

1 believe he has already answered the question by
2 saying it would go to the EGS.

3 MR. TRASK: I asked the question three times,
4 and I have not gotten an answer.

5 MR. GALLAGHER: I believe he has answered it.

6 JUDGE RAINEY: I will overrule the objection.

7 A I think if a customer made a request
8 directly to PECO, then I would -- I would except
9 that PECO would relay that request to the EGS, and
10 together, with the customer, then a decision would
11 be made.

12 Q And the EGS would ultimately have control
13 over that decision?

14 The customer could not require PECO to
15 change the customer's regulated usual rates?

16 Isn't that true under the ENRON plan?

17 A No. I do not agree with the regulation at
18 all, because what you are hypothesizing there is
19 that a customer would go to his EGS and say that he
20 has identified a way in which he, the customer, can
21 save money, and the EGS would for some reason deny
22 that request.

23 Again, I think from a business
24 perspective, that customer would soon have a new
25 EGS.

1 Q All right. With respect to your testimony
2 about the outage allowance and Rate SLP, you said
3 -- is it correct to characterize your testimony as
4 saying that ENRON would not change the service that
5 the City of Philadelphia would get if it remained
6 under its Rule 4.6 contract?

7 A If the city decided to continue service
8 under that contract, that's correct.

9 Q And wouldn't that require retention of the
10 outage allowance in Rate SLP to affect that?

11 A I think it would require a retention of
12 that allowance in the contract.

13 Q And if the contract makes direct reference
14 to a tariff provision, in this case the outage
15 allowance or the Rate SLP as it stands today,
16 wouldn't it be necessary for that tariff provision
17 to remain?

18 A Well, I think the tariff, as it exists
19 now, would have to be attached to that contract --

20 Q So --

21 A -- and that in going forward, that would
22 be the contract.

23 Q All right. So would it be correct to say
24 that this was another amendment to the Choice Plan
25 under the tariff as part of the Choice Plan?

1 You are changing your testimony now or
2 changing ENRON's position that the outage allowance
3 would not remain under any circumstances?

4 A I don't think this represents a change at
5 all.

6 What we have said all along, that if a
7 customer, including the city, wanted to continue
8 service under a special contract that presently
9 exists, that it can do so, and if that contract
10 allows for an outage allowance, then that provision
11 would be maintained in the contract.

12 A What I am referring to in the tariff are
13 generally available terms outside of special
14 contracts.

15 Q Okay. Let me ask you about another
16 provision.

17 First of all, let me ask you about Rule
18 22.

19 This has to do with your testimony just
20 now about Rule 21.7.

21 Doesn't Rule 22 contemplate that except
22 for the limited circumstances with respect to
23 outage calls in 22.2-C, that the EGS would be,
24 under the ENRON plan, the sole point of contact for
25 customer service?

1 A Okay. You are referring now to Section
2 22.2? I am referring --

3 A Of the --

4 Q I am referring to Rule 22 in its entirety,
5 and I was just qualifying my question because of
6 the one provision.

7 Doesn't this rule contemplate that the EGS
8 will be the sole point of contact for customer
9 service under the ENRON plan for customers who are
10 served by EGSs?

11 A The one exception that comes to mind is
12 the last provision of Section 22.2, which refers to
13 the company maintaining the capability to receive
14 calls under hazardous or life-threatening
15 situations.

16 Q And that was the exception I referred to.

17 A All right.

18 Q So except for that one exception, the sole
19 point of contact under Rule 22 is ENRON -- or
20 excuse me; not ENRON -- an EGS for all customers
21 who were served by EGS?

22 A I think that's an appropriate
23 characterization.

24 Q When you testified about Rule 21.7, didn't
25 you just say that customers could still come to

1 PECO and make the kinds of requests that are now
2 permitted to be honored by PECO under current Rule
3 21.7?

4 A Yes. I think -- I believe I said nothing
5 precludes the customer from making that contact.

6 I mean, there is nothing in this tariff
7 that prohibits a customer from picking up the
8 telephone and calling PECO.

9 That, I mean, that is something that we
10 could --

11 Q Why wouldn't the tariff preclude -- why
12 wouldn't this rule that we are discussing, Rule 22,
13 preclude PECO from honoring the customer's request
14 under the ENRON plan, as the rule provides that the
15 EGS is the sole point of contact, except for the
16 one limited exception that you mentioned earlier?

17 A I think PECO could refer that customer to
18 its EGS.

19 I wouldn't see any problem with that.

20 Q And unless the EGS said that it was okay,
21 then PECO wouldn't be able to provide the service
22 under Rule 21.7 under the ENRON plan?

23 Isn't that correct?

24 A No. I don't agree with that
25 characterization.

1 Q See, what I am having trouble
2 understanding, Mr. Kingerski, is that the whole
3 tariff is structured so that the EGS is interposed
4 between PECO and the customer, and I am just trying
5 to understand, in this particular instance, is that
6 true, or is it not true?

7 I mean, are there other examples within
8 this tariff where we don't know whether that is in
9 fact the case or not the case?

10 Are there going to be other changes to
11 these tariff provisions that you can't tell by
12 reading the tariff, where it is permissible to call
13 PECO and get services directly from PECO, or have
14 PECO do whatever PECO currently does for the
15 customer?

16 A Well, I think the -- my testimony has been
17 that the customer will contact his or her end user
18 for services.

19 I have also said that if there were some
20 reason, if it be by mistake or deliberate action,
21 if that customer were to call PECO, that is pretty
22 much beyond the control of the EGS.

23 What I would expect would happen in that
24 case is that PECO would refer the customer back to
25 the EGS.

1 Q With respect to this Rule 21.7, let's
2 assume that a customer calls PECO and says, "Can
3 you -- a pole line just fell down in my back yard.

4 "I know I can get service from a number of
5 other providers, but can you please put that pole
6 line back up?"

7 Now, under the current rule, PECO could
8 say, "We can do that for a charge."

9 If PECO went ahead and did that for a
10 charge, under the ENRON Rule 21.7, would that be a
11 violation of the ENRON tariff?

12 Would that action be a violation of the
13 ENRON tariff, or would PECO have to ask the EGS for
14 permission?

15 A No, that would not be a violation of the
16 tariff.

17 Q With respect to your testimony about Rule
18 7.2, you reiterated your previous testimony that
19 you didn't see a problem with the EGS not assuming
20 the revenue guarantee for line extensions.

21 Is it correct that your reasoning was that
22 EGSs don't know anything about the services, or
23 don't provide the service, and therefore it makes
24 no sense to impose the revenue guarantee on them,
25 as opposed to the end user?

1 A No. I believe that I said that the EGS is
2 not in the business of constructing extension
3 lines.

4 That is the business of the distribution
5 company.

6 Q Aren't there many things that only the
7 distribution company is going to do in the future,
8 even under the ENRON plan, that an EGS can't do;
9 nonetheless, the ENRON tariff would put the EGS in
10 the mix of relationships between the customer and
11 PECO?

12 A I don't have any examples that would fit
13 the circumstances you described.

14 Q Okay. Let's just -- I will just pick one.
15 Rule 7.3, underground service in new residential
16 developments, on Page 22.

17 A Uh-huh.

18 Q ENRON has this one structured so the EGS.
19 is now responsible for arranging this underground
20 service?

21 Isn't that correct? If you look at --

22 A I don't believe that is correct, no.

23 Q If you look at applicant for the service,
24 an EGS may act as the agent for the developer, so
25 the EGS can act as an agent in that instance with

1 respect to a regulated distribution service? Isn't
2 that correct?

3 A No. What that is referring is, it is
4 giving the customer the choice of approaching his
5 EGS to take care of the coordination of the
6 service, if he so chooses, so the EGS could act as
7 agent for the customer, but there is nothing that
8 requires a customer to go to an EGS to get that
9 type of service.

10 Q Let me ask this question, then.

11 With respect to services that only the
12 distribution company can provide, and that an EGS
13 can't provide, like line extensions, is it -- does
14 the ENRON permit the customer to obtain those
15 services directly from PECO, any of those services?

16 A If by "any of those services," you are
17 referring to obtaining a line extension --

18 Q Any of the distribution services offered
19 by PECO to provide what in the future will be
20 regulated distribution service; can an end user
21 contact PECO directly to obtain those services,
22 even though -- or because an EGS doesn't know how
23 to, or can't?

24 A I -- I don't understand the question,
25 because I don't know what the services are that you

1 are referring to.

2 Q Aren't there many other distribution
3 services that are contemplated by this tariff that
4 PECO will provide, because there are customers out
5 there that need them, other than line extensions?

6 A Well, by way of clarification, I would
7 ask: Do you mean non-delivery-related services?

8 Q I mean delivery-related services.

9 A The delivery-related services are provided
10 on behalf of the EGS who was contracted for them on
11 behalf of his end users.

12 Q And can those delivery services, can a
13 customer get them directly from PECO, since under
14 Rule 7.2, a customer can get that service directly
15 from PECO under the ENRON plan?

16 A Those services -- under the ENRON plan,
17 those delivery-related services are obtained
18 through an EGS.

19 Q So how does ENRON distinguish between
20 those delivery services that a customer can get
21 directly from PECO, and those that a customer
22 cannot get directly from PECO?

23 How is the Commission going to make that
24 determination?

25 A Well, we have made the separation based on

1 the fact that with extensions, there is a physical
2 construction that's going on.

3 Such construction occurs well prior to the
4 start-up of delivery service, and this seems to be
5 very much of a service which is different from
6 delivery service, so having the customer contract
7 directly with PECO to have an extension performed
8 seems very different to me than having a delivery
9 service from PECO.

10 Q So if there are other construction-related
11 services that the tariff would have PECO provide in
12 the future under the ENRON plan, the customers
13 could get those also directly from PECO, rather
14 than requiring the agency relationship, having to
15 get them through the EGS?

16 A Well, without any, I mean, explicit
17 listing of what those services would be, generally
18 I would say yes, because PECO is in the business of
19 constructing lines.

20 Q So before the Commission can determine
21 what the ENRON plan actually is, it is going to
22 have to go through this tariff and figure out which
23 provisions fall into that category, and those it
24 turns out customers can get directly from PECO,
25 notwithstanding the language in the tariff?

1 A Well, I think we have made it very clear
2 which services are available from PECO, and which
3 are available through an EGS.

4 Q You just testified that anything that had
5 to do with the construction of distribution-related
6 facilities PECO could get from, or a customer could
7 get directly from PECO?

8 That was the analytic distinction that you
9 made should be applied in order to make the
10 determination about whether you could get the
11 service directly from PECO or not?

12 A That's correct.

13 MR. TRASK: I have nothing further, Your
14 Honor.

15 JUDGE RAINEY: Thank you.

16 Any further questions? Mr. Ryan?

17 CROSS EXAMINATION

18 BY MR. RYAN:

19 Q Mr. Kingerski, I intend to take you back
20 to the very first set of questions which Mr.
21 Gallagher asked you.

22 That is where my concern is, and that's
23 all I have, but I would like to clear up some
24 terminology questions first to make sure we are
25 really on track.

1 In the exhibits which we are using for
2 this discussion -- that's Exhibit WFS-16 -- and
3 indeed, in the cross examination questions that
4 just occurred, we have talked about things like --
5 well, in the schedule, it talks about ENRON Rule
6 17.2(b), for example, and we have talked about the
7 ENRON tariff during the cross examination, but that
8 is not exactly correct, is it?

9 It is not an ENRON tariff that has been
10 proposed here?

11 It is an ENRON version of a tariff that
12 would apply to PECO, isn't it?

13 It would be PECO's tariff, wouldn't it?

14 A That is exactly right. We have written a
15 tariff which we have proposed would be implemented
16 and administered by PECO.

17 Q All right. And that is important, because
18 as I understand the way this whole system will work
19 in the new era of customer choice, a company like
20 ENRON wouldn't even file a tariff, will they?

21 As an EGS, would they file a tariff with
22 the Pennsylvania Public Utility Commission?

23 A If such a requirement were made by the
24 Commission, they would, but absent such a
25 requirement --

1 Q As you sit here --

2 A I am not aware of any reason why they
3 would.

4 Q Are you aware, sitting here today, that
5 they have as yet said that ENRON would have to file
6 one?

7 A As an EGS --

8 Q Right.

9 A -- or as provider of last resort?

10 Q Well, first of all, let's do it as an EGS.
11 Has -- and you are an EGS right now, and I think
12 you are supplying services in Pennsylvania under
13 the pilot programs, are you not?

14 Oh, wait. I don't mean EESPI. I guess it
15 is one of the members of the ENRON group.

16 Whatever company it is for the day,
17 whatever that company is, do they have a tariff on
18 file with the PUC, whoever is selling power in
19 Pennsylvania under the pilot program?

20 I think it is ENRON Power Marketing.

21 Would they have a tariff on file? Do you
22 know?

23 I honestly don't. I am asking you.

24 A I -- I don't believe so, but I do not know
25 definitively.

1 Q Okay. I don't believe so, either. All
2 right.

3 Well, I think we have gone far enough.
4 Let's get back to that very first question.

5 I tried to take down your answer to the
6 first set of questions, and I am not a court
7 reporter, so what I am going to tell you I wrote
8 down is kind of the way I heard it, and would you
9 just listen to it?

10 You had said at one point that the
11 customer can choose an EGS and then pick from a
12 menu of billing options that are essentially made
13 available to him by his chosen EGS, and I don't
14 think you used those exact words, but you were
15 talking about the two blocks at the top of the page
16 under Kingerski response and the deficiency or
17 problem.

18 Do you remember --

19 A Yes.

20 Q -- saying something like that?

21 A Yes.

22 Q Now, if the EGS that the customer has
23 chosen does not include among its billing options
24 on this menu that they make available to their new
25 customer the right to be billed directly by PECO

1 for the wire line service, for the T&D service --
2 that's just not one of the options on the menu --
3 wouldn't you still have this effect of cutting off
4 the end user customers' protections under the
5 Statutory Rate Caps, because the end user isn't
6 really a customer of PECO any more?

7 He is a customer only of the EGS, and it
8 is the EGS who is buying the wire line service for
9 him?

10 Am I correct in that regard?

11 A The end user is then a customer of the
12 EGS, that's correct.

13 Q And the customer of PECO is the EGS, not
14 my client, the little guy who owns a grocery store
15 down in South Philadelphia, right?

16 A That's correct.

17 Q Thank you very much.

18 JUDGE RAINEY: Thank you, Mr. Ryan.

19 Further cross examination?

20 (No response.)

21 JUDGE RAINEY: Any redirect?

22 MR. CLEARFIELD: No, Your Honor.

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

25 (Witness excused.)

1 MR. CLEARFIELD: Off the record.

2 JUDGE RAINEY: Off the record.

3 (Discussion off the record.)

4 JUDGE RAINEY: Back on the record, please.

5 Mr. Clark, I believe you have two pieces of
6 testimony that by stipulation may come into the
7 record.

8 (Thereupon, Environmentalist's Statement 1-E
9 was marked for identification.)

10 MR. CLARK: Yes, Your Honor. Yesterday we
11 determined that an environment, David Schoengold,
12 Environmentalist's Statement 1-E, which was
13 scheduled for cross examination today, we
14 determined yesterday no party had cross for him.

15 I would like to move that we admit his
16 testimony by stipulation.

17 I am giving two copies to the reporter.

18 JUDGE RAINEY: Any objection?

19 (No response.)

20 JUDGE RAINEY: Hearing none, so admitted.

21 (Thereupon, Environmentalist's Statement 1-E
22 was admitted in evidence.)

23 MR. CLARK: Yesterday, we also determined
24 that there was no cross examination for
25 Environmentalist witness Roger Colton.

1 I just wanted to make sure.

2 Does any party have any cross for Colton
3 scheduled for tomorrow?

4 (No response.)

5 JUDGE RAINEY: Was there any party aware of a
6 party who is not here who may have cross
7 examination for Mr. Colton, I mean, in terms of
8 parties here who may be aware of that?

9 MR. CLARK: I am not. I have been asking,
10 Your Honor.

11 JUDGE RAINEY: Okay. Very good.

12 MR. CLARK: I would like to therefore have
13 him excused from appearing tomorrow, and by
14 stipulation, enter his testimony,
15 Environmentalist's Statement 3-E, into the record,
16 and I am giving two copies to the reporter.

17 (Thereupon, Environmentalist's Statement 3-E
18 was marked for identification.)

19 JUDGE RAINEY: Any objection?

20 (No response.)

21 JUDGE RAINEY: Hearing none, so admitted.

22 (Thereupon, Environmentalist's Statement 3-E
23 was admitted in evidence.)

24 MR. CLARK: Thank you, Your Honor.

25 JUDGE RAINEY: Why don't we take up Mr. Hill

1 at this time? I'm sorry.

2 (Discussion off the record.)

3 JUDGE RAINEY: Yes. Mr. Hill, you have been
4 previously sworn?

5 Is that correct?

6 MR. HILL: Yes, I have, Your Honor.

7 JUDGE RAINEY: So the oath still applies.

8 MR. HILL: Yes.

9 JUDGE RAINEY: Mr. Bonney.

10 MR. BONNEY: Thank you, Your Honor. We
11 previously distributed to Your Honors and to the
12 parties two statements which I would like to
13 mention at this time.

14 The first one is entitled the "Supplemental
15 Direct Testimony of Thomas P. Hill, Jr. Regarding
16 Investment and Non-regulated Businesses," PECO's
17 Statement 1-S, and I believe that this was not
18 previously admitted into the record, unless I am
19 mistaken.

20 We provided two copies for the court reporter
21 yesterday.

22 JUDGE RAINEY: May I see the document?

23 MR. BONNEY: Sure.

24 JUDGE RAINEY: Were all the parties aware of
25 this document and have this document, PECO

1 Statement No. 1-S.

2 (Thereupon, PECO Statement 1-ER
3 was marked for identification.)

4 MR. BONNEY: We also have distributed more
5 recently a document entitled the "Rebuttal
6 Testimony of Thomas P. Hill, Jr. Regarding the
7 ENRON Plan," and that's been designated as PECO's
8 Statement No. 1-ER, and I would ask that both of
9 those be admitted into the record.

10 JUDGE RAINEY: I'm sorry. Do you have a 1-E
11 as well?

12 JUDGE CHESTNUT: Aren't there three of them?

13 JUDGE RAINEY: Do you have a PECO statement
14 which is -- we have a 1-E --

15 MR. BONNEY: Yes. Thank you, Your Honor.

16 JUDGE RAINEY: -- a 1-ER, and a 1-S.

17 MR. BONNEY: Yes. We have a 1-E and a 1-ER.
18 Thank you.

19 JUDGE RAINEY: You are welcome. Any
20 objections?

21 (No response.)

22 JUDGE RAINEY: So admitted.

23 (Thereupon, PECO Statements 1-E and 1-ER were
24 admitted in evidence.)

25 MR. BONNEY: Your Honor, we have some

1 sur-rebuttal testimony, as we had indicated a
2 moment ago.

3 JUDGE RAINEY: Yes. Please proceed.

4 THOMAS P. HILL, JR., recalled as a witness,
5 having been previously duly sworn, testified
6 further as follows:

7 DIRECT EXAMINATION

8 BY MR. BONNEY:

9 Q Mr. Hill, have you had an opportunity to
10 check since Mr. Freeman's testimony earlier today
11 to confirm how many PJM members have ownership or
12 control over more than 1000 megawatts of electric
13 generation?

14 A Yes, I did.

15 Q And what is that number?

16 A Mr. Freeman testified that there were
17 seven out of 76 companies that were PJM members
18 that had generating capacity of a thousand
19 megawatts or more, and Mr. Freeman checked off line
20 and indicates that there are 23 companies that
21 actually fit into that category, 23 out of 76 have
22 a thousand or more megawatts of capacity.

23 Q Have you reviewed the rebuttal testimony
24 that was filed last Wednesday by ENRON in this
25 proceeding?

1 A Yes, I did.

2 Q And are you aware of adjustments that they
3 have made or proposals that they have made
4 regarding the transmission and distribution rates
5 that PECO should recover in this proceeding?

6 A Yes, I believe, as outlined in Mr.
7 Oliver's testimony.

8 Q And does Mr. Reising address that as well?

9 A Yes.

10 Q Have you calculated what the cost to PECO
11 is if those T&D adjustments are adopted by the
12 Commission?

13 A Yes. I have done a calculation based upon
14 the original ENRON plan, Plan 1, and the revision
15 to the ENRON plan, Plan 2.

16 The distribution component of the
17 unbundled rate structure has been reduced by .74
18 cents per kilowatt hour, and the annual impact of
19 that change would be to reduce the recoveries under
20 the distribution rate by approximately 250 million
21 dollars per year, or over the ten-year period, on a
22 net present value basis, would reduce PECO's
23 revenues by approximately one point six billion
24 dollars.

25 Q Mr. Hill, were you present earlier today

1 during the cross examination of Mr. Oliver
2 regarding the cost to ENRON of the early discounts?
3 And by that, I mean the discounts that are proposed
4 under the ENRON plan from September to December of
5 1998.

6 A Yes. I was present at that time.

7 Q And do you have an opinion regarding
8 whether there is a cost to ENRON of those early
9 discounts?

10 A Yes, I have an opinion, and it is that
11 they are -- in my opinion, there is no cost to
12 ENRON associated with the imposition of a twenty
13 percent reduction to be put in place September 1,
14 '98, running through December 31st, 1998.

15 That would actually represent a reduction
16 in revenue to PECO energy shareholders of
17 approximately 230 million dollars.

18 That, on an after tax basis, would be an
19 income penalty expressed in earnings per share of
20 about 62 cents, which would be on the backs of the
21 shareholders of PECO Energy, and would not at all
22 impact the financial statements of ENRON.

23 Q Have you reviewed the rebuttal testimony
24 that was filed by Mr. Oliver on Wednesday?

25 A Yes, I have.

1 Q Do you have a comment on the sales
2 assumptions that he used in the analysis that he
3 performed?

4 A Yes, I do, and I refer to Exhibit A-R,
5 which is appended to Mr. Oliver's statement 2-E, in
6 which Mr. Oliver purports to use the sales from our
7 1997 annual resource planning report.

8 As I previously testified, these forecasts
9 are out of date.

10 They were done in the summer of 1995.

11 However, Mr. Oliver continues to use these
12 forecasts for various analyses.

13 The analysis shown on Exhibit A-R purports
14 to be the base sales forecast from the company's
15 '97 ARPR, and I have in fact reviewed that report
16 and cannot replicate the numbers identified by Mr.
17 Oliver for the period September '98 through
18 December 31st, 2008.

19 The company presents in its annual
20 resource planning report three sales forecasts, a
21 high sales forecast, a base sales forecast, and a
22 low sales forecast.

23 Mr. Oliver, under cross examination,
24 indicated that he utilized the company's base
25 forecast for the basis of his analysis.

1 My review shows that the sales are not the
2 company's sales in its ARPR for the base forecast,
3 and I have recast Mr. Oliver's analysis to utilize
4 the base forecast and found that the results that
5 Mr. Oliver provides over state by almost -- well,
6 actually are double the impacts shown on his
7 exhibit.

8 His exhibit doubles the impacts as they
9 appear on Exhibit A-R.

10 I have also run a similar set of
11 calculations, utilizing the company's low forecast,
12 which I believe more appropriately tracks our
13 current sales experience, and on that basis, the
14 difference between the use of the levelized sales
15 shown in the partial settlement and the low sales
16 forecasts used in the ARPR show a de minimus
17 difference on a net present value basis, both
18 discounted at an eight percent discount rate and a
19 ten percent discount rate similar to Mr. Oliver's
20 calculation.

21 I have copies of those work sheets, which
22 I would be happy to distribute to the parties.

23 MR. CLEARFIELD: That is not something that
24 you provided previously, is it?

25 THE WITNESS: No, it is not.

1 MR. BONNEY: Your Honor, we would ask that
2 this document be designated PECO Exhibit 6.

3 JUDGE CHESTNUT: So identified.

4 (Thereupon, PECO Exhibit 6 was marked for
5 identification.)

6 MR. CLEARFIELD: Your Honor, I am going to
7 object to the admission because Mr. Hill has been
8 here all day.

9 I suspect that this has been available all
10 day, and yet PECO declined to provide it to the
11 other parties until this moment, and you know, it
12 puts us at an unfair disadvantage in terms of
13 trying to respond to this testimony.

14 MR. BONNEY: Your Honor, I would be happy to
15 give Mr. Clearfield as much time as he would like
16 to respond to this, including making Mr. Hill
17 available tomorrow, if that's preferable.

18 JUDGE RAINEY: Okay. To the extent that Mr.
19 Hill will be available tomorrow in order to address
20 any questions with regard to the exhibit, why don't
21 we do this?

22 We will give you some opportunity to review
23 the exhibit.

24 We will defer at this particular time
25 admitting PECO Exhibit 6 into the record.

1 MR. BONNEY: One final sur-rebuttal question,
2 and then I believe we have one correction to the
3 prefiled testimony we would like to make.

4 BY MR. BONNEY:

5 Q But just to be clear, Mr. Hill, what is
6 PECO's position regarding whether it will enter
7 into the PPA or MBC service agreement, agreements
8 that ENRON has proposed?

9 A I have read the testimonies of PECO
10 witnesses Pratzon and Crowe, which address the --
11 those particular contracts of PPA and the services
12 agreement, and I have also listened to the cross
13 examination, particularly of Mr. Kean yesterday and
14 other ENRON witnesses today, and just so that we
15 are clear in the record, the company indicates that
16 it would not sign either of those contracts offered
17 in the ENRON Choice Plan, either the original plan
18 or the revised plan, for the reasons set forth in
19 those testimonies, and I believe supported by the
20 cross examination of the ENRON witnesses.

21 Q Do you have a correction to the prefiled
22 testimony that you submitted?

23 A Yes, I do. On Page 14 of my Statement
24 1-E, Line 21, there is a reference to the
25 Competition Act, Section 2812 (b)(5), and it should

1 be, I believe, 2812(b)(6).

2 MR. BONNEY: The witness is available for
3 cross examination, Your Honor.

4 JUDGE RAINEY: Cross examination?

5 Yes, Mr. Dworetzky.

6 CROSS EXAMINATION

7 BY MR. DWORETZKY:

8 Q Now, Mr. Hill, could I direct your
9 reference to Exhibit TPH-35?

10 A Yes.

11 Q And this was filed as part of your most
12 recent testimony, most recent written testimony?

13 A I believe it was filed in response to my
14 second most recent.

15 This was Statement 1-E.

16 Q And does this represent your most recent
17 calculation of the value of the settlement, the
18 partial settlement to PECO?

19 A This represents, from PECO's perspective,
20 as one of the signators to the joint petition, our
21 position relative to the value of the settlement
22 for PECO Energy, as compared to the cost elements
23 within -- embodied within that settlement.

24 Q And this is something that you prepared or
25 was prepared under your direction?

1 A This was prepared under my direction.

2 Q Now, I want to make sure that I understand
3 the assumptions that are included in this, and let
4 me ask you about those.

5 Am I correct in assuming that in TPH-35,
6 you have taken the position that PECO would be
7 entitled to a return on its stranded assets?

8 A As I have indicated, it is PECO's
9 position, in evaluating the joint petition, that we
10 would be entitled to a -- both a recovery of and a
11 return on the stranded costs of 5.461 billion.

12 Q And that's assumption that is in this
13 calculation?

14 A Yes, it is.

15 Q And am I also correct that you assume in
16 this calculation no load --

17 A May I just interject, it assumes that for
18 those elements as provided in Mr. Kean's testimony,
19 for those elements that qualify for a return, that
20 return requirement is included.

21 There are certain of the assets that do
22 not have a return requirement.

23 Q I understand. Would I be correct in
24 assuming that for purposes of this exhibit, you
25 have not anticipated any load growth?

1 A I have not embodied any increase in sales
2 or decreases in sales for the reasons indicated in
3 my testimony.

4 Q Would I be correct that the present
5 valuation is as of September 1, '98 in this
6 exhibit?

7 A That was the basis of PECO's calculation
8 in evaluating the settlement from PECO's
9 perspective.

10 Q And you have used a discount rate in this
11 exhibit of 8.71?

12 A Yes, I have.

13 Q And have you followed in this exhibit the
14 valuation or the methodology of calculating present
15 value, which looks to the end of the year, the end
16 of the year convention?

17 A All the calculations, including the
18 revenue requirements, are based upon year-end
19 calculations.

20 It could be modified to utilize mid-year
21 calculations, which would give approximately the
22 same results, but we have been consistent.

23 Q In this document, is my question, have you
24 used the end of the year convention in calculating
25 the present values?

1 A I believe I indicated, yes, we did for
2 both the cost and the revenues, so we have been
3 consistent in the evaluation.

4 Q Am I correct that you have in this
5 document continued in your position that you should
6 offset the various items which have been bargained
7 with other parties to the joint settlement
8 agreement as benefits to them from -- I'm sorry.

9 Have you added the cost of those items
10 that you have bargained with other members of, or
11 other parties to the joint settlement agreement to
12 the revenue requirement in making the comparisons
13 included on this document?

14 A I believe I understand your question, and
15 we have -- from PECO's evaluation of the joint
16 petition, we have evaluated other costs other than
17 the revenue requirement on the stranded costs.

18 From PECO's perspective, they represent
19 other transition costs and are properly recoverable
20 through the CTC.

21 Q Now, let me focus you on the line that
22 says "Cost of LILR EER Modifications"?

23 A Yes.

24 Q What amount have you used there?

25 A As I have indicated, on a pre-gross

1 receipts tax basis, we evaluated at a range of
2 thirty-three million to 117 million.

3 Q And have you previously provided
4 information to NEV and to other of the suppliers
5 that have evaluated that cost as a single number,
6 rather than a range?

7 A I believe Mr. Kean has supplied that in a
8 response to PECC -- Interrogatory PECCR 9-A, which
9 indicated a range.

10 Q Have you ever provided it not as a range,
11 but as a discreet number, to the best of your
12 knowledge?

13 A I am not aware of any other presentation
14 other than the range.

15 We may have, but I am not aware of it.

16 Q Let me show you a document and ask if this
17 refreshes your recollection?

18 MR. BONNEY: May I have a copy of it, please?

19 MR. DWORETZKY: Yes.

20 A Yes. I believe these are some analyses
21 that we --

22 Q Excuse me. Let me just --

23 A Yes.

24 Q -- be precise for the record.

25 I asked if this had refreshed your

1 recollection of whether you had ever given us
2 information as to a single amount for the LILR
3 cost?

4 A Yes. That's -- that represents a single
5 point, which I believe is the arithmetic average of
6 the numbers shown in the range.

7 Q And with your recollection refreshed, what
8 was that amount?

9 A I believe it was seventy-seven million
10 dollars.

11 Q And can you explain to me why you changed
12 from a single number to a range?

13 A I believe the range is what we originally
14 evaluated in terms of the potential for losses
15 under the modifications to the industrial rate
16 schedules, depending upon the reaction of customers
17 to those tariff changes.

18 For convenience of that presentation, we
19 just utilized the arithmetic average, representing
20 the mid point of the possibility.

21 Q Thank you. With respect to -- let me
22 direct your attention to the portion of exhibit
23 TPH-35 that deals with the value of securitization.

24 A Yes.

25 Q What value did you give to securitization

1 here?

2 A We evaluated a range of no securitization,
3 up to four billion dollars of securitization.

4 I believe our principal evaluations have
5 focused on securitizing approximately two billion
6 dollars, and the range of outcomes on the net
7 reduction to revenue requirements is anywhere from
8 nothing to 600 million.

9 Q Okay. Let's take the -- let's take the
10 case where it is nothing.

11 Would that be because you do not have a
12 securitization?

13 A That would take place if no -- that would
14 be the result with no securitization, that's
15 correct.

16 Q And would that be the case in the event
17 there was a legal impediment to your ability to
18 securitize?

19 A Amongst other reasons, a legal impediment,
20 or perhaps the market conditions, or the fact that
21 we could not get the appropriate tax or book
22 accounting treatment for securitization.

23 Q Now, in the case where there is a legal
24 impediment to securitization, the actual -- there
25 would be a reduction in the amount of the rate

1 decreases that were available under the joint
2 settlement?

3 A Yes, that's correct, until such time as
4 the impediment was removed.

5 Q And in this calculation, do you show as an
6 offsetting benefit or an offsetting cost those --
7 that portion of the rate decreases that you no
8 longer would have to pay or no longer have to
9 provide?

10 A No, I do not.

11 Q And the amount, that three percent or
12 three cents per kilowatt hour over, if it were to
13 persist for the full ten-year period, would be in
14 the range of 600 million dollars?

15 Is that correct?

16 A If you in fact assume that the replacement
17 scenario is full securitization of the four
18 billion, which is not a foregone conclusion.

19 Q Now, would you explain to me why you have
20 included the cost of the universal service program
21 improvements and the cost of the LILR and the EER
22 modifications on this sheet?

23 A Under the terms of the settlement, the
24 company agreed to various tariff provisions,
25 modifying those provisions for our large industrial

1 rates, LILR and EER, and also agreed to modify the
2 universal service program, which would represent to
3 us a significant increase in costs which, from our
4 purpose, represented a transition cost, additional
5 transition cost encountered in moving from a
6 regulated environment to a competitive environment,
7 utilizing the joint petition for settlement.

8 Q And for that reason, you thought it
9 appropriate to add then to the revenue requirement?

10 A From PECO's perspective, when we evaluated
11 the settlement, they represented additional costs
12 to us, which we needed to evaluate relative to the
13 recoveries under the CTC.

14 Q And the idea would be that it would be
15 appropriate, under those circumstances, for all the
16 rate payers to pay that revenue requirement, the
17 additional revenue requirement?

18 A Again, from PECO's perspective, these are
19 in fact reasonable costs and should be and were
20 supported by the consumers, then they are
21 reasonably recoverable through the rate structure.

22 Q When you say "reasonably recovered through
23 the rate structure," you mean recovered from the
24 CTC?

25 A Through the rate structure, which is

1 embodied through the CTC as part of that rate
2 structure.

3 Q And CTC is paid by all the rate classes?
4 Is that correct?

5 A That's correct.

6 Q So that in essence, under this proposal,
7 or under this analysis, the CTC paid by all rate
8 classes is used to pay a benefit that is delivered
9 to a particular rate class?

10 Is that correct?

11 A No. I think that's a false presumption.
12 Again, this represents PECO's evaluation of the
13 cost of the joint petition and the associated
14 revenues.

15 There is no indication of the distribution
16 of these costs across various rate classes embodied
17 in the settlement.

18 In fact, I believe the settlement is quite
19 specific in terms of not drawing the conclusion,
20 particularly on the universal service program, as
21 who has the cost responsibility for universe
22 service cost increases.

23 Q But you do think it appropriate to add to
24 the revenue requirement and to be recaptured
25 through the CTC mechanism?

1 That is what this exhibit represents,
2 doesn't it?

3 A It represents PECO's position on that, and
4 yes, I indicated they represent reasonable costs,
5 which represent transition costs in moving from
6 regulation to competition above and beyond the cost
7 associated with the stranded plan.

8 Q Thank you, Mr. Hill.

9 JUDGE RAINEY: Further cross examination?

10 MR. CLEARFIELD: Yes. I have some, Your
11 Honor.

12 JUDGE RAINEY: Mr. Clearfield.

13 CROSS EXAMINATION

14 BY MR. CLEARFIELD:

15 Q Good evening, Mr. Hill.

16 A Good evening, Mr. Clearfield.

17 Q Your official title is vice president and
18 controller?

19 Is that correct?

20 A That's correct.

21 Q And are you responsible for preparing
22 financial forecasts for PECO, among your other
23 duties?

24 A Not specifically. I don't have the
25 company's budget responsibility as part of my -- I

1 did for several -- I guess about a year ago, I did
2 have the corporate budget.

3 Q You have prepared financial forecasts with
4 respect to the effects of various restructuring
5 plans on PECO, though, haven't you?

6 A I have done evaluations, yes.

7 Q That is not part of your regular duties,
8 however?

9 A As part -- as they affect the company's
10 presentation in the restructuring case, I had the
11 primary responsibility for participating in the
12 company's presentation.

13 Q So you did prepare those financial
14 forecasts with respect to the restructuring
15 proceeding?

16 A I did participate in the preparation, and
17 directed, along with counsel, many of the analyses
18 used to evaluate the company's restructuring,
19 including the joint petition for settlement.

20 Q Just for clarification, who normally
21 prepares the financial forecasts for PECO?

22 Would that be your office, or would that
23 be a different office?

24 A Well, I will define "financial forecast"
25 as the company's budget and forecast, which is

1 prepared in the company's corporate planning under
2 the direction of the company's vice president for
3 corporate planning, and that one of the direct
4 reporting lines is the director of the corporate
5 budget, who reports to that vice president.

6 Q And who is that vice president?

7 A That, there is an acting individual in
8 that role right now.

9 There is no vice president holding that
10 position.

11 It is being held by Charles Lewis.

12 Q Is Mr. Mitchell part of that organization?

13 A No, he is not.

14 Q And does that corporate planning process
15 include forecasts of the company's financial
16 criteria, such as earnings, bond rating, cash flow,
17 coverages, and the like?

18 A As part of the output of the financial
19 model, you would get such indications of financial
20 performance.

21 Q And does the company regularly prepare
22 those kinds of forecasts?

23 A The company does an annual forecast of its
24 total operation.

25 Q How far out does that forecast look?

1 A The traditional forecast is a five-year
2 forecast.

3 Q Do you do other kinds of forecasts besides
4 the five-year forecast, long term or long range
5 forecast?

6 A We would do other forecasts, depending
7 upon particular necessity.

8 Q Do you do -- when you forecast, do you
9 include results based on different sensitivities or
10 changed assumptions?

11 A We have utilized sensitivities in certain
12 forecasts, but our normal practice is to provide a
13 financial forecast or a budget and forecast for
14 PECO Energy based upon a single set of criteria.

15 Q Well, when do you decide to utilize a
16 forecast for sensitivities, and when don't you?

17 A If we wish to test the outcome of a
18 particular set of assumptions, we could run a
19 variation against that.

20 Q Well, I will come back to that in a
21 minute.

22 Let's get to your testimony, Statement
23 1-E.

24 Generally, your statement criticizes the
25 policy support and evidentiary support for the

1 Choice Plan proposals, pretty much virtually every
2 single aspect of it, and suggests that the partial
3 settlement is superior in those respects.

4 Would that be a fair characterization?

5 A I think I provide an overview from the
6 company's perspective of the flaws in the ENRON
7 plan and contrast that with the partial
8 settlement.

9 Q And specifically, you, in several
10 instances, suggest that the evidentiary and policy
11 support for the Choice Plan is deficient, in your
12 view? Isn't that right?

13 A As I have indicated in my testimony, yes.

14 Q Let me ask -- I would like to ask you some
15 questions with respect to -- and utilize the
16 answers to interrogatories that you provided in
17 this proceeding.

18 MR. CLEARFIELD: Your Honor, I would like to
19 mark this for identification, and would we be at
20 EESPI Cross Examination 1?

21 JUDGE CHESTNUT: Cross Examination Exhibit 1.

22 MR. CLEARFIELD: It had to come sometime.

23 JUDGE RAINEY: So identified for the record.

24 (Thereupon, EESPI Cross Examination Exhibit 1
25 was marked for identification.)

1 BY MR. CLEARFIELD:

2 Q Mr. Hill, have you been able to thumb
3 through those, what we have marked as EESPI Cross
4 Examination Exhibit 1?

5 A No, I didn't. I was waiting for your
6 questions.

7 Q Well, the question is: Would you thumb
8 through that exhibit?

9 A Sure.

10 (Discussion off the record.)

11 JUDGE RAINEY: Let's go back on the record.
12 We are back on the record.

13 Mr. Clearfield?

14 A I finished my thumbing.

15 Q These are all answers to ENRON
16 interrogatories or data requests that you have
17 sponsored?

18 Would you agree to that, subject to check?

19 A Yes, that's correct.

20 Q And were they prepared by you, or under
21 your direction and supervision?

22 A Yes, they were.

23 Q Let's look at the first one, ENRON Set 10,
24 No. 3.

25 We asked you, and I am going to just

1 generally characterize them and characterize the
2 answer, Mr. Hill.

3 We asked you for the -- in essence, the
4 analysis assumption calculations and supporting
5 data for the various, if you will, unbundled
6 charges on Table A of the partial settlement --

7 A Uh-huh.

8 Q -- including the distribution charges, the
9 transmission charges, the CTC or the ITC and the
10 market price and energy capacity?

11 Is that right?

12 A Yes.

13 Q And your answer was that there are no work
14 papers?

15 The partial settlement rates were
16 developed through the negotiations of the
17 signatories?

18 Is that correct?

19 A That is my -- that is my answer.

20 Q That means, doesn't it, that there was no
21 specific market prices used by or agreed to by the
22 parties to develop or support the energy and
23 capacity caps that are shown on Table A of the
24 partial settlement?

25 Is that right?

1 A I think that's a fair assessment. I
2 believe individual parties reviewed the partial
3 settlement from their own perspective and then
4 could impute, imply any market price that they felt
5 appropriate.

6 Q Now, the figures on Table A are system
7 average figures -- is that correct -- Table A of
8 the partial settlement?

9 Excuse me.

10 A Yes, they are.

11 Q And the rate -- I'm sorry -- the unbundled
12 rates for individual rate schedules are shown on
13 Appendix C of the partial settlement?

14 Is that also correct?

15 MR. BONNEY: I am going to object to this
16 line of questioning, Your Honor.

17 This phase of proceeding is with respect to
18 the ENRON plan, and what we are seeing here today
19 is additional cross examination of Mr. Hill
20 regarding the PECO view of the partial settlement
21 or the parties' view of the partial settlement.

22 We had extensive cross examination of Mr.
23 Hill of that in October, and had a phase of the
24 proceeding dealing with that.

25 In fact, I think many of these same questions

1 or similar questions were asked and answered.

2 JUDGE RAINEY: Mr. Clearfield?

3 MR. CLEARFIELD: Your Honor, in most
4 instances in Mr. Hill's testimony, he criticizes
5 the Choice Plan and then compares it to the partial
6 settlement and suggests that the partial settlement
7 is superior, for example, pages eight and nine with
8 respect to the escalation of the CTC rates, Pages
9 11 and 12, with respect to the generation credits,
10 and Page 13 with respect to the financial support
11 and the guarantees associated with the rate
12 decreases, so Mr. Hill has brought this comparison
13 into this part of the proceeding, and I am
14 exploring, I think fairly, that comparison.

15 JUDGE RAINEY: I am going to overrule the
16 objection.

17 I will ask you to be non-repetitive with
18 regard to what has already gone into the record
19 with regard to --

20 MR. CLEARFIELD: Right, and think maybe as
21 Mr. Hill and I understand each other, we may be
22 able to move along.

23 BY MR. CLEARFIELD:

24 Q I had asked you about Appendix C, Mr.
25 Hill, and am going to ask you just simply whether

1 that reflected the individual unbundled rates for
2 the rates, the rate schedules for PECO?

3 A Yes, as agreed to by the joint
4 petitioners.

5 Q And again, those individual rate schedules
6 are not supported by a specific -- they were the
7 product of negotiation among the parties, were they
8 not?

9 A The entire joint petition, including all
10 appendices, were negotiated by the parties, that's
11 correct.

12 Q And again, that means that the individual
13 market prices, or I'm sorry, the individual
14 generation and energy caps or specific rates aren't
15 supported or developed by specific market price
16 forecasts that all parties agreed to? Is that
17 right?

18 A I -- as I indicated, the parties had their
19 independent review or had the opportunity for
20 independent review for market forecasts, including
21 PECO's estimate of the market, which was presented
22 at the -- in the original restructuring case.

23 Q But the partial settlement does not
24 include a specific evidentiary basis on which all
25 parties have agreed is the support for the

1 individual rate energy and capacity caps by
2 schedule?

3 Is that right?

4 A I would say it doesn't include a specific
5 market forecast, but I believe the document,
6 itself, and the statements in support of that
7 settlement indicate that the consumer parties and
8 the company were satisfied that those generation
9 caps would provide for the adequate development of
10 the competitive market under those caps.

11 Q Well, is there anything specifically --
12 is there a market forecast attached to the partial
13 settlement that supports Table A or Appendix C?

14 A I think I have indicated that there is no
15 individual forecast which was signed on by all
16 parties.

17 All parties to the settlement had their
18 own positions, but indicated their support, and
19 they also indicated that they thought the market
20 could develop under the price caps established, the
21 generation price caps, as established in the
22 partial settlement.

23 Q Where did they indicate that in the
24 partial settlement?

25 A I would refer you to the joint petition.

1 There's individual statements in support --

2 Q So it is not --

3 A -- including the company's.

4 Q It is not in the partial settlement?

5 A It is not in the settlement document,
6 including the appendices, to my knowledge.

7 Q Would you look at the answer to ENRON
8 VIII, No. 21?

9 A VIII. This is in this pack?

10 Q Yes. That is the fourth one in.

11 A Yes.

12 Q Now, we asked you -- or in that question,
13 it was asked why there is a difference in the gaps
14 between Rate HT energy and capacity caps and Rate R
15 in 1999, and the same rates, that is, the energy
16 and capacity cap for Rate HT and Rate R in 2008,
17 and your answer again was, it was negotiated?

18 A Yes.

19 Q Is that right?

20 A That's correct.

21 Q Would you turn to the Roman X, No. 29, for
22 a moment?

23 A Is it further back, counsel?

24 Q Oh, I'm sorry. X, No. 28.

25 A Yes.

1 Q And again, this indicates that the partial
2 settlement doesn't specify the portion of
3 generation stranded assets that PECO had claimed
4 that in fact are allowed or agreed to in the
5 partial settlement?

6 Isn't that right?

7 A That is the way the partial settlement is
8 drafted.

9 It does not specify the specific assets,
10 right.

11 Q The same is true for regulatory assets, as
12 listed on Set 10, No. 29?

13 A Yes.

14 Q The same is true for other stranded
15 transition costs and for deconditioning costs?

16 A That's correct.

17 Q Now, Set 8, No. 1, which is the next one
18 in --

19 A Yes.

20 Q -- look at the answer to Part B of that
21 question.

22 Does this indicate, or doesn't this
23 indicate that in fact there was no agreed to
24 calculation of the net present value of the stream
25 of revenues that PECO would --

1 JUDGE RAINEY: I'm sorry, Mr. Clearfield.

2 What are you referring to?

3 MR. CLEARFIELD: Set 8, No. 1, Part B.

4 JUDGE RAINEY: And how far in is that?

5 MR. CLEARFIELD: Sorry.

6 MR. DOLL: Ten in.

7 MR. CLEARFIELD: The 11th page in mine, Your
8 Honor.

9 I apologize. I hope it is in yours. Do you
10 have it? Off the record.

11 (Discussion off the record.)

12 BY MR. CLEARFIELD:

13 Q This answer indicates, doesn't it, Mr.
14 Hill, that the parties did not agree to a specific
15 calculation of the net present value of the CTC
16 revenues that PECO would recover from the partial
17 settlement?

18 A I think we --

19 MR. BONNEY: I object to the form of the
20 question.

21 Are you reading from B? This is 8-1, Section
22 B.

23 MR. CLEARFIELD: Yes.

24 MR. BONNEY: I don't see that.

25 BY MR. CLEARFIELD:

1 Q Well, let me just ask you. Did the
2 parties agree to a specific calculation of the net
3 present value of the CTC revenues that PECO would
4 recover from the rates agreed to in the partial
5 settlement?

6 A Well, I think we have been over this
7 before in my prior deposition and cross
8 examination, and I think I indicated there that
9 parties were free to do their own calculations
10 based upon their projection of sales, the company's
11 projection, or utilizing any other source.

12 They could utilize their own discount
13 rates as to what they felt appropriate.

14 They could factor in other elements of the
15 settlement and value those from their own
16 perspective.

17 To my knowledge, those types of
18 calculations were done by other parties other than
19 Company, but there was no specific NPV, net
20 present value calculation done as a -- and
21 presented as part of the joint petition, because
22 parties had different views on different elements,
23 but on balance, the parties accepted the CTCs as
24 fairly representing the cost of the stranded cost
25 recovery, as well as the other elements in the

1 joint petition.

2 Q Where does that say that in the partial
3 settlement?

4 A Participating in the partial settlement
5 with the other parties.

6 That's my perceptions as one of the
7 negotiators.

8 Q You prepared a financial forecast that
9 calculated the amount of CTC recovery on a net
10 present value basis that PECO would be able to
11 recoup under the partial settlement at the time the
12 settlement was signed, didn't you?

13 MR. BONNEY: Objection, Your Honor.

14 We have now had maybe fifteen minutes of
15 cross examination, I think most of which was
16 previously covered.

17 This certainly was covered in October at
18 length, and I just ask that it not be repeated
19 here.

20 MR. CLEARFIELD: Well, Your Honor, I didn't
21 raise the comparison between the partial settlement
22 and the choice plan.

23 Mr. Hill did.

24 MR. BONNEY: There has been no discussion of
25 the ENRON Choice Plan in this cross examination.

1 As far as I can tell, it is all about the
2 partial settlement, and what the parties did in the
3 negotiation of it.

4 I don't recall hearing any --

5 MR. CLEARFIELD: In the testimony, Your
6 Honor, Mr. Hill's statement is replete with
7 references to the lack of evidentiary support for
8 the Choice Plan proposals, and what I am trying to
9 do is explore and establish the basis for the
10 partial settlement.

11 JUDGE RAINEY: Well, to the extent that the
12 questions have been previously asked when Mr. Hill
13 was previously on the stand, I would ask you to
14 move very quickly to get to whatever point you need
15 to make to bring out something new, Mr. Clearfield.

16 MR. CLEARFIELD: That is a fair point, and I
17 will certainly try.

18 MR. BONNEY: Your Honor, I just must object
19 on the record to the characterization, too, that
20 there is no support.

21 Attached to the settlement is a listing of
22 all the testimony that the parties had submitted
23 previously, and it is obviously a compromise of
24 those positions through negotiation where the
25 parties reached the settlement.

1 That's been Mr. Hill's testimony.

2 I don't think there has been any dispute
3 about that.

4 JUDGE RAINEY: Well, I don't want the
5 attorneys to get into testifying, and I think you
6 will have the opportunity --

7 MR. BONNEY: But it goes to the relevance of
8 the cross examination.

9 JUDGE RAINEY: I think you will have an
10 opportunity to put your positions in the record
11 with regard to a brief or a closing type of
12 argument that's allowed, but to the extent that we
13 want to be able to get through this witness this
14 evening, I am going to ask you to expedite matters
15 that have already been recovered covered, Mr.
16 Clearfield.

17 MR. CLEARFIELD: I understand you, Your
18 Honor.

19 I will. I will. I will.

20 BY MR. CLEARFIELD:

21 Q Quickly, and I wouldn't go through all
22 these, just, Mr. Hill, with respect to -- would you
23 turn to Set 10, Number 53?

24 A Okay.

25 Q That discusses the --

1 MR. BONNEY: Excuse me, Mr. Clearfield. Is
2 that in this package?

3 MR. CLEARFIELD: Yes.

4 MR. BONNEY: Toward the back or the middle?

5 MR. DWORETZKY: Another five back.

6 MR. BONNEY: Okay. I have it. Another five
7 back

8 MR. BONNEY: Thank you.

9 BY MR. CLEARFIELD:

10 Q And there is several others attached that
11 you might want to take a look at.

12 Now, again, I will ask a summary question
13 to try to move this along.

14 This question requests specific analysis,
15 assumption and work papers for the way in which the
16 partial settlement rates would be adjusted if in
17 fact there is an impediment to securitization at
18 the time, if it is put into effect, and there has
19 to be a reduction in the rate decreases, doesn't
20 it?

21 A That is the basic concept embodied in the
22 interrogatories.

23 Q And in essence, your answers, these
24 answers state that the -- all the analysis and
25 support for that are contained in the partial

1 settlement, itself, and specifically Paragraph 10
2 and Table A?

3 Would that be fair to say?

4 A I think that's where you are directed to
5 find the answer, because that is precisely how the
6 calculation was agreed to through negotiations in
7 the partial settlement.

8 Q Now, has PECO provided a comparable
9 version of Appendix C that would show the rates
10 that would go into effect if in fact there was a
11 determination that there is a impediment to
12 securitization on September 1998, and in the event
13 that the PUC wouldn't approve this partial
14 settlement?

15 A I think Paragraph 10 of the partial
16 settlement directs how that calculation could be
17 done or should be done.

18 Q Okay. So would the answer be no, Appendix
19 C, or a comparable Appendix C with adjusted rates
20 has not been provided?

21 A Appendix C, as modified by Paragraph 10,
22 would provide the prescription to do those
23 calculations that you just referred to.

24 Q Well --

25 A It is a fairly mechanical process.

1 Q Well, what would the rate for RS be if in
2 fact there is an impediment to securitization in
3 September 1998?

4 Is that reflected in the tariff that you
5 provided to --

6 A No, it is not.

7 MR. BONNEY: Well, wait.

8 Q When do you provide --

9 JUDGE RAINEY: Yes. Hold on just a moment.

10 MR. BONNEY: I have an objection.

11 JUDGE RAINEY: Mr. Bonney?

12 MR. BONNEY: Yes. I would object. There are
13 two questions, and I am objecting to the compound
14 question.

15 I'm not sure which of the ones that you
16 answered.

17 I just want to make sure. I am objecting to
18 the question, because it is compound.

19 A The question I was answering was: Is
20 there a tariff in the joint petition for settlement
21 which shows the three percent reduction by
22 individual rate class, and the answer to that is
23 no.

24 Q And does PECO plan to provide that tariff
25 before the end of these proceedings?

1 A Well, the company would make -- once the
2 Commission accepts the partial settlement, the
3 company would make its compliance filing in
4 accordance with that, and also any other provisions
5 that are necessary to incorporate the full effects
6 of restructuring.

7 There are several issues which are not
8 embodied in the partial settlement that also need
9 to be resolved before we move into competition.

10 My expectation is that we would make that
11 compliance filing for a series of rates.

12 If in fact there is a legal impediment to
13 moving forward to securitization, the company has
14 the obligation to come forward, show the Commission
15 that there is in fact a legal impediment, and at
16 that time that the Commission determines that there
17 is a legal impediment, I believe the Commission
18 would order the company to file a compliance
19 tariff, putting in place a series of rates, showing
20 what they would be, reduced by the three percent
21 impact we have just discussed, but the company has
22 the burden of showing and proving to the Commission
23 in fact the legal impediment exists, and that's
24 embodied in the language within the joint petition
25 for settlement, placing the burden on the company

1 to definitively prove that that legal impediment
2 exists.

3 Q Yes. I understand. I was really focusing
4 on the tariffs that would be in place or would be
5 utilized.

6 In that event -- and I think I understood
7 your testimony, that you haven't presented those
8 tariffs as of yet.

9 A We haven't, and for the reason that the
10 company has not made a showing, to my knowledge,
11 that there is a legal impediment to moving forward
12 with securitization.

13 We would do so at the time that we believe
14 that would exist, and then the Commission would
15 make a decision, and we would file tariffs and
16 compliance.

17 Q Was a set of tariffs reflective of
18 individual rates for each class that would go into
19 effect if there is a legal impediment, and the
20 three percent reduction would be in effect, agreed
21 to by all the parties, in the partial settlement?

22 A I believe the partial settlement that was
23 signed by the parties indicated, including all the
24 consumer groups and their representatives, and they
25 agreed that the language shown in Paragraph 10 is

1 prescriptive in working through those calculations,
2 and I am sure would rely upon the compliance
3 procedure, at which point the company would offer
4 those tariffs for approval by the Commission.

5 Q It is late, and I am not trying to be
6 flippant, but the answer is, no, there wasn't any
7 set of tariffs that were agreed to by all the
8 parties?

9 MR. BONNEY: Objection, Your Honor.

10 A No.

11 MR. BONNEY: He answered the question.

12 I don't know the distinction Mr. Clearfield
13 is trying to make, but it is clear under Paragraph
14 10 of the settlement that it provides what happens.

15 He has answered that the tariff that spells
16 that out has not been provided.

17 BY MR. CLEARFIELD:

18 Q Well, what rates would be reduced, Mr.
19 Hill? Would all rates --

20 JUDGE RAINEY: Just a moment. We are going
21 to move on, okay, so I am going to sustain your
22 objection, and Mr. Clearfield, I do think that Mr.
23 Hill has placed into the record the answer to your
24 last question.

25 I take it now that you are going to move on

1 to another question.

2 BY MR. CLEARFIELD:

3 Q Well, when will the company revise the
4 tariffs to reflect the correction, if you will,
5 that Mr. Sundermeir testified to?

6 A I am -- I will have to refresh me on that.
7 I believe that Mr. Sundermeir did put something in
8 his testimony, indicating that there would be a
9 modification, and if that's so, then the company
10 would submit that after the Commission acted as
11 part of its compliance filing.

12 Q So --

13 A I believe he has indicated any appropriate
14 adjustment on the record.

15 Q So it hasn't been submitted or reflected
16 in Appendix C at this point?

17 A I would have to check with Mr. Sundermeir.

18 Q Okay. You mentioned the legal impediment
19 version of the partial settlement.

20 Do you have the answer to Commission Roman
21 I, No. 9, available?

22 I have a copy, but I only have one. Well,
23 Mr. Hill, I can just show it to you.

24 FROM THE AUDIENCE: We have a copy here.

25 A I thought I had it, but I didn't.

1 MR. CLEARFIELD: Now, I believe these have
2 been stipulated into the record.

3 Is that right, Mr. Bonney?

4 MR. BONNEY: That's correct.

5 MR. CLEARFIELD: So this is already part of
6 the record.

7 JUDGE CHESTNUT: Well, it isn't yet, but it
8 will be.

9 MR. CLEARFIELD: All right.

10 MR. BONNEY: That's PECO's answer.

11 A This is Yolanda Lopez's answer to PUC one
12 nine.

13 Q I'm sorry. PECO's --

14 A PECO's answer to the Commission
15 Interrogatory Set number one nine.

16 That isn't -- watch yourself.

17 Q May I show you?

18 MR. CLEARFIELD: May I approach the witness,
19 Your Honor?

20 JUDGE RAINEY: Yes, you may.

21 THE WITNESS: Is everybody behind me now?

22 MR. DWORETZKY: Don't get nervous.

23 (Discussion off the record.)

24 BY MR. CLEARFIELD:

25 Q That question asks you about the company's

1 view of the effect of the utility workers' lawsuit
2 with respect to the act?

3 Is that right?

4 A Yes.

5 Q And it says there that -- and I believe
6 you sponsored that answer, correct?

7 A Yes, I did.

8 Q And it says that the company believes that
9 that lawsuit constitutes -- that the bonds would
10 not be able to issue -- the transition bonds would
11 not be able to issue with that lawsuit outstanding?

12 Is that right?

13 A That is the company's position, but I
14 think it also indicates that in order to prevail
15 under the terms of the joint petition, we would
16 have to prove the legal impediment by having an
17 opinion confirmed by a qualified and reputable bond
18 counsel.

19 Q Have you gotten that opinion yet?

20 A No, we have not.

21 Q So how do you know that that constitutes a
22 legal impediment?

23 A That is what the attorneys have indicated
24 to me.

25 They believe that at this point in time,

1 but subject to that review by an independent bond
2 counsel, we wouldn't know for sure.

3 Q So you received an oral opinion on that
4 subject?

5 A Just that it was discussed, and it was
6 indicated that we believe it is an impediment.

7 Q So it is a oral opinion?

8 A I guess it is a oral opinion. I don't
9 have anything in writing.

10 Q It also -- do you know who the bond
11 counsel will be that is going to issue in opinion?

12 A No, I don't. A reputable one.

13 Q You think that there is going to be --

14 FROM THE AUDIENCE: Aren't they all?

15 MR. RYAN: Sure.

16 MR. CLEARFIELD: I will wait for the laughter
17 to die.

18 BY MR. CLEARFIELD:

19 Q In PECO's view, will that legal impediment
20 exist on September 1st, 1998?

21 A I don't know.

22 Q A quick question: You do agree that the
23 rate decreases in the partial settlement are not
24 guaranteed, don't you?

25 A Well, I think the rate decreases in the

1 partial settlement are clearly a guarantee.

2 Q Did the partial settlement -- as part of
3 the partial settlement, did PECO waive the
4 provisions of the Competition Act, which permits an
5 EEC to seek a waiver, if you will, from the rate
6 caps that are imposed by the act?

7 A In terms of the provisions of the act?

8 Q Yes.

9 A No.

10 MR. BONNEY: Objection, Your Honor -- okay.

11 MR. CLEARFIELD: Well, he already answered
12 the question.

13 A No.

14 MR. RYAN: It is getting late.

15 BY MR. CLEARFIELD:

16 Q So you would agree with me, there is a
17 whole service of bases on which an EEC, including
18 PECO, could ask for relief from the rate cap
19 provisions under the act, such as circumstances
20 that would constitute extraordinary rate relief,
21 significant increases in fuel prices, changes in
22 tax expense for the company, and the like?

23 MR. BONNEY: Objection, Your Honor. We are
24 now a half hour into questions about the partial
25 settlement.

1 I'm not sure what portion of Mr. Hill's
2 rebuttal testimony with respect to the ENRON plan
3 we are talking about now, and I think it is beyond
4 the scope of his testimony.

5 MR. CLEARFIELD: I am talking about Page 5,
6 Your Honor, in which Mr. Hill suggests that the --

7 JUDGE RAINEY: I'm sorry. Page 5 of which
8 testimony?

9 MR. CLEARFIELD: Of statement 1-E.

10 JUDGE RAINEY: Yes. Please proceed.

11 MR. CLEARFIELD: Thank you.

12 JUDGE RAINEY: I'm sorry. Page 5. Please
13 proceed with your argument.

14 MR. CLEARFIELD: Oh, I thought I had already
15 won.

16 In which Mr. Hill suggests that the ENRON's
17 Choice Plan is not the -- and the rate decreases
18 reflected in there are not guaranteed, or are not
19 secure.

20 MR. BONNEY: I'm not sure what that has to do
21 with whether rate caps apply to the partial
22 settlement, Your Honor.

23 MR. CLEARFIELD: Well, if you allow me a few
24 minutes, I will be able to develop that.

25 MR. BONNEY: I think we have already --

1 JUDGE RAINEY: Are you going to get to
2 something now, Mr. Clearfield?

3 MR. CLEARFIELD: Yes. Absolutely.

4 Well, I believe these are all points that go
5 to the assertions that are made by Mr. Hill, and
6 again, in each instance, Mr. Hill is comparing the
7 Choice Plan to the partial settlement, and I
8 believe it is fair, Your Honor, and I apologize for
9 the late hour, but this had to happen sometime.

10 MR. BONNEY: I don't see a discussion of rate
11 caps here.

12 Maybe I am missing something.

13 JUDGE RAINEY: What line are you referring
14 to?

15 MR. BONNEY: It is the settlement on Page 5.

16 MR. CLEARFIELD: On lines nine through
17 eleven, Mr. Hill suggests that the ENRON Choice
18 Plan is not certain, because of certain conditions
19 that are contained in the plan, and by implication,
20 Mr. Hill is suggesting that the rate decreases that
21 are promised in the plan are not guaranteed.

22 JUDGE RAINEY: Okay. We have had a lot of
23 testimony with regard to the guarantees or the lack
24 of guarantees with regard to the various plans.

25 I would ask you to attempt to move into areas

1 that have not been fully explored, or that there is
2 some need for clarification with regard to the
3 company's, or the joint petition for partial
4 settlement, and not regurgitate what has already
5 been testified to --

6 MR. CLEARFIELD: Well --

7 JUDGE RAINEY: -- so with that caveat, I am
8 going to overrule that objection, but I am going to
9 ask you to be mindful, Mr. Clearfield, of not being
10 repetitive.

11 MR. CLEARFIELD: Your Honor, I will, and I
12 appreciate that.

13 BY MR. CLEARFIELD:

14 Q Do you remember the question, Mr. Hill?

15 A I think I remember the question, something
16 along the lines, did the -- relative to the
17 provisions of the act which would allow for the
18 company to come back in for rate changes to modify
19 the caps.

20 I would say, for this record, I have been
21 asked and answered that question, both in my
22 deposition and my prior cross examination.

23 Q And the answer is that you haven't waived
24 that right?

25 A And I think I answered that again tonight.

1 We have not waived that right.

2 Q And so if in fact one of those
3 circumstances occurred, and PECO -- and the partial
4 settlement was in place, and PECO determined to
5 come to the Commission and ask for relief from the
6 rate caps, in fact those rate decreases that are in
7 reflected in the partial settlement might not
8 actually be put in place?

9 Isn't that right?

10 A I would still, under that --

11 Q Give a yes or no, and then --

12 A No. I believe that the guarantees are
13 fully embedded in the plan.

14 Obviously there are some extreme
15 exceptions provided for under the act, which this
16 company has no intention at this point of invoking,
17 because nobody has an expectation that those events
18 are actually going to occur, so I think from a
19 customer perspective, I would bank on the
20 guarantees that are embedded in the partial
21 settlement.

22 Q You are not promising that the company is
23 never going to try to invoke the provisions of the
24 act that allows for relieve from the rate caps,
25 though, are you?

1 A I indicated that, that the company has not
2 waived the rights under the act.

3 Q No guarantees, right?

4 A That is not my testimony, Mr. Clearfield.
5 That's yours.

6 Q Has the company made any projection of the
7 likelihood of utilizing one of these rate cap
8 provisions?

9 A Remote. All the provisions indicated
10 there are extreme conditions, which are most remote
11 in their application, and the expectation -- my
12 expectation is that if we were to come before the
13 Commission and to seek recovery or additional
14 adjustments to the rate cap, that the threshold for
15 proving our case would be extremely high.

16 Q I am really not going to try to press
17 this, but are you inferring -- are you including in
18 that last answer the provision that indicates that
19 you can ask for relief from the rate cap if there
20 are significant increases in the rates of federal
21 or state taxes, or other significant changes in law
22 or regulation that would allow -- that would
23 indicate that the company would not earn a fair
24 rate of return?

25 A I am including all the provisions under

1 the exceptions under the rate cap.

2 Q Even that one?

3 A Including that one.

4 Q How about the provision that indicates
5 that there could be capital improvements that
6 directly --

7 JUDGE RAINEY: Mr. Clearfield, I'm sorry.

8 Mr. Clearfield, I think the witness has
9 stated all of the provisions.

10 MR. CLEARFIELD: I will move on.

11 BY MR. CLEARFIELD: .

12 Q Mr. Hill, at the time the partial
13 settlement was signed, did the company prepare a
14 financial forecast that projected the amount of CTC
15 revenues that it would collect over and above the
16 5.461 billion that's reflected in that document?

17 A As I testified --

18 MR. BONNEY: Your Honor, I am going to object
19 to this for the same reasons that I objected to the
20 identical question when it was asked earlier this
21 evening, and it has been covered.

22 MR. CLEARFIELD: Your Honor, and I think it
23 is very important.

24 It has been raised in the cross examination
25 of Mr. Kean.

1 It is been raised in Mr. Mitchell's
2 testimony, and that is the question of the
3 financial effects of the Choice Plan versus other
4 alternatives before the Commission. This is
5 extremely important, I think.

6 MR. BONNEY: Your Honor, I don't think the
7 question was about the Choice Plan.

8 If it was, I would withdraw my objection.

9 MR. CLEARFIELD: Your Honor, again, Mr.
10 Hill's testimony is consistent in comparing the
11 Choice Plan with the partial settlement, and I
12 think it is fair cross examination at this point to
13 explore whether or not in fact the company and Mr.
14 Mitchell and Mr. Hill, and even today, has
15 suggested that certain financial consequences of
16 the Choice Plan were to be approved by the
17 Commission, and what I am trying to do is explore
18 whether Mr. Hill has made analyses of the financial
19 effects of the partial settlement that have or have
20 not been provided to the parties.

21 MR. BONNEY: Your Honor, I think we had at
22 least half an hour of cross examination on that in
23 October, if not more.

24 I must add, we had about two days of
25 deposition on that as well.

1 JUDGE RAINEY: Is this something new, Mr.
2 Clearfield, that --

3 MR. CLEARFIELD: Well, it is new, Your Honor,
4 and it is new, because the company has seen fit to
5 raise this issue in the context of the Choice Plan.

6 It has suggested that there are certain
7 harmful financial effects that are going to occur
8 if the Choice Plan is approved.

9 Now, that was not an issue in the prior -- in
10 the prior proceeding.

11 It is an issue now, and we have been asking
12 and asking and asking for the financial forecast
13 outputs, financial forecast that Mr. Hill has
14 conducted, and we have not been provided them --

15 JUDGE RAINEY: Have you --

16 MR. CLEARFIELD: -- and so we are at a
17 disadvantage.

18 MR. BONNEY: My objection --

19 JUDGE RAINEY: Excuse me. I guess my
20 question to you, Mr. Clearfield, is: Are you going
21 to be asking questions which have not already been
22 asked and answered in this proceeding?

23 MR. CLEARFIELD: I believe I will. I will
24 be, yes, Your Honor.

25 MR. BONNEY: Your Honor, we have yet to hear

1 a question about the ENRON Choice Plan.

2 It is now 40 minutes, and I don't know if we
3 are going to get any questions about the Choice
4 Plan.

5 I would suggest that all of the cross be
6 stricken, because they have had an opportunity to
7 ask Mr. Hill about his prior testimony, about the
8 financial analysis the company has done on the
9 Choice Plan, et cetera, about the waiver of the
10 rate caps under the partial settlement.

11 It has nothing to do with the ENRON choice
12 plan, Your Honor.

13 MR. CLEARFIELD: Well, Your Honor, if that's
14 going to be the standard, then all of the testimony
15 with respect to the financial effect of the Choice
16 Plan should be withdrawn --

17 JUDGE RAINEY: Why don't we --

18 MR. CLEARFIELD: -- or should be stricken.

19 JUDGE RAINEY: Why don't we do this? We are
20 not going to strike any testimony.

21 Why don't we do this, Mr. Clearfield.

22 If you can draw your questions to the
23 testimony which is before us, which was just
24 admitted into evidence today, maybe then we can
25 have some examination as well as some responses

1 which may add to this proceeding, as opposed to
2 regurgitating matters which have already been put
3 on the record.

4 BY MR. CLEARFIELD:

5 Q Mr. Hill, does your testimony indicate or
6 summarize testimony from other witnesses that, in
7 your view, ENRON will benefit financially if the
8 Choice Plan is put into effect?

9 A Yes. I believe on Page 8 of Statement
10 1-E, I indicate that based upon the testimony of
11 Mr. Hiller that -- and I would quote, beginning at
12 line two --

13 Q Well, it is in the record, Mr. Hill.

14 A Well, you asked me, and I am --

15 Q Well, you gave me the reference, and I was
16 very appreciative of that.

17 Thank you very much.

18 A You are welcome.

19 Q How much more money will PECO make if the
20 partial settlement is approved?

21 A I would ask you to refer to Exhibit
22 TPH-35, and I think it would indicate that the
23 company would expect to receive a net present value
24 of the revenue stream of 5.893 million, based upon
25 our view of the sales forecasts over the period,

1 and that would be in reference to a cost or revenue
2 requirement anywhere from nominally 5.9 billion to
3 6.6 or 6.7 billion --

4 Q Now, you calculated --

5 A -- excluding gross receipts tax.

6 Q I'm sorry. Did you calculate a net
7 present value amount of revenues that PECO would
8 collect under the partial settlement prior to the
9 time that this exhibit was produced, this TPH-35?

10 A I believe -- and now we are back into the
11 same line of questioning that we had back in
12 October.

13 Q Uh-huh.

14 A The company did an evaluation of the
15 partial settlement of which we supplied ENRON and
16 other parties under confidential cover the
17 financial results and the assumptions used in our
18 analysis.

19 I believe some of the results came through
20 Mr. Mitchell's testimony, and the assumptions came
21 as part of a data request.

22 Q Just to -- let me just ask you to
23 reconsider that answer.

24 You didn't provide any financial results
25 in that process, did you?

1 You only provided the assumptions that had
2 been calculated or had been used in the analysis?
3 Isn't that right?

4 A Well, I believe you to a testimony from
5 Mr. Mitchell and indicated and received some
6 information relative to the company's financial
7 results.

8 Q Were we provided with -- these were
9 analyses that were done at the time the partial
10 settlement was signed?

11 Isn't that right?

12 A This was --

13 MR. BONNEY: Objection, Your Honor. This
14 exhibit that we are talking about is now, I
15 believe, a part of the record and was cross
16 examined at length last time.

17 In fact, it was admitted under seal.

18 We had to clear the courtroom, if you will
19 recall, so whether it is in the document or not, it
20 is already a matter of record.

21 MR. CLEARFIELD: Well, Your Honor --

22 JUDGE RAINEY: I'm not sure why it is
23 necessary to determine when that was prepared again
24 and what it contains.

25 It speaks for itself.

1 Mr. Ryan?

2 MR. RYAN: May other parties at least express
3 the view that we would like to hear about the ENRON
4 plan?

5 This has all been about the partial
6 settlement, and we did go through that.

7 I am going to join -- for whatever it is
8 worth, I am going to join now with the PECO
9 objection, that we are repeating what we did in
10 October.

11 Can we at least focus now, in this late hour,
12 on what Mr. Hill may have said about the ENRON
13 plan, not what he said or what he believes about
14 the partial settlement.

15 He has already testified to that and been
16 cross examined at great length, I think, into the
17 night again.

18 JUDGE RAINEY: Mr. Clearfield?

19 MR. CLEARFIELD: Your Honor, these issues
20 have been joined because of Mr. Hill's testimony
21 and the testimony of other witnesses in response to
22 the Choice Plan.

23 We did cross examine Mr. Hill prior to the
24 time the Choice Plan was filed, or at least prior
25 to the time hearings were scheduled.

1 This issue has become relevant because of
2 allegations that are contained in his testimony.

3 Mr. Hill suggests that ENRON is going to make
4 -- and completely incorrect -- a certain amount of
5 money if the Choice Plan is approved, yet we have
6 asked, and we have not been able to, and we have
7 not received similar estimates of the earnings or
8 the revenues that PECO would receive for the next
9 ten years if the partial settlement was adopted.

10 There is no way that the Commission can
11 compare the testimony of Mr. Hill unless we are
12 able to have an opportunity to explore the
13 financial effects of the partial settlement.

14 Otherwise, there is no comparative.

15 There is no relative basis.

16 Now, those issues were not explored in the
17 prior round of hearings beyond questions about the
18 assumptions that were used in the financial
19 forecast, if you recall.

20 We asked about four questions.

21 We established that that financial forecast
22 was made at the time the partial settlement was
23 signed.

24 We established that Mr. Hill provided us with
25 the assumptions, and we asked him some questions

1 about that.

2 JUDGE CHESTNUT: Well, let me just say this.

3 I think it is valid to compare the two plans.

4 It is hard to get away from or get around
5 comparing the two plans in order to present a
6 complete record to the Commission with regard to
7 the relative merits, as well as the -- also the
8 faults of the various plans.

9 However, we do have to try to maintain an
10 orderly proceeding, one which flows, because of the
11 fact of the magnitude of this particular case, and
12 also because of the fact that there is evidence of
13 record which needs not to be repeated.

14 MR. CLEARFIELD: I understand. Your Honor, I
15 don't mean to interrupt, but I think if I could ask
16 just a couple of questions --

17 JUDGE RAINEY: I am going to you to -- I am
18 going to ask you to direct your questions to
19 portions of the testimony which have been presented
20 here today by Mr. Hill, and again, to be very
21 mindful of what already has been testified to, and
22 what is already a part of the record.

23 I would ask you to attempt to elicit
24 something new, based on the testimony which has
25 been presented here today.

1 With that, I am going to overrule the
2 objection.

3 MR. CLEARFIELD: All right. Thank you, Your
4 Honor.

5 BY MR. CLEARFIELD:

6 Q Again, I am going to ask just a few more
7 questions in this area, and then I will stop.

8 Would you provide us, Mr. Hill, with the
9 financial analysis that you have performed that
10 would help us compare the financial effects,
11 projected financial effects of the partial
12 settlement vis-a-vis your testimony and Mr.
13 Mitchell's testimony, with respect to the alleged
14 financial effects of the Choice Plan?

15 And I am referring here to an analysis
16 that you conducted prior to the time that the
17 partial settlement was executed --

18 MR. BONNEY: Your Honor --

19 Q -- prior to or at that time.

20 MR. BONNEY: -- obviously before we executed
21 the partial settlement, we didn't do any analysis
22 that compares the ENRON Choice Plan to the partial
23 settlement, because the ENRON Choice Plan didn't
24 exist.

25 MR. CLEARFIELD: That wasn't my question. I

1 asked --

2 MR. BONNEY: Yes, it was. That was precisely
3 your question.

4 MR. CLEARFIELD: I asked --

5 JUDGE RAINEY: Then restate the question.

6 BY MR. CLEARFIELD:

7 Q would you provide us with an analysis that
8 the results, the output of the analysis that you
9 performed that determined or projected the
10 financial effects of the partial settlement --

11 MR. BONNEY: Objection, Your Honor.

12 Q -- so that we could use it to compare your
13 testimony with respect to the alleged financial
14 effects, effects of the Choice Plan?

15 MR. BONNEY: Objection, Your Honor. This was
16 the subject of the discovery dispute, and as you
17 will recall, we had, I believe, two conference
18 calls about it.

19 The consequence of that, after two days of
20 deposition with Mr. Hill and Mr. Mitchell, was the
21 provision by PECO of a substantial amount of
22 financial information, which Mr. Hill has described
23 again tonight.

24 They include the results of financial
25 analysis and assumptions.

1 We objected strenuously to even providing
2 that, and I think we had at least five grounds for
3 objection, including that they were attorney work
4 product directed and privileged communications, and
5 that they were -- to disclose anything further
6 would require us to disclose proprietary
7 information.

8 All Mr. Clearfield is doing is asking the
9 same question again, Your Honor, and I think it is
10 objectionable.

11 JUDGE RAINEY: Was this the subject of the
12 conference call that we had --

13 MR. BONNEY: Two of them.

14 JUDGE RAINEY: -- with regard to a motion to
15 compel?

16 MR. CLEARFIELD: Yes, Your Honor.

17 JUDGE RAINEY: Well, it is my understanding
18 that there was resolution of that particular
19 matter.

20 MR. DWORETZKY: Yes. I was involved in that,
21 Your Honor.

22 Just to refresh your recollection, there was
23 a tentative resolution.

24 There were materials that were prepared and
25 submitted, and at that time, we withdrew the

1 pending motion or motion to compel based on that
2 interim, but it was very clear from the
3 circumstances that that didn't waive the right to
4 ask for that information again at a later time.

5 MR. CLEARFIELD: And Your Honor --

6 MR. BONNEY: Your Honor, the time to ask for
7 that, if it was relevant to cross examination of
8 Mr. Hill, was when he was cross examined last time.

9 To wait for six and a half weeks or seven
10 weeks, and now, during cross examination at this
11 hour, to ask for the same information is
12 inappropriate and objectionable.

13 MR. CLEARFIELD: Your Honor, I didn't pick
14 the time that Mr. Hill was going to be cross
15 examined.

16 In Statement 1-E, for example, Page 18, line
17 two, Mr. Hill states that even after unlocking the
18 -- quote -- "hidden value" -- end quote -- of
19 securitization, PECO will not -- quote -- "over
20 recover" -- end quote -- the cost of the integrated
21 settlement package.

22 Now, if that doesn't join the issue of the
23 financial effects of the partial settlement as PECO
24 has calculated them, I don't know what does.

25 Now, that testimony wasn't in the record six

1 weeks ago.

2 This issue wasn't joined six weeks ago.

3 That is why we deferred a motion to compel on
4 this information.

5 Now we have a situation where Mr. Hill has
6 specifically made allegations with respect to the
7 partial settlement.

8 Yesterday, Mr. Bonney cross examined Mr. Kean
9 on the alleged financial benefits to ENRON of the
10 Choice Plan, and we objected on the ground that
11 that was -- that that information was proprietary,
12 and the answers were compelled.

13 Now it is just that we are not --

14 JUDGE RAINEY: You would agree, Mr.
15 Clearfield, that this is related to a previous
16 discovery dispute that you brought before us in a
17 conference call?

18 Is that correct?

19 MR. CLEARFIELD: That is right, Your Honor,
20 but the record, I think, would indicate that we did
21 not waive our right to pursue this, and at the
22 time, obviously, these issues were not before any
23 of us.

24 We were not aware that PECO would attempt to
25 make an issue of the financial effects of either

1 the Choice Plan or the partial settlement which it
2 has now.

3 MR. BONNEY: Your Honor, it surprises me to
4 hear Mr. Clearfield indicate that they had not
5 previously joined the issue of whether, in their
6 view, PECO would over recover the costs of the
7 stranded investment, because that was the subject
8 of extensive testimony by, among others, Mr.
9 Mitnick in October.

10 If they are now arguing that that testimony
11 isn't relevant, or it didn't cover that subject, it
12 just surprises me, and I would like to note that.

13 JUDGE RAINEY: Well, it is late, both with
14 regard to the day, as well as this particular
15 proceeding.

16 I am a little surprised that this issue has
17 resurfaced with regard to discovery, because we did
18 have a conference call with regard to it.

19 The parties have not come back to us with
20 regard to it, so it was my understanding that it
21 had been resolved.

22 I am going to ask the parties again to make
23 some attempt to resolve this particular matter
24 among themselves, and having stated that, let's see
25 if we can get through this witness.

1 Do you have much more, Mr. Clearfield.

2 MR. CLEARFIELD: I would take a moment just
3 to review my notes, considering the lateness of the
4 hour.

5 There are some questions that may not be
6 necessary, but will Mr. Hill be available tomorrow?

7 JUDGE RAINEY: It is my understanding that he
8 will be available tomorrow.

9 Mr. Doll?

10 MR. DOLL: I do have limited cross
11 examination, and I fully intend to stay over
12 tonight.

13 JUDGE RAINEY: In this room?

14 MR. CLEARFIELD: Your Honor --

15 JUDGE RAINEY: In this room, Mr. Doll?

16 JUDGE CHESTNUT: I think we all are.

17 MR. CLEARFIELD: If you let Mr. Doll go
18 forward, I could finish my notes.

19 JUDGE CHESTNUT: You might miss a big moment,
20 a damaging admission.

21 MR. BONNEY: I doubt it, Your Honor.

22 MR. DOLL: Your Honor, it hasn't happened in
23 27 years.

24 I doubt we are going to start tonight.

25 JUDGE RAINEY: All right, Mr. Doll.

1 MR. DOLL: I know it is rather unusual.

2 CROSS EXAMINATION

3 BY MR. DOLL:

4 Q Mr. Hill, I will be succinct, I certainly
5 assume you will be, also.

6 A I will try, Mr. Doll. It is a later good
7 evening to you.

8 Q In response to some questions of Mr.
9 Dworetzky regarding the CTC and your exhibit, am I
10 correct in stating that you intend to apply the CTC
11 across all rate classes, with certain small
12 exceptions?

13 A Are you referring to Exhibit C of the
14 partial settlement?

15 Q Yes. I believe there was a CTC applied to
16 all rate classes, with minor exceptions, and my
17 mind eludes me as to what those particular
18 exceptions are.

19 A I will accept that as a fair summary.

20 Q Okay. And you said that there -- on cross
21 examination by, I believe, Mr. Clearfield, you said
22 that you have not made a showing to the Commission
23 that a legal impediment exists, so that no tariffs
24 have been filed which would reflect the three
25 percent differential?

1 Is that correct?

2 A Yes.

3 Q And yet am I correct that as we sit here
4 this evening, in response to Interrogatory No. 9 of
5 the Commission, which Mr. Clearfield showed you, am
6 I correct that you are under the opinion that a
7 legal impediment as of six twenty exists?

8 A PECO believes that there is a legal
9 impediment, but we have not heretofore sought --
10 No. 1, the partial settlement has not been
11 approved, and No. 2, when it is approved, the
12 company would then, if it believed that to be a
13 legal impediment, would move forward and ask the
14 Commission to recognize it as a legal impediment.

15 Q I wish I could share your optimism. Would
16 you refer to your testimony -- let me get the
17 correct one here -- 1-E, Page 9, lines one through
18 five?

19 A Page five?

20 Q Nine.

21 A I'm sorry.

22 Q Lines one through five. You speak of the
23 back loading of the recovery of stranded costs.

24 I assume by that you mean the stranded --
25 the stranded costs would be higher in the later

1 years?

2 Is that what you are referring to by "back
3 loading"?

4 A I am referring to the pattern of the CTC,
5 or in the case of the ENRON plans, either the
6 original or the revised, the upward sloping ITC.

7 Q Okay. It is the CTC strip that has been
8 referred to previously?

9 A That is what I was referring to, correct.

10 Q Now, is there any legal -- strike that.

11 Is there any impediment in the act, as you
12 have reviewed it, to prevent either front end
13 loading, back end loading, or a level -- even a
14 levelized CTC?

15 A Within the act, I believe the CTC is set
16 by the Commission, but the CTCs in the partial
17 settlement incorporated the consumer desire to not
18 back end load the recovery, but rather reflect the
19 downward sloping CTC, as we move forward over the
20 ten-year transition period.

21 Q I appreciate what the negotiators thought,
22 but my question was directed to: Is there any
23 impediment that you know of in the act to
24 levelizing the CTC?

25 A I think I answered that, that I am not

1 aware of any in the act.

2 Q Okay. It is late, and my hearing is
3 failing me.

4 Would you refer to Page 17 of your
5 testimony?

6 A Yes.

7 Q I believe it is lines five -- you talk
8 about the partial settlement and the initiatives,
9 lines five through seven.

10 Now, when you are talking here about the
11 CTC and these initiatives, these initiatives, I
12 take it, were the special provisions that you
13 included within the settlement to satisfy some of
14 the negotiating parties?

15 Is that correct?

16 A What I am referring -- yes, but I have
17 added that that is PECO's position, and as I have
18 indicated in my cross by Mr. Clearfield, our
19 analysis is that which is embodied in TPH-35 as
20 being the other -- the other transition costs which
21 would be, in our mind, reasonably recoverable over
22 the transition period.

23 Q So what your testimony is, is that under
24 the Competition Act, that these are transition
25 costs or stranded costs, and not merely concessions

1 that were given to reach a settlement?

2 A Well, they are clearly concessions that
3 were negotiated through the settlement process, but
4 they represent, as I indicated, reasonable
5 transition costs which the company would, in our
6 analysis, incorporate as other transition costs and
7 seek the recovery of those from our perspective
8 mechanically through the CTC, but again --

9 Q And in your opinion, those are transition
10 costs as defined by the Competition Act?

11 A They are transition costs, because that's
12 precisely what we are doing.

13 We are trying to settle this proceeding by
14 coming together with the parties, reaching a joint
15 stipulation which takes us from regulation to
16 competition.

17 It is precisely that document, which is
18 the -- in our mind the road map to moving to
19 competition, and these are reasonable transition
20 costs which we have agreed to as parties in the
21 settlement process.

22 Q I think that was a yes.

23 A A long yes.

24 Q Would you please refer to your testimony,

25 Page 20?

1 This is again Statement 1-R --

2 A Sure.

3 Q -- lines -- and the question beginning at
4 Line 10, down through Line 16, and then you
5 continue on for several pages, and I appreciate
6 your familiarity with the act.

7 Is it your testimony here that the
8 Commission -- am I reading this correctly -- has
9 broad discretion as to whether or not there should
10 be a reconciliation of the stranded costs or CTC or
11 ITC?

12 A Yes. Under the provisions of 1307-E of
13 the Public Utility Code.

14 MR. DOLL: May I approach the witness, Your
15 Honor?

16 JUDGE RAINEY: Yes, you may.

17 BY MR. DOLL:

18 Q I would like to refer you to Section
19 2808-F.

20 Is that where you get the reference to
21 1307?

22 A Yes.

23 Q And --

24 A The act directs us to 1307-E.

25 Q And would you review the second sentence?

1 It starts with, "The review shall reconcile."

2 A Are we reading into the record --

3 JUDGE RAINEY: No, no. We are not reading it
4 into the record.

5 BY MR. CLEARFIELD:

6 Q No, no. Please don't, no.

7 A I thought that was a no-no.

8 Q To yourself.

9 A Yes.

10 Q As a non-lawyer layman businessman, what
11 does the word "shall" in that sentence mean to you?

12 Is that mandatory, or is that
13 discretionary?

14 MR. BONNEY: Objection. Relevance.

15 JUDGE RAINEY: I am going to overrule the
16 objection, and the witness, to the extent that he
17 believes that he can answer it from a layman's
18 point of view, he can answer the question.

19 A This is a tired layman. Can I see the
20 document again?

21 I don't remember reading the word "shall."

22 Q "Shall recognize."

23 A Well, "shall," to answer your question
24 directly, means do it, and that is my layman's
25 interpretation.

1 The sentence is linking to the first
2 sentence, referring to the review under 1307-E, and
3 I refer back to 1307-E, which give us the
4 Commission the broad discretion to -- on
5 reconciling or not reconciling for a good cause
6 shown.

7 Q So you are basing that on a layman's
8 analysis of 1307-E, and not on the Competition Act?

9 A I am basing it on the Competition Act
10 directing me to go to 1307-E, and 1307-E language
11 being operative to say that the Commission can,
12 under its discretion, not reconcile if there is
13 good cause shown, which I believe is the basis of
14 the settling parties, that there is good cause
15 shown for not reconciling the CTC.

16 It is assumed in the settlement.

17 Q Are you finished?

18 A Yes.

19 Q Oh, thank you. Would you refer to
20 Commission -- first, let me lay a foundation.

21 Am I correct that you are sponsoring the
22 answers to the Commission's interrogatories?

23 A Yes.

24 Q I think we went through this before. We
25 may at one time for the entire room.

1 Commission Interrogatory Set 1, No. 13, I
2 believe, would you take a look at that response,
3 please?

4 A Yes.

5 Q Now, you talk there generally about sales
6 growth?

7 Is that correct?

8 A Yes.

9 Q And Mr. Hill, are you aware of the recent
10 negotiations regarding the Philadelphia Naval
11 Shipyard?

12 A I am familiar somewhat with the
13 transaction, yes.

14 Q And if that transaction takes place, and
15 the Naval Shipyard again becomes a functioning
16 shipyard, will that affect your load growth
17 projections any?

18 A Depending upon what load is put in place
19 at the shipyard, it certainly will affect as one
20 element of our total sales picture what will happen
21 on a prospective basis.

22 Q Do you know what kind of load you are
23 serving at the shipyard right now?

24 A I do not know, and I do not know -- I will
25 anticipate your next question.

1 I do not know what it will be after the
2 new company moves in.

3 Q Would you expect it to be higher?

4 A I have no idea. I mean, the expectation
5 is that if they are going to add load, I would
6 expect it to go up.

7 How much, I have no idea.

8 Q Okay. I am not asking for quantification,
9 but I mean, if they are going to reopen a shipyard,
10 would it not be logical to assume that consumption
11 is going to increase, because they are going to be
12 building something there?

13 It is going to be an active piece of
14 property?

15 A It is obviously -- if you bring a customer
16 in, and the expectation is that load will go up,
17 but our sales are not a function of one customer.

18 Our sales are a function of the aggregate of
19 activity of all the customers across the service
20 territory, and my testimony in this interrogatory
21 goes to the aggregate kilowatt hour sales.

22 MR. DOLL: If I may have ten seconds to save
23 ten minutes, Your Honor?

24 MR. BONNEY: Take an hour, then.

25 MR. CLEARFIELD: To save tomorrow? Is that

1 what you are suggesting?

2 It wouldn't cut down on mine.

3 BY MR. DOLL:

4 Q One last question, Mr. Hill, and I am
5 going to apologize here, because I don't have an
6 exact page reference to it.

7 I believe it is around Page 6.

8 You state, the mortgage trustee of PECO's
9 bonds would have to release the lien on --

10 A On the property. I think Page 6 is what
11 you are looking for.

12 Q I think so.

13 JUDGE CHESTNUT: Line five.

14 MR. DOLL: Thank you very much, Your Honor.

15 BY MR. DOLL:

16 Q It would have to release the lien created.

17 Is it PECO's intention, if in fact they do
18 issue the transition bands, and they do get a
19 qualified -- an additional qualified rate order,
20 that there would be a proration redemption of both
21 the bonds and common stock?

22 MR. BONNEY: May I ask a question?

23 Are you referring to the ENRON Choice Plan or
24 to the partial settlement?

25 MR. DOLL: Well, he says that -- the direct

1 answer is to the partial settlement.

2 He is saying that under the ENRON
3 proposal, they would have to get the release, and
4 in order to get this release, I am asking if the
5 same situation would occur, would have to occur
6 under the partial settlement?

7 MR. BONNEY: Thank you.

8 A Just so we are clear, for the testimony,
9 based upon the testimony of Mr. Mitchell, Mr.
10 Hiller, and I guess Mr. Rayzis, the property would
11 not be released, and the transaction would not go
12 forward.

13 Based upon the partial settlement, the
14 company would seek the release of the property for
15 up to four billion dollars, depending on the level
16 of securitization, and then I think, as Mr.
17 Mitchell has indicated, we would use the proceeds
18 principally to reduce both debt and equity.

19 At this point, a lot of that depends upon
20 what our capitalization looks like at the time, but
21 if in fact we had less equity on our balance sheet,
22 we may relieve more debt, but I think it would be
23 more appropriate to direct your question to Mr.
24 Mitchell --

25 Q Fine.

1 A -- as it specifies specific to the partial
2 settlement.

3 Q I will take that up, then, with Mr.
4 Mitchell.

5 Thank you.

6 MR. DOLL: I have nothing further, Your
7 Honor, with the one caveat, that we were going to
8 discuss -- Mr. Trask and I have had preliminary
9 discussions about the statement on page 25, I
10 believe, of Dr. -- is it Dr. Hieronymus's --

11 MR. TRASK: Mr. Sundermeir first.

12 MR. DOLL: Mr. Sundermeir's testimony. There
13 were some unresolved things there that we were
14 going to attempt to resolve.

15 JUDGE RAINEY: Very good.

16 MR. DOLL: Thank you.

17 MR. DWORETZKY: Your Honor, would it be
18 appropriate to take a two-minute break to check, to
19 call a babysitter?

20 JUDGE RAINEY: How much more do we have for
21 Mr. Hill tonight?

22 MR. CLEARFIELD: I have about five minutes
23 with respect to the sur-rebuttal.

24 JUDGE CHESTNUT: I don't believe you.

25 JUDGE RAINEY: Is there --

1 JUDGE CHESTNUT: That is not even one
2 question for Mr. Clearfield.

3 JUDGE RAINEY: Off the record.

4 (Discussion off the record.)

5 JUDGE RAINEY: Let's go back on the record.

6 There was a brief discussion that was held
7 off the record with regard to what to do with the
8 remainder of this evening, and it was decided that
9 we will recess until tomorrow morning.

10 We will resume at that time with Mr. Hill.

11 We will resume at 9:00 o'clock tomorrow
12 morning.

13 Are there any questions, or anything else for
14 the record this evening?

15 (No response.)

16 JUDGE RAINEY: If not, this hearing is
17 adjourned.

18 Thank you.

19

20 (Thereupon, at 6:40 o'clock PM, the hearing
21 was adjourned.)

22

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3 We hereby certify that the proceedings and
4 evidence are contained fully and accurately in the
5 notes taken by us during the hearing of the within
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