

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

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Petition of PPL Electric Utilities : Docket No.
Corporation. For Approval of a : P-00062227
Competitive Bridge Plan. :
 :
 Further Hearing :
 :
 ----- -X

Pages 193 through 278

Hearing Room No. 2
Commonwealth Keystone Building
Harrisburg, Pennsylvania

**DOCUMENT
FOLDER**

Wednesday, December 20, 2006

Met, pursuant to adjournment, at 9:04 a.m.

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P R O C E E D I N G S

1
2 ADMINISTRATIVE LAW JUDGE MARLANE R. CHESTNUT: Good
3 morning, everybody. This is a further hearing at Docket
4 P-00062227, the Petition of PPL Electric Utilities
5 Corporation. For the record, let me state that I am
6 Administrative Law Judge Marlane R. Chestnut.

7 I'll note the following appearances for the record:
8 Kenneth Mickens representing OTS; Dan Clearfield, Kevin
9 Moody for Direct Energy, RESA and Strategic Energy.

10 Good morning.

11 MR. CLEARFIELD: Good morning.

12 JUDGE CHESTNUT: Todd Stewart for Dominion Retail.

13 MR. STEWART: Good morning, Your Honor.

14 JUDGE CHESTNUT: George Jugovic for PennFuture.

15 MR. JUGOVIC: Good morning, Your Honor.

16 JUDGE CHESTNUT: Ms. Polacek for PPLICA.

17 MS. POLACEK: Good morning, Your Honor.

18 JUDGE CHESTNUT: Anthony Gay for Exelon.

19 MR. GAY: Good morning, Your Honor.

20 JUDGE CHESTNUT: Linda Evers for Met-Ed and Penelec.

21 MS. EVERS: Good morning, Your Honor.

22 JUDGE CHESTNUT: Steve Gray for OSBA.

23 MR. GRAY: Good morning, Your Honor.

24 JUDGE CHESTNUT: Paul Russell for PPL Electric
25 Utilities.

1 MR. RUSSELL: Good morning, Your Honor.

2 JUDGE CHESTNUT: Michael Hassell for PPL Electric
3 Utilities.

4 MR. HASSELL: Good morning, Your Honor.

5 JUDGE CHESTNUT: James Mullins, Tanya McCloskey, OCA.

6 MS. MCCLOSKEY: Good morning, Your Honor.

7 MR. MULLINS: Good morning, Your Honor.

8 JUDGE CHESTNUT: Kathy Kolich for First Energy.

9 MS. KOLICH: Good morning, Your Honor.

10 JUDGE CHESTNUT: Good morning.

11 Brian Knipe for Reliant.

12 MR. KNIPE: Good morning, Your Honor.

13 JUDGE CHESTNUT: Chris Lewis for Constellation.

14 MR. LEWIS: Good morning, Your Honor.

15 JUDGE CHESTNUT: And Stephanie Corson. Excuse me,
16 didn't mean to leave you off.

17 MS. CORSON: Good morning, Your Honor.

18 JUDGE CHESTNUT: And then David MacGregor for PPL
19 Electric Utilities.

20 MR. MacGREGOR: Yes, Your Honor.

21 JUDGE CHESTNUT: Is there anybody who hasn't signed?

22 (No response.)

23 JUDGE CHESTNUT: If there is, please do that at a
24 break.

25 As I indicated previously, we're going to do some

1 housekeeping now and see if we can get rid of some of those
2 matters. Is there anybody who wants to move in their
3 testimony by stipulation or by -- yes, Ms. Kolich.

4 MS. KOLICH: Thank you, Your Honor. Good morning.

5 JUDGE CHESTNUT: Good morning.

6 MS. KOLICH: I have two documents here that I'd like
7 marked for identification, FES Statement No. 1, entitled
8 Direct Testimony of Irena M. Prezelj on behalf of
9 FirstEnergy Solutions Corp., and the second document, FES
10 Statement No. 1-SR, entitled Surrebuttal Testimony of Irena
11 M. Prezelj on behalf of FirstEnergy Solutions Corp.

12 JUDGE CHESTNUT: The documents will be so marked.

13 (Whereupon, the documents were marked
14 as FES Statements Nos. 1 and 1-SR
15 for identification.)

16 MS. KOLICH: The parties that have indicated that
17 they would like to cross Ms. Prezelj, both Reliant and PPL,
18 have agreed to waive cross, and, therefore, I'd like to
19 enter these documents by stipulation.

20 JUDGE CHESTNUT: Is there any objection to admission?

21 (No response.)

22 JUDGE CHESTNUT: The documents are admitted.

23 (Whereupon, the documents marked
24 as FES Statements Nos. 1 and 1-SR
25 were received in evidence.)

1 MS. KOLICH: Thank you, Your Honor.

2 JUDGE CHESTNUT: Thank you, Ms. Kolich.

3 MR. MULLINS: Good morning, Your Honor.

4 JUDGE CHESTNUT: Good morning.

5 MR. MULLINS: The OCA would like to identify for the
6 record OCA Statement No. 1, the Direct Testimony of Steven
7 L. Estomin; OCA Statement No. 1R, the Rebuttal Testimony of
8 Steven L. Estomin; and OCA Statement 1S, the Surrebuttal
9 Testimony of Steven L. Estomin.

10 JUDGE CHESTNUT: Okay.

11 (Whereupon, the documents were marked
12 as OCA Statements Nos. 1, 1R and 1S
13 for identification.)

14 MR. MULLINS: Your Honor, by previous agreement, the
15 OCA would move for the admission, via stipulation, of OCA
16 Statements Nos. 1, 1R and 1S.

17 JUDGE CHESTNUT: Stipulation, several of you have
18 used that term in terms of admitting testimony without
19 objection. Do you have a written stipulation?

20 MR. MULLINS: No, I do not, Your Honor.

21 JUDGE CHESTNUT: So what you're really saying is that
22 you're just moving it in, waiving authenticity?

23 MR. MULLINS: Yes, Your Honor. The two parties that
24 have indicated cross of Mr. Estomin have now redacted those
25 proposals, so there is no cross as far as we're concerned

1 with respect to Dr. Estomin's testimony.

2 JUDGE CHESTNUT: Okay. I just wanted to make sure
3 there wasn't a written stipulation floating around, because
4 you know --

5 MR. MULLINS: No, Your Honor, just the actual
6 statements. I apologize for the confusion.

7 JUDGE CHESTNUT: You know procedural details are my
8 life.

9 Any objection?

10 (No response.)

11 JUDGE CHESTNUT: The documents are admitted.

12 (Whereupon, the documents marked
13 as OCA Statements Nos. 1, 1R and 1S
14 were received in evidence.)

15 MR. MULLINS: I am providing two copies to the court
16 reporter as well.

17 JUDGE CHESTNUT: Thank you, Mr. Mullins.

18 Anybody else?

19 MR. JUGOVIC: Good morning, Your Honor.

20 JUDGE CHESTNUT: Good morning.

21 MR. JUGOVIC: George Jugovic with PennFuture. I have
22 PennFuture Statement No. 1 and PennFuture Statement No.
23 1-SR, along with a third written document, which is
24 PPLICA/PennFuture Stipulations in lieu of Cross-Examination
25 of Dr. Tuffey, which contains three paragraphs that clarify

1 Dr. Tuffey's statements.

2 JUDGE CHESTNUT: What do you want to call that,
3 PennFuture or PPLICA or --

4 MR. JUGOVIC: It's labeled PPLICA Cross-Examination
5 1.

6 JUDGE CHESTNUT: And that's a stipulation with
7 PennFuture?

8 MS. POLACEK: That's a factual stipulation concerning
9 items in Dr. Tuffey's testimony.

10 JUDGE CHESTNUT: Okay; that's fine. It will be so
11 marked.

12 (Whereupon, the document was marked
13 as PPLICA Cross-Examination Exhibit
14 No. 1 for identification.)

15 JUDGE CHESTNUT: Any objection to its admission?

16 (No response.)

17 JUDGE CHESTNUT: Good. It's admitted.

18 (Whereupon, the document marked
19 as PPLICA Cross-Examination Exhibit
20 No. 1 was received in evidence.)

21 JUDGE CHESTNUT: I'm sorry; did you identify the
22 statements yet, or are you going to?

23 MR. JUGOVIC: Yes, Your Honor. Statements Nos. 1 and
24 1-SR, which are Dr. Tuffey's direct testimony and his
25 surrebuttal testimony.

1 JUDGE CHESTNUT: They will be so marked.
2 (Whereupon, the documents were marked
3 as PennFuture Statements Nos. 1 and
4 1-SR for identification.)

5 JUDGE CHESTNUT: Is there any objection?
6 (No response.)

7 JUDGE CHESTNUT: The documents are admitted.
8 (Whereupon, the documents marked
9 as PennFuture Statements Nos. 1 and
10 1-SR were received in evidence.)

11 MS. POLACEK: Thank you, Your Honor.

12 MR. JUGOVIC: Your Honor, I have copies of those. I
13 assume two copies for the record?

14 JUDGE CHESTNUT: That's fine. I have a copy of the
15 stipulation.

16 MR. JUGOVIC: Thank you, Your Honor.

17 JUDGE CHESTNUT: Thank you.

18 Anybody else? Mr. Lewis.

19 MR. LEWIS: Your Honor, we will be offering the
20 surrebuttal testimony of Marjorie Philips, but we'll be
21 doing so later today in connection with a written
22 stipulation that will be offered to Your Honor.

23 JUDGE CHESTNUT: That's fine. Just don't let me
24 forget.

25 MR. MacGREGOR: We won't forget, Your Honor.

1 JUDGE CHESTNUT: Is there any --

2 MR. HASSELL: Your Honor?

3 JUDGE CHESTNUT: Yes, Mr. Hassell.

4 MR. HASSELL: Your Honor, we have entered into
5 stipulations with three additional parties. They've been
6 signed this morning. We just took them back to our office
7 to make copies. They will be back here shortly.

8 JUDGE CHESTNUT: If it's okay with everybody then,
9 we'll take a break to allow that to happen, unless there's
10 any other items someone wants to bring up now?

11 (No response.)

12 JUDGE CHESTNUT: Okay. Why don't we take a break for
13 an hour then. We'll come back at 10:15.

14 MR. MacGREGOR: Thank you, Your Honor.

15 (Recess.)

16 JUDGE CHESTNUT: We'll go back on the record. We've
17 come back after our adjournment.

18 Mr. MacGregor.

19 MR. MacGREGOR: Yes, Your Honor. We have a number of
20 stipulations that Mr. Hassell is going to present, the last
21 one of which, signed copies are on their way back over from
22 the Harrisburg office. I guess we can go ahead and start
23 with the other stipulations, and I think by the time we get
24 through those, that Mr. Tubbs should be back.

25 JUDGE CHESTNUT: If he's not, too bad.

1 MR. MacGREGOR: We'll send out a search party for
2 him.

3 MR. HASSELL: We'll talk slowly, Your Honor.
4 Your Honor, at this time we have two stipulations to
5 present. The first stipulation is between the Office of
6 Trial Staff and PPL Electric. I have two for the court
7 reporter and one for Your Honor. The stipulation, in
8 summary, indicates that Trial Staff is not objecting to
9 PPL's revised Competitive Bridge Plan, recognizing, of
10 course, that it is not precedential in all facets.

11 The second stipulation we have, Your Honor, --

12 JUDGE CHESTNUT: Do you want to mark that as an
13 exhibit?

14 MR. HASSELL: Yes, Your Honor, perhaps we should mark
15 it as an exhibit.

16 JUDGE CHESTNUT: Cross-Examination 3?

17 MR. HASSELL: Cross-Examination 3 would probably be
18 the best, Your Honor. Thank you.

19 JUDGE CHESTNUT: Only if you want to. I don't want
20 to force you.

21 MR. HASSELL: That would be fine.

22 (Whereupon, the document was marked
23 as PPL Cross-Examination Exhibit No.
24 3 for identification.)

25 MR. HASSELL: The second stipulation, Your Honor, is

1 with the Office of Consumer Advocate. We will then label
2 that as Cross-Examination Exhibit 4. In many respects it is
3 quite similar to the stipulation with the Office of Trial
4 Staff, with the further caveat, however, that there are
5 additional provisions related to the calculation of rates
6 for customers under Rate Schedule RS, depending upon the
7 ultimate size of the rate increase as a result of the
8 solicitations for 2010, and also some provisions related to
9 demand side response programs.

10 JUDGE CHESTNUT: That's a really excellent idea. I
11 appreciate that you thought of that and put that in here.

12 (Whereupon, the document was marked
13 as PPL Cross-Examination Exhibit No.
14 4 for identification.)

15 MR. HASSELL: Your Honor, it appears we have our --
16 just one moment, please, Your Honor.

17 JUDGE CHESTNUT: Certainly.

18 (Pause.)

19 MR. HASSELL: Your Honor, thank you very much.
20 Your Honor, the third stipulation is between PPL and
21 Constellation New Energy. This would then be -- what are we
22 at, 5?

23 JUDGE CHESTNUT: Five.

24 (Whereupon, the document was marked
25 as PPL Cross-Examination Exhibit No.

1 record here with respect to discussions we've had with his
2 office.

3 JUDGE CHESTNUT: Does that relate to these
4 stipulations directly?

5 MR. HASSELL: They relate to not these stipulations
6 directly, but with respect to certain agreements, or
7 understandings perhaps is the best term to use, that I
8 believe are relevant with respect to the matter of
9 stipulations among the parties.

10 JUDGE CHESTNUT: Because I don't want to lose track
11 of these stipulations in terms of admitting them. So if you
12 want to do it now as opposed to --

13 MR. HASSELL: At this time, Your Honor -- perhaps
14 I'll do this. At this time I would ask to move the
15 admission of all these stipulations.

16 JUDGE CHESTNUT: Are there any objections?

17 MS. POLACEK: Your Honor, I don't think it's an
18 objection -- Ms. Polacek on behalf of PPLICA -- but
19 obviously these are stipulations between PPL and certain
20 parties, and a lot of us are just reviewing these for the
21 first time. They don't bind us, so obviously we don't
22 oppose their admission into the record, but --

23 JUDGE CHESTNUT: Well, why don't you take a few
24 minutes to review them, and in the meantime I will
25 conditionally admit them, and if you have a problem, state

1 it; okay?

2 MS. POLACEK: Thank you.

3 JUDGE CHESTNUT: Sure.

4 (Whereupon, the documents marked
5 as PPL Cross-Examination Exhibits
6 Nos. 3 through 5 were received in
7 evidence.)

8 JUDGE CHESTNUT: Anything else, Mr. Hassell?

9 MR. HASSELL: Not in terms of stipulations, but
10 again, Mr. Gray.

11 JUDGE CHESTNUT: Yes, I know. Thank you. You can
12 sit down.

13 MR. HASSELL: Thank you.

14 JUDGE CHESTNUT: Mr. Gray.

15 MR. GRAY: Thank you, Your Honor. Just to be clear,
16 the OSBA is not entering into any written stipulation with
17 any other party, but Mr. Hassell thought it would be useful
18 for us to just clarify from yesterday, with the company's
19 making modifications to its programs, specifically regarding
20 the change in the TSC design, OSBA in general supports the
21 plan and will be briefing in primary support of what the
22 company's current modified proposal is. So we are just
23 clarifying that because there was a little bit of confusion
24 yesterday about what the TSC plan -- what the modification
25 was and what the company's rebuttal testimony should have

1 said.

2 JUDGE CHESTNUT: Okay. Thank you.

3 MR. GRAY: Thank you.

4 MR. HASSELL: Your Honor, I was mistaken. We did
5 have one more stipulation. I apologize.

6 JUDGE CHESTNUT: That's all right.

7 MR. HASSELL: So many things floating around.

8 The fourth stipulation is between PPL and PennFuture.
9 PennFuture again, in general, will be supporting PPL's
10 revised Competitive Bridge Plan, and there are certain
11 matters involved in here that will involve exploring further
12 energy efficiency program matters.

13 (Document handed to Judge Chestnut.)

14 JUDGE CHESTNUT: Okay. That will be marked as Cross-
15 Examination Exhibit 6.

16 (Whereupon, the document was marked
17 as PPL Cross-Examination Exhibit No.
18 6 for identification.)

19 JUDGE CHESTNUT: Are there any objections to its
20 admission?

21 MS. POLACEK: Your Honor, --

22 JUDGE CHESTNUT: Again, subject to your review.

23 MS. POLACEK: Thank you.

24 JUDGE CHESTNUT: It's admitted subject to that.

25 (Whereupon, the document marked

1 as PPL Cross-Examination Exhibit No.
2 6 was received in evidence.)

3 MR. HASSELL: Thank you, Your Honor. I believe
4 that's finally all. Thank you.

5 JUDGE CHESTNUT: Thank you.

6 All right, what's next?

7 MR. MacGREGOR: I think we're proceeding with
8 Mr. Lacey.

9 JUDGE CHESTNUT: Okay.

10 MR. MacGREGOR: I don't mean to call Mr. Clearfield's
11 witness for him, but --

12 MR. CLEARFIELD: Perfectly all right.

13 JUDGE CHESTNUT: Mr. Lacey, do you want to raise your
14 right hand, please?

15 **Whereupon,**

16 **FRANK LACEY**

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

18 JUDGE CHESTNUT: Please sit down and give and spell
19 your name for the record.

20 THE WITNESS: Thank you. Good morning, Your Honor.
21 My name is Frank Lacey, last name L-a-c-e-y.

22 MR. CLEARFIELD: Good morning, Your Honor. I ask
23 that the following documents be marked for the purposes of
24 identification: a multi-page document entitled the Direct
25 Testimony of Frank Lacey on behalf of Direct Energy

1 Services, LLC. We ask that that be marked as Direct Energy
2 Services Statement No. 1.

3 JUDGE CHESTNUT: It will be so marked.

4 (Whereupon, the document was marked
5 as Direct Energy Services Statement
6 No. 1 for identification.)

7 MR. CLEARFIELD: A multi-page document entitled
8 Rebuttal Testimony of Frank Lacey on behalf of Direct Energy
9 Services, LLC. We ask that that be marked as Direct Energy
10 Services Statement No. 1R.

11 JUDGE CHESTNUT: It will be so marked.

12 (Whereupon, the document was marked
13 as Direct Energy Services Statement
14 No. 1R for identification.)

15 MR. CLEARFIELD: And finally, a document entitled the
16 Surrebuttal Testimony of Frank Lacey on behalf of Direct
17 Energy Services, LLC, and that we have asked to be marked as
18 Direct Energy Services Statement No. 1SR.

19 JUDGE CHESTNUT: It will be so marked.

20 (Whereupon, the document was marked
21 as Direct Energy Services Statement
22 No. 1SR for identification.)

23 MR. CLEARFIELD: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. CLEARFIELD:

FORM 2

1 Q. Mr. Lacey, do you have before you what's been
2 marked as Direct Energy Services Statements 1, 1R and 1SR?

3 A. I do.

4 Q. Are they your prepared direct, rebuttal and
5 surrebuttal testimony, respectively, in this proceeding?

6 A. They are.

7 Q. Were they prepared by you or under your
8 supervision and direction?

9 A. They were.

10 Q. Do you have any additions or corrections to
11 those statements?

12 A. I do have --

13 Q. Why don't we take each one successively then,
14 starting with Statement 1.

15 A. On page 3 of Statement 1, in line 21, there's a
16 sentence, it should be a sentence that ends with "BG&E."
17 There's a comma there. It should be a period.

18 MR. CLEARFIELD: Do you have that, Your Honor?

19 JUDGE CHESTNUT: Yes.

20 BY MR. CLEARFIELD:

21 Q. Proceed.

22 A. On page 9 of that same document, in line 2, the
23 sentence -- that line, "buying decisions for their
24 respective businesses," it should be "buying decisions for
25 their respective homes and businesses."

1 JUDGE CHESTNUT: I'm sorry; respective?

2 THE WITNESS: Homes and businesses, so just adding
3 the words "homes and."

4 BY MR. CLEARFIELD:

5 Q. Do you have any additions or corrections for
6 Statement 1R?

7 A. No, I do not.

8 Q. Do you have any additions or corrections for
9 Statement 1SR?

10 A. Yes. On page 1, in line 18, towards the end of
11 that sentence it says, "identified Direct Energy." It
12 should be "identified by Direct Energy."

13 Q. Does that complete the corrections that you'd
14 like to make to those statements?

15 A. That does, yes.

16 Q. With those additions or corrections, are the
17 statements that we've identified as Statement 1, 1R and 1SR
18 true and correct to the best of your information, knowledge
19 and belief?

20 A. They are.

21 Q. And if we asked you the questions that are
22 contained therein today, would your answers be the same?

23 A. They would be, yes.

24 MR. CLEARFIELD: Your Honor, I would move for
25 admission of Direct Energy Services Statements 1, 1R and

1 1SR, subject to appropriate cross-examination that might
2 occur today.

3 JUDGE CHESTNUT: Any objections?

4 (No response.)

5 JUDGE CHESTNUT: The documents are admitted.

6 (Whereupon, the documents marked
7 as Direct Energy Services Statements
8 Nos. 1, 1R and 1SR were received in
9 evidence.)

10 MR. CLEARFIELD: Your Honor, we propose to present a
11 short rejoinder to surrejoinder that Mr. Krall presented
12 yesterday with respect to PPL --

13 JUDGE CHESTNUT: I don't think you can do that unless
14 the company agrees.

15 MR. CLEARFIELD: Well, Your Honor, I have discussed
16 it with the company, with Mr. MacGregor, and on the
17 condition that if they so choose, Mr. Krall could present a
18 short rejoinder, which would be the end of the process, they
19 have indicated they have no objection. It's one small area
20 that we believe it would be very helpful to correct the
21 record, or clarify our position with respect to, let's put
22 it that way. We have one exhibit that we would use for that
23 discussion, and it should take two or three questions.

24 JUDGE CHESTNUT: Well, I'll allow it since the
25 company is not objecting and you promise that it will be

1 brief, but seriously, I don't like people adding rounds of
2 testimony, especially since the company has the right to
3 open and close since they have the burden of proof. This
4 could go on forever.

5 MR. CLEARFIELD: We understand that there's no
6 further round if the company chooses to respond with
7 Mr. Krall. It's a fairly narrow point.

8 JUDGE CHESTNUT: Okay.

9 MR. CLEARFIELD: And to facilitate that surrejoinder,
10 we have an exhibit that we'd like to hand out. We've
11 already provided it to the company earlier today.

12 JUDGE CHESTNUT: So this would be oral rejoinder,
13 wouldn't?

14 MR. CLEARFIELD: Yes. And the exhibit has been
15 marked Exhibit FPL-4. I've handed two copies to the
16 reporter, one to Your Honor.

17 (Document handed to Judge Chestnut.)

18 JUDGE CHESTNUT: Thank you.

19 BY MR. CLEARFIELD:

20 Q. Mr. Lacey, were you informed of the rejoinder
21 that was provided by Mr. Krall with respect to your
22 surrebuttal testimony concerning comparison of PPL's 2006
23 tariff rate and the PJM average LMP rates that you discussed
24 in that surrebuttal?

25 A. Yes. I was informed of that yesterday.

1 Q. In that surrejoinder, as we understand it,
2 Mr. Krall suggested that the comparison you made in your
3 surrebuttal was not an apples-to-apples comparison, and he
4 provided what he believed was an apples-to-apples
5 comparison. Is that your understanding?

6 A. That is correct, yes.

7 Q. Do you agree with his characterization in his
8 comparison?

9 A. Not completely. I agree with the premise that
10 he tried to adjust the energy and capacity charge for Gross
11 Receipts Tax, a capacity payment, line losses and a load
12 following factor, but I think he started with the wrong
13 number. He started with the number 5.03 cents, the
14 appropriate number should be 6.27 cents, and that number is,
15 as he indicated, the average energy and capacity charge, but
16 also includes the stranded cost charges.

17 Q. Do you have an exhibit that illustrates that?

18 A. I do.

19 MR. CLEARFIELD: Your Honor, we would ask, if I
20 haven't already, that the two-page exhibit be marked for
21 identification as FPL No. 4.

22 JUDGE CHESTNUT: It will be so marked.

23 (Whereupon, the document was marked
24 as Direct Energy Services Exhibit
25 No. FPL-4 for identification.)

1 MR. CLEARFIELD: Thank you.

2 BY MR. CLEARFIELD:

3 Q. Do you have FPL No. 4 before you, Mr. Lacey?

4 A. I do.

5 Q. Could you explain how you've illustrated your
6 point that you just made?

7 A. I have incorporated his math exactly the same,
8 I've just started with a different number and reduced all of
9 the charges as he did, and my end result is that the proxy
10 price would be 4.34 cents. I have further compared that to
11 the LMP prices that Mr. Krall submitted I believe as DAK-3,
12 and I found that the LMP price would have been lower in 32
13 of the 49 months that he analyzed, and the LMP would have
14 been higher in just 17 of those 49 months.

15 Q. And just so the record again is clear, the
16 difference that you -- or the addition that you've made in
17 your chart compared to the comparison Mr. Krall made is
18 what?

19 A. I'm sorry; could you repeat that?

20 Q. What's the difference between your calculation,
21 your 6.27, and the number that Mr. Krall started with?

22 A. It just reflects the addition of the ITC and CTC
23 charges.

24 Q. Does that complete your oral surrejoinder?

25 A. Yes.

1 MR. CLEARFIELD: Thank you, Your Honor. The witness
2 is available for cross-examination.

3 JUDGE CHESTNUT: Do you want to move in the exhibit?

4 MR. CLEARFIELD: I'll move in Exhibit FPL-4, subject
5 to cross-examination.

6 JUDGE CHESTNUT: Any objection?

7 MR. MacGREGOR: None, Your Honor.

8 JUDGE CHESTNUT: The document is admitted.

9 (Whereupon, the document marked as
10 Direct Energy Services Exhibit
11 No. FPL-4 was received in evidence.)

12 JUDGE CHESTNUT: Mr. MacGregor.

13 MR. MacGREGOR: Thank you, Your Honor.

14 **CROSS-EXAMINATION**

15 BY MR. MacGREGOR:

16 Q. Good morning, Mr. Lacey.

17 A. Good morning.

18 Q. Following up just for a brief minute on your
19 oral testimony here, would you agree that the CTC and ITC
20 charges that you included in your analysis are non-
21 bypassable charges?

22 A. Yes, I would agree that they are non-bypassable.

23 Q. In the sense that if a customer decides to shop
24 with an EGS, they would continue to pay those charges to
25 PPL?

1 A. They will have to continue to pay those
2 generation related charges, yes.

3 Q. Thank you. Referring to your direct testimony,
4 can you please state for the record what offices Direct
5 Energy has in Pennsylvania, if any?

6 A. What physical offices?

7 Q. Yes.

8 A. Just my office where I work, which is --

9 Q. Your home?

10 A. -- my home, yes. Actually, we do have a
11 salesman who is employed in Pennsylvania. He also works out
12 of his home.

13 Q. And the two of you would account for the Direct
14 employees who are physically located in Pennsylvania?

15 A. To the best of my knowledge, yes.

16 Q. Does Direct serve any retail customers in PPL's
17 service territory today?

18 A. No, we do not.

19 Q. Is Direct Energy a licensed EGS?

20 A. Yes, we are.

21 Q. To the best of your knowledge, do you have any
22 obligation to serve PPL customers?

23 A. No, we have no legal obligation to serve PPL
24 customers.

25 Q. Are you under any obligation to offer budget

1 billing to PPL customers?

2 A. We are not under any obligation, but we would --
3 that's a very viable competitive product.

4 Q. Are you under any obligation to offer low income
5 customers a discounted rate based on their ability to pay?

6 A. No, we are not.

7 Q. Are you required to serve customers who don't
8 pay their bills during winter months?

9 A. No, we are not.

10 Q. On pages 4 and 5 of your direct testimony,
11 beginning at the bottom of page 4, you discuss PPL's current
12 tariff structure and the fact that it varies depending on
13 the amount of kilowatt-hours used; is that correct?

14 A. Yes, it is.

15 Q. And your reference there is to PPL's current
16 tariff structure as it exists today?

17 A. Yes, it is.

18 Q. Are you aware that PPL in this case has proposed
19 to change that tariff structure, at least with respect to
20 capacity and energy charges, to go to a more flat rate
21 structure in 2010?

22 A. I'm aware that that's what the proposal is, but
23 I also know that other parties are not in agreement with
24 that.

25 Q. What parties are opposed to that?

1 A. Well, I think OCA.

2 Q. But you would support the flat rate structure
3 for 2010 for PPL's rates?

4 A. We have no problems with the flat rate
5 structure.

6 Q. On page 7 of your testimony you discuss your
7 monthly pricing plan that you propose for PPL in 2010.
8 Would you agree with me that as we sit here today, that for
9 all of the utilities, the electric utilities that surround
10 PPL Electric, including PECO Energy, Metropolitan Edison,
11 Pennsylvania Electric Company, West Penn Power and UGI, that
12 each of those companies are under either restructuring plans
13 or Commission orders under which they offer fixed annual
14 rates to residential customers through 2010?

15 A. They're fixed, but I think some of them have
16 escalation clauses in them, so I'm not sure exactly where
17 they all are today.

18 Q. Do any of them have rate plans that vary the
19 prices monthly for residential customers?

20 A. I believe some of them have summer peaking
21 prices, so they wouldn't vary monthly but they would vary a
22 couple times a year.

23 Q. On page 7 of your direct testimony, lines 10 and
24 11, you discuss the procedure under which your monthly
25 pricing plan would work, and it includes the POLR provider

1 signing a full requirement contract 45 days in advance of
2 service; is that correct?

3 A. That's correct.

4 Q. Under your proposal, who would bear the risk of
5 customer shopping in the interim, from the time of the
6 signing of that contract to when service was provided?

7 A. I think traditionally under these types of
8 contracts where you procure wholesale power in the open
9 market, the wholesale provider bears migration risk.

10 Q. And one of the benefits you see in this monthly
11 pricing program is it will provide a signal to customers as
12 to the level of current market prices and they can adjust
13 their usage accordingly?

14 A. Yes.

15 Q. And to achieve that benefit, then PPL Electric
16 would not be able to offer budget billing to its customers
17 because that would wipe out the price signal?

18 A. I would not suggest that PPL couldn't offer
19 budget billing.

20 Q. So we could adopt your monthly pricing plan and
21 still offer budget billing to any customer who wanted it?

22 A. I would think so, yes.

23 Q. Now, PPL currently has over 17,000 low income
24 customers who are served under individual discounted rates
25 that reflect their individual ability to pay. How would

1 they be served under your monthly program?

2 A. I think -- I don't see any reason they would be
3 served any differently. I think the evidence in the record
4 shows that the costs would actually be lower under a monthly
5 proposal than under a long-term contract, so there would
6 actually be savings there. But mechanically, I don't see
7 any difference in how they would physically be served.

8 Q. So your proposal would be that PPL include its
9 CAP customers, low income customers, in the monthly program?

10 A. Yes.

11 Q. On page 8 of your testimony --

12 MR. MacGREGOR: I guess this a question to counsel.
13 Page 8, line 16, should we strike the reference to
14 Mr. Ajello since he is not a witness in this proceeding? I
15 don't mind leaving the statement in, but --

16 MR. CLEARFIELD: All right. We can take out "as
17 Mr. Ajello points out."

18 JUDGE CHESTNUT: But wasn't some of Mr. Ajello's
19 testimony submitted?

20 MR. MacGREGOR: It was not submitted because of the
21 stipulation with Reliant.

22 JUDGE CHESTNUT: Okay.

23 MR. CLEARFIELD: The statement stands, I think, on
24 its own without the reference to Mr. Ajello. It's simply a
25 cross-reference.

1 BY MR. MacGREGOR:

2 Q. Turning briefly to your rebuttal testimony,
3 Mr. Lacey, pages 2 and 3, and elsewhere in your testimony,
4 you reference the term "volatility." Can you state for the
5 record your definition of the term "volatility"?

6 A. Yeah. Volatility I think is often mis-used,
7 actually. Volatility is a very specific statistical measure
8 and really it's a measure of how far each of the points in a
9 series of points deviates from the average line that would
10 be constructed by those points.

11 Q. Thank you. Now, turning to your surrebuttal
12 testimony, page 2, lines 9 through 12, --

13 A. Okay.

14 Q. -- you reference there that even with PPL's
15 proposal to charge flat energy prices for 2010 for energy
16 and capacity, they will still be subject to declining block
17 distribution rates.

18 A. Could you repeat where you are?

19 MR. CLEARFIELD: Yeah. I lost your reference as
20 well, Mr. MacGregor.

21 BY MR. MacGREGOR:

22 Q. I'm sorry. I'm in surrebuttal testimony, page
23 2, --

24 A. Oh, you're in surrebuttal; okay.

25 Q. I moved off the rebuttal.

1 A. Okay. Page 2?

2 Q. Yes. At the top of the page on 2 you discuss
3 PPL's rate structure and you note, beginning on line 8, that
4 even with the flat POLR price that the company has proposed
5 in this case, customers will be subject to declining block
6 rates for distribution and that provides some volatility in
7 the rate structure.

8 A. Yes, it does.

9 Q. Have you made any measure of the magnitude of
10 that volatility, of that effect on the distribution rate
11 structure?

12 A. No. In fact, I note that the magnitude will be
13 much less significant. The distribution portion of the bill
14 is much smaller than the energy portion.

15 Q. And these are distribution rates we're talking
16 about here, which would be paid by customers whether they
17 shopped with an EGS or took POLR service through PPL?

18 A. Yes.

19 Q. Page 3 of your surrebuttal, lines 9 through 15,
20 you note that PPL's rates have -- because of their flat rate
21 structure and rates that do vary monthly or with LMP, PPL's
22 long-term prices have premiums built into them that result
23 in prices that are above monthly prices. Do you see that
24 reference?

25 A. Yes.

1 Q. And you further continue that if customers were
2 given the choice of paying those higher fixed prices or
3 lower monthly prices, they would presumably opt for the
4 lower of the two?

5 A. I would think the majority of customers would do
6 that.

7 Q. And in your surrejoinder testimony today you
8 presented your analysis that, at least in your view, in most
9 months the fixed price was above the LMP price. I guess my
10 question is: why aren't you serving any of those customers
11 in PPL's service territory today?

12 A. We aren't serving them for a couple reasons.
13 One is they have these non-bypassable generation charges
14 that are on the bill. There's also a lot of regulatory
15 uncertainty as to how the market is going to progress.
16 There's no guaranteed value proposition, there's no
17 guarantee that the prices, the LMP prices, will be at a
18 level where we would be able to compete on a long-term basis
19 with the fixed price that the utility is offering.

20 MR. MacGREGOR: Thank you. That's all I have,
21 Your Honor.

22 Thank you, Mr. Lacey.

23 JUDGE CHESTNUT: Does anybody else have any cross for
24 Mr. Lacey?

25 MS. POLACEK: Your Honor, I have just one question.

CROSS-EXAMINATION

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BY MS. POLACEK:

Q. Good morning, Mr. Lacey.

A. Good morning.

Q. I've just got one question for you today. Is Direct Energy serving any large C&I customers in the Duquesne Light service territory?

A. We are not.

MS. POLACEK: Thank you.

Thank you, Your Honor.

JUDGE CHESTNUT: Sure. Anybody else?

(No response.)

JUDGE CHESTNUT: Mr. Clearfield, do you want to do redirect? Do you want to take a minute and see if you want to do redirect?

MR. CLEARFIELD: I could take a minute. May I just ask Ms. Polacek, did you mean to say Duquesne Light in that question?

MS. POLACEK: Yes.

MR. CLEARFIELD: Okay. I was confused.

Yes, could I just take a few seconds?

(Pause.)

MR. CLEARFIELD: Your Honor, I just have one clarifying question.

JUDGE CHESTNUT: Okay.

REDIRECT EXAMINATION

1
2 BY MR. CLEARFIELD:

3 Q. Mr. Lacey, you were asked questions about how
4 the monthly market pricing proposal that you made would
5 apply to low income customers in PPL's CAP or other low
6 income assistance programs. How would they be treated --
7 how would any discount or subsidy or benefit that goes to
8 those customers now be handled in that context?

9 A. I would think it would be handled in the exact
10 same way it's handled today. They would get the rate, and
11 then if there was a discount or a subsidy that was passed
12 through from a program, it would be passed through to them
13 regardless of what the price of the power was.

14 MR. CLEARFIELD: That's all I have.

15 JUDGE CHESTNUT: Any recross based on the redirect?

16 MR. MacGREGOR: No, Your Honor.

17 JUDGE CHESTNUT: Thank you very much, Mr. Lacey.

18 You're excused.

19 THE WITNESS: Thank you, Your Honor.

20 (Witness excused.)

21 JUDGE CHESTNUT: Does that take us to Mr. Butler?

22 MR. STEWART: Yes, Your Honor.

23 JUDGE CHESTNUT: Do you want to stand, please, and
24 raise your right hand?

25 Whereupon,

1 and 1-SR for identification.)

2 BY MR. STEWART:

3 Q. Mr. Butler, do you have in front of you copies
4 of Dominion Retail Statements Nos. 1 and 1-SR?

5 A. Yes, I do.

6 Q. Do you have any corrections or additions to make
7 to those statements?

8 A. No, I do not.

9 Q. Is the information contained in those statements
10 true and correct to the best of your knowledge, information
11 and belief?

12 A. Yes, it is.

13 Q. If I were to ask you the same questions that are
14 contained in those two statements today, would your answers
15 be the same?

16 A. Yes, they would.

17 MR. STEWART: With that, Your Honor, I would move for
18 admission into the record Dominion Retail Statements Nos. 1
19 and 1-SR, subject to cross-examination and appropriate
20 motions.

21 JUDGE CHESTNUT: What happened to 1-R?

22 MR. STEWART: We didn't have an R, we just had an SR.

23 JUDGE CHESTNUT: I have three pieces of testimony
24 here marked -- oh, you know what, this is the wrong witness.
25 Sorry.

1 MR. STEWART: I was just going to say, if you have a
2 1-R from Dominion, we've got a problem.

3 JUDGE CHESTNUT: Are you sure you don't want to adopt
4 the testimony of Mr. Lacey?

5 (Laughter.)

6 JUDGE CHESTNUT: You're right. You're right. So
7 we're off of Lacey, onto Butler. Where are we with that?

8 MR. STEWART: I move for admission.

9 JUDGE CHESTNUT: Is there any objection?

10 (No response.)

11 JUDGE CHESTNUT: The documents are admitted.

12 (Whereupon, the documents marked
13 as Dominion Retail Statements Nos. 1
14 and 1-SR were received in evidence.)

15 MR. STEWART: Thank you, Your Honor. The witness is
16 available for cross.

17 JUDGE CHESTNUT: Mr. MacGregor.

18 MR. MacGREGOR: Thank you, Your Honor.

19 **CROSS-EXAMINATION**

20 BY MR. MacGREGOR:

21 Q. Good morning, Mr. Butler.

22 A. Good morning.

23 Q. Can I turn to page 1 of your testimony, and I
24 note that, unlike most testimonies I read, you have nothing
25 about your educational background and work experience, so I

1 apologize for burdening the record, but can you please
2 summarize your formal education?

3 A. My formal education, I have a Chemical
4 Engineering Degree from the University of Pittsburgh, a B.S.
5 in Chemical Engineering, Bachelor's, and I have a Master's
6 of Science, Industrial Administration, from Carnegie Mellon
7 University.

8 Q. Can you summarize your employment experience up
9 to the time you joined Dominion Retail in 1996?

10 A. I worked five years for LTV Steel, from 1981 to
11 1986, and then I joined Dominion, which was formerly CNG, in
12 1988 and I've been with them for approximately 18 years.

13 Q. Can you also tell us a little something for the
14 record about Dominion Retail? Who are they?

15 A. Dominion Retail is a competitive energy
16 supplier. We operate in I guess 11 states right now. We
17 serve about eight to nine hundred thousand, somewhere in
18 that range, I'm not sure of the exact numbers, competitive
19 small customers in those states. We serve over 200,000
20 customers in Pennsylvania, either gas or electricity, and
21 probably our next biggest -- actually, our largest state we
22 serve customers is in Ohio. We have about 450,000 gas
23 customers in Ohio.

24 Q. Do you currently serve any residential or small
25 commercial or industrial customers for electricity in PPL's

1 service territory?

2 A. We do not.

3 Q. Is Dominion Retail owned by a larger company?

4 A. Yeah, we're owned by Dominion Resources.

5 Q. At page 1 of your direct testimony, lines 17 to
6 19, you say that your proposals, in your opinion, comply
7 with the mandate to promote a robust competitive market.
8 Can you please state the source of that mandate?

9 A. You're on page 1 of the --

10 Q. Line 18.

11 A. Line 18. I guess the mandate is actually the
12 statute to try to create a competitive market in the State
13 of Pennsylvania. I believe that unless we can balance the
14 POLR plans with creating a competitive market, balance both
15 issues, a competitive market will never develop. Dominion
16 Retail has been involved since the beginning with this
17 program and we've served customers electricity for ten years
18 in Pennsylvania, and we're probably the lone entity that can
19 say that. Our intent would be to continue to try to provide
20 competitive options for customers. It's very critical, for
21 a market to develop, that these POLR plans comply fairly
22 strictly with the mandate that the price be prevailing and
23 be market based.

24 Q. My point is somewhat more mundane and narrower
25 than that, Mr. Butler. I have looked at the Competition

1 Act, which you cite as the source of your mandate, and I do
2 not find the word "robust" in the statute. Is it there?

3 A. Well, that may have been an exaggeration.

4 Q. Thank you. On page 2 of your testimony,
5 beginning at line 4, you state your understanding regarding
6 the Electricity Generation Customer Choice and Competition
7 Act, particularly Section 2807(e)(3), and you reference its
8 requirement, beginning on lines 7 and 8, that PPL acquire
9 electric energy at prevailing market prices and recover
10 fully all reasonable costs. Would you agree with me that,
11 just looking at the statutory language, it does not say that
12 customers must be charged prevailing market prices?

13 A. It does not say that customers must be charged,
14 it basically says that the supply should be purchased at
15 prevailing market prices.

16 Q. Page 2, line 19, of your testimony, you submit
17 that PPL can pass along to its wholesale suppliers most of
18 the risk which appears to be the basis of its reconciliation
19 request. Do you see that reference?

20 A. Yes.

21 Q. I take it your testimony is that PPL cannot pass
22 along all risk to the supplier, only most risk?

23 A. It should be able to pass on all the risks
24 associated with the acquisition of the power and the costs
25 associated with acquiring the power.

1 Q. Then why did you say most risk in your
2 testimony?

3 A. Certainly it cannot pass on all the collection
4 risks and some of those other items that would be associated
5 with getting all of their money for the power that they
6 sold.

7 Q. On page 4 of your testimony, beginning on line
8 9, you describe what I guess is your less preferred
9 alternative proposal, that if price stability is the goal,
10 then default service can be provided with a long-term fixed
11 price for a period of no less than three years and no more
12 than five years. Do you see that reference?

13 A. Yes, I do.

14 Q. Then you state in a little more detail at the
15 bottom of page 5 of your testimony how this would work, and
16 summarizing, and correct me if I'm wrong, that PPL would
17 purchase its POLR supply needs in 2009 and then fix the
18 price for at least three years, maybe up to five years; is
19 that correct?

20 A. Yes. My alternative was to try to balance the
21 issues of -- you know, the concern is prevailing is variable
22 and there's consumer issues associated with that. This is
23 alternatively something that would provide some type of
24 stable price --

25 Q. So the way this would work, we would buy power

1 in 2010 and, if it were five years, then we would fix the
2 price for 2010, '11, '12, '13 and '14; is that correct?

3 A. Well, if that was the scenario that you selected
4 to do -- four years is what you're saying?

5 Q. I said five years.

6 A. You would buy it in 2009 and you would fix it
7 for three years or four years or whatever.

8 Q. Is it your testimony here that that would
9 satisfy the prevailing market price standard in the statute?

10 A. Prevailing from the sense that at least the
11 purchase was made close to the time it started to be
12 consumed. The issue that I have as a supplier, and this is
13 complicated a little bit from the standpoint that --
14 realize, I have zero customers on PPL. If I can take a
15 minute to explain.

16 MR. MacGREGOR: Your Honor, my question was pretty
17 narrowly focused.

18 JUDGE CHESTNUT: Yes. Mr. MacGregor's question was
19 really focusing on the time span there, and he was simply
20 applying your three to five-year alternative proposal.

21 Is that the way you meant it?

22 MR. MacGREGOR: Yes, and I --

23 JUDGE CHESTNUT: If you don't understand that,
24 Mr. Butler, maybe he can rephrase it, but you're kind of
25 straying outside the bounds of the answer there.

1 THE WITNESS: Okay.

2 JUDGE CHESTNUT: But, on the other hand, I do want
3 you to fully express yourself and answer the question
4 completely.

5 BY MR. MacGREGOR:

6 Q. My question is this really. You testified that
7 PPL's proposal here under which we would buy power in 2007,
8 '08 and '09 to provide fixed price service in 2010 does not
9 meet the prevailing market price standard, yet you've
10 proposed an alternative standard here in which PPL would
11 purchase power in 2009 to provide service for 2010 through
12 2014, and you've proposed it as an alternative proposal
13 here, so I presume you believe it satisfies the prevailing
14 market price standard. My question is: if your alternative
15 program satisfies the prevailing market price standard, why
16 doesn't PPL's?

17 A. And I'll explain why, why I view it doesn't or
18 it puts at risk. In my view, as a supplier, for me to enter
19 the market, it would leave significant offatory (ph.) risk
20 if I were to try to buy my power three years in advance and
21 assume I was going to have customers and customers to market
22 to in 2010. So my view is that the prevailing issue is
23 you've got to buy it close to the time you start to consume
24 it. If you want to buy it for three years, you can buy it
25 for three years, but you've got to buy it close to the time

1 you're going to try to consume it, because otherwise it's
2 going to harm the competitive market. I think that's the
3 intent of why they put "prevailing" in the language.

4 Q. So as we sit here today, Mr. Butler, is there a
5 market price for power in 2010?

6 A. Yes, there is.

7 Q. And we can purchase power today or next month or
8 next year --

9 A. Yes.

10 Q. -- for delivery in 2010?

11 A. Yes.

12 Q. And there is a prevailing market price today for
13 that purchase; there's a market for that and there's a price
14 in that market, and that is the prevailing market price for
15 power to be delivered in 2010?

16 A. That's true.

17 Q. Back on page 4 of your direct testimony, lines 9
18 through 10, you describe your alternative proposal, and then
19 at line 11 you say that "...such a price must be set before
20 the rate is offered and cannot change during the period."
21 Do you see that reference?

22 A. (Witness nodding head affirmatively.)

23 Q. Would you agree with me that under PPL's
24 proposal, both of those conditions would be satisfied, in
25 that customers and EGSSs will know the rate before the

1 service is offered, and under PPL's proposal the price will
2 be fixed for 2010?

3 A. I do agree with that.

4 Q. Now, looking at pages 6 and 7 of your direct
5 testimony, beginning at the very bottom of page 6, you state
6 that "...the inclusion of a reconciliation mechanism causes
7 tremendous concern for Dominion Retail." Do you see that
8 reference?

9 A. Uh-huh.

10 Q. And can I refer you to page 6 of your
11 surrebuttal testimony, lines 11 through 12? Do you there
12 testify that "The reconciliation proposed by PPL appears to
13 present minimal rate impact for customers in PPL's service
14 territory"?

15 A. I was responding to testimony that was provided
16 by, I believe, witness Krall that basically said that they
17 felt the reconciliation was going to be relatively de
18 minimis or small.

19 MR. MacGREGOR: Thank you. That's all I have,
20 Your Honor.

21 JUDGE CHESTNUT: Nobody else has indicated they have
22 cross for this witness, so do you want to take a minute
23 before redirect?

24 Off the record.

25 (Discussion off the record.)

1 JUDGE CHESTNUT: Back on the record.

2 Mr. Stewart.

3 MR. STEWART: Thank you, Your Honor. I have one
4 clarifying question.

5 **REDIRECT EXAMINATION**

6 BY MR. STEWART:

7 Q. Mr. Butler, do you recall when Mr. MacGregor was
8 asking you about the risks that PPL would be able to pass on
9 to wholesale suppliers?

10 A. Yes, I do.

11 Q. Do you want to clarify your response as far as
12 what risks you believe PPL will not be able to pass on?

13 A. Well, at this point I believe that they couldn't
14 pass on the actual collection of the charges; the risks
15 associated with that was kind of the main categorization and
16 why I used the word "most" in my testimony.

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

18 JUDGE CHESTNUT: Any recross based on the redirect?

19 MR. MacGREGOR: No, Your Honor.

20 JUDGE CHESTNUT: Thank you very much, Mr. Butler.
21 You're excused.

22 (Witness excused.)

23 JUDGE CHESTNUT: I think we've come to the end of our
24 witness list. Is there anything else before we talk about
25 briefs?

1 Mr. MacGregor?

2 MR. MacGREGOR: Yes, Your Honor, there is actually.

3 The Constellation --

4 JUDGE CHESTNUT: Oh; sorry.

5 MR. MacGREGOR: -- stipulation has two open issues.
6 Part of that stipulation permits PPL to present rejoinder
7 testimony to the redacted testimony of Ms. Philips, so I
8 think Mr. Lewis may want to introduce that testimony,
9 because our testimony responds to it. Then we can proceed
10 to present our testimony, and then Mr. Lewis can cross.

11 JUDGE CHESTNUT: Yes. Sorry, Mr. Lewis, I didn't
12 mean to neglect you.

13 MR. LEWIS: That's quite all right. Your Honor, I
14 thought the way we were going to proceed is that we would
15 have Mr. Cavicchi take the stand and his rejoinder testimony
16 would be presented. I would then get the opportunity to
17 cross-examine him. At that time I believe the surrebuttal
18 testimony of Marjorie Philips would be introduced without
19 objection, but that, depending upon Mr. Cavicchi's
20 rejoinder, Constellation wanted the opportunity to present
21 very limited surrejoinder. We just don't know what he's
22 going to say. I thought that was acceptable to
23 Mr. MacGregor.

24 MR. MacGREGOR: I don't have any problem with any of
25 that, I just thought procedurally we ought to go ahead and

1 stipulate in Ms. Philips' testimony because our testimony
2 responds to it, that's all. That's fine. I don't care.

3 JUDGE CHESTNUT: I don't think it really matters,
4 because we're going to end up at the same place, frankly.

5 MR. MacGREGOR: Either way.

6 JUDGE CHESTNUT: Yes. I just don't want to lose
7 track of these things.

8 MR. LEWIS: Your Honor, may I have marked as
9 Constellation --

10 JUDGE CHESTNUT: Before you do, do you have an extra
11 copy?

12 MR. LEWIS: Yes. May I approach, Your Honor?

13 JUDGE CHESTNUT: Sure.

14 (Document handed to Judge Chestnut.)

15 JUDGE CHESTNUT: Thank you.

16 MR. LEWIS: Your Honor, I have provided to the
17 stenographer two documents. The first document is the
18 surrebuttal testimony of Marjorie R. Philips, which I would
19 ask that Your Honor permit to be marked as Constellation
20 Statement No. 1-SR.

21 JUDGE CHESTNUT: It will be so marked.

22 (Whereupon, the document was marked
23 as Constellation Statement No. 1-SR
24 for identification.)

25 MR. LEWIS: The second document is an exhibit which

1 accompanies that surrebuttal testimony, a multi-page
2 document that we would ask to be marked for identification
3 purposes as MRP-3. Your Honor, for the --

4 JUDGE CHESTNUT: Is this the same MRP-3 that was
5 provided previously?

6 MR. LEWIS: It is except that it has been redacted,
7 and I would also point out --

8 JUDGE CHESTNUT: So that's redacted, too; okay.

9 MR. LEWIS: Yes. And just so the record is clear,
10 the surrebuttal testimony of Marjorie Philips has also been
11 redacted in accordance with the stipulation.

12 JUDGE CHESTNUT: And you're not presenting Scott
13 Miller's testimony at all?

14 MR. LEWIS: That is correct, Your Honor. Nor will we
15 be presenting Exhibits MRP-1 and MRP-2.

16 JUDGE CHESTNUT: Okay.

17 (Whereupon, the document was marked
18 as Constellation Exhibit No. MRP-3
19 for identification.)

20 MR. LEWIS: Your Honor, if it's appropriate at this
21 time, I would move those exhibits into evidence.

22 JUDGE CHESTNUT: Is there any objection?

23 MR. MacGREGOR: No objection.

24 JUDGE CHESTNUT: The documents are admitted.

25 (Whereupon, the documents marked

1 as Constellation Statement No. 1-SR
2 and Constellation Exhibit No. MRP-3
3 were received in evidence.)

4 MR. MacGREGOR: Your Honor, at this time we would
5 recall Mr. Cavicchi to the stand. He appeared yesterday and
6 has been previously sworn.

7 JUDGE CHESTNUT: Yes, and that oath continues,
8 Mr. Cavicchi.

9 MR. CAVICCHI: Yes, Your Honor.

10 Whereupon,

11 JOSEPH CAVICCHI

12 having previously been duly sworn, testified further as
13 follows:

14 MR. MacGREGOR: Your Honor, Mr. Cavicchi's testimony
15 is in response to a certain portion of Ms. Philips'
16 testimony, and to ease the record we went ahead and wrote it
17 up to distribute it, rather than reading it into the record,
18 which I think will probably save 20 minutes of time.

19 JUDGE CHESTNUT: That's fine.

20 MR. MacGREGOR: If I can distribute that, that will
21 perhaps move things along a little bit.

22 JUDGE CHESTNUT: You know I'm in favor of that.

23 (Document handed to Judge Chestnut.)

24 JUDGE CHESTNUT: Thank you.

25 MR. MacGREGOR: It's captioned Reply to Surrebuttal

1 Testimony of Marjorie R. Philips and I would ask that it be
2 marked for identification as PPL Statement 2-S.

3 JUDGE CHESTNUT: It will be so marked.

4 (Whereupon, the document was
5 marked as PPL Statement No. 2-S
6 for identification.)

7 DIRECT EXAMINATION

8 BY MR. MacGREGOR:

9 Q. Mr. Cavicchi, do you have a copy of a document
10 that has been marked for identification as PPL Statement 2-S
11 before you?

12 A. I do, albeit it's not marked PPL 2-S.

13 Q. That's all right. We'll mark it.

14 A. In the interest of honesty here.

15 Q. Is this a copy of your prepared rejoinder
16 testimony?

17 A. Yes, it is.

18 Q. And it was prepared by you or under your direct
19 supervision?

20 A. It was.

21 Q. Is the information contained therein true and
22 correct to the best of your knowledge?

23 A. It is.

24 MR. MacGREGOR: Your Honor, subject to cross-
25 examination, I would move the admission of PPL Statement

FORM 2

1 2-S.

2 JUDGE CHESTNUT: Any objection?

3 MR. LEWIS: No objection.

4 JUDGE CHESTNUT: The document is admitted.

5 (Whereupon, the document marked
6 as PPL Statement No. 2-S
7 was received in evidence.)

8 MR. MacGREGOR: Mr. Cavicchi is available for cross.

9 JUDGE CHESTNUT: Do you want to take a minute to
10 review this, Mr. Lewis, --

11 MR. LEWIS: If I may.

12 JUDGE CHESTNUT: -- or have you seen it already?

13 MR. LEWIS: No, I have not seen it already. Thank
14 you, Your Honor.

15 (Pause.)

16 **CROSS-EXAMINATION**

17 BY MR. LEWIS:

18 Q. Mr. Cavicchi, I'd like to ask you a few
19 questions related principally to the reply that has now been
20 introduced into evidence, but by way of background, in your
21 direct testimony at page 3, you pointed out that the company
22 developed most of the documents for this POLR solicitation
23 based on documents that were approved for use in the RFP
24 processes by the PUC or the Maryland Public Service
25 Commission; is that correct?

1 A. That's correct, Mr. Lewis.

2 Q. Was one of the documents that you relied on the
3 form of Supply Master Agreement that was used in Maryland?

4 A. It was, I believe. It would have been the year
5 2006, though. I believe they have different dates through
6 time.

7 Q. And isn't it fair to say that the provisions of
8 the proposed SMA that you have included in your Exhibit
9 JC-1, that most of those provisions are taken almost
10 verbatim from the form of SMA that was used in Maryland?

11 A. I believe you're correct to indicate that many
12 of the provisions were taken verbatim, albeit the agreement
13 itself and the interlocking elements of the agreement were
14 viewed in detail by counsel for PPL and there were various
15 modifications made in order for the agreement to, one, be
16 cohesive with respect to PPL's proposal, and two, apply to,
17 in fact, what PPL was requesting as part of its request for
18 proposal.

19 Q. Was a reason that PPL used the Maryland form of
20 SMA as a model because -- was one of those reasons because
21 Maryland had been effective in attracting a large number of
22 suppliers to bid in its auction?

23 A. In fact, that wasn't one of the considerations.
24 I think a primary consideration was that the type of RFP
25 Maryland was utilizing was similar to the type of RFP that

1 PPL felt was appropriate for its solicitations, namely, that
2 there are going to be tranches in various customer classes
3 and the structure of the Maryland model supply agreement was
4 very conducive to that type of structure, whereas in
5 contrast, for example, the New Jersey basic generation
6 service auction is quite a bit different and it would have
7 been much more difficult to adapt various portions of that
8 contract. Moreover, the Penn Power proposed contract at the
9 time also had similarities in that there were classes of
10 customers, several different classes, and it fit nicely with
11 PPL's proposal.

12 Q. Did PPL consider how the contractual language
13 might influence the willingness of suppliers to bid in
14 providing the supply?

15 A. I can't say that I was privy to all the legal
16 discussions that they had surrounding the impact of the
17 contractual language on suppliers' willingness to provide an
18 offer, but I do believe it's an important element that was
19 considered throughout the process.

20 Q. In your reply testimony at page 3, lines 17
21 through 19, you state that the two-way default provision is,
22 in effect, a poor contract design; correct?

23 A. I should be quite careful in the language here
24 given I'm not a lawyer by training. The description here
25 applies to the calculation of the termination payment

1 itself. I should be quite clear; default provisions do need
2 to go two ways in that either party can default. If you
3 take another step in a default provision, after you have a
4 default, there is a means by which a remedy can be achieved
5 by the defaulting party. In most instances it's the
6 calculation of some type of termination payment. The
7 language here applies specifically to the termination
8 payment itself and whether the non-defaulting party in the
9 event of a default would be obligated to pay the defaulting
10 party a termination payment when, in fact, the non-
11 defaulting party wasn't responsible for the contract
12 termination.

13 Q. I'll explore that area with you in just a bit,
14 but before I do, isn't it true that the termination payment,
15 the type of termination payment you are now stating is poor
16 contract design, isn't that type -- and I will describe it
17 as the two-way default provision that you've also outlined
18 in your reply testimony. Wasn't that type of provision
19 approved by the Pennsylvania PUC for use by Penn Power when
20 Penn Power obtained its POLR supply?

21 A. First, you made an assumption in the first part
22 of your question that the termination payment itself is poor
23 design, and I'm not arguing that the termination payment
24 itself is poor design, it's the issue of when there's a
25 termination payment, should the non-defaulting party

1 potentially be obligated to pay the defaulting party. I
2 know the issue is somewhat narrow, but I want to be clear.
3 I do believe the termination payment and the default clauses
4 are absolutely appropriate and that there needs to be a
5 means by which the parties, when a contract is breached, can
6 determine how it needs to be resolved.

7 Q. Do you know what provision was used in the case
8 of Penn Power that was recently approved by the Pennsylvania
9 Public Utility Commission?

10 MR. MacGREGOR: I object to that question,
11 Your Honor. The Penn Power order makes it perfectly clear
12 that that decision is not precedential.

13 JUDGE CHESTNUT: I'll allow the answer.

14 THE WITNESS: I have not looked at the compliance
15 filing, so I'm not aware of the actual language that was
16 finally adopted in Penn Power, although I have read the
17 contract and previous submission forms and have noted to
18 myself anyhow that there is a similarly complex provision in
19 there with respect to default that is indicative of all
20 these sorts of provisions, which is that they're very
21 complex and they are meant to somehow fit together, and
22 there are a large number of folks here who probably
23 understand better than me exactly how to fit them together.

24 BY MR. LEWIS:

25 Q. Do you have in front of you Constellation's

1 Exhibit MRP-3?

2 A. I do not.

3 MR. LEWIS: May I approach the witness, Your Honor?

4 JUDGE CHESTNUT: Certainly.

5 (Document handed to witness.)

6 THE WITNESS: Thanks.

7 BY MR. LEWIS:

8 Q. Mr. Cavicchi, to just refresh your recollection,
9 MRP-3 is the redacted version of the red line of the
10 Maryland SMA versus the SMA that PPL is proposing to use in
11 this proceeding. Are you aware that in Maryland the Public
12 Service Commission approved use of the two-way default
13 provision and the termination provisions that are proposed
14 in MRP-3?

15 A. Are you referring to the most recent order
16 pertaining or at any --

17 Q. Or at any time.

18 A. I'm aware in general, yes, that they have
19 allowed this type of provision in their contracts.

20 Q. Are you aware of the practice in Illinois?

21 A. I'm not aware of the practice in Illinois.

22 Q. So if I were to tell you that in Illinois it was
23 approved as well, you would not be in a position to
24 disagree?

25 MR. MacGREGOR: Objection, Your Honor; he says he

1 knows nothing about Illinois, no basis to agree or disagree.

2 JUDGE CHESTNUT: Okay. If you ask him to accept it
3 subject to check, then you can do that and provide a way for
4 him to check it, if possible.

5 BY MR. LEWIS:

6 Q. Are you aware that the two-way provision was
7 approved for use in New Jersey?

8 A. I am aware that the two-way provision was
9 approved for use in New Jersey, and I indicate here that
10 I've read the provision and observed that it's a quite
11 different and more complex provision that outlines several
12 components relating to the rights of the non-defaulting
13 party when there is a two-way provision on the termination
14 payment in existence.

15 Q. Are you aware that the two-way provision was
16 approved for use in Delaware?

17 A. I'm not aware that it was approved for use in
18 Delaware.

19 Q. Is it your testimony that you don't know one way
20 or the other?

21 A. It's my testimony, with respect to Delaware,
22 that I do not know one way or the other.

23 Q. Are you aware that the two-way provision was
24 approved for use in the District of Columbia?

25 A. I am not aware that it was approved for use in

1 the District of Columbia.

2 Q. And similarly, do you have any knowledge of it
3 one way or the other?

4 A. In Delaware, I do not.

5 Q. I'm speaking of the District of Columbia now.

6 A. I'm sorry; the District of Columbia, no, I do
7 not.

8 Q. Now, earlier you testified that it was one of
9 the company's considerations in determining the language for
10 the SMA that it be framed in a way which might attract
11 potential bidders.

12 A. That's correct.

13 Q. That's a poor paraphrase of your testimony, but
14 you can straighten it out for me. Did the company perform
15 any survey to determine whether the absence of that two-way
16 provision might influence the willingness of bidders to
17 participate?

18 A. Not that I'm aware of, no.

19 Q. And have you performed any formal analysis to
20 determine whether the absence of that provision might
21 influence the willingness of bidders to participate?

22 A. No, I have not.

23 Q. On page 3 of your reply to surrebuttal
24 testimony, at lines 7 through 14, you provide a hypothetical
25 in which you suggest that there may be an incentive for a

1 supplier to default if the two-way provision is used; is
2 that correct?

3 A. That's correct.

4 Q. And with your permission, I'd just like to walk
5 through your logic of what happens.

6 MR. LEWIS: And we'll try to do this quickly,

7 Your Honor.

8 BY MR. LEWIS:

9 Q. Your hypothetical assumes that the market price
10 of electricity declines; correct?

11 A. That's correct.

12 Q. So the market price at that time is below the
13 contract price.

14 A. That's correct.

15 Q. And in a two-way provision, what happens then
16 upon termination?

17 A. My understanding is there is a chance that if a
18 supplier defaulted in that situation, the termination
19 payment as calculated could result in the non-defaulting
20 party, in this instance the buyer, becoming obligated to pay
21 the defaulting supplier some sum of money.

22 Q. That's correct. In that situation, under the
23 contract that's been proposed, the form of SMA that's been
24 included in JC-1, are there not step-up rights?

25 A. There are step-up rights in the contract; that's

1 correct.

2 Q. And if the market price is below the contract
3 price, would there not be an incentive for other suppliers
4 to step up?

5 A. It's likely the case that there would be an
6 incentive.

7 Q. And if, in fact, those suppliers did step up,
8 wouldn't the termination provision of the contract operate
9 such that no termination payment would then be due?

10 A. I can't state with absolute certainty whether a
11 termination payment would be due or not, but I would state
12 that all else equal, it would lead toward a termination
13 payment not being due, although I'll note that in all
14 instances where I'm familiar with the two-way provision,
15 there's a considerable amount of complexity, and my real
16 point here was it concerned me that we change one line of a
17 contract that had several interlocking clauses. Obviously,
18 as our discussion has ensued, I'm quite aware that there are
19 these sorts of provisions. I'm not arguing that the
20 provisions themselves are necessarily inappropriate, just
21 that they create a concern here where there's an absence of
22 perhaps other language that might be appropriate.

23 Q. Let's just address that very quickly. Do you
24 understand that the purpose of the two-way provision is to
25 make the forward value of the contract independent of any

1 factors except for the movement of the market?

2 A. I do not think I do understand that. Are you
3 talking about an accounting issue? Is that correct,
4 Mr. Lewis?

5 Q. Not an accounting issue. What I'm saying is
6 that -- let's take a two-way provision real quickly. In the
7 case of a one-way provision, and as the SMA is proposed in
8 JC-1, whether or not the forward value is realized depends
9 on whether the party is in default; correct?

10 (Alarm sounded.)

11 A. Can you read back the question, or do you want
12 to restate it?

13 JUDGE CHESTNUT: I'm not sure where you are. Was
14 there a question outstanding at this point?

15 MR. LEWIS: Yes, there was, Your Honor.

16 BY MR. LEWIS:

17 Q. The question I had is, in the case of a two-way
18 provision, isn't it true that whether the party realizes the
19 forward value of the contract depends upon who is in
20 default?

21 A. That's correct.

22 Q. And in the case of a two-way provision, whether
23 the party realizes the forward value is independent of
24 whether and who is in default; is that correct?

25 A. I think generally speaking that's correct,

1 although there often are so many clauses in these sections
2 of the contracts, it's hard to sit there and just read it
3 and say exactly what would happen in the event. I'll give
4 you an example. To my recollection, in New Jersey there is
5 specific language where if the termination payment ended up
6 being due from the non-defaulting party to the defaulting
7 party, there's some additional protections that the non-
8 defaulting party might be able to retain part of it at its
9 leisure, it seems -- not its leisure, but based on
10 reasonable, I presume, arguments that they should be able to
11 retain part of it.

12 Q. Thank you, Mr. Cavicchi. You're welcome to look
13 at the contract, but would it be fair to describe the events
14 of default provisions to include both technical defaults and
15 performance defaults?

16 A. Yes.

17 Q. And, therefore, under a one-way provision, in
18 the event of a technical default, isn't it true that a party
19 could lose the forward value of the contract?

20 A. Subject to the operation of the provision, I
21 guess that would potentially be the case, albeit I'm not
22 sure in this contract -- there are often clauses that permit
23 the buyer, in the event of a supplier default, to be
24 lenient; I don't know how to describe it, Mr. Lewis, but
25 there's some discretion I guess is the term.

1 Q. Do you know how rating agencies view these types
2 of clauses?

3 A. Rating agencies? No, I do not.

4 Q. Do you know how the credit markets view these
5 types of clauses?

6 A. No, I do not.

7 Q. You are aware, are you not, that several banks
8 or affiliates of banks have participated as bidders in
9 auctions around the country for power?

10 A. I am aware of that fact.

11 Q. Are you aware that Congress recently passed the
12 Financial Netting Improvements Act of 2006, which may affect
13 the validity of one-way settlement clauses?

14 A. I am not aware of that.

15 Q. Are you aware of that Act at all?

16 A. I am not.

17 Q. Just to complete the line of questioning, I take
18 it, therefore, you are not aware of whether the presence of
19 the one-way clause would affect the ability of a potential
20 bidder to get credit or to be appropriately rated in
21 connection with its bid in this proceeding?

22 A. I am not familiar.

23 MR. LEWIS: I have no further questions at this time
24 of Mr. Cavicchi.

25 JUDGE CHESTNUT: Does anybody else have any questions

1 for this witness?

2 (No response.)

3 JUDGE CHESTNUT: Do you want to take a minute and see
4 about redirect then?

5 MR. MacGREGOR: I don't think I have anything,
6 Your Honor. If I could just have a minute?

7 (Pause.)

8 MR. MacGREGOR: I have no redirect, Your Honor.

9 JUDGE CHESTNUT: Thank you very much, Mr. Cavicchi.
10 You're excused.

11 THE WITNESS: Thank you, Your Honor.

12 (Witness excused.)

13 MR. LEWIS: Your Honor, I would like to present the
14 surrejoinder of Marjorie Philips, but if I may, may I have
15 one moment with her so that we can condense her testimony?

16 JUDGE CHESTNUT: Sure.

17 MR. MacGREGOR: Your Honor, we also have some very
18 short testimony from Mr. Kleha, and perhaps it would be best
19 to hear both of those testimonies, because Ms. Philips might
20 want to respond to that as well, and do it all at once.

21 JUDGE CHESTNUT: Okay.

22 MR. HASSELL: Mr. Kleha, of course, has been
23 previously sworn, Your Honor.

24 JUDGE CHESTNUT: Yes. Thank you.

25 MR. KLEHA: Good morning, Your Honor.

1 Whereupon,

2 JOSEPH M. KLEHA

3 having previously been duly sworn, testified further as
4 follows:

5 MR. MacGREGOR: Mr. Hassell is going to do the
6 questioning, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. HASSELL:

9 Q. Mr. Kleha, have you had the opportunity to
10 review the redacted surrebuttal testimony of Ms. Philips
11 related to the transmission issues in her testimony?

12 A. Yes, I have, I've had an opportunity to give it
13 a cursory review. I have not, however, had an opportunity
14 to give it a full review at this point in time. Ms. Philips
15 does discuss some of the elements of the change to the SMA
16 that are required because of the proposed modifications to
17 PPL's proposal under its Competitive Bridge Plan and we will
18 be reviewing that in detail.

19 Q. Am I correct that Ms. Philips' testimony has
20 attached to it a list of various proposed changes to the
21 SMA?

22 A. Yes, it does. There were several sections, and
23 she may correct me where I miss them here. In particular,
24 there are two exhibits to the SMA, Exhibit D and Exhibit H,
25 which relate to transmission, and I believe it is Article

1 2.3 and 2.4 of the SMA that also relate to transmission, as
2 well as some others that may be in there, and those sections
3 have to be reviewed in detail because there were significant
4 modifications to them.

5 Q. You do acknowledge that certain changes do need
6 to be made to the SMA as a result of the changes on the
7 transmission --

8 A. Yes. Yes. Those --

9 Q. How does PPL Electric propose to deal with those
10 proposed changes, the need for those proposed changes?

11 A. Well, upon review we will attempt to determine
12 if the proposed changes that Ms. Philips reflects in her
13 exhibit provide for changes that are consistent with my
14 testimony in this proceeding with regard to proposed
15 transmission service under the TCS. The SMA clearly
16 indicates that the delivery point for energy from the
17 supplier is the PPL zone, and from that standpoint PPL
18 Electric will be responsible for network integration
19 transmission service within its zone and from the delivery
20 point to its customers. The supplier, on the other hand,
21 will be responsible for transmission service for getting the
22 power to the PPL border, to the point of delivery. In
23 addition to that, the supplier will be responsible for all
24 ancillary services, whether they're outside of the PPL zone
25 or within the PPL zone. From that standpoint, the SMA will

1 have to be modified to reflect those changes and to meet
2 those principles.

3 Q. Mr. Kleha, are you aware of the stipulation that
4 has been entered into with Constellation in this proceeding
5 related to doing the changes to the SMA?

6 A. Yes, I am. I believe we filed it this morning.
7 That stipulation provides that PPL Electric and
8 Constellation, as well as other interested parties, will
9 convene to review the proposed changes to the SMA, and to
10 the RFP where necessary, to reflect the proposed changes to
11 the transmission service portion, and that we will attempt
12 to reach consensus on all of those issues. To the extent we
13 resolve it to a consensus point, the consensus position will
14 be filed within PPL's compliance filing. If we do not reach
15 consensus, then the compliance filing will reflect PPL's
16 proposal and the parties will have the opportunity to file
17 comments at that time.

18 Q. Do you have anything further to add, Mr. Kleha?

19 A. No, I do not.

20 MR. HASSELL: I believe we are completed, Your Honor.

21 JUDGE CHESTNUT: Thank you.

22 (Pause.)

23 MR. LEWIS: I have no questions of Mr. Kleha.

24 JUDGE CHESTNUT: Thank you, Mr. Lewis.

25 Thank you, Mr. Kleha, you are excused again.

1 THE WITNESS: Thank you.

2 (Witness excused.)

3 JUDGE CHESTNUT: Does that take us to Ms. Philips at
4 this point?

5 MR. LEWIS: Yes.

6 JUDGE CHESTNUT: Raise your right hand.

7 Whereupon,

8 **MARJORIE R. PHILIPS**

9 having been duly sworn, testified as follows:

10 JUDGE CHESTNUT: Please sit down and give and spell
11 your name for the record.

12 THE WITNESS: Sure. It's Marjorie, M-a-r-j-o-r-i-e,
13 R. Philips, P-h-i-l-i-p-s.

14 JUDGE CHESTNUT: Go ahead, Mr. Lewis.

15 **DIRECT EXAMINATION**

16 BY MR. LEWIS:

17 Q. Ms. Philips, preliminarily, by whom are you
18 employed?

19 A. Constellation Energy Commodities Group, Inc.

20 Q. And in what capacity?

21 A. I am Vice President of Regulatory Affairs.

22 MR. LEWIS: Your Honor, I would just note for the
23 record that Ms. Philips' educational and employment
24 background have been described in her surrebuttal testimony.

25 JUDGE CHESTNUT: Fine. I don't think there's any

1 dispute about it, is there?

2 MR. LEWIS: No.

3 MR. MacGREGOR: No, actually there's not, Your Honor,
4 we are not challenging Ms. Philips as an expert. I would
5 state for the record that her résumé indicates that she has
6 a law degree, and that's fine, but I assume she is not being
7 presented to testify on any legal matters but only on expert
8 factual issues.

9 JUDGE CHESTNUT: I don't see why she can't testify to
10 legal matters since she is a lawyer.

11 MR. MacGREGOR: I would object to that, Your Honor.
12 The law is for Your Honor to determine and for the parties
13 to file a brief --

14 JUDGE CHESTNUT: She can give her understanding of
15 it. But why are we talking about this here --

16 MR. MacGREGOR: I don't know.

17 MR. LEWIS: I was being entertained.

18 MR. MacGREGOR: It's an interesting digression.

19 BY MR. LEWIS:

20 Q. Ms. Philips, let's begin with the testimony that
21 Mr. Kleha just provided. Did his testimony clarify how the
22 transmission charges would be handled?

23 A. No, with all due respect, it actually -- I'm
24 even more confused. In PJM, I would assume that when in the
25 testimony PPL said that they would be buying transmission on

1 behalf of its customers, that the service that they would
2 purchase is firm network service, because that's the most
3 solid delivery that you can purchase and that's, of course,
4 what they're using today, and that service doesn't have --
5 it's actually much broader than what Mr. Kleha testified.
6 When you buy firm network service, that entitles you to take
7 energy from anywhere, once it's on the PJM system, to the
8 PP&L zone, so, in fact, when they take energy -- when they
9 take this service, they can accept energy anywhere in the
10 PJM zone at no additional cost and it gets delivered to the
11 PP&L zone. Therefore, what the supplier would appropriately
12 be responsible for are any charges to import that energy
13 into PJM. And I'm confused because the statement was,
14 "We'll take service from the PPL zone to our customers," and
15 that is a distribution service that isn't even governed by
16 the PJM rules. So, actually, I'm more confused now than
17 ever.

18 Q. Is it your understanding that pursuant to the
19 stipulation, that the company will meet with you and others
20 in any attempt to work that out?

21 A. Yes. I appreciate their offer to do so, and we
22 will willingly participate with them.

23 Q. Turning now to the reply of Mr. Cavicchi. Are
24 you familiar with the provisions he describes in his reply
25 as the two-way default provisions?

1 A. Yes, I am.

2 Q. In his reply, he suggests that those provisions
3 are not common. Do you know whether they are common in the
4 industry?

5 A. I would have to disagree violently. The
6 standard agreement we use in the industry is called the
7 Edison Electric Agreement. Almost all transactions today,
8 other than the kinds we're talking about here, are done
9 under that standard agreement. We also often use ISDA
10 agreements in our business. Again, that language is there.
11 Also, in most of the procurements in the mid Atlantic, New
12 Jersey, Maryland, Delaware, District of Columbia, and in
13 Illinois, which is in PJM, they all have this provision and
14 it is for this specific load following product.

15 Q. Do you know how the credit agencies view these
16 provisions?

17 A. They view them as very critical, and actually
18 they're beneficial for both parties, not just one or the
19 other, and that's because what they do is they look at the
20 forward value of the contract and they realize that even if
21 there is a termination, both parties are preserving the
22 value of the contract; that is, if, in fact, the supplier is
23 the defaulting party, and the buyer can go out and purchase
24 energy at a cheaper price, the buyer is still protected in
25 that it will not pay the seller unless it gets a benefit

1 here, which is to say its price comes in under that
2 contract. So it protects the buyer in that when the credit
3 agency looks at its contracts, that the buyer will never be
4 obligated to pay more than that, and it protects the seller
5 because it guarantees the seller that it will have this
6 forward income.

7 And if I might add a little bit, I understand that
8 PPL has an issue because somehow it seems wrong that the
9 defaulting party would get paid, but, in fact, whether we
10 like it or not, this is a commodities contract and it is
11 treated as a forward contract, and that it is very standard
12 in the business at this point, as I mentioned, it's very --
13 PP&L would actually be the exception, not the rule, except
14 in the northeast cases that it cited, in not having this
15 provision, which just looks at preserving the balance of the
16 agreement and doesn't look at who's defaulting or non-
17 defaulting. Also, if I could just point out that the party
18 that is non-defaulting has the right to waive the default
19 and not enforce the provisions.

20 Q. In your view, would the presence of a two-way
21 default provision enhance or detract from the willingness of
22 suppliers to participate in the bidding?

23 A. It may detract from their willingness to
24 participate. It, more importantly, will add to the cost to
25 the consumers, because all of the folks that are similarly

1 situated as us, we assign a cost to everything, and if this
2 hurts our credit, which it would because we no longer have
3 that two-way guarantee, we're going to have to add a
4 premium.

5 I might add that it's particularly unfair because my
6 competitors, such as Morgan Stanley and J. Aron, will be
7 able to take advantage of this new Act where a one-way
8 settlement is unenforceable against them, and so I am
9 actually going to be at a disadvantage because maybe they
10 don't have to price that risk in the way I do, and so it
11 really makes sense, you want to get as -- but I may manage
12 the commodity pricing better. So you really want everybody
13 to be on an equal playing field, so that's why it might
14 affect price and it might affect willingness to participate.

15 Q. Ms. Philips, you just referred to an Act. Is
16 that the Financial Netting Improvements Act of 2006?

17 A. Yes, it is.

18 Q. Just so the record is clear, if the SMA includes
19 a one-way provision, would that be more or less attractive
20 for suppliers?

21 A. It would be much less attractive.

22 MR. LEWIS: I have no further questions.

23 JUDGE CHESTNUT: Mr. MacGregor or Mr. Hassell?

24 MR. MacGREGOR: May we have a minute, Your Honor?

25 JUDGE CHESTNUT: Certainly.

1 (Pause.)

2 MR. HASSELL: Your Honor, while Mr. MacGregor is
3 determining whether there is anything, I have just a couple
4 of questions for Ms. Philips.

5 JUDGE CHESTNUT: Okay.

6 **CROSS-EXAMINATION**

7 BY MR. HASSELL:

8 Q. Ms. Philips, are you aware of the testimony that
9 has been presented on behalf of the Office of Small Business
10 Advocate by Mr. Brian Kalcic?

11 A. I would need to be refreshed on it.

12 Q. Mr. Kalcic presented testimony indicating a
13 concern that if prices in the bid process are compared on an
14 energy basis excluding transmission, that there could be
15 actual price distortions where transmission costs that might
16 result for one bidder would be higher than the transmission
17 costs related to another bidder.

18 A. I actually don't know where that comes from. In
19 my experience, the issue with transmission costs and the
20 reason that we advocate them being borne by the buyer is
21 that it usually reduces the price that we would offer, and
22 I'll explain why. There is risk associated with
23 transmission rates changing, and that's a -- generally the
24 buyer is able to pass through all the costs of the change in
25 rates to its customers, and, therefore, they don't pay a

1 premium. If I were to take the risk as a supplier, I'm
2 going to have to add a risk premium for these changes in
3 rates or changes in related charges because I don't know
4 what they are and I'm bidding, you know, three years behind.
5 And so we recommend, why do you want my risk premium added
6 to this? In fact, when they are transmission charges and
7 transmission-related charges, in almost all cases the Public
8 Utility Commissions have let them be passed through to
9 customers directly and that way they don't have to pay the
10 premium and they get the best price. We've just found that
11 allocation of risk reduces prices to consumers.

12 MR. MacGREGOR: I do have one question, Your Honor.

13 JUDGE CHESTNUT: Certainly. Is Mr. Hassell done?

14 MR. MacGREGOR: I don't know if he's done or not; I'm
15 sorry.

16 (Pause.)

17 BY MR. HASSELL:

18 Q. Let me ask you this. Would you agree that under
19 the PPL proposal, suppliers would bear congestion risk?

20 A. Absolutely.

21 MR. HASSELL: Your Honor, that's all.

22 JUDGE CHESTNUT: Mr. MacGregor.

23 MR. MacGREGOR: Yes, Your Honor, just a couple of
24 questions.

25 **CROSS-EXAMINATION**

1 BY MR. MacGREGOR:

2 Q. It seems to me the bottom line here is that
3 you're saying that you might not bid on this contract, or,
4 if you did bid on this contract, you would likely increase
5 your price, and you would have difficulty competing and
6 difficulty getting credit unless this contract contains a
7 provision that allows you to be paid for defaulting under
8 the contract. Is that your testimony essentially summarized
9 here?

10 MR. LEWIS: Your Honor, I would object to the
11 characterization.

12 JUDGE CHESTNUT: Well, she has the chance to respond.

13 THE WITNESS: Just repeat it, would you?

14 BY MR. MacGREGOR:

15 Q. Yes, I would. I'm just trying to summarize here
16 to understand the issue.

17 A. Yes, I'm sorry, I do remember the question now.
18 I blanked. It is my testimony that the defaulting party
19 would be paid in accordance with prevailing industry
20 practices.

21 MR. MacGREGOR: Thank you, Your Honor. That's all I
22 have.

23 JUDGE CHESTNUT: Does anybody else have any cross-
24 examination for this witness?

25 (No response.)

1 JUDGE CHESTNUT: Mr. Lewis, do you want to see if you
2 have redirect?

3 (Pause.)

4 MR. LEWIS: No further questions, Your Honor.

5 JUDGE CHESTNUT: Thank you very much. You're
6 excused, Ms. Philips.

7 (Witness excused.)

8 JUDGE CHESTNUT: Does anybody have anything else then
9 before we talk about the briefs?

10 (No response.)

11 JUDGE CHESTNUT: As indicated, main briefs are due
12 January 12, reply briefs are due January 19. We went over
13 this previously at the pre-hearing conference. I would like
14 all of you to reflect, now that we've completed the
15 evidentiary hearings, on what your actual position is
16 finally going to be here, and perhaps there is some room for
17 resolution. If not, then I'll expect to see the briefs.
18 If, however, you decide that you would like to slip the
19 briefing schedule in order to have some settlement talks,
20 that's certainly okay.

21 Mr. Gray.

22 MR. GRAY: Your Honor, just to be clear, those dates
23 are hard copy in-hand dates to you in Philadelphia; correct?

24 JUDGE CHESTNUT: You know, I'm embarrassed to admit
25 that I can't remember what I said before, but yes, if that's

1 what I said. I do want your briefs electronically in an
2 editable form, and keep in mind what I told you before about
3 them; keep it simple. Now, when I say keep it simple, you
4 cannot summarize it enough. I especially want to have some
5 kind of summary from you of what your client's position is
6 so I can cut and paste that instead of coming up with it
7 myself. Other things to keep in mind: short paragraphs,
8 lots of white space; good table of contents. I can't stress
9 the table of contents thing enough, because that's an
10 outline for you to use and for the reader to use so they
11 have a context in which to put your issues. But at this
12 point, perhaps you can get together and see what issues
13 really do need to be developed since I know there's been
14 substantial movement in terms of the original filing.

15 Does anybody have any other questions about the
16 briefs or anything else with respect to the conduct of this
17 proceeding?

18 MR. MacGREGOR: Your Honor, I don't know if it's
19 necessary or not, but if it, I would like to ask that we
20 keep the record open. I do expect at least one more and
21 maybe a couple more stipulations.

22 JUDGE CHESTNUT: That would be fine. I also
23 recognize that there are outstanding at least one, possibly
24 more, data requests, so at this point my inclination is to
25 close the record when I receive your reply briefs.

1 Is there anything else?

2 (No response.)

3 JUDGE CHESTNUT: Then let me say what a pleasure it
4 was to see all of you and to have these hearings. It was
5 much less of a nightmare than I had anticipated. If I can
6 help in any way, please don't hesitate; if you have a
7 procedural question or if you come into a problem with
8 respect to your briefs or anything else, let me know. I'm
9 not going to actually be in the office till January 3, and,
10 of course, I'm not going to be reviewing my e-mail or
11 thinking about this, but if anything else comes up -- you
12 know, if something urgent does come up, to be honest, I
13 probably will check it occasionally. If not, let my
14 secretary know and she'll contact me.

15 Otherwise, I wish you all a Happy Holiday and good
16 luck to you in your personal and professional lives.

17 (Whereupon, at 12:05 p.m., the hearing was
18 adjourned.)

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C E R T I F I C A T E

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

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