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BEFORE

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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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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1 JUDGE RAINEY: Good morning. My name is
2 Charles Rainey, and along with me is Marlane
3 Chestnut, and we are the Administrative Law Judges
4 who have been assigned to this proceeding.

5 This is the proceeding of the Pennsylvania
6 Public Utility Commission versus PECO Energy Company
7 at Docket Numbers R-00973953, R-00973953C0001 through
8 C0007 and also the petition of ENRON Energy Services
9 Power, Incorporated at Docket Number P-00971265.

10 I would like the parties present to
11 identify themselves for the record.

12 We'll start with you, Mr. Shields.

13 MR. SHIELDS: Certainly, Your Honor. Charles
14 Daniel Shields, and later on today it will be Kenneth
15 Mickens, prosecutors for the Commission's Office of
16 Trial Staff. Thank you.

17 MR. STEINMETZ: Steven Steinmetz for the
18 Office of Consumer Advocate.

19 MR. RYAN: Bernard Ryan for the Office of
20 Small Business Advocate.

21 MR. BONNEY: Paul Bonney for PECO Energy, and
22 with me today are Noel Trask and Vilna Gaston.

23 MR. KLEPPINGER: David Kleppinger from the law
24 firm of McNeese, Wallace and Nurick representing
25 Philadelphia Area Industrial Energy Users Group.

1 MR. WALSH: Vincent J. Walsh, Jr., for SEPTA.

2 MR. DWORETZKY: Joe Dworetzky from Hangley
3 Aronchick Segal and Pudlin for New Energy Ventures.

4 MR. DOLL: Craig Doll representing Conektiv
5 Energy.

6 MR. DESALLE: David DeSalle representing GPU
7 Energy.

8 MS. HELPERT: Lisa Helpert representing PP&L,
9 Inc.

10 MR. NORDSTROM: Paul Nordstrom representing
11 Allegheny Power.

12 MR. HERSHEY: Steven Hershey representing CEPA,
13 TAG, ACORN, and John W. Long, Jr..

14 MR. MILLER: Your Honor, the firm of Wolf,
15 Block, Schorr, Solis-Cohen by Dan Clearfield and Alan
16 Kohler and the law firm of LeBoeuf, Lamb, Green &
17 MacRae by John Klauberg, John Gallagher, Zsuzsanna
18 Benedek and Bruce Miller. I'm Bruce Miller.

19 JUDGE RAINEY: Have all parties identified
20 themselves for the record?

21 (No audible response.)

22 JUDGE RAINEY: Is there any particular lineup
23 with regard to either witnesses or parties as far as
24 cross-examination for today, or should we just follow
25 the matrix that was given out prior to yesterday's

1 hearing?

2 (No audible response.)

3 JUDGE RAINEY: Hearing nothing, let's start
4 with Mr. Slater.

5 KENNETH J. SLATER, called as a witness, being
6 duly sworn, testified as follows:

7 JUDGE RAINEY: Please be seated. Give your
8 full name for the record, spelling your last name,
9 and also give your business address.

10 THE WITNESS: Kenneth J. Slater, S-L-A-T-E-R.
11 3370 Habersham Road, Atlanta, Georgia 30305.

12 JUDGE RAINEY: Yesterday, in order to save
13 time, the parties agreed to stipulate to the
14 authentication of testimony, prefiled testimony, into
15 the record.

16 Are the parties still in agreement that we
17 should do that today?

18 (No audible response.)

19 JUDGE RAINEY: Hearing nothing, let's do that.
20 Please proceed, Counsel.

21 MR. MILLER: Your Honor, Mr. Slater is offering
22 ENRON Statement Number 4 containing four exhibits,
23 KJS-1 through KJS-4, and ENRON Statement Number 4-R,
24 containing one exhibit, KJS-4R. I would like to at
25 this time move Mr. Slater's statements into evidence.

1 JUDGE RAINEY: Any objections?

2 (No audible response.)

3 JUDGE RAINEY: Hearing none, so admitted.

4 (ENRON Statement 4 and ENRON Statement 4-R
5 were marked and admitted.)

6 MR. MILLER: Mr. Slater is available for
7 cross-examination.

8 JUDGE RAINEY: Cross-examination. Mr. Bonney.

9 MR. BONNEY: Thank you, Your Honor.

10 **CROSS-EXAMINATION**

11 BY MR. BONNEY:

12 Q. Good morning, Mr. Slater.

13 A. Good morning.

14 Q. I'm Paul Bonney, counsel for PECO Energy.

15 You were not involved in the preparation
16 of the October 7th ENRON Choice Plan; is that
17 correct?

18 A. No, I was not.

19 Q. In fact, you were retained after that
20 document was filed on October 7th. Is that true?

21 A. Yes.

22 Q. Am I correct that one of the purposes of
23 your testimony is to provide estimates of the market
24 price for retail generation for the retail customers
25 of PECO? I'm referring --

1 A. To the point, it was to examine the
2 generation credits put forward by PECO and by ENRON
3 to see if, in fact, they would allow competition.

4 Q. I was quoting from your testimony at Page
5 4, Lines 3 to 4.

6 JUDGE RAINEY: Would you identify the
7 statement, Mr. Bonney?

8 MR. BONNEY: I'm sorry. Yes. Thank you, Your
9 Honor.

10 BY MR. BONNEY:

11 Q. This is your direct testimony, Statement
12 Number 4.

13 A. In order to see whether they're
14 competitive or would allow competition, you do have
15 to have an estimate of what the price might be and
16 then look at the generation caps to see if you could
17 compete with them.

18 Q. You performed no study, analysis, or
19 estimate of wholesale or retail prices or avoided
20 costs within PJM for purposes of this case; is that
21 correct?

22 A. That's correct.

23 Q. You're an expert on PROMOD. Is that true?

24 A. That's correct.

25 Q. In fact, you're one of the leading experts

1 in the country; is that correct?

2 A. I basically designed and produced the
3 first versions of PROMOD.

4 Q. Would you please briefly explain what
5 PROMOD is and what it does?

6 A. PROMOD is a probabilistic production
7 model. It models each individual generator in the
8 system that you're endeavoring to model and models
9 the load that has to be served.

10 The particular feature about PROMOD when
11 it was introduced was the way that it treated the
12 biggest problem in doing such modeling, which was the
13 random forced outages of generating units. It
14 treated those random forced outages in a
15 probabilistic manner to take account of all
16 possibilities of units being in or out or de-rated.

17 Q. Is PROMOD used within PJM, to your
18 knowledge?

19 A. I presume it still is. I know I spent
20 many long weekends down at the control center getting
21 the first multi-area version of PROMOD working for
22 the PJM interconnection.

23 Q. Do you yourself regularly conduct PROMOD
24 runs?

25 A. Yes, quite regularly.

1 Q. You've previously testified in other
2 jurisdictions and presented the results of PROMOD
3 runs in that testimony; is that true?

4 A. That's correct.

5 Q. For what purposes did you perform and
6 present those PROMOD runs?

7 A. In other places?

8 Q. Yes.

9 A. For many purposes. I've presented them
10 for replacement power cost damages when units have
11 been unavailable and owners have been damaged by that
12 effect. I've presented them for avoided costs, quite
13 often for avoided costs.

14 Let's see. What else? I've prepared them
15 for other litigation, again, on the effects of one
16 thing or another happening on the system, like a
17 merger or what have you. I've presented the results
18 of runs for reliability, for determining optimal or
19 suitable reserve margins for systems, that type of
20 thing.

21 Q. Is it fair to say that, in your opinion,
22 use of PROMOD or other computer analysis is an
23 integral part of determining avoided costs or
24 expected market prices?

25 A. It's part of the answer. Using a model

1 like that, one can study how the system can dispatch.
2 You can make certain assumptions about energy prices
3 on that system, how they're going to be determined,
4 and you can get results out of PROMOD to indicate
5 energy prices. But you can't get things like
6 capacity pricing out of PROMOD. It's not a program
7 built for that purpose.

8 Q. You haven't performed any analysis of PJM
9 market prices using PROMOD as far as your work for
10 ENRON in this case, have you?

11 A. No, I haven't. The point about doing
12 something like that is it takes quite a long time to
13 get your data set up. There wasn't any time like
14 that in this case.

15 Q. Let's turn to your Exhibit KJS-4, which is
16 attached to your direct testimony. As I understand
17 it, the basis and source for each of the figures
18 presented on this exhibit is your experience working
19 with independent power producers; is that correct?

20 A. That's correct.

21 Q. When asked in discovery to produce
22 documents to support the basis and sources of these
23 figures, you produced none; is that correct?

24 A. That's correct. I can't very well produce
25 just handwritten notes I've taken at meetings, but

1 that would be the effect of just doing that. These
2 are numbers that I've discussed often enough in the
3 last nine to 12 months with my clients, numbers very
4 similar to these.

5 Q. What source did you rely upon for your
6 selection of the five-percent gross receipts tax on
7 Exhibit KJS-4?

8 A. I asked and was told five percent. I
9 asked counsel and was told by one counsel that it was
10 five percent, so I used five percent. Apparently, I
11 was wrong and the answer is 4.4 percent, which
12 accounts for Exhibit 4-R in my rebuttal testimony.

13 Q. In that exhibit you've revised it to
14 reflect the 4.4 percent?

15 A. Yes.

16 Q. Now, at the bottom part of this exhibit,
17 am I correct that you have -- In the entire exhibit,
18 you've calculated the cost of a combined cycle unit
19 in 1999, and then you escalate that cost by 1.3
20 percent a year; is that correct?

21 A. Yes.

22 Q. In your calculations you used a 16-percent
23 fixed charge rate; is that correct?

24 A. Yes. I've used a 16-percent fixed charge
25 rate because that appears to be the sort of center of

1 the range that my independent power producer clients
2 want to see as the return on an investment like this,
3 an investment without a guarantee of revenue.

4 Q. Can I draw your attention to Page 4 of
5 your rebuttal testimony, please. Here in the middle
6 of the page you indicate that the 16-percent fixed
7 charge rate that you used includes three factors--
8 fixed O & M, financing costs, and depreciation. Do
9 you see that?

10 A. That's correct.

11 Q. What rate did you employ for fixed O & M?

12 A. The fixed O & M seems to be coming in
13 today somewhere around between one and a half and two
14 dollars per megawatt hour. If you translate that
15 back, it has an impact on that 16 percent. I'd have
16 to go away and calculate it if you want what that
17 eventually gives. But the numbers are coming in
18 today around about that number.

19 Q. Did you use any particular debt and equity
20 rates in determining that cost?

21 A. No. I've simply asked my clients, How
22 much return are you going to get to cover your fixed
23 O & M, including property taxes, that type of thing,
24 plus repay your debt and give yourself a profit on
25 your equity. But what they're assuming is something

1 around down, for things like this, 10- to 20-percent
2 equity.

3 Q. What rate did you use for the financing
4 costs?

5 A. I haven't used any particular rate. I've
6 taken notice of the clients as to what return they
7 expect.

8 Q. Likewise for depreciation, no particular
9 rate?

10 A. That's right. They want to depreciate the
11 plant over -- Generally speaking, they want to get
12 rid of the debt part of their investment in something
13 like about 20 years. So they're wanting to recover
14 enough to pay that off.

15 It's not depreciation in the strict sense
16 that we apply straight-line depreciation in normal
17 regulatory accounting, but it is a return that allows
18 them to get rid of their debt in about the 20 years.

19 Q. Where are the IPP clients that you're
20 referring to located? More particularly, where are
21 the plants that they're considering building or have
22 built located?

23 A. A lot of plants in New York state, some in
24 New England, California, Ontario, in Georgia. Where
25 else are we working? Also out of the country.

1 Q. Are all of those projects combined cycle
2 units, or are they different types of units?

3 A. A lot of them are combined cycle. Some of
4 them are hydro. Some of them are -- One, in
5 particular, is rather interesting, combustion turbine
6 with heat recovery, which is an interesting unit.
7 They're different types, but the majority are
8 combined cycle.

9 Q. Now, turning to the gas prices or price
10 that you've used here for fuel cost, 274, am I
11 correct that that information is a product of your
12 experience with working with IPPs as well?

13 A. Yes. I took those prices from a fuel
14 forecast that we had in the late summer. That fuel
15 forecast was for a base price of 274 cents. Well, a
16 little bit less than 274, but with a rate of
17 escalation of almost one percent, almost
18 indistinguishable from one percent per year in
19 nominal terms. In other words, declining real
20 dollars.

21 This was supposedly based upon forward
22 market curves. I used that particular one because we
23 had had earlier ones that were similar except for the
24 base price of the gas. The escalation rates are very
25 similar in those forward market prices.

1 We had some more the other day for a new
2 study that we're doing. Again, we're looking at
3 similar sorts of prices with similar escalation.

4 Q. When you say we, are you referring to you
5 and your IPP clients or your firm?

6 A. And other consultants working for the IPP
7 clients.

8 Q. Is there any particular source that you
9 can cite that is the basis for this figure; for
10 example, a cite, a quote, from the forward fuel
11 market?

12 A. No. That's where they come from. They're
13 gas and oil prices that we have been working with.
14 For the IPPs to make considerable investments, they
15 have all come from forward market prices.

16 Q. But there's no document that --

17 A. No, I have no documents for them. If I
18 did, I would have given them to you a couple of weeks
19 ago.

20 Q. Thank you. What time period do the
21 forward markets that you're referring to cover?

22 A. They're covering somewhere out to about
23 2006, the ones that these people have been getting.

24 Q. Do you have a reference to the particular
25 forward fuel market that they're talking about?

1 A. No, I don't. I've gone to look myself at
2 figures and found them only going out a couple of
3 years.

4 Q. As have I. I'm not aware of any that go
5 to 2006.

6 A. These are quotes that people must be
7 getting in the marketplace. This is what they told
8 me. They've deliberately gone and asked for quotes
9 for a longer period.

10 Q. Isn't it true that in the forward fuel
11 markets there's not much trading in volume past five
12 months out?

13 A. I don't know.

14 Q. So you don't participate at all in the
15 forward --

16 A. No, I don't.

17 Q. At Page 7 of your rebuttal testimony, Line
18 5, you state that the price of oil has been
19 essentially flat in nominal dollar terms. You don't
20 use any oil prices in the figures that you've
21 calculated on Exhibit KJS-4, do you?

22 A. No, I don't, because I always like to see
23 -- When I go and look at a forecast, I like to see
24 all the fuels there. I like to see what people are
25 assuming for oil, gas and, on occasions, coal just to

1 see that it all makes sense. Therefore, I do like to
2 see the oil that I'm seeing in gas forecasts.

3 Q. As far as the escalation of the gas price,
4 I think you mentioned one percent. What's the basis
5 for that? Is it, again, discussions with IPPs, or is
6 there any independent source that you can cite for
7 that?

8 A. These were in those forward market prices,
9 an escalation of about one percent per year. The oil
10 has been showing a slight drop and then a rise over
11 that time period up to around about the same level
12 as, say, '99. Up to about 2006 they're almost level
13 with just sort of a little dish in between.

14 Q. Is there a particular document that you're
15 referring to when you describe that pattern?

16 A. I'm just describing the forecasts that
17 I've been given to work with recently.

18 Q. And you don't know the source of those,
19 other than other people that you've talked to have
20 talked to somebody else in some market?

21 A. They've been the product of a Big Eight
22 accounting and consulting firm out of the Houston
23 office where they do this work.

24 Q. At Page 7, Lines 3 to 4, of your
25 testimony, you referenced DRI, EIA fuel price

1 forecasts. Is it your opinion that those forecasts
2 are not credible?

3 A. On page what?

4 Q. Page 7 up at the top. I believe it's
5 Lines 3 to 4. I'm sorry. Of your rebuttal
6 testimony.

7 A. Yes.

8 Q. Would you like me to repeat the question?

9 A. No. I've got it here. Do I not think
10 that they're credible?

11 Q. Yes.

12 A. I've looked at a number of these in the
13 past, DRI forecasts and EIA forecasts. I don't see
14 quite often these forecasts ever coming true. I've
15 seen quite a lot of EIA forecasts over the years, and
16 I've never seen one come anywhere near true,
17 particularly when you get out about 10 years.

18 There were forecasts back in the -- I was
19 looking at some several weeks ago when I was doing
20 some testimony for Georgia Power. I was looking at
21 forecasts made in 1977, '78, '80, '81 by EIA. They
22 show, as a lot of other forecasts did in that time
23 frame, oil prices that were huge. But we never got
24 anywhere near them, \$40 and on up, dollar a barrel
25 oil, which gave rise to some of the planning that

1 happened in those days.

2 But no, I haven't seen any come true. I
3 don't have a lot of confidence in the longer term
4 view of these markets. Something always seems to
5 happen to get that price down. Whether it's
6 improvements in the recovery of the fuels, whether
7 it's new fields coming on, something always seems to
8 happen.

9 Q. Now turning to your 1.3-percent escalation
10 rate. I want to also refer you to Page 6 of your
11 rebuttal testimony. There you state that the 1.3-
12 percent rate reflects three components--capital
13 costs, O & M costs, and gas fuel costs. Do all three
14 of those components have the same relative impact on
15 the overall cost of a combined cycle unit?

16 A. The energy from the combined cycle unit,
17 the biggest component is the fuel.

18 Q. Now, for capital costs you assume that the
19 nominal dollar capital increase in the future will be
20 balanced by performance improvements. What specific
21 analysis have you performed to support that opinion,
22 if any?

23 A. None; just looking at what has been
24 happening and what propositions are coming forward on
25 new machines that sort of haven't been run yet. But

1 there was a design out there that is going to promise
2 the same sort of economies that we've got today
3 without any increase. In other words, nominally flat
4 coming out of the new developments. If the price
5 goes up a little bit, then the efficiency is
6 improved. So it doesn't seem to be that the
7 technology is rising in cost at all.

8 Q. You also state that you assume that the
9 O & M costs will escalate at the general rate of
10 inflation. What specific analysis have you performed
11 to support your conclusion here?

12 A. I've just been watching O & M costs for a
13 long, long time, and they seem to do that. They seem
14 to go up roughly with the general escalation.

15 Q. What is the general rate of inflation
16 today?

17 A. What I consider it is is about three
18 percent in fairly rough times. It might be 2.6,
19 maybe 2.7. But three is not a bad number to use.

20 Q. You didn't generate the CTC, ITC, or
21 generation credit schedules set forth in the revised
22 ENRON Choice Plan, did you?

23 A. No, I had nothing to do with that.

24 Q. At Page 8 of your rebuttal testimony, you
25 reference Mr. Mitnick's testimony.

1 A. Yes.

2 Q. Do you agree with, disagree with, or have
3 no opinion regarding the generation credits that
4 Mr. Mitnick proposed be adopted in this proceeding?

5 A. I have no opinion about them.

6 Q. If you would please look at Page 11 of
7 your rebuttal testimony. I don't have a line number
8 here. I'm looking, in particular, at Lines 15 and
9 16. Is it your understanding that in his analysis
10 Dr. Hieronymus assumed that the present retirement
11 schedule for PECO's generating units would remain
12 unchanged?

13 A. That's what I gathered from reading his
14 material.

15 Q. Anything in particular that you looked at
16 or just a general review of his testimony?

17 A. Just a general review of the testimony.
18 That's what I recalled.

19 Q. Please turn over to Page 12, Lines 9 to
20 15, of your rebuttal. Here you state that the fixed
21 costs associated with excess capacity in PJM are
22 being charged to captive ratepayers. That is retail
23 customers, I assume.

24 A. Yes.

25 Q. Are you aware that the Pennsylvania

1 Commission has made substantial excess capacity
2 disallowances in PECO and PP&L rate cases?

3 A. I would expect that they have, just the
4 same as such things are being done everywhere else.
5 The rest of the capacity, of course, is all
6 supported.

7 Q. Would you turn to Page 16 now, please. At
8 the bottom half of this page, in particular, the last
9 sentence, you say, "But if PECO could achieve a
10 result similar to that achieved by the New England
11 Electric System in its divestiture, PECO's stranded
12 costs would undoubtedly be far less than it is
13 forecasting." Have you performed any analysis of
14 PECO's stranded costs if PECO could achieve the
15 result that New England Electric System did?

16 A. No. But I have performed a lot of
17 analyses on the New England part.

18 You asked me earlier if I had done any
19 PROMOD runs last night. I did three runs, while I
20 slept, on my laptop on the New England system. We're
21 continuing to study that. The result that was
22 achieved by New England Electric was a magnificent
23 return on that price for their generation assets that
24 they sold.

25 It would indicate that whoever bought U.S.

1 Gen. was assuming market prices considerably higher
2 than would have been generated with the type of
3 analysis that Dr. Hieronymus did.

4 Q. The NEES units that were sold were all
5 fossil and hydro units; is that true?

6 A. Fossil and hydro and a pump storage plant.

7 Q. Do you know how PECO's capacity breaks
8 down by fuel type?

9 A. Yes. There's a lot of nuclear capacity on
10 the system, but there is some fossil. But the
11 assumption in the New England pool, if you look at
12 those NEES assets, they would have been assuming
13 market prices which would have had a significant
14 capacity component to them.

15 If PJM generates similar market prices
16 than was driving the U.S. Gen. bid in New England,
17 then all of the plant, nukes included, would benefit
18 from that higher market price.

19 Q. Do you know what the implicit value
20 assigned to PECO's fossil and hydro facilities under
21 the partial settlement in this proceeding is?

22 A. I couldn't find it. I looked for that,
23 and I couldn't find it.

24 Q. I want to refer you to your answer to PECO
25 Interrogatory 16-10. I have a copy of it here if I

1 could share it with you.

2 A. Yes.

3 Q. I just want to ask you, Do you agree that
4 during the term of the Power Purchase Agreement as
5 proposed by ENRON that PECO is required to have
6 available to it at all times a quantity of energy and
7 capacity sufficient to supply default service
8 customers and will not be able to sell such energy
9 and/or capacity to other buyers on a firm basis?

10 A. Yes.

11 MR. BONNEY: That's all I have, Your Honor.
12 Thank you.

13 JUDGE RAINEY: Any other cross-examination?

14 (No audible response.)

15 JUDGE RAINEY: Redirect.

16 MR. MILLER: May I have a brief moment with
17 the witness, Your Honor?

18 JUDGE RAINEY: Yes, you may.

19 (Pause)

20 JUDGE RAINEY: Mr. Miller.

21 MR. MILLER: Thank you, Your Honor. No
22 redirect.

23 JUDGE RAINEY: Thank you. You may stand down.
24 Thank you, Mr. Slater.

25 Mr. Oliver. Is Mr. Oliver the next one up?

1 Is Mr. Oliver here?

2 MR. MILLER: He is here, Your Honor.

3 MR. CLEARFIELD: He must have stepped out for
4 a minute.

5 JUDGE CHESTNUT: He ran away.

6 MR. MILLER: Dr. Bohi is here.

7 JUDGE RAINEY: Okay. Do you want to go with
8 Dr. Bohi?

9 JUDGE CHESTNUT: Should we go in order,
10 though, if he's just out --

11 JUDGE RAINEY: Does it matter?

12 MR. MILLER: It doesn't matter to us.

13 JUDGE RAINEY: All right. Dr. Bohi.

14 Dr. Bohi, would you raise your right hand.

15 DOUGLAS R. BOHI, called as a witness, being
16 duly sworn, testified as follows:

17 JUDGE RAINEY: Thank you. Please be seated.
18 Give your full name, spelling your last name, and
19 also give your business address for the record.

20 THE WITNESS: My name is Douglas R. Bohi,
21 B-O-H-I. My address is 1001 Pennsylvania Avenue,
22 Washington, D.C.

23 JUDGE RAINEY: Thank you.

24 MR. MILLER: For the record, Your Honor,
25 Dr. Bohi is offering ENRON Statement Numbers 3 and

1 3-R. There are no exhibits. Your Honor, may we move
2 Dr. Bohi's statements into evidence, please.

3 JUDGE RAINEY: Any objections?

4 (No audible response.)

5 JUDGE RAINEY: Hearing none, so admitted.

6 (ENRON Statement 3 and ENRON Statement 3-R
7 were marked and admitted.)

8 MR. MILLER: Dr. Bohi is available for cross.

9 JUDGE RAINEY: Cross-examination. Mr. Bonney.

10 MR. BONNEY: Thank you, Your Honor.

11 **CROSS-EXAMINATION**

12 BY MR. BONNEY:

13 Q. Good morning, Dr. Bohi. Paul Bonney,
14 counsel for PECO Energy.

15 You were not involved in the preparation
16 of the October 7th ENRON petition; is that correct?

17 A. That's correct.

18 Q. In fact, you were retained after that was
19 filed; is that true?

20 A. That's correct.

21 Q. If you would look at Page 8 of your direct
22 testimony for a moment, please.

23 A. Yes.

24 Q. Here you state that PECO's long-run
25 marginal cost of generation exceeds the generation

1 caps in the partial settlement. Is that a fair
2 characterization of your testimony?

3 A. That's a fair characterization.

4 Q. Have you performed any studies to support
5 that conclusion?

6 A. Just logic.

7 Q. Please turn to Page 7, Lines 11 to 13.
8 There you state that for short periods of time the
9 market price for energy and capacity may be above or
10 below long-run marginal cost because of temporary
11 shortages or surpluses of capacity. Do you see that?

12 A. Yes.

13 Q. By using the term short term, you mean the
14 length of time required to install new generating
15 capacity; is that correct?

16 A. No, I do not.

17 Q. Do you mean the length of time should be
18 no longer than that required to install new capacity?

19 A. Short term could be minutes, hours, days,
20 weeks. But it's less than the time required to
21 obtain capacity.

22 Q. Do you have a copy of your answer to
23 PECO's Interrogatory 18-1?

24 A. I believe so. 18-1?

25 Q. Yes.

1 A. Yes.

2 Q. In Subpart A you were asked to provide
3 your definition of the term short period and
4 temporary as you've used it on Page 7. Am I correct
5 that you answered that short period and temporary
6 refer to the length of time required before a
7 competitor is able to increase the amount of capacity
8 available to serve the market; the length of time
9 should be no longer than that required to install new
10 capacity?

11 A. This is, obviously, a mistake. It should
12 say less than required to install new capacity.

13 JUDGE RAINEY: I'm sorry. You'll have to keep
14 your voice up.

15 A. What this was meant to say was the length
16 of time less than that required to install new
17 capacity.

18 BY MR. BONNEY:

19 Q. I think it does say should be no longer
20 than, so I think that's consistent with what you're
21 saying.

22 Have you prepared an analysis of the
23 supply/demand hours for energy in PECO's service
24 territory or in PJM?

25 A. No, I have not.

1 Q. Am I correct that you've performed no
2 specific analysis regarding elasticities of demand as
3 it relates to PECO's sales levels in this case?

4 A. That's correct.

5 Q. Would you please look at Page 15 of your
6 direct testimony, in particular, Lines 6 to 8. Have
7 you performed any analysis of the magnitude of the
8 efficiencies that you expect and that you're
9 referring to here?

10 A. I've thought considerably about this
11 issue, yes. It depends on what you mean by an
12 analysis.

13 Q. Have you quantified those efficiencies?

14 A. In rough terms, I have thought about that.
15 I have not run a econometric model, if that's what
16 you mean.

17 Q. Please turn to Page 17 of your direct
18 testimony. At Lines 4 to 5, you say that the
19 rider-of-last-resort customer will migrate to
20 entities that can offer generation services at a
21 level which is below the generation credit. Do you
22 see that?

23 A. Yes, I do.

24 Q. So, then, does it follow that under the
25 ENRON Choice Plan default customers that stay with

1 the default provider of last resort service will be
2 paying prices in excess of prices available in the
3 competitive market?

4 A. That depends upon the relationship between
5 the price in the market and the generation credit.

6 Q. And if that price is the same, will
7 customers migrate because of a price difference?

8 A. If the price that they're paying is the
9 same as the market price?

10 Q. Yes.

11 A. Then there's no reason for them to
12 migrate.

13 Q. So it follows, then, because you're saying
14 that customers will migrate, that your testimony is
15 that you expect that there will be a price
16 difference?

17 A. I would have to read the context a little
18 more here in which that statement is read.

19 Q. Please do.

20 (Pause)

21 A. I've read it now. Please restate your
22 question.

23 Q. Under the ENRON Choice Plan, default
24 customers that stay with the default provider of last
25 resort service will be paying prices in excess of the

1 prices available in the competitive market, in your
2 opinion?

3 A. It's possible.

4 Q. If that's not the case, they won't
5 migrate, is that true, because of price?

6 A. It depends on how much the price
7 difference is. There's always a reluctance to
8 migrate.

9 Q. In your direct and in your rebuttal
10 testimony, you argue that under the partial
11 settlement PECO has an incentive to retain provider-
12 of-last-resort customers and that under the ENRON
13 plan ENRON has no such incentive.

14 A. That's correct.

15 Q. Your reasoning is that ENRON will buy
16 power from PECO and resell it to provider-of-last-
17 resort customers at the same price?

18 A. That's correct.

19 Q. Under the partial settlement, in your
20 view, is it correct that the PECO distribution
21 company will buy power from the market and sell it to
22 provider-of-last-resort customers at lowered capped
23 prices, at a loss, in other words?

24 A. I don't expect them to sell at a loss, no.

25 Q. Is that because you expect the market

1 prices to be below the caps?

2 A. They could be buying from their own
3 generation and not selling at a loss.

4 Q. Is there a requirement in the settlement
5 that PECO buy from its own generation?

6 A. Not that I'm aware of.

7 Q. The settlement says that PECO Distribution
8 Company would buy power from the market; isn't that
9 correct?

10 A. That's correct.

11 Q. Is it your opinion that PECO's generation
12 company would sell to the PECO Distribution Company
13 at a loss under that scenario?

14 A. Not necessarily, but we're talking about a
15 situation where the profits and losses of these
16 separate entities are not necessarily the relevant
17 measure of profit and loss but, rather, the entire
18 holding company. Revenues could be received by
19 another part of the company that could compensate for
20 generation.

21 Q. But under the mechanics of the partial
22 settlement, isn't it correct that the PECO
23 Distribution Company has to buy at market, whether
24 that's from PECO Generation Company or from some
25 other supplier, for example, ENRON?

1 A. Not necessarily, because there's a
2 situation here where it's possible that the market
3 will not develop in the sense of a competitive
4 market, in which case the Distribution Company may be
5 left with only one alternative, and that's the
6 monopoly provider that exists now. If that's the
7 only alternative, then the requirement that they buy
8 at the market is not very meaningful.

9 Q. Would the PECO Distribution Company be
10 buying in the retail market or the wholesale market?

11 A. Excuse me.

12 Q. Would the PECO Distribution Company be
13 buying in the retail market or the wholesale market?

14 A. If you define wholesale to be sales for
15 resale, that's the wholesale market.

16 Q. Is it your opinion that there's not a
17 competitive wholesale market that exists today?

18 A. No, I don't.

19 Q. Do you believe there's a monopoly market
20 for wholesale today?

21 A. I believe it's a distorted market in the
22 sense that you still have bundled service with
23 captive customers paying for the capital costs of
24 most of the utilities, most of the capital of the
25 utilities that trade in that market, so that what

1 trading does occur at the wholesale level is a
2 relatively small share of total power that's produced
3 by the members of PJM.

4 Q. Do you know how many members of PJM there
5 are?

6 A. Not exactly.

7 Q. Approximately?

8 A. Six, eight.

9 Q. Would you agree, subject to check, that
10 there are 76 members?

11 A. Yes, I would. By that I meant major
12 utilities.

13 Q. How do you define major utilities?

14 A. Traditional integrated utilities serving
15 captive customers.

16 JUDGE RAINEY: I'm sorry, Dr. Bohi. You'll
17 have to keep your voice up.

18 A. Traditional integrated utilities serving
19 captive customers.

20 BY MR. BONNEY:

21 Q. Are you including only those utilities
22 that are located within the PJM territory within that
23 six to eight, or are you including utilities --

24 A. You asked for members, so I was responding
25 to that.

1 Q. Please turn to Page 11, Line 15, of your
2 rebuttal.

3 A. I'm sorry. Which page?

4 Q. Page 11 of your rebuttal. Line 15, I
5 believe it is. You cite a 14.5-percent gas price
6 figure there. Do you see that?

7 A. Yes, I do.

8 Q. How did you calculate that?

9 A. I calculated that as the percentage
10 difference, percentage increase from 2000 to 2020 in
11 the wellhead price.

12 Q. What calculation did you do? Did you take
13 the 2000 year projection set forth in the EIA
14 forecast and compare it to the 2010 forecast for the
15 wellhead price?

16 A. And then divided by the 2000, yes.

17 Q. Is that an indication of real growth?

18 A. Yes. The price forecasts are in real
19 terms, so it would be change. It's not a growth rate
20 in the sense of an annual change.

21 Q. Now, the 58-percent figure that you
22 calculate two lines later, that's a nominal
23 percentage; correct? In other words, it includes
24 both real growth and inflation.

25 A. That is the number used by Dr. Hieronymus.

1 You'll have to ask him what it includes.

2 Q. So you're not sure whether it's real or
3 nominal?

4 A. I would expect him to focus on real terms.
5 It's silly to try to forecast inflation. So, if I
6 were to guess, I would say it would be a real
7 forecast.

8 Q. But you're guessing?

9 A. That's right.

10 Q. Please turn to Page 5 of your rebuttal.
11 At Lines 11 to 16, you discuss why existing market
12 prices are not competitive market prices in your
13 opinion.

14 A. Yes.

15 Q. In particular, at Line 13 you use the term
16 "until the day arrives," and then you continue. Do
17 you see that?

18 A. Yes.

19 Q. When do you expect that day to arrive?

20 A. Well, I imagine it will vary by state and
21 region of the country.

22 Q. How about for Pennsylvania?

23 A. I have no specific estimate of that date.

24 Q. It might be 2003?

25 A. It could be, or it could be much earlier.

1 Q. But you don't have a specific date --

2 A. No, I do not.

3 Q. -- in mind?

4 A. No.

5 Q. Are you saying here that as long as
6 utilities in surrounding states that sell into the
7 PJM area have not moved to retail competition that
8 that day has not yet arrived and that the market
9 price will be depressed?

10 A. No, I do not say that.

11 Q. But would you agree with that statement?

12 A. Not necessarily, no.

13 Q. And why is that?

14 A. It's a vague statement about what's
15 happening in areas neighboring the PECO territory. A
16 lot of uncertainty, openness in that question.

17 Q. In the wholesale market that serves the
18 PECO territory, how broad geographically is that? In
19 other words, from how far do sellers sell? Is it
20 just generation plants located within the PECO
21 territory, or are sales made from units outside of
22 the territory?

23 A. By territory, do you mean the retail
24 territory?

25 Q. Yes. Thank you.

1 A. Yes, I would say it was from outside of
2 that territory.

3 Q. Would you agree that there are a number of
4 firms that participate in that wholesale market that
5 have not yet unbundled their services?

6 A. Yes.

7 Q. And probably won't unbundle their services
8 for a few years?

9 A. That's possible.

10 Q. In your view, actual transaction prices in
11 PJM are irrelevant to the question of determining the
12 appropriate generation cap or credit in this
13 proceeding. Is that a fair characterization of your
14 testimony?

15 A. They're a poor choice among alternatives.

16 Q. Have you reviewed the testimony of
17 Witnesses Hull and Douglas that were sponsored by,
18 among other parties, ENRON in this proceeding?

19 A. No, I have not.

20 Q. Please look at Page 7 of your rebuttal.

21 Q. Is it your testimony here that the
22 customer participation credit that this Commission
23 imposed in the Pennsylvania pilots pushes generation
24 prices downward?

25 A. From the point of view of the customer,

1 yes. .

2 Q. Do you know whether ENRON argued against
3 or in favor of those credits in the pilot?

4 A. No, I do not.

5 Q. Based on the effect that it has here, the
6 downward pressure on prices, would you expect that
7 they would or would you recommend that they argue in
8 favor or against such credits?

9 A. Would you please repeat the question.

10 MR. BONNEY: Could I have it read back.

11 (Indicated question read by court reporter.)

12 A. It's a very vague question. I could not
13 base a recommendation on the premise of the question.

14 BY MR. BONNEY:

15 Q. At Line 18 you state that "prices of
16 electricity sold into the pilot can actually be below
17 the cost of energy." To your knowledge, has ENRON
18 sold electricity into the pilot at prices below its
19 cost of energy?

20 A. This is not a statement from the
21 perspective of the seller. This is a statement that
22 pertains to the perspective of the buyer.

23 Q. But there has to be a seller to make the
24 sale; correct?

25 A. Well, yes. But the sale price could be

1 higher than the price of energy but still appear to
2 be lower than the price of energy to the consumer.

3 Q. So one price -- Oh, because of the
4 participation credit?

5 A. Because of the participation credit.

6 Q. Do you expect, then, that ENRON and other
7 suppliers will charge more for electricity when
8 competition unfolds in Pennsylvania in 1999 and its
9 participation credit is removed? By more, I mean
10 more than they're charging in the pilot.

11 A. Better ask that again.

12 Q. Would you expect that ENRON and other
13 suppliers will charge more than they have been or
14 will charge in the pilot for electricity when
15 competition unfolds in 1999?

16 A. I don't see the pilot as being related to
17 a competitive market. It's administratively
18 determined prices. It pertains to a small subset of
19 consumers. So I'm not sure what you mean by this
20 connection between the competitive market and the
21 pilot.

22 Q. I'm not trying to make a connection. I'm
23 just asking if you think prices will be higher when
24 the participation credit from the pilot is removed.
25 Will suppliers charge higher prices?

1 A. May or may not. I don't see the
2 connection. The credits have to do with the consumer
3 and what prices the consumers pay for electricity.
4 Your question had to do with sellers.

5 Q. Just to be clear, your testimony is that
6 the customer participation credit doesn't affect what
7 sellers charge for electricity?

8 A. It could, but it would be indirect through
9 the effect on consumers and the level of demand by
10 consumers. If it were an open market that pertained
11 to all customers in which there was a subsidy, one
12 could imagine the level of the subsidy affecting
13 demand, affecting the quantity of sales and therefore
14 affecting the supply side.

15 But this is a small subset, so I would
16 guess that there would be relatively little effect
17 from the participation credit to the cost to the
18 generator and therefore the price that the generator
19 is willing to sell at.

20 Q. Please turn to Page 10, Lines 14 to 15.
21 Here you say that, if the market price is lower than
22 long-run marginal costs, competition will bid down
23 the price of generation below the cap rate and
24 consumers are no worse off. Do you see that?

25 A. Yes.

1 Q. To enjoy the lower market price that
2 you're referring to, under the ENRON plan customers
3 must switch off of default service; is that true?

4 A. That's correct.

5 MR. BONNEY: That's all I have.

6 JUDGE RAINEY: Mr. Ryan.

7 MR. RYAN: May I ask a clarifying question?

8 JUDGE RAINEY: Sure.

9 **CROSS-EXAMINATION**

10 BY MR. RYAN:

11 Q. I'm still a little puzzled, Dr. Bohi, about
12 your answer to the question Mr. Bonney asked you on
13 Page 7, Line 14, where you make a comment about the
14 customer participation credit and say that it further
15 biases downward prices for generation. Do you see
16 where I'm talking about?

17 A. Yes, I do.

18 Q. Now I want you to focus on the perspective
19 of an electric generation supplier, whether it's
20 ENRON or one of the other new entrants into the
21 market, for example. Given what you say there, would
22 you think that a new entrant into this new
23 competitive market would be in favor of a customer
24 participation credit or opposed to it, given the
25 impact it apparently has on generation prices? Would

1 they support it or oppose it?

2 A. I'm not sure. You would have to ask them.

3 Q. What's in their economic interest? That's
4 what I'm confused about. If it's driving the price
5 down, would that be in their interest?

6 A. I'm sorry. This is not driving the price
7 down from the seller's point of view. This is
8 driving it down from the consumer's point of view.
9 The consumer is paying less. The seller is not
10 receiving less.

11 Q. Who is getting the difference?

12 A. Who is paying the difference?

13 Q. Yes. That's right. I'm sorry.

14 A. My guess is PECO would be paying the
15 difference.

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

17 JUDGE RAINEY: Thank you.

18 Further cross-examination?

19 Mr. Clark.

20 **CROSS-EXAMINATION**

21 BY MR. CLARK:

22 Q. Dr. Bohi, my name is Roger Clark. I'm
23 counsel for the environmentalists.

24 On Page 14 of your direct testimony, you
25 address a Federal Communications Commission order

1 from 1985. Do you see that cite?

2 A. Page 14?

3 Q. Fourteen, the top of the page.

4 A. Yes.

5 Q. Do you know what problem that Federal
6 Communications Commission order was attempting to
7 address?

8 A. One of the problems it was trying to
9 address was the entry of competitive suppliers into
10 the market and redistributing market share.

11 Q. Redistributing the market share of the
12 monopoly supplier AT&T?

13 A. That's correct.

14 Q. Do you know at what point the Federal
15 Communications Commission said that market share of
16 AT&T was excessive?

17 A. At what point?

18 Q. Yes, at what percentage of the market.
19 What was their goal of allocating additional market
20 share?

21 A. I don't remember a specific number.

22 Q. Do you remember, subject to check, that 50
23 percent was the trigger point?

24 A. Subject to check, yes.

25 Q. Did the Federal Communications Commission

1 allocate those non-choosing customers to a single
2 alternative carrier or to many carriers?

3 A. Alternatives.

4 Q. I know. But was it a single or --

5 A. More than one.

6 Q. Do you know why they didn't simply
7 allocate it to a single alternative carrier?

8 A. Well, the idea was to distribute market
9 share. You achieve your objective more by allocating
10 it to more than one alternative supplier.

11 MR. CLARK: I have no further questions, Your
12 Honor.

13 JUDGE RAINEY: Any further cross-examination?
14 Mr. Hershey.

15 **CROSS-EXAMINATION**

16 BY MR. HERSHEY:

17 Q. Dr. Bohi, the front page of your testimony
18 indicates that your testimony is submitted concerning
19 the relative benefits under the Choice Plan and the
20 partial settlement; isn't that right?

21 JUDGE RAINEY: You're referring to Statement
22 Number 3-R, Mr. Hershey?

23 MR. HERSHEY: Yes. Thank you.

24 A. Yes.

25 BY MR. HERSHEY:

1 Q. But having said that, you don't offer any
2 opinion whether there's a legal impediment to
3 securitization, do you?

4 A. No, I do not.

5 Q. And you also don't offer any opinion
6 concerning whether the PUC has the authority to order
7 adoption of the various elements of the ENRON
8 proposal, do you?

9 A. No, I do not.

10 MR. HERSHEY: Thank you. That's all I have.

11 JUDGE RAINEY: Thank you.

12 Further cross-examination?

13 (No audible response.)

14 JUDGE RAINEY: Redirect.

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

17 JUDGE RAINEY: Yes, Mr. Miller.

18 (Pause)

19 MR. MILLER: We have no redirect.

20 JUDGE RAINEY: Thank you. You may stand down.
21 Mr. Oliver.

22 BRUCE R. OLIVER, called as a witness, being
23 duly sworn, testified as follows:

24 JUDGE RAINEY: Provide your full name and
25 business address for the record.

1 THE WITNESS: My name is Bruce Richard Oliver.
2 My business address is 7103 Laketree Drive, Fairfax
3 Station, Virginia.

4 JUDGE RAINEY: Mr. Miller.

5 MR. MILLER: Thank you, Your Honor. For the
6 record, Mr. Oliver is sponsoring ENRON Statement
7 Number 2, which has Exhibits A and B with it, and
8 ENRON Statement Number 2-R, which has an Exhibit A
9 with it.

10 JUDGE RAINEY: So identified for the record.

11 Do you move for the admission into evidence?

12 MR. MILLER: Mr. Oliver also sponsored a
13 revision to exhibit, which has been given to the
14 court reporter. It's a revised Exhibit A to his
15 direct, which is Statement Number 2.

16 At this time I would like to move into
17 evidence the statements and exhibits of Mr. Oliver.

18 JUDGE RAINEY: Any objections?

19 (No audible response.)

20 JUDGE RAINEY: Hearing none, so admitted.

21 (ENRON Statement 2, ENRON Statement 2-R, and
22 Statement 2 Revised Exhibit A were marked and
admitted.)

23 MR. MILLER: Mr. Oliver is available for
24 cross-examination.

25 THE WITNESS: I had corrections to the update.

1 MR. MILLER: Apparently, Mr. Oliver has a
2 correction to his direct testimony.

3 JUDGE RAINEY: Yes. He may provide that at
4 this time.

5 THE WITNESS: To be consistent with the
6 revised schedule, I need to update some of the
7 numbers on Page 8 of Statement 2. At Line 11 where
8 it says "at least \$843 million," it should read at
9 least 767 million.

10 At Line 18, the two hundred twenty, I
11 believe it's eight million should be 200 million.

12 On Line 20 the figures 270 and 190 million
13 should be changed to 246 and 173 million.

14 JUDGE RAINEY: Thank you.

15 Is the witness available for cross-
16 examination, Mr. Miller?

17 MR. MILLER: Yes.

18 JUDGE RAINEY: Cross-examination. Mr. Bonney.

19 MR. BONNEY: Thank you, Your Honor.

20 **CROSS-EXAMINATION**

21 BY MR. BONNEY:

22 Q. Good morning, Mr. Oliver.

23 A. Good morning.

24 Q. I'm Paul Bonney, counsel for PECO Energy.

25 A. Nice to meet you.

1 Q. You were not involved in preparing the
2 October 7th ENRON Choice Plan; is that correct?

3 A. That's correct.

4 Q. In fact, you were hired after that plan
5 was filed; is that true?

6 A. That's true.

7 Q. In your opinion, electric generation
8 suppliers will be able to undercut the generation
9 credits that ENRON has proposed; is that correct?

10 A. Yes.

11 Q. So, if a customer is paying --

12 A. I'd like to just expand on that a little
13 bit. From my perspective, I think the issue of
14 undercutting price has been perhaps a little too
15 simply addressed in this proceeding.

16 I've dealt and talked with a number of
17 marketers, and most marketers come to you with
18 offerings of not a single product but of bundled
19 services. They may be offering you not just electric
20 but electric and gas, or electric, gas, and oil, or
21 electric and energy services activities that give
22 more dimension to the offerings. Simply looking at a
23 per-kilowatt-hour price may not give you the
24 effective price to the consumer.

25 We've long talked in the electric industry

1 about, particularly, smaller consumers but many
2 consumers looking not so much at the individual rate
3 but at the bottom line. You may be offered a per-
4 kilowatt-hour charge, but then that kilowatt-hour
5 charge is also affected by the other elements of the
6 service that you're offered, whether it's an
7 efficiency improvement or another product, natural
8 gas or something like that, where the effective price
9 to the consumer is less.

10 So it's real hard to say that just because
11 the energy price is at a certain level, the cost per
12 kilowatt hour, that marketers will not undercut that
13 through other means.

14 Q. So that if the market price for the
15 commodity of electricity were, say, the same as the
16 generation credit, electric suppliers would still
17 have opportunities to attract customers then?

18 A. Possibly.

19 Q. What's the source of the sales figures
20 that you used in your Exhibit A-R attached to your
21 rebuttal testimony?

22 A. It was the base case load growth scenario
23 from the May 1997 Annual Resource Planning Report
24 that was filed by PECO.

25 Q. Do you happen to have a copy of that with

1 you or that page that you referenced? I don't, or I
2 would show it to you.

3 A. I may. I'm not sure.

4 Q. I do have a copy. I have a copy here if
5 that would help you, or do you have your own copy,
6 whichever is easier for you.

7 A. I believe it was attached to a data
8 request response.

9 Q. Okay. Is there a specific page of this
10 1997 PECO Annual Resource Planning Report that you
11 used as the source for the sales figures?

12 A. Well, the pages aren't numbered as such.
13 It's part of Appendix A-1. The page I'm looking at
14 is labeled PECO Energy, IRP Electric, 1-A, Historical
15 and Forecast Energy Demand Growth, Gigawatt Hours,
16 Load Growth Scenario: Base.

17 Q. Thank you. That's all I had on that
18 particular point.

19 Am I correct that you have not performed
20 any analysis of prices or price projections for
21 wholesale or retail power within PJM for purposes of
22 this case?

23 A. That's correct.

24 Q. Please turn to Page 8 of your rebuttal
25 testimony, Lines 8 to 9. Here you say that the

1 rebuttal testimony of Mr. Kean explains how the
2 Commission could increase the later year generation
3 credits. Could you point me to a particular section
4 or page of his testimony where he explains that? I
5 couldn't find it. This isn't a hunt, but --

6 A. I read his testimony. I know it's there,
7 but I didn't memorize the page. You have to give me
8 a few minutes.

9 Q. Again, just to be clear, I couldn't find
10 it anywhere, so I was just confirming that, is really
11 what I wanted to do. But I wanted to give you an
12 opportunity to see if it is specifically addressed.

13 A. I'm sure it's -- I know it's discussed in
14 greater detail, but at Page 5 starting at Line 13,
15 there's a Point F there that says, "As part of the
16 alterative rate structuring, establishing increased
17 generation credits to address concerns about
18 competition in the later years of the Choice Plan and
19 PECO's assertion that ENRON's original out-year
20 generation credits would jeopardize its 'financial
21 integrity.'" "

22 So I know it's there. The rest of the
23 discussion I'm sure is in there, but I can't give you
24 a page offhand. If you want me to take the time, I
25 could find it.

1 Q. I couldn't find it. That was the extent
2 of the discussion that I saw. Again, I don't mean to
3 take too much time.

4 I was going to ask you, Isn't it true that
5 no ENRON witness explains the derivation of
6 generation credits that ENRON proposes, if you know?
7 I don't mean to make you take the time to go through
8 his testimony.

9 JUDGE RAINEY: Do you want to take time during
10 a break, Mr. Oliver, to look through that?

11 MR. BONNEY: If he knows or not. I don't --

12 A. I don't think I could say with certainty
13 that no ENRON witness addresses it. In fact, it's my
14 understanding that it had been addressed.

15 BY MR. BONNEY:

16 Q. Perhaps if during the break you could
17 identify that, that would be useful, but I don't want
18 to belabor the issue. Thank you.

19 Please refer to Page 8 of your rebuttal
20 testimony, Lines 14 to 15. Here you say that the
21 provisions of the partial settlement require that
22 provider-of-last-resort customers always receive the
23 lower of the market price or the generation credits.
24 Is it your testimony that from a consumer perspective
25 for customers to be assured that they will receive

1 the lower of the market price or the generation
2 credit is a bad thing or something to be avoided?

3 A. In the long run, yes.

4 Q. Why is that?

5 A: Because I believe that really thwarts any
6 ability to create competition. If customers can
7 obtain a market price without shopping around,
8 without having to open their perspectives to consider
9 other potential suppliers, even though it may not be
10 the full benefit that alternative marketers might
11 provide, the fact that they are giving the indication
12 through the structure of the plan and the way that
13 may be advertised that they are getting a market
14 price, customers may be discouraged from looking
15 elsewhere.

16 Q. Is it better, in your view, for customers
17 to be charged a higher generation credit so that
18 they're encouraged to go into the market to obtain a
19 lower market price?

20 A. The plans, both the PECO plan and the
21 ENRON plan, provide lower overall rates. Whether
22 those reductions are in generation credits or in
23 T & D charges or somewhere else is somewhat semantic
24 to the bottom line impact on the consumer. No
25 consumer will be worse off under the ENRON plan.

1 In structuring the components such that
2 you provide further encouragement for customers to
3 investigate and seriously consider competitive
4 alternatives is the only way that you're going to
5 create a viable competitive market in the long run.

6 If customers can get the same thing
7 staying where they are without looking at anything
8 else, why should anybody move to competitive
9 suppliers? That's essentially what the partial
10 settlement does. It says, Stay where you are; you'll
11 get all the benefits.

12 But the benefits of competition are only
13 derived in the long run if you achieve competition.
14 If you have a plan where everybody stays where they
15 are, you then discourage the entry of competitors,
16 and at the end of the plan, there's nobody there to
17 pick up the load.

18 Q. One of the ways that you propose or that
19 ENRON proposes that competition be encouraged is to
20 charge higher generation credits, as compared to the
21 partial settlement?

22 A. That's correct, particularly in the early
23 years.

24 Q. Please look at Page 9 of your rebuttal,
25 Lines 12 to 13. How does the partial settlement

1 limit customers' access to efficiency-based savings?

2 A. It was as I was explaining just a few
3 minutes ago. If customers perceive that they're
4 getting a market price without investigating
5 alternatives, as Mr. Hill said, without shopping
6 around, then they're only seeing the cents-per-
7 kilowatt-hour effect that they can get. They're not
8 seeing the other associated benefits that they might
9 be offered in the marketplace.

10 Q. If you were a demand side management or an
11 efficiency investment supplier, would it be harder
12 for you to sell that service to a customer under the
13 partial settlement than it would be under the ENRON
14 plan, and if so, why?

15 A. I think it would be, and I think it's just
16 as I have explained. Under the ENRON plan, there is
17 an incentive for customers to look at other market
18 alternatives. Under the PECO plan, people are very
19 comfortable staying where they are.

20 Q. That incentive is higher generation
21 credits?

22 A. The incentive is the difference between
23 the generation credits under the two plans.

24 Q. And they are higher under the ENRON plan;
25 correct?

1 A. Yes:

2 Q. In your analysis of the costs and value of
3 the partial settlement and the ENRON plan, where and
4 how have you factored in the cost of PECO's
5 concessions?

6 A. Well, they're at various stages of the
7 analysis. If you look at my discussion of that, I
8 address Mr. Hill's representation of a -- the
9 perception of a balance between the costs and
10 benefits, the costs and cost recoveries--let's put it
11 that way--in which he includes those costs, and then
12 I show the effects of removing those.

13 It's not at all clear, based on my reading
14 of the act, that PECO is entitled to recover those
15 costs through stranded cost recovery.

16 Q. So you've removed them from your
17 calculations?

18 A. No. No. I left them in there, and I've
19 talked about scenarios. One scenario would include
20 their removal.

21 However, as I point out toward the end of
22 that discussion, bottom line, when you consider all
23 the aspects of the potential for over-recovery by
24 PECO, whether or not they get recovery of those costs
25 through the CTCs is probably not the driving

1 determinant as to whether PECO over collects. PECO's
2 over-collection just simply through expected load
3 growth way overwhelms the cost of those concessions.

4 Q. How much did you attribute in your
5 analysis for the cost of expanded universal service?

6 A. I accepted whatever Mr. Hill had in his
7 exhibit. I believe it was TPH-35. I did not try to
8 recalculate what those costs were.

9 Q. Let's look for a minute at the rate
10 reductions that PECO agreed to in the partial
11 settlement from September to December of 1998.

12 A. The early rate reductions?

13 Q. Early rate reductions. I'm not looking
14 for a legal opinion. But do you know whether the
15 Competition Act provides the Commission with the
16 authority to order this four-month rate reduction in
17 1998?

18 A. My recollection of the Competition Act is
19 it does not direct the Commission to order an early
20 rate reduction. That's not a typical provision of
21 that kind of legislation to begin with. It would be
22 different for the time of each utility. This was
23 something that was negotiated.

24 Q. Would you agree that a 10-percent four-
25 month rate reduction in 1998 will cost PECO \$115

1 million?

2 A. I haven't verified that number, but I
3 accept it subject to check.

4 Q. And that a 20-percent four-month rate
5 reduction will cost PECO twice that, or 230 million,
6 if you would accept that subject to check?

7 A. I would accept it subject to check.

8 Q. ENRON's Choice Plan provides no recovery
9 of that 230 million; is that correct?

10 A. ENRON's Choice Plan provides no recovery
11 of that for the company, other than the other
12 benefits that are already built into it.

13 Q. The 20-percent four-month rate reduction
14 results in no loss or cost for ENRON; is that true?

15 A. I think there's a definite cost to ENRON.

16 Q. And what is that?

17 A. It's dollars that could have been
18 collected if they had offered a lesser rate
19 reduction.

20 Q. Dollars that could have been collected by
21 whom?

22 A. By ENRON, the default supplier, whoever
23 that is.

24 Q. In 1998?

25 A. I'm sorry. Maybe I didn't hear the

1 question.

2 Q. I'm talking and this entire set of
3 questions is about the rate reduction in 1998.

4 A. Right.

5 Q. Isn't it true that the 20-percent four-
6 month rate reduction results in no loss for ENRON,
7 the 1998 rate reduction? It didn't cost ENRON a
8 thing to offer that; did it?

9 A. I disagree with that. It certainly does
10 cost ENRON something to offer that reduction.

11 Q. What is that cost?

12 A. It's 10 percent.

13 Q. Is it a loss in ENRON's revenues during
14 those four months or PECO's revenues?

15 A. My understanding is it is a loss in
16 ENRON's revenues.

17 Q. It's your understanding that during 1998
18 ENRON is going to be supplying customers under the
19 plans that have been put forth?

20 A. My understanding is that ENRON would be
21 absorbing that difference.

22 Q. How?

23 A. That ENRON would be getting less of the
24 dollars from the plan.

25 Q. How, mechanically?

1 A. I'm afraid I haven't investigated that
2 detail.

3 Q. In fact, ENRON buys power from PECO and
4 resells it at the same price under the plan; correct?

5 A. Generation, that's correct.

6 Q. So it doesn't incur any cost for that sale
7 of power; isn't that true? It makes no profit and
8 incurs no cost on a net basis; isn't that correct?

9 A. Well, that's not quite true. Anytime you
10 engage in a transaction, even if it's a paper
11 transaction, you incur some incremental costs, which
12 my understanding is ENRON is not asking for recovery.

13 Q. You're talking about the lawyers' time to
14 negotiate the contract, that type of thing, those
15 transaction costs?

16 A. Just accounting and recording of the
17 effect of net dollars.

18 Q. What value is ENRON providing under the
19 Choice Plan that it could not offer to customers as a
20 generation supplier under the partial settlement, if,
21 indeed, it's costing ENRON to supply customers at a
22 discount? Why couldn't it just offer that discount
23 as a generation supplier?

24 A. The real value ENRON is providing is a
25 more competitive marketplace.

1 Q. So it could offer that as a generation
2 supplier?

3 A. You do not get the same effect just coming
4 in as a third-party supplier as you do creating a new
5 default alternative and introducing much more vividly
6 to consumers the concept that there is a choice out
7 there.

8 Even if initially it's only PECO and
9 ENRON, the very fact that you now have a second very
10 visible participant in the marketplace will trigger
11 many consumers to say, Well, is there a third? But
12 if you only have the one, the likelihood that people
13 are going to even start asking those questions goes
14 down.

15 MR. BONNEY: That's all I have, Your Honor.
16 Thank you.

17 JUDGE RAINEY: Further cross-examination?

18 Mr. Hershey.

19 **CROSS-EXAMINATION**

20 BY MR. HERSHEY:

21 Q. Welcome back to Philadelphia, Mr. Oliver.

22 A. Nice to be back.

23 Q. You indicate that you testified concerning
24 the relative benefits under the Choice Plan and the
25 partial settlement. I'm correct, am I not, that

1 you're not offering any opinion concerning possible
2 legal impediments to securitization?

3 A. That's correct.

4 Q. And you're not offering an opinion whether
5 the PUC has the authority to order adoption of the
6 various elements of the ENRON choice; is that right?

7 A. I'm offering no such opinion.

8 Q. I would like to pursue a couple areas that
9 you touched on in response to Mr. Bonney's questions.
10 You indicated that in this proceeding there's too
11 much emphasis on price. Do you recall that
12 conversation?

13 A. I do.

14 Q. You indicated that with the coming of
15 competition we'll get more bundled services,
16 including various specific energy services. Do you
17 recall that?

18 A. Yes, I do. I would also like to point
19 out, when you talk price in a competitive market,
20 you're not talking a simple kilowatt-hour price as
21 consumers currently have. Every time they want to
22 consume incremental kilowatt hours they can look at a
23 rate schedule and know what they're paying for it.

24 But you may be talking about and I know
25 that you will be talking about competitive suppliers

1 coming in offering services for periods of time which
2 may vary as well. So it may be a price that's locked
3 in. It may be a price that's tied to an index.

4 The whole measure of price becomes a much
5 more complex undertaking, and you can have one
6 competitive supplier offering an indexed rate and
7 another competitive supplier offering a three-year
8 fixed rate and somebody else offering something in
9 between with energy services tied into it or other
10 types of services tied in. And that's all part of
11 the competitive dynamic.

12 Q. Would you expect an increase in activity
13 in supplying those energy services?

14 A. Oh, yes.

15 Q. And are you aware that within the last two
16 weeks ENRON entered into an agreement with the
17 hospitals in this area to reduce their energy costs
18 by approximately 20 percent?

19 A. I was not aware of that.

20 Q. Would that surprise you?

21 A. No. I don't know the number.

22 Q. I understand that. Would it also surprise
23 you that the agreement was based not on a reduction
24 in the price of electricity but, rather, in those
25 alternative energy sources?

1 MR. MILLER: Objection, Your Honor. He said
2 he doesn't know anything about that.

3 MR. HERSHEY: I'm sorry, Your Honor. He
4 specifically testified that he would not be surprised
5 to see that kind of activity increasing and that,
6 while he wasn't aware of the specific details, this
7 specific deal didn't surprise him either.

8 JUDGE RAINEY: Would you repeat your last
9 question, Mr. Hershey?

10 MR. HERSHEY: Well, I'll rephrase it, if I can
11 remember it.

12 BY MR. HERSHEY:

13 Q. Would it surprise you that the agreement
14 entered into between ENRON and the hospitals offered
15 not a reduction in the price of electricity but,
16 rather, a reduction in the energy costs based on
17 various energy services provided to the hospital?

18 A. My own perception is, if you're right on a
19 20-percent reduction, I think it would be hard to
20 achieve through most instances through just
21 improvements in energy efficiency use.

22 Q. Whatever the number, that wouldn't
23 surprise --

24 A. There may be elements that we're not
25 looking at there.

1 Q. Whatever the number was, whether it was 10
2 percent or 20 percent or something in between, you
3 wouldn't be surprised to see a company like ENRON or
4 any other ESCO, as it's called in the industry, to be
5 offering reductions in bills based on those non-price
6 components?

7 A. That's correct.

8 Q. Why would that be attractive now to
9 hospitals or other customers as we see the beginning
10 of competition?

11 A. Why is a reduction in cost attractive?
12 That's sort of self-defining.

13 Q. As we see the beginning of competition and
14 the newspapers are full of discussions about how
15 electric prices are going to go down, why would it be
16 attractive to hospitals and other customers of
17 electricity to enter into that kind of agreement?

18 A. Frankly, having worked with a number of
19 large commercial institutional customers, I think
20 there's a lot of concern that competition may not go
21 forward or at least on the schedule that they may be
22 hoping for and that an assured near-term benefit may
23 be greater than the questionable longer-term benefit.

24 I don't know the terms of the agreements.
25 There may be provisions within the agreement that you

1 talked about that if there is a rate reduction
2 they'll get some benefit in addition to what they've
3 already negotiated.

4 Q. But that kind of agreement isn't something
5 that's brand new, is it?

6 A. Energy services agreements have been
7 negotiated for years now.

8 Q. Turning to another area --

9 A. The big difference in competition is the
10 ability to start linking the various energy services
11 into different bundles of packages and different
12 packages of services that you couldn't offer before.

13 I've specifically seen offerings of gas,
14 electric, and energy services. I've seen offerings
15 of different components of services that clearly are
16 not available in the marketplace right now.

17 Q. So, with the coming of competition, you
18 would expect to see more of that specific activity?

19 A. Yes.

20 Q. Now, in another area touched on by
21 Mr. Bonney, you indicated that it would be important
22 to encourage shopping by customers; isn't that right?

23 A. That's correct.

24 Q. And one way of doing that is by charging
25 higher prices?

1 A. I disagree with the concept of higher
2 prices. The ENRON overall price is lower. The
3 generation component is higher --

4 Q. And that's what --

5 A. -- in the early years.

6 Q. And that's what you were referring to when
7 you discussed encouraging shopping?

8 A. That's correct.

9 Q. Now, in the past when you came to
10 Philadelphia, you used to testify on behalf of low-
11 income customers; isn't that right?

12 A. I have at times, yes.

13 Q. And do you have any opinion concerning the
14 likelihood that low-income customers would shop for
15 electricity?

16 A. I think that there is the potential
17 through aggregation groups, and I think there are
18 examples in other areas where they have been able to
19 through aggregation to shop for services.

20 I don't think you would see individual
21 customers going out and shopping for services as
22 much, but the market can surprise you. I think it
23 has surprised a lot of people already.

24 Q. Are customers who don't pay their bills on
25 a regular basis attractive to aggregators?

1 A. Customers who aren't able to pay their
2 bills on a regular basis are not necessarily
3 attractive to any provider.

4 Q. When we talk about low-income customers,
5 typically we talk about customers at or below 150
6 percent of the federal poverty standard; isn't that
7 right?

8 A. That's a measure that's commonly used,
9 yes.

10 Q. Would you agree with me that some of the
11 statements we've just made would not be limited just
12 to those at or below 150 percent but might creep
13 above the 150-percent level too? Isn't that right?

14 A. Do you mean in terms of --

15 Q. In terms of their --

16 A. -- the role of aggregation in their
17 shopping?

18 Q. And their ability to shop.

19 A. And their ability to shop. Probably, yes.

20 MR. HERSHEY: I have no further questions,
21 Your Honor. Thank you.

22 JUDGE RAINEY: Thank you.

23 Any further cross-examination?

24 (No audible response.)

25 JUDGE RAINEY: Redirect?

1 MR. MILLER: May I have a moment with the
2 witness, Your Honor?

3 JUDGE RAINEY: Yes, Mr. Miller.

4 (Pause)

5 JUDGE RAINEY: Mr. Miller.

6 MR. MILLER: Thank you, Your Honor.

7 **REDIRECT EXAMINATION**

8 BY MR. MILLER:

9 Q. Mr. Oliver, is ESCO activity more likely
10 to increase under the Choice Plan or the partial
11 settlement, in your view?

12 A. In my perception, it's clearly more likely
13 to increase under the Choice Plan because competitive
14 suppliers will have more room to operate. If a
15 competitor cannot recover their fixed and variable
16 costs of generation coming into the market, they're
17 certainly not going to have any room to get into
18 other services and providing other benefits.

19 There's a threshold level that must be met
20 to even enter the market. If the generation credit
21 is too low and that threshold is not met, then you're
22 not even going to see people beginning to offer the
23 other services.

24 Q. A low-income customer is better off under
25 the Choice Plan or the partial settlement?

1 A. I believe low-income customers are better
2 off under the Choice Plan, One, because they get a
3 much greater rate reduction right up front. They
4 have much greater present value benefits. That,
5 combined with the portability of universal service,
6 they are not as unattractive. They become more
7 attractive to potential aggregators.

8 MR. MILLER: That's all I have, Your Honor.
9 Thank you.

10 JUDGE RAINEY: Any recross on the redirect?

11 Mr. Hershey.

12 **RE CROSS EXAMINATION**

13 BY MR. HERSHEY:

14 Q. Low-income customers would be better off
15 under the Choice Plan; is that right?

16 A. Yes.

17 Q. Now, as I remember, we agreed that low-
18 income customers can't pay their bills; isn't that
19 right?

20 A. I don't think I agreed to that. There are
21 low-income customers who have trouble paying their
22 bills at times. Sometimes it's more frequent than
23 others. But there are many low-income customers who
24 pay their bills regularly. Particularly, the senior
25 citizens in Philadelphia, by my understanding, have a

1 very good payment record, even though they clearly
2 qualify as low income.

3 Q. My recollection is that in the past you
4 have testified that the reason low-income seniors pay
5 their bills more frequently is because they're
6 worried about paying and sometimes they'll forego
7 other life essential services, like food and
8 medicine, in order to do that. Isn't that right?

9 A. I don't recall testifying to exactly that.

10 JUDGE RAINEY: I'm sorry. Only one person can
11 talk at one time.

12 A. I think tradeoffs do occur at times.

13 BY MR. HERSHEY:

14 Q. Do you understand what the cap or cap rate
15 program is?

16 A. I believe so, yes.

17 Q. Tell me what your understanding of that
18 is.

19 A. It's a program that limits the charges to
20 low-income consumers.

21 Q. Those at or below 150 percent of poverty?

22 A. That's my understanding.

23 Q. Do you know why that program exists?

24 A. Mostly because of your intervention in
25 these activities, perhaps.

1 Q. Certainly the PUC had something to do with
2 it as well, didn't they?

3 A. Certainly.

4 Q. And they made a judgment that was a little
5 more independent than mine; isn't that right?

6 A. Hopefully.

7 Q. And PECO actually ran such a program,
8 didn't they, and continue to run it?

9 A. Yes.

10 Q. Why would such a program be offered to
11 low-income customers?

12 A. Because there are demonstrable numbers of
13 customers in this area that have payment problems.

14 Q. When you say payment problems, do you mean
15 that they're not able to pay their bills
16 consistently?

17 A. That's correct.

18 Q. Would you agree, subject to check, that in
19 Philadelphia alone approximately one-third of the
20 utility customers are at or below 150 percent of
21 poverty?

22 A. I would accept that subject to check.

23 Q. And that they, therefore, qualify for the
24 cap or cap rate program?

25 A. Yes.

1 Q. Are you aware that in the partial
2 settlement that consumers and low-income consumers,
3 particularly, have entered into with PECO customers
4 at or below 150 percent of poverty would gain access
5 to the cap rate program whether or not they were
6 current on their bills?

7 A. That's my understanding, yes.

8 Q. Now, why would that be true?

9 A. Because that's what was negotiated. I
10 mean I was not a participant in the negotiations.

11 Q. Can you envision why low-income customers
12 might have wanted to negotiate that particular term
13 that it specifically did not make as a pre-condition
14 to entry into the program, the fact that they were
15 behind on their bills? Why would that be important,
16 if you know?

17 A. People's situations vary from time to
18 time. While we may have had a mild year over the
19 last year, in more extreme weather conditions, bills
20 get higher. Payment problems are accentuated.

21 Q. If a person is at or below 150 percent of
22 poverty, their financial situation is so fragile that
23 they absolutely need the help. Would you agree with
24 that?

25 A. Not necessarily.

1 MR. HERSHEY: I have no further questions.
2 Thank you.

3 JUDGE RAINEY: Mr. Bonney.

4 MR. BONNEY: Thank you, Your Honor.

5 **RE CROSS EXAMINATION**

6 BY MR. BONNEY:

7 Q. Mr. Oliver, it's your testimony that the
8 implementation of the ENRON Choice Plan will
9 encourage ESCO activity and energy efficiency?

10 A. Yes.

11 Q. That increased ESCO activity will, by
12 definition, reduce sales; is that true?

13 A. No.

14 Q. So, with an increase in efficiency, you'll
15 have an increase in sales as a result of that?

16 A. I think, as in many activities, when you
17 have a reduction in the effective cost, you find more
18 dollars to invest in other activities, expanded
19 activities. The overall environment for operating in
20 this area improves, and you find increased business
21 in commercial activity.

22 Q. Have you analyzed that specifically in
23 this case, what that effect will be?

24 A. I'm not sure that you can put a dollar
25 value on it or a specific number on it, but I would

1 certainly have confidence that that will occur.

2 Q. That, on balance, electricity sales will
3 actually increase because of ESCO activity?

4 A. I would think so, yes.

5 Q. Do you have any studies or analyses to
6 support that conclusion?

7 A. No, I don't have any forecasts.

8 MR. BONNEY: That's all I have. Thank you.

9 JUDGE RAINEY: Any further recross?

10 (No audible response.)

11 JUDGE RAINEY: Nothing further of this
12 witness.

13 Thank you, Mr. Oliver. You may stand
14 down.

15 Why don't we take a five-minute break.
16 We'll reconvene 11:05.

17 (Recess taken.)

18 JUDGE RAINEY: The next witness on my list is
19 Mr. Freeman.

20 Mr. Freeman, you have been previously
21 sworn, so that the oath still applies.

22 Mr. Bonney.

23 MR. BONNEY: Thank you, Your Honor. Before we
24 begin with Mr. Freeman, yesterday we had talked about
25 providing copies of the notices that PECO had

1 previously distributed in this case.

2 There are actually two more notices, one
3 that we started right around April 1st. We received
4 some concerns about that, so we revised it by
5 stipulation with certain of the parties. PECO
6 Exhibit 4 is the first notice, and PECO Exhibit 5 is
7 the second notice. I would ask that these be entered
8 into the record.

9 I notice that Mr. Dworetzky is not in the
10 room, and I think he had an interest in this. Oh, he
11 is. I wanted to make sure that he had seen this.

12 JUDGE RAINEY: Why don't you pass those out to
13 everyone.

14 Mr. Dworetzky, Mr. Bonney was just
15 referring to customer notices that were in regard to
16 April. If you can just take a look at these, we'll
17 defer admission of these exhibits until after this
18 witness has presented testimony.

19 MR. DWORETZKY: Thank you.

20 MR. BONNEY: Your Honor, we've distributed to
21 yourselves and to the parties testimony of Michael
22 Freeman in this round of the case, and it's labeled
23 PECO Statement Number 26-E, the testimony of Michael
24 Freeman regarding the ENRON proposal. I ask that
25 that be admitted into the record.

1 JUDGE RAINEY: Any objections?

2 (No audible response.)

3 JUDGE RAINEY: So admitted.

4 (PECO Statement 26-E was marked and admitted.)

5 MR. BONNEY: The witness is available for
6 cross-examination.

7 JUDGE RAINEY: Cross-examination.

8 MR. MILLER: Yes, Your Honor.

9 JUDGE RAINEY: Mr. Miller.

10 **CROSS-EXAMINATION**

11 BY MR. MILLER:

12 Q. Good morning, Mr. Freeman.

13 A. Good morning.

14 Q. Earlier today Mr. Bonney asked I believe
15 Dr. Bohi a question about the number of members in
16 the PJM interchange. Do you know how many members
17 there are in the PJM interchange currently?

18 A. I believe there are 76.

19 Q. Of those members, how many have generation
20 that they own or control of, say, more than 1,000
21 megawatts?

22 A. Seven.

23 Q. Are there some members that own no
24 generation?

25 A. I believe there are, yes.

1 Q. Do you know roughly what that number would
2 be?

3 A. Of the 76, how many do not own generating
4 assets?

5 Q. Yes.

6 A. I don't know.

7 Q. You discuss the pilot program, do you not?

8 A. Yes, I do.

9 Q. The generation credit for residential and
10 commercial customers that was determined by the
11 Commission is three cents a kilowatt hour; is that
12 correct?

13 A. Yes, it is.

14 Q. And there's also a participation credit
15 for those customers; is that true?

16 A. Yes, there is.

17 Q. And how is that participation credit
18 determined?

19 A. It's a percentage of the sum of the
20 regulated pieces of the bill.

21 Q. And what's the percentage for those
22 residential and commercial customers?

23 A. It's 13 percent of the sum of
24 transmission, distribution, and CTC charges.

25 Q. Do you know the current retail rate for

1 residential customers taking service under the pilot?

2 A. The total rate?

3 Q. Yes.

4 A. Including competitive generation?

5 Q. Yes.

6 A. I don't know what the average offers are
7 to residential customers, so I can't answer the
8 question.

9 Q. Let's try it another way. What would be
10 the participation credit for retail customers, retail
11 residential customers?

12 A. 1.2 cents, approximately, per kilowatt
13 hour.

14 Q. And for commercial customers?

15 A. I'll have to estimate. I don't know it.

16 Q. Ballpark is fine.

17 A. I'm going to say 1.3 cents, but I
18 certainly want to check.

19 Q. And that's a credit that a customer
20 receives if he or she goes out and procures
21 generation services?

22 A. That's correct.

23 Q. So is that participation credit then
24 additive to the credit for generation?

25 A. In the sense that the customer's total

1 discounts would be calculated on that basis. On the
2 bills there are separate line items.

3 Q. Retail is a commercial customer going out
4 looking for generation. Would it be fair to say that
5 that customer has, roughly, 4.3 cents to work with,
6 and that would be composed of the three-cent
7 generation credit and the 1.3 estimate that you gave
8 for the participation credit?

9 A. To work with? What do you mean?

10 Q. When that customer is seeking generation
11 services.

12 A. It depends on how the offer is presented
13 to the customer. If a marketer says, You're having
14 4.X cents extracted from the bill and I'm willing to
15 sell it to you for less, then that would be one
16 presentation.

17 If the marketer, instead, chose to say
18 that the generation piece being extracted from your
19 bill is roughly three cents and I'm willing to sell
20 it to you for less, that would be another way to
21 present it.

22 Q. If you say that the total generation piece
23 that the marketer comes in on for that commercial
24 customer is, say, 3.3 cents, would the customer save
25 a penny per kilowatt hour for participating in the

1 pilot?

2 A. 3.3 cents for competitive generation?

3 Q. Yes.

4 A. This is for what rate class?

5 Q. Commercial.

6 A. Rate GS, the general service?

7 Q. Sure.

8 A. It depends on the load factor of the
9 customer. If the customer's load factor were such
10 that it resulted in a market generation credit of 3.3
11 cents and that was the marketer's offer, the customer
12 would not save any money on the market generation
13 piece of the bill. They would be neutral.

14 Q. Would the customer still save money on the
15 participation credit?

16 A. Yes.

17 Q. So it would be in that customer's
18 interest, in that context, to seek competitive
19 generation rather than seeking to take that
20 generation from PECO?

21 A. That's correct.

22 Q. Is there a similar participation credit
23 under the partial settlement?

24 A. No, there is not.

25 Q. I would like you to turn to Page 3 of your

1 statement, please. Do you see your reference to the
2 PECO Energy Power Team? I guess the first reference
3 to that is Line 9.

4 A. Yes, I do.

5 Q. Can you explain something? Describe the
6 Power Team to me.

7 A. The Power Team is PECO Energy's wholesale
8 power marketing division.

9 Q. Does it have a separate income statement
10 or balance sheet? Is it corporately separate, or is
11 it just a division?

12 A. It's a division.

13 Q. Does it keep separate books?

14 A. Does it have a separate P & L, do you
15 mean?

16 A. Yes.

17 Q. I don't believe so, but I'm not positive.

18 Q. From what entity does the Power Team
19 procure the power that it sells?

20 A. The power that it sells in general?

21 Q. Yes.

22 A. My understanding is that the Power Team
23 uses a number of different sources of capacity and
24 energy.

25 Q. Are they all PECO-owned sources?

1 A. No.

2 Q. What percentage of the power that they
3 sell comes from PECO generation sources?

4 A. I don't know.

5 Q. Can you roughly estimate it?

6 A. No.

7 Q. Do you know how the power that's marketed
8 by the Power Team is priced?

9 A. No, I don't.

10 Q. Are PECO's electric generating facilities
11 still, with perhaps one exception, in the company's
12 rate base?

13 A. My understanding is that 1,200 megawatts
14 of PECO generation is not in the rate base.

15 Q. Is that attributable to one plant?

16 A. No.

17 Q. How many plants?

18 A. It's called slice of system. It
19 represents a cross section of the entire portfolio of
20 plants.

21 Q. That was due to a PUC order of some kind?

22 A. Yes, it was.

23 Q. Now, I would like you to turn -- You're
24 on Page 3. Look at Line 15, please. Do you have
25 that?

1 A. Yes, I do.

2 Q. There you're talking about a standard
3 offer by the Power Team.

4 A. Yes.

5 Q. And you refer to the offer being an "all-
6 in" price covering, among other things, installed
7 capacity. Do you see that?

8 A. Yes, I do.

9 Q. Is it your testimony that that standard
10 offer covers all of PECO's embedded capacity costs
11 for the capacity used to supply that generation?

12 A. How are you defining PECO's embedded
13 capacity costs?

14 Q. That which PECO would carry on its books
15 in the traditional, original costs less depreciation
16 way that rates are kept in this jurisdiction.

17 A. And could you repeat the earlier question?

18 Q. By calling it an all-in price, are you
19 saying that PECO is recovering all of those embedded
20 capacity costs?

21 MR. BONNEY: I object to the form of the
22 question, Your Honor. I think Mr. Freeman has
23 testified that the source of the power that the Power
24 Team purchases is various sources, some of which is
25 PECO Energy Power.

1 So I think implicit in the question, as I
2 understand it, is that all of the power that the
3 Power Team is selling under the standard offer is
4 PECO generation embedded cost type of power.

5 MR. MILLER: Let me amend the question then.

6 BY MR. MILLER:

7 Q. For that power which is purchased from
8 PECO or procured from PECO, is it your testimony that
9 it's an all-in price?

10 A. All-in, in the context of Line 15, Page 3,
11 is from the seller's point of view -- I'm sorry, the
12 electric generation supplier's point of view. When
13 you buy the standard offer from the Power Team,
14 you're buying an all-in product. You're buying
15 energy, installed capacity, ancillary services,
16 losses for distribution, and load following service.

17 Q. That's what the customer sees?

18 A. Yes.

19 Q. Does the Power Team market power from
20 generation sources owned by PECO?

21 A. Yes, it does.

22 Q. How is that price determined?

23 A. I don't know.

24 Q. Move ahead to Page 4, if you will. Do you
25 see a reference on Page 4 to PECO's National Energy

1 Team?

2 A. Yes.

3 Q. How does the National Energy Team differ
4 from the Power Team?

5 A. The National Energy Team is a retail
6 marketing group that tries to reach agreements with
7 customers in states where there is retail access or
8 there soon will be retail access.

9 Q. Are there states that have full retail
10 access at the current time that the National Energy
11 Team is marketing?

12 A. No, not quite yet. California is opening
13 up January 1st, 1998.

14 Q. Let me ask, does the National Energy Team
15 have a separate corporate entity?

16 A. It does not.

17 Q. Does it have a separate P & L?

18 A. There are transitions going on in the
19 company right now. I believe that, in time, the
20 National Energy Team will have a separate P & L. I
21 don't believe the transition is fully complete,
22 though.

23 Q. I guess without a separate corporate
24 entity you wouldn't be an officer of either
25 organization, the Power Team or the National Energy

1 Team.

2 A. That's correct.

3 Q. Do you have responsibilities for either or
4 both organizations?

5 A. I'm employed by the National Energy Team.
6 I was detached by the company to work on the standard
7 offer.

8 Q. Is that the standard offer in Pennsylvania
9 for pilot purposes?

10 A. Yes, it is.

11 JUDGE CHESTNUT: Excuse me. Detached by which
12 company?

13 A. PECO Energy.

14 JUDGE CHESTNUT: By PECO?

15 A. Yes.

16 JUDGE CHESTNUT: I thought you said you were
17 employed by the National Energy Team. That's a
18 subset of PECO?

19 A. Yes, it is, Your Honor.

20 BY MR. MILLER:

21 Q. Also on Page 4 you refer to 10 customers
22 which got price quotes ranging from 2.25 cents per
23 kilowatt hour to 3.05 cents per kilowatt hour. Do
24 you see that?

25 A. Yes, I do.

1 Q. Were all those quotes for the full term of
2 the pilot?

3 A. Yes, they were.

4 Q. And what was the load factor for the
5 customer obtaining the lowest quote there?

6 A. Seventy-five percent.

7 Q. And the highest quote, do you know?

8 A. I don't know that one.

9 Q. Does the standard offer vary according to
10 a load factor of a customer?

11 A. No, it doesn't.

12 Q. Does it vary by rate class?

13 A. Yes, it does.

14 Q. What would be the standard offer for, say,
15 commercial customers, GS customers?

16 A. 3.0 cents less the gross receipts tax,
17 which is approximately a mill. Then the offer
18 accounts for delivery losses as well. So the average
19 cost is probably something like 2.7 cents.

20 Q. And that's a standard offer to marketers
21 who will then repackage that generation?

22 A. Yes.

23 Q. Move ahead to Page 7 of your testimony, if
24 you will, please. Do you see on the top of that page
25 where you state that customers are demanding

1 innovative products?

2 A. Yes.

3 Q. You list metering on the customer side as
4 one of the innovations.

5 A. Yes.

6 Q. Would ENRON's Choice Plan provide a credit
7 to customers who obtain metering service from an
8 entity other than a utility?

9 A. In other words, would a metering charge be
10 unbundled in the retail rates under the Choice Plan?
11 I believe it would.

12 Q. Would that occur under the partial
13 settlement?

14 A. No, it would not. I'm not talking about
15 metering for billing here. I'm talking about
16 metering for load research.

17 JUDGE RAINEY: I'm sorry. That was load --

18 A. Load research.

19 BY MR. MILLER:

20 Q. Are you saying that metering for billing
21 is not an innovative product?

22 A. It could be.

23 Q. You also speak about performance-based
24 pricing. Do you see that in that same section?

25 A. Yes.

1 Q. Could you briefly define what you mean by
2 performance-based pricing?

3 A. Certainly. In a situation where a
4 marketer offers a customer a price cap, something
5 like, for example, I will charge you X percent below
6 the market generation rate in the unbundled rate, and
7 if I do better than that, I'm going to get a larger
8 and larger share, depending on how better I do. So
9 I'm going to get a share based on my performance.

10 Q. So you weren't referring to what's
11 commonly known as performance-based pricing for a
12 utility?

13 A. No.

14 Q. Do you see on Page 11 the first full
15 question and answer on that page?

16 A. Yes.

17 Q. You talk about the National Energy Team
18 and ENRON going head to head for a customer.

19 A. Yes.

20 Q. And you say that, while ENRON offered
21 significantly more financial incentives than the
22 National Energy Team, it lost the contract?

23 A. Yes.

24 Q. What kind of non-financial incentives did
25 the National Energy Team offer that customer?

1 A. I'm sorry. Can you explain your question?

2 Q. Well, the premise of your answer,
3 apparently, is that ENRON offered more financial
4 incentives but it lost the contract.

5 A. Right.

6 Q. Did it lose the contract because the
7 National Energy Team was able to offer non-financial
8 incentives?

9 A. Oh. The National Energy Team's package
10 was more attractive to the customer for some reason.
11 I don't know why.

12 Q. You don't know why?

13 A. No.

14 Q. Did you participate in the preparation of
15 that package?

16 A. I worked on it early on, but the final
17 result was not part of my work.

18 Q. So is it your testimony that you don't
19 know the incentives that were in the package?

20 A. I don't know the full range of incentives.

21 Q. Do you know some of the incentives that
22 were in there?

23 A. Yes, I do.

24 Q. Can you list those kinds of things that
25 would persuade a customer to choose a supplier on a

1 criterion other than price?

2 A. I can suggest some things. I don't know
3 why the customer ultimately made this decision.

4 Q. Okay.

5 A. This customer is the one I referenced on
6 Page 7 at Line 4, pilot metering project. This is
7 the customer that wanted a pilot metering project to
8 look at the customer's load profile versus the
9 customer's actual consumption.

10 Q. Are you suggesting somehow that there was
11 a decoupling from metered usage in that arrangement?

12 A. Decoupling?

13 Q. Yes, that the load profile was somehow
14 more important than actual usage.

15 A. No. This is one of the customers that
16 does not have continuous interval demand metering.
17 The LDC--well, it's a variety of LDCs, including
18 PECO--presents the customer with a load profile that
19 is a simulation of similarly situated customers.
20 It's not the customer's actual usage. Then whoever
21 is going to deliver the power and make arrangements
22 for the power supply to that customer has to deliver
23 according to that profile.

24 The possible advantage of metering,
25 continuous interval demand metering in this case, is

1 to determine is it more efficient to serve the
2 customer based on the actual usage rather than the
3 profile.

4 MR. MILLER: Thank you. I have nothing
5 further.

6 JUDGE RAINEY: Thank you.

7 Further cross-examination? Mr. Doll.

8 MR. DOLL: I have a few questions.

9 CROSS-EXAMINATION

10 BY MR. DOLL:

11 Q. Good morning, Mr. Freeman.

12 A. Good morning.

13 Q. You may recall. I represent Conectiv
14 Energy.

15 A. Yes, I do.

16 Q. In your cross-examination, you were
17 discussing the standard offer that has been made. Am
18 I correct that the standard offer is only good for
19 service being provided within the PECO service
20 territory?

21 A. That is correct.

22 Q. In other words, Conectiv, let's say, could
23 only purchase enough energy and capacity under your
24 standard offer to serve those customers that we
25 obtained within the PECO service territory?

1 A. That's correct.

2 Q. So, then, this is not a general market
3 price that you put up on a bulletin board that says,
4 Here's what we're going to sell all-in?

5 A. No. It was communicated to all the
6 electric generation suppliers in the retail access
7 pilot programs for the PECO pilot. In addition, the
8 Power Team advertised an invitation for market
9 solicitations for energy and capacity to be supplied
10 in other pilot programs other than PECO's.

11 Q. But just for the standard offer, that's
12 only in PECO's?

13 A. Yes. That's right.

14 Q. Would you also agree that this standard
15 offer expires the day the pilot program expires?

16 A. It is good for the 14 months of the pilot.
17 That's correct.

18 Q. Now, on Page 5 of your testimony, you talk
19 about the National Energy Team marketing in the PECO
20 territory. If I remember correctly, that's a slight
21 divergence from your earlier testimony.

22 A. Yes, it is.

23 Q. Is the National Energy Team licensed by
24 the Pennsylvania Commission to provide marketing
25 services in Pennsylvania?

1 A. It is. It operates under PECO Energy's
2 license.

3 Q. This isn't Horizon; is it?

4 A. No.

5 Q. This is PECO Energy under their license?

6 A. Yes, it is.

7 Q. So the NET is operating under PECO's
8 license and not under its own separate?

9 A. That's correct.

10 MR. DOLL: I'm trying to eliminate some stuff.

11 JUDGE RAINEY: Yes. Thank you.

12 (Pause)

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

14 JUDGE RAINEY: Thank you.

15 Any further cross-examination?

16 (No audible response.)

17 JUDGE RAINEY: Redirect?

18 MR. BONNEY: Could I just have one minute,
19 Your Honor?

20 JUDGE RAINEY: Yes.

21 (Pause)

22 MR. BONNEY: We have nothing further, Your
23 Honor.

24 JUDGE RAINEY: Thank you, Mr. Bonney.

25 Thank you, Mr. Freeman. You may stand

1 down.

2 The next person on my list is Mr. Pratzon.

3 MR. BONNEY: Your Honor, before we begin with
4 Mr. Pratzon, Mr. Dworetzky and I had a conversation.
5 He would like me to clarify, which I'm happy to do,
6 that those notices were mailed to customers by bill
7 insert. I believe the first notice, which has been
8 identified as Number 4, that there were some runs
9 that were started, but then it was stopped as of the
10 date or a couple of days before the stipulation with
11 respect to that was entered into.

12 So I don't know the extent to which the
13 customers received the first notice. In fact, I'm
14 fairly certain that all customers did not receive
15 that.

16 MR. DWORETZKY: I would have no objection to
17 the introduction of the second one, but to the point
18 of introducing a notice that was not given --

19 MR. BONNEY: That's fine with me, Your Honor.

20 JUDGE RAINEY: Should we then mark what is now
21 marked as PECO Exhibit Number 5 PECO Exhibit Number
22 4?

23 JUDGE CHESTNUT: Can we just keep them the way
24 they are and just have Four not admitted?

25 MR. BONNEY: That would be fine, Your Honor.

1 Four was identified but not admitted. Five was
2 identified and admitted.

3 JUDGE RAINEY: With that clarification, are
4 there any objections to the admission of PECO Exhibit
5 Number 5?

6 (No audible response.)

7 JUDGE RAINEY: If not, so admitted.

8 (PECO Exhibit 5 was admitted.)

9 MR. DWORETZKY: Thank you, Your Honor.

10 JUDGE RAINEY: Mr. Pratzon, would you stand
11 and raise your right hand, please.

12 DAVID J. PRATZON, called as a witness, being
13 duly sworn, testified as follows:

14 JUDGE RAINEY: Please be seated. Give your
15 full name and your business address for the record.
16 Please spell your last name as well.

17 THE WITNESS: My name is David J. Pratzon,
18 P-R-A-T-Z-O-N. I work for PECO Energy Company, 2301
19 Market Street, Philadelphia, Pennsylvania.

20 JUDGE RAINEY: Thank you. Please proceed.

21 MS. GASTON: Your Honor, Vilna Gaston for PECO
22 Energy. We have previously submitted the testimony
23 of David J. Pratzon at PECO Statement 21-E. We now
24 move it for admission into the record.

25 JUDGE RAINEY: Any objections?

1 (No audible response.)

2 JUDGE RAINEY: So admitted into evidence.

3 (PECO Statement 21-E was marked and admitted.)

4 MS. GASTON: We've also been advised that
5 there is no cross to Mr. Pratzon. However, we have
6 some brief surrebuttal testimony.

7 JUDGE RAINEY: Please proceed.

8 MR. KOHLER: Your Honor, we would have no
9 objection to that as long as we have the right to
10 rejoinder since we have the burden of going forward.

11 JUDGE RAINEY: Okay, Mr. Kohler.

12 Please proceed, Ms. Gaston.

13 **DIRECT EXAMINATION**

14 BY MS. GASTON:

15 Q. Mr. Pratzon, I'm going to direct your
16 attention to certain portions of ENRON witness Steven
17 Kean's testimony and ask for your specific response.
18 When I refer to ENRON, I am referring to ENRON Energy
19 Services Power, Inc.

20 At Page 39 of his testimony Mr. Kean says
21 that ENRON has attempted to respond to constructive
22 criticisms about its plan and was prepared to
23 eliminate or modify various conditions precedent to
24 the effectiveness of the plan. Do you have a
25 response to that testimony?

1 A. I believe that there are a number of
2 important conditions and limitations in the ENRON
3 plan that were not addressed in Mr. Kean's testimony.
4 One, for instance, that seems to me particularly
5 important is ENRON's continuing refusal to allow
6 itself to become a public utility if it is to be the
7 provider of last resort in the PECO service
8 territory.

9 Q. Has ENRON addressed the issue of public
10 utility status in discovery responses?

11 A. Yes. Mr. Kean reaffirmed that ENRON stand
12 in discovery.

13 Q. I'm going to show you a document which has
14 previously been admitted, which is ENRON's answer to
15 Interrogatory Set 16, Question 2.

16 MR. KOHLER: I'm going to object. First of
17 all, I haven't seen it. Second, if it's from our
18 interrogatory response, she can use it to impeach our
19 witness, but I don't think this witness can sponsor
20 it one way or another.

21 JUDGE CHESTNUT: Didn't you just say that it
22 was admitted into the record?

23 MS. GASTON: It was admitted into the record.
24 I am just asking him to identify --

25 JUDGE CHESTNUT: Entered into the record as

1 what?

2 JUDGE RAINEY: As an exhibit?

3 JUDGE CHESTNUT: What's the number of the
4 exhibit?

5 MS. GASTON: I'm sorry. It has not been
6 admitted. I'm going to show it to opposing counsel.
7 I have premarked it as Exhibit DJP-1.

8 JUDGE CHESTNUT: Could we go off the record.
9 That's okay. Never mind.

10 (PECO Exhibit DJP-1 was produced and marked.)

11 BY MS. GASTON:

12 Q. Could you identify the document which I
13 have handed you which has been marked as Exhibit
14 DJP-1?

15 A. This is the --

16 MR. KOHLER: By the way, I'll withdraw the
17 objection.

18 JUDGE RAINEY: Thank you.

19 A. This is the interrogatory that I was just
20 mentioning in my testimony.

21 BY MS. GASTON:

22 Q. And could you just read the question and
23 the response into the record, please.

24 JUDGE RAINEY: I'm sorry. We've had a
25 policy--and we may as well continue to follow it--of

1 not having witnesses read things into the record but
2 allowing the documents to speak for themselves, so we
3 will continue with that policy for fairness sake.

4 MS. GASTON: That's fine.

5 BY MS. GASTON:

6 Q. What else about the Choice Plan does
7 Mr. Kean not say that ENRON is willing to eliminate
8 or modify?

9 A. Mr. Kean did not indicate that ENRON was
10 willing to eliminate or modify the provisions under
11 which they could declare a default under the Power
12 Purchase Agreement and then begin to sell energy to
13 default service customers at market rates, thus
14 removing the rate cap protection in the original
15 plan.

16 Q. And have you identified anything else that
17 Mr. Kean does not say that ENRON is willing to
18 eliminate or modify about the Choice Plan?

19 A. ENRON continues to have in their Power
20 Purchase Agreement a regulatory out-clause that would
21 allow them to cancel the agreement on only 15 days'
22 notice, which could have the same effect on
23 customers.

24 Q. What conclusions do you draw, if any,
25 about what ENRON has not said it is willing to

1 eliminate or modify in its Choice Plan?

2 A. My conclusion is that ENRON is trying to
3 give an appearance of a willingness to change their
4 plan. However, there are still so many escape
5 clauses and provisions in the plan that not only
6 would be unacceptable to PECO in a business sense but
7 could also serve to emasculate the rate cap offerings
8 in the plan itself and also limit the ability of the
9 Public Utility Commission to regulate ENRON's service
10 as provider of last resort.

11 Q. At Page 37 of his testimony, Mr. Kean says
12 that "ENRON is not getting a 'call' on generation for
13 any purpose other than serving the full requirements
14 of customers in PECO's service territory. This
15 scenario is no different than the current situation
16 in which all of the customers in PECO's service
17 territory have a 'call' on energy from PECO at
18 tariffed rates." Do you agree with Mr. Kean?

19 A. No. The difference between operations
20 today and under retail choice and further under the
21 ENRON proposal are like day and night.

22 Currently, all customers in the PECO
23 service territory are PECO's franchised customers.
24 They must receive their energy services from PECO.
25 Under any retail choice regime, some customers will

1 choose alternate suppliers, and the provider of last
2 resort will only be serving the remainder of those
3 customers.

4 Under the partial settlement, PECO, as
5 provider of last resort, has the obligation to serve
6 all of those customers. It, however, has the
7 capability to make arrangements independently to meet
8 those and, thus, manage the risks of provision of
9 energy to those provider-of-last-resort customers.

10 Under the ENRON plan, ENRON has inserted
11 itself between PECO under the PPA agreement and
12 customer needs. For the optional service customers,
13 ENRON has an option to request PECO to supply energy
14 or, actually, to demand that PECO supply energy for
15 these customers, but it does not have an obligation
16 to purchase the energy from PECO.

17 That tremendously increases PECO's risk in
18 being able to manage its generation portfolio to
19 provide energy for the customers under the ENRON PPA
20 while still trying to remain economically viable.

21 Q. In your testimony at PECO Statement 21-E,
22 you state that in a competitive marketplace PECO
23 would be entitled to recover a reservation fee for
24 the energy and capacity used to satisfy ENRON's
25 optional requirements. What does Mr. Kean say about

1 PECO's ability to recover a reservation fee?

2 A. Mr. Kean states that PECO should get no
3 reservation fee for the call option that ENRON is
4 making on PECO generation.

5 Q. Do you understand that Mr. Kean has
6 testified that reservation fees are not appropriate
7 for call contracts?

8 A. No. I believe that Mr. Kean says that in
9 a competitive situation a reservation fee would be a
10 typical practice but that he believes there should be
11 no reservation fee in this case.

12 Q. What do you understand to be the theory
13 underlying Mr. Kean's insistence of no reservation
14 fee for PECO?

15 A. I believe that Mr. Kean's theory is that
16 because PECO is receiving stranded cost payments
17 that, therefore, ENRON should be able to have a call
18 on PECO's entire generation portfolio in order to
19 serve customers under the PPA.

20 Q. At Page 37 of his testimony, Mr. Kean
21 says, "PECO is fully compensated for its agreed upon
22 stranded investments under the Choice Plan. That is,
23 PECO is getting paid for the very facilities which
24 should be used to supply ENRON under the PPA. No
25 additional reservation fees are necessary or

1 appropriate." Is that the testimony forming the
2 basis of your last answer?

3 A. Yes, it is.

4 Q. Do you have a response to Mr. Kean's
5 testimony?

6 A. Mr. Kean seems to be confusing the idea of
7 stranded costs from the idea of the market value of
8 generation. My understanding is that stranded costs
9 are to be recovered by a utility to make up for the
10 sum cost of generation assets that could no longer be
11 recovered under a free-market situation.

12 There is still -- As I believe other
13 witnesses have testified this morning, in addition to
14 just the cost of energy, there are the fixed market
15 costs of building and maintaining generation. Those
16 have to be recovered by a utility or any generation
17 supplier in order to remain economically viable.

18 Q. What effect does the Power Purchase
19 Agreement's denial of a reservation fee to PECO have
20 on PECO?

21 A. ENRON's ability to make a call on PECO
22 generation while paying no reservation fee extracts a
23 large value from PECO at no cost to ENRON. Under the
24 Power Purchase Agreement, ENRON could choose to take
25 energy from -- not choose to take energy, but could

1 choose to demand energy from PECO to serve its
2 optional customers even on an hour-by-hour basis.

3 What this does is it eliminates PECO's
4 ability to sell a large share of its resources into
5 the general markets and relegates PECO to only being
6 able to make non-firm spot market sales after ENRON
7 has made its final determination.

8 This would have a tremendous negative
9 effect on PECO's ability to manage its risks in
10 trying to earn enough money to pay for the expenses
11 of its generation plant.

12 Q. At Page 35 of his testimony, Mr. Kean
13 says, ENRON believes that the proposed terms of the
14 PPA are likely to be substantially similar to the PPA
15 that PECO would enter into with its supplier if the
16 partial settlement was approved by the Commission.
17 Do you have a response to Mr. Kean?

18 A. I disagree. I can't believe that any
19 supplier would voluntarily or independently enter
20 into such a contract, if for no other reason than the
21 issue of the free call and the loss of value that a
22 supplier suffers under this type of option agreement.

23 Q. At Page 39 of his testimony, Mr. Kean says
24 that ENRON believes that both the Power Purchase
25 Agreement and the MBC services agreement reflect

1 typical terms and conditions for agreements of this
2 type. Do you agree with Mr. Kean?

3 A. No. Again, I disagree. I really see
4 these two agreements as one-of-a-kind-type
5 agreements. Just as quick examples, I do not believe
6 that in a typical power purchase and sales agreement
7 it would be the buyer solely setting the rate for the
8 power.

9 I do not believe in a power sales
10 agreement with call provisions that there would be no
11 reservation fee paid to recognize the value of the
12 call option that the buyer has.

13 Also, in typical power purchase and sales
14 agreements, there are scheduling and other planning
15 procedures that are part of the agreement. Those are
16 notably absent in the ENRON PPA.

17 Q. Did you conduct any review of a Power
18 Purchase Agreement by ENRON Power Marketing in
19 connection with your testimony today?

20 A. Yes. PECO had made a request from ENRON
21 for typical power purchase agreements since they were
22 discussed in Mr. Kean's testimony, and yesterday
23 ENRON's counsel produced what they defined as an
24 exemplar of a power sales agreement that ENRON might
25 make with another entity. I did have a chance to

1 review that to look at the pricing components that
2 ENRON would propose in this exemplar agreement.

3 Q. What was the purpose of your examination?

4 A. It was primarily to look to see if ENRON,
5 as a seller of energy and other power services,
6 believed that there was a value in having an option
7 of a buyer to purchase energy or not, whether they
8 placed a value on that that showed up in the
9 contract.

10 Q. What were the findings of your
11 examination?

12 A. The ENRON exemplar contract included
13 provisions for ENRON as seller to recover both a
14 fixed charge and an energy charge based on the amount
15 of energy that was actually received.

16 So, from that, I conclude that ENRON
17 believes there is a value in a buyer being able to
18 have an option to receive energy at their request and
19 that that value has to be transferred to the seller.

20 Q. At Page 39 of his testimony, Mr. Kean says
21 ENRON would be willing to discuss with PECO any
22 reasonable objections that it may have to the terms
23 of the Power Purchase Agreement. Do you have a
24 response for Mr. Kean?

25 A. While I believe that ENRON might be

1 willing to discuss differences, I think that's far
2 different from ENRON perhaps agreeing to make any
3 changes.

4 I would note that in my testimony I mentioned a
5 number of omissions, problems, or other concerns with
6 the Power Purchase Agreement, and in Mr. Kean's
7 rebuttal testimony, my comments were either glossed
8 over or ignored, primarily. From that, I would
9 question ENRON's seriousness in more than listening
10 to complaints and actually doing anything about it.

11 Q. Does that conclude your testimony?

12 A. Yes, it does.

13 MS. GASTON: The witness is now available for
14 cross.

15 JUDGE RAINEY: Do you want to move in his
16 testimony?

17 MS. GASTON: Yes, I do, as well as the DJP-1.

18 JUDGE RAINEY: Any objections?

19 (No audible response.)

20 JUDGE RAINEY: So admitted into evidence.

21 Cross-examination.

22 MR. KOHLER: Your Honor, because of the
23 extensive nature of the oral testimony, we would like
24 five minutes to --

25 JUDGE RAINEY: Yes. Well, a couple minutes,

1 two minutes.

2 (Pause)

3 JUDGE RAINEY: Are we ready to proceed,
4 Mr. Kohler?

5 MR. KOHLER: Yes, Your Honor. My
6 understanding is we'll have an opportunity for oral
7 rejoinder tomorrow by Mr. Kean. Mr. Kean is not
8 here, so he would have the opportunity to review the
9 transcript and --

10 JUDGE RAINEY: Was that worked out by the
11 parties? I don't want us to get bogged down as far
12 as the schedule is concerned. Do we have time for
13 that? Is there any objection from the parties with
14 respect to that?

15 MR. KOHLER: Your Honor, just the point that
16 we have the burden of going forward here. Under
17 every PUC proceeding I've ever been involved in, that
18 means, essentially, we get the last word. They asked
19 for oral surrebuttal. We did not object. As long as
20 we get oral rejoinder, I believe that's appropriate.

21 JUDGE RAINEY: Is there any objection to that?

22 MR. SHIELDS: No, we have no objection. I
23 mean given the extensive nature of that oral
24 surrebuttal testimony, I think it would be
25 inappropriate for us to object to that.

1 JUDGE RAINEY: That's fine. We will allow the
2 oral rejoinder, and the parties can work out among
3 themselves with respect to the schedule where that
4 witness would appear.

5 Mr. Kohler.

6 CROSS-EXAMINATION

7 BY MR. KOHLER:

8 Q. Mr. Pratzon, you talked briefly about the
9 potential relationship between PECO and its supplier
10 affiliate if it were provider of last resort, and you
11 compared that with if ENRON was provider of last
12 resort. There would be a PPA, wouldn't there,
13 between PECO as provider of last resort and the
14 supplier affiliate; is that right?

15 A. Certainly PECO, the local distribution
16 company that had the provider-of-last-resort
17 responsibilities, would have to have power purchase
18 arrangements with whatever suppliers it chose to deal
19 with.

20 Q. Do you know whether that agreement would
21 be in written form?

22 A. I would certainly assume that it would be.

23 Q. And would you be involved in putting
24 together that arrangement?

25 A. It's possible, yes.

1 Q. And has that agreement been developed to
2 date?

3 A. No, it has not.

4 Q. Do you know whether that agreement would
5 include a reservation fee from PECO to its affiliate?

6 A. Well, first just let me clear up
7 reservation fee. You're saying from PECO, the buyer
8 of energy, to whoever the seller of energy was. I
9 would assume, yes, that there would be some
10 reservation fee involved.

11 Q. Have you been involved in any discussions
12 where that issue was addressed?

13 A. No, I have not.

14 Q. Do you know for sure one way or another?

15 A. As I had said, the LDC has not issued an
16 RFP or other request to get offers to supply energy
17 for its provider-of-last-resort role. So it would
18 certainly be premature to --

19 Q. So the decision hasn't been made yet; is
20 that right?

21 A. Which decision?

22 Q. The decision whether PECO as provider of
23 last resort would pay its affiliate supplier a
24 reservation fee.

25 A. I would say that it would be likely that

1 PECO as provider of last resort would be paying a
2 reservation fee to whoever its suppliers were.

3 Q. Including its affiliate?

4 A. If its affiliate were a successful bidder
5 into that RFP if one should be issued, yes.

6 Q. But you would agree that that decision
7 hasn't been made yet; right?

8 A. PECO has not yet issued an RFP.

9 MS. GASTON: Objection. Asked and answered.

10 MR. KOHLER: I don't think he answered the
11 first time, Your Honor.

12 JUDGE RAINEY: Would you repeat the question
13 again, Mr. Kohler.

14 MR. KOHLER: Your Honor, he might have just
15 answered it right then. I'll accept that answer.

16 JUDGE RAINEY: There was an outstanding
17 objection to the question. Could you read the
18 question back.

19 (Question read by court reporter.)

20 JUDGE RAINEY: I'll overrule the objection.

21 That was answered?

22 MR. KOHLER: Your Honor, I believe it's
23 already been answered.

24 JUDGE RAINEY: Court Reporter, what was the
25 answer to that question?

1 (Indicated answer read by court reporter.)

2 JUDGE RAINEY: Thank you.

3 Please proceed, Mr. Kohler.

4 BY MR. KOHLER:

5 Q. And because of that, the decision hasn't
6 been made; is that right?

7 A. No. Again, the decision is --

8 Q. The decision as to whether PECO the
9 provider of last resort will pay its affiliated
10 supplier a reservation fee.

11 A. No decision has been made. My statement
12 is that it would be typical or I would expect that in
13 this type of contract a reservation fee would be a
14 part of the financial arrangements.

15 Q. You talked a little bit about the PPA
16 contract that ENRON provided pursuant to a request by
17 PECO; is that right?

18 A. Not a PPA contract, but a power sales
19 contract that was identified as an exemplar as used
20 by ENRON Power Marketing, the ENRON wholesale
21 provider.

22 Q. Were any of those contracts related to the
23 provision of service as provider of last resort?

24 A. There was a single contract offered. No,
25 it did not specifically mention provider of last

1 resort.

2 Q. Under the partial settlement, is PECO
3 waiving its right to any of the statutory
4 opportunities for extraordinary rate relief?

5 MS. GASTON: Objection, Your Honor, to the
6 extent it calls for a legal opinion from this
7 witness.

8 JUDGE RAINEY: To the extent that the witness
9 knows the answer, you can answer the question.

10 MS. GASTON: It's also outside the scope of --

11 JUDGE RAINEY: I'm going to overrule the
12 objection.

13 A. It's outside the scope of my knowledge.

14 BY MR. KOHLER:

15 Q. You don't know whether they're waiving any
16 of the exemptions to the rate cap?

17 A. That's correct.

18 Q. You talked a little bit about load
19 provided to what ENRON calls transitional customers
20 and load that's provided to customers who leave the
21 provider of last resort and return. Do you recall
22 that testimony?

23 A. Yes.

24 Q. Do you know how much load is projected to
25 be provided to transitional customers as compared to

1 load for customers who leave and return?

2 A. No, I do not.

3 Q. Would you expect that the load related to
4 transitional customers would be much larger, at least
5 in the early stages of transition?

6 A. I think that depends on how quickly
7 customers who have the opportunity to choose a
8 different supplier would make that choice. Certainly
9 in the early part of the implementation of choice
10 where one-third of the customers still cannot choose
11 during the first year, that will be the main group of
12 transitional default customers for that period.

13 How that would relate to customers who
14 might opt for another supplier and come back quickly
15 or who might be in the category that opts but chooses
16 not to select a supplier and, therefore, are standard
17 default customers and, therefore, under the optional
18 arrangement, that's correct.

19 Q. Given the fact that a third aren't
20 eligible, wouldn't you expect that the load related
21 to transitional customers would be much greater, at
22 least in the early years?

23 A. During the first year, that's a strong
24 possibility, yes.

25 Q. Do you frequently review PPA agreements?

1 Are you familiar with a wide variety of those
2 agreements?

3 A. I have reviewed a number of agreements
4 that PECO has entered, yes.

5 Q. And you spoke a little bit about
6 regulatory out-clauses. Would you consider that type
7 of provision a standard provision in those
8 agreements?

9 A. Many of those agreements have regulatory
10 out-clauses, but they are neither as extensive nor as
11 one-sided as the one proposed in the ENRON PPA.

12 MR. KOHLER: Nothing further, Your Honor.

13 JUDGE RAINEY: Thank you.

14 Any further cross-examination?

15 (No audible response.)

16 JUDGE RAINEY: Any redirect on the cross?

17 MS. GASTON: May I just have a minute?

18 JUDGE RAINEY: Yes.

19 (Pause)

20 MS. GASTON: I just have one redirect.

21 **REDIRECT EXAMINATION**

22 BY MS. GASTON:

23 Q. Mr. Pratzon, under the partial settlement
24 is it your understanding that there would be one PPA
25 between PECO and a supplier affiliate?

1 A. No. My understanding is that PECO, the
2 local distribution company and provider of last
3 resort, could enter into agreements with as many
4 suppliers as necessary to serve its needs as provider
5 of last resort.

6 JUDGE RAINEY: Thank you. If there's nothing
7 further for this witness --

8 MR. CLEARFIELD: Just a moment.

9 JUDGE RAINEY: I'm sorry.

10 (Pause)

11 MR. KOHLER: Two questions.

12 **REXCROSS EXAMINATION**

13 BY MR. KOHLER:

14 Q. The first one is that you fully expect
15 that one of those PPAs will be with an affiliated
16 supplier; is that right?

17 MS. GASTON: Objection, Your Honor. I think
18 it calls for speculation. He hasn't established a
19 basis for this witness to expect that there will be a
20 PPA and there will be one with the affiliate.

21 MR. KOHLER: Your Honor, I --

22 JUDGE RAINEY: I'm going to overrule the
23 objection. Please proceed.

24 A. Would you mind repeating the question.

25 BY MR. KOHLER:

1 Q. You would fully expect, wouldn't you, sir,
2 that one of the PPAs that you spoke of in your
3 redirect would be with an affiliated supplier; is
4 that correct?

5 A. I would certainly expect that an
6 affiliated PECO supplier would bid aggressively to be
7 successful in the solicitation.

8 Q. And that would likely be the affiliated
9 supplier that owns the generation assets; is that
10 correct, sir?

11 A. Yes.

12 Q. You talked about PPAs with other supply
13 sources other than the affiliated supplier; is that
14 right?

15 MS. GASTON: Objection, Your Honor. That's
16 beyond the scope of my cross. I only crossed on one
17 point, one question. He's going beyond that.

18 MR. KOHLER: The answer was there were other
19 PPAs other than with the affiliated supplier.

20 JUDGE RAINEY: I'm going to overrule the
21 objection.

22 BY MR. KOHLER:

23 Q. Would there be any lost opportunity costs
24 related to that portion of the load purchased by
25 PECO?

1 A. I don't follow your question.

2 Q. You talked about lost opportunity costs
3 related to entering into the PPA with ENRON; is that
4 right?

5 A. That's right.

6 Q. That wouldn't apply to --

7 MR. KOHLER: One minute, Your Honor.

8 (Pause)

9 MR. KOHLER: Nothing further, Your Honor.

10 JUDGE RAINEY: Is there anything further of
11 this witness?

12 (No audible response.)

13 JUDGE RAINEY: If not, thank you, Mr. Pratzon.
14 You may step down.

15 The next witness I have on my list is
16 Dr. Hieronymus.

17 MR. SHIELDS: If I may note, I see my
18 co-prosecutor, Mr. Mickens, in the courtroom. I
19 suspect we'll have the proverbial OTS changing of the
20 guard. Maybe now would be --

21 JUDGE RAINEY: I beg your pardon.

22 MR. SHIELDS: I want to have an opportunity to
23 confer with him for a second.

24 JUDGE RAINEY: Yes. Off the record.

25 (Pause)

1 JUDGE RAINEY: Mr. Trask.

2 MR. TRASK: Noel Trask for PECO Energy.

3 Yesterday during the testimony of Mr. Sidak there was
4 an exhibit that we didn't have enough copies of, and
5 we want to introduce it into the record now. I
6 thought I would give two copies of it to the court
7 reporter and anybody else who wants a copy. I
8 believe its admission was moved into the record
9 yesterday. This is an amendment to Statement 10-R.

10 JUDGE RAINEY: Dr. Hieronymus, you have been
11 previously sworn. The oath still applies.

12 WILLIAM H. HIERONYMUS, called as a witness,
13 being duly sworn, testified as follows:

14 JUDGE RAINEY: Mr. Bonney.

15 MR. BONNEY: Thank you, Your Honor. We
16 previously distributed to Your Honors and to the
17 parties the testimony of William Hieronymus regarding
18 the ENRON proposal, and it's been designated PECO
19 Statement Number 6-E. I ask that that be admitted
20 into the record at this time.

21 JUDGE RAINEY: Any objections?

22 (No audible response.)

23 JUDGE RAINEY: Hearing none, so admitted.

24 (PECO Statement 6-E was marked and admitted.)

25 MR. BONNEY: Your Honor, we have brief

1 surrebuttal for this witness.

2 DIRECT EXAMINATION

3 BY MR. BONNEY:

4 Q. Dr. Hieronymus, have you reviewed the
5 rebuttal testimony of Dr. Bohi and Mr. Slater?

6 A. Yes, I have.

7 Q. Is the 58-percent figure that Dr. Bohi
8 calculated at Page 11 of his testimony a real or a
9 nominal figure?

10 A. It's a nominal figure, as all of the
11 figures used by all of the parties in that proceeding
12 were.

13 Q. So is the comparison that he's made
14 between the 14-percent figure and the 58-percent
15 figure apples and apples or apples and oranges?

16 A. No. They're completely -- I won't say
17 completely unrelated, but heavily unrelated by, to be
18 more precise, 10 years' worth of inflation. So
19 they're not comparable.

20 Q. Is Dr. Bohi correct in stating that the
21 market price of wholesale power must be above the
22 long-run marginal cost in the first few years of this
23 transition period?

24 A. No. PJM has excess capacity, as does the
25 regions around it. When you have access capacity,

1 you don't need to attract entry. Indeed, you don't
2 want to attract entry of generation.

3 If you have prices that are high enough to
4 attract entry, you will get entry. If you don't need
5 it, the market will clear below the entry price.
6 That's entirely appropriate for this relatively brief
7 period we're talking about up until 2001.

8 Q. Why is it appropriate up to that period?

9 A. Because existing entrants will continue to
10 -- Existing generators will continue to operate as
11 long as they are in enough of the market to at least
12 cover the cost of staying open. Whereas, an entrant
13 would have to cover the cost of building a new
14 facility.

15 So the price that's necessary to keep
16 enough existing generation open is lower than the
17 price that it takes to get new generation built.
18 We've seen that phenomena in existing wholesale
19 markets, that the prices are below those required to
20 induce entry, fortunately.

21 Q. Is Mr. Slater's long-run cost calculation
22 a relevant forecast of the market clearing price?

23 A. No. I testified at some length in my pre-
24 filed 6-E as to the things I felt were wrong with it.
25 I listened to his explanation this morning, and I

1 still don't have any basis for it other than simply
2 it's his opinion based on discussions that he's had
3 with some group of people.

4 I've stated why I think, in particular,
5 that the escalation that is in it is way too low.
6 Lastly, I'll note that according to Mr. Bohi this
7 whole forecast may be moot because ENRON seems to
8 have moved away from it and, at any rate, doesn't
9 appear to be relying on it now.

10 Q. Dr. Bohi implies that if the Commission
11 doesn't establish an energy and capacity cap that is
12 higher than long-run marginal costs buyers that need
13 electricity the most may not be able to get it and
14 that a non-market rationing scheme would be required.
15 Is this a legitimate concern, in your view?

16 A. No. Again, I commented on this in 6-E,
17 but Dr. Bohi's rebuttal testimony seems to indicate
18 that he persists in this conception. He says, for
19 example, on Page 3 that the energy and capacity cap
20 is the highest price that a generator can receive.

21 The energy and capacity cap is a price
22 pertinent to retail suppliers, to the supplier of
23 last resort specifically. The price in the wholesale
24 market is not going to be regulated by anything like
25 an energy and capacity price. It will be whatever

1 supply and demand causes it to be.

2 If supply and demand conditions are such
3 that you need to get new entry, prices will rise high
4 enough to have entry, irrespective of what the energy
5 and capacity cap is.

6 Now, as long as there's enough generation
7 in the market for loads to be met, someone will meet
8 them. That's one of the reasons there is a provider
9 of last resort, is to assure that whatever the price
10 has to be that he has to pay in the wholesale market
11 to get sufficient energy and capacity to meet loads,
12 he will go out and pay it.

13 There is utterly no reason why virtually
14 irrespective of what the energy and capacity cap is,
15 there should not be sufficient generation brought
16 forth by a free wholesale market in PJM and
17 surrounding areas.

18 Q. Last question. Is your analysis of energy
19 price forecasts based on or does it rely upon
20 existing prices or prices that are being offered in
21 the pilots in Pennsylvania today?

22 A. No, it doesn't. My analysis is based on a
23 PROMOD like--it's actually using GE maps--analysis of
24 the formation of energy prices in the future. It is
25 based on the capacity requirements that are set forth

1 in the PJM roles that FERC has ordered be
2 implemented.

3 So it's not based on history or on the existing
4 split savings arrangements that I think Mr. Bohi
5 alludes to. There's nothing like split savings in my
6 analysis. The only sense in which I make use of
7 existing prices is to start a trend point to get to a
8 long-run marginal cost based capacity price in 2001.
9 In respect of that, the current price level is fully
10 what I would expect to see in a competitive capacity
11 market when there's excess capacity.

12 The last observation I would make based on
13 Mr. Bohi's testimony this morning is that his
14 objection to relying on existing price levels is that
15 these price levels are somehow infected by the
16 continued existence of native load responsibility, of
17 CTC recovery, things like that.

18 The period we're talking about, which is just
19 the first two years of competition, certainly will
20 still have those same attributes. If he is right--
21 and I have no reason to agree that he is right--that
22 there is that kind of infection, it will still be
23 there in the period that we're disputing, which is
24 the 1999, 2000, 2001 period.

25 MR. BONNEY: The witness is available for

1 cross-examination, Your Honor.

2 JUDGE RAINEY: Cross-examination. Mr. Miller.

3 CROSS-EXAMINATION

4 BY MR. MILLER:

5 Q. In today's environment when a utility
6 places a generating plant in service, do you agree
7 that the capital costs related to that unit are
8 placed in the utility's rate base, generally?

9 A. That has been the practice, yes.

10 Q. A utility is allowed to recover those
11 costs through depreciation expense and earn a return
12 on the undepreciated balance of those costs?

13 A. Yes.

14 Q. So today it's generally true, isn't it,
15 that utilities are compensated for their capital
16 costs related to generating plants through the
17 bundled service rates that are paid by their retail
18 customers?

19 A. That is the general pattern, but certainly
20 not the complete pattern, especially not the complete
21 pattern in Pennsylvania, where I know from a long
22 history of proceedings I've been involved in that
23 utilities have substantial incentives to maximize
24 revenues earned for their generating resources from
25 outside of that regulatory paradigm that you're

1 talking about.

2 Q. What happens in that instance?

3 A. Generally speaking, they get -- Well, it
4 depends. Some of the long stay-outs, the utilities
5 explicitly get to keep the revenues that they earn
6 because the plan has been excluded in whole or in
7 part from rate base.

8 In other cases, generally speaking,
9 shareholders get to keep whatever positive variance
10 there is between the allowed and earned rate of
11 return until the next rate case or, conversely, to
12 reduce the shortfall between now and the next rate
13 case.

14 Q. Do you know if the so-called off-systems
15 sales -- You're familiar with that concept?

16 A. Yes, I'm familiar with the concept.

17 Q. Are those revenues treated under the
18 1307(F) procedure in Pennsylvania?

19 A. I don't recall.

20 Q. As a general rule, is it customary in rate
21 making for all or some part of revenues received from
22 off-system sales to be used to benefit the retail
23 customers of the selling utility by various
24 mechanisms?

25 A. I think it is a general, though not a

1 universal, practice that ratepayers get a substantial
2 benefit from profit of off-system sales ultimately.

3 Q. Is it your experience that the prices for
4 off-systems sales historically have not recovered all
5 of the utility's capacity costs related to the
6 generation used to make those sales?

7 A. As a general matter, yes.

8 Q. Do you know of any electric utility in the
9 PJM interchange that's not currently serving its
10 retail customers through bundled rates?

11 A. No, I don't personally.

12 Q. Am I correct that you relied on a forecast
13 of gas prices put together by DRI?

14 A. Well, I used two forecasts, but I place
15 principal reliance on the DRI forecast.

16 Q. Did you independently review and examine
17 the inputs of the DRI forecast?

18 A. No. There's a discussion that accompanies
19 the forecast, but the model itself is proprietary to
20 DRI.

21 Q. As a general rule, do you know whether the
22 cost of producing natural gas has gone up or down
23 over the last five years? These are production
24 costs.

25 A. That's a bit complicated because there are

1 a lot of rents in production costs. The cost of
2 finding gas has gone down.

3 Q. Can you tell me why?

4 A. Yes. It's mostly new technology in terms
5 of three-dimensional seismic imaging, things like
6 that. The cost of pulling it out of the ground I
7 suspect has probably gone up a bit. I have not
8 really done a study of the component pieces of it.

9 Q. Is there new technology in the recovery
10 area as well?

11 A. Yes. I don't think the effect has been as
12 dramatic as the technology. But there is, sure.

13 Q. Are gas wells now much deeper than they
14 were, for example, five years ago?

15 A. Well, nobody is digging the really deep
16 gas that they went for in the '80s. I don't know
17 whether the average depth is higher or lower.
18 They're digging deeper than they were five years ago
19 for new wells.

20 Q. You wouldn't be testifying that
21 technological improvements will cease as of today?

22 A. No. And I have no reason to assume that
23 the forecast that I rely on assumed that either.

24 Q. Do you know what percentage of the city-
25 gate price in PECO's service territory relates to

1 upstream pipeline and storage costs?

2 A. Not specifically.

3 Q. Do you know if there are any current
4 pipeline capacity constraints coming into the
5 Philadelphia area?

6 A. Philadelphia area. No, I don't.

7 Q. Are you aware of the proposed new pipeline
8 projects to bring natural gas supplies to the
9 northeastern United States?

10 A. I'm generally aware of some proposals to
11 bring western Canadian gas and Chicago and some other
12 proposals further on into New England and New York.

13 Q. Do you know about the back-haul projects
14 down from the maritime provinces?

15 A. As a very general matter, I know about
16 them, yes.

17 Q. On Page 8 of your testimony at Lines 13 to
18 14, you talk about an expectation that fuel prices
19 will increase at a rate above inflation. Do you see
20 that?

21 A. Yes, I do.

22 Q. To what fuels are you referring?

23 A. I'm referring here specifically to gas.

24 Q. Just gas. Whose expectation is that?

25 A. The main forecasters of long-term gas

1 prices.

2 Q. Who would they be?

3 A. DRI, GRI, DOE. I haven't looked at the
4 recent refill forecast. I don't know that they're
5 still doing it in the U.S. Those are the three that
6 I'm relying on.

7 Q. It's your testimony that DOE has an
8 expectation that natural gas prices will increase
9 higher than the rate of inflation?

10 A. Yes.

11 Q. What rate of inflation are you using?

12 A. It's a question of what rate they're
13 using. Generally speaking, I think most everyone is
14 using a rate between two and a half to three percent.

15 Q. Do you agree with that rate?

16 A. Yes.

17 Q. On Page 11 of your testimony, you discuss
18 the pilot program. Do you see that?

19 A. I'm sorry. No, I don't. Oh, yes, I see
20 it now.

21 MR. BONNEY: What line reference?

22 A. Page 11, Line 2.

23 BY MR. MILLER:

24 Q. Do you know what the retail generation cap
25 per KWH is for the residential and commercial

1 customers under the pilots?

2 A. No.

3 Q. Do you know if any incentive is being
4 given to customers to participate in those pilots?

5 A. My general recollection from what I've
6 heard in this proceeding is that there's -- I believe
7 there's a 13-percent discount.

8 Q. Again, on Page 11, Line 6, you talk about
9 the last three years of the partial settlement. Do
10 you see that reference?

11 A. Yes, I do.

12 Q. Do you know how much on a percentage basis
13 of its stranded costs PECO would have collected under
14 the partial settlement the first of those last three
15 years?

16 A. Well, in a present value basis, it will be
17 more than 70 percent. Other than that, I would be
18 speculating.

19 Q. Going over to Page 12 of your testimony,
20 you address the issue of the power of the incumbent
21 supplier. Do you see that?

22 A. Yes, I do.

23 Q. In what year, generally, did PECO and its
24 predecessor companies begin serving customers in
25 Philadelphia?

1 A. I don't know specifically. I assume
2 sometime around the turn of the century.

3 Q. So almost 100 years ago, give or take?

4 A. Yes.

5 Q. You expect that PECO would have detailed
6 profiles of customers' individual usage history,
7 credits, things like that?

8 A. I'd be speculating. One would presume
9 this, but I have enough experience with utilities to
10 know that presumption doesn't necessarily hold true.

11 Q. Touche. Do you know if there's anything
12 under the partial settlement that would prohibit
13 PECO, if it had such information, from retaining it
14 in their records?

15 A. I don't know exhaustively. Some of it
16 clearly would have to be retained for operational
17 reasons.

18 Q. You state that under the Choice Plan PECO
19 would no longer have a basis for contact with ENRON's
20 customers. Do you see that?

21 A. Yes, I do.

22 Q. By ENRON's customers, do you mean the
23 customers that are taking service from the PLR?

24 A. Yes, that is what I meant.

25 Parenthetically, any other ENRON customers also.

1 Q It's your understanding that PECO would remain
2 the wires customer under the Choice Plan?

3 A Wires company.

4 Q Wires company under the Choice Plan.

5 A Yes.

6 Q For those customers that do not default to the
7 provider of last resort, would there be anything that would
8 keep PECO from sending out a bill to those customers?

9 A So your question refers to customers who have
10 chosen the competitive supplier rather than the -- I don't
11 know what the arrangements are for billing as to whether it
12 is proposed that they bill separately or through the energy
13 service provider or conversely I just don't know.

14 Q So is it also true that for those customers that
15 don't default to the provider of last resort, you don't
16 know whether PECO would retain a basis for contact with
17 those customers?

18 A Well, the contact I am talking about is the
19 billing and call centers and related kinds of contact. And
20 as the last answer indicated there may be some basis for
21 doing those things for those customers. What we are
22 talking about here, however, was the incumbency of what
23 would be in the PLR.

24 Q Is it your understanding that for those customers
25 that do not take service from the PLR, that ENRON would not

1 be essentially using PECO to provide those services under
2 the meter bill collect arrangements?

3 A That's my understanding of the ENRON proposal,
4 yes.

5 Q Now, on page -- if you refer back to page 10 of
6 your testimony, don't you state that in the early period of
7 Choice Plan a substantial proportion of customers will
8 likely move to alternative suppliers?

9 A You read that correctly, yes, sir.

10 Q So those customers would not necessarily be
11 taking service from ENRON as the PLR. Isn't that the case?

12 A That is correct.

13 Q Going back up to page 11, you talk about at the
14 top of that page, tight generation caps in the early years
15 of the partial settlement. Do you see that?

16 A Yes.

17 Q So under the partial settlement, would you agree
18 that customers that remain with PECO as the PLR would not
19 have any risk of having this generation price exceed those
20 generation caps?

21 A That's true by definition of the cap.

22 Q And if -- is it also true that if market price
23 were lower than the cap, those customers taking service
24 from PECO as the PLR would pay that lower market price?

25 A That's my understanding.

1 Q Now, a customer that chose to go to a competing
2 EGS could see his or her generation price exceed the
3 generation cap listed under the partial settlement, isn't
4 that true?

5 A That would depend on the nature of the
6 arrangements it had with its alternate generation supplier.

7 Q There would be nothing to prohibit that other
8 than that relationship with the EGS; right?

9 A There's no regulatory rule that would prohibit
10 that.

11 Q Do you know of anything in the partial settlement
12 that prohibits PECO from advertising the fact that if
13 customers stick with PECO they'll always get the benefit of
14 the market price or the generation cap, whichever is lower?

15 A No, I don't.

16 MR. MILLER: Your Honor, I don't have any more
17 questions of Dr. Hieronymus and I would like to reserve the
18 right to offer Mr. Slater later today to respond to the
19 points that Dr. Hieronymus made in his surrebuttal.

20 JUDGE RAINEY: Any objections to that request.

21 MR. BONNEY: If we are going to do it why don't we
22 do it now while witnesses are available.

23 JUDGE RAINEY: Okay. If that's okay with the
24 parties.

25 MR. MILLER: I think we'd need five minutes to talk

1 it over, but certainly no longer than that.

2 JUDGE RAINEY: Why don't we then -- do you want to
3 finish with this witness who's here right now. Dr.
4 Hieronymus, and then we can go to Mr. Slater after that.
5 Is there any further cross examination for Dr. Hieronymus?

6 (No response.)

7 JUDGE RAINEY: Any redirect?

8 MR. BONNEY: Could I just have less than a minute.

9 (Pause.)

10 MR. BONNEY: No redirect, Your Honor. Thank you.

11 JUDGE RAINEY: Thank you. Thank you, Dr.
12 Hieronymus. You may stand down. Are you ready to put Mr.
13 Slater on now? Do you need time?

14 MR. MILLER: Yes.

15 JUDGE RAINEY: You can do that over lunch, then.
16 It's about quarter to one presently. What is the
17 preference of the parties, do you want to break for lunch
18 at this time or do you want to proceed? Okay. Hearing
19 nothing, why don't we take a lunch break at this particular
20 time and why don't we come back at 1:30.

21 (Whereupon, at 12:46 p.m., the hearing recessed, to
22 reconvene at 1:30 p.m., the same day.)

23

24

25

AFTERNOON SESSION

1
2 JUDGE RAINEY: Are we ready to resume? Are we ready
3 to go back on the record?

4 MR. MILLER: Yes, Your Honor.

5 JUDGE RAINEY: Okay. We'll have oral surrejoinder
6 by Mr. Slater. Mr. Slater, you have been previously
7 sworn. The oath still applies. Mr. Miller?

8 KENNETH SLATER, called as a witness, having been
9 duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

10
11 MR. MILLER: Thank you, Your Honor.

12 BY MR. MILLER:

13 Q Mr. Slater, do you recall Dr. Hieronymus
14 addressing his contentions of the goal of the wholesale and
15 resale regeneration market?

16 A Yes, I do.

17 Q Do you have a reply to his contentions?

18 A The problem I see between having a reconnect
19 between the wholesale and retail market is that you have
20 new entrants in the energy market who sell energy on the
21 wholesale market and if the price caps on the retail is
22 larger than the wholesale, he's shut out of the retail
23 market. He can't acquire retail generation.

24 He can sell wholesale generation in the wholesale
25 market, but presumably his only customers would be

1 retailers. People who would be selling to retail business
2 the price caps were too low for that wholesale market, he
3 would be shut out of that. That's basically the question
4 that I am sort of having a problem with there of having a
5 disconnect between the two markets.

6 One secondary point is we haven't seen or I haven't
7 seen any mechanism that PECO proposes to address the
8 situation of what happens if the wholesale market is, in
9 fact, higher than the retail market. Where did he get the
10 energy from to supply their retail market? That's just a
11 question I have. That's all, Mr. Miller.

12 Q Was that under the partial settlement? Your last
13 comment?

14 A Yes. Under the partial settlement.

15 MR. MILLER: That's all we have, Your Honor.

16 JUDGE CHESTNUT: Thank you. Cross examination Mr.
17 Bonney.

18 MR. BONNEY: Thank you, Your Honor. Good afternoon,
19 Mr. Slater.

20 CROSS EXAMINATION

21 BY MR. BONNEY:

22 Q Is it your testimony that with retail price caps
23 that the overall demand for power in the PECO service
24 territory will change? Or will it be the same? Regardless
25 of the caps?

1 A All other things being equal, it should remain
2 the same. The total demand for energy.

3 Q Isn't it correct that the mechanism under the
4 partial settlement that you referred to for purchasing of
5 power when the wholesale price is higher than the cap would
6 be for the PECO distribution company to buy that power at
7 the wholesale market price and resell it at the capped
8 price?

9 A That's what one would assume, but there doesn't
10 seem to be anything there that would stop the distribution
11 company from going broke. Under the --

12 Q That's the risk that PECO takes under the partial
13 settlement; correct?

14 A I don't know. I was just addressing that as a
15 question that I hadn't seen answered.

16 MR. BONNEY: That's all I have. Thank you.

17 JUDGE RAINEY: Any other cross examination?

18 (No response.)

19 JUDGE RAINEY: Redirect?

20 (No response.)

21 JUDGE RAINEY: Thank you Mr. Slater. Next witness I
22 have on the list is Ms. Lopez?

23 MR. GALLAGHER: Yes, Your Honor.

24 JUDGE RAINEY: Ms. Lopez, will you raise your right
25 hand, please.

1 JUDGE RAINEY: Any objections?

2 (No response.)

3 JUDGE RAINEY: So admitted in evidence.

4 (ENRON Statements Nos. 6 and 6-R and ENRON Exhibits
5 Nos. A, B, C and 1 were admitted in
evidence.)

6 JUDGE RAINEY: Cross examination? Mr. Trask?

7 MR. TRASK: PECO has no cross examination, Your
8 Honor.

9 JUDGE RAINEY: No cross examination for this
10 witness.

11 (No response.)

12 JUDGE RAINEY: Thank you, Ms. Lopez. You may stand
13 down.

14 THE WITNES: Okay.

15 JUDGE RAINEY: Next witness I have is Mr.
16 Kingerski. Mr. Kingerski, would you raise your right hand,
17 please.

18 HARRY J. KINGERSKI, called as a witness, having been
19 duly sworn, was examined and testified as follows:

20 JUDGE RAINEY: Thank you. Please be seated. Give
21 your full name, spelling your last name and your business
22 address for the record.

23 THE WITNESS: My name is Harry J. Kingerski. Last
24 name is K-i-n-g-e-r-s-k-i. My business address is 1400
25 Smith Street, Houston, Texas, 77002.

1 MR. RAINEY: Thank you. Mr. Gallagher?

2 MR. GALLAGHER: Yes, Your Honor. Thank you. Mr.
3 Kingerski is sponsoring ENRON Statement Number 5, direct
4 testimony with Exhibit A and B and also ENRON Statement 5-R
5 with Exhibit Number 1.

6 JUDGE RAINEY: So identified for the record.

7 (ENRON Statements Nos. 5 and 5-R and ENRON Exhibits
8 Nos. A, B and 1 were produced and marked for
identification.)

9 DIRECT EXAMINATION

10 BY MR. GALLAGHER:

11 Q Mr. Kingerski, do you have any changes to your
12 direct testimony? Let's start with that.

13 A Yes, I do. First, on page 19 of my direct
14 testimony, at line 9, I would like to delete the reference
15 to employment and economic recovery and replace it by
16 economic efficiency.

17 Q Do you have any other changes to your direct
18 testimony?

19 A Yes. One other change. In the section entitled
20 proposed treatment of miscellaneous riders, page 3 of 4,
21 the second block from the bottom on the right-hand side
22 under the column labeled recommended action.

23 Q And in what exhibit is this located, Mr.
24 Kingerski?

25 A This is in Exhibit A, at the end of Exhibit A.

1 This has to do with the economic efficiency rider and as
2 stated right now, the phrase is eliminate this rider and I
3 would like to change that to read, modified discounts so as
4 to apply only to the transmission and distribution
5 components of service.

6 MR. GALLAGHER: Your Honor, I have distributed to
7 all the parties those changes. It might be easier if you
8 wanted to refer to those.

9 JUDGE RAINEY: Thank you, Mr. Gallagher.

10 BY MR. GALLAGHER:

11 Q Do you have any changes to your rebuttal
12 testimony, Mr. Kingerski?

13 A Yes, I do. First at page 10, line 9, the last
14 word of the sentence now reads PECO and I would like to
15 change that to E-G-S-s; capital E capital G capital S small
16 s.

17 Then also at page 14, line 13, I would like to
18 delete the phrase, "is Mr. Baron correct in asserting
19 that", and replace it by the word "does." Again, on page
20 14, at line 15, I would like to change the reference to
21 page 2 to be "page 3 (as amended)."

22 Then again on page 14, beginning at line 18, I would
23 like to delete the phrase "there is apparent confusion
24 because."

25 Q Is that the extent of the corrections to your

1 rebuttal testimony?

2 A Yes, it is.

3 MR. GALLAGHER: With those corrections, Your Honor,
4 I'd like to move ENRON Statement Number 5, Exhibits A and B
5 and ENRON Statement Number 5-R with Exhibit Number 1 into
6 the record subject to any cross or objections from the
7 other parties.

8 JUDGE RAINEY: Any objections?

9 (No response.)

10 JUDGE RAINEY: So admitted.

11 (ENRON Statements Nos. 5 and 5-R and ENRON Exhibits
12 Nos. A, B and 1 were admitted in evidence.)

13 JUDGE RAINEY: Is the witness available for cross
14 examination, Mr. Gallagher?

15 MR. GALLAGHER: Yes, Your Honor.

16 JUDGE RAINEY: Cross examination. Yes, Mr.
17 Steinmetz.

18 MR. STEINMETZ: Good afternoon, Mr. Kingerski. My
19 name is Steve Steinmetz. I am with the OCA.

20 CROSS EXAMINATION

21 BY MR. STEINMETZ:

22 Q Would you please turn to section 17 of your rules
23 for payment terms and your tariff, Exhibit A? That's on
24 page 32 now, is there any provision in your proposed tariff
25 which would allow for PECO, the EDC, to issue a combined

1 bill including its own charges and those in an EGS?

2 A The only -- the provision for billing by PECO is
3 for default service customers. For a customer that has
4 chosen an alternate supplier, then presumably that billing
5 would be done through an independent billing service. I
6 think I have mentioned in my testimony that I don't think
7 there's anything that would preclude PECO from applying for
8 the type of status that would allow it to also provide
9 competitive billing services.

10 Q I mean if PECO -- how would PECO apply for such
11 status?

12 A Well, if PECO decided that it would like to,
13 under the ENRON approach, where metering, billing and other
14 customer related services are made competitive, if there
15 were a means or a plan by which PECO could take existing
16 assets and employees and turn that into a competitive
17 service, an unregulated service under a transition plan
18 that it had proffered before the Commission, then it could
19 end up being a competitive supplier of that type of
20 service.

21 Q Okay. But unless PECO took those actions
22 currently as it's structured under your tariff, there's
23 nothing which would allow PECO to issue, as the EDC to
24 issue a combined bill including its own charges and those
25 of an EGS. Is that correct?

1 A Except for default service under the MBC
2 agreement with ENRON.

3 Q Also, there would be no provision within this
4 tariff as it's currently constructed which would allow PECO
5 the EDC, to independently bill for its transmission and
6 distribution service and allowed an EGS to just bill for
7 its generation service? Is that correct?

8 A Well, the billing that PECO would be issuing in
9 that case would be directly to the EGSs for delivery
10 service provided on their behalf.

11 Q Okay. Not to the end users, the customer. Is
12 that correct?

13 A Correct.

14 Q Okay. So currently this tariff is structured
15 only in a way which would let EGS issue a combined bill for
16 all services. Is that correct?

17 A That's correct.

18 Q Do you believe that this tariff and this billing
19 procedure as you proposed is consistent with the
20 Commission's final orders on guideline for maintaining
21 services the same level and quality at Docket Number
22 C-00960890F011?

23 A Let me answer that in two ways. I am not
24 familiar with the specific reference that you have made.
25 But I would also point out that in Section 2 of our tariff,

1 the EGS is required in performing services, to adhere to
2 any prior laws and/or statute or regulations that have been
3 proffered and I would include in that the one that you have
4 just cited.

5 Q Please take a look at proposed Rule 17.2(b).
6 This language states that, quote, EGS billings may either
7 separately state the company's charges or incorporate them
8 into the EGS billing. Is that correct?

9 A Yes.

10 Q Incorporation of all charges into the EGS billing
11 would mean bundled rates. Is that correct?

12 A Well, the EGS bill going to the customer may have
13 a variety of services that are being reflected.
14 Transmission and distribution delivery being two
15 possibilities, obvious possibilities.

16 Q So when you say, when this tariff states
17 separately state or incorporate, that would mean that
18 either T&D could be set up separately or could be bundled
19 into one rate under an EGS bill. Is that correct?

20 A That's correct.

21 Q And on page 3 of your rebuttal, you believe you
22 state that a customer bill designed which type of billing
23 they prefer.

24 MR. GALLAGHER: Mr. Steinmetz, what line are you
25 referring to?

1 MR. STEINMETZ: That would be line 1.

2 BY MR. STEINMETZ:

3 Q But the rule at 17.2(b) doesn't actually indicate
4 that it is. Is that correct?

5 A I have to ask you to repeat that comparison.

6 Q Sure. On page 3 of line 1, responding to I guess
7 the testimony of Mr. Sundermeir concerning the bundled
8 nature of your proposed bill, you claim that the customer,
9 not PECO, decides what type of bill is desired.

10 But I am looking at 17.2(b) and it just says EGS
11 billing may either separately state the company's charges
12 or incorporate them in the EGS billing, the word customer
13 is no where in that language.

14 A Okay.

15 MR. GALLAGHER: Is there a question there somewhere?

16 MR. STEINMETZ: I am asking him to determine whether
17 the customer, not PECO, determines what kind of billing?

18 THE WITNESS: In Section 17.2(b) the options that
19 are presented there for the EGS are that they can offer a
20 menu of billing options to the customer. They may want to
21 offer very detailed billing where every individual
22 unbundled service is laid out separately and there may be
23 some customers who would prefer that.

24 The EGS may also offer, under our proposed tariff, a
25 type of billing where two or more of those individual

1 unbundled services are combined together and stated under a
2 flat price.

3 The presumption here is that the EGS, then, would
4 use the flexibility afforded in Section 17 and present a
5 range of options, a range of billing options to the
6 customer so the customer then is in a position of first
7 being able to choose among competing EGSs by the type of
8 billing service that they are providing.

9 And then second, within the choices of any one EGS
10 they could look at a whole menu of billing options that
11 might be offered. So it's that kind of diversity and
12 flexibility that we would imagine would develop with the
13 EGS billing that leads me to say that the customer gets to
14 decide.

15 BY MR. STEINMETZ:

16 Q Okay. Now, also on page 3 of your rebuttal
17 testimony, you respond to a PECO claim that the delivery
18 provision has no provision requiring an EGS to comply with
19 the rate cap provisions of the act. You admit that ENRON
20 is subject to the rate caps in its role as provider of
21 default service. Do you see that?

22 A Could I ask you for a line reference?

23 Q Sure.

24 JUDGE RAINEY: That's starting at line 2?

25 BY MR. STEINMETZ:

1 Q Right. You state on line 3 under the delivery
2 tariff, ENRON is subject to the rate caps in its role as
3 provider of default service. Do you see that?

4 A Right.

5 Q You go on in line 5 and state, EGS is our freedom
6 market and the customer is free to choose a product or a
7 price which is an improvement on default service. Do you
8 see that?

9 A Yes.

10 Q Is it ENRON's position that once a customer
11 chooses an EGS he or she loses all protections of the rate
12 cap?

13 A Well, the rate cap attaches to default service.
14 When a customer chooses the EGS and there are a variety of
15 other products that they may also be purchasing from that
16 EGS, then we get into a comparison of apples to oranges, so
17 to speak. The default service may not be directly
18 comparable to the type of service that the customer is
19 getting from the EGS.

20 The customer always has the opportunity to fall back
21 to default service if they would prefer that type of
22 service and the pricing that's contained therein. But if a
23 customer is willingly choosing to provide a -- to purchase
24 a different mix of services, then the rate cap would not
25 apply under the ENRON plan. Presumably it doesn't apply

1 under the partial settlement either.

2 Q Are you including the transmission and
3 distribution rate cap protection?

4 A No. I am talking about the total. The total
5 price cap. Not the rate cap on transmission and
6 distribution rates. The transmission and distribution
7 rates would continue to be set forth in the tariff and
8 determined through regulation.

9 Q And that would also apply if a customer selected
10 an EGS, the transmission and distribution rates would
11 continue to be capped. Am I correct?

12 A The prices from PECO to the EGS for transmission
13 and distribution would be as set forth in the PECO tariff.

14 Q And how about the prices from the EGS to the end
15 user?

16 A The prices from the EGS to the end user are
17 determined by contract between those two parties.

18 Q Including the transmission and distribution
19 prices?

20 A That's correct.

21 Q Now, at 17.2(e) of your proposed tariff, sir, you
22 list all the information to be included within an EGS
23 bill. I don't see any requirement for the inclusion of any
24 cents per kilowatt hour price disclosure. Can I assume
25 that that would be required pursuant to 17.2(e). Any

1 information necessary for the computation of the bill?

2 A Now. The type of disclosure you asked me about
3 refers to cents per kilowatt hour?

4 Q Uh-huh.

5 A I am not aware at this time of any requirement
6 that the bill would have to show a cents per kilowatt hour
7 figure.

8 Q Okay. Now, on page 4 of your rebuttal, you
9 indicate that the EGS is responsible for payment of all
10 charges assessed by the company and you cite to Rule
11 17.1(b). Do you see that on line 5?

12 A Yes.

13 Q Does this mean that ENRON remits all T&D, CTC and
14 ITC charges to PECO regardless of whether a customer has
15 paid them to ENRON?

16 A Yes.

17 Q Under your tariff you seem to contemplate that an
18 EGS could be responsible for all billings and collections
19 even for regulated charges such as transmission and
20 distribution; correct?

21 A Could you give me that --

22 Q Sure. Under your tariff I believe it
23 contemplates that an EGS could be responsible for all
24 billing and collections, including regulated charges.

25 MR. GALLAGHER: Could we have a cite somewhere?

1 Where are you referring to?

2 MR. STEINMETZ: I believe it's his tariff. There's
3 got to be a collection provision in here somewhere that he
4 was aware of. I had trouble finding it. Can you answer
5 the question?

6 THE WITNESS: Well, we have recommended collection
7 activity in an unbundled unregulated service.

8 BY MR. STEINMETZ:

9 Q Actually -- all right. Do you contemplate that
10 an EGS will have the right to terminate a customer's
11 service and by that I mean disconnect the customer from the
12 grid? For nonpayment of T, D or generation services?

13 A No. An EGS will not do the physical disconnect.
14 In accordance with Chapter 56 regulations it can request
15 that PECO do that disconnect.

16 Q Right. Would you please reference Rule 18.1,
17 that's on page 33 of the tariff. That's basically where
18 you set that out. That's what you have said. But my
19 question is what does generally mean?

20 A I think the generally there refers more to the
21 five-day provision that's contained in that sentence. If
22 there were a condition that involved a safety hazard or
23 some other condition which perhaps is life threatening, and
24 we needed instant remediation, then the EGS could exercise
25 an opportunity to request PECO to do the physical

1 disconnection under section, for example, 18.4 and not have
2 to wait the full five-day period.

3 Q For clarification that would be the company and
4 not the EGS actually disconnecting the customer. Right?

5 A That is correct.

6 Q Please turn to Section 2.6 of your tariff.
7 That's on page 13. Now, why does this tariff allow the EGS
8 or the company to provide a letter to another EGS record
9 regarding an end user's payment history?

10 A That letter would come at the request of the end
11 user. So the end user had voluntarily agreed to have that
12 letter go from one EGS to the other.

13 Q Okay. So just for confirmation, that would be
14 with the end user's knowledge or Commission?

15 A Yes.

16 Q Excuse me if I am skipping around but could you
17 turn to 22.2 of your proposed tariff, single point of
18 contact. In this section you require a customer --

19 JUDGE RAINEY: I am sorry. Do you have a page
20 number?

21 MR. GALLAGHER: Thirty-five, Your Honor.

22 MR. STEINMETZ: Thirty-five.

23 JUDGE RAINEY: Thank you.

24 BY MR. STEINMETZ:

25 Q This customer is required to report a service

1 outage to their electric supplier. Would you agree the
2 vast amount of outages of transmission or distribution are
3 related?

4 MR. GALLAGHER: Objection. I don't know whether
5 that's within -- I don't believe that's within Mr.
6 Kingerski's expertise.

7 JUDGE RAINEY: I am going to overrule the
8 objection. He can answer if he knows. If he doesn't know,
9 he can say so.

10 THE WITNESS: I don't know that to be the case.

11 BY MR. STEINMETZ:

12 Q If a car hit a distribution pole at the end of my
13 block and ENRON was my EGS, instead of calling PECO, who is
14 ultimately responsible for putting back the line, I would
15 call ENRON. Is that correct?

16 A Section 22.2(c)(1)(a) would say yes, that the
17 primary recipient of those types of phone calls would be
18 the EGS and if ENRON were the EGS of the customer whose
19 service were affected, that's where the call should go.

20 Q And if on my block of let's say 20 houses there
21 were ten houses that had ten different EGS suppliers and a
22 pole went down, instead of calling Philadelphia and having
23 my service restored, we would have ten phone calls
24 throughout the nation to different EGSS? Is that correct?

25 A Well, I won't speculate on the hypothetical of

1 whether that would actually happen. I am not sure that it
2 would happen under today's circumstances, but the way this
3 outage reporting obligation has been set up is that an EGS
4 who gets such a call has the obligation to pass that
5 information along to PECO on a real time basis.

6 So that as the EGS gets the call, PECO is also
7 getting that same information with no lag.

8 Q At page 7 of your rebuttal, you indicate that
9 ENRON now supports the portability of cap rate discounts.
10 But at this time you don't have a process for implementing
11 this portability. Is that correct?

12 A What we have done is to accept in its entirety
13 the concepts presented in the partial settlement regarding
14 the cap rate program. The discounts, the extension of
15 service, the expansion of service, all elements thereto.

16 The actual procedures for implementing the discounts
17 we would envision would be part of a compliance filing in
18 this case as I would have expected they would have been
19 part of a compliance filing coming out of the partial
20 settlement.

21 I mean, those are details that have to be worked out
22 with regard to this expansion of the cap rate program in
23 either event.

24 MR. STEINMETZ: Thank you. I have no further
25 questions.

1 JUDGE RAINEY: I think I just have one question. It
2 may go to one or two, but I want to understand the concept
3 under how you see all the billing arrangements to work.

4 BY MR. RYAN:

5 Q Let's assume that some service by the ENRON plan
6 -- and I assume it will be the rebuttal testimony version
7 of the ENRON Choice Plan actually gets approved by the
8 PUC. So that you understand the role you would have, then,
9 if this happened; right? You'd have an MBC contract
10 somehow with PECO; right?

11 A ENRON, as provider of last resort, would have --

12 Q Well, ENRON -- okay. As provider of last
13 resort. Well, let's talk about a situation where ENRON's
14 handling at least in name, Enron is handling all the
15 billings not only for the default customers but for
16 customers who are shopping and successfully shop and go to
17 Connectiv or something like that.

18 Isn't that correct? Won't you be doing that, too or
19 will you not? Maybe I am misunderstanding it. Maybe
20 that's why I am asking.

21 A Well, the billing arrangements and specifically
22 the MBC contracts, the details of that have been laid out
23 in Mr. Kean's testimony, but the arrangement is that the
24 billing is being done under contract by PECO to ENRON.

25 Q I may be under a misapprehension here and that's

1 what I am asking you to clear up for me. Billing to all
2 customers now served by PECO, some of whom will now be
3 getting their generation from any number of suppliers,
4 including ENRON, or is that MBC contract only going to
5 apply to the service that ENRON provides to default
6 customers as in ENRON's capacity, whoever ENRON is, in
7 ENRON's capacity as a provider of last resort? Is that all
8 the MBC contract applies to?

9 A The MBC contract applies to or with ENRON, as
10 provider of last resort as a contract between ENRON and
11 PECO for that service for default service customers.

12 Q Okay. All right. Now, that clears up the first
13 part. Earlier something you said made me think you were
14 talking about a much broader responsibility, but I am
15 obviously wrong. So you are saying it's only in that
16 capacity. I am pleased to hear that. That's what I
17 thought but I wasn't sure.

18 Now, for those providers, those default customers
19 who get their bill under the MBC contract, if we assume --
20 no. And you also have the power purchase agreement in
21 place, too, if the ENRON Choice Plan is going forward;
22 right? So you are buying the power to supply those default
23 customers from ENRON -- I mean from PECO. Is that
24 correct?

25 A For the transitional default customers, that is

1 an obligation under the contract.

2 Q So a transitional default customer will, in fact,
3 be receiving PECO power. Its lines and services, its wire
4 services if you will, would still be provided effectively
5 by PECO employees and PECO facilities and the bills will be
6 prepared by PECO employees and facilities under the MBC
7 contract but the -- when the bill finally arrives at that
8 transitional default customer's place of business or his
9 home, it will show ENRON as if ENRON is the electric
10 company to them, will it not?

11 A That bill would show ENRON on it as the supplier
12 because ENRON would be providing the default service.
13 That's correct.

14 Q And PECO, or its name will appear nowhere in any
15 of those transactions, will it?

16 A I don't know that to be the case.

17 Q Would you expect it to be the case? Is ENRON
18 likely to put PECO's name on the bill? If you know? Maybe
19 you don't know.

20 A There may be arrangements where that would
21 occur. I really am not sure.

22 MR. RYAN: Thank you. That's all I have.

23 JUDGE RAINEY: Thank you. Mr. Trask?

24 MR. TRASK: I had previously indicated to Mr.
25 Gallagher we did not have cross but a couple of the

1 questions that Mr. Steinmetz asked suggested just a couple
2 of questions that I have.

3 BY MR. TRASK:

4 Q I just wanted to clarify, Mr. Kingerski and -- I
5 am Noel Trask on behalf of PECO. You mentioned in response
6 to one question that Mr. Steinmetz asked that there were
7 certain circumstances under which EGS could request that
8 PECO terminate, that is physically shut off service to a
9 customer?

10 A Yes. I believe I said that the EGS would have to
11 adhere to Chapter 56 regulations with regard to turnoffs,
12 but if everything had evolved such that that turnoff was
13 possible, and permitted, then the EGS would request PECO to
14 physically do the disconnect.

15 Q Okay. Then, if I could refer you to your rule
16 18.1 in your tariff which is on page 33 of the exhibit,
17 doesn't that rule contemplate that an EGS may not request
18 such physical shutoff by PECO and that rather the customer
19 would revert to default service?

20 A I am not sure I follow your question.

21 Q Okay. Well, first of all, doesn't it say that
22 EGS may terminate but not disconnect service?

23 A Yes. And that's referring to the fact that the
24 EGS is not a party that will physically do the
25 disconnection.

1 Q So your interpretation or the meaning within
2 language is that that doesn't preclude an EGS from asking
3 PECO to do so under certain circumstances?

4 A That's correct. The EGS could be terminating its
5 service to the end user in that the EGS is no longer the
6 supplier of service to that end user. And it also goes on
7 to say, then, that the EGS cannot physically disconnect the
8 service.

9 Q Mr. Steinmetz also asked you about the single
10 point of contact. Do you recall that testimony? Having to
11 do with Rule 22.2? In your tariff?

12 A Yes. Generally.

13 Q And it would be correct to characterize your
14 testimony, did you say that because there would be real
15 time links between PECO and EGS there would be no lag in
16 the conveyance of information about outages?

17 A That's correct.

18 Q Would you agree that it's possible that the
19 systems that create these real time links could fail on
20 occasion?

21 A I think any technology is probably subject to a
22 certain amount of risk for failure and I don't know that
23 the real time systems contemplated here would be any
24 different.

25 Q Different than what?

1 A Different than other sophisticated electronically
2 oriented technology. I would say that the EGS, so as to
3 make sure that it was adhering to the requirements that it
4 had to provide this real time communication, may have or
5 may need to install redundant equipment to make sure that
6 it is still adhering to the requirement here.

7 Q Since the equipment could fail notwithstanding
8 the existence of redundant equipment, wouldn't it be
9 possible for there to be occasions where the customer could
10 get through to PECO and at the same time if they weren't
11 able to call PECO the systems that would enable the EGS to
12 communicate with PECO could fail?

13 A Well, I think the possibility, the potential for
14 failure could exist on both sides. I mean, I could agree
15 with the premise of your question but I'd also have to say
16 that the possibility of a customer not being able to get
17 through to PECO because of some type of technological
18 failure could exist also and I don't know that the
19 differences in those two risks are different.

20 Q In the case of the EGS as the contact, however,
21 aren't there two sets of systems that would have to work?
22 Whereas, if the customer could call PECO there's only one
23 system that has to work?

24 A But again, the --

25 Q First of all -- you can expand on your answer but

1 do you agree with that?

2 A No. I don't agree with the basic premise because
3 the technology that is being used by the EGS might have a
4 much lower failure rate than that which is being used by
5 PECO. I mean, I just don't know that that would be the
6 case.

7 MR. TRASK: Your Honor, I have nothing further.

8 JUDGE RAINEY: Thank you. Any further cross
9 examination? Mr. Kleppinger?

10 MR. KLEPPINGER: Thank you, Your Honor. Good
11 afternoon, Mr. Kingerski.

12 THE WITNESS: Good afternoon.

13 BY MR. KLEPPINGER:

14 Q Before I get to what I really wanted to do, I was
15 confused by one of your prior responses. I'd like to walk
16 through what an HT customer, rate HT, high tension customer
17 would receive in terms of rate cap protection on the T&D
18 piece of their purchase.

19 Let's assume that an HT customer exercises its right
20 to choose an alternate supplier but also say sales that
21 they want to be billed separately by the alternate supplier
22 for the generation and for PECO for the T&D. Okay?

23 First question is, is that permissible under the
24 ENRON Choice Plan? Their selection of that type of a
25 billing arrangement? Let me just repeat what I understood

1 you to say.

2 The HT customer would purchase generation from an
3 EGS. The transmission and distribution delivery would be
4 provided by PECO via that same EGS and the customer would
5 also have chosen competitive supply for metering and
6 billing from an EGS, perhaps the same one.

7 I think the only caveat there that I don't believe
8 was correct is that the customer continues to purchase
9 their T&D from PECO and elects to be billed separately by
10 PECO. Can they do that under the ENRON Choice Plan?

11 A No.

12 Q They cannot. Now, if they elect to -- well, I
13 guess they don't have the election. So the HT customer
14 that takes an alternate supplier is going to be billed by
15 the alternate supplier for both the generation piece and
16 the transmission distribution piece. That's their only
17 option?

18 A Well, I guess one qualification I would add to
19 that is a customer with the appropriate means to do so, has
20 the opportunity to, itself, become an EGS. So if a
21 customer exercised that option and met the criteria for
22 being an EGS, then it could do that.

23 Q Why do you think a customer would want to apply
24 to the Commission to be an EGS have a bonding requirement
25 just to take regular electric service?

1 A I didn't say that he would want to. I just said
2 that they would have that opportunity.

3 Q Is it your understanding of the PJM transmission
4 tariff that end use customers can qualify to take
5 transmission service directly from PJM?

6 A I don't know.

7 Q Under the ENRON Choice Plan, would they have the
8 ability to do that or would -- let's assume hypothetically
9 that under the PJM open access transmission tariff that an
10 end user can, in fact, purchase transmission service
11 directly from PJM?

12 Would they have the ability to do that under the
13 ENRON Choice Plan or would they be foreclosed by virtue of
14 having to take that transmission service through the
15 electric generation supplier?

16 A Under the conditions that you have cited, I would
17 say they can, in fact, purchase transmission separately
18 from PJM and I would cite, for example, page 57 of the
19 tariff which is the second page of rate HT and there we say
20 that transmission service may be purchased separately from
21 distribution service. So the ENRON plan does envision that
22 transmission and distribution are two unbundled services.

23 Q Okay. So now my high tension customer can go to
24 PJM for transmission. Can they go to -- but they still
25 don't go to PECO for the last distribution piece if they

1 are choosing an alternate supplier. Alternate supplier has
2 to purchase that for them under the ENRON Choice Plan?

3 A That's correct.

4 Q Now, I believe in answer to Mr. Steinmetz you
5 indicated that where the customer chooses an alternate
6 supplier, that the pricing of the transmission and
7 distribution service would be the subject of negotiation
8 between the customer and the alternate generation
9 supplier? Did I understand you correctly or not? Maybe I
10 misunderstood?

11 A Well, the customer will know by looking at, being
12 able to look at PECO's tariff that applies to EGS, what the
13 EGS is paying for transmission and distribution. The EGS,
14 in turn, in its relationship with the customer, will
15 presumably be bundling a package of services, transmission
16 and distribution being two of them.

17 If that customer wants an all-in price that includes
18 perhaps some of the things that Mr. Oliver referred to this
19 morning, energy efficiency improvement, different energy
20 services, if for some reason that customer wanted a package
21 price for a bundle of services, there would be no
22 requirement that the EGS would have to separately show or
23 explicitly point out that transmission and distribution
24 prices are.

25 But for that piece of it, it's not that the customer

1 is negotiating on transmission and distribution rates. The
2 customer is negotiating on what the package of energy
3 related services are that they are purchasing.

4 Q Before we start packaging services I'd like to
5 try to keep this with three services; generation,
6 transmission and distribution. On the transmission and
7 distribution piece, if a customer purchased power from an
8 alternate generation supplier in the ENRON Choice Plan,
9 does that customer continue to have the protection of the
10 transmission and distribution rate cap provisions of the
11 Competition Act?

12 A The protection exists via the rates that are
13 being charged by PECO to the EGS.

14 Q Is the EGS obligated under the Competition Act,
15 to charge no more than the rates that they pay the local
16 distribution company for transmission and distribution
17 service?

18 A I am not aware if there's an explicit requirement
19 to that effect in the act.

20 Q If the electric generation supplier were to
21 charge the customer more than the transmission and
22 distribution charges that the local distribution company is
23 charging the EGS, do you believe that that's a violation of
24 the non-generation rate cap provision of the Competition
25 Act?

1 MR. GALLAGHER: Your Honor, I may have to object.
2 He may be asking for a legal opinion.

3 MR. KLEPPINGER: Your Honor, this is the rates and
4 tariffs person that --

5 JUDGE RAINEY: I understand. The witness can answer
6 the question if he knows. If he does not know, he can say
7 so.

8 THE WITNESS: Well, I guess I would like to answer
9 it not from a legal perspective but from a business
10 perspective. I don't know if it's a violation of the act,
11 but I would think that a customer in that situation, when
12 faced with paying -- faced with the possibility of paying
13 higher T&D rates than the EGS is paying, itself, would
14 quickly find a new EGS.

15 BY MR. KLEPPINGER:

16 Q Would you agree that for a customer to make that
17 kind of a determination, they'd have to have a knowledge
18 base of what the T&D charges actually are in the LDC's
19 tariff?

20 A Yes.

21 Q Would you also agree that they would have to know
22 what the component of the bill that they are getting from
23 the electric generation supplier is that's attributable to
24 transmission and distribution service? In order to make
25 the relevant comparison as to whether they are being over-

1 charged or not?

2 A There's a certain amount of information that
3 would go into that, yes. I agree.

4 Q And would you agree that if the customer is
5 getting a bundled price for the three components
6 generation, transmission and distribution, without a
7 separation of those three components, they wouldn't be able
8 to tell whether they were being overcharged for a
9 transmission or distribution in comparison to the charge
10 that the EGS is receiving from the local distribution
11 company?

12 A Well, with the type of hypothetical that you are
13 presenting there, I think that would be relatively easily
14 remedied by having or requesting an unbundled bill from the
15 EGS. And it's certainly my experience and feeling that the
16 sophisticated HT customer could, and often does make those
17 type of calculations under existing rates right now and
18 that they would continue to do that type of activity under
19 the situation that or the type of environment that ENRON is
20 proposing here.

21 Q Mr. Kingerski, would you agree, subject to check,
22 that there's over 2000 rate HT customers on the PECO system
23 today?

24 A Yes.

25 Q And is it your understanding that all customers

1 served at 13.28 KV and above are rate HT customers?

2 A I don't know that all customers served at 13.28
3 and above are exclusively HT, no.

4 Q If I could turn to page 12 of your testimony,
5 rebuttal testimony, lines 5 and 6 you do make the general
6 statement that the ENRON proposal is not intended to take
7 away any benefit that P-A-I-E-U-G is obtaining a partial
8 settlement and that's really the purpose of most of my
9 questions here today.

10 Is it fair to say that ENRON is accepting now the
11 entire provisions contained in the partial settlement with
12 respect to Large Interruptible Load Rate or LILR?

13 A I would refer to my Exhibit 1-R in that testimony
14 which is a copy of a data response that we provided in
15 answer to the Public Utility Commission interrogatory Set
16 Number 2, question 1, where we took each of the issues that
17 we believed were relevant to that settlement and explained
18 how we have either matched or met what was contained in the
19 partial settlement or in those cases where there was not a
20 match, why we did not match.

21 Q And that interrogatory response goes beyond rate
22 LILR? Correct? Meaning its other provisions as well. If
23 we can focus on LILR. Can we agree that ENRON's agreed
24 that the availability of LILR will continue through the
25 year 2008?

1 A Yes.

2 Q Can we agree that ENRON has agreed that the on
3 peak hour pricing for LILR during that time period will
4 continue to be the PJM billing rate or its equivalent plus
5 a one cent adder?

6 A As part of default service, yes.

7 Q Can we agree that ENRON will characterize LILR
8 customers as default customer?

9 A Yes.

10 Q Has ENRON agreed that the methodology and
11 application of power factor adjustment to a rate HT LILR
12 customer's billing will not change under the ENRON Choice
13 Plan?

14 A Well, a suggested wording change to that effect
15 was made with Mr. Baron yesterday and subject to check, I
16 believe he accepted that wording change. But with that
17 wording change, then, yes, your question is correct.

18 Q And has ENRON agreed that the composition of the
19 one cent adder and at the time that the one cent adder is
20 unbundled, if you will, will be a half a cent for
21 transmission and half cent for distribution, thus totaling
22 the one cent number?

23 A Yes. And those rates have explicitly been laid
24 out in rate schedule HT.

25 Q And finally, the way in which CTC or ITC will be

1 applied to a rate LILR customer, ENRON has agreed to the
2 same provisions as are contained in the partial settlement
3 with respect to that calculation?

4 A If by that you mean that there will be no CTC
5 charges assessed to the on peak portion of the customer's
6 interruptible load, the answer is yes.

7 Q And with respect to the off peak portions of the
8 rate LILR customer's load ENRON is agreeing to the
9 calculation methodology that is described in the partial
10 settlement in paragraph 12?

11 A I believe the off peak CTC is standard under, as
12 defined under schedule HT.

13 Q Will ENRON use the customer's billing demands for
14 purposes of performing the off peak ITC calculation?

15 A As described in the partial settlement?

16 Q Yes.

17 A Yes.

18 Q Now, if I understand what you have done with the
19 Exhibit A to your direct testimony, and I am going to focus
20 on the last three pages of that which are the matrix of the
21 riders, and I'll stick with LILR for the moment which can
22 be found on page 3 of 4 of that exhibit, the end of that
23 exhibit.

24 Having agreed that LILR customers are default
25 customers, and then recommending at this point of the

1 exhibit that credits be repriced in LILR, are you
2 differentiating between a default LILR customer and a
3 non-default LILR customer?

4 A Yes. And let me explain how -- my reference is
5 to that in rebuttal testimony. With preserving the
6 arrangement that now exist with the LILR customer that
7 would be done under an agreement with the wording as
8 presently exists in that rider would attach to that
9 customer's service going into the future, so the customer
10 could preserve the same type of arrangement it has now with
11 LILR going into the future.

12 For an HT customer that is not presently served
13 under LILR, in the future it's envisioned under our plan
14 that there will be a new version of LILR that would exist
15 where the generation component of the service has been
16 unbundled.

17 The customer could contract with any number of, one
18 of any number of EGSS that were providing generation
19 service and in all likelihood matching or bettering the
20 type of arrangement they have now with PECO.

21 But we also recognize that there would be advantages
22 to having an LILR even under those circumstances, where
23 perhaps distribution and/or transmission constraints could
24 be relieved by having interruption of the customer's load.

25 So for that new customer, for that prospective

1 customer, then, we are saying that he would have the
2 advantage of first being able to obtain competitive
3 electric supply in the market, where he can shop for the
4 best arrangement that would suit his particular curtailment
5 opportunities, and then also couple that with discounts,
6 cost based discounts on the transmission and distribution
7 system that would reflect the avoided costs that are
8 possible by having an interruptible load.

9 Q Thank you. I take it, then, that at the end of
10 the Enron Choice Plan, there's really two LILRs, one that
11 applies to customers that are on the rate today and keep
12 their contract and those that may want to try to get on the
13 rate later on after the unbundled tariff is in existence?

14 A That's correct.

15 Q Now, that latter group of customers, is it
16 ENRON's view that they would not be able to qualify for the
17 preexisting LILR? You are saying there's no reason to
18 maintain that tariff?

19 A That's correct.

20 Q Do you know if the LILR is currently open to new
21 customers at all even under these tariffs for PECO?

22 A Based on my reading of PECO's existing tariff
23 LILR, I would say no, that a customer had to be under
24 contract for either HT or EP schedule as of December 1st of
25 1995 to qualify.

1 Q And under the ENRON Choice Plan, under the new
2 version of LILR you would be reopening that under your
3 proposal. Is that correct?

4 A No. I wouldn't characterize it as a reopening.
5 I would characterize it as a different type of rider which
6 is reflecting possible savings on transmission and
7 distribution because of the customer's willingness to
8 interrupt or curtail load on demand.

9 Q So in essence, you are proposing a new
10 interruptible rider for T&D service?

11 A Exactly.

12 Q Now, if you turn back to page 2 of Exhibit A, the
13 cooling thermal storage HT rider, is it still ENRON's
14 position that that end rider be eliminated from PECO's
15 tariff?

16 A Yes. And just to clarify, this recommendation is
17 made relative to what we are calling, say, an end state
18 condition.

19 It's saying that that type of rider, once we have
20 arrived to a fully competitive environment where services
21 have been unbundled, and generation can be purchased in a
22 market where there are competing EGSSs, that in those kinds
23 of conditions or under those kinds of conditions there's no
24 longer a need for a rider which gives preferential
25 treatment to this one technology because of, let's say, of

1 a lack of refinement in an otherwise available rate
2 schedule.

3 With a cooling storage application, the reason that
4 a special rider like this is in place is because presumably
5 a lot of that customer's load has been shifted to the off
6 peak. And therefore, that would warrant a special rate as
7 compared to the standard rate.

8 It's our view that in the competitive market, if the
9 customer has that type of load, and the type of
10 characteristic where most of that load is off peak, then he
11 will be able to go into the marketplace and contract with
12 an EGS who would be very willing to offer low prices for
13 load which is predominantly off peak.

14 Q At what point in time would this rider be
15 eliminated? Is there a date specific that this rider would
16 be eliminated in the ENRON Choice Plan?

17 A We have not proposed a specific date for that,
18 no.

19 Q If a customer is on the cooling thermal storage
20 HT rider as of December 31, 1996, is it your belief that
21 that customer has the protection of the rate cap provisions
22 that are contained in the Competition Act? With respect to
23 that service?

24 A At this time, there has not been a default
25 service specifically for cooling thermal storage customers

1 that has been proposed as part of the ENRON plan.

2 Q I don't think that answered the question. The
3 question was whether a customer was on the cooling thermal
4 HT rider as of December 31, 1996, does that customer, with
5 respect to that service, have the protection of the rate
6 cap provisions of the Competition Act?

7 A Well, I could see where, as a transition solution
8 prior to the point where competition was fully active and
9 available to all customers that there would be, that there
10 could be a need to maintain that type of rider going
11 forward for customers who were presently served thereunder
12 until such time as those customers had the opportunity to
13 choose.

14 So, for example, if there were a cooling thermal
15 storage rider customer who did not have the opportunity to
16 choose until say 1/1/2000, that certainly at a minimum, the
17 transition would have to maintain this rider for that
18 customer until the point at which that customer had the
19 opportunity to choose.

20 Now, my presumption is that when they had that
21 opportunity, they would be able to do at least as well as
22 they are doing now under this rider by contracting with an
23 EGS. If there were some reason that that presumption would
24 not hold true, then I could see where we would have to take
25 care of that type of situation and the customer could bring

1 that to the attention of the Commission and/or ENRON and we
2 would be willing to work through that.

3 Q Are the rate cap provisions contained in the
4 Competition Act under your understanding, tied in terms of
5 their duration for generation service to the collection
6 period of the CTC or a point in time when someone
7 determines that sufficient competition exists in the
8 marketplace?

9 A I believe that it's tied to the CTC recovery
10 period. I really don't remember the specifics of that.

11 Q That's good. So a CTC collection period, if it's
12 going to run through 2008, there would be rate cap
13 protection, let's say 2005 so we don't get into the
14 extension periods.

15 Let's say that in PECO's service territory there's
16 going to be a CTC or an ITC throughout the year 2005.
17 Under the ENRON Choice Plan, does the cooling thermal
18 storage HT rider customer have the protection of that rate
19 cap through 2005?

20 A That is not an explicit part of the ENRON
21 proposal at the present time.

22 Q Is this a benefit, in your mind, of the partial
23 settlement to P-A-I-E-U-G? Namely that the rate cap
24 provisions exist through 2005 for the riders currently
25 contained in PECO's tariff?

1 A I don't require any -- I mean I don't recall any
2 obligation that PECO has in the partial settlement to
3 maintain that rider as it exists right now.

4 Q Is it self evident from the statute, itself, that
5 the rate cap protections for customers that are taking
6 services December 31, 1996 have rate cap protection during
7 the duration of the CTC collection?

8 A It's not self evident to me and I base that on
9 the fact that in a competitive environment where generation
10 is provided by a multitude of EGSS and not by PECO as a
11 regulated entity, that that type of rider would continue to
12 exist?

13 I mean, that was my fundamental feeling about this
14 rider that it is basically inconsistent with an unbundled
15 competitive market price. So I can't say that it's self
16 evident that that rider would continue to exist in an
17 environment that was completely competitive.

18 Q What charges are covered by the rate cap, then?

19 A The charges covered by the rate cap are all those
20 in default service which cover each of the individual rate
21 schedules.

22 Q Well, is default service only the straight
23 service that a customer takes under rate R, rate RH, rate
24 GS rate PD and rate HT and excluding all the riders that
25 are in the current tariff? Is that the ENRON position? Is

1 that what default service means to you?

2 A I think we have described what default service
3 means in the tariff and the testimony of various
4 witnesses.

5 Q I'll ask again, does the default service in the
6 ENRON Choice Plan, is it limited to the plain vanilla
7 services to take under an R and RH, HT, GS and an HT rate
8 and exclude the riders that may be available to customers
9 under one or all of those rate schedules?

10 A Well, I come back to my same answer, which is
11 that in an unbundled environment, some of these riders are
12 inconsistent with that type of environment.

13 Now, we have also made the statement in this same
14 exhibit, at page 1 of this exhibit, that we have offered
15 these observations on these riders because this is how we
16 expect the fully competitive environment will operate.

17 We acknowledge that this is not a final package of
18 riders in that we would need to work with the company, work
19 with PECO, to implement the individual details associated
20 with specific customers.

21 Now, I think in some cases, the kinds of
22 circumstances that you are referring to would be covered in
23 those kinds of arrangements, but again, my basic point is
24 that in a competitive environment where generation can be
25 purchased separately, services related to generation should

1 not be part of the tariff.

2 Q These arrangements that would take care of these
3 riders and the discussions that ENRON would have with PECO,
4 would these all occur before December 11, 1997?

5 A I don't think so, no.

6 Q Would I, as a representative of customers taking
7 service of those riders be privy to those arrangements and
8 discussions?

9 A I would certainly think so, but I, since we are
10 talking about something that's prospective, I think that
11 would be an arrangement between PECO, ENRON and perhaps
12 others.

13 Q Moving down the column to the curtailment HT
14 rider, I'll try not to be repetitious here. Your basic
15 recommended action here is really identical to your
16 recommended action on the large interruptible load rider;
17 correct? In terms of eliminating references to generation
18 services and repricing the credit? It's the same
19 verbiage.

20 A You are looking at the specific rider or just
21 riders in general?

22 Q No. I am back on your Exhibit A and the
23 curtailment HT rider. Your recommended action block there
24 is identical to the recommended action block on the large
25 interruptible load rider.

1 A Yes. That's correct.

2 Q So here again, in the ENRON Choice Plan, I think
3 you are differentiating between default service curtailment
4 HT riders that would continue to take service from PECO and
5 a customer who opts for an alternate supplier and you are
6 converting the curtailment HT rider in that second case to
7 a T&D curtailment rider; correct?

8 A That's correct.

9 Q And is the remaining curtailment HT rider
10 customer the existing customer, a default customer under
11 the ENRON Choice Plan?

12 A I am sorry. Could you give me that example
13 again.

14 Q The customer that's currently on the curtailment
15 HT rider today receiving the \$2.00 per KW credit, under the
16 ENRON Choice Plan, is that customer a default customer?

17 A ENRON's plan matched the provisions that were in
18 the partial settlement with regard to LILR, for example. I
19 don't recall, other than the EER and 4.6 special contract, I
20 don't recall the partial settlement addressing any of these
21 other riders.

22 Our plan, then, did not address any of these other
23 riders because it's not our impression that there's
24 anything there to match with regard to the partial
25 settlement.

1 Q Is that -- can you answer the question? Whether
2 they are a default customer or not under the ENRON Choice
3 Plan? A curtailment HT rider customer, irrespective of
4 what's in the partial settlement.

5 There's some things the partial settlement may have
6 felt it didn't have to say. But we'll try to keep the
7 editorializing aside. Under your choice plan, is a
8 curtailment HT rider customer today a default customer --
9 period -- question mark.

10 A My answer is that a separate default service
11 category was not set up for that customer under that rider
12 because the partial settlement did not address that
13 customer. So the answer is no, because it was not our
14 impression that we were trying to match anything there in
15 the partial settlement.

16 Q So under your interpretation of the partial
17 settlement, an HT customer that also takes service under
18 the curtailment HT rider and I think we can agree that
19 that's the \$2.00 per KW credit on their demand charge? Is
20 that your general familiarity with the curtailment HT
21 rider?

22 A I'll accept that.

23 Q Okay. Is it your believe that the partial
24 settlement does not protect that customer in terms of the
25 statutory rate cap as it applies to the HT service they

1 take in conjunction with the curtailment HT rider?

2 A I am aware of no such protection in the partial
3 settlement.

4 Q And you don't believe that the Competition Act
5 gives that protection and doesn't have to be mentioned in
6 the partial settlement?

7 MR. GALLAGHER: I believe he's already answered that
8 question, Your Honor.

9 MR. KLEPPINGER: I have been asking a lot of
10 questions but I haven't heard many answers, Mr. Gallagher.

11 JUDGE RAINEY: I am going to overrule the
12 objection.

13 THE WITNESS: Could you repeat the question.

14 BY MR. KLEPPINGER:

15 Q Is it your understanding that an existing rate HT
16 customer who also utilizes the curtailment HT rider is
17 protected by the rate cap provisions of the Competition
18 Act? In the charges that they paid for that service as of
19 December 31, 1996?

20 MR. GALLAGHER: Your Honor, I am going to have to
21 object again on the grounds that it is asking for legal
22 opinion.

23 JUDGE RAINEY: If the witness knows, this is a
24 critical area with respect to this case and the witness can
25 say whether he knows or not.

1 THE WITNESS: I am not aware of the explicit
2 requirement that that type of customer is covered under the
3 rate protection.

4 MR. KLEPPINGER: Let me read the statute to you.
5 Sometimes that helps. In your capacity --

6 MR. GALLAGHER: Your Honor, I am going to --

7 MR. KLEPPINGER: In your capacity as a lay person
8 and an expert.

9 JUDGE RAINEY: I am sorry. Why don't we do this, so
10 it doesn't get out of hand. Do you have an objection you
11 want to make, Mr. Gallagher.

12 MR. GALLAGHER: Yes, Your Honor. I am going to
13 object to Mr. Kleppinger reading a statute to my witness
14 and asking him for an opinion, a legal opinion based on
15 that statute.

16 MR. KLEPPINGER: I haven't asked for a legal opinion
17 at all, Your Honor. I am asking -- this man is an expert
18 in rates and tariffs. There's a Choice Plan being proposed
19 that may or may not affect my clients' interest on the rate
20 cap protection and all I want him to do in his capacity as
21 that expert witness, tell me what his interpretation of
22 this section of the Competition Act means.

23 JUDGE RAINEY: I don't want us to get bogged down
24 and certainly there are areas for briefing with regard to
25 what the statute states and what is required under the

1 statute with regard to rate case. We have been around this
2 area quite a long time with Mr. Kingerski.

3 I believe he has made certain statements with regard
4 to what he knows or he's aware of with regard to what the
5 act states.

6 So I don't want to belabor this point. If you want
7 to ask him what his -- if you want to ask him what his lay
8 person's interpretation of this particular matter is, then
9 we can go -- we can ask that question but I don't want us
10 to belabor points that are legal argument or for brief.

11 It appears to me that you have asked the questions
12 that you have needed in order to gain information with
13 regard to what this witness' knowledge is or is not with
14 regard to the act.

15 MR. GALLAGHER: Your Honor, if I may, Mr. Kingerski
16 has already indicated that he doesn't know and secondly,
17 the act speaks for itself. Whatever the act says with
18 regard to these rate caps is in the act. And we can brief
19 it. But Mr. Kingerski certainly is not here to answer that
20 question.

21 MR. KLEPPINGER: Your Honor, the difficulty is not
22 what we can brief. It's what the ENRON Choice Plan means
23 and right now, I don't know what it means for my client,
24 even to write the brief as to whether or not it meets my
25 clients' needs or not.

1 JUDGE RAINEY: I am going to let you proceed with
2 the understanding that I don't want the point belabored.
3 Please proceed. I'll overrule the objection.

4 MR. KLEPPINGER: Thank you.

5 BY MR. KLEPPINGER:

6 Q Mr. Kingerski, I'll read the following phrase to
7 you from Title 66, Section 2804, 4, which has some
8 introductory language on the rate cap but the operative
9 words are as follows:

10 The total charges of an electric distribution
11 utility for service to any customer who purchased
12 generation from that utility shall not exceed the total
13 charges that have been approved by the Commission for such
14 service as of the effective date of this chapter.

15 It's that sentence right there. Can we at least
16 agree that for an HT customer that is also taking service
17 under the curtailment HT rider that their total charges for
18 that service as of December 31, 1996 included the rate
19 levels that are contained in PECO's HT tariff and
20 curtailment HT rider as of that date?

21 A I believe that there is a legal opinion required
22 here that I am not able to offer. And my basis for that is
23 that when I read this and I see that there are total
24 charges that have been approved by the Commission for
25 service, for a bundled service that includes generation, I

1 would automatically think of that as rate HT.

2 Q Have you seen a customer's -- strike that. Under
3 that interpretation that you have just given, can I
4 conclude that the rate cap provision that I just had you
5 read in ENRON's view, does not cover riders other than the
6 strict, plain vanilla rate HT rate PD, rate GS, rate R,
7 rate RH?

8 A Again, without offering a legal interpretation of
9 that provision, that would be my reading of the rate cap.

10 Q So that answer, I take it, would apply, again
11 moving back to Exhibit A, we have been through the cooling
12 thermal storage HT rider, the curtailment HT rider, would
13 that answer also apply to the employment and economic
14 recovery rider which is at the bottom of page 2 of the
15 exhibit?

16 A When I refer to that answer, you are talking
17 about the rate cap interpretation.

18 Q That's correct. The applicability of the rate
19 cap.

20 A Subject to the same caveat I mentioned before,
21 yes. That's my interpretation.

22 Q And would that answer also apply to the night
23 service HT rider on page 3 of 4 of Exhibit A to your
24 testimony?

25 A Yes.

1 Q And would it also apply to the capacity
2 reservation rider on page 3 of 4 of your testimony?

3 A Yes.

4 Q Now, let's turn for a moment to the economic
5 efficiency rider or EER and in your revised exhibit I
6 believe it was, ENRON's no longer proposing the elimination
7 of this rider. It is now proposing to have the discount
8 modified to apply to only T&D service; correct?

9 MR. GALLAGHER: Where is that, Mr. Kleppinger?

10 MR. KLEPPINGER: This is in Statement Number 5,
11 Exhibit A to Statement Number 5, page 3 amended. It's the
12 one you handed me this morning, Mr. Gallagher.

13 THE WITNESS: Yes. And it's the same arrangement
14 and issue as we have discussed with respect to LILR,
15 presumably going forward there would be two versions of
16 that; one that exists now for customers served under that
17 rider presently and one that would exist for future
18 application.

19 BY MR. KLEPPINGER:

20 Q Okay. Now, for an existing EER customer that has
21 an EER contract, would they be a default customer under the
22 ENRON Choice Plan?

23 A No. Not at the present time. And the reason for
24 that is because there is information that we felt that we
25 needed regarding those types of contracts before we felt

1 that we could make the commitment to I think as I have
2 said, quote, step into PECO's shoes on those contracts and
3 offer the discounts on CTC.

4 Q So is it fair to say that as of today, you
5 couldn't tell an EER customer whether or not they would
6 obtain the 20 percent or 14 percent rate reduction that's
7 contained in the ENRON Choice Plan? Is that correct?

8 A Well, we have proposed that those customers be
9 offered a fresh start with regard to those contracts and if
10 they exercise that option, then the discount offer of
11 standard rates would be available. If they exercise the
12 option to stay under those contracts, then the pricing is
13 as it's been already agreed to by PECO and the customer.

14 Q Let me understand this. If the customer does opt
15 for a fresh start, they receive the benefit of the
16 discount. Is that what you said?

17 A Relative to the rates that would otherwise apply
18 for the rate HT customer.

19 Q Okay. So if there -- let's say the HT rate that
20 the customer pays is six cents a kilowatt hour, and the EER
21 contract that they have is a let's say a 5 percent
22 reduction off of the six cents, for that customer, it would
23 be in their interest to take the fresh start in order to
24 get the 20 percent reduction off of HT; correct?

25 A I would presume so, yes.

1 Q Now, if the customer has a 25 percent discount
2 off of HT today, as a result of their EER contract, it
3 would not be in their interest to exercise the fresh
4 start. Would that be correct?

5 A Based on price consideration alone, I would agree
6 with that.

7 Q Now, I'd like to explore your understanding of
8 how the partial settlement operates with respect to EER
9 contracts. And let's assume for the moment that an HT
10 customer has a monthly bill of \$100.00.

11 I am not very smart with math so we are going to
12 keep it easy. And that that customer had negotiated, if
13 they were a standard rate HT customer they would be paying
14 \$100.00 a month. But they were able to negotiate over the
15 last couple of years an EER contract that contained a 10
16 percent reduction off of that bill so that their current
17 bill is really \$90.00.

18 Under the partial settlement, what is your
19 understanding of what happens to that customer's bill after
20 the 10 percent rate reduction contained in the partial
21 settlement goes into existence?

22 A It's my understanding that that customer would
23 pay the unbundled distribution and transmission charges of
24 rate HT and that the 10 percent discount that's in their
25 current bill would be reflected against CTC charges.

1 Q And the CTC charges in the HT tariff would have
2 already included the 10 percent across the board reduction
3 that's occurring as a result of the partial settlement. Is
4 that correct?

5 A I believe that's correct, yes.

6 Q So if we continue with the hypothetical, if the
7 HT rate reduction due to the partial settlement produced an
8 across the board reduction for an HT customer with these
9 load characteristics of 10 percent, instead of their
10 hundred dollar standard HT bill, this customer's standard
11 HT bill before the EER negotiation is now \$90.00.

12 Will you agree with me that the 10 percent, then,
13 that they have negotiated comes off the \$90.00 instead of
14 the prior \$100.00, so that the customer's net bill is 81
15 percent? Or \$81.00, excuse me.

16 A Accept that.

17 Q Now. That dynamic of how an EER customer's bill
18 is calculated under the partial settlement is that the
19 dynamic that ENRON cannot commit to now because of the lack
20 of information that it has?

21 A Yes. And we had requested the information from
22 PECO that would allow us to do that kind of analysis and
23 make that kind of commitment to match that particular part
24 of the partial settlement.

25 Q And is that a financial analysis that you would

1 have to go through as opposed to a conceptual analysis.
2 You understand the concept of how it would work. You just
3 don't know how much money it's going to cost you. Is
4 that --

5 A That's correct.

6 Q Would you agree that at least on your reading of
7 the partial settlement that that EER calculation dynamic is
8 a benefit to P-A-I-E-U-G as contained in the partial
9 settlement?

10 A It's a benefit which ENRON has every intention to
11 match once the requested information is available that will
12 allow us to make that commitment.

13 Q Am I going to know that by December 2nd when I
14 have to brief this case?

15 A That's not under ENRON's control at the present
16 time.

17 Q Does the ENRON customer Choice Plan differ with
18 respect to Rule 4.6 contracts from rate EER contracts? Or
19 again, the same position on Rule 4.6 contracts as you are
20 under EER contract?

21 A Well, with regard to the Rule 4.6 contracts, we
22 have replaced that in the proposed tariff with a Rule 4.1
23 which says customers opting to stay in those contracts can
24 do so. We did not maintain a provision to have that type
25 of contract going forward available to prospective

1 customers because we saw it as largely redundant with the
2 EER rider.

3 Q With respect to Rule 4.6 customer, if such a
4 customer has a, in their 4.6 agreement, a percentage
5 reduction off of the otherwise applicable rate HT bill,
6 similar to the analysis we just went through in the
7 hypothetical with an EER customer, is it your understanding
8 of the partial settlement that the 4.6 customer has their
9 bill calculated the same way that we walked through the
10 steps of the EER bill under the partial settlement?

11 A Yes.

12 Q And at this point in time, am I correct that
13 under the ENRON Choice Plan, on such a 4.6 contract, there
14 also is not yet a commitment to match that benefit? Of the
15 partial settlement?

16 A I'll reemphasize that we would very much like to
17 do that.

18 Q And I guess to do that, you would have to be
19 asking PECO for the pricing of that and you may or may not
20 be a competitor with PECO, so that's part of the problem
21 here in terms of getting the information, isn't it?
22 Because we don't know if the Choice Plan's going to be
23 approved or the Pennsylvania partial settlement is going to
24 be approved?

25 A We have asked that PECO provide the total sales

1 volumes and the revenues associated with those contracts.
2 We have not asked for detail on individual contracts but
3 only as a group of customers so that we could perform that
4 financial analysis that we need to perform. At the present
5 time, that information has not been supplied.

6 Q One last provision of the partial settlement goes
7 to self generation customers or customers who pursue self
8 generation, and you have described that provision on
9 Exhibit 1-R, page 5 of 6. Again, at least with respect to
10 this benefit of the partial settlement for P-A-I-E-U-G,
11 ENRON is not currently in a position to match that benefit
12 based on the information it has. Is that correct?

13 A Well, we have said that we can't match that
14 benefit because it's, as it's defined, it's a very elusive
15 benefit.

16 We would like to know exactly what that benefit is
17 and I would specifically refer to that part of the
18 provision in the partial settlement that says that customer
19 can qualify for the CTC exemption or partial exemption if
20 they were considering self generation as of December 1,
21 1998.

22 Now, in that exhibit, we have listed six different
23 possible interpretations of what considering self
24 generation might mean. I am sure there are others. If we
25 knew what had been committed to, we could define that

1 provision of the partial settlement. Again, we would be
2 more than happy to match that part of the partial
3 settlement.

4 Q So it's the degree of documentation of the
5 considering self generation that's at issue for you?

6 A That was the primary issue and I also mentioned,
7 we also mentioned in the exhibit just the idea of the self
8 generation is only a small part of the total load. Does
9 that qualify the customer's total load for the CTC
10 exemption. This, that, again, was something that was not
11 defined in the partial settlement provision.

12 Q So it's unclear to you as to whether or not the
13 reduction in the CTC would only apply to the portion of the
14 load that's being self generated as opposed to the entire
15 load which would otherwise be paying the full CTC?

16 A That's correct.

17 MR. KLEPPINGER: Thank you, Mr. Kingerski. That's
18 all I have. Thank you, Your Honor.

19 JUDGE RAINEY: Thank you. Further cross
20 examination? Yes, Mr. Doll?

21 MR. DOLL: Good afternoon.

22 THE WITNESS: Good afternoon.

23 MR. DOLL: My name is Craig Doll and I represent
24 Connectiv Energy. And I thought I understood the billing
25 and collection provisions of your tariff and in light of

1 some of the earlier questions now I am not so sure. My
2 question goes to the termination of service. I am going to
3 pose a hypothetical to you.

4 If I, Connectiv have a customer who does not pay his
5 bill, does Connectiv have to send out the termination
6 notices and comply with the other requirements in Chapter
7 56 under the ENRON plan?

8 A Any EGS has to comply fully with Chapter 56
9 regulations.

10 Q So in other words, I am responsible for giving
11 the end user the five-day notice of termination? Let me
12 collect that question. I believe there's two notices.
13 There's a ten-day, a five-day and then a personal contact,
14 I believe.

15 So Connectiv, rather than someone else, would be
16 responsible for giving those three notices to the customers
17 prior to service being disconnected by PECO under the ENRON
18 plan?

19 A Well, our proposal is this. The EGS complies
20 with Chapter 56. Now, I am aware that 56 is under review
21 by the Commission with regard to how it will apply to
22 EGSs. After the Commission decides with regard to 56 and
23 its application to EGSs that's supported by the Enron
24 plan.

25 MR. DOLL: Okay. I have nothing further. Thank

1 you.

2 JUDGE RAINEY: Thank you, Mr. Doll. Mr. Clark?

3 MR. CLARK: I just have a couple questions about
4 Exhibit A.

5 BY MR. CLARK:

6 Q Are you familiar with the joint settlement
7 petition's treatment of the residential solar tariff? Rate
8 RS?

9 A I don't recall explicitly what that is.

10 Q Are you aware that the joint settlement petition
11 expands the rate RS to renewable energy technologies other
12 than solar photovoltaic system?

13 A I will accept that.

14 Q But in your proposal, your Exhibit A you do not
15 make that expansion. Is that correct?

16 A Is there a cite that you can give me on that.

17 Q Yes, it's page 50, rate RS solar residence
18 service? Third line, installed solar panels or similar
19 device generating electricity from energy from the sun.
20 That would be solar photovoltaic?

21 A On this rate schedule, RS, other than the changes
22 that have been red lined we have mimicked the rate schedule
23 submitted by PECO as part of the partial settlement. So if
24 there were items which had been excluded from that tariff
25 sheet, in PECO's submission, then they did carry over to

1 our plan.

2 Q But items that were expanded under the joint
3 settlement are not in here. Is that true? You are not
4 aware that the joint settlement expands this tariff to
5 technologies other than photovoltaic systems?

6 A I am not aware of that expansion.

7 Q Are you aware that the joint settlement expands
8 this tariff to customers other than residential customers?

9 A Well, again, I am referring back to the fact that
10 in constructing this tariff, in this particular aspect of
11 it, we did mimic the PECO tariff and there was no explicit
12 design on our part to exclude any expansions. It was not
13 considered.

14 Q If what you are using was maybe then an earlier
15 version of this tariff and in fact, the joint settlement
16 petition's proposing the expansions to other technology --
17 renewable technologies and other customer classes, is it
18 your testimony, then, that ENRON would make a singular
19 expansion of this tariff?

20 A I think that would have to be discussed and I
21 would certainly want to discuss that with the people who
22 would be making those decisions, but clearly ENRON has
23 supported renewable energy development and has many
24 programs in place to do those types of things, so I can't
25 imagine that we would just unilaterally exclude that.

1 Q Let me move on to another environmentally
2 friendly technology. That's electric vehicles. I am
3 looking at the electric vehicle charging rider and I notice
4 that you are proposing to eliminate that tariff. Is that
5 correct?

6 MR. GALLAGHER: Where is that?

7 MR. CLARK: On page 2 of 4 of the chart at the back
8 of Table A. It's also crossed out on the table of
9 contents.

10 THE WITNESS: Well, and there are two reasons for
11 that recommendation. First of all, I note that in PECO's
12 existing tariff that rider is set to expire at the end of
13 1998 as it is.

14 Secondly, with regard to the types of issues that we
15 were reviewing earlier today, it's our expectation that in
16 a competitive market where charging for vehicles can be
17 done either off peak or through some type of special
18 circumstances, that these types of applications could find
19 many EGSSs that would be willing to satisfy that in very
20 favorable terms.

21 So we don't see the need to maintain this as a
22 special rider when the services that go into doing the
23 charges will be unbundled and at least the generation part
24 will certainly be available in the competitive
25 marketplace.

1 Q What if that charging took place on peak,
2 for example, delivery vehicles used primarily in
3 the evening being charged during the daytime?

4 How would a customer negotiate a favorable
5 deal for on peak power that would have the
6 incentive and encouragement that this rider might?

7 A I can certainly imagine circumstances
8 where an EGS would be very favorably disposed to be
9 associated with that type of technology and would
10 have some types of special pricing arrangements
11 just so as to be attached with or associated with
12 that technology.

13 Q But in your proposal, you are proposing to
14 eliminate the rider altogether?

15 A Because there are services in it that are
16 part of the bundled utility product right now that
17 would no longer carry over into the new
18 environment.

19 MR. CLARK: Okay. That's all my questions.
20 Thank you, Your Honor.

21 JUDGE RAINEY: Thank you, Mr. Clark.

22 Any other cross examiners?

23 (No response.)

24 JUDGE RAINEY: Redirect?

25 MR. GALLAGHER: Yes, Your Honor. If you can

1 give us some time, I would appreciate it.

2 JUDGE RAINEY: Yes. Five minutes.

3 (Recess taken.)

4 JUDGE RAINEY: Mr. Gallagher?

5 MR. GALLAGHER: Thank you, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. GALLAGHER:

8 Q Mr. Kingerski, in response to some
9 questions from Mr. Steinmetz regarding the items
10 that are to be placed on the bill, do you remember
11 a question concerning whether or not the kilowatt,
12 cents per kilowatt item is placed on the bill?

13 A Yes, I do.

14 Q Could you tell us whether or not that item
15 should be placed on the bill?

16 A Well, if that item is one of the items
17 that the Commission does require to be entered on
18 the bill, then the tariff provision on Page 32 of
19 the tariff, which says that any other information
20 necessary for the computation of the bill would
21 cover that requirement, and the EGS in fact would
22 have to show it.

23 Q Now, in response to a number of questions
24 raised by various parties concerning termination of
25 service and discontinuance of the service, would

1 you please clarify for us what you mean when you
2 speak of discontinuance versus termination of
3 service --

4 A Okay.

5 Q -- and what --

6 A As I have used those terms, I would refer
7 to termination as the physical disconnection from
8 the system.

9 I would refer to the discontinuance of
10 service as that which the EGS would do when it no
11 longer is supplying an end user, so the EGS then
12 could discontinue service to an end user for
13 whatever reason was appropriate, and that end user
14 then would go back to default service and be
15 supplied under the default service provisions.

16 Q Could you clarify for us, because I think
17 there was some misunderstanding, the distinction
18 between ENRON as a provider of last resort
19 requesting PECO to physically disconnect a line and
20 the rights of the EGS to terminate its service?

21 A Well, the EGS will not terminate service
22 to an end user.

23 It is prohibited from doing that.

24 It is only the company that would do that
25 physical disconnection.

1 Now, as provider of last resort, if an end
2 user is part of that default pool, then a
3 termination can result subject to Chapter 56
4 regulations if bill payment or other obligations
5 have not been met by the customer.

6 Q Could you tell us your understanding of
7 how HT rider customers and the LILR, the self
8 generation customers, were treated under the ENRON
9 Choice Plan?

10 A Well, to the extent we could, the Choice
11 Plan mirrors and matches the provisions for those
12 riders as they were contained in the partial
13 settlement.

14 If there are customers who were served
15 under riders, other riders that apply to HT, other
16 than, for example, LILR, and if the Commission at
17 some point determines that the price cap in the act
18 or other protections are indeed to be afforded to
19 those customers, then clearly the ENRON plan, in
20 intending to match the provisions of the partial
21 settlement for these customers, would also adopt
22 those same provisions, once they were approved and
23 agreed to by the Commission.

24 Now, I have also mentioned that with regard
25 to some of these provisions, for example, EER and

1 the self generation customers, we have every
2 intention of matching the partial settlement, but
3 we are awaiting information from PECO in response
4 to questions that we have asked of them.

5 One example of that is in ENRON
6 Interrogatory 10, Question 24, where we have asked
7 that PECO provide all documentation received to
8 date by PECO from industrial or commercial
9 customers that are or were actively seeking self
10 generation or considering self generation as of
11 December 31st, 1996, and the answer from PECO in
12 that regard was that the company has documentation
13 to support two customers who are or were actively
14 seeking self generation.

15 The company considers individual
16 customer's information as privileged and
17 confidential.

18 With that lack of clarity as to what the
19 commitment would actually be, that is why we have
20 hesitated to match those provisions.

21 MR. GALLAGHER: Thank you. I have no further
22 questions, Your Honor.

23 JUDGE RAINEY: Any recross on the redirect?

24 MR. KLEPPINGER: Just a little bit, Your
25 Honor.

1 JUDGE RAINEY: Mr. Kleppinger.

2 RECROSS EXAMINATION

3 BY MR. KLEPPINGER:

4 Q Mr. Kingerski, with respect to the riders
5 to the HT tariff, when the customer wants to stay
6 on those riders under ENRON Choice Plan, and ENRON
7 will be the provider of the service, as opposed to
8 PECO, who will they be buying the generation
9 service from under the ENRON Choice Plan, an HT
10 customer, for example that utilizes the night
11 service HT rider?

12 A While that rider is in place as it exists
13 now, that generation would be purchased from PECO,
14 but I think my earlier clarification was that if at
15 some point the Commission were to decide that the
16 protections of the rate cap were also to apply to
17 those customers, and even though the partial
18 settlement did not explicitly refer to those
19 riders, if they are in fact included in the same
20 terms, then ENRON would take on the role of
21 providing those services or having those services
22 available under a form of default service, just as
23 LILR is in the plan right now.

24 Q Okay. So the end result would be that the
25 customer would be purchasing those generation

1 services from ENRON as a default customer?

2 A They would be purchasing from ENRON, and
3 the PPA would be the vehicle By which ENRON would
4 obtain the generation.

5 Q Okay. Now, will the Commission be able to
6 order ENRON to maintain particular price levels for
7 that generation service?

8 A If the Commission were to determine that
9 under its interpretation of the rate cap that those
10 riders should remain, or the opportunity to be
11 served under those riders should continue forward
12 as they exist now, then those prices that are
13 contained in the riders right now and the credits
14 would carry forward into default service, just as
15 the provisions of LILR have carried forward into
16 default service.

17 Q So ENRON would agree that the Commission
18 has the authority to impose price caps on the
19 provider of last resort with respect to the HT
20 tariff and the riders under that tariff? Is that
21 correct?

22 MR. GALLAGHER: To the extent that Mr.
23 Kleppinger is asking for his opinion, I have no
24 objection.

25 JUDGE RAINEY: If the witness knows. If the

1 witness knows.

2 MR. KLEPPINGER: That is fine. I am
3 searching for the ENRON position.

4 A If the Commission exercises that right,
5 and if it is deemed to have that right, then ENRON
6 would match -- in its Choice Plan, ENRON would
7 allow those riders to be contained in default
8 service just as default service has the LILR in it,
9 and it is because that is the rider that was
10 explicitly mentioned in the partial settlement.

11 Other riders were not mentioned.

12 Q And just to close this, the PLR under the
13 ENRON Choice Plan is not a public utility?

14 A Correct.

15 MR. GALLAGHER: Your Honor, I am going to
16 have the same objection.

17 He is asking for a legal opinion as to
18 whether or not ENRON would be --

19 MR. KLEPPINGER: Well, I thought it was in
20 the record yesterday.

21 JUDGE RAINEY: I think that question has been
22 answered by a previous or prior ENRON witness, and
23 I'm not sure what is the necessity of getting Mr.
24 Kingerski to confirm that, but if he knows the
25 answer to the question, he can answer it.

1 If he doesn't know, he can say so.

2 A And the question, again?

3 Q Whether or not the provider of last resort
4 under the ENRON Choice Plan will be a public
5 utility?

6 A I believe the answer to that is no, it
7 will not.

8 Q Thank you.

9 MR. KLEPPINGER: That's all I had, Your
10 Honor.

11 JUDGE RAINEY: Thank you.

12 Any further recross?

13 (No response.)

14 JUDGE RAINEY: Anything further of this
15 witness?

16 MR. GALLAGHER: No, Your Honor.

17 JUDGE RAINEY: If not, thank you, Mr.
18 Kingerski. You may stand down.

19 The next witness is --

20 MR. CLEARFIELD: I'm sorry. Mr. Reising.

21 JUDGE RAINEY: Yes. The next witness on my
22 list is Mr. Reising.

23 Mr. Reising, were you previously sworn?

24 MR. REISING: Yes.

25 JUDGE RAINEY: Yes. Since you were

1 previously sworn, we do not need to do that again.

2 Your prior oath still applies.

3 Mr. Clearfield?

4 MR. CLEARFIELD: Your Honor, Mr. Reising is
5 sponsoring at this phase of the proceeding -- Mr.
6 Reising has appeared before -- EESPI Statement No.
7 7, and EESPI Statement 7-R.

8 Is that right, Mr. Reising?

9 MR. REISING: That's right.

10 (Thereupon, EESPI Statement 7 and EESPI
11 Statement 7-R were marked for
12 identification.)

13 MR. RYAN: Your Honor --

14 JUDGE RAINEY: Yes.

15 MR. RYAN: -- may I just ask a clarification?
16 I think we have used ENRON statement number
17 designations and EESPI.

18 Is there a specific distinction being made?
19 And I really just want to know how to say them.
20 That's all.

21 MR. CLEARFIELD: Are we on the record?

22 JUDGE RAINEY: We can go off the record.

23 Let's go back on the record.

24 (Discussion off the record.)

25 JUDGE RAINEY: Let's go back on the record.

1 Mr. Clearfield?

2 PAUL REISING, called as a witness, having
3 been previously duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. CLEARFIELD:

6 Q Mr. Reising, do you have any additions or
7 corrections you would like to make to either of
8 these statements?

9 A No, I do not.

10 MR. CLEARFIELD: I would move these into the
11 record, then, Your Honor, subject to any
12 appropriate motions.

13 Mr. Reising has been previously sworn in.

14 JUDGE RAINEY: Yes.

15 MR. TRASK: Your Honor, I have an objection
16 to a portion of the testimony being moved into
17 evidence, if I may.

18 JUDGE RAINEY: Mr. Trask.

19 MR. TRASK: On Page 10, Line 21 through the
20 end --

21 JUDGE RAINEY: What statement are you
22 regarding to, Mr. Trask?

23 MR. TRASK: Excuse me. I'm sorry. This is
24 ENRON or EESPI Statement 7-R.

25 This has to do with --

1 JUDGE RAINEY: I'm sorry. That was Page 10.

2 MR. TRASK: Page 10, and it goes through Page
3 -- through Page 13, the end of the testimony.

4 These are -- the testimony concerns brand new
5 T&D rates in response to the ENRON plan.

6 There was no objection to the T&D rates. Per
7 Miss Lopez's original testimony, ENRON accepted the
8 PECO's distribution and transmission rates, and
9 under the Commissions' Regulations 5.243-E, you
10 can't introduce evidence during a rebuttal phase
11 when it could have been introduced originally.

12 These T&D rates that are now being offered
13 could have been introduced originally in support of
14 the Choice Plan, and, yes, the language of the
15 regulation says that if the new testimony
16 substantially varies, and clearly, this
17 substantially varies.

18 We are talking about T&D rates that will
19 recover revenues that are hundreds of millions of
20 dollars less than the original T&D rates that ENRON
21 accepted, and on that basis, Your Honor, I move to
22 strike that portion of Mr. Reising's testimony that
23 concerns these rates.

24 In addition, that objection would extend to
25 the relevant numbers in Mr. Kean's Attachments A

1 and B, and also the corresponding proofs of revenue
2 of Miss Lopez.

3 JUDGE RAINEY: Mr. Clearfield?

4 JUDGE CHESTNUT: Excuse me. Before you
5 respond, could you clarify exactly what it is you
6 wish stricken --

7 MR. TRASK: Yes, Your Honor.

8 JUDGE CHESTNUT: -- from mine?

9 MR. TRASK: The first I would move to strike
10 would be EESPI Statement 7-R, Line 21, Page 10, I'm
11 sorry, Page 10, Line 21, through Page 13, Line 21
12 as well, and then also the attachments that concern
13 that testimony where the new T&D rates are
14 reflected, which is Exhibit C to the testimony, the
15 entire exhibit would need to be stricken. In
16 addition, the relevant portions of Mr. Kean's
17 Attachments A and D would also have to be stricken.

18 Those are the portions of those attachments
19 that contain the T&D rates, and just as a matter of
20 housekeeping, the corresponding proofs of revenue
21 in Mrs. Lopez's statement, which is EESPI Statement
22 No. 6-R..

23 JUDGE CHESTNUT: But which --

24 MR. TRASK: And it is hard to tell you
25 exactly what would need to be stricken, because the

1 proofs of revenue deal not only with respect to
2 T&D.

3 They also have to do with the CTC and ITC and
4 other streams.

5 If Your Honor were to grant the motion, we
6 would certainly take the time to indicate the
7 specific portions of that, of those proofs of
8 revenue and the attachments that should be
9 stricken.

10 JUDGE RAINEY: And what was it from Mr.
11 Kean's
12 testimony that you wanted stricken?

13 MR. TRASK: It would also -- it would be,
14 again, it would be portions of Attachments A and B,
15 where the T&D revenues -- excuse me -- the T&D
16 rates are reflected and summarized by Mr. Kean, and
17 I do not have the precise portions that would need
18 to be stricken, but we could certainly do that.

19 If Your Honor were to grant the motion, we
20 would work with counsel for ENRON to identify those
21 portions which would have to be stricken.

22 JUDGE RAINEY: Mr. Clearfield?

23 MR. CLEARFIELD: Your Honor, the motion is
24 completely without merit.

25 First of all, these are not new positions.

1 Mr. Reising has testified in the earlier phases
2 about the complete lack of validity of PECO's
3 allocation of primarily overhead administrative and
4 general costs to -- one hundred percent to
5 distribution and transmission.

6 In the petition to which Mr. Trask alluded,
7 there is a specific reference to these T&D rates,
8 and a footnote -- it is on Page 20, Footnote 28 of
9 the petition -- which indicates that the petition,
10 as filed, did not reflect the adjusted rates that
11 Mr. Reising has sponsored, but that was because
12 information necessary to be able to reflect those
13 rates into actual tariffs have not been provided,
14 and there was additional information that needed to
15 be provided.

16 In fact, in Statement 7, which is the
17 original direct testimony that supported the
18 petition, on Page 3, Mr. Reising states just that.
19 I'm sorry.

20 You see, starting on line nine, he says that
21 those are not the rates that he supports, but that
22 in fact they deserve the right to continue to
23 challenge those T&D rates.

24 JUDGE RAINEY: I am going to overrule the
25 objection to the motion.

1 MR. CLEARFIELD: Thank you, Your Honor.

2 MR. TRASK: May I respond to counsel's
3 argument?

4 JUDGE RAINEY: I don't think that's
5 necessary.

6 MR. TRASK: Very well, Your Honor. Thank
7 you.

8 JUDGE RAINEY: Is the witness available for
9 cross examination?

10 MR. CLEARFIELD: Yes, the witness is
11 available for cross.

12 We did move the testimony in.

13 JUDGE RAINEY: Did you? Okay. Any other
14 objections to the testimony?

15 If not --

16 MR. HAVER: Yes, Your Honor. I understand
17 that you are going to rule the same way.

18 I would just like the record to reflect that
19 I also would like the testimony to be stricken.

20 This is simply a new proposal, and it is
21 impossible for someone like myself to keep up.

22 ENRON continues to change their proposals
23 hourly, minute by minute, and I don't want to take
24 the time, because I recognize we are not going to
25 be in favor, but I would like the record to reflect

1 that.

2 JUDGE RAINEY: Thank you, Mr. Haver. Your
3 motion is also overruled and denied.

4 The testimony will be admitted into evidence.
5 (Thereupon, EESPI Statements 7 and 7-R were
6 admitted in evidence.)

7 JUDGE RAINEY: Cross examination?

8 MR. MICKENS: Yes.

9 CROSS EXAMINATION

10 BY MR. MICKENS:

11 Q Mr. Reising, my name is Ken Mickens. I
12 represent the Office of Trial Staff.

13 A Good afternoon.

14 Q Good afternoon. I just have a couple of
15 clarifying questions, I believe, concerning your
16 discussion of non-wire services and the development
17 of competition.

18 A Uh-huh.

19 Q On Page 9 of your testimony, you indicate
20 that --

21 JUDGE RAINEY: I'm sorry, Mr. Mickens. Is
22 that Statement --

23 MR. RYAN: I'm sorry the EESPI Statement No.
24 7.

25 JUDGE RAINEY: Thank you.

1 BY MR. MICKENS:

2 Q Page nine of your testimony, beginning at
3 line nine, in that question and answer you indicate
4 that the competition could not develop the non-wire
5 services without an unbundled distribution rate?
6 Is that correct?

7 A That is correct.

8 Q Now, when you say it could not develop,
9 are you saying it could never develop?

10 A Well, I am saying here that it would be
11 very difficult for it to develop --

12 Q All right. Later on --

13 A -- as practical matter.

14 Q All right. Later on in your testimony,
15 don't you indicate that due to competition, that in
16 fact these services will in fact be offered by
17 other suppliers as competition develops, whether or
18 not the rate, the distribution rate is unbundled,
19 as you desire?

20 A Do you have a cite for that, because --

21 Q Yes. If you look at Page 11 of your -- of
22 the same statement, beginning around line sixteen,
23 you talk about, the introduction of competition
24 would increase the efficiency and reduce metering
25 costs.

1 You indicate that is very possible
2 competitive forces will dictate that suppliers will
3 install and promote time use meter, et cetera, and
4 all that.

5 That is what I am referring to.

6 A Well, that is premised on -- that
7 statement is premised on the concept that non-wire
8 service charges would be unbundled.

9 Q And so you don't think that even if they
10 are not unbundled, you think that they would never
11 develop into competitive services?

12 A Well, I think, as I said before, I think
13 it would be very difficult for it to develop.

14 Q Let me ask you this. A supplier now could
15 determine what their costs are with regard to these
16 non-wire services?

17 Is that correct?

18 If they wanted to provide these services,
19 they could determine what their costs would be? Is
20 that correct?

21 A They could determine the cost to provide
22 non-wire services, yes --

23 Q And --

24 A -- but --

25 Q I'm sorry.

1 A But under the current circumstances, with
2 it bundled, it would be duplicative of what they
3 would be paying, or end users would be paying PECO,
4 for non-wire services.

5 Q All right. But they could determine
6 whether or not they could make a profit by
7 providing the services, could they not?

8 A Well, they could evaluate the cost of
9 meters and billing arrangements.

10 Q And determine how much it would cost them
11 to provide those services, and whether -- and then
12 they could determine whether or not they felt that
13 they wanted to provide those services? Is that
14 correct?

15 A They could -- they certainly would be, I
16 would assume, capable of making that analysis.

17 Q Okay. And similarly, if they determine,
18 for example, that they could profit by offering
19 time of day rates and by offering meters which
20 allowed its customers to analyze their usage, they
21 could provide that as well?

22 Is that correct?

23 A Yes, they could, again, with the
24 qualification I mentioned earlier, that it would be
25 duplicative of what is already being charged.

1 MR. MICKENS: That's all I have, Your Honor.

2 JUDGE RAINEY: Thank you, Mr. Mickens.

3 Further cross examination?

4 (No response.)

5 JUDGE RAINEY: Any redirect?

6 MR. CLEARFIELD: No, sir. Thank you.

7 JUDGE RAINEY: Thank you. Thank you, Mr.

8 Reising. You can stand down.

9 (Witness excused.)

10 JUDGE RAINEY: Mr. Sundermeir is next.

11 MR. CLEARFIELD: Could we just have a minute?

12 Your Honor, could we just have a moment?

13 JUDGE RAINEY: Yes.

14 MR. CLEARFIELD: We didn't expect such a
15 quick transition.

16 (Discussion off the record.)

17 JUDGE RAINEY: Let's go back on the record.

18 Mr. Sundermeir, I believe you have been previously
19 sworn?

20 MR. SUNDERMEIR: No.

21 JUDGE RAINEY: Oh, you haven't?

22 MR. SUNDERMEIR: No.

23 JUDGE RAINEY: All right. Would you raise
24 your right hand?

25 WILLIAM SUNDERMEIR, called as a witness,

1 having been duly sworn, testified as follows:

2 JUDGE RAINEY: Please be seated. Give your
3 full name, spell your last name, also your business
4 address for the record.

5 THE WITNESS: My name is William F.
6 Sundermeir.

7 That is spelled is S-u-n-d-e-r-m-e-i-r.

8 My address is 2821 Bayland Drive, Ocean City,
9 New Jersey 08226.

10 JUDGE RAINEY: Thank you.

11 Mr. Trask?

12 MR. TRASK: Yes. Thank you, Your Honor.

13 This morning, I circulating to counsel for ENRON
14 and all others who were interested, who were
15 around, a copy of a new exhibit.

16 It is Exhibit WFS-16, and the purpose of
17 preparing and circulating the exhibit was to avoid
18 additional hearing time.

19 What this is, it summarizes Mr. Sundermeir's
20 responses to some of Mr. Kingerski's responses with
21 respect to Mr. Sundermeir's analysis of the --

22 JUDGE RAINEY: Mr. Trask, did you submit that
23 to us?

24 MR. TRASK: I haven't done that yet, because
25 Mr. Sundermeir wasn't on the stand.

1 I am prepared to do that right now. Okay.
2 It has been circulated to all parties, and if
3 anybody doesn't have a copy of it and would like
4 one, we can get it.

5 There's two for the court reporter.

6 Would you both like copies?

7 JUDGE CHESTNUT: Yes, sure.

8 (Thereupon, Exhibit WFS 16 was marked for
9 identification.)

10 MR. TRASK: And if you like, I could have the
11 witness authenticate the exhibit, or we can
12 stipulate to that.

13 JUDGE RAINEY: Is there any opposition to the
14 stipulation?

15 MR. GALLAGHER: Your Honor, we have talked to
16 counsel for PECO.

17 We consider this sur-rebuttal testimony, and
18 we reserve the right to recall Mr. Kingerski for
19 oral rejoinder on this.

20 MR. TRASK: We have no objection to that,
21 Your Honor.

22 I have two or three other questions by way of
23 oral sur-rebuttal that have to do with Mr.
24 Reising's testimony and Mr. Sundermeir's response
25 to that as well.

1 JUDGE RAINEY: Any other objection to the --
2 or any objection to the exhibit?

3 (No response.)

4 JUDGE RAINEY: Mr. Trask, do you want to move
5 in the --

6 MR. TRASK: Yes, I would like to move Exhibit
7 WFS --

8 JUDGE RAINEY: I'm sorry. Mr. Cohen?

9 MR. COHEN: Your Honor, Mr. Reising is on his
10 way out, so I would like to try to get him.

11 I'm sorry. I thought he was on the way out.

12 JUDGE RAINEY: Okay. Mr. Reising is here.

13 I'm sorry.

14 Mr. Trask?

15 MR. TRASK: Thank you.

16 DIRECT EXAMINATION

17 BY MR. TRASK:

18 Q Mr. Sundermeir, do you have any comments
19 about Mr. Reising's claim in rebuttal testimony in
20 response to your testimony that under the ENRON
21 proposal, PECO would be fully compensated for
22 providing so-called non-wire services?

23 A Yes. I think he is wrong. Forgetting the
24 value for a moment, the value that is there for the
25 moment, under their plan, only customers that are

1 receiving default service with PECO get paid for
2 that service, and I would like to suggest that
3 there is a great deal additional cost involved in
4 standing by to serve default customers.

5 Q Do you have any comments with regard to
6 Mr. Reising's claim that it is appropriate for the
7 non-wire services credit that he proposes to be --
8 and I use his words, I believe -- symmetrical with
9 the amount that PECO would be paid to perform
10 non-wire services for default customers?

11 A Yes. I believe that PECO wouldn't
12 necessarily shed cost in proportion to the number
13 of customers involved with there services.

14 Under the ENRON proposal, PECO would pay a
15 bloated credit to the provider that would not
16 reflect any reduction in the corresponding cost.

17 An example of that, for example, is
18 uncollectible accounts, and I could give other
19 examples, but let's look at that one.

20 Under the uncollectible accounts, ENRON
21 would, by their own tariff provisions, be able to,
22 I will call it, dump the non-paying customers over
23 into default service, so therefore, the
24 relationship on the uncollectible accounts area, it
25 would clearly -- the scales would be clearly tipped

1 over in one direction.

2 Q Does Mr. Reising make any factual
3 mis-statements in his rebuttal testimony with
4 regard to your testimony?

5 A Yes. With regard to the credit that we
6 developed, that we were trying to develop to show
7 what might be a reasonable credit, he indicated
8 that we did not include taxes other than income,
9 and he indicated that we did not include customer
10 service expenses.

11 In fact, we did include the gross receipts
12 tax, and in fact we did include about 22 million
13 dollars in customer service expenses in those
14 calculations.

15 Q Do you have any comments regarding Mr.
16 Reising's testimony with respect to the non-wire
17 credit and its impact on what Mr. Reising
18 characterizes as smaller default services
19 customers?

20 A Yes. Mr. Reising, with regard to the idea
21 that -- of charging a kilowatt hour credit, or
22 giving a kilowatt hour credit versus a per customer
23 credit, indicated that he didn't do it that way,
24 because he thought it would have an impact on the
25 small default service customers.

1 I think initially there wouldn't be any
2 impact at all on the small default service
3 customers, because the actual payment to PECO for
4 providing those services for the default service
5 customers is an arrangement between PECO and ENRON
6 for those services, and I don't think there would
7 be any immediate impact at all on any of the small
8 customers.

9 If we look at the customers that are not
10 default customers, I see a totally different
11 scenario.

12 Using a kilowatt charge or a credit -- I'm
13 sorry -- a credit in this case, it would certainly
14 give the provider a lot of incentive to cherry pick
15 the large customers, because the larger the energy
16 use, the higher the credit relative to the cost,
17 and therefore, that would leave the small use
18 customer probably not a very desirable customer,
19 because I don't know how many providers are going
20 to want to provide that service to a customer that
21 they are going to lose money on.

22 In the long run, I think it would work to
23 the detriment of all customers, because if PECO is
24 paying a bloated credit, then that money has to
25 come from somewhere, because there is not a

1 corresponding reduction in cost, and ultimately
2 PECO would have to seek to recover those dollars,
3 and ultimately that would have to come out of the
4 pockets of all customers.

5 Q Thank you, Mr. Sundermeir.

6 MR. TRASK: That's all I have in the way of
7 oral sur-rebuttal, Your Honor.

8 The witness is available for cross
9 examination.

10 Now, I don't know if I need to move into
11 evidence PECO -- what is it PECO Statement --

12 JUDGE RAINEY: Yes, 13-E.

13 MR. TRASK: -- Statement 13-E. I do so at
14 this time.

15 JUDGE RAINEY: As well as your exhibit?

16 MR. TRASK: As well as that Exhibit WFS-16,
17 which was offered previously.

18 JUDGE RAINEY: Any objections?

19 (No response.)

20 JUDGE RAINEY: Hearing none, so admitted.

21 (Thereupon, Statement 13-E was marked for
22 identification and admitted into evidence,
23 and Exhibit WFS-16 was admitted into
24 evidence.)

25 MR. CLEARFIELD: I may have a few questions,

1 Your Honor, if I could have just one minute.

2 (Discussion off the record.)

3 CROSS EXAMINATION

4 BY MR. CLEARFIELD:

5 Q Mr. Sundermeir, with respect to the
6 proposal to unbundle uncollectibles, let me ask you
7 this hypothetically.

8 If an EGS takes on a customer, and takes
9 on all billing and collection risk for that
10 customer, and the second part of the hypothetical,
11 agrees with PECO that it will pay PECO for all
12 charges owing to PECO regardless of whether the
13 customer, the end user customer pays -- are you
14 following me so far?

15 A I think so.

16 Q -- does PECO have any risk of
17 uncollectible in that situation, assuming the EGS
18 continues to pay?

19 A Well, the EGS, as I understand it, would
20 be getting a credit from PECO for that, and part of
21 that credit would include, at least a piece of it,
22 the respective uncollectible account, but if the
23 EGS is able to jettison nonpayment customers, it
24 seems to me that the risk of that is considerably
25 diminished on their side of the equation.

1 Q I don't think you answered my question.
2 If the EGS is taking on all collection risk with
3 respect to the customer and is guaranteeing PECO
4 payment for the service that PECO provides, does
5 PECO, in that hypothetical, have any collection
6 risk for that customer?

7 A No, but I don't think you can answer that
8 without taking the next step to say that the EGS
9 can unload those type customers.

10 It is true if they don't unload them, but
11 if they do, how much risk are they taking?

12 Q But with respect to the bill that doesn't
13 get paid when the customer is a customer with EGS,
14 PECO has no collection risk?

15 Isn't that right?

16 A If you are suggesting that for a month or
17 two, until it is established that the customer is a
18 non-paying customer, and the EGS recognizes that it
19 is a non-paying customer and decides to give the
20 customer five days notice that it is no longer an
21 EGS customer, there is a short period of time in
22 there, yes.

23 Q How long will EGS customers continue to
24 provide service to end users before they
25 discontinue service to them, Mr. Sundermeir?

1 A I guess that would be hard for me to
2 answer, but I can't imagine that they would
3 entertain service to a customer for a very long
4 period of time if the customer wasn't paying their
5 bill.

6 Q But you in fact don't know under what
7 circumstances the EGS would -- or when an EGS would
8 discontinue the service, do you?

9 A I --

10 Q It could be a short period? It could be a
11 longer period, depending on the circumstances
12 surrounding the provision of the service to the
13 customer?

14 Isn't that right?

15 A I would suggest that it would probably not
16 be a very long period if the customer wasn't paying
17 its bill.

18 Q But in fact, you don't really know what an
19 EGS arrangement -- what arrangement an EGS might
20 have with a particular customer in a particular
21 circumstance, do you?

22 A I think I -- EGS is proposing a tariff
23 that they will be able to jettison the customer
24 with five days' notice.

25 I know I read that in the tariff.

1 Q The question, Mr. Sundermeir --

2 A Okay.

3 Q -- was, do you know in fact how long EGSs
4 might keep a customer, for example, if they had a
5 long-term customer, contract with that customer
6 before they determined to discontinue the service
7 with five days' notice, or with some other notice
8 period?

9 Do you know for a fact?

10 A Do I know for a fact that the -- how many
11 exact days it would be before they --

12 Q No. How long the customer -- how long the
13 EGS might continue to provide service to a customer
14 if the customer was behind in its bill?

15 A My guess, being that the EGS has a perfect
16 way to get out of that situation, that I can't
17 imagine that it would be for a very long period of
18 time.

19 Q But what if the customer -- what if the
20 EGS had a year contract with the -- with the
21 customer and was providing other types of services
22 under other arrangements, Mr. Sundermeir?

23 A If --

24 Q Would that change your opinion?

25 A I think it would, if ENRON says that they

1 would enter into a contract with a customer for
2 service, and they would continue honoring that
3 contract even if the customer doesn't pay his bill.

4 Q So that's a circumstance --

5 A Then that is a circumstance where they
6 might have to do that, although --

7 Q And that is a possibility?

8 A -- I don't know how realistic that is.

9 Q But that's a possibility, isn't it?

10 A It is not impossible.

11 Q Mr. Sundermeir, in fact, depending upon
12 the relationship, it might occur?

13 Isn't that true?

14 Isn't it possible that the EGS might be
15 providing other types of services in addition to --
16 in addition to the generation service?

17 MR. TRASK: Your Honor, I object. The
18 question was just asked and just answered very
19 thoroughly.

20 JUDGE RAINEY: I am going to overrule the
21 objection.

22 BY MR. CLEARFIELD:

23 Q Did you hear the question?

24 A Yes, I did, and I guess I would be amazed
25 if the EGS would continue to provide any of these

1 services, or all of these services if the customer
2 isn't paying his bill.

3 Q Do you provide service to customers when
4 they don't pay their bill at PECO, that is?

5 A Do we?

6 Q Yes.

7 A Oh, we certainly do, and we are under
8 strict regulations to do that.

9 Q And would you stop providing service to
10 the customer as soon as they stopped paying their
11 bill if you weren't under strict regulation?

12 A We follow the rules of Chapter 56 with
13 regard to termination of the customers.

14 Q And if you weren't under those strict
15 regulations, would you cut customers off as soon as
16 they stopped -- fell behind in their bill by a day
17 or two?

18 A I -- I think even before Chapter 56, my
19 experience was that PECO bent over backwards before
20 they would cut off a customer.

21 It was an option of last resort.

22 Q And isn't that something that an EGS might
23 also do?

24 A It doesn't seem likely to me, at least
25 when they have the option of dropping the customer

1 with five days' notice and transferring the
2 customer to default service.

3 Q Are you familiar with any plans that PECO
4 might have to provide competitive billing services
5 to EGSS or other entities at the present time, Mr.
6 Sundermeir?

7 A No.

8 Q That's all I have.

9 JUDGE RAINEY: Any other cross examination?

10 Yes, Mr. Doll.

11 MR. DOLL: I have one question. Maybe I
12 could get the answer out of counsel and
13 shortcircuit a lot of things, but --

14 MR. TRASK: Am I under oath?

15 MR. DOLL: Only the one you took as an
16 officer of the court.

17 Now, in Mr. Sundermeir's testimony on Page
18 25, Lines 15 through 22, he is referring to his
19 proof of revenues exhibit, and it says it makes a
20 -- that would change the Appendix C of the partial
21 settlement.

22 I will pose it either to you, Mr. Sundermeir,
23 or to you, Mr. Trask.

24 Is there any -- is there going to be an
25 update to that Appendix C and the summaries that is

1 going to be introduced into this record?

2 Perhaps I think we have got the wrong
3 witness.

4 MR. TRASK: Yes. I believe that there is an
5 exhibit to this testimony which does that, but I
6 would defer to the persons under whose supervision
7 -- under Mr. Sundermeir's supervision who prepared
8 that exhibit, and I don't know whether or not it
9 would be -- we could deal with this --

10 MR. DOLL: Yes. Your Honor, it would be
11 acceptable to me if I could get an answer later.

12 JUDGE RAINEY: That would be fine.

13 MR. DOLL: Thank you. I have no questions.

14 JUDGE RAINEY: Further cross examination?

15 MR. CLEARFIELD: No.

16 JUDGE CHESTNUT: Redirect?

17 MR. TRASK: No, Your Honor.

18 JUDGE CHESTNUT: Thank you, Mr. Sundermeir.

19 You may stand down.

20 (Witness excused.)

21 MR. GALLAGHER: Your Honor?

22 JUDGE RAINEY: Yes, Mr. Gallagher?

23 MR. GALLAGHER: Your Honor, at what point
24 would we be able to present Mr. Kingerski in
25 response to the sur-rebuttal?

1 MR. TRASK: If you made a decision, we could
2 do it now.

3 MR. GALLAGHER: That is fine.

4 JUDGE RAINEY: All right. Why don't we do
5 that now, for continuity purposes?

6 JUDGE RAINEY: Mr. Kingerski, you have been
7 previously sworn.

8 MR. KINGERSKI: Yes.

9 JUDGE RAINEY: The oath still applies.

10 HARRY J. KINGERSKI, recalled as a witness,
11 having been previously duly sworn, testified
12 further as follows:

13 REDIRECT EXAMINATION

14 BY MR. GALLAGHER:

15 Q Mr. Kingerski, were you in the courtroom
16 when counsel for PECO requested the admission of
17 Exhibit WFS-16?

18 A Yes.

19 Q Do you have that exhibit in front of you?

20 A Yes, I do.

21 Q I am going to ask you some questions
22 regarding that, Mr. Kingerski.

23 Starting with the exhibit list on the
24 left-hand side, Kingerski Response on the
25 right-hand side, it lists deficiency and problem.

1 We will start with the first one involving
2 ENRON Rule 17.2(b).

3 Could you give us your comments regarding
4 the deficiency, as outlined in that column?

5 A Well, initially in my rebuttal testimony,
6 I described ENRON's response there at Page 2 of my
7 testimony, and I would just add that earlier today,
8 during cross examination, I referred to this very
9 instance, in that a customer would be able to
10 choose an EGS based on billing options that that
11 EGS provided, or for a given EGS that it was
12 receiving service from, it could choose from a menu
13 of options for billing that that customer -- that
14 EGS was providing, so I believe that the deficiency
15 or problem noted there really does not apply.

16 Q Following down the column on the left,
17 regarding ENRON Rule 2.5.1, could you comment on
18 the deficiencies, as pointed out in the right-hand
19 column?

20 A Yes. My rebuttal testimony addressed that
21 issue at Page 3, and I would just note in response
22 to the comment here that I think it is a matter of
23 semantics, in that Rule 2.5.1 does require that an
24 EGS adhere to Chapter 56.

25 It is referred to here in the exhibit as

1 only applying to the solicitation of end users, and
2 that is incorrect.

3 The application is to the EGS's dealings
4 in all aspects with the end user, and I believe
5 that Mr. Kean had made that very clear in his
6 rebuttal testimony in saying that it is ENRON's
7 intention that the EGSs do comply in all aspects of
8 Chapter 56.

9 Q Turning now to ENRON Rule 11.1, could you
10 give us your comments regarding the criticism or
11 deficiency?

12 A Yes. My rebuttal testimony had addressed
13 that issue beginning at Page 3, and the comments
14 there I believe still hold.

15 There was no intention on ENRON's part to
16 deprive a customer of the choice noted here, and I
17 do not believe that the rule does in fact deprive
18 customers.

19 Q With regards to ENRON Rule 21.7, could you
20 give us your comments, please?

21 A My rebuttal testimony addressed that issue
22 at Page 4, and specifically on Page 4, Line 16, I
23 said that certainly nothing in the proposed tariff
24 precludes the customer from approaching PECO
25 directly for service, so I do not believe that that

1 problem applies, that problem that is noted in the
2 table.

3 Q Could you comment on Rule 11.3,
4 deficiencies that have been outlined in the
5 right-hand column?

6 A My rebuttal testimony addressed that issue
7 at Page 6, and I believe that that testimony still
8 holds, and that the problem, as described on this
9 table, does not exist.

10 Q Could you comment on the deficiencies
11 outlined with regards to standard default service,
12 the option under ENRON Rate DS that were outlined
13 in Column No. 2?

14 A Yes. Here I would note with reference to
15 the problem noted that nowhere in the availability
16 section of Rate HT are the words "industrial" or
17 "commercial" mentioned.

18 The availability is based on high tension
19 service.

20 I do recognize that in ENRON's proposed
21 tariff, the availability of standard default
22 service refers to residential and commercial.

23 That availability is not intended to
24 preclude any customer group, so I would offer as a
25 clarification that I would have no problem changing

1 that terminology to say residential and
2 non-residential, because I believe that would then
3 cover unambiguously all customer groups.

4 Q Turning to the second page of this
5 exhibit, with regard to Rule 18.1, could you give
6 us your comments on the deficiencies outlined in
7 the second column?

8 A My rebuttal testimony addressed that issue
9 at Page 8, and I don't have anything further to add
10 to that at this point.

11 Q Moving down, could you please comment on
12 Rate SL-P and the deficiencies outlined there in
13 the second column?

14 A My rebuttal testimony addressed that issue
15 beginning at Page 8, and I would note under the
16 condition referred to as a problem here, if the
17 city decided not to exercise the option of a fresh
18 start, then it is ENRON's plan that nothing then
19 would change for the city, so if it chose not to
20 exercise that option, everything would stay intact.

21 Q With regard to ENRON Rule 7.2, regarding
22 guarantees associated with distribution line
23 extensions, could you give us your comments with
24 regard to the deficiencies outlined in the second
25 column?

1 A Yes. My rebuttal testimony addressed that
2 issue at Page 10, and again, what I have said there
3 I believe still holds.

4 I would note that the EGS is not in the
5 business of constructing extension lines, and
6 because of that, I think it is proper in that case
7 that financial dealings between PECO and the
8 customer are entirely appropriate.

9 Q With regards to ENRON Rule 16.2, could you
10 please give us your comments with regards to the
11 advantage that competitive meter service providers
12 do not have, as you have outlined in your
13 testimony, in the deficiencies listed in the second
14 column?

15 A On that issue, my rebuttal testimony
16 addresses that beginning at Page 10, and I have
17 nothing further to add on that.

18 Q With regards to your testimony regarding
19 PECO's right to shut off service when an EGS owns
20 the meter, could you comment on the deficiencies
21 outlined in the second column?

22 A Yes. My rebuttal testimony addressed that
23 issue at Page 11, and what I was referring to there
24 is that PECO cannot terminate the service because
25 of abuse to a meter which it, itself, does not own.

1 If there is such abuse to an MSP owned meter,
2 then the MSP can request PECO to do the termination
3 of service, and I think all of that is permitted
4 under 18.3 of the proposed tariff, but I would
5 also note that if there is any doubt on this issue,
6 if there is any confusion about the tariff's
7 intention there, ENRON would certainly be willing
8 to make the necessary wording changes to remove
9 that confusion.

10 Q Finally, Mr. Kingerski, would you comment
11 on the deficiencies outlined on the last question
12 regarding Rule 7.2 and the revenue guarantees?

13 A Yes. My rebuttal testimony had addressed
14 that issue at Page 10.

15 Again, I'm not sure exactly what other
16 investments are being referred to in the table
17 there, but I would note that if there are any other
18 investments that the company can say is
19 attributable to an individual customer, be it
20 transformers or substations or the like, then I
21 think an easy remedy is to just take the Section
22 7.2 and expand it to apply to those other
23 investments, and I think PECO would certainly have
24 the opportunity and the right to at, the
25 appropriate time, make such a revision to the

1 tariff.

2 MR. GALLAGHER: Thank you, Your Honor.

3 JUDGE RAINEY: Thank you.

4 Redirect?

5 MR. RYAN: Recross.

6 JUDGE RAINEY: I'm sorry. Yes. Recross?

7 MR. TRASK: Yes, Your Honor. I have some
8 recross.

9 RECCROSS EXAMINATION

10 BY MR. TRASK:

11 Q Okay. I think I just heard you say that
12 with respect to Rule 11.1 in the ENRON tariff, that
13 that rule, as written, would not eliminate any
14 choices that customers now have?

15 Is that a correct characterization of your
16 testimony just now?

17 A I do not believe that it does, that's
18 correct.

19 Q Isn't it true that right now, customers
20 have the right to ask PECO directly for assistance
21 and also to make a choice as to their rate, their
22 regulated rates?

23 A Yes, that's correct.

24 Q Wouldn't that choice under the ENRON plan
25 be unavailable with respect to regulated

1 distribution rates, unavailable to the customer?

2 A No, because the opportunity to switch
3 schedules still exists.

4 Q Does the --

5 A The customer could have that, that choice,
6 and that change of schedule is still available.

7 Q Does the customer have the right to ask
8 PECO to change the schedule under the ENRON plan?

9 A The customer would pursue such a change
10 through its EGS, and the EGS would make the request
11 to the company.

12 Q So the customer would not have the right
13 to make that direct request from PECO under the
14 ENRON plan?

15 A Well, I take the opportunity here of this
16 section as referring to the ability to have the
17 rate schedule changed.

18 I think it is much less of an issue as to
19 who is actually doing the requesting.

20 Q I wasn't asking you whether you thought it
21 was an issue.

22 I was just asking you whether a customer
23 can ask PECO to change the customer's regulated
24 distribution rates under the ENRON plan?

25 MR. GALLAGHER: Objection, Your Honor. I

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