

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

DOCKET NO. R - 00973953

RESPONSIVE TESTIMONY

OF

RICHARD H. SILKMAN

TO THE ENRON-CHOICE PROPOSAL

JACKETED
NOV 21 1997

RECEIVED
97 NOV 20 PM 12:47
PA.P.U.C.
PROTHONOTARY'S OFFICE

ON BEHALF OF SENATOR VINCENT J. FUMO,
CEPA, TAG, ACORN, AND JOHN W. LONG JR.

DOCUMENT
FOLDER

NOVEMBER 7, 1997

R-00973953 C0001 C0007 et al

CEPA Fumo

~~Statement~~ Statement # 3

11/19/97 photo

EJ

1 Choice Plan. In addition, I will comment on certain criticisms of the Partial Settlement Agreement
2 and comparisons between the Settlement Agreement and the Choice Plan made by Enron witnesses.
3 Finally, I will reiterate my support for the Partial Settlement Agreement and my recommendation
4 that the Commission approve the Partial Settlement Agreement as presented.

5

6 Q. WOULD YOU PLEASE SUMMARIZE YOUR CONCLUSIONS?

7 A. Yes. I have reached the following conclusions:

8 The Choice Plan is incomplete and cannot be implemented as submitted by Enron. Because of
9 its incompleteness and because Enron has reserved for itself the right to cancel the Choice
10 Plan at its sole discretion, there are no guarantees for ratepayers that any of the savings
11 identified in the Choice Plan will be realized.

12 Implementation of the Choice Plan is explicitly conditioned on the ability to securitize at least
13 \$5.4 billion of stranded costs. If the issuance of transition bonds is prevented for whatever
14 reason, the Choice Plan will not be implemented and PECO's ratepayers will not realize any
15 savings or other benefits such as the non-rate benefits in the Partial Settlement Agreement.

16 The savings to ratepayers alleged by Enron under the Choice Plan are vastly overstated, as they
17 derive from inappropriate comparisons between the Partial Settlement Agreement and the
18 Choice Plan. When these two options are compared on equal bases, a majority of the
19 alleged savings disappear and under certain circumstances, the Choice Plan actually results
20 in higher rates for ratepayers than the Partial Settlement Agreement.

21 Using Enron's own witness's estimates of market prices for capacity and energy, the Choice
22 Plan is likely to result in establishing Enron as an unregulated monopolist in the electric
23 supply market in the PECO service territory at the end of the transition period.

24 The Partial Settlement Agreement remains the best option for ratepayers and should be
25 approved by the Commission.

26

27 *The Choice Plan is incomplete and cannot be implemented as submitted by Enron. Because of its*
28 *incompleteness and because Enron has reserved for itself the right to cancel the Choice Plan at*
29 *its sole discretion, there are no guarantees for ratepayers that any of the savings identified in*
30 *the Choice Plan will be realized.*

31

32 Q. PLEASE EXPLAIN WHY YOU BELIEVE THE CHOICE PLAN AS SUBMITTED BY ENRON IS

33 INCOMPLETE.

34 A. There are three major reasons why the Choice Plan is incomplete. First, Enron has reserved for

1 itself the right to cancel implementation of the Choice Plan, but has not specified fully under what
2 conditions it would exercise that right. Accordingly, the Commission and the parties have no way
3 of knowing at the present time whether the Choice Plan will be implemented. This raises very
4 interesting questions regarding the authority of the Commission to find that a plan, whose
5 consequences are at the discretion of a private party and thus indeterminate, is in the public interest.

6 This is especially troublesome in light of Enron's assertion that (1) it may withdraw its Petition and
7 the Choice Plan at any time for reasons that are unknown at this time; (2) that it reserves the right to
8 withdraw its Petition and the Choice Plan at any time following Commission approval; (3) that, if it
9 withdraws its Petition and the Choice Plan, all of the potential rate reductions for ratepayers could
10 be eliminated; and (4) that, if it withdraws its Petition and the Choice Plan, the remaining provisions
11 of the Partial Settlement Agreement that are contained therein could be eliminated. (See Enron
12 response to FUMO-II-6, submitted by Mr. Kean which is attached to this testimony.)

13 Second, Mr. Kean's testimony indicates that Enron will be filing an amendment to the Petition
14 and the Choice Plan to address problems related to the universal service provisions of the Choice
15 Plan, including the portability of CAP rate protections. I do not believe that such an amendment
16 has been filed.

17 Third, a critical component of the Choice Plan has not been submitted to the Commission. The
18 Choice Plan does not contain a copy of the "ITC Shortfall Agreement" referenced by a number of
19 Enron's witnesses in their testimonies.

20

21 **Q. IS THE ITC SHORTFALL AGREEMENT AN IMPORTANT COMPONENT OF THE CHOICE PLAN?**

22 **A.** Yes, it would appear to be a very important component. According to Ms. Voorhees, the "Choice
23 Plan will require a highly creditworthy party to enter into an agreement known as the ITC Shortfall
24 Agreement with PECO, to virtually eliminate the risk to ratepayers of increased payments due to
25 load decline." (Voorhees testimony, at page 8, lines 10-13) Unless and until the Commission can
26 review the proposed form of the ITC Shortfall Agreement, there is no way to determine the extent of
27 ratepayer protections provided under the Choice Plan. Further, as I discuss below, Enron has
28 explicitly conditioned implementation of the Choice Plan on the ability to securitize \$5.461 billion
29 of stranded costs through the issuance of transition bonds. If these bonds cannot be sold on terms
30 that are acceptable to Enron because, for example, an acceptable ITC Shortfall Agreement cannot
31 be executed, ratepayers will realize no savings under Enron's Choice Plan.

32

1 Q. ARE THERE ANY OTHER OMISSIONS OR INCONSISTENCIES IN THE ENRON CHOICE PLAN?

2 A. Yes, there are a number of them. For example, the Choice Plan appears to make no accommodation
3 for issuance and related costs associated with the \$5.461 billion of transition bonds. This is not a
4 trivial matter, especially given the complex nature of the transition bond component of the Choice
5 Plan, including the ITC Shortfall Agreement, the SPE reserve account (See Mr. Fastow, page 4,
6 lines 1-4) and servicing fees payable to PECO or other parties (See Mr. Fastow, page 5, lines 6-15).
7 Since these costs have not been included in the Choice Plan, they will likely result in commensurate
8 increases in the CTC/ITC rates and therefore an erosion of the savings to consumers.

9 The Choice Plan is inconsistent with respect to the responsibility of ratepayers to make up
10 shortfalls in the CTC/ITC collections that may result. On the one hand, the Choice Plan appears to
11 be perfectly clear on this matter. As stated in Paragraph 23 (o) of the Choice Plan, "As required by
12 the Act, there will be an annual review of ITC charges. The transition bonds, however, will be
13 issued on terms that will not require the ITC to be increased." On the other hand, the Choice Plan
14 itself (in the fine print of one of its exhibits) and the testimonies of Enron's witnesses appear to
15 contradict this very clear statement:

16 Paragraph 6 of the Qualified Rate Order contained in Exhibit 5 of the Choice Plan states,
17 "Pursuant to 66 Pa.C.S. Section 2812(b)(4), this Commission authorizes the Company to
18 make annual adjustments ('Annual Adjustments') to the Intangible Transition Charges if
19 collections of such Intangible Transition Charges fall below the amount necessary to ensure
20 the receipt by the Transition Bond trustee of revenues sufficient to recover the Qualified
21 Transition Expenses."
22

23 Mr. Kean indicates on page 17 of his testimony that there "is a theoretical risk" that the
24 CTC/ITC charges contained in the Choice Plan may be increased and customers adversely
25 affected.
26

27 Mr. Fastow indicates on page 4 of his testimony that the Special Purpose Entity will make
28 deposits in reserve accounts to "mitigate possible fluctuations in PECO's customer load
29 levels over the life of the Transition Bonds."
30

31 Mr. Fastow indicates on page 20 of his testimony that, if an energy sales decline results in an
32 ITC increase, the Guarantor (under the ITC Shortfall Agreement) will pay any shortfall and
33 there will be no impact on ratepayer bills, "unless there is a catastrophic decline in energy
34 usage from the Base Load Level."
35

36 Ms. Voorhees indicates on page 8 of her testimony that the ITC Shortfall Agreement will
37 "virtually eliminate the risk to ratepayers of increased payments due to load decline."
38

39 The qualifications in each of the above statements are characteristic of the Enron Choice Plan and
40 are a source of considerable concern for consumers. I believe that they should be a concern for the

1 Commission as well, especially since Enron has not provided a copy of the proposed ITC Shortfall
2 Agreement or any indication that the transition bonds will be issuable under the terms and
3 conditions contained in the Choice Plan (see further discussion of this issue below).

4 The Choice Plan is explicitly conditioned on a Power Purchase Agreement between Enron and
5 PECO at prices equal to the generation credits contained in the Choice Plan. This would appear to
6 suggest that such an agreement would be difficult to obtain in the marketplace. Yet, Mr. Kean and
7 Mr. Slater both refute PECO's assertion that no prudent utility manager would enter into such a
8 contract, and Mr. Slater further asserts that the terms of the Power Purchase Agreement are more
9 than generous to PECO. If, in fact, this is the case and there is no extraordinary risk for PECO
10 associated with entering into the proposed Power Purchase Agreement, I cannot help but wonder
11 why Enron will not accept the risk implicit in the generation credits and by doing so avoid
12 conditioning the Choice Plan on an acceptable Power Purchase Agreement.

13
14

15 *Implementation of the Choice Plan is explicitly conditioned on the ability to securitize at least*
16 *\$5.461 billion of stranded costs. If the issuance of transition bonds is prevented for whatever*
17 *reason, the Choice Plan will not be implemented and PECO's ratepayers will not realize any*
18 *savings or other benefits such as the non-rate benefits in the Partial Settlement Agreement.*
19

20 **Q. HAS ENRON MADE SECURITIZATION A CONDITION OF IMPLEMENTING ITS CHOICE PLAN?**

21 **A.** Yes. This is explicitly stated in Paragraph 35 (b) and (g) of the Choice Plan. Under subsection (b),
22 the Commission must approve the issuance of an irrevocable QRO permitting PECO to issue
23 transition bonds and permitting such bonds to be purchased no later than September 1, 1998 by
24 Enron or its designee. Under subsection (g), there must arise no legal impediment to the issuance of
25 transition bonds pursuant to section 2812 of the Act.

26

27 **Q. WHAT HAPPENS UNDER THE ENRON CHOICE PLAN IF TRANSITION BONDS ARE NOT**
28 **ISSUABLE?**

29 **A.** Enron has indicated that it reserves for itself the right to withdraw its proposal at its sole discretion
30 if this or other conditions are not satisfied. If this occurs, ratepayers will be back at square one,
31 having been deprived of the opportunity to realize significant savings from the Partial Settlement
32 Agreement, savings that are not conditioned on securitization or any other variable or event not
33 envisaged by the Act itself. In contrast, under the Partial Settlement Agreement all of the benefits
34 are achieved even without securitization, except for a portion (30%) of the rate reductions.

1

2 **Q. HAS ENRON PROVIDED THE COMMISSION AND RATEPAYERS WITH EVIDENCE THAT THE**
3 **TRANSITION BONDS WILL BE ISSUABLE?**

4 **A.** No. In fact, Enron has rejected requests by my clients to provide evidence that the transition bonds
5 will be issuable under the terms and conditions contained in its Choice Plan. Specifically, Enron's
6 capital market witness, Ms. Voorhees, has characterized lawsuits and appeals by the Utility
7 Workers Union of America and by Indianapolis Power & Light Company as being "without merit"
8 (see Page 10, lines 11 and 23). Ms. Voorhees has also indicated that she believes the transition
9 bonds will receive "a favorable reception by the investor community" (see Page 9, line 24) and will
10 receive "a favorable reception by the rating agencies" (see Page 9, line 10). Enron has filed
11 objections to all interrogatories requesting specific evidence to support these statements. Enron is
12 asking this Commission and ratepayers to forego the certain savings contained in the Partial
13 Settlement Agreement, yet appears unable or unwilling to provide any comfort that what it has
14 proposed will actually occur.

15 Further, Mr. Fastow has stated very clearly that there may be other uncertainties that could
16 jeopardize the ability to securitize stranded costs through the issuance of transition bonds. While he
17 also "... believes that those uncertainties will be resolved in a manner that does not require changes
18 to our proposal", he states very clearly that "if those uncertainties are resolved with an unexpected
19 outcome, certain modifications to the proposal may be required." (See Mr. Fastow, page 12, lines
20 6-9) The Commission should be very concerned that 100% of the potential savings to ratepayers
21 under the Enron Choice Plan are dependent on the resolution of uncertainties, some of which are
22 apparently unknown at the present time, and that Enron will not assume the risk that these will be
23 resolved favorably.

24

25

26 *The savings to ratepayers alleged by Enron under the Choice Plan are vastly overstated, as they*
27 *derive from inappropriate comparisons between the Partial Settlement Agreement and the*
28 *Choice Plan. When these two options are compared on equal bases, a majority of the alleged*
29 *savings disappear and under certain circumstances, the Choice Plan actually results in higher*
30 *rates for ratepayers than the Partial Settlement Agreement.*

31

32 **Q. HAVE YOU REVIEWED THE TESTIMONY PRESENTED BY MR. BRUCE R. OLIVER THAT**
33 **COMPARES THE RELATIVE SAVINGS TO CUSTOMERS OF THE PARTIAL SETTLEMENT**

1 **AGREEMENT AND THE ENRON CHOICE PLAN?**

2 A. Yes, I have reviewed the testimony and the comparisons.

3

4 **Q. DO YOU AGREE WITH MR. OLIVER?**

5 A. No. Mr. Oliver has constructed artificial comparisons that are designed to create the desired result
6 that the Choice Plan is better for consumers than the Partial Settlement Agreement. Specifically, he
7 assumed that total ratepayer savings do not include generation savings that result from ratepayers
8 having the ability to purchase electricity in competitive generation markets. Rather, he has assumed
9 that generation savings are measured by difference between the generation credits under the Partial
10 Settlement Agreement and Choice Plan. (See Mr. Oliver, Exhibit A, page 1 of 6, Notes 2 and 3.)

11

12 **Q. WHY DO YOU BELIEVE THESE ASSUMPTIONS WERE MADE?**

13 A. I do not know; however, it is interesting to observe what happens when they are relaxed. The
14 elimination of these assumptions leaves Enron between the proverbial "rock and the hard place" in
15 its defense of its Choice Plan. The problem for Enron is as follows: If there are generation savings
16 associated with the Choice Plan, then the generation credits in the Choice Plan must be set below
17 market prices and the Choice Plan is anti-competitive. Alternatively, if the Choice Plan is not anti-
18 competitive because the generation credits are above market prices, then there are no generation
19 related savings associated with the Choice Plan. In either case, there is less in the Choice Plan than
20 Enron would have us believe.

21

22 **Q. PLEASE EXPLAIN.**

23 A. There are three possibilities regarding the relationship between the market price for electricity and
24 the generation credits contained in the Choice Plan – the market price can be less than, equal to or
25 greater than the generation credits. Consider the consequences of each possibility separately,
26 beginning with the situation in which the market price is equal to the generation credits contained in
27 the Choice Plan. In this case, under the Partial Settlement Agreement, consumers will purchase
28 electricity at the generation credit rates contained in that Agreement for the early years, when these
29 credits are below the market rate (recall that the generation credits function as caps under the
30 Partial Settlement Agreement), and at the generation credit rates contained in the Choice Plan in the
31 later years when these credits are equal to the market price. This situation is illustrated in Exhibit
32 SILKMAN-2, page 1 of 3. Note that the generation savings under the Choice Plan are negative and
33 more than offset the value of the CTC savings. (On a net present value basis, the CTC savings are

1 larger.)

2

3 **Q. PLEASE GO THROUGH THE SECOND POSSIBILITY - WHERE THE MARKET PRICE IS LESS THAN**
4 **THE GENERATION CREDITS CONTAINED IN THE CHOICE PLAN.**

5 **A.** This is the easiest of the possibilities to illustrate. For simplicity, I will assume that the market price
6 is less than the generation credits contained in both the Partial Settlement Agreement and the Choice
7 Plan. Under this condition, consumers pay exactly the same amount for electricity under each
8 option - the market price, and thus there are no savings associated with generation, assuming that
9 default consumers switch to market offerings under the Enron Choice Plan. This case is illustrated
10 in Exhibit SILKMAN-2, page 2 of 3, and shows very clearly how the early rate reductions that
11 derive from lower CTC/ITC charges are paid for by ratepayers through higher CTC/ITC charges in
12 the later years.

13

14 **Q. PLEASE DISCUSS THE THIRD POSSIBILITY - WHERE THE MARKET PRICE IS GREATER THAN**
15 **THE GENERATION CREDITS CONTAINED IN THE CHOICE PLAN.**

16 **A.** To illustrate the consequences of this possibility, I have used the estimated market prices presented
17 by Mr. Mitnick on behalf of the Pennsylvania Electric Competition Coalition (PECC), of which
18 Enron is a member. (It is instructive to make this comparison using Mr. Mitnick's market price
19 estimates for two reasons. First, these estimates were provided by parties opposing the Partial
20 Settlement Agreement before Enron developed and submitted its Choice Plan. Second, Enron has
21 acknowledged that it relied upon the testimony of Mr. Mitnick regarding a projection of market
22 prices in preparing its Choice Plan and Petition. (See Enron response to PECO-XI-17, which is
23 attached to my testimony.)) These prices begin to exceed the generation credits contained in the
24 Choice Plan in 2001, and remain in excess of the credits through the balance of the transition
25 period. In this situation consumers will pay more for energy and capacity under the Partial
26 Settlement Agreement than under the Choice Plan, as shown in Exhibit SILKMAN-2, page 3 of 3.
27 This exhibit also shows the total amount of generation savings that consumers will realize under the
28 Choice Plan, assuming that the terms and conditions of the Power Purchase Agreement between
29 Enron and PECO will be honored through 2008.

30 The generation savings in this case derive from the difference between market price and the
31 generation credits. Because the generation credits are below the market price, consumers will pay
32 less for electricity under the Choice Plan than under the Partial Settlement Agreement. Of course,
33 the fact that Enron can afford to offer electricity at a lower price because of the generation credits

1 will provide Enron a cost advantage in the market that is anti-competitive. Further, this cost
2 advantage will increase over time so that by the end of the transition period it will be so large that it
3 is highly likely that Enron will become a monopoly supplier of electricity.

4

5 **Q. ARE THE RESULTS SIMILAR UNDER THE PARTIAL SETTLEMENT AGREEMENT?**

6 A. No. Under the Partial Settlement Agreement, the generation credits increase more rapidly and thus
7 the threat that they will be below market prices in the latter years of the transition period is minimal.

8 This fact is acknowledged by virtually all of Enron's witnesses including Mr. Mitnick, who
9 indicates that the generation caps (credits) in the Partial Settlement Agreement will exceed estimated
10 market prices and thus allow competitive entry into the electricity supply market in the year 2007.

11 The Partial Settlement Agreement also provides real benefits to large industrial and commercial
12 customers which cannot benefit from the lower rates in the early years. This will have a beneficial
13 impact on economic development in the Philadelphia region.

14

15

16 *Using Enron's own witness's estimates of market prices for capacity and energy, the Choice Plan is*
17 *likely to result in establishing Enron as an unregulated monopolist in the electric supply*
18 *market in the PECO service territory at the end of the transition period.*

19

20

21 **Q. PLEASE EXPLAIN HOW ANY RESTRUCTURING PLAN CAN CREATE AN EFFECTIVE MONOPOLY**
22 **IN THE ELECTRIC SUPPLY MARKET.**

23 A. There are many ways in which a restructuring plan can result in a de facto monopoly in the electric
24 supply market. Perhaps the most important of these is the establishment of generation credits that
25 are set below market prices for electricity. Indeed, this has been Enron's primary complaint with
26 respect to the Partial Settlement Agreement. According to Enron's policy witness, Mr. Kean, the
27 Partial Settlement Agreement is anti-competitive, since it will thwart competition in the generation
28 of electricity for several years until the generation credits exceed the market price for electricity.

29 (See Direct Testimony of Steven J. Kean, page 4, line 18 through page 5, line 17.)

30

31 **Q. DOES THE ENRON CHOICE PLAN SATISFY THE CONDITION THAT THE GENERATION CREDITS**
32 **MUST EXCEED THE MARKET PRICE FOR ELECTRICITY?**

33 A. The many projections of market price filed in this case demonstrate that there is a wide range of

1 possibilities concerning future prices. Notwithstanding this observation, it is instructive to compare
2 the Enron generation credits to the market prices provided by Mr. Mitnick, a witness sponsored by
3 the Pennsylvania Electric Competition Coalition (PECC), of which Enron is a member.
4

5 **Q. WHAT DO THESE COMPARISONS SHOW?**

6 **A.** These comparisons show that the generation credits contained in the Enron Choice Plan are below
7 the estimated retail market price of electricity beginning as early as 2001 and by the year 2008, at
8 the end of the transition period, the generation credits are \$.01 per kwh or more below retail market
9 prices. In contrast, the generation credits contained in the Partial Settlement Agreement may be
10 below market in the early years, but are above market in the later years.
11

12 **Q. PLEASE DISCUSS THIS COMPARISON FURTHER.**

13 **A.** The most detailed estimates of the retail market price for electricity are provided in the testimony
14 filed on behalf of the PECC by Mr. Mitnick. Using the PHB Projections submitted by PECO in
15 this case, Mr. Mitnick derives an adjusted market price for energy and capacity by including line
16 losses, reserve margins and gross receipts taxes. (See Mitnick, Exhibit SAM-2) These prices are
17 shown in Exhibit SILKMAN-3, along with the generation credits contained in both the Partial
18 Settlement Agreement and the proposed Choice Plan.

19 This comparison is very instructive. It shows that the generation credits in the Partial
20 Settlement Agreement may be below market prices in the early years of the transition period, but are
21 above market prices in the later years. In contrast, the generation credits in the Enron Choice Plan
22 behave in the opposite fashion. They are above market prices in the first two years, but well below
23 market prices in the later years.
24
25

26 **Q. WHAT DOES THIS COMPARISON SAY ABOUT THE IMPACTS OF THE TWO OPTIONS ON THE**
27 **COMPETITIVE NATURE OF THE ELECTRIC SUPPLY MARKET IN THE PECO SERVICE**
28 **TERRITORY?**

29 **A.** Assuming that the estimated retail market prices submitted by Mr. Mitnick on behalf of the PECC
30 and Enron are correct, the two options present an interesting tradeoff for the Commission. Focusing
31 only on this one dimension of the two proposals, the Partial Settlement Agreement may result in a
32 delay of competition in the PECO service territory, but potential marketers that do decide to
33 compete can be reasonably certain that the market will become increasingly competitive over the

1 transition period and fully competitive by the end of the transition period.

2 The opposite will be true for the Choice Plan. Under this option, there may be opportunities for
3 competitors prior to 2001, but these opportunities will begin to disappear beginning January 1,
4 2001 as the market becomes increasingly anti-competitive over the balance of the transition period.
5 Further, by the end of the transition period, the differences between the generation credits contained
6 in the Choice Plan and the estimated market prices for capacity and energy will be substantially
7 larger than at any time under the Partial Settlement Agreement.

8

9 **Q. DOES THE STRUCTURE OF THE GENERATION CREDITS CONTAINED IN THE ENRON CHOICE
10 PLAN PROVIDE ENRON WITH ANY BENEFITS?**

11 **A.** Yes. Under reasonable forecasts of market prices for capacity and energy in the PJM Pool including
12 those provided by Enron's witness in this proceeding, the Choice Plan will result in Enron's
13 becoming a monopoly supplier of electricity in the PECO service territory.

14

15 **Q. PLEASE EXPLAIN.**

16 **A.** Under the Enron Choice Plan, the generation credits will be above estimated market prices for only
17 two years - 1999 and 2000. During the first of these two years, access to the competitive market is
18 restricted by the Choice Plan to at most 2/3rds of PECO's current retail customers. In addition,
19 experience in the telecommunications area has shown that it takes time for competitive suppliers to
20 develop market shares. Finally, because potential competitors will be faced with a cost
21 disadvantage they will not be able to overcome, it is unlikely that many will make the initial
22 investments necessary to establish a presence in this market for such a brief time and for such
23 limited opportunities. Accordingly, I believe that Enron will retain the vast majority of PECO's
24 total retail customer base during the 1999-2000 period as the competitive market begins to develop.

25 An even more important factor that will contribute to Enron's ability to maintain a dominant
26 presence in the retail market is the fact that it alone, through the Power Purchase Agreement with
27 PECO, will be able to meet the generation credit limitations after the year 2000. All other
28 competitors will be forced to purchase and sell electricity at market prices, and will not be able to
29 compete against Enron. Using the same arguments presented by Mr. Mitnick in his criticism of the
30 Partial Settlement Agreement and paraphrasing his conclusion, the result of the Enron Choice Plan's
31 generation credits will be to effectively eliminate competition in this market beginning in the year
32 2001. (See Mr. Mitnick, page 27, lines 7-8.) Beginning in the year 2001, Enron will have a price

1 differential against all other suppliers that must acquire generation supply at market prices. As
 2 shown in Exhibit-SILKMAN-3, this price differential will grow significantly over the transition
 3 period. Assuming that the T&D and CTC/ITC components of retail rates remain relatively constant
 4 during the transition period, this differential will increase for the average consumer over time and
 5 will represent an approximate 10% differential in the total price for electricity by the end of the
 6 transition period, making it effectively impossible for any other supplier to offer the “minimum of
 7 five to ten percent savings” Ms. Hull has indicated, based on her own experiences as a consumer
 8 and observing the behavior of others, that consumers need before they will change suppliers. (See
 9 Ms. Hull, page 8, lines 18-21.)
 10

11 **Q. WHY IS IT IMPORTANT TO HAVE A COMPETITIVE RETAIL MARKET FOR ELECTRICITY AT THE**
 12 **END OF THE TRANSITION PERIOD?**

13 **A.** The Electricity Generation Customer Choice and Competition Act recognizes that it is not possible
 14 to flash-cut the existing regulatory system and monopoly industrial structure to a competitive
 15 market. Accordingly, the General Assembly established in a number of findings and declarations in
 16 the Act that the restructuring of the electric utility industry would be accomplished through a
 17 transition process that would result in the creation of a competitive market for the generation of
 18 electricity:
 19

20 Section 2802 (7) - “This Commonwealth must *begin the transition* from regulation to greater
 21 competition in the electricity generation market ...”

22 Section 2802 (8) - “In *moving toward greater competition* in the electricity generation market,
 23 the commonwealth must resolve certain transitional issues in a manner that is fair to
 24 customers, electric utilities ...”

25 Section 2802 (13) - “... The procedures established under this chapter provide for *a fair and*
 26 *orderly transition* from the current regulated structure to a structure under which retail
 27 customers will have direct access to a competitive market for the generation and sale or
 28 purchase of electricity.”

29 Section 2802 (15) - “In establishing the *standards for the transition to* and creation of a
 30 competitive electric market, ...”

31 Section 2802 (21) - “ ... The Commission will consult with the Department of Environmental
 32 Protection regarding this issue *during the transition to retail competition.*”
 33 (Italics added)
 34

35 The expectation is that a certain amount of time is needed to accommodate all of the changes
 36 necessary to create competitive electric markets, and that during this time, existing interests (e.g.,
 37 utility shareholders, municipalities, utility employees and customers) and desirable characteristics of

1 the electric system (e.g., reliability, safety) should be protected or preserved. At the same time,
2 however, the expectation is that the transition period will give way to a competitive generation
3 supply market which will no longer be subject to economic regulation. If this does not happen, and
4 in fact the electricity supply market is a monopoly at the end of the transition period, the entire
5 purpose of the Act would be thwarted and consumers will be worse off than they are currently. The
6 effect of the restructuring process will be that consumers traded a regulated monopolist – PECO –
7 for an unregulated monopolist – Enron.

8

9 **Q. PLEASE EXPLAIN WHY YOU BELIEVE CONSUMERS WOULD BE WORSE OFF.**

10 **A.** The current monopoly position of PECO is tempered at the present time by the regulatory process.
11 To the extent that this monopoly position continues during the transition period, it remains tempered
12 by the rate caps provided for in the Act. Finally, after the transition period is complete and a
13 competitive electric supply market is established, neither PECO nor any other company will be able
14 to exercise monopoly power in the electric supply market.

15 Under the Enron Choice Plan, the first two protections will remain. However, at the end of the
16 transition period, Enron will enjoy a monopoly position in the market and consumers will no longer
17 be protected by regulation or by statutory rate caps. Assuming that Mr. Mitnick's estimated market
18 prices for electricity are correct, it is highly likely that on January 1, 2009, Enron will be supplying
19 virtually all retail consumers in PECO's service territory and will be free from any statutory,
20 regulatory or settlement constraints. Enron will be an unfettered monopolist and, again to
21 paraphrase Mr. Mitnick, when its market price advantage is combined with the incumbency
22 advantage Enron would be able to achieve over the last few years of the transition period, there
23 simply will be no chance for competition in PECO's service territory and what will remain is Enron
24 as a deregulated monopoly. (See Mr. Mitnick, page 36, lines 12-15.)

25
26

27 ***Additional Issues Related to the Enron Choice Plan***

28

29 **Q. ARE THERE ADDITIONAL POINTS RELATED TO THE ENRON CHOICE PLAN OR TO THE**
30 **TESTIMONIES OF ENRON'S WITNESSES THAT YOU WOULD LIKE MAKE?**

31 **A.** Yes. The first point I would like to make is that the long-run marginal costs of energy and capacity
32 presented by Mr. Slater are incomplete and inconsistent with those presented by Enron's previous

1 witness Mr. Mitnick. When Mr. Slater's estimates are adjusted to be consistent with those
2 presented by Mr. Mitnick, they increase considerably and are well above the generation credits
3 contained in the Choice Plan.

4

5 **Q. PLEASE INDICATE WHY YOU BELIEVE MR. SLATER'S GENERATION COST ESTIMATES ARE**
6 **INCONSISTENT WITH PREVIOUS ESTIMATES PROVIDED BY ENRON IN THIS CASE.**

7 **A.** There are two glaring inconsistencies between the methodologies used by Mr. Mitnick and by Mr.
8 Slater, both of which tend to reduce Mr. Slater's estimates. Mr. Mitnick makes two adjustments to
9 the base level energy and capacity costs that are not made by Mr. Slater -- he adjusts both energy
10 and capacity costs to account for line losses, and he adjusts capacity costs to account for load
11 factor.

12

13 **Q. HAVE YOU MADE THESE ADJUSTMENTS IN MR. SLATER'S ESTIMATES?**

14 **A.** Yes. When Mr. Slater's 1999 LRMC is adjusted to reflect line losses and load factor, the estimate
15 increases from \$.03197/kwh to \$.04132/kwh or by almost 30%. This adjustment is shown in
16 Exhibit SILKMAN-4.

17

18 **Q. DO YOU BELIEVE OTHER ADJUSTMENTS SHOULD BE MADE TO MR. SLATER'S ESTIMATES?**

19 **A.** Yes. I believe that one additional adjustment should be made. I know of no study or economic
20 forecast that projects that construction costs of gas turbines, O&M costs or fuel costs will increase
21 by only an average of 1.3% a year between 1999 and 2008. A much more reasonable projection of
22 cost escalation is 3% per year, which when combined with the adjustments made previously, will
23 result in a market price in 2008 of \$.05392 per kwh, as shown in Exhibit SILKMAN-4. This price
24 is slightly above Mr. Mitnick's estimated price of \$.05210 per kwh, and about \$.0123 per kwh
25 above the generation credit in 2008 contained in the Enron Choice Plan. In fact, when these
26 adjustments are made to Mr. Slater's market price estimates, they are above the generation credits
27 contained in the Choice Plan each and every year.

28

29 **Q. IS THERE A SECOND ISSUE YOU WOULD LIKE TO ADDRESS?**

30 **A.** Yes. Enron has argued that the Partial Settlement Agreement fails to provide for full reconciliation
31 of CTC or ITC charges and therefore is not in the best interests of ratepayers.

32

1 Q. DO YOU AGREE WITH ENRON'S ASSERTION THAT THE ABSENCE OF RECONCILIATION OF THE
2 TOTAL AMOUNT OF CTC CHARGES COLLECTED BY PECO IS NOT IN THE PUBLIC INTEREST?

3 A. No, I do not. The original consumer parties to the negotiations that resulted in the Partial Settlement
4 Agreement established as an important objective the creation of near-term certain rate reductions for
5 ratepayers. These parties sought guarantees from PECO that retail rates would be fixed at levels
6 below current rates. This certainty could only be accomplished by allocating the risk of
7 reconciliation adjustments to PECO, that is, by holding ratepayers harmless to changes in revenue
8 requirements resulting from changes in either the total or relative mix of billing units. By shifting
9 sales risks to PECO, the consumer parties acknowledged that PECO could receive a larger or a
10 smaller amount of total transition costs than the amount identified as "expected" in the actual Partial
11 Settlement Agreement. This was a conscious decision that made rate reduction levels certain, and at
12 the same time eliminated ratepayer exposure to higher rates that would otherwise result from sales
13 declines. The consumer parties deliberately sought to avoid both of these consequences and were
14 successful in their negotiation of such an agreement. (In my rebuttal testimony in this proceeding, I
15 have described a variety of reasons why such declines might be expected over the next decade.) As
16 such, the original consumer parties believe that this decision constitutes "good reason" under
17 1307(e) of 66 Pa.C.S.A., as that section is referenced in Section 2808(f) of the Act.

18

19

20 *Summary*

21

22 Q. PLEASE SUMMARIZE YOUR TESTIMONY.

23 A. The two proposals put before the Commission in this case – the Partial Settlement Agreement and
24 Enron's Choice Plan – present the Commission with stark contrasts in how to proceed with the
25 restructuring of the electric utility industry. The Partial Settlement Agreement, which is supported
26 by a broad spectrum of interested parties, offers ratepayers known and certain reductions in retail
27 electricity rates as well as additional protections and benefits that they could not otherwise obtain
28 through litigation. These include a longer stayout provision with respect to T&D rates, an
29 extension of the generation rate cap through 2008, increases in the scope of coverage of existing
30 universal service programs and an acceleration of ratepayer access to the competitive marketplace.
31 The Partial Settlement Agreement is a complete agreement, in so far as the issues it covers and the
32 terms and conditions it contains are concerned. When the Commission votes to accept this
33 Agreement, it will know with certainty that the Agreement will be implemented, and that ratepayers

1 will enjoy the benefits and protections provided under the Agreement.

2 In contrast, the Enron Choice Plan has no broad base of support. It is incomplete and
3 inconsistent. It offers ratepayers at best uncertain discounts and at worst no rate reductions and
4 delays in the ability to access competitive generation markets. Further, assuming that the Choice
5 Plan could be implemented as structured, it is likely to result in enthroning Enron itself as an
6 unregulated monopoly provider of electricity as the transition period comes to an end and all
7 existing statutory and regulatory ratepayer protections expire.

8 Stripped of all of its rhetoric and complex contingencies, the Enron Choice Plan and Enron's
9 defense of that plan are long on promises but remarkably short on results. As the Commission
10 reviews the Choice Plan and the Partial Settlement Agreement, it should understand that Enron is
11 asking ratepayers to gaze into a pool and drop the bone they have in their mouth for the illusion of a
12 larger and more tasty one in the reflection.

13

14 **Q. ARE THERE ANY OTHER COMMENTS YOU WOULD LIKE TO MAKE?**

15 **A.** Yes, there is one. I have prepared this testimony without the benefit of responses to three sets of
16 interrogatories containing over 70 separate interrogatories submitted to Enron. Accordingly, I
17 reserve the right to file supplemental responsive testimony based on the responses to these
18 interrogatories. Further, to the extent that the Enron witnesses file additional testimony in this case,
19 as they have reserved the right to do, I would expect to have the opportunity to respond as
20 appropriate.

21

22 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

23 **A.** Yes.

24

25

26

27

28

29

30

31

32

33

Exhibit SILKMAN-2
Revised Estimated Net Present Value of Choice Plan Savings

Market Price = Generation Credit in the Choice Plan

System-Wide Savings (Based on Average Rates from Partial Settlement Agreement and Choice Plan)

Year	Sales (MWH)	CTC Savings (\$000)	Market Price (\$/kwh)	Generation Credit		Generation Savings (\$000)	Total Savings (\$000)
				Partial Settlement (\$/kwh)	Choice Plan (\$/kwh)		
9-12/98	8,395,802	\$ 83,622	\$ 0.0348	n.a.	\$ 0.0348	\$ -	\$ 83,622
1999	33,569,358	\$ 560,608	\$ 0.0348	\$ 0.0280	\$ 0.0348	\$ (228,272)	\$ 332,337
2000	33,569,358	\$ 560,608	\$ 0.0348	\$ 0.0280	\$ 0.0348	\$ (228,272)	\$ 332,337
2001	33,569,358	\$ 281,983	\$ 0.0354	\$ 0.0320	\$ 0.0354	\$ (114,136)	\$ 167,847
2002	33,569,358	\$ 110,779	\$ 0.0363	\$ 0.0350	\$ 0.0363	\$ (43,640)	\$ 67,139
2003	33,569,358	\$ 6,714	\$ 0.0372	\$ 0.0370	\$ 0.0372	\$ (6,714)	\$ -
2004	33,569,358	\$ (53,711)	\$ 0.0381	\$ 0.0397	\$ 0.0381	\$ -	\$ (53,711)
2005	33,569,358	\$ (60,425)	\$ 0.0389	\$ 0.0407	\$ 0.0389	\$ -	\$ (60,425)
2006	33,569,358	\$ (265,198)	\$ 0.0398	\$ 0.0477	\$ 0.0398	\$ -	\$ (265,198)
2007	33,569,358	\$ (433,045)	\$ 0.0408	\$ 0.0537	\$ 0.0408	\$ -	\$ (433,045)
2008	33,569,358	\$ (473,328)	\$ 0.0416	\$ 0.0557	\$ 0.0416	\$ -	\$ (473,328)
Total	344,089,382	\$ 318,608				\$ (621,033)	\$ (302,425)
Net Present Value @ 8%		\$ 689,743				\$ (494,740)	\$ 195,002
Net Present Value @ 10%		\$ 724,622				\$ (469,001)	\$ 255,621

1998 savings computed as 10% of total revenues (8,395,802,000 x \$.0998) and applied to CTC Savings

Exhibit SILKMAN-2
Revised Estimated Net Present Value of Choice Plan Savings

Market Price < Generation Credit in the Choice Plan

System-Wide Savings (Based on Average Rates from Partial Settlement Agreement and Choice Plan)

Year	Sales (MWH)	CTC Savings (\$000)	Market Price (\$/kwh)	Generation Credit		Generation Savings (\$000)	Total Savings (\$000)
				Partial Settlement (\$/kwh)	Choice Plan (\$/kwh)		
9-12/98	8,395,802	\$ 83,622	\$ 0.0280	n.a.	\$ 0.0348	\$ -	\$ 83,622
1999	33,569,358	\$ 560,608	\$ 0.0280	\$ 0.0280	\$ 0.0348	\$ -	\$ 560,608
2000	33,569,358	\$ 560,608	\$ 0.0280	\$ 0.0280	\$ 0.0348	\$ -	\$ 560,608
2001	33,569,358	\$ 281,983	\$ 0.0320	\$ 0.0320	\$ 0.0354	\$ -	\$ 281,983
2002	33,569,358	\$ 110,779	\$ 0.0350	\$ 0.0350	\$ 0.0363	\$ -	\$ 110,779
2003	33,569,358	\$ 6,714	\$ 0.0370	\$ 0.0370	\$ 0.0372	\$ -	\$ 6,714
2004	33,569,358	\$ (53,711)	\$ 0.0381	\$ 0.0397	\$ 0.0381	\$ -	\$ (53,711)
2005	33,569,358	\$ (60,425)	\$ 0.0389	\$ 0.0407	\$ 0.0389	\$ -	\$ (60,425)
2006	33,569,358	\$ (265,198)	\$ 0.0398	\$ 0.0477	\$ 0.0398	\$ -	\$ (265,198)
2007	33,569,358	\$ (433,045)	\$ 0.0408	\$ 0.0537	\$ 0.0408	\$ -	\$ (433,045)
2008	33,569,358	\$ (473,328)	\$ 0.0416	\$ 0.0557	\$ 0.0416	\$ -	\$ (473,328)
Total	344,089,382	\$ 318,608				\$ -	\$ 318,608
Net Present Value @ 8%		\$ 689,743				\$ -	\$ 689,743
Net Present Value @ 10%		\$ 724,622				\$ -	\$ 724,622

1998 savings computed as 10% of total revenues (8,395,802,000 x \$.0996) and applied to CTC Savings

Exhibit SILKMAN-2

Revised Estimated Net Present Value of Choice Plan Savings

Market Price > Generation Credit in the Choice Plan

System-Wide Savings (Based on Average Rates from Partial Settlement Agreement and Choice Plan)

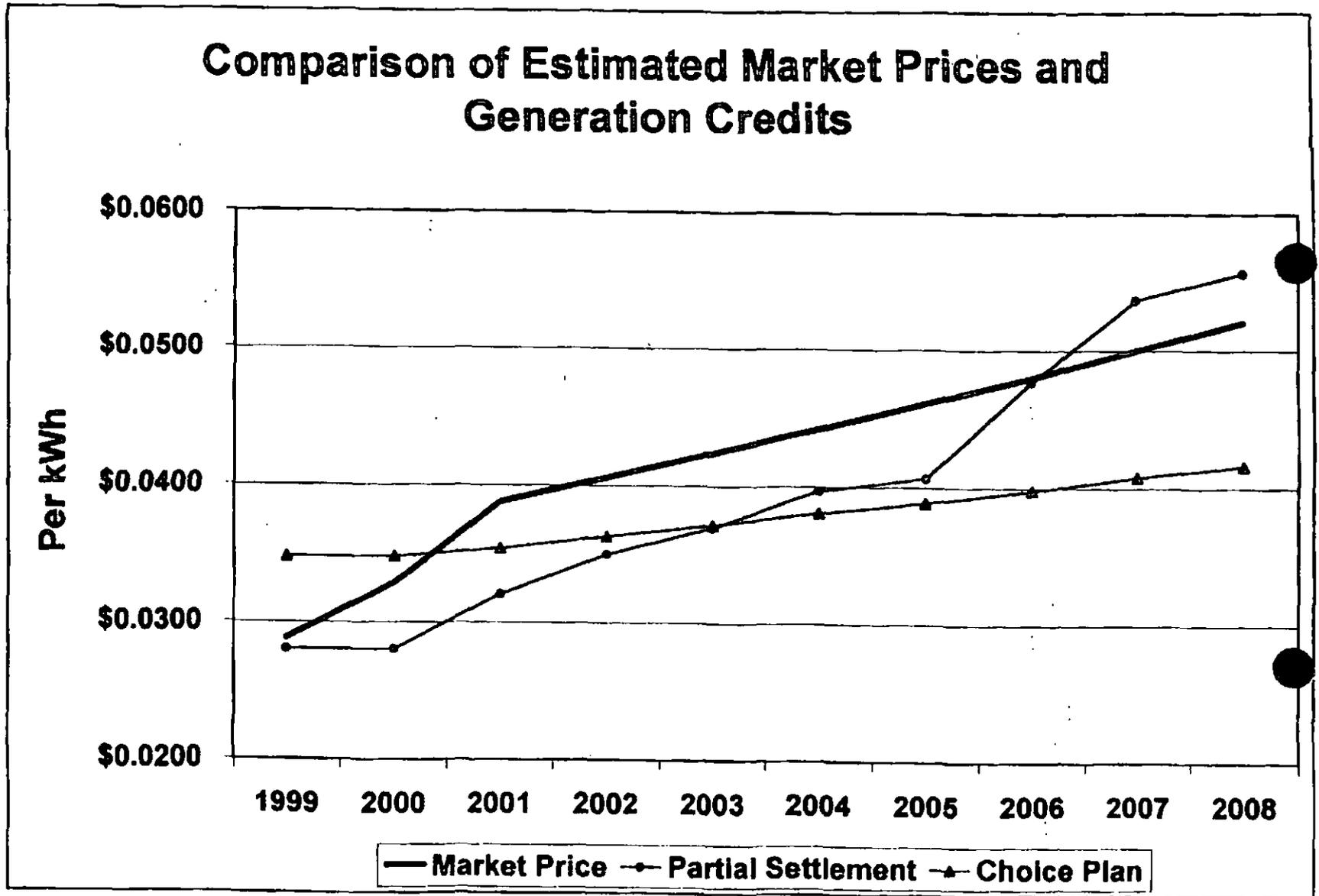
Year	Sales (MWH)	CTC Savings (\$000)	Market Price (\$/kwh)	Generation Credit Partial Settlement (\$/kwh)	Generation Credit Choice Plan (\$/kwh)	Generation Savings (\$000)	Total Savings (\$000)
9-12/98	8,395,802	\$ 83,622	n.a.	n.a.	\$ 0.0348	\$ -	\$ 83,622
1999	33,569,358	\$ 560,608	\$ 0.0286	\$ 0.0280	\$ 0.0348	\$ (26,855)	\$ 533,753
2000	33,569,358	\$ 560,608	\$ 0.0329	\$ 0.0280	\$ 0.0348	\$ (164,490)	\$ 396,118
2001	33,569,358	\$ 281,983	\$ 0.0388	\$ 0.0320	\$ 0.0354	\$ (114,136)	\$ 167,847
2002	33,569,358	\$ 110,779	\$ 0.0406	\$ 0.0350	\$ 0.0363	\$ (43,640)	\$ 67,139
2003	33,569,358	\$ 6,714	\$ 0.0424	\$ 0.0370	\$ 0.0372	\$ (6,714)	\$ -
2004	33,569,358	\$ (53,711)	\$ 0.0442	\$ 0.0397	\$ 0.0381	\$ 53,711	\$ (0)
2005	33,569,358	\$ (60,425)	\$ 0.0461	\$ 0.0407	\$ 0.0389	\$ 60,425	\$ 0
2006	33,569,358	\$ (265,198)	\$ 0.0480	\$ 0.0477	\$ 0.0398	\$ 265,198	\$ -
2007	33,569,358	\$ (433,045)	\$ 0.0500	\$ 0.0537	\$ 0.0408	\$ 308,838	\$ (124,207)
2008	33,569,358	\$ (473,328)	\$ 0.0521	\$ 0.0557	\$ 0.0416	\$ 352,478	\$ (120,850)
Total	344,089,362	\$ 318,808				\$ 684,815	\$ 1,003,423
Net Present Value @ 8%		\$ 689,743				\$ 219,448	\$ 909,190
Net Present Value @ 10%		\$ 724,622				\$ 156,211	\$ 880,833

1998 savings computed as 10% of total revenues (8,395,802,000 x \$.0996) and applied to CTC Savings

Exhibit SILKMAN-3
Comparison of Estimated Market Prices and Generation Credits

Year	Market Price		Generation Credit	
		(\$/kwh)	Partial Settlement Agreement	Enron Choice Plan
		(\$/kwh)	(\$/kwh)	(\$/kwh)
9-12/98		n.a.	n.a.	\$ 0.0348
1999	\$	0.0288	\$	0.0280 \$ 0.0348
2000	\$	0.0329	\$	0.0280 \$ 0.0348
2001	\$	0.0388	\$	0.0320 \$ 0.0354
2002	\$	0.0406	\$	0.0350 \$ 0.0363
2003	\$	0.0424	\$	0.0370 \$ 0.0372
2004	\$	0.0442	\$	0.0397 \$ 0.0381
2005	\$	0.0461	\$	0.0407 \$ 0.0389
2006	\$	0.0480	\$	0.0477 \$ 0.0398
2007	\$	0.0500	\$	0.0537 \$ 0.0408
2008	\$	0.0521	\$	0.0557 \$ 0.0416

Market Price Estimates from Mitnick Testimony - Exhibit SAM-2



**Exhibit SILKMAN-4
Adjustments to Mr. Slater's LRM Estimates**

	Adjustments to Slater's Estimates				Generation Credits Enron Choice Plan
	Slater's Estimates	Load Factor	Line Losses	Escalation Rate	
1999	0.03197	0.03843	0.04132	0.04132	0.0348
2000	0.03239	0.03893	0.04186	0.04258	0.0348
2001	0.03281	0.03944	0.04240	0.04384	0.0354
2002	0.03323	0.03995	0.04296	0.04515	0.0383
2003	0.03367	0.04047	0.04351	0.04651	0.0372
2004	0.03410	0.04099	0.04408	0.04790	0.0381
2005	0.03455	0.04153	0.04465	0.04934	0.0389
2006	0.03500	0.04207	0.04523	0.05082	0.0398
2007	0.03545	0.04261	0.04582	0.05235	0.0408
2008	0.03591	0.04317	0.04642	0.05392	0.0416

Line Losses adjustment for both capacity and energy computed as 0.93 from Mitnick, Exhibit SAM-2

Load Factor adjustment for capacity only computed as 0.60 from Mitnick, Exhibit SAM-2

Overall Escalation Rate increased to an average of 3% per year

Enron Energy Services Power, Inc.
Docket No. R-00973953
Docket No. P-00971265
SENATOR VINCENT J. FUMO
Interrogatories, Set II

Witness: Steven J. Kean

FUMO-II-6:

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

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

Response:

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

Enron Energy Services Power, Inc.

Docket No. R-00973953

Docket No. P-00971265

PECO Energy Company

Interrogatories, Set XI

Witness: Steven J. Kean

PECO-XI-17:

Please provide a copy of every projection of market prices that Enron or its advisors and consultants relied upon in preparing the Enron Choice Plan and Petition. Please provide a copy of other projections of market prices in PECO's service territory or in PJM that are in Enron's possession.

Response:

Subject to previously filed partial Objections to Question 17, and without waiver thereof, Enron Energy Services Power, Inc. ("EESPI") hereby responds as follows:

Please refer to the Testimony of Steven A. Mitnick on behalf of the Pennsylvania Electric Competition Coalition (PECC Statement No. 1) filed at Docket No. R-00973953 on September 29, 1997, regarding a projection of market prices that EESPI relied upon in preparing its Choice Plan and Petition.