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C O N T E N T S

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NUMBER	FOR IDENTIFICATION	IN EVIDENCE
<u>PP&L Statements</u>		
9 (Tierney)	824	917
9-R (Tierney)	824	917
10 (Krall)	733	788
10-R (Krall)	733	788
<u>PP&L Exhibits</u>		
DAK-1 through DAK-4 (Krall)	733	788
SFT-1 through SFT-14 (Tierney)	824	917
<u>OSBA Statements</u>		
✓✓1 (Knecht) ✓✓	791	806
✓✓1-R (Knecht) ✓✓	791	806
✓✓S1 (Knecht) ✓✓	791	806
<u>Environmentalists' Cross-Examination Exhibits</u>		
✓✓2 (Environmentalists-II-96) ✓	865	866
✓✓3 (Environmentalists-II-97) ✓	865	866

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P R O C E E D I N G S

1
2 ADMINISTRATIVE LAW JUDGE GEORGE M. KASHI: I call
3 this proceeding back to order. As we finished last night,
4 we were two witnesses behind, and I had a distraught court
5 reporter causing me to rearrange some of the seating today;
6 but other than that, the only other matter was I am getting
7 a lot of interest from the Harrisburg political contingent
8 that we aren't giving them a public input in that second go-
9 round. I'm not quite sure whether Mr. Barak is behind it or
10 not.

11 Is he here?

12 MR. FOGEL: He's not here.

13 JUDGE KASHI: He's not here today. Because the first
14 letter I got was some anonymous representatives, and then I
15 got a call from the press office about the
16 Environmentalists; and then when the letter came from the
17 Mayor, there wasn't anything else as to the budgetary
18 restraints that I usually fall back on.

19 Given that I'm too tired, we will have a public input
20 in Harrisburg on the afternoon of September 3 probably right
21 here. We're going to be in Bethlehem that evening. I hope
22 Mr. Barak will be able to get his troops out since they
23 weren't able to get them out for the 30th of May. I
24 imagine, though, that Labor Day might prove just as
25 difficult, Labor Day weekend.

1 Anyway, are there any matters preliminary from
2 counsel?

3 MR. RUSSELL: Just one from the company, Your Honor,
4 sort of a housekeeping matter. In view of the schedule and
5 the fact that we're two witnesses behind, as you noted, we
6 reviewed the schedule last evening and are proposing to move
7 Mr. Kleha and Mr. Kasper to tomorrow. Tomorrow looked like
8 a light day to us, and we thought that if we moved those two
9 witnesses down it would make today much more doable and then
10 make tomorrow still a doable day.

11 The only constraint on that -- and I think Mr. Kaplan
12 mentioned it yesterday, but I just want to mention it again
13 -- Dr. Kahn is scheduled to be on the stand tomorrow, and we
14 would like to lead with him. He has some travel
15 constraints, and we would like to lead with Dr. Kahn and
16 then move into the rest of the schedule at that point.

17 JUDGE KASHI: I do note, though, that that still with
18 the two witnesses from yesterday plus the two, Mr. Krall and
19 Mr. Tierney, we're still looking at in excess of eight hours
20 of cross-examination today.

21 MR. KOHLER: Your Honor, speaking for my group -- and
22 that is correct that we did coordinate -- I think we'll be
23 very significantly under our estimates, if that's helpful.

24 JUDGE KASHI: Good. It is always helpful.

25 Are there any other matters from counsel this morning

1 preliminary? Mr. Kleppinger?

2 MR. KLEPPINGER: Yes, Your Honor. Yesterday the
3 parties indicated that there was no cross-examination for
4 PPLICA Witnesses Rooney and Schneider. I've provided two
5 copies of their testimony to the court reporter. I'd like
6 to have Mr. Rooney's testimony identified as PPLICA
7 Statement No. 4.

8 JUDGE KASHI: So marked for purposes of
9 identification.

10 (Whereupon, the document was marked
11 as PPLICA Statement No. 4 for
12 identification.)

13 MR. KLEPPINGER: And Mr. Schneider's testimony
14 identified as PPLICA Statement No. 5.

15 JUDGE KASHI: So marked for identification.

16 (Whereupon, the document was marked
17 as PPLICA Statement No. 5 for
18 identification.)

19 MR. KLEPPINGER: And I would move for the admission
20 of PPLICA Statement No. 4 and No. 5 at this time.

21 JUDGE KASHI: By stipulation of counsel, they are
22 received into the evidentiary record.

23 (Whereupon, the documents marked as
24 PPLICA Statements Nos. 4 and 5 were
25 received in evidence.)

1 MR. KLEPPINGER: Thank you and for the accommodation
2 of all the parties.

3 MR. McCORMICK: Your Honor, my name is David
4 McCormick from the DOD. I have also provided the court
5 reporter with two copies of Mr. Prisco's testimony, which
6 was stipulated yesterday. I ask that it be marked DOD
7 Statement No. 1.

8 JUDGE KASHI: So marked for purposes of
9 identification.

10 (Whereupon, the document was marked
11 as DOD Statement No. 1 for
12 identification.)

13 MR. McCORMICK: And I move DOD Statement No. 1.

14 JUDGE KASHI: Received into the evidentiary record by
15 stipulation of counsel.

16 (Whereupon, the document marked as
17 DOD Statement No. 1 was received in
18 evidence.)

19 MR. McCORMICK: Thank you, Your Honor.

20 JUDGE KASHI: Anyone else?

21 (No response.)

22 JUDGE KASHI: Hearing no one, we left off and I
23 believe we're starting with Enron, Mr. Dirmeier.

24 MR. KOHLER: Your Honor, I call Michael Dirmeier.

25 JUDGE KASHI: Would you raise your right hand and be

1 sworn, sir?

2 Whereupon,

3 MICHAEL D. DIRMEIER

4 having been duly sworn, testified as follows:

5 JUDGE KASHI: Please be seated, sir.

6 DIRECT EXAMINATION

7 BY MR. KOHLER:

8 Q. Good morning, Mr. Dirmeier.

9 A. Good morning.

10 Q. Have you submitted prefiled testimony in this
11 proceeding?

12 A. Yes, I have.

13 Q. Did you submit what has been marked as Enron
14 Statement 6.0 consisting of 51 pages as prefiled testimony?

15 A. Yes, I did; 51 pages, that's correct.

16 Q. In the surrebuttal stage of this proceeding, did
17 you also submit surrebuttal testimony marked as Enron
18 Statement 6.1 into this proceeding?

19 A. Yes, I did.

20 Q. And does that document consist of 34 pages of
21 testimony?

22 A. Yes, it does.

23 Q. Do you have any corrections to make to that
24 testimony at this time?

25 A. Yes, I do. In the direct testimony, Enron

1 Statement 6.0, unfortunately, there were about 14 words left
2 out between the bottom of page 32 and the top of page 33. I
3 will read them, but we have also prepared a page that we can
4 distribute to the parties that indicates what was left out
5 and which will also indicate what I will be reading.

6 MR. KOHLER: Your Honor, we have a corrected page I
7 can circulate at this time.

8 JUDGE KASHI: All right.

9 THE WITNESS: For the record, I will read the words
10 that should be inserted at the very top of the page:
11 "eligible to choose will be provided monopoly generation
12 service by the generation supply group - the same division
13 or group."

14 BY MR. KOHLER:

15 Q. Mr. Dirmeier, do you have any additional
16 corrections?

17 A. Yes, I have two other small corrections. On
18 page 28, line 3, where it reads, "not to chose," c-h-o-s-e,
19 it should say "not to choose," c-h-o-o-s-e.

20 Q. Anything additional?

21 A. No, not in the direct testimony. I do have two
22 corrections in the surrebuttal testimony, Enron Statement
23 6.1. On page 1, line 4, there is a reference to PECO, and
24 it should be a reference to PP&L. It is the very first word
25 on that line.

1 On page 2, lines 13 and 14, there is a comma on line
2 13 that should be removed from there. It is after the word
3 "EDC's." That comma should be removed. And on line 14,
4 there should be a comma after "competition."

5 Those are the corrections that I have.

6 MR. KOHLER: Your Honor, at this time I would like to
7 move into the record Enron Statements 6.0 and 6.1.

8 JUDGE KASHI: So identified.

9 MR. KOHLER: There are no exhibits.

10 (Whereupon, the documents were marked
11 as Enron Statements Nos. 6.0 and 6.1
12 for identification.)

13 MR. KOHLER: Subject to any timely motions and
14 objections.

15 JUDGE KASHI: Subject to any timely motions and
16 objections, that which has been marked as Enron Statement
17 6.0 and Enron Statement 6.1 are received into the
18 evidentiary record.

19 MR. KOHLER: The witness is available for cross, Your
20 Honor.

21 JUDGE KASHI: Thank you very much, sir.
22 Mr. Kleppinger.

23 MR. KLEPPINGER: Thank you, Your Honor.

24
25

CROSS-EXAMINATION

1
2 BY MR. KLEPPINGER:

3 Q. Good morning, Mr. Dirmeier. I am David
4 Kleppinger representing the PP&L Industrial Customer
5 Alliance.

6 A. Good morning.

7 Q. Turning to page 28 of your direct testimony, the
8 page you made that one slight typographical correction on,
9 just so I understand the chart that appears on that page, in
10 the first block where it says, "customers which choose not
11 to choose," is it your understanding that the charges you
12 then have listed under the T&D delivery group are still
13 subject to the rate cap during the transition period?

14 A. Yes.

15 Q. Would the same be true for customers that
16 exercise choice but return to PP&L, again the charges you
17 list under T&D delivery group, is it your understanding that
18 those would be subject to the rate cap?

19 A. I believe they would be subject to the rate cap,
20 because I believe the rate cap is an absolute part of the
21 Act.

22 Q. And then finally, the last group of charges in
23 the lower right-hand portion of this chart for customers not
24 eligible to choose, those charges would be covered by the
25 rate cap, would they not?

1 A. Yes.

2 Q. Beginning at the bottom of page 10 of your
3 testimony and carrying over to page 11, you discuss the
4 company's competitive rate rider and industrial development
5 initiatives; correct?

6 A. Yes.

7 Q. Now, both of those are Commission-approved
8 riders to the PP&L tariff; is that right?

9 A. The ones that exist are, and then there are ones
10 that have been filed for approval, which may subsequently be
11 approved.

12 Q. You make the comment at lines 3 and 4 on page 11
13 that customer retention efforts are valid undertakings in a
14 competitive market. My question is whether or not you
15 believe that customer retention efforts are also valid
16 undertakings in a Commission-regulated market as we are in
17 today.

18 A. They are. The issue is whether -- for example,
19 for economic incentive rates in a regulated environment.
20 The issue, however, is the extent to which a customer
21 retention effort in a market that is undertaking transition
22 becomes something more than customer retention and is
23 transformed into an effort to basically capture a future
24 potentially competitive market and preclude competition.

25 Q. So your concern is with this transition period,

1 if you will, and you define that as January 1, 1997 through
2 some end date?

3 A. Yes. Of course, there is the phase-in period
4 January, '99 through January, 2001, at which point all
5 customers would be eligible for retail wheeling, but there
6 is a period of transition.

7 Q. Do I have the right beginning point for
8 transition in your mind? Is it the 1/1/97 date of the Act?

9 A. It would be the Act.

10 Q. Now, what is the end date of that transition?
11 Is it January 1, 2001 when all customers have access or is
12 it some other date?

13 A. Well, I think the end date -- there are three
14 end dates, really. Those customers who become eligible for
15 choice January 1, 1999, that would be a point in time in
16 which competitors can access those customers and provide
17 service to them, and then January 1, 2000 for the second
18 tranche, and then January 1, 2001 for the third tranche.

19 Q. So that the outermost date you're looking at
20 then is January 1, 2001?

21 A. Yes.

22 Q. So at least for some customers we're talking
23 about up to a three-year transition period if they in fact
24 are not in the first third or second third?

25 A. That's correct.

1 Q. If I understand the thrust of your testimony,
2 you would not want to permit PP&L to utilize the competitive
3 rate rider for that type of customer until after 1/1 2001?

4 A. If you're in the third tranche.

5 Q. Yes.

6 A. Yes.

7 Q. Now, would you acknowledge that customers today
8 at least in the industrial sector have competitive
9 alternatives for their energy consumption other than the
10 purchase of electricity from their host utility?

11 A. They have competitive opportunities for the
12 purchase of electricity?

13 Q. Yes.

14 A. I'm not sure I understand the question.
15 Certainly, there are ways to displace electric consumption
16 to a certain extent by consumption of other energy, but I
17 don't understand how a customer today has an alternative for
18 another source of electricity supply than self-generation.

19 Q. Okay; self-generation is one.

20 A. Okay.

21 Q. Do you know if a customer can joint venture with
22 a neighboring industrial operation?

23 A. I don't know.

24 Q. During this transition period that you have
25 defined, would you expect that there are industrial

1 customers out there who would be looking for reductions in
2 their electricity pricing for their own competitive reasons?

3 A. Yes.

4 Q. And absent reductions in their current
5 electricity pricing levels, could a consequence of not
6 getting those reductions be reduction in their current
7 production levels?

8 A. It could be.

9 Q. Could one of the consequences also be a
10 reduction in employment levels at those plants?

11 A. Yes.

12 Q. During the transition period, is it your belief,
13 Mr. Dirmeier, that PP&L still retains its full obligation to
14 serve its industrial customers or any customer that is not
15 in the first tranche or the second tranche of this full
16 transition period?

17 A. I want to make sure I understood the question.
18 It was really a simple question, but I just may not have
19 heard it.

20 Q. That's fine.

21 A. You're asking during the transition period, if
22 I'm not in one of the tranches, do they retain the
23 obligation to serve?

24 Q. Yes.

25 A. Yes, I think they do.

1 Q. Turning back to page 11 of your testimony, lines
2 14 and 15, you posit that if there are market-priced
3 contracts out there between PP&L and its customers, that
4 they should be transferred to PP&L's unregulated supplier
5 affiliate. Do you see that reference?

6 A. Yes.

7 Q. Would that require an actual reformation of the
8 contract if the contract is not in fact assignable?

9 A. Well, you're asking for a legal conclusion, but
10 inasmuch as PP&L's position is that the generation supply
11 group and the electric delivery group will be the same
12 company, I don't think there would be an assignment required
13 because it's the same company. It would be serviced by a
14 different organization within that same company.

15 Q. Who do you want to require that transfer; what
16 entity? Do you want the Commission to order the transfer of
17 that contract?

18 A. I want the Commission to order that the contract
19 would be served by the unregulated supplier affiliate.

20 Q. During the transition period, is it your
21 testimony that PP&L should be foreclosed from entering into
22 such a contract, customers that are not in the tranches?

23 A. Not an absolute foreclosure, because the
24 testimony states if they are allowed to enter into those
25 contracts, then other competitors should be allowed to

1 compete for that business. Now, that may require them to be
2 in the tranche under the Act unless the Commission can order
3 an alternative, which is that when PP&L and the utilities
4 compete to sign up contracts, that they make them open to
5 other competitors.

6 Q. Do you have a proposal that would assure
7 customers being in the first tranche or the second tranche
8 that would allow that to happen? I'm a little confused by
9 the process of events. If the first third is selected and
10 would be selected presumably by January 1, 1999 and a given
11 customer is not in that group, and three months later that
12 plant is under stress and danger of closing and PP&L offers
13 them a market-priced contract under the competitive rate
14 rider, would you foreclose them from offering that contract
15 or would you try something else?

16 A. Well, I think there are three things that could
17 be done. One, I would foreclose them from offering that
18 contract unless that contract were offered to the
19 competitive market. In your example where it is three
20 months later, it could well be that your customer
21 substitutes for a customer who in fact was offered the
22 opportunity and elected not to take it in the first tranche.

23 Q. What if the 33 percent is completely subscribed
24 in the rate class that that customer is in?

25 A. Then I would look to see if the Commission has

1 within its power the ability to open that customer up to
2 competition.

3 Q. So you would look for an exception to the 33
4 percent limitation?

5 A. Effectively.

6 Q. Are you aware that the Act has the word
7 "maximum" before the 33 percent in terms of the phase-in
8 language?

9 A. I'll accept that subject to check.

10 Q. You also raise the concept of a penalty-free
11 fresh start for customers who have entered long-term
12 contracts with PP&L. That is discussed at the bottom of
13 page 11 carrying over to page 12 of your direct.

14 A. Yes.

15 Q. And as I understand it, that fresh start would
16 only apply to contracts that were signed after the passage
17 of the Act.

18 A. Yes.

19 Q. So it would not apply to any contract that is
20 dated prior to 1/1/97. Is that the purpose of this
21 provision?

22 A. That's correct.

23 Q. And it would be only at the option of the
24 customer to reopen that contract?

25 A. Yes.

1 Q. If a customer entered that type of a contract
2 after 1/1/97, is it safe to assume that that customer would
3 have understood what their rights were under Act 138, the
4 Electric Generation Customer Choice and Competition Act?

5 A. I wouldn't make any assumption about that, but I
6 think it probably is not entirely safe to assume that,
7 because a critical piece of data would have been absent from
8 the customer, which is what is the price in a competitive
9 market.

10 Q. What convinces you that we're going to know that
11 any better in 1998 than that customer may have known in
12 February of '97? Won't we still be looking at forecasted
13 market prices and estimates?

14 A. Well, actually, in 1999 when I would allow the
15 customer to begin entering into those contracts, you would
16 have an actual beginning -- I mean, I don't believe the
17 market will be fully competitive in 1999, but you will begin
18 to have competitive activity in that year and presumably
19 more competitive activity in the subsequent years so that
20 you can actually see what the market is doing and what
21 customers are signing for or what you are receiving as
22 offers from competitors on whatever basis competitors decide
23 to make those offers.

24 Q. Does your fresh start approach begin 1/1/99?

25 A. How do you mean begin 1/1/99?

1 Q. When does the customer's right to essentially
2 cancel their long-term contract with PP&L arise? When does
3 that happen? Could they do it today or do they have to wait
4 until 1/1/99?

5 A. No. They have to wait until -- well, obviously,
6 they have to wait until the Commission orders it, and my
7 recommendation is that the Commission order it coincident
8 with approval of the order in this case. In other words, I
9 can't terminate today because I don't have an order allowing
10 me to do that.

11 Q. I'm looking for your proposal as to when that
12 right arises.

13 A. That's exactly right. And I am recommending
14 that the Commission order a fresh start that begins the
15 effective date of the order in this case.

16 Q. So it would be before 1/1/99?

17 A. Yes.

18 Q. And we still wouldn't have a market there that
19 they would know market prices if they were to choose to
20 exercise that fresh start right?

21 A. They don't have to exercise that fresh start
22 right on the day that the order becomes effective. They can
23 exercise it later.

24 Q. If the fresh start concept is applied to
25 contracts entered after 1/1/97, let me give you a

1 hypothetical and maybe you can answer why the concept in
2 your proposal wouldn't apply.

3 A customer enters a contract, a five-year contract,
4 with PP&L under the competitive rate rider in June of 1996.
5 It predates the legislation, predates the infamous
6 stakeholder group regarding the legislation. We're not sure
7 when access will begin in Pennsylvania, but yet, because of
8 the competitive option they had available at that time, PP&L
9 offered them a five-year contract.

10 That customer would not have a fresh start right
11 under your proposal; is that correct?

12 A. That's correct. He would be locked in until May
13 30th of 2001.

14 Q. Why is that different than the contract that
15 would have been entered in February of '97 under the same
16 hypothetical?

17 A. A key difference is that with the stakeholder
18 group and the passage of the legislation, the utility
19 clearly understood that for a period of time the name of the
20 game was to capture customers. Now, the utility may have
21 understood that and believed that to be the case in June,
22 1996 when our hypothesized contract was signed, but there
23 the utility was guessing. Once you had passage of the Act,
24 it is no longer guessing. It has a clear motivation to try
25 to lock in those revenue streams and to limit the size of a

1 future potential competitive market for as long as possible.

2 Q. Without rendering any legal opinion, because I
3 know you're not a lawyer, but I would like your expert
4 opinion as to whether or not the hypothetical customer that
5 we just went through was conferred a right of access by Act
6 138, irrespective of the existence of their five-year
7 contract.

8 A. And Act 138 was?

9 Q. That's the reason we're here today.

10 A. The Act?

11 Q. Yes. I apologize.

12 A. And you want to know if the Act conferred to the
13 customer a right of access?

14 Q. Yes.

15 A. I want to be sure I understand what you mean by
16 that, too; the right of access being --

17 Q. Let me make it a little more simple. Maybe I
18 can simplify the question.

19 A. Okay.

20 Q. Have you had an opportunity to review the Act?

21 A. Yes, I have.

22 Q. In your review of that, do you recall any
23 distinction in the definition of direct access or a
24 customer's right of direct access that is dependent upon the
25 type of contract they have with the utility?

1 A. No.

2 Q. If a customer is on a standard tariff rate with
3 a given utility and the tariff has a minimum term
4 requirement in the tariff and that minimum term is four
5 years and their contract expired in September of 1996 and
6 they had to in order to get service sign another contract
7 that has a minimum term of four years, under that scenario
8 and with the implementation of Act 138, would that customer
9 be entitled to a fresh start under your proposal?

10 A. I can say that I would hope that the customer
11 has a right when his tranche comes up in 1/1/99 or 2000 or
12 2001 to elect service under that tranche through the terms
13 of the order in this case, but it would not be specifically
14 subject to the fresh start.

15 Q. Here's where some of my confusion is coming
16 about and the reason for my prior line of questions. It is
17 not your intent, is it, Mr. Dirmeier, to have this fresh
18 start proposal alter or limit in any way the rights of a
19 customer under their existing contract and under Act 138
20 allowance for direct access?

21 A. No. It is the customer's option in the fresh
22 start.

23 Q. Now, in terms of what competitors are offering
24 today, are you aware of alternative providers of electricity
25 making proposals to customers which would essentially buy

1 out their existing obligation with their utility in order to
2 lock in the customer for their sales when access begins?

3 A. I'm not specifically aware of that activity in
4 the electric industry in Pennsylvania at this time.

5 Q. Are you aware of anything that would foreclose
6 that type of activity from happening today?

7 A. No.

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

10 JUDGE KASHI: Thank you very much, Mr. Kleppinger.
11 Mr. Kaplan.

12 MR. KAPLAN: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. KAPLAN:

15 Q. Good morning, Mr. Dirmeier.

16 A. Good morning.

17 Q. My name is Donald Kaplan, and I will be
18 examining you on behalf of Pennsylvania Power & Light
19 Company this morning.

20 Could you please turn to page 7 of your direct
21 testimony? I gather that you believe that the fiduciary
22 obligation that you think PP&L's management has would be one
23 that would be applicable to any corporation.

24 A. Yes.

25 Q. And you would agree that the management of any

1 regulated company has a fiduciary duty to its stockholders
2 to prevent the development of competition; is that correct?

3 A. Well, I think the management of any utility
4 company has the fiduciary responsibility to try to maximize
5 its shareholder wealth, and I believe most utilities would
6 find that maximization of wealth is consistent with trying
7 to eliminate competition. So the answer is yes, if you
8 assume that maximization of wealth -- you assume or believe
9 that maximization of wealth is consistent with the
10 elimination of competition; and I believe that to be the
11 case.

12 Q. That is a general fiduciary duty of the
13 management of regulated utility companies, just as it is for
14 any company?

15 A. Yes.

16 Q. Are you aware that Enron Corporation owns two
17 interstate natural gas pipelines regulated by the Federal
18 Energy Regulatory Commission?

19 A. Yes.

20 Q. Are you aware that Enron recently purchased
21 Portland General Electric Company, a utility regulated by
22 the Oregon Public Utility Commission?

23 A. Yes.

24 Q. So then you would state that the management of
25 Enron Corporation has a fiduciary obligation to prevent the

1 development of competition with respect to its ownership of
2 its regulated natural gas pipelines and Portland General
3 Electric; is that correct?

4 A. Yes.

5 Q. Would you please turn to page 21, line 8 of your
6 direct? Here you recommend the divestiture to guarantee
7 completely the prevention of horizontal and vertical market
8 power. Now, isn't it your view that Enron should be
9 required to spin off Northern Natural Gas Company and
10 Transwestern Pipeline?

11 A. No, and I don't make that recommendation. That
12 was the first part of your statement.

13 Q. Well, you state that that is the best way to
14 prevent horizontal and vertical market power; is that
15 correct?

16 A. That's correct. I state that full separation,
17 i.e., divestiture may be necessary.

18 Q. Now, given that you believe that Enron has a
19 fiduciary obligation in order to prevent competition using
20 its regulated interstate pipelines, shouldn't the Department
21 of Justice bring a suit to require Enron to --

22 MR. KOHLER: Your Honor, I'm going to object.

23 JUDGE KASHI: Sustained. The gentleman is not an
24 attorney.

25

1 BY MR. KAPLAN:

2 Q. As a policy matter, do you recommend that the
3 agencies that have the responsibility -- as policy matter,
4 without regard to whether they have a legal ability to do so
5 -- seek the divestiture of Transwestern or Northern Natural
6 Gas Company?

7 MR. KOHLER: Your Honor, I'm going to object. What
8 regulators should do in another state related to another
9 industry is outside of this proceeding.

10 JUDGE KASHI: I understand that, but in the context
11 of his statements on the horizontal and vertical and
12 divestiture, I guess the question is whether or not he
13 thinks that it should be a general policy for this type of
14 divestiture to take place.

15 MR. KOHLER: I think that was asked and answered,
16 Your Honor.

17 MR. KAPLAN: He didn't quite go that -- this was the
18 question we were on. I don't intend to inquire at length.
19 I'm merely trying to probe the depth of his policy.

20 JUDGE KASHI: The objection is overruled. Answer the
21 question, but let's not go further with it.

22 THE WITNESS: If I believed that that should be the
23 case, then I would be recommending to this Commission that
24 it should order the divestiture of the generation supply
25 group from PP&L. Clearly, it is a concern, and if, for

1 example, Enron in the exercise of its fiduciary duty begins
2 to exercise horizontal and vertical market power and to
3 abuse its position in markets, then it should be subject to
4 whatever penalties are appropriate. The same would apply to
5 PP&L. But I do not believe as a policy matter they should
6 necessarily at the front end say no, you cannot have that,
7 those acquisitions, or no, you can't; we must order you to
8 divest the pipelines at this point.

9 BY MR. KAPLAN:

10 Q. You say "if they begin to exclude competition."
11 Thus, you recognize a vertically integrated company that has
12 a competitive sales arm, a regulated utility may not engage
13 in such anti-competitive activities?

14 A. Yes.

15 Q. Could you please turn to page 28 of your direct
16 testimony? Now, referring to this chart on page 28, you use
17 the language -- and I'm now in the box on customers which
18 choose not to choose or customers, let's say, who just fail
19 to choose -- you refer to the service being provided as de-
20 tariffed; is that correct?

21 A. Yes, I do.

22 Q. Now, is your testimony based on the proposition
23 that there will be no tariff covering service that PP&L's
24 electric delivery group charges to these fail to choose
25 customers, and that service is known as basic utility supply

1 service?

2 A. That's certainly an element in the testimony,
3 but the fact of its being de-tariffed is not the critical
4 feature causing a concern in the testimony.

5 Q. But it is one of the elements upon which you
6 base the testimony?

7 A. That's correct.

8 (Documents distributed by counsel.)

9 Q. Do you have a copy of the two exhibits?

10 A. Yes, I do.

11 MR. KAPLAN: Your Honor, at this time we request that
12 these two exhibits, which are respective Enron's response to
13 PP&L Interrogatory No. 49 and Enron's supplementary response
14 to PP&L Interrogatory No. 51, be marked as PP&L Cross-
15 Examination Exhibits Nos. 6 and 7.

16 JUDGE KASHI: So marked for purposes of
17 identification, 49 being marked No. 6 and 51 being marked
18 No. 7.

19 (Whereupon, the documents were
20 marked as PP&L Cross-Examination
21 Exhibits Nos. 6 and 7 for
22 identification.)

23 BY MR. KAPLAN:

24 Q. Have you had an opportunity to examine --

25 MR. KOHLER: Can we wait until I have the second one?

1 MR. KAPLAN: Oh, I'm sorry, Mr. Kohler.

2 BY MR. KAPLAN:

3 Q. Mr. Dirmeier, have you had an opportunity to
4 examine PP&L Interrogatory No. 49?

5 A. Yes, I have.

6 Q. If you were asked that question today, would you
7 provide the same answer?

8 A. Yes.

9 MR. KAPLAN: Your Honor, we would like to move the
10 introduction of PP&L Interrogatory No. 49.

11 JUDGE KASHI: Received into the evidentiary record,
12 without objection?

13 (No response.)

14 JUDGE KASHI: Without objection.

15 (Whereupon, the document marked as
16 PP&L Cross-Examination Exhibit No.
17 6 was received in evidence.)

18 BY MR. KAPLAN:

19 Q. Now, Mr. Dirmeier, 51 lists a Mr. Richard
20 Shapiro, another witness, as the responding party. Have you
21 seen this interrogatory answer before?

22 A. I may have seen it. I've certainly read it just
23 now. I may have seen it before.

24 MR. KAPLAN: Your Honor, we are not going to move the
25 introduction of 51 at this time, leave it marked, and we

1 will move it when Mr. Shapiro testifies.

2 JUDGE KASHI: All right.

3 BY MR. KAPLAN:

4 Q. Could you please turn to page 48, line 9? I
5 believe that's also your direct testimony. You state that
6 the electric delivery group of PP&L could be in full
7 compliance with the code of conduct, yet that code of
8 conduct could be violated by the generation supply group.

9 Now, would you agree that the monopoly portion of
10 PP&L would be the electric delivery group?

11 A. Yes.

12 Q. Now, would you agree that if the electric
13 delivery group treated all alternate suppliers fairly and in
14 full compliance with the code of conduct, that the
15 generation supply group could not force anyone to deal with
16 it on the condition of dealing with the electric delivery
17 group?

18 A. If the predicate in your question were
19 fulfilled, the answer should be yes.

20 Q. Now, Mr. Dirmeier, would you concede that there
21 is nothing in your direct or surrebuttal testimony to infer
22 that PP&L or its employees are anything other than
23 upstanding corporate citizens?

24 A. Yes.

25 Q. Are you willing to state that you have no basis

1 for questioning the statements by Mr. Geneczko yesterday
2 regarding the commitment of PP&L to behave in a manner that
3 is consistent with good corporate responsibility?

4 A. Well, I guess I would have to contest that
5 because I think some of the actions that PP&L is taking in
6 this proceeding, as outlined in the testimony with regard to
7 the name, with regard to the rate riders, are not matters
8 with which I agree.

9 He may believe that PP&L is behaving in accordance
10 with good corporate responsibility. I think that's what you
11 used. And by his standards, they may be. I don't agree
12 with those standards.

13 Q. So the only thing, then, that you have a problem
14 with which would prevent you from agreeing with that
15 statement are PP&L's insistence on using its own name and
16 PP&L's position with regard to the competitive rate rider?

17 A. Well, those were the two that I mentioned right
18 then. I'm not sure that those are the only ones. It's
19 everything that's in the testimony, which is a place where
20 we have a specific disagreement.

21 Q. But it's only the specific things you've
22 identified in the testimony, is that correct, the specific
23 policy positions?

24 A. Yes.

25 Q. So you're not aware of anything else that PP&L

1 is doing that would be inconsistent with the belief that
2 they are acting in a manner that is consistent with good
3 corporate policy?

4 A. I'm not aware of anything else, but then those
5 are the issues in this case.

6 Q. Would you please turn to page 2 of your
7 surrebuttal testimony? Now, is it your testimony that Enron
8 will face a daunting task overcoming the single brand name
9 of PP&L?

10 A. It is. I can't find them there, but it is.

11 Q. Isn't it true that Enron advertised during the
12 Super Bowl telecast last January?

13 A. Yes, it is.

14 Q. Isn't it true that Enron has been advertising
15 its brand name heavily throughout the country?

16 A. I don't know that for a fact. I know I've seen
17 some ads for Enron up where I am in -- I guess I'm in
18 southern New York. But I don't know that they're
19 advertising that nationally.

20 I would also point out that it's not just Enron that
21 will face a daunting task, it's all competitors.

22 Q. We'll get to that. My question was, we're
23 talking about Enron now. Have you seen PP&L ads?

24 A. In southern New York?

25 Q. Yes.

1 A. No.

2 Q. Have you seen any PP&L ads on national
3 television programs?

4 A. No.

5 Q. Now, are you familiar with the list of
6 applicants for supplier licenses in Pennsylvania?

7 A. I don't believe I've seen it. I heard it being
8 discussed yesterday during cross-examination of Dr. Mayo.

9 Q. You did. Now, do you think that PP&L's brand
10 name has greater recognition than DuPont?

11 A. In PP&L's service territory?

12 Q. Anyplace.

13 A. In California, no. In this service territory,
14 quite likely.

15 Q. Do you think companies the size and scope of The
16 Southern Company and Duke Power Company and PECO do not have
17 the resources to establish brand names for the sale of
18 electricity in Pennsylvania?

19 A. It depends upon what other actions they are
20 taking, because for example if PP&L is allowed to use its
21 name and to undertake other activities that extend its
22 monopoly position here, I don't even think they'll try. I
23 think they will say, "We'll go to a jurisdiction where
24 there's a chance for fair competition, and we won't put our
25 efforts into the Pennsylvania market."

1 MR. KAPLAN: Your Honor, I'm showing the witness the
2 official document which is a list of license applications.

3 BY MR. KAPLAN:

4 Q. Do you see the name of DuPont on that list, sir?

5 A. I do.

6 Q. Do you see the name of PECO?

7 A. Yes, I do.

8 Q. Do you see the name of Southern Energy Retail
9 Trading?

10 A. Yes, I do.

11 Q. And do you seen the name of PanEnergy?

12 A. PanEnergy, yes, I do.

13 Q. And is it your understanding they were recently
14 acquired by Duke?

15 A. I'll accept that subject to check.

16 Q. They have all applied for licenses, haven't
17 they?

18 A. Yes.

19 Q. Do you think they split the money out to apply
20 for a license in Pennsylvania because they have no intention
21 of trying to enter PP&L's service territory?

22 A. That's not what I said. You are assuming that
23 because they have applied for a license and paid the fee,
24 that they are going to then actively promote their services
25 in this service territory.

1 They certainly intend to do that today, but whether
2 in fact they do that tomorrow depends upon whether there is
3 an opportunity for fair competition in this jurisdiction.

4 If there is not, I don't think they will throw good
5 money after bad. I think they will then say, "Gee, maybe we
6 should pursue competition in Virginia" -- and I don't know
7 what Virginia is doing, so just as an example -- "or New
8 Jersey or some other state."

9 Q. What about New Hampshire?

10 A. Or New Hampshire.

11 Q. And are you aware that Northeast Utilities and
12 Public Service New Hampshire use their brand names in the
13 New Hampshire pilot?

14 A. Yes.

15 Q. And Enron totally failed to break into the
16 market; is that correct?

17 A. No.

18 Q. They were very successful, weren't they?

19 A. I don't think so.

20 Q. ~~In fact, if you go to their web page, you can~~
21 ~~see their advertisement saying, "Freedom in New Hampshire"?~~

22 MR. KOHLER: Your Honor, strike that. Mr. Kaplan is
23 testifying.

24 JUDGE KASHI: Very well.

25

1 BY MR. KAPLAN:

2 Q. Have you seen their web page, Mr. Dirmeier?

3 A. No, I have not.

4 Q. You should try it.

5 MR. KOHLER: Your Honor, just to clarify the record
6 -- and I think we can stipulate to this; it's not a big
7 ordeal -- I believe the document that Mr. Kaplan circulated
8 as representing the list of applicants that admittedly he
9 got from the Commission is the applicants for the pilot
10 programs only.

11 Can you stipulate to that, Mr. Kaplan?

12 MR. KAPLAN: No. This is a list of companies filing
13 application to provide electric service in Pennsylvania.

14 MR. KOHLER: But do you recall that in the licensing
15 order, they established an interim license for the pilots
16 for which Enron has admittedly applied, and then would have
17 a follow-up application for a permanent license at some
18 point?

19 MR. KAPLAN: My point is, they've applied for a
20 license, and we have no indication they intend not to follow
21 up. But we can debate --

22 MR. KOHLER: Can you stipulate that that list is for
23 interim licenses; is that correct?

24 MR. KAPLAN: The list speaks for itself, sir.

25 MR. FOGEL: Your Honor, is it possible for a copy of

1 that list to be made available?

2 MR. KAPLAN: We will provide copies to the parties
3 either tomorrow or at the break.

4 JUDGE KASHI: In fact, it is the interim list for the
5 interim licenses.

6 MR. KAPLAN: Thank you, Your Honor.

7 BY MR. KAPLAN:

8 Q. You testified earlier that Enron has been
9 advertising, and you've seen Enron advertisements?

10 A. I did see the Super Bowl advertisement, and I
11 think I've seen a couple of other ones.

12 Q. Now, suppose you were thinking of establishing
13 an electric supplier known as Dirmeier Electric. I'd use
14 the name "Kaplan Electric," except we would have customer
15 confusion in this case.

16 Would you believe that in order to be fair to
17 Dirmeier Electric, that Enron would have to be prohibited
18 from using its name in Pennsylvania since it has already
19 been advertising that name and has name recognition?

20 A. No. I think the distinction there is, Enron
21 doesn't have a monopoly operation in Pennsylvania and the
22 ability to extend its monopoly over transmission and
23 distribution services to services that we hope will become
24 competitive. I can't reach any other conclusion but no.

25 Q. And for PP&L to do that, it would have to --

1 well, let me step back. PP&L no longer controls the
2 transmission of electric power, does it?

3 A. It doesn't control the operation of the
4 transmission system. I suspect that PP&L has still
5 considerable latitude concerning the construction and
6 maintenance of that system and the upgrades to that system.

7 Q. And it has an obligation under the law to
8 maintain the safe and reliable delivery of electricity; is
9 that correct?

10 A. Right, and there's considerable degree of
11 freedom regarding what that means.

12 Q. Now, you had some discussions with Mr.
13 Kleppinger about PP&L's competitive rate rider; is that
14 correct? You may recall those.

15 A. Yes, I do.

16 Q. Now, under your proposal, if a company entered
17 into a contract before January 1, 1997 that extended beyond
18 the introduction of customer choice, it would not be able to
19 get out of that contract; is that correct? It would be
20 required to complete the contract, even if it were selected
21 in one of the early groups for choice?

22 A. My proposal doesn't speak to, what are the
23 alternatives available to the company. The fresh start is
24 an alternative that should be exclusively available to
25 customers. That's the first point that I want to clarify.

1 The second point that I want to clarify is, if you
2 entered into a contract, a normal, standard tariff contract
3 -- that was one of the areas that he asked about -- with a
4 customer say late in '96 that extends to a period in time
5 after that customer becomes eligible for choice, I frankly
6 don't know whether the Act provides that the customer would
7 be able to migrate from his standard term contract to
8 utilize the choice that would otherwise be available to him
9 by virtue of being in one of the tranches.

10 But my testimony on fresh start speaks to the
11 competitive rate riders, the non-standard term tariffs.

12 Q. Now, you aware, are you not, that PP&L has
13 stated that any customer who has entered into a contract,
14 regardless of the time, that extends into the choice period
15 will be given the option of renegotiating that contract or
16 leaving PP&L?

17 A. Well, I knew that they have been given the
18 option to renegotiate. I was not aware that that also
19 included the option of leaving PP&L.

20 I stated in my surrebuttal testimony -- I believe I
21 stated there -- that if the renegotiation means, as you just
22 stated, the opportunity to leave PP&L is without penalty,
23 then I don't think we have any issue between us.

24 Q. Now, will you also agree that preventing
25 customers from entering into competitive rate rider

1 contracts during the transition period could cause them to
2 pay more for power than they otherwise would over the long
3 run?

4 A. Not necessarily, because while it may well
5 require them to pay more for power than they otherwise would
6 during the period in time until they become eligible for
7 direct access -- well, actually, during the period until the
8 contract expires and they are eligible for direct access,
9 you ignore the fact that if they weren't in that contract
10 and they become eligible for direct access during the period
11 of time of that putative contract, they might save more
12 during that period than they pay in the front end period.

13 I said that very badly, and if you'd like, I can try
14 again.

15 Q. No, I think we understand you. But the question
16 is, that's their judgment as to whether or not their
17 anticipation of post-choice savings out in the future
18 outweighs the immediate exercise of benefit up front; isn't
19 that correct?

20 A. Yes, but it's also a judgment being made in a
21 bit of a vacuum, in that it's a judgment being made without
22 having an active competitive market against which to weigh
23 or measure, compare the offer received from PP&L.

24 Q. Now, you understand that this option,
25 competitive rate rider option, is available generally to

1 large customers the size of Mr. Kleppinger's clients; is
2 that correct?

3 A. Well, 5,000 kilowatts or greater, and I don't
4 know his clients, but I'll accept that.

5 Q. And it is your testimony that the Commission
6 needs to protect those customers because they may fail to
7 fully understand the implications of choice and what that
8 can mean for competition in the sale of electric power?

9 A. I don't think the statute says that the
10 Commission should protect some customers but not other
11 customers. The answer is yes.

12 Q. Is there anything requiring a customer to enter
13 into a competitive rate rider agreement?

14 A. No.

15 Q. So they could either choose to enter into it or
16 wait?

17 A. Yes.

18 Q. And they'll do that by conducting an analysis of
19 the savings; is that correct?

20 A. You would hope, but --

21 Q. Is -- I'm sorry.

22 A. But it's an analysis of savings in the absence
23 of important information.

24 Q. And they will be able to assess how important
25 that information is; is that correct?

1 A. Yes.

2 Q. And as someone with an accounting background,
3 they will also apply a discount rate probably to that
4 analysis as well?

5 A. I would hope they would.

6 Q. You would hope they would, which would probably
7 give relatively greater weight to the up-front savings; is
8 that correct?

9 A. Yes.

10 Q. Mr. Dirmeier, would you agree that were PP&L to
11 provide service at a lower cost than a competitor or better
12 service than a competitor, that it would be in the
13 customer's interest to be able to obtain that service?

14 A. When we say PP&L in that question, are you
15 saying the electric service division or the generation
16 supply group? I need to know what part of PP&L you're
17 discussing.

18 Q. The generation supply group.

19 A. Could you reask the question, or make sure that
20 I understand the question? I'm sorry.

21 Q. Would you agree that PP&L's competitive electric
22 power sales entity, if they were capable of providing
23 service at a lower cost to a customer or better service,
24 that it would be in the customer's interest to be able to
25 obtain that service?

1 A. Well, your question has an interesting choice of
2 words, because it says, would I agree that if the
3 competitive entity could provide the service at a lower cost
4 to the customer as opposed to a lower price to the customer.

5 Q. I'm sorry.

6 A. Well, it's an important distinction, though.

7 Q. Use the word "price."

8 A. Well --

9 Q. That's not my question. I'm asking first if you
10 would please answer my question, sir.

11 A. Well, it depends on whether the customer's total
12 price from PP&L, including the potential for having improper
13 cost allocations, is higher than it would be taking the
14 service from a competitor if you had proper cost
15 allocations.

16 Q. Mr. Dirmeier, let us assume neutrally that
17 whoever can judge the real truth, whoever that person may
18 be, determined that the price to the customer was lower or
19 the service was better. It would be in the interest of that
20 customer to take that service; is that correct?

21 A. Yes.

22 Q. Would you agree that the Commission should not
23 adopt policies that raise customer costs or prevent them
24 from getting good service?

25 A. Well, certainly the Commission should not adopt

1 policies that prevent a customer from getting good service.
2 Now, if the policy raises a customer's cost in exchange for
3 creating a competitive market that provides benefits for
4 everyone, then that's something --

5 Q. That's not my question, Mr. Dirmeier.

6 MR. KAPLAN: I object, Your Honor. The witness is
7 going far beyond my question. I'd like to try to get some
8 answers to my questions.

9 JUDGE KASHI: Could you answer the question, sir?

10 THE WITNESS: I was answering his question, sir.

11 JUDGE KASHI: Well, you were restating his question
12 and re-calculating it, and --

13 THE WITNESS: The answer is neither yes nor no. It
14 depends on the circumstance, and I was explaining the
15 circumstance.

16 JUDGE KASHI: Well, you could have told us, it's not
17 a yes nor no.

18 THE WITNESS: Okay.

19 BY MR. KAPLAN:

20 Q. Would you agree that it would be wrong or
21 misleading not to disclose to customers the true identity of
22 the company providing them power?

23 A. It depends upon whether, by disclosing of that,
24 you also communicate to customers information that is
25 misleading.

1 Q. So you should not disclose the true identity of
2 the entity supplying customers power?

3 A. I'll stand on the answer I just gave you.

4 Q. Would it be wrong to mislead customers as to who
5 is providing the power?

6 A. Well, yes, it would be. And if you use the name
7 PP&L when in fact PP&L is not providing the power, then that
8 would be wrong.

9 Q. And if you use the name Enron when Enron is not
10 providing the power, that would be wrong?

11 A. That's true, except if Enron is providing the
12 power and standing behind it -- for example, let's take a
13 possibility. Enron is purchasing power from PP&L and
14 providing that to a customer.

15 Enron is standing behind that transaction, and if
16 Enron fails in that transaction, then the customer knows who
17 to be angry at.

18 Q. And if we simply substituted PP&L for Enron in
19 your last answer, that would also be a true statement?

20 A. Well, not if the customer believes that PP&L is
21 the utility that has an obligation to serve and is the
22 monopoly entity. Then I think it's wrong.

23 Q. If PP&L clearly identifies that it is the
24 competitive energy sales group, that would be correct?

25 A. Not necessarily, because the question then would

1 be, do customers really understand the distinction or do
2 customers say, "For 20 years I've been buying from PP&L and
3 I'm still buying from PP&L," and basically fail to heed and
4 understand the distinction between PP&L generation service
5 group -- generation supply group; I had the wrong name --
6 which is the competitive entity and PP&L electric delivery
7 group which is the regulated monopoly entity.

8 Q. Mr. Dirmeier, if Mr. Kohler worked for the state
9 government of Pennsylvania and Enron was familiar with his
10 activities for many years as an employee of the state
11 government and found him to be a quality attorney, honest,
12 intelligent, resourceful, should Mr. Kohler change his name
13 when he goes into private practice?

14 A. No, he shouldn't. That analogy is not apropos
15 to the question of PP&L generation services, but no, he
16 shouldn't.

17 JUDGE KASHI: He hadn't had a monopoly in state
18 government for the longest time.

19 (Laughter.)

20 BY MR. KAPLAN:

21 Q. Mr. Dirmeier, would you agree that some
22 utilities do not have good reputations with their customers?

23 A. Yes. And I suspect that those utilities won't
24 be using their name in their competitive endeavors.

25 Q. Please turn to page 16 of your surrebuttal

1 testimony.

2 (Witness perusing document.)

3 A. There it is.

4 Q. I'm looking at the answer beginning at line 15.

5 Do you have that, sir?

6 A. Yes, I do.

7 Q. Would you agree that the only reason that PP&L
8 would be able to abide by Pennsylvania's Customer Choice Act
9 yet use that Act to its own advantage would be if the law
10 itself was inadequate to govern the restructuring of
11 electric utilities in Pennsylvania?

12 A. Well, no, I don't, because I would tell you,
13 it's my understanding that the Commission under the Act is
14 given certain supervisory powers to implement the Act. So I
15 don't think the Act by itself stands for the proposition
16 that it's the final word on these issues. If it were, we
17 wouldn't be here today.

18 Q. Please turn to page 16 of your prepared rebuttal
19 testimony. Isn't it true that Dr. Kalt never stated that
20 PP&L did not want real competition?

21 A. I would have been shocked if he had said that.

22 Q. So he didn't state it?

23 A. No. I think it's the sum total of --

24 Q. Thank you, Mr. Dirmeier --

25 A. -- PP&L's actions, but he would never say that.

1 Q. Is it true, Mr. Dirmeier, that Dr. Kalt, neither
2 in his direct or rebuttal testimony, never stated that PP&L
3 would seek to impose every disadvantage possible on its
4 potential customers and destroy any advantage that they may
5 have? That's also found on page 16, beginning at line 15.

6 (Witness perusing document.)

7 A. Well, let me just say that Dr. Kalt recognized
8 that competitors have that incentive and, just as we said
9 earlier, that PP&L and Enron have the same incentives as any
10 other corporation. I think PP&L has the same incentive as
11 every corporation does, which is to do the things that are
12 stated on page 16, lines 15 through 17.

13 Q. You will admit that Dr. Kalt never made that
14 statement?

15 A. No, he never -- and he never distinguished PP&L
16 from any other corporation to say they have lesser
17 incentives.

18 Q. But he never made the statement that you have
19 made beginning at line 14?

20 A. Yes.

21 Q. Please turn to page 14 of your surrebuttal
22 testimony. Will you agree that the Commission in the case
23 of Pennsylvania Public Utility Commission v. Citizens
24 Utility Water Company of Pennsylvania, cited at page 9 of
25 your testimony, never in fact made a ruling that the utility

1 increased its return using its monopoly position or that --
2 I'm sorry?

3 MR. KOHLER: I'm confused by the reference to page 9.

4 MR. KAPLAN: Line 9.

5 MR. KOHLER: Line 9, I'm sorry.

6 MR. KAPLAN: I will repeat the question.

7 BY MR. KAPLAN:

8 Q. That in that case, beginning at line 9, cited at
9 line 9, the Pennsylvania Public Utility Commission made no
10 ruling that the utility inappropriately increased its return
11 using its monopoly position?

12 A. Do you mean that nowhere did the Commission put
13 those words together pretty much just the way, in a sentence
14 saying, "This company has increased its monopoly return
15 using its monopoly position"?

16 Q. Yes.

17 A. I don't think they said, but I think it is the
18 sum total of the order.

19 Q. They never used the word "monopoly position"
20 throughout the opinion, did they?

21 A. I suspect they did not, but --

22 Q. They never used --

23 A. Excuse me. That doesn't change the fact that
24 they were a monopoly.

25 Q. They never used the word "monopolization" or

1 "market power" in the opinion, either, did they?

2 A. I don't think so.

3 Q. Please turn to page 19 of your surrebuttal
4 testimony. You understand that PP&L --

5 A. Page 19?

6 Q. Nineteen -- has an obligation to provide service
7 under Section 2807 of the Customer Choice Act, to provide
8 service to customers who fail to choose?

9 A. Yes.

10 Q. And you also understand that PP&L must serve
11 those customers at prevailing market prices?

12 MR. KOHLER: Your Honor, I think that asks for a
13 legal conclusion. Objection.

14 MR. KAPLAN: I'm asking his understanding of what the
15 Act says, Your Honor.

16 I can show you the Act, if you need to see the
17 section.

18 THE WITNESS: No, I have the Act.

19 JUDGE KASHI: You can answer the question.

20 THE WITNESS: It's my understanding that they have an
21 obligation to serve. It doesn't say that they have to
22 provide the service at prevailing market prices. As I
23 understand it, it says they have to acquire at prevailing
24 market prices and they are also subject to the rate cap.

25 MR. KAPLAN: One second, Your Honor.

FORM 2

1 (Pause.)

2 BY MR. KAPLAN:

3 Q. Isn't it true that PP&L has never stated that it
4 intended to aggressively market or market at all last resort
5 service, service to customers who fail to choose?

6 A. I'm not aware of any statement in that regard.

7 Q. Now, what you therefore want PP&L to do to these
8 customers who fail to choose is, acquire it at market price,
9 prevailing market prices, but sell it to those customers at
10 a higher price; is that correct?

11 A. No. I want them to acquire the product at
12 market price and sell it.

13 Q. At prevailing market prices?

14 A. No, sell it at the price that they are required
15 to sell it under the tariff -- excuse me, under the Act.

16 Q. And what price is that?

17 A. Well, the Act will speak for itself, but there
18 is the price cap.

19 Q. If the prevailing market price falls below the
20 energy and capacity component of PP&L's unbundled rates, is
21 it your testimony that PP&L should nonetheless sell power to
22 customers who fail to choose at the tariff, at the price
23 cap?

24 A. It's my testimony that they should comply with
25 the Act, and if the Act permits them to sell it at a price

1 below the cap, then certainly it's difficult to argue that
2 you should sell it at a rate higher than you could otherwise
3 sell it at, and I don't oppose that.

4 However, I also would have to presume, in answering
5 that question, that costs have been allocated appropriately
6 so that the energy and capital component of the unbundled
7 rate is accurate.

8 Q. Let us make that assumption. What do they sell
9 the power at?

10 A. At the rate that the Commission tells them to
11 sell it at.

12 Q. At their acquisition cost, the cost of acquiring
13 power?

14 A. At what I just said, at the rate the Commission
15 tells them to sell it at.

16 Q. What rate should the Commission tell them to
17 sell it at?

18 A. Okay. The Act imposes a rate cap and it does
19 state that the rate shall not exceed the generation
20 component charged customers, and the other rates I'm sure
21 have "shall not exceed" as well.

22 If the costs are properly allocated, then I would
23 advise the Commission to try to establish rates that are
24 below the cap.

25 Q. Would those rates be above market price?

1 A. Well, the generation component -- when you say
2 "market price", do you mean --

3 MR. KOHLER: Your Honor, I think it's asked and
4 answered, and I think what Mr. Kaplan is addressing is a
5 pure legal question, and I think Mr. Dirmeier's answer is,
6 however the Commission views the law, they should implement
7 it in that manner and if the price is lower than the cap, if
8 the law allows the price to be lower than the cap, it's hard
9 to argue that the price shouldn't be lower.

10 MR. KAPLAN: I want to find out whether it should be
11 down to the market price, Your Honor. I think this is a
12 very important question.

13 MR. KOHLER: I think his answer was that if the law
14 requires that it be at the market price, then --

15 JUDGE KASHI: We're looking at the --

16 MR. KOHLER: Or if the law permits that it be at the
17 market price.

18 JUDGE KASHI: -- economist's view of what it should
19 be set at as opposed to what legal view the Commission might
20 take on that. And I don't think the Commission is going to
21 take an absolute legal view on it, anyway.

22 We know there's a price cap. We know what the
23 acquisition cost is, so what does he recommend the
24 Commission thinks that they should go for? I mean, that's a
25 simple question.

1 MR. KOHLER: I think it's been asked and answered,
2 Your Honor. He can answer it again if Your Honor prefers.

3 JUDGE KASHI: Answer it one more time for me, okay?

4 THE WITNESS: Well, I was just getting ready to ask,
5 is the prevailing market price the wholesale price. And the
6 answer is -- if the question is, should they sell it at the
7 wholesale price, the answer I think is no, because no one is
8 able to take a wholesale price and turn it around and sell
9 it to customers without incurring some costs of their own.

10 And if you sell it that way, then implicitly costs
11 that you are incurring are being paid somewhere else, likely
12 in the T&D rates. That would be inappropriate.

13 The generation supply group should have to include in
14 its price to end users the same kinds of costs that any
15 competitor has to include in their price to end users.

16 MR. KAPLAN: Let me just clarify it. I apologize,
17 Your Honor, for pursuing this, but I think it is a very
18 important point.

19 BY MR. KAPLAN:

20 Q. Let's assume that the costs are properly
21 allocated and the transmission and distribution costs that
22 PP&L incurs are fully covered, including all the overheads
23 attributable to the regulated company, fully covered under
24 the T&D, transmission and distribution tariffs.

25 The only additional cost, the only additional cost

1 PP&L incurs is maintaining a small staff of power buyers to
2 enter into contracts for prevailing market price power.

3 If PP&L charges a price that is the wholesale
4 acquisition cost plus the fully distributed cost of that
5 staff, would that be the appropriate price for them to
6 charge to customers who fail to choose?

7 A. Yes.

8 JUDGE KASHI: Are you going on to another area, sir?

9 MR. KAPLAN: Yes.

10 JUDGE KASHI: What I would like to do at this time,
11 because there are those people who need that cup of coffee
12 and the coffee shop closes at 11:00, we're going to take our
13 morning recess at this time. We'll come back at 11:10.

14 MR. KAPLAN: That's very important information, Your
15 Honor. Thank you.

16 (Recess.)

17 JUDGE KASHI: Back on the record.

18 Mr. Kaplan?

19 MR. KAPLAN: I have eliminated several lines of
20 cross-examination, Your Honor. I only have a couple more
21 things.

22 BY MR. KAPLAN:

23 Q. Mr. Dirmeier, are you familiar with the FERC
24 standards of conduct for interstate pipeline marketing?

25 A. I have read them.

1 Q. Do you believe they go far enough in protecting
2 against the kind of abuses that you describe in your
3 testimony?

4 A. Not entirely, no.

5 Q. And it's your understanding that Enron is
6 subject to that standard of conduct; is that correct?

7 A. Yes.

8 Q. So they inadequately protect against Enron
9 engaging in those types of abuses if it chooses to do so?

10 MR. KOHLER: Your Honor, I'm going to object. The
11 natural gas standard of conduct has nothing to do with
12 anything.

13 JUDGE KASHI: I kind of agree on that.

14 MR. KAPLAN: I will move on, Your Honor.

15 BY MR. KAPLAN:

16 Q. Mr. Dirmeier, is it your understanding that the
17 PJM is in the process of establishing an independent system
18 operator?

19 A. Yes.

20 Q. Could you please turn to page 28 of your
21 surrebuttal testimony? You cite a speech in your answer
22 beginning on line 13 by Douglas Melamed, who is the
23 principal deputy assistant attorney general in the antitrust
24 division of the Department of Justice; is that correct?

25 A. Yes.

1 Q. Now, you cite the speech, but the citation is to
2 an article in "Public Utilities Fortnightly"; is that true?

3 A. Well, maybe I answered incorrectly. I don't
4 know that I cite the speech or talk about the speech. Maybe
5 I do. But of course, you are correct. I am referencing a
6 Fortnightly article.

7 Q. Right. But you're quoting Mr. Melamed?

8 A. Yes.

9 Q. Have you read the speech?

10 (No response.)

11 Q. It's actually testimony. Have you read the
12 testimony?

13 A. No, I have not.

14 MR. KAPLAN: Your Honor, I'm showing the witness a
15 copy of the testimony, Statement by A. Douglas Melamed,
16 principal deputy assistant attorney general, antitrust
17 division, U.S. Department of Justice for the Committee on
18 the Judiciary of the United States House of Representatives
19 dated June 4, 1997.

20 JUDGE KASHI: I didn't realize we still had an
21 antitrust division in the Department of Justice.

22 (Laughter.)

23 MR. KAPLAN: They didn't close it up when I left it,
24 Your Honor.

25

1 BY MR. KAPLAN:

2 Q. Will you please turn to page 8 at the bottom?
3 Will you read the paragraph on the bottom of page 8 and the
4 top of page 9?

5 A. Into the record?

6 Q. No, no. Just read it to yourself.

7 (Witness perusing document.)

8 A. Okay.

9 Q. In fact, the sentence that you quote is at the
10 top of page 9; is that correct?

11 A. Yes.

12 Q. Now, will you read into the record the very next
13 paragraph?

14 A. "Turning over operation and control of
15 transmission facilities to independent system operators
16 (ISOs) is potentially a more promising solution for
17 preventing anticompetitive, discriminatory behavior by the
18 owners of transmission facilities. ISOs are regional
19 entities that assume operational control of transmission
20 facilities.

21 "Although the current utility transmission owners
22 could retain ownership of their transmission facilities, the
23 ISOs, if governed in a manner that renders them truly
24 independent of the parochial interests of the owning
25 utilities, could insure comparable and nondiscriminatory

1 access to the transmission grid by competing power
2 suppliers. Congress should consider whether FERC needs
3 additional regulatory authority to promote the creation of
4 ISOs."

5 MR. KAPLAN: Thank you, Mr. Dirmeier.

6 We have no further questions, Your Honor.

7 JUDGE KASHI: Thank you very much, sir.

8 Redirect?

9 MR. KOHLER: Can I have one minute, Your Honor?

10 JUDGE KASHI: Yes. Off the record.

11 (Discussion off the record.)

12 JUDGE KASHI: Back on the record.

13 Are you ready, Mr. Kohler?

14 MR. KOHLER: One minute, Your Honor.

15 (Pause.)

16 REDIRECT EXAMINATION

17 BY MR. KOHLER:

18 Q. Mr. Dirmeier, do you recall Mr. Kleppinger's
19 questions about long-term contract issues pertaining to PP&L
20 and your recommendation in that regard?

21 A. Yes, I do.

22 Q. Can you identify for the Commission what in your
23 view is the most important aspect of that recommendation?

24 A. The most important aspect is the fresh start
25 component which enables a customer who has signed an

1 agreement to be able to obtain the benefits of a truly
2 competitive market when that market develops.

3 Q. And if the Commission were to adopt the fresh
4 start aspect of your proposal and reject other aspects,
5 would you be generally satisfied?

6 A. I think the Commission -- the answer is yes
7 because the Commission would have taken the appropriate
8 action to protect a nascent competitive market.

9 MR. KOHLER: That's all, Your Honor.

10 JUDGE KASHI: Thank you very much.

11 No follow-up, Mr. Kleppinger, I'm sure?

12 MR. KLEPPINGER: I guess not.

13 JUDGE KASHI: You are excused, sir.

14 (Witness excused.)

15 JUDGE KASHI: That which has been marked and
16 identified as Enron Statement No. 6 and Enron Statement No.
17 6.1 are received into the evidentiary record, without
18 objection?

19 (No response.)

20 JUDGE KASHI: Without objection.

21 (Whereupon, the documents marked as
22 Enron Statements Nos. 6 and 6.1
23 were received in evidence.)

24 JUDGE KASHI: Mr. Stewart, do you wish to call your
25 witness, sir?

1 MR. STEWART: Yes, Your Honor. MAPSA calls Donald E.
2 Johnstone.
3 Whereupon,

4 DONALD E. JOHNSTONE
5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. STEWART:

8 Q. Mr. Johnstone, do you have in front of you a
9 document that is labeled, "Direct Testimony of Donald E.
10 Johnstone"?

11 A. I do.

12 Q. And did you submit that testimony in this
13 proceeding?

14 A. Yes, I did.

15 MR. STEWART: Your Honor, I would ask that Mr.
16 Johnstone's statement consisting of 28 pages, one appendix
17 with two pages and one exhibit that is marked DEJ-1 be
18 marked as MAPSA Exhibit 1 for purposes of identification.

19 JUDGE KASHI: If you don't have a problem, can we
20 mark it MAPSA Statement No. 1?

21 MR. STEWART: Statement, yes, Your Honor. I'm sorry.

22 JUDGE KASHI: And the exhibit is --

23 MR. STEWART: DEJ.

24 JUDGE KASHI: -- Exhibit DEJ-1.
25

(Whereupon, the documents were marked as MAPSA Statement No. 1 and MAPSA Exhibit No. DEJ-1 for identification.)

BY MR. STEWART:

Q. Mr. Johnstone, do you have any corrections or modifications to that testimony?

A. At page 16, line 8, the third word on that line is "price". I would insert the word "energy" before "price", so it would read, "with the energy price based on the PP&L forecast". That would be the only change.

MR. STEWART: Your Honor, the witness is available for cross-examination. I would move, however, that subject to cross-examination and timely objections, that the statement and the exhibit thereto be admitted into evidence.

JUDGE KASHI: Subject to any timely motions and/or objections pending cross-examination, that which has been marked as MAPSA Statement No. 1 with the attending Exhibit DEJ-1 will be received into the evidentiary record.

Mr. Kleppinger?

MR. KLEPPINGER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. KLEPPINGER:

Q. Good morning, Mr. Johnstone.

A. Good morning.

FORM 2

1 Q. I am Dave Kleppinger. I represent the PP&L
2 Industrial Customer Alliance. All of my questions will
3 relate to page 19 of your direct testimony where you provide
4 your recommendation for the development of the implicit
5 generation component rate.

6 And at lines 10 through 12, you recommend there a
7 review process every two years; is that correct?

8 A. Yes, it is.

9 Q. And would the result of that review process or
10 could the review process be a change to the CTC levels that
11 had been in tariffs prior to that point?

12 A. On a prospective basis, yes.

13 Q. So then unlike the PP&L proposal in this case
14 that would have a CTC established at the conclusion of this
15 case definitively in each of the years of the transition
16 period, we would only be setting those CTC levels for the
17 first two years of the transition period in this case?

18 A. Yes, sir. That would be the effect.

19 Q. And what type of proceeding do you envision at
20 these two-year intervals?

21 A. Well, I would anticipate a formal proceeding in
22 which evidence would be introduced as to the then-current
23 forecast of market price.

24 Q. Would you agree that the use of a two-year
25 review process will create more uncertainty in the markets

1 than having a CTC established in this case for the duration
2 of the transition period?

3 A. Create more uncertainty in the market I guess
4 is the question --

5 Q. From the customer's perspective. It's the one
6 I'm typically coming from.

7 A. I would have to say no. There is a good deal of
8 uncertainty associated with a forecast that would go out for
9 nine years, and I would think that you would reduce
10 uncertainty by making these periodic adjustments. There is
11 a significant risk with a forecast of that length.

12 Q. Well, we know during the transition that the
13 market price is going to be different than whatever we set
14 it at in this case, correct?

15 A. Yes. I would agree with that.

16 Q. I haven't seen a forecast that has been right
17 yet. But what we would know, coming out of this case, is
18 that the CTC level would be definitive for the duration of
19 the transition period?

20 A. Well, that is the company's proposal.

21 Q. Right. Do you believe a customer would be able
22 to or would want to sign a contract for anything more than a
23 two-year period under your proposal?

24 A. That would depend on the terms of the contract.
25 I would think it would be possible. There would have to be

1 some provisions to deal with the change in the transition
2 charge.

3 Q. As you acknowledge, the customer would not know
4 what the CTC charge would be beyond that two-year period?

5 A. Yes. And I think the point is, if he entered
6 into a long-term contract under the other scenario, he could
7 run a very significant risk of paying prices well above
8 market in the out years. And so I think those are the two
9 things that you have to trade off.

10 Q. When you say "prices well above market," you
11 mean by the combination of the CTC and the market price at
12 the time?

13 A. Thank you. That's an important clarification.

14 Q. And at least under the company's proposal, we'd
15 be paying a CTC through the year 2006 or thereabouts,
16 correct, 2005, 2006, so under your proposal and under the
17 company's requested stranded cost recovery, how many of
18 these two-year revisions would we have? We would have one
19 in 2001, correct?

20 A. 2003.

21 Q. 2003.

22 A. I would think that would do it. There would be
23 two.

24 Q. During that entire period, then, we could have
25 three different CTC levels, '99 to 2001, 2001 to 2003, and

1 then after, 2003 to 2005?

2 A. I think under either proposal, you have a
3 different CTC every year. The question is, when will you
4 know what those CTCs are.

5 Q. Right. But we will have at least three
6 different CTCs set in three different proceedings as opposed
7 to a known series of CTCs in one proceeding, with your
8 proposal versus PP&L's?

9 A. Yes, sir.

10 MR. KLEPPINGER: Thank you.

11 That's all I have, Your Honor.

12 JUDGE KASHI: Before I go to Allegheny, Mr.
13 Johnstone, this is a little historical. Can I take you back
14 to the seventies and the coal contract cases that were
15 involved with PP&L? Are you familiar with those, sir?

16 THE WITNESS: Familiar with the seventies, not with
17 the coal contract case.

18 JUDGE KASHI: Okay. Are you familiar with the NUG
19 contracts of the present day?

20 THE WITNESS: Yes, sir.

21 JUDGE KASHI: And the contracts that have been
22 entered into regarding those facilities?

23 THE WITNESS: I have not reviewed those contracts. I
24 am aware of them from the discussions in this proceeding.

25 JUDGE KASHI: Are you aware of the actions by the

1 Commission and by the Legislature to see that we now undo
2 those contracts?

3 THE WITNESS: I am aware that that is under
4 discussion.

5 JUDGE KASHI: Does any of that have anything to do
6 with your idea that we should do this every two years
7 instead of trying to sit here and project these things down
8 the line?

9 THE WITNESS: I would think so. The point is that
10 it's very difficult to have a reliable forecast for an
11 extended period of time. Whether it's an avoided cost
12 forecast or a market price forecast, they both go to much
13 the same point.

14 And the benefit of a two-year adjustment is that you
15 will be able to stay in sync with the market on an ongoing
16 basis.

17 JUDGE KASHI: Are you familiar with the proceedings
18 in front of this Commission under the 1307 -- I'm going to
19 say this wrong; it's (e) or (f) -- where we talk about the
20 energy costs? Do you understand those proceedings?

21 THE WITNESS: I'm afraid not.

22 JUDGE KASHI: All right, thank you.

23 Ms. Swanstrom?

24 MS. SWANSTROM: Thank you, Your Honor.

25

CROSS-EXAMINATION

BY MS. SWANSTROM:

Q. Good morning, Mr. Johnstone. My name is Deborah Swanstrom. I represent Allegheny Power. For your background information, West Penn Power Company is a member of the Allegheny Power System that provides retail electric service in the Commonwealth of Pennsylvania.

A. Good morning.

Q. Could you please refer to page 12, line 9 of your direct testimony? You believe that the ability of new generation suppliers to compete with PP&L will rise and fall with the accuracy of PP&L's market price forecasts; is that correct?

A. Yes.

Q. And do you agree that it's virtually impossible for PP&L or any party to accurately predict what the price of electricity will be 20 or more years into the future?

A. The forecast, when it's stated as a specific point, a point forecast as referred to by Mr. Kleppinger, is almost invariably wrong. And so what you have is a range of possibilities. And if you want to have increasing confidence in your forecast, that band would get wider.

What we're dealing with in this proceeding is, in effect, a point forecast. And in that context, it is very difficult to have an accurate point forecast that you can

FORM 2

1 rely on.

2 Q. And would you agree it's virtually impossible to
3 predict exactly what the energy price is going to be 20
4 years from now?

5 A. Yes, I would agree with that.

6 Q. Would you please turn to page 19, lines 8
7 through 9 of your direct testimony? There you state that
8 the generation rate component should be based on a forecast
9 of market energy prices and a market-oriented forecast of
10 the cost of new capacity; is that correct?

11 A. Yes.

12 Q. In view of the uncertainty that's inherent in
13 these market price forecasts, in your opinion, would it be
14 an appropriate regulatory policy for this Commission to
15 instead base a utility's CTC on actual market prices rather
16 than a forecast?

17 A. No, I don't think so. That would be going too
18 far the other direction. You need to have an ability to
19 plan and to make intelligent choices as a buyer or to make
20 plans as a seller.

21 And without a degree of certainty which you would
22 have with a fixed price for at least a two-year period, I
23 don't think that you would have a situation that would be
24 conducive to the development of a competitive retail market.

25 Q. But you would agree, at least for that two-year

1 period, that you would recalculate the CTC at that time?

2 A. On a going-forward basis, yes, ma'am.

3 Q. And based on the actual market prices that were
4 in existence at that time?

5 A. All the relevant evidence, including the recent
6 history, yes, ma'am.

7 MS. SWANSTROM: Thank you. That's all the questions
8 I have.

9 JUDGE KASHI: Thank you very much.

10 Mr. Kaplan?

11 MR. KAPLAN: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. KAPLAN:

14 Q. Good morning, Mr. Johnstone. My name is Donald
15 Kaplan. I'll be examining you this morning on behalf of
16 Pennsylvania Power and Light Company.

17 A. Good morning.

18 Q. Could you please turn to page 3 of your
19 testimony? Would you agree that the first step in assessing
20 competition is to define the relevant market?

21 A. Yes, sir.

22 Q. Would you agree that for a firm to possess
23 market power, it must face sufficiently low intensity of
24 actual competition from firms currently in the market and a
25 correspondingly low intensity of potential competition from

1 firms not currently in the market?

2 A. Would you give me the very beginning of that
3 again, please?

4 Q. Would you agree that for a firm to possess
5 market power, it must face sufficiently low intensity of
6 actual competition from firms currently in the market and
7 correspondingly low intensity of potential competition from
8 firms not currently in the market?

9 A. I think that would be necessary but not
10 sufficient if you're trying to establish a lack of market
11 power.

12 Q. If I was trying to establish market power, then
13 both of those conditions would need to be true to establish
14 market power?

15 A. You would need to have an intensity, yes.

16 Q. In order for market power to exist, you would
17 need a lack of intensity of actual and potential
18 competition? Market power would exist in the absence of
19 both actual and potential competition?

20 A. Yes.

21 Q. Is it true that the relevant market under retail
22 competition will be determined in large part upon the
23 availability of transmission and distribution at a
24 reasonable price and under fair and comparable terms and
25 conditions?

1 A. That is a part of it but not in large part.
2 During the context of the transition, the proposals that are
3 at issue in this proceeding are very much a part of what
4 constitutes the relevant market.

5 Q. What I'm asking is, would the cost of reaching
6 customers over the transmission and distribution system be
7 an important relevant consideration to determining the scope
8 of the geographic market once customer choice is available?

9 A. Yes.

10 Q. Would you agree that once retail competition is
11 implemented, both transmission and distribution will be
12 available at rates that are regulated either by the Federal
13 Energy Regulatory Commission or the Public Utility
14 Commission of Pennsylvania?

15 A. Yes.

16 Q. And would you agree that those rates would apply
17 not only to alternate suppliers in PP&L's distribution
18 system but to PP&L's competitive generation supplier as
19 well?

20 A. Yes, that's my understanding.

21 Q. Would you agree that the concept of market power
22 implies the ability to control market price by exercising
23 control over total amount of output available in the market?

24 A. That is one concept. The control of the
25 delivery system is another.

1 Q. Would the concept of using delivery --
2 ultimately we're talking about market power in the
3 generation markets. And in order to have market power, you
4 would need to control through some means the availability of
5 output in the market?

6 A. I think what we're going after ultimately is
7 price, and certainly there's a relationship between price
8 and output. I think I'm with you on that.

9 Q. So if you can't prevent entry or output
10 expansion by firms in the market, you're not going to be
11 able to exercise market power?

12 A. That's correct.

13 Q. Now, would you agree, Mr. Johnstone, that the
14 way the Federal Energy Regulatory Commission, the U.S.
15 Department of Justice and the Federal Trade Commission
16 determine the degree of competition in a market is by the
17 application of the Department of Justice, Federal Trade
18 Commission merger guidelines?

19 A. Yes.

20 Q. Now, it is also true that you have not conducted
21 any analysis of either the wholesale market for electricity
22 or the retail market for electricity that would exist as of
23 the beginning of competition?

24 A. Difficult to -- with respect to the first point,
25 the wholesale market, we have relied on the analyses that

1 have be submitted, the forecast of the market price.

2 With respect to the retail market, there is nothing
3 there to analyze yet, and I think the point of this
4 proceeding is to put in place procedures and policies that
5 will allow that to develop.

6 Q. Would you agree, Mr. Johnstone, that the
7 Electric Generation Competition and Customer Choice Act
8 balances a number of goals, including competition?

9 A. That's true.

10 Q. Would you agree that among those goals are
11 fairness to customers, electric utilities, investors and the
12 employees of electric utilities?

13 A. Yes, and I believe that it also includes in that
14 list suppliers.

15 Q. Would you agree that among those goals are the
16 availability to all electric customers of electric power
17 under reasonable terms and conditions?

18 A. Yes.

19 Q. Would you agree that among those goals are the
20 assistance of low income customers?

21 A. Yes.

22 Q. Would you agree that among those goals are the
23 maintenance of a safe and reliable electric system?

24 A. Yes.

25 Q. Mr. Johnstone, if you could to page 7 of your

1 testimony, would you agree that Pennsylvania Power and Light
2 has not testified at any place in this proceeding that it
3 intends to use the generation supply group as a supplier of
4 power for customers who fail to choose alternative
5 suppliers?

6 A. I guess it's my understanding that they intend
7 to use that group based on what was characterized as an
8 arm's-length negotiation.

9 Q. Is it your understanding that what they
10 testified to was that if they do use that group, it would be
11 an arm's-length negotiation, but they have not made a
12 commitment to use that group? Would that be more accurate?

13 A. No, that's not my understanding. That would be
14 an important difference, if that were the case.

15 Q. You would agree that the price at which the
16 electric delivery group would acquire power would be
17 prevailing market prices?

18 A. I agree that that's the stated intent.

19 Q. Now, let's say that the market price for power
20 is three cents, hypothetically, and PP&L's CTC were two
21 cents.

22 Would you agree that it would be economically
23 irrational for PP&L to use some of its CTC to sell power
24 below the prevailing market price when it could sell that
25 power at the prevailing market price?

1 A. No.

2 Q. Is the condition under which you believe it
3 would be economically rational for them to do that the
4 ability to permanently exclude competitors for the market?

5 A. I think it would be their ability to do that in
6 the context of the transition period so as to get to the end
7 of the transition period with its market share largely
8 intact. I don't think it could be permanent, but it could
9 last through 2005. That is in fact the danger that I see.

10 Q. So that unless they had some reasonable
11 guarantee that they could exclude these competitors from the
12 market for some long period of time, there would be no
13 incentive for them to do that?

14 A. Well, they have the ability under the company's
15 proposal to do that through 2005. I think that is a long
16 period of time.

17 Q. So they would permanently give up CTC throughout
18 the period between now and 2005 in order to keep competitors
19 from the market?

20 A. Permanently give up -- excuse me, let me think
21 about that.

22 (Pause.)

23 A. I think the scenario -- I'm not sure that I'm
24 quite with you on this scenario. As I understand it, we
25 would have a market price in the generation rate that was

1 potentially less than market, with their total cost being
2 covered by definition in the CTC.

3 Q. That's not my hypothetical.

4 A. Okay, then I'm sorry.

5 Q. The Commission has determined that the CTC is
6 two cents.

7 A. All right.

8 Q. And the market price, the competitive market
9 price is three cents. PP&L sells power at two cents and
10 collects two cents CTC for a total collection of four cents,
11 therefore voluntarily foregoing one cent.

12 It's your testimony that they would have an incentive
13 to do that from the beginning of the transition period
14 through 2005?

15 A. No.

16 Q. Is it your testimony that they would have only
17 an incentive to undercut the market price of electricity if
18 they could fully make up those losses or those lost
19 opportunities for profit by collecting more CTC?

20 A. Certainly to the extent that they fully collect
21 it, that would be true. And then it's a question of degree
22 after that.

23 Q. And you agree that anything they do give up
24 would be permanently lost?

25 A. There is I understand in the Act a provision

1 to -- now, let me back up just a minute. Again, the
2 discount is in the market price and not the CTC. In that
3 scenario, I don't see any way to come back to get it, no.

4 Q. Now, would you agree that in order to engage in
5 the kind of subsidy we're discussing here, all you really
6 need is a large amount of cash?

7 A. That would be helpful.

8 Q. And the source of that cash, whether it be CTC
9 or retained earnings, would be irrelevant?

10 A. I agree that it's irrelevant. You say all that
11 you need is the cash. You also need the will and the
12 decision to sustain the losses associated with that.

13 In the sense of being able to do it financially, you
14 need the cash. There are certainly other implications.
15 That's not the only one.

16 Q. If you would turn to page 11 of your direct
17 testimony, please, looking at the answer beginning on line
18 16, is it the case that if the market price is higher than
19 that forecasted by PP&L due to increases in fuel costs, that
20 PP&L would be required to pay those fuel costs in order to
21 generate the power for all of the fail-to-choose customers
22 returning to PP&L because of the rate cap?

23 A. It's true. It's also true that that's one of
24 the exceptions under the Act where they could petition for
25 rate relief.

1 Q. And they would have to obtain that from the
2 Commission, it's not automatic; is that correct?

3 A. That's correct.

4 Q. Is it also true that before the enactment of the
5 Customer Choice Act, PP&L was able to pass through higher
6 fuel costs through the Energy Cost Rate that existed prior
7 to the passage of the Act?

8 A. Yes.

9 Q. And it is your understanding that that provision
10 was eliminated in December of 1966; is that correct?

11 A. That provision which passed through higher and
12 lower costs, as the case may be, was eliminated. That's my
13 understanding.

14 Q. Could you please turn to page 14 of your direct
15 testimony? Would you agree that if PP&L is offering fully
16 comparable transmission and distribution service to all its
17 suppliers, and that the market price was generally below the
18 prices projected by PP&L, that there is nothing
19 anticompetitive about PP&L capturing the business of a large
20 portion or even most of its former retail distribution
21 customers if it does so by its excellent prices, excellent
22 products, superior service and superior reputation for
23 reliability?

24 A. So long as that is not in the context of the
25 transition period but in the period after 2005 when we're

1 not dealing with the generation rate and the CTC
2 considerations, I would agree that that's a good result.

3 Q. Now, isn't it also true, Mr. Johnstone, that
4 PECO Energy and GPU in Pennsylvania and maybe even Penn
5 Power will be collecting CTC as well?

6 A. Yes.

7 Q. I meant to say "West Penn Power." I'm sorry.

8 Isn't it also true that even if the scenario you
9 project with respect to use of CTC revenues to exclude
10 competitors becomes true, that the other regulated utilities
11 in Pennsylvania collecting CTCs will still be around as
12 competitors to PP&L?

13 A. No, I would not agree that they would be in your
14 retail market. They would certainly continue to be
15 wholesale competitors.

16 Q. Well, if they're collecting CTCs, why can't they
17 use their CTCs to subsidize their retail prices to compete
18 with PP&L?

19 A. I think that their CTCs have to do with the
20 costs on their system. Now, the question is, would they
21 come in in the face of a CTC that forced a below-market
22 price in your service area and sell in your service area
23 when they could instead sell that same power in the
24 wholesale market and get more for it.

25 I see no economically rational reason for them to do

1 that. No other competitor would come in and, for an
2 extended period of time, endure a loss.

3 Q. Well, first of all, why would they care whether
4 it's their own customers or PP&L's customers?

5 A. Well, I suppose we'll deal with the situation
6 with respect to their customers in those respective
7 proceedings. And I would like to think that we'll get a
8 good approach similar to what I'm recommending so that this
9 wouldn't happen.

10 Now, if you're asking me to assume that something
11 like you have recommended was in place in all those, then
12 that would be a different situation. It's not something I
13 would recommend, though.

14 Q. But I'm asking you to assume that your
15 recommendation was not adopted, accordingly we are
16 collecting CTCs as proposed by PP&L and PECO is collecting
17 CTCs as proposed by PECO, \$7.5 billion worth or whatever
18 they're awarded.

19 Wouldn't they be indifferent as to whose retail
20 customers they went after?

21 A. Absolutely not. If they're going to supply your
22 customers, customers outside their service territory,
23 they've got to deal with marketing. They've got to deal
24 with determining the load of those customers. They've got
25 to deal with scheduling in your service territory. They've

1 got to deal with the imbalance charges, whatever they turn
2 out to be.

3 They've got to deal with billing and collection in
4 your service area. They've got to deal with bad debts, just
5 like any other marketer that was coming into your area.

6 So I don't think that they would be indifferent at
7 all as compared to continuing to operate where they have
8 been.

9 Q. So your scenario requires PP&L to violate its
10 code of conduct in order to give competitive advantages to
11 its retail energy supply group to become true?

12 A. I think that there is one of two scenarios
13 there, I suppose. I hadn't contemplated in terms of them
14 violating it.

15 It's my understanding that they propose to buy from
16 the supply group at a price that would allow them to sell
17 under the generation rate that they proposed.

18 That generation rate does not include the marketing
19 costs, does not include these half a dozen factors that I
20 just listed. And so there is a problem there. Either the
21 supply group is going to sell at a loss or somebody else is.

22 But if it's going to be equal treatment for all, and
23 this is going to work with respect to the supply business,
24 somebody is going to have to come in and sell at a loss for
25 an extended period of time.

1 Q. Well, the hypothetical I'm positing is that PP&L
2 did not provide its retail energy supply group with customer
3 lists, marketing information on a preferential basis, and
4 that's available to all suppliers; and that all suppliers
5 equally have access to that information, they have equal and
6 full access to PP&L's service territory.

7 But what these other suppliers don't have under this
8 scenario as discussed by you is, they don't have CTCs other
9 than PECO and GPU and West Penn Power and Duquesne and Penn
10 Power.

11 A. I understand what you're saying. I think the
12 linchpin here in my mind is the market price that's the
13 other half of the CTC equation.

14 It's the market price proposal that does not allow
15 for the full cost in my opinion to get that wholesale power
16 to a retail transaction.

17 Q. So what you're proposing is, as I understand it,
18 then, the problem is the fact that the electric delivery
19 group will be selling power to the fail-to-choose customers
20 at cost? That's your problem?

21 A. At wholesale cost, with all these other costs
22 having been avoided.

23 Q. So they're selling to last resort customers,
24 fail-to-choose customers at wholesale cost, and will you
25 concede -- let's say they mark it up for the cost of

1 acquiring power.

2 A. It's my understanding that the proposal is
3 market price without any mark-up whatsoever. That seems to
4 be the company proposal, so I can't agree to that.

5 Q. Let us assume that they add to the wholesale
6 cost the cost of a small staff of a few individuals to
7 acquire the power.

8 A. There is not room for that under the company's
9 proposal.

10 Q. The company says it would acquire the power at
11 prevailing market prices and pass it through without profit.
12 Do you agree with that?

13 A. I agree with that.

14 Q. And without profit would include compensation
15 for whatever acquisition costs there are.

16 A. Yes.

17 Q. But let's assume that they are relatively
18 trivial when spread over all the kilowatt-hours. Let's
19 assume that. That's not a question.

20 Now, assuming that, you think that price is too low;
21 is that correct?

22 A. The price that I think is too low is the
23 generation rate that's going to in effect be the cap on that
24 transaction and every other one. Now, if the generation
25 group has those costs and can sell it at that price, that's

1 okay, if they've covered their costs.

2 The question is, how do you get it from there to the
3 retail customer, and how does that interact with the
4 generation rate proposal which allows for none of these
5 costs but, from my understanding of the proposal, is based
6 solely on the wholesale market price.

7 Q. Is your proposal then that PP&L should be
8 required to mark up that price to customers who fail to
9 choose so that it is above the wholesale cost?

10 A. Mark it up has a connotation. It should reflect
11 the cost to deliver to a retail customer or a generation
12 supplier subject to the rate cap. That's what makes all
13 this sticky.

14 Q. That would mean I'm adding costs in addition to
15 its wholesale acquisition cost?

16 A. Yes. Those are not the total costs.

17 Q. Well, assuming that all of the electric delivery
18 group's transmission and distribution costs were being
19 covered so that there were no other costs, what other costs
20 would you have PP&L add on?

21 A. Thank you. The assumption was incorrect. I
22 agree that you have to acquire the power, but then you have
23 to have power that matches the load, so you have the
24 scheduling. You have to deal with the imbalances. If
25 you're going to be treated comparably to all other

1 suppliers, that supply and the load will not match and you
2 will have the costs associated with the imbalance. You will
3 have the billing. You will have the collection. You will
4 have the bad debts. If they're going to be treated like all
5 other suppliers, they will have to separately deal with all
6 of the costs associated with Chapter 56. So it seems to me
7 that those are all costs that are relevant to the
8 transaction and would fall to that retail supply function.

9 Q. So as long as all those costs are covered, then
10 that's the price that they should sell the power at?

11 A. Yes, sir.

12 Q. Would you agree, Mr. Johnstone, that once
13 competition begins, PP&L will be able to compete for
14 customers within PECO's and GPU's and West Penn Power's
15 sales territories?

16 A. I don't know about PP&L, per se. I understand
17 the competitive generation supply group would be able to.

18 Q. That's correct. You understand that?

19 A. Yes.

20 Q. And you also understand that the comparable
21 organization with those entities, GPU, PECO, West Penn
22 Power, would be able to compete in PP&L's service territory?

23 A. Yes.

24 Q. Do you also understand that in calculating
25 stranded costs, the Commission is supposed to make its best

1 estimate of stranded costs?

2 A. I think there are a number of provisions of the
3 Act. "Best efforts," I don't recall those words, but
4 something like that.

5 Q. It should aim as accurately as it can?

6 A. And then determine what is just and reasonable
7 based on the facts.

8 Q. And then to do that it must make its best and
9 most accurate estimate of the marketplace?

10 A. I would agree with that.

11 Q. And you would also agree that there is nothing
12 in the Act which authorizes the Commission to overstate the
13 price of energy and capacity in estimating PP&L's stranded
14 costs?

15 A. No, sir. I want to agree with you, yes.

16 Q. You're agreeing with me. Would you agree that
17 under PP&L's proposed code of conduct, that PP&L's
18 competitive energy supplier would be charged the same price
19 for billing services as any other supplier would be charged?

20 A. I believe that is the position as it has been
21 modified, yes.

22 MR. KAPLAN: Might I have just a second, Your Honor?

23 JUDGE KASHI: Yes.

24 (Pause.)

25 MR. KAPLAN: We have no further questions. Thank

1 you, Mr. Johnstone.

2 THE WITNESS: You're welcome.

3 JUDGE KASHI: Redirect, Mr. Stewart?

4 MR. STEWART: If I could just have one minute, Your
5 Honor?

6 JUDGE KASHI: Sure.

7 (Discussion off the record.)

8 JUDGE KASHI: Back on the record.

9 Redirect, Mr. Stewart.

10 **REDIRECT EXAMINATION**

11 BY MR. STEWART:

12 Q. Mr. Johnstone, do you recall being asked by Mr.
13 Kaplan whether or not other utilities would have the ability
14 to compete in PP&L's service territory?

15 A. Yes.

16 Q. Could you just clarify your answer on what you
17 meant when you said that they would have the ability?

18 A. I understood the question to go to their ability
19 under the law, whether or not they would be able to come in
20 here. I think that the important issue here is economically
21 whether they could do so, and my concern would be that while
22 they might have the legal ability to compete, that
23 economically they would face the same problems as all other
24 alternative suppliers.

25 MR. STEWART: I have nothing further, Your Honor.

1 JUDGE KASHI: Thank you very much.

2 Any follow-up?

3 (No response.)

4 JUDGE KASHI: Thank you. You are excused, sir.

5 (Witness excused.)

6 JUDGE KASHI: That which has been marked and
7 identified as MAPSA Statement 1, together with the attendant
8 exhibit, No. DEJ-1, are received into the evidentiary record
9 without objection.

10 (No response.)

11 JUDGE KASHI: Without objection.

12 (Whereupon, the documents marked as
13 MAPSA Statement No. 1 and MAPSA
14 Exhibit No. DEJ-1 were received in
15 evidence.)

16 JUDGE KASHI: PP&L, do you wish to call your next
17 witness, Mr. Krall?

18 MR. RUSSELL: Thank you, Your Honor.

19 JUDGE KASHI: Now we get into one of my favorite
20 areas, rate design.

21 MR. RUSSELL: Your Honor, Pennsylvania Power & Light
22 Company calls Douglas A. Krall as its next witness.

23 JUDGE KASHI: Mr. Krall, would you raise your right
24 hand to be sworn, sir?

25

1 Whereupon,

2 DOUGLAS A. KRALL

3 having been duly sworn, testified as follows:

4 JUDGE KASHI: Please be seated, sir.

5 MR. RUSSELL: Your Honor, under our agreed-upon
6 procedures, I will simply identify Mr. Krall's testimony and
7 exhibits. PP&L Statement No. 10 is Mr. Krall's direct
8 testimony. It is an 18-page document. Attached to that is
9 Exhibit DAK-1. In addition, PP&L Statement 10-R is the
10 rebuttal testimony of Mr. Krall. It consists of 43 pages,
11 and attached to it are Exhibits DAK-2, DAK-3 and DAK-4.

12 DIRECT EXAMINATION

13 BY MR. RUSSELL:

14 Q. Mr. Krall, do you have any corrections to your
15 testimony or exhibits?

16 A. Yes. I have two small corrections to Statement
17 No. 10-R, the rebuttal testimony. On page 16, line 5, there
18 is a reference to "RS class" customers. That should be
19 "GS." On page 38, line 1, the words "current by" should be
20 replaced by "currently," one word, "c-u-r-r-e-n-t-l-y."

21 Q. And is that all the corrections, Mr. Krall?

22 A. Those are all the corrections, yes.

23 MR. RUSSELL: Your Honor, with the foundation laid by
24 agreement, PP&L moves into the record Statement No. 10,
25 Statement No. 10-R and Exhibits DAK-1 through DAK-4.

1 JUDGE KASHI: They will be so marked for purposes of
2 identification, and pending any timely motions and/or
3 objections pending cross-examination, they will be received
4 into the evidentiary record.

5 (Whereupon, the documents were marked
6 as PP&L Statements Nos. 10 and 10-R
7 and PP&L Exhibits Nos. DAK-1 through
8 DAK-4 for identification.)

9 MR. RUSSELL: And finally, Your Honor, we have short
10 oral rejoinder from Mr. Krall.

11 BY MR. RUSSELL:

12 Q. Mr. Krall, have you reviewed the surrebuttal
13 testimony of the Small Business Advocate Witness Knecht
14 regarding the company's proposed customized rate design?

15 A. Yes, I have. The company's original proposal
16 was to offer to residential customers a choice between an
17 unbundling which preserves the existing block structure and
18 a customized design which moves 50 percent of the use-based
19 CTC to a fixed charge. The original proposal would require
20 commercial and industrial customers to take service under
21 the customized design.

22 Witness Knecht, as well as several other parties,
23 criticized the mandatory feature and recommended all
24 customer classes have the option afforded to the residential
25 class. The company has previously stated its concern that

1 extending a selection opportunity to all classes would lead
2 to erosion of CTC revenues. However, upon further
3 consideration, the company has decided that the opportunity
4 to select between the customized and traditional design
5 could be extended to all classes if and only if appropriate
6 revenue collection protections are instituted.

7 Specifically, if the opposing party proposals are
8 adopted, they should be adopted only on the following terms.
9 First, all customers would have the opportunity to elect to
10 receive service under the customized or the traditional rate
11 design. For each customer this election will remain in
12 effect for a minimum of 12 months that can be revised
13 thereafter. Any subsequent revision must remain in effect
14 for a minimum of 12 months.

15 Second, PP&L will clarify its CTC reconciliation
16 proposal now described in Mr. Kleha's rebuttal testimony to
17 reconcile to revenues rather than sales. Specifically, PP&L
18 will track for each year the CTC is in effect the difference
19 between the annual amortization of stranded costs approved
20 in this proceeding and PP&L's actual CTC revenues for the
21 same period. Any over or under-collection will be addressed
22 by a shortening or a lengthening of the CTC collection
23 period.

24 PP&L's willingness to resolve the matter of customer
25 choice with regard to the rate design applied to customers

1 in the manner set forth above is conditioned upon acceptance
2 of both proposals. Without these conditions, allowing
3 customer choice between customized or traditional rate
4 design for all classes will almost inevitably lead to an
5 under-collection of approved stranded costs in comparison
6 with PP&L's original proposal.

7 The change in the method of reconciliation addresses
8 and substantially resolves PP&L's concern that customer
9 choice with regard to rate design would lead to a
10 substantial CTC revenue shortfall.

11 MR. RUSSELL: Your Honor, Mr. Krall is now available
12 for cross-examination.

13 JUDGE KASHI: Thank you very much, sir.

14 MR. EPSTEIN: Your Honor, if I may, I have to be back
15 at work at 12:30. I was wondering with your permission and
16 the indulgence of the other parties, I have micro-cross for
17 Mr. Krall, if I could go first.

18 JUDGE KASHI: Does anybody have a problem with that?

19 MR. RUSSELL: We have no objection, Your Honor.

20 JUDGE KASHI: Mr. Epstein.

21 MR. EPSTEIN: Eric Epstein, pro se. I also wanted to
22 alert the Court that I am still a Plaintiff in the case
23 before the PUC concerning the cost of transcripts; and if
24 possible, I would like to have transcripts reproduced of
25 this case at a true cost. That case is still pending, so I

1 don't know if you will rule on it.

2 JUDGE KASHI: There is nothing before me, sir. Go
3 ahead.

4 MR. EPSTEIN: Thank you, Your Honor

5 CROSS-EXAMINATION

6 BY MR. EPSTEIN:

7 Q. Mr. Krall, Eric Epstein representing the firm of
8 pro and se. How are you doing today? Just four questions
9 for you.

10 Mr. Krall, has PP&L proposed a rate recovery formula
11 for decommissioning SESS that segregates users based on
12 years of service?

13 A. No, it has not.

14 Q. Is it your belief that if stranded costs for
15 decommissioning SESS are denied, future customers would be
16 unnecessarily at risk?

17 A. I'm sorry. You referred to SSC --

18 Q. Susquehanna Electric Steam Station.

19 A. Could you repeat the question, please?

20 Q. I'll just refer to it as Berwick if that's
21 helpful.

22 A. Fine.

23 Q. Is it your belief that if stranded costs for
24 nuclear decommissioning at Berwick are not part of the
25 stranded recovery costs, that future customers would be at

1 risk?

2 A. No. Future customers should be -- new customers
3 connecting to the system should be subject to CTC charges
4 consistent with the language of the Act.

5 Q. Would the company assess future customers who
6 receive little to no electrical benefit from Berwick nuclear
7 decommissioning and nuclear waste isolation fees based on a
8 weighted schedule?

9 A. No. We would charge customers in accordance
10 with the Act consistent with their standing as new
11 customers, and they would receive the CTC charges approved
12 in this proceeding.

13 Q. So that someone who came on line tomorrow would
14 be assessed the same charge as someone who received electric
15 from that facility for the last ten years?

16 A. That's correct.

17 Q. In your opinion, is it fair for customers who
18 receive no benefit from a plant to be assessed a fee for
19 stranded costs?

20 A. I'm not sure that fairness is really an issue.
21 I think it is compliance with the law in this case.

22 Q. But I'm just asking for your opinion. In your
23 opinion, do you think that is fair?

24 A. In my opinion, yes, I think that is fair and
25 consistent with inter-generational concerns.

1 MR. EPSTEIN: Thank you. That concludes my cross,
2 Your Honor.

3 JUDGE KASHI: Thank you very much, Mr. Epstein.
4 Mr. Kohler.

5 MR. KOHLER: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. KOHLER:

8 Q. Good afternoon, Mr. Krall.

9 A. Good afternoon.

10 JUDGE KASHI: Let me just alert you that it is my
11 intent to go ten minutes and we will then break.

12 MR. KOHLER: I think I will be about ten minutes,
13 Your Honor. I'm going to try.

14 JUDGE KASHI: We will break at 12:30 to 1:30 for
15 lunch.

16 MR. KOHLER: Maybe we can even get Mr. Stewart in in
17 that ten minutes, too.

18 BY MR. KOHLER:

19 Q. Mr. Krall, were you here for Dr. Kalt's
20 testimony yesterday? I don't remember seeing you.

21 A. I was here for about a half-an-hour of it.

22 Q. Were you here for the discussion -- I would like
23 to present Mr. Krall with Enron Exhibit No. 1.

24 (Document handed to witness.)

25 Q. Were you here for the discussion of that

1 exhibit?

2 A. No, I was not.

3 Q. I'd like to refer you to the answer to 16(b).

4 There is a statement in there in particular that is causing
5 me problems in understanding the company proposal, and I
6 just want to understand the company proposal.

7 A. Fine.

8 Q. It says, "However, because supply will be at
9 market prices, Chapter 13 of the Public Utility Code may not
10 apply." Can you explain how all of this is going to work
11 under the company's proposal?

12 A. Well, as to this specific reference, I
13 understand that Chapter 13 of the Public Utility Code speaks
14 to cost-based rates. To the extent that this service would
15 be provided at a market price, I'm not sure how Chapter 13
16 would apply.

17 Q. Does the term "cost-based rate" appear in
18 Chapter 13?

19 A. I believe it does.

20 Q. Is this meant in any way to say that Chapter 13
21 procedures, not Chapter 13 ratemaking methodology, that
22 Chapter 13 procedures may not apply?

23 A. I'm not that familiar with Chapter 13 to address
24 that. I only inquired as to the application of Chapter 13
25 to market prices.

1 Q. So you don't know whether Chapter 13 procedures
2 would apply?

3 A. I don't know about Chapter 13 procedures, right.
4 I've stated here that I am uncertain. It says it may not
5 apply.

6 Q. I asked Dr. Krall some questions yesterday about
7 what he meant by the term "tariffed," and I think he
8 deferred to the company witness. I suppose you might be
9 that person.

10 A. Fine.

11 Q. Mr. Dirmeier in his testimony drew a conclusion
12 that the service was de-tariffed, and the company has made
13 it clear that they believe that is incorrect.

14 What is meant by the term "tariffed"? Well, first of
15 all, in your view, will this be tariffed?

16 A. Let me just be perfectly clear, in 16(b), we're
17 talking about customers who have the opportunity for choice.

18 Q. That's right.

19 A. But do not elect to choose. Therefore, they are
20 what we have been referring to as last resort customers.

21 Q. I'm restricting the questions just to 16(b).

22 A. Right. We believe that the company's obligation
23 is to provide them service at prevailing market prices. We
24 look at that as pretty much of a pass-through. In Mr.
25 Kleha's testimony, we propose a mechanism called a purchase

1 generation cost rate to track that to assure that it does
2 follow prevailing market prices and that that is verifiable.

3 Q. Just to make it clear, when you say -- do you
4 know what a catch-all tariff provision is?

5 A. I'm not familiar with that terminology, but I
6 think as to the specific issue of tariff, the mechanisms for
7 dealing with last resort service will be described by
8 tariff.

9 Q. And it's likely that what that tariff provision
10 would say is that the generation rates charged these
11 customers will be determined under Mr. Kleha's methodology;
12 is that fair?

13 A. I think words to that effect and subject to
14 appropriate true-ups.

15 Q. It is unlikely that there will be rate points?
16 Do you know what rate points are?

17 A. I might like to hear your definition.

18 Q. Where the tariff identifies a specific rate,
19 that might be defined as a rate point.

20 A. In the proposed tariff that we filed, there are
21 rate points, as you term them, for energy and capacity for
22 each class for two years. We felt that that was necessary
23 to do to address the phase-in.

24 Other than that particular issue, no, you can't know
25 the market price ahead of time.

1 Q. Fair enough. I want to refer you to page 24 of
2 your surrebuttal testimony.

3 A. That would be rebuttal.

4 Q. I apologize. I consistently made that mistake.
5 Is it fair to summarize your testimony starting on line 6
6 that it is proper for the generation supply group to serve
7 customers which are not yet eligible to choose because that
8 division of the company serves those customers now?

9 A. Yes, I think that would be a fair
10 characterization.

11 Q. Mr. Krall, at the present time is the generation
12 supply group a monopoly provider?

13 A. Yes, it is.

14 Q. And after 1/1/99, won't it be a competitive
15 provider?

16 A. A third of it will be, in my view. Two-thirds
17 of it will not be, in my view.

18 Q. Don't you believe that that transition from a
19 monopoly provider to a competitive provider should have a
20 significant impact on how the supply group conducts its
21 business?

22 A. Yes, and I believe it will.

23 Q. And I think you just said this. Under your
24 proposal, the supply group would be both a monopoly and a
25 competitive provider at the same time, depending on the

1 customer, during the phase-in period; is that right?

2 A. That is correct.

3 Q. Now, other than this one aspect, does the
4 delivery group provide all other monopoly functions,
5 including the provision of generation, to carrier of last
6 resort customers?

7 A. Yes.

8 Q. Now, referring to page 27 of your rebuttal,
9 correct me if I misstate this, but I believe you state that
10 PP&L as a provider of last resort has to provide carrier of
11 last resort service at prevailing market prices. Is that a
12 fair characterization?

13 A. Yes.

14 Q. When you say "has to provide," are you referring
15 to a legal obligation there?

16 A. It is spelled out under the section of the Act
17 titled "Obligation of the Electric Distribution Utility."

18 Q. Is that Section 2087(e)(3) of the Act? Do you
19 have the Act, sir?

20 A. Not on the desk in front of me.

21 (Document handed to witness by Counsel Kaplan.)

22 A. And your reference was to 2807(e)(3)?

23 Q. Yes.

24 A. Yes, that's right.

25 Q. Within that subsection, which specific language

1 are you referencing?

2 A. In terms of the obligation, the whole discussion
3 prior to -- the first part tells me who that obligation is
4 to. The last part tells me what that obligation is. The
5 last two sentences -- well, it's within the last two lines
6 of this copy tells me that it is at prevailing market prices
7 and shall recover fully all reasonable costs, which include
8 acquisition costs.

9 Q. So it is the provision that says, "shall acquire
10 electric energy at prevailing market prices;" is that right?

11 A. And "shall recover fully" --

12 Q. To serve that customer "and shall recover fully
13 all reasonable costs"?

14 A. Yes.

15 Q. Isn't your testimony that it should sell
16 electric energy at prevailing market prices, not acquire?

17 A. I'm presuming that that's what is meant by
18 "shall recover fully all reasonable costs." It would be the
19 acquisition of the commodity itself, the cost of the
20 acquisition, and appropriate allocated overheads.

21 Q. Is your read of this that there are two clauses
22 there, acquire energy at prevailing market prices and
23 recover all reasonable costs? Is that a fair
24 characterization from your read?

25 A. Yes. If I were to diagram the sentence, yes, it

1 is two parts. If I put them together, I am considering that
2 last resort service is, in my terminology, a pass-through.

3 MR. KOHLER: Nothing further.

4 JUDGE KASHI: Thank you very much. It is now 12:30,
5 and we will break for lunch, and we will come back at 1:30.
6 At that time we will have the cross of Mr. Stewart followed
7 by Mr. Fogel.

8 MR. FOGEL: Your Honor, I've merged my cross with Ms.
9 Tierney.

10 JUDGE KASHI: You don't have cross for Mr. Krall?

11 MR. FOGEL: No.

12 JUDGE KASHI: Good enough. So then we'll go to Mr.
13 Kleppinger. After Mr. Kleppinger, Mr. Caplan. Then OSBA
14 and OCA.

15 We'll recess until 1:30.

16 (Witness temporarily excused.)

17 (Whereupon, at 12:30 p.m., the hearing was adjourned,
18 to be reconvened at 1:30 p.m., this same day.)

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AFTERNOON SESSION

(1:30 p.m.)

1 JUDGE KASHI: Going back on the record.

2 Just for the record, in case I haven't been saying it
3 loud enough, I do hope that behind the scenes the parties
4 are in fact talking to each other.
5

6 MR. RUSSELL: We are to some extent, Your Honor.

7 JUDGE KASHI: I've lived through the coal contract
8 cases and long-term contracts, and I know, Mr. Russell, you
9 understand that whole thing that transpired, and we've all
10 lived through putting \$300 million on Met-Ed's ratepayers to
11 get out of a co-gen contract that there wasn't a single
12 shovel of dirt ever turned, and I think that this particular
13 proceeding lends itself to a collaborative type of effort
14 that keeps everybody's interests with the ratepayers
15 uppermost in mind, and I think that it lends itself better
16 to a negotiated, collaborative kind of effort than it does
17 to a litigated, hard fast, by the numbers, this is how we're
18 going to cut them.
19

20 My fear is that if it goes down that way, a couple
21 years down the road we will have it revisited. And I think
22 that looking at the company that was up in front of us who
23 walked out of here in my estimation -- and I mean, this is
24 only my estimation, but I'll put it on the record -- they
25 walked out of here with nothing except a bunch of appeals, a

1 billion dollars and five years looking at appeals is nothing
2 from my standpoint.

3 I think there is a lot of room here for reasonable
4 people to arrive at a collaborative kind of effort. But of
5 course, that's just my opinion.

6 Back on the record. We are on the record. I'm
7 sorry. That got that reporter awake, didn't it?

8 (Laughter.)

9 JUDGE KASHI: No; I specifically want that on the
10 record.

11 Mr. Stewart, cross-examine, sir.

12 Whereupon,

13 DOUGLAS A. KRALL

14 having previously been duly sworn, testified further as
15 follows:

16 CROSS-EXAMINATION

17 BY MR. STEWART:

18 Q. Mr. Krall, my name is Todd Stewart. I represent
19 the Mid-Atlantic Power Supply Association. In your rebuttal
20 testimony at page 7, beginning at line 19, you state that
21 the company estimated the charge for market-based generation
22 that it then used in its calculation of the CTC; is that
23 correct?

24 A. Yes. That would be the estimate that Dr. Jones
25 has testified to.

1 Q. And is it true that the reason that the company
2 had to estimate what the market price would be is because
3 there currently is no effective retail market for electric
4 energy and capacity?

5 A. Well, in part, but in large part because we were
6 asked to make a forecast out over the life of long-lived
7 assets, and I can't know what the market is going to be in
8 2024. That requires a forecast.

9 Q. Right before lunch -- and I want to make sure I
10 got this correct -- in answer to Mr. Kohler, you stated that
11 the market price of energy that the electric generation
12 supply group -- and I think I got the entities correct --
13 would be using to sell energy, that they would be charging
14 customers for energy, would include appropriately allocated
15 overhead I believe were your words. Is that correct? Am I
16 correct in that?

17 A. This would be the electric delivery group, I
18 think is the term, providing last resort service.

19 Q. The delivery group; I'm sorry. Yes.

20 A. I believe there might be some overheads
21 associated with their function.

22 Q. Would you consider an overhead to be marketing
23 costs?

24 A. No. I think that would be an allocated cost.

25 Q. And what about scheduling of load?

1 A. I think that would be an allocated cost. I
2 think when I say overheads, I'm thinking in terms of
3 building space, if it happened to be shared with another
4 PP&L entity.

5 MR. STEWART: That's all I have, Your Honor.

6 JUDGE KASHI: Thank you very much, sir.

7 Mr. Kleppinger.

8 MR. KLEPPINGER: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. KLEPPINGER:

11 Q. Good afternoon, Mr. Krall.

12 A. Mr. Kleppinger.

13 Q. I'd like to begin with your rejoinder testimony
14 and the conditions that were placed on making the customized
15 rate design option optional in the commercial and industrial
16 class.

17 A. Fine.

18 Q. The second condition, I believe, was to the
19 effect that the CTC under this condition would be
20 reconcilable as to revenue as opposed to sales; is that
21 correct?

22 A. Yes.

23 Q. Now, could you further explain how that changes
24 the reconciliation feature of the CTC compared to the
25 company's original proposal, which I believe was

1 reconcilable based on sales?

2 A. Correct. In Mr. Kleha's testimony, we describe
3 the reconciliation process built around sales levels. The
4 key feature of that reconciliation was to track CTC
5 collection relative to sales, and to the extent that there
6 was an over or under-collection, the collection period would
7 be extended or shortened appropriate to assure full
8 collection.

9 What I am proposing is that instead of tracking
10 sales-related changes in revenues -- of course, necessarily,
11 you're only tracking revenues and trying to separate out the
12 sales-caused changes -- we would be tracking full revenue
13 changes, all revenue-related changes, and truing up using
14 the same lengthening or shortening process on that full
15 revenue calculation.

16 Q. The revenue reconciliation would not attempt to
17 isolate in particular the change in revenues caused by a
18 customer who has selected the customized option and one who
19 has not. It would be all revenues.

20 A. Correct.

21 Q. Now, with that background, if we turn to your
22 rebuttal testimony at page 3, focusing on lines 8 through 15
23 -- do you have that?

24 A. Page 3, 8 through 15, right.

25 Q. Now, here you provide us with an update on what

1 stranded cost recovery your proposed CTC would actually
2 produce, and I take it that number has been revised from
3 \$4.2 billion to \$4 billion; correct?

4 A. That's what this piece of testimony is about,
5 that's correct.

6 Q. And if every projection that is in PP&L's case
7 comes true and the Commission grants what PP&L is asking in
8 terms of total stranded recovery, I take it that it will
9 take the full CTC period for PP&L to recover the \$4 billion.

10 A. That is correct, within the rate cap.

11 Q. Now, if in year --

12 A. I'm sorry; let me correct that. That also
13 includes some collections beyond that period related to
14 nuclear decommissioning costs.

15 Q. With that exception.

16 A. Right.

17 Q. Thanks for that clarification. Now, if by year
18 2003, hypothetically, with our reconciliation feature PP&L
19 has collected \$4 billion, at that point in time, does the
20 CTC get eliminated?

21 A. If we get \$4 billion as the Commission-approved
22 amount, then with the exception of that nuclear
23 decommissioning portion --

24 Q. Right.

25 A. -- yes, the CTC collection period would be

1 shorted.

2 Q. And \$4 billion is what PP&L is now asking to
3 have this Commission approve for recovery; is that correct?

4 A. I think we're asking for review of \$4.6 billion.
5 We acknowledge that to fit within the cap provisions of the
6 legislation, there is only room for 4 billion.

7 Q. I'll ask the question again then. Are you
8 asking the Commission to approve for recovery from
9 ratepayers anything more than \$4 billion?

10 A. If there is an opportunity with any other change
11 or our interpretation of the workings of the Act to be found
12 any different where we could slide in the full 4.6 and the
13 4.6 was found to be allowable, we would like the full 4.6.

14 Q. So if market prices turn out to be lower than
15 the market prices assumed in your CTC calculation, that
16 would leave room under the rate cap, would it not, all other
17 things being equal?

18 A. If actual prices turn out to be at the
19 Commission's forecasts, yes.

20 Q. So under that scenario, PP&L could conceivably
21 collect more than \$4.0 billion if the Commission says that
22 4.6 --

23 A. If the Commission were to allow that amount,
24 yes.

25 Q. So the operative number in terms of when the CTC

1 will actually be concluded is going to be driven by the
2 dollar number for stranded cost recovery that the Commission
3 states in its final order, not the \$4 billion that is on
4 page 3 of your rebuttal testimony?

5 A. I think that is correct.

6 Q. Now, on page 5 of your rebuttal testimony, lines
7 15 through 18, you indicate what the Act specified on
8 stranded generation costs and provide, I guess, something of
9 a definition there as to the difference between revenues
10 that would be available under continued traditional
11 regulation and revenues that would be available in a market
12 environment.

13 Can you point to me the section of the Act that uses
14 that language as a specification of how stranded generation
15 costs would be calculated?

16 A. I think I might have the specific quote back in
17 the testimony.

18 Q. In your direct?

19 A. No, in my rebuttal.

20 (Pause.)

21 A. On page 28 at line 22, I quote language from
22 2803 that discusses costs, quote, "which traditionally would
23 be recoverable under a regulated environment," closed quote.

24 Q. And a lead-in to that refers to the Act's
25 language regarding costs. That is at page 28, line 22 of

1 your testimony.

2 A. Yes.

3 Q. And for purposes of the language used on page 5,
4 you're talking about the difference between revenues under
5 continued regulation and revenues in a market environment.

6 A. Revenues reflect what would be recoverable.

7 Q. So are you equating costs with revenues in that
8 section of your testimony?

9 A. In a regulated environment, I'm saying that
10 revenues will reflect cost-based regulation.

11 Q. In your opinion, Mr. Krall, is the language that
12 you have used on page 5 of your rebuttal testimony, lines 15
13 through 18, equivalent to the language in Section 2803 of
14 the Act which defines transition or stranded costs?

15 A. If you're asking me to pick, I'd always defer to
16 the language of the Act.

17 Q. If I could show that to you at this time. In
18 that definition of transition or stranded costs in the Act
19 --

20 (Document handed to witness.)

21 A. This one here?

22 Q. It looks like it is the right one. Will you
23 agree that the definition in the Act does not mention
24 revenues?

25 A. No. Again, it mentions recoverable, which I

1 equate to cost-of-service-based ratemaking, as the mechanism
2 by which utilities recover their costs.

3 Q. Now, if we could turn to a different subject
4 area, back to this customized rate design option. That is
5 discussed in your direct testimony. I'll focus on pages 13
6 and 14. There you have an example of a residential customer
7 where you calculated the traditional CTC and the customized
8 CTC; correct?

9 A. Correct.

10 Q. Would you agree with me that for customers whose
11 load would increase, that the average CTC per kilowatt-hour
12 paid for that customer would be lower under the customized
13 calculation as compared to the traditional calculation?

14 A. That's correct.

15 Q. In contrast, would you agree that for a customer
16 whose load is declining, that on an average CTC per
17 kilowatt-hour basis, that customer would pay more, it would
18 be a higher average CTC per kilowatt-hour cost under the
19 customized option as opposed to the traditional option?

20 A. That's correct.

21 Q. One of the reasons that you cite for the
22 customized option I think can be found at page 14 of your
23 rebuttal testimony at lines 13 through 16, where you
24 indicate that the customized option is an incentive to
25 expand operations and bring economic development benefits to

1 Pennsylvania consistent with 2802 of the Act. Do you see
2 that?

3 A. Yes, I do. That's the close of a paragraph that
4 lists a number of different reasons why PP&L feels that the
5 customized rate design is appropriate.

6 Q. Is it also a valid economic development
7 objective to retain the existing load that we have in
8 Pennsylvania?

9 A. I think so.

10 Q. And insofar as a customer's load is declining
11 and if the customized rate option is in fact mandatory on
12 that customer, would not that customer be paying a higher
13 average total cost than under the traditional calculation of
14 the CTC?

15 A. I'm sorry. You said a higher average total
16 cost?

17 Q. All other things being equal, would he not?

18 A. His average cost per kilowatt-hour would be
19 higher on that option than the other option. The term
20 "total" confuses me.

21 Q. So would you agree that if the customized rate
22 option is in fact mandatory, it would be more difficult for
23 a shrinking business to control their energy costs than the
24 traditional design?

25 A. Difficult for them to control brings in a whole

1 host of other options, but I would agree that all other
2 things being equal, that the average cost per kilowatt-hour
3 will go up if it is measured per unit of their production.
4 That would be a higher number.

5 Q. Turning to page 15 of your rebuttal testimony,
6 beginning on line 14, you discuss your objections to making
7 the customized rate option in fact optional for industrial
8 customers.

9 A. That's correct.

10 Q. As opposed to mandatory. Just so the record is
11 clear, PP&L wants to make it mandatory. PPLICA is
12 suggesting if you're going to have that option, make it
13 voluntary on the customer's part; correct?

14 A. That's correct as to PP&L. It is my
15 understanding, yes, as far as PPLICA.

16 Q. And one of your concerns with PPLICA's proposed
17 position is that it would place a level of risk on the
18 company's collection of the CTC that would not exist if it
19 is mandatory.

20 A. That's correct.

21 Q. So I take it that under PPLICA's recommendation,
22 the risk from PP&L's perspective on CTC is higher than
23 without PPLICA's recommendation.

24 A. In our basic, proposal, yes, that is correct.

25 Q. Now, if the PP&L proposal is adopted as a

1 mandatory proposal --

2 A. The original PP&L proposal?

3 Q. The original PP&L proposal is adopted, would you
4 agree that PP&L's risk of CTC collection is less compared to
5 keeping the customized option in fact optional?

6 A. Yes.

7 Q. If PP&L's risk is less in that scenario, someone
8 else's risk is higher.

9 A. I think the issue is that we introduced the risk
10 by offering this customized proposal. There is nothing in
11 the legislation that encourages us to do this or take on
12 this risk.

13 Q. So if we wanted to keep everyone's risk
14 constant, we don't use the option at all?

15 A. No. You would go to a traditional rate
16 unbundling. You wouldn't move any charges. It would look a
17 lot like today's regulated environment. Our concern is that
18 that doesn't really get you to the spirit of the
19 legislation. You'd really have to wait for a new rate
20 design for customers until the end of CTC collection in
21 2005.

22 Q. Would you agree that as long as there is any
23 CTC, you don't have a truly competitive market, because
24 competitive markets don't normally have competitive
25 transition charges for any of the market participants, do

1 they, Mr. Krall?

2 A. I'd argue that it is probably appropriate for a
3 transition to a competitive environment where we're coming
4 from a regulated history.

5 Q. But the goals of the Act aren't completely met,
6 are they, until we're finished with stranded cost recovery?

7 A. In terms of buying generation and generation-
8 related services at market price only, that's correct.

9 Q. So where we are left today then after your
10 rejoinder testimony I think are maybe three positions. I'm
11 not sure, but you can clarify if I am mistaken. We have the
12 company's original position in the case, which is to have
13 the customized option mandatory for industrial customers and
14 commercial customers.

15 A. That's correct.

16 Q. And then in your rebuttal testimony, I believe
17 you indicate that if the Commission doesn't accept PP&L's
18 proposal, that you would, rather than making it optional as
19 proposed by PPLICA, not do it at all.

20 A. That's correct. That's what is stated on page
21 16, lines 11 through 14.

22 Q. Now with your rejoinder, we have a third
23 position that says, well, if you're going to make it
24 optional, place this condition on it on flipping back and
25 forth between traditional versus customized and have a

1 revenue reconciliation.

2 A. It is our effort to find a position that
3 accommodates the request for making those designs optional
4 and also keeping us whole.

5 Q. Now that we have three options on an option, can
6 you tell us today what the primary PP&L position is that you
7 want to see adopted in this case?

8 A. Our original proposal.

9 Q. Now, from that original proposal, has there been
10 any commercial or industrial representative in this case
11 that is excited by that proposal, that has endorsed that
12 proposal?

13 A. Excited?

14 (Laughter.)

15 Q. I'm trying not to look excited.

16 A. I'm not aware of any, but other than through the
17 testimony, I'm not aware of any objections either.

18 Q. Other than the testimony?

19 A. Other than through the testimony, I'm not aware
20 of any objections either.

21 Q. Can you conclude from what you have read in this
22 case that it is an option that customers in the commercial
23 and industrial sector are not particularly interested in
24 having available to them?

25 A. When you say an option not available to them,

1 you mean that they are not interested in having the option

2 --

3 Q. Having it forced upon them.

4 A. Having it forced upon them. From the testimony,
5 no, I gather that industrial customers would prefer to have
6 choice of the basic rate design.

7 MR. KLEPPINGER: Thank you. That's all I have, Your
8 Honor.

9 JUDGE KASHI: Thank you, Mr. Kleppinger.

10 Mr. Caplan.

11 MR. CAPLAN: Thank you, Your Honor.

12 **CROSS-EXAMINATION**

13 BY MR. CAPLAN:

14 Q. Mr. Krall, my name is Richard Caplan, and I
15 represent some independent power producers with whom you may
16 have some familiarity, one of them being Schuylkill Energy
17 Resources, Incorporated.

18 I don't have very many questions for you, except I
19 have some concerns about what I see as sort of a logical
20 inconsistency in the position that you took with regard to
21 including non-utility generation in PP&L's capacity. I
22 believe you espoused at some place in your testimony that
23 you didn't believe it was appropriate to include the non-
24 utility generation capacity in PP&L's capacity for purposes
25 of ratemaking or otherwise. Is that correct?

1 A. I discuss some of the uncertainties related to
2 doing resource planning, and indeed, relying on the
3 continued operation of NUG plants presents certain
4 uncertainties.

5 Q. And yet, you were prepared to argue in the same
6 paper, if I recall, that it would be appropriate to assume
7 that they would continue at the same level of production
8 that they enjoyed from 1994 through '96 throughout the terms
9 of their respective contracts with PP&L; isn't that true?

10 A. Yes, that's true.

11 Q. Do you find that to be something of a logical
12 inconsistency, on the one hand, arguing when it comes to
13 stranded cost recovery that it is appropriate to consider
14 those contracts as basically inviolate and the production
15 levels unwavering, and then at the same time to argue that
16 they are so insecure that you can't include them in your
17 capacity?

18 A. No, I don't find it inconsistent. The
19 discussion with regard to resource planning tried to bracket
20 what an appropriate reserve would be using reasonably likely
21 levels of several known uncertainties, but it is not a
22 single point analysis that says NUG will operate or will not
23 operate in a certain way.

24 Q. What is the status of the NUG generation now in
25 terms of capacity inclusion? Is it included as far as the

1 PUC is concerned?

2 A. I think if you look at the Commission's order
3 from our last rate case -- and I've I guess not quoted, but
4 paraphrased some material from that -- the Commission
5 recognized that it is difficult to pin down an actual
6 reserve level that is definitively the correct reserve
7 level; that there are a number of different factors that
8 reflect on that determination, so it is appropriate to
9 consider a range.

10 All I've done in my rebuttal is try to update that
11 discussion consistent with the Commission's order.

12 Q. But it is true, is it not, that PP&L in fact
13 sold some of that capacity to other utilities and therefore
14 sold it on the representation that it was firm?

15 A. I'm not familiar with that.

16 Q. You're not familiar with the fact that PP&L
17 collected revenue from the sale of the capacity of NUG
18 plants?

19 A. I'm not familiar with that.

20 Q. With regard to the contribution of the non-
21 utility generation or the PURPA contracts, if you will, to
22 the calculation of stranded cost, is it fair to say that
23 some of those non-utility generation plants use a technology
24 which is not being used presently by PP&L's own generation
25 facilities, in particular, fluidized bed combustion?

1 A. PP&L has no fluidized bed combustion units of
2 its own.

3 Q. And would it be fair to say that there are a
4 significant number of the non-utility generation plants with
5 whom PP&L has contracts that use this technology?

6 A. Yes.

7 Q. Did you in the course of making your
8 determination that these plants would continue to operate at
9 the level that was experienced in 1994 to '96 make any
10 evaluation of the longevity of plants using that technology
11 elsewhere like in Europe where the technology was perfected?

12 A. We have individuals in our engineering
13 department who stayed abreast of fluidized bed technology.
14 We ourselves in the late '70s, early '80s did consider
15 fluidized bed as a potentially viable alternative for
16 capacity addition, so we have some familiarity with the
17 technology.

18 Q. Isn't it correct, sir, that some of these plants
19 in fact burn fuels that are not beneficiated; in other
20 words, they actually burn rock and debris in greater
21 proportion than they do carbonaceous material?

22 A. That's true. The engineers who design the
23 plants understand, though, and, as we've been informed,
24 design in appropriate safety margins, erosion shielding,
25 things like that.

1 Q. But would it be fair to say that a plant that is
2 subject to that level of erosion and materials handling
3 problems might have a shorter productive or useful life than
4 a conventional stoker-fueled, coal-fired plant?

5 A. Not if properly designed, I wouldn't say that
6 that is necessarily the case.

7 Q. What was the operating history on average of all
8 the NUG plants between the years 1994 and '96? In other
9 words, what was the average age of those plants in terms of
10 in production?

11 A. I don't know specifically. Given that plants
12 started coming on in the late 1980s, you're looking at
13 plants that were in the eight to nine to ten-year age range.

14 Q. When you say they started to come on stream in
15 the late 1980s, what, '88, '89?

16 A. Probably as early as '85.

17 Q. But would it be fair to say the average age
18 during the period that you looked at, operating age now, is
19 like four to six years at most?

20 A. I'm not sure I'd want to endorse that
21 comparison. I'm not sure whether we're talking about a
22 comparison that is weighted as to megawatt years of life or
23 age divided by number of plants.

24 Q. What was the average availability factor of all
25 the plants during this test period that you used?

1 A. It was -- I'm not sure that I can tell you what
2 the availability factor is. I know that the NUG generation
3 that we used in the market model and in the stranded cost
4 analysis reflected the three-year average period.

5 Q. What is it empirically that allows you to
6 presume that level of productivity will remain for the
7 period of the entire non-utility generation contracts that
8 essentially form the basis of that contribution to stranded
9 costs?

10 A. I think I discussed that in my testimony. To
11 recollect a couple of items, it was the fact that at eight
12 to ten years of age, these plants were past the infant
13 mortality stage. They were broken in, start-up problems had
14 been resolved. They were mature plants, and their contracts
15 incent them to the extent that they pay per kilowatt-hour to
16 achieve a high level of availability and output.

17 Those kinds of things would tend to drive them to be
18 good producers.

19 Q. Is it not correct that just in the industry as a
20 whole, the productivity of power plants declines over time?

21 A. No, that's not true. Power plants can be
22 renewed. PP&L has a lot of experience with that. We have
23 several fairly old power plants that it has been cost
24 effective to upgrade and to continue their operation.

25 Q. Through the introduction of additional capital;

1 correct?

2 A. Yes.

3 Q. But assume for argument sake that the owners of
4 these plants are not prepared to invest substantial sums in
5 them or for whatever reason the capital market is not
6 prepared to finance the upgrade of these plants given the
7 expiration of these contracts over time which you would
8 concede presently are over market by a factor of 2 to 4; is
9 that correct?

10 A. Certainly, the existing contracts offer a
11 lucrative source of income for any capital investment. To
12 the extent that those contracts may wind down, those plants
13 are left to make new contracts in a marketplace, and those
14 might be equally lucrative for all we know.

15 Q. But my question to you is hypothetically assume
16 that the market, long-term energy market at retail is as
17 you've projected for purposes of your stranded cost
18 calculation, which was relatively low. In other words, it's
19 way below 5 to 7 cents per kilowatt-hour. And assume,
20 therefore, that the sources of capital for upgrading these
21 plants are not available.

22 Would you assume that without capital upgrades, these
23 plants would continue to operate to term, to the end of
24 their contracts, at the same level of productivity that they
25 have accomplished in the years 1994 to '96 when they went on

1 stream in the late '80s or early '90s?

2 A. I'm not sure I can draw a conclusion one way or
3 another. We understand that the Continental facility, which
4 was one of our buy-outs, has been purchased and there are
5 plans to upgrade and expand that facility, so that speaks to
6 somebody's willingness to invest in independent power
7 producers and make them operate efficiently.

8 Q. Is the only contract they had a contract with
9 PP&L or did they have contracts with several other
10 utilities?

11 A. I believe they may have had a contract for some
12 excess generation, generation above their rated level with
13 Con-Ed, but I believe that has expired.

14 Q. I am also interested in the way you split or
15 allocated costs. What specifically is in the generation
16 component? Can you describe that to us?

17 A. In the generation component of?

18 Q. Of rates. In other words, when you're
19 unbundling your rates, you've now told us that there is
20 going to be a separate transition component, a separate
21 distribution component, and a separate generation component
22 or energy component. What goes into the energy component,
23 which is the part that presumably presents the target to
24 outside markets?

25 A. Sure. Our effort is to mirror the retail price

1 of generation service. We have a market capacity component,
2 market energy component, energy losses. Because the market
3 energy is a wholesale price, we need to get it down to the
4 retail level. And the gross receipts tax.

5 Q. Is there any customer acquisition expense in
6 that at all; in other words, like marketing, advertising,
7 public relations, any of the things that the independent
8 producer would factor into its energy price?

9 A. No. The number that we've included for our
10 unbundling reflects last resort service. We wouldn't be
11 going out and seeking last resort customers.

12 Q. Is that the same number that would be the target
13 in the pilots, for example, where the independent producer
14 is going out and trying to sell and has that as its target?

15 A. It's a little bit different to the extent that
16 the pilot is looking to credit, and in an unbundled billing,
17 we're looking to provide unbundled components that people
18 can shop.

19 Q. All right. So would it be fair to say that from
20 the present position of PP&L in the pilot proceeding, the
21 amount of the credit available in the pilot, the energy
22 credit in total is larger than the amount that would be
23 available in the unbundled bill in the restructuring
24 proceeding?

25 A. My understanding of where the pilot discussions

1 are right now is that there is a proposal for a market price
2 that is specific as to PJM companies that includes a
3 shopping credit. Our unbundled energy price does not
4 include a shopping credit.

5 Q. So let me just give you a hypothetical. Assume
6 that I, as a consumer, go out and I contract with Enron to
7 provide my house with power and I pay Enron its energy,
8 whatever they charge me for my kilowatt-hours, and they are
9 charging me in that price presumably all of their costs,
10 their sunk costs -- let's assume they generate it themselves
11 -- their sunk costs from generation, their marketing costs
12 to induce me to switch suppliers, their G&A, their operating
13 overhead, their taxes -- not just gross receipts tax, but
14 corporate tax and everything else -- my percentage of all of
15 those expenses associated with doing business. And then I,
16 as part of that -- so I pay them that, and then I am charged
17 by PP&L for transmission and distribution, and included in
18 that presumably are some of the same charges, but they are
19 now incurred by PP&L instead of by Enron.

20 Am I correct in what I've just said so far?

21 A. You might also have a component from PP&L for
22 any last resort service if Enron failed to supply.

23 Q. In effect, am I paying twice for any of the
24 things I'm paying to Enron? In other words, are any of the
25 things that I've just said to you that Enron is charging me

1 things that PP&L is also charging me?

2 A. I don't believe so.

3 Q. That's my problem. When you take your
4 traditional price for energy and capacity in the rates, the
5 total amount that I pay to you -- because I am a PP&L
6 customer --

7 A. Thank you.

8 Q. So I pay you a certain amount of money every
9 month for my service. And when you split that off and
10 unbundle it for me and you have an energy component, which I
11 can now shop around and do better if I can, find an Enron
12 that will undercut that, but I can't avoid the other
13 portions of that bundled rate, whatever they are for
14 transmission and distribution, and you include in
15 transmission and distribution costs associated with the
16 acquisition of me as a customer with attaching my meter,
17 with sending out notices in the mail to me every month
18 telling me what PP&L is planning to do and so forth, am I
19 not paying twice for certain components of the bill? Aren't
20 I paying you something and at the same time paying Enron for
21 the same service?

22 A. I don't think so. Our transmission and
23 distribution unbundling is in accordance with the
24 requirements of the law, which looks to the last rate
25 proceeding.

1 To the extent that you're describing generation-
2 related costs, then they aren't in there. The accounting
3 system doesn't collect them. If they are anywhere, it would
4 be in the CTC.

5 Q. Now, when your independent marketing group goes
6 out to sell to me and let's assume I get a call from them
7 and I invite them to my house and I ask them to make a
8 proposal to me, when they propose, are they going to be
9 quoting prices other than the cost of electricity to them?
10 In other words, are they going to include their marketing
11 costs to come and see me, to advertise and have somebody
12 telephone me in the middle of the night to pay for their
13 space and personnel and insurance and all the other expenses
14 that that one-third of the business, which I think you
15 described it to be, would incur in the normal course of
16 operating as an independent competitive supplier?

17 A. I would hope that our competitive supply arm
18 would price its product to cover all its costs, if that's
19 what you're asking.

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1 Q. In doing so, are any of its costs included that
2 are in the rates, that's in the transmission and
3 distribution component?

4 A. I don't believe so, and they shouldn't be, in
5 accordance with the code of conduct. Otherwise, you've got
6 a cross-subsidy from regulated business to unregulated
7 business.

8 Q. How would one, looking at the submissions, make
9 that determination? Is there any mechanism for being sure,
10 that is empirically, going through the paperwork, and
11 satisfying yourself that there is no redundant or double
12 charging going on?

13 A. You have to go back to the cost allocation
14 studies which I believe were presented by Mr. Kleha.

15 MR. CAPLAN: Thank you. I have no further questions.

16 JUDGE KASHI: Thank you very much, Mr. Caplan.

17 Mr. Zalcman?

18 MR. ZALCMAN: Your Honor, I have no questions for
19 this witness.

20 JUDGE KASHI: Ms. Moury?

21 MS. MOURY: Yes, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. MOURY:

24 Q. Good afternoon, Mr. Krall.

25 A. Good afternoon.

1 Q. I'm Karen Moury with the Office of Small
2 Business Advocate. I have questions about the customized
3 rate design as in your original proposal where it would be
4 mandatory for commercial and industrial classes.

5 As I understand from your testimony earlier, that is
6 still the PP&L primary position?

7 A. Yes, it is.

8 Q. Now, in your direct testimony on page 15, in
9 support of the mandatory nature of the proposal for
10 commercial and industrial classes, you indicate that the
11 customers in the GS and LP classes are more familiar with
12 economic issues than the average residential customer.

13 Now, have you conducted any surveys or reviewed the
14 results of any surveys to determine whether small business
15 customers have a higher degree of understanding of utility
16 rates than the average residential customer?

17 A. We haven't done any surveys of individual
18 customers' understanding of economic principles, although we
19 did go back and look in the GS-1 and GS-3 categories, and we
20 find a large number of accounts that are actually branch
21 offices of things like banks and stock brokers. The
22 telephone company has a large number there.

23 So I would presume that they have some centralized
24 energy buying capability or could certainly leverage their
25 many locations to develop that expertise if they don't

1 already have it with regard to bulk purchases of phone,
2 office supplies or anything like that.

3 Q. Are you familiar with the results of the focus
4 group survey that's attached to Ms. Lennon's rebuttal
5 testimony?

6 A. I've read Ms. Lennon's rebuttal testimony
7 briefly. I'm aware that there was a focus group discussion
8 of her consumer ed. materials. I'm not sure that that
9 necessarily speaks directly to this particular issue.

10 Q. Well, are you aware that according to that
11 survey, that commercial participants have about the same
12 level of understanding of kwh related specifics of their
13 bills as residential customers?

14 A. I didn't read it for that level of
15 understanding.

16 Q. Would you agree that among the diverse
17 commercial and industrial classes, that there is a different
18 level of understanding among the various businesses?

19 A. Certainly.

20 Q. Are you aware that in Ms. Lennon's direct
21 testimony, she lumped residential and small business
22 customers together for purposes of discussing their
23 understanding of customer choice rather than lumping small
24 business customers with large industrial customers?

25 A. I'm not familiar with her groupings of customers

1 and I'm not specifically familiar with how her
2 characterization of small business might relate to either
3 the GS-1 or GS-3 rate class.

4 Q. Now, even if we were to assume that a small
5 business customer is more knowledgeable about economic
6 issues or their utility rates than the average residential
7 customer, would you agree that a small business owner's
8 understanding of utility rates would be quite different than
9 the level of understanding that a large industrial customer
10 would have?

11 A. It probably depends on the customer, but that
12 probably isn't a bad generalization. I mean, I know some
13 small business people who are quite astute about such
14 things.

15 Q. In your rebuttal testimony, I believe Mr.
16 Kleppinger talked to you about this, too, where you said
17 that you thought that the customized rate design should be
18 mandatory for commercial and industrial customers in order
19 to maximize the economic development potential of the Act?

20 A. Yes.

21 Q. Now, would a mandatory customized rate design
22 for residential customers also enhance the economic
23 development potential of the Act?

24 A. Yes. I think I did say somewhere in a portion
25 not too far away from that reference that really, we would

1 prefer that all our customers be on that rate, but in
2 deference to educational issues and consumer protection
3 concerns, that residential customers should be offered a
4 choice.

5 Q. And you would agree that a small business owner
6 with an unusually high consumption level for whatever reason
7 in '96 would end up contributing a greater share of CTC
8 under the customized rate design than they would under
9 traditional rate design?

10 A. The issue I was discussing with Mr. Kleppinger
11 about use had to do with a customer on a design and then
12 changing his usage. I'm not sure that your example changes
13 usage. Let's see.

14 Q. The usage would be say maybe back to a more
15 level that they had in '95 or '94, but much lower than what
16 they had in '96.

17 A. Then his average price per kwh would be changed,
18 yes.

19 Q. And has PP&L made any provision to deal with a
20 customer in that situation?

21 A. No.

22 Q. And have you surveyed small business customers
23 to determine the acceptability of a customized rate design?

24 A. No, we haven't.

25 MS. MOURY: That's all I have, Your Honor.

1 JUDGE KASHI: Thank you very much.

2 Mr. Mullins?

3 MR. MULLINS: Thank you, Your Honor. Mr. Burgraff
4 will conduct the cross on behalf of our office today.

5 JUDGE KASHI: Mr. Burgraff?

6 MR. BURGRAFF: Thank you, Judge.

7 CROSS-EXAMINATION

8 BY MR. BURGRAFF:

9 Q. Good afternoon, Mr. Krall. I'm Craig Burgraff
10 with the Office of Consumer Advocate.

11 A. Good afternoon.

12 Q. I'd like to stay for a moment on some of the
13 questions that were posed to you on your oral rejoinder.

14 A. Sure.

15 Q. Without the reconciliation for revenues, would
16 the offering of the rate design option to commercial and
17 industrial customers have a greater possibility of
18 lengthening the CTC recovery period or shortening the CTC
19 recovery period?

20 (No response.)

21 Q. In other words, if the option was offered to
22 commercial and industrial customers without reconciliation
23 based on revenues, would that have a tendency to increase or
24 decrease the CTC recovery?

25 A. I hadn't thought about it in terms of whether it

1 would shorten or lengthen.

2 Q. The possibility?

3 A. The possibility? It would tend to risk not
4 collecting the full amount within the time period. We could
5 have a situation where, under our proposed reconciliation to
6 sales, sales are exactly as forecast and the revenue
7 dislocation is entirely due to customer selection of an
8 option.

9 That wouldn't necessarily trigger a lengthening or a
10 shortening under our original proposal. That's why the two
11 proposals are joined, that our original reconciliation
12 proposal does not address the risk that we see of
13 undercollection.

14 Q. So would your answer be the same with the
15 proposed revenue reconciliation?

16 A. The revenue reconciliation makes the problem go
17 away. The tendency with the revenue reconciliation would
18 probably be to lengthen the collection period, given that
19 customer selection and their self-interest will tend to
20 reduce collections. If that's what you were asking, we took
21 kind of a long way to get there.

22 Q. Thank you.

23 A. I'm sorry to the extent it might have been my
24 fault.

25 Q. No. It's just bad questioning, that's all.

1 Does the revenue reconciliation you are proposing,
2 assuming that the rate design option is granted to
3 commercial and industrial customers, does that give you a
4 greater ability to collect more than \$4.2 billion than
5 without the revenue reconciliation?

6 A. I don't believe it does. The revenue
7 reconciliation proposal starts with the Commission approved
8 stranded amount that we can collect, and it seeks to collect
9 that amount and only that amount.

10 Q. Can I quickly refer you to page 11 of your
11 rebuttal testimony, Mr. Krall?

12 A. Certainly.

13 JUDGE KASHI: Did you say page 11, Mr. Burgraff?

14 MR. BURGRAFF: Yes, page 11, Your Honor.

15 BY MR. BURGRAFF:

16 Q. The first question on that page, how does PP&L
17 respond to Ms. Smith's assertion that the customized rate
18 design shifts stranded cost responsibility to customers who
19 increase their usage," should not that read, "from customers
20 who increase their usage"? I believe you made that
21 statement on page 9.

22 A. Made the statement on page 9?

23 Q. That Ms. Smith's argument is that it shifts
24 stranded cost responsibility from customers who increase
25 their usage.

1 A. Yes, I believe that is correct. Sorry about
2 that.

3 Q. That's no problem.

4 Let me return for a minute to some earlier questions
5 relative to your treatment of NUGs for capacity planning
6 horizon purposes and the treatment of NUGs for stranded cost
7 purposes in this case.

8 Could I refer you to page 31 of your rebuttal? On
9 line 16, you mention certain uncertainties relative to the
10 continued availability of any particular NUG as a resource.
11 Do you see that?

12 A. Yes. That's a reference to Act 94.

13 Q. And what are the sources of the uncertainties
14 you reference?

15 A. Well, the particular one I'm discussing here has
16 to do with the legislation enacted in 1996 to encourage the
17 buyout, buydown and restructuring of above market power
18 purchase agreements, simplifying the recovery of those or
19 making clearer the recovery mechanism for any of those.

20 Q. Mitigation under the Act, potential mitigation?

21 A. Yes, although Act 94 predated the Competition
22 Act.

23 Q. Sliding back up to lines 7 and 8 on page 31, why
24 does the mandate of federal law affect the ability of NUGs
25 to contribute to reserves?

1 A. The completion of that sentence is, the use of
2 NUG generation relative to ratemaking purposes. To the
3 extent that a utility would have in place a capacity
4 addition plan that included generating plants that had
5 significantly long lead times and then was suddenly required
6 by federal law to accommodate a large chunk of additional
7 capacity which it could not have known about ahead of time,
8 seems to present a problem in terms of which capacity came
9 first and which capacity is necessary if in fact there is a
10 concern for having more capacity than might be determined
11 useful.

12 If you were to do it on strictly a time line basis,
13 it could be determined that the capacity begun by the
14 utility is in the end found to be excess for reasons that
15 were totally outside of its control as it was doing the
16 planning.

17 Q. Mr. Krall, what assumptions did you make about
18 the company's efforts to buy out, buy down or otherwise
19 alter NUG contracts as stranded cost mitigation?

20 A. In the stranded cost calculation, we reflected
21 the buyouts that have been accomplished. We reflected the
22 buyout payments as they are scheduled to occur. We did not
23 make any assumptions that there would be additional buyouts
24 available because we have no basis for knowing that those
25 might in fact occur.

1 Q. So did you consider any of the uncertainties
2 mentioned on page 31 of your testimony?

3 A. In terms of doing the stranded cost calculation?

4 Q. Yes.

5 A. Stranded cost calculation includes the NUG
6 liabilities in accordance with the contracts to the
7 termination of the contracts.

8 Q. Pre-existing?

9 A. Yes.

10 Q. Let me refer you to page 20 of your Statement
11 10-R, and your reference to the Commission's interim
12 requirements for customer information issued on July 10,
13 1997.

14 A. Yes.

15 Q. Now, am I correct that those requirements for
16 customer information essentially deal with fuel mix as
17 required of all suppliers and emissions disclosures only
18 from those who must essentially back up their specific
19 claims in that area? Is that correct?

20 A. I believe that to be correct, yes.

21 Q. Now, I assume that the information required on
22 fuel mix will apply to PP&L as to the generation portion of
23 its business; is that right?

24 A. I presume it will apply to PP&L's competitive
25 portion.

1 Q. Competitive.

2 A. I also presume it might apply to PP&L's last
3 resort provisions. It's not clear from my reading of those
4 requirements that it doesn't.

5 Q. Let me refer you to page 23 of your rebuttal,
6 sir. Now, there you're discussing the last resort
7 generation service of PP&L; is that correct?

8 A. Correct.

9 Q. Now, the penalty you talk about in your
10 discussion with regard to last resort service, that is a
11 penalty on the supplier who fails to deliver; is that
12 correct?

13 A. Yes.

14 Q. And if the supplier who failed to deliver
15 desired in any fashion to pass that penalty on to an end
16 user, that would be done based upon the contract between the
17 customer and that supplier; is that right?

18 A. Yes.

19 MR. BURGRAFF: Thank you, Mr. Krall.

20 That's all we have, Your Honor.

21 JUDGE KASHI: Thank you very much, sir.

22 Redirect?

23 MR. LAVELLE: Your Honor, my name is John Lavelle. I
24 represent New Energy Ventures. I had not asked to ask
25 Mr. Krall any questions, but having heard his rejoinder

1 testimony, there is one discrete area of testimony I would
2 like to ask about.

3 JUDGE KASHI: All right, sir.

4 MR. LAVELLE: Thank you, sir.

5 CROSS-EXAMINATION

6 BY MR. LAVELLE:

7 Q. Mr. Krall, my name is John Lavelle. I represent
8 New Energy Ventures. I want to ask you particularly about
9 one area of your rejoinder testimony that you discussed
10 earlier with Mr. Kleppinger.

11 Do you recall discussing with Mr. Kleppinger the
12 difference between the amount of stranded cost which PP&L
13 believes it will have and what it is trying to recover
14 through the CTC in this proceeding?

15 A. Yes.

16 Q. And you recall discussing that PP&L believes
17 that there are \$4.6 billion in stranded costs but has tried
18 to make a proposal for recovering \$4 billion through the
19 CTC? Do you recall discussing that?

20 A. Yes. Our calculation is that to comply with the
21 rate cap requirements, that's all the room there is.

22 Q. You also recall discussing with Mr. Kleppinger
23 the issue of there being more room to recover CTC if market
24 prices turned out to be lower than what had been assumed?
25 Do you recall discussing that?

1 A. Yes.

2 Q. Is it in fact the case that if market prices
3 turn out to be lower than what you've assumed, it would
4 leave room under the cap to recover additional CTC; is that
5 correct?

6 A. It would if there were the opportunity there tod
7 do it. Again, if you're speaking specifically to our
8 reconciliation proposal, that reconciles to the Commission
9 approved amount of stranded, so if that's a fixed number and
10 room becomes available, then it might not all be used up.

11 Q. Just so I understand what you propose in your
12 rejoinder testimony, is your proposal that if there are
13 additional stranded costs approved by the Commission and
14 market prices go down, that the amount of the CTC be
15 increased during the reconciliation process up to the amount
16 of the rate cap?

17 A. No. It's that the reconciliation be done to the
18 Commission approved level of stranded amount.

19 Q. And you're talking about reconciliation over
20 time, aren't you?

21 A. Yes.

22 Q. Let me try and focus my question to a particular
23 example.

24 A. Fine.

25 Q. Let's assume that the cap is 4.4 cents, and

1 let's also assume that what we've assumed the market price
2 is going to be is 2.9 cents.

3 Let's also assume that in the reconciliation process
4 for a particular year, we go back and we find that the
5 actual market price was 2.7 cents instead of 2.9 cents,
6 generation price.

7 So I understand how this reconciliation process would
8 work, would the CTC that you would try and recover for that
9 year be 1.7 or 1.5 cents?

10 A. The reconciliation would be done on a schedule
11 of millions of dollars, I believe, laid out over time.

12 Q. Are you not able to answer that question?

13 A. Of how many millions of dollars?

14 Q. No, no, no. Let's assume what I just laid out.
15 Would the CTC vary in that circumstance based on the fact
16 that the market price had been different than what had been
17 assumed?

18 A. No. The CTC wouldn't vary.

19 Q. So the reconciliation process would not change
20 the CTC that you would recover?

21 A. It would lengthen the period of recovery. It
22 would introduce additional CTC collections in subsequent
23 years.

24 Q. So in other words, even if there were room under
25 the cap, you wouldn't use that room to recover additional

1 CTC for that year?

2 A. That's not our proposal.

3 MR. LAVELLE: I have nothing further, Your Honor.

4 JUDGE KASHI: Thank you very much.

5 Redirect, Mr. Russell?

6 MR. RUSSELL: Could I have just a minute, Your Honor?

7 JUDGE KASHI: Yes, Mr. Russell.

8 (Discussion off the record.)

9 JUDGE KASHI: Back on the record.

10 MR. RUSSELL: Thank you, Your Honor. We do not have
11 any redirect.

12 JUDGE KASHI: Thank you very much, sir. You are
13 excused.

14 (Witness excused.)

15 JUDGE KASHI: That which has been marked and
16 identified as PP&L Statement No. 10 and 10-R, together with
17 DAK-1 through 4 are received into the evidentiary record,
18 without objection?

19 (No response.)

20 JUDGE KASHI: Without objection.

21 (Whereupon, the documents marked as
22 PP&L Statements Nos. 10 and 10-R
23 and PP&L Exhibits DAK-1 through 4
24 were received in evidence.)

25 JUDGE KASHI: Do you wish to call your next witness?

1 MR. RUSSELL: Your Honor, could we take a short break
2 before we call our next witness? We need to get one thing
3 resolved.

4 JUDGE KASHI: All right, I don't have a problem with
5 that. Let's take the afternoon recess now and we'll come
6 back at 3:00 and begin the next witness.

7 (Recess.)

8 JUDGE KASHI: Going back on the record.

9 Mr. Russell, do you wish to call your next witness,
10 sir?

11 MR. RUSSELL: Your Honor, we have made a slight
12 change in the schedule, if it's acceptable to you. The
13 Small Business Advocate would like to present their witness,
14 Mr. Knecht, who has travel arrangements, and then we would
15 go back and introduce the testimony of Dr. Tierney.

16 MS. MOURY: Your Honor, Mr. Knecht is free to stay
17 today as late as it takes, as long as we would be fitting
18 him in today. He doesn't have to be taken out of order. I
19 think we were getting concerned that he might not fit in
20 today.

21 MR. KOHLER: Your Honor, Mr. Reising also has a 7:20
22 flight out. We hadn't seen that in danger as of this point,
23 but I would just raise that for your consideration.

24 JUDGE KASHI: Well, I want to get Ms. Tierney done.

25 MR. KLEPPINGER: Your Honor, if it's any help, I

1 think some of the moderate listings for cross examination of
2 Ms. Tierney are going to be more like brief, so that those
3 estimates are overstated from what you might have in front
4 of you. I know mine will be very brief.

5 JUDGE KASHI: Let's put it this way. What kind of
6 cross do you have for Reising?

7 MR. RUSSELL: Probably about 15 or 20 minutes, Your
8 Honor.

9 JUDGE KASHI: You're the only people who have cross.

10 MR. RUSSELL: It's not lengthy.

11 JUDGE KASHI: All right. Let's accomodate the out of
12 town people who have to depend upon deregulated airlines to
13 make their commitments.

14 Ms. Moury, do you wish to call your witness?

15 MS. MOURY: Yes, thank you, Your Honor. The OSBA
16 calls Robert D. Knecht.

17 JUDGE KASHI: Would you raise your right hand and be
18 sworn, sir?

19 Whereupon,

20 ROBERT D. KNECHT

21 having been duly sworn, testified as follows:

22 JUDGE KASHI: Please be seated.

23 MS. MOURY: Your Honor, the OSBA has provided the
24 direct testimony and exhibits of Mr. Knecht, rebuttal
25 testimony and exhibits and further rebuttal testimony and

1 exhibits, and those have been previously marked as OSBA
2 Statement Nos. 1, 1-R and S1.

3 JUDGE KASHI: So marked for purposes of
4 identification.

5 (Whereupon, the documents were
6 marked as OSBA Statements Nos.
7 1, 1-R and S1 for identification.)

8 DIRECT EXAMINATION

9 BY MS. MOURY:

10 Q. Mr. Knecht, did you have any corrections to your
11 testimony?

12 A. No, I do not.

13 MS. MOURY: Subject to timely motions, objections and
14 cross-examination, the OSBA moves for the admission of OSBA
15 Statement and Exhibits Nos.1, 1-R and S1.

16 JUDGE KASHI: Subject to any timely motions and/or
17 objections made, pending cross-examination, they will be
18 received in the evidentiary record.

19 MS. MOURY: And Mr. Knecht is prepared for cross-
20 examination.

21 JUDGE KASHI: Thank you very much.

22 Mr. Kleppinger?

23 MR. KLEPPINGER: No questions, Your Honor.

24 JUDGE KASHI: Mr. Fitzpatrick is not available. Are
25 you handling that, Ms. Swanstrom, GPU?

1 MS. SWANSTROM: I had a questions --

2 JUDGE KASHI: I'm sorry. My eyes are going already.

3 Ms. Swanstrom?

4 MS. SWANSTROM: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MS. SWANSTROM:

7 Q. Good afternoon, Mr. Knecht. My name is Deborah
8 Swanstrom. I represent Allegheny Power, West Penn Power
9 Companies, a member of the Allegheny Power System which
10 provides retail electric service in Pennsylvania.

11 A. Good afternoon, Ms. Swanstrom.

12 Q. Mr. Knecht, you believe the PP&L's forecast of
13 future market prices is overly conservative; is that
14 correct?

15 A. Yes.

16 Q. You also believe that PP&L's stranded cost
17 estimate is overstated as a result of its inaccurate
18 forecast; is that correct?

19 A. Yes.

20 Q. Do you agree that it's virtually impossible for
21 PP&L or any other party to accurately predict what the
22 future price of electricity will be 20 years or more into
23 the future?

24 A. Depending on exactly what you mean by accurate,
25 I generally agree with that. Predicting energy prices,

1 energy fuel price forecasting is a very uncertain business
2 and electricity prices are even more uncertain because the
3 market has not yet developed. So in general, I agree with
4 you, whether it's virtually impossible or not.

5 Q. But you would agree that the future market price
6 forecast could prove to be uncertain?

7 A. It is certainly uncertain.

8 Q. In your direct testimony, at pages 33 to 34, you
9 indicated that one hypothetical way stranded costs could be
10 valued is by comparing the market price received through a
11 sale of a utility's generating assets with the book value of
12 those generating assets; is that correct?

13 A. Yes.

14 Q. In your surrebuttal testimony, however, you
15 recognize that divestiture of generating assets is not
16 mandated by the Competition Act; is that correct?

17 A. Yes.

18 Q. You also recognize that a fire sale of the
19 utility generating asset could cause some problems; is that
20 correct?

21 A. Yes.

22 Q. Mr. Knecht, if a utility were to volunteer to
23 base its stranded cost recovery on actual market prices in a
24 manner that didn't cause the problems associated with a fire
25 sale, do you believe that the use of actual market prices is

1 a more accurate way to determine a utility's CTC than long-
2 term, uncertain forecasts?

3 A. Yes. It's not only the market price forecasts
4 which are uncertain, but the cost forecasts, the forecasts
5 about whether a plant can be refurbished and continue its
6 existing life, so it's the retirement costs.

7 It's a whole set of assumptions that you have to make
8 in an administrative proceeding such as this where various
9 experts on each side argue it back and forth.

10 If you do it through a market mechanism, you will get
11 the market's best estimate of what those things are. And in
12 fact, I think because you would sell it to the highest
13 bidder, you would tend to get the value that's best for the
14 ratepayers because it would reflect the assumptions of an
15 optimistic investor.

16 MS. SWANSTROM: Thank you. That's all the questions
17 I have.

18 JUDGE KASHI: Thank you very much.

19 Mr. Russell?

20 MR. RUSSELL: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. RUSSELL:

23 Q. Good afternoon, Mr. Knecht.

24 A. Good afternoon, Mr. Russell.

25 Q. My name is Paul Russell. I'm representing

FORM 2

1 Pennsylvania Power and Light Company in this case. Could
2 you refer to page 9 of your direct testimony?

3 A. Yes, sir.

4 Q. And there you're discussing the implications of
5 changing PP&L's market price forecast; am I correct?

6 A. In the bottom half, yes.

7 Q. Would you agree that a high market price
8 estimate will decrease the amount of stranded costs that
9 PP&L can recover during the transition period?

10 A. If the market price forecast is high, speaking
11 only about the transition period, yes, that will reduce the
12 CTC revenues that the company collects. It also reduces the
13 stranded costs that the CTC are there to recover.

14 Q. Now assume for a moment that the unbundled rates
15 established in this proceeding are equal to the company's
16 rate cap.

17 Would you agree, all else being equal, that if actual
18 market prices during the transition period are less than the
19 market prices adopted by the Commission in this proceeding,
20 PP&L's total rates would be less than the rate cap?

21 A. Yes, that's my understanding. PP&L's proposal
22 is that CTCs are fixed from whatever is determined in these
23 proceedings and if they then have to, for competitive
24 reasons, price below what the electricity price forecast
25 was, they will need to reduce the rates.

1 Q. And it's your understanding that PP&L's proposal
2 is a fixed CTC?

3 A. That's my understanding.

4 Q. And so in the hypothetical that we talked
5 about --

6 A. Maybe if I just clarify, it's fixed at the rates
7 that are set. The CTC actually declines over time, but the
8 specification for what those things will be is not to change
9 in the out years.

10 Q. So in the hypothetical situation we talked about
11 a minute ago, PP&L could not increase its CTC to recover the
12 additional stranded costs?

13 A. That was my understanding of what Mr. Krall just
14 said.

15 Q. If you would turn to page 12 of your direct
16 testimony, in the middle of the page you're discussing
17 relative advantages of two methods of reconciling a CTC. Do
18 you see where I am, sir?

19 A. Yes.

20 Q. Would you agree that shortening the period of
21 CTC recovery would reduce PP&L's risk of not being able to
22 recover its stranded costs?

23 A. This depends on what you assume about PP&L's
24 true-up mechanism proposal. And it also depends on what
25 PP&L's true-up mechanism proposal is, whether it's the

1 \$4.0 billion or the \$4.6 billion that Mr. Krall discussed at
2 some length. And I must admit I'm still confused about what
3 PP&L's proposal is.

4 But if we say that PP&L's true-up proposal is that we
5 get to recover our \$4.0 billion by either extending or
6 shortening the transition period to recover that so that we
7 exactly hit that \$4.0 billion, then there's no risk to PP&L
8 either way.

9 Q. Could you refer to page 36 of your direct? Is
10 it a fair summary of your recommendation that the Commission
11 not determine the method of reconciling the CTC until the
12 CTC is about to expire?

13 A. What I was saying was PP&L should not be allowed
14 to automatically continue beyond the transition period the
15 recovery of CTC without the Commission taking a look at the
16 actual experience.

17 For example, suppose that the Commission determines
18 in these proceedings that PP&L's stranded costs are \$3.5
19 billion and allows them to recover \$3.5 billion over the
20 transition period, meaning that the market value, the
21 implied market value of PP&L's facilities is \$3.5 billion
22 less than its book value.

23 Now suppose we go out into the transition period, the
24 market seems stronger than anybody expected, the facility
25 values are much higher, gas prices have gone up, and PP&L

1 sells off its facilities and in fact sells off its
2 facilities for its book value, thereby essentially
3 recovering CTCs of \$3.5 billion and recovering that
4 \$3.5 billion again through the sale of its assets.

5 It just seemed to me that to automatically allow
6 continuation of CTC recovery beyond the 2005 period in that
7 case just doesn't make much sense, so that it seemed to me
8 you want to come back and take a look at the actual
9 experience before 2005 before you automatically say, okay,
10 you can recover the last \$50 million or \$100 million in
11 unrecovered CTC.

12 Q. And from the answer that you just gave, it seems
13 to me that that Commission proceeding near the end of the
14 CTC could be a fairly extensive proceeding?

15 A. Being familiar with these things, I would guess
16 that it could, if there is some significant debate about
17 whether the stranded costs, the actual stranded costs were
18 much less than the estimated stranded costs here in 1997,
19 yes.

20 Q. Would you agree that the ultimate result of that
21 sort of approach is that for approximately seven years, PP&L
22 would not know whether it ultimately could recover its CTC
23 undercollections?

24 A. No, because, one, the variation, as I think Mr.
25 Kleha says in his testimony, the variation -- or in

1 interrogatory response -- the variation in sales or
2 variation in revenue, particularly with a lot of customers
3 in the CRD option, isn't going to be that high. So you're
4 only exposed to what the risk is in the variation in volumes
5 under the recovery mechanism.

6 And to the extent you've underforecasted sales, you
7 will have recovered before you have this proceeding, so
8 there's a good chance you've recovered all of it or a very
9 large share of it before you even have one of these
10 proceedings.

11 Q. But just assume with me for a moment that there
12 are in fact undercollections and assume that they're of a
13 material amount.

14 If your proposal were adopted, PP&L would be
15 uncertain until close to the end of the seven year period
16 whether those undercollections could in fact be recovered?

17 A. Yes. On the other hand, in terms of having that
18 proceeding, I would be -- the implicit answer is that PP&L
19 is allowed to recover them.

20 It would only be under extraordinary circumstances
21 under which PP&L had been extraordinarily profitable, much
22 better than had been anticipated in 1997, would they be
23 disallowed. So that I don't see them as that uncertain,
24 except in the case where PP&L has done extremely well, in
25 which case they wouldn't care.

1 Maybe they would care, but on the other hand the
2 certainty would not be that important to the company. It
3 would have recovered its stranded costs.

4 Q. But really, this sort of standard of
5 extraordinary gain that you've talked about in this last
6 answer is not part of your proposal. Really, the proposal
7 would be, let's take it to the Commission and have the
8 Commission evaluate a lot of changed circumstances and see
9 whether collection would be appropriate.

10 And really where it comes down is that it would be up
11 to the Commission and their discretion to determine recovery
12 at that point; wouldn't it?

13 A. Yes, as it is in their descretion now to approve
14 the true-up mechanism or not approve it.

15 Q. Could we just move one page over to page 37, at
16 the top of that page, kind of a carry-over discussion of
17 true-up?

18 Would you agree that the CTC underrecovery or
19 overrecovery would be determined on a year by year basis,
20 not the collection necessarily, but just the determination?

21 (Witness perusing document.)

22 A. I'm sorry, I was just going back to the previous
23 page to reread what paragraph we were in here. Could you
24 restate the question?

25 Q. Let me restate the question. Would you agree

1 that CTC underrecovery or overrecovery will be determined on
2 a year by year basis?

3 A. I believe that is Mr. Kleha's proposal.

4 Q. And then would you agree that the reconciliation
5 would be done on a current basis reflecting the histories of
6 underrecovery or overrecovery?

7 A. In other words, you carry the underrecovery or
8 the overrecovery forward?

9 Q. Yes.

10 A. Yes. That's my understanding. On the other
11 hand, the only thing I'm saying here is that you should,
12 similar to what you use in the ECR process, is to apply a
13 cost of capital to that.

14 Q. And where is that cost of capital
15 recommendation? Is that the discussion on lines 2 and 3 of
16 page 37, about net present value?

17 A. Yes, exactly.

18 Q. And you meant by the net present value
19 discussion that there would be interest accrued on the
20 overcollection or undercollection?

21 A. Yes.

22 Q. If you would look at page 40 of your direct
23 testimony on lines 5 to 7, is it a fair summary of that
24 testimony that you believe all classes of customers will
25 eventually benefit from a competitive marketplace for

1 generation, either directly or indirectly?

2 A. As it says here, if an actively competitive
3 market develops, yes.

4 Q. And I didn't mean to exclude that. Is it your
5 expectation that one of these benefits would be lower prices
6 for electric service?

7 A. When you say lower prices, the way I think of it
8 as lower prices than they would otherwise have under
9 continued regulation, yes, I believe that competitive forces
10 can reduce costs below the level of regulated utility
11 service.

12 Q. Would you turn to page 43 of the direct, still?

13 A. Yes, sir.

14 Q. I'm sorry. Could we move on to 53?

15 A. Yes, sir.

16 Q. Is it your recommendation that if the random
17 drawing process that you discuss on line 16 produces too few
18 customers, that the large customers would place only a
19 portion of their total load into competition?

20 A. Yes.

21 Q. Have you considered how an approach of that sort
22 could be administered by PP&L?

23 A. Not in great detail, no. My understanding of
24 listening to PP&L in the technical conference and in
25 interrogatory responses is, the mechanics even from PP&L's

1 standpoint of the phase-in period are still a little fuzzy
2 and need to be worked out.

3 So they haven't sorted it out in great detail, and
4 neither have I.

5 Q. Would you agree with me that as a general
6 proposition, the discount rate is a measure of the cost of
7 capital?

8 A. Yes.

9 Q. Are all of PP&L's investors common equity
10 investors?

11 A. No. There's preferred stockholders.

12 Q. And there are also debt investors?

13 A. Yes, there are also debt investors who invest in
14 PP&L debt, yes.

15 Q. If you look at page 16 of your direct testimony
16 at lines 11 and 12, you state, quote, "Under
17 competition/CTC, the return to equity holders will be market
18 revenue plus CTC revenues less all operating, interest and
19 tax costs." Do you see that?

20 A. Yes.

21 Q. Could you tell me, under competition/CTC, what
22 is the return to preferred stockholders?

23 A. The return to the preferred stockholders is the
24 dividends that are paid on the preferred stock plus the
25 change in the price.

1 In my analysis here, I haven't segregated out returns
2 to preferred shareholders. This analysis could be modified
3 to do that, but for the purpose of determining the discount
4 rate, I have excluded that level of complexity.

5 Q. Have you looked at what would be the return to
6 bondholders?

7 A. Yes.

8 Q. And what would that be?

9 A. The return to bondholders that's included in my
10 analysis, at least in the algebra that I've laid out here is
11 what I call R_d times D percent times the rate base, the book
12 value of the assets. You would see that in the equation,
13 Equation 3 on page 18 at the last term in the numerator of
14 the right hand side of the equation.

15 Q. How would you state that return to bondholders
16 in a narrative similar to the narrative I quoted from page
17 16 of your testimony?

18 A. The returns to the bondholders would consist of
19 the interest payments plus any repayment of principal.

20 Q. And you would agree that PP&L is financed with a
21 mix of capital including common, preferred and debt?

22 A. Yes.

23 Q. Would you look at page 21 of your surrebuttal?
24 At lines 13 to 21, you're discussing your Exhibit RDK-S3.
25 Am I correct that the testimony on page 21 of your

1 surrebuttal and that exhibit that's cited there contain
2 hypothetical data?

3 A. Yes.

4 Q. Further, am I correct that you did not conduct a
5 study of actual gas, oil or coal prices?

6 A. Well, did I conduct an actual study of -- did I
7 actually try to forecast gas, oil and coal prices? No. Did
8 I compare Dr. Jones' forecast to the publicly available
9 forecasts that he relied on? Yes.

10 MR. RUSSELL: May I have just one minute, Your Honor?

11 JUDGE KASHI: Sure.

12 (Pause.)

13 MR. RUSSELL: We have nothing else, Your Honor.

14 JUDGE KASHI: Thank you very much, sir.

15 Redirect, Ms. Moury?

16 MS. MOURY: I have none, Your Honor.

17 JUDGE KASHI: Thank you very much, sir. You are
18 excused.

19 (Witness excused.)

20 JUDGE KASHI: That which has been marked and
21 identified as OSBA Statements 1, 1-R and S1 are received
22 into the evidentiary record, without objection?

23 (No response.)

24 JUDGE KASHI: Without objection.
25

1 (Whereupon, the documents marked as
2 OSBA Statements Nos. 1, 1-R and S1
3 were received in evidence.)

4 JUDGE KASHI: Mr. Kohler, do you wish to call your
5 witness?

6 MR. KOHLER: Yes, Your Honor. I would call Mr. Paul
7 Reising.

8 JUDGE KASHI: Would you raise your right hand and be
9 sworn, sir?
10 Whereupon,

11 PAUL D. REISING

12 having been duly sworn, testified as follows:

13 MR. KOHLER: Your Honor, I'm going to try Ms. Moury's
14 approach to introducing Mr. Reising's testimony. Mr.
15 Reising submitted Enron Statement 3.0 on July 2nd consisting
16 of 37 pages, one attachment and seven exhibits, PDR-1
17 through PDR-7.

18 Shortly after that pre-filed testimony was submitted,
19 we circulated an amendment to PDR-6, Schedules 1 and 2 which
20 I believe was circulated to all the parties and Your Honor.
21 I have copies if anyone doesn't have that.

22 Also, Mr. Reising submitted on behalf of Enron
23 surrebuttal testimony consisting of ten pages and one
24 exhibit, PDR-8.

25 JUDGE KASHI: The statement was?

1 MR. KOHLER: That was Statement 3.1, Your Honor.

2 JUDGE KASHI: And exhibits?

3 MR. KOHLER: One exhibit, PDR-8.

4 JUDGE KASHI: So marked for purposes of
5 identification.

6 (Whereupon, the documents were
7 marked as Enron Statements Nos. 3.0
8 and 3.1 and Enron Exhibits Nos.
9 PDR-1 through 8 for
10 identification.)

11 DIRECT EXAMINATION

12 BY MR. KOHLER:

13 Q. Mr. Reising, in addition to the one correction
14 that was circulated to all the parties previously, do you
15 have any additional corrections?

16 A. I have one other correction to my surrebuttal
17 testimony. That would be on page 10, line 15. The word
18 "amount" should be "among". That would be the extent of any
19 changes.

20 MR. KOHLER: Your Honor, with that, I would move the
21 admission of Enron Statement 3.0 and 3.1 subject to any
22 timely motions and objections, with attachments and
23 exhibits.

24 JUDGE KASHI: Pending any timely motions and/or
25 objections made, pending cross-examination, that which has

1 been previously marked as Enron Statements 3, 3.1 and
2 Exhibits PDR-1 through 8 will be received into the
3 evidentiary record.

4 MR. KOHLER: Your Honor, Mr. Reising is available for
5 cross.

6 JUDGE KASHI: Thank you very much, sir.

7 Mr. Russell? Mr. Kaplan? Mr. Russell?

8 MR. RUSSELL: Mr. Russell. We're it today?

9 JUDGE KASHI: You're it today, sir.

10 CROSS-EXAMINATION

11 BY MR. RUSSELL:

12 Q. Good afternoon, Mr. Reising.

13 A. Good afternoon.

14 Q. My name is Paul Russell. I'm representing
15 Pennsylvania Power and Light Company in this proceeding.

16 Could you turn in your direct testimony to page 14,
17 please?

18 A. I have that.

19 Q. Would you agree that PP&L has incurred
20 uncollectible account expenses in the past?

21 A. Yes.

22 Q. And would you agree that if traditional
23 regulation were to continue, PP&L would incur uncollectible
24 account expenses in the future?

25 A. Most likely, yes.

1 Q. And would you agree that under traditional
2 regulation, these uncollectible account expenses would be
3 recoverable through rates?

4 A. If they continued to be regulated, yes.

5 Q. Would you accept my definition of uncollectible
6 account expenses, those expenses represent the amounts that
7 customers have not paid for service rendered?

8 A. Yes, I would agree with that.

9 Q. Now, in a competitive environment, would you
10 expect that electric suppliers would terminate service to
11 customers that don't pay?

12 A. I believe it's unlikely that they would
13 terminate service to customers that don't pay.

14 Q. How would you anticipate suppliers would deal
15 with customers that didn't pay their bills?

16 A. Well, I think they would have to deal with those
17 in the same manner in which other businesses probably relate
18 to customers who do not pay their bills. I think they would
19 have to institute collection activities, interest charges,
20 et cetera.

21 Q. Wouldn't you agree, absent regulation, at some
22 point suppliers cease to supply to customers that don't pay?

23 A. That's true.

24 Q. And I guess to loop back, wouldn't you think
25 that would occur in a competitive electric marketplace as

1 well?

2 A. It may very well, depending upon what the rules
3 are that are in place to deal with those issues.

4 Q. If customers that don't pay for electric service
5 in a competitive environment are terminated by the supplier,
6 wouldn't those customers become last resort customers of
7 PP&L?

8 A. They would become last resort customers of some
9 party, yes.

10 Q. And conceivably, that party could be PP&L?

11 A. It could be PP&L.

12 Q. Won't PP&L have to maintain customer information
13 services even for customers buying generation from other
14 suppliers?

15 A. That would depend on the functions that PP&L, as
16 the EDC, would continue to carry out for those customers.

17 Q. I would agree that the scope of the customer
18 information services might depend on the services that PP&L
19 retained, but wouldn't you agree that there would be at
20 least some customer information obligation that would
21 remain?

22 A. There may be some. I indicated one particular
23 element in my direct testimony that might have to continue
24 to be maintained by the EDC, for example safety related
25 issues.

1 Q. And there might be other types of issues
2 associated with the delivery of electricity that would
3 require customer information services?

4 A. There may be some.

5 Q. If you would turn to page 16 of your direct
6 testimony, on lines 6 to 7, you discuss some definitions
7 that are contained in Exhibit 3, PDR-1. Could you tell me
8 what the source of the definitions and descriptions of
9 ancillary service in that exhibit, what was the source of
10 those definitions and descriptions?

11 A. Those are generally the same definitions -- I'd
12 have to check them word for word -- but I think they're
13 generally the same definitions used by the Federal Energy
14 Regulatory Commission or very close thereto.

15 Q. Is there a glossary of terms issued by the FERC,
16 or were they drawn from orders and regulations and so on?

17 A. They would have been drawn from orders, for
18 example FERC Order 888 or 888-A, the pro forma tariffs.

19 Q. On page 21 of your testimony, you show a
20 functional revenue requirement breakdown that you prepared.
21 My question on that schedule is, would you propose that
22 charges for each of these functions be reflected in customer
23 bills?

24 A. Well, my testimony goes to the development of
25 rates applicable under the pro forma distribution tariff, in

1 which case the supplier would be the customer basically
2 acting as agent.

3 In that circumstance, it would be appropriate to
4 develop rates for these various elements, certainly the
5 energy delivery service elements and the revenue cycle
6 elements, and include charges or rates for those purposes
7 under the pro forma tariff.

8 I also believe that regardless of the use of that
9 tariff, I also believe that the rates or class defined
10 rates, however you want to look at it, should also be
11 unbundled to separately identify energy delivery from
12 revenue cycle charges as well.

13 Q. And show that on the customer bill?

14 A. I believe so, yes.

15 Q. If pricing distinctions are made between single
16 phase and multiple phase or poly-phase facilities, wouldn't
17 that result in either a shortfall of revenue for PP&L or a
18 violation of the rate cap?

19 A. I don't know that it would.

20 Q. You don't know that one or the other of those
21 results would occur?

22 A. No.

23 Q. On page 23 of your direct, you suggest some rate
24 design issues. Am I correct you did not develop a full set
25 of rates based on your customer service characteristic

1 approach?

2 A. Can I ask you what you mean by a full set of
3 rates?

4 Q. A set of rates that PP&L could put in its tariff
5 and bill customers.

6 A. No. I designed rates that would be applicable
7 under the distribution services tariff which I proposed in
8 Exhibit PDR-7 and updated in PDR-8.

9 Q. Do you know whether fully developed rates based
10 on customer service characteristics would result in
11 interclass or intraclass cost shifting?

12 A. I don't know whether it would or would not. I
13 did not design these rates on a class-specific basis.

14 Q. On page 37 of your direct, are you recommending
15 that the Commission not establish in this proceeding CTC
16 charges for each year of the transition period?

17 A. I am not recommending that at all.

18 Q. Are you recommending a schedule of CTC charges
19 be established here?

20 A. I am not commenting on whether there should be a
21 schedule of CTC charges. I merely included in a sample rate
22 design per kilowatt-hour by class for the CTC for 1999.
23 Presumably that would change each year in the transition
24 period. I did not extend my analysis beyond that.

25 Q. And what would change each year?

1 A. Yes, I believe so.

2 Q. If Enron has an opportunity to bill individual
3 customers, would Enron comply with the Commission's current
4 regulations regarding customer billing and termination?

5 A. Well, I assume that they would if those
6 provisions apply to power suppliers such as Enron.

7 Q. Would it be safe to say that Enron would comply
8 with all applicable Commission regulations?

9 A. I would assume that they would, yes.

10 Q. Returning to page 24 of your direct testimony in
11 the rate design area, is it your recommendation that the
12 Commission abandon the traditional approach of designing
13 rates on the basis of rate classes?

14 A. Consistent with my recommendations for the use
15 of a distribution pro forma tariff that would designate
16 suppliers as the customers under that tariff, the customers
17 of the EDC, yes, I think on that basis that there would not
18 be a need -- after the transition period there would not be
19 a need for class based rates other than perhaps continuation
20 of the CTC until that is ultimately resolved.

21 Q. Now, I looked through your Exhibit 3, PDR-6, and
22 I guess I need a little help. Can you tell me under your
23 proposed rate design what the specific charges would be for
24 a residential customer? By that -- let me just clarify the
25 question -- I mean each of the charges that would be imposed

1 on a residential customer. For example, customer charge,
2 first block of use and second block of use and so on.

3 A. Well, I think to give you an illustration or
4 give you an example, if you were to look at Exhibit 3,
5 PDR-6, Schedule 2, and you look at the single-phase
6 secondary customers -- now, this would be the charge if you
7 were to charge a customer charge rather than an energy based
8 charge -- this would be -- for example, a single-phase
9 secondary voltage customer -- presumably, residential end-
10 users fit in that category -- that would be the amount
11 charged to the supplier as customer under the pro forma
12 tariff. How that translates into a rate or a charge to an
13 individual residential customer as indicated in the response
14 to the interrogatory is up to the supplier.

15 Q. But this exhibit shows the charges to the
16 supplier?

17 A. That's correct, for a residential end-user or a
18 small general service user who would fit under the category
19 single-phase secondary voltage customers.

20 Q. And if I read this correctly, the customer
21 charge would be \$4.67 a month?

22 A. That would be one way to approach it, yes.

23 Q. And what would be other ways to approach it?

24 A. Another way to approach that would be to state
25 that as a charge per kilowatt-hour. Here for illustrative

1 purposes I have computed, if you look at the cumulative
2 charge, adding the cost of line transformers and services,
3 which that line 32 should say customer-related services
4 based upon the revision that was distributed, if you added
5 those customer charges up applicable to single-phase
6 secondary voltage customers or end-users I should put it, it
7 would be \$8.28.

8 The alternative way to design that would be to
9 compute an average charge per kilowatt-hour, and I've done
10 that on the following page.

11 Q. You have done that on -- I'm sorry. Can you
12 give me the reference of where it is done on a Kwh basis?

13 A. On the following page, I computed the demand-
14 related costs -- I'm sorry -- I computed the demand-related
15 costs on a per kilowatt-hour basis. It would be also
16 possible to take the customer-related costs and the demand-
17 related costs and equate that to a cost per kilowatt-hour.

18 Q. But looking now at Exhibit 3, PDR-6, Schedule 2,
19 which is where I think you just referenced us --

20 A. Yes.

21 Q. -- line 55 shows the demand rate on dollars per
22 Kwh, and I guess if I move over under the secondary voltage
23 customers -- is that the proper column?

24 A. That's correct.

25 Q. And I get .00737.

1 A. Correct.

2 Q. That's not the totality of the charges, is it?

3 A. No. There would be additional charges. If you
4 were to look on Schedule 3, our revenue cycle services, it
5 includes meter-related costs, meter reading, and customer
6 billing-related costs.

7 Q. And for the residential customer that I'm
8 interested in, those would be shown on line 31 as \$4.79 a
9 month?

10 A. Correct. For a residential end-user, the
11 supplier would be billed \$4.79 based upon this sample rate
12 design.

13 Q. Now, are there additional charges yet that we
14 haven't addressed?

15 A. The other additional charge would be the CTC
16 charge, which is shown on the following page.

17 Q. That is shown on Schedule 4?

18 A. That's correct.

19 Q. And then I guess finally, the per Kwh charge --
20 the energy charge.

21 A. Because this applies to the distribution pro
22 forma tariff, the EDC would not be charging the supplier for
23 energy.

24 Q. And energy would be the market price of energy
25 at that point?

1 interrogatory response?

2 A. Yes, I am.

3 Q. And does it remain accurate today?

4 A. Yes.

5 Q. Thank you. Am I correct, Mr. Reising, that in
6 your rate design testimony that we just spent a couple
7 minutes discussing, there is no discussion of rate cap
8 implications?

9 A. There is no discussion of rate cap implications.
10 Whatever the rate cap provisions are would apply here as
11 well. In other words, once we've designed the rates for
12 energy delivery and revenue cycle services, it would be
13 capped according to whatever the provisions are under the
14 Competition Act and the Commission regulations.

15 Q. And finally, in your rebuttal testimony on page
16 2, I just wanted to ask: could your concerns regarding last
17 resort service be addressed through a procedure where the
18 prices for that service charged by PP&L energy retail supply
19 group were indexed to market price?

20 A. I think you'd have to tell me more about your
21 indexing concept.

22 Q. Is there an indexing approach that would satisfy
23 your concerns?

24 A. I don't know without having studied the basis.
25 If it's indexed, I guess the question I have is: what is

1 the starting point for the index?

2 Q. So without more information, you really can't
3 draw a conclusion?

4 A. No, I can't.

5 MR. RUSSELL: That's all the questions I have. I
6 request to move PP&L Cross-Examination Exhibit No. 8 and
7 No. 9 into the record.

8 JUDGE KASHI: Received into the evidentiary record
9 without objection.

10 (No response.)

11 JUDGE KASHI: Without objection.

12 (Whereupon, the documents marked as
13 PP&L Cross-Examination Exhibits Nos.
14 8 and 9 were received in evidence.)

15 JUDGE KASHI: Redirect?

16 MR. KOHLER: One minute, Your Honor.

17 JUDGE KASHI: Off the record.

18 (Discussion off the record.)

19 JUDGE KASHI: Back on the record.

20 Mr. Kohler.

21 **REDIRECT EXAMINATION**

22 BY MR. KOHLER:

23 Q. Mr. Reising, do you recall Mr. Russell's
24 questions about whether your pro forma distribution tariff
25 was intended as a proposal to replace the PP&L tariff?

1 A. It was intended --

2 Q. Do you recall his question?

3 A. Yes, I certainly recall the question.

4 Q. Is it your proposal that as of the initiation of
5 direct access, that your pro forma distribution tariff would
6 replace or supplement PP&L's general distribution tariff?

7 A. On the commencement of competition, it would not
8 replace it. It would supplement it.

9 MR. KOHLER: Thank you.

10 JUDGE KASHI: Thank you very much. You are excused,
11 sir.

12 (Witness excused.)

13 JUDGE KASHI: That which has been previously
14 identified as Enron Statement No. 3 and 3.1 and the
15 attendant Exhibits PDR-1 through 8 are received into the
16 evidentiary record without objection.

17 (No response.)

18 JUDGE KASHI: Without objection.

19 (Whereupon, the documents marked as
20 Enron Statements Nos. 3 and 3.1 and
21 Enron Exhibits Nos. PDR-1 through
22 PDR-8 were received in evidence.)

23 JUDGE KASHI: Back to PP&L for Ms. Tierney.

24 Will you raise your right hand to be sworn?
25

1 Whereupon,

2 **SUSAN F. TIERNEY**

3 having been duly sworn, testified as follows:

4 JUDGE KASHI: Please be seated.

5 MR. RUSSELL: Your Honor, at this point, PP&L would
6 like to present the testimony of Dr. Susan F. Tierney.
7 Under our procedures, I would simply identify her testimony
8 as follows. PP&L Statement No. 9 is the direct testimony of
9 Susan F. Tierney. It consists of 41 pages of questions and
10 answers and is accompanied by Exhibits SFT-1 through SFT-12.

11 PP&L Statement No. 9-R is the rebuttal testimony of
12 Susan F. Tierney. It consists of 51 pages and includes
13 Exhibits SFT-13 and SFT-14.

14 **DIRECT EXAMINATION**

15 BY MR. RUSSELL:

16 Q. Dr. Tierney, do you have any corrections to your
17 testimony or exhibits that have just been identified?

18 A. Yes, I do. I have one correction, please. In
19 my rebuttal testimony on page 6, line 16, there are two
20 words "rather than" that should be "and." That's it.

21 MR. RUSSELL: Your Honor, with the foundation that
22 has been laid by agreement, PP&L moves into the record
23 Statement No. 9, Statement No. 9-R and Exhibits SFT-1
24 through SFT-14.

25 JUDGE KASHI: They will be so marked for purposes of

1 identification, and pending any timely motions and/or
2 objections made pending cross-examination, they will be
3 received into the evidentiary record.

4 (Whereupon, the documents were marked
5 as PP&L Statements Nos. 9 and 9-R
6 and PP&L Exhibits Nos. SFT-1 through
7 SFT-14 for identification.)

8 MR. RUSSELL: Thank you, Your Honor. We also have
9 short oral rejoinder for Dr. Tierney.

10 JUDGE KASHI: Go ahead.

11 BY MR. RUSSELL:

12 Q. Dr. Tierney, are you familiar with the
13 surrebuttal testimony of Ms. Smith on behalf of the Office
14 of Consumer Advocate?

15 A. Yes, I am.

16 Q. Could you comment on the statements that there
17 is no demonstration that the company's customized rate
18 design is more efficient than the company's traditional rate
19 design?

20 A. Yes. In her surrebuttal testimony, Ms. Smith
21 makes a point with regard to her belief that transmission
22 and distribution embedded costs are typically lower than
23 transmission and distribution marginal costs, and therefore,
24 she disagrees with my testimony in both my direct and
25 rebuttal testimony that the customized rate design is the

1 more efficient rate design than the traditional rate design.

2 With regard to transmission and distribution and the
3 point that Ms. Smith makes in her surrebuttal, I would agree
4 with her in the instance where a utility company had a
5 transmission expansion plan that indicated investment in
6 major transmission facilities. In the case of PP&L, this is
7 not the case. Prior to submitting my rebuttal testimony, I
8 had asked PP&L with regard to their transmission expansion
9 plan whether there were major transmission investments, and
10 the answer was no.

11 Seeing that, I was comfortable drawing the conclusion
12 that, in general, embedded costs for transmission and
13 distribution were likely to exceed marginal costs for
14 transmission and distribution since there are virtually no
15 variable costs associated with T&D.

16 That made me come to the conclusion generally that
17 with regard to the customized rate in which there are half
18 of CTC, which many intervenors agree with me is above
19 marginal cost and where generation is priced at marginal
20 cost and where transmission embedded costs exceed marginal
21 costs, the sum total of all of those is that we have a rate
22 design that is more efficient than today's traditional rate
23 design.

24 Q. Also regarding Ms. Smith's surrebuttal
25 testimony, can you comment on her revised proposal for

1 setting CTC charges during the transition period?

2 A. Yes. Originally, Ms. Smith testified that
3 should the Commission determine that stranded costs that
4 were allowed were less than the amount that could be
5 recovered under the rate cap using the residual approach
6 that PP&L has adopted, that she would propose to levelize
7 CTC payment across the entire transition period.

8 In her surrebuttal testimony, she testified that she
9 would revise that. Now she would rearrange CTC collection
10 schedules in such a way in which in the first year of the
11 transition period, there would be a major reduction in the
12 customer's bill, a 16 percent rate reduction, and that there
13 would be increases each year thereafter when both
14 generation, CTC and transmission costs were included.

15 My view about this proposal is that it
16 inappropriately trades off a one-year rate reduction of
17 significant size for subsequent year-by-year rate increases.
18 Based on my experience as a regulator and as a public
19 official who has observed rate increases and decreases,
20 customers tend to have a very short time memory for rate
21 decreases and substantial intolerance for rate increases
22 when it is for regulated rates.

23 Therefore, I believe that her current proposal is
24 essentially penny wise and pound foolish politically. I
25 would recommend that in the event that the Commission

1 determines that the allowed stranded costs are less than the
2 amount that could be collected under the cap, the Commission
3 should adopt PP&L's original proposal, which is to use the
4 residual method.

5 If the Commission does not adopt that proposal, I
6 would encourage the Commission to adopt the original
7 proposal of Mr. Knecht, who would reduce CTC in that event
8 in a way that is a pro rata ratio between the amount of CTC
9 collection that is allowed as compared to the amount of CTC
10 revenues that are available under the cap.

11 Q. Turning to Mr. Knecht's surrebuttal on behalf of
12 the Small Business Advocate, you are familiar with that
13 testimony?

14 A. Yes.

15 Q. Could you comment or respond to his comments
16 regarding the ability of the company to effectively price
17 its own generation at below market rates for customers on
18 last resort service and the company's failure to reduce its
19 CTC if market prices rise above forecast levels?

20 A. Yes. Mr. Knecht appears not to have read or for
21 some reason not to have understood the proposal that Mr.
22 Kleha has made in his rebuttal testimony and that I
23 reference in my rebuttal testimony as well. This is a
24 proposal in which there is a credit on the bill for last
25 resort customers when the combined total of market prices

1 and CTC exceed the rate cap for generation-related services.

2 In that event, we find ourselves in a situation where
3 PP&L, according to the law and according to its proposed
4 mechanisms, must and will sell to last resort customers at
5 prevailing market prices. It must not have a rate that
6 exceeds the cap. Therefore, the difference between the
7 total of prevailing market price and CTC will have to be
8 taken out of shareholders' returns.

9 Q. And finally, are you familiar with the
10 surrebuttal testimony of Mr. Schoengold on behalf of the
11 Environmentalists?

12 A. Yes.

1 Q. Do you agree with his characterization of your
2 testimony in the New Jersey electric industry restructuring
3 docket?

4 A. Not exactly. I would like to clarify the
5 context in which my testimony was given in New Jersey. New
6 Jersey, a year ago when I testified, has, as it has today,
7 no Act with regard to restructuring the electric industry.
8 At the time I testified, there had been a working group
9 established by the Public Utility Board as well as the
10 Energy Office in the state which had recommended that the
11 Board address issues related to pollution from old power
12 plants. The Board asked for ideas from stakeholders, and my
13 testimony went to the following issue. I made the point
14 that Mr. Schoengold has extracted from my testimony that,
15 indeed, it is a factual observation that environmental
16 regulations for power plants differ by virtue of the
17 vintage, the location, the fuel type, the size of power
18 plants, and that's a function of environmental law and
19 regulation. I suggested that the Board could consider doing
20 the following under its rate regulation authority; to create
21 carrots for companies to voluntarily clean up their power
22 plants. I had recommended that where the Board had already
23 established stranded cost, and where the Board had already
24 established what the recovery period would be for stranded
25 cost, the Board could extend a carrot to companies who had

1 stranded costs that exceeded the amount they could collect
2 during that period, and that carrot could extend for any
3 assets that were clean, in other words, that met modern
4 emissions performance standards.

5 The situation as I see it in Pennsylvania is very
6 different than New Jersey. Pennsylvania has adopted an Act,
7 and it is that Act that constrains the Commission, rather
8 than the Clean Air Act, from doing very much in this area.
9 The Pennsylvania Act defines what stranded costs are, it
10 defines the transition period; it does not extend rate
11 regulation authority for emission policy above and beyond
12 compliance with current law and regulation from
13 environmental regulators. I note that the Act, in Section
14 2802, Section 21, authorizes the PUC to work with state
15 environmental regulators, and it supports changes to federal
16 law and regulation on this issue.

17 MR. RUSSELL: Thank you.

18 Your Honor, Dr. Tierney is available for cross-
19 examination.

20 JUDGE KASHI: Thank you very much.

21 Mr. Kohler.

22 **CROSS-EXAMINATION**

23 BY MR. KOHLER:

24 Q. Good afternoon, Dr. Tierney.

25 A. Good afternoon.

FORM 2

1 Q. I just have a few brief questions.

2 In reference to page 49 of your rebuttal testimony,
3 lines 10 to 11, --

4 A. Yes.

5 Q. Let's first start on line 4. I think you
6 reference Mr. Bowen's testimony, pages 19 to 20. Do you
7 have that in front of you or available?

8 A. I can have it available. I don't have it yet.

9 Q. I think we're actually on page 20, not page 19.

10 A. Okay.

11 Q. Can you review Mr. Bowen's testimony again
12 quickly?

13 A. In a moment.

14 Q. I'm sorry; you don't have it yet.

15 (Document handed to witness.)

16 MR. RUSSELL: Excuse me; what page?

17 MR. KOHLER: Page 20.

18 (Witness perusing document.)

19 THE WITNESS: Yes.

20 BY MR. KOHLER:

21 Q. Now, going back to your testimony on pages 10 to
22 11, I believe you say that under Enron's proposal, Enron
23 would be willing to accept the first through the meter
24 approach and then an additional approach; is that right?

25 A. Yes.

1 Q. And then you describe -- what we're talking
2 about here is phase-in for direct access for C&I customers;
3 is that right?

4 A. Yes.

5 Q. And you describe Enron's or Mr. Bowen's
6 description of the two methodologies for a phase-in for C&I
7 customers that would be acceptable to Enron as a proposal;
8 is that right?

9 A. Yes.

10 Q. Isn't it a better characterization of Mr.
11 Bowen's testimony that he would accept these two
12 methodologies if one or the other were preferred by the C&I
13 customer base?

14 A. It's not exactly what I read, but it's probably
15 not an important distinction.

16 Q. Would you accept the notion that Mr. Bowen's
17 proposal in his testimony is to defer to C&I customer
18 proposals on this issue? Do you see that in that paragraph?

19 A. I see the words that say "I would defer to the
20 selection process advocated by many commercial and
21 industrial customers."

22 Q. And within that context he merely is identifying
23 two methodologies that presumably he believes might be
24 preferable to the C&I customers which would be acceptable to
25 Enron.

1 A. Yes.

2 Q. Does that sound reasonable?

3 A. I agree that's what he says.

4 Q. Thank you.

5 Referring to page 17 of your testimony, lines 9 to

6 10 --

7 A. Original?

8 Q. I'm sorry; your rebuttal testimony. Well, maybe
9 it was -- bear with me for a minute.

10 (Pause.)

11 Q. I just want to clarify the intent. Does this
12 mean that the delivery group would be prohibited from
13 acquiring energy at less than prevailing wholesale market
14 rates under any circumstances?

15 A. I interpret the law, and based on my discussions
16 with PP&L, the electric delivery group must obtain supplies
17 at prevailing market rates.

18 Q. So if they had a way of purchasing energy at
19 less than prevailing market rates, they would not be able to
20 do that, they would have to acquire energy at prevailing
21 market rates; is that --

22 A. I guess it would be hard to distinguish what the
23 prevailing market rate would be in that circumstance.

24 Q. Is it your testimony that whatever rate they
25 purchase it at is the prevailing market rate?

1 A. Yes, because they don't have supply; this group
2 does not have supply. It has to go to the market to get it.

3 MR. KOHLER: Nothing further.

4 JUDGE KASHI: Thank you very much, sir.

5 Mr. Stewart.

6 MR. STEWART: Yes, Your Honor. Thank you.

7 **CROSS-EXAMINATION**

8 BY MR. STEWART:

9 Q. Good afternoon. My name is Todd Stewart. I
10 represent the Mid-Atlantic Power Supply Association.

11 A. Hello.

12 Q. In your rejoinder testimony I believe you said
13 essentially that customers taking power from PP&L as
14 supplier of last resort would be protected in the event that
15 market prices for energy rose above the cap rates?

16 A. Yes.

17 Q. And by that you mean -- and I think you also
18 said that PP&L's shareholders would suffer the loss; is that
19 correct?

20 A. Yes.

21 Q. Which division would that loss be recorded in,
22 would that be the supply group or the delivery group?

23 A. The electric delivery group.

24 Q. Under PP&L's proposal then, if that were to
25 occur, there would be no adjustment to the CTC to correspond

1 to that increase in market price; is that correct?

2 A. That's correct.

3 Q. On page 40 of your direct testimony, at the top
4 of the page, you state that those customers who are taking
5 under the BUSS rates, that their rates would be tied to a
6 market price?

7 A. Yes.

8 Q. Are you referring to a wholesale market price or
9 a retail market price?

10 A. I'm referring to the price that the electric
11 delivery group has to incur to obtain supplies. As I
12 understand it, that is largely wholesale prices, but that
13 may include some other costs associated with the acquisition
14 process itself.

15 Q. Sorry for jumping around here. On page 12 of
16 your direct testimony, at line 6, you state that one of the
17 purposes of the Act, I believe, or one of the requirements
18 is that all customers must benefit from choice?

19 A. Yes.

20 Q. By benefit do you mean to say some sort of
21 economic savings, or is there some other benefit that you
22 had in mind from choice?

23 A. Well, as I interpret the Act, there is an
24 inherent benefit associated with giving customers the
25 opportunity to choose and select their supplier of

1 generation services; that retail choice is part of opening
2 up a competitive retail generation market, which itself has
3 lots of benefits, lots of economic benefits. But I mean the
4 choice has benefits on its own.

5 Q. So you say just the ability to have choice.
6 There's no necessary inclusion in that benefit of customer
7 savings?

8 A. It's all about customer savings, but choice is
9 one of the ways you get to that.

10 Q. Is it true that any forecasts of market prices
11 for electric energy are influenced by the availability of
12 capacity in a particular region?

13 A. Sure.

14 Q. And so, essentially, if there's an excess of
15 capacity, it would depress the forecasts of the market price
16 not only for capacity but also for energy?

17 A. Depress? It would have a low capacity value
18 component in it, if that's what you mean by depress.

19 Q. That's what I meant.

20 And correspondingly, then, an increase in demand for
21 capacity would tend to drive up the overall price of energy
22 and capacity?

23 A. Yes.

24 Q. For the sake of argument, suppose that PP&L's
25 forecast of the market price of energy and capacity

1 beginning in 1999 is incorrect and that the forecast
2 underestimates the actual cost of energy and capacity, would
3 that mean that customers buying capacity and energy from
4 PP&L as supplier of last resort would be paying less than
5 the actual cost of the energy and capacity?

6 A. Forgive me, that was a multi-part hypothetical,
7 which I'm --

8 Q. I would be perfectly willing to restate it.

9 A. Please do.

10 Q. Okay. PP&L's forecasts of market price of
11 energy and capacity, we're going to assume it's incorrect
12 and that it underestimates the actual cost of energy and
13 capacity, so that when we get into choice and the customers
14 are buying energy and capacity from PP&L as the supplier of
15 last resort, and under the rate cap, would those customers
16 be paying less than the actual cost of the energy and
17 capacity?

18 A. I would like to ask you one more question, if
19 you would let me, and that is: where are we along the
20 process? What year are we in?

21 Q. Any time after 1999, a customer that has choice,
22 or has the ability to choose but doesn't choose.

23 A. The reason I asked you is a last resort customer
24 will, in the first year, take market price for generation
25 according to a tariffed value under the electric delivery

1 group. In subsequent years, after there will have been a
2 mechanism to look at what the new market price is, whether
3 up or down, the market price in that tariff will be reset
4 for those customers. So it's going to be reset year to year
5 based on the prevailing market price.

6 Q. In one of those years before the price is reset,
7 though, would the customer taking power during that period
8 before the reset, would they be paying less than market
9 price? If the forecast happened to be wrong for the period
10 of time, would they actually be paying less or more than
11 market price?

12 A. Well, in your hypothetical you told me the
13 market price forecast was too low.

14 Q. Right.

15 A. So based on that I would say in that year
16 they're going to pay under, and the next year it's going to
17 be made up.

18 Q. Just a point of clarification. Is the
19 prevailing market price reset only once a year, or is it --

20 A. My understanding is it would be reset once a
21 year.

22 Q. And would that rate point always be specified in
23 the tariff?

24 A. My understanding is that it will; yes.

25 MR. STEWART: I have nothing further, Your Honor.

1 JUDGE KASHI: Thank you very much.

2 Mr. Fogel.

3 MR. FOGEL: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. FOGEL:

6 Q. Good afternoon, Ms. Tierney. My name is Usher
7 Fogel. I represent the Pennsylvania Petroleum Association.

8 In your testimony you describe the manner in which
9 the CTC will be recovered; that's 50 percent would be coming
10 from the usage rate and 50 percent from the monthly fixed
11 rate, fixed charge, per customer.

12 A. Yes.

13 Q. Now, would you agree that the purpose of the CTC
14 is to recover stranded costs?

15 A. Absolutely.

16 Q. And those stranded costs represent the net
17 generation costs that have become uneconomic due to the
18 advent of competition or the influence of competitive
19 forces; correct?

20 A. The language in the law is slightly different,
21 but it's the difference between what those costs for
22 generation would be under regulation versus the market.

23 Q. But the only costs that we're attempting to
24 recover here are generation costs?

25 A. Generation-related costs.

1 Q. And so now we're recovering costs that reflect
2 the costs the company incurred in the past to construct and
3 install various modes of generation; okay?

4 A. Okay.

5 Q. Do we agree so far?

6 A. As well as other generation-related costs; yes.

7 Q. Now, in the past, prior to the advent of
8 deregulation, in the rate design that the company applied to
9 all customers, would it be correct to say that the costs of
10 generation were recovered on a usage basis either through a
11 kW charge or a kWh charge?

12 A. My understanding is that they were.

13 Q. And to your knowledge, was there ever an
14 instance in which generation costs were recovered through a
15 fixed customer charge on a monthly basis?

16 A. I don't know the answer to that.

17 Q. Could you take it yes or no subject to check? I
18 have no way of checking from the company.

19 MR. RUSSELL: Your Honor, Mr. Kleha can testify to
20 that tomorrow.

21 MR. FOGEL: I don't want to hang around for that.
22 It's not the person, he seems like a very nice fellow and
23 everything, but if I don't get back tonight, my wife's going
24 to kill me.

25 (Laughter.)

1 THE WITNESS: But I don't even know which way to go
2 subject to check; that's the problem.

3 BY MR. FOGEL:

4 Q. But to your knowledge there was never an
5 instance in which that was done?

6 A. I know of no such instance, but I would ask Mr.
7 Kleha to confirm that, if I'm allowed to do that.

8 Q. Okay. I'll have to arrange something with the
9 company one way or the other.

10 Let me ask you: in your experience in Massachusetts,
11 was there ever an instance in which generation costs were
12 recovered in some other format besides a kW or kWh charge?

13 A. I think it's possible, yeah.

14 Q. Was there a fixed monthly charge for it like a
15 customer charge?

16 A. We did have customer charges; yes.

17 Q. I know you had fixed customer -- well, let me
18 take a step back. With respect to Pennsylvania -- and I
19 refer you to your response to my Interrogatory No. 19 where
20 you describe the customer charge as a monthly charge like
21 collecting a per capita, or more precisely a per customer
22 basis rather than those based on a per kilowatt-hour or per
23 kilowatt use; and then you further say that the customer
24 charges include a portion of delivery charges, and per
25 customer the rate is one-half of the CTC charges.

1 A. In Pennsylvania that is the case with this
2 proposal, yes.

3 Q. So that under your CTC methodology that you've
4 proposed, you are not only making the company whole for
5 these stranded costs, but you're also changing the
6 methodology, the rate methodology, by which generation costs
7 are recovered vis-a-vis in the past.

8 A. There's no secret here that this is a rate
9 redesign proposal; yes.

10 Q. Would you consider that to be a rate design
11 change?

12 A. Yes.

13 Q. Does the statute allow rate design changes?

14 A. I think the statute is silent on the question of
15 whether rate design -- although, they do say -- rate design
16 includes, of course, cost allocation questions, and cost
17 allocations have to remain as they were in the last cost of
18 service study.

19 Q. Traditionally, was shifting of revenue recovery
20 from a usage rate to a customer charge or monthly rate
21 considered to be a form of revenue allocation intra-class?

22 A. Yeah.

23 Q. Turning our focus now a little bit differently,
24 in terms of the risk of recovery of costs through charges,
25 all else being equal, would a fixed monthly charge versus a

1 usage charge increase or decrease the risk of cost recovery?

2 A. Well, all else being equal, it would decrease
3 the risk.

4 Q. So that would you agree that by shifting
5 recovery 50 percent of the CT charges through a usage rate
6 to the monthly fixed rate, the company's risk of cost
7 recovery of these costs is decreased?

8 A. Well, I don't think all else is equal.

9 Q. Okay.

10 A. So I think there's a balancing of risks on this
11 point. Under an entirely usage-based cost recovery
12 mechanism for CTC, the company and customers bear the risk
13 of greater than expected weather conditions. Let's say it's
14 a treacherously cold winter here in Pennsylvania and, lo and
15 behold, PP&L comes out swimmingly in terms of CTC collection
16 if it's an entirely usage based rate, and obviously the
17 converse is true; if it is a really ugly, mild winter, CTC
18 collection is conversely affected. The shift to some
19 portion of those into fixed charges obviously reduces the
20 band widths of that risk for both customers and PP&L.

21 Q. Looking at it from PP&L's perspective, however,
22 the more you shift into a fixed monthly charge, the
23 volatility associated with cost recovery is decreased?

24 A. Yes.

25 Q. I think you touched on it in your answer, but

1 could you just explain a little bit again how your proposal
2 reduces a customer's risk?

3 A. Yes. Again, say a customer with electric
4 heating and cooling systems finds themselves in a weather
5 condition that we have found ourselves in in the past couple
6 of years of extremely hot summer and extremely cold winter,
7 they're going to be paying more CTC if it's entirely a
8 usage-based charge.

9 Q. Okay. Let's look at that for a moment. If I'm
10 the customer and I'm looking now ahead, okay, assuming the
11 CTC was recovered entirely on a monthly basis, fixed charge,
12 then a mild winter happened and I'm going to pay all this
13 money; there's a certainty about that. However, as you go
14 more to a usage rate, then the level that I may pay may be
15 more or less dependent upon weather?

16 A. Yes.

17 Q. How does that decrease the customer's risk then?
18 That's what I don't understand.

19 A. Your exposure to events that you can't control
20 is reduced.

21 Q. I guess the question is: if the weather is
22 worse than normal, I'm better off -- if the weather is
23 milder than normal, I'm better off; if the weather is worse
24 than normal, I'm worse off, so it can go either way.

25 A. Yes.

1 Q. But if I go with a fixed charge, I know I'm
2 going to get nailed.

3 A. True.

4 Q. So how does that make me feel better as a
5 customer?

6 A. There is a shifting of risk.

7 JUDGE KASHI: It puts more certainty in your life.

8 (Laughter.)

9 MR. FOGEL: Thank you. Nothing further.

10 THE WITNESS: Thank you.

11 JUDGE KASHI: Thank you very much, sir.

12 Mr. Kleppinger.

13 MR. KLEPPINGER: Thank you, Your Honor.

14 **CROSS-EXAMINATION**

15 BY MR. KLEPPINGER:

16 Q. Good afternoon, Dr. Tierney.

17 A. Good afternoon.

18 Q. I'm David Kleppinger. I represent the PP&L
19 Industrial Customer Alliance.

20 Let's turn to page 49 of your rebuttal, which is your
21 discussion of the phase-in. I would like to try to focus on
22 the differences between PP&L's proposal for handling the
23 phase-in and your criticisms of PPLICCA's proposal. In the
24 case of PP&L's proposed phase-in, am I correct that for the
25 industrial customer class, if the first-come/first-serve

1 approach produces an over-subscription above the 33 percent,
2 that some customers will be in, some customers will be out?

3 A. Yes.

4 Q. And then for the customers that are in, 100
5 percent of their load, their individual load, would have
6 access?

7 A. Subject to PP&L's commitment to look at
8 instances where there is some competitive issue for some of
9 the customers.

10 Q. By what process would that competitive
11 discussion be adjudicated, if you will?

12 A. Actually, I don't know the answer to that.

13 Q. Now, under PPLICA's proposal, is it your
14 understanding that there would be a first-come/first-serve
15 nomination type period, and if the 33 percent in the first
16 year is over-subscribed, there would be a pro rata reduction
17 in every customer's nomination that wanted access?

18 A. That's my understanding.

19 Q. Is it safe to say that under the PPLICA
20 approach, more total customers would have access than under
21 the PP&L approach?

22 A. I would expect that to be the case.

23 Q. Do you know how many customers PP&L has in its
24 industrial LP-5 and LP-6 class?

25 A. (No response.)

1 Q. Less than a thousand?

2 A. Yes, I believe.

3 Q. Do you believe it would be -- I guess you do,
4 based on your testimony -- it would be unworkable and
5 confusing to do pro rata reductions on a few hundred
6 customers?

7 A. Yes, I did testify to that fact, and I do
8 believe that to be true.

9 Q. And that would be more unworkable and more
10 confusing than everything else we're doing in this case?

11 A. Well, when you put it that way.

12 (Laughter.)

13 A. No. I made this point very much from the gut of
14 my experience as a public policy maker where you have to
15 devise implementation mechanisms for programs where there is
16 no perfect way to do it and more people want to do something
17 than you can do, or fewer people want to do something than
18 you can do, or whatever the deal is, and public policy
19 makers split the baby in some fashion. I've been in that
20 seat many times over the past 15 years, and splitting the
21 baby in ways that sounds okay inside of hearing room often
22 engenders so many implementation problems, and this one
23 looks to me that way.

24 Q. Are you familiar with PP&L's position on the
25 phase-in issue in the context of the Commission's ongoing

1 working group?

2 A. I understand that there are discussions going
3 on.

4 Q. Do you know if PP&L's position is the same or
5 different in the context of that working group?

6 MR. RUSSELL: Your Honor, I would object to that
7 line of questioning. We are participating in a number of
8 the working groups at the Commission, and in an effort to
9 reach collaborative results to solve some of these thorny
10 problems, we have taken positions in those groups that may
11 be different than our litigation positions. In my view, if
12 those groups are to be successful, we can't be forced to
13 defend collaborative positions in the context of a litigated
14 proceeding.

15 JUDGE KASHI: Very well.

16 MR. KLEPPINGER: I didn't ask for the position. I
17 just asked if she was aware if one was taken?

18 MR. RUSSELL: Your Honor, I thought we were headed
19 down the road.

20 JUDGE KASHI: I agree with Mr. Russell's point.

21 MR. KLEPPINGER: I do to. That's why I did not ask
22 for the precise position.

23 THE WITNESS: So what do I do?

24 JUDGE KASHI: Are you aware?

25 THE WITNESS: Yes.

1 JUDGE KASHI: All right.

2 BY MR. KLEPPINGER:

3 Q. Now, another alternative, I believe, raised in
4 PPLICA's direct testimony was whether or not the statute
5 permitted an acceleration of the phase-in to the extent that
6 on January 2 of 1999, for example, a utility could, if they
7 so desired, move to 66 percent of each class' peak load.
8 Are you familiar with that position?

9 A. Yes.

10 Q. I take it in your rebuttal testimony you have
11 not addressed that issue. Does the company not have a
12 position on that issue?

13 A. Actually, I think that the company's position
14 with regard to the day after 1/1/99 and the last day in the
15 phase-in period, of that one year of the phase-in period, is
16 silent in the record, and presumably there's flexibility on
17 that. Silent to my knowledge, I would say.

18 Q. Is there a particular objection by PP&L to the
19 idea that a large industrial customer may have a split load,
20 33 or 60 percent, 66 percent on direct access and the
21 remainder on purchases from PP&L, during the phase-in?

22 A. Actually, I don't know PP&L's position on that
23 precisely, but I understand there could be an expectation
24 that those arrangements will happen in the future.

25 Q. They'll have to happen in the pilot, for

1 example?

2 A. That's right.

3 Q. Now, we've talked a lot about the customized
4 rate design today. Just one quick question on that. Is it
5 your understanding of today's rates of PP&L that those rates
6 are based on embedded cost of service as opposed to marginal
7 cost?

8 A. To the best of my knowledge, yes.

9 Q. So in addition to being a rate design change, as
10 I think you conceded to a prior cross-examiner, it would be
11 somewhat of a philosophical change, too, in that the
12 Commission would be endorsing marginal cost based developed
13 rates as opposed to embedded cost developed rates?

14 A. Indeed, that's the spirit in which PP&L has
15 offered this proposal, is that this is a philosophical move
16 that's consistent with a move to competitive generation
17 markets.

18 Q. Would you agree with me that in competitive
19 generation markets, the providers of those competitive
20 generation services will need to be more responsive to
21 customer desires and interests than under the old regulated
22 system?

23 A. Under monopoly regulation you would assume that,
24 as compared to a competitive regime, customer focus will be
25 increased in a new competitive market.

1 Q. And based on your review of all the testimony in
2 this case thus far, would you conclude that the customer
3 focus, at least in the industrial community, is not heavily
4 in favor of the customized rate option that's proposed by
5 PP&L?

6 A. Actually, I interpreted the testimony to be that
7 they're not enthusiastic about the mandatory nature. I did
8 interpret that those who see they would benefit might
9 actually be quite enthusiastic.

10 Q. But they don't want it imposed upon them?

11 A. I did detect that.

12 Q. Good.

13 Turning to your rebuttal testimony, you use some of
14 the very similar terminology at pages 12, 16 and 19, and I
15 just wanted to walk you through that briefly. At page 12,
16 lines 13 through 15, you state that all customers pay the
17 same CTC regardless of whether PP&L or some other supplier
18 provides them generation service. Do you see that?

19 A. Yes.

20 Q. And I believe on page 16, paraphrasing again,
21 you make pretty much the same comment again at lines 15
22 through 17 and 19 through 21, that customers pay the same
23 CTC regardless of who supplies them power.

24 A. So I'm repeating myself.

25 Q. I think, to make it clear, you repeat yourself

1 again on page 19, lines 10 and 11, all of PP&L's retail
2 customers in a similar rate class pay the same CTC
3 regardless of whether PP&L or some other company provides
4 the service; correct?

5 A. Yes. It's the regardless part that's operative
6 in this last sentence. Yes.

7 Q. Now, those statements that appear on page 12, 16
8 and 19 in your rebuttal testimony, is that true under PP&L's
9 proposal for the CTC that's contained in Rate Schedules IST,
10 ISB and ISA?

11 A. Well, based on my understanding of those rate
12 schedules, which includes a requirement that in order to be
13 an interruptible customer you have to take service from
14 PP&L, you have a CTC payment under that rate class, and if
15 you're not an interruptible customer you don't qualify for
16 that rate class, so you go to a difference rate class, and
17 then once you're in that different rate class, you have a
18 CTC regardless of who you take supply from.

19 Q. But if I'm an IST customer today and I sit and
20 wait until January 1, 2001 where I know I can get 100
21 percent of my load, and I cut my ties from PP&L at that time
22 and take competitive supply from someone else, do I or do I
23 not pay the CTC that is found in the IST rate schedule?

24 A. You are not an interruptible customer of PP&L
25 under the circumstance you just described.

1 Q. So then --

2 A. You don't qualify for that rate.

3 Q. I don't qualify for that rate even though that's
4 the last rate I was on with the company when I was taking
5 supply from that company?

6 A. Again, based on my understanding, each rate has
7 some eligibility rules, and if any customer, whether it's a
8 residential customer by virtue -- any rate class where you
9 no longer meet the test of eligibility, you move to a
10 different rate class, and so under those circumstances, you
11 are going to be treated like everybody else in the new rate
12 class. That's very common under traditional regulation.

13 Q. Very common under a statute that has an anti-
14 cost shifting approach and a rate cap approach?

15 A. It's very common that if you no longer qualify
16 for the eligibility rules, you don't get to take service
17 under that class.

18 Q. Do you know if that eligibility rule is in the
19 tariff today or is being proposed in this case?

20 A. Well, my guess is it's being proposed in this
21 case because it's the first time that anybody would have the
22 opportunity to choose. They didn't have that opportunity in
23 the past, and PP&L --

24 Q. So it's a new requirement of the tariff that the
25 customer take all their supply under IST in order to qualify

1 for that rate?

2 A. Because interruptible supply is about
3 interruptible supply, and if you don't take supply, it
4 doesn't have any meaning to the company.

5 Q. But a customer could -- prior to this change in
6 the tariff, could a customer not have self-generated half of
7 their supply and purchased half of their supply under the
8 interruptible rate, if you know?

9 A. Well, I presume so, but they still were subject
10 to being interrupted by PP&L, and that had some value to
11 PP&L.

12 Q. Are you familiar with the effects on the
13 customer of charging a firm based, firm tariff CTC versus an
14 interruptible based CTC?

15 A. I have ready the testimony on this point.

16 Q. And you're familiar with the -- I believe you
17 read the Act, based on your testimony?

18 A. Many times.

19 Q. And while not trying to quote the Act in any
20 kind of detail, I think we could agree that one of the
21 purposes of the Act is to retain and promote economic
22 development in the state?

23 A. Absolutely.

24 Q. Is it your testimony that charging a higher CTC
25 to a formerly interruptible customer who, under a new

1 qualification criteria, cannot take that service anymore is
2 in keeping with promoting economic development in the state?

3 A. On this particular issue I would expect the
4 Commission to look at the balance of issues, and that is --

5 Q. I'd rather hear the answer to the question as
6 opposed to what the Commission is supposed to do.

7 A. I apologize. Would you restate the question so
8 I can answer it precisely, or have it read back?

9 Q. I think we had agreed that one of the purposes
10 of passing Act 138 in Pennsylvania was that the cost of
11 electricity is an important factor in determining whether
12 businesses locate, expand or change facilities in
13 Pennsylvania?

14 A. Agreed.

15 Q. And I'm asking you whether or not the proposal
16 by PP&L, which would result in higher CTC charges for
17 interruptible customers which would occur only if that
18 customer exercised the direct access rights under the
19 statute, is in keeping with promoting economic development
20 and retention in the Commonwealth of Pennsylvania?

21 A. The interruptible rate looks to me as though it
22 has dual benefits today. One of them is to the customer,
23 because there is essentially a rate that reflects the
24 discount associated with firm capacity.

25 Q. I think you can answer this question without

1 getting into the purpose of the underlying rate.

2 MR. KLEPPINGER: I think the question calls for a yes
3 or no answer, Your Honor.

4 JUDGE KASHI: Can you answer the question?

5 THE WITNESS: I can't answer it yes or no.

6 JUDGE KASHI: She can't answer it yes or no, Mr.
7 Kleppinger.

8 MR. KLEPPINGER: Then I don't want an answer, Your
9 Honor.

10 JUDGE KASHI: All right.

11 MR. KLEPPINGER: Thank you very much. That's all I
12 have.

13 JUDGE KASHI: That's all you have? Thank you very
14 much.

15 Mr. Vough from CEO?

16 MR. VOUGH: Thank you, Your Honor.

17 **CROSS-EXAMINATION**

18 BY MR. VOUGH:

19 Q. Dr. Tierney, my name is Michael Vough and I
20 represent CEO, a community-based organization in Luzerne
21 County. I'm going to be questioning you regarding your
22 rebuttal testimony from page 39 toward the end of your
23 rebuttal.

24 In your rebuttal testimony basically your opinion is
25 that you agree with PP&L's proposed universal service

1 program, and you feel that it is adequate to the needs of
2 the consumers, low income consumers, in PP&L's regional
3 territory. I would like to ask you what information you
4 received from PP&L and what you reviewed to base your
5 decision on?

6 A. I saw documents describing the Wrap Program and
7 other programs. I read testimonies from the intervenors in
8 this case with regard to their views about what the program
9 should or should not include, including from the CEO, and
10 that included, in some instances, as you know, needs
11 assessments as well as critiques of the program.

12 Q. So you reviewed other documentation besides Tim
13 Dahl's testimony?

14 A. Yes. In a general fashion.

15 Q. Looking at your rebuttal testimony, it seems
16 that you make two references to there will be an increase in
17 individuals seeking these programs, twice in your rebuttal -
18 - specifically, line 1 on page 42, and line 17 on page 42,
19 you specify that the program is expected to grow in terms of
20 numbers of eligible customers served over time. Is the
21 increase in individuals seeking these programs because of
22 the change from regulation to competition?

23 A. Not to my knowledge.

24 Q. Why do you think the number of individuals is
25 going to increase in these programs?

1 A. Actually, these statements are meant to be
2 factual descriptions of PP&L's proposal, which is it
3 proposes to increase the number of people served under the
4 programs.

5 Q. So your testimony, if I could clarify it, is
6 based upon PP&L's visions of the program's size increasing?

7 A. Yes.

8 Q. It's not based on anything regarding competition
9 or regulation?

10 A. That's right.

11 Q. So your opinion whether it's going to be
12 increased or not increased is based upon what PP&L has done?

13 A. Yes, and I don't know whether or not their
14 expansion was driven by the expectation of competition. I'm
15 sorry, I don't know that.

16 Q. If you do know, do you know of any other markets
17 where they've gone from regulation to competition where
18 there's been an increase in the people seeking universal
19 service programs?

20 A. Phrased as you have, it's difficult for me to
21 answer it. Posed in a slightly different way, which is the
22 expectation often is that were there not for some universal
23 service programs, such as in telecommunications, there would
24 be fears that not everyone might be served in a competitive
25 market, and therefore, there have been universal service

1 programs put in place.

2 Q. The universal service program that PP&L has now
3 uses community-based organizations like CEO to provide
4 services to low income individuals. Do you agree with that
5 proposal?

6 A. That's my understanding.

7 Q. One of the problems that I see in this proposed
8 order is the education situation, providing education to low
9 income individuals. Would it be your opinion that these
10 community-based organizations that provide services now,
11 would it be applicable for them to provide education to low
12 income individuals?

13 A. Presumably, that's part of their job.

14 Q. Do you know who the program administrator will
15 be of PP&L's program?

16 A. You mean the person?

17 Q. Not the person, the entity.

18 A. Subject to check, I think it's -- actually, I
19 don't know, but I believe it's on the electric delivery
20 group side of the shop. There's different units in there,
21 so I don't know.

22 Q. It would be someone affiliated with PP&L?

23 A. By program administrator, do you mean the person
24 within PP&L who administers this program?

25 A. Not the individual person. Will the person be

1 affiliated with PP&L?

2 A. I presume so.

3 MR. RUSSELL: Your Honor, let me just make a comment.
4 I'm not objecting to the line of questions because Dr.
5 Tierney has addressed these issues in her testimony. I
6 would just note for the record that the details of how the
7 program will be administered by PP&L can be supplied by Mr.
8 Dahl when he's on the stand next week, and we'll be prepared
9 to answer detailed questions at that time.

10 MR. VOUGH: Your Honor, all I'm looking for is that
11 PP&L will be administering the program.

12 JUDGE KASHI: All right.

13 BY MR. VOUGH:

14 Q. Your testimony in your rebuttal on page 41, line
15 10 through line 13, basically you state there that all the
16 competitive power suppliers, including PP&L, will provide a
17 level of financial assistance deemed appropriate for
18 individual low income program participants by the program
19 administrator.

20 A. I see what you mean.

21 Q. What does that mean?

22 A. My understanding of the program -- and I don't
23 know who the administrator is in this sentence.

24 Q. I don't really care about that.

25 A. -- is that there is an entity who determines,

1 based on income eligibility, income facts and eligibility
2 for programs, how much support a particular customer is
3 going to get.

4 Q. And that person is affiliated with PP&L who
5 makes that decision?

6 A. What I'm telling you is I don't know the answer
7 to that question.

8 Q. Is it safe to say that when an individual enters
9 the universal service program, that person becomes a
10 liability to the utility; the utility loses revenue because
11 that person enters that program?

12 A. Yes. Liability is a pretty tough word.

13 Q. Let's just say they lose revenue.

14 A. They lose revenue, and in many instances the
15 attempt is to try to get some good --

16 Q. Revenue back.

17 A. Some revenue back; sure.

18 Q. If the person gets a subsidy on their bill,
19 they're helped out with their bill, they may receive Wrap
20 services where their home is serviced by the utility, the
21 utility pays for that; correct?

22 A. Yes.

23 Q. So in this proposal you're saying that PP&L is
24 going to decide who qualifies for these programs?

25 A. I would like to be very clear with regard to my

1 testimony. Mr. Dahl's testimony should speak to the
2 question of who the program administrator is, and it could
3 be the Community Assistance Program, to my knowledge, and it
4 might be PP&L. I don't know the answer to that question. I
5 think, when I was answering your earlier questions, I
6 thought you were asking about PP&L's point of contact, but
7 my understanding is that somebody outside of PP&L was making
8 decisions about the income support.

9 Q. My question would be: does PP&L decide who gets
10 these programs or not?

11 A. Please ask Mr. Dahl that question.

12 Q. Okay. I will. The reason I asked you is it was
13 in your testimony; that's why I asked.

14 Are you familiar with the hard numbers, I say the
15 hard numbers, the actual residents in the PP&L service area
16 that are low income?

17 A. I can tell you that I read the testimony offered
18 by your witnesses, but I am not familiar with the details of
19 the hard numbers.

20 MR. VOUGH: That's all I have. Thank you.

21 JUDGE KASHI: Thank you very much, sir.

22 Mr. Zalcman.

23 MR. ZALCMAN: Thank you, Your Honor.

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CROSS-EXAMINATION

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BY MR. ZALCMAN:

Q. Good afternoon, Dr. Tierney. My name is Fred Zalcman and I represent the Environmentalists in this case.

A. Good afternoon.

Q. Based on your statement of particular expertise at page 2 of your direct testimony, lines 3 through 8, would it be fair to say that there are certain public benefits that market forces alone won't be capable of delivering?

A. Lines 3 to 4?

Q. Three to 8.

A. Oh. Sure. I don't think we have perfect markets.

Q. As you've used the term "public benefits" at line 7, can you define that?

A. Sure. I think there are a number of ways in which competitive markets as we know them in this country, especially ones that have moved from regulation to competition, are not perfect. That's with regard to supporting public goods like research and development, long-term research and development, basic research and development. With regard to environmental externality issues where such externalities are not internalized in prices. Those kinds of benefits -- those kinds of issues that are reflective of imperfect markets were sometimes, in

1 some jurisdictions, dealt with by public utility
2 commissions.

3 Q. Would it be fair to say that wherever possible
4 regulators should avoid the stranding of public benefits in
5 the transition to competition?

6 A. In general, yes.

7 Q. Now, I'd like you to refer to page 20 in your
8 direct testimony, lines 14 through 17. Do you have that?

9 A. Page 20, lines 14 through 17; yes.

10 Q. There you use the term "efficient"; is that
11 correct?

12 A. Yes.

13 Q. You believe that economic efficiency is a main
14 objective of industry restructuring; isn't that correct?

15 A. Sure.

16 MR. ZALCMAN: Your Honor, I, too, have documents that
17 I'd like to have marked for identification, please.

18 JUDGE KASHI: All right.

19 (Documents distributed by Counsel Zalczman.)

20 JUDGE KASHI: Question No. 96 will be marked as
21 Environmentalists' Cross 1 --

22 MR. ZALCMAN: Your Honor, I believe this should be
23 Environmentalists' Cross Exhibit 2.

24 JUDGE KASHI: Two. I missed one. And 97 will be
25 Cross 3.

1 (Whereupon, the documents were marked
2 as Environmentalists' Cross-
3 Examination Exhibits Nos. 2 and 3
4 for identification.)

5 BY MR. ZALCMAN:

6 Q. Dr. Tierney, Questions 96 and 97, Set 2, of the
7 Environmentalists' interrogatories, were those documents
8 prepared by you?

9 A. Yes.

10 Q. And were I to ask you the questions that appear
11 in those documents, would your answers today be the same?

12 A. Yes.

13 MR. ZALCMAN: Your Honor, I would move for the
14 admission of Environmentalists' Cross Exhibits 2 and 3.

15 JUDGE KASHI: Without objection, that which has been
16 marked as Environmentalists' Cross 2 and 3 will be received
17 into the evidentiary record.

18 MR. RUSSELL: Your Honor, there is no objection. I
19 just want to be sure I have the numbering right. Is
20 Environmentalists' Cross Exhibit No. 2 the response to
21 Question 96?

22 JUDGE KASHI: That's correct, sir.

23 MR. RUSSELL: Thank you.
24
25

1 (Whereupon, the documents marked as
2 Environmentalists' Cross-Examination
3 Exhibits Nos. 2 and 3 were received
4 in evidence.)

5 BY MR. ZALCMAN:

6 Q. Dr. Tierney, would you believe that in addition
7 to the internalized costs, an appropriate measure of
8 socially efficient would include consideration of damage to
9 the environment, damage to public health?

10 A. Were I writing an economic textbook, yes.

11 Q. Would you agree that the public interest in
12 restructuring is defined by an industry structure that
13 minimizes long-term economic and environmental costs, and
14 specifically reliable service?

15 A. Actually, in Pennsylvania I would say that the
16 Act creates the framework for defining what the public
17 interest is with regard to the costs associated with utility
18 service.

19 Q. Now, in your rejoinder statement you addressed
20 the surrebuttal testimony of Environmentalists Witness
21 Schoengold; is that correct?

22 A. Yes.

23 Q. And as I understand your rejoinder, you describe
24 a different situation in Pennsylvania than was applicable in
25 New Jersey at the time you testified on the BPU Master Plan

1 there; is that correct?

2 A. Yes.

3 Q. And if I'm not mistaken, the difference in
4 situation that you describe is one of law; you identified
5 differences relative to the period over which stranded costs
6 can be recovered.

7 A. I think there were a number of differences. One
8 of them had to do with the platform that a law creates for
9 directing a commission's action. In Pennsylvania such a law
10 has been passed, and in New Jersey there is no such law that
11 has been passed. There are also differences associated with
12 what I'll call kind of the organic utility regulatory laws
13 that apply to the two commissions. In New Jersey there was
14 an expressed desire by the commission to hear how they could
15 use rate regulation to create incentives for environmental
16 performance.

17 Q. I guess what I'm getting at is the environmental
18 problem itself is not materially different in Pennsylvania
19 than it is in New Jersey; would that be correct?

20 A. Well, as a former head of a state environmental
21 agency, that is a very loaded statement, the question you
22 asked me. There are extraordinary material differences by
23 geographic region of the environmental conditions between
24 Pennsylvania and New Jersey. There are many similarities
25 and there are many differences.

1 Q. Let's go through that then. Would you agree
2 that Pennsylvania is subject to pollution from upwind states
3 that make more difficult compliance with applicable air
4 quality regulations?

5 A. Sure.

6 Q. That's true in New Jersey as well?

7 A. Yes.

8 Q. Would you agree that in Pennsylvania there are
9 certain power plants that emit a significant amount of
10 pollutants to the ambient environment?

11 A. Based on my general knowledge, yes.

12 Q. Would you agree that there are pervasive,
13 significant differences between the environmental impacts
14 of, say, a modern gas-fired combined cycle plant and older
15 fossil fuel generation?

16 A. Yes.

17 Q. And that would be true whether the plant were
18 located in Pennsylvania or New Jersey; is that correct?

19 A. It depends upon whether or not it's located in
20 an attainment portion of a non-attainment portion of the
21 state.

22 Q. You cited to the legislative finding in the
23 Competition Act regarding environmental comparability. You
24 have no reason to dispute the legislative finding that there
25 are disparate environmental standards as between older

1 plants and power plants subject to special performance
2 standards?

3 A. Oh, no. As you have seen me testify, I have
4 made that factual observation many times.

5 Q. Would you agree that if economic efficiency is
6 the main objective of industry restructuring, and if
7 environmental progress is to continue, all market
8 competitors should be forced to internalize more of the
9 costs of pollution?

10 A. That is not a question I can answer with a yes
11 or no answer, so if you're willing, I'll start. There are
12 public policy contexts in which environmental regulation and
13 law take place and in which economic regulation and law take
14 place with regard to utilities and utility power plants. I
15 have on many occasions testified as to the differences and
16 narrow places of overlap between those two set bodies of law
17 and regulation. As a former public official, from both the
18 environmental and the economic regulatory side, I know that
19 in each one of those hats I operated pursuant to a set of
20 laws that authorized and directed me to do things. So in
21 answering your question, restructuring takes place in the
22 context of a body of laws, and in Pennsylvania my
23 understanding is that body of law on the environmental side
24 includes a set of federal and state laws pertaining to smog,
25 ground level ozone and sulfur dioxide, et cetera, and on the

FORM 2

1 economic regulation side it pertains to a body of law that
2 governs the actions of this Commission, including the new
3 Act. I believe that the purposes are set forth in the laws
4 in any particular community.

5 Q. Were I to ask you to put on your economist hat
6 and take off your regulatory hat and ask you the same
7 question, would your answer be --

8 A. In theory, I would want to see efficient
9 internalization of external costs, in prices.

10 Q. Would you agree that if restructuring is to
11 result in economic efficiency rather than hardship, along
12 with environmental progress, then all market competitors
13 should face the same environmental standards?

14 A. In theory, I have said points to this effect:
15 in Pennsylvania I look to the law as a platform of what can
16 be done in this particular proceeding.

17 Q. Without such internalization, would you agree
18 that the restructuring of the electric industry will result
19 in stranding benefits associated with investments in clean
20 technologies?

21 A. Categorically, that's hard to say. In
22 Pennsylvania, my understanding is that the set of programs
23 associated with demand-side management and renewables are
24 anticipated to be maintained. With regard to environmental
25 regulation, I don't see that this law makes it worse.

1 Q. And the means by which investments in renewables
2 and DSM are maintained is by some extra market mechanism;
3 isn't that correct?

4 A. I think there are actually two mechanisms. One
5 of them is through the programs authorized by the law,
6 especially with regard to low income programs. And then
7 there are programs that are delivered through competitive
8 markets, green pricing, et cetera.

9 Q. And you haven't conducted any analysis to
10 determine whether green pricing will deliver commensurate
11 public benefits as under the system of regulation from which
12 we are going; is that correct?

13 A. Green pricing in and of itself is one element of
14 many different actions that can take place. Amongst the
15 other actions that will happen in a competitive market is
16 that we will see the introduction of new, cleaner plants
17 into the fleet of generating units that will displace
18 generation at older, less efficient plants. So green
19 pricing may not deliver those associated with regulation. I
20 think the jury is out, as I have said in public statements
21 before, about whether there will be more or less emissions
22 associated with a competitive generation market.

23 Q. In your rejoinder statement you also identified
24 different contexts in terms of your recommended cure to the
25 problem, if you will, and among other things you identified

1 in Pennsylvania the fact that there is a very set, specific
2 period for CTC collection; is that correct?

3 A. (Witness nodding head affirmatively.)

4 Q. Are you familiar with company proposals for
5 extending the CTC beyond the transition period?

6 A. Yes.

7 Q. For example, are you familiar with Mr. Kleha's
8 proposal for extending the CTC period for collection of
9 nuclear decommissioning costs?

10 A. Yes.

11 Q. Were you in the hearing room today when Mr.
12 Krall testified as to the company's proposed alternative
13 with respect to giving commercial and industrial customers
14 the option of staying on the traditional rates?

15 A. Yes.

16 Q. Would you agree that a condition attached to
17 that option was that the CTC period be extended for
18 over/under-collection that would result from that
19 alternative proposal?

20 A. Yes, but it was to collect the amount of
21 recoverable stranded costs that the Commission had
22 determined as appropriate.

23 Q. But over a longer time period; isn't that
24 correct?

25 A. Over a shorter or longer time period.

1 Q. One final question. You're not trained as an
2 attorney; are you?

3 A. Never have been.

4 Q. So, in describing the Pennsylvania statute in the
5 context in which environmental comparability solutions may
6 be formulated, you weren't offering a legal opinion?

7 A. I was offering my opinion of fifteen years of
8 administering public statutes and interpreting them on the
9 job.

10 JUDGE KASHI: You're not admitting to practicing law
11 without a license?

12 THE WITNESS: Nowhere.

13 (Laughter.)

14 MR. ZALCMAN: I have nothing further. Thank you very
15 much.

16 JUDGE KASHI: Mr. Caplan?

17 MR. CAPLAN: Thank you, Your Honor.

18 **CROSS EXAMINATION**

19 BY MR. CAPLAN:

20 Q. Dr. Tierney, my name is Richard Caplan. I'm not
21 trained as an economist, and sometimes I wonder if I was
22 trained as a lawyer.

23 (Laughter.)

24 Q. In any event, I represent some independent power
25 producers, and I have some questions for you.

1 JUDGE KASHI: Mr. Caplan, could you hold your voice
2 up, sir?

3 MR. CAPLAN: Yes, I'm sorry.

4 BY MR. CAPLAN:

5 Q. I take it that in your reading of the new act, as
6 you describe it, you felt that one of the concerns of the
7 legislature was that the resulting environment created by
8 changes to rates and changes to structure, and so on, would
9 be fair to independent producers in the sense that it would
10 level the playing field with regard to the sale of energy at
11 retail; is that correct?

12 A. Yes.

13 Q. And in the course of reviewing the rate
14 structures that are proposed, did you consider the impact of
15 those structures from that dimension? In other words, to
16 the extent to which they would be even-handed with regard to
17 the access to the market by independent producers of one
18 kind or another?

19 A. Yes.

20 Q. All right. Now, you said something, and I can't
21 quote it verbatim because I didn't write it exactly down.
22 But you said something which has been echoed by others in
23 testimony, that there was an obligation on the part of PP&L,
24 assuming that it's the supplier of last resort -- which, of
25 course, is still up in the air; but let's presume for the

1 purpose of my question that it is -- that those customers
2 that fall into that class or classes of service that wind up
3 with PP&L by default, as it were, have to have their energy
4 provided at cost. And I think you used the word "cost," and
5 I may be mistaken. If I am correct.

6 A. I think what I certainly meant to say, and I hope
7 I said, was prevailing market price.

8 Q. Okay.

9 JUDGE KASHI: Can I just say one thing so that
10 everybody's clear on it? Everybody's tossing around
11 revenues, costs and prevailing price. And I'm hearing a lot
12 of interchange going on between you. And I've seen this
13 Commission talk about rates and revenues and make deals on
14 rates, then say they meant revenues. So let's see if we
15 can't tighten that up a little bit.

16 MR. CAPLAN: Your Honor, thank you, that's exactly
17 what I want to try to do.

18 BY MR. CAPLAN:

19 Q. Under the statute, Section 2707(e)(3) -- I think
20 that's the section that talks about service to these
21 customers on the basis of those who do not choose, or have
22 their service terminated by an outside supplier, and wind up
23 being served by the purveyor of last resort. Is that your
24 understanding?

25 A. Yes.

1 Q. And it says at the prevailing market prices.
2 Now, what do you understand the legislature to mean by
3 market prices? Wholesale market prices to the utility
4 that's the purveyor of last resort?

5 A. I read the two clauses of this sentence, supplier
6 shall acquire electric energy at prevailing market prices to
7 ensure that that -- to serve that customer, and shall
8 recover fully all reasonable costs.

9 Together, those two clauses represent the procurement
10 and acquisition in the competitive, in a competitive way, of
11 generation on behalf of consumers of last resort service.

12 Q. All right. Now, if the resulting price -- and
13 now I'm going away from cost, and I'm saying we're calling
14 it rate, or whatever, of the bill.

15 I'm now a customer of last resort, and I have a bill,
16 and there's an energy charge for kilowatt hour. Is it
17 conceivable that this formulation would lead to a rate which
18 is below the charge that an independent producer could
19 charge with the same level of efficient generation?

20 In other words, there's Enron out there, and it has a
21 plant, and it can generate power at a marginal cost of two
22 cents. And the market price that PP&L can buy the power to
23 serve me is two cents.

24 Is it not conceivable that as the purveyor of last
25 resort to me, PP&L would be selling at two cents, but Enron

1 could not sell at two cents, because it has additional
2 costs?

3 A. I find that factual, or that hypothetical, to not
4 be reasonable.

5 Q. Why?

6 A. The electric delivery group, which is charged
7 with this last resort service, does not have power within
8 that group. It goes to get power from competitive
9 suppliers. They might be any of the suppliers you
10 represent, they might be any of the suppliers that other
11 parties represent, and they might be PP&L's competitive
12 wing.

13 I can't imagine that any of those suppliers who
14 believe they could get more in the market would sell at some
15 kind of special deal. If it's a special deal and PP&L gets
16 it, then that's kind of the prevailing market price. That's
17 what happens as a result of competition.

18 Q. But I understand that the prices -- well, let me
19 back up, because not being an economist, I'm at a
20 disadvantage.

21 I understand that in determining what the prevailing
22 market price is, PP&L has worked virtually exclusively at
23 the PJM spot market prices. Am I wrong in that?

24 A. For the --

25 Q. For forecasting purposes.

1 A. I think that you're referring to the preparation
2 of a market price forecast for the purpose of the stranded
3 cost calculation.

4 Q. Yes, yes.

5 A. I don't think that is dispositive for the long
6 term of how this will be implemented. PP&L's electric --
7 the first year there will be a tariff set. And it reflects
8 the market price as you have described it. The market price
9 forecast for that first year.

10 For the second year it will be based on what are the
11 expectations in the market for acquiring, procuring and
12 making that supply available to last resort customers.

13 Q. Well, are you suggesting that the cost to sell to
14 a customer at retail is, per unit of energy, is equivalent
15 to the cost of selling energy at bulk and spot market? I
16 mean, are you telling me that I can go out, and I, as a
17 businessman, can contemplate that I sell at the same price
18 to 50 megawatts in the spot market per unit of energy as I
19 can sell 100 kilowatts to Mr. Smith on the corner?

20 A. The procurer of past for last resort service will
21 be buying on behalf of a large buying group, if you will.

22 Q. In megawatt quantities, probably; yes?

23 A. I assume so, yes.

24 Q. All right. And therefore they're buying --
25 there's economies of scale associated with the seller; isn't

1 that true? In other words, when I'm selling into that spot
2 market in a megawatt range, I can justify pricing that's
3 entirely different than if I have to handle 10,000
4 Richard Caplan's in their little homes all over PP&L's
5 service territory; isn't that true?

6 A. There may be different marketing costs associated
7 with those kinds of circumstances that are appropriate on
8 the competitive side of the shop.

9 Q. All right. Now we get into what I want to know.
10 When the statute says that they must acquire, shall acquire
11 at the prevailing market price to serve, but shall recover
12 fully all reasonable costs, can you not read into that that
13 those reasonable costs are, in fact, those marketing costs;
14 the same ones that Enron or any other competitor would have
15 to incur if they were selling to Richard Caplan on the
16 corner?

17 A. You set up a hypothetical that I think is counter
18 to your question. You set up a hypothetical of whether or
19 not there are advantages to a buying group that represents a
20 particularly advantageous load or large size. And there may
21 well be, yes. And that's what this group, the electric
22 delivery group, is going to be about.

23 Q. But I don't understand if you are correct in your
24 reading of the act that the act is supposed to create an
25 even playing field, how, in fact, the servicing of a large

1 body of customers of the incumbent monopolist, who do not
2 elect to choose, and servicing them basically at a wholesale
3 price, creates a level playing field for the rest of us out
4 there who want to try to get in and sell to these people.

5 Q. The act does not say, nor do markets imply, that
6 two parties with different circumstances who enter the
7 market, one customer with a particular load pattern versus a
8 large customer group with a different load pattern, have the
9 same cost to serve them by competitive suppliers.

10 Q. I understand that. But should not the transition
11 period be designed to eliminate the artifacts of the
12 regulated past?

13 In other words, what is happening under -- as I read
14 PP&L's proposal, is that if by some chance Enron defaults,
15 it's servicing customer A, and they default, customer A goes
16 back into the fold, back into the monopolist's fold, and is
17 now served at a price which essentially would foreclose even
18 Enron from selling to them.

19 Q. Let me explain how it will work, as I understand
20 it. The law provides a protection of last resort service.
21 That's the scheme that the legislators, in their wisdom,
22 adopted in Pennsylvania. That is not inherently an aspect
23 of a competitive market; right?

24 The law says that people can come and go to that,
25 from that group, but that group will have a buyer on their

1 behalf. And that buyer will be the last resort supplier.

2 That buyer enters the marketplace with all these
3 folks behind them just like new energy ventures would on
4 behalf of all of their buyers -- excuse me, on behalf of all
5 the customers they're buying on behalf of in the market; and
6 they say: Hi, market, I have this group here, and it has
7 these kinds of load patterns and these load characteristics,
8 and give me your competitive price. That's the prevailing
9 market price for this constituency.

10 That's a competitive price.

11 Q. I understand it's a competitive price. But what
12 I'm saying, what I see in this, if that's the interpretation
13 that PP&L's going to give of this statutory provision, what
14 it basically means is that everybody will look to PP&L as
15 the provider of last resort, because that's the cheapest way
16 they can buy power.

17 I mean, look, just think about that. If you are
18 saying that the wholesale price is the price of default, the
19 price that you get for doing nothing but sitting in your
20 home and saying, I want to choose, I want to choose, or
21 having a lousy producer who defaults, then virtually what
22 you're doing is saying that the default option is the best
23 option. How does that stimulate cost, I mean choice?

24 MR. RUSSELL: Your Honor, I think we've been really
25 indulgent in this line of discussion. Dr. Tierney, in her

1 last answer, summarized, I think, very succinctly her
2 understanding of how this would work. I think we're in the
3 area of argument at this point.

4 JUDGE KASHI: I disagree, Mr. Russell. I mean, I'm
5 not --

6 MR. RUSSELL: That sounds like you've overruled.

7 (Laughter.)

8 JUDGE KASHI: That's what it comes down to, sir.

9 (Laughter.)

10 JUDGE KASHI: Dr. Tierney has agreed that there are
11 two clauses there. The one says prevailing market price,
12 and has agreed to you that there is a but, recover
13 reasonable costs. And I'm not sure what the thinking is on
14 behalf of PP&L as to what you're going to be selling to the
15 default customer and to the people who stay, under that
16 interpretation.

17 So I don't feel that it's been as succinct as you
18 think it is, Mr. Russell. Yes, Mr. Caplan's being a bit
19 argumentative, but --

20 MR. CAPLAN: I apologize, Your Honor, I just get too
21 excited.

22 THE WITNESS: And we said people weren't excited
23 about this proposal.

24 (Laughter.)

25

1 BY MR. CAPLAN:

2 Q. In other words, let me just ask you what I think,
3 if you wouldn't mind agreeing with this interpretation.
4 When the legislature, in its wisdom, said, and shall
5 recover, shall, not may recover, at their option, but shall
6 recover their full, full, all reasonable costs, not the ones
7 they want to recover, not the ones that they might forget
8 about, but all of them, doesn't that suggest to you that
9 what they're saying is you have to, in effect, charge that
10 customer a loaded rate; you have to charge them as though
11 you were selling to them under the retail market, just as
12 though your competitive supplier had done it, so that
13 everyone else in the world has the incentive to go to that
14 same customer and offer the same service?

15 Because if you didn't say shall recover fully all
16 costs, I would totally agree with you. But what the
17 legislature has now said is that you must recover all your
18 costs. And all those costs are the loaded costs.

19 I assume you understand the term "loaded," because
20 it's sort of an economist's term; yes?

21 A. What a loaded question.

22 (Laughter.)

23 Q. Would you concede that that is, in fact, a
24 possible reading of that phrase?

25 A. My understanding of PP&L's proposal --

1 Q. No, I didn't ask that.

2 A. Okay.

3 Q. I asked you whether you would concede that my
4 reading or proposed interpretation of that total phrase,
5 those two lines of that section, 2807(e)(3), is potentially
6 what the legislature has in mind.

7 A. Loaded? No. I don't read the word "loaded" into
8 that.

9 Q. Well, in other words, all costs would be costs
10 including the cost of sales, the cost of personnel, general
11 and administrative overhead, all of the costs associated,
12 not just the simple cost of paying a sale commission on the
13 price of power.

14 A. There is not a marketing cost here, because this
15 is not a marketing unit; okay? So that's not a cost that's
16 going to be loaded into it.

17 Q. How about G & A, just the cost of the personnel
18 that do this and all the rest? I mean, this is done by a
19 certain division or a certain part of PP&L, those people
20 that actually attend to this, and they create an overhead.
21 Would that be a cost that would have to be added on?

22 A. Conceptually, yes.

23 Q. All right. Is it being in the proposal, to your
24 knowledge?

25 A. I want you to ask another witness that question

1 to make sure. To my knowledge, those costs will be part of
2 this.

3 Q. All right. And who would I ask that?

4 A. I suppose Mr. Kleha.

5 MR. KAPLAN: Mr. Kleha.

6 MR. CAPLAN: All right.

7 I have no further questions for the witness. Thank
8 you.

9 JUDGE KASHI: Thank you very much, Mr. Caplan.

10 Ms. Moury?

11 MS. MOURY: Thank you, Your Honor.

12 **CROSS EXAMINATION**

13 BY MS. MOURY:

14 Q. Good afternoon, Dr. Tierney. My name is
15 Karen Moury, I'm here on behalf of the Office of Small
16 Business Advocate.

17 A. Good afternoon.

18 Q. All of my questions relate to your discussion of
19 the customized rate design proposal.

20 A. I thought they might.

21 Q. Looking first at your rebuttal testimony at page
22 26, lines 13 through 15, where you respond to OCA's
23 suggestion that the only goal the company had in mind was
24 economic efficiency in developing a customized rate design.

25 A. Yes.

1 Q. And that, in fact, PP&L was attempting to satisfy
2 multiple roles --

3 A. Yes.

4 Q. -- on rate design. Would you agree, or would it
5 be fair to say, that in deciding to make the customized rate
6 design mandatory for commercial and industrial classes that
7 the primary goal was economic efficiency?

8 A. The purpose of introducing this in the first
9 place to the case, yes, was for economic efficiency.

10 JUDGE KASHI: One second. Could we go off the record
11 for a second?

12 (Discussion off the record.)

13 JUDGE KASHI: Back on the record.

14 Ms. Moury.

15 MS. MOURY: Thank you, Your Honor.

16 BY MS. MOURY:

17 Q. If you could turn now, Dr. Tierney, to page 28 of
18 your rebuttal testimony, where you testify that the
19 customized rate design is more efficient, and especially for
20 customers who are one, price sensitive, and two, used to
21 buying services under more complex pricing structures.

22 Now, first with respect to price sensitivity, I
23 believe you made the claim that the non-residential
24 customers are more price sensitive than residential
25 customers.

1 A. In general, yes.

2 Q. And to support that conclusion during the
3 discovery process, I believe in response to PPLICA, Set I,
4 No. 9, you referenced a study of energy elastics that was
5 prepared by Douglas --

6 A. Bohi.

7 Q. Bohi. Do you happen to have that response with
8 you? I do have an extra copy.

9 A. Would you state the number again?

10 Q. PLICA Set I, No. 9.

11 (Pause.)

12 MS. MOURY: Would it be simpler? I do have a copy
13 available.

14 (Document handed to witness.)

15 BY MS. MOURY:

16 Q. If you would refer to page 79 of that study,
17 towards the bottom of that page.

18 A. Yes.

19 Q. Would you agree that according to this study,
20 there have been relatively few studies performed to examine
21 commercial electricity demand?

22 A. Yes.

23 Q. And would you also agree that, according to this
24 study, none of those studies that have been performed
25 distinguished among many diverse establishments?

1 A. Yes.

2 Q. Would you agree that even if demand is more
3 elastic in the commercial sector than in the residential
4 sector that demand responsiveness would not necessarily be
5 the same among various businesses in a commercial sector?

6 A. That makes sense.

7 Q. And in fact, you haven't estimated any demand
8 elasticity for PP&L's GS-1 and GS-3 classes; --

9 A. No.

10 Q. -- correct?

11 Now, going to the second reason that you mentioned
12 for making the customized rate design mandatory for small
13 businesses, while it's optional for residential, are the
14 complex pricing structures.

15 By that, are you referencing the differences in the
16 existing tariffs that, for instance, PP&L's different
17 tariffs that one would apply to residential and the other to
18 GS-1 and another to GS-3? Are you referencing those
19 differences?

20 A. No. This was based on a general observation over
21 twenty years of experience in dealing with not only
22 regulated but unregulated industries where there are a
23 number of financial and pricing arrangements available to
24 commercial industrial customers for all sorts of things, not
25 just utility service.

1 Q. All right. Do you know whether a typical small
2 business customer on, say, GS-1 understands the rate
3 structure that they're --

4 A. I don't know the answer to that. For PP&L.

5 Q. Okay. Now, continuing on page 28, at line 10.
6 This is where I think you were discussing the different
7 objectives and trade-offs that you considered in deciding
8 how to propose this customized rate. And you indicate that
9 rate administration should be as simple as possible. And I
10 think that you said that that supported an approach that
11 would make the same for all classes; --

12 A. Uh-huh.

13 Q. -- is that correct?

14 A. Well, everybody in the same rate class would have
15 the same treatment.

16 Q. And that goals of fairness and non-discriminatory
17 treatment would have also supported that concept?

18 A. Yes.

19 Q. But then, as I understand the final analysis, the
20 company decided to keep rates to meet the simple, the
21 simplification, or that objective, by giving residential
22 customers an option, but then to make mandatory for the
23 other customers to make sure about the revenue stability
24 concern.

25 A. Yes. As I testified, simplicity was given a

1 higher premium, if you will, in the residential class.

2 Q. But revenue stability is also at risk with
3 extending the option to residential customers?

4 A. That's right.

5 Q. Just skipping back a couple of pages to --
6 actually, just one page, back to page 27. Here you indicate
7 at lines 8 through 13 that PP&L actually did consider giving
8 all the customers the option, but then arrived at what you
9 term a fair compromise of giving it only to residential.

10 A. Uh-huh.

11 Q. I'm wondering if it wouldn't -- by fair
12 compromise there, do you mean a balancing of rate objectives
13 as opposed to a compromise in the sense that PP&L decided to
14 extend the benefit to general service classes in exchange
15 for something else?

16 A. Yes.

17 Q. Going back to the revenue stability concerns, and
18 recognizing Mr. Krall's testimony about making the
19 customized design optional for all classes if there would be
20 this reconciliation based on revenues.

21 In your opinion, would it be possible to extend the
22 CTC recovery period to recover any shortfall dealing with,
23 resulting from making this customized design option, but
24 would be short of an entirely different reconciliation based
25 on sales, and based on revenues versus sales?

1 Would there be some way, in other words, to pull that
2 one factor out and allow PP&L to address its revenue
3 stability concerns without reconciling on the basis of
4 revenues?

5 A. Well, I've spent a bit of time thinking about it,
6 and this seemed to be the one nagging point. And I haven't
7 been able to come up with a better approach than a
8 reconciliation idea.

9 So, when I heard about it, I thought it was a
10 wonderful way for moving towards making this available on an
11 optional basis for customers who want to go traditional or
12 customized, but then afforded the company the revenue
13 protection that would otherwise be at risk by making it
14 available to everybody.

15 Q. One last question on the concerns about revenue
16 stability. Would you agree that it's at least possible that
17 some small business customers, even if it would be more
18 beneficial for them to go with the customized rate design,
19 would rather stay with the status quo, and would do that
20 even if they had a choice?

21 A. You mean be like me, as a residential customer?
22 I can imagine that there is a lot of reasons that people
23 make decisions, including small businesses. And it's not
24 always what an economist would say is narrowly rational,
25 yes.

1 Q. All right.

2 MS. MOURY: That's all I have, Your Honor. Thank
3 you.

4 JUDGE KASHI: Thank you.

5 MR. LAVELLE: Excuse me, Your Honor. John Lavelle,
6 representing New Energy Ventures. I beg your pardon. I had
7 advise PP&L and my team coordinator that I was going to be
8 asking some questions on behalf of New Energy Ventures, and
9 I wondered, if it wouldn't inconvenience anyone else, if I'd
10 be able to do my questioning now, as I have to catch an
11 Amtrak, and the last one out of town is 6:20.

12 JUDGE KASHI: Well, you have to ask Mr. Simms and
13 Mr. Mullins, whether they object, since they are the last
14 two in the bunch.

15 MR. SIMMS: That's fine.

16 MR. BURGRAFF: That's fine with me, Your Honor.

17 MR. LAVELLE: Thank you.

18 JUDGE KASHI: Go ahead, Mr. Lavelle.

19 I wish that somebody would give that information to
20 me.

21 MR. KOHLER: I apologize, Your Honor. I was aware of
22 that, and I forgot.

23 **CROSS EXAMINATION**

24 BY MR. LAVELLE:

25 Q. Dr. Tierney, my name is John Lavelle. I

1 represent New Energy Ventures.

2 A. Hi.

3 Q. Dr. Tierney, would you agree that there is a
4 relationship between the prevailing market price for
5 generation and stranded costs?

6 A. You mean under the act, or what?

7 Q. In general.

8 A. Yes.

9 Q. Would you all that, all other things being equal,
10 as the market price for generation increases, utilities'
11 stranded costs decrease?

12 A. Generally, yes.

13 Q. Okay. And would you also agree that as the
14 market price for generation decreases, the value of
15 generation decreases and stranded costs increase?

16 A. Generally, yes.

17 Q. I'd like to refer you to page 24 of your rebuttal
18 testimony, line 12.

19 MR. RUSSELL: I'm sorry, I missed the reference.

20 MR. LAVELLE: Yes, at page 24 of the rebuttal
21 testimony, starting at line 12.

22 THE WITNESS: Yes.

23 BY MR. LAVELLE:

24 Q. You discuss in this paragraph, Dr. Tierney, what
25 might happen if the PUC approved a stranded cost amount

1 lower than the maximum of CTC revenue. Do you see that
2 discussion there?

3 A. I think it says exceeds.

4 Q. Exceeds is at line 12, and following; then the
5 next sentence --

6 A. I'm sorry. On line 16?

7 Q. Yes.

8 A. Okay, yes.

9 Q. I want to ask you a hypothetical question based
10 on what you described there, assuming that the PUC were to
11 approve a stranded cost amount lower than the maximum amount
12 of CTC revenues; okay?

13 If the PUC were to do that, would disallow some of
14 PP&L's stranded costs, so that the maximum amount of CTC
15 revenues was lower under the rate cap -- let me rephrase
16 that.

17 The PUC disallows some of PP&L's stranded costs, but
18 the CTC is less than the difference between the rate cap and
19 the market generation price, what would you view is the
20 maximum level of generating price that you believe PP&L
21 should be able to charge?

22 A. For what service?

23 Q. For generation.

24 A. To last resort customers, or in the competitive
25 side of the business?

1 Q. For last resort customers, first.

2 A. That prevailing market price.

3 Q. Okay. Would you think that it could go all the
4 way up to the difference between the allowed CTC and the
5 rate cap?

6 A. Well, you gave me a hypothetical where there's
7 room under the cap --

8 Q. Right.

9 A. -- for a CTC and prevailing market price; is that
10 right?

11 Q. Right.

12 A. No, they charge the prevailing market price.

13 Q. Okay. And if the market price goes up, you'd be
14 able to keep going up all the way until the market price
15 plus the CTC equal the rate cap; right?

16 A. Correct.

17 Q. Okay. Now, let's look at page 10 of your
18 rebuttal testimony. I'm sorry, page 11 of your rebuttal
19 testimony, starting at line 3.

20 This is the discussion where you were responding to
21 Mr. Boonin's, of NEV's proposal with respect to CTC varying
22 with the market generation price.

23 A. Yes.

24 Q. And what you say in this -- would you agree with
25 me that in this section of your rebuttal testimony, what you

1 say is that customers need to have a fixed CTC in order to
2 be able to know whether they're going to be able to beat the
3 cap rate under PP&L's last resort service?

4 A. Yes.

5 Q. Isn't it actually true that when the CTC is
6 fixed, or variable, as Mr. Boonin has suggested, it's going
7 to be the same whether you get your energy from PP&L or the
8 last resort service, or whether you get it from NEV or from
9 Enron? Isn't that CTC always going to be the same?

10 A. The CTC will be?

11 Q. Yes.

12 A. Yes.

13 Q. So it doesn't really matter whether it's fixed or
14 variable; does it?

15 A. Well, yes, it does, because if you're a customer
16 -- if I lived here in PP&L's service territory and I were
17 operating under Mr. Boonin's proposal, and I had three
18 offers, one of them is the capped rate, and I know the
19 generation-related size of that, which includes CTC and
20 prevailing market price, and I have an offer from NEV and an
21 offer from Enron, I don't know, going forward, under
22 Mr. Boonin's proposal how big CTC is. So I don't know if
23 NEV's offer for market price plus CTC is going to be the
24 same as what I -- I don't know how to compare it with what I
25 would get from Enron relative to this capped amount.

1 Because the CTC is going to stay the same across all of
2 them.

3 Q. Well, a fixed CTC is not going to help a customer
4 predict what the market generation price is going to be next
5 year; does it?

6 A. Here's what it helps you do. If you knew --

7 Q. Would you answer my question first, and then you
8 can explain.

9 A. Yes, it helps you. Yes, it helps you.

10 Q. It does help you predict?

11 A. Yes, it does help you predict.

12 Q. Okay. Why don't you explain that to me.

13 A. The reason being, their rate cap is an important
14 piece of data to you. You know what the CTC is, you know
15 what the rate cap is. You don't know what the market price
16 is going to be. And it's going to go up and down. It's
17 going to go up and down for NEV, it's going to go up and
18 down for Enron, and it's going to go up and down in periodic
19 trenches, you know, annually, for PP&L's last resort
20 service.

21 I know what the capped rate is going to be. I know
22 that deal. Because I know if market price goes above it,
23 I'm going to get a credit on my bill.

24 I don't know -- if I don't know what the CTC is in
25 advance, I don't know how to shop. I don't have the data

1 point that allows me to make comparison shopping.

2 Q. Isn't it true that under Mr. Boonin's proposal,
3 CTC would vary with the market price, so that the sum of the
4 two would always equal the same thing?

5 A. Yes, but it actually might exceed the cap; right?
6 Because CTC and prevailing market price can mathematically
7 exceed the cap. But when that happens, PP&L last resort
8 customers get a credit on their bill, under the law. I
9 mean, essentially, that has to happen that they pay a capped
10 amount.

11 Q. Well, let's --

12 A. If I take power from you in the competitive
13 market, I mean from NEV, I don't enjoy that rate cap
14 protection. So I enjoy the protection of the CTC portion,
15 that's constant. But I don't have this rate cap protection.
16 So I --

17 Q. Okay. Let me make sure I understand. You get
18 the rate cap under either NEV's proposal or PP&L's proposal
19 if I get it from you as a last resort customer?

20 A. No. I do not get rate protection if I'm shopping
21 in the market.

22 Q. That wasn't my question.

23 A. I'm sorry, I misunderstood.

24 Q. My question was: If I buy from PP&L as a last
25 resort customer, and I enjoy the benefits of the rate cap,

1 whether or not PP&L's fixed CTC rate would apply, or on the
2 other hand, NEV's variable CTC would apply; isn't that
3 right?

4 A. Certainly you would get the rate cap protection.
5 But I don't have a piece of information as a shopper.

6 Q. Okay. Let me get back to the question where I
7 started out. Which is: Having a fixed CTC is not going to
8 help a customer predict what the market generation, market
9 price generation is going to be next year; does it?

10 A. That question, the answer's no.

11 MR. LAVELLE: I don't have anything further. Thank
12 you.

13 JUDGE KASHI: Anybody have a question?

14 Mr. Burgraff.

15 MR. BURGRAFF: Thank you, Your Honor.

16 **CROSS EXAMINATION**

17 BY MR. BURGRAFF:

18 Q. Well, it's still afternoon, Dr. Tierney, so, good
19 afternoon.

20 A. You just slipped right under the wire there.
21 Good afternoon.

22 Q. My name is Craig Burgraff, I represent the Office
23 of Consumer Advocate.

24 A. Hi.

25 Q. Referring generally to pages 13, 14 and 15 of

1 your rebuttal testimony. And essentially going back to the
2 concept that last resort customers under the company's
3 proposal receive the same CTC and market price, but they
4 don't necessarily pay the same CTC plus market price if that
5 combination exceeds the rate cap; is that right?

6 A. That's right.

7 Q. Now, I was confused earlier in looking at Kleha's
8 proposal and at your proposal. But let me just clarify
9 this. If there is a credit to a last resort customer, that
10 credit does not become part of the reconciliation of the
11 purchased generation cost rate; is that correct?

12 A. I don't think so.

13 Q. Well, indeed, that would be consistent with your
14 testimony that, indeed, the company's shareholders are at
15 risk for that --

16 A. That's right.

17 Q. -- piece. However, if you're in a situation
18 where a last resort customer is receiving a credit on a bill
19 because of the market price at that time, and the CTC, isn't
20 it also true that that customer will pay less than a
21 customer taking generation from an outside supplier; a
22 similarly situated customer with the same CTC?

23 A. Facing the same market price, yes.

24 Q. That's right. Now, I believe you testified
25 earlier that you think that residential customers are not

1 necessarily as price-sensitive as commercial industrial
2 customers; is that correct?

3 A. In general, yes.

4 Q. Did you have any input into Mr. Kleha's proposed
5 purchased generation cost rate?

6 A. We discussed the idea before he brought wrote it
7 down on paper, I think. But actually, I -- before he wrote
8 his testimony. I don't know whether or not he had written
9 it down other places.

10 Q. So you talked about some general things?

11 (Witness nodding head affirmatively.)

12 A. I wanted to refer you quickly to pages 23 and 24
13 of your rebuttal statement. And generally there you're
14 talking about the levelized CTC increases; is that correct?

15 A. Yes.

16 Q. Now, in your oral rejoinder you discussed
17 Ms. Smith's original concept of levelization and the concept
18 presented in her surrebuttal testimony; is that right?

19 A. Yes.

20 Q. Now, assuming that the Commission determined that
21 allowable stranded cost was considerably lower than that
22 filed by the company, would the company be better off with
23 the CTC collections based on a levelized percentage
24 reduction or a levelized CTC annual collection amount?

25 A. What do you mean by levelized percentage

1 reduction? Was that the same as the pro rata reduction that
2 I described?

3 Q. No, that essentially is our initially suggested
4 levelized CTC.

5 A. Then I request a rephrasing of the question,
6 because I thought you were comparing that first thing that I
7 was asking you a question about to your levelized proposal.
8 So I didn't hear you right.

9 Q. I guess my question is the following: Once
10 again, assuming that the Commission allows stranded costs at
11 a level considerably lower than filed by the company, would
12 the company be better off under Witness Smith's initial
13 levelized proposal or under the second levelized proposal?

14 A. Excuse me a minute.

15 MR. RUSSELL: Mr. Burgraff, we're going to need a
16 copy of Ms. Smith's rebuttal so that Dr. Tierney can review
17 the two proposals before she answers.

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FORM 2

1 JUDGE KASHI: Dr. Tierney, do you need some time to
2 do that? I'll give you five minutes. We'll take a ten
3 minute recess at this point.

4 (Recess.)

5 JUDGE KASHI: Back on the record.

6 Mr. Burgraff, you were inquiring, sir?

7 BY MR. BURGRAFF:

8 Q. There is an outstanding question.

9 A. I know the question. I believe you asked me
10 whether the company was better off under Ms. Smith's
11 original levelized proposal as compared to her revised
12 proposal. I'm not sure it was that order, but let me answer
13 it in that order.

14 Q. That's fine.

15 A. The company is, as I read it, better off under
16 her proposal for a given level of allowable stranded cost
17 recovery.

18 Q. For the proposal in her surrebuttal testimony?

19 A. Correct.

20 Q. Now, Dr. Tierney, on your oral rejoinder, you
21 gave an opinion regarding efficiency, as I recall, as far as
22 transmission and distribution embedded versus marginal cost?

23 A. Yes.

24 Q. I believe you stated, and I'm not sure I got
25 down entirely, that you did inquire of the company relative

1 to their transmission investment plans in the future; is
2 that correct?

3 A. Yes.

4 Q. And I believe you said that they have no major
5 transmission investments planned; is that correct?

6 A. That's my understanding.

7 Q. What time horizon did you ask the company to
8 give you that information?

9 A. Five years.

10 Q. Five years, beginning?

11 A. I guess about now. I just said five years.

12 Q. You said five years. By the tone of that
13 question, then, I assume you are familiar with methodologies
14 that estimate marginal transmission and distribution costs
15 by looking at how transmission and distribution costs have
16 increased in the past as customer usage increased or by
17 looking at how transmission and distribution costs are
18 projected to increase in the future with increases in load;
19 is that correct?

20 A. Yes.

21 Q. And in fact, when you were with the
22 Massachusetts Department of Public Utilities, was it
23 standard to design rates for non-demand metered customers so
24 that tail block energy rates would be equal to or higher
25 than the sum of the marginal generation and marginal T&D

1 costs?

2 A. That's my recollection.

3 Q. Can I refer you to page 48 of your rebuttal
4 testimony?

5 A. Yes, sir.

6 Q. There on line 6, you note that PP&L has plans to
7 use a variety of multi-media communications techniques; is
8 that correct?

9 A. Yes.

10 Q. Can you describe those techniques supported by
11 PP&L?

12 A. Yes. It is my understanding they have
13 techniques that have to do with workshops. They have a
14 book. They have various radio or TV aspects to them, so
15 that there are various means by which they plan to
16 communicate their program.

17 Q. Dr. Tierney, is it your testimony that
18 prevailing market price could not be interpreted, at least
19 insofar as serving last resort customers, could not be
20 interpreted as trying to judge a price based upon what other
21 competitors are offering a similarly situated competitive
22 customer?

23 A. Could not be?

24 Q. Could not be.

25 A. Could be the same.

1 Q. It could be the same?

2 A. I imagine it might be the same.

3 Q. So in trying to determine, under the company's
4 proposed purchased generation cost rate, an estimate or
5 indeed a reflection of actual prevailing market price, the
6 company or a party could suggest an analysis that looked at
7 what other competitors have offered say for example a
8 residential customer who was purchasing in the competitive
9 market?

10 A. If it were one residential customer, I don't
11 believe that you would expect it to be the same as the group
12 being served by last resort service.

13 Q. So you would suggest that an analysis of that
14 type would have to be a function of essentially pooled
15 service?

16 A. That type meaning last resort service?

17 Q. Let me rephrase that. Under the company's
18 proposed BUSS service and in the cause that Witness Kleha
19 has advanced, the company is going to essential predict or
20 project the prevailing market price, and then they are going
21 to reconcile based upon actual experience; is that correct?

22 A. That's my understanding.

23 Q. For the last resort group?

24 A. And actually, there's two groups that they would
25 look at, those with hourly meters and those without hourly

1 meters.

2 Q. We don't know what the hourly meter methodology
3 is yet?

4 A. Yes.

5 Q. However, is going back and trying to determine
6 the prevailing market price for that group or for portions
7 of that group, say the residential portion of the last
8 resort group, you're suggesting that any analysis in that
9 regard would have to take into account or have to look at
10 pooling type arrangements, in other words cannot look at
11 offerings made to an individual, similarly situated customer
12 who was a competitor?

13 A. Yes. I mean, I think that the two comparisons
14 would need to look at load shape, essentially, load
15 conditions, load factors to see if they're comparable. I
16 should mention the number of customers as well, not just
17 load factors.

18 Q. Sure. So we wouldn't be faced with the prospect
19 of someone coming in and saying, "Well, Marketer A offered a
20 free toaster with a certain price to every residential
21 customer in the PP&L service territory, so we have to value
22 a toaster"?

23 A. I hadn't thought of that, but I had anticipated
24 building that in. That's right.

25 MR. BURGRAFF: That completes my cross, Your Honor.

1 JUDGE KASHI: Thank you very much.

2 Mr. Simms?

3 MR. SIMMS: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. SIMMS:

6 Q. Dr. Tierney, my name is Johnnie Simms. I am of
7 the attorneys representing the Office of Trial Staff in this
8 proceeding.

9 I'd like to focus my cross-examination on your
10 rebuttal testimony on page 6 and 7.

11 A. Yes, sir.

12 Q. Now, on lines 10 through 11, you submit rebuttal
13 to the OCA and OTS recommendation that customer bills have a
14 separate line item for universal service charges; do you
15 not?

16 A. Yes.

17 Q. Now, you may have corrected this
18 misunderstanding I had during your direct examination by Mr.
19 Russell, but is it my understanding that the company has
20 proposed that a message could be placed on customer's bills
21 indicating that universal service charges are part of the
22 charges for distribution?

23 A. That's my understanding as well.

24 Q. Now, is that understanding or proposal reflected
25 in Company Exhibit OGK-2? Is that your understanding?

1 A. Is that the tariff?

2 Q. That is the tariff.

3 A. No. My understanding that I hope you would
4 confirm with Mr. Kasper is, the rebuttal position if you
5 will that I have testified to and Mr. Kasper is testifying
6 to is that there will be an item in the tariff for each and
7 every customer class that shows the actual customer charge,
8 including ones where it's point zero zero x.

9 Q. I understand that. My question to you is
10 whether or not that is specifically detailed or outlined in
11 the company's tariff as is set forth in Company Exhibit
12 OGK-2.

13 A. Would you allow me to request you to ask Mr.
14 Kasper that question?

15 Q. Okay, I will.

16 A. Thank you.

17 Q. Now, based upon your understanding, was there a
18 statutorily mandated universal service in existence prior to
19 the enactment of the Customer Choice Act?

20 A. Not to my knowledge, but I'm not certain of
21 that.

22 Q. Now, you reference in your rebuttal testimony
23 certain provisions of the Competition Act; do you not?

24 A. Yes.

25 Q. What is your understanding of the Commission's

1 responsibility with respect to universal service?

2 A. There are a number of them. The Act requires
3 maintenance and continuation if you will of universal
4 service activities that are in place today, at least
5 maintenance and continuation of them.

6 I consider the existence of a requirement that there
7 be a supplier of last resort service essentially a
8 supporting component for universal service, that everyone
9 has a chance to be served. Excuse me a moment.

10 Q. Well, in the interest of time, would you not
11 agree that the statute required the Commission to establish
12 a cost recovery mechanism for universal service?

13 A. Oh, absolutely.

14 Q. And that cost must be over the life of the
15 universal service program, correct?

16 A. I don't remember that particular phrasing. I
17 recall language to the effect that there needs to be a
18 non-bypassable, competitively neutral cost recovery
19 mechanism.

20 Q. Let me suggest to you that 2804, Section (a)
21 does in fact require full recovery over the life of the
22 universal service programs. If you want to verify that, you
23 can.

24 (Witness perusing document.)

25 A. Thank you. I agree with you.

FORM 2

1 Q. And would I not also be correct that the
2 Commission must insure that universal service policy
3 activities and services are appropriately funded and
4 available in each electric distribution territory?

5 A. Absolutely.

6 Q. Now, you make a reference, do you not, to
7 Professor Kalt and Mr. Bujnowski's rebuttal testimony, and
8 I'll reference page 7, lines 5 through 8 of your testimony.

9 A. Yes.

10 Q. Now, is that reference by you used as a basis of
11 support for your position regarding universal service?

12 A. Oh, no. No, as I testified, I interpret the
13 requirement that there be a non-bypassable recovery charge
14 in rates, it's embedded in the distribution portion of rate
15 and that it is not unbundled, there's not a requirement to
16 unbundle it. My reference to Professor Kalt and Mr.
17 Bujnowski's testimony had to do with revenue cycle services.

18 Q. So I understand your testimony, your rebuttal to
19 OTS's recommendation is set forth solely in lines 10 through
20 17 on page 6 and lines 1 through 2 on page 7; would that be
21 correct?

22 A. Let me just check, please.

23 (Witness perusing document.)

24 A. Did you include in your question lines 2 through
25 9 on page 6? Because that also goes to that point.

1 Q. That goes to that point?

2 A. Yes.

3 Q. So that adding that lines 2 through 9 on page 6,
4 would the answer to my question be yes?

5 A. Yes.

6 MR. SIMMS: Thank you very much.

7 Your Honor, that concludes my cross-examination.

8 JUDGE KASHI: Thank you very much, sir.

9 Redirect?

10 MR. RUSSELL: Very brief, Your Honor, but not
11 non-existent.

12 REDIRECT EXAMINATION

13 BY MR. RUSSELL:

14 Q. Dr. Tierney, during cross-examination, you
15 indicated that there is an inverse relationship between
16 market price and stranded costs.

17 Is that relationship a perfect inverse relationship?

18 A. No. There are some factors that could drive an
19 increase in market price that would not result in an
20 increase in stranded costs, and the one that comes to mind
21 that illustrates this best is an increase in fuel prices.

22 Q. You talked an increase in market price driving
23 an increase in stranded. Did you mean --

24 A. Excuse me. I'm sorry, I'm getting tired. Thank
25 you. An increase in market price resulting in a decrease in

1 stranded cost, or vice versa.

2 Q. In response to a question from counsel for
3 MAPSA, you talked about the possibility that a last resort
4 customer might pay less than market price if PP&L is at or
5 above its rate cap.

6 Would you clarify that answer?

7 A. Yes. I am not aware, and if I did say that PP&L
8 would sell generation to last resort customers at less than
9 a market price, that is not my testimony.

10 Should the combination of market price and CTC result
11 in an amount that exceeds the generation related cap, the
12 company would sell power at market prices and it would
13 charge the CTC as in the regular schedule, but there would
14 be a bottom line credit on that bill.

15 Q. And that credit would be applied to total rates?

16 A. Yes.

17 Q. There was some discussion about customer
18 sophistication and customer knowledge about competition. In
19 that vein, which customers would you believe are likely not
20 to choose a competitive supplier in a competitive
21 marketplace?

22 A. Well, everywhere I go around the country, the
23 indication that I hear is that the expectation is that
24 people like elderly customers, possibly low-income
25 customers, customers who are less educated may not choose.

1 Q. All of those in the residential class; is that
2 right?

3 A. Oh, yes. I'm sorry.

4 Q. In response to a question from counsel for
5 PPLICA, you suggested that there may be more total customers
6 who have an opportunity to shop under the PPLICA phase-in
7 proposal than under the PP&L proposal. Is that true under
8 all circumstances?

9 A. That would only be true if you hit the maximum
10 allowable amount of load that can be subject to choice, if
11 you're oversubscribed.

12 Q. And if you're not oversubscribed, would that be
13 true, in your opinion?

14 A. No.

15 Q. In response to questions from counsel for CEO, I
16 think you stated that you expected a utility would lose
17 revenue when a customer enters that utility's universal
18 service program.

19 Would you clarify what comparison would be
20 appropriate for looking at the revenue impact of customers
21 in those programs?

22 A. Yes. The appropriate comparison is the revenues
23 from that customer once they enter the program as compared
24 to the revenues that the company is now getting from them.

25 Q. And what is your understanding of the revenues

1 that the company is now getting from customers who are
2 eligible for the customer assistance programs?

3 A. That they are not getting their revenues from
4 them.

5 Q. So when those customers enter the program, what
6 would be the effect?

7 A. That it's not a reduction in the company's
8 collected revenues.

9 MR. RUSSELL: And my final question, Your Honor.

10 BY MR. RUSSELL:

11 Q. In response to questions from counsel for NEV,
12 you discussed benefits of a fixed CTC in terms of having a
13 bogey to shop against.

14 Is there an additional benefit of a fixed CTC that
15 you wanted to put on the record?

16 A. Yes. One of the advantages of a competitive
17 market is the expectation that consumers will see efficient
18 prices in a visible fashion, they will see them as they move
19 up and down and make appropriate decisions about their own
20 consumption in light of those price expectations.

21 Under the NEV proposal where CTC and market prices go
22 in inverse tandem with each other, the customer would not
23 see this movement of market prices. They would see
24 essentially the joint sum of the two prices, and it could
25 look as though it's a flat price, essentially, a price that

1 might look like the rate cap.

2 MR. RUSSELL: That's all I have, Your Honor.

3 JUDGE KASHI: Thank you very much.

4 MR. STEWART: I have one recross question, Your
5 Honor.

6 JUDGE KASHI: All right, sir.

7 RE CROSS-EXAMINATION

8 BY MR. STEWART:

9 Q. In clarifying your answer to the question which
10 I posed regarding whether, in selling to last resort
11 customers, PP&L would sell below the market price, you
12 stated that you would in no event sell below the market
13 price, but that the difference between all the other charges
14 and the rate cap would be applied to the customer's bill as
15 a credit; is that correct?

16 A. Yes.

17 Q. Could you tell me what part of the customer's
18 bill in particular that credit would be applied to? What
19 charge in particular is that going to be a credit against,
20 or how is that going to be applied?

21 A. My understanding, and I think you should ask Mr.
22 Kleha to clarify, is that this is a bottom line reduction
23 off the bottom of the bill.

24 Q. Is it sort of like a pro rata reduction of each
25 component? I'm just curious.

1 A. No, it's a bottom line credit.

2 That was two questions, by the way.

3 MR. STEWART: I'm sorry.

4 (Laughter.)

5 JUDGE KASHI: No other burning questions, I take it,
6 to follow up on?

7 (No response.)

8 JUDGE KASHI: Thank you very much.

9 Dr. Tierney, I want to thank you for your tireless
10 effort here for the last two hours and some odd minutes of
11 straight cross-examination.

12 (Witness excused.)

13 JUDGE KASHI: That which has been marked and
14 identified as PP&L Statement No. 9, Statement No. 9-R and
15 Exhibits SFT-1 through SFT-14 are received into the
16 evidentiary record, without objection?

17 (No response.)

18 JUDGE KASHI: Without objection.

19 (Whereupon, the documents marked as
20 PP&L Statements Nos. 9 and 9-R and
21 PP&L Exhibits Nos. SFT-1 through 14
22 were received in evidence.)

23 JUDGE KASHI: Anything further from counsel?

24 MR. RUSSELL: No, sir.

25 JUDGE KASHI: Does 9:30 suit everybody? We should do

1 it again?

2 MR. BURGRAFF: Sounds good.

3 JUDGE KASHI: We will recess until 9:30 tomorrow
4 morning. Thank you very much.

5 (Whereupon, at 6:38 p.m., the hearing was adjourned,
6 to be reconvened at 9:30 a.m., Wednesday, August 20, 1997,
7 in Harrisburg, Pennsylvania.)

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FORM 2

C E R T I F I C A T E

I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me and thereafter reduced to typewriting by me or under my direction, and that this transcript is a true and accurate record to the best of my ability.

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FORM 2