion on that issue of whether the  
14 tax treatment renders this deal economic or non-economic?

15 A I think there's substantial tax consequences that  
16 would occur inure to PECO should it not get the favorable  
17 tax treatment.

18 Q So you do have an opinion?

19 A Sure. I think the tax consequences would be  
20 severe.

21 Q Would they be severe enough to make the deal a no  
22 go in the absence of a ruling?

23 A PECO has said that's true.

24 Q Do you have an opinion as to whether that is  
25 true?

1 A I have an opinion that PECO thinks --

2 Q Please state that --

3 A I have an opinion that PECO says the consequence  
4 would be adverse to them.

5 Q Do you have an opinion independent of what PECO  
6 says on this issue?

7 A My opinion doesn't --

8 Q That is why you are on the stand now and unless  
9 there's an objection that is sustained I think you are  
10 required to answer that question.

11 MR. MILLER: If PECO would disclose the finance  
12 information they have perhaps Ms. Voorhees would find it  
13 easier to render an opinion as to the wisdom of this  
14 transaction for PECO. It's PECO that's withheld that  
15 financial information.

16 MR. SMITH: There's not an objection to the  
17 question, Your Honor, and it's an inappropriate coaching of  
18 the witness.

19 JUDGE CHESTNUT: I don't think it's an inappropriate  
20 coaching. I think the witness is trying to answer the  
21 question without perhaps understanding the intent of the  
22 question. But Ms. Voorhees, if you feel that you're  
23 qualified to answer that question based on your knowledge  
24 and experience, then answer it. Independent -- don't refer  
25 to what PECO's position is. I think Mr. Ward is asking you

1 if you were in Mr. Mitchell's position. What would your  
2 point --

3 THE WITNESS: If I were in Mr. Mitchell's position  
4 -- I am sorry. That hasn't been made clear to me what the  
5 question was going to. If I were in Mitchell's position, I  
6 would undertake an analysis of what an adverse, what PECO  
7 would determine an adverse consequence would be.

8 If I were Mr. Mitchell, I would analyze my financial  
9 condition and I would look to see that if I had sale  
10 treatment according the sale of the transition property,  
11 then I would make a determination whether or not I would  
12 want to go forward.

13 Q And sitting here today, have you conducted any of  
14 those analysis to allow to you reap that conclusion?

15 A No, I have not.

16 Q Thank you. I think you have a fourth predicate  
17 listed and that is the ab accepts of a significant  
18 deterioration of conditions in the bonds market. Tell me  
19 what is meant by this. What is meant by that language?

20 A Conditions which would impair the marketability,  
21 significantly impair the marketability to prices and  
22 liquidity on the bonds.

23 Q Could you give me an example of what such a  
24 condition would be?

25 A Our assessment that the market would not be

1 receptive to issuance of the bonds, given some market  
2 term.

3 Q In California have they attempted to define what  
4 these kinds of market conditions would be?

5 A California is going forward, even in the face of  
6 the market disruptions over the past month or so.

7 Q So California has attempted to define what these  
8 kinds of significant deteriorations would be?

9 A I don't know that -- are you asking whether  
10 California has defined them or what the market disruptions  
11 would be.

12 Q I am asking first whether California attempted to  
13 define them?

14 A Are you -- define them or are you going forward  
15 in the face of any market disruptions? I still don't  
16 understand.

17 Q They set up criteria against which to judge this  
18 issue, correct, in California?

19 A Underwriters have determined that they are going  
20 forward with issuing the bonds at this point in time, yes.

21 Q And they did that, having set up some criteria  
22 first; correct?

23 A I don't -- you would normally set up criteria but  
24 they are going forward, yes.

25 Q They have an underwriting document in California?

1 A It's an underwriting --

2 Q In the underwriting agreement it provides certain  
3 outs that allow the underwriters to issue the bonds in the  
4 event certain market conditions exist; correct?

5 A Sure.

6 Q Are those the kinds of things that you were  
7 talking about when you said that you would make sure that  
8 there were no significant deteriorations in the condition  
9 of the bond market in order to issue the bonds?

10 A No. I think I was talking on a more broad  
11 circumstance. I was talking about significant  
12 interruptions in the bond market that would lead us to  
13 determine that we would advise against issuing bonds.

14 Q Okay. I think you said earlier that it is not  
15 usual for a single underwriter to agree to buy all of the  
16 bonds in that transaction?

17 A It would depend on the transaction's size. It  
18 would depend on our assessment together with the issue as  
19 to whether or not they would want co-managers in the  
20 transaction.

21 Q With five and a half billion dollars, you would  
22 use a syndicate, correct?

23 A That's correct.

24 Q If Chase was lead, they might issue 30 percent of  
25 the bonds?

1           A We would have to determine the economics at the  
2 time. There's different ways to allocate bonds. There's  
3 different ways that the bond would be distributed. We  
4 would speak with the syndicate and decide the proper  
5 execution of the transaction.

6           Q Just generally there would be a fairly  
7 substantial amount left over for other people to underwrite  
8 in the syndicate?

9           A Again, it would be based on the condition that  
10 where we would go with it would be dependent upon where we  
11 would choose to allocate bonds.

12          Q Did the syndicate like this in California for  
13 their bonds?

14          A They have leads, co-leads and co-managers, yes.

15          Q You are a member of that syndicate?

16          A We are a co-manager, yes.

17          Q You are familiar with the terms and conditions of  
18 that syndication agreement?

19          A Yes.

20          Q What happens under the California agreement if  
21 one of the underwriters chooses not to buy their bonds that  
22 have been allocated to them?

23          A It would -- well, it depends on how the economics  
24 of the transaction work. The bonds have yet to be issued  
25 in California. They have talked -- right now, I believe,

1 this syndicate, about how they are going to allocate them.

2 Q What has been the conclusion of that discussion?

3 A I think they're going to do some form of pot and  
4 some form of retention.

5 Q Explain what those terms mean.

6 A Retention would be that each underwriter is  
7 allocated a certain amount of bonds for their retention.  
8 That is, if there are underwriting conditions and the  
9 number of bonds that they are to sell, and pots are ordered  
10 that are not subject to --

11 JUDGE CHESTNUT: What happens if multiple buyers  
12 choose not purchase the bonds that have been allocated to  
13 them?

14 THE WITNESS: I don't understand.

15 BY MR. SMITH:

16 Q There's a 10 percent trigger, isn't there, that  
17 if 10 percent of the bond people choose not to buy them  
18 then everybody gets to back out of the deal?

19 A I don't know where you are referring to there.  
20 If that's written down I have not -- I am not referring  
21 that. Is that in the -- what are you saying?

22 Q You are not familiar with anything like that in  
23 California?

24 A You have to show me what you are referring to. I  
25 don't understand you characterization.

1           Q My -- it's not a characterization it's a question  
2 of whether you are aware of anything like that in  
3 California and you are saying no to that and we can move  
4 on. But if you are?

5           A Show me what you are referring to and I'll answer  
6 the question.

7           Q Again, you are an attorney, right?

8           A I passed the bar a number of years ago, yes. And  
9 I practiced law but not in this capacity, and I am not here  
10 in that capacity.

11          Q In California, are there conditions on the  
12 underwriter's obligation to buy the bonds? In other words,  
13 things that can say that they do not, are not required to  
14 buy the bonds that have been allocated to them?

15          A I have not reviewed the tells of the underwriting  
16 agreements but that would be typical.

17          Q Then I am misunderstanding something. I thought  
18 you said a few minutes ago that you were co-lead on this  
19 and had reviewed documents?

20          A No, I have not said I have reviewed the  
21 documents. I have reviewed the red that's been filed. I  
22 am a co-lead manager on the transaction.

23          Q You have not reviewed the underwriting agreement  
24 in California?

25          A I have not seen the underwriting agreements.

1 Q Thank you. Let's talk a few minutes about the  
2 no-merit and then I think we may be done. Let's clean up  
3 one easy thing first.

4 Mr. Craig asked you a few moments ago about the fees  
5 that Chase might or any underwriter might receive for a  
6 deal like this. He said that there have been some deals at  
7 45 to 50 basis points. Do you recall that?

8 A That is the range of the gross spread in the  
9 California transaction, yes.

10 Q Just because not everybody knows what basis  
11 points are. If you applied 45 or 50 basis points,  
12 whichever you think is appropriate to a \$5.461 billion  
13 deal, what would the underwriting fees be?

14 A It equates to what you call -- it's between \$4.50  
15 and \$5.00 a bond which is a thousand dollars. So it would  
16 be in the 20 something million dollar range. I'd have to  
17 calculate it. I don't know what it is.

18 Q Is this a hard thing to do?

19 A No. You just have to calculate it. I don't have  
20 a calculator. And it depends on what you are asking.  
21 There's different deals, there's PG&E. There's Chemlo.  
22 These San Diego. That's the fee for each of the deals.  
23 Each the deals has different issues --

24 Q What I am asking is what is 50 basis points of  
25 \$5.5 billion?

1           A 50 basis points of the \$5.5 billion. Whatever it  
2 is. I don't know. What is it? Twenty-five or so?

3           Q \$25 million or so?

4           A Uh-huh.

5           Q Let's talk about no-merit opinions. When an  
6 underwriter goes to issue bonds, it will receive an opinion  
7 from bond counsel about a number of thing, including  
8 whether there are any significant risks associated with the  
9 bonds. Is that generally a correct characterization?

10          A Yes.

11          Q Now, there can also be the specific question of  
12 whether a particular legal claim has risks. That is also  
13 true?

14          A Yes.

15          Q And that can come up in at least two different  
16 ways. First, because the question just generally exists,  
17 is this statute constitutional and secondly, because  
18 there's a lawsuit in which someone has claimed that, for  
19 example, the statute is unconstitutional and those would be  
20 two different ways that the issue of legal risks could  
21 arise. Is that also accurate?

22          A Yes.

23          Q Now, as a finance person, you would look for a  
24 different set of information or opinions from your counsel  
25 in those two different situations that we have just

1 described; right?

2 A Yes.

3 Q In the case of a lawsuit, what you would look for  
4 is an evaluation of the legal issue and a statement by  
5 counsel that in their opinion, the statute is, let's say  
6 constitutional; right?

7 A Yes.

8 Q If there is a lawsuit, you want more than that;  
9 right? Before you'll good forward with the bonds?

10 A I want them to say that it's without merit. That  
11 it's not going to be sustained.

12 Q And that is a technical term of art; right? No  
13 merit? In your word, the finance world that's a term of  
14 art?

15 A That's how we view no merit, yes.

16 Q It talks about several types of written legal  
17 opinions; right?

18 A We talk about -- were talking about the opinion  
19 that would lead us to issue the bonds in the face of  
20 pending litigation, yes.

21 Q And that would have to be a written opinion,  
22 number one?

23 A Yes.

24 Q It would have to be based on an analysis of all  
25 of the documents filed in that case; correct?

1           A   What the lawyers see fit to review in order to  
2 give that opinion, yes. That would seem reasonable.

3           Q   If a law firm came to you and said I'll give you  
4 a no-merit opinion on this case but I have got to tell you  
5 I haven't read the briefs. Would you accept that opinion  
6 even if it was written?

7           A   And he came and affirmatively said that, I would  
8 have issues, yes.

9           Q   You would not accept it; correct?

10          A   Yes.

11          Q   They would have to do it in writing and they  
12 would have to have read all the briefs and they would have  
13 to say more than simply we think the one side would one,  
14 wouldn't they?

15          A   We would have to be satisfied as underwriters  
16 that it was a good opinion, yes.

17          Q   Now, the substance of that opinion would have to  
18 be stronger than simply to say we think PECO's going to win  
19 the case. By the way, I hope you are right on all this  
20 because I want those cases to go away. But right now,  
21 while the cases are pending, you, in order to issue the  
22 bonds, would require a much stronger statement than simply  
23 a statement that PECO is likely to win. Wouldn't you?

24          A   We would require -- we require a statement that  
25 made us comfortable.

1 Q You wouldn't require a statement --

2 A That we could go ahead and issue the bonds.

3 Q You would require a statement in order to get  
4 comfortable that the case were speciously filed,  
5 frivolously filed, almost at a Rule 11 type of analysis,  
6 wouldn't you?

7 A You have got to tell me what Rule 11 is.

8 Q I am sorry. Because you are -- that's the rule  
9 that attorneys can be gotten after these days if they file  
10 claims that are frivolous.

11 A I am not one of you guys now.

12 MR. DWORETZKY: I object on the grounds that we have  
13 already done this before.

14 MR. SMITH: Number one, she's not his witness and we  
15 have had rulings on that in this. But I don't think we  
16 have done this part of it. Just because Mr. Craig went  
17 over it doesn't mean he hit every point that needs to be  
18 hit here.

19 JUDGE CHESTNUT: I would expect you not to be  
20 redundant, Mr. Smith. We do have a lot of witnesses  
21 scheduled for today and I don't you want to go until 7:00  
22 o'clock tonight.

23 MR. SMITH: Understood, Your Honor.

24 BY MR. SMITH:

25 Q You would require that level of opinion in order

1 to issue in face of a pending lawsuit; correct?

2 A He would require an opinion that in the face of  
3 pending litigation we could get comfortable with issuing  
4 the bonds that the opinion would have, what we have  
5 characterized -- that the opinion would say that there's no  
6 merit. I disagree with your using frivolous or Rule 11,  
7 specious.

8 Q What would that level be in order to give you  
9 comfort?

10 A That the outcome of the litigation would not be  
11 adverse.

12 Q So you would accept --

13 A With interest.

14 Q You would issue five and a half billion dollars  
15 worth of bonds in the face of a pending lawsuit if you were  
16 given an opinion that PECO was likely to win the suit?

17 A I don't know how you would go through and -- I  
18 don't know the fundamentals of how you would analyze the  
19 pending litigation. I don't know the statements that you  
20 would make based on your analysis. You would have to let  
21 me know and I would have to speak with counsel at Chase and  
22 counsel for ENRON to determine that based on the opinion,  
23 the exact words given we would be comfortable with showing  
24 issue in the securities.

25 Q Maybe the easiest way is this. You don't have

1 any of that stuff in front of you right now?

2 A No. We have relied verbal advice of counsel.

3 Q You would recommend issuing the bonds today based  
4 upon the advice you have received from counsel to date?

5 A It wouldn't be proper to determine that.

6 Q Would you make that recommendation because in  
7 fact, here today, the Commission or in this proceeding, the  
8 Commission may want to know that, the answer to that  
9 question of whether you would recommend that?

10 A What I have said before is that today those two  
11 lawsuits are outstanding. But the that today it's  
12 premature to make a determination. That today the advice  
13 that I have received and it's my understanding that those  
14 lawsuits are --

15 Q I am not sure --

16 A We've referred to that information going forward.

17 Q I am not sure if I understand what premature  
18 means?

19 A Are premature is that you receive that pitch  
20 right before you issue the bonds.

21 Q I am going to ask this one more time. Sitting  
22 here today, based on the advice you have received, would  
23 you recommend issuing the bonds?

24 A I haven't --

25 MR. MILLER: Your Honor, we have been down this

1 road. I think Mrs. Voorhees' testimony --

2 JUDGE CHESTNUT: I think she's answered it a number  
3 of times, actually but we'll have one more shot here to  
4 repeat it.

5 BY MR. SMITH:

6 Q Hypothetically, if the bonds were ready to go  
7 today and you had this set of advice in front of you, what  
8 would you -- would you recommend issuance of the bonds?

9 MR. MILLER: Your Honor, objection. The  
10 hypothetical can't be that hypothetical because Ms. --

11 JUDGE CHESTNUT: Even though he refers to a  
12 hypothetical, let's me see if I understand Ms. Voorhees'  
13 testimony to make sure that I understand it which is that  
14 you could not answer that hypothetical because you would  
15 expect a more detailed legal opinion shortly before you do  
16 the pass-through and since you are not at that stage now,  
17 that is why you do not have a more detailed opinion.

18 THE WITNESS: That's correct.

19 JUDGE CHESTNUT: Is that clarified?

20 MR. SMITH: Yes.

21 JUDGE CHESTNUT: I think that's why she's having the  
22 problem with the hypothetical.

23 BY MR. SMITH:

24 Q Is it possible that the written opinion you  
25 received prior to today would be different than the verbal

1 opinion that you have received today?

2 A That's possible.

3 MR. SMITH: Thank you. That's all, Your Honor.

4 JUDGE CHESTNUT: Does anybody else have any  
5 questions for Ms. Voorhees? Mr. Hershey?

6 MR. HERSHEY: I'd like to clarify a couple points if  
7 I may.

8 BY MR. HERSHEY:

9 Q Are you aware, Ms. Voorhees, -- you know who Tom  
10 Hill is? You have been sitting in this room for a few  
11 days?

12 A Yes.

13 Q And you know his position at PECO?

14 A Yes.

15 Q ARE you aware that in proceedings before this  
16 Commission, Mr. Hill has testified that he has been advised  
17 that PECO could not sell the bonds that it was proposing to  
18 sell with some of the litigation that's pending today?

19 A He has oh -- it's my understanding that he's  
20 relied on verbal advice of counsel as have I, that he  
21 wouldn't be able to issue the bonds. Yes.

22 Q Does that fact give you any pause concerning the  
23 salability of these bonds?

24 A My counsel advises me differently.

25 Q Now. I want to nail down one point. You

1 indicated that you had been advised orally that the  
2 litigation was without merit. I am correct, am I not, that  
3 it's not just that you have been advised clearly and  
4 there's some opinion in the closet. You would agree that  
5 there is no written opinion whatever?

6 A There is no opinion in the closet.

7 Q I want to go back to some of the areas that Mr.  
8 Smith and Mr. Craig touched on because when I see this many  
9 lawyers sitting in a room, you know, it's not just an  
10 academic exercise. There's a lot at stake here. And I am  
11 sure you are well aware of that?

12 A Very well aware of that.

13 Q In fact, you mentioned the Puget Sound deal at  
14 200 mill. How many deals of you done that are at \$5  
15 billion?

16 A How many have you done at \$5 billion? None.

17 Q When a deal is as big as this, and as important  
18 as this, would it not be conservative to avoid all this  
19 work that is, go to the lawyer, get a careful reading of  
20 the situation, and get some advice before you put a lot of  
21 people to a lot of trouble?

22 MR. MILLER: Objection, Your Honor.

23 JUDGE CHESTNUT: On what grounds?

24 MR. MILLER: No basis for that question. It has  
25 nothing to do with what Ms. Voorhees is talking about.

1 JUDGE CHESTNUT: Objection is overruled.

2 THE WITNESS: We have very carefully, at Chase  
3 analyzed the partial settlement, very carefully rendered  
4 advice regarding the Choice Plan, very carefully assessed  
5 the market conditions and despite the fact that I  
6 personally have not done a \$5 billion deal, we have very  
7 carefully looked at the marketability and the ability of  
8 the market to absorb a deal of this size, and I take very  
9 seriously the fact that we are here and we are not here to  
10 say that this, to put a lot of people in a room for no  
11 reason.

12 Q There's one issue that you left off that list  
13 about what you have analyzed carefully. I'll bet you know  
14 which one that is.

15 A No. Because you just started talking. Tell me  
16 what that issue is.

17 Q It's the question we have been discussing here,  
18 and that's the no merit.

19 A No. We have very carefully -- we have relied on  
20 advice of counsel as to those two lawsuits. And --

21 Q You have very --

22 A And the no-merit opinion that has been given to  
23 us.

24 Q And you would put all of this, all of these  
25 resources into play without knowing that your lawyers had

1 read the briefs?

2 A I rely on advice of counsel. If the bottom line  
3 advice of counsel is that that litigation is without merit,  
4 I respect the counsel that were involved in this at  
5 LeBoeuf, at Wolf Block, at Chase, and at Mill Bank. And if  
6 there considered advice is that that litigation is without  
7 merit then I go with it.

8 Q This is really considered if they haven't had any  
9 briefs?

10 A That is for them to determine.

11 Q But I can't accept that. You are putting a lot  
12 at stake at Chase and you are not going to -- if somebody  
13 hands you the back of an envelope that says no merit you  
14 won't accept that, would you.

15 MR. MILLER: Your Honor, I object.

16 JUDGE CHESTNUT: Mr. Hershey, that has been going on  
17 and on. Why don't you move on.

18 MR. HERSHEY: Let me ask one other question.

19 BY MR. HERSHEY:

20 Q When we talk about the marketability of these  
21 bonds we are not just talking about whether you can sell  
22 them. The question is whether they get an appropriate  
23 rating. Isn't that right?

24 A A separate condition is the required rating,  
25 yes.

1 Q And so it's possible, in some of the discussions  
2 that we have heard, we haven't -- there's been discussion  
3 that they could be sold, but sometimes we overlook the fact  
4 that they do need that appropriate rating and so it's not  
5 enough that they sell it with a strong bond rate.

6 It has to be a rating sufficient to provide the  
7 benefits that are needed to make this deal work. Isn't  
8 that right?

9 A The required rating, yes.

10 MR. HERSHEY: Thank you.

11 JUDGE CHESTNUT: Is there any further cross  
12 examination for this witness.

13 (No response.)

14 JUDGE CHESTNUT: Redirect?

15 MR. MILLER: May I have a moment or two with the  
16 witness, Your Honor?

17 JUDGE CHESTNUT: Certainly.

18 (Pause.)

19 JUDGE CHESTNUT: Mr. Miller, do you have any  
20 redirect questions for this witness?

21 MR. MILLER: Yes, I do, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. MILLER:

24 Q Ms. Voorhees, within the oral opinion solicited  
25 from counsel, is it your understanding that all briefs,

1 that counsel advised you that all briefs that were  
2 available were reviewed by counsel?

3 A Yes. That's my understanding.

4 Q Now, in significant asset-backed securitization  
5 transactions, is it common that at the beginning of that  
6 process an oral opinion of counsel is solicited?

7 A Yes. It's typical.

8 Q And as that process moves along, when we get to a  
9 stage before the closing, is it common that very serious  
10 unresolved legal issues still exist at the time of closing?

11 A At the -- as we move through.

12 Q Prior to closing?

13 A As we move through a deal, we solicit and  
14 continue to ask whether or not there are significant  
15 impediments and whether there, if in the case of unresolved  
16 legal issues they continue to exist and that counsel is --  
17 continues to be comfortable in this case with its opinion  
18 that the litigation would have no merit. At the time we  
19 issue the securities, that is the time when a written  
20 opinion would be delivered.

21 Q And you receive a written opinion from counsel?

22 A Yes.

23 Q And that written opinion is shared with the  
24 various parties?

25 A Yeah, absolutely.

1           Q   And is it not uncommon that there are 40 page  
2 written legal opinions, multi-page legal opinions  
3 discussing?

4           A   That's not common -- as I have indicated  
5 depending on the reasoning, depending on the factors there  
6 was a question asked about thickness. It can be  
7 inordinately thick. It can be less thick. But they are  
8 usually substantive in terms of weight and volume.

9           MR. MILLER: Your Honor, before I am finished with  
10 Ms. Voorhees, would you like to take judicial notice of the  
11 dockets in those two lawsuits as to when briefs, what's  
12 available to counsel and when the briefs are filed? I  
13 think it's a matter --

14          JUDGE CHESTNUT: You can make a statement if you  
15 wish. I am not sure about taking judicial notice of it.

16          MR. SMITH: I didn't hear what he said.

17          JUDGE CHESTNUT: Mr. Miller asked if it would be a  
18 good idea to take judicial notice of the docket numbers and  
19 the briefing and argument schedule at those dockets.

20          MR. MILLER: I think a matter of record.

21          JUDGE CHESTNUT: If you want to make a statement go  
22 ahead and make it. There's no controversy over what that  
23 is.

24          MR. MILLER: I think we can put it in the briefs if  
25 you need it. That's all I have for Ms. Voorhees.

1 JUDGE CHESTNUT: Is there any recross based on  
2 redirect examination.

3 MR. HERSHEY: I have one question.

4 JUDGE CHESTNUT: Mr. Hershey?

5 RECROSS EXAMINATION

6 BY MR. HERSHEY:

7 Q Ms. Voorhees, you were just asked on redirect  
8 whether it's common for you, as you approach the issue date  
9 to do a more careful analysis and a legal opinion would be  
10 more thorough than the kind that you have received in this  
11 case that it is right?

12 A That's not the way the question was asked.

13 MR. MILLER: I object. I don't believe I used the  
14 word more careful.

15 JUDGE CHESTNUT: No. But the witness has testified  
16 she can clarify exactly what that is she said.

17 BY MR. HERSHEY:

18 Q Would you do so?

19 A It's always careful. It's not that it gets more  
20 careful. The opinion is memorialized at the time of  
21 issuance.

22 Q That's fair enough. Does it make any difference  
23 to Chase that Public Utility Commission of Pennsylvania has  
24 to issue an opinion, a decision that will affect many  
25 customers of PECO, will affect the finances of PECO and the

1 finances of ENRON without benefit of that written legal  
2 opinion?

3 A That written -- there has been no written legal  
4 opinion offered by either PECO, by either PECO nor ENRON.  
5 As such, the Commission needs to make a determination based  
6 on the advice solicited by each party.

7 MR. HERSHEY: Thank you.

8 JUDGE CHESTNUT: Is there any further recross?

9 (No response.)

10 JUDGE CHESTNUT: Thank you very much, Ms. Voorhees.  
11 You are excused.

12 Before we go on with our next witness let me make an  
13 announcement to address an issue that came up during the  
14 break, and that is the admission into the record of  
15 parties' responses to Commissioners' interrogatories.

16 I expect each party to make them part of the record  
17 and I think the easiest way is to designate your responses  
18 as an exhibit and then have it stipulated into the record.  
19 I don't think it's necessary to have a witness qualify it  
20 orally, a foundation for it.

21 But they do have to be part of the record. They are  
22 not automatically part of the record. So if that could be  
23 done by everybody, I would appreciate it. On Monday I read  
24 out the responses that I had and if there are others, you  
25 know, make sure everything that should be included is

1 included.

2 Does anybody have any questions or comments  
3 concerning that particular issue?

4 MR. HERSHEY: I want to make sure that is by the  
5 close of the record which at this point is Tuesday.

6 JUDGE CHESTNUT: Well, I think with respect to the  
7 last set, the response date was Thursday at noon, I  
8 believe. Tomorrow at noon.

9 MR. HERSHEY: I thought it was premised on -- wasn't  
10 there a statement in the document that the record close  
11 today?

12 JUDGE CHESTNUT: Right. And then we had added on  
13 Tuesday but we might not have the hearing Tuesday.

14 MR. HERSHEY: I know.

15 JUDGE CHESTNUT: If you could get it here by Friday;  
16 if not, have it out by Tuesday. You can do it by mail.  
17 They have to be made a part of the record and you have to  
18 do it affirmatively.

19 MR. BONNEY: Your Honor, I had another housekeeping  
20 item if it's an appropriate time.

21 JUDGE CHESTNUT: Sure.

22 MR. BONNEY: I understand from reviewing your list  
23 and our records that one statement that had been previously  
24 distributed was perhaps not on your list and not into the  
25 record, that is the rebuttal testimony of George Cucchi,

1 PECO Statement Number 15-R. This is his testimony filed  
2 back in the summer. I have two copies.

3 JUDGE CHESTNUT: I have 15-R on here.

4 MR. BONNEY: So that was admitted.

5 JUDGE CHESTNUT: Was admitted on the 17th.

6 MR. BONNEY: I want to make sure of that.

7 JUDGE CHESTNUT: I have 15, 15-S and 15-R. I  
8 appreciate your reviewing it. I do want this list to be  
9 accurate.

10 MR. TRASK: Your Honor, there's one other  
11 housekeeping matter. Noel Trask for PECO Energy.  
12 Yesterday, during the cross examination of Mr. Sundermeier  
13 had asked a quip the question about the impact under the  
14 rate HT proofs of revenue if any on the documents that are  
15 part of the partial settlement and in order to avoid the  
16 cross examination we worked it out off the record and the  
17 only impact that those proofs of revenue Chase has are very  
18 slight changes to some of the numbers in the tariff sheet  
19 for rate HT that are part of the partial settlement.

20 In a way that I would propose to handle this and I  
21 discussed this with Mr. Doll before is to introduce updated  
22 tariff sheets with the direct numbers as I guess it's PECO  
23 Exhibit 7 at this point. Is that acceptable to everybody?  
24 And I have a bunch of copies here, which I can distribute.

25 JUDGE CHESTNUT: Are they updating something that's

1 already in the record?

2 MR. TRASK: This is updating something that's in the  
3 record, yes. That is an update.

4 MR. DOLL: I think it is --

5 MR. TRASK: All it does is reflect the numbers that  
6 are in the HT price of revenue that are part of Mr.  
7 Sundermeier's --

8 JUDGE CHESTNUT: I understand that. But is it an  
9 update to a particular exhibit?

10 MR. DOLL: Point of clarification.

11 MR. TRASK: What it is an update to is the tariff  
12 sheets that are part of the partial settlement.

13 JUDGE CHESTNUT: Okay.

14 MR. TRASK: The copies I have here are not marked  
15 PECO Exhibit 7 but I guess that's the number we are on.

16 JUDGE CHESTNUT: Yes. Does anybody object to the  
17 admission of Exhibit 7.

18 (No response.)

19 JUDGE CHESTNUT: It's admitted into the record

20 (PECO Exhibit No. 7 was produced and marked for  
21 identification and admitted in evidence.)

22 MR. TRASK: As a point of clarification, they would  
23 replace pages in his Exhibit C which are the tariff pages  
24 that are attached to the partial settlement.

25 JUDGE CHESTNUT: Is it intended to replace his

1 supplement?

2 MR. TRASK: Is intended to replace the pages that  
3 are attached to the partial settlement.

4 MR. SMITH: That's Appendix C?

5 MR. TRASK: I am not sure what it is.

6 (Pause.)

7 JUDGE CHESTNUT: Okay. Mr. Clearfield?

8 MR. CLEARFIELD: If we could, in terms of the order  
9 of witnesses, if Mr. Voorhees is available today --

10 JUDGE CHESTNUT: Who?

11 MR. CLEARFIELD: I am sorry, Fastow is available  
12 today but it would be -- if we could indulge his schedule  
13 and slip him till later in the afternoon it would be better  
14 for us. Better for him and his schedule to take him out of  
15 order and take him later today. He has another scheduling  
16 matter that he --

17 MR. BONNEY: Is he available now? I guess I don't  
18 understand.

19 MR. CLEARFIELD: He's not up now. But no he's not.  
20 Not right now.

21 JUDGE CHESTNUT: We'll take him later on.

22 MR. CLEARFIELD: Later after lunch, possibly.

23 JUDGE CHESTNUT: The next one we have listed is Dr.  
24 Silkman. Is there a problem in having him go now.

25 MR. HERSHEY: It would be our preference to go ahead

1 now.

2 JUDGE CHESTNUT: Absolutely.

3 MR. HERSHEY: And while Dr. Silkman is coming up if  
4 we could have the usual stipulation concerning preparation  
5 of his testimony, and I'd ask that it be admitted.

6 JUDGE CHESTNUT: Before you do that you did not mark  
7 it. So why don't you designate it.

8 MR. HERSHEY: You are correct. I believe we'll make  
9 it CEPA, et al -- I am sorry. Statement I am not even sure  
10 where we are.

11 JUDGE CHESTNUT: I have one and two.

12 MR. HERSHEY: So this would be 3. Statement 3 of  
13 Senator Fumo and CEPA, et al.

14 (FUMO, CEPA, et al Statement No. 3 was produced and  
15 marked for identification.)

16 MR. HERSHEY: Dr. Silkman has been crossed on all of  
17 the others and I believe all the others are in evidence.

18 JUDGE CHESTNUT: All right, the document's  
19 admitted. Dr. Silkman has previously been sworn.

20 RICHARD H. SILKMAN, recalled as a witness, having  
21 been previously duly sworn, was examined and testified  
22 further as follows:

23 DIRECT EXAMINATION

24 THE WITNESS: Previously, yes. Richard H. Silkman.

25 MR. HERSHEY: We would like the opportunity to do a

1 brief oral surrebuttal based on some of the documents that  
2 have have come in recently.

3 JUDGE CHESTNUT: Are you ready? Okay.

4 BY MR. HERSHEY:

5 Q Mr. Silkman, have you had a chance to review the  
6 modifications ENRON has made to its Choice Plan?

7 A Yes, I have.

8 Q Do you have any opinion concerning those  
9 modifications? Do you believe the modifications address  
10 all of the concerns you raised in your rebuttal testimony?

11 A ENRON, in its modifications of the plan have  
12 responded to two of the concerns. The first one is the  
13 securitization contingency issue and the second one with  
14 the low generation caps in the out years that were in the  
15 original plan. In both cases, the response has been an  
16 incomplete one.

17 The securitization modification introduced a new  
18 requirement and that's that the ratings achieved on the  
19 bond issues now have to be triple A. Prior to that there  
20 was no such ratings requirement. The bonds would be issued  
21 as the market would accept them.

22 We have added a new requirement and with respect to  
23 the generation rate caps a while we raised them in the out  
24 years I think they are still too low and still present some  
25 of the same problems though obviously not as significant.

1           In addition, the modifications created one new  
2 problem. And that's that they paid for -- and I use the  
3 word paid in quotation marks -- but they have paid for  
4 those modifications that I mentioned above in part, but  
5 reducing the T&D rates by a significant amount.

6           So now what we have is a plan which is not  
7 contingent to the same extent on securitization, but is  
8 rather contingent on the Commission finding that the T&D  
9 rates that are in Table A and in the plan are appropriate.  
10 The plan also requires as it did before, the purchased  
11 power agreement commitment by PECO.

12           Q A moment ago in the discussion concerning a  
13 triple A rate you have said we have added a new rate. Do  
14 you mean they have added a new rate?

15           A They have added. No ownership on that one.

16           Q Do you agree with Mr. Oliver's estimation of rate  
17 payer savings under the Choice Plan as compared to the  
18 partial settlement?

19           A No, I don't. Mr. Oliver, and I still seem to  
20 have a disagreement with respect to terminology. I think  
21 it lies with the confusion over what the generation rate  
22 caps in the partial settlement represent. He seems to be  
23 interpreting those as market prices or at least our belief  
24 as to what market prices will be and we have never, in all  
25 of the discussions on the partial settlement, suggested

1 that those generation rate caps would be equal to market  
2 prices. I think that's where the confusion lies. If you  
3 can get over that hurdle my guess is we could probably  
4 agree on numbers. As a result, because of that, I think he  
5 continues to overstate the benefits of the Choice Plan to  
6 rate payers, largely by including it appropriately some  
7 generation related savings.

8 Q And what portion of the benefit that he alleges  
9 for the Choice Plan would relate to that specific  
10 distinction? Would you agree that it's a good three  
11 quarters of the benefit?

12 A Yes. And in fact, it is a substantial, most of  
13 the benefit relates to the generation rate saving, although  
14 now that the new plan reduces T&D rates, which we now have  
15 as some of those generation rate savings shifted over to  
16 two and -- but effectively they are all related to either  
17 of those two components.

18 They are only limited benefits associated with CTC,  
19 IDC rate levels.

20 Q Do you believe that the proposed rate reductions  
21 in the partial settlement. Or the ENRON Choice Plan will  
22 stimulate electricity usage?

23 A No, I don't. And that's true for actually both  
24 settlements. It's both the ENRON and the partial  
25 settlement agreement. I think that there are a couple of

1 reasons for that and in fact, Mr. Oliver provides a  
2 convenient way of describing them.

3         The price elasticity estimates that he is using and  
4 that are generally used are based on nominal price, the  
5 actual price that consumers pay. And they also tend to be  
6 symmetric which means that when prices go down there's a  
7 certain behavior and when prices go up there's the opposite  
8 behavior but in equal measure.

9         If you think about what both the partial settlement  
10 agreement and the Choice Plan do, is that they lower prices  
11 initially but then they increase prices back to their  
12 otherwise existing level. Under all expectations -- under  
13 both plans, achieve that same result. So what we believe  
14 is that consumers either are so short-sighted as to not see  
15 the subsequent increase in price that they can expect, or  
16 make irrational decisions or behavior asymmetrically.

17         I don't think any of those things are going to  
18 happen. In addition, there's -- there remains a lot of  
19 energy service company activity. And in fact, as I  
20 understand, Mr. Oliver even acknowledged some of that as  
21 going on and ENRON, in particular, has just indicated in an  
22 agreement with the prices in this area that they expect to  
23 be able to reduce energy consumption at those facilities by  
24 20 percent.

25         It's a significant amount that conforms with the

1 numbers that I had in my original testimony, I think it's  
2 an accurate assessment as to what's available in those  
3 facilities. So I don't dispute the ENRON position at all  
4 in that case, I think it's exactly where I would expect  
5 them to be able to be.

6 Q And the agreement that ENRON entered into with  
7 the hospitals occurred prior to any of the unbundling that  
8 is part of the discussion in this proceeding. Isn't that  
9 right?

10 A Yes, it has.

11 Q Having reviewed ENRON's rebuttal, and the changes  
12 that were made in the Choice Plan, do you still believe the  
13 partial settlement agreement is the better option?

14 A Yes I do. The partial settlement agreement is a  
15 compromise. It's certainly not a perfect agreement from  
16 anybody's perspective but represents a balancing of  
17 interests and quite frankly, a balancing of risks and I  
18 think that consumer are better served under the partial  
19 agreement as it's currently structured versus under the  
20 Choice Plan as it's been modified by ENRON.

21 In addition, I would note also that we have not seen  
22 what I believe to be a significant component of that plan  
23 and that's the ITC shortfall agreement. I don't know and I  
24 am certainly not an expert and would defer to experts but  
25 it's my understanding that it's very difficult to achieve a

1 triple A rating in the securitization market with without a  
2 true-up mechanism and it's my understanding in the Enron  
3 plan that the ITC shortfall agreement provides that true-up  
4 mechanism and at that, I am not sure how we can achieve a  
5 triple A rating we still have not seen it despite the fact  
6 that ENRON has promised in data responses that we would see  
7 it before the end of this case.

8 MR. HERSHEY: Dr. Silkman is available for cross  
9 examination.

10 JUDGE CHESTNUT: Does anybody have any questions for  
11 Dr. Silkman.

12 MR. MILLER: No, Your Honor.

13 JUDGE CHESTNUT: Mr. Doll.

14 MR. DOLL: Good morning.

15 CROSS EXAMINATION

16 BY MR. DOLL:

17 Q Dr. Silkman, in your oral testimony, you said  
18 that the generation numbers in the partial settlement, I  
19 assume, are not to be market prices? Is that -- do I  
20 understand you correctly?

21 A They were not established initially as our  
22 expressions of market prices. They were established as  
23 rate caps so that if market prices ever went above those  
24 caps the caps would be effective.

25 Q So is it safe to assume, then, that the

1 generation portion of the formula is just a fall-out number  
2 that you came up with, a T&D number that you then came up  
3 with a CTC, ITC number, whatever was left over, out of  
4 PECO's rates, became the generation credit?

5 A No. I wouldn't characterize them that way. In  
6 fact, what we did was we looked to see what kinds of  
7 benefits, from our perspective -- what we did was we looked  
8 to see what kind of benefits PECO might be achieving as a  
9 result of its divestiture of generation assets and tried to  
10 ensure that especially early on in this market, that the  
11 transfer of those assets couldn't create windfall benefits  
12 to PECO as a significant supplier of energy in the  
13 Philadelphia marketplace.

14 As a result, we were very tight in establishing the  
15 early generation credits, the credits, the generation caps,  
16 caps in the years 1999, 2000, 2001 and so forth. After  
17 that period of time, what we were most concerned about for  
18 protecting rate payers from potential run-ups, potential  
19 abnormalities in the energy market, that again would create  
20 significant windfalls to PECO and so established those rate  
21 caps.

22 By the end of the term of the agreement, we would  
23 expect that the market would impose a discipline on PECO's  
24 ability to exercise whatever market power it has currently  
25 in the marketplace. Our concern was more for unforeseen

1 events that might occur in the energy marketplace.

2 Q Would you refer to page 2, line 9 of I believe  
3 it's Statement 3. I am sorry, 9 and 10. Where you --

4 A Yes, I see that.

5 Q -- where you talk about ENRON reserves the right  
6 to cancel the Choice Plan at is sole discretion. Under the  
7 partial settlement, does not PECO -- for that matter  
8 almost any other party to the settlement -- have the right  
9 to withdraw from that settlement if it's modified?

10 A Yes. And what I was referring to there was not  
11 so much the modifications. You are correct. PECO has  
12 reserved for itself and, in fact, all of the signing  
13 parties have reserved the right to withdrew from the  
14 partial settlement if it's modified.

15 Under the Choice Plan, the Commission could accept  
16 the Choice Plan exactly as structured but ENRON still  
17 reserves for itself the right to withdraw from it. PECO,  
18 in the signing party to the partial settlement didn't  
19 reserve that right under the settlement.

20 If the settlement is accepted exactly as written,  
21 all parties have agreed to abide by it. That's the  
22 distinction that I am trying to make there.

23 Q To clarify in my mind, on page 9, paragraph that  
24 starts with the question on line 5, runs through line 13.

25 A I am sorry.

1 Q Page 9?

2 A It's possible that I am working off of a  
3 different copy because I --

4 Q The question begins on line 5, are the results  
5 similar?

6 A Yes, I see that now.

7 Q Maybe my copy's different.

8 A The problem is Senator Fumo didn't have Word 7 on  
9 his damned machine. So when we E-mail things it gets  
10 translated and we lose lines.

11 Q I can appreciate that. Are you suggesting that  
12 competition should be delayed until about the year 2007?

13 A No, I am not suggesting that.

14 Q On page 10 of your testimony, beginning at line  
15 5, the question there, this may have been changed on --  
16 your testimony may have changed somewhat on your  
17 surrebuttal. Is it still your position that the generation  
18 credits are appropriately low in the early years and then  
19 increase as time goes on?

20 A In which plan?

21 Q In either plan? Was it your testimony that  
22 that's appropriate that they increase?

23 A Yes, it is, yes.

24 Q So we are still on the same page.

25 A Yes.

1 Q Now, are you aware that Connectiv is currently  
2 participating in the Pennsylvania pilots?

3 A I understand that you are but I don't know much  
4 about your participation.

5 Q Okay. Now, do you know what the current level of  
6 the combination of market price and participation credit is  
7 that was established by the Commission?

8 A It's my understanding, although I have not  
9 reviewed it carefully although it's my understanding that  
10 it's fairly comparable to what the initial year rates are  
11 in the partial settlement.

12 For residential use, I understand that that would be  
13 somewhere around 3.2 cents or something like that.

14 Q Would you accept, subject to check that that's  
15 around 4.2 cents?

16 A I'll accept subject to check that that's the  
17 indication, certainly.

18 Q Okay. Now, if, in fact, the --

19 A May I back up for one moment? Does that include  
20 the participation credit.

21 Q Participation credit, yes. I am sorry if I  
22 wasn't clear. Now, if we, in the first year of competition  
23 in the partial settlement, if we were to drop back to the  
24 2.8 or some there's some question as to whether this number  
25 is 2.8 or 3 under the partial settlement. And if your

1 supposition or if your position is adopted, competition may  
2 be delayed in the earlier years so we could have more  
3 vigorous competition in the later years.

4           Would you suggest to my client that we either sell  
5 power to customers at a price below the market -- I mean  
6 below the market until such time as that price comes up to  
7 the point in the partial settlement where it would meet the  
8 market price?

9           A I wouldn't suggest that you of sell below the  
10 market unless you had a good reason to. I don't know what  
11 your company's cost structure is and I don't know what  
12 access it has. If it can't sell at the -- at a competitive  
13 price then it would have to make that decision for itself.

14           Q So then if that were an eventuality if our costs  
15 were above what is set forth as the generation credit, if  
16 you will, you would suggest that it would be a wise  
17 business move for my clients to immediately leave the  
18 market after the pilot is over and wait until such time as  
19 the generation as we can compete against that generation  
20 quoted and re-enter the market?

21           A Now, it's very presumptuous for me to tell your  
22 clients what to do with it. I'd be happy to consult for  
23 your client.

24           Q I am sure you would. And depending upon your  
25 answers, I may talk to you afterwards?

1           A But it strikes me that your client has lot of  
2 interests in this particular marketplace; one of which is  
3 selling electricity to customers. I don't know how your  
4 client would package its interests and make determinations  
5 about how it ought to sell product. For example, I mean,  
6 the classic situation is sort of 7-11s or periodically will  
7 undersell or under price gasoline in order to get people to  
8 come in for cigarets or other products.

9           JUDGE CHESTNUT: Loss leader.

10          THE WITNESS: Could energy become a loss leader and  
11 would that make economic sense for a year or to into -- but  
12 we have it done now. We would take that loss on a product  
13 like --

14 BY MR. DOLL:

15          Q You don't advocate selling at a low cost for any  
16 extended period of time?

17          A Not if it was selling its entire product line  
18 below cost.

19          Q One last question. On page 13 -- and this is a  
20 clarification -- I am not sure that I understand what you  
21 are saying. Lines 1 through 5, it actually starts over on  
22 page 12, if we have the same copy here. You talk about  
23 thwarting of competition. By setting the generation rates  
24 so at a level which would delay the entry of competitors in  
25 the market, would this comport with your concept of the

1 goals of the Competition Act?

2           A To begin, I am not convinced that setting the  
3 generation level at the rate cap level in the partial  
4 settlement will thwart competition. So I don't accept that  
5 premise. Is there a possibility that it will? Yes. I  
6 would acknowledge that there's a possibility. I think that  
7 what we have to look at is the entire transition period and  
8 remember what we are comparing now in my testimony are two  
9 situations.

10           One plan which has the potential of thwarting  
11 competition early on in the plan but enabling it, in later  
12 periods of the transition period, compared to another plan  
13 which has the possibility of enabling it more aggressively  
14 in the early part of the transition period but thwarting it  
15 in the later part of the transition period.

16           And what I am suggesting is given those two options,  
17 I think the act it's more consistent with the form. The  
18 that the act anticipate a transition to competition and if  
19 we have to look at risks we are better offering on the side  
20 of enabling competition later in the transition period  
21 rather than enabling it early in the transition period if,  
22 in both instances we are thwarting it in the opposite time  
23 periods.

24           Q But the ultimate goal is not to set the  
25 generation level so that it wouldn't thwart competition at

1 all?

2 A That's correct.

3 MR. DOLL: Thank you. I have nothing further, Your  
4 Honor.

5 JUDGE CHESTNUT: Does anybody else have any  
6 questions for Dr. Silkman?

7 (No response.)

8 JUDGE CHESTNUT: Is there any redirect?

9 MR. HERSHEY: No, Your Honor.

10 JUDGE CHESTNUT: Thank very much. You are excused.

11 JUDGE CHESTNUT: Are we going to go with Mr. Kinney  
12 next?

13 MS. SMITH: Our witness ready to go right now, if  
14 it's possible to go with Dr. Cooper right now?

15 JUDGE CHESTNUT: Can we go with Dr. Cooper?

16 (Discussion off the record.)

17 JUDGE CHESTNUT: This is another unmarked --

18 MS. SMITH: We had another document at the earlier

19 --

20 JUDGE CHESTNUT: It's been admitted. Stipulated as  
21 statement 1. Do you want this as 2? One?

22 (AARP Statement No. 2 was produced and  
23 marked for identification.)

24 JUDGE CHESTNUT: Would you please stand and raise  
25 your right hand.

1           MARK COOPER, called as a witness, having been duly  
2 sworn, was examined and testified as follows:

3                           DIRECT EXAMINATION

4           JUDGE CHESTNUT: Please sit down and give and spell  
5 your name for the record.

6           THE WITNESS: M-a-r-k, C-o-o-p-e-r.

7           JUDGE CHESTNUT: Go ahead, Ms. Smith.

8 BY MS. SMITH:

9           Q Dr. Cooper could you give your business address  
10 for the record, as well?

11           JUDGE CHESTNUT: We have decided just stipulate  
12 testimony in unless a party objects, to save time.

13 BY MS. SMITH:

14           Q You have prepared written testimony in this  
15 proceeding. Do you have any additions or changes to this  
16 testimony which we are identifying as Dr. Cooper's  
17 Testimony Statement Number 2?

18           A I have no changes to this testimony.

19           Q Do you have anything you would like to add to  
20 this testimony at this time?

21           A Well, obviously, there's been sort of a  
22 negotiated price in public here where people have been  
23 putting new proposals on the table. There are a couple of  
24 things I would like to state so that the Commission has at  
25 least some reactions to the very late developments that

1 have occurred in the case.

2           While consumer advocates have always been supportive  
3 of balloting proposal and those are one of the fairly late  
4 entries in this process, we have two concerns about that.  
5 Particularly from my client's point of view, representing  
6 older Americans who are risk averse.

7           We can call them different things. Sometimes they  
8 are late adopters. I can have nice words. I can have  
9 scientific words. But they are risk averse. They are  
10 likely not to vote or likely not to vote because they don't  
11 want to change and it's a substantial concern to us that  
12 they get changed when they really didn't want to. And they  
13 a major concerns with the balloting proposal.

14           A second concern that was very high on AARP's list  
15 in this proceeding was to get an expanded lifeline program  
16 and as my direct testimony today shows we accomplish that,  
17 we felt. That is not listed as an obligation on any of the  
18 companies that receive default customers.

19           There is no social obligation to support universal  
20 service or lifeline programs. There are only obligations  
21 to support environmental programs. And as far as I can  
22 tell, those entities would have no obligation to support a  
23 life line program in that part of the market they have been  
24 awarded. So that is a serious concern.

25           Q And Dr. Cooper when you were referring to

1 balloting, you were referring to the proposal performed by  
2 the environmentalists.

3 A I thought that was clear to everybody.

4 MS. SMITH: Dr. Cooper is available for cross  
5 examination.

6 JUDGE CHESTNUT: Does anybody have cross examination  
7 for Dr. Cooper.

8 MR. GALLAGHER: I do, Your Honor.

9 JUDGE CHESTNUT: Mr. Doll?

10 CROSS EXAMINATION

11 BY MR. DOLL:

12 Q Good morning, Dr. Cooper. My name is Craig Doll  
13 and I represent Connectiv Energy in this proceeding. Page  
14 10, I believe it is, of your testimony -- I am trying to  
15 find the line. The question I have here is you are  
16 generally critical of the market rate that ENRON had  
17 proposed in this proceeding?

18 A I am not critical of the market rate A or B  
19 hasn't taken a position, hasn't testified to market rates.  
20 I am critical of the, it seems to me, the comparisons that  
21 have been made have excluded the possibility that market  
22 prices are below the generation caps in the partial  
23 settlement and my clients get the benefit of the best of  
24 the market rate and that is clearly not clear in the way  
25 that the Choice Plan has been presented and compared.

1 Q Okay. Now, you are also aware that in the  
2 partial settlement that PECO would set that market rate?

3 A Well, PECO would set -- well, PECO will not set  
4 the market rate. In the partial settlement, default  
5 customers would be charged at the lesser of the market rate  
6 that PECO incurs or the cap. Obviously, anyone who shops  
7 gets the rate that they obtain in the market.

8 Q But for those default customers that we are  
9 talking about, those people who either choose not to choose  
10 or cannot choose for the first two years, they would get  
11 either the cap or a market rate set by PECO?

12 A The lesser of those two.

13 Q The lesser of. I stand corrected. Thank you.

14 On page 11, the question beginning at line 8,  
15 specifically the lines I think 14 and 15 you talk about the  
16 legal authority of the Commission. Now, I assume from that  
17 -- let me strike that. You are familiar, generally with  
18 the act, the provisions of the Choice Act?

19 A Generally with the act, yes.

20 Q Now, do you believe that in your review of the  
21 act, that the act provides a true-up process for the CTC?

22 A Well, I believe that the act requires a true-up  
23 process unless a company can give away that right which is  
24 what I think happened in the partial settlement. That is,  
25 PECO could insist upon the true-up with respect to the

1 quantity sold under the act.

2 Q But you are not suggesting that the parties to a  
3 settlement agreement can change the law?

4 A No, I am suggesting that the parties to the  
5 settlement agreement can forego -- a party to a settlement  
6 agreement can forego a right it had under the law. PECO  
7 could, PECO can sign any agreement it wants. Someone would  
8 have to sue PECO or sue me and say you have violated the  
9 law or sue the Commission if the Commission approved that  
10 act. I mean that's possible.

11 Q Thank you for that clarification.

12 A Clearly, then, does the act require that the  
13 Commission impose that true-up, I think that if the -- if  
14 those parties explain why they have forgone the true-up  
15 this Commission could find otherwise. But certainly  
16 anybody can sue and say you have violated the law.

17 JUDGE CHESTNUT: Excuse me. I want to clarify to  
18 make sure I understand what part of your answer is. In  
19 your opinion is the true-up only to benefit the utility?

20 THE WITNESS: No. We believe the true-up benefits  
21 us in this settlement. And there's been exchange of values  
22 as I said in my testimony.

23 BY MR. DOLL:

24 Q So both the utility and clients represented by  
25 you are giving up a benefit conferred on them by the

1 statute?

2           A No. We are making an exchange of values. We  
3 have exchanged the right to true-up to reduce their  
4 recovery under some circumstances in exchange for their  
5 giving the rate, to giving up the right to increase our CTC  
6 and other circumstances. So we have made an exchange of  
7 values in this agreement.

8           Q And the exchange is only with respect to the  
9 reconciliation?

10          A No. The exchange is with respect to everything  
11 in --

12          Q I mean in terms of your answer right there, these  
13 change of values were with respect to the reconciliation as  
14 opposed to other elements of the settlement?

15          A If you look on the at reconciliation, PECO, in  
16 fact, bears the risk of a recession, seven years into an  
17 expansion phase in the event you may or may not, that's a  
18 significant risk they have on their side; the risk of  
19 recession, that is if they have a recession here in  
20 Philadelphia in the next year they will not be able to come  
21 back and recalculate on the basis of a shortfall in  
22 demand. And they will not be able to increase my CTC as a  
23 result of that.

24          So I get the benefit of being insulated against a  
25 shortfall in demand I have also got the benefit of the kind

1 of market behavior that we have seen that Enron is engaging  
2 in.

3 JUDGE CHESTNUT: Dr. Cooper, I didn't mean to open  
4 the door for a general discussion. I just wanted to make  
5 sure I understood the context that your answer was  
6 presented in terms of.

7 THE WITNESS: Yes.

8 JUDGE CHESTNUT: The value that you saw being  
9 exchanged. I think you have answered.

10 THE WITNESS: If there's an exchange of values with  
11 respect to both sides of the true-up, absolutely.

12 JUDGE CHESTNUT: Sorry for interrupting, Mr. Doll.  
13 Why don't you continue.

14 MR. DOLL: I think you clarified it for me also.

15 BY MR. DOLL:

16 Q On page 13 of your testimony, lines 14 and 15,  
17 page 13, lines 14 and 15, you say we believe that  
18 generators will enter when the market price allows them and  
19 they will be there in later years. I have posed these  
20 questions a little bit earlier to Dr. Silkman. Is it your  
21 opinion that competition should be delayed until the later  
22 years?

23 A Well, I don't believe that competition will be  
24 delayed. I just believe that the entrants in the  
25 marketplace -- again, this is with respect to ENRON's

1 complaints about the partial settlement -- the entrants in  
2 the marketplace may well be people with existing excess  
3 capacity.

4           They, in the early years because this is a market  
5 that is in surplus at the present time, when the  
6 marketplace will eventually build up enough to meet the  
7 demand at the market claimed price, I believe that we will  
8 be there.

9           I don't say there would be no competition. The  
10 short term competition will be driven by people with excess  
11 capacity that they can bring to the market. ENRON's  
12 analysis focused in on the price of building new generating  
13 capacity. They didn't look at the question of is a market  
14 in surplus likely to be competitive without attracting new  
15 generation.

16           I don't think competition is being delayed. One  
17 class of competitors may be delayed. People who say I  
18 can't build a new plant against that market price.

19           Q So in your view, competition would be limited to  
20 those existing utilities who have -- not existing  
21 utilities; existing companies that have excess capacity  
22 that they can move into the Philadelphia area? Am I  
23 correct?

24           A That, I mean in the early years, that is likely  
25 to happen. And that is the way markets actually work and

1 are supposed to work. People don't build new plants when  
2 they see excess capacity in a market.

3 Q On page 17, lines 11 and 12, you talk about  
4 universal service. You say that all producers should  
5 contribute to universal service. As a point of  
6 clarification, what did you mean by producers?

7 A Suppliers of --

8 Q Suppliers?

9 A Suppliers, yes.

10 Q If a supplier would contribute to a universal  
11 service fund and -- strike that. Under your concept of a  
12 universal service fund, am I correct that that is a pool of  
13 money that would be put somewhere that could be drawn upon  
14 for those customers who are either temporarily or longer  
15 term unable to pay the going rate on their bills?

16 A Yes.

17 Q Now, under that concept of the universal service  
18 fund, would you suggest that if producers contribute to  
19 that fund, that the -- or suppliers contribute to that fund  
20 that when the bill comes out and the customers, say, can  
21 only pay half of their bill, and let's also I guess assume  
22 that it's a -- make it easy. It's a \$50.00 bill, \$25.00 of  
23 which is generation, \$25.00 of which is a combination of  
24 CTC and transmission and distribution charges?

25 A Yes.

1 Q So half would go to PECO and whatever would go to  
2 the supplier. Would you suggest, under your concept of  
3 this universal service fund, that both the supplier and  
4 PECO would share in withdrawing funds from that program to  
5 pay off parts of their bills in equal portions?

6 A Funds should be competitive now, with respect to  
7 each one of their suppliers.

8 MR. DOLL: I have nothing further, Your Honor.

9 JUDGE CHESTNUT: Does anybody else have questions?

10 MR. CLARK: Yes, I have a couple questions.

11 BY MR. CLARK:

12 Q Dr. Cooper, my name is Roger Clark. I am an  
13 attorney for the environmentalists. At the beginning of  
14 your oral testimony this morning, you made the note that  
15 consumer groups jointly support balloting programs. Is  
16 that correct?

17 A Yes.

18 Q Am I -- and then you went on and you listed  
19 several particular concerns you had in the proposal made by  
20 Bruce Biewald?

21 A I listed a couple of the big ones. I have got  
22 some others but --

23 Q Okay. Is it your recommendation that the  
24 Commission adopt a balloting program provided we can  
25 construct it in a way that meets your concerns?

1           A I would certainly be willing to sit down and work  
2 out the details of a balloting program that I think would  
3 promote the consumer interest in competition. It had not  
4 been a part of the case. They are very difficult. The  
5 details are very difficult to work out and so it is  
6 possible to sit down and talk about balloting.

7           I think balloting is good. It focuses peoples'  
8 attention on something that's appropriate to something that  
9 has been used in a number of different industries.  
10 Allocating detailed customers gives us concern.

11           Q I understand that.

12           A And so -- and it can have perverse market  
13 impact, especially in an industry like this.

14           Q Do you have serious concern about the domination  
15 of the market by the incumbent monopoly? Is this a problem  
16 as well?

17           A Well, I have serious concerns about the  
18 domination of the market by the incumbent monopolist. And  
19 okay, the idea here is to get through a transition that  
20 gets us to a competitive marketplace.

21           Q Okay.

22           A The fact that someone has a 50 percent market  
23 share at the end of a competitive marketplace I can  
24 probably build a -- put my fingers on a lot of markets  
25 where the dominant firm has a 50 percent market share, have

1 always been historically competitive, so --

2 Q I understand. Let me ask about some of two  
3 points you have made. First you made the statement that  
4 many of your clients, seniors, primarily are concerned  
5 about being changed when they don't want to.

6 Do you understand that under the Biewald proposal  
7 that any customer who wants to stay with, in this case,  
8 PECO, may elect to do that and they will not be changed?

9 A Well, I understand, but a lot of my folks are  
10 liable not to vote. There's good reason not to change.  
11 And this is a negative option.

12 Q Okay. I understand that. But they can, by --  
13 and if we can develop the mechanism that makes that voting  
14 simple and not a burden, they cannot change if they don't  
15 want to.

16 A Obviously, again, we, as a matter of principle,  
17 we are opposed to negative options.

18 Q Okay.

19 A Having been in the consumer movement for 20  
20 years, I have never supported a negative option.

21 Q Okay.

22 A So basically someone who doesn't vote, who should  
23 not be forced to do something. And in the case -- in this  
24 case, I think they would actually end up with a higher  
25 price than they thought they were going to get. They could

1 end up with a supplier who subsequently goes bankrupt. And  
2 there were good reasons that they didn't vote and so I am  
3 severely concerned about imposing a negative option on  
4 consumers.

5 Q Let me ask about your second concern, which is  
6 what you perceive to be a supplier's lack of an obligation  
7 to support the lifeline program. Under the joint  
8 settlement, the universal service program is portable, the  
9 benefits of the universal service program is portable, is  
10 it not?

11 A Yes, it is.

12 Q Under the ENRON proposal, the benefits of the  
13 universal service program are like a portable, aren't they?

14 A Again, if you look at my direct testimony, I  
15 don't know what's left of my universal service program.  
16 When you, if you shift to the ENRON proposal.

17 Q Okay. But if we fashion a final order here that  
18 does say that universal service benefits are portable under  
19 balloting, would it not be the case that any supplier that  
20 has a customer assigned to it under a ballot situation  
21 would also have the same portable benefits?

22 A The question, I mean, is equally who's going to  
23 pay for that universal service proposal? That is, the --  
24 if you have taken away 50 percent market share from PECO,  
25 do you still intend to collect the 50 or \$75 million of

1 universal service charges from PECO which is what happens  
2 under the joint proposal?

3           You have taken away half their market share. I  
4 would like to have seen you say that everyone who's awarded  
5 a customer by default has to contribute that share, their  
6 share of the market to the cost of the funds or in other  
7 words, support their own universal service customers.

8           Q Who pays for universal service programs under the  
9 joint petition?

10           A Well, who pays is there are three levels of who  
11 pays. The current level of who pays come out of  
12 distribution rates. PECO's distribution rates.

13           Q From which rate classes?

14           A From residential classes. The second level,  
15 between 35 and 80,000 participants comes from PECO'S  
16 revenues. You read the settlement. It says PECO's  
17 revenues. In negotiating that settlement we made no, took  
18 no steps to designate where that came from or to increase  
19 any specific rates to compensate for that.

20           So I say to my client, since I don't raise any of  
21 your rates, that comes from their general revenues and  
22 people will look at that agreement and say different  
23 things. The third step is left to negotiations.

24           Q In that third step, if we get to that point, is  
25 it your recommendation that we leave, that we recover

1 universal service costs only from residential customers?

2 A Absolutely not. We should recover, it's my  
3 position, and one of the reasons we did not reach agreement  
4 on the third step was that we insisted that at least the  
5 third step be funded from a, we prefer a KWH charge.

6 MR. CLARK: Thank you. That's all.

7 JUDGE CHESTNUT: Does anybody else have any cross  
8 for the witness?

9 MR. GALLAGHER: Your Honor, ENRON does.

10 JUDGE CHESTNUT: Okay. Mr. Gallagher.

11 MR. GALLAGHER: Good morning, Dr. Cooper. My name  
12 is John Gallagher and I represent ENRON Energy Service and  
13 I have some questions for you this morning.

14 THE WITNESS: Good morning.

15 BY MR. GALLAGHER:

16 Q I'd like to refer you to page 1 of your  
17 testimony, lines 15, 16. You talk about making a judgment  
18 about how your clients are likely to fare in this  
19 environment right now.

20 A Yes.

21 Q When you made that judgment, did you consider,  
22 read or review any market price projections?

23 A I have recommended market price projections that  
24 have been put into the case by a variety of people, yes.

25 Q Which ones were those?

1           A I certainly read OCA's and factors, the people I  
2 have -- who I was negotiating and discussing with. I have  
3 seen market projections in other cases as well. I am aware  
4 of PECO's current market projections, ENRON's current  
5 market projections.

6           Q So it's fair to say, then, that you reviewed the  
7 OCA market projections, PECO's market projections and  
8 ENRON's market projections?

9           A I certainly have read the market discussions that  
10 support ENRON's plan, yes.

11          Q Have you reviewed any market projections that are  
12 not contained in the partial settlement?

13          A I reviewed the market projections contained in  
14 the testimony of several of the parties to the partial  
15 settlement. OCA's were not. I mean, they are not in the  
16 partial settlement. PECO's are not in the partial  
17 settlement. They were in their testimony.

18          Q At line 18 you talk about you reviewed certain  
19 options. Could you tell me what those -- what options you  
20 considered in responding to the ENRON proposal?

21          A The litigation positions, the partial settlement  
22 and the ENRON proposal.

23          Q By litigation positions, what do you mean?

24          A The possibility that I would have gotten  
25 everything I asked for in my testimony, that PECO would

1 have gotten everything they asked for in their testimony,  
2 that OCA would have gotten everything they asked for in  
3 their testimony. Each of those is a possible outcome of  
4 the case.

5 Q When you have performed your analysis, did you  
6 look forward 10 to 15 years when you made your analysis  
7 here in reviewing your options?

8 A Generally, I looked at the terms of the  
9 settlement.

10 Q And what is that?

11 A It runs roughly to 2008.

12 Q Turning to page 7 of your testimony, at line 13.  
13 That sentence ends -- it starts at line 12 if PECO  
14 challenged the settlement. Do you see that?

15 A Yes.

16 Q Is it your position that ENRON has proven its  
17 case for full claim to stranded costs based on the existing  
18 record?

19 A Well, no. It's my contention in that sentence  
20 that if PECO goes into court with ENRON's theory, since  
21 ENRON has adopted PECO's theory of stranding, then they  
22 stand a good chance of getting their recovery. I think  
23 ENRON's theory is wrong, as I said, in that as is PECO's  
24 theory.

25 But that sentence says that if their -- if that

1 theory is correct, then they have a claim to full recovery  
2 of stranded costs. I think the theory is wrong.

3 Q Well, they may have a claim, Mr. Cooper. I am  
4 asking you is it your position that PECO has proven its  
5 case with regard to full recovery of all the transfer  
6 costs?

7 A I have -- no. I believe PECO hasn't proven its  
8 claim because it's based on the wrong theoretical  
9 foundation. You can't give up the theoretical foundation  
10 and expect to win the case.

11 Q If you turn to page 8, line 13 do you see that?

12 A I have it.

13 Q You talk about price risk. Could you clarify, I  
14 know you talked about that somewhat in response to a  
15 question from Mr. Doll. But could you define a little bit  
16 further what you mean by the price risks to which PECO is  
17 exposed.

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1           A   If the market produces clearing prices  
2           that are below the generation caps, then my clients  
3           have the ability to purchase electricity at that  
4           price, and their savings will be larger than what  
5           we calculated. They have -- and PECO will also  
6           have a revenue stream that is smaller than it would  
7           have been at the generation cap, so they are  
8           exposed to that risk, and I have that potential  
9           benefit.

10           Q   Looking at Line 15, you state that PECO  
11           was not over compensated.

12                    Did the parties -- to your knowledge, did  
13           the parties or yourself to the partial settlement  
14           see a review of forecast of PECO's earnings?

15           A   Did -- well, we -- we have -- we  
16           understand that there is a general stream of  
17           revenues that is projected, and if certain sets of  
18           circumstances take place, they will collect more  
19           than is stated.

20                    If other sets of circumstances occur, they  
21           will collect less, so the reason they are not over  
22           compensated is that they bear risks and rewards in  
23           the out years.

24           Q   Maybe I didn't make myself clear, or you  
25           didn't understand.

1 My question was: Did you or the parties  
2 to the partial settlement see or review a forecast  
3 of PECO's earnings?

4 A You mean their net income?

5 Q Yes.

6 A I did not look at specific net income  
7 figures.

8 Q Did PECO provide you with that  
9 information?

10 A I do not -- I did not see that  
11 information.

12 Q Can you direct me to the Section of the  
13 partial settlement which addresses PECO's price  
14 risk, where that is discussed?

15 A Well, it is -- PECO's price risk exists in  
16 the fact that I can buy energy under the  
17 settlement, and therefore they lose sales to me, or  
18 lower their price to match the market.

19 Q Once again, Mr. Cooper, maybe I didn't  
20 make myself understood.

21 Can you direct me to that portion of the  
22 partial settlement that discusses that issue?

23 A That's a fundamental element of a  
24 competitive market.

25 Q Well, Mr. Cooper, maybe the answer is yes

1 or no.

2 Can you refer me to a section of the  
3 partial settlement that discusses that issue?

4 A Off the top of my head, I would have to --  
5 it would be that section which gives my clients the  
6 right to buy energy on the market, and I believe  
7 that is --

8 Q Do you have a copy of the partial  
9 settlement?

10 A I don't have a copy of the partial  
11 settlement.

12 Q Mr. Cooper, you have before you the  
13 partial settlement.

14 I will repeat my question again.

15 JUDGE CHESTNUT: I don't think that's  
16 necessary, Mr. Gallagher.

17 Why don't you leave that to us to do it. I  
18 mean, I can find it.

19 I think it is pretty clear what section or  
20 what aspect of the settlement you are referring to.

21 Of course I am not the one answering.

22 A Again, I haven't --

23 MR. GALLAGHER: Maybe I should have asked  
24 you, Your Honor.

25 A Section 9, it establishes a maximum market

1 price for energy and capacity.

2 Once that is established, any time I can  
3 purchase energy at a lower price, they are at risk  
4 for not being able to collect that stream of  
5 revenue, and I have a reward of being able to beat  
6 that price.

7 That is the first instance. It pervades  
8 the rest of the section.

9 Q Moving on, Mr. Cooper, on Page 8, again,  
10 on Line 15, you talk about an exchange of values.

11 I believe you discussed that briefly in  
12 response to a question from Mr. Doll, I believe.

13 Maybe you can clarify it a little further  
14 for me.

15 What exactly did you give up in this  
16 bargain for exchange of values?

17 A I gave up a larger write-off of assets,  
18 which I had originally testified to do in my  
19 litigating position.

20 I would have asked them to write off  
21 probably a billion dollars more of assets, of  
22 stranded costs.

23 I gave up a universal service program that  
24 did not have a distressed bill payment requirement  
25 for enrollment in that program.

1 That was one of the things I wanted.

2 Those are the two primary things that I  
3 gave up.

4 Q And in return for that, what did you get?

5 A I got a much expanded low income program  
6 from the current level of 35,000 to 100,000.

7 I got a guaranteed set of price reductions  
8 in the near term, since obviously PECO's litigating  
9 position was not to provide those price reductions.

10 I got the possibility of larger price  
11 reductions later on as the market develops and my  
12 clients are better able to shop, rather than in the  
13 early years.

14 I am very much convinced that different  
15 classes of customers will fare better early while  
16 my clients learn how to shop, and they -- their  
17 ability to shop in the later years is extremely  
18 important.

19 Frankly, we think we got a good thing in  
20 the non-reconcilable CTCs, because energy  
21 conservation will be fully rewarded, so long as  
22 rates are -- those rates are fixed, so those are  
23 -- I have quantified at least a billion and a half  
24 dollars of benefits I got, with potential of larger  
25 benefits.

1                   Again, my clients' time horizon tends to  
2                   be short, so near term guaranteed price reductions  
3                   are particularly attractive.

4                   Q   Well, that's somewhat cold, Mr. Cooper,  
5                   but --

6                   A   Well, see --

7                   Q   -- we will accept that.

8                   A   -- they hired an expert to advise them,  
9                   and it is very important to realize that if you go  
10                  into an investment banker, and you are twenty-five  
11                  years old, he gives you one investment strategy,  
12                  and if you are sixty-five, he gives you another  
13                  one --

14                  Q   Well, thank you.

15                  A   -- and that is just as cold.

16                  Q   I don't --

17                  A   Well, it was a snide remark.

18                  Q   Turning to Page 17, Line 22, 21 and 22,  
19                  you mention that ENRON will be the provider of both  
20                  wires and energy.

21                                 Can you give me the support for your  
22                                 assertion that ENRON will be the provider of wires?

23                   A   Well, ENRON has taken -- launched B, the  
24                   provider of last resort, and it proposes to  
25                   exercise -- to discharge that function through a

1 contract with their -- with another company, but  
2 ENRON has taken the primary responsibility for  
3 providing that.

4 They want to replace PECO as the provider  
5 of last resort.

6 Q Is it your position or testimony that  
7 ENRON will operate and maintain the physical  
8 transmission and distribution lines of PECO?

9 A Well, ENRON has the responsibility, and  
10 they have tried to contract with PECO to discharge  
11 that responsibility, but ultimately, I need -- and  
12 that is my complaint.

13 The entity that is ultimately my provider  
14 of last resort has to be responsible to me.

15 That is the point.

16 I don't want to have to reach through the  
17 contract to the next subcontractor as the  
18 responsible entity.

19 Q You said that you have reviewed the Choice  
20 Plan, correct?

21 A I have looked at it, yes. I have not  
22 reviewed it.

23 Q Can you point to any provision of the  
24 Choice Plan that directly states that ENRON Energy  
25 Services will own and maintain the distribution?

1           A I didn't say owned and maintained. ENRON  
2 wants to have the responsibility of the provider of  
3 last resort.

4           It wants to discharge that responsibility  
5 with a subcontractor.

6           Q Once again, where in the Choice Plan does  
7 ENRON Energy Services have the responsibility to be  
8 the provider of wires?

9           A If you give me a copy of the Choice Plan,  
10 I will show you.

11           At Page 24, over to 25, ENRON seeks to be  
12 the provider of last resort.

13           Q And from that statement, Mr. Cooper, you  
14 understand that ENRON is going to own and  
15 maintain --

16           A I didn't say own and maintain.

17           As the provider of last resort, my  
18 understanding is that if I need power, I go to you  
19 and say, "I need these services, wires and power."

20           That is what a provider of last resort is,  
21 in plain English.

22           I didn't say you owned it.

23           You have the responsibility to meet my  
24 needs.

25           Q Is that your definition of "provider of

1 last resort"?

2 A That is my understanding of what we mean  
3 by a provider of last resort.

4 Somebody has to be there who has the  
5 ultimate and definitive responsibility to make sure  
6 my lights go on.

7 Q You mentioned earlier, Mr. Cooper, that  
8 you had reviewed, through OCA's testimony, their  
9 market price forecasts, correct?

10 A I looked at their market price forecast.

11 Q Do you know what the 1999 projected  
12 delivered generation prices, including retail sales  
13 cost was reflected in that testimony of Mr. Smith?

14 A I don't recall.

15 Q Would you accept, subject to check, that  
16 the 1999 residential market price projected by OCA  
17 was three point six cents?

18 A Subject to check, I will accept it.

19 Q Do you know what the residential energy  
20 and capacity cap in the partial settlement is?

21 A It is probably lower than that. You can  
22 give it to me, subject to check.

23 Q Subject to check, would you agree it is  
24 three cents?

25 A Okay.

1 Q Now, if the OCA's projection is correct,  
2 would you agree that the only way marketers would  
3 be able to participate in the market would be able  
4 to sell -- they would have to sell below the three  
5 cents range?

6 A Well, as a general proposition, they would  
7 have to meet the market, the cap.

8 Q Which was below -- which would be below  
9 the market price, correct?

10 A In -- below OCA's --

11 Q Correct.

12 A -- testimony estimate.

13 Q Correct.

14 A Above PECO's, I believe PECO's number was  
15 lower than that.

16 Q I understand, but would you agree that it  
17 is below the market -- projected market price in  
18 OCA's testimony?

19 A It is probably below that price and above  
20 other projected prices in the case.

21 Q Turning to Page 22 of your testimony, at  
22 line eleven --

23 A I have it.

24 Q -- could you explain to me your  
25 understanding of what is involved in a formal

1 write-off of assets?

2 A Well, I believe what happened, what will  
3 happen is that the assets will be transferred to --  
4 on the books at a value less than the going-in book  
5 value of the assets.

6 Q Do you know what assets PECO will write  
7 off?

8 A They will write off generation assets, I  
9 assume.

10 Q What is -- do you know what the financial  
11 consequences of that is, of that write-off would be  
12 to PECO?

13 A The financial consequences?

14 Q Right.

15 A Well, I mean, the financial consequences  
16 of write-offs to all companies is that it lowers  
17 their -- their equity base frequently associated  
18 in the market with it, with charges against income,  
19 and establishes a company on a different -- a  
20 different asset base.

21 Q Is it your testimony that PECO has a right  
22 to recover through a write-off the difference  
23 between the requested stranded costs and what they  
24 were going to recover under the partial settlement?

25 A It is -- it is my testimony that PECO has

1 no right to recover any stranded costs.

2 The settlement is a compromise in which I  
3 did not -- didn't change my litigating position.

4 They have written off part of those  
5 assets.

6 I would have liked them to have written  
7 off more in my litigating position.

8 They claimed they didn't have to write off  
9 any in their litigating position.

10 Q You would agree that even under the  
11 partial settlement, the Commission has the ability  
12 to direct that none of those assets be written off?

13 A The Commission has the ability under the  
14 partial settlement?

15 Q Yes.

16 A No. If the Commission doesn't adopt the  
17 partial settlement, I may litigate the case.

18 I mean, I may go elsewhere and litigate  
19 it, but if the Commission does not adopt the  
20 partial settlement and the parties are not bound by  
21 the partial settlement, then we go back to our  
22 litigated position, in which case I maintain that  
23 they have to write off more assets.

24 Q In line thirteen, you talk about shifts,  
25 significant risks and rewards.

1                   What exactly, without being repetitive --  
2                   and I don't mean to ask you to go over ground that  
3                   we have already gone over -- but what are the risks  
4                   to the company?

5                   A    The company has two substantial risks,  
6                   one, that demand will not meet its assumptions, and  
7                   two, that price will not meet its assumptions, and  
8                   if I can beat the price, I get the reward.

9                   They bear the risk of that lower price.

10                  If demand does not meet their assumption,  
11                  then they bear that risk.

12                  Q    And the rewards to the company are?

13                  A    They get the up-side of those  
14                  possibilities, up to -- well, they can't -- they  
15                  can't bust the cap, but they could get the full  
16                  value of the stream of income on the basis of the  
17                  demand and the generation cap, if the market will  
18                  not allow me to go below that.

19                  Q    Thank you, Mr. Cooper. I have no further  
20                  questions.

21                  A    Thank you.

22                  JUDGE CHESTNUT: Does anybody else have any  
23                  questions for Dr. Cooper?

24                  (No response.)

25                  JUDGE CHESTNUT: Redirect?

1 MS. SMITH: Yes, Your Honor. May we have one  
2 moment to check a figure?

3 JUDGE CHESTNUT: Certainly.

4 (Discussion off the record.)

5 REDIRECT EXAMINATION

6 BY MS. SMITH:

7 Q Doctor Cooper, you were asked some  
8 questions, subject to check, regarding OCA's market  
9 projections.

10 Do you recall those questions?

11 A I was, yes.

12 Q Were you able to check OCA's current  
13 market projection?

14 A I am informed that OCA has a new set of  
15 market projections, which will be put in  
16 sur-rebuttal testimony.

17 Q And that is expected on Friday? Is that  
18 correct?

19 A As I understand it.

20 Q Okay. Doctor Cooper, you were also asked  
21 some questions regarding the risk that PECO was to  
22 assume, and you were asked to refer to the partial  
23 settlement to support your statements.

24 Is there another section of the partial  
25 settlement that you would like to refer to?

1           A Yes. Well, at Chapter 11 explicitly  
2 transfers, transfers the risks of the last issue,  
3 the changes in sales to PECO.

4           MS. SMITH: Okay. Thank you, Dr. Cooper.

5           I have no further questions, Your Honor.

6           JUDGE CHESTNUT: Let me just clarify. When  
7 you say Chapter 11, do you mean Paragraph 11?

8           THE WITNESS: No. Paragraph 11. I meant  
9 Paragraph 11.

10          JUDGE CHESTNUT: Is there any further cross  
11 examination based on the redirect, redirect  
12 testimony?

13          (No response.)

14          JUDGE CHESTNUT: Okay. Thank you very much.  
15 You are excused.

16          (Witness excused.)

17          JUDGE CHESTNUT: Mr. Mitchell is next on the  
18 list here.

19          MR. BONNEY: I'm sorry. Who is next, Your  
20 Honor?

21          JUDGE CHESTNUT: Mr. Mitchell.

22          MR. BONNEY: We prefer to go with the ENRON  
23 witnesses Kinney or Fastow at the moment.

24          JUDGE CHESTNUT: Are they available?

25          MR. MILLER: Your Honor, I was out of the

1 room, because I don't know if you are aware that we  
2 got several pieces of written rejoinder testimony  
3 from PECO this morning, and we have had no chance  
4 to evaluate it.

5 The one by Mr. Mitchell I think is about  
6 seventeen pages, along with exhibits.

7 I am trying to deal with this in some kind of  
8 cogent coherent fashion, but it is very difficult.

9 JUDGE CHESTNUT: Do you want to defer Mr.  
10 Mitchell then until you have had a chance to look  
11 at that?

12 MR. MILLER: You know, realistically, you  
13 know, there is no chance on a day when we are all  
14 in hearings to look at it, and I think what I would  
15 like to -- if you contrast what we did when we put  
16 on Mr. Kinney, we put a motion to Your Honors to  
17 have his testimony received.

18 We gave backup reasons for it.

19 PECO had a chance to review it before the  
20 hearings.

21 This testimony and others, I think, with Mr.  
22 Sharp's testimony -- I'm not sure if there are any  
23 others; they are all floating across the desk here  
24 -- have all come in this morning.

25 It is extremely difficult to deal with

1 information like this, or testimony like this.

2 Obviously we have witnesses here.

3 It is actually an undue burden to ask them to  
4 do rejoinder today.

5 Unfortunately, I talked to Mr. Kinney.

6 He is not available next Tuesday for the  
7 hearing.

8 He is gone all next week.

9 We are just at a loss, Your Honor, frankly.

10 JUDGE CHESTNUT: How much testimony was  
11 submitted to you today?

12 MR. MILLER: In addition to the various  
13 witnesses that have oral rejoinder, we got one  
14 statement, a rejoinder statement, PECO No. 20 ERJ,  
15 ERJ for Mr. Mitchell, seventeen pages long.

16 It has got a couple of exhibits with it.

17 There is another one by Mr. Sharp, six pages  
18 long, raising issues that we probably have seen for  
19 the first time.

20 I am not saying that they aren't issues that  
21 were raised, but they are new arguments, new issues  
22 that are raised in rejoinder to some of the issues  
23 that we have.

24 Obviously, you know, some of this information  
25 is information that witnesses who are here don't

1 have access to their computers, their data banks,  
2 and things like that.

3 It is virtually impossible to say that we can  
4 deal with this in any effective fashion.

5 MR. SMITH: If I may briefly respond to this,  
6 Your Honor?

7 JUDGE CHESTNUT: Certainly.

8 MR. SMITH: On Wednesday of last week, ENRON  
9 filed testimony which significantly changed the  
10 plan to respond to certain issues that had been  
11 raised by Mr. Mitchell, Mr. Sharp and others, and  
12 they made explicitly -- and this I think will be  
13 clear when Mr. Fastow is on the stand -- they said,  
14 "We have amended our plan in numerous places in  
15 ways that we, ENRON, think addresses the concerns  
16 that were raised."

17 We then of course have the right to put on  
18 oral sur-rebuttal testimony or rejoinder, or  
19 whatever you want to call it, by our witnesses  
20 today to respond to that testimony filed last  
21 Wednesday, and in fact last Friday as well, the  
22 late filing that was made of Mr. Kinney's  
23 testimony.

24 We, as a courtesy, wrote it up ahead of time  
25 and gave it to them this morning, so they would

1 have additional hours to deal with it.

2 We will withdraw the testimony and ask the  
3 questions orally when those witnesses go on the  
4 stand, if we have to.

5 JUDGE CHESTNUT: I am not sure that you do  
6 have a right for oral sur-rebuttal here.

7 It seems to me that with respect to the ENRON  
8 plan, which is separate from the restructuring  
9 issues, that ENRON goes first and ends.

10 MR. SMITH: ENRON specifically -- they would  
11 then have the right to respond to that if they want  
12 to --

13 JUDGE CHESTNUT: But --

14 MR. SMITH: -- but they changed the plan last  
15 Wednesday, and we have had no opportunity to  
16 respond --

17 JUDGE CHESTNUT: Okay.

18 MR. SMITH: -- to that, Your Honor, and I  
19 apologize.

20 MR. BONNEY: And I just want to add on that,  
21 Your Honor, that you permitted Mr. Mitnick, for  
22 example, among other witnesses for ENRON the last  
23 time to do just what we are asking this time, and  
24 as we have been doing throughout the course of  
25 these days of hearings.

1           Your Honor, this is a substantial change in  
2           the plan.

3           If the ruling is that that rebuttal testimony  
4           is not permitted to go in, then we don't have to  
5           file rejoinder to it.

6           If ENRON is going to be permitted on the 11th  
7           hour and 59th minute to dump in yet a new plan, we  
8           should at a minimum have a full opportunity to  
9           respond to that, and we have done that through this  
10          testimony, among other things.

11          MR. CLEARFIELD: The characterization of the  
12          change of the position is obviously just argument,  
13          and the responses are legitimate rebuttal  
14          responses.

15          Our concern --

16          MR. SMITH: It is testimony.

17          MR. CLEARFIELD: Our concern that we have  
18          raised is that as the hearings go on, there is  
19          virtually no way of us being able to cogently  
20          evaluate this testimony and respond, and we are at  
21          a severe disadvantage.

22          This is not simply additional argument on  
23          policy.

24          This is detailed analysis by a CPA, Mr.  
25          Sharp, or a member of an accounting firm, and Mr.

1 Mitchell.

2 JUDGE CHESTNUT: But isn't it responsive to  
3 changes made in your position?

4 MR. BONNEY: Yes, it is.

5 MR. CLEARFIELD: I haven't had an opportunity  
6 to look at Mr. Mitchell's testimony in detail.

7 There is response -- it appears to be  
8 responses to the testimony that we submitted on  
9 Wednesday, Your Honor.

10 JUDGE CHESTNUT: Well, you know, I have --  
11 Judge Rainey and I have both taken the position in  
12 this case to be as inclusive as possible.

13 We would like maybe a big fat messy record,  
14 as opposed to a clean, streamlined record, just  
15 because of the issues, and to make sure all issues  
16 are fully developed.

17 I don't want any party to be placed in an  
18 unfair position, but at some point, you know, the  
19 target has to stop moving, and parties should have  
20 a fair opportunity to respond to whatever that  
21 final position is.

22 I understand and I recognize that there are  
23 external time constraints with this case, and I  
24 think we all have to recognize that that is a  
25 parameter that has to guide how we proceed that

1 cannot be changed by any of us in light of the  
2 time.

3 Mr. Miller, I think the it is -- I think it  
4 is, as a general matter, I don't think PECO is out  
5 of line in responding to the changes that you have  
6 put or the modifications to your plan.

7 I do think that it is appropriate to put it  
8 in writing and give it to you, but on the other  
9 hand, I think you have to have a chance to respond  
10 to it in a meaningful kind of way.

11 Now, I would have suggested that we postpone  
12 it until Tuesday, since we have that day scheduled,  
13 but you say that that is not an option.

14 Do you have another proposal?

15 MR. MILLER: You know, I think that -- let me  
16 just address the Mitchell/Kinney testimony.

17 To the extent that Mr. Mitchell addresses --  
18 to go back, what Mr. Kinney was attempting to do  
19 was to respond to Mr. Mitchell's original  
20 testimony, and that's where we got into the tussle  
21 over whether we had sufficient information to do  
22 so.

23 Mr. Mitchell's rejoinder testimony I think is  
24 sort of a mixed bag in responding to that  
25 testimony, and then also responding to certain

1 changes in ENRON's plan, so it is kind of a mixed  
2 bag.

3 It is a little bit of both.

4 JUDGE CHESTNUT: Well, when you say "his  
5 testimony," are you referring to the testimony you  
6 received this morning?

7 MR. MILLER: Yes.

8 JUDGE CHESTNUT: Okay. Now, our problem with  
9 Mr. Kinney is, I think for some of the other  
10 witnesses, we might be able to, if there was a  
11 hearing on Tuesday, come back on Tuesday.

12 We might actually be able -- you know, if we  
13 could file whatever it might be sur-rejoinder,  
14 perhaps we would call it.

15 We could probably file some written  
16 sur-rejoinder testimony in time to give PECO, you  
17 know, at least a day or two to look at that and  
18 come back on Tuesday.

19 Mr. Mitchell -- Mr. Kinney presents a  
20 different problem, because he is unavailable on  
21 Tuesday.

22 That being the case --

23 JUDGE CHESTNUT: Is he available  
24 telephonically?

25 MR. MILLER: I don't know.

1 JUDGE CHESTNUT: Is there some way to  
2 accommodate this and wrap it up today, actually --

3 MR. MILLER: There might be.

4 JUDGE CHESTNUT: -- would be more my  
5 preference.

6 If we have -- if I depart from my usual  
7 practice in terms of short lunch periods and give  
8 you a chance to look it over, and then you can make  
9 a decision, and we will proceed this afternoon.

10 MR. MILLER: I think in any event, we would  
11 like to take Mr. Mitchell before Mr. Kinney, in  
12 view of the fact that Mr. Kinney wouldn't be  
13 available on Tuesday.

14 JUDGE CHESTNUT: I think Mitchell should go  
15 before Kinney.

16 MR. SMITH: We are fine with that, Your  
17 Honor.

18 MR. BONNEY: Your Honor, I would just like to  
19 point out that perhaps this is, among other  
20 reasons, why we have a Commission rule that it is  
21 not appropriate and prohibited to present a  
22 rebuttal case that varies substantially from the  
23 case in chief.

24 MR. CLEARFIELD: That is not necessary, Your  
25 Honor.

1 JUDGE CHESTNUT: We don't have to get into  
2 that.

3 MR. CLEARFIELD: Every part of the case  
4 responded to rebuttal testimony, testimony in the  
5 case.

6 There was no motion to strike any testimony,  
7 except one, which was rejected.

8 JUDGE CHESTNUT: Well, I think it is in the  
9 public interest here to have a complete record and  
10 a full development of issues, which may include  
11 changes to reflect other parties' testimony.

12 MR. BONNEY: We are prepared to go ahead with  
13 Mr. Mitchell.

14 JUDGE CHESTNUT: Why don't we go ahead with  
15 Mr. Mitchell, and then break for lunch and see  
16 where we are with that, or would you rather wait to  
17 have Mr. Mitchell after lunch?

18 MR. BONNEY: Or perhaps we could have cross  
19 examination on his first testimony before lunch,  
20 and then however -- frankly, however they would  
21 prefer to do with this.

22 JUDGE CHESTNUT: How would you prefer to go  
23 with this in terms of where we proceed from here?

24 MR. MILLER: Why don't we see how it  
25 develops, Your Honor, and we may be able to finish

1 before lunch.

2 If we have to come back, we --

3 JUDGE CHESTNUT: When you say "see," do you  
4 mean go ahead with Mr. Mitchell now?

5 MR. MILLER: Yes.

6 JUDGE CHESTNUT: Go ahead.

7 MR. DWORETZKY: Your Honor, I am okay with  
8 that, but I just wanted to reserve the issue of  
9 whether Mr. Mitchell will be made available on  
10 Tuesday until after we have heard his testimony,  
11 and if you will recall, that there is still  
12 outstanding, unresolved issues about certain  
13 financial information that has not been provided by  
14 PECO, and that may be raised by the testimony of  
15 this witness.

16 I want to see that before making a final  
17 determination of whether today will be sufficient.

18 JUDGE CHESTNUT: Would you raise your right  
19 hand, please?

20 J. BARRY MITCHELL, called as a witness,  
21 having been duly sworn, testified as follows:

22 JUDGE CHESTNUT: Would you please sit down  
23 and give and spell your name for the record?

24 THE WITNESS: My name is J. Barry Mitchell.

25 (Thereupon, PECO Statement 20-EGS and PECO

1 Statement 20-ERJ were marked for  
2 identification.)

3 MR. SMITH: Your Honor, we have previously  
4 distributed to the parties and to Your Honors  
5 PECO's Statement No. 20-EGS, the testimony of J.  
6 Barry Mitchell regarding the ENRON Choice Plan,  
7 which was submitted on November 7th, 1997.

8 This morning, as we have just heard, we have  
9 distributed to the parties PECO's Statement No.  
10 20-ERJ, the rejoinder testimony of J. Barry  
11 Mitchell regarding the ENRON Choice Plan, and that  
12 was distributed to the parties and to the court  
13 reporter earlier today, and I am now handing copies  
14 to Your Honors, and while I recognize that we may  
15 have some motions, I move that, the admission of  
16 these two pieces of testimony into the record,  
17 pending timely motions and cross examination.

18 JUDGE CHESTNUT: Any objection?

19 (No response.)

20 JUDGE CHESTNUT: The statements are admitted.  
21 (Thereupon, PECO Statement 20-EGS and PECO  
22 Statement 20-ERJ were admitted in evidence.)

23 MR. SMITH: The witness is available for  
24 cross examination at this time, Your Honor.

25 JUDGE CHESTNUT: Mr. Miller?

1 MR. MILLER: Thank you, Your Honor.

2 CROSS EXAMINATION

3 BY MR. MILLER:

4 Q Good afternoon, Mr. Mitchell.

5 A You are right. Good afternoon.

6 Q Mr. Mitchell, does PECO, as a matter of  
7 its general business practice, forecast balance  
8 sheets for some period of years into the future?

9 A Not for public consumption.

10 Q Is that answer yes? Does PECO have  
11 forecasted balance sheets?

12 A Do you mean public forecasts?

13 Q No. Does PECO in general?

14 A Yes. We would make forecasts.

15 Q Now, how far into the future does PECO  
16 forecast those balance sheets?

17 A It depends upon the nature of the  
18 analysis.

19 Q Do you have them, say, ten years into the  
20 future?

21 A As in any kind of forecast, the further  
22 you go out from the present, the less reliable  
23 those forecasts are going to be, so I would imagine  
24 sometimes we would go out ten years, but frequently  
25 not that far.

1 Q Do you have -- is there, to your  
2 knowledge, more than one forecasted balance sheet?

3 A There isn't a single forecasted balance  
4 sheet.

5 We may do analyses depending upon  
6 different -- we may perform different kinds of  
7 analyses that would involve balance sheet  
8 calculations.

9 Q Okay. Do you similarly have forecasts of  
10 income statements out into the future?

11 A Yes.

12 Q And you also have cash flow forecasts out  
13 into the future?

14 A Yes.

15 Q Generally, do those forecasts follow  
16 generally-accepted accounting procedures?

17 A Yes.

18 Q Does PECO introduce various sensitivities  
19 into those forecasts?

20 A When applicable.

21 Q Did PECO perform balance statement  
22 analyses for the partial settlement?

23 A Yes.

24 Q Was there more than one?

25 A Yes.

1 Q How about cash flow statements for the  
2 partial settlement?

3 Did they do that?

4 A I believe so.

5 Q More than one?

6 A Yes.

7 Q How about income statements? More than  
8 one?

9 A Yes.

10 Q Would one purpose of those forecasts be to  
11 analyze PECO's financial integrity under the  
12 partial settlement?

13 A Yes.

14 Q Have those forecasts been provided for the  
15 record in this proceeding?

16 A No.

17 Q Mr. Mitchell, did PECO perform forecasts  
18 of balance sheets under the Choice Plan submitted  
19 by ENRON?

20 A Yes.

21 Q How many?

22 A I don't have a specific count. Several.

23 Q And was the purpose of producing several  
24 to use different sensitivities?

25 A Well, it was primarily to address the

1 original Choice Plan, and all the variations that  
2 were later submitted.

3 Q And did PECO also perform forecasted  
4 income statements under the Choice Plan?

5 A Yes.

6 Q And did PECO perform several of those  
7 forecasts?

8 A Yes.

9 Q And did PECO perform forecasts of cash  
10 flows under the Choice Plan?

11 A Yes.

12 Q And the answer to that is several as well?

13 A Yes.

14 Q Why did PECO perform those forecasts?

15 A To be able to understand and evaluate the  
16 financial integrity of the company with respect to  
17 the different ENRON proposals.

18 Q Were they performed according to  
19 generally-accepted accounting principles?

20 A Yes.

21 Q Were they performed on the same basis that  
22 you performed your forecasts of the partial  
23 settlement?

24 A Yes.

25 Q And have you provided those forecasted

1 balance sheets, income statements, and statements  
2 of cash flow for the record?

3 A We submitted a summary of the results of  
4 my testimony.

5 Q Have you provided those forecasts for the  
6 years in question, showing your statements of cash  
7 flow, balance sheets, and income?

8 A We have not provided the specific income  
9 statement or the components.

10 We have shown the results.

11 Q Did you use a financial model to calculate  
12 the ratios in Table JBM-1?

13 A I'm sorry. Which?

14 Q Your table.

15 A My table?

16 Q Yes, in your original testimony.

17 A In the --

18 Q The first rebuttal you put in.

19 A Oh, okay.

20 Q It is on Page 8, Statement 20-EGS.

21 A All right. There have been a lot of  
22 papers.

23 Q I know.

24 A I'm sorry. What was the question?

25 Q Okay. Did you use a financial model to

1 calculate those ratios?

2 A Yes.

3 Q And did that model produce all of the  
4 calculations for the ratios shown on that table?

5 A Yes.

6 Q Now, did you have any impact -- did you  
7 have any communication on the impact of the partial  
8 settlement on PECO with any rating agency, any of  
9 the major rating agencies?

10 A Yes.

11 Q Did you show them the results of the  
12 financial model analyzing the partial settlement?

13 A No.

14 Q Have you provided that model to any of the  
15 parties to this case?

16 A No.

17 Q Have you provided the outputs of that  
18 model to any of the parties to this case?

19 A No. Only through my testimony.

20 Q Did you share any of the outputs of the  
21 financial model with any of the signatories to the  
22 partial settlement?

23 A No.

24 Q Mr. Mitchell, are you still on the page  
25 with the table for the JBM-1?

1 A Uh-huh.

2 Q Look, for example -- well, with that in  
3 mind, would you define the funds -- do you see the  
4 column there -- the statement, funds from operation  
5 to interest coverage ratio?

6 A Right.

7 Q All right. Would you provide your  
8 definition of that and include the components that  
9 you use for the numerator and the denominator?

10 A Well, it is as it says, the funds from  
11 operations, basically, earnings before interest,  
12 depreciation, and two, the annualized interest.

13 Q Now, Mr. Mitchell, does that calculation  
14 include income tax, or does it exclude income tax?

15 A I will double check.

16 . It includes income taxes.

17 Q For that category, go to, say, the year  
18 2001. All right? Do you see that column for the  
19 year 2001?

20 A Yes.

21 Q All right. And do you see the 2.53  
22 times --

23 A Right.

24 Q -- result? Can you provide the numerical  
25 calculation of the numerator and the denominator

1 that produces that two point five three times  
2 result?

3 A No. I don't have that with me.

4 Q Do you know if the numerator includes the  
5 CTC or the ITC?

6 A It would include -- well, it would  
7 exclude the ITC.

8 Q Now, does the denominator include interest  
9 expense from the transition bonds?

10 A No.

11 Q Have you provided the calculations of  
12 those ratios to the parties to date for each of  
13 those columns?

14 A No.

15 Q Look down at the same column, the 2001  
16 column.

17 Do you see where you have total debt to  
18 total capital ratio?

19 A Correct.

20 Q And do you see the number 63.5?

21 A Right.

22 Q Did you include the transition bond and  
23 associated regulatory assets in that calculation?

24 A No.

25 Q And do you see the 2001 pre-tax interest

1 coverage of 1.46 times?

2 A Right. I do.

3 Q Was CTC or ITC revenue included in the  
4 numerator for that calculation?

5 A The ITC revenue would not be included.

6 Q Was transition bond expense the  
7 denominator?

8 A No.

9 Q On the cash flow to capital expenditure  
10 ratio in 2001, did you adjust for the CTC revenue  
11 or transition bond expense?

12 A Yes.

13 Q And how did you do that?

14 A Well, once again, the cash resulting from  
15 the collection for the ITC would not be included.

16 Q Now, under the assumptions that you used  
17 to model the Choice Plan, how did you assume that  
18 the proceeds were to be used?

19 A Basically, 50/50, with respect to debt and  
20 equity.

21 Q Was it your assumption that PECO would be  
22 buying back stock?

23 A Yes.

24 Q What stock price did you assume for the  
25 buy-back?

1           A Well, that gets into issues that have --  
2 we have been advised by counsel would violate  
3 Securities regulations.

4           JUDGE CHESTNUT: Excuse me, Mr. Mitchell.  
5 There is no objection to that question.

6           THE WITNESS: I am responding in that  
7 context, Your Honor.

8           JUDGE CHESTNUT: Okay.

9           MR. SMITH: And I will put the objection on  
10 the record then, Your Honor.

11          JUDGE CHESTNUT: Well --

12          MR. SMITH: I mean --

13          JUDGE CHESTNUT: You didn't.

14          THE WITNESS: Based upon -- based upon my  
15 knowledge and dealings with the Securities laws and  
16 the company's policy, Your Honor, that was -- I'm  
17 sorry, but that would be my response.

18          MR. MILLER: Your Honor, I am not responding  
19 to these things, and I am not making motions now.

20                I think PECO's position is clear to us.

21                Our position is clear to them.

22                I don't want to clutter up the record.

23                I think we will address it at an appropriate  
24 time.

25           BY MR. MILLER:

1           Q Mr. Mitchell, would the price at which  
2 stock was repurchased affect the results of your  
3 analysis?

4           A Yes.

5           Q Did you also assume that you repurchased  
6 debt?

7           A Yes.

8           Q What premium did you assume for the debt  
9 repurchases?

10          A The debt was cullable.

11                   We obviously used the premium with respect  
12 to each of those particular issues.

13                   For the debt that wasn't cullable, we made  
14 certain assumptions with respect to the ability to  
15 tender for those issues.

16          Q Have you provided those assumptions for  
17 the record?

18          A No.

19          Q Now, referring back to your answer, that  
20 generally the split was 50/50 between debt and  
21 equity, if PECO used fifty percent of the proceeds  
22 of the issuance of the transition bonds to retire  
23 debt, generally what would be the effect if that  
24 percentage of the proceeds were increased to, say,  
25 sixty percent?

1           A    Just -- just the change in the  
2           application.

3                     Well, I guess it would depend.

4                     There are a couple of factors in terms of  
5           whether the debt is cullable, and what kind of  
6           premium you would have to pay, but you would have a  
7           trade-off between earnings per share then and cash  
8           flow, such that earnings per share as a single  
9           measure would be worse, and cash flow presumably  
10          would be a little better.

11                    Q   So would it be generally correct that the  
12          ratios you show on your columns would improve if  
13          there was an increase in the retirement of debt  
14          over the 50 percent that you assume?

15                    A   Not necessarily.

16                    Q   Okay. And which ones would, and which  
17          ones wouldn't?

18                    A   Well, it would depend upon the  
19          circumstances.

20                    I mean, based upon all of the different  
21          provisions in terms of what debt is cullable and  
22          the tender premiums and so forth, and we have  
23          demonstrated that to a certain effect with respect  
24          to the table in one of your rejoinder testimonies  
25          to show that actually, with respect to these

1 measures, the application of the debt in the higher  
2 percentage, or the proceeds to a higher percentage  
3 causes these measures to deteriorate.

4 Q Now, is there a way that someone looking  
5 at the two pieces of testimony can follow  
6 calculations through, based on the information you  
7 have given us, and see how precisely that happens?

8 A Well, they certainly wouldn't be able to  
9 eyeball it, but based upon the assumptions that  
10 have been provided, I would imagine that they would  
11 be able to get to that, based upon those  
12 assumptions and the information that is public with  
13 respect to our security issues.

14 Q So it is your testimony that a party has  
15 all of the information publicly available so that  
16 they could replicate how you got from one table to  
17 the next, based on the assumptions?

18 A They could probably get pretty close --

19 Q Well, that --

20 A -- but the point is, frankly is that the  
21 differences there may be interesting, but they are  
22 both horrible.

23 Q Right. But that wasn't my question, was  
24 it?

25 A No. Well, I think it was, because I am

1 talking about the difference between a relatively  
2 fine-tuned distinction and significant macro  
3 differences, and I am suggesting that the  
4 differences between those cases, although not huge,  
5 someone with the degree of information that is  
6 public and the assumptions that are provided and  
7 the ability to model these things could come in  
8 within reasonable tolerance to these numbers.

9 Q Are you a CPA?

10 A No.

11 Q Would a person need the forecasted  
12 financial statements in order to calculate the  
13 number in JBM-1?

14 A I'm sorry. I didn't hear that.

15 Q Would a person need the forecasted  
16 financial statements in order to calculate the  
17 numbers in --

18 A Well, that's what they would be doing.

19 If we did that, they wouldn't be doing any  
20 forecasting.

21 Q Would they need to replicate the numbers  
22 in JBM-1?

23 A They would have to produce their own, yes.

24 Q In reaching the conclusion that PECO would  
25 be rated B or below, what guidelines did you use,

1 that is, what ratings guidelines, and from what  
2 rating agency?

3 A Basically, Standard & Poors is more public  
4 with respect to their guidelines, both quantitative  
5 and qualitative, and we used both the qualitative  
6 and the quantitative factors and compared the  
7 output from the model to the benchmark calculations  
8 that we have previously provided here.

9 Q And where in your testimony do you show  
10 that analysis, both how one uses the qualitative  
11 and the quantitative analysis applied to those  
12 ratios to get the binder?

13 A We don't show the qualitative.

14 We state that we take the qualitative  
15 aspects into effect and look at that in light of  
16 the benchmark, the benchmark measures that S&P has  
17 published.

18 Q Whose analysis of the qualitative measures  
19 was this?

20 Was it S&P's, or was it PECO's?

21 A It was -- it was our assessment, based  
22 upon a lot of experience in terms of dealing with  
23 them.

24 Q So you didn't talk to them about this  
25 analysis, did you?

1           A   Talked to them about the analysis only  
2           with respect to continuing sort of validation, if  
3           you will, about the proper calculation of the  
4           measures.

5           Q   Now, which of the quantitative measures  
6           did you use, and how did you apply them?

7           A   We placed the -- I would say primary, but  
8           the total emphasis on the first three measures, the  
9           funds from operations, average total debt, the  
10          funds from operation interest coverage as the two  
11          primary, and then total debt to total capital.

12          Q   And what S&P document did you use?

13          A   We used a document for -- the benchmark  
14          comparison aspect is JBM-8.

15          Q   What is the date of that document?

16          A   The date of --

17          Q   Yes.

18          A   -- the underlying document?

19          Q   Yes. The S&P document.

20          A   As I recall, it is 1994, but I would -- I  
21          have to check that, but it is about that time  
22          period.

23          Q   For purposes of calculations you did in  
24          table JBM-1, did you assume a two billion dollar  
25          write-off?

1 A No.

2 Q You did not assume that PECO was going to  
3 write off the two billion dollars?

4 A No.

5 Q Did you assume dividends of a dollar  
6 eighty a share?

7 A We kept the dividend constant.

8 Q At what rate?

9 A At the dollar eighty.

10 Q For, say -- let's stay in the year 2001 --  
11 what would the total dividend amount be in dollars?

12 MR. SMITH: I am going to object to that  
13 question on the grounds that it calls for propriety  
14 information.

15 In addition, it is the kind of information  
16 that we would have to clear the courtroom in order  
17 to deal with it --

18 JUDGE CHESTNUT: We can do that.

19 MR. SMITH: -- but aside from that, we also  
20 object to it on the grounds that it is propriety  
21 information.

22 MR. MILLER: I think this is just another one  
23 of those issues that we can deal with later, Your  
24 Honor.

25 I am not going to fight about it.

1 BY MR. MILLER:

2 Q Is that dividend in excess of net income  
3 in that year, that total dividend payment?

4 A I don't recall.

5 Q Would it be --

6 A Probably -- as I recall, in each of those  
7 years there was a loss in earnings per share.

8 Q So that means that there would be a  
9 dividend -- if PECO were to pay a dividend, it  
10 would be in excess of earnings, right?

11 A Yes, yes.

12 Q Would it be prudent to pay the dividend in  
13 light of those projected earnings?

14 A Well, it would certainly be something we  
15 would have to look at very hard, that's for sure.

16 MR. MILLER: Your Honor, I am confused at  
17 this point.

18 I think counsel can clear it up.

19 We got Mr. Mitchell's rejoinder testimony  
20 today.

21 It has a document that we were given. It was  
22 -- there was a confidentiality claim for that  
23 document.

24 I don't know if PECO has waived that  
25 confidentiality claim, or they are still asserting

1 it.

2 I would like to ask questions on it.

3 MR. SMITH: We are still asserting that  
4 confidentiality claim on that document.

5 JUDGE CHESTNUT: Well, what do you want to  
6 do?

7 MR. MILLER: I would like to ask questions on  
8 it.

9 JUDGE CHESTNUT: Okay.

10 MR. SMITH: Then --

11 JUDGE CHESTNUT: We can treat it as  
12 confidential.

13 MR. SMITH: Confidential, and those people  
14 who have not signed the confidentiality agreement  
15 are required to leave the courtroom, as we have  
16 dealt with before, including the press.

17 JUDGE CHESTNUT: Is there a way you can ask  
18 your questions that does not disclose the actual  
19 information, or do you have to do that?

20 MR. MILLER: I don't know. Let me look.

21 You know, why don't I ask the questions, and  
22 I think some of them look like they wouldn't  
23 require that.

24 Maybe all of them are.

25 If we get to that point, maybe we will have

1 to deal with it.

2 JUDGE CHESTNUT: Okay. Mr. Mitchell, if you  
3 could kind of couch your answer so that you don't  
4 disclose that information, but indicate where it  
5 may be found, or something like that, we can try  
6 that.

7 THE WITNESS: Well, I think I understand.

8 JUDGE CHESTNUT: I am concerned you might  
9 blurt out --

10 THE WITNESS: Pardon me?

11 JUDGE CHESTNUT: Now, I don't want you to be  
12 in a position where you might blurt out some kind  
13 of confidential information.

14 If you would like to go ahead and try this  
15 and see if we can skirt sensitive information like  
16 that.

17 If you would rather just treat it as  
18 confidential and clear the courtroom, we can do  
19 that, too.

20 MR. SMITH: Wait a second.

21 (Discussion off the record.)

22 MR. SMITH: My client advises me he would  
23 like to clear the courtroom.

24 JUDGE CHESTNUT: All right. I would like  
25 everybody here then who has not signed the

1 confidentiality treatment to please leave.

2 MR. SMITH: With respect specifically to this  
3 information, or frankly, nobody has signed it for  
4 this one, because I think the confidentiality  
5 agreement was set up prior.

6 Anybody who has signed the confidentiality as  
7 to this prior, the prior assumptions.

8 Joe, I think you did -- is that right -- or  
9 is that the only one that you did.

10 MR. DWORETZKY: Right. I am happy to carry  
11 it over to this.

12 JUDGE CHESTNUT: And this portion of the  
13 transcript will be treated as confidential.

14 MR. RYAN: Off the record.

15 (Discussion off the record.)

16 JUDGE CHESTNUT: Mr. Smith?

17 MR. SMITH: Mr. Kinney is a New York banker,  
18 and it is precisely those people in the financial  
19 community that would be most interested in the  
20 information.

21 JUDGE CHESTNUT: Well, obviously if he says  
22 he wouldn't use it --

23 MR. CLEARFIELD: That's correct.

24 We are making a representation that he will  
25 abide by it, and it can't be used for other

1 purposes.

2 MR. BONNEY: That's satisfactory, Your Honor.  
3 Thank you.

4 MR. SMITH: For purposes of this litigation  
5 only, so long as he understands the constraints on  
6 the use of the information.

7 JUDGE CHESTNUT: I think we are all  
8 professionals here.

9 I think he knows how to act, some of us more  
10 than others maybe.

11 All right. Yes. Are we ready to proceed,  
12 then?

13 MR. SMITH: We are waiting for someone else.  
14 We need to make sure that Miss Voorhees has  
15 either left, or made that same representation.

16 JUDGE CHESTNUT: If she wants to leave, I  
17 think you ought to let her leave.

18 MR. MILLER: I just want to make sure she  
19 leaves.

20 MR. DWORETZKY: Your Honor, just so the  
21 record is clear, I have signed a limited  
22 confidential agreement, and I am agreeable to the  
23 extension of that agreement to the document that is  
24 attached to Mr. Mitchell's testimony.

25 JUDGE CHESTNUT: Okay.

1           MR. SMITH: Setting aside, Your Honor, in the  
2 previous time that we did this, we did go around  
3 the room and make everybody stand up and say that  
4 they agreed to it, and we are satisfied that  
5 everybody in the room did that in the previous  
6 round and still is bound, except nobody from  
7 LeBoeuf Lamb did it in the previous round, stood up  
8 and said that they agreed to be bound, and they  
9 haven't signed anything, either.

10           JUDGE CHESTNUT: Well, do you make that  
11 representation, or would you rather leave the room?

12           MR. MILLER: Do I have a choice?

13           MR. KLAUBERG: I am from LeBoeuf Lamb.

14           Everyone here from LeBoeuf will agree to be  
15 bound by the confidentiality agreement.

16           JUDGE CHESTNUT: Folks, I am not kidding.

17           We have got to be done by six tonight, dead  
18 or alive.

19           MR. MILLER: I don't have that much more,  
20 Your Honor.

21           JUDGE CHESTNUT: Okay.

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(The information contained in Pages 2055 to 2146 is of a proprietary nature and is contained in a separate, sealed transcript.)

1 JUDGE CHESTNUT: Mr. Miller, I wasn't clear.  
2 Were you done the cross-examination completely for  
3 Mr. Mitchell at this point, or do you have further  
4 based on his non-confidential?

5 MR. MILLER: The only thing I have left is some  
6 cross on the rejoinder, Your Honor.

7 JUDGE CHESTNUT: Are you going to do that now?

8 MR. MILLER: I suppose I can.

9 JUDGE CHESTNUT: Mr. Miller.

10 **CROSS-EXAMINATION**

11 BY MR. MILLER:

12 Q. Mr. Mitchell, on Page 5 of your rejoinder  
13 testimony --

14 A. Yes.

15 Q. -- you state that PECO is a public  
16 company. Its annual and quarterly financial  
17 statements are publicly available. Do you see that?

18 A. Yes.

19 Q. You're referring to the SEC disclosure  
20 requirements?

21 A. Yes.

22 Q. The SEC doesn't require public companies  
23 to make financial forecasts, does it?

24 A. Not specifically.

25 Q. So you're referring to historical

1 information there, are you not?

2 A. We publish an annual forecast as well.

3 Q. An annual forecast how far out?

4 A. Five years.

5 Q. Of what information?

6 A. Basically cap X and balance sheet kind of  
7 information along with some sales information.

8 Q. In what context do you publish that,  
9 Mr. Mitchell?

10 A. We publish that usually in the late spring  
11 when we've firmed up our budget and forecast for the  
12 year.

13 Q. As an SEC report?

14 A. No.

15 Q. In what context do you publish it?

16 A. It's information for analysts. It's very  
17 widely distributed.

18 MR. MILLER: Your Honor, again, I'm going to  
19 object to the scope and length of this testimony  
20 being delivered to us this morning. There was not  
21 very much I could have done with it because, as you  
22 know, I was in this hearing room all day long.

23 Other than the limited cross I have, I  
24 have no other cross on the rejoinder.

25 JUDGE CHESTNUT: Does anybody else have

1 cross-examination for Mr. Mitchell?

2 Mr. Dworetzky.

3 MR. MILLER: Your Honor, I misspoke. I do  
4 have one other question that slipped my mind.

5 BY MR. MILLER:

6 Q. Mr. Mitchell, on Page 12 of your  
7 rejoinder, Line 12 --

8 A. Yes.

9 Q. -- you relay a quote from Mr. Kean's  
10 testimony.

11 A. Right.

12 Q. Didn't Mr. Kean actually say no material  
13 adverse change shall have occurred in the business,  
14 financial position, or prospects of PECO?

15 A. Would you like to point me to the right  
16 place?

17 Q. You lifted the quote off of Pages 39 and  
18 40, Mr. Mitchell.

19 A. That's right. It's right there. Yes.  
20 That quote in my testimony is in error. It says no  
21 material adverse change.

22 MR. MILLER: That's all I have, Your Honor.

23 **CROSS-EXAMINATION**

24 BY MR. DWORETZKY:

25 Q. Mr. Mitchell, your testimony in your

1 rejoinder testimony is limited to commenting on the  
2 financial effects on PECO of ENRON's Plan Number 1  
3 and Plan Number 2; is that correct?

4 A. No.

5 Q. Have you commented on the financial  
6 effects on PECO of any other plan?

7 A. No.

8 Q. You've testified sort of in essence that  
9 the ENRON plan is not feasible in the way that it is  
10 structured at present; is that correct?

11 A. In what context?

12 Q. In your rejoinder testimony.

13 A. No. I mean as far as -- Are you talking  
14 about the tax implications?

15 Q. Actually, I'm talking about the financial  
16 implications for PECO.

17 A. Oh, the financial impact on PECO?

18 Q. Yes.

19 A. Yes.

20 Q. Are you aware of any way that the  
21 transaction that ENRON has proposed could be  
22 restructured that would ameliorate some of those  
23 hardships on PECO, not necessarily cure them but  
24 ameliorate them?

25 A. Not other than to make them still awful.

1 Q. Please answer my question.

2 MR. SMITH: I think that was answered, Your  
3 Honor.

4 A. I did.

5 BY MR. DWORETZKY:

6 Q. So the answer is no? You're aware of no  
7 way that the transaction could be structured that  
8 would be other than awful?

9 MR. SMITH: The answer is on the record, but  
10 it speaks for itself.

11 A. Correct.

12 MR. DWORETZKY: I have nothing further.

13 JUDGE CHESTNUT: Mr. Doll.

14 **CROSS-EXAMINATION**

15 BY MR. DOLL:

16 Q. Good afternoon, Mr. Mitchell.

17 A. Good afternoon.

18 Q. Real quickly, I understand that it's your  
19 testimony--I believe it's around Page 15 of your  
20 first statement --

21 A. I'm sorry. Which piece of testimony are  
22 you talking about? The rejoinder or --

23 Q. 20-E.

24 A. Yes. I'm sorry. Now, what page?

25 Q. Page 15, Line 21. You say that the long-

1 term debt under the mortgage is \$3.8 billion; is that  
2 correct?

3 A. Yes.

4 Q. I mean that's still a good figure?

5 A. Yes.

6 Q. To your knowledge, is there any impediment  
7 or any term or condition of the first mortgage bond  
8 -- Strike that.

9 I also understand it's your testimony that  
10 PECO will apply the proceeds from the securitization  
11 on an approximately 50/50 basis, 50 percent belonging  
12 to the debt, 50 percent to equity.

13 A. Yes.

14 Q. Is there any impediment in either the  
15 first mortgage bond or any other financial document  
16 which would prevent PECO from applying it all to  
17 equity or all to debt?

18 A. If we applied it all to equity, then we  
19 would violate a financial covenant in our \$900  
20 million revolving credit facility.

21 If we applied it all to debt, then I guess  
22 it would just be a function of meeting the  
23 requirements of whatever the call provisions were and  
24 determining what could be done as far as tendering  
25 for those issues to try to meet that amount.

1 Q. So that it's conceivable that if you  
2 securitize either four billion or five billion, or  
3 whatever, that if it was sufficient there is no  
4 impediment to you completely paying off that debt, to  
5 your knowledge?

6 A. There would be no legal impediment,  
7 presumably. It would have different financial  
8 impacts.

9 Q. So, then, all of your testimony that  
10 relates to what would happen with regard to -- All  
11 of the conditions to the first mortgage bond that you  
12 testified to, those conditions wouldn't apply if you  
13 paid off that first mortgage bond, would it?

14 A. Which conditions?

15 Q. You state in there that there are certain  
16 conditions that have to be met, such as different  
17 opinions, et cetera, to satisfy the bondholder in the  
18 first mortgage bond. Maybe I'm looking at it too  
19 simplistically.

20 A. No, no. Theoretically, that could, in  
21 fact, be accomplished; but the financial results  
22 would be so horrendous that it wouldn't be something  
23 we would contemplate.

24 Q. I'm just asking you theoretically.

25 A. Yes.

1 MR. DOLL: Thank you very much for giving the  
2 exact answers I was looking for, and I just took care  
3 of the rest of what I was going to ask you.

4 JUDGE CHESTNUT: Does anybody else have any  
5 questions for Mr. Mitchell?

6 (No audible response.)

7 JUDGE CHESTNUT: Redirect?

8 MR. SMITH: No, Your Honor.

9 JUDGE CHESTNUT: Thank you very much,  
10 Mr. Mitchell.

11 MR. DWORETZKY: Your Honor, before  
12 Mr. Mitchell leaves, can I ask that Your Honors  
13 direct that he either stay in the courtroom or keep  
14 his binder in the courtroom?

15 JUDGE CHESTNUT: I'm sure he will.

16 Right, Mr. Mitchell?

17 MR. MITCHELL: Absolutely.

18 JUDGE CHESTNUT: Before we go on with the next  
19 witness, I did get a communication concerning the  
20 briefing format, and you're not going to like it, so  
21 I asked Chief Judge Christianson to go back and see  
22 if he could rework that agreement. We'll take a  
23 five-minute break now and see if that was done. Also  
24 Judge Rainey and I will discuss the outstanding  
25 motion.

1 MR. BONNEY: Before we go off, perhaps one  
2 quick housekeeping thing. I distributed the third  
3 page of the exhibit we had previously identified, I  
4 believe Exhibit 7 regarding the -- Exhibit 6, the  
5 sales analysis. I think everybody who wants a copy  
6 has received it, but if not, please let me know.

7 (Recess taken.)

8 JUDGE CHESTNUT: The good news is that we got  
9 your brief length extended to 45 pages from 30.

10 MR. DOLL: I thought you said four or five.

11 JUDGE CHESTNUT: Maybe that's not a bad idea.

12 MR. STEINMETZ: Bad news?

13 JUDGE CHESTNUT: No. This is all good news at  
14 this point. Let me go through. There are a couple  
15 of things about the brief, so we'll just talk to you  
16 now since you're all here.

17 The brief length is 45 pages. You are  
18 required to provide proposed findings of fact with  
19 specific record references and proposed conclusions  
20 of law, but they can be in an appendix and will not  
21 count toward your page limit.

22 You do not have to file a history of the  
23 proceeding since I will be including one in my  
24 certification order. If you do choose to have your  
25 own, that counts against your page limit.

1           In terms of what you file where, file two  
2 hard copies and one disk with the prothonotary's  
3 office, OSA, and each Commissioners' office. Of  
4 course, Judge Rainey and I would like to see your  
5 brief, just for entertainment.

6           MR. DOLL: It's getting cold, and you need  
7 fuel for the fireplace.

8           MR. RYAN: You'll take a hard copy only?

9           JUDGE CHESTNUT: Sure. Yes, we don't have to  
10 do anything to it.

11           As the Commission indicated, the mailbox  
12 rule does not apply, so the date of filing is the  
13 date of receipt, which is December 2nd.

14           If the parties choose to file a joint  
15 brief or joint partial brief, they can do that, but  
16 they don't get extra pages. I mean it comes out of  
17 the total page limitation.

18           Does anybody have any questions concerning  
19 the briefing issue?

20           Mr. Dworetzky.

21           MR. DWORETZKY: Two questions. If, for  
22 example, NEV were to file its own brief of 20 pages  
23 and joined with Conectiv in a joint brief that was 25  
24 pages, would that be acceptable?

25           JUDGE CHESTNUT: I don't think so. I think

1 that joint one would have to be ten, but I'm not  
2 sure. They were not positive in terms of how this  
3 would work out.

4 JUDGE RAINEY: Are you saying a total of 45  
5 pages?

6 MR. DWORETZKY: Yes.

7 JUDGE CHESTNUT: Oh, I'm sorry. I'm sorry.  
8 Yes. Yes.

9 MR. DWORETZKY: The second question is,  
10 there's no time for reply briefs in this schedule.  
11 Does that mean that we will not have reply briefs, in  
12 fact?

13 JUDGE CHESTNUT: Yes.

14 MR. DWORETZKY: And it would be improper for  
15 somebody to send in a reply brief?

16 JUDGE CHESTNUT: Yes. Of course, I don't want  
17 to tell you your business. But I would imagine if  
18 there's a suitable motion to strike a portion of a  
19 brief, you're not precluded from doing that. But  
20 that was not expressly addressed.

21 Mr. Doll.

22 MR. DOLL: That's two hard copies and one disk  
23 to each of those three, so there's three disks and  
24 six hard copies.

25 JUDGE CHESTNUT: Yes. Of course, that's Word

1 6 or lower, but if you have Word Perfect, they'll  
2 accept that too, I assume.

3 Any other questions?

4 (No audible response.)

5 JUDGE CHESTNUT: Now, with respect to the  
6 outstanding motion made by Mr. Dworetzky--and I'm not  
7 sure if ENRON has an actual motion outstanding but  
8 the same issue--which is the request that the company  
9 be required to provide the analysis of the financial  
10 impact on PECO, Judge Rainey and I have, obviously,  
11 discussed this at great length.

12 At this point it's not clear to us from  
13 the testimony that Mr. Mitchell gave that he feels  
14 sufficient information was provided that any  
15 competent financial analyst could replicate that  
16 study and make assumptions concerning the  
17 reasonableness of the inputs.

18 I'm not sure what Mr. Kinney's testimony  
19 was, that he would be able to do it or that -- I  
20 think Mr. Kinney's testimony was he was not sure if  
21 he was able to do it.

22 At this point we're going to grant the  
23 motion but suspend it and give Mr. Kinney a chance to  
24 see if he can, in fact, do that analysis. I'm not  
25 sure of the time frame that Mr. Kinney has, if you

1 have to be in his office or whatever.

2 So what we are going to direct is that  
3 we'll grant the motion but we're going to defer its  
4 impact until tomorrow, close of business tomorrow.  
5 We will have a conference call on Friday to see if  
6 Mr. Kinney was able to do that.

7 Now, let me make it clear that we expect  
8 that the company would provide Mr. Mitchell,  
9 telephonically or in person, to work with Mr. Kinney  
10 to accomplish this.

11 MR. BONNEY: Yes, Your Honor.

12 JUDGE CHESTNUT: Of course, there should be  
13 adequate confidentiality safeguards, whatever is  
14 required.

15 Now, Mr. Dworetzky, I'm not sure how that  
16 works in with you. But I don't see why you could not  
17 work with ENRON on this.

18 Maybe a better way of saying it  
19 affirmatively is I would expect you to share the  
20 results with Mr. Dworetzky or any expert that  
21 Mr. Dworetzky has.

22 Is that clear to everybody? I don't want  
23 to open a new round of argument because it's 5  
24 o'clock and we still have a lot of witnesses. We  
25 know that you need direction with this, and I think

1 that should be sufficient direction for you to move  
2 on.

3 MR. BONNEY: Do you want to set a time for the  
4 conference call on Friday, Your Honor?

5 JUDGE CHESTNUT: I think Judge Rainey and I  
6 both have hearings scheduled at 10, so this would  
7 give us a good excuse to reschedule them. How about  
8 9:30? If you're not able to do it, then the company  
9 will be directed to provide it, and that should give  
10 you Friday and the weekend.

11 MR. BONNEY: Your Honor, let me be clear about  
12 that. I'm afraid if it's another option order  
13 granting them the option to do this or not then I  
14 know where we'll be Friday morning, and that is --

15 JUDGE CHESTNUT: That's your right, if you're  
16 talking about filing an interlocutory appeal.

17 MR. BONNEY: I'm wondering what obligations  
18 you're imposing upon ENRON and Mr. Kinney regarding  
19 the analysis.

20 JUDGE CHESTNUT: The obligation on the parties  
21 is a good faith effort to do it yourself. I don't  
22 want you to just go through the motions and say you  
23 can't do it.

24 MR. MILLER: We understand that, Your Honor.

25 JUDGE RAINEY: Mr. Mitchell, you look --

1 MR. MITCHELL: No. I'm just listening.

2 JUDGE CHESTNUT: -- conflicted or compacted.

3 MR. MITCHELL: No. I was just making sure I  
4 caught up.

5 JUDGE CHESTNUT: But let me just tell you that  
6 we both feel very strongly that, if the record  
7 contains testimony concerning the impact or the  
8 projected impact of the company of the adoption of  
9 the ENRON plan, then the record should contain  
10 similar information concerning the effective impact  
11 of the partial settlement.

12 Of course, if there is no record evidence  
13 concerning the impact of the ENRON plan, then it's  
14 not necessary to address this. But if one is in,  
15 they both should be in. If they're both out, then  
16 that's fine.

17 But I don't want to talk about it anymore.  
18 So please be assured that, obviously, we considered  
19 all of your arguments very carefully.

20 Now, can we go on to the next witness?  
21 Mr. Miller, do you have a witness, or are you going  
22 to make a statement?

23 MR. MILLER: No. Mr. Kinney, he's got his own  
24 statement.

25 CHRISTOPHER P. KINNEY, called as a witness,

1 being duly sworn, testified as follows:

2 JUDGE CHESTNUT: Give and spell your name for  
3 the record.

4 THE WITNESS: Christopher P. Kinney,  
5 K-I-N-N-E-Y.

6 JUDGE CHESTNUT: Mr. Miller.

7 MR. MILLER: Your Honor, Mr. Kinney is  
8 sponsoring Statement Number 11-R, and there are three  
9 exhibits attached to that statement. At this time I  
10 would like to move that statement into evidence.

11 JUDGE CHESTNUT: Any objection?

12 (No audible response.)

13 JUDGE CHESTNUT: It is admitted.

14 (ENRON Statement 11-R was marked and  
15 admitted.)

16 JUDGE CHESTNUT: Is there any cross for  
17 Mr. Kinney?

18 I'm sorry. Did you want to do oral?

19 MR. MILLER: I think I would like to do that,  
20 Your Honor.

21 Your Honor, just a brief housekeeping  
22 matter. I spoke with Mr. Bonney about this.  
23 Mr. Mitchell's rejoinder Exhibit JBM-7 contains a  
24 letter from Mr. Bonney to me dated November 11th. I  
25 think Mr. Bonney would agree that what concerns me is

1 that there's a statement in there about being  
2 provided with backup information that I first  
3 requested, and Mr. Bonney would agree with me that I  
4 later advised him that that was not all the  
5 information that I requested on that day.

6 Is that correct, Mr. Bonney?

7 MR. BONNEY: Yes. At the same time, it was  
8 our view that that was sufficient.

9 MR. MILLER: Right, without you waiving any  
10 right as to the sufficiency.

11 MR. BONNEY: That's right. Thank you, sir.

12 DIRECT EXAMINATION

13 BY MR. MILLER:

14 Q. Mr. Kinney, have you had a chance to  
15 review the rejoinder testimony submitted by  
16 Mr. Mitchell today?

17 A. Yes, I have.

18 Q. Recognizing that you haven't had very much  
19 of a chance to do that, do you have any comments on  
20 the contentions that Mr. Mitchell makes in that  
21 testimony?

22 A. Yes, I do.

23 Q. Would you please state them for the  
24 record.

25 A. I would like to begin on Page 4 of the

1 rejoinder testimony of Barry Mitchell, Lines 2  
2 through 9, the first question and answer regarding  
3 his Section 3, "Mr. Kinney's financial analysis is  
4 incorrect."

5 In Lines 2 through 9, he draws the  
6 conclusion that the only way he could replicate my  
7 results is to not reflect the 20-percent rate  
8 reduction in the ENRON plan and that that would  
9 represent a very fundamental error. I did not make  
10 that error, for the record. I did include the 20-  
11 percent rate reduction.

12 Then the next question that begins on Line  
13 11 and continues on Page 4 and then to Page 5, carry  
14 over onto Line 11 of Page 5 regarding the  
15 quantitative versus qualitative assessment by S & P.  
16 My original testimony was intended to reflect the  
17 fact that, to my knowledge, S & P has not published  
18 quantitative benchmarks since -- and my estimate was  
19 1994.

20 I believe in Mr. Mitchell's testimony  
21 there was cross testimony that was provided earlier.  
22 He affirmed the fact that he did use quantitative  
23 benchmarks from 1994.

24 On Page 5 in the next question, "any other  
25 comments on Mr. Kinney's testimony?" The answer says

1 on Line 15, "I do not understand how he can claim to  
2 have had insufficient information and time ..." I  
3 don't believe anywhere in my testimony did I claim I  
4 had insufficient time.

5 What I did claim in my testimony was that  
6 I had insufficient information to evaluate the  
7 testimony in a manner that would be consistent with  
8 standard practice in financial analysis.

9 I would like to expand on that by saying  
10 that the first step in doing so would be to attempt  
11 to replicate. Not having the underlying financial  
12 information which produces the ratios in the table  
13 that he had in his rebuttal testimony, what I would  
14 attempt to do first is to replicate that information  
15 given the assumptions that I had to work with.

16 Given the assumptions that I had to work  
17 with, I simply could not replicate that financial  
18 information. That's why I was saying I must have had  
19 insufficient information in order to evaluate the  
20 testimony.

21 On the next page, Page 6, Lines 1 through  
22 5, the statement is made that ENRON should have taken  
23 into account the financial impact of the ENRON plan  
24 before submitting the ENRON plan.

25 I refer to the QRO Exhibit 5 in the

1 initial plan in which there is a direction by the  
2 Commission to cause PECO to reduce the capitalization  
3 of the company with the proceeds from the bond, from  
4 the transition bond financing and primarily to use  
5 those proceeds to reduce debt to preserve the  
6 financial integrity of PECO.

7 So I would say that they did address the  
8 fact that PECO's financial integrity should be  
9 maintained under the plan.

10 On Page 6 --

11 That's all. That's all I have, Your  
12 Honor.

13 JUDGE CHESTNUT: Mr. Smith.  
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1 JUDGE CHESTNUT: Mr. Smith?

2 BY MR. SMITH:

3 Q Mr. Kinney, what are the things you talked about  
4 there? I think you said that the QRO addressed financial  
5 integrity. Do you recall that piece of your testimony?

6 A Yes.

7 Q Can you just go over it again?

8 A What I said was in Exhibit 5 of the initial plan,  
9 the draft QRO contained a statement. I may not be using  
10 the right legal term. I am not a lawyer. But the  
11 statement that says that the Commission should be compeled  
12 to have PECO use the proceeds from the transition bond  
13 finance to reduce capitalization primarily in the form of  
14 debt reduction so as to preserve the financial integrity of  
15 the --

16 Q It want to be clear. We are talking about the  
17 QRO that was appended to the Choice Plan?

18 A To the Choice Plan.

19 Q Did it say that the proceeds would be used to  
20 primarily reduce the company's capitalization, period, and  
21 you are interpreting that that means applied primarily to  
22 debts or --

23 A I believe it said primarily to debt.

24 Q What paragraph of the --

25 A I don't have it in front of me.

1 Q Okay. Here is a copy of the paragraph 10 of that  
2 article. That paragraph states that --

3 JUDGE CHESTNUT: Would you identify the document you  
4 have. It's still not real clear.

5 MR. SMITH: I am referring to the document that --  
6 this is the qualified rate order that was attached to the  
7 ENRON Choice Plan as appendix --

8 THE WITNESS: Exhibit 5, I think is what I have.  
9 Exhibit 5.

10 BY MR. SMITH:

11 Q Okay. And the paragraph in question indicates  
12 that the --

13 A What it says is Chase, if I can just read --

14 JUDGE CHESTNUT: No.

15 THE WITNESS: Don't read it? Sorry.

16 JUDGE CHESTNUT: No.

17 BY MR. SMITH:

18 Q In your opinion as a financial expert would  
19 reducing the balance sheet dent in a disproportionate  
20 amount to equity, necessarily have a positive effect on the  
21 company's financial integrity?

22 A All other factors being the same if you reduce  
23 more debt you would have better access to the capital  
24 markets and have more financial integrity.

25 Q What would be the effect of reducing a

1 disproportionate amount of debt on the savings created by  
2 securitization?

3 A Well, that's -- that involves a lot of moving  
4 parts. There would have to be assumptions in that analysis  
5 regarding the stock price, the purchase of the stock, the  
6 price at which the stock is re-purchased, vis-a-vis the  
7 debt, the premia of the debt for the debt that's  
8 re-purchased. So I couldn't conclude, you know, from that.

9 Q Generally speaking, statements of securitization  
10 are generated from two sources; correct?

11 A Correct.

12 Q The first is by replacing higher cost debt with  
13 lower cost debt. The second is replacing high cost equity  
14 with low cost debt. Is that correct?

15 A Correct.

16 Q PECO has already a low cost debt structure prior  
17 to the securitization; correct?

18 A I don't know if I would characterize it as low  
19 cost debt structure.

20 Q Will you accept that the -- that it's about 7.82  
21 percent long term debt currently? And would you accept  
22 that it's about 7 percent embedded long term debt? We can  
23 make those subject to check afterwards, Mr. Kinney, if  
24 that's okay. I am not going to follow up on that.

25 A Okay. Well I accept that subject to check, then.

1 Q Would you accept that equity tends to be more  
2 expensive than debt?

3 A Well, it depends on the price at which you are  
4 purchasing. If you are purchasing equity and relative to  
5 become value what that price is, because you are dealing in  
6 a regulatory environment with moving parts, you have got  
7 the regulatory equity and then you have actual equity as  
8 determined by the market capitalization of the company.

9 Q On book equity, to your knowledge, has this  
10 Commission normally provided for a return that exceeds what  
11 you would expect to see on the debt that -- the debt levels  
12 that we talked about?

13 A Yes.

14 Q Thank you. Could you turn in your written  
15 testimony to the table Exhibit 1, which is right after the  
16 written testimony?

17 A Yes.

18 Q You have reported there one of the five Standard  
19 & Poor's ratios?

20 A Yes.

21 Q And is that total ratio of debt total capital?

22 A Yes.

23 Q Standard & Poor's in the document, the '94  
24 document and '97 documents that you were talking about  
25 earlier, have indicated that there are two other ratios

1 that -- quantitative ratios that they consider to be more  
2 important than this ratio in determining a bond rating. Is  
3 that your understanding?

4 A I am not sure they say those two are more  
5 important. In terms of measures of profitability they are  
6 more important ones. But in terms of actual measures of  
7 balance sheet level, this is probably the most important.  
8 And they refer in their 1997 update to three ratios, one of  
9 which is total debt to total--

10 Q Can you find that statement and read it allowed,  
11 please.

12 A It's not a statement. It's just a chart.

13 Q Okay. I am going to ask you to hold that  
14 document for a minute because -- we'll come back to that in  
15 just at second. You provided some assumptions that you  
16 used in calculating these ratios? Or this ratio?

17 A Yes.

18 Q Provided that to PECO yesterday around noon-ish?

19 A No I provided that day before yesterday in the  
20 evening.

21 Q Okay. I don't want to ask you about the entire  
22 list. I want to get a few of these on the record and make  
23 sure I understand what they are.

24 A Sure.

25 Q You say that to simplify matters, the Choice Plan

1 is assumed to be implemented on January 1st, 1999; correct?

2 A Right.

3 Q So that means that when you calculated the final  
4 entry right here, there were four months of rate discounts  
5 that would be provided by PECO Energy which you did not  
6 take consideration of --

7 A We -- I just took consideration of them four  
8 months later than they actually would occur and the reason  
9 I did that is because I wanted to get, I wanted the  
10 financial ratio in 1998 to produce the benchmark to produce  
11 the benchmark ratings as if the transaction had not  
12 occurred so that I could see the full impact of the plan on  
13 a full year basis.

14 Q How did you reflect then that lost revenue for  
15 those --

16 A I just deferred basically for the four months.  
17 So my analysis would continue on four months longer than  
18 the actual plant. It's a four month delay. It's not lost.

19 Q So instead of starting in September of '98 and  
20 extending out for ten years you start in January of '99 and  
21 extend out for ten years beyond that --

22 A Exactly.

23 Q So that the day from this four months actually  
24 picked up from the front end and moved to the back, ten  
25 years later?

1           A Well, no, because the financial impact of the  
2 first four months is felt, it's felt in the model in the  
3 first four months of my model as well. So all you have  
4 done is deferred for four months the impact in the model.

5           Q Okay. Moving down to I think the fourth one on  
6 your list, you said costs of production and operating  
7 expenses are assumed to remain constant.

8           A Yes.

9           Q So what you are saying there is when you modeled  
10 the financial impact on PECO Energy, you assumed that it  
11 would have no increase in the cost of production in  
12 operating expenses over the next ten years?

13          A That's correct.

14          Q If PECO does have increases in costs over the  
15 next ten years, that would mean that they would be, the  
16 company would have -- less resources available during that  
17 time frame. Am I right?

18          A That's correct.

19          Q Which are not reflected in the rates?

20          A Correct.

21          JUDGE CHESTNUT: Turn to the fourth line down in the  
22 interest to debt area. It shows the interest to debt of  
23 8.6 percent.

24          THE WITNESS: Right.

25 BY MR. SMITH:

1 Q I want to assure you that because we had that  
2 subject to check discussion. Another half dozen points  
3 down you said the remaining regulatory assets will be  
4 amortized over 30 years?

5 A Yes.

6 Q In a competitive environment; 30 years, is that  
7 based on a regulatory environment?

8 A Yes. Because that the assumption is those  
9 regulatory environment is for a T&D company.

10 Q Is it your opinion the amortization period of 30  
11 years for a competitive environment is still appropriate?

12 A Well, for the T&D company it's still a monopoly  
13 company, so 30 years may be appropriate.

14 Q Were any of the regulatory assets that you are  
15 talking about here generation related regulatory assets?

16 A No. I believe generation regulatory assets have  
17 been written off.

18 Q So your assumption is that all of the generation  
19 regulatory assets are written off?

20 A Yes.

21 Q You indicate that earlier on in the remaining  
22 generation assets are pure market value so there's no  
23 regulatory assets to -- but they are still carried on the  
24 books?

25 A Yes.

1 Q What amortization period did you use for those?

2 A Just the regular amortization for the PECO has  
3 experienced for their generation assets.

4 Q How many years was this?

5 A I am not sure.

6 JUDGE CHESTNUT: Range? I mean roughly?

7 THE WITNESS: Probably 20 to 30 straight line, if we  
8 book.

9 BY MR. SMITH:

10 Q The last one in your other assets in the second  
11 sentence. In addition, the \$2 billion writeoff of  
12 regulatory expense claims the total amount of capital  
13 requirements. Do you see that?

14 A Yes.

15 Q There's one ratio calculation. Let me see if you  
16 get the thing. You're assuming that there is a \$2 billion  
17 writeoff of equity?

18 A Right.

19 Q And then the one ratio that you calculate is debt  
20 to equity and you, in calculating that, you then assume  
21 away the writeoff that you just assumed was going to  
22 occur. Is that what that says?

23 A No. Your premise is incorrect.

24 Q Okay. Please explain that to me.

25 A If you look at my Exhibit Number 3, table CPK-1 I

1 have calculated all of the S&P rates from its criteria from  
2 1999 to the year 2005. That's exactly the three. In  
3 exhibit -- I believe that's Exhibit 3. Maybe that's  
4 Exhibit 2. I'm sorry. And Exhibit 1, I simply extracted  
5 one ratio as a method of showing the impact that one  
6 particular range of assumption could have on any one of  
7 these ratios.

8 Q Okay. In calculating that ratio which is the  
9 total debt to total capital the one that's isolated in  
10 table 1, did you do what I described a few moments ago?

11 A That's exactly what Exhibit 1 says which is I did  
12 the ratio with and without the \$2 billion writeoff to show  
13 the magnitude of the difference in the ratio given that one  
14 change of assumption.

15 Q In Exhibit 3, the table CPK-1 that you were just  
16 talking about, the one where you used all five of the -- I  
17 am sorry. I am going to have to just let that go. Let's  
18 take a quick look at the '97 document, again. The --

19 A Sorry. What did you say.

20 Q Ninety-seven document, the Standard & Poor's  
21 document. At the bottom of the second page in the section  
22 labeled financial profile, there's a sentence at the bottom  
23 of that page that begins, financial parameters that are  
24 increasingly viewed as relevant and reliable. Could you  
25 tell us which of the parameters are -- Standard & Poor's

1 states as being increasingly relevant and reliable?

2 A Well, what it says is there is increasingly  
3 viewed as relevant and reliable and coverage of fixed  
4 financial changes by cash flow and cash from their  
5 operations to total debt.

6 Q Those two, those are not the ones that you  
7 isolated in table 1?

8 A No. But that's not part of Table 1. Table 1's  
9 purpose is to show how one ratio could be affected by one  
10 simple change of assumption drastically. I calculated all  
11 the ratios in Table 2, including those ratios which S&P  
12 mentioned as being the ones viewed as increasingly relevant  
13 and reliable.

14 MR. SMITH: Thank you. No further questions.

15 JUDGE CHESTNUT: Does anybody else have any  
16 questions for Mr. Kinney?

17 (No response.)

18 JUDGE CHESTNUT: Any redirect?

19 MR. MILLER: May I have one moment with the witness,  
20 Your Honor.

21 JUDGE CHESTNUT: Certainly.

22 (Pause.)

23 REDIRECT EXAMINATION

24 BY MR. MILLER:

25 Q Mr. Kinney, you were asked a question about the

1 debt cost that you used for PECO. What was the derivation  
2 of that number?

3 A Interest rates for debt?

4 Q Yes.

5 A The interest rates for debts were derived from a  
6 FERC Form 1 filing of PECO in which they indicate their  
7 average cost long term debt is 8.6 percent and their  
8 average cost short term debt is 5.65 percent.

9 MR. MILLER: That's all I have, Your Honor.

10 JUDGE CHESTNUT: Recross?

11 (No response.)

12 JUDGE CHESTNUT: Thank you very much.

13 MR. SMITH: No, Your Honor.

14 JUDGE CHESTNUT: Are we going to pick up Mr. Fastow  
15 or --

16 MR. CLEARFIELD: We can take Mr. Fastow now if he's  
17 here. Are you here?

18 JUDGE CHESTNUT: Mr. Fastow, do you want to raise  
19 your right hand, please.

20 ANDREW S. FASTOW, called as a witness, having been  
21 duly sworn, was examined and testified as follows:

22 JUDGE CHESTNUT: Please sit down. Give and spell  
23 your name for the record.

24 (Pause.)

25 JUDGE CHESTNUT: Are you ready, Mr. Miller?

1 MR. CLEARFIELD: I'll be doing.

2 JUDGE CHESTNUT: Sorry. Continue.

3 MR. CLEARFIELD: Thank you. Mr. Fastow is  
4 sponsoring two statements, Your Honor, EESPI Statement  
5 Number 8 and EESPI Statement Number 8-R and I ask that they  
6 be moved into the record subject to any appropriate motions  
7 to strike.

8 JUDGE CHESTNUT: Any objection?

9 (No response.)

10 JUDGE CHESTNUT: The documents are admitted.

11 (EESPI Statements Nos. 8 and 8-R were produced and  
12 marked for identification and admitted in  
evidence.)

13 DIRECT EXAMINATION

14 BY MR. CLEARFIELD:

15 Q Do you have additions or corrections to those  
16 statements?

17 A Sorry?

18 Q Any additions or corrections?

19 A No.

20 MR. CLEARFIELD: He's available for cross.

21 JUDGE CHESTNUT: Mr. Mickens?

22 CROSS EXAMINATION

23 BY MR. MICKENS:

24 Q Good afternoon, Mr. Fastow.

25 A Good afternoon.

1 Q My name is Ken Mickens and I represent the Office  
2 of Trial Staff. I have a couple clarifying questions.  
3 Page 5 of Statement Number 8.

4 A Yes.

5 Q Again on line 14, there you indicate that in its  
6 reply to the Choice Plan PECO states that the financing  
7 proposal of the Choice Plan includes a profit with a net  
8 present value of approximately \$1 billion. You asked  
9 yourself is that accurate and you say you don't think so.

10 And you indicate there that you do know that the  
11 Choice Plan's profitability would be at least \$500 million  
12 less than PECO's profit under the partial settlement  
13 proposal. Is that correct?

14 A That is what I state on page 5, yes.

15 Q My question to you is how did you arrive at that  
16 calculation?

17 A Which calculation? The 500 mill.

18 Q The calculation I just referred to.

19 A Okay. 500 mill. Well, I did it conceptually and  
20 it really doesn't have to be much more complicated than  
21 that. If you look at the additional rate cuts that the  
22 rate payers of Pennsylvania will get under the Choice under  
23 the partial settlement that's approximately \$600 million of  
24 reduction in ITC and CTC under the ENRON Choice Plan.

25 Well, where is that going under the partial

1 settlement plan? It's going to PECO. I don't know that  
2 you have to get much more complicated than that in the  
3 analysis to understand the relative value to the two  
4 companies.

5 Q Okay. If you didn't arrive at a total figure  
6 necessarily that PECO would, the profit that PECO would  
7 receive under the partial settlement?

8 A I can't -- from the information that's been  
9 provided by PECO, and as we saw today, we have a lack of  
10 information. Mr. Mitchell has been unwilling to give us  
11 information. I am not able to calculate PECO's profits.

12 However, I am able to look at the additional saving  
13 to the rate payers under the Choice Plan versus under the  
14 partial settlement and I use that as a proxy on a relative  
15 basis to show that ENRON is earning less money than PECO is  
16 earning on it, at least to the tune of \$600 million which  
17 is the reduction in ITC and CTC under the Choice Plan  
18 versus under the partial settlement.

19 Q Okay. And you didn't evaluate any other issues  
20 that might impact that amount other than the ITC --

21 A I cannot calculate, to answer your question  
22 again, I cannot calculate PECO's profitability because I  
23 have not received enough information from PECO to do so.

24 MR. MICKENS: That's all I have, Your Honor.

25 JUDGE CHESTNUT: Mr. Steinmetz.

1 MR. STEINMETZ: Good evening, Mr. Fastow.

2 THE WITNESS: Good evening.

3 MR. STEINMETZ: My name is Steve Steinmentz and I am  
4 with the Office of Consumer Advocate.

5 BY MR. STEINMETZ:

6 Q In your response to Fumo Set 5 Number 52, you  
7 state that a draft agreement of the ITC shortfall agreement  
8 would be --

9 A Excuse me. I just need to find that. Fumo Set  
10 5, I am sorry.

11 Q Number 52.

12 A Yes. I am there.

13 Q You state that a draft of the ITC shortfall  
14 agreement will be prepared as a supplemental agreement.

15 Have you prepared that supplemental -- excuse me,  
16 supplement exhibit.

17 A No, I have not.

18 Q Do you intend to file a supplemental exhibit of  
19 the ITC shortfall agreement?

20 A It is -- it will be prepared at a supplemental  
21 exhibit that's what I answered and yes, I would -- that is  
22 still the case.

23 Q And it will be prepared in time before the close  
24 of the record in this proceeding?

25 A At this point I do not know when it will be

1 prepared.

2 Q Do you know how much the ITC shortfall agreement  
3 will cost?

4 A No, I do not.

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

6 A It will be paid for by ENRON.

7 Q So it will not be included in the ITC strip of  
8 rates in attachment A of Steven Kean's exhibit?

9 A I'd have to see the exhibit you are referring to.

10 JUDGE CHESTNUT: When you say ENRON, what ENRON?

11 Which ENRON? Enron Corp?

12 THE WITNESS: EESPI. It will be paid by Enron Corp,  
13 a consolidated subsidiary of ENRON.

14 BY MR. STEINMETZ:

15 Q So that would mean it could not be included in  
16 ITC --

17 A Again, I'd have to see the exhibit you are  
18 referring to to answer your question.

19 Q It's exhibits to Statement Number 1-R and that's  
20 attachment A?

21 A I don't have Mr. Kean's -- okay. I am on that  
22 page and if you would, could you ask the question again,  
23 please.

24 Q Sure. My questions would the costs associated  
25 with ITC shortfall agreement be included within the CTC

1 strip of rates going down through 2008 on this exhibit?

2 A Well, let me try to answer the question a little  
3 differently and if I don't answer it, please let me know.

4 Q Sure.

5 A ENRON is paying \$5.461 billion to PECO under the  
6 Choice Plan and in exchange, it would receive transition  
7 bonds. The transition bonds have stated cash flow, the ITC  
8 to support the transition bonds. All other costs than the  
9 transaction are borne by ENRON.

10 So we could go through -- we could continue to go  
11 through these, but the ITC cash flows what were provided as  
12 the Choice Plan are the cash flows in support of the  
13 transition bonds. That is what ENRON, those are the total  
14 cash flows. There's no other cost. So the answer to your  
15 question is -- your question was phrased is it included.  
16 That is not a correct phase-in of the questions. I don't  
17 think.

18 Q Well, will it be --

19 A And there will be no additional cost for PECO or  
20 for the rate payers with respect to the ITC shortfall  
21 agreement.

22 Q Okay. So it will not be included. Because  
23 the --

24 A I don't understand the question.

25 Q Because the ITC stream will be general principal

1 and interest to repay the transition bonds?

2 A The ITC stream is a stream of cash. That is used  
3 to service the transition bonds. Okay? Period.

4 Q Okay. Let's talk about the limitation on ITC  
5 shortfall agreement regarding loss, reduction in sales from  
6 present.

7 A Uh-huh.

8 Q I believe the ITC shortfall agreement, if I  
9 understand it, will protect rate payers for decline in  
10 sales. Is that correct?

11 A Could you refer me to any particular statement or  
12 interrogatory?

13 Q Well, page 20 of your direct testimony in this  
14 case. You state on line 8 --

15 A I am sorry. This is Statement Number 8?

16 Q Yes.

17 A Page 20. Okay.

18 Q On line 7 if annual sales decline results in a  
19 ITC increase the guaranty will pay any shortfall up to the  
20 guaranty amount without any impact on the rate payers'  
21 bill. Do you see that?

22 A Yes, I do.

23 Q My question is would -- I am searching for the  
24 percentage, essentially that that agreement would protect  
25 in the event of any sales decline. In other words, would a

1 5 percent decline in sales be covered completely by the ITC  
2 shortfall agreement?

3 A Well, the answer to that, I believe, we have  
4 stated this in the testimony, may not have been my  
5 testimony, is that we will have a rating agency size the  
6 amount of the guaranty or the ITC shortfall to a triple A  
7 rated level. Okay? I do not know what the amount would be  
8 because it would be up to the rating agency to make that  
9 determination.

10 But the concept here is that to get that to a triple  
11 A level from the rating agency it would have to be, they  
12 would stress that to a very -- it would be a very extreme  
13 stress test which would mean that it would be highly  
14 unlikely that a load decline would exceed what they have  
15 seized as the A the ITC shortfall.

16 So the concept is that ENRON, therefore, this triple  
17 A is meant to be close to risk free. If the United States  
18 Government is triple A, then ENRON, therefore, as a result,  
19 is assuming all of the load risk, load decline rate. The  
20 important thing to notice, the difference between the  
21 Choice Plan and the partial settlement is under the partial  
22 settlement PECO also assumes load decline risk, but updated  
23 partial event.

24 If load goes up, PECO doesn't give that money back  
25 where under the Choice Plan if load goes up and there's

1 excess cash flow, ENRON gives that back, so that goes back  
2 to the benefits of the rate payers.

3 Q I understand. I am trying to concentrate on load  
4 decline right now. And you cannot tell me to what extent  
5 load rate payers would be at risk. I don't know if --

6 A I think I answered that question. I'll do it  
7 again. I wanted to -- the answer to the question is --

8 Q Excuse me, sir. Could you wait till there's a  
9 question.

10 (Pause.)

11 BY MR. STEINMETZ:

12 Q You cannot tell me with precise certainty what  
13 percentage of load decline would exceed the guaranties  
14 contained in the shortfall agreement. Is that correct?

15 A I could tell you that we have agreed to have a  
16 rating agency size that to a triple A risk level and we  
17 will be willing to provide an ITC shortfall agreement for  
18 that triple A risk level. It would be up to the rating  
19 agency to seize that amount.

20 Q Okay. Continuing in that same paragraph, you  
21 claim that, I am stating on line 9, now --

22 A Tell me the page again. I closed my book.

23 Q That was page 20. In contrast, under the partial  
24 settlement, the ITC payment will be increased with a  
25 corresponding decrease in the remaining CTC up to the

1 amount of the combined CTC/ITC payment and then you  
2 concluded, in either case the total rate paid by the rate  
3 payers will not increase unless there's a catastrophic  
4 decline in energy usage from the base load level.

5 My question to you is what provision of the partial  
6 settlement will allow PECO to come back in the event the  
7 load declines and increase the ITC rates payable, to be  
8 paid by rate payers?

9 A I do not know the answer to that question. I  
10 would have to ask for some help from any attorney to  
11 reference you the exact provision.

12 Q You did state on line 11 that in either case, the  
13 total rate paid will not increase. Or under the Choice  
14 Plan, customers would be at risk followed a catastrophic  
15 decline, did you not?

16 A Would you ask the question again.

17 Q Sure. You did state in your testimony, right  
18 here, that in the event of a catastrophe the decline in  
19 energy usage, rate payers under the partial settlement  
20 would be at risk. Is that correct?

21 A They would be at risk under either the partial  
22 settlement or the Chase plan. That's correct.

23 Q But my question to you is what portion of the  
24 partial settlement would pass those costs on to the rate  
25 payer?

1           A   And the answer, I do not know the answer to your  
2 question.

3           MR. CLEARFIELD:   We'll provide that.   He's been  
4 advised he needs to provide that criteria.

5 BY MR. STEINMETZ:

6           Q   What did you have in mind that sentence on line  
7 11 in either case?

8           A   I think it's pretty self explanatory but let me  
9 try it for you again.

10          Q   Under the partial settlement.   Specifically,  
11 please?

12          A   Under the partial settlement.   Under the partial  
13 settlement, it is my understanding that to the except that  
14 there's a decline in load beyond the ITC amount, that the  
15 CTC in that in essence, can be used to provide value to  
16 cover that shortfall that has occurred.

17          There might be a case where the total CTC is not  
18 sufficient to cover that shortfall in value due to what I  
19 have colorfully categorized as a catastrophic decline in  
20 energy usage.   In that instance, I do not personally know  
21 of any prohibition for PECO to return to the Commission to  
22 ask for additional value for that.

23          Q   Thank you, but at this time you do not know any  
24 provision within the partial settlement that would allow  
25 PECO to request recovery?   Is that correct?

1           A   No.  And I would rely on my attorneys to provide  
2 you that information if you would accommodate me.

3           MR. STEINMETZ:  Thank you.  That's all I have of the  
4 witness.

5           JUDGE CHESTNUT:  Mr. Ryan?

6           MR. RYAN:  Let Mr. Ward go.  I am sorry, Mr. Smith.  
7 If I call him Dr. Ward, I get away with it.  Mr. Smith,  
8 first.  My question may disappear.  I hope I will.

9 BY MR. SMITH:

10          Q   I am Ward Smith, that's Mr. Smith.  I represent  
11 PECO Energy.  You are a Senior Vice President at ENRON?

12          A   Yes.

13          Q   You have been that for about six months?

14          A   A little longer than six months.

15          Q   Prior to that you were a managing director of one  
16 of the ENRON subsidiaries?

17          A   Yes.  At ENRON Capital and Trade Resource.

18          Q   You went from the position of managing director  
19 to the position of a senior vice president of the --

20          A   Senior Vice President of Finance for ENRON.

21          Q   Congratulations.

22          A   Thank you.

23          Q   Do you have a position at EPMI?

24          A   I am sorry?

25          Q   Do you have a position at EPMI?

1 A No.

2 Q Do you have a position at EEPSI?

3 A No.

4 Q On whose behalf are you here testifying today?

5 A Well, I don't really know the answer to that  
6 question.

7 MR. RYAN: They just told you to come and you came?

8 MR. SMITH: Thank you.

9 THE WITNESS: But I am here to answer any question  
10 you ask.

11 BY MR. SMITH:

12 Q You had asset-backed experience prior to coming  
13 to ENRON?

14 A Prior to joining ENRON, I worked at Continental  
15 Bank in Chicago, which is now Bank of America in the asset  
16 securitization group.

17 Q And so you really are the person in house at  
18 ENRON who developed the securitization portion of the ENRON  
19 Choice Plan?

20 A Is that a question?

21 Q Yes.

22 A The answer is I think it was a team effort and we  
23 had very good financial advice from our advisors on how to  
24 do that.

25 Q In house, are you the key person?

1           A In house, I am the person at ENRON responsible  
2 for financing that ENRON enters into. I was part of the  
3 team that worked on this transaction.

4           Q Maybe I am being very, very unclear because this  
5 is an easy question. I just want to know whether you are  
6 the right person to be asking questions about this. Are  
7 you the key person in house on the securitization portion  
8 of this plan?

9           A Let me ask you a clarifying question if I can.  
10 When you say securitization, what does that mean because I  
11 have heard people use it in different ways.

12           JUDGE CHESTNUT: Mr. Smith, why don't you just ask  
13 him questions and see if I can answer them.

14           THE WITNESS: I'll do my best to answer your  
15 questions.

16 BY MR. SMITH:

17           Q Okay. Who did you consult? You mentioned  
18 investment bankers. Who else did you consult in developing  
19 this plan?

20           A Our advisor is Chase.

21           Q And did you consult anyone other than Chase in  
22 developing this plan?

23           A No. No other bankers. Obviously, we have  
24 attorneys.

25           JUDGE CHESTNUT: I am asking for everyone who you

1 consulted with.

2 THE WITNESS: Every banker or every attorney?

3 MR. SMITH: Every person.

4 THE WITNESS: Well --

5 MR. CLEARFIELD: Your Honor, is this really  
6 necessary?

7 THE WITNESS: I could go get our contact list.

8 MR. SMITH: I don't want every name. I'm sorry. I  
9 want --

10 THE WITNESS: Chase is our financial advisor on the  
11 transaction, if that answers your question. If you ask me  
12 to remember all the names of the law firms represented in  
13 this room I'd have a difficult time with all the names.

14 BY MR. SMITH:

15 Q Who was your lead law firm that assisted you in  
16 developing the securitization plan?

17 A There were a number of law firms involved. Each  
18 with different expertises. Again, I would have to say it  
19 was team effort and the major law firms involved in  
20 developing the plan were LeBoeuf, Mill Bank, Wolf Block and  
21 I think those are the three primary ones.

22 Q When did you begin work on this plan?

23 A I don't know the exact date it was done; months  
24 ago.

25 Q Four months ago?

1           A I don't know the exact date. I would have to go  
2 back and --

3           Q Do you have a rough date?

4           A I'd be guessing. I'd have to go back and look at  
5 my notes to see if I could figure that out.

6           Q I'd like an on the record data request that he go  
7 back and find that.

8           A I'd be happy to.

9           Q Could you turn to page 6?

10          MR. CLEARFIELD: We'll provide it.

11          MR. SMITH: Pardon?

12          MR. CLEARFIELD: I said, I guess we'll provide it.

13 BY MR. SMITH:

14          Q Could you turn to page 6 of your direct testimony  
15 and lines 6 through 10 you discuss that PECO would receive  
16 a servicing fee in the choice transaction for the functions  
17 that it would do as an administrator of the special purpose  
18 entity. You talk as servicer of PECO of being paid an  
19 arm's length fee for these costs and you say that's typical  
20 in securitization proceedings transactions. Why is it in  
21 securitization transactions that you normally have this fee  
22 determined as an arm's length fee? Why is that important?

23          A Okay. Well, I don't think I am the  
24 securitization expert, but let me give you my understanding  
25 of the way the servicers receive an arm's length fee. It

1 is so that in the event that the servicer has to be  
2 replaced because the servicer is either unable or unwilling  
3 to perform its duties, that there is sufficient  
4 compensation to pay a replacement.

5 Q Okay. Is there someone at ENRON who you can  
6 designate as being an expert in securitization who would  
7 know the answer to that question with certainty.

8 MR. CLEARFIELD: Ms. Voorhees has testified this  
9 morning and she --

10 THE WITNESS: Our financial advisor, Chase who  
11 helped on the securitization we relied on, to a great  
12 extent, their advice.

13 BY MR. SMITH:

14 Q You talked for a few moments about the ITC  
15 shortfall agreement which you were talking about with Mr.  
16 Steinmetz a moment ago. I want to see if I understand  
17 this. Basically what you are proposing is like an  
18 insurance policy. You're going to identify a third party,  
19 pay them a premium up front, and then in the event that the  
20 ITC revenue stream has a shortfall, that party is going to  
21 make up any shortfalls. Is that roughly how it works?

22 A Let me try to take a shot at describing it in a  
23 manner that I think is a little more accurate.

24 Q Okay.

25 A ENRON's intent under the Choice Plan is that

1 within the rating agency defined scope of a catastrophic  
2 decline in load that ENRON would bear the risk of load  
3 decline as opposed to the rate payers for PECO. Okay? So  
4 in the event that there was a load decline and there were  
5 an increase in ITC in order to cover that decrease in load  
6 decline, there would be a commensurate payment under the  
7 ITC shortfall, an equal payment to offset the increase I  
8 did there. So the net effect --

9 Q Who would that payment come from.

10 MR. CLEARFIELD: I don't think the witness was  
11 finished with his answer.

12 MR. SMITH: I'm sorry finish your answer.

13 THE WITNESS: Payment in this situation would come  
14 from what we call the guarantor in the ITC short analysis.  
15 The only reason we have a guarantor there because ENRON, in  
16 essence, is taking this risk or we are paying to have  
17 someone take this risk.

18 It would probably be our preference, although I'd  
19 have to think about it a little more, probably would be our  
20 preference to take this risk ourselves. However, we just  
21 assumed that perhaps PECO would not want to have ENRON  
22 providing that service. They'd rather have a higher rated  
23 entity providing that service so we have added into the  
24 structure the ability to interpose a higher rated entity  
25 than either PECO or ENRON to ensure the delivery of that

1 ITC payment.

2 Q Oh. And so we are going to identify a third  
3 party. Is that correct?

4 A As we move through this transaction, yes, we  
5 would identify a third party.

6 Q We are going to pay them a premium up front;  
7 correct?

8 A We'll pay them a premium to compensate them for a  
9 risk they are taking for that load.

10 Q And if there is a shortfall, they will make up  
11 that shortfall; correct?

12 A That is the concept.

13 Q Thanks. The importance of this is to get a  
14 triple A rating. Is that right? That's why you do this?

15 A The importance of this is so that the rate payers  
16 will not have to bear load risk or that PECO will not have  
17 to bear the load risk. ENRON is saying that they will take  
18 that risk upon themselves. That is the purpose of having  
19 the ITC shortfall payment.

20 Q In the absence of an ITC shortfall agreement,  
21 would you be able to get a triple A rating?

22 A I think the answer is it is possible to get a  
23 rating of triple A on at least a portion of the  
24 certificates even without the shortfall.

25 Q And you would use other credit enhancements to

1 achieve that?

2 A That is correct.

3 Q But the reason you have a shortfall agreement in  
4 this proposal, one of the reasons, is so you can achieve  
5 the triple A rating.

6 A It is so we can achieve a triple A rating on a  
7 larger portion of the certificates than would otherwise be  
8 possible.

9 Q That's fine. Thank you. I think you also say in  
10 your testimony that one of the reasons that it is -- that  
11 one of the important things about the ITC shortfall  
12 agreement is to get it done correctly for purposes of the  
13 tax relief. Is that right?

14 A Can you refer me to the --

15 Q Page 8, lines 7 through 8.

16 A Yes. That is correct.

17 Q Okay. Now, let me make sure we understand what  
18 the IRS revenue ruling is about. The revenue ruling that  
19 you, PECO, has sought for its own plan and I think the same  
20 one that -- the same sort of thing that you are talking  
21 about here is a ruling that the transfer of the intangible  
22 transition priority is to be treated as debt and not as a  
23 sale and equity. Is that your understanding of what the  
24 priority is on the tax requirements?

25 A I am not a tax man. I rely on my counsel for tax

1 advice.

2 Q You testified at great length in both your direct  
3 testimony and your rebuttal testimony about the tax issue;  
4 correct?

5 A May I interrupt you for just a minute because my  
6 pager continues to buzz in my pocket.

7 JUDGE CHESTNUT: Whale do you that. Let's go off  
8 the record a minute.

9 (Discussion off the record.)

10 (Whereupon, Judge Chestnut departed from the hearing  
11 room.)

12 BY MR. SMITH:

13 Q You did testify in both sets of testimony moats  
14 about the tax issue.

15 A I have certainly testified about them.

16 Q Do you have at least a fundamental understanding  
17 of the IRS revenue ruling and what its role is in this  
18 transaction?

19 A I have a lay understanding, not a legal  
20 understanding of the IRS regulations and what it would take  
21 to achieve the appropriate tax rule. The advice from my  
22 counsel is that given the provisions we have included in  
23 the Choice Plan that it is their advice that we would be  
24 successful in receiving the ruling.

25 Q Do you know, either of your own personal

1 knowledge or based on what you can remember of your advice  
2 from counsel, whether a key issue involved with the IRS tax  
3 ruling is whether the transaction is treated as debt or as  
4 the sale of assets. Do you know if that is an important  
5 distinction?

6 A I would say that my understanding is that for tax  
7 purpose we would want to have this treated as debt.

8 Q Incidentally, I think you said I want to make  
9 sure, you haven't seen the ITC shortfall agreement yet?  
10 You have not?

11 A What I said is we have not drafted the ITC  
12 shortfall agreement. Therefore, I have not seen it.

13 Q I want to understand how the ITC shortfall  
14 agreement works in relationship to the true-up that you  
15 discuss at pages 8 to 9?

16 A The true-up of the proceedings.

17 Q I want to run this through and see if this is  
18 correct. Do you have a true-up provision in which there is  
19 an evaluation by the Commission of whether the ITC revenue  
20 stream is being sufficient to pay off the principal and  
21 interest on the debt. Is that right? Like the first step  
22 on this?

23 A I am not sure I understand what the question is.

24 Q Is that the first step in this review process and  
25 how the shortfall agreement and the true-up work together?

1 A That is my understanding, yes.

2 Q Okay. Then as a second step, if they find that  
3 there is a shortfall, they increase the ITC rate that will  
4 be charged to customers. Is that correct?

5 A Yes.

6 Q As a third step, then, the guarantor, this third  
7 party guarantor pays to PECO Energy an amount of money  
8 equal to that aggregate increase. Is that right?

9 A That is correct.

10 Q As a further step, then PECO Energy Company  
11 reimburses the customers. Is that the final step in how  
12 this process works?

13 A I am not sure if -- I am not sure exactly  
14 mechanically how the fourth step works but clearly the  
15 value is there for the customers. I am not the expert to  
16 answer exactly how that value gets from PECO to the  
17 customer.

18 Q Let me just ask you if you know this. Is there a  
19 time lag of a month or whatever between the time that the  
20 Commission makes its determination that the ITC rate has to  
21 go up and the time when the guarantor pays the money to  
22 PECO and in what mechanism. You don't know the mechanism  
23 but whatever mechanism to refund the money back to the  
24 customer is there any time lag in between those?

25 A The answer is that mechanically since we have not

1 drafted the agreement I cannot answer the question.

2 Conceptually, the intent of the ITC shortfall agreement  
3 would be to preserve the value, preserve a value equivalent  
4 to the ITC adjustment by the Commission?

5 Q Well, conceptually, with that intent, if the ITC  
6 revenue stream went up in March because of a Commission  
7 order, and then was adjusted downward because the guarantor  
8 kicked in in April, would that match the concept that you  
9 have of how this would work?

10 A I would think given your hypothetical scenario  
11 which is I am not sure that my understanding is the same as  
12 yours as that actually is how it would happen in your  
13 hypothetical scenario you have a lag in the cash flows;  
14 right? If I understood it correctly.

15 Q I am asking is --

16 A Well, in that case there is a time value of money  
17 issue and so the values would not be equivalent because  
18 cash is being moved in one month and then cash is being  
19 paid in a second month to make up for that so you would  
20 have to adjust for the time value of that money.

21 Q Assuming that adjusted for the time value of the  
22 money, does your concept of an ITC shortfall agreement  
23 allow for that to happen where you have a change made in  
24 one month and then a value adjusted reconciliation made on  
25 the next month's bill?

1           A Well, for the third time, we haven't drafted the  
2 ITC shortfall agreement and I cannot give you the specific  
3 mechanics how it works.

4           Q For the third time?

5           MR. CLEARFIELD: Let's flip topics.

6           THE WITNESS: The concept shifts the intent to make  
7 the value equivalent.

8           MR. SMITH: I'll leave it at that.

9 BY MR. SMITH:

10          Q I think you have said you don't know how much the  
11 guarantor will cost?

12          A That is correct.

13          Q But ENRON is going to pay for it?

14          A That is correct.

15          Q ENRON gets to designate who the third party  
16 guarantor is?

17          A That would -- that has not been addressed in the  
18 proposal, who designates.

19          Q On page 10, line 10 of your testimony.

20          JUDGE RAINEY: I'm sorry. You are still referring  
21 to Statement Number 8, Mr. Smith.

22          MR. SMITH: Yes, Your Honor. I think I have got the  
23 right place here. I don't have the right place.

24 BY MR. SMITH:

25          Q On line 10 it says does this approach place the

1 guarantor designated by ENRON at risk of losing all of the  
2 guaranty amount. Is that an indication that you intend to  
3 have ENRON designate the guarantor?

4 A Yes, within the context of the bonds being rated  
5 triple A and what that would require.

6 Q Oh?

7 A The intent --

8 Q There's no question pending?

9 A Pardon?

10 Q If you are going to answer that question, then  
11 feel free.

12 A I thought I was answering the question. Could  
13 you restate your question. Maybe I misunderstood it.

14 Q Do you intend to have ENRON designate the  
15 guarantor?

16 A And my answer was, if you'd let me finish, yes.  
17 We would designate the guarantor within the context of a  
18 triple A rating that would have to be achieved. So we  
19 would never need to have the rating agency concur on who  
20 the guarantor is. As well as what the guarantee amount  
21 is.

22 And further, as I stated earlier, the reason we have  
23 a guarantor at all conceptually, is because we assumed that  
24 PECO, maybe unfortunately, would not like to have ENRON be  
25 the guarantor. That they would want an opportunity with a

1 line of credit, interposed so this was really to a  
2 commodity and anticipated concern of PECO to try to make it  
3 a better transaction for PECO as well.

4 Q Thank you. This kind of activity we are talking  
5 about, potentially designating a guarantor. Paying for the  
6 guaranty on the debt.

7 A Uh-huh.

8 Q In your experience, is that the sort of activity  
9 that you would normally expect to see done?

10 A To what?

11 Q To see done by a creditor, that is a bond holder  
12 or by the owner of the company, by the equity owner? . Who  
13 would you normally expect to do those kinds of activities?

14 A To do --

15 Q To pay for the guarantee on the debt.

16 A Okay. This is not a guaranty of debt, but if  
17 someone were guaranteeing debt, then it would typically be  
18 the sponsor of the transaction, whoever that may be and  
19 may, in fact, be the issuer of the debt.

20 Q That's the equity owner. But not the person who  
21 was borrowing the debt who's lending the money.

22 A I think your question confuses me. Because what  
23 ENRON is doing is proposing to pay PECO \$5.461 billion in  
24 exchange for PECO issuing the transition bonds to ENRON.  
25 Or designated a guarantor trust as the case may be. That's

1 one transaction. How ENRON chooses to fund it.

2 If ENRON chooses to fund that, if you will, through  
3 other means, that's really a different transaction. So if  
4 ENRON were to then issue debt or cause to be issued debt  
5 out of the guarantor trust, I would expect that ENRON would  
6 be speaking with any guarantors and the rating agency with  
7 respect to that transaction.

8 Q I have been dramatically unclear in my question  
9 and I apologize. You told Mr. Steinmetz that there would  
10 be no additional costs to PECO or to the rate payers beyond  
11 the 5.46 billion revenue stream; right?

12 A Beyond the revenue stream associated with the  
13 payment of 5.461. Yes.

14 Q There are going to be other functions, though,  
15 associated with this transaction?

16 A Yes.

17 Q And other costs associated with this transaction?

18 A I would think so, yes.

19 Q Just saying ENRON is going to keep all of those  
20 costs?

21 A Well, I think you have to go and talk about the  
22 cost. If PECO has entered into some arrangement where they  
23 have already committed to pay someone some amount of money,  
24 I have no knowledge of that so that could be a hypothetical  
25 cost. I wouldn't mean to include that, so I would think we

1 have to sit down and go through a detailed list of --

2 Q And I was trying to get one specific thing you  
3 had identified and that was designating the guarantor?

4 A I don't --

5 Q Paying for the guarantor?

6 A And I'll state at the present time, ENRON will  
7 pay for that guarantor.

8 Q I am going to leave it at that.

9 A Okay.

10 Q In your direct testimony, page 2, lines 12  
11 through 13, you say that one of purposes of your testimony  
12 is going to be demonstrate the reasonableness of the  
13 assumptions and the calculations included herein; right?  
14 In any plan?

15 A I am sorry.

16 MR. CLEARFIELD: I missed the page, too.

17 MR. SMITH: Page 2, lines 12 through 13.

18 BY MR. SMITH:

19 Q Is that a correct characterization?

20 A I see it, yes.

21 Q Now, I want to understand what you did in order  
22 to prepare your analysis of this. What steps you took to  
23 make sure that you understood the reasonableness of the  
24 assumptions in the calculations. So could you just  
25 describe to me what steps you took to analyze this issue

1 and to prepare this testimony?

2           A Well, I'd probably go back to my earlier comments  
3 or -- the basic analysis that caused us to proceed with  
4 this transaction was an analysis based on certain  
5 assumptions we had to make because information was not  
6 available from PECO. On how much money PECO was earning in  
7 this transaction. And based off of our analysis, based on  
8 assumptions and limited information of what PECO was making  
9 on the transaction, we were then able to, in essence,  
10 quantify the amount of money that could either be given  
11 back to rate payers or would be available to pay for the  
12 structural enhancement that you have asked me at length  
13 about.

14           And so our starting analysis, if you will, was an  
15 analysis to determine how much money PECO was making and  
16 that's where we -- there was a pool of money we had to work  
17 with and the pool of money we had to look at to figure out  
18 how much we could give back to the rate payers.

19           If we could do it better, we'd be able to give that  
20 money back to the rate payers and we would find a way to do  
21 it better.

22           Q And this thing that you are talking about, again,  
23 it wasn't clear and I apologize. You did this by talking  
24 to your lawyers; right?

25           A Uh-huh.

1 Q By talking to your investment bankers. Was there  
2 anything else along that order that -- I am trying to find  
3 out the mechanics. What you did. Was there anything else  
4 like that that you did in order to prepare this testimony?

5 A We did some very rudimentary calculations based  
6 on the limited information. We did a discounted cash flow  
7 analysis to try to again estimate how much money PECO was  
8 retaining for itself, that we might be able to give back to  
9 the rate payers by coming up with a better securitization  
10 proposal so I'd say probably the thing we did internally  
11 was in addition to that, was the discounted cash flow  
12 analysis?

13 To try to calculate, based on limited information,  
14 what that pool of money was that PECO had.

15 Q And everything comes down to this. Do you  
16 believe at the time you filed this testimony, that you had  
17 developed an ITC revenue stream that would be sufficient to  
18 pay the principle and interest on the bonds?

19 A Yes.

20 Q You later amended the plan because you decided  
21 that the original plan did not provide that; correct?

22 A There was a number of amendments to the plan. I  
23 would think that any plan of that complexity would continue  
24 to evolve. And again, based on limited information, from  
25 PECO, you know, we have had to make certain assumptions.

1 I would hope that if we could get more full  
2 information we'd be able to refine it even further. I  
3 would say that as we have amended the value has gotten  
4 better for the rate payers and I think PECO has actually  
5 brought up one or two good points that help make the Choice  
6 Plan a --

7 MR. SMITH: The question was very limited and the  
8 witness went into tremendous lengths on issues that I think  
9 are completely unrelated to the testimony. I'm going to  
10 move to strike.

11 THE WITNESS: I'll try to keep my comments more  
12 direct. Apology.

13 JUDGE CHESTNUT: Let's move along.

14 MR. SMITH: Just to make sure, you did amend the  
15 plan in order to get an ITC rate sufficient to make the  
16 issuance of bonds.

17 MR. CLEARFIELD: Objection, it's outside the scope  
18 of the direct testimony. I believe Mr. Kean talked about  
19 the reason in his references to the ITC.

20 MR. SMITH: Would you look at your second --

21 MR. CLEARFIELD: Excuse me. I have an objection --

22 MR. SMITH: I withdrew it.

23 BY MR. SMITH:

24 Q Could you look at page 3 of the second piece of  
25 testimony?

1 A The second piece?

2 Q Second piece?

3 A 8-R.

4 Q Page 3?

5 A Page 3.

6 Q Page 3, lines 16 and 17.

7 A Yes.

8 Q Starting on actually line 14, did you testify  
9 there that in response to an argument made by PECO Energy,  
10 that ENRON amended the plan in order to receive a revenue  
11 stream sufficient to pay the principal and interest.

12 A What I state is that in preparing the Choice Plan  
13 it was not clear whether PECO's proposed CTC charges under  
14 the partial settlement were inclusive of GRT, gas receipts  
15 tax. PECO's response testimony provides further  
16 information on the treatment of the GRT, on CTC challenged  
17 by PECO and in response to such additional information,  
18 ENRON has adjusted the finance as proposed and in the  
19 Choice Plan to reflect this fact.

20 Q You amended --

21 A Is that -- could you repeat that.

22 Q Is a correct characterization that you testified  
23 that ENRON amended its plans?

24 A Yes, we did.

25 Q Thank you. You also testified in your original .

1 direct testimony, that the special purpose entity would be  
2 able to maintain a 50 basis point equity reserve for the  
3 term of bonds.

4 A Could you refer me to that.

5 Q I'll change the question. Did you believe, at  
6 the time you filed your original testimony, that the  
7 structure you had proposed would allow the special purpose  
8 entity to maintain a 50 basis point equity reserve for the  
9 life of the ITC revenue?

10 A -- there is a difference between that and the  
11 guarantor trust you are talking about. There are two  
12 special purpose entities we are talking about in this  
13 transaction.

14 Q Do you know which one of them is supposed to have  
15 the equity reserve? Let me start with that.

16 A I think in order to receive the appropriate tax  
17 ruling the PECO special purpose entity should have a  
18 certain amount of equity in the entity.

19 Q And in you your original testimony, you concluded  
20 that the plan that you had at the time would be sufficient  
21 to maintain a 50 basis point reserve in that PECO special  
22 fund?

23 A Could you refer me to where I say that.

24 Q Did you understand -- did you believe that at the  
25 time that you file your --

1 A I'd like to see my testimony where --

2 Q I didn't reference your testimony. Can  
3 you --

4 A Before I'd address that, I'd like to reference my  
5 testimony.

6 MR. CLEARFIELD: Your Honor, if there's a reference  
7 that Mr. Smith can provide that would certainly move things  
8 along. Otherwise, Mr. Fastow can just go through --

9 JUDGE RAINEY: It's getting late and we're starting  
10 to haggle unnecessarily. Mr. Smith, is there a reference  
11 that you could point the witness to that might expedite  
12 matters. Otherwise, if you are just asking him the  
13 question, why don't you just ask him the questions.

14 MR. SMITH: I will do that, again, Your Honor.

15 BY MR. SMITH:

16 Q When you filed your original testimony, was it  
17 your opinion that the structure that you had proposed would  
18 allow the PECO special purpose entity to maintain 50 basis  
19 points equity reserve over the life of the bonds?

20 A It was my understanding that the equity in the  
21 special purpose vehicle would be sufficient to receive the  
22 tax ruling that was necessary to do the transaction.

23

24

25

1 BY MR. SMITH:

2 Q. And later amended the plan to adjust that  
3 particular issue; correct?

4 A. We amended it based on additional new  
5 information that was provided by PECO.

6 Q. You originally believed when you filed  
7 your direct testimony that the ITC revenue stream  
8 would be sufficient to fund a 50 basis point over-  
9 collateralization reserve; correct?

10 A. Could you say that again.

11 Q. That the ITC revenue stream would be  
12 sufficient to fund a 50 basis point over-  
13 collateralization reserve in the special purchase  
14 entity. You believed that at the time; right?

15 A. Yes.

16 Q. Later you amended your plan to adjust on  
17 that issue; correct?

18 A. It sounds like the same question you just  
19 asked and that I answered. Is that a different  
20 question?

21 Q. The first question was the 50 basis point  
22 equity reserve, and the second question is the 50  
23 basis point over-collateralization reserve.

24 A. Could you reference that?

25 Q. Could you take a look at Page 7 of your

1 rebuttal testimony. You discuss the equity reserve  
2 at Lines 14 to 16 and the over-collateralization  
3 reserve at Lines 17 through 19.

4 A. Yes. That is correct.

5 Q. You originally believed that monthly  
6 principal and interest payments would be okay and  
7 later adjusted the plan on that basis as well;  
8 correct?

9 A. I believe that is correct. I would have  
10 to go back and check my notes to confirm that.

11 Q. Page 8, Lines 1 through 3 of your rebuttal  
12 testimony.

13 A. Lines 1 through -- Sorry.

14 Q. Three, I believe.

15 A. Yes. That's right. This references  
16 quarterly payments. I thought you just said monthly  
17 payments.

18 Q. You originally had monthly and changed it  
19 to quarterly; correct?

20 MR. CLEARFIELD: That's what the testimony  
21 says, Your Honor.

22 A. Yes.

23 MR. CLEARFIELD: I'm sort of struggling to  
24 understand why we --

25 JUDGE RAINEY: I'm sorry. The witness will

1 answer the question. Mr. Clearfield, I would  
2 appreciate it if you would not constantly interject.  
3 I think it's only slowing down this process.

4 Was the question asked and answered?

5 MR. SMITH: I think he did.

6 A. Could you state the question again for  
7 this.

8 BY MR. SMITH:

9 Q. Did you originally conclude in your direct  
10 testimony that monthly payments would be adequate and  
11 then amend the plan later to go to quarterly  
12 payments?

13 A. Page 8 of the rebuttal testimony talks  
14 about quarterly payments. I would like a reference  
15 to monthly payments in my initial testimony that you  
16 are talking about.

17 Q. Did you in your original --

18 A. In our rebuttal testimony, we talk about  
19 quarterly payments.

20 Q. Do you know whether or not you originally  
21 proposed monthly payments?

22 A. I would have to go back and look at the  
23 testimony to make sure that I'm giving correct  
24 information.

25 Q. Do you know whether or not you originally

1 proposed a 124-month term for these bonds?

2 A. Yes. It was my understanding we did.

3 Q. And later you amended that because you  
4 concluded that would not be consistent with the law;  
5 correct?

6 A. That is correct.

7 Q. Finally, you originally concluded that  
8 Option 1 as proposed would receive a favorable tax  
9 ruling; is that correct?

10 A. Option 1?

11 Q. The original Choice Plan, I'm sorry, that  
12 you discussed in your direct testimony?

13 A. As I stated earlier, the advice of counsel  
14 was that we will receive favorable tax treatment.

15 Q. For the proposal that you made in and  
16 discussed in your direct testimony, counsel advised  
17 you that that plan would receive a favorable tax  
18 ruling; correct?

19 A. That is correct.

20 Q. Now, you have made a number of amendments.  
21 I want to find out -- Let's see. You say that ENRON  
22 is going to be paying for all of these amendments?

23 A. I'm sorry. All of the amendments?

24 Q. The structural enhancements I think you  
25 called them earlier.

1 MR. CLEARFIELD: Objection to the form of the  
2 question. I don't believe that's been established.

3 A. I think my answer to that question --

4 JUDGE RAINEY: Why don't you rephrase the  
5 question, Mr. Smith.

6 BY MR. SMITH:

7 Q. Who is going to pay for the structural  
8 enhancements?

9 A. We've talked about the guarantor and the  
10 ITC shortfall agreement. If there are any other  
11 structural enhancements you would like to ask me  
12 about, I'd be happy to address those. But to say all  
13 enhancements, I don't know what you're thinking when  
14 you say that.

15 Q. Are there any that you're aware of for  
16 which PECO Energy will pay?

17 A. For structural enhancements? Other than  
18 what is outlined in the testimony, no.

19 Q. I couldn't find -- It wasn't clear to me  
20 on some of these who was paying for them, so I'm just  
21 generally asking you. Is it your understanding that  
22 PECO will pay for -- Your plan is that PECO will pay  
23 for any of these structural enhancements that you're  
24 proposing?

25 A. The plan is that ENRON pays PECO \$5.461

1 billion; check, money order, however you'd like to  
2 receive it, cash. It doesn't matter. \$5.461  
3 billion. What we are asking for in return is  
4 transition bonds that are rated triple A or  
5 equivalent.

6 Q. I know it's late, but I want to ask you to  
7 really listen carefully to the question. The  
8 structural enhancements that you propose in your  
9 rebuttal testimony, we've identified one, the  
10 shortfall.

11 A. Could you identify another? I'm trying to  
12 answer your question, but when you say any structural  
13 enhancements, I don't know what you mean. I don't  
14 want that to be taken out of context.

15 PECO's idea of a securitization is  
16 different than the Choice Plan, so I don't know what  
17 PECO is thinking when they say enhancement.

18 Q. Well, does the change from 124 months to  
19 120 months have any costs associated with it?

20 A. Not to PECO.

21 Q. To anyone?

22 A. It had costs to ENRON.

23 Q. So ENRON is going to pay for that one as  
24 well?

25 A. When you say pay, there is no payment to

1 be made by anyone. The ITC cash flow stream that is  
2 being received to service transition bonds will be  
3 reduced by that amount.

4 Q. You'll absorb that cost?

5 A. That is correct.

6 Q. Was there any cost associated with the  
7 change from monthly to quarterly principal and  
8 interest payments?

9 A. I don't know. I don't know the answer to  
10 that.

11 Q. Was there any cost associated with the  
12 changes that you made to improve the 50 basis point  
13 over-collateralization reserve?

14 A. I don't know the answer to that.

15 Q. At Page 5, Lines 9 through 12, of your  
16 direct testimony, you say that it is difficult to  
17 determine how much value ENRON is going to be getting  
18 out of this structure. You talk about because there  
19 are two risks. There are interest rate risks.

20 A. Page 5. Which line?

21 Q. Lines 9 through 12. You talk about there  
22 being two risks associated there. Actually, the  
23 question starts on Line 7.

24 A. All right.

25 Q. You talk about that there are two factors

1 that make it difficult to determine that value. One  
2 is interest rate risk, and the other is rating agency  
3 risk; is that right?

4 A. Yes.

5 Q. I want you to assume that the interest  
6 rate risk, at whatever level you think could  
7 reasonably occur, does occur, that is, the interest  
8 rate goes as high as you think it could reasonably go  
9 during this time frame, and whatever the rating  
10 agency risk is becomes fully realized. Do you know  
11 how much ENRON would -- what the net present value of  
12 the Class B certificates would be under that  
13 scenario?

14 A. First of all, I do not make projections or  
15 predictions about what interest rates will be. I  
16 leave that Alan Greenspan to determine.

17 What we have built into the transaction  
18 with respect to interest rates is, in essence, a  
19 collar around the interest rates. ENRON is willing  
20 to absorb an increase in interest rates--the 10-year  
21 treasury we're using as the index--up to a seven-  
22 percent rate. So ENRON will absorb that.

23 With respect to the rating agency, I do  
24 not know what they could potentially come up with.  
25 It is impossible for me to say with any certainty

1 what the maximum possible cost would be.

2 Q. Using the top end of the collar, the seven  
3 percent, and assuming that the rating agencies do  
4 give a triple A rating, how much would be the net  
5 present value of the Class B pass-through  
6 certificates to ENRON?

7 A. I can't tell you that because other  
8 assumptions would have to be made; such as, What is  
9 the cost of the insurance? What is the size of the  
10 ITC shortfall agreement?

11 There are a number of assumptions. I  
12 would be happy to go through all of those assumptions  
13 with you and give you that, if you'd like. It would  
14 probably take some time to go through that.

15 Q. That's okay. I'm satisfied.

16 A. But, in any event, the amount of money  
17 that ENRON is potentially earning here is still \$600  
18 million less than what PECO is receiving under the  
19 partial settlement, because ENRON is giving back a  
20 rate cut. It's doubling the rate cut to the  
21 Pennsylvania ratepayers. So that value is taken by  
22 ENRON and given back to the ratepayer. So on a  
23 relative basis, it's \$600 million less.

24 Q. Would you turn to Page --

25 A. Mr. Hill is --

1 JUDGE RAINEY: I'm sorry. I believe you have  
2 answered the question.

3 A. Okay.

4 MR. SMITH: And another one.

5 BY MR. SMITH:

6 Q. Would you turn to Page 15 of your  
7 testimony and take a look at --

8 A. Of direct or rebuttal?

9 Q. Direct. And look at Lines 19 to 21.  
10 That's Page 15. Sorry. There you state, "Our  
11 analysis indicated that ENRON would be able to make a  
12 reasonable rate of return based on the risks assumed  
13 by ENRON under the Choice Plan," provided that this  
14 collar that you were discussing a moment ago was  
15 maintained. Do you see that portion of the  
16 testimony?

17 A. What line is that? I'm sorry.

18 Q. It must be Line 18, at the end of it.

19 "Our analysis indicated ..."

20 A. What page?

21 Q. Page 15.

22 A. Yes.

23 Q. What analysis were you referring to there?

24 A. Discounted cash flow analysis that I  
25 referenced earlier today.

1           Q. The risks that you say that ENRON is  
2 assuming there I think you identify elsewhere in your  
3 testimony as the load risk and the interest rate  
4 risk. Is that what you're talking about here?

5           A. Those are two of the risks. Risk of the  
6 amount of the guaranty payment being very large, the  
7 premium for the guaranty. Excuse me. Risk that  
8 general market conditions change beyond our control,  
9 things like that. These are risks that ENRON takes.

10          Q. I'll go back to that one. What rate of  
11 return did your analysis show that you would get  
12 here?

13          A. I do not remember the rate of return that  
14 we would be earning.

15          Q. Are we talking about return on equity  
16 here? Is that what you meant by rate of return?

17          A. It would be return on capital -- There  
18 are a number of different ways to define rate of  
19 return. But the way I would look at it would be what  
20 is the capital ENRON is putting at risk in the  
21 transaction. So we would calculate a return based on  
22 that.

23          Q. How much are you bringing to the table?

24          A. I beg your pardon.

25          Q. How many dollars is ENRON bringing to the

1 table and putting at risk?

2 A. 5.4 -- 5.6

3 MR. CLEARFIELD: .46.

4 A. 5.46 billion. Understand, ENRON is  
5 buying the transition bonds, period. ENRON has the  
6 risk of securitizing those on the back end, not PECO.  
7 You combine them as one transaction. I think they're  
8 two transactions. PECO receives 5.461 billion. They  
9 give ENRON the transition bonds.

10 BY MR. SMITH:

11 Q. The \$5.461 billion, in the plan that you  
12 propose, where do you get that money?

13 A. In the plan we have proposed, we get that  
14 by having a grantor trust issue pass-through  
15 certificates.

16 Q. And selling to investors?

17 A. Selling pass-through certificates to  
18 investors.

19 Q. No money comes out of ENRON's general  
20 funds; correct?

21 A. I think I've stated otherwise. ENRON is  
22 making payments for different credit enhancements and  
23 other things in the transaction.

24 Q. The 5.461 billion is what we're talking  
25 about now. Does any of that money come out of

1 ENRON's general funds?

2 A. It might. ENRON is saying that -- In the  
3 amended plan, we are saying we are going through with  
4 this transaction. So, if ENRON has to write the  
5 check for \$5.461 billion, ENRON will write that  
6 check. In other words, ENRON takes the risk of  
7 securitization, not PECO.

8 Q. In the deal that you were proposing on the  
9 A certificates, is there any recourse against ENRON  
10 if the revenue stream is not sufficient to pay the  
11 principal and interest?

12 A. No.

13 Q. Is it your understanding that under the  
14 proposals you have made that ENRON will obtain an  
15 equity interest in tangible transition property or in  
16 the ITC revenue stream?

17 A. I don't think ENRON is obtaining an equity  
18 interest in those. Did I understand your question  
19 correctly?

20 Q. Yes.

21 A. The PECO SPV has the ITC interest. Cash  
22 flows from the PECO SPV are used to service the  
23 transition bonds that are issued by the PECO SPV.  
24 The grantor trust established by ENRON purchases the  
25 transition bonds. The revenues from the transition

1 bonds are used to service the pass-through  
2 certificates issued by the grantor trust.

3 Q. Could you turn to Page 8 of your rebuttal  
4 testimony, Lines 21 through 22. You say, "First, I  
5 note that Mr. Sharpe offers no support for his  
6 assertion" --

7 A. I'm sorry. I'm on the wrong one. Just a  
8 moment. Okay.

9 Q. You say, "First, I note that Mr. Sharpe  
10 offers no support for his assertion that the interest  
11 rate on the transition bonds is at higher than a  
12 market rate." Do you see that?

13 A. Yes.

14 Q. Could I take you to your direct testimony,  
15 Page 14. Could you read the question at the bottom  
16 of the page there.

17 JUDGE RAINEY: No, we're not doing that.  
18 We're not doing that.

19 MR. SMITH: I'm sorry.

20 BY MR. SMITH:

21 Q. It pretty much says -- The question is,  
22 "Is the interest rate intended to reflect a market  
23 rate?" And your answer is no, it's not. Is that  
24 correct?

25 A. That is correct.

1           Q. Is that sufficient grounds for another  
2 witness to conclude that the rate is not a market  
3 rate?

4           A. I think there are two different  
5 statements. In one statement I say that Mr. Sharpe  
6 offers no support for his assertion, and the  
7 statement I make in answer to the question, "Is the  
8 interest rate intended to reflect a market rate?" is  
9 no.

10          Q. In fact, if the interest rate reflected a  
11 market rate ENRON would be taking no value out of  
12 this transaction, correct, because the Class A  
13 certificates would eat up all of the interest and  
14 principal to pay them off?

15          A. I don't know that that's correct. I would  
16 have to look at -- I can't do that calculation in my  
17 head.

18          Q. This will be the last line of questions.  
19 If you could take a look at your rebuttal testimony,  
20 Page 4, Lines 9 through 11, you are discussing the  
21 risks that ENRON takes on here. I want to focus on  
22 two of those risks, the load decline risk and the  
23 interest rate risk that you say ENRON is going to be  
24 taking on there. Do you see that?

25          A. Yes.

1 Q. Let's start by talking about the interest  
2 rate risk. This risk is the risk that the interest  
3 rate environment will change between now and August  
4 1998?

5 A. The risk in the amended plan is that the  
6 interest rates would move between now and -- I think  
7 it's a much longer time period. I think because we  
8 have a plan where this may not occur right away, we  
9 would still be doing the securitization. It's a much  
10 longer time period in which ENRON would be exposed to  
11 the interest rate risk. I can't give you the date.

12 Q. Around December 2000?

13 JUDGE RAINEY: Let's go off the record for a  
14 minute.

15 (Pause)

16 A. I'm not sure. That sounds about right.

17 BY MR. SMITH:

18 Q. The risk we're talking about here is the  
19 risk that the interest rates would rise during that  
20 time; right?

21 A. That interest rates will move, yes. In  
22 this case, there would be a diminution in value if  
23 interest rates were to rise.

24 Q. How much do you think that ENRON should be  
25 compensated for taking this risk on?

1           A. I think probably the -- I don't know the  
2 answer to that question, but I think if you would  
3 like a specific number we could go to a financial  
4 institution and ask them to quote the price for an  
5 interest rate derivative to ensure against the price  
6 movement. I would expect that that would be a  
7 significant price to pay, which would indicate a  
8 large degree of risk.

9           Q. Now, this risk that you're talking about  
10 is only up to the seven-percent level; right?

11          A. That is correct.

12          Q. Above the seven percent, if the interest  
13 rates go above seven percent, then the following  
14 steps occur. I want to see if this is right. First,  
15 the ITC increases after that to recognize the fact  
16 that there is a higher interest payment that needs to  
17 be made, and simultaneously the generation credit is  
18 decreased. Is that --

19          A. Is that a question?

20          Q. -- your understanding of how your plan  
21 works?

22          A. I believe that is the mechanics to make it  
23 happen.

24          Q. Since the Power Purchase Agreement credits  
25 are tied to the generation credits, PECO Energy's

1 revenues go down?

2 A. I'll help you get there. If interest  
3 rates go above seven percent, PECO takes that risk  
4 under our plan. I'm trying to move it along.

5 JUDGE RAINEY: Thank you. I appreciate that.

6 BY MR. SMITH:

7 Q. As to the load risk, is the ITC shortfall  
8 agreement basically designed to eliminate the load  
9 risk so that ENRON does not have to bear that risk?

10 A. No. ENRON is bearing that risk, or ENRON  
11 is paying someone else to bear that risk. In any  
12 event, it is for ENRON's account.

13 Q. Could you turn to Page 11 of your direct  
14 testimony. Actually, the bottom of Page 10. The  
15 question is, "Is there a risk that the ITC shortfall  
16 will exceed the guaranty amount?" Is that the load  
17 risk that we're talking about?

18 MR. CLEARFIELD: That's on Page 10?

19 MR. SMITH: The bottom of Page 10.

20 A. Yes.

21 BY MR. SMITH:

22 Q. And the answer is, "Practically speaking,  
23 there is no such risk," because the guaranty amount  
24 eliminates it. Right?

25 A. Yes.

1 MR. SMITH: I have no further questions.

2 JUDGE RAINEY: Thank you.

3 Mr. Ryan.

4 MR. RYAN: In view of the lateness of the hour  
5 and the fact that I've already decided I wouldn't use  
6 it in my brief anyway, I'm not going to ask any  
7 questions, not with a 45-page brief.

8 JUDGE RAINEY: I'm sure that's appreciated.

9 Redirect?

10 MR. CLEARFIELD: Can we take a few minutes?

11 JUDGE RAINEY: Yes. Why don't we take a five-  
12 minute break.

13 (Recess taken.)

14 JUDGE RAINEY: Mr. Clearfield.

15 MR. CLEARFIELD: Three questions, Your Honor.

16 **REDIRECT EXAMINATION**

17 BY MR. CLEARFIELD:

18 Q. Mr. Fastow, do you need the ITC shortfall  
19 agreement to obtain a triple A rating?

20 A. No, you do not. The ITC shortfall  
21 agreement is not a feature to achieve the rating.  
22 The ITC shortfall agreement was put in place because  
23 we needed to include the true-up provision, the ITC  
24 true-up provision. Yet, we did not want anyone to  
25 have to come out of pocket to bear that cost other

1 than ENRON. The ITC true-up is not for the rating.  
2 It's so that ratepayers do not have to bear the cost  
3 of load decline.

4 Q. And for clarification of these, what are  
5 the credit enhancements in the transaction associated  
6 with bonds?

7 A. The credit enhancements associated with  
8 the transition bonds are three-fold. You have the  
9 ITC true-up. You have the equity in the PECO SPV,  
10 and you have the over-collateralization in the PECO  
11 SPV.

12 Q. There was some discussion about interest  
13 rate risk over seven percent. Today how much  
14 interest rate risk would ENRON bear under the  
15 proposal based on current interest rates?

16 A. Okay. I didn't look at the paper today,  
17 but I think the 10-year treasury is at or about--  
18 someone correct me if I'm wrong--5.83 percent, which  
19 would mean that if that's a correct number ENRON  
20 would bear the first 117 basis point movement in the  
21 10-year treasury rate.

22 MR. CLEARFIELD: That's all we have.

23 JUDGE RAINEY: Thank you.

24 Any recross on the redirect?

25 MR. SMITH: No, Your Honor.

1 JUDGE RAINEY: Thank you. You may stand down,  
2 Mr. Fastow.

3 Let's go off the record.

4 (Discussion off the record.)

5 MR. SMITH: PECO Energy previously distributed  
6 to Your Honor, the parties, and the court reporter  
7 PECO Statement Number 28-E, the testimony of George  
8 Rayzis, R-A-Y-Z-I-S, regarding the ENRON Choice Plan.  
9 I move for the admission of that testimony into  
10 evidence.

11 JUDGE RAINEY: Let me swear him in at this  
12 time.

13 GEORGE J. RAYZIS, called as a witness, being  
14 duly sworn, testified as follows:

15 JUDGE RAINEY: Please be seated. Give your  
16 full name for the record, spelling your last name.

17 THE WITNESS: My name is George J. Rayzis,  
18 R-A-Y-Z-I-S.

19 JUDGE RAINEY: Please proceed, Mr. Smith.

20 MR. SMITH: As I indicated, Your Honor, we  
21 previously distributed Mr. Rayzis's testimony, PECO  
22 Statement Number 28-E. I move for its admission into  
23 evidence pending timely motions and cross-  
24 examination.

25 JUDGE RAINEY: Any objection?

1 (No audible response.)

2 JUDGE RAINEY: Hearing none, so admitted.

3 (PECO Statement Number 28-E was marked and  
4 admitted.)

5 JUDGE RAINEY: Any cross?

6 (No audible response.)

7 JUDGE RAINEY: Hearing none, thank you very  
8 much, Mr. Rayzis. You may stand down.

9 MR. SMITH: PECO Energy calls Mr. Sharpe.

10 JAMES W. SHARPE, called as a witness, being  
11 duly sworn, testified as follows:

12 JUDGE RAINEY: Please be seated. Give your  
13 full name, spelling your last name, for the record.

14 THE WITNESS: My name is James W. Sharpe,  
15 S-H-A-R-P-E.

16 JUDGE RAINEY: Thank you. Mr. Smith.

17 MR. SMITH: Your Honor, PECO Energy previously  
18 distributed to Your Honor, the parties, and the court  
19 reporter PECO Statement Number 23-E, the testimony of  
20 James W. Sharpe regarding the ENRON Choice Plan.

21 In addition, earlier today we distributed  
22 to, I believe, all counsel, but, if not, certainly  
23 the ENRON counsel, a short piece of written rejoinder  
24 testimony by Mr. Sharpe labeled PECO Statement Number  
25 23-ERJ.

1 I move that those two pieces of testimony  
2 be admitted into the record pending timely motions  
3 and cross-examination.

4 JUDGE RAINEY: Any objections?

5 (No audible response.)

6 JUDGE RAINEY: Hearing none, so admitted.

7 (PECO Statement Numbers 23-E and 23-ERJ were  
8 marked and admitted.)

9 MR. SMITH: Your Honor, we have one oral  
10 surrebuttal question based on Mr. Fastow's testimony,  
11 if I may be permitted.

12 JUDGE RAINEY: Please proceed.

13 **DIRECT EXAMINATION**

14 BY MR. SMITH:

15 Q. Mr. Sharpe, two questions. Were you in  
16 the room for the testimony of Mr. Fastow?

17 A. I was.

18 Q. Mr. Fastow testified regarding who would  
19 bear the cost of the ITC shortfall agreement. Does  
20 that testimony affect your analysis of the tax  
21 treatment that would be given to the ENRON Choice  
22 Plan?

23 A. It does. I think that in the original  
24 direct testimony as well as in the rejoinder  
25 testimony we talked about today we were not sure who

1 paid for the grantor on the ENRON plan.

2 I think one of the things about the  
3 shortfall agreement, what we were concerned about,  
4 again, is in this particular case ENRON, being the  
5 creditor, would pay for this particular guarantor or  
6 the ITC shortfall.

7 We were concerned that effectively they  
8 would be absolving risk. That risk would be one of  
9 those things that the Internal Revenue Service would  
10 look at in our ruling request and actually come down  
11 to the point where they would say, Gee, this is  
12 actually a sale of PECO's intangible transition  
13 property to ENRON for the \$5.4 billion.

14 We would think that that would be one of  
15 the factors that would preclude PECO from getting a  
16 favorable ruling under the ENRON revised plan.

17 MR. SMITH: Your Honor, the witness is  
18 available for cross-examination.

19 JUDGE RAINEY: Cross-examination.

20 Mr. Gallagher or Mr. Klauberg.

21 **CROSS-EXAMINATION**

22 BY MR. KLAUBERG:

23 Q. Mr. Sharpe, I'm John Klauberg, counsel for  
24 ENRON. I will try to move it along quickly here.

25 What is your specialty area within Coopers

1 and Lybrand?

2 A. I specialize in taxation for regulated  
3 enterprises.

4 Q. So utilities --

5 A. Utilities. Electric, gas, telephone  
6 companies, yes.

7 Q. What about experience in asset-backed  
8 financing?

9 A. I really have very little experience in  
10 asset-backed financing.

11 Q. Things before transition bonds--credit  
12 card receivable financing, home mortgage financing,  
13 typical asset-backed financing that are very  
14 analogous to the transition bonds?

15 A. I have not had any experience. My  
16 impression was what I'm opining on or my opinion is  
17 related not necessarily to security types  
18 transitional bonds, financing, but really the  
19 question of whether we've had a sale or financing  
20 arrangement.

21 Typically I see a lot of those  
22 transactions where we're always looking at who has  
23 the benefits and the burden of ownership. That's  
24 what I -- This is fairly typical.

25 Q. Have you analyzed that particular issue, I

1 guess, putting aside sort of the other areas where it  
2 comes up in your practice, the asset-backed area in  
3 particular?

4 A. Well, certainly I have been following the  
5 securitization in the industry going back to the  
6 Puget sale. I have been closely following the  
7 securitization here in Pennsylvania. I have been to  
8 industry meetings, have talked to other practitioners  
9 in the area looking at different securitization  
10 transactions and been following that very closely.

11 Q. But you don't have any -- I guess  
12 hands-on experience, being involved in a transaction  
13 from Day One, the structure of it, all the different  
14 pieces, the service agreement, transition bonds, the  
15 SPV, the pass-through certificates, how much  
16 experience do you have in transactions of that  
17 nature?

18 A. Other than the utility related in this  
19 particular issue, very little.

20 Q. Since transition bonds, obviously, haven't  
21 been done before --

22 A. Since utilities started issuing securities  
23 related to things like the Puget demand side  
24 management and now stranded costs.

25 Q. But since we don't have any transition

1 bond deals out there, your --

2 A. My experience is new.

3 Q. Are you familiar with the Portland General  
4 securitization transaction of demand side management  
5 receivable that sort of came on the back of Puget?

6 A. No, I'm not.

7 Q. What about just Coopers and Lybrand in  
8 general? Does the firm ordinarily get involved in  
9 these types of transactions? Do you render tax  
10 opinions, or is that typically done by the law firm  
11 involved?

12 A. It varies. Sometimes the firm does issue  
13 opinions related to these types of transactions.

14 Q. Did you rely on anybody else to sort of  
15 help you through this analysis of --

16 A. Again, I've been following, certainly, the  
17 private letter ruling that PECO had submitted for  
18 approval. I've been following the California  
19 situation. I have talked to California tax directors  
20 about their particular transaction and the favorable  
21 ruling they got.

22 Q. Have you seen the California ruling?

23 A. I have not seen it.

24 Q. You haven't seen it.

25 A. I have seen the request. I have not seen

1 the actual ruling from the IRS.

2 Q. You haven't seen what the IRS focused on  
3 in that?

4 A. No.

5 Q. If PECO were to do the securitization  
6 pursuant to the partial settlement, do you anticipate  
7 that Coopers would be involved in that process as far  
8 as rendering an opinion or being involved in the  
9 structuring of that?

10 A. Are you talking about the tax side of  
11 that?

12 Q. Yes. I mean structuring of the  
13 securitization.

14 A. We certainly would look at the accounting  
15 side. As far as the tax side, PECO has already  
16 requested a private letter ruling from the Internal  
17 Revenue Service, and outside tax counsel has  
18 requested that.

19 Q. So you would not be involved, generally,  
20 in that process, other than from an accounting side?

21 A. That's correct.

22 Q. Did you prepare at all or were involved at  
23 all in the PECO ruling request that was submitted, as  
24 I understand it, a few months ago?

25 A. Other than the draft. I saw the draft and

1 made certain comments about the draft.

2 Q. I'm assuming that was done by outside  
3 counsel.

4 A. Yes, the outside counsel had drafted the  
5 request.

6 Q. So you commented on a draft?

7 A. Yes.

8 JUDGE RAINEY: Is that a request for a ruling  
9 from the IRS that you're referring to?

10 A. Yes.

11 BY MR. KLAUBERG:

12 Q. Have you discussed the differences between  
13 the securitization structure in the partial  
14 settlement with the securitization in the Choice Plan  
15 with anybody at the IRS?

16 A. No, I have not.

17 Q. You testified in your direct testimony  
18 that there were four essential elements, in effect,  
19 in obtaining the IRS ruling that Mr. Smith has gone  
20 through. Have you reviewed the changes that have  
21 been made to the Choice Plan to address any of those?

22 A. Yes.

23 Q. And do you feel that the plan does address  
24 those issues?

25 A. The plan has cosmetically changed those

1 particular four requirements. I think those are the  
2 base layer of the securitization transaction. I  
3 think my concern with the ENRON plan is not just the  
4 securitization, but it's all the other aspects of the  
5 ENRON Choice Plan.

6 Q. We'll come to those. I guess I'm just  
7 curious. Mr. Smith went on at great length about the  
8 four factors in going through this. You've said that  
9 we cosmetically changed the plan. What do you mean  
10 by cosmetically?

11 A. Well, I think that my perspective of the  
12 way you cosmetically change the plan, you change the  
13 ITC revenue stream in those years, and in some sense  
14 you have barred the revenue from the T & D rates. I  
15 think that's really just doing nothing but changing  
16 the revenue streams for the ITC.

17 Q. Is that a tax issue?

18 A. Well, I think the issue, again -- I think  
19 the Internal Revenue Service in looking and opining  
20 on issuing a ruling on this would look at all the  
21 factors, look at the economic substance of it.

22 Q. When the Internal Revenue Service looks at  
23 this transaction--correct me if I'm wrong--they're  
24 going to look at the final plan.

25 A. Right.

1 Q. They're going to look at the plan that is  
2 submitted and that you go for the ruling on. Why is  
3 that even in the ballpark of a relevant analysis?

4 A. Well, I think that they would want some  
5 history of how the ENRON plan came about.

6 Q. But if you adjust the revenue stream, no  
7 matter how you adjust it, why is that a tax issue if  
8 the tax test is you've got to have sufficient revenue  
9 to make the over-collateralization amount, the .5  
10 percent, and have enough money in there to cover the  
11 interest and principal on the bonds? Why is that  
12 relevant, where the money, in effect, comes from for  
13 tax purposes?

14 A. I think it's because -- Again, I think  
15 that what really is occurring here is that ENRON is  
16 acquiring the intangible transition property from  
17 PECO for the \$5.4 billion and, in turn, is going out  
18 and financing that \$5.4 billion with the type A  
19 certificates.

20 I think the Service would look at that and  
21 try to look to see whether there has been an economic  
22 sale versus nothing more than a financing  
23 arrangement.

24 While the form -- I think you were  
25 correct, that the form of the transaction is that it

1 meets those four basic requirements. I think that  
2 they would look closer to the substance than to the  
3 form.

4 Q. Didn't you in your initial direct  
5 testimony say that those were the four principal  
6 factors?

7 A. Yes.

8 Q. Are you aware that a grantor trust type  
9 structure is probably one of the most commonly used  
10 financing structures in the asset-backed industry?  
11 It's probably more than 50 percent of asset-backed  
12 transactions that have issues related to whether  
13 something is a debt or a sales transaction?

14 MR. SMITH: I'm going to object to that  
15 question on the grounds that it assumes facts that  
16 are not in evidence. Therefore, the attorney is  
17 testifying to those facts.

18 BY MR. KLAUBERG:

19 Q. Would you, subject to check, answer that  
20 question?

21 A. Well, I think that earlier I said that I  
22 don't have a lot of experience with asset-backed  
23 financing. So I think it would be difficult for me  
24 to say am I aware of it. I'm not aware of it.

25 Q. Maybe I should rephrase it. Could you,

1 again, subject to check, just check with an  
2 investment bank and ask them, Is grantor trust one of  
3 the most commonly used special purpose financing  
4 vehicles for asset-backed securities?

5 A. Sure.

6 Q. You've testified that the grantor trust, I  
7 think, was mentioned as one of the unusual features  
8 that is different from the PECO partial settlement  
9 securitization plan. But you've also mentioned that  
10 it is a composite of other factors, namely, that PPA  
11 agreement and the fact that ENRON is the provider or  
12 is proposed to be the provider of last resort and the  
13 MBC agreement. When you put all of those together,  
14 you feel that the IRS would be "less comfortable" in  
15 giving the ruling, the favorable ruling on the ENRON  
16 plan.

17 Can you help us and point us to some  
18 authority that would focus on any types of  
19 agreements, like in a secured financing, that raised  
20 the issue as to whether those adversely affect debt  
21 treatment?

22 A. Any specific authority I cannot. I think  
23 it's the weight. I don't think the Service would  
24 look at each individual aspect of the ENRON and opine  
25 on one particular one. I think they would look at

1 the full plan.

2 For example, in PECO's ruling request,  
3 they mention the qualified rate order. These things  
4 are all working together. I think that ENRON, in  
5 substance, is effectively acquiring an equity  
6 interest in the intangible transition product.

7 Q. Maybe I could just restate what I said  
8 before. Is there any authority that you can point us  
9 to --

10 JUDGE RAINEY: I think he answered that,  
11 Counsel. I think he said that there is no authority  
12 that he can point you to.

13 A. I don't think there's any specific  
14 authority on a similar plan like ENRON. For one  
15 thing, I don't think there's anything out there like  
16 ENRON.

17 BY MR. KLAUBERG:

18 Q. You say, for example, PECO's proposed  
19 securitization under the partial settlement is more  
20 typical. It's like the California utilities. But  
21 you say that there are some differences. What are  
22 those differences, and how are they material or not  
23 material?

24 A. The ENRON plan?

25 Q. No, no, no. The partial settlement, you

1 say in your direct testimony, is very similar,  
2 although there are some differences from the  
3 California ruling.

4 A. Yes.

5 Q. The PECO ruling itself mirrors the  
6 California ruling. I think there are some  
7 differences in the California legislation versus the  
8 Pennsylvania legislation.

9 Q. What differences are those?

10 A. For example, the transmission is ISO  
11 process in California.

12 Q. I agree. Whether there's an ISO, why  
13 would that make any difference?

14 A. I'm not sure if I'm following the point.  
15 I think what we would say is that we would expect to  
16 get a ruling for PECO because it's very similar to  
17 the ruling request that the California utilities --

18 Q. That's what I'm getting at. You said  
19 similar, and you said there are some differences.  
20 What I'm trying to get at is what are the  
21 differences.

22 A. Would you point me to the testimony?

23 Q. You say --

24 JUDGE RAINEY: Counsel, you'll have to  
25 identify the statement and the page and also the

1 line.

2 BY MR. KLAUBERG:

3 Q. I guess the rejoinder testimony, Page 3,  
4 where you say down at Line 17, PECO's proposed  
5 structure which closely mirrors the California  
6 structure. It seemed to me it's not identical, so I  
7 would just try to understand what are the  
8 differences.

9 A. I don't think there's any substantial  
10 differences between the PECO ruling versus the  
11 California ruling.

12 Q. But you don't know that for a fact because  
13 you haven't seen the California ruling?

14 A. I've seen the ruling request, yes.

15 Q. But you haven't seen the ruling?

16 A. I have not seen the ruling. Well, PECO  
17 hasn't had a ruling, so this is the ruling request  
18 I'm talking about here.

19 Q. The PECO, I agree with that. For purposes  
20 of making your analysis here for the purpose of the  
21 testimony, you've read the ruling request put in by  
22 either one or three of the California utilities.

23 Have you read the deal documents, sort of the  
24 tentative financing documents that have been out for  
25 a while now, that describe the structure and some of

1 the features that have come up, I would say, in the  
2 latter course of the financing discussions?

3 A. No, I have not.

4 Q. So your "closely mirror" here is based  
5 upon just reading the ruling request when it went in?

6 A. Yes.

7 Q. Not looking at the other agreements that  
8 may be involved in that transaction?

9 A. Yes.

10 Q. With respect to this composite analysis  
11 that you say you have to take into account the  
12 panoply of these other agreements, are you familiar,  
13 putting aside any authority, with any other structure  
14 that has similar analogous agreements, whether it's a  
15 power agreement, a servicer agreement, any other  
16 secured financing, like a credit card receivable or  
17 something, where they have similar agreements that  
18 you have to look at to really make the tax analysis?

19 A. No, I'm not.

20 Q. Is it correct that a conclusion regarding  
21 the treatment of securities, such as the transition  
22 bonds, as debt or a sale of property by PECO requires  
23 you to look at all the facts and circumstances and  
24 all of the case law out there, as opposed to just  
25 looking at a provision or provisions of the Internal

1 Revenue Code?

2 A. In my opinion, I think the Service in  
3 looking at the ruling request would look at the full  
4 bundle of things that's occurring here, yes. They  
5 really were trying to evaluate the economic substance  
6 and not the form of the transaction.

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1 Q Now, you said that you haven't talked to  
2 the Internal Revenue Service about either their  
3 view of the PECO securitization, or anything with  
4 respect to the ENRON plan?

5 A No, I have not talked to the Service.

6 I have been advised by PECO's counsel that  
7 he had some discussion with the Internal Revenue  
8 Service related to their ruling.

9 Q Okay. Now, just to clarify there, that is  
10 with respect to PECO's ruling?

11 A PECO's ruling.

12 Q Okay. Going back again just to the  
13 California situation, you focus a lot in your  
14 rejoinder testimony about it being a  
15 straight-forward transaction, and it is something  
16 that the IRS would feel more comfortable with than  
17 the ENRON plan, presumably relating to the fact  
18 that the ENRON plan just has more agreements  
19 associated with it?

20 A That's correct.

21 Q Are you aware that the Internal Revenue  
22 Service in many cases won't rule on  
23 straight-forward transactions?

24 They actually have no ruling positions out  
25 there?

1 A I am aware of that.

2 Q You are aware of that. And so you do  
3 agree, don't you, that the IRS very often will rule  
4 on more complex transactions?

5 A They --

6 Q It is just not a straight-forward  
7 transaction?

8 You don't have to walk in with a  
9 straight-forward transaction to get a ruling?

10 A That's correct. I am aware of that.

11 Q Are you aware that in many other  
12 transactions, there is a difference between the way  
13 a transaction is treated for tax purposes, and the  
14 way it is treated for regulatory and book purposes?

15 A I have been spending most of my career in  
16 regulated enterprises, so I am certainly aware of  
17 that, yes.

18 Q You mentioned the Puget Sound  
19 transaction.

20 Were you personally involved in that  
21 transaction?

22 A No, I was not.

23 Q Have you read the Deal documents?

24 A No, I have not read the Deal documents.

25 Q Do you know whether they applied for a

1 ruling in that?

2 A They did not.

3 Q Do you know that -- do you know whether  
4 they treated the bonds in that case differently for  
5 tax and book purposes?

6 A I -- they did treat them differently.

7 Q Have you -- do you have any knowledge that  
8 the IRS has challenged that transaction?

9 A No, I don't have any knowledge of that.  
10 That's a relatively recent transaction.

11 Q Do you see any difference between  
12 securitizing demand side management receivables and  
13 transition and stranded costs?

14 A I think the concept is very similar.

15 Q So the principles that would apply, and  
16 those likely would apply to transition bonds as  
17 well?

18 A I would think so, yes.

19 Q Are you aware whether in the Puget  
20 securitization, whether the structure met all of  
21 the four factors that you have cited in your direct  
22 testimony?

23 A It's been awhile since I have looked at  
24 that, and I can't answer that question now to say  
25 yes or no.

1           Q Just one clarification, I guess. In your  
2 rejoinder testimony on Page 4, line eleven -- let  
3 me see here; I am trying to think here; I guess it  
4 is line twelve -- you talk about ENRON as an  
5 electric generation supplier, and I am assuming  
6 that you are assuming that as an electric  
7 generation supplier, ENRON is the PLR?

8           A Yes.

9           Q All right. And then it says "will in  
10 effect through its proposed tariff."

11                   Do you mean ENRON, or do you mean PECO's  
12 tariff, as modified, or proposed to be modified by  
13 ENRON to reflect its provision of default service?

14           A I intended to mean ENRON's proposed  
15 tariff.

16           Q ENRON's proposed changes to PECO's?

17           A That's it, yes.

18           Q Okay. With respect to the ITC short-fall  
19 agreement, is it your view, and I wish I -- again,  
20 we just got this today, so I'm sorry I can't find  
21 it right away, but that the payments that would be  
22 made under that agreement would run to the special  
23 purpose vehicle, the special purpose entity?

24           A Yes.

25           Q Will you, subject to check, agree that

1           those payments don't run to the SPV, but run  
2           instead, as Mr. Smith pointed out, run to PECO?

3           A   Well, the SPE is a disregarded purpose,  
4           disregarded entity for tax purposes.

5                     For tax purposes, the SPE and PECO are one  
6           and the same.

7           Q   That's for tax purposes?

8           A   Yes.

9           Q   It wasn't clear, though --

10          A   Yes.

11          Q   -- whether in here you are referring to  
12          tax purposes or for bankruptcy --

13          A   Yes.

14          Q   -- and for a lot of other state law  
15          purposes, that is a separate vehicle?

16          A   Yes. I think that my testimony is related  
17          to the tax.

18          Q   Are you considering that to be an  
19          enhancement on the debt, or do you consider that to  
20          be a separate payment to PECO that is unrelated to  
21          the transition bonds?

22          A   Well, since ENRON -- I went on to say that  
23          ENRON is proposing to guarantee any ITC short-fall,  
24          or either pay for a grantor for that particular  
25          cost. Then it seems to me that, again, what ENRON

1 is absorbing, any of the ITC short-fall because of  
2 load decline or whatever, so effectively, again,  
3 ENRON -- I mean, PECO, in a sense, is kind of out  
4 of the ball game all together.

5 Now, ENRON is basically assuming or has  
6 the ownership of basically the ITC, and if there is  
7 any short-fall, they have the risks associated with  
8 that short-fall.

9 Q But isn't it that if there is a  
10 short-fall, the payments run to PECO, and it in  
11 effect is up to PECO to credit those or refund  
12 those, putting aside whether it is done  
13 simultaneously or the next month, to offset against  
14 customers' bills?

15 A I'm not sure if I understand the question.

16 Q Well, I am just trying to understand.

17 When you talked about this, it seemed to  
18 be the way --

19 A Well --

20 Q -- the testimony was laid out.

21 A Yes. I think this testimony again was  
22 that we were not clear, or I wasn't clear of what  
23 the ENRON guarantor arrangement was, the short-fall  
24 arrangement was.

25 We were unclear who paid for it, related

1 to that, what it actually pertained to, so I think  
2 Mr. Fastow, earlier this afternoon, clarified that,  
3 and I think what I hear now is that PECO and the  
4 SPE are one and the same for tax purposes, although  
5 effectively, the short-fall -- the short fall, any  
6 ITC short-fall actually will -- will be paid by the  
7 ENRON or the ENRON guarantor directly to the SPE to  
8 pay the bonds, and --

9 Q No.

10 A -- basically, that's the way the principle  
11 is.

12 Q No, no. I mean, that is, would you,  
13 subject to check --

14 A No.

15 Q -- check to see whether under the  
16 documents, that is the way the cash flow runs, or  
17 whether it runs separate and apart and does not act  
18 as credit enhancement for the bonds, but instead,  
19 runs directly to PECO?

20 A Yes. I think subject to check, yes.

21 Q And if so, does that change your view?

22 A No. I think in substance, it is the same.

23 Q Just going back to the other factors that  
24 you have mentioned here that you have to look at,  
25 in your direct testimony, and I guess the question

1 really is, why are you so doubtful when, in your  
2 direct testimony, it appeared, anyway, that if the  
3 four factors were met, that that was really the key  
4 items, but now you seem to be -- even if those are  
5 met, you are still doubtful that you get there?

6 A I think what I intended to say in the  
7 direct testimony was, absent those four fact or  
8 technical requirements, that's almost like a base  
9 minimum level that you have to get to, and once you  
10 get to that, then effectively you look at the  
11 economic substance of the transaction, and I was  
12 troubled by the other aspects of the transaction.

13 I think one of the things that was  
14 particularly troubling is the excess interest rate  
15 that the bonds would bear.

16 Q And why is that?

17 A Well, why would -- I think the Service  
18 would try to understand; why would PECO issue bonds  
19 at a rate that is two to three hundred basis points  
20 above market?

21 I think they would try to understand what  
22 was going on with the transaction.

23 They would try to understand what is  
24 really occurring in the economics here.

25 Q Are you aware of any other situations in

1 the market where issuers have issued debt at above  
2 market interest rates?

3 A Sure. That is typically a premium  
4 arrangement.

5 Q So it is done?

6 A Uh-huh.

7 Q And are you aware in those transactions  
8 whether they have had tax structure issues  
9 associated with those transactions?

10 A No, I am not. I think that typically,  
11 though, where someone would issue something in a  
12 premium, they would actually get the cash, so I  
13 think this situation, because it is related, I  
14 mean, if anything at all, I think that if you look  
15 at ENRON's proposal, that excess interest rate is  
16 effectively what they are making on the transaction  
17 with really no investment.

18 Q And your analysis on that point takes into  
19 account the fact that over recoveries from low  
20 growth go back to customers?

21 A Yes.

22 Q So you would agree that ENRON is not  
23 purchasing the entire stream, because that money  
24 goes back to customers?

25 A Well, they are purchasing -- I would say

1 they are purchasing the entire stream of the -- or  
2 the -- and the intangible transition property, but  
3 along with that, they agree that if there is a load  
4 growth, they will actually return that piece.

5 Q Okay. So you are not saying they are  
6 purchasing the entire stream?

7 A I am saying that they are purchasing  
8 PECO's right under the intangible transition  
9 property.

10 Q If you were to have a situation where debt  
11 was issued at an above market rate, is it plausible  
12 that the IRS would treat, in effect, part of the  
13 amount as an excess loan amount that then was  
14 deemed paid back?

15 Have you seen situations or rulings or any  
16 authority that would give you that result?

17 A Not anything directly on point to the  
18 ENRON proposal.

19 Q With respect to the attachment to your  
20 rebuttal, your rejoinder testimony, you indicate in  
21 your testimony that the Choice Plan's tax  
22 characterization is hurt, because ENRON issued a  
23 press release, and in that press release said that  
24 they had proposed to purchase the ITC/CTC revenue  
25 from PECO.

1           Do you think that that has an effect on  
2 the tax analysis, the issuance of that press  
3 release?

4           A Certainly I have dealt with other  
5 situations where the Service would take something  
6 perhaps within the 10-K or press release and try to  
7 apply that facts to a transaction and try to assert  
8 that that was reflected in the economics.

9           Q What is the governing document, if you  
10 will? I mean, the IRS comes in to look at a  
11 transaction.

12                   What governs?

13           The terms and conditions of the governing  
14 documents, or what the company may have issued in a  
15 press release?

16           A Well, I think that typically what would  
17 control it from a tax perspective is the economics.

18           I think that generally, when the taxpayers  
19 pick the form, and then they try to vary from the  
20 form, the Service will say, "No, you picked the  
21 form, so we will stick with that," but in other  
22 situations, just because of the form of the  
23 transition it is deemed to be a financing or a  
24 credit/debtor relationship, the Service would  
25 recharacterize it that in substance it was a sale.

1 Q Do you think that in most cases, when  
2 companies issue press releases, one, they have them  
3 reviewed by their tax lawyers in advance, or two,  
4 that they generally describe a transaction so that  
5 the general public can understand in concept what  
6 the deal is all about?

7 A I think it is the -- they typically  
8 describe the deal, and the tax lawyers and the tax  
9 accountants cringe when they read it.

10 Q And how much probative weight would you  
11 give -- if you had a deal that was structured in a  
12 certain fashion, how you have probative weight  
13 would you give a press release that was one issued,  
14 and issued with respect to the prior ENRON Choice  
15 Plan?

16 A Well, I don't think -- and I think the  
17 intent of my testimony, the intent was not to say  
18 one particular item would be the controlling  
19 factor.

20 It is all the factors together, and I  
21 would say that this particular press release,  
22 giving the other factors that is in the ENRON plan  
23 would have some weight.

24 Is it the one that tilts it over to where  
25 it is a sale?

1 I don't know whether it is this particular  
2 item, but I am saying, it does carry some weight, I  
3 believe.

4 I think the Service would look at this,  
5 and they would say, "Gee, that was the intent of  
6 the taxpayers."

7 Q Have you seen any of the press releases  
8 that have been issued with respect to any of the  
9 other securitization transactions?

10 A I have read some things in the paper, yes.

11 Q I just want to come back to one of items  
12 that we just -- that we talked about a minute ago,  
13 but with respect to the issue on debt or sale tax  
14 treatment, do you think it is critical that the  
15 equity participating in that transaction retain the  
16 residual interest?

17 A I think it is a factor.

18 Q And do you believe that in the ENRON  
19 Choice Plan, because over recoveries do not --  
20 basically the holder of the transition never  
21 receives more than its stated interest and  
22 principal, and any excess amount remains in the  
23 special purpose vehicle, do you consider that to be  
24 the retention of equity by the SPE?

25 A I would, although I would say that the

1 ENRON Class B certificates, as long as they own  
2 that, that effectively is that excess interest, and  
3 I think the Service would have a problem whether  
4 that represents equity, that excess interest in the  
5 bonds, the so-called interest rate above fair  
6 market value.

7 Q Do you know whether in the ENRON plan,  
8 Class B and the Class A certificates are pari  
9 passu?

10 A Mr. Fastow put that in his testimony, in  
11 his rebuttal testimony.

12 Q That they are on, in effect, the same  
13 payment priority?

14 A Yes.

15 MR. KLAUBERG: We have no further questions.

16 JUDGE RAINEY: Thank you, counsel.

17 MR. KLAUBERG: Thank you.

18 JUDGE RAINEY: Any further cross examination?

19 (No response.)

20 JUDGE RAINEY: Redirect?

21 MR. SMITH: Very brief.

22 REDIRECT EXAMINATION

23 BY MR. SMITH:

24 Q Mr. Sharpe, to what extent was your -- or  
25 any of your conclusions based on the fact that the

1 ENRON plan uses a grant or trust?

2 A The grant or trust I don't think is the  
3 important issue.

4 I think the grant or trust, having the two  
5 types of certificate, where the A certificate  
6 having the principal and interest that would be at  
7 market rate, and the B certificate, the ENRON  
8 certificate, represents the residual, what I  
9 would call the residual part of that, that is the  
10 piece that complicates the transaction.

11 Q I want you to assume, as counsel asked you  
12 to assume, that the use of grant or trust in  
13 asset-backed securities transactions is extremely  
14 common.

15 I want you to assume that as a fact.

16 Given that fact, does that change your  
17 analysis of the tax implications of the ENRON plan?

18 A No.

19 MR. SMITH: No further questions, Your Honor.

20 JUDGE RAINEY: Thank you. Any recross?

21 (No response.)

22 JUDGE RAINEY: Any redirect?

23 (No response.)

24 JUDGE RAINEY: Thank you very much. Thank  
25 you.

1 You may stand down, Mr. Sharpe.

2 (Witness excused.)

3 MR. SMITH: PECO Energy calls Howard Hiller  
4 to the stand.

5 (Discussion off the record.)

6 JUDGE RAINEY: Okay. Let's go back on the  
7 record.

8 Mr. Hiller, would you raise your right hand,  
9 please?

10 HOWARD HILLER, called as a witness, having  
11 been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 JUDGE RAINEY: Thank you. Please be seated,  
14 and give your full name for the record.

15 THE WITNESS: Howard Hiller, H-i-l-l-e-r.

16 JUDGE RAINEY: Thank you.

17 Mr. Smith.

18 (Thereupon, PECO Statement 27-E was  
19 marked for identification.)

20 MR. SMITH: Your Honor, PECO Energy  
21 previously described to the parties, yourself and  
22 the court reporter PECO Statement 27-E, the  
23 testimony of Howard Hiller regarding the ENRON  
24 Choice Plan.

25 I would like to move that into evidence

1 pending timely motions and cross examination.

2 JUDGE RAINEY: Any objections?

3 (No response.)

4 JUDGE RAINEY: Hearing none, so admitted.

5 (Thereupon, PECO Statement 27-E was admitted  
6 in evidence.)

7 MR. SMITH: We have very limited  
8 sur-rebuttal, if I may proceed.

9 JUDGE RAINEY: Please proceed.

10 - - -

11 BY MR. SMITH:

12 Q Mr. Hiller, have you examined the ENRON  
13 Plan No. 2, as we have been referring to it, the  
14 revised plan set forth in the most recent  
15 testimony?

16 A Yes, I have.

17 Q Have you evaluated the value of the Class  
18 B Securities under the ENRON Plan No. 2?

19 A Yes, I have.

20 Q And could you tell us what that value is  
21 that you calculated?

22 A The initial value that we had calculated  
23 was 1.015 billion, and relative to the revised  
24 plan, that has changed to 1.123 billion.

25 Q Could you the tell us, on a new issue --

1           thank you. I'm sorry.

2                    Could you tell us on a new issue, then --  
3 we have just been talking about whether a tax  
4 ruling will be coming for this proposal or not.

5                    In your opinion, if there is no positive  
6 tax ruling, rather, if there is a negative tax  
7 ruling on the ENRON Choice Plan 2, would that  
8 proposal make economic sense to securitize?

9                    A I testified in my original direct  
10 testimony that without a favorable tax ruling,  
11 securitization would be rendered uneconomic, and  
12 the rating agencies' in reports and publications on  
13 securitization made similar comments.

14                   MR. SMITH: Thank you very much.

15                   The witness is available for cross  
16 examination.

17                   JUDGE RAINEY: Thank you, Mr. Smith.

18                   Cross examination?

19                   MR. GALLAGHER: Yes, Your Honor.

20                   JUDGE RAINEY: Mr. Gallagher?

21                                    CROSS EXAMINATION

22                   BY MR. GALLAGHER:

23                   Q Good evening, Mr. Hiller. My name is John  
24 Gallagher, and I represent ENRON Energy Services.

25                   I have approximately nine questions that I

1 hope go very quickly, since some of my colleagues  
2 are urging me to get this over with.

3 MR. SMITH: He actually is "Dr. Hiller."

4 MR. GALLAGHER: Oh, excuse me. Dr. Hiller.

5 MR. RYAN: Not Dr. Ward.

6 BY MR. GALLAGHER:

7 Q Dr. Hiller, am I correct that for four  
8 years in your employment with Soloman Brothers, you  
9 advised utilities on issues such as capital  
10 structure, dividend policy, and debt management?

11 A That's correct.

12 Q In advising utilities in that capacity,  
13 did they provide you with the results of financial  
14 forecast models in that time period?

15 A Occasionally.

16 Q Did you ever forecast the financial  
17 results of utilities using financial models?

18 A No.

19 Q Were you provided by your utility clients  
20 with forecasted balance sheets?

21 A Occasionally.

22 Q How about income statements?

23 A Occasionally.

24 Q The same for cash flow statements?

25 A The same.

1 Q Were these forecasts important to the  
2 advice you rendered to your clients on capital  
3 structure and dividend policy?

4 MR. SMITH: I just want to object to this  
5 line of questions, Your Honor, on the grounds that  
6 it is outside of the scope of the testimony of this  
7 witness.

8 We are going back several years in his  
9 experience, and they are now trying to build their  
10 argument on why we should have given up certain  
11 discovery issues to them, but this witness didn't  
12 testify about that issue anywhere.

13 MR. GALLAGHER: Your Honor --

14 JUDGE RAINEY: Mr. Gallagher, can you draw  
15 your questions to the testimony of Mr. Hiller?

16 MR. GALLAGHER: Your Honor, maybe I will just  
17 do it this way, very, very direct questions with  
18 regards to what PECO provided you.

19 BY MR. GALLAGHER:

20 Q Did PECO provide you with financial  
21 forecasts in conjunction with your review of the  
22 Choice Plan?

23 A No, they did not.

24 Q Has PECO provided you with access to  
25 forecasts of the results of what it expects to

1           achieve under the partial settlement?

2           A   No, they have not.

3           Q   Are you familiar with the assumptions PECO  
4           used in evaluating the effect of either the Choice  
5           Plan, or the partial settlement?

6           A   Not in any great detail.

7           Q   Did you take part in any presentation by  
8           PECO to rating agencies involving either the Choice  
9           Plan or the partial settlement?

10          A   I was a participant in a rate agency  
11          presentation which dealt with securitization, of  
12          the impact of the securitization on going forward,  
13          financial statements.

14          MR. GALLAGHER:  Your Honor, I have no further  
15          questions.

16          JUDGE RAINEY:  Thank you, Mr. Gallagher.

17          Any further cross examination?

18          (No response.)

19          JUDGE RAINEY:  Redirect?

20          MR. SMITH:  No redirect, Your Honor.

21          JUDGE RAINEY:  Very good.  Thank you, Dr.

22          Hiller.  You may stand down.

23          (Witness excused.)

24          JUDGE RAINEY:  Are there any further or other  
25          witnesses that need to be heard today?

1 MR. GALLAGHER: Your Honor, I think in some  
2 discussions with both you and Judge Chestnut, we  
3 discussed putting on the record the responses of  
4 the parties to the Commission interrogatories  
5 today --

6 JUDGE RAINEY: Yes.

7 MR. GALLAGHER: -- and I would like to do  
8 that now.

9 JUDGE RAINEY: Okay. I'm sorry. We haven't  
10 adjourned yet, so that we will need you to be  
11 quiet.

12 I think that Mr. Gallagher was in the process  
13 of entering into the record his client's responses  
14 to the Commission's interrogatories.

15 MR. GALLAGHER: I'm sorry, Your Honor.

16 JUDGE RAINEY: Please proceed.

17 MR. GALLAGHER: Your Honor, this afternoon,  
18 we discussed with both you and Judge Chestnut how  
19 we were to proceed with putting the  
20 interrogatories, the Commission's responses on the  
21 record, and I believe at that time we agreed that  
22 we would submit one exhibit for the record, and I  
23 just want to understand how we should do that right  
24 now.

25 JUDGE RAINEY: Well, it should be your next

1 exhibit number.

2 MR. GALLAGHER: Fine. It will be ENRON  
3 Energy Services Power, Inc. Exhibit No. 2.

4 JUDGE RAINEY: Thank you. I don't think we  
5 need to get any objections or to make any rulings  
6 with regard to that.

7 That will just be admitted into evidence.

8 (Thereupon, ENRON Energy Services Power  
9 Exhibit 2 was admitted in evidence.)

10 JUDGE RAINEY: Are there any other parties  
11 who want to admit their responses to Commission  
12 interrogatories into the record at this time?

13 MR. BONNEY: Your Honor, I understand that  
14 PECO's had previously been admitted, but if that's  
15 incorrect -- I think we discussed it the first day.

16 I am just drawing a blank on whether that  
17 actually was put in.

18 MR. GALLAGHER: And Your Honor, also with the  
19 exhibit, we also are submitting two amended  
20 responses, PUC No. 7-1, No. 8 and No. 14.

21 (Thereupon, PUC Nos. 7-1, 8 and 14 were  
22 marked for identification.)

23 JUDGE RAINEY: Have all the parties seen  
24 that --

25 MR. GALLAGHER: Yes, Your Honor.

1 JUDGE RAINEY: -- amendment?

2 Any objections?

3 (No response.)

4 JUDGE RAINEY: Hearing none, so admitted.

5 (Thereupon, PUC Nos. 7-1, 8 and 14 were  
6 admitted in evidence.)

7 MR. SMITH: Your Honor, I'm sorry. We have  
8 not -- we are trying to figure out whether we have  
9 seen those revised answers.

10 JUDGE RAINEY: Mr. Gallagher, do you have  
11 copies?

12 MR. GALLAGHER: Yes, Your Honor. We have  
13 them now, and I would be happy to.

14 If you need more time to look at them, that  
15 would be fine.

16 They are 8 and 14.

17 MR. KLEPPINGER: Your Honor, while that's  
18 being examined --

19 JUDGE RAINEY: Yes.

20 MR. KLEPPINGER: -- PAIEUG did submit a  
21 response to one Commission interrogatory that was  
22 directed at us.

23 I don't have copies of that with me today,  
24 given that they are in Harrisburg.

25 I can file them officially on Monday or

1 Tuesday.

2 I think Judge Chestnut's ruling was by  
3 Tuesday.

4 JUDGE RAINEY: Yes. Why don't you do that?  
5 Those parties who do not have their exhibits  
6 available today for admission into the record  
7 should file those by mail by Tuesday, I think was  
8 the date that Judge Chestnut set.

9 MR. BONNEY: Your Honor if I may?

10 JUDGE RAINEY: Yes, Mr. Bonney.

11 MR. BONNEY: Thank you, Your Honor.

12 We just received the revised answers to  
13 Commission interrogatories from ENRON, numbers 1-8  
14 and 1-14.

15 I have spoken with counsel for ENRON, and  
16 since we have not had a chance to review these, we  
17 would like to have that opportunity, and reserve  
18 that objection.

19 JUDGE RAINEY: Are they interrogatory  
20 responses to the Commission?

21 MR. GALLAGHER: Yes.

22 JUDGE RAINEY: We will just admit those into  
23 the record for the Commission.

24 MR. GALLAGHER: And Your Honor, just for  
25 clarity, the record will close on Monday or --

1 JUDGE RAINEY: Well, we still have a hearing  
2 reserved for Tuesday of next -- of next week.

3 Are there any other interrogatories with  
4 regard to responses to the Commission that need to  
5 be taken up at this time before we start talking  
6 about the schedule?

7 If not, let's go off the record.

8 MR. DWORETZKY: Your Honor, while we are  
9 still on the record, I have two housekeeping items.

10 JUDGE RAINEY: Yes.

11 MR. DWORETZKY: No. 1, Mr. Bonney and I have  
12 a stipulation with respect to PECO Exhibit No. 3 --  
13 I'm sorry -- No. 6.

14 There was an additional page that is being  
15 added to that, and Mr. Bonney and I have stipulated  
16 that in the present value calculations, the present  
17 value date is 9-1-98, and these calculations were  
18 done using the end of the year convention, as  
19 previously has been described.

20 JUDGE RAINEY: Thank you. Thank you.

21 MR. DWORETZKY: And second, Your Honor, I  
22 would ask that while we are still on the record,  
23 that pending the resolution of the ruling that Your  
24 Honors made earlier, and the steps that are going  
25 to be made tomorrow and Friday, whether Mr.

1 Mitchell's portion of the binder that he has that  
2 relates to the exhibits that were identified,  
3 whether that could be placed in an envelope and  
4 sealed and maintained by the Court pending the  
5 resolution of that.

6 JUDGE RAINEY: Was that information Mr.  
7 Mitchell will need in order to respond to any  
8 questions from Mr. Kinney when he tries to make his  
9 runs?

10 Mr. Mitchell?

11 MR. DWORETZKY: Or a copy, Your Honor, any  
12 way, just so there is one copy kept with the Court  
13 under seal.

14 JUDGE RAINEY: Mr. Bonney?

15 MR. BONNEY: Your Honor, we would be happy to  
16 give you the whole notebook until next Tuesday, and  
17 we can pick it up then.

18 JUDGE RAINEY: That is fine, as long as Mr.  
19 Mitchell has materials in terms of backup, so that  
20 he could respond to any questions that Mr. Kinney  
21 has.

22 MR. MITCHELL: I have no problem.

23 JUDGE RAINEY: Thank you, Mr. Mitchell.

24 MR. DWORETZKY: Thank you very much.

25 MR. BONNEY: Your Honor, on that particular

1 item, I just wanted to note that we have set up a  
2 conference call for tomorrow morning, and I believe  
3 Mr. Kinney at least is going to be participating in  
4 that.

5 Mr. Mitchell is available along with Mr. Cohn  
6 here, to answer whatever further questions there  
7 are and try to move that along.

8 JUDGE RAINEY: Thank you. I appreciate the  
9 company's good faith effort, as well as the efforts  
10 of ENRON and NEV to resolve this matter.

11 Are there any other housekeeping items before  
12 we go off the record and talk about the schedule  
13 from here on out?

14 Okay. Let's go off the record.

15 (Discussion off the record.)

16 JUDGE RAINEY: Let's go back on the record.

17 There was a discussion that took place off  
18 the record with regard to the scheduling in this  
19 particular case.

20 As the schedule presently stands, the parties  
21 are to serve upon each other in hand by this Friday  
22 sur-rebuttal testimony on their litigation  
23 positions.

24 They are to then let Judge Chestnut and I  
25 know by twelve noon on Monday, November the 24th,



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EUGENE W. HOLBERT  
GLENDA S. TRAVITZ  
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