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C O N T E N T S

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
Bruce Biewald				
By Mr. Barak	1404	--	1458	--
By Mr. Kleppinger	--	1437	--	--
Thomas J. Prisco				
By Mr. McCormick	1461	--	1471	--
By Mr. MacGregor	--	1463	--	--
Kevan L. Deardorff				
By Mr. Gorka	1473	--	1497	--
By Mr. Gadsden	--	1475	--	1500
Paul J. Metro				
By Mr. Simms	1503	--	1528	--
By Mr. Gadsden	--	1506	--	--
By Mr. Kleppinger	--	1526	--	--

E X H I B I T S

<u>NUMBER</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
<u>Sierra Club Statement</u>		
✓ 1 (Biewald)	1408	1408
<u>Sierra Club Exhibits</u>		
✓ 1A through ✓ 1E (Biewald)	1408	1408
<u>Department of Defense Statement</u>		
✓ 1 (Prisco)	1462	1462
<u>OTS Statements</u>		
✓ 1 (Deardorff)	1474	1475
✓ 5 (Metro)	1504	1506

1 writing it up. I love gradualism, by the way. The bottom
2 line is gradualism. That's clearly of record in decisions
3 I've written over the years.

4 MR. MacGREGOR: As long as it takes into account a
5 longer time period.

6 JUDGE CHRISTIANSON: But we'll just see what happens
7 with the whole thing. But anyway, I guess first up would be
8 the Sierra Club unless somebody has a reason to change the
9 order.

10 Let's be off the record briefly.

11 (Discussion off the record.)

12 JUDGE CHRISTIANSON: Let's be back on the record.

13 We might as well start off with the Sierra Club.
14 I've been told there is some motion against the offering
15 generally, but we might as well get the witness in the stand
16 and get started on the thing and see where we go.

17 So go ahead and call your witness.

18 MR. BARAK: Your Honor, at this time the Sierra Club
19 calls Bruce Biewald to the stand and asks that he be sworn.

20 JUDGE CHRISTIANSON: Fine. Just as a caution, the
21 noise level might get up high in a few minutes when the
22 Commissioners and the people all come out of Public Meeting.
23 I call it the thundering herd, because they all leave
24 together.

25 Could you raise your right hand?

1 Whereupon,

2 BRUCE BIEWALD

3 having been duly sworn, testified as follows:

4 JUDGE CHRISTIANSON: Fine. Be seated then and take a
5 moment to settle your thoughts; and proceed, counsel.

6 MR. BARAK: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. BARAK:

9 Q. Mr. Biewald, could you please state your name
10 and business address for the record?

11 A. My name is Bruce Biewald. I work for the Tellus
12 Institute at 11 Arlington Street in Boston, Massachusetts.

13 Q. And are you the same Bruce Biewald whose name
14 appears on a document entitled, "Sierra Club Statement No.
15 1, Testimony of Bruce Biewald On Behalf Of Sierra Club of
16 Pennsylvania, April 12, 1995"?

17 A. Yes.

18 Q. I'll just identify that for the record and ask
19 you to affirm it as consisting of 33 numbered pages. Is
20 that right?

21 A. That's correct.

22 Q. And does that document have attached to it
23 exhibits entitled, "Sierra Club Exhibit No. 1A, 1B, 1C, 1D
24 and 1E?"

25 A. Yes.

- 1 Q. Now, let's return to Sierra Club Statement No.
- 2 1. Was that prepared by you or under your supervision?
- 3 A. Yes, it was.
- 4 Q. Do you have any changes or corrections to that
- 5 document?
- 6 A. Yes, I do.
- 7 Q. How many do you have?
- 8 A. I have changes on three pages.
- 9 Q. Could you tell us briefly what they are and then
- 10 very briefly explain why you're making them?
- 11 A. The first change is on page 6, line 15.
- 12 Q. Which reads now?
- 13 A. Line 15 reads: "and (c) for each rate class the
- 14 fixed cost percentage is multiplied by the total." I would
- 15 like to delete the word "percentage" and substitute the word
- 16 "portion." So the new line reads: "and (c) for each rate
- 17 class the fixed cost portion is multiplied by the total."
- 18 Q. And the "c" is in parentheses; is that right?
- 19 A. That is correct.
- 20 Q. Please continue.
- 21 A. On page 11, I have changes on lines 32 and 33.
- 22 The sentence currently beginning on line 32 reads: "(c)
- 23 The system, at this stage, should not be symmetrical. PP&L
- 24 should be rewarded if it performs exceptionally, but not
- 25 penalized if it fails to meet a minimum level."

1 I'd like to strike the word "not" and on the next
2 like strike the words "but not" and replace them with the
3 word "and." So the new sentence from the beginning reads:
4 "The system, at this stage, should be symmetrical. PP&L
5 should be rewarded if it performs exceptionally, and
6 penalized if it fails to meet a minimum level."

7 The final change is on page 20, line 3. That line
8 currently reads: "activity in a previous year. Under
9 surcharge mechanisms, net lost revenues due to." I'd like
10 to insert the word "some" after the word "under."

11 Q. So this line now reads?

12 A. Line 3 on page 20 now reads: activity in a
13 previous year. Under some surcharge mechanisms, net lost
14 revenues due to."

15 Q. That completes your corrections?

16 A. Yes, it does.

17 Q. Could you very briefly tell us why you made
18 those three corrections?

19 A. The corrections are typographical errors. The
20 one on page 11 perhaps deserves a bit of explanation. The
21 meaning as it currently reads is reversed. It states that
22 there should be penalties. That was simply an error. The
23 testimony, if you read later in the testimony, it is clear
24 what was intended.

25 JUDGE CHRISTIANSON: Yes, I agree with you. The

1 intent is clear. Okay.

2 THE WITNESS: That concludes the changes.

3 BY MR. BARAK:

4 Q. Now, as corrected in the last few minutes, is
5 Sierra Club Statement No. 1 true and correct to the best of
6 your knowledge, information and belief?

7 A. Yes, it is.

8 Q. Let's turn to the exhibits, which you said were
9 prepared by you or under your supervision. Do you have any
10 changes or corrections to those?

11 A. I do not.

12 Q. Are Sierra Club Exhibits Nos. 1A through 1E true
13 and correct to the best of your knowledge, information and
14 belief?

15 A. Yes.

16 Q. If you were asked to testify orally to the
17 matters addressed in Statement No. 1 and Exhibits 1A through
18 1E for the Sierra Club today, would you testify as stated
19 therein?

20 A. Yes.

21 MR. BARAK: At this point, Your Honor, I ask and move
22 that Sierra Club Statement No. 1 and Sierra Club Exhibits
23 1A, 1B, 1C, 1D and 1E be received into evidence and would
24 tender the witness then for cross-examination.

25 JUDGE CHRISTIANSON: At this point, I might as well

1 go along with my standard practice. Subject to the motions,
2 it is accepted. It is now part of the record, but I
3 understand that Mr. Kleppinger has a motion.

4 (Whereupon, the documents were marked
5 as Sierra Club Statement No. 1 and
6 Exhibits Nos. 1A through 1E for
7 identification, and were received in
8 evidence.)

9 MR. KLEPPINGER: Yes, Your Honor. On behalf of the
10 PP&L Industrial Customer Alliance, we would move to strike
11 portions of Sierra Club Statement No. 1. Those portions
12 would begin on page 4, line 5, and extend through and
13 including page 7, line 2. It would include all of the
14 material contained on pages 9 through 24. And finally, it
15 would include Exhibit 1C.

16 The justification for the motion to strike, Your
17 Honor, is based primarily on relevance and the inability of
18 Your Honor to implement the recommendations contained in the
19 testimony. The express purpose, as stated on page 3 of this
20 testimony, is to respond to the Commission's 1993 DSM cost
21 recovery order at Docket No. I-900005 and to the
22 Commonwealth Court's appellate decision at Docket No. 3104
23 C.D. 1993, which I would point out is the subject of a
24 Petition for Allocatur to the Pennsylvania Supreme Court.
25 That petition was filed by the Commission at Middle District

1 Docket No. 0164 M.D. Allocatur 1995.

2 The problem that we see, Your Honor, is that with the
3 Commonwealth Court Order subject to the Allocatur Petition,
4 the outcome is unknown. Should the Supreme Court deny
5 allocatur, the Commonwealth Court Order would require a
6 remand to address at least the lost revenue recovery issue
7 and the DSM recovery mechanism to implement for all
8 utilities in Pennsylvania. If the Supreme Court grants the
9 allocatur, obviously, we would need to await its final
10 decision. In either case, little can be done, if anything,
11 in this proceeding which would not prejudge the remand or
12 the outcome that the Supreme Court has pending before it.

13 The recommendations contained in the portions of the
14 testimony that we moved to strike are in fact conditional on
15 what the outcome may be in the appellate process.

16 Perhaps most disturbingly, Your Honor, the issues
17 that are raised in the portions of the testimony which we
18 are moving to strike were fully litigated extensively in the
19 Commission's DSM investigation. For example, should there
20 be an incentive component to the DSM recovery mechanism or
21 shouldn't there? Is that incentive mechanism legal or isn't
22 it? Should there be lost revenue recovery or shouldn't
23 there be lost revenue recovery? And is that lost revenue
24 recovery legal or not? What should be the methodology for
25 calculating the incentive component if there is going to be

1 one in any DSM recovery mechanism? What are the methods for
2 calculating lost revenues in the event that in fact lost
3 revenues are permitted? How do you even calculate the
4 savings of DSM programs to input into an equation that may
5 be used for lost revenue recovery or incentive recovery?
6 What are the components of a net lost revenue adjustment?
7 These are the very issues that were the subject of a very
8 intensive piece of litigation that began in 1990.

9 What some of the recommendations in this testimony
10 attempt to do is set a net lost revenue adjustment policy
11 for PP&L and then have it applied generically to all
12 utilities on remand. That recommendation can be found at
13 page 6 on lines 33 and 34.

14 Frankly, Your Honor, the testimony places all the
15 parties in this case, Your Honor himself, and the Commission
16 in an untenable position of prejudging the Commission's
17 generic proceeding, which is the subject of the appeal. We
18 question how the rights of the parties to the original DSM
19 investigation can be protected when such generic issues are
20 being addressed solely in a PP&L rate case.

21 We find it ironic that the Sierra Club would attempt
22 to do this in the PP&L case given its knowledge of the DSM
23 investigation which began in October of 1990 and culminated
24 in Commission decisions in December of 1993 and April of
25 1994. The Sierra Club did not participate actively in the

1 litigation during that three-year process until the
2 exception stage to the Administrative Law Judge's
3 Recommended Decision. At that time, the Sierra Club as part
4 of an environmentalist group simultaneously filed
5 exceptions, a brief and a reply brief. The Commission
6 permitted that late intervention and those pleadings.

7
8 Meanwhile, in the DSM litigation, several members of
9 PPLICA participated as part of the Pennsylvania Industrial
10 Energy Coalition. PP&L actively participated. The Consumer
11 Advocate actively participated. The Small Business Advocate
12 participated; and the Commission Staff participated through
13 the Bureau of CEEP and the Law Bureau. All of these parties
14 expended considerable resources in the generic litigation,
15 and now the Sierra Club seeks to re-litigate those issues
16 here. We already had established six days of hearings in
17 the DSM case, almost 800 pages of transcript, extensive
18 direct and rebuttal testimony by the parties in that case.

19 If this testimony is received at this time in this
20 case, we essentially are asking the parties to redo the
21 generic case for one utility and not for the others in
22 Pennsylvania. We think it is inconsistent with
23 administrative and judicial efficiency to ask the parties in
24 this case to have to rebut and re-litigate the issues that
25 were in the generic case.

It is simply the wrong case and the wrong time for

1 this testimony to be received, and we move to strike the
2 portions previously stated.

3 JUDGE CHRISTIANSON: Usually I have questions for
4 counsel on a motion like this, but you pretty well covered
5 your ground as far as your side of it. We do have a
6 directive to consider this issue in electric rate cases.
7 I'm just looking for the memo about it, which I think I
8 alluded to before in this proceeding.

9 Well, obviously, I'd like to hear from Sierra Club.

10 At this point, let's be off the record just for a
11 minute.

12 (Discussion off the record.)

13 JUDGE CHRISTIANSON: Let's be back on the record.

14 We went off the record for a couple of minutes. At
15 this point, some other counsel want to be heard from; and we
16 might as well hear from the company at this point briefly.

17 MR. MacGREGOR: Yes, Your Honor. Thank you. I'm not
18 going to repeat Mr. Kleppinger's arguments, which I agree
19 with. I think it is clear that the Commission has
20 determined that this issue should be addressed on a generic
21 basis. It is being addressed on a generic basis, and that
22 process should be completed, and it is inappropriate to
23 pursue it in cases involving individual utilities.

24 I think it is particularly inappropriate in this
25 case. I think we have more than enough issues on the table,

1 more than enough issues to deal with in this case already
2 without further complicating the matter at this point in the
3 proceeding and requiring the parties to prepare and file
4 extensive rebuttal testimony on these broad-ranging
5 recommendations; and I think the better path would be to let
6 the generic proceeding take its course, let the appellate
7 litigation take its course, and proceed accordingly.

8 JUDGE CHRISTIANSON: Okay. Let's hear briefly from
9 Consumer Advocate.

10 MS. KENNEY: Your Honor, we are not joining in the
11 motion. However, we do need to express similar concerns to
12 what Mr. Kleppinger has expressed. We are very concerned
13 that the issues that have been identified by Mr. Kleppinger
14 are issues that are currently pending before the Petition
15 for Allocatur in the Supreme Court, and the issue is, even
16 if these issues were addressed in this proceeding, whether
17 the Commission currently, since it has asked the Supreme
18 Court to take these very same issues up for review, whether
19 this Commission at any time until matters are decided in
20 that area actually has authority to discuss or to consider
21 such issues.

22 In the interest of time and efficiency, we would ask
23 that these issues possibly be postponed to either a later
24 proceeding on remand or discussed at a later time.

25 JUDGE CHRISTIANSON: You are talking more or less

1 about management of the issues.

2 MS. KENNEY: These are important issues. They are
3 issues that were addressed, as Mr. Kleppinger reviewed the
4 history, extensively in the other proceeding. They were
5 addressed by a number of parties and by the Commission and
6 by the Commonwealth Court, and that matter is apparently
7 still pending. We don't believe it would be appropriate at
8 this time to address that in this proceeding.

9 JUDGE CHRISTIANSON: Then let's hear from Sierra
10 Club. And we may go around again, but you might as well
11 have your speech at this point.

12 MR. BARAK: Thank you, Your Honor. I have two large
13 bases for opposing the motion. One is procedure; the other
14 substantive; and I'll make both arguments.

15 The first is that it is, of course, untimely. We
16 filed this testimony by in-hand delivery on counsel for the
17 industrials on April 12. I understand that he had a pretty
18 big workload, and I'm very sensitive to that, but the first
19 we heard of this was a phone call pursuant to the Bench's
20 instruction or suggestion two days ago; and we are all at a
21 disadvantage here because of the untimeliness of this
22 motion, and I think Your Honor as well.

23 There are a lot of assertions that should be
24 supported by law in counsel's argument, and you haven't
25 heard any law. If this matter is to be carefully

1 considered, then we should have an argument to strike
2 testimony supported by law. So procedurally, we are
3 disadvantaged because we're hearing this motion to strike
4 now instead of on paper with some research and some weeks
5 ago.

6 Let me go to the substance now, because the
7 implication of the arguments is incorrect. The implication
8 is that somehow either there is no basis in law for offering
9 the challenged testimony --

10 JUDGE CHRISTIANSON: If you want to, we can pause.
11 That's the thundering herd I talked about. I can hear you
12 fine.

13 MR. BARAK: The implication is that either there is
14 no basis in law for the challenged testimony or somehow
15 we're violating the intent or the letter of the Commonwealth
16 Court decision, which is now the law of Pennsylvania.
17 Merely because someone sought allocatur doesn't mean that we
18 have a stay of the Commonwealth Court decision. That is a
19 discretionary, if you will, writ.

20 So what is the law right now? Well, the law is that
21 the Commission properly require the inclusion in rates on a
22 surcharge basis of the direct costs of DSM programs, of
23 demand-side management programs; that with respect to lost
24 revenues, the Commission has the option of looking at how to
25 calculate those revenues in a generic remand case or in a

1 specific rate case on a company-by-company basis.

2 And finally, as to incentives, the law from the
3 Commonwealth Court is that the Commission may not permit the
4 collection of incentives for DSM performance through a
5 surcharge mechanism; that only in base rates can such
6 incentives be calculated and ordered recovered, only through
7 the base rate mechanism.

8 Now, there was mention of this now another level of
9 appeal from the Commonwealth Court decision to the Supreme
10 Court. The Commission has only sought review of the lost
11 revenue issue. The Commission has effectively said to the
12 Supreme Court: Look, you're leaving us kind of up in the
13 air on this. We don't want to look at lost revenues and how
14 to calculate them, come back to the Commonwealth Court later
15 only to find out we wasted our time. It has happened to us
16 before. We don't want this to happen again.

17 The incentives issue is settled. The direct cost
18 recovery is settled. Our testimony, as challenged, goes to
19 incentives and lost revenues. We have taken the instruction
20 of the Commonwealth Court. We've gone to the first pending
21 electric base rate case and we have provided the Commission
22 with a record to permit the Commission to calculate within
23 base rates incentives for appropriate DSM program
24 performance. That's what Mr. Biewald's testimony, the
25 challenged testimony, would do.

1 There is no saying that the Commission will accept
2 that and go forward with that, but the only place, the only
3 place to go for those incentives is in a base rate case.
4 So Mr. Kleppinger's argument, which is without citation to
5 any law of any sort, would effectively block the only remedy
6 that the Commonwealth Court has provided to those parties
7 who think that providing somehow for incentives for
8 exemplary DSM performance pursuant to the Commission's
9 December, 1993 Order is a good idea.

10 The Commonwealth Court said: Go to a base rate case
11 only if you're going to do this at all. That's why we're
12 here.

13 With respect to lost revenues, the Commonwealth Court
14 said: We're not really sure how you, the Commission, in
15 your December Order intended to have these lost revenues
16 calculated, so we're sending this one back to you; and by
17 the way, you might even want to address some of the legal
18 bases for these. That's effectively what the Commonwealth
19 Court decision of January 9, 1995 did. The court did not
20 specify whether that would take place in a remand proceeding
21 or a generic proceeding or whether it would take place in a
22 base rate case.

23 Again, we have taken the law of that case and applied
24 it to the formulation of Mr. Biewald's testimony asking him
25 how he would calculate lost revenues, addressing that issue.

1 So putting this all a little differently, we are not
2 here to re-litigate four years of generic DSM proceedings.
3 We're not at all. We are simply following the dictates of
4 the Commonwealth Court decision, a decision occasioned by
5 positions taken by some of the industrial customers, who are
6 part of the coalition in this case, as part of a different
7 coalition in that case.

8 There was a suggestion that -- the term "relevance"
9 was used in Mr. Kleppinger's argument. Although he didn't
10 really spend much time on it, he at least raised the issue.
11 The magic words, of course, are "relevant to a material
12 proposition of the case." The material proposition of this
13 base rate electric proceeding pursuant to the Commonwealth
14 Court is: should incentives or an incentive mechanism be
15 ordered and calculated for this utility for certain kinds of
16 performance related to the conduct of its DSM activities,
17 number one?

18 Another material proposition of this case would be:
19 should lost revenue recovery be ordered? And if so, how
20 should it be calculated, again, for this particular
21 utility's administration of its DSM programs?

22 Those are material propositions that are provided to
23 us by the Commonwealth Court and by the Commonwealth Court
24 only.

25 By injecting into this case expert testimony on the

1 subject, we, of course, are not mandating, one does not
2 mandate that the Bench or the Commission take any particular
3 action or make any particular decision. The Commission has
4 been given discretion by the Court to address these issues
5 in a base rate case or in a generic case. That's the
6 general rule. Exception: it has no discretion with respect
7 to incentives. The only place the Commission can deal with
8 incentives for DSM programs is in a base rate case.

9 There was a suggestion made that gee, we ought to
10 hold back taking evidence in this case because everything is
11 kind of conditional on the outcome of the Supreme Court
12 appeal. If the Supreme Court takes the case, it will only
13 deal with the one issue, cost revenue recovery. It will not
14 deal with incentives. That door is closed. That matter is
15 settled. There is one place and one place only to go for
16 incentives pursuant to the Commission's December, 1993
17 Order. That is in this base rate case for this company; and
18 as the company's filing suggests, we won't be seeing PP&L in
19 a rate case for a number of years. This is the time.

20 There was a suggestion made that we are re-litigating
21 issues from that generic case. This testimony is very
22 narrowly drawn. It is very narrowly drawn to those two
23 issues, and, as these counsel who are experienced in that
24 generic case know, it doesn't step outside the four corners
25 of the decision that the Commission made in its

1 December, 1993 Order, and that's not our intention.

2 Our intention is to take the remand as provided in
3 the Commonwealth Court decision and, within the context of
4 generic protocols and rules developed by the Commission in
5 its December, 1993 Order, permit the Commission to apply its
6 DSM formulations to PP&L's rates.

7 There is no legal standard argued to you by any of
8 the counsel here as to why this testimony, given the
9 materiality of it, should be excluded. The only word I
10 heard as to why you should exclude this testimony at this
11 time is, quote, "inappropriate," unquote. That is not a
12 legal standard, and that suggests that this really is the
13 wrong time to be arguing these legal issues. Counsel will
14 have ample opportunity on brief to once again with some law
15 try to urge Your Honor to somehow take no account of the
16 testimony.

17 The law of the case, if you will, the law of this
18 matter is the law of the Commonwealth Court. The
19 Commonwealth Court told the parties to that case: you can
20 go to generic proceedings with respect to lost revenues.
21 You can go to base rate proceedings with respect to
22 incentives and lost revenues. That's why we're here.
23 That's why we asked Mr. Biewald to address the issues he did
24 address, and that's why the testimony that was identified by
25 counsel and that one exhibit should be permitted to come

1 into this case and it should be tendered for cross-
2 examination. Thank you.

3 JUDGE CHRISTIANSON: Thank you. One question I have,
4 which is more for my problem, I think I alluded to it when
5 Mr. Kleppinger mentioned this when I told him to call you.
6 I had a little memo from my staff, which must be in my
7 papers in my office, indicating that there was a directive
8 that this matter generally be considered in electric base
9 rate cases. I can't remember without looking at the paper
10 whether that was a particular Commissioner's admonition or
11 action by the Commission, but I can check with my staff on
12 that generally.

13 You can respond especially to the question. Are you
14 asking me to use my discretion because it's just too big a
15 case to get this issue in?

16 MR. KLEPPINGER: No, Your Honor.

17 JUDGE CHRISTIANSON: Or are you saying it cannot be
18 in this case?

19 MR. KLEPPINGER: I'm saying it cannot be in this
20 case; and if I might take an opportunity to respond. I
21 think that the directive that you are referring to is
22 related to whether or not utilities are conducting DSM
23 programs and what the scope of those programs are, but not
24 to the recovery mechanism, which is the primary subject of
25 the appellate litigation.

1 JUDGE CHRISTIANSON: That is the flavor I got, to
2 sort of consider it like we throw issues into base cases
3 generally.

4 MR. KLEPPINGER: And PP&L has submitted testimony in
5 this case as to the scope of its demand-side management
6 programs, and I understand that that is fair game in a base
7 rate case, but what we are talking about here are the
8 specific components of a special recovery mechanism for
9 those DSM costs.

10 In terms of responding to Mr. Barak's arguments, the
11 procedural timing is perfect in this case. The regulations
12 permit motions to strike testimony to be provided anytime
13 prior to its submission for the record. Your Honor has the
14 control over the receipt of evidence and the timing of
15 evidence pursuant to 52 Pa. Code Section 5.403, and the
16 objection to the admission is timely under the provisions of
17 the Code at 52 Pa. Code 5.243 and 5.103.

18 In terms of the substantive objections, with all due
19 respect to Mr. Barak, he is flatly wrong in terms of saying
20 that the incentive issue has been decided. The Commission
21 itself in its Petition for Allocatur to the Pennsylvania
22 Supreme Court argues that the decision below is clearly
23 erroneous because the Commonwealth Court, in deciding that
24 the provision of incentives through DSM, through the use of
25 an annual surcharge mechanism, was beyond the authority of

1 the PUC, misinterpreted the meaning and intent of several
2 sections of the Public Utility Code; and that is at page 15
3 of the Commission's own petition.

4 In terms of what is the law, the law is right now
5 this Commonwealth Court decision, which I would like to
6 quote from page 36. The Commonwealth Court said, "We remand
7 the case to the PUC." And I'll quote the entire paragraph.
8 "We remand the case for the PUC either to consider this
9 matter in this proceeding or to determine that it is
10 appropriate to defer the matter to later cases such as the
11 approval of DSM programs or a base rate case involving a
12 balancing account. When the issue is before the PUC, they
13 should fully address their power to award lost revenues, how
14 to calculate lost revenues and how recovery is affected if
15 overall revenues increase. If the parties appeal that
16 decision, it can be properly reviewed at that time."

17 What the court has told the Commission to do is to
18 consider the remand in the DSM case or determine that it is
19 appropriate to defer to later cases or base rate cases. The
20 Commission has not yet made that determination because it
21 has appealed the case to the Supreme Court.

22 JUDGE CHRISTIANSON: You're saying the remand has not
23 occurred, in fact?

24 MR. KLEPPINGER: That's correct. So what we're being
25 asked to do is to respond to lost revenue and incentive

1 issues, which are clearly open for debate based on the
2 Commonwealth Court decision and the Commission's appeal in a
3 limited, one utility rate case, which cannot generically
4 apply to that investigation even though Mr. Biewald says at
5 page 6 of his testimony: "The Commission should establish
6 in a remand docket the generic treatment of net lost
7 revenues for DSM, presumably consistent with that provided
8 here."

9 So the clear intent of this testimony is to establish
10 a precedent in this case that will apply generically to all
11 utilities in Pennsylvania. It is flatly contradictory to
12 the whole direction the Commission provided to DSM recovery
13 to be addressed on a generic basis. And in terms of any
14 quote of legal principle, there is a legal principle of
15 administrative efficiency; and it just doesn't make sense to
16 ask all the parties in this case to in detail rebut lost
17 revenue issues and incentive issues when it is all sitting
18 in a case that is already pending at the Commission.

19 JUDGE CHRISTIANSON: One of your arguments then is
20 the Sierra Club is attempting to put the cart before the
21 horse?

22 MR. KLEPPINGER: Yes, Your Honor, on a one utility
23 basis when so far everything that has been done on DSM cost
24 recovery is generic in nature.

25 JUDGE CHRISTIANSON: And there is more generic

1 development that should occur before we do this individual
2 case; is that what you're saying?

3 MR. KLEPPINGER: That's correct. I mean, we've got
4 to see what the Commission is doing on the remand after the
5 court decides whether it is taking the appeal before we set
6 any additional principles on what is appropriate for lost
7 revenues or what is appropriate on incentives.

8 The issues in Mr. Biewald's testimony clearly fit
9 into the generic case.

10 JUDGE CHRISTIANSON: Okay. Then maybe Mr. -- go
11 ahead. You'll get a response, too.

12 MR. MacGREGOR: Just one point, Your Honor. In terms
13 of legal principles, I think it is the first principle of
14 administrative law that an agency has broad discretion to
15 determine whether to provide policy generically by
16 regulation or to adjudicate issues on a case-by-case basis.

17 In this instance, the Commission to date has
18 determined that those issues should be dealt with on a
19 generic basis. The generic proceeding is not done yet, and
20 Sierra Club should not be permitted to short-circuit that
21 generic process by trying to establish these issues in an
22 individual rate case. The generic proceeding is not over,
23 as Mr. Kleppinger indicated.

24 JUDGE CHRISTIANSON: Maybe focus on that. Kleppinger
25 focused on this bottom of page 6, paragraph number 4. And

1 maybe focus on this cart before the horse characterization.
2 But go ahead and have a response.

3 MR. BARAK: Thank you, Your Honor. I do want to
4 correct something. Counsel is correct. I conceded too much
5 when I said that the Commission didn't take the incentive
6 issues up; and when he read that, I do recall that very
7 well, that language.

8 JUDGE CHRISTIANSON: A lot goes on in these things.
9 It is hard to remember every detail.

10 MR. BARAK: Well, if we're all lucky enough and the
11 Supreme Court takes the case and reverses the Commonwealth
12 Court so we can --

13 JUDGE CHRISTIANSON: Is it lucky or unlucky about
14 taking it and reversing it?

15 MR. BARAK: Well, of course, I added the second part.
16 But if they take it and they reverse the Commonwealth Court,
17 we get our incentives and we get our lost revenues for a
18 program that we think is very necessary here. But that
19 issue that counsel raised on the cart before the horse I
20 think is a very important one, and we thought long and hard
21 about whether to raise these matters in this case.

22 I am very sympathetic to the Administrative Law
23 Judge, who has a \$261 million claim or some amount lower
24 than that, depending on which testimony one accepts, to
25 adjudicate and the complexity of the case and the

1 multiplicity of the issues in the case. The language
2 counsel read, however, is the Catch 22 here.

3 We have a filing in which this utility says, "Hi,
4 folks. This is Brigadoon. We saw you five years ago.
5 We're here for a while, and we'll see you in another five or
6 many more years."

7 JUDGE CHRISTIANSON: It has been ten, historically.

8 MR. BARAK: So when the Commonwealth Court said to
9 the Commission, "You decide whether you're going to take
10 this up in a rate case or you're going to take this up
11 generically," the only way the Commission can take this
12 matter up in this case, short of somewhere within our nine
13 months reopening the record after the whole thing has gone
14 up on brief, the only way is if someone comes into the case
15 and says, "Ah, yes. We've read what the Commonwealth Court
16 said. We understand that this could be one of those cases.
17 Here is the language. Here is the expert testimony on this
18 very narrow issue, very narrow issue. Is this the time to
19 set rates for this company because they won't be back for a
20 while?"

21 The Commonwealth Court cannot be required to
22 understand the complexities of the Commission's docket, and
23 I can't recall any principle of law that requires a court to
24 somehow be cognizant of those kinds of details the way, say,
25 a litigant before a court might have to be of the court's

1 docket.

2 I agree with counsel for the company that there is a
3 principle of administrative law that says a Commission can
4 make decisions that have generic applications a number of
5 ways. It can make them by rule, and in the old days it made
6 them on a case-by-case determination. Now, in the last, oh,
7 10 or 15 years, we've seen around the country Commissions
8 spend more and more time in generic proceedings.

9 JUDGE CHRISTIANSON: And that process has become more
10 muscle bound, so maybe they're going back to doing it case
11 by case.

12 MR. BARAK: Maybe there are some arguments as to why
13 generic cases are a very fair way or a very good way to do
14 effective rulemaking. We're not arguing that here today,
15 but there is a very persuasive argument that the old way of
16 dealing with a very concrete set of costs and customers is
17 the way to set a rule for this utility, and then one
18 examines later on if it works for another utility. The
19 court did not say things had to be decided generically.

20 Our witness said, "Commission, because I'm here,
21 because I've been asked to give you this testimony on this
22 issue pursuant to the Commonwealth Court for this utility,
23 if you make a decision here, you may want to do something to
24 reconcile your decision in this case with your decisions for
25 other utilities." That's what that testimony on page 6 is

1 about. It is putting the horse before the cart, not the
2 cart before the horse. It responds to the court saying:
3 Look, do it in a rate case or do it generically. We don't
4 sit here over in the other office building and tell you who
5 is coming up when, but the reality is this company won't be
6 back for a while.

7 JUDGE CHRISTIANSON: I guess my problem as a Judge is
8 one of our directives is if in doubt, allow the development.

9 Let me check from the company. If this issue is
10 excluded, essentially if I grant the motion and we avoid
11 this detail of DSM, how is the company going to treat it and
12 what is left as far as being concerned about the subject
13 matter?

14 MR. MacGREGOR: Well, I think the issue that is
15 relevant, as indicated by the internal memorandum Your Honor
16 referred to earlier, is that we do have costs claimed in
17 this rate proceeding for DSM programs. We have presented
18 direct testimony --

19 JUDGE CHRISTIANSON: Costs in the sense of normal
20 costs; that is, just like expenses?

21 MR. MacGREGOR: That's right; not lost revenues and
22 not incentive mechanisms and these kind of things that --

23 JUDGE CHRISTIANSON: Salaries or whatever?

24 MR. MacGREGOR: Well, the cost of materials for the
25 programs and salaries and that kind of --

1 JUDGE CHRISTIANSON: I mean, it's just like salaries
2 or any other cost?

3 MR. MacGREGOR: That's right. We've claimed those
4 costs and we've described the programs and we believe they
5 are reasonable programs, and other parties have presented
6 testimony, particularly the Commission on Economic
7 Opportunity, who we'll hear from next week, who argue that
8 we ought to be spending more money on DSM programs, and they
9 explain why.

10 I mean, I think the place where we're trying to draw
11 the line is -- I mean, it is one thing to deal with the DSM
12 programs and the reasonableness of those programs. This
13 issue of incentive mechanisms and lost revenue recovery are
14 really the issues the Commission has taken out and said,
15 "We're going to deal with those on a generic basis and we
16 think that process should finish before we take off into
17 some other direction that may or may not be what the
18 Commission wants to do."

19 JUDGE CHRISTIANSON: You think your filing is a
20 sufficient response to the Commission concern about the
21 topic?

22 MR. MacGREGOR: Yes, Your Honor. It is my
23 recollection that that kind of grew out of a West Penn case
24 where West Penn was criticized -- not the most recent one,
25 but the one before -- where they were criticized for not

1 presenting testimony on their DSM programs; and I think
2 there was a directive in the Commission's Order or at some
3 point in that proceeding where they were told that in future
4 cases they should come in and say what their DSM programs
5 are and what they are spending on DSM.

6 I think that is what the internal memo addresses and
7 that is what we were trying to address in this filing, but I
8 think there is a difference between a DSM program, which is
9 like a conservation program or a weatherization program or
10 any other program we have where we have costs that we are
11 incurring and claiming in rates -- and those can certainly
12 be examined. We have those issues on the one hand. On the
13 other hand, these more broad-ranging policy issues about
14 incentive mechanisms and lost revenue recovery are quite a
15 different boat.

16 JUDGE CHRISTIANSON: I guess we're about -- do you
17 have any further thoughts? I'm thinking at the moment. If
18 you want to talk meanwhile, go ahead.

19 MR. KLEPPINGER: We'll only make you do one thing at
20 a time.

21 JUDGE CHRISTIANSON: I'm sort of pausing. I'm
22 inclined as a matter of efficiency to exclude the issue, but
23 on the other hand, you hate to deny the Commission the
24 possibility of reaching an issue of they want to.

25 Trial Staff didn't volunteer anything. Do you want

1 to help us decide this?

2 MR. SIMMS: No comments, Your Honor.

3 JUDGE CHRISTIANSON: Okay, fine. I'm inclined on the
4 thought of efficiency to go with the motion, but I'm not
5 sure if the Commission would want to do the same thing is my
6 problem.

7 (Pause.)

8 JUDGE CHRISTIANSON: I think, considering the matter,
9 I don't think I'm under the force of that directive. I
10 think I agree with the company's thinking that the directive
11 does not require me to go into the mechanism element of it,
12 and I guess I intimated the same thing earlier in another
13 context that I have a rate case before me and that might be
14 enough of a plate to worry about.

15 I'm going to go ahead and grant the motion. I
16 appreciate the efforts of Sierra Club. As a matter of fact,
17 mechanically, the prefiled testimony will physically remain
18 part of the record, subject to the motion to strike. I
19 grant the motion. I'm largely thinking of matters of
20 efficiency and the pendent nature of the whole thing. I
21 appreciate the effort to get it in the proceeding as early
22 as possible and get the issue presented as early as
23 possible, but I think mainly I'm concerned about efficiency
24 and sort of a -- not quite a due process, but a I guess
25 efficiency method is the best way to characterize it on

1 thoughts of administrative expediency you might even say.
2 It's not quite the word I want.

3 I think, though this is a candidate for the matter, I
4 think my thinking of the cart before the horse is probably
5 my best basis. Things are still pending, and we may never
6 actually reach this matter in a base case, depending on how
7 things actually go, but I guess eventually we will get to
8 that point. We will get to that point I hope with more
9 directive than we have at this time; and rather than to try
10 to do the thing preliminarily and without all the answers in
11 you might say, I think we're better off to defer the matter
12 perhaps for not more than a couple of years. I don't know
13 when PP&L might be in next. PP&L doesn't know when PP&L
14 might be in next.

15 But basically, on Mr. Kleppinger's thrust of
16 efficiency and concern for the tentative nature of the whole
17 topic and with some consideration to the burden placed on
18 the parties to respond to this issue and it might be an
19 unnecessary issue -- I was going to use the word "spurious,"
20 but that's not quite the word I want. Unnecessary I guess
21 is a better thought -- I'm granting the motion.

22 I think that is perhaps a fairly incoherent
23 explanation, but it is the best I can muster at the moment.

24 I appreciate the efforts of Sierra Club, and it is a
25 very important topic. Personally, I'm not in love with the

1 topic. I think it smacks of old-fashioned regulation at a
2 time when we're going into competition and that aspect of
3 utility regulation and that the two things might be somewhat
4 incompatible, but that would draw to the other direction;
5 you do it now before we get into competition too much and we
6 get DSM in the works now while we still have more or less a
7 monopoly model working. That goes in the other direction of
8 where I'm going on the issue, but I just mention my personal
9 thoughts in case that flavors my decision.

10 I hope I'm not avoiding the issue, because
11 personally, I think it might be an issue of the past rather
12 than an issue of the future. But in any case, I'll mention
13 that possible element in my thinking. I'm going more or
14 less on efficiency and the fact that things are still up in
15 the air about the whole issue and might come to earth who
16 knows how after the Supreme Court is done with it and the
17 Commission might chew on the matter a little bit.

18 In any case, I've had sufficient, I think,
19 conversation on the thing. I'm granting the motion with my
20 apologies to Sierra Club for all the work they did and to
21 counsel, obviously, too.

22 MR. BARAK: Thank you, Your Honor. Pursuant to the
23 Commission's regulations, I'd make an offer of proof of the
24 testimony that is prefiled, written and the exhibit as we
25 provided them in the record today.

1 JUDGE CHRISTIANSON: Yes.

2 MR. BARAK: I don't believe I have to do anything
3 further.

4 JUDGE CHRISTIANSON: Yes. It is properly done. It
5 will remain physically there subject to Mr. Kleppinger's
6 motion. And if the Commissioners hate me for it, you're
7 right and I'm wrong.

8 Then if people don't have anything more, we can go
9 ahead with cross.

10 MR. BARAK: Just, Your Honor, again for the record, I
11 request the creation of a separate record with respect to
12 the stricken testimony so that any party seeking to cross-
13 examine the witness on that testimony has an opportunity to
14 do it now so that if the Commission -- it would have to be
15 on exceptions -- should reverse your decision, that we are
16 not in a position of having to remand and bring Mr. Biewald
17 back.

18 JUDGE CHRISTIANSON: You're thinking about the
19 possibility of interlocutory review?

20 MR. MacGREGOR: Your Honor, that is completely
21 inappropriate. The cross-examination alone is not what
22 would be necessary. We'd have to file extensive rebuttal
23 testimony for the witness. It is either in or it's out.

24 JUDGE CHRISTIANSON: In fact, it is interesting. It
25 occurred to me as I sat here to hold off my ruling until

1 cross for the witness had been completed so we'd have some
2 sort of a record on this witness, but I think I'd rather
3 just go with the action I've taken.

4 If some counsel wants to cross the witness, I'll
5 allow it.

6 MR. KLEPPINGER: Your Honor, I have no intention of
7 crossing any testimony that has been stricken from the
8 record. I think it is wholly inappropriate procedurally
9 from an evidentiary standpoint to do that. The motion has
10 been granted. Like you said, it stays physically in the
11 file, but it is not part of the official record, and I am
12 not going to cross-examine testimony that is not in the
13 record.

14 JUDGE CHRISTIANSON: Yes. Like I said, it occurred
15 to me to allow that, but I think Mr. Kleppinger is probably
16 right in the final analysis. It will remain as an offer of
17 proof at this point. And again, if counsel wants to do it,
18 feel free, but I suspect they would rather not cross-examine
19 on the topic.

20 MR. BARAK: Thank you, Your Honor. I tender the
21 witness for cross-examination.

22 JUDGE CHRISTIANSON: Fine. Thank you. Again, my
23 sympathies for the Sierra Club's efforts. You came close,
24 but let's try cross starting with the company.

25 MR. MacGREGOR: I have no questions, Your Honor.

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JUDGE CHRISTIANSON: Does Trial Staff have any?

MR. MICKENS: No questions, Your Honor.

JUDGE CHRISTIANSON: Anybody else?

MS. KENNEY: As a result of the motion being granted,
the OCA has no questions.

JUDGE CHRISTIANSON: You would have had otherwise?

MS. KENNEY: Yes, Your Honor.

JUDGE CHRISTIANSON: So would have others.

Anything from the federal people?

MR. McCORMICK: No questions, Your Honor.

MS. MOURY: No, Your Honor.

JUDGE CHRISTIANSON: Mr. Kleppinger?

MR. KLEPPINGER: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. KLEPPINGER:

Q. Good morning, Mr. Biewald.

A. Good morning.

Q. I'd like you to turn to page 25 of your
testimony. Here you discuss the issue of discount rates at
least generally, correct, at this portion of your testimony?

A. That's correct.

Q. Now, have you reviewed PP&L's tariffs in
preparation for your testimony today, the actual currently
effective tariffs of PP&L?

A. Only very briefly.

FORM 2

1 Q. Are you able to tell us which rate schedules
2 would fit within your definition of discount rates for PP&L?

3 A. I can't point to the specific rate schedules. I
4 understand that there are rates that are justified in terms
5 of economic development and are specifically discount rates,
6 but I couldn't point to the specific ones.

7 Q. And you characterized economic development rates
8 as discount rates?

9 A. There are a variety of justifications offered
10 for discounted rates. I would say discounted rates is the
11 general term. Sometimes they are called incentive rates.
12 Sometimes they are called --

13 Q. Could I have your definition of discount rates?
14 What is your definition?

15 JUDGE CHRISTIANSON: Are we focusing on the reason
16 for the discount, I guess, as opposed to competition or
17 avoidance of capacity cost and such? You are focusing on
18 development rates, essentially.

19 THE WITNESS: Well, when I use the word "discount," I
20 mean it generally as rates that are below what one would get
21 through a normal cost allocation. It can be justified in
22 terms of keeping the customers on the system, in terms of
23 providing for expansion, creating jobs, and so on.

24 BY MR. KLEPPINGER:

25 Q. Let me ask you this. If a rate is above cost,

1 above what an otherwise applicable cost allocation study
2 would produce, but it is below what the tariff rate for that
3 schedule is, is that a discount rate under your definition?

4 A. Yes.

5 Q. Even though it is above cost?

6 JUDGE CHRISTIANSON: Let me clarify, Mr. Kleppinger.
7 Are you talking about an incremental cost?

8 MR. KLEPPINGER: No. What I'm talking about is --

9 BY MR. KLEPPINGER:

10 Q. Let's say you have a tariff rate of 6 cents a
11 kilowatt-hour. That is the tariff, explicit tariff. The
12 cost of service study shows that that class has a cost of
13 5.5 cents a kilowatt-hour, but because of regulatory reasons
14 and whatever the company has been allowed to charge 6 cents
15 --

16 A. Of the allocated costs?

17 Q. The allocated costs are 5.5, but the company is
18 being permitted by the Commission to charge 6.

19 JUDGE CHRISTIANSON: To cross-subsidize another rate
20 category or whatever.

21 MR. KLEPPINGER: Whatever.

22 BY MR. KLEPPINGER:

23 Q. Now, if the company chooses to discount that
24 rate to that customer to 5.6 cents, does that fit within
25 your definition of discount even though it is still above

1 cost?

2 A. Above the marginal cost of serving those --

3 JUDGE CHRISTIANSON: Again, we've got to -- I think
4 he is talking about fully distributed cost.

5 BY MR. KLEPPINGER:

6 Q. I'm talking about the fully distributed cost
7 allocation study that would be submitted in a rate case that
8 produces an average cost let's say for a given customer
9 class of 5.5 cents. That would be the system average rate
10 of return for that customer class. However, because of
11 prior cases or the like, that class is actually providing
12 6 cents per kilowatt-hour in revenue to the company. So its
13 rate of return is higher than the system average.

14 If the company chooses to reduce that class
15 voluntarily to 5.6 cents a kilowatt-hour, is that a
16 discounted rate under your definition?

17 A. Could you clarify the reasons that the actual
18 rate is higher than the cost in this example?

19 Q. Well, historically, there are certain customer
20 classes that have earned rates of return to utilities above
21 the system average.

22 I'll do this for the benefit of Ms. Moury. Let's
23 call it a GS-3 customer under PP&L's rate schedules. Their
24 rates of return in this case are under almost any cost study
25 that we've seen above the system average rate of return.

1 Okay?

2 JUDGE CHRISTIANSON: And the Commission might invoke
3 gradualism --

4 BY MR. KLEPPINGER:

5 Q. And the Commission has allowed that to happen
6 since the last PP&L rate case. That's what I mean by that
7 class providing an above system rate of return.

8 JUDGE CHRISTIANSON: And you're bringing the rate
9 down so that they provide more than the rate of return of
10 the system but less than they would have provided under the
11 general tariff?

12 MR. KLEPPINGER: That's correct. And the question is
13 whether in that scenario he would call that a discounted
14 rate.

15 THE WITNESS: I would, but I take the Commission's
16 allocation and rate design as a starting point here and as a
17 given and then deviations from -- based on whatever
18 reasoning they used --

19 JUDGE CHRISTIANSON: Yes. The Commission might have
20 gotten these results from gradualism or whatever principle
21 kept those rates hung up a little bit above system rate of
22 return.

23 THE WITNESS: -- and take that whole process as a
24 given, and then what I am addressing here are discounts from
25 those rates that the Commission otherwise found to be just

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and reasonable.

JUDGE CHRISTIANSON: So he has answered you basically yes, as I understand it.

BY MR. KLEPPINGER:

Q. Then look at your testimony at lines 10 through 12.

MR. BARAK: I'm sorry. What page?

MR. KLEPPINGER: Page 25.

MR. BARAK: Page 25. Okay. Thank you.

FORM 2

1 JUDGE CHRISTIANSON: Off the record.

2 (Discussion off the record.)

3 JUDGE CHRISTIANSON: Back on the record.

4 BY MR. KLEPPINGER:

5 Q. Now, in the hypothetical I just gave you, you
6 would have found that this GS-3 customer who is now paying
7 5.6 cents would be receiving a discount.

8 So focusing now on page 25, lines 10 through 12, you
9 indicate that non-discount customers often bear the burden
10 of subsidizing the lost revenues that result from the
11 discount rate.

12 Can you explain to me how this GS-3 customer would be
13 receiving a subsidy if in fact that 5.6 cent kilowatt-hour
14 rate that I'm hypothetically putting forward is above their
15 system average fully distributed cost of service?

16 JUDGE CHRISTIANSON: I see what you're doing.

17 (Laughter.)

18 JUDGE CHRISTIANSON: You're decreasing the subsidy
19 flowing from that class, rather than flowing in the other
20 direction.

21 MR. KLEPPINGER: Correct, Your Honor.

22 THE WITNESS: If I understand the point, it's that
23 there wouldn't be lost revenues in that case. And I would
24 point out that the sentence reads, "can lead to rate
25 inequity."

1 It's going to depend on the ratemaking treatment, you
2 know, whether the other customers are asked to pay for those
3 costs.

4 JUDGE CHRISTIANSON: You wouldn't necessarily call it
5 "inequity" in Mr. Kleppinger's specialized scenario of
6 diminution in subsidy from the class to other classes?

7 THE WITNESS: Right. And if the rates -- I mean,
8 equity is a tricky issue. One notion of inequity is simply
9 that one customer is getting the discount and another is
10 not. Even if their rates are not going up, there's arguably
11 an inequity --

12 JUDGE CHRISTIANSON: Compared to what is always the
13 question, I guess.

14 THE WITNESS: Right. In this case, you know,
15 comparing to the customer that is offered the discount,
16 arguably there's an inequity.

17 BY MR. KLEPPINGER:

18 Q. Let me try to stay with my hypothetical. Will
19 you agree with me that if the company elects to reduce the
20 rate to this customer from 6 cents per kilowatt-hour to 5.6
21 cents per kilowatt-hour, that there will be lost revenues to
22 the utility company as a result of that action? They will
23 receive less revenue from that customer than they would at
24 the 6 cents, okay? Do you agree with that?

25 A. That's correct.

1 Q. Now, if that lost revenue is then collected from
2 customer classes who are providing rates of return to the
3 utility below the system average rate of return, would you
4 still say that those non-discount customers who are
5 providing revenues to the utility at a level below the
6 system average rate of return are being subsidized by this
7 customer who is still paying 5.6 cents per kilowatt-hour,
8 which is still above the system average rate of return in
9 the cost of service study?

10 A. Well, I believe that who is subsidizing who in
11 each case depends upon what the base line is that we're
12 comparing it against.

13 Q. I'm trying to compare it against cost of
14 service. That's the base line for all customers. I think
15 that was evident from the question.

16 JUDGE CHRISTIANSON: Cost of service including the
17 overall rate of return for that --

18 MR. KLEPPINGER: System average rate of return.

19 JUDGE CHRISTIANSON: Right.

20 THE WITNESS: And we have some customers that are
21 contributing a higher percentage to the system average rate
22 of return than others?

23 BY MR. KLEPPINGER:

24 Q. And some customers who are not providing the
25 system average rate of return, they are below the system

1 average rate of return.

2 A. Well, speaking very strictly with your
3 hypothetical, then even before the discounted rate, then I
4 suppose by this very particular definition, you may have a
5 cross-subsidy, depending on the base line. And you've
6 defined the base line very --

7 Q. And from where is the subsidy flowing, and to
8 whom? In my hypothetical, isn't the subsidy flowing from
9 the customer who actually received the rate reduction, from
10 6 cents to 5.6, is still subsidizing those customers who are
11 non-discounted but providing a return below the system
12 average? Isn't that the direction the subsidy is flowing,
13 consistent with His Honor's questions?

14 A. You've outlined a hypothetical example where
15 what we have is a reduction in an existing cross-subsidy due
16 to the discount rate.

17 Q. That is correct.

18 A. And as a hypothetical or abstract matter, I can
19 agree that that could happen. Now, for my testimony here, I
20 do accept the current rates or proposed -- whatever rates
21 the Commission finds to be just and reasonable as a starting
22 point, and then discounts are dealt with from that point.
23 So I'm addressing the discounts rather than the cost
24 allocations.

25 JUDGE CHRISTIANSON: Are you saying --

1 MR. KLEPPINGER: Okay, so does that mean -- I'm
2 sorry.

3 JUDGE CHRISTIANSON: Let me try a question.

4 You're defining the Commission's decision about
5 tariffs as equitable, so a reduction from what the
6 Commission decides is inequitable, even under Mr.
7 Kleppinger's scenario?

8 THE WITNESS: Basically, yes. The whole --

9 JUDGE CHRISTIANSON: Go ahead and explain further, if
10 you want to.

11 THE WITNESS: We're dealing with equity or inequity
12 relative to some base line. And I wasn't, my testimony in
13 this case doesn't go to the cost allocation or existing
14 cross-subsidies and whether there are cross-subsidies or not
15 or whether they're appropriate or not as a starting point.

16 I want to take the rates that the Commission finds to
17 be appropriate given allocation principles of equity and so
18 on as a starting point, and then talk about discounts from
19 that, those rates.

20 JUDGE CHRISTIANSON: Mr. Kleppinger obviously has the
21 thrust to go to costs because of historic reasons and the
22 people he represents, obviously.

23 BY MR. KLEPPINGER:

24 Q. So if I understood your response, Mr. Biewald,
25 your base line are existing rate levels and not system

1 average cost of service rate levels; is that a fair summary
2 of your response to the Judge's question? Your base line
3 measurement is off of existing rate levels and not off of
4 rates which would be based on system average rate of return
5 in a cost of service study?

6 MR. BARAK: I don't know if this is an objection or
7 clarification. I heard the phrase, "existing rate levels,"
8 and as I'm listening to the back-and-forth, I think existing
9 at what point in time is probably not getting communicated
10 between the questioner and the witness.

11 JUDGE CHRISTIANSON: We can take away the presence of
12 a base case.

13 MR. KLEPPINGER: By "existing," I mean the currently
14 effective rates that PP&L has in place.

15 JUDGE CHRISTIANSON: That have been set by the
16 Commission in a previous base case, and now we're talking
17 about maybe departing from those rates for some reason.

18 MR. KLEPPINGER: I guess I'm asking basically, what
19 is his base line.

20 BY MR. KLEPPINGER:

21 Q. Is your base line rates that are currently in
22 effect today for all customers, or something other than
23 that, from where you're going to measure if a given customer
24 has a discount or not?

25 A. Well, it's something other than that. To the

1 extent that there are existing discounts justified on the
2 basis of keeping the customer on the system or economic
3 development, those are exactly the discounts that this
4 section of the testimony speaks to.

5 Q. Well, then, what is the base line for your
6 measurement of the size of the discount, assuming one exists
7 today? What is your base line in that situation?

8 (No response.)

9 Q. You are hypothesizing that there are currently
10 discounted rates on PP&L, correct?

11 A. Correct.

12 Q. From where have you measured that discount?
13 What was your base line to reach the conclusion that there
14 are in fact discounted rates today?

15 JUDGE CHRISTIANSON: For PP&L, the answer might be
16 the rates set ten years ago in the last base case.

17 THE WITNESS: Well, I don't have a specific
18 quantitative base line in mind. I haven't quantified what
19 the discounts are or will be, but rather that --

20 (Pause.)

21 THE WITNESS: My definition of the base line would be
22 the rates that the Commission would otherwise arrive at if
23 not for considerations of incentives or economic development
24 to these particular customers.

25

1 BY MR. KLEPPINGER:

2 Q. And then if I could pick up on your own
3 counsel's question, at what point in time would we be making
4 that determination as to what the Commission believes the
5 right level is, if you have a time?

6 A. I think that as a general matter, it would be
7 good practice at all points to know specifically what the
8 discounts being provided are to customers that are given
9 discounted rates.

10 In the past and in the future, if the discount is 20
11 percent off of what the rate would otherwise be or 25
12 percent, I think that should be explicit.

13 Q. Your testimony doesn't contain any
14 quantification of the level of discount that you know exists
15 on the PP&L system today, does it?

16 A. That's right, and I'm not testifying for or
17 against the use of the discounts.

18 Q. Do you know, Mr. Biewald, if any of PP&L's
19 presently effective rates are set on a long-run marginal
20 cost basis as you've used the term at lines 17 and 18 on
21 page 25?

22 A. I honestly don't know what the specific
23 discounts are or what the basis is for determining those
24 discounts.

25 Q. Do you know today, Mr. Biewald, whether or not

1 any of PP&L's proposed rates in this case are based on long
2 run marginal costs as you've used the term at page 25, lines
3 17 and 18?

4 A. I'm not certain.

5 Q. If you turn to page 27 of your testimony, lines
6 4 through 6, you use the term "certified energy audit."
7 Could you tell me who would be the certifying entity of such
8 an audit?

9 A. Yes. I discussed that at the bottom of page 29,
10 lines 28 through 31. The certification could be by any
11 appropriate energy efficiency organization.

12 The purpose is that it's knowledgeable, qualified,
13 professional, and unbiased. I'm not proposing a specific
14 organization.

15 Q. Do you know of any such organizations in
16 Pennsylvania?

17 A. I don't know of any particular organizations,
18 firms or individuals who I would recommend for this, but I'm
19 sure that such organizations exist.

20 Q. Now, you reference the New York audit procedure
21 and you include I believe as Exhibit 1D the guidelines on
22 flexible rates from New York. Do you have that exhibit?

23 A. Yes, I do.

24 Q. When I read that exhibit, I did not find a
25 requirement that the audit be certified. Could you tell me

1 if in fact I missed something on Exhibit 1D that requires a
2 professionally certified audit?

3 A. Well, the language regarding the audit is a
4 little bit different for the different utilities. They use
5 terms such as "comprehensive production analysis and energy
6 audit," "recent energy audit to identify potential energy
7 efficiency improvements." I'm reading from pages 2 and 3 of
8 the exhibit.

9 Q. But none of those pages call for a
10 professionally certified audit, do they, Mr. Biewald?

11 A. They don't use those words, no. I do recommend
12 it, though.

13 Q. Turning to page 31 of your testimony, here you
14 discuss a system benefits charge for potentially stranded
15 benefits, I take it in a more competitive electric utility
16 industry; is that generally what you're discussing here?

17 A. That's correct. There are potentially stranded
18 costs and potentially stranded system benefits as we go into
19 the future.

20 Q. And if I understand this proposal, there would
21 be some type of rate recovery mechanism to assure that those
22 stranded benefits continue in a competitive environment; is
23 that correct?

24 A. That's correct. I think that if and when we
25 have a more competitive environment that might or might not

1 include direct access, that demand-side management won't be
2 a thing of the past.

3 I believe that it's up to regulators and the rest of
4 us to insure that those benefits are not lost, that they can
5 be, DSM programs can be continued, other important public
6 programs can be continued, and that NARUC has recognized
7 this in its resolution.

8 And I think that it's important to put in place
9 policies that will in fact keep those benefits continuing.

10 Q. I guess, Mr. Biewald, my confusion is over the
11 use of the term "system benefits charge" in conjunction with
12 your testimony at page 31, lines 8 through 10, because there
13 you say, "cost recovery of these stranded benefits."

14 So it's still a cost that you want ratepayers to
15 continue to absorb, even though the costs at least in your
16 mind are being incurred in order to create system benefits;
17 is that right?

18 A. That's right. There are costs associated, for
19 example, with DSM programs and low income programs. I
20 believe there are net benefits, and that's why the term
21 "system benefits charge" is used.

22 And that's to distinguish these from stranded costs
23 for example that might be associated with investments in
24 uneconomical power plants which ought to be treated
25 differently.

1 Q. But you would agree that before such a cost
2 would be recovered in a system benefits charge, you would at
3 least require a demonstration that in fact that cost is
4 producing those benefits?

5 A. Or a reasonable expectation that it will produce
6 the benefits. To the extent your question may have implied
7 that there's a detailed monitoring and evaluation result
8 required, I would disagree. I think it can be done on a
9 forward looking basis.

10 But the standard, say a prudence review ought to
11 still apply. I don't think I could remove that if I wanted
12 to, and I don't.

13 Also, the DSM programs should be in the public
14 interest. They should produce net savings say by the total
15 resource cost test, or to the extent these are low income
16 programs, they should have been found to be in the public
17 interest.

18 Q. But before you would allow costs to be recovered
19 in a system benefits charge, you would at least want, would
20 you not, a review of some cost benefit analysis associated
21 with a given program, whether it's DSM or whatever?

22 A. That's right, cost benefit analysis and
23 consideration of perhaps non-monetary or non-monetizable
24 benefits.

25 To the extent we're talking about say low income

1 programs or research and development that might have a
2 long-term but uncertain payoff, development of renewable
3 resources -- you know, some states are considering or have
4 in place set-asides for renewable resources where those
5 programs are explicitly above near-term avoided costs.

6 And the reason is there are thought to be long-term
7 benefits in terms of stimulating the market and having
8 options available in the future.

9 So those are the sort of system benefits that NARUC
10 talks about in its resolution and that there's concern that
11 as we move to a competitive industry, some of those benefits
12 will be lost.

13 So this charge is intended to provide continuity,
14 some assurance of cost recovery for those sorts of programs
15 that are very important and found to be in the public
16 interest.

17 So I don't want a cost/benefit test to be interpreted
18 too narrowly or applied too narrowly, that in fact some of
19 these things may fail a very narrowly defined cost/benefit
20 test because the payoffs are in terms of equity, the long
21 term, the environment and so forth.

22 Q. Finally, Mr. Biewald, let's turn to page 33 of
23 your testimony. You pose the question to yourself as to
24 whether the system benefits charge would change cost
25 allocation or DSM cost recovery.

1 And your answer is that it would not, and you cite
2 then as an example in the next question the Washington Water
3 Power mechanism.

4 My question gets to whether this is a general intent
5 of your proposal that however these costs that we're talking
6 about putting into a system benefits charge are being
7 recovered currently should also be the way they are
8 recovered at least on a class basis under your system
9 benefits charge. Are you looking for consistency in those?

10 A. Well, those are two separate points. One is how
11 the costs are allocated, and two is the system benefits
12 charge.

13 And what my testimony speaks to here is the systems
14 benefits charge aspect to it. So the main point is that
15 some assurance should be provided that these costs will be
16 recoverable in the future even if competition develops in a
17 way that might cause that otherwise to be a problem.

18 And so it's not necessary to change the allocation in
19 any way, that whatever the current cost allocation,
20 collection -- allocation to classes and the whole collection
21 approach can remain intact, and it's really a matter of what
22 we call them and providing some assurance that they will be
23 collectible in the future.

24 Q. So if I understand what you're saying then, if
25 these types of costs are currently being collected under our

1 traditional system and are allocated to customer classes,
2 let's say on a customer basis, that you would suggest that
3 in the system benefits charge allocation of those same
4 costs, if that mechanism is created, they continue to be
5 allocated on a customer basis? Is that what you mean at
6 lines 9 and 10 on page 33?

7 A. That takes it a little bit further than I'd like
8 to. I mean, my main point here -- I don't want to endorse
9 the method of collection that's been in place, and I don't
10 want to testify today that I've reviewed that and believe
11 that it's appropriate in the future to use that same method.

12 Q. I'm not asking you to do that.

13 A. That's separate from my testimony. My testimony
14 is that some assurance should be provided that those costs
15 will be recovered, and that can be provided without changing
16 the cost collection mechanisms.

17 Q. But in order for your statement to be consistent
18 at lines 9 through 10 on page 33, will you agree with me
19 that if we have a body of costs in today's rates that are
20 currently allocated on a customer basis and that body of
21 costs becomes the body of costs that are going to be
22 collected in your system benefits charge, that in order for
23 there not to be a change in the allocation, those costs
24 would still have to be allocated on the customer basis?

25 A. Correct.

1 MR. KLEPPINGER: Thank you.

2 That's all I have, Your Honor.

3 JUDGE CHRISTIANSON: Then I guess we're about done
4 with cross. Anybody have follow-up on Mr. Kleppinger's
5 contribution?

6 (No response.)

7 JUDGE CHRISTIANSON: I guess you want a little time
8 with the witness.

9 MR. BARAK: Please.

10 JUDGE CHRISTIANSON: Let's be off the record.

11 (Discussion off the record.)

12 JUDGE CHRISTIANSON: Let's be back on the record.

13 My apologies to counsel. I took a lot of time but I
14 had a lot of administrative stuff to take care of and I just
15 couldn't break away.

16 I understand there is limited redirect, and counsel
17 may proceed.

18 MR. BARAK: Thank you, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. BARAK:

21 Q. Mr. Biewald, counsel during cross asked you
22 whether you were aware of persons who were certified to
23 perform the DSM evaluation services that you describe in
24 your testimony, whether such persons existed in
25 Pennsylvania. Do you recall that?

1 A. Yes, I do.

2 Q. To what extent is it your belief that such
3 persons exist or don't exist in Pennsylvania?

4 A. Well, I know individuals who would be qualified
5 in various locations around the country. I would recommend
6 looking to a couple of national associations on this,
7 including the Association of Energy Engineers and the
8 American Society of Heating, Refrigerating and Ventilating
9 and Air Conditioning Engineers, ASHRAE (phonetic), for their
10 members and any certification process that they may have in
11 place.

12 I'm quite certain that there are individuals and
13 firms in Pennsylvania who would be able to provide
14 knowledgeable, high quality, unbiased audits.

15 The exact system that's put in place would really
16 depend on what the Commission wants to do and how it wants
17 to deal with quality control type issues, how much oversight
18 and how much certification or what the specific
19 certification requirements would be.

20 But the key elements are that you want engineers who
21 know both energy efficiency and the industrial process that
22 is at issue, along with some assurance that they're not
23 biased.

24 JUDGE CHRISTIANSON: You're saying basically that the
25 function or service exists or can be developed if necessary?

1 THE WITNESS: I believe so, yes.

2 JUDGE CHRISTIANSON: Okay. Go ahead.

3 MR. BARAK: Thank you, Mr. Biewald.

4 That's all I have, Your Honor.

5 JUDGE CHRISTIANSON: Fine. Any follow-up? We
6 probably don't need too much follow-up.

7 MR. KLEPPINGER: No, Your Honor.

8 JUDGE CHRISTIANSON: Then the witness is excused.

9 He expected to have more territory to cover, but we
10 denied him that. Thank you.

11 (Witness excused.)

12 JUDGE CHRISTIANSON: Let's be briefly off the record.

13 (Discussion off the record.)

14 JUDGE CHRISTIANSON: Back on the record.

15 I understand that Sierra Club wants to withdraw at
16 this point, having done their duty.

17 MR. BARAK: If I may be excused, Your Honor?

18 JUDGE CHRISTIANSON: Yes, certainly.

19 MR. BARAK: Thank you.

20 JUDGE CHRISTIANSON: Then we might as well just go
21 ahead with it. I'll swear in the witness.

22 Whereupon,

23 THOMAS J. PRISCO

24 having been duly sworn, testified as follows:

25 JUDGE CHRISTIANSON: My apologies for being so

1 fast. Sometimes I can speak fast easier than speaking slow.
2 Go ahead, counsel.

3 DIRECT EXAMINATION

4 BY MR. McCORMICK:

5 Q. Sir, would you please state your name for the
6 record?

7 A. My name is Thomas J. Prisco.

8 Q. And by whom are you employed?

9 A. I'm employed by the Department of the Army as an
10 accountant and financial adviser.

11 Q. Do you have before you 17 pages of testimony in
12 question-and-answer form and your Exhibit Schedules TJP-1
13 through TJP-14 which were previously filed with the
14 Commission?

15 A. Yes, sir.

16 Q. Was this testimony and the attached exhibit
17 schedules prepared by you and under your direct control and
18 supervision?

19 A. Yes, sir.

20 MR. McCORMICK: Your Honor, I'd like to have the
21 document consisting of the 17 pages and the attached exhibit
22 schedules marked for identification as DOD Statement No. 1,
23 if that would be appropriate.

24 JUDGE CHRISTIANSON: Yes, fine, your Statement No. 1,
25 so identified.

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

3 BY MR. McCORMICK:

4 Q. Mr. Prisco, do you have any changes or
5 corrections to your prepared testimony and exhibits?

6 A. I do not.

7 Q. Are the testimony and the figures in your
8 exhibits and so on true and correct to the best of your
9 information, knowledge and belief?

10 A. Yes, sir.

11 MR. McCORMICK: Your Honor, I'd like to tender Mr.
12 Prisco for cross-examination.

13 JUDGE CHRISTIANSON: Yes, and I'll anticipate perhaps
14 counsel. I now accept the statement into the record along
15 with the schedules subject to possible adverse motions on
16 cross.

17 MR. McCORMICK: Thank you, Your Honor.

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

20 JUDGE CHRISTIANSON: I do this to lawyers. I try to
21 keep them a little off balance that way, but that's my
22 pattern.

23 MR. McCORMICK: I appreciate your taking care of me.

24 JUDGE CHRISTIANSON: Thank you.

25 Then we can logically start with the company.

1 MR. MacGREGOR: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. MacGREGOR:

4 Q. Good afternoon, Mr. Prisco.

5 A. Good afternoon.

6 Q. Could I refer you to page 6 of your testimony,
7 please?

8 A. All right.

9 Q. Where you discuss the company's rate case
10 expense claim. Am I correct that the company has proposed
11 to spread its rate case expense over two years, and you
12 propose three years?

13 A. Yes, sir.

14 Q. And you cite a number of jurisdictions in your
15 testimony who have at least at some point in time used a
16 three-year average of rate case expense.

17 Were those decisions to your knowledge based on any
18 specific analysis of how frequently the utility was expected
19 to file rate cases?

20 A. Yes, they were.

21 Q. Do you have any information available to you to
22 support the proposition that PP&L is likely to file rate
23 cases every three years as opposed to some other period?

24 A. No, I do not.

25 Q. And we asked you an interrogatory, Set II,

1 No. 1, to provide relevant excerpts from rate decisions
2 issued by other regulatory commissions in which a three-year
3 average was utilized to determine the allowed level of rate
4 case expense.

5 A. Yes, sir.

6 Q. Do you have a copy of that response with you?

7 A. Yes.

8 Q. Am I correct that in your response, you cited
9 two cases, one from the Florida Commission and one from the
10 Texas Commission?

11 A. Yes, sir.

12 Q. Am I correct that in both instances, the quoted
13 portions which you provided indicate that the Commission
14 adopted three-year amortizations of rate case expense?

15 A. Yes, sir.

16 Q. Do you know whether this Commission follows an
17 amortization or normalization approach for establishing rate
18 case expense in rate cases?

19 A. No, I do not.

20 JUDGE CHRISTIANSON: Before you leave page 6, just a
21 minor housekeeping matter. If you go to line 2, is there a
22 word missing at the end of that line? "Fossil Fuel Plant
23 Lives," is it?

24 (No response.)

25 JUDGE CHRISTIANSON: Do you think it stands the way

1 it is?

2 THE WITNESS: It could stand the way it is.

3 JUDGE CHRISTIANSON: Okay, go ahead.

4 THE WITNESS: "Lives," okay, "Lives" would be fine.

5 JUDGE CHRISTIANSON: Okay. I'll sort of read that in
6 myself. It just didn't seem to quite compute perfectly.

7 Go ahead, counsel.

8 BY MR. MacGREGOR:

9 Q. Referring to page 7 of your testimony, Mr.
10 Prisco, where you assert that PP&L is paying an excessive
11 interest rate on customer deposits, when you prepared your
12 testimony, had you had an opportunity to review Pennsylvania
13 regulations on this subject as published in the January 14,
14 1995 Pennsylvania Bulletin?

15 A. No, sir.

16 Q. Did you have an opportunity to review the
17 company's response to Office of Consumer Advocate
18 Interrogatory Set IV, No. 74 which was provided to you as a
19 party in this case?

20 A. No.

21 (Document handed to the witness.)

22 JUDGE CHRISTIANSON: We will give the witness a
23 moment, and then we can proceed.

24 (Witness perusing document.)

25 THE WITNESS: Okay.

1 BY MR. MacGREGOR:

2 Q. Does that response indicate that the Commission
3 has issued regulations revising the methodology for the
4 calculation of interest on customer deposits?

5 A. Yes.

6 Q. And the methodology will be the average of
7 one-year T-bill rates for September, October and November of
8 the previous year?

9 A. Yes, sir.

10 Q. And does it further indicate that the company
11 intends to revise the interest rate it pays on customer
12 deposits in this proceeding?

13 A. Yes.

14 Q. Next, with respect to your adjustment regarding
15 the voluntary early retirement program, your adjustment as
16 shown on Exhibit TJB-7 was based upon the company's initial
17 filing in this case; is that right?

18 A. Yes, it was, sir.

19 Q. And Mr. Berish's direct testimony filed with
20 this case indicated that his figure was an estimate and
21 would be updated during the proceeding?

22 A. Yes.

23 Q. And in preparing your testimony, did you have
24 the opportunity to review the company's response to Office
25 of Consumer Advocate Interrogatory Set IV, No. 75, which

1 provided an update of the company's claim?

2 A. No, I did not.

3 Q. So your adjustment does not incorporate any
4 changes that may have been made in that interrogatory
5 response?

6 A. Correct.

7 Q. Now, you calculate your adjustment using an
8 average annual payroll figure; is that correct?

9 A. Yes, sir.

10 Q. But the company employees who retired are
11 specific company employees who might be paid more or less
12 than average; is that correct?

13 A. Correct.

14 Q. In preparing your testimony, did you have an
15 opportunity to review the company's response to Office of
16 Consumer Advocate Interrogatory Set IV, No. 76, where the
17 company provided the salary figures for each of the 580
18 employees who retired?

19 A. No, I did not see that.

20 Q. If that specific information were available,
21 would it be more correct and accurate to use those numbers
22 rather than just an average number?

23 A. Yes.

24 Q. Now, at the bottom of page 9 and going over to
25 page 10, you discuss the company's request for nuclear

1 decommissioning expenses.

2 Am I correct that you propose to rely upon the cost
3 required for decommissioning by the Nuclear Regulatory
4 Commission?

5 A. No, not the actual cost itself. I was just
6 referring to that as, you know, leave it the same as it is
7 because the Nuclear Regulatory Commission in this case does
8 not require non-nuclear decommissioning at this time.

9 Q. On page 10 of the testimony, you state, "At this
10 time, I would recommend that the Commission not change its
11 present practice for recouping decommissioning costs."

12 To the extent you are aware, is the Commission's
13 current practice at this time to rely on site specific
14 studies for decommissioning costs or to rely upon NRC
15 figures?

16 A. Site specific.

17 Q. And you're not opposed to that as a general
18 matter, site specific?

19 A. No.

20 Q. Turning to pages 13 and 14 where you discuss the
21 company's capital structure and cost of capital, you
22 recommend a return on equity in this proceeding of 11.5
23 percent; is that correct?

24 A. I'm using it for calculation purposes.

25 Q. And you use that based upon the Commission

1 allowance in the recent West Penn Power Company order?

2 A. Correct.

3 Q. To the best of your knowledge, does West Penn
4 Power Company have any nuclear power plants on its system?

5 A. No, they do not.

6 Q. To the best of your knowledge, are West Penn's
7 current rates lower than PP&L's rates?

8 A. Not really. I haven't matched them up.

9 Q. Is it your testimony in this proceeding that a
10 utility such as West Penn that has no nuclear units and
11 relatively lower rates as compared to PP&L has the same
12 business risk in the current market environment as PP&L?

13 A. In my interrogatory, I think I answered that.
14 That's the reason why I selected West Penn. I think it was
15 II-6.

16 Q. Right.

17 Am I correct that in that response, one of the
18 reasons you noted was that Mr. Moul, the company's rate of
19 return witness in this proceeding, had included the
20 Allegheny Power System of which West Penn is a part in his
21 barometer group?

22 A. Correct.

23 Q. And in preparing your testimony, did you have an
24 opportunity to review Mr. Moul's testimony?

25 A. Briefly, not in detail.

1 Q. And specifically, did you have an opportunity to
2 review the answer on page 26 of Mr. Moul's testimony where
3 he states that, "The investment risk of PP&L is, in my
4 opinion, somewhat greater than that of the barometer group"?

5 (Document handed to the witness.)

6 A. I've read that, okay, yes.

7 Q. Now, you've also opposed the company's proposal
8 regarding the return of the capacity sold to Jersey Central
9 Power & Light; is that correct?

10 A. I have not opposed it, just that it should be
11 under base rate if it's -- yes, whatever portion they decide
12 on, I think that the capacity should be done in a base rate
13 case.

14 And I said I was making a policy statement there
15 versus any calculation.

16 Q. Now, if you know, when the Jersey Central Power
17 & Light capacity, as it returns to the PP&L system, would it
18 be correct as a general matter that, all else equal, that
19 PP&L's capacity cost will go up and its energy cost will go
20 down?

21 A. Well --

22 Q. If you know?

23 A. I haven't looked at that.

24 Q. You don't know?

25 A. I don't know.

1 MR. MacGREGOR: That's all I have, Your Honor.

2 JUDGE CHRISTIANSON: Okay. We can check around the
3 table. Anything from Trial Staff?

4 MR. SIMMS: No, Your Honor.

5 MS. KENNEY: No questions, Your Honor.

6 JUDGE CHRISTIANSON: Anything from Small Business?

7 MS. MOURY: No, Your Honor.

8 JUDGE CHRISTIANSON: Mr. Kleppinger?

9 MR. KLEPPINGER: No questions, Your Honor.

10 JUDGE CHRISTIANSON: Then we seem to be done with
11 cross. Let's be off the record briefly.

12 (Discussion off the record.)

13 JUDGE CHRISTIANSON: Let's be back on the record.

14 I understand there's some brief redirect.

15 REDIRECT EXAMINATION

16 BY MR. McCORMICK:

17 Q. Mr. Prisco, the Judge drew your attention to
18 page 6, line 2. Am I correct that you have no objection to
19 adding the word "Lives" after the word "Plant" on that line?

20 A. No, I have no objection to that.

21 MR. McCORMICK: With that redirect, Your Honor, I
22 have no further redirect.

23 JUDGE CHRISTIANSON: Fine. The witness then is
24 excused.

25 THE WITNESS: Thank you, sir.

(Witness excused.)

JUDGE CHRISTIANSON: Then perhaps we can profitably
break for lunch. Let's be off the record, in any case.

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

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FORM 2

1 MR. GORKA: Your Honor, the Office of Trial Staff has
2 marked for identification and distributed to the parties and
3 to the court reporter two documents.

4 The first is identified as OTS Statement No. 1, the
5 direct testimony of Kevan Deardorff concerning fair rate of
6 return. The second is marked OTS Exhibit No. 1, schedules
7 to accompany Mr. Deardorff's direct testimony.

8 May they be so marked?

9 JUDGE CHRISTIANSON: So marked.

10 (Whereupon, the documents were marked as OTS
11 Statement No. 1 and OTS Exhibit No. 1 for
12 identification.)

13 BY MR. GORKA:

14 Q. Mr. Deardorff, do you have a copy of what has
15 been marked for identification as OTS Statement and Exhibit
16 No. 1?

17 A. Yes.

18 Q. Is this statement of direct testimony and
19 accompanying exhibit prepared by you or under your direct
20 supervision?

21 A. It is.

22 Q. Are there any changes or corrections to be made
23 at this time?

24 A. Not at this time.

25 Q. If I were to ask you these questions today,

1 would your answers be the same?

2 A. Yes, they would.

3 Q. And are these answers true and correct to the
4 best of your knowledge and belief?

5 A. Yes, they are.

6 MR. GORKA: Your Honor, I would like to move that OTS
7 Statement No. 1 and Exhibit No. 1 be entered into the record
8 at this time subject to cross-examination and timely
9 motions.

10 JUDGE CHRISTIANSON: Yes, subject to the standard
11 motions provision, the statement and the associated exhibit
12 are accepted into the record.

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

16 MR. GORKA: The witness is now available for cross-
17 examination.

18 JUDGE CHRISTIANSON: And again, we might as well
19 start with the company.

20 MR. GADSDEN: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. GADSDEN:

23 Q. Mr. Deardorff, first a minor housekeeping
24 matter. We have not yet received responses to our
25 Interrogatories Set III, Nos. 3 and 4. We received a fax

1 transmittal yesterday or the day before, and those were not
2 included in the package.

3 And I didn't know whether that was by inadvertence or
4 whether you are still working on those, and if so, if you
5 could give me a status report as to where you stand.

6 MR. SIMMS: Your Honor, if I may, we faxed out I know
7 two separate responses to the company's interrogatories to
8 the Office of Trial Staff.

9 How many did you receive?

10 MR. GADSDEN: We received a fax transmittal on April
11 24th providing us Mr. Deardorff's responses to Set I. We
12 received a fax transmittal on April 25th providing Mr.
13 Deardorff's responses to all interrogatories in Set III
14 other than Questions 3 and 4.

15 JUDGE CHRISTIANSON: We can be off the record for a
16 minute.

17 (Discussion off the record.)

18 JUDGE CHRISTIANSON: Let's be back on the record.

19 Evidently there was a problem the fax, and I
20 understand 2 and 3 you didn't receive?

21 MR. GADSDEN: Set III, Nos. 2 and 3, yes.

22 JUDGE CHRISTIANSON: Then again, a copy was provided
23 just now by the witness, and Consumer Advocate has it, so I
24 guess there was some mix-up in the fax somehow or other,
25 which happens.

1 MR. GADSDEN: Certainly. We're happy to proceed.

2 BY MR. GADSDEN:

3 Q. Mr. Deardorff, you have accepted the company's
4 proposed capital structure in developing your rate of return
5 recommendation; have you not?

6 A. Yes, I have.

7 Q. At pages 12 and 13 of your direct testimony, you
8 discuss certain problems that you perceive with so-called
9 inefficient capital structures.

10 And in your response to our Interrogatory Set I, No.
11 1, you indicated that you believe the barometer group's
12 average capital structure reasonably satisfied your goals
13 with respect to efficient capital structures; is that
14 correct?

15 A. Yes. I used it as a standard.

16 Q. And does the same hold true for PP&L's proposed
17 capital structure?

18 A. Well, I used the barometer group's capital
19 structure as a standard to compare PP&L's capital structure
20 to, and I found that the capital structure is in the
21 vicinity of that standard.

22 Q. So you're satisfied that PP&L's proposed capital
23 structure is an efficient one at least for purposes of its
24 use in this proceeding?

25 A. Yes.

1 Q. Directing your to your testimony at page 13,
2 specifically at lines 15 through 17, you provide certain
3 capital structure ratio figures and conclude that PP&L has
4 slightly higher financial risk; is that correct?

5 A. Yes, it is.

6 Q. And that analysis is based on the data shown in
7 your Schedule 2, page 1?

8 A. That is correct.

9 Q. In our Interrogatory Set III, No. 1, we asked
10 you to provide equity ratios for the barometer group and
11 PP&L at calendar year end 1994-1995; do you recall that
12 question?

13 A. Yes, I do.

14 Q. And can we agree that your response indicates
15 that the barometer group's equity ratio was approximately
16 350 basis points higher than PP&L's at the end of '94 and
17 280 basis points higher than PP&L's on a projected basis at
18 the end of 1995?

19 A. Yes. Based upon those projections, that is
20 correct.

21 Q. With respect to the company's claimed embedded
22 cost of debt and preferred stock, you again have adopted
23 what has been proposed by PP&L in this case; have you not?

24 A. Yes.

25 Q. So the only areas of dispute at this point

1 between you and Mr. Moul relate to the company's claimed
2 equity allowance and overall rate of return?

3 A. That is correct.

4 Q. Now, Mr. Deardorff, I notice from your Appendix
5 A that you have testified in a number of recent cases. For
6 example, you presented testimony in the last National Fuel
7 Gas case; did you not?

8 A. Yes.

9 Q. Can we agree or would you accept subject to
10 check that your equity recommendation in that case was 10.25
11 percent?

12 A. Yes, I'll accept that subject to check.

13 Q. And similarly, would you accept subject to check
14 that in the most recent Blue Mountain Consolidated Water
15 Company case, your recommendation was 9.75 to 10 percent?

16 A. I'll accept that subject to check also.

17 Q. And finally, would you accept subject to check
18 that your equity recommendation in the pending Roaring Creek
19 case was 10.25 percent?

20 A. Yes.

21 Q. And your recommendation here is 10.63 percent?

22 A. That is correct.

23 Q. Can we agree that in each of those cases that I
24 referred to and in the current case, you relied exclusively
25 on the DCF method in developing your recommended equity

1 allowance?

2 A. Yes.

3 Q. You have offered testimony on rate of return for
4 a number of years; have you not?

5 A. Yes, I have.

6 Q. And throughout your career, have you always
7 relied exclusively on the DCF method?

8 A. No.

9 Q. If we refer to page 41 of your testimony at
10 lines 5 through 8, you acknowledge, do you not, that other
11 methods such as the risk premium method and the capital
12 asset pricing model are considered by investors?

13 A. Yes. In their decision making process, they do
14 look at those methods or the results of those methods.

15 Q. And if you know, would you agree that those
16 methods are also considered or taken into consideration by
17 other regulatory commissions in establishing equity
18 allowances for regulated utilities?

19 A. I believe a few do consider the results in their
20 recommendations, a very few.

21 Q. Are you aware that a recent study commissioned
22 by the National Association of Regulatory Commissioners
23 found that 80 percent of the responding state commissions
24 indicated they consider the results of more than one method?

25 (No response.)

1 Q. Maybe I should ask this question: Are you aware
2 of that study?

3 A. I'm aware of the study, but I am skeptical of
4 the results.

5 Q. Skeptical in the sense that you don't think that
6 the responses provided by the commissions actually reflect
7 what they do in practice?

8 A. Well, I'm skeptical in the sense that just
9 reviewing what they reported as the Pennsylvania PUC's
10 methodologies that they use, they said that they use more
11 than one method, and they state that they use the CAPM and
12 the risk premium.

13 And they haven't used the CAPM and risk premium in
14 recent years, so I don't know if the information they're
15 using is dated or whether it's incorrect. I have no idea.
16 I'm just skeptical of the results.

17 Q. Is it your testimony that this Commission has
18 completely ignored the results of other methods in the last
19 several years?

20 A. They from time to time look at the methods, but
21 I don't think they rely upon them very heavily.

22 Q. Is it your testimony that the Commission should
23 ignore the results of other methods, even though those
24 methods may be considered by investors?

25 A. At this point in time, I do.

1 JUDGE CHRISTIANSON: You actually would use the word
2 "ignore"?

3 THE WITNESS: Yes.

4 MR. GADSDEN: Mr. Deardorff --

5 THE WITNESS: As presented, as presented. I believe,
6 if they were going to use a proper risk premium calculated
7 with expected risk premiums, I believe that that could be
8 used.

9 But the methods that are presented, the CAPM method
10 as presented in this case and the risk premium method, I
11 think it should be ignored.

12 JUDGE CHRISTIANSON: Fine.

13 BY MR. GADSDEN:

14 Q. Mr. Deardorff, at various points in your
15 testimony, you address the issue of relative risk. I have a
16 few questions on that subject, the first of which relates to
17 your testimony on page 22.

18 At lines 18 through 20, you contend that the overall
19 risk of public utilities will decline further relative to
20 their industrial counterparts. Do you see that?

21 A. Yes.

22 Q. In our Interrogatory Set I, No. IV, we asked you
23 to explain why you felt that way, and am I correct that your
24 response essentially addressed the issue of financial risk?

25 A. No. I didn't refer to either types of risk, I

1 believe risk in general.

2 Q. Did you refer specifically to the amount of debt
3 in capital structure?

4 A. Yes.

5 Q. Did you consider, in making the statement at the
6 bottom of page 22, what might be characterized as business
7 risk factors and more specifically the prospect of increased
8 competition and/or deregulation of the electric utility
9 industry?

10 A. No. That statement was made in the absence of
11 that consideration. I was only concentrating on the effect
12 of interest rates.

13 Q. Do you believe that increased competition and/or
14 partial or total deregulation of the electric industry could
15 affect the cost of equity for electric companies?

16 A. Yes.

17 Q. Mr. Deardorff, if we could turn now to page 27
18 of your testimony, you observe at lines 10 through 13 that
19 Value Line is projecting that price/earnings multiples of
20 the barometer group will rise slightly over the next five
21 years, and that PP&L's P/E ratio will fall from 12.4 to 10.5
22 percent.

23 A. Yes, that is correct.

24 Q. We asked you in an interrogatory why you felt
25 that was the case. The interrogatory itself is Set I,

1 No. 8, but as I recall your answer to it, it was simply the
2 fact that -- well, let's take a look at it.

3 You state that, "Implicit in Value Line's expectation
4 of P/E ratios for the barometer group is that the growth in
5 price over the next five years will be greater than the
6 growth of earnings, and that the converse is true of PP&L."

7 My question for you is, why do you think that that is
8 what investors are expecting or at least what Value Line
9 might be projecting? Why are they moving in different
10 directions?

11 A. Why do investors think that, or why doesn't
12 Value Line think that?

13 Q. Why do you think Value Line is projecting that?
14 Are you aware of any factors that would cause PP&L's
15 price/earnings multiple to drop while the barometer group's
16 price/earnings multiple would rise, and if so, what are
17 those factors?

18 A. I didn't make that analysis.

19 Q. Mr. Deardorff, if we could turn to your
20 application of the DCF method, preliminarily, I understand
21 from your testimony on page 23 that in your view, one of the
22 advantages of the DCF method is that it is compatible with
23 what you characterize as the long run process of ratemaking;
24 is that correct?

25 A. Yes, it is.

1 Q. Do you have any opinion as to how long the rates
2 set in this case are likely to remain in effect?

3 A. Any estimate on my part would be strictly a
4 guess. I have no idea.

5 Q. It could be a year, it could be ten years?

6 A. Given the history, it could be ten years.

7 Q. Now, as I understand your testimony, you
8 performed DCF analyses of both PP&L and the barometer group
9 that Mr. Moul utilized; is that correct?

10 A. Yes.

11 Q. And at page 17, you note that it's important to
12 look at both because events could cause short-term market
13 aberrations in the data for any individual company; is that
14 correct?

15 A. Yes, that is correct.

16 Q. But I also understand from your response to Set
17 I, No. 2 that you're not aware of any short-term aberrations
18 that may have affected the data which you analyzed for PP&L;
19 is that correct?

20 A. That is correct.

21 Q. Now, for both PP&L and the barometer group, you
22 analyze both recent market data and projected data; is that
23 correct?

24 A. Yes.

25 Q. And did you give equal weight to each, or did

1 you rely primarily on the recent market data? And by
2 "recent market data," I'm referring to the analyses where
3 you calculated dividend yields based on a recent spot and
4 12-month average basis.

5 A. Yes. I gave 100 percent weight to that
6 information that appears on Schedules 4, pages 1 and 2, and
7 no weight to what appeared on page 3.

8 Q. Just so the record is clear, that data that
9 appears on page 3 is the projected dividend yields and
10 growth rates; is that correct?

11 A. That is correct.

12 Q. As I alluded to a minute ago, with reference to
13 your analysis of recent market data, as I understand your
14 testimony, you calculated dividend yields on the basis of a
15 spot yield, a specific point in February of 1995, as well as
16 average yields for the 12 months ending February, 1995; is
17 that correct?

18 A. Rather than average 12 month, it was average 52
19 week high and low.

20 Q. We'll get to that in a minute.

21 And the reason for looking at both, at least as given
22 in your response to our Interrogatory Set I, No. 6, was to
23 provide balance and smooth out potential problems in the
24 data series; is that a fair summary?

25 A. That is correct.

1 Q. I am going to be discussing your yield finding,
2 so it might be helpful to be looking at page 28 of your
3 testimony and the table that you present at the top.

4 As that table indicates, and focusing first on your
5 spot yield calculations, those were based on closing prices
6 for the last Wednesday in February; is that correct?

7 A. That is correct.

8 Q. That happened to be February 22nd; is that
9 correct?

10 A. That is correct.

11 Q. And when we asked you in our Interrogatory Set
12 I, No. 9 if you had updated your DCF analysis to include
13 data for the month of March, you indicated that you had and
14 provided us certain figures.

15 Do you have that response?

16 A. Yes. I updated those figures for the response
17 to this interrogatory.

18 Q. Okay. My understanding of your response is that
19 when you updated the spot yield for PP&L, again presumably
20 using the last Wednesday in March, the spot yield had
21 dropped from 8.15 percent to 7.23 percent; is that correct?

22 A. Yes, as calculated by the Value Screen.

23 Q. Now, Mr. Deardorff, would you accept subject to
24 check that the 7.23 percent yield figure implies a stock
25 price of \$23 per share?

1 A. Well, the dividend yield presented here was
2 based upon Value Screen's projection of a \$1.40 dividend,
3 and the prices as of those dates. That is why they are much
4 lower, not because of implied higher price.

5 Q. Just so everybody is clear on this, in your
6 direct testimony, the yields were calculated on the basis of
7 \$1.67 dividend, which is the current dividend, and in your
8 update you utilized a \$1.40 dividend based on a projection
9 by Value Line that the dividend might be cut; is that
10 correct?

11 A. Yes.

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1 Q. Mr. Deardorff, can we agree that yesterday
2 happened to be the last day in April? The last Wednesday in
3 April; I'm sorry.

4 JUDGE CHRISTIANSON: I got worried there.

5 (Laughter.)

6 THE WITNESS: That is correct.

7 BY MR. GADSDEN:

8 Q. Can we agree or would you accept subject to
9 check that PP&L's stock closed yesterday at 18-5/8ths?

10 A. That is correct.

11 Q. Can you also agree that if we calculated a yield
12 based on that spot price and the current dividend, not Value
13 Line's projection of a dividend cut but the current dividend
14 of \$1.67, that we would come up with a yield of
15 approximately 9 percent?

16 A. Sure, based upon your figures.

17 Q. Let's take a look at your 12-month average
18 yields, and here, as the table on page 28 shows, you've
19 derived 52-week averages of 7.50 and 7.68 percent, the
20 latter figure being for PP&L, for the 52 weeks ended
21 February 28; is that correct?

22 A. Yes, that is correct.

23 Q. In our Interrogatory Set III, No. 5, we asked
24 you to explain how those figures were derived, and I believe
25 you alluded to it in a prior question -- well, let me back

1 up a minute.

2 These figures were derived or retrieved from the
3 Value Line-Value Screen Data Base?

4 A. Yes.

5 Q. And what that data base provides are the annual
6 high and low closing prices and an average of the two; is
7 that correct?

8 A. Yes.

9 Q. And that's what you've utilized?

10 A. I utilized that as my price and the projected
11 dividend for the dividend in the dividend yield calculation.

12 Q. So Value Line does not calculate average monthly
13 yields, it simply takes the highest price that the stock
14 traded at during the prior 12 months and the lowest and
15 divides by two?

16 A. That is correct.

17 Q. Let's just walk through a brief example to see
18 if I can understand how this works. Let's assume we have a
19 dividend of \$1.00 per share and that on the first day of the
20 year the stock closes at \$20. The yield would be 5 percent;
21 is that correct?

22 A. Yes.

23 Q. Let's assume on the second day of the year the
24 stock dropped to \$10 a share. The yield would rise to 10
25 percent; is that correct?

1 A. That is correct.

2 Q. Let's further assume that the stock traded at
3 \$10 per share for the remaining 364 days of the year,
4 constantly yielding 10 percent. Under the methodology used
5 by Value Line, the 12-month average yield would be 7.5
6 percent; is that correct?

7 A. That is correct.

8 Q. Did you compute average yields on a monthly
9 basis, or did you just rely on the Value Line materials?

10 A. I just relied on Value Screen.

11 Q. Briefly, Mr. Deardorff, I do have a few
12 questions with respect to your DCF analysis in which you
13 used projected dividend yield data, as I was under the
14 impression from your testimony that you had conducted those
15 analyses as a check on the reasonableness of your primary
16 analyses.

17 A. Well, I have, in a certain respect. It gives a
18 time perspective, and if capital cost rates are declining
19 and the future shows a continuation of that decline, then my
20 current recommendation fits in very well with that trend.

21 Q. So there is some relevance in your view to those
22 analyses --

23 A. Yes.

24 Q. -- even though you did not directly utilize them
25 in calculating your recommendation?

1 A. That is correct.

2 Q. There is not a table in your testimony I can
3 point to, but the figures are provided in narrative form on
4 page 25. In this instance you derived DCF expected equity
5 return rates of 9.25 percent for the barometer group and 9.4
6 percent for PP&L; is that correct?

7 A. Yes.

8 Q. If I could refer you to your answer to our
9 Interrogatory Set III, No. 5, and for clarity of the record,
10 in this interrogatory we essentially asked that the
11 barometer group composite be broken down by individual
12 company data.

13 Can we agree that what your response shows are
14 projected equity rates as low as 8.2 percent for Atlantic
15 Energy and 8.4 percent for Delmarva?

16 A. I'm confused. Which response are you --

17 Q. This is Set III, No. 5. And if I'm
18 misinterpreting the data, I apologize, but if I could direct
19 you to the second page which is attached to that response,
20 which is captioned "Value Line Five-Year Projected Dividend
21 Yields and Growth Rates." Do you have that?

22 A. Yes.

23 Q. If we look, for example, for Atlantic Energy, we
24 see a yield of 6.7 percent and an average growth rate of 1.5
25 percent, do we not?

1 A. That is correct.

2 Q. If we look at Delmarva, we see a dividend yield
3 of 6.4 and an average growth rate of 2.0 percent, and that
4 would give us 8.5 percent?

5 A. That is correct.

6 Q. Do you have an estimate for what A-rated public
7 utility bonds are yielding at the present time?

8 A. Yes. The projection is for the next year they
9 will be in the 8.3 to 8.5 percent range.

10 Q. Eight-point-three to 8.5?

11 A. Yes.

12 Q. Thank you.

13 Now, these are projected equity returns using Value
14 Line data; is that correct?

15 A. Yes.

16 Q. Keeping those figures in mind of 8.2 percent for
17 Atlantic Energy and 8.4 percent for Delmarva, and taking a
18 look at your Schedule 4, page 7 -- do you have that?

19 A. Yes.

20 Q. How do we reconcile those low numbers with the
21 expected returns on equity projected for Atlantic and
22 Delmarva of 12.5 percent and 11.5 percent, respectively?

23 A. Well, one is calculated on book and the other is
24 the expected return of the investor, two totally different
25 numbers. If that's the way it turns out, then it will be an

1 incentive for the investors to bid the price up on those
2 stocks. They will be earning a lot more than they're
3 actually expecting.

4 Q. What is the expected return for investors based
5 on? You drew a distinction between the expected return of
6 investors and book.

7 A. Book is what the company will actually earn on
8 the book value.

9 Q. In an original cost regulatory environment, is
10 not the rate base set at something approximating book value?

11 A. Yes.

12 Q. Mr. Deardorff, let me just ask you a few
13 questions regarding your critique of Mr. Moul's
14 presentation.

15 On page 39, at lines 10 through 15, you reject Mr.
16 Moul's ex-dividend adjustment because he was unable to
17 supply (1) any academic evidence in support of this
18 adjustment, or (2) any reference to investor influencing
19 publications that provided that kind of information. Is
20 that a fair summary of your testimony?

21 A. Yes.

22 Q. In our Interrogatory Set I, No. 12, we
23 effectively asked you to ignore those two factors and to
24 explain to us why, in your opinion, this adjustment was
25 inappropriate. The response simply referred back to the

1 direct testimony and the same two factors that we discussed
2 a minute ago.

3 Apart from the reasons you state in your direct
4 testimony, what additional problems, if any, do you perceive
5 with Mr. Moul's ex-dividend adjustment?

6 A. Well, we're supposed to be determining what
7 investors expect, and if they do not use that type of
8 methodology to determine their investment decisions, then by
9 using it you're going to have erroneous results.

10 Q. How do we know that they don't consider that
11 kind of information?

12 A. Well, it's a fair assumption that if investors
13 use it and want that type of information for their
14 investment decision-making process, the financial journals
15 are going to provide it. The Business Investors Daily
16 prides themselves on providing statistics to investors that
17 they need and want. If that's one of the statistics that
18 they use in their decision-making process, you can be sure
19 The Business Investors Daily is going to provide it.

20 Q. Does The Wall Street Journal provide any data
21 with respect to ex-dividends?

22 A. They provide ex-dividend dates.

23 Q. If you were to learn that other Commissions had
24 accepted this adjustment, would you reconsider your
25 position?

1 A. I would have to read their reasons why --

2 Q. Fair enough.

3 A. -- before I would make any decision upon that.

4 Q. Lastly, Mr. Deardorff, at page 42 you criticize
5 the risk premium and CAPM methods and note that the
6 variables determining the cost of equity and debt are
7 different; is that correct?

8 A. Yes.

9 Q. But there is a direct relationship between the
10 cost of equity and the cost of debt, is there not?

11 A. There is a relationship over time, but it's not
12 completely a 100 percent correlation. It varies
13 significantly from time to time. The biggest example is the
14 crash of 1987 when the bond market was going in one
15 direction and the equity markets were going in the opposite
16 direction, totally inconsistent with that type of theory.

17 Q. But you do testify, do you not, that there is a
18 direct relationship between bond yields and dividend yields?

19 A. Yes.

20 Q. You also note on page 42 that changing economic
21 conditions can affect premiums over time.

22 A. That is correct.

23 Q. Can we agree that changing economic conditions
24 can also affect dividend yields and growth rates?

25 A. Yes.

1 MR. GADSDEN: Your Honor, that's all we have for Mr.
2 Deardorff.

3 JUDGE CHRISTIANSON: Then we can check. Anybody else
4 have cross for the witness?

5 (No response.)

6 JUDGE CHRISTIANSON: I hear no volunteers
7 immediately. Let's go off the record briefly.

8 (Discussion off the record.)

9 JUDGE CHRISTIANSON: Let's be back on the record.

10 I gather there is some redirect of the witness?

11 MR. GORKA: Some, Your Honor.

12 JUDGE CHRISTIANSON: Proceed.

13 REDIRECT EXAMINATION

14 BY MR. GORKA:

15 Q. Mr. Deardorff, do you recall Mr. Gadsden asking
16 you a question as to whether you conducted an analysis of
17 the P/E ratios?

18 A. Yes.

19 Q. What is the purpose of your Schedule 4, page 5,
20 of OTS Exhibit No. 1?

21 A. Well, the main purpose of that was to examine
22 the price/earnings ratios and to determine whether or not
23 price/earnings ratio is stable and is expected to be stable
24 in the future. The numbers indicating there are that for
25 the barometer group they are expected to be rather stable

1 over the next five years, and the numbers for PP&L are
2 expected to decline significantly from the 12.4 level.

3 I didn't do a specific analysis of each individual
4 component of the price/earnings ratio because the current
5 P/E does fluctuate around the projection that Value Line has
6 there. For example, based upon Value Line's prior three-
7 month projection dated January -- well, based upon the
8 December 16 issue of Value Line, which was three months
9 prior to the March 17, the current P/E for PP&L was 10.1,
10 which indicated that it was going to increase. So in my
11 mind that indicates that while it fluctuates in the short
12 term, it is tending towards the Value Line forecast.
13 Therefore, I didn't think it was necessary to analyze why
14 Value Line thought the prices were going to increase or
15 decrease.

16 Q. Finally, why didn't you include a response to
17 Schedule 4, which was called an update, into the record and
18 reflect this in your recommendation?

19 A. Well, there's some confusion over how I
20 calculated that dividend yield. The way Value Screen
21 presents the information, I used the expected dividend that
22 Value Screen was presenting, which they were forecasting
23 that there's a possibility that the dividend will be cut
24 from 1.67 down to 1.40. So I used that as the expected
25 dividend, and I applied that to the spot and the 52-week

1 price, high/low price.

2 Now, Mr. Gadsden suggested that I should use the
3 1.67. That would indicate a significantly higher dividend
4 yield. The reason I didn't include this, at this point in
5 time I think that there's significant aberrations occurring
6 in not only the dividend but also the price of PP&L, which,
7 when using updated information, is giving some bias. I
8 didn't include that in my recommendation, and I don't think
9 I should.

10 JUDGE CHRISTIANSON: Just because the numbers are
11 strange right now?

12 THE WITNESS: Yes. There's aberrations going on,
13 which is reflecting short-term uncertainties.

14 JUDGE CHRISTIANSON: But you don't think it's
15 significant in the long run?

16 THE WITNESS: No. I don't think it should be
17 considered for a long-term rate of return.

18 JUDGE CHRISTIANSON: Which is what you're talking
19 about.

20 THE WITNESS: Yes.

21 JUDGE CHRISTIANSON: Okay.

22 MR. GORKA: No further questions.

23 JUDGE CHRISTIANSON: We can pause. Go ahead if
24 you're ready to go.

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REXCROSS-EXAMINATION

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BY MR. GADSDEN:

Q. Mr. Deardorff, when you referred to your Schedule 4, page 5, you indicated that -- I believe you indicated that you had presented that data and reviewed it for purposes of evaluating stability of price/earnings ratios; is that a fair characterization of what you stated to your counsel?

A. Yes. Stability of expected price/earnings ratios.

Q. Would stability of a price/earnings ratio suggest to you more risk or less risk, or do you see no relationship between the two?

A. It's hard to determine because you have two different variables moving possibly in two different directions.

Q. Is relative price stability a factor which Value Line analyzes and reports?

A. Yes.

Q. You indicated in response to a question by your counsel and then by the Administrative Law Judge that there were, in your view, aberrations at the present time in terms of PP&L's dividend and price. Could you just elaborate a little bit more on what those aberrations are and why you think they are occurring?

1 JUDGE CHRISTIANSON: First, do you know what they
2 are?

3 THE WITNESS: Well, the expected dividend. Value
4 Line on the issue of March 17 said it was still going to be
5 \$1.67 in their sheet, but on their other sheet dated the
6 same time they printed \$1.40 as a possible dividend. Now,
7 to me, investors looking at that, they're going to start to
8 wonder which is the dividend; it's going to start to provide
9 uncertainty to investors.

10 JUDGE CHRISTIANSON: Would that feed into price of
11 stock, the sale price?

12 THE WITNESS: Well, it will start to be reflected in
13 the price.

14 Now, in the Value Screen, which is the same company
15 but just a different source of information, there they just
16 report it as 1.40; they don't say anything about the 1.67.
17 So they're saying it's a possibility, but it's not probable.

18 JUDGE CHRISTIANSON: So you might have two markets,
19 one for the computer literate and one for the paper --

20 THE WITNESS: Yes.

21 JUDGE CHRISTIANSON: Okay; go ahead.

22 THE WITNESS: At the same time, on the price side,
23 there's some volatility going on on the price side that's
24 reflecting this rate case. And that is short-term
25 volatility; it is reflecting short-term uncertainty. When

1 the order is finally issued, that uncertainty will
2 evaporate.

3 BY MR. GADSDEN:

4 Q. What is it about this rate case that is having
5 an effect on the price, in your opinion?

6 A. The uncertainty of the outcome.

7 JUDGE CHRISTIANSON: Consumer Advocate's negative
8 number I guess.

9 MR. GADSDEN: Thank you, Your Honor.

10 MS. KENNEY: No comment.

11 (Laughter.)

12 BY MR. GADSDEN:

13 Q. Let me ask you this question. Is uncertainty an
14 indicator of greater risk in the eyes of an investor?

15 A. Yes. It's a factor in their risk determination.

16 MR. GADSDEN: That's all we have, Your Honor.

17 MR. GORKA: Nothing further, Your Honor.

18 JUDGE CHRISTIANSON: Then the witness is excused, and
19 we'll be off the record just briefly.

20 (Witness excused.)

21 (Discussion off the record.)
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1 JUDGE CHRISTIANSON: Let's be back on the record.
2 I'll go ahead and swear in the witness.

3 Whereupon,

4 PAUL J. METRO

5 having been duly sworn, testified as follows:

6 JUDGE CHRISTIANSON: Proceed.

7 MR. SIMMS: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MR. SIMMS:

10 Q. Mr. Metro, please state your full name for the
11 record.

12 A. My name is Paul J. Metro.

13 Q. By whom are you employed and in what capacity?

14 A. I am employed by the Pennsylvania Public Utility
15 Commission in the Office of Trial Staff as a Fixed Utility
16 Valuation Engineer working in the Rate Structure/Engineering
17 Section of the Energy Division.

18 Q. What is your business address for the record?

19 A. My business address is P.O. Box 3265,
20 Harrisburg, Pennsylvania.

21 MR. SIMMS: Your Honor, at this time I ask that a
22 multi-page document entitled "The Direct Testimony of Paul
23 J. Metro" be marked for identification as OTS Statement No.
24 5. May it be so identified?

25 JUDGE CHRISTIANSON: So identified.

1 (Whereupon, the document was marked
2 as OTS Statement No. 5 for
3 identification.)

4 MR. SIMMS: Also attached to that direct testimony is
5 a multi-page document entitled "Exhibit to Accompany the
6 Direct Testimony of Paul J. Metro." May it be marked for
7 identification as OTS Exhibit No. 5? May it be so
8 identified?

9 JUDGE CHRISTIANSON: Yes.

10 (Whereupon, the document was marked
11 as OTS Exhibit No. 5 for
12 identification.)

13 BY MR. SIMMS:

14 Q. Mr. Metro, I show you what has been marked for
15 identification as OTS Statement No. 5 and OTS Exhibit No. 5.
16 Were the direct testimony and exhibit prepared by you or
17 under your supervision and control?

18 A. Yes, they were.

19 Q. Do you have any corrections or additions to make
20 to either your direct testimony or to your exhibits?

21 A. I have two corrections. The first one is on
22 page 14, line 17. After the letters "MW," I would insert
23 "per year." So it would read: "forced outages of 250 MW
24 per year."

25 The second one is in Exhibit No. 5, Schedule 1.

1 About halfway down the page in the left column --

2 Q. Mr. Metro, could I ask you to slow down a little
3 bit, please?

4 A. Sure.

5 Q. Could you once again identify the page and
6 exhibit?

7 A. Okay. The first correction was on page 14, line
8 17. I inserted the words "per year" after megawatts on that
9 line.

10 The second correction is on OTS Exhibit No. 5,
11 Schedule 1. About halfway down the left column, there is a
12 line that says "PJM Requirement." Beside those words should
13 read "112 percent" instead of the 1.12 percent.

14 Q. Does that conclude your corrections?

15 A. Yes, it does.

16 Q. Mr. Metro, if today I was to ask you the
17 questions orally which are contained in OTS Statement No. 5,
18 would your answers be the same as contained therein?

19 A. Yes, they would.

20 Q. Are your answers true and correct to the best of
21 your knowledge, information and belief?

22 A. Yes, they are.

23 MR. SIMMS: Your Honor, at this time I'd ask for the
24 admission into the record of OTS Statement No. 5 and OTS
25 Exhibit No. 5 subject to cross-examination and timely

1 motions made by the parties in this proceeding.

2 JUDGE CHRISTIANSON: Yes, accepted into the record
3 now under the standard conditions.

4 (Whereupon, the documents marked as
5 OTS Statement No. 5 and OTS Exhibit
6 No. 5 were received in evidence.)

7 MR. SIMMS: Mr. Metro is available for cross-
8 examination.

9 JUDGE CHRISTIANSON: Again, Mr. Gadsden will have
10 most of it, I'm sure.

11 MR. GADSDEN: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. GADSDEN:

14 Q. Mr. Metro, you've never been employed by an
15 electric utility, have you?

16 A. That's correct.

17 Q. And can I assume as a result of that you've
18 never been responsible for forecasting loads or evaluating
19 the reliability of electric generating resources?

20 A. That's correct.

21 Q. And this is the first time that you've presented
22 testimony with respect to a utility's need for electric
23 power?

24 A. Yes.

25 Q. Now, just by way of overview, you've proposed

1 that the company be denied a total return -- and by that I
2 mean the overall rate of return set in this proceeding -- on
3 a 564 megawatt slice of its investment and production
4 facilities; is that correct?

5 A. That's correct.

6 Q. There are, in my view, three key components to
7 the development of that recommendation, which we might as
8 well lay out up front. The first is that in developing your
9 recommendation, you concluded, did you not, that for
10 ratemaking purposes, the company's reserve margin should be
11 set at approximately 16 percent.

12 A. That's correct. The reserve margin should be
13 set at 16 percent over the defined planning period that I
14 used, which was nine years.

15 Q. You further determined that power which PP&L is
16 required by statute to purchase from qualifying facilities
17 or so-called QFs should be counted as an available capacity
18 resource for purposes of calculating its reserve margin.

19 A. That's correct. I identified the QFs, as you
20 put it, as NUGs.

21 Q. And finally, as you alluded to a minute ago, you
22 developed an average level of excess capacity over a
23 planning period which you define as the next nine years, and
24 it was on the basis of your findings that there was an
25 average excess capacity amount of 564 megawatts that form

1 the basis for your recommendation.

2 A. That's correct.

3 Q. Mr. Metro, as a general matter, would you agree
4 that a particular reserve margin figure has no independent
5 significance but is only relevant in terms of the
6 reliability that it can provide?

7 A. I think it is relevant in that it is a signal
8 for planning purposes for the utility on where their
9 resources should be.

10 Q. But it is relevant only to the extent that it is
11 compatible with whatever reliability criterion the utility
12 plans for; isn't that correct?

13 A. The reliability criteria is one aspect of the
14 reserve margin.

15 Q. And in effect -- well, let me ask you this.
16 Isn't the reserve margin in effect a fall-out of the
17 reliability criterion? Don't we first determine what level
18 of reliability we want to plan for and then make an
19 evaluation of how much capacity we need to meet that target?

20 A. Yes, I would agree with that.

21 Q. And that determination can only be made, can it
22 not, in the context of the specific characteristics of the
23 generating system in question? In other words, what might
24 be an adequate reserve margin for one utility might be
25 totally inadequate for another even though they might be

1 trying to achieve the same level of reliability.

2 A. Yes. The characteristics for each utility would
3 depend upon when the utility's customers have their peaks.
4 Some utilities have summer peaks. Other utilities have
5 winter peaks. In this case, PP&L was a winter peaking
6 company.

7 Q. But it would rely also, would it not, on the
8 individual utility's customer mix, overall system load
9 factor, generating lineup and forced outage rates, things of
10 this nature? Wouldn't those all go into the equation as
11 well?

12 A. Those are part of the factors that contribute to
13 when the utility has its peak.

14 Q. The reliability criterion that you cite in your
15 testimony is the so-called one event in ten years standard,
16 is it not?

17 A. Yes.

18 Q. And you reference that on page 13 of your
19 testimony?

20 A. Yes.

21 Q. Now, in our Interrogatory Set II, No. 2, we
22 asked whether you believed that standard was a reasonable
23 criterion for purposes of evaluating the adequacy of a
24 utility's reserve margin, and the words that you used in
25 your response was that you believed it was the foundation

1 for evaluating the adequacy of a utility's reserve margin.

2 Do you believe it is a reasonable foundation?

3 A. Yes. Those are my words. The one event in ten
4 years standard is the foundation for evaluating the reserve
5 margin. There are other aspects that go into the reserve
6 margin, but the one-in-ten-year probabilistic calculation is
7 the foundation for it.

8 Q. And you're not taking issue with that particular
9 reliability standard in this case, are you?

10 A. No.

11 Q. And we began to get into it a few minutes ago,
12 but can we agree that the determination of whether a
13 particular utility system will satisfy that standard
14 involves a series of very complex calculations?

15 A. That's correct.

16 Q. And those calculations would rely on any number
17 of different assumptions regarding customer demands, unit
18 availability and the like, would they not?

19 A. That's part of it, yes.

20 Q. And you indicated before that this is in effect
21 a probabilistic analysis as to which there is no guarantee
22 that the results are going to be perfect?

23 A. That's correct. When you look at a one-in-ten-
24 year load criteria, you set a range of, for example, 95
25 percent assurance that you'll hit that criteria or

1 90 percent assurance that you'll hit, so there is a factor
2 that you will not hit that criteria.

3 Q. Do you know whether the PJM, the Pennsylvania-
4 Jersey-Maryland interconnection, as a pool or PP&L as an
5 individual company have been able to satisfy the one-event-
6 in-ten-year standard in recent years?

7 A. I believe it has except for the winter of 1994,
8 which was the worst winter that Pennsylvanians lived through
9 in 100 years.

10 Q. Were you in the hearing room when Mr. Sipics was
11 cross-examined last month?

12 A. Some of the time.

13 Q. Do you recall him testifying that the PJM and
14 PP&L had experienced eight such events in the last seven
15 years?

16 A. No.

17 Q. Now, Mr. Metro, sticking on page 13 of your
18 testimony, you state that PP&L's reserve margin should be
19 thought of as a single figure. Do you see that?

20 A. Yes.

21 Q. However, in response to one of our
22 interrogatories, specifically Set II, No. 2, you also
23 indicated that you did not believe that a utility should
24 plan to meet that specific figure each and every year. Do
25 you recall that?

1 A. That's correct. That's because in my analysis,
2 when I said that the reserve margin should be thought of as
3 a single figure, I was referring to the defined planning
4 period in which I examined PP&L's data for excess capacity.

5 Q. And under your analysis and adjustment, there
6 would be years in which PP&L would be above that 16 percent
7 figure and years in which PP&L would be below it; is that
8 correct?

9 A. That's correct.

10 Q. It is sort of a range, if you will?

11 A. Right. The 16 percent is an average for the
12 nine years.

13 Q. Right. In your response to our Interrogatory
14 Set II, No. 4 -- let me back up a minute. In that
15 interrogatory, we asked you whether it was your testimony
16 that PP&L required a 16 percent reserve margin above its
17 winter peak load to provide safe, reasonable and adequate
18 service. And your response was yes; is that correct?

19 A. That's correct.

20 Q. Now, focusing on the 16 percent figure, as I
21 understand it -- and let's simply limit ourselves to the
22 first year -- the 16 percent figure or, more properly, the
23 15.72 percent figure that you derived was developed by
24 taking the company's 12 percent installed capacity
25 obligation to the PJM interconnection and adding to it

1 250 megawatts, which on page 14 at line 17 you refer to as
2 PP&L's 1994 experienced forced outages.

3 A. That's correct.

4 Q. Can we agree the 250 megawatts doesn't really
5 represent a forced outage factor, but rather an amount of
6 lost generation based on certain assumed capacity factors?

7 A. Yes, I would agree. The calculation is derived
8 from an interrogatory response -- I believe it was 69 --
9 that the company replied to, one of my interrogatories; and
10 the 250 relates to the lost generation of forced outages as
11 you look at all the units' reliability.

12 Q. It's not intended to reflect an average level of
13 unit outages at the time of PP&L's winter peak or any other
14 specific point in time, is it?

15 A. No.

16 Q. Did you make any analysis to determine what
17 PP&L's actual forced outage rate had been at the time of its
18 winter peak in the last several years?

19 A. I believe I did do that analysis. When I looked
20 at the 250 megawatts that I derived, I also knew that within
21 the 12 percent PJM requirement was a specific percentage for
22 forced outages, so I didn't want to duplicate that amount
23 with the 250. The 250 could be looked at as a padding
24 factor.

25 Q. Did you or did you not do the analysis that you

1 referred to or don't you recall? The question would be:
2 did you look at the winter peak day of 1995, 4, 3, 2, what
3 have you, and make an analysis of how much generation may
4 have been on forced outage at that time?

5 A. I did an analysis of that type. It wasn't a
6 formal analysis. I looked through some of the information
7 that PP&L had filed in the filing.

8 Q. That analysis has not been presented in the
9 testimony, I take it?

10 A. That's correct.

11 Q. Can we agree or would you accept subject to
12 check that the average size of PP&L's generating units,
13 other than its combustion turbines, is substantially in
14 excess of 250 megawatts?

15 A. I'll agree, subject to check.

16 Q. Mr. Metro, in preparing for this proceeding, did
17 you review the Commission's Order in PP&L's last base rate
18 proceeding which concluded in 1985?

19 A. Parts of it.

20 Q. Did you review the parts of it that dealt with
21 excess capacity?

22 A. Yes.

23 Q. And I gather, therefore, that you are aware that
24 in that case the Commission measured PP&L's excess capacity
25 by reference to an approximate 22 percent reserve margin; is

1 that correct?

2 A. That's correct.

3 Q. And that was based on the recommendation of
4 Office of Trial Staff Witness Mr. Gruber, was it not?

5 A. Yes, it was.

6 Q. If you recall, did not Mr. Gruber calculate that
7 figure by in effect doubling PP&L's forced outage rate?

8 A. I believe that's how Mr. Gruber calculated his
9 -- how he came to derive the 22 percent.

10 Q. Did you make any attempt to determine what
11 reserve margin figure would be derived if one were to
12 replicate Mr. Gruber's analysis in this case?

13 A. No.

14 Q. Are you aware of any Commission decision in
15 which a reserve margin as low as 16 percent has been adopted
16 for purposes of determining whether or not a utility has
17 excess capacity? And by any Commission, I'm referring
18 specifically to this Commission.

19 A. I'm not aware of any other Commission Order
20 relying on an excess capacity reserve margin of 16 percent.
21 However, I would add that PP&L is unique in that they are a
22 winter peaking company and the rest of the Pennsylvania
23 electric companies are summer peaking utilities.

24 Q. Was PP&L a winter peaking company in 1985?

25 A. I don't know.

1 Q. Is it your understanding that all other
2 Pennsylvania utilities are summer peaking companies?

3 A. That's my understanding.

4 JUDGE CHRISTIANSON: Did you say in Pennsylvania or
5 PJM?

6 MR. GADSDEN: Pennsylvania I believe is what he
7 testified to previously.

8 THE WITNESS: Pennsylvania is what I testified to,
9 Your Honor.

10 BY MR. GADSDEN:

11 Q. Mr. Metro, if we look at your Schedule 1 --

12 A. I have it.

13 Q. -- can we agree that in calculating PP&L's
14 reserve margins, you have effectively assumed a constant
15 forced outage rate over time, recognizing, of course, that
16 the number of megawatts listed as forced outages will grow
17 simply as a function of available resources? It is the same
18 ratio used throughout the table, isn't it?

19 A. Yes. When I calculated the forced outages, I
20 trended the forced outages each year for the net resource
21 increase that was applied each year.

22 Q. So it's a constant ratio, although the resulting
23 figure grows over time?

24 A. That's correct.

25 Q. Would it seem reasonable to you that a unit's

1 forced outage rate might increase as that unit aged?

2 A. That would depend on the maintenance of that
3 unit.

4 Q. You can't accept that as a general proposition?

5 A. No, I wouldn't accept it as a general
6 proposition.

7 Q. Now, in your calculations, you've also treated
8 interruptible load as a capacity resource, have you not?

9 A. Yes.

10 Q. Can we agree that from an operational standpoint
11 at least PP&L has no control over whether an interruptible
12 customer actually curtails load when asked to do so?

13 A. That's correct. That's one of the risks that a
14 utility faces when it has interruptible customers.

15 Q. And if you know, have there not been numerous
16 occasions when an interruptible customer was asked to
17 curtail its load but did not curtail it to the extent
18 requested?

19 A. That could have happened.

20 Q. You don't know whether it has or not?

21 A. I don't know.

22 Q. Fair enough. Now, Mr. Metro, in your reserve
23 margin calculations, you've also reflected as available
24 capacity the power PP&L is purchasing from qualifying
25 facilities, have you not?

1 A. Yes, I have.

2 Q. And as you indicated earlier, that is what you
3 refer to as NUG generation?

4 A. Yes.

5 Q. On page 17 of your testimony, you list various
6 reasons why in your view it is appropriate to reflect NUG
7 generation in PP&L's reserve margin calculations. First you
8 observe that PP&L is obligated by statute to buy this power;
9 is that correct?

10 A. Yes.

11 Q. Why does that suggest to you that it should then
12 be used to in effect penalize PP&L through an excess
13 capacity adjustment?

14 A. The Federal Energy Regulatory Commission has
15 required that the electric utilities purchase the NUG
16 generation, and in my opinion, since they require it, it
17 should be used in their net resources.

18 Q. Well, let me ask you this question then. If
19 PP&L was not obligated by statute to purchase this power but
20 elected to do so, would it be your position that that
21 capacity should not be reflected in its reserve margin
22 calculations?

23 A. That's a different scenario, and I didn't review
24 that type of scenario.

25 Q. Second, you assert that NUG generation is as

1 reliable as PP&L's own generation. And here I'm referring
2 to the sentence on lines 4 and 5.

3 A. Yes.

4 Q. Are QF facilities required by law to operate, if
5 you know?

6 A. Not to my knowledge.

7 Q. Is it possible that significant changes in fuel
8 prices such as were experienced in the 1970s and early '80s
9 could at some point make it uneconomic for a qualifying
10 facility to continue to operate?

11 A. That could happen.

12 Q. Do you know whether any of the QFs from which
13 PP&L is buying power have declared bankruptcy?

14 A. May I have a minute?

15 Q. Sure.

16 (Pause.)
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1 A. I'm ready to respond.

2 Q. Sure.

3 A. It is my understanding through an interrogatory
4 response, OTS-RB-52, that there is one NUG who has filed for
5 bankruptcy.

6 Q. On lines 6 through 10 of page 17 you allude to
7 bad timing and luck or possible poor planning and vision. I
8 gather from one of your interrogatory responses that you are
9 not testifying today that PP&L was guilty of poor planning
10 and vision with respect to the development of NUG
11 generation, are you?

12 A. That's correct. The interrogatory response
13 states that it's been many years since that decision whether
14 to build Susquehanna 1 and 2 and the development of NUG
15 power came into this state, it's been maybe 20 years, so I'm
16 not blaming PP&L for lack of vision or for bad luck.

17 Q. Just so the record is clear, the 20-year figure
18 that you alluded to was with reference to what?

19 A. It's my understanding that PP&L began planning
20 for Susquehanna 1 and 2 in the 1970s, early '70s.

21 Q. And we can agree that it did not enter into a
22 NUG contract until the mid '80s; is that correct?

23 A. That's correct.

24 Q. With respect to the contracts that it did enter
25 into, PP&L is not currently making any capacity payments, is

1 it?

2 A. I don't know that.

3 Q. You're not aware of any; is that correct?

4 A. That's correct.

5 Q. Mr. Metro, if PP&L were forced to sign up
6 another 500 megawatts of QF power tomorrow, would it be your
7 recommendation that the company be denied a return on an
8 additional 500 megawatts?

9 A. If the company was forced to buy 500 megawatts,
10 yes, it would be my testimony that it would be in excess.

11 Q. If Congress passed a law next year that required
12 the company to buy 1,000 megawatts of power from the
13 Tennessee Valley Authority, would it be your recommendation
14 that we throw that onto the pile and deny the company a
15 return on another 1,000 megawatts of power?

16 A. Yes.

17 Q. Doesn't that strike you as a bit unfair?

18 A. No.

19 Q. In preparing your testimony, did you review any
20 Commission documents or statements, decisions, which
21 addressed the issue of whether NUG power should be counted
22 for excess capacity purposes?

23 A. Not that I recall.

24 Q. Just a few more, Mr. Metro -- a few, few more.
25 As we discussed at the beginning of your testimony,

1 the 564 megawatt adjustment is based on an average over a
2 nine-year planning period extending from capacity year
3 '95-'96 to 2003-2004; is that correct?

4 A. That's correct.

5 Q. Maybe it would be helpful to return to your
6 Schedule 1.

7 A. I have it.

8 Q. Let me ask you this question before we get to
9 specific numbers. This nine-year averaging concept is
10 dependent, is it not, on the Commission's adoption of PP&L's
11 proposal that it be allowed to phase in through the ECR the
12 capacity that will be returning from expiring off-system
13 sales? The two are tied together, are they not?

14 A. The two are tied together in that Mr. Sipics'
15 Exhibit JFS-1 includes those increments of the JCP&L
16 contract coming back in over the several five years, and as
17 a consequence of those coming back in I utilized those as
18 net resources available.

19 Q. But the only way they could come back in, at
20 least and be recognized for jurisdictional rate purposes,
21 would either be through a series of base rate cases or
22 through adoption of Mr. Kleha's proposal that the ECR be
23 used for that purpose; isn't that correct?

24 A. That's the two ways they could come into base
25 rates, yes.

1 Q. And it would be inappropriate, would it not, to
2 develop an excess capacity adjustment on the basis of
3 capacity for which Pennsylvania jurisdictional customers
4 were not being asked to pay anything for?

5 A. If the increments, 189 increments, megawatt
6 increments, did not come back into the system, in my opinion
7 then there would be no excess capacity adjustment.

8 Q. Let's get back to your Schedule 1. Can we agree
9 that if the Commission disagreed with your nine-year
10 averaging proposal, for whatever reason, and confined itself
11 to the first year during which the new rates in this case
12 will be in effect, that the indicated excess capacity
13 adjustment, assuming all other aspects of your presentation
14 were blessed, would be 371 megawatts?

15 A. Could you restate that? I missed something.

16 Q. Sure. Let's assume the Commission adopts all of
17 your recommendations other than the proposal that excess
18 capacity be quantified in terms of the nine-year planning
19 horizon and simply said, "We're going to look at the first
20 year that these rates are in effect and see how much excess
21 capacity PP&L has in that year." Under those circumstances
22 the adjustment would drop from 564 to 371; is that correct?

23 A. If the Commission decided that they didn't want
24 to use the nine-year average planning period in the excess
25 capacity calculation and decided to skip to Schedule 1, OTS

1 Exhibit No. 5, and they look at the 1995-1996 year, they
2 would see, all things equal, they would see 371 megawatts of
3 excess capacity.

4 Q. Can we further agree that in addition to
5 deciding to focus only on the first year that new rates were
6 in effect, the Commission did not agree that NUG power
7 should be reflected in the calculation, and under those
8 circumstances there would be no excess capacity adjustment,
9 would there?

10 A. I would agree to that, yes.

11 Q. And even if we look to the second year, any
12 excess capacity adjustment would be de minimis, about 7
13 megawatts; is that correct?

14 A. Basically zero; correct.

15 Q. Can we also agree or would you accept subject to
16 check that if we stripped out completely the NUG generation
17 from your Schedule 1, that the resulting reserve margins
18 that you show at the bottom of the schedule would never get
19 above 15.7 percent over the entire nine-year period?

20 A. If the NUG power was completely removed from the
21 nine-year planning period, what was the number for reserve
22 margins?

23 Q. The indicated reserve margins that would be
24 calculated at the very bottom of the schedule would never
25 exceed 15.7 percent. Are you willing to accept that subject

1 to check?

2 A. Before I agree subject to check, you are
3 including the net resources at peak time plus the
4 interruptible load?

5 Q. My understanding is we're just recalculating
6 your numbers and stripping out the "plus NUG" line.

7 A. I don't think I can agree to that then.

8 Q. Okay.

9 A. And I can tell you why. The bottom of Schedule
10 1 shows reserves at the time of peak as a percent, and if
11 you include this interruptible load it varies from 14.19
12 percent to a high of 19.18 percent.

13 Q. Okay. That's without recognition of the forced
14 outage adjustment that you've proposed; is that right?

15 A. That's correct.

16 Q. Finally, Mr. Metro, at pages 28 and 29 of your
17 testimony you recommend, apparently on advice of counsel,
18 that the company's request to accrue AFUDC on plant held for
19 future use be rejected; is that correct?

20 A. That's correct.

21 Q. Is it your understanding that the objection to
22 this request is that portion where the company asks that it
23 be allowed to accrue AFUDC as an accounting matter, or is
24 the objection to the notion that it be authorized in advance
25 to include those accrued amounts in rate base at some future

1 time, or don't you know?

2 A. I would rather not speculate. I don't know.

3 MR. GADSDEN: I'm sure we'll find out in the Trial
4 Staff's brief.

5 Your Honor, that's all I have.

6 JUDGE CHRISTIANSON: Anybody else have cross?

7 Mr. Kleppinger.

8 MR. KLEPPINGER: Yes, Your Honor. I did have one
9 brief area.

10 CROSS-EXAMINATION

11 BY MR. KLEPPINGER:

12 Q. Mr. Metro, I would like to focus on page 27 of
13 your testimony.

14 A. Yes, I have it.

15 Q. At lines 15 through 18 you discuss your position
16 with respect to the company's ECR proposal as it relates to
17 the return of the JCP&L capacity; correct?

18 A. That's correct.

19 Q. And you indicate there that you do not oppose
20 the company's proposal. My question is whether your lack of
21 opposition to the company's proposal is premised upon the
22 excess capacity adjustment that you are recommending in the
23 sense that should the Commission reject your excess capacity
24 adjustment, does your position then change with respect to
25 whether or not you agree with the company's proposal to

1 phase in the 189 megawatts per year of Jersey Central
2 capacity in the ECR?

3 A. There sounds like there's two questions there.
4 The first answer to the question would be that in my opinion
5 promoting an excess capacity adjustment and allowing the
6 JCP&L contract increments to come through the ECR is a
7 package deal. On the other hand, if the Commission says
8 there is no excess capacity, I haven't addressed that
9 portion in my testimony. I haven't done a study to see what
10 the effects would be of running the revenue requirements of
11 the JCP&L contract through the ECR or not running it, or
12 just filing a base rate case. I haven't looked at the
13 effects on the customers.

14 Q. So at this point at least Trial Staff doesn't
15 have a position on whether or not the company's ECR proposal
16 should stand if there's no excess capacity adjustment?

17 A. That's correct. Normally we would be against
18 running the revenue requirement through the ECR as the
19 company has proposed; however, because of the excess
20 capacity adjustment, we think it's a good idea.

21 MR. KLEPPINGER: Thank you, Mr. Metro.

22 That's all I have, Your Honor.

23 JUDGE CHRISTIANSON: Then we're probably at the end
24 of cross unless somebody has follow-up.

25 (No response.)

1 JUDGE CHRISTIANSON: Let's go ahead and be off the
2 record briefly.

3 (Discussion off the record.)

4 JUDGE CHRISTIANSON: We can go ahead and be back on
5 again.

6 I guess there is some redirect?

7 MR. SIMMS: That's correct, Your Honor. We have a
8 few questions here.

9 JUDGE CHRISTIANSON: Go ahead.

10 REDIRECT EXAMINATION

11 BY MR. SIMMS:

12 Q. Mr. Metro, do you recall being asked a question
13 if, in fact, the JCP&L contract came back, that there would
14 not be any excess. Do you remember answering that question?

15 A. Yes. I believe I was asked whether, if the
16 incremental portions of that JCP&L contract did not come
17 back into the net resource base, if there would be an
18 excess, and I answered that's correct, there would not be an
19 excess capacity.

20 Q. That was over a nine-year period that you
21 answered that question; correct?

22 A. That's correct; yes.

23 Q. As a point of clarification, if in fact the
24 contract came back in, would there be an excess capacity
25 over a short period of time?

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JUDGE CHRISTIANSON: We seem to be at the end of the day for the witnesses today. We'll be back again 10:00 tomorrow. We'll be off the record for today.

(Whereupon, at 3:31 p.m., the hearing was adjourned, to be reconvened at 10:00 a.m. on Friday, April 28, 1995, in Harrisburg, Pennsylvania.)

C E R T I F I C A T E

I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me, and thereafter reduced to typewriting by me or under my direction; and that this transcript is a true and accurate record to the best of my ability.

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