

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

ORIGINAL

Pennsylvania Power & Light Company  
Application for approval of a  
Restructuring Plan.

: Docket No.  
: R-00973954

Further Hearing.

Pages 1760 through 1848

Hearing Room 1  
North Office Building  
Harrisburg, Pennsylvania

DOCUMENT  
FOLDER

Wednesday, August 27, 1997

met, pursuant to adjournment, at 10:05 a.m.

BEFORE:

GEORGE M. KASHI, Administrative Law Judge

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FORM 2

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C O N T E N T S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
Richard LaCapra				
By Mr. Burgraff	1768	--	1801	--
By Mr. Nordstrom	--	1769	--	--
By Mr. Russell	--	1777	--	--
David Schoengold				
By Mr. Zalcmán	1805	--	--	--
By Mr. Nordstrom	--	1805	--	--
By Mr. Kaplan	--	1808	--	--
Bruce E. Biewald				
By Mr. Zalcmán	--	--	1843	--
By Mr. Russell				

E X H I B I T S

<u>NUMBER</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
<u>OCA Statement No.</u>		
✓ 3 (Catlin) ✓	1766	1767
✓ 3-S (Catlin) ✓	1766	1767
✓ 1 (LaCapra) ✓	1767	1803
✓ 1-S (LaCapra) ✓	1768	1803
<u>OCA Exhibit No.</u>		
RLC-1 through RLC-6 (LaCapra)	1767	1803
RLC-7 through RLC-10 (LaCapra)	1768	1803
✓ RLC-9 Revised (LaCapra) ✓	1768	1803
<u>PP&amp;L Cross-Examination Exhibit No.</u>		
✓ 10 (OCA-III-24) ✓	1790	1803
✓ 11 (transcript excerpt, pilot program hearing) ✓	1823	1825

E X H I B I T S (Continued)

<u>NUMBER</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
<u>Environmentalists' Statement No.</u>		
✓ 1 (Schoengold) ✓	1804	1830
✓ 1-SR (Schoengold) ✓	1804	1830
✓ 2 (Biewald) ✓	1831	1846
✓ 2-SR (Biewald) ✓	1832	1846
<u>Environmentalists' Exhibit No.</u>		
✓ DS-1 through DS-6 (Schoengold) ✓	1804	1830
✓ BEB-1 through BEB-3 (Biewald) ✓	1831	1846

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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.

4 Are there any preliminary matters from counsel this  
5 morning? Mr. Russell?

6 MR. RUSSELL: Not from the company, Your Honor.

7 JUDGE KASHI: Any other counsel? Mr. DeBroff?

8 MR. DeBROFF: Thank you, Your Honor. In response to  
9 your order for settlement proceedings to go forward, the  
10 Office of Trial Staff has a position on that issue.

11 Currently, it is our impression that the settlement  
12 proceedings that have gone on in this case have been  
13 relatively nil to this date involving the Office of Trial  
14 Staff and very possibly most of the other parties.

15 Our opinion is that the direct testimony of all the  
16 parties other than the company are obviously before the  
17 company for review.

18 We view the company as having all of those positions  
19 and the ability to respond to those positions with some  
20 issue resolution and also some obviously dollar resolution  
21 in terms of the stranded cost issue.

22 As noted in our direct testimony, we do have probably  
23 the highest recovery of the parties in the stranded cost  
24 area, and it's our position that the company should be  
25 responding to the Office of Trial Staff as well as the other

1 intervening parties and the other statutory parties with  
2 their interpretation of where they would like to go in terms  
3 of the settlement, money and otherwise.

4 We certainly have every intention of going forward  
5 with the settlement negotiations and will participate as  
6 much as we can, but obviously, with our number being  
7 significantly higher than most of the other parties, it  
8 appears that our involvement will be relatively limited  
9 until discussions between the company and the other parties  
10 would somehow rise from where they are, somewhere closer to  
11 where possible settlement may go.

12 We wanted to indicate that to you. We believe that  
13 it was the company who should be in a position to initially  
14 respond not just to the Office of Trial Staff but we believe  
15 to the rest of the parties in the case. Thank you.

16 JUDGE KASHI: Thank you, Mr. DeBroff.

17 I guess my concern with your statement is that having  
18 seen all of the testimony, having seen the wide diversity of  
19 positions from the various parties on numbers of issues as  
20 opposed to merely numbers, that my concern about the ability  
21 of the intervenors to come to something that looks unified,  
22 as opposed to trying to have the company go running from  
23 room to room to room with various intervenors, I'm not quite  
24 sure where that would get anybody at this particular time.

25 And that's why I think that having the intervenors be

1 able to sit down and talk among themselves first might be  
2 more productive in producing a collaborative effort.

3 My sense is that there are matters, whether it  
4 ultimately goes to a litigated closure or whether it goes to  
5 a settlement/litigated, whatever, is that there are certain  
6 matters in this case that are beyond the facts of this  
7 particular case and beyond the application in this  
8 particular matter.

9 While not saying that it can't be done in this vein,  
10 I would say that some of my general thinking on the matter  
11 is that the issues regarding metering and billing deserve  
12 more attention than this case can give it.

13 It's not that we can't struggle through and come up  
14 with something out of it, but my thinking at the present  
15 time, unless changed somewhere before the case finishes, is  
16 that those are the generic type of issues that can be  
17 handled outside of this case and wouldn't necessarily need a  
18 negotiated or collaborative process, settlement. And  
19 there's a couple other issues too in this particular matter.

20 But my sense is that if in fact the intervenors --  
21 because quite frankly, from some of the things that I see in  
22 here, I mean, we've got problems that if -- there are some  
23 parties here that I think could accept a settlement with the  
24 company while other intervenors wouldn't want to get  
25 involved in that.

1           And I would like the intervenors to be able to see  
2 where it is they really want to go with this. My sense is  
3 that if we litigate to conclusion, the chances of it ending  
4 up in the upper courts for a number of years is pretty good,  
5 as opposed to a collaborative effort by all the interest  
6 groups that are involved, and the interest groups that  
7 fairly represent the Commonwealth, the constituency of the  
8 Commonwealth being able to put together something that  
9 complies with the wishes of the Legislature as far as how to  
10 get this thing moving, complies with the concepts of how the  
11 Governor is concerned about keeping Pennsylvania in the  
12 forefront of competition, which is a good effort.

13           And I think that the litigants, if the intervenors  
14 redouble their efforts as far as talking to themselves,  
15 would make it easier to comply with what you're talking  
16 about, about getting the company to respond.

17           If the company can respond to a unified proposal, I  
18 think it would make it a heck of a lot easier than -- I  
19 guess at the present time we've got 36 intervenors.

20           All right? Anything further?

21           (No response.)

22           JUDGE KASHI: Hearing nothing, we will have the  
23 Office of Consumer Advocate call its first witness.

24           MR. BURGRAFF: Yes, Your Honor. Before we do that, I  
25 believe we agreed yesterday we would stipulate Mr. Catlin's

1 testimony into the record. I would like to do that at this  
2 time.

3 JUDGE KASHI: All right, sir.

4 MR. BURGRAFF: I have previously submitted to the  
5 parties, Your Honor, and I will give two copies to the court  
6 reporter of a document entitled OCA Statement No. 3, the  
7 direct testimony of Mr. Catlin.

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

10 (Whereupon, the document was marked  
11 as OCA Statement No. 3 for  
12 identification.)

13 MR. BURGRAFF: And also OCA Statement No. 3-S, the  
14 surrebuttal testimony of Mr. Catlin.

15 JUDGE KASHI: So marked for purposes of  
16 identification.

17 (Whereupon, the document was marked  
18 as OCA Statement No. 3-S for  
19 identification.)

20 MR. BURGRAFF: I would ask that they be moved into  
21 the record.

22 JUDGE KASHI: It will be accepted into the record as  
23 stipulated to by counsel.

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FORM 2

(Whereupon, the documents marked as OCA Statements Nos. 3 and 3-S were received in evidence.)

MR. BURGRAFF: Thank you. We have Mr. LaCapra this morning. He is at the witness chair and ready to be sworn.

JUDGE KASHI: Mr. LaCapra, would you raise your right hand and be sworn, sir?

Whereupon,

RICHARD LaCAPRA

having been duly sworn, testified as follows:

JUDGE KASHI: Mr. Burgraff?

MR. BURGRAFF: Thank you, Your Honor.

Once again, we have previously submitted to the parties and Your Honor and we will give the court reporter two copies of a document entitled, OCA Statement No. 1, the direct testimony of Richard LaCapra consisting of 33 pages of narrative testimony --

JUDGE KASHI: So marked for purposes of identification --

MR. BURGRAFF: -- and Exhibits RLC-1 through 6.

(Whereupon, the documents were marked as OCA Statement No. 1 and OCA Exhibits Nos. RLC-1 through RLC-6 for identification.)

MR. BURGRAFF: We have also given to the parties a document

FORM 2

1 entitled, OCA Statement No. 1-S consisting of 14 pages of  
2 narrative testimony and Exhibit RLC-7 through  
3 RLC-10.

4 And before I ask that that be marked for  
5 identification, Your Honor, this morning I have distributed  
6 what has been erroneously marked as Exhibit RLC-10. I would  
7 ask that this be marked as Exhibit RLC-9 Revised. This is a  
8 recalculation of that exhibit. We take into account OCA  
9 Witness Smith's new exhibits LS-9R through LS-12R.

10 So I would ask that Exhibit 9 Revised be recognized  
11 as opposed to the original Exhibit 9.

12 JUDGE KASHI: So marked for purposes of  
13 identification.

14 (Whereupon, the documents were  
15 marked as OCA Statement No. 1-S,  
16 OCA Exhibits Nos. RLC-7 through  
17 RLC-10 and OCA Exhibit RLC-9  
18 Revised for identification.)

19 MR. BURGRAFF: Thank you.

20 DIRECT EXAMINATION

21 BY MR. BURGRAFF:

22 Q. Mr. LaCapra, do you have those two documents in  
23 front of you?

24 A. Yes, I do.

25 Q. And do you have any corrections to those

1 documents today?

2 A. No, not other than the ones you've mentioned,  
3 sir.

4 MR. BURGRAFF: Your Honor, I would ask that these two  
5 documents be admitted into the record subject to the caveats  
6 we've been offering.

7 JUDGE KASHI: Subject to any timely motions and/or  
8 objections made, pending cross-examination, that which has  
9 been marked and identified will be received into the  
10 evidentiary record.

11 MR. BURGRAFF: Thank you, Your Honor. The witness is  
12 available for cross-examination.

13 JUDGE KASHI: Thank you very much.

14 Mr. Kleppinger?

15 MR. KLEPPINGER: No questions, Your Honor.

16 JUDGE KASHI: Mr. Nordstrom?

17 MR. NORDSTROM: Yes, just briefly, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. NORDSTROM:

20 Q. Good morning, Mr. LaCapra. My name is Paul  
21 Nordstrom. I represent Allegheny Power.

22 Mr. LaCapra, could you turn to page 29 of your direct  
23 testimony? I refer you to the sentence at line 17 to line  
24 20. You say there, "The most effective way to address these  
25 mitigation values, however, is not in quarreling about their

1 exact numerical value but rather as a rational basis for  
2 sharing of costs and benefits of restructuring between the  
3 customers and investors of the company."

4 Do you see that, sir?

5 A. Yes, I do.

6 Q. Do I take it correctly that your recommendation  
7 for sharing of stranded costs between shareholders and  
8 ratepayers, which as I understand immediately follows this  
9 quoted language, has as its rational basis the company's  
10 mitigation efforts?

11 A. The company's basis?

12 Q. That your proposal has as its basis, its  
13 rational basis, the company's mitigation efforts or lack  
14 thereof.

15 A. The company has a mitigation responsibility and  
16 I'm not sure I'm connecting to your question. My proposal  
17 is to put forth a recommendation that does not require an  
18 agreement on all values of all potential mitigation. So  
19 this proposal would in fact, in our opinion, satisfy the  
20 criteria of mitigation.

21 Q. And your proposal is an equity disallowance,  
22 basically?

23 A. That's correct.

24 Q. And how does that relate to mitigation?

25 A. It relates to mitigation in the following way,

1 that the mitigating of stranded costs would require a proper  
2 valuation of various costs that are difficult to determine  
3 and difficult to quantify at this time.

4 So mitigating of particular costs would require  
5 certain actions that the company could now take, and the  
6 value of those could be somewhat uncertain.

7 It could involve actions that the company will take,  
8 values that the company may not have for several years that  
9 in fact cannot be reclaimed by customers.

10 This attempts to bring forth a formula that can be  
11 applied now and settle out in a reasonable fashion all of  
12 these potential avenues of mitigation.

13 The alternative that we were saying is difficult is  
14 to quantify all of those possibilities in an agreeable form  
15 right now, numerically.

16 Q. Does your proposal for sharing apply to any  
17 utility, no matter how much mitigation it has achieved to  
18 date?

19 A. In the cases that we have seen thus far in the  
20 Commonwealth, I would answer that yes. This would apply to  
21 all companies.

22 Q. Is there any level of mitigation to which your  
23 proposal would not apply?

24 A. If there were -- and anything is theoretically  
25 possible, in that vein -- typically, I would say no in

1 practice, yes in theory.

2 Q. Could you explain that for me, please?

3 A. Yes, that the types of mitigation and the types  
4 of valuation that we are talking about are very, very  
5 unlikely to have happened in the current environment.

6 The establishment of going concern values, of  
7 residual values that we talk about that are of real value  
8 that will not be reclaimed, these are very unlikely to have  
9 entered into the system of a vertically integrated,  
10 regulated monopoly. The quantification of these is  
11 difficult.

12 Now, I say "theoretically," because presumably we can  
13 establish a system by which this would not apply. Now, let  
14 me give you an example of that system.

15 If you chose to divest your generating assets under a  
16 certain form in a fair auction and we settled out on that,  
17 there would be no other requirements of this sort.

18 That in itself would presume to capture all  
19 appropriate mitigation and we would not need to have a  
20 sharing formula.

21 Q. Is the what I perceive to be a very high level  
22 of mitigation that you're discussing -- one can say it  
23 practically has not been reached in this state -- is that  
24 mandated by the Competition Act?

25 A. I think the Competition Act does require

1 mitigation, and I think the intent of requiring mitigation  
2 is to ensure fairness between the value left residually with  
3 the company and the values that are returned to the  
4 customers. So I would say this to me is a high standard.  
5 Fairness is a high standard.

6 Q. And are the particular elements that you have  
7 discussed laid out anywhere in the Competition Act?

8 A. The Competition Act does speak of a voluntary,  
9 not mandatory divestiture as an approach.

10 Q. But that is voluntary, it's not mandatory; is  
11 that correct?

12 A. That is correct.

13 Q. So it is not required?

14 A. It is not required by the Act, that's correct.

15 Q. Is it fair to say that short of a level of  
16 mitigation that would either be voluntary divestiture or  
17 equal voluntary divestiture, that utilities otherwise  
18 engaging in mitigation, utilities that otherwise have run  
19 their operations efficiently and have provided power at low  
20 cost and have taken other mitigation efforts specifically in  
21 light of competition, they would still be subject to the  
22 full effect of your sharing recommendation and placed in the  
23 same position as utilities that did none of those things?

24 A. No, I wouldn't say that would be true.  
25 Companies that operated very efficiently and have costs at

1 or below national averages would tend to have very low  
2 stranded costs, and this issue would not play out quite the  
3 same way.

4 It is the utilities that have very high rates  
5 relative to the regional market or other averages where they  
6 would be affected by this. So, no, the impact of it is  
7 very, very different among utilities --

8 Q. But in terms of sharing --

9 A. -- and very much a function of the efficiency of  
10 the utility.

11 Q. I'm sorry, I thought you had completed your  
12 answer. Please continue.

13 A. Sorry. The last statement -- I'm sorry if I  
14 paused; I do that sometimes -- the effect on the utilities  
15 are very, very different, with the efficient utilities  
16 having very, very little impact from this sharing formula,  
17 perhaps none.

18 Q. Don't you think it's possible for an efficient  
19 utility to come before the Commission with the same level of  
20 stranded costs as an inefficient utility?

21 A. No.

22 Q. What about differences in markets?

23 A. The measure of the efficiency of a utility and  
24 the rates of a utility I would assume would be in the market  
25 context in which it exists, that barring some completely

1 fortuitous advantage that one particular utility may have  
2 had in the marketplace, presumably a marketplace is defined  
3 by reasonable the same access of fuel and customers, markets  
4 and transmission.

5 And what we have -- and perhaps it's not fair to use  
6 only the term "efficiency" -- but we have higher cost and  
7 lower cost utilities that in most cases in a market had  
8 reasonably similar opportunities.

9 Q. Do you believe that there is one market, one  
10 electricity market in Pennsylvania?

11 A. There is a market in PJM which is the relevant  
12 market in this case. Now, there's ability import and export  
13 from PJM to some region, but effectively I would say for  
14 these purposes we can look at PJM as a market that would  
15 affect the applicant as its primary trading area, primary  
16 market area.

17 Q. Let me give you a hypothetical. Utility A over  
18 the years has kept its costs very low, run its operations  
19 efficiently. It has engaged in extensive mitigation in  
20 anticipation of competition so that its generation costs are  
21 5 cents. It operates in a market where the market  
22 competitive rate is 2 cents, leaving it with a stranded cost  
23 claim of 3 cents.

24 Utility B is a higher cost utility. It has done  
25 little to run its operations efficiently. It has done

1 little to mitigate stranded costs in anticipation of  
2 competition. Its generation costs are six cents. It has  
3 the good fortune, however, of operating in a market where  
4 the competitive price is 3 cents, so its stranded cost  
5 claim, six minus three, is also three cents.

6 The two utilities get to the same stranded costs  
7 claim, although one has operated efficiently and one has  
8 not. Do you believe they should be treated equally in terms  
9 of a sharing proposal as you outline in this case?

10 MR. BURGRAFF: Your Honor, I hate to object, but I  
11 don't see the foundation for the hypothetical or its  
12 application to PP&L's proposal in this case.

13 JUDGE KASHI: Mr. Nordstrom?

14 MR. NORDSTROM: Well, Your Honor, there are several  
15 issues in this case. I think the sharing of stranded costs  
16 between --

17 JUDGE KASHI: No, let's go back to the foundation  
18 problem. Where is the foundation in the record for that?

19 MR. NORDSTROM: Your Honor, there is none. This is  
20 simply a hypothetical. We are trying to explore how this  
21 witness's --

22 JUDGE KASHI: Yes, but a hypothetical has to be based  
23 on facts that are part of the record, sir. We just can't  
24 sit making things up as far as the efficiency of one utility  
25 and another.

1 MR. NORDSTROM: Well, we're not asking him to opine  
2 on the merits of any particular utility, but we're trying to  
3 see how his proposal, which the Commission could conceivably  
4 adopt in this case, will have application.

5 I think it's very possible to deal with this  
6 hypothetical in those conceptual terms. If not, I'll  
7 withdraw it.

8 MR. BURGRAFF: Your Honor, this case is about PP&L's  
9 proposal and it's about PJM. I don't see a foundation  
10 behind Mr. Nordstrom's question.

11 JUDGE KASHI: I'm inclined to agree with counsel,  
12 sir, so I'm going to sustain that objection.

13 MR. NORDSTROM: Thank you, Your Honor.

14 Your Honor, with that, I will conclude. Thank you.

15 JUDGE KASHI: Thank you very much, sir.

16 Mr. Russell?

17 MR. RUSSELL: Yes, sir. Thank you.

18 CROSS-EXAMINATION

19 BY MR. RUSSELL:

20 Q. Good morning, Mr. LaCapra. My name is Paul  
21 Russell. I am representing PP&L in this proceeding.

22 A. Good morning.

23 Q. If you would turn to page 8 of your direct  
24 testimony at lines 23 to 28, you're citing a return on  
25 equity. And what I want to ask you, the 10 percent return

1 on equity that you cite here was reflected in a Commission  
2 securitization order; is that correct?

3 A. That's correct.

4 Q. Have you reviewed any other recent PUC decisions  
5 regarding the Commission's allowed rate of return on common  
6 equity?

7 A. As the statement puts forth, the last Commission  
8 ruling on the PP&L case, 11.5 percent, so we did review that  
9 and we stated that that was the last adjudicated case and  
10 made note of that.

11 Q. And you didn't review any others in other  
12 industries, for example?

13 A. Well, we have a number of cases in other -- you  
14 mean utilities or other industries? Are you talking about  
15 the steel industry, or --

16 Q. Other utilities before the Pennsylvania  
17 Commission.

18 A. Before the Pennsylvania Commission? We had  
19 reviewed the PECO cases. I don't recall, I didn't do it  
20 myself, but we had looked back at those as well when making  
21 their filing.

22 Q. Did you say you don't recall what the return on  
23 equity was in those cases?

24 A. No.

25 Q. Have you conducted your own specific cost of

1 equity analysis in this case?

2 A. No, we have not.

3 Q. Would you turn to page 11, still in your direct?

4 And on lines 26 to 28 there, you discuss -- and it carries  
5 over to the next page -- you discuss the company's filing  
6 with FERC regarding the Schuylkill Energy Resources project.

7 Have you reviewed the company's FERC filing regarding  
8 this project?

9 A. I have had my staff review the filing, and at  
10 the time the issue was in doubt and we were uncertain on the  
11 outcome, and this is why we made this comment.

12 Q. And as far as you know, the outcome is still  
13 undecided before FERC; is that correct?

14 A. As far as I know, that's correct.

15 Q. In reviewing the company's application or after  
16 reviewing the company's application, would you agree that  
17 the company is seeking to revoke SER's status as a  
18 cogeneration QF as opposed to a small power production QF?

19 A. That is correct.

20 Q. And would you further agree that even if the  
21 company's petition is granted by the FERC, SER would remain  
22 a small power production QF?

23 A. We are not sure that -- well, yes, but we're not  
24 sure that that would require or result in the same volume or  
25 price level.

1 Q. Turning to the price level, are you aware that  
2 if PP&L's application is granted, the company's payments to  
3 SER would decline from 6.5 cents per kWh to 5 cents per kWh?

4 A. I can't personally testify to those numbers, but  
5 that's the right direction.

6 Q. And do you have any information about what the  
7 annual savings would be from that change in payments?

8 A. There was that calculation done to determine the  
9 reduction that was calculated. Isolating that one, I would  
10 have to look at the workpapers, but the sum of the  
11 adjustments as noted is \$106 million from the various  
12 factors that we looked at.

13 Q. Would you accept subject to check that the  
14 savings would be about \$10 million a year? Does that sound  
15 about right?

16 A. I don't recall the savings for that individual  
17 project.

18 Q. Turning to page 12 of your direct testimony, at  
19 the top, you are discussing NUGs on the company's system in  
20 a more general sense. Have you examined the contracts under  
21 which PP&L purchases output from NUGs?

22 A. Our staff has I believe looked at all the  
23 contracts.

24 Q. And they reported to you what they --

25 A. Right. This was their opinion, yes.

1 Q. Would you agree, based on the information from  
2 your staff, that these agreements obligate PP&L to pay only  
3 for energy produced by the NUGs?

4 A. I think that's generally true, yes.

5 Q. Would you further agree that such a provision  
6 would provide an incentive for the NUG owner to operate at  
7 the highest levels possible?

8 A. All other things being equal, as their own costs  
9 would change and as other opportunities may become  
10 available, the economic benefit to the generator may change  
11 over time. There could be times when the price paid for  
12 energy is not as economical as it is today, or not as  
13 valuable or profitable to the NUG as it is today.

14 Q. The price paid by PP&L?

15 A. The price paid by PP&L, that's correct.

16 Q. So is it basically your answer that if the NUG's  
17 cost of operation rise to exceed the payments it receives  
18 from PP&L, then it may not have an incentive to operate at  
19 the highest levels possible?

20 A. May not have the incentive to operate as much,  
21 may have an incentive, on seeing this on the horizon, to  
22 settle out at some point in the future.

23 There are all opportunities that appear to point in  
24 more or less the same direction, and that direction is that  
25 there is some likelihood that this would be less, and one

1 cannot really easily conjure up a scenario where it would be  
2 more.

3 Q. I'm sorry, where it --

4 A. The output you're buying from NUGs.

5 Q. Do you know or would you accept that PP&L's  
6 payments to NUGs are generally about 6 cents per kWh?

7 A. That sounds about right.

8 Q. On page 12 of your testimony, you indicate that  
9 used an 80 percent annual average capacity factor in your  
10 analysis of future NUG generation. Did you conduct a study  
11 or analysis to derive this 80 percent capacity factor?

12 A. We did not look at the specific NUGS. We looked  
13 at the technology and the average availability of the kinds  
14 of technology for data we had and found 80 percent to be a  
15 reasonable number on which to cast the long-term estimate.

16 Q. But that analysis did not evaluate specifically  
17 the NUGs on PP&L's system?

18 A. Your NUGS? No, sir, they did not.

19 Q. If you would turn to page 15 of your direct?  
20 Starting here and carrying over for a couple of pages, you  
21 describe some estimates of going-forward costs of the  
22 company's generation assets. Would you agree that  
23 developing these estimates of going-forward costs requires a  
24 forecasting of various cost components?

25 A. Yes.

1 Q. Would you agree that one of the cost components  
2 that must be forecast would be operation and maintenance  
3 expenses?

4 A. Yes.

5 Q. And would another be fuel costs?

6 A. Yes.

7 Q. On page 16 at the top, still in your direct  
8 testimony, you cite a productivity factor of .2 percent.  
9 Did you conduct a study to develop that productivity factor?

10 A. The study was not specific to your NUGs. It is  
11 based on our own analyses.

12 Q. I'm sorry. Your answer has confused me a little  
13 bit. Is the .2 percent productivity factor to be applied to  
14 our NUGs?

15 A. Yes.

16 Q. On page 18 of your direct where you are  
17 discussing fossil decommissioning costs, would you agree  
18 with me that as a general proposition, fossil  
19 decommissioning costs traditionally have been recovered in  
20 rates in Pennsylvania as incurred through net negative  
21 salvage?

22 A. Yes.

23 Q. And I believe you indicate that you've reviewed  
24 the definition of stranded costs in the Customer Choice Act;  
25 is that correct?

1 A. That's correct.

2 MR. RUSSELL: Your Honor, could I approach the  
3 witness?

4 JUDGE KASHI: Yes.

5 BY MR. RUSSELL:

6 Q. Mr. LaCapra, I'll show you a copy of the  
7 Customer Choice Act --

8 JUDGE KASHI: Show it to counsel, please.

9 (Document shown to Counsel Burgraff.)

10 BY MR. RUSSELL:

11 Q. And what I'm looking at specifically is Section  
12 2803, the definition section, the definition of stranded  
13 costs, and under that, subparagraph 3, and under that,  
14 subparagraph IV. I'd just ask you to look at that. It's  
15 very short, if you could just read that into the record.

16 A. "Retirement costs attributable to the utility's  
17 existing generating plants other than the costs defined in  
18 paragraph 1."

19 Q. And that section I just asked you to read is  
20 part of the definition of transition or stranded costs in  
21 the Act; is that correct?

22 A. Other than paragraph 1.

23 Q. I agree, yes, sir.

24 A. It refers to several other things, including  
25 decommissioning costs.

1 Q. Am I correct that paragraph 1 refers to nuclear  
2 decommissioning costs?

3 A. Paragraph 1 refers to decommissioning costs,  
4 yes. It refers to nuclear decommissioning costs, regulatory  
5 assets and unfunded costs of NUG contracts.

6 Q. I guess what I'm trying to understand is that if  
7 the section that I asked you to look at that talks about  
8 retirement costs attributable to the utility's generating  
9 plants does not refer to decommissioning of those plants,  
10 what would you expect it is referring to?

11 A. What it is referring to are the costs that would  
12 be included if strandable. There is a presumption I think  
13 in your question that by putting forth a cost category  
14 effectively endorses it as a stranded cost as opposed to  
15 putting it forth for adjudication or evaluation.

16 Now, our position is that costs, if they would exist  
17 in the competitive industry, and costs which would be  
18 incurred by other competitive suppliers should not be  
19 isolated. So here the definition is not to say that this  
20 category is necessarily stranded to the full extent  
21 possible. It is to say it is appropriate for review; and  
22 our opinion is if the review would show that these are costs  
23 that would exist in the competitive market that other  
24 generators would have to pay, then it is not appropriately  
25 strandable.

1 Q. So I understand it, it would be your testimony  
2 that fossil decommissioning costs are a cost to be  
3 considered and litigated in this proceeding as a possible  
4 component of stranded costs?

5 A. It is obviously the company's right, which it  
6 has done so, to put forth this, and we do not believe this  
7 is a strandable cost.

8 Q. And I understand that. Then on page 18 at line  
9 5 where you say, and I quote, "These costs simply do not fit  
10 the definition of stranded costs," closed quote, would you  
11 after our discussion here change that and concede that they  
12 fit the definition, but then we have a proceeding here to  
13 decide to what extent they are allowable?

14 MR. BURGRAFF: Your Honor, I'm going to have to  
15 object at this point. I have no problems with that part of  
16 the question going to what Mr. LaCapra explained about a  
17 regulatory versus a competitive environment. However, as  
18 far as a legal conclusion on this section, I don't think the  
19 witness should be asked --

20 JUDGE KASHI: He made a statement. He made a  
21 statement in his testimony that they don't fit the  
22 definition.

23 MR. BURGRAFF: Well, he explained the point --

24 JUDGE KASHI: I think it is fair. The objection is  
25 overruled. Answer the question.

1 THE WITNESS: I believe the question was would I  
2 change the statement of these do not fit the definition of  
3 stranded cost. My answer is simply no. What I am  
4 testifying to here is what I am defining as stranded costs,  
5 meaning not the review of the universe of possibilities, but  
6 basically those costs which ultimately go through the filter  
7 and wind up as stranded costs.

8 JUDGE KASHI: Your definition?

9 THE WITNESS: My definition, which is a stranded cost  
10 is that cost which cannot be recovered in a competitive  
11 market, and it is not a cost which a competitor is likely to  
12 face.

13 Now, there are general costs that could be stranded  
14 but may not be stranded. This is one of them. Certain  
15 plant costs could be stranded but may not be stranded.  
16 We're saying this cost is not strandable. It is not a  
17 stranded cost. It is does not fit the definition of that  
18 which would not exist in a competitive market.

19 BY MR. RUSSELL:

20 Q. But you're saying those costs could be stranded,  
21 but in your opinion is not stranded?

22 A. Certain types of decommissioning costs can be  
23 stranded. Clearly, certain nuclear costs we've recognized  
24 as costs that may not have been stranded but in fact are in  
25 this case. One can imagine a situation where nuclear

1 decommissioning costs would not be stranded and be able to  
2 be collected in a competitive market. So it could be on  
3 either side of the definition in this specific instance.

4 Q. Thank you. Turning to page 20, beginning at  
5 line 15, you present some data regarding PP&L and some data  
6 regarding PECO, and I just wanted to work through this data  
7 a little bit with you and do some comparisons that carry on  
8 from a comparison that you created.

9 If you look at lines 20 and 21, you conclude that  
10 PP&L's stranded cost request is more than 60 percent of  
11 PECO's stranded cost request. More than 60, to use that  
12 terminology, I did the calculation, and would you accept  
13 that it turns out to be 62 percent?

14 A. Okay. I'll work with that.

15 Q. Also in that section, you talk about the average  
16 rates for both PP&L and PECO. You cite 7.2 cents per kWh  
17 for PP&L and 9.9 cents per kWh for PECO. And to do the same  
18 comparison with those rates that you did with the stranded  
19 costs, would you agree that PP&L's average rates are 73  
20 percent of PECO's average rates?

21 A. Yes.

22 Q. And my final question in this area. If you turn  
23 over to the top of 21 where you look at net book value for  
24 generation assets, there you show 3.92 billion for PP&L and  
25 6.32 billion for PECO. And again, making the same

1 comparison, would you agree that PP&L's net book value for  
2 generation assets is 62 percent of PECO's net book value for  
3 generation assets?

4 A. Yes.

5 Q. On page 23, you're talking about the company's  
6 proposal for reclassification of depreciation reserve. Have  
7 you reviewed the mitigation provisions of the Customer  
8 Choice Act?

9 A. Yes.

10 MR. RUSSELL: Again, Your Honor, could I approach and  
11 show to counsel first?

12 JUDGE KASHI: Yes.

13 (Document shown to Counsel Burgraff.)

14 BY MR. RUSSELL:

15 Q. Mr. LaCapra, I would like you to look at 2808 --  
16 this is very complicated -- sub (c), sub (4), sub (3), where  
17 the Act sets forth examples of mitigation. If you would  
18 just look at that and then just read that into the record.

19 (Witness perusing document.)

20 A. It says, "Reallocation of depreciation reserves  
21 to existing rate base generation assets."

22 Q. And wouldn't you agree that that is what PP&L  
23 has proposed in this case?

24 A. PP&L is in fact proposing it, and I think our  
25 recommendation here is simply that moving costs from one

1 account to another is not mitigation in a real sense.

2 Q. On page 25 of your direct at lines 16 and 17,  
3 you state, and I'll quote, "The company has indicated in  
4 response to discovery (OCA-III-24) that it has no additional  
5 mitigation plans for NUG contract costs," closed quote.  
6 Have I read that accurately?

7 A. That's correct.

8 MR. RUSSELL: Your Honor, I would like to mark for  
9 identification as PP&L Cross-Examination Exhibit No. 10 the  
10 company's response to OCA Interrogatories Set III, Question  
11 24.

12 JUDGE KASHI: So marked for purposes of  
13 identification.

14 (Whereupon, the document was marked  
15 as PP&L Cross-Examination Exhibit  
16 No. 10 for identification.)

17 BY MR. RUSSELL:

18 Q. Mr. LaCapra, am I correct that the interrogatory  
19 response that has been identified as PP&L Cross-Examination  
20 Exhibit No. 10 is the interrogatory response that you relied  
21 upon in this section of your testimony that I read into the  
22 record a minute ago?

23 A. Yes, it is.

24 Q. Mr. LaCapra, I would just ask that you read  
25 PP&L's response as set forth on PP&L Cross-Examination

1 Exhibit No. 10 into the record.

2 A. Certainly. Our statement is it has no  
3 additional plans to mitigate NUG contract costs, and we've  
4 taken that opinion from this statement of PP&L. "PP&L has  
5 entered into a buy-out arrangement with one NUG which is  
6 awaiting Commission approval. It is PP&L's policy to pursue  
7 opportunities to enter into buy-outs, buy-downs and  
8 renegotiations as they arise consistent with the contracts  
9 which exist between the company and the NUG owners."

10 I believe our statement is correct given that  
11 response.

12 Q. Thank you. Would you turn to page 29 of your  
13 direct? Mr. LaCapra, are you a licensed real estate  
14 appraiser in Pennsylvania or any other state?

15 A. I don't think so. I had a broker's license in  
16 New York in the early '70s, but I'm not sure if that  
17 qualified me to appraise property. I actually don't recall  
18 what the agreement allowed me to do.

19 Q. But you certainly don't have a current license  
20 in Pennsylvania?

21 A. No, I do not.

22 Q. Do you have any experience with regard to real  
23 estate appraisals?

24 A. As a certified appraiser, no, I do not.

25 Q. In your analysis here in this part of the

1 testimony, did you consider what is referred to as, quote,  
2 "the highest and best use," closed quote, of the land on  
3 which the company's plants are located?

4 A. Do you have a reference for me?

5 Q. I'm on page 29, and I'm at lines 1 through 8.

6 (Witness perusing document.)

7 A. On 1 through 8, I don't see that quote.

8 Q. No. It's not quoted there. I'm asking in that  
9 analysis, did you consider the highest and best use?

10 A. No. We simply escalated the property value by  
11 an inflation rate, and this is, in my opinion, being more  
12 familiar with valuation of electrical property and  
13 generation, to be remarkably conservative in that generation  
14 sites are extremely valuable. Our approach was simply to  
15 attempt to value the land asset at some nominal amount,  
16 which is the cost that was on the book times inflation, and  
17 I would, frankly, be very pleased to purchase all your land  
18 at that price.

19 Q. Did you assume the land would be used for  
20 location of generation assets in the future?

21 A. I don't think we implicitly assumed that in this  
22 calculation. This calculation was simply an escalation of  
23 the book cost by inflation. My own opinion is that this  
24 would appear to be one of the logical uses for generating  
25 property.

1 Q. Turning to your surrebuttal testimony, on page  
2 5, you discuss -- I don't want to go to the symmetry  
3 argument so much as increases in price of energy. Would you  
4 agree that if prices for energy increase, consumers will  
5 tend to conserve?

6 A. As a general proposition, yes.

7 Q. And would you also agree that if prices for  
8 energy increase, producers will attempt to find new sources  
9 to bring to the market?

10 A. That may or may not be true. Not within  
11 reasonable bounds. If, for example, all fossil and fuels  
12 were to go up in price and there were no nuclear  
13 construction, no more hydro sites, well, simply the price  
14 level of that product would rise and there would be very  
15 little opportunity for a producer to come in with something  
16 else. So we've experienced many times in this industry  
17 where there has been an absolute price level that was not  
18 able to be curtailed by some different technology or some  
19 new idea. The prices simply went up.

20 Q. Just focusing on oil and gas, wouldn't you agree  
21 after the oil price increase in the '70s, that the prices  
22 fell again within a decade?

23 A. Yes.

24 Q. And as a general proposition then, would you  
25 agree that energy price increases tend to be

1 self-correcting?

2 A. Well, they didn't fall back to original levels.  
3 Energy, particularly oil and gas have had a very spiky past,  
4 particularly from the early '70s to the mid '80s, but they  
5 have not reverted to their price in the '60s.

6 Q. On your surrebuttal, page 13, am I correct here  
7 that you expect market revenue in the competitive market to  
8 increase over time?

9 A. Yes.

10 Q. And am I further correct that this revenue will  
11 enable PP&L to recover the costs of its generating  
12 facilities?

13 A. Most of its facilities, yes.

14 Q. Now, would you agree that the company will be  
15 able to recover a just and reasonable amount of these costs  
16 only if your market price projections turn out to be  
17 correct?

18 A. I think there are two things going on here. One  
19 of them is that the price suppression in the early years is  
20 due somewhat to some earlier PJM excesses. Now, these will  
21 go away through a normal growth cycle, which really isn't in  
22 dispute, the best I can tell. So part of the price will  
23 clearly vanish -- part of the price reduction, the lower  
24 price, this will clearly vanish within a couple of years. I  
25 don't think anybody disagrees with that.

1           The ambiguity of the forecast is something that I  
2 think gets overstated. There are two parts to this.  
3 Clearly, the fuel price is a forecast and it is subject to  
4 its vagaries. On the other hand, once there are capacity  
5 additions coming on, I believe we and a lot of other people  
6 have a very good handle on what these new technologies are  
7 costing that are in the planning and manufacturing stages.  
8 I think these are pretty good numbers. It really gets down  
9 to fuel forecasts can vary somewhat, but of the major  
10 components, if I were to isolate those three, I would say  
11 two of them are reasonably predictable at this point; and of  
12 two of the three, I don't think there is any dispute among  
13 any of the analysts that these are all going to put upward  
14 pressure on prices.

15           Q. But you would agree that fuel is very uncertain?

16           A. Fuel is a forecast, and fuel I think over time,  
17 if you look at the trend, has behaved itself over long  
18 periods of time, but has been very spiky in the short term  
19 for short periods.

20           Q. Finally, if you would look at pages 10 and 11 of  
21 your surrebuttal, you discuss some recent market activity in  
22 New England and elsewhere.

23           A. Yes.

24           Q. Regarding the New England experience, you  
25 described the sale as just recently completed. Would you

1 agree that the sale is not closed as of today?

2 A. The closing has not occurred as of today, that's  
3 correct.

4 Q. And you indicate that the sale was for nearly  
5 4,000 megawatts. Would you agree the transaction was for  
6 4,000 megawatts of NEES plant plus contracts to receive  
7 another 1,110 megawatts for a total transaction of 5,110  
8 megawatts?

9 A. The contracts that you referred to were NUG  
10 contracts, and these were handled under a separate transfer  
11 and a separate deal. They were actually handled separately  
12 in the bid package as well.

13 Q. But there was a second transaction for the --

14 A. There was a transaction which settled out an  
15 amount that required a transfer from the utility to the  
16 purchaser for certain of the above-market costs. So what  
17 was negotiated there or what was bid there was effectively a  
18 strike price on the output with the company paying the  
19 differential, and this is how the mitigation was handled  
20 effectively for the NUGs.

21 Q. Would that transaction have been an offset  
22 against the other one to some extent?

23 A. No. They were handled very, very separately.  
24 One was a sale of assets. The other was a mitigation of NUG  
25 contracts. From the bid itself, they were issued

1 independently and could have just as easily gone to  
2 different bidders. There was an aggressive bid by one  
3 company and it won both parts of the bid.

4 Q. Do you know that under the NUG transaction, NEES  
5 would make payments to PG&E; am I correct?

6 A. That's correct.

7 Q. Of the 4,000 megawatts, are you aware that 2,800  
8 is fossil and 1,200 is hydro?

9 A. I would need to check that.

10 JUDGE KASHI: Will you accept it subject to check,  
11 sir?

12 THE WITNESS: It doesn't seem exactly right to me,  
13 but to proceed, let's assume it is a mixture of fossil and  
14 hydro of about that proportion.

15 BY MR. RUSSELL:

16 Q. I want to spend just a minute talking about the  
17 environment in New England. Are you aware that Millstone  
18 Units 1, 2 and 3 are now closed?

19 A. They are not operating now. The units are not  
20 closed. The units are still active units that are  
21 undergoing, according to the company, repairs that have a  
22 completion point, and the company at least has put out  
23 schedules for each of the three to return to service.

24 Q. Thank you. That's a more precise way to state  
25 it. They're not operating, but they're not --

1           A.    They're not closed.

2           Q.    And that's what I meant.  Thank you.  Are you  
3 aware that there is some doubt whether they will begin  
4 operation again?

5           A.    I think there is some doubt about, frankly,  
6 Millstone 1.  There is not as much -- there is relatively  
7 little about 2, and I think most analysts in the region  
8 believe that Millstone 3 will return to service more or less  
9 as scheduled.  I think that is the current feeling.

10          Q.    And those three units total about 2,600  
11 megawatts; is that correct or will you accept subject to  
12 check?

13          A.    Those units total 2,500 megawatts.  
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1 Q. Are you aware that Maine Yankee is closed?

2 A. Yes.

3 Q. Would you accept, subject to check, that Maine  
4 Yankee is about 580 megawatts?

5 A. It is 584 megawatts; that's right.

6 Q. Finally, I'd like to turn to the Duquesne Light  
7 transaction, which is closer to home. Do you know what  
8 Duquesne's interest in the Fort Martin Unit 1 was, or is?

9 A. It's interest?

10 Q. I'm sorry; what percentage interest is what I'm  
11 asking.

12 A. No, I don't recall.

13 Q. Are you aware that the buyer was Allegheny Power  
14 System?

15 A. Yes.

16 Q. And that Allegheny Power System is the operator  
17 of Fort Martin?

18 A. Yes.

19 Q. Are you aware that Allegheny Power System and  
20 Duquesne subsequently have announced the intent to merger?

21 A. Yes.

22 Q. On page 11 you discuss PECO's interest in  
23 acquiring nuclear assets. To your knowledge, has PECO  
24 acquired any nuclear units to date?

25 A. They're in negotiations. I have not heard of

FORM 2

1 their closing a sale yet, but we know of their negotiations.

2 Q. And those negotiations deal with what plant?

3 A. They deal with the Louisiana River -- a plant in  
4 Louisiana, a plant in Colorado and a plant in Maine, the  
5 negotiations I'm aware of.

6 Q. That goes to my next question. Did PECO  
7 recently seek to acquire the Maine Yankee nuclear plant?

8 A. Yes, it did, and their negotiations broke down  
9 at some point after it was believed to be a pretty much  
10 completed deal. I don't know the circumstances of why those  
11 negotiations unraveled at the last moment.

12 MR. RUSSELL: Thank you, Mr. LaCapra. I have nothing  
13 else.

14 JUDGE KASHI: Thank you, sir.

15 Redirect, counsel?

16 MR. BURGRAFF: If I could have just one or two  
17 minutes, Your Honor?

18 JUDGE KASHI: Five minutes?

19 MR. BURGRAFF: Five minutes.

20 JUDGE KASHI: We stand in recess for five minutes.

21 (Recess.)

22 JUDGE KASHI: Going back on the record.

23 Redirect, Mr. Burgraff?

24 MR. BURGRAFF: Thank you, Your Honor.

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## REDIRECT EXAMINATION

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BY MR. BURGRAFF:

Q. Mr. LaCapra, do you recall Mr. Russell asking you a question relative to the 0.2 percent annual productivity factor shown on the top of page 16 of your Statement No. 1?

A. Yes, I do.

Q. I believe you answered that that was NUG-specific only. Do you recall that?

A. Yes.

Q. Do you care to offer another response?

A. Right. Referring to the NUGs, I said it was used specifically for the NUGs. The 0.2 percent productivity factor was used in estimating of O&M for all units, including company-owned and non-utility generation units.

Q. Mr. LaCapra, do you also recall several questions from Mr. Russell concerning page 10 of your surrebuttal testimony?

A. Yes.

Q. Do you recall him asking certain questions about the Millstone units?

A. Yes, I do.

Q. I believe you testified that Units 2 and 3 are anticipated by many planners to return to service. Of the

1 2500 megawatts of capacity of the Millstone Units, what  
2 amount of that number do Units 2 and 3 represent?

3 A. It's a little under 2,000. It's about 1,950  
4 megawatts are represented by the two units that are very  
5 likely to be back shortly.

6 Q. What is the impact of that on the capacity  
7 situation in New England?

8 A. This would return New England more or less to  
9 the situation which has been forecast in the past, a year of  
10 need somewhere between 1999 and the year 2000, so it's  
11 similar to PJM in the year of need by a year or two, and New  
12 England will have a year or two of excess and then require  
13 capacity. So I think the two pools are relatively similar  
14 in that regard.

15 MR. BURGRAFF: Thank you, Mr. LaCapra.

16 That's all we have, Your Honor. Obviously, if Mr.  
17 Russell has further questions on the 0.2 percent  
18 productivity factor, feel free. We misspoke there.

19 MR. RUSSELL: Thank you, Mr. Burgraff.

20 We have no recross, Your Honor.

21 JUDGE KASHI: Thank you.

22 MR. RUSSELL: I would like to move into the record  
23 PP&L Cross-Examination Exhibit No. 10.

24 JUDGE KASHI: It's received without objection.

25

1 (Whereupon, the document marked as  
2 PP&L Cross-Examination Exhibit No.  
3 10 was received in evidence.)

4 JUDGE KASHI: Mr. LaCapra, you're excused.

5 (Witness excused.)

6 JUDGE KASHI: That which has been previously marked  
7 and identified by OCA as OCA Statement No. 1, 1-S and the  
8 attendant exhibits are received into the evidentiary record,  
9 without objection?

10 (No response.)

11 JUDGE KASHI: Without objection.

12 (Whereupon, the documents marked as  
13 OCA Statements Nos. 1 and 1-S and  
14 OCA Exhibits Nos. RLC-1 through  
15 RLC-10 were received in evidence.)

16 JUDGE KASHI: The Environmentalists, Mr. Zalcman.

17 MR. ZALCMAN: Thank you, Your Honor. The  
18 Environmentalists call Mr. David Schoengold.

19 JUDGE KASHI: Mr. Schoengold, will you raise your  
20 right hand and be sworn, sir?

21 Whereupon,

22 DAVID SCHOENGOLD

23 having been duly sworn, testified as follows:

24 JUDGE KASHI: Please be seated.

25 MR. ZALCMAN: Your Honor, in accordance with the

1 procedures established in this case, the Environmentalists  
2 have served copies of prepared testimony and exhibits of  
3 David Schoengold consisting of 40 pages of question and  
4 answer type material and accompany Exhibits DS-1 through 5.  
5 We ask that that be marked.

6 JUDGE KASHI: So marked for purpose of  
7 identification.

8 (Whereupon, the documents were marked  
9 as Environmentalists' Statement No.  
10 1 and Environmentalists' Exhibits  
11 Nos. DS-1 through DS-5 for  
12 identification.)

13 MR. ZALCMAN: In addition, Your Honor, the  
14 Environmentalists have provided copies to the court  
15 reporter, the parties and Your Honor of Environmentalists'  
16 Statement 1-SR, the surrebuttal testimony of David  
17 Schoengold, consisting of ten pages of narrative testimony,  
18 and Exhibit DS-6. We ask that that be marked.

19 JUDGE KASHI: So marked for purpose of  
20 identification.

21 (Whereupon, the documents were marked  
22 as Environmentalists' Statement No.  
23 1-SR and Environmentalists' Exhibit  
24 No. DS-6 for identification.)  
25

## DIRECT EXAMINATION

1  
2 BY MR. ZALCMAN:

3 Q. Mr. Schoengold, do you have any corrections  
4 you'd like to make to your direct testimony,  
5 Environmentalists' Statement 1?

6 A. No.

7 Q. Are there any corrections you'd like to make to  
8 your surrebuttal testimony, Environmentalists' Statement  
9 1-SR?

10 A. No.

11 MR. ZALCMAN: Thank you.

12 Your Honor, we would move for the admission of  
13 Environmentalists' Statement 1, Environmentalists' Statement  
14 1-SR, and Exhibits DS-1 through 6, subject to timely motions  
15 and objections, and would tender the witness for cross-  
16 examination.

17 JUDGE KASHI: Subject to any timely motions and/or  
18 objections, that which has been previously marked and  
19 identified will be received into the evidentiary record.

20 Mr. Nordstrom.

21 MR. NORDSTROM: Thank you, Your Honor.

## CROSS-EXAMINATION

22  
23 BY MR. NORDSTROM:

24 Q. Good morning, Mr. Schoengold. My name is Paul  
25 Nordstrom. I represent Allegheny Power in this proceeding.



1 Mr. Schoengold, I notice that your testimony is  
2 replete with references to past and accurate projections in  
3 the electricity industry, uncertainties inherent in  
4 predicting market electricity prices now, and an admonition  
5 to the Commission not to rely on such projections in this  
6 case. Is that generally correct?

7 A. Certainly in portions of my testimony that is  
8 weighed very heavily.

9 Q. Your position here is that there is just too  
10 much at stake to rely on these highly uncertain projections  
11 in this case; is that right?

12 A. Yes.

13 Q. And to deal with that uncertainty you propose  
14 two methods of calculating stranded costs for PP&L; is that  
15 right?

16 A. Yes.

17 Q. And both methods, as I understand them, start  
18 with the establishment of a pro forma market price and a  
19 tracking account for true-up adjustments. One method would  
20 require the sell-off of generation assets after a period of  
21 time, and the other method would simply continue the  
22 tracking mechanism throughout the transition period; is that  
23 right?

24 A. Essentially, yes.

25 Q. Now, conceptually do these two alternative

1 methods leave the utility in the same place with respect to  
2 the amount of stranded cost recovery?

3 A. They should, assuming that under the approach  
4 that requires the selling off of the assets, that the buyers  
5 under the auction are reflecting the market prices in what  
6 they're willing to pay for the assets.

7 Q. Reflecting the actual market prices at the time?

8 A. The actual and their projection of what the  
9 future market prices will be.

10 Q. And the true-up mechanism in the other proposal,  
11 actually in both proposals, that is a true-up based on  
12 actual market prices?

13 A. Yes.

14 MR. NORDSTROM: Thank you, Your Honor. I have no  
15 further questions.

16 JUDGE KASHI: Thank you very much.

17 Mr. Kaplan.

18 MR. KAPLAN: Good morning, Mr. Schoengold. My name  
19 is Donald Kaplan. I'll be examining you on behalf of  
20 Pennsylvania Power and Light Company this morning.

21 JUDGE KASHI: Let's stop right here one second. We  
22 have not taken our morning recess. Rather than letting you  
23 go and breaking here shortly, let's take 15 minutes now, and  
24 we'll come back and start.

25 (Recess.)

1 JUDGE KASHI: Going back on the record.

2 Mr. Kaplan, cross-examine.

3 MR. KAPLAN: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. KAPLAN:

6 Q. Mr. Schoengold, would you agree with the general  
7 proposition that one of the purposes of competition, one of  
8 the goals of competition, is to ultimately lead to lower  
9 costs to consumers of purchasing electricity?

10 A. I don't know that I would say it's one of the  
11 purposes of competition. I would say the purpose is to give  
12 customers choice, and there's an assumption that by the  
13 presence of that choice, there will be lower prices, but I'm  
14 not sure that that's necessarily the purpose of the  
15 competition itself.

16 Q. But that is the anticipated result of  
17 competition?

18 A. It's certainly the hoped-for result.

19 Q. Of competition.

20 Now, wouldn't you agree that under PP&L's customized  
21 rate design, the incremental costs of electricity to  
22 consumers would be lower than they are today?

23 A. The incremental cost to current consumers for  
24 use beyond their --

25 Q. Current --

1 A. -- current level would be lower than it is  
2 today.

3 Q. Would you agree that under PP&L's proposal, no  
4 residential customer would be required to take the  
5 customized rate design?

6 A. No residential customer would be required;  
7 that's correct.

8 Q. Are you aware that in the rejoinder testimony  
9 last week of Mr. Krall, he stated that subject to certain  
10 conditions, that the company would be willing to extend the  
11 option of the customized rate design to other rate classes,  
12 I mean the option of not taking the customized rate design  
13 to other classes?

14 A. I was not aware of that, no.

15 Q. Not aware.

16 Please turn to page 28 of your prepared direct  
17 testimony. Here you propose eliminating the block structure  
18 from existing rates; is that correct?

19 A. Where are you referring?

20 Q. Page 28, line 15, of the direct.

21 A. Yes.

22 Q. Your proposal is that the existing block  
23 structure which was carried over into the CTC should be  
24 eliminated; is that correct?

25 A. Essentially, yes.

1 Q. And that CTC should be collected on a constant  
2 kilowatt-hour basis; is that correct?

3 A. Yes.

4 Q. Now, this would raise the incremental price of  
5 electricity to all consumers, including residential and  
6 commercial customers; is that correct?

7 A. It would raise the incremental cost for usage  
8 above the current levels for current consumers.

9 Q. Right. Now, you also would recommend that PP&L  
10 be prohibited from moving any of its transmission costs from  
11 their current rate design of a per kilowatt-hour charge to  
12 any rate design that contains a fixed charge; is that  
13 correct?

14 A. Could you --

15 MR. ZALCMAN: Do you have a reference?

16 BY MR. KAPLAN:

17 Q. Page 33 of your direct testimony. Take a look  
18 at the answer beginning on line 4.

19 (Witness perusing document.)

20 A. I'm having a bit of a problem because the page  
21 numbers and lines in my testimony don't match exactly with  
22 yours.

23 Q. Perhaps we have an additional copy.

24 A. That would be useful. In the production of the  
25 testimony, there was a change at the printers and the paging

1 got --

2 Q. If I am using a printed out version, I  
3 apologize.

4 A. I believe you may have the correct one.

5 MR. KAPLAN: If I may examine that copy of his  
6 testimony to make sure we're coordinated on lines. Is that  
7 okay?

8 MR. ZALCMAN: Yes.

9 BY MR. KAPLAN:

10 Q. Yes. This is the version that I -- you are  
11 using the same version.

12 A. I'm sorry for the problem.

13 Q. The question on the table is that you would  
14 propose to prevent any proposal from PP&L that would move  
15 the recovery of transmission and distribution costs from a  
16 per kilowatt-hour charge to a fixed charge; is that correct?

17 A. I am recommending that the company not be  
18 allowed to move charges that are currently on the per  
19 kilowatt-hour side of the charging to the fixed charge side,  
20 not that there be -- I'm not proposing that there be no  
21 fixed charge, but that the movement of costs from per  
22 kilowatt-hour to fixed should not be allowed.

23 Q. This would have the effect of preventing any  
24 further reductions in the incremental price of electricity  
25 to consumers which would result by moving charges from the

1 variable charge to the fixed charge?

2 A. Again, for existing customers, the use of  
3 additional electricity, under the PP&L proposal, there would  
4 be a lower cost for that additional amount of electricity,  
5 which in my proposal would not be there.

6 Q. Right. And by proposing that any movement of  
7 charges from the variable component to the fixed component  
8 be prohibited, you would in fact propose that those  
9 incremental costs not be lowered even more?

10 A. Incremental costs would remain as they are now.

11 Q. And you would recommend that the Commission  
12 reject a proposal to lower them even further?

13 A. To lower the cost of increased use of  
14 electricity; yes, I would recommend against that. It  
15 doesn't affect the cost of using the same amount of  
16 electricity as the customers are using now.

17 Q. You also propose -- one of your CTC collection  
18 proposals, as you discussed with Mr. Nordstrom this morning,  
19 involves the variable recovery of CTC; is that true?

20 A. Well, with Mr. Nordstrom I discussed the truing  
21 up of the CTC to reflect the actual market price as opposed  
22 to the projected market price.

23 Q. To try to put this in relatively simple terms,  
24 as the market price declines, CTC would expand; is that  
25 correct?

1           A.    Yes.  And, on the contrary, as market price went  
2 up, CTC would go down.

3           Q.    And the sum total would remain the same?

4           A.    No, that's not necessarily the case, because, on  
5 the one hand, if you determine a CTC based on an assumed  
6 market price and fix that CTC, if the market price in  
7 actuality goes up, the fixed CTC will not go down, but --

8           Q.    Under your true-up proposal, though --

9           A.    Under the true-up proposal, it would, but under  
10 a proposal which doesn't allow for a true-up, if the market  
11 price goes up, the CTC will not go down, so there won't be a  
12 reduction.

13          Q.    I was talking about your proposal with the true-  
14 up.

15          A.    Okay.  I'm sorry.

16          Q.    So in the simplest terms, I realize there may be  
17 other issues regarding timing and such, but, basically, as  
18 the market price goes down, the CTC would go up, and,  
19 conversely, as the market price went up, the CTC would go  
20 down?

21          A.    Under my proposal, yes.

22          Q.    As a result, at least while the CTC is being  
23 collected, customers would not see any reduction in their  
24 incremental cost of electricity if market prices went down?

25          A.    That's correct.  And they would not see an

1 increase in the incremental cost of electricity if the  
2 market price went up.

3 Q. The net effect of all of these recommendations  
4 is, essentially, to maintain the current incremental cost of  
5 electricity to customers, at least throughout the transition  
6 period; is that correct?

7 A. That would depend on what the Commission decides  
8 in terms of how much recovery of stranded costs is allowed  
9 and what customers choose to do in terms of taking their  
10 power either from PP&L or from other marketers. If the  
11 Commission chooses to allow less than 100 percent recovery  
12 of stranded costs, and customers choose to take their power  
13 from other marketers, presumably they will see a lower price  
14 of electricity than they're seeing now.

15 Q. But if, in fact, the price they take from other  
16 marketers reflects a market price, then it is possible that  
17 the CTC would expand to fill in that difference in the gain  
18 from competition?

19 A. Well, there are two elements to the size of the  
20 CTC. One is the difference between the cost of power, as  
21 PP&L produces it, and the market price, and the other is the  
22 fraction of the stranded costs which the Commission allows  
23 recovery of. If the Commission allows recovery of less than  
24 100 percent stranded costs, whatever the market price does,  
25 presumably, the customers will end up with an opportunity to

1 see prices lower than they currently see.

2 Q. That depends upon, of course, the recovery  
3 period of the CTC and precisely how much the Commission  
4 allows?

5 A. Yes. That's what I was saying.

6 Q. But once that amount is set, under your  
7 proposal, as competition reduces the price of electricity  
8 from some starting point, the CTC will then expand to true-  
9 up that difference in the price of electricity resulting  
10 from the reduction due to competition?

11 A. To the extent that the market price is lower  
12 than the initial assumption, yes, the CTC would expand. If  
13 the market price becomes higher than the initial assumption,  
14 the CTC would contract.

15 Q. Now, I think I misspoke just a couple questions  
16 ago in characterizing your proposal. One of your proposals,  
17 the elimination of the block structure, would actually  
18 increase the incremental price of electricity. Assuming the  
19 same level of -- putting aside the level of the CTC for the  
20 moment, elimination of the block structure would increase  
21 the incremental price of electricity?

22 A. It could serve to increase at least one portion  
23 of the price. The effect on the total price of electricity  
24 wouldn't be clear; it depends on how other elements are  
25 treated, and also, it depends on what other decisions are

1 made on stranded costs.

2 Q. Could you please turn to page 7 of your  
3 surrebuttal testimony?

4 A. Yes.

5 Q. I'm working off a facsimile copy, so hopefully  
6 we both have the same version.

7 A. I think there was only a problem with my version  
8 of the direct testimony.

9 Q. Now, here you take the position that the  
10 jurisdictional allocation of PP&L's generation assets upon  
11 which stranded costs are based should be fixed at the last  
12 point in time in which the allocation was made; is that  
13 correct?

14 A. Yes.

15 Q. Would you agree --

16 A. Well, that's not exactly correct. It's at the  
17 point in time in which the decision is made to end the  
18 monopoly structure. To the extent that those are the same  
19 as when the last allocation was made, then your question  
20 would be correct.

21 Q. You understand that the definition, statutory  
22 definition, of stranded costs is costs that "traditionally  
23 would be recoverable under a regulated environment, but  
24 which may not be recoverable in a competitive electric  
25 generation market"? Do you recall that definition from the

1 statute?

2 A. It sounds familiar. I don't have a copy of --

3 Q. I'm perfectly happy to show it to you, if you'd  
4 like to see it.

5 A. I probably should check just to make sure, but  
6 that sounds right.

7 (Document handed to witness.)

8 Q. You can keep that in front of you.

9 A. Okay.

10 Q. Would you agree that under regulation, which is  
11 the first part of that test, PP&L would have been required  
12 to continue to serve its existing customers?

13 A. Yes.

14 Q. And one of the elements of providing that  
15 mandatory service would have been maintaining adequate  
16 capacity and adequate reserve margins; is that correct?

17 A. Yes.

18 Q. Would you agree that one way PP&L could have met  
19 that responsibility to maintain adequate capacity and  
20 adequate reserve margins would be, assuming growing demand,  
21 not to renew wholesale contracts, but instead to use its  
22 available capacity to serve its customers whom it had a  
23 responsibility to serve?

24 A. That would be one possible approach, but if that  
25 existing capacity was at a cost higher than either the cost

1 of power in the market or the cost of adding new facilities,  
2 then it would not be a very good decision; it would be  
3 better to continue to use those facilities to serve the  
4 existing contracts and to bring in newer, lower cost  
5 supplies to meet the retail load.

6 Q. Subject to whatever test the Commission would  
7 have applied at the time, there would have been some costs  
8 incurred, however, to meet growing demand, be it contract or  
9 the existing capacity that was available?

10 A. Yes.

11 Q. Please turn to page 19 of your direct testimony.  
12 (Witness perusing document.)

13 A. Okay.

14  
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FORM 2

1 Q. Now, if you please turn to page 19, line 9, you  
2 start out this discussion with the proposition that you  
3 believe PP&L's stockholders have already received, and I'm  
4 quoting, "a fairly decent return on their investment"; is  
5 that correct?

6 A. That's correct.

7 Q. Then you make the statement that even though you  
8 don't really know how much PP&L stockholders have already  
9 earned or received, that to understand that fully you would  
10 need to do, quote, "an extremely intensive review of PP&L's  
11 books over the past decades." And that language is found on  
12 line 16 of that page; is that correct?

13 A. That's correct.

14 Q. Please turn to page 21. I'm looking now at the  
15 chart on the bottom of the page entitled, "PP&L Stockholder  
16 Return on Investment."

17 A. Yes.

18 Q. Now, as I understand it, your 42.7 percent  
19 sharing proposal would mean that PP&L stockholders would  
20 recover zero future dollars on and of their investment; is  
21 that correct?

22 A. Yes.

23 Q. And if I look to the top of that row, 100  
24 percent recovery would mean \$2.22 billion of future  
25 recovery; is that correct?

1 A. Yes.

2 Q. And as I understand, then, the total import of  
3 your proposal is that you are proposing not to permit the  
4 recovery of \$2.2 billion based upon what you characterize as  
5 something other than an extremely intensive review of PP&L's  
6 books and records.

7 A. Yes.

8 Q. Please turn to page 22. Now, here you say at  
9 the end of the process, even if the Commission allows only a  
10 25 percent recovery, PP&L stockholders will be able to  
11 recoup some of their return on their overall investment; is  
12 that correct?

13 A. The wording specifically is that the  
14 stockholders will end up recouping all their money plus some  
15 return on their overall investment.

16 Q. Plus some return on overall investment?

17 A. Yes.

18 Q. Now, you spent a good deal of your career in  
19 regulation; is that correct?

20 A. Yes.

21 Q. And you're generally familiar with the standard  
22 tests by which regulatory commissions judge the  
23 reasonableness of rates and returns to investors; is that  
24 correct?

25 A. Yes.

1 Q. Now, could you please turn in this copy of the  
2 statute there, and it's probably marked, to Section 2804(13)  
3 of the Customer Choice Act, this yellow tab?

4 A. Okay, yes.

5 MR. KAPLAN: If I may approach the witness, Your  
6 Honor.

7 JUDGE KASHI: Yes.

8 BY MR. KAPLAN:

9 Q. And you can read to yourself that short section,  
10 2804(13), and the standard for recovery of stranded costs  
11 stated there is the standard, "just and reasonable"; is that  
12 correct?

13 A. The statute says that the Commission has the  
14 power and duty to approve a competitive transition charge  
15 for the recovery of transition or stranded costs it  
16 determines to be just and reasonable to recover from  
17 ratepayers.

18 Q. And that language, "just and reasonable," is in  
19 fact the standard language under which regulatory  
20 commissions in the United States, as you understand it, have  
21 been operating for years; is that correct?

22 A. Different commissions in different states  
23 operate under different legal standards, and I don't know  
24 that the exact wording "just and reasonable" is in the  
25 statutes under which all or most commissions operate. I

1 have not reviewed the legislation in all the states.

2 Q. But you are aware that the United States Supreme  
3 Court has interpreted those words, is that correct, in the  
4 Hope Natural Gas case and more recently in the Barasch  
5 versus Duquesne case?

6 A. I know that the Supreme Court has interpreted  
7 language. I'm not sure exactly if the language that they  
8 have interpreted specifically says, "just and reasonable."  
9 I have not reviewed those decisions in a while.

10 Q. I won't press you. You are not a lawyer, you  
11 are an economist.

12 A. I am not a lawyer.

13 Q. Please turn to page 18, line 9.

14 A. Yes.

15 Q. I'm sorry, that should be line 19.

16 A. Yes.

17 Q. You say here that PP&L is calling for 100  
18 percent recovery of stranded generating asset costs; is that  
19 correct?

20 A. Yes, I do.

21 Q. I just want to be certain that you understand  
22 that under PP&L's proposal and the rate cap, PP&L will not  
23 be able to recover \$600 million of stranded costs; is that  
24 correct?

25 A. I understand that that's what PP&L is saying in

1 their testimony.

2 MR. KAPLAN: Your Honor, may I approach the witness?

3 JUDGE KASHI: Yes, sir.

4 MR. KAPLAN: We would like marked as an exhibit PP&L  
5 Cross-Examination Exhibit No. 11.

6 JUDGE KASHI: So marked for purposes of  
7 identification.

8 (Whereupon, the document was marked  
9 as PP&L Cross-Examination Exhibit  
10 No. 11 for identification.)

11 BY MR. KAPLAN:

12 Q. Now, you recall some time ago, not too long ago,  
13 in fact less than a month ago, testifying in hearings  
14 conducted by this Commission on the reasonableness of the  
15 proposed pilot program settlement; is that correct?

16 A. Yes.

17 Q. And they were in fact before Judge Christianson  
18 probably right across the hall; is that correct?

19 A. That's correct.

20 Q. And do you recall that we actually spoke during  
21 those hearings?

22 A. Yes, we did.

23 Q. Now, you can take a second to examine it, but  
24 I'm showing you -- and what I have marked, Your Honor, is my  
25 total cross-examination of Mr. Schoengold in that hearing, a

1 sum total of approximately four pages; actually less,  
2 probably closer to three.

3 And I simply want to ask you if this is an accurate  
4 transcript to the best of your knowledge of what you said.

5 (Witness perusing document.)

6 A. Yes, it looks like an accurate transcription of  
7 the cross-examination as I remember it.

8 MR. KAPLAN: Your Honor, I would like to offer into  
9 evidence PP&L Cross-Examination Exhibit No. 11.

10 JUDGE KASHI: It is received into the evidentiary  
11 record, without objection?

12 MR. ZALCMAN: Your Honor, if I may, I don't know that  
13 an adequate foundation has been laid for this. This  
14 testimony was given in the context of the pilot program, and  
15 really there has been no establishment that what the witness  
16 has said in the context of a pilot program is transferable  
17 to what is at issue in this proceeding, which is a longer  
18 term rate restructuring plan.

19 MR. KAPLAN: Your Honor, this would fall in the  
20 category of what I understand to be a self-foundation laying  
21 document, because on the face of the document, assuming  
22 these statements are true, it is clearly relevant to issues  
23 that not only have been raised in this case but have been  
24 testified to by other witnesses in this case.

25 JUDGE KASHI: It will be received over the objection

1 of counsel.

2 (Whereupon, the document marked as  
3 PP&L Cross-Examination Exhibit  
4 No. 11 was received in evidence.)

5 BY MR. KAPLAN:

6 Q. Mr. Schoengold, as I understand the  
7 environmentalists' position, a higher marginal cost of  
8 energy is closer to what in your view is society's  
9 incremental cost of energy when society's environmental  
10 externalities are internalized into the price; is that a  
11 fair statement?

12 A. Well, your question talks about a higher  
13 marginal cost. I guess I would have to say, compared to  
14 what? You've got a comparative. I'm not sure what your  
15 reference is to.

16 Q. Well, let me try to make it easier. Your  
17 position is that decreasing the marginal cost of energy from  
18 current levels would not fully cover properly internalized  
19 external environmental externalities?

20 A. My position is that there are external costs of  
21 the production of electricity which are not included in the  
22 current cost of production, and therefore are not reflected  
23 in customer rates at this time.

24 Q. And are they not reflected in customer  
25 incremental rates at this time?

1 A. They would not be reflected in customer  
2 incremental rates at this time.

3 Q. Now, would you agree that reducing the company's  
4 stranded costs claim by 50 percent or approximately -- over  
5 50 percent or more than \$2 billion would have precisely the  
6 opposite effect on incremental rates to consumers?

7 A. Opposite to what? I don't follow your question.

8 Q. That that would lower prices to consumers.

9 A. That would lower the total price per  
10 kilowatt-hour to consumers. Whether it would lower the  
11 incremental cost or not would depend upon the structure that  
12 was used in setting those rates.

13 Q. Can we please turn to your Exhibit DS-3?

14 A. Yes.

15 Q. Now, as I understand this exercise, you looked  
16 at accumulated depreciation and rate base and return and  
17 went down to Year 11, which you determined is roughly the  
18 percentage of the company's book value that has been  
19 recovered through depreciation; is that correct?

20 A. Yes.

21 Q. So, your selection of a cumulative return of  
22 104.8 percent is based upon what you understand -- you  
23 understand that the company already has recovered  
24 31.4 percent of its depreciation?

25 A. Of the generation assets, yes -- no, that's not

1 quite correct -- 31.4 percent of the original investment,  
2 not of the depreciation.

3 Q. Now, if we can turn to DS-5, Schedule 5.

4 A. Yes.

5 Q. Here you show a depreciation to date figure of  
6 -- bear with me a second; I want to make sure I have the  
7 numbers right.

8 (Pause.)

9 Q. Would you agree that the amount of line 12 of  
10 DS-5, Schedule 5 of \$2.961 billion was a result of applying  
11 the percentage on line 11, 31.4, to the original equity  
12 investment in generation of \$2.825 billion on line 3?

13 A. Yes.

14 Q. Now, does not the amount on line 12 of Exhibit  
15 DS-5, Schedule 5 contain \$.887 billion of cumulative  
16 depreciation the equity investment in generation?

17 A. Could you repeat the question?

18 Q. Do you agree that the amount on line 12 contains  
19 \$887 million of cumulative depreciation on the equity  
20 investment in generation?

21 A. No, that's not correct.

22 Q. It does not contain \$.887 billion?

23 A. No, it doesn't. There is no depreciation  
24 included in that number. It's just the cumulative return.

25 Q. Cumulative return on equity, not of it?

1 A. Cumulative return on equity, not of equity.

2 Q. No return of equity in that number?

3 A. No. That appears elsewhere.

4 Q. Where does that appear?

5 A. On line 13, total to equityholders to date  
6 includes both the return on equity and the depreciation to  
7 date.

8 You can see that if you look back at Exhibit DS-3  
9 where the 104.8 value comes from. The cumulative return  
10 column on that table does not include any depreciation  
11 that's been taken by the company already. It's just the  
12 total of the returns on investment, not of investment.

13 Q. Okay, thank you. I am done with that exhibit,  
14 now.

15 A. Okay.

16 Q. Now, you in your direct testimony, page 19, you  
17 said that Dr. Jones confirms that nobody knows how the  
18 market in the future will behave as it develops; is that  
19 correct? Page 19, I believe it's near the bottom of your  
20 direct.

21 A. I don't find that reference on page 19 of my  
22 testimony in my direct.

23 Q. We're probably, again, working off different --

24 A. Page 19 is where I talk about stranded asset  
25 recovery fraction.

1 Q. I may have the wrong reference. Bear with me  
2 just a second.

3 A. Sure.

4 Q. Yes, page 9, I'm sorry. Bad case of editing.

5 A. Okay. What was your question again?

6 Q. You say that Dr. Jones -- I believe this is the  
7 page -- you say here that Dr. Jones confirms that the future  
8 is uncertain with respect to the price of electricity; is  
9 that correct? And I think you, if you carry over to the  
10 bottom of -- this is whole answer which carries over to the  
11 bottom of 10.

12 Look at page 10, line 19 or 20.

13 A. Yes.

14 Q. Now, would you agree that in fact what Dr. Jones  
15 does say, that the price of energy in the future as a result  
16 of competition will most certainly reflect increased  
17 efficiency and lower costs?

18 A. I don't have a copy of Dr. Jones' testimony with  
19 me, but I believe he made statements of that nature.

20 MR. KAPLAN: Thank you. We have no further  
21 questions, Your Honor.

22 JUDGE KASHI: Redirect, counsel?

23 MR. ZALCMAN: Your Honor, may we have a few minutes?

24 JUDGE KASHI: Yes.

25 (Discussion off the record.)

1 JUDGE KASHI: Back on the record.

2 Redirect, counsel?

3 MR. ZALCMAN: Your Honor, we have no redirect.

4 JUDGE KASHI: Thank you very much.

5 You are excused, sir.

6 (Witness excused.)

7 JUDGE KASHI: That which has been marked  
8 Environmentalists' Statement No. 1 and 1-SR together with  
9 the attendant exhibits are received into the evidentiary  
10 record, without objection?

11 (No response.)

12 JUDGE KASHI: Without objection.

13 (Whereupon, the documents marked as  
14 Environmentalists' Statements Nos.  
15 1 and 1-SR and Environmentalists'  
16 Exhibits Nos. DS-1 through DS-6  
17 were received in evidence.)

18 JUDGE KASHI: It is now 12:30, and I see that we have  
19 one witness left with only brief cross determined by PP&L.

20 MR. RUSSELL: And we have brief cross, Your Honor, I  
21 would say 10 to 15 minutes.

22 JUDGE KASHI: Let's do it. Call your next witness,  
23 sir.

24 MR. ZALCMAN: Thank you. Your Honor, the  
25 environmentalists call Mr. Bruce Biewald.

1 JUDGE KASHI: Sir, would you raise your right hand  
2 and be sworn?

3 **Whereupon,**

4 **BRUCE EDWARD BIEWALD**

5 **having been duly sworn, testified as follows:**

6 JUDGE KASHI: Mr. Zalcman.

7 MR. ZALCMAN: The Environmentalists have provided  
8 copies to the court reporter and the parties of  
9 Environmentalists Statement No. 2, the Direct Testimony of  
10 Bruce Edward Biewald, consisting of 41 pages, and  
11 accompanying exhibits BEB-1 through 3. We ask that that be  
12 marked for identification.

13 JUDGE KASHI: So marked for purposes of  
14 identification.

15 (Whereupon, the documents were marked  
16 as Environmentalists Statement No. 2,  
17 including Exhibit BEB-1 through 3 for  
18 identification.)

19 MR. ZALCMAN: In addition, Your Honor, the prefiled  
20 Environmentalists Statement No. 2-SR, the surrebuttal  
21 testimony of Bruce Edward Biewald, consisting of six pages  
22 of narrative testimony. We ask that that be marked.

23 JUDGE KASHI: So marked.  
24  
25

1 (Whereupon, the document was marked as  
2 Environmentalists Statement No. 2-SR for  
3 identification.)

4 DIRECT EXAMINATION

5 BY MR. ZALCMAN:

6 Q. Mr. Biewald, do you have any corrections to make  
7 to your direct testimony?

8 A. No, I do not.

9 Q. And similarly, with respect to Environmentalists  
10 Statement No. 2-SR, your surrebuttal testimony, do you have  
11 any corrections?

12 A. I have no corrections.

13 Q. Thank you.

14 MR. ZALCMAN: Your Honor, we would move for the  
15 admission of Environmentalists Statement 2, Statement 2-SR,  
16 and Exhibits BEB-1, 2 and 3.

17 JUDGE KASHI: Subject to any timely motions and  
18 objections made pending cross examination, that which has  
19 been marked and identified will be received into the  
20 evidentiary record.

21 MR. ZALCMAN: Thank you. We tender the witness for  
22 cross examination.

23 JUDGE KASHI: Mr. Russell?

24 MR. RUSSELL: Thank you, Your Honor.  
25

CROSS EXAMINATION

BY MR. RUSSELL:

Q. Good afternoon, Mr. Biewald.

A. Good afternoon.

Q. My name is Paul Russell, and I'm representing PP&L in this proceeding.

If you would look at page 14 of your direct testimony, the answer on that page that begins on line 4 and runs through line 24, you're discussing operation of electric power pools. Is it your intention that that description apply to PJM?

(Witness perusing document.)

A. That's a generation description, not specifically describing PJM. But I think the principle would apply to the PJM system, yes.

Q. And you're familiar with current operations at PJM?

A. Generally, yes.

Q. Are you generally familiar with the proposed restructuring of PJM?

A. Yes.

Q. Under that proposed restructuring, would a split savings type of pricing continue?

A. I'm not sure how that pricing would work for automatic exchanges in the proposed PJM system.

FORM 2

1 Q. In this part of your testimony you talk about, at  
2 line 8, "each company is assigned its own units first  
3 towards its own load."

4 In that reference, would each company be referring to  
5 an vertically integrated electric utility?

6 A. That's right, that's a company that both owns  
7 units and has a firm load, yes.

8 Q. In a restructured PJM, would you anticipate that  
9 that concept would continue to be present?

10 A. Well, I think there still will be vertically  
11 integrated utilities, unfortunately. And so, to some extent  
12 that would be the case, there would be companies that have  
13 both generating resources and firm load.

14 Q. And it would be your expectation that the  
15 generating resources of those companies would be assigned by  
16 the pool to the load of those companies?

17 A. By some system, yes. And then, presumably  
18 there's also a system for dealing with surpluses and  
19 deficits to make the market work smoothly and efficiently.

20 Q. Do you have any idea of how many generating units  
21 currently are in operation on PJM?

22 A. I don't know the exact number. I modeled the PJM  
23 system a few years ago, and I recall it was quite a few, and  
24 it was more than the number of generating units that were  
25 present in New England, for example.

1           But it involved quite a few smaller units as well.  
2           So the total number was dominated by smaller units, but the  
3           total capacity was dominated by the fewer number of larger  
4           units, obviously.

5           Q.   Fine.  With your familiarity with PJM, you're  
6           aware, are you not, that units from outside PJM also  
7           operated and import their output into the PJM pool?

8           A.   Well, I know there are contracts for imports from  
9           outside.  I can't testify to the structure of those  
10          contracts.

11          Q.   Are you generally familiar with the operation of  
12          spot market purchases in PJM?  Sales and purchases, really?

13          A.   Well, I know that there is a provision in the PJM  
14          agreement for, again, smooth exchange of excess energy among  
15          the participants.  But I don't know specifically how that  
16          works.

17          Q.   And in general --

18          A.   And also, I think that will change in the future.

19          Q.   Are you aware that those spot market transactions  
20          currently take place on an hour-to-hour basis?

21          A.   I imagine that's correct.

22          Q.   If you would look at page 14 of your direct  
23          testimony, at line 32, you're discussing environmental  
24          disclosure requirements for retail sellers in Pennsylvania.  
25          I'm not aware that "retail sellers" is a defined term.

1     Could you help me to understand who all would have the  
2     obligation to provide this disclosure?

3             A. Yes. It would be the entities that are marking  
4     and serving customers at retail. Those are the ones that I  
5     assume the Commission's information policy would apply to.  
6     That's the order that came out of the public meeting of  
7     July 10, 1997.

8             So, the entities that are regulated under those  
9     provisions would be the entities to which I would expect  
10    this disclosure requirement to apply.

11            Q. Would it be your expectation that that would  
12    apply to load aggregators?

13            I should restate that. Would it be your expectation  
14    the requirement would apply to load aggregators that are  
15    dealing directly with retail end use customers?

16            A. Well, I would anticipate -- I would recommend and  
17    expect that the requirement would apply to every kilowatt  
18    hour sold at retail. So someone would be responsible for  
19    it.

20            If there's some sort of a sale that involves an  
21    aggregator and then some other retail seller or generator,  
22    one of those entities would have the obligation to disclose  
23    the fuel mix to the customers.

24            Q. But as long as one of the entities disclosed it,  
25    you don't have a specific proposal on which one; is that

1 correct?

2 A. Well, what I've recommended here is a company-  
3 based system. So, what it would amount to -- if you had,  
4 say, a small aggregator being supplied by a company with  
5 many generating resources and purchased power contracts,  
6 then what that larger entity -- if it were the smaller  
7 aggregator who is disclosing, what that aggregator would  
8 disclose is the mix of resources in the portfolio of its  
9 supplier.

10 So, it would amount to the same resource mix being  
11 disclosed. If somehow the aggregator had two different  
12 suppliers with two different resource portfolios, then I  
13 would see those being weighted together. The average of  
14 those two would be what gets disclosed to those particular  
15 customers.

16 Q. And disclosed by the aggregator in this example?

17 A. That's right.

18 Q. Are you familiar with the obligation in the act  
19 that local distribution companies provide what we've been  
20 referring to here as last resort service, to customers who  
21 either cannot shop or choose not to shop?

22 A. Yes.

23 Q. Under the circumstance where a customer is  
24 receiving last resort service from a local distribution  
25 company, would the local distribution company, in your

1 opinion, have an obligation to provide the environmental  
2 disclosure information?

3 A. Yes. One of the principles of a good system for  
4 fuel mix or expanded disclosure is that all of the  
5 generation in the system, adjusted for losses, would get  
6 recorded at the point of retail sale. So there's a kind of  
7 a check on the whole system that in the aggregate nothing's  
8 falling between the cracks or being recorded twice.

9 Q. Have you performed a study to determine the cost  
10 of implementing a mandatory environmental disclosure system  
11 as you've described here?

12 A. I have not conducted an estimate of the cost of  
13 implementing such a system. I have -- I refer you to  
14 Exhibit BEB-3, Appendix B, on page 29 of the report provided  
15 as Exhibit BEB-3, where I lay out the equations that could  
16 be used to implement such a disclosure system.

17 And it's actually quite a straightforward set of  
18 equations. And given this simple data, the transactions  
19 between the companies, the original generation mix, and the  
20 retail sales, it would be very straightforward data  
21 processing activity to calculate the retail mix of, really,  
22 any number of suppliers. With a computer, once you've done  
23 two, it's relatively straightforward to do 100.

24 And so I have explored this in general in terms of  
25 these equations, and considered it in the context of

1 particular systems.

2 In New England -- on this issue of the cost of  
3 implementing it, in New England there was a certain ballpark  
4 estimate offered of \$3- to \$5 billion to implement the  
5 tracking required for such a system.

6 Q. But that was an estimate in New England, and  
7 you've not done an estimate in Pennsylvania?

8 A. That's correct.

9 Q. If you'd look on page 21 of your direct, at lines  
10 12 to 28 there, there's a citation from an order of the  
11 Federal Energy Regulatory Commission.

12 Am I correct that the docket that that appears in was  
13 the Notice of Proposed Rulemaking that FERC opened that  
14 eventually led to Orders 888 and 889?

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

16 Q. Are you aware that FERC Order 889 established a  
17 requirement for jurisdictional utilities to file codes of  
18 conduct?

19 A. Not specifically, no. I understand that  
20 utilities are developing codes of conduct.

21 Q. If you know, do you know whether Pennsylvania  
22 Power & Light Company has filed a code of conduct with the  
23 FERC under Order 889?

24 A. I am not familiar with that.

25 Q. Are you aware that PP&L has filed a proposed code

1 of conduct in this proceeding?

2 A. Yes.

3 Q. Have you reviewed that code of conduct?

4 A. Not in detail, no.

5 Q. On page 28, still in your direct, at lines 12 to  
6 15, you recommend that decommissioning revenues be placed in  
7 external decommissioning funds. Are you aware that PP&L  
8 currently is placing its nuclear decommissioning revenues  
9 into an external fund?

10 A. Yes, I am. This recommendation is with regard to  
11 additional costs in the future.

12 Q. Still on that page, are you generally familiar  
13 with ratemaking practice in Pennsylvania?

14 A. Very generally, yes.

15 Q. Are you aware, or would you agree that nuclear  
16 decommissioning costs are an allowable expense for  
17 ratemaking?

18 A. Yes, I understand that these are the subject of  
19 review in periodic cases, and that typically in the past,  
20 perhaps with a few adjustments, that the utilities'  
21 estimates of decommissioning costs have been, as I said,  
22 adjusted, and then the adjusted numbers put into rates.

23 Q. Is it your testimony that PP&L should be  
24 responsible for some portion of any decommissioning cost in  
25 excess of current projections, even if those additional

1 decommissioning costs are prudent?

2 A. Yes, it is.

3 Q. Would you look, still in your direct, at page 28  
4 -- well, that's where we still are -- line 25, where you  
5 suggest the Commission should address the complicated  
6 technical and policy issues of nuclear decommissioning. Is  
7 it your opinion that the Pennsylvania Public Utility  
8 Commission has the authority to address technical issues of  
9 nuclear decommissioning?

10 A. If they don't, they should.

11 Q. On page 30 -- and I just think this may be  
12 inadvertent, but I wanted to clear it up -- on line 33, you  
13 refer to the Limerick plant. I assume you're aware that  
14 Limerick is owned by PECO?

15 A. I apologize. The intention there was to refer to  
16 the Susquehanna plant and its current license expiration  
17 date. The point is a generic one about the uncertainty of  
18 the operating lives of, really, any nuclear unit.

19 MR. RUSSELL: That's all I have, Your Honor.

20 JUDGE KASHI: Thank you very much, sir.

21 Any redirect, Counsel?

22 MR. ZALCMAN: Your Honor, I believe I may have some;  
23 but if I may confer with the witness.

24 JUDGE KASHI: Okay.

25 (Off-the-record pause.)

1 JUDGE KASHI: Back on the record.

2 I had made some earlier comments, and given the fact  
3 of the sparse attendance by most counsel, I think I just  
4 would rather have it on the record than not. Those comments  
5 went to the fact that there is a problem with the tables  
6 that are normally presented by the Commission to the parties  
7 for briefing in rate cases, that they don't seem to  
8 naturally fit in this particular case, and I, therefore,  
9 have invited any of the parties who wish, they can provide  
10 me with sample tables, which I will submit to our technical  
11 staff to see what might be useable and what might not be  
12 useable. I mean, I'm not asking that the parties have to  
13 absolutely do that. If they choose to do that, they can do  
14 that.

15 Secondly, I stated to the parties, both the  
16 intervenors and to the company, that when it comes to  
17 briefs, that we should be thinking in terms of, at best, a  
18 common history so that not everybody has to read it, write  
19 it or do anything with it.

20 Finally, what I would like to have put on the record  
21 is there has been, not a controversy, but every once in a  
22 while I hear the rattle of my designation of lead counsel in  
23 this particular proceeding. 52 Pa. Code 5.76 on "Limitation  
24 of participation in hearing," Section Sub (a), specifically  
25 says, "Where there are two or more intervenors having

1 substantially like interest and position, the Commission or  
2 Presiding Officer may, in order to expedite the hearing,  
3 arrange appropriate limitations on the number of attorneys  
4 who will be permitted to cross-examine and make and argue  
5 motions and objections on behalf of the intervenors." That  
6 together with what I have already cited as 5.403 I think  
7 leaves us on firm ground with the lead counsel.

8 Redirect, counsel?

9 MR. ZALCMAN: Yes, Your Honor.

10 **REDIRECT EXAMINATION**

11 BY MR. ZALCMAN:

12 Q. Mr. Biewald, you were asked by Mr. Russell if  
13 you had any estimate of the cost in implementing your  
14 recommendation for environmental disclosure. Do you recall  
15 that?

16 A. Yes, I do.

17 Q. And you're aware, are you not, that the  
18 Commission has recently established policies regarding  
19 disclosure of a supplier's fuel mix?

20 A. Yes, I am.

21 Q. And costs will be incurred in implementing that  
22 system; isn't that correct?

23 A. Some costs will be incurred, yes.

24 Q. What will be the additional cost of implementing  
25 your proposal for environmental disclosure?

1           A. I believe it will be a small portion of the  
2 costs of implementing the tracking mechanism in the first  
3 place. That is, to implement the policy that the Commission  
4 has already articulated will involve some costs of tracking  
5 the mix of resources through the various markets, and  
6 really, what I'm proposing here is simply adding another bit  
7 of information to that, several fields in the database, if  
8 you will, and the processing is very much the same. So the  
9 incremental cost would be very low.

10           Q. Turning to another area, you were asked by Mr.  
11 Russell whether it is your position that nuclear  
12 decommissioning costs, even if prudently incurred, should be  
13 allowed. Do you recall that?

14           A. Yes, I do.

15           Q. And your answer, I believe, was that, indeed,  
16 your position is that some costs should be disallowed.

17           A. That the costs should be shared, that's right.

18           Q. I'd like you to elaborate, if you could, on why  
19 that is the case.

20           A. I see nuclear decommissioning as an  
21 extraordinary issue, separate from other electricity  
22 restructuring issues. There are public health and safety  
23 and very long term potential effects, and so it is very  
24 important on the one hand to have the money, the funds  
25 available for decommissioning at the time that they are

1 needed.

2 On the other hand, with decommissioning potentially  
3 exceeding a billion dollars, it is very important to have  
4 mitigation incentives to control those costs so that we  
5 don't get cost over-runs and decommissioning costing even  
6 more than the current estimates.

7 Therefore, a system that puts the company and its  
8 ratepayers in the same boat together in terms of sharing  
9 those costs would be very useful. It would be an excellent  
10 system for providing an incentive to control those costs  
11 even if the share that the company would bear is a small  
12 fraction of the total.

13 Q. Thank you. Now, on the same area of  
14 decommissioning costs, you were asked by Mr. Russell whether  
15 the Commission has the authority to undertake a technical  
16 review of decommissioning costs. Do you recall that line of  
17 questioning?

18 A. Yes, I do.

19 Q. And by technical review, what did you envision  
20 that the Commission would undertake?

21 A. Really, it's a look at a similar set of issues  
22 to what the Commission has looked at in the past routinely  
23 in the utility-specific rate cases and in its generic look  
24 at decommissioning in the past; that is the method of  
25 decommissioning, the uncertainty in the estimates, the

1 various contingencies to allow for such as the DOE's  
2 schedule for accepting the spent nuclear fuel, and so on.  
3 So there are many, quote, "technical issues" that have  
4 bearing upon the cost and the appropriate policy and  
5 ratemaking treatment for decommissioning costs. That's  
6 really what I had in mind.

7 MR. ZALCMAN: Thank you. Your Honor, we have nothing  
8 further.

9 JUDGE KASHI: Thank you very much, sir.

10 MR. RUSSELL: I have nothing, Your Honor.

11 JUDGE KASHI: You're excused, sir.

12 (Witness excused.)

13 JUDGE KASHI: That which has been marked as  
14 Environmentalists' Statement No. 2 and 2-SR with the  
15 attendant exhibits are received into the evidentiary record  
16 without objection.

17 (No response.)

18 JUDGE KASHI: Without objection.

19 (Whereupon, the documents marked as  
20 Environmentalists' Statements Nos. 2  
21 and 2-SR and Exhibits BEB-1 through  
22 3 were received in evidence.)

23 JUDGE KASHI: I believe that now concludes what we  
24 had planned for today. We will start tomorrow at 9:30.

25 MR. RUSSELL: Could we go off the record a minute,

1 Your Honor?

2 JUDGE KASHI: Sure. Off the record.

3 (Discussion off the record.)

4 JUDGE KASHI: Back on the record.

5 Having discussed the scheduling for tomorrow and the  
6 settlement conference that has been directed by this  
7 Administrative Law Judge to take place among the  
8 intervenors, we will conclude for the day, and we will  
9 resume tomorrow morning at 9:30 in Hearing Room No. 2.  
10 The Commission has a Public Meeting tomorrow.

11 If there is nothing further, we are recessed until  
12 9:30 tomorrow morning.

13 (Whereupon, at 12:58 p.m., the hearing was adjourned,  
14 to be reconvened at 9:30 a.m., Thursday, August 28, 1997, in  
15 Harrisburg, Pennsylvania.)

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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.

COMMONWEALTH REPORTING COMPANY, INC.

By: William J. Horst

William J. Horst

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FORM 2