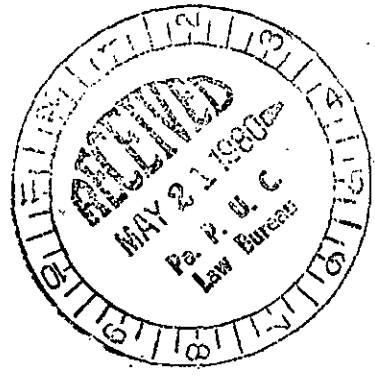
B-800526 75

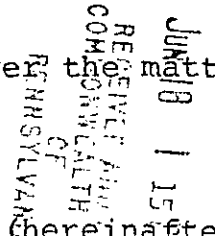
COMMONWEALTH COURT OF PENNSYLVANIA

PHILADELPHIA ELECTRIC COMPANY, Petitioner	:	No. 1211
v.	:	Commonwealth Court
PENNSYLVANIA PUBLIC UTILITY COMMISSION, Respondent	:	Docket 1980



PETITION FOR REVIEW

TO THE HONORABLE, THE PRESIDENT JUDGE AND JUDGES OF THE COMMONWEALTH COURT OF PENNSYLVANIA:



1. This Court has jurisdiction over the matter by reason of 42 Pa. C.S.A. Section 763(a)(1).

2. Philadelphia Electric Company (hereinafter "PECO"), Petitioner, is a regulated public utility rendering electric, gas and steam service in a service territory of 2,255 square miles with a population of approximately 3.9 million. The Company renders electric service, the rates of which are at issue in this Petition, to a total of approximately 1.2 million retail customers in Philadelphia and surrounding territory in Bucks, Chester, Delaware, Montgomery and York Counties. PECO's main office is located at 2301 Market Street, Philadelphia, Pennsylvania (19101).

No. 1211 C. D. 1980
Date of Filing: May 16, 1980

Form 1514(a)(Rev. 4-21-77)

NOTICE OF FILING PETITION FOR REVIEW
UNDER
PENNSYLVANIA RULE OF APPELLATE PROCEDURE 1514(a)

To the clerk or prothonotary of the court or the head, chairman, deputy or secretary of the other government unit which made the determination to which the enclosed papers relate:

A Petition for Review, a copy of the cover page of which and the full text of the certificate of service accompanying which are enclosed, of a determination of your court or other government unit has been filed in the appellate court named in the caption of the Petition for Review. The date of filing and the docket number assignment in the appellate court are endorsed on the enclosed cover page of the Petition for Review.

/X/ If the preceding box has been checked it has been preliminarily determined that under the applicable law the question or questions raised by the Petition for Review may be determined in whole or in part upon the record before your court or other government unit. Accordingly, under Pa. R. A. P. 1541, 1951 and 1952, the service of a copy of the Petition for Review upon you (similar to the service of a writ of certiorari from an appellate court under the prior practice) has the effect of directing you to transmit the record in the matter to the prothonotary of the appellate court according to the following instructions:

1. The record consists of the papers specified in Pa. R. A. P. 1951.

2. The record should be prepared and certified as specified in Pa. R. A. P. 1952.

3. If Pa. R. A. P. 1952(a) is applicable (i.e., if the petition for review relates to a quasijudicial order as defined in Pa. R. A. P. 102) the court or agency should, if an adjudication or opinion has not been filed, prepare and file of record the opinion required by Pa. R. A. P. 1925. Also in such case Pa. R. A. P. 1701 may be applicable and may prevent your court or other government unit from

proceeding further in the matter.

4. The record must be transmitted to the appellate prothonotary within 40 days after the date the Petition for Review was served upon you.

5. The address to which you are to transmit the record in this case is set forth in Annex A to this Notice. Annex A also sets forth the personnel who are available to assist you with any inquiries you may have concerning your responsibilities in this case.

Copies of Pa. R. A. P. 102, 1541, 1701, 1925, 1951 and 1952 are attached.

A copy of this Notice is being concurrently furnished to all parties or their counsel, if any, indicated on the Proof of Service accompanying the Petition for Review. The appearance of any such counsel has been noted on the record of the appellate court under Pa. R. A. P. 1514(d). Counsel have 30 days after the date on which the Petition for Review was filed within which to praecipe the prothonotary of the appellate court (which must be received at the address set forth in Annex A in order to be timely) to strike off or correct the record of appearances.

If the Petition for Review contains or has endorsed upon it a notice to plead a respondent may answer or otherwise plead as prescribed by Pa. R. A. P. 1515 and 1516. Otherwise no further pleading will be received, but any appropriate motion under Pa. R. A. P. 1972 or otherwise may be made.

If appropriate, there is also enclosed with this Notice the receipt for the filing fee, a request for the payment or supplementation of the filing fee, evidence of action on an application to proceed in forma pauperis under Pa. R. A. P. 553, etc.

cc: Parties or counsel named in Proof of Service relating to the Petition for Review.

Administrative Office of Pennsylvania Courts.

Attach to:
Form 907 (b)
1112 (b)
1122
1123 (a)-1
1311 (b)
1322
1514 (a)
1934
2571/2572

ANNEX A
Commonwealth Court

Address all written communications to:

Office of the Prothonotary
Commonwealth Court of Pennsylvania
Sixth Floor, South Office Building
Harrisburg, Pennsylvania 17120

Filings may be made in person at the above office (except Saturdays, Sundays and legal holidays observed by Pennsylvania courts) between 9 A.M. and 4 P.M.

Information may be obtained from the following:

Francis Barbush
Chief Clerk of the Commonwealth Court of Pennsylvania
(717) 787-5884
(717) 787-8836

Pleadings and similar papers (but not paperbooks) may also be filed as follows:

Office of the Prothonotary
Commonwealth Court of Pennsylvania
Philadelphia Filing Office
Room 231-32 City Hall
Philadelphia, Pennsylvania 19107

The hours of the Philadelphia Filing Office are 9 A.M. to 5 P.M.

Under Pa. R.A.P. 3702 writs or other process issuing out of the Commonwealth Court shall exit only from the Harrisburg Office and shall be returnable thereto.

B-8005267

B-8005267

PARK TOWNE AND MADWAY ENGINEERS AND CONSTRUCTORS, Petitioners	:	IN THE COMMONWEALTH COURT OF PENNSYLVANIA
v.	:	
PENNSYLVANIA PUBLIC UTILITY COMMISSION, Respondent	:	No. 1111 C. D. 1980
PHILADELPHIA ELECTRIC COMPANY, Petitioner	:	IN THE COMMONWEALTH COURT OF PENNSYLVANIA
v.	:	
PENNSYLVANIA PUBLIC UTILITY COMMISSION, Respondent	:	No. 1211 C. D. 1980

SUPPLEMENTAL CERTIFICATION OF THE RECORD

TO THE HONORABLE, THE PRESIDENT JUDGE AND JUDGES OF THE COMMONWEALTH COURT:

PENNSYLVANIA PUBLIC UTILITY COMMISSION DOES HEREBY CERTIFY THAT the attached is the supplemental record of said Commission in the matter of the petitions for review filed in the above-captioned matters from the findings, determination and order of the Commission in the Investigation of Philadelphia Electric Company, Docket No. R.I.D. 438, said supplemental record consisting of the following:

Order of the Commission, entered February 5, 1979;
Order of the Commission, entered March 9, 1979;
Order of the Commission, entered March 9, 1979;

IN TESTIMONY WHEREOF, PENNSYLVANIA PUBLIC UTILITY COMMISSION has caused its seal to be hereunto affixed, duly attested by its Assistant Secretary this sixteenth day of June, 1981.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

ATTEST:

Joanne Rossi

Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG, PA. 17120

June 18, 1980

IN REPLY PLEASE
REFER TO OUR FILE
B-80052675

G. Ronald Darlington, Prothonotary
Commonwealth Court of Pennsylvania
Sixth Floor, South Office Building
Harrisburg, Pennsylvania 17120

In re: Petition of Philadelphia Electric Company
No. 1211 C. D. 1980
~~Commonwealth~~ Court of Pennsylvania

Dear Mr. Darlington:

Enclosed is the certification of the record in the above captioned case. The record was certified to the Court in the Petition of Park Towne and Madway Engineers and Constructors, No. 1111 C. D. 1980.

Very truly yours,

Carol J. Barnes
Appeals Clerk

cc: Robert H. Young, Esq.
Edward J. Riehl, Esq.
Martha Bush, Esq.
Charles J. Streiff, Esq.
Mark B. Segal, Esq.
Andre C. Dasent, Esq.

PHILADELPHIA ELECTRIC COMPANY, Petitioner	:	IN THE COMMONWEALTH COURT OF PENNSYLVANIA
v.	:	
PENNSYLVANIA PUBLIC UTILITY COMMISSION, Respondent	:	No. 1211 C. D. 1980

CERTIFICATION OF THE RECORD

TO THE HONORABLE, THE PRESIDENT JUDGE AND JUDGES OF THE COMMONWEALTH COURT:

PENNSYLVANIA PUBLIC UTILITY COMMISSION DOES HEREBY CERTIFY THAT the record in the Petition for Review of Philadelphia Electric Company from the findings, determination and orders of the Commission in the Investigation of Philadelphia Electric Company, Docket No. R.I.D. 438, has been duly certified to your Honorable Court in the matter of the Petition for Review of Park Towne and Madway Engineers and Constructors, No. 1111 C. D. 1980.

IN TESTIMONY WHEREOF, PENNSYLVANIA PUBLIC UTILITY COMMISSION has caused its seal to be hereunto affixed, duly attested by its Assistant Secretary this eighteenth day of June 1980.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

ATTEST:

Joanne Kassi

Assistant Secretary

Johnson

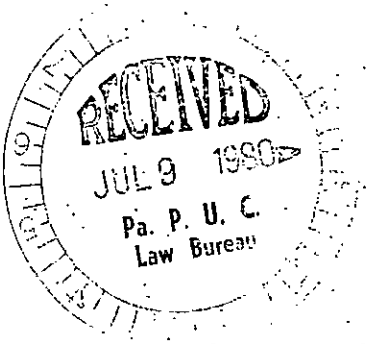
B-800526 71
B-800526 75

Commonwealth Court of Pennsylvania

HARRISBURG, PENNSYLVANIA 17120

OFFICE OF THE PROTHONOTARY

July 8, 1980



Thomas P. Gadsden, Esq.
Morgan, Lewis & Bockius
123 South Broad Street
Philadelphia, Pa. 19109

Re: Philadelphia Electric Company
v. Pa. P.U.C.
No. 1211 C. D. 1980

Park Towne and Madway Engineers & Constructors
No. 1111 C. D. 1980

Dear Mr. Gadsden:

I am in receipt of your request for an extension of time to file your brief in the above-captioned matter.

Since opposing counsel has no objection, I shall grant same to August 27, 1980.

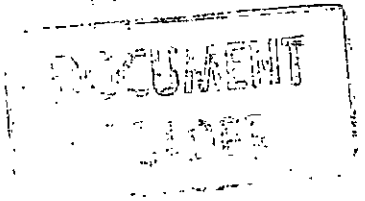
Very truly yours,

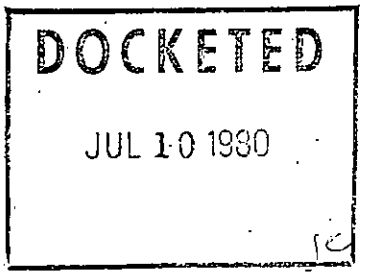
Francis C. Barbush

Francis C. Barbush
Chief Clerk

FCB:slr

cc: All parties of record





COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG, Pa. 17120

September 15, 1980

IN REPLY PLEASE
REFER TO OUR FILE

B-80052675
B-80052671

Francis C. Barbush, Chief Clerk
Commonwealth Court of Pennsylvania
620 South Office Building
Harrisburg, PA 17120

Re: Philadelphia Electric Company
v.
Pennsylvania Public Utility Commission

No. 1211 Commonwealth Docket 1980

* * *

Park Towne and Madway Engineers & Constructors
v.
Pennsylvania Public Utility Commission

No. 1111 Commonwealth Docket 1980

Dear Mr. Barbush:

In accordance with the Rules of Appellate Procedure and your granting of an extension of time, Philadelphia Electric Company and Park Towne, petitioners in the above-captioned appeals, filed their briefs on/about August 27, 1980.

Respondent, The Pennsylvania Public Utility Commission, requests an extension of time for the filing of briefs in these appeals from September 26, 1980 to October 26, 1980. This extension of time, if granted, should also apply to intervenors in both appeals.

This is the first request by the Commission for an extension of time for filing briefs. I have discussed this request with counsel for both petitioners and with counsel for each intervenor, and they have no objection to the requested extension.

Very truly yours,

Albert W. Johnson III
Assistant Counsel

AWJ/jem

B-80052671

COMMONWEALTH COURT OF PENNSYLVANIA

PARK TOWNE AND MADWAY ENGINEERS AND CONSTRUCTORS,	:	NO. 1111
Petitioners	:	
vs.	:	
PENNSYLVANIA PUBLIC UTILITY COMMISSION,	:	
Respondent	:	COMMONWEALTH DOCKET 1980

BRIEF FOR PETITIONERS

JERROLD V. MOSS, ESQUIRE
Attorney for Park Towne and
Madway Engineers and Constructors
Attorney I.D. No. 01428

****

FELL, SPALDING, GOFF & RUBIN
1800 Penn Mutual Tower
510 Walnut Street
Philadelphia, Pennsylvania 19106
215-925-8300

TABLE OF CONTENTS

STATEMENT OF JURISDICTION

This Honorable Court has jurisdiction over the matter by reason of 42 Pa.C.S.A. §763(a)(1).

ORDERS FROM WHICH REVIEW IS SOUGHT

Order of the Pennsylvania Public Utility Commission Entered February 5, 1979

...2. That the Respondent is authorized to file within 30 days after the date of entry of this Order, tariff revisions consistent with our above order, to provide total annual operating revenues of $1,150,100,000 (exclusive of revenues from the State Tax Adjustment Surcharge and the Fuel Adjustment Clause); as computed and allowed herein at the level of operations ending December 31, 1977.

3. That the additional revenues allowed herein in the amount of $78,894,000 be allocated to customer classes, as designated by separate tariff schedules, on an equal percentage of increase basis, over revenues at the level of operations ending December 31, 1977...

Order of the Pennsylvania Public Utility Commission Entered March 9, 1979

...4. That Respondent's Electric Pa. P.U.C. Tariff No. 25 with alternative rate schedules HT and PD is hereby permitted to become effective on March 2, 1979, pending Commission determination of the issues now raised by the Commission and the parties with respect to the final order and the compliance tariff.

5. That the Respondent's recoupment plan is approved, provided, however, that Respondent shall file monthly totals, but customer class, of recoupment dollars received...

Order of the Pennsylvania Public Utility Commission Entered April 7, 1980

That the Respondent's tariff schedules for rates HT and PD, are hereby made permanent and our determination as to HT and PD rates of December 28, 1978 and entered February 5, 1979, as modified by our March 1, 1979 Order entered March 9, 1979, is hereby affirmed.

STATEMENT OF QUESTIONS PRESENTED

1. Where the Commission ordered a restructuring of rates to eliminate a phenomenon in which Appellant and others similarly situated paid more than their share of the Utility's costs, and where the Commission subsequently twice reiterated such order in the face of the Utility's opposition and where the Utility acknowledged that such could be accomplished, was it error for the Commission to adopt finally a set of rates which exacerbated such inequality?

2. Where the Administrative Law Judge found that the Utility was seeking revenues from rate payers for a return on excess generating capacity and ordered a reduction of $40 million from rate base, and where three of the five Commissioners essentially agreed with the Administrative Law Judge, was it error for the Commission, totally without explanation, to reject his adjustment while accepting his reasoning?

3. In the alternative to Question 2, where the Commission rejected the Administrative Law Judge's elimination of excess capacity, was it error for the Commission to fail to follow its own mathematical formula to reflect the appropriate interest and tax adjustment?

STATEMENT OF THE CASE

This is an Appeal from a series of Orders of the Pennsylvania Public Utility Commission concluding an investigation into a rate increase proposed by the Philadelphia Electric Company.

Appellants, apartment house owners in Philadelphia and its suburbs, were among the Complainants opposing such rate increase as proposed by the Utility.

Specifically, inter alia, Appellants:

1. Asserted that the Utility's generating capacity exceeded its needs and that current rate payers should not be required to afford the Utility a return on investment not needed to serve them.

2. Complained of the fact that mid-demand HT and PD apartment house owners, such as Appellants, were being deprived of the lower return requirement benefitting residential customers, although they are residential customers, and in fact were being required to provide a greater return to the Utility even than large commercial and industrial customers served under the same rate classes.

The Administrative Law Judge, in his recommended decision, dated November 15, 1978, although rejecting the far larger generating capacity adjustment proposed by Appellants, did determinate it appropriate to make the excess capacity adjustment proposed by another party Complainant, the Consumer Advocate of

Pennsylvania, to wit, the elimination of $40 million from original cost rate base. The Administrative Law Judge's mathematical calculation of the Utility's tax liability at the rate level he was recommending reflected the elimination of the $40 million in excess capacity, thereby increasing the tax related revenue requirement from rate payers from that which it would have been had the Administrative Law Judge not reduced rate base. Thus the component parts of the Administrative Law Judge's recommendation with respect to excess capacity were a revenue need reduction by virtue of a reduction of rate base and a revenue need increase by virtue of the reduction of the interest deduction for tax purposes.

The Administrative Law Judge, in his recommended decision, rejected the Appellants' Complaint with respect to rate structure, refusing both the request to equalize the rate of return requirements among the classes and the request to equalize rates of return within the HT and PD classes.

After the submission of exceptions, briefing and oral argument, the Commission made its decision at a series of public meetings, consistent with its obligation to do so pursuant to the Pennsylvania Sunshine Law.

As to the issues with which this Appeal is concerned:

1. At its meeting of December 28, 1978, the Commissioners engaged in extensive discussions among themselves with respect to the excess capacity adjustment and its implications in terms

of reducing the Utility's revenue requirements. Chairman Goode expressed support for the Administrative Law Judge's adjustment while Commissioners Johnson and Carter both expressed support for an alternative approach to reduce the Utility's approved revenue requirement. Commissioners Johnson and Carter each attempted to identify the revenue earning ability of the excess generating plant, and called for crediting such revenue earning ability against the Utility's revenue requirement. The adjustments so proposed by Commissioners Carter and Johnson would have reduced the approved revenue requirement even more than the Administrative Law Judge's approach, and therefore would have been more detrimental from the Utility's point of view. Subsequently in the discussion, with no explanation for the change, Chairman Goode cast his vote with the other two Commissioners, Bloom and O'Bannon for a revenue requirement which could be justified only by restoring the $40 million to rate base.

In the decision and Order subsequently entered by the Commission on February 5, 1979, the Commission essentially adopted the analysis of the Administrative Law Judge with respect to excess capacity, to wit, that if generating plant is excessive, even if built without fault, it should be disallowed at least in part as a proper sharing of risk between shareholders and rate payers. But, without any explanation, the Commission's decision simply states it had determined not to make the adjustment.

In response to a subsequent petition for modification,

correction and reconsideration filed by Appellants and others, the Commission acknowledged the fact that three of the five Commissioners expressed views in favor of a capacity adjustment, as noted above, its Order (of May 16, 1979) merely asserting that "we consider it extremely inappropriate that comments made during deliberative discussions of an aspect of a proceeding be cited to us in support of an adjustment which we chose not to make".

2. In its decision as made on December 28, 1979, and as subsequently expressed in its Opinion and Order entered February 5, 1980, the Commission failed, without explanation, to reverse the other part of the Administrative Law Judge's capacity adjustment, to wit, the interest-tax expense adjustment. Thus, its decision restores the elimination of excess capacity and the related increased revenue need but fails to restore the associated interest tax deduction and the related reduced revenue need. In response to the petition for modification, correction and reconsideration referred to above, the Commission by its Order entered May 16, 1979 acknowledged this error, at least to the extent of $1,249,000,[1] contenting itself to deny the correc-

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1. The correct revenue impact of the error above described is actually $1,713,000. In accordance with the system of allocating interest expense for tax calculation purposes which was recommended by the Utility (Exhibit P-28 revised) and adopted by the Administrative Law Judge (Administrative Law Judge recommended Order page 131) and, presumably, by the Commission (Commission Order page 87), such an increase

tion of the error on the ground that the Utility had asserted possible counter balancing errors and that "regulation is an art not a science and the requested adjustment urges a degree of precision which is unwarranted, at least on an after-the-fact basis".

3. After deferring the matter for several meetings, the Commission determined to accept Appellants' arguments as to the need to eliminate inequality in rate of return requirements within the HT and PD classes so as to ameliorate the plight of Appellants and other similarly situated apartment houses. Its Order entered February 5, 1979 so declared, calling for the Utility to "eliminate to the extent reasonably possible variation in rates of return within those classes". Unfortunately, as it turned out, the Commission went on in its ordering paragraph 10 to set forth a method for so doing. The method was the

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in rate base increases the interest expense allocated by the amount of $1,572,850 [$37,809,000 X 52% (debt portion of capital) X 8% (imbedded debt cost)], results in an increase in return of $812,000 ($1,572,850 X 51.628%) and a decrease in revenue need of $1,713,000 [$812,000 X 2.1095 (the ratio used by the Administrative Law Judge and the Commission, see Order page 100)]. The Commission calculation of a lesser figure includes both the rate base changes in the Administrative Law Judge's Order of $37,809,000 (the most significant of which is the $40 million excess capacity adjustment) and corrections of other errors in the calculation of interest expense by the Administrative Law Judge, recalculating the entire interest expense from scratch rather than calculating the impact of the Commission's changes in the recommended decision of the Administrative Law Judge.

institution of a rate form which consists of a customer charge, a demand charge and an energy charge in place of the declining block form with no customer charge and the collection of some of the demand costs in the energy blocks. Evidently, the Commission's purpose in so designating the methodology was to have a rate structure which paralleled the cost of service study performed by the Utility on the theory that such a rate structure would provide equal rates of return for all customers in the class. The Commission erred in calling for such a methodology to accomplish its declared intent; for it failed to recognize that the cost of service study which it was seeking to parallel postulates a demand cost which increases as the Utility's load factor is increased, so as to reflect the likelihood of a customer's peak load occurring on the Utility's peak as the customer's load factor increases.[2]

The Utility simply took advantage of the Commission's methodological error by submitting rates consistent with paragraph 10, knowing that such methodology incorporates an error easily corrected by the Utility varying the demand charge. Such paragraph 10 rates did, as might be expected, provide for exces-

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2. The statistical technique employed, the Barry Curve, is merely a recognition of the increasing probability that any particular customer will make his maximum demand upon the generating system at the moment the total of demands of all customers are at their maximum, as the customer uses his maximum demand or close to it at more and more hours of the month.

sive rates of return from customers who use electricity during a small part of the day, such as school districts and municipalities.

Instead of submitting an alternative design to implement the Commission's declared intent, the Utility submitted as Alternative 1 a tariff which was designed the way in which the Utility had originally proposed the rage increase be spread[3] and which exacerbated the inequality which the Commission desired to reduce. Thus, it increased the extent to which mid-demand users ere providing a higher rate of return than low and high demand customers, or to put it another way, the extent to which mid-demand users, such as Appellants, were providing more of the Company's costs than were low and high demand customers in the same rate classes.

The Commission approved the "Alternative 1" tariff containing such increased inequalities by an Order entered March 9, 1979 in which it (i) accepted the Alternative tariff 1, both for prospective application and as the basis of recoupment to July 4, 1980, and (ii) declared its intent to modify the tariff as soon as possible for prospective application in order to equal-

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3. The Company's proposal as originally made and as reflected in its alternative 1 simply applied a uniform rate increase in each of the existing blocks after eliminating fuel costs. Mathematically, such a system must increase the rate of return divergence from that which had previously existed, thus exacerbating the inequality about which the Commission was concerned.

ize returns provided by customers at the various demand levels.[4] In its effort to accomplish the latter, the Commission in its March 9 Order directed the parties to brief the "issue...(of) whether the alternative rate design submitted by respondent (PECO) or some other structure of rates HT and PD is the most appropriate means of reducing the present inequality of returns within the schedule, given the present circumstances and the existing record".

Following submission of such briefs, the Commission issued a Secretarial Letter to the Utility, indicating the Commission's determination that it "was not satisfied with the portion of the record regarding the design of the HT and PD rates" and that "it

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4. Appellant filed a Petition For Review with this Honorable Court from such apparent determination by the Commission not to make any subsequent change in rate structure retroactive. A Petition For Supersedeas was filed by Appellants, briefed, argued and denied. Subsequently, the Court denied the Commission's Motion to Quash or Dismiss Appellants' Petition For Review and remanded the Petition For Review to the Commission "reserving to Petitioners the right to again petition this Court for review in the event Petitioners deemed the decision of the Commission on reconsideration in error". (Order entered April 23, 1979 in No. 457 CD, 1979.) The Court appended to its Order as containing its "reason" an Opinion and Order entered in the Appeal of PECO from the February 5 Commission Order as of No. 557 CD, 1979, in which it specifically reserved the right to all parties to petition the Court for review of the February 5 Order as of the conclusion of reconsideration as ordered by the Commission March 9, 1979. In its Opinion of April 23, 1979 in No. 557, this Court described the March 9 Commission Order as a reconsideration of "rate structure as among classes of rate payers". This Petition For Review was filed consistent with the Court's Orders in No. 457 and 557.

would be appropriate for alternatives to be developed which might strike a middle ground balance between the Commission ordered rate design...(paragraph 10)...and the Company's Alternative 1". The Letter, dated July 31, 1979, again reiterated the Commission's desire for a "redesigned rate schedule from which revenue deviation hews more closely to cost incurrance at various demand levels and load factors". It directed the Utility to submit its response, including the middle ground rate design, by October 1, noting that "it is currently contemplated that, at an appropriate time after your submission, an informal conference of the parties will be convened, under the auspices of the Commission Staff, in order to discuss the information provided and to chart a course for further proceedings in this matter".

The Utility's October 1 response supplied data and enclosed as the "rate form alternative which is proposed by the Company in response to your letter" its proposed rate PD and HT tariff schedules submitted in a subsequent rate increase request then under investigation at Docket R79060865, and subsequently concluded.[5] The Commission, with no further communication with the parties and with no conference, formal or informal, entered an Order April 7, 1980, finally concluding the proceedings and

5. The R79060865 proposed tariff introduced a customer charge of approximately one-half the customer cost as of determined in the cost of service study and decreased the decline in the demand blocks, inter alia.

and declining to make any change in this proceeding in the HT and PD rate structure, impliedly at least indicating its satisfaction with the proposal as made by the Utility in its subsequent rate increase request, which it in fact subsequently approved.

This Appeal followed.

SUMMARY OF ARGUMENT

This Appeal seeks the limited objective of requiring the Commission to fix rates for the Philadelphia Electric Company (hereinafter sometime referred to as "PECO", the "Utility" and the "Company"), in accordance with determinations made by the majority of the Pennsylvania Public Utility Commission (hereinafter referred to as "Commission"). It therefore accepts the Commission's exercise of discretion; it merely asks the Commission to do what it, the Commission, says is appropriate.

As to rate structure, the Commission in its initial Order concluding the rate case determined to "eliminate, to the extent reasonably possible, variations in rates of return for customers" in the HT and PD classes. Subsequently, although permitting the filing of a rate structure which fails to accomplish that objective, the Commission reiterated its "declared intent" of "reducing the present inequality of returns within the schedules". Although in subsequent proceedings, the Utility acknowledged that such a goal can be accomplished and in fact proposed to do so prospectively, the Commission finally concluded the rate case by an Order which left in effect rates exacerbating the inequality as it affects Appellants and other apartment house and mid-demand range HT and PD users. The Commission should be ordered to implement as of July 4, 1978, the effective date of the rates fixed by the Commission in the instant pro-

ceeding, a rate structure in the form subsequently submitted by the Utility on October 1, 1979 and subsequently and presumably accepted by the Commission as appropriate in its Order entered April 7, 1980.

As to the amount of revenue to be required of rate payers, the most significant economic adjustment made by the Administrative Law Judge was the elimination of $40 million from rate base as representing excess capacity, thus reducing the obligation of rate payers to afford the Utility a return on such disallowed investment. In their deliberations, three of the five Commissioners agreed with the finding of excess capacity, although disagreeing in the revenue need elimination resulting. The least amount of revenue adjustment suggested by any of the Commissioners would have resulted from the affirmance of the Administrative Law Judge's recommendation of the $40 million rate base elimination. Despite the agreement of three of the five Commissioners to the adjustment, as a minimum, as recommended by the Administrative Law Judge, no such adjustment was reflected by the Commission in its decision. To the contrary, the Commission essentially adopted the reasoning of the Administrative Law Judge but rejected his conclusion, with no adequate explanation. A reinstatement of the Administrative Law Judge's adjudication in this respect would implement the express decision of three of the five Commissioners and should be ordered by this Honorable Court.

Alternatively, the Court should as a minimum require the Commission to restore the disallowed $40 million to rate base properly. To do so consistent with the Commission's own formula, the interest deduction for the calculation of tax liability should be increased, tax decreased, and revenue requirement decreased accordingly. The Commission has specifically recognized its error in failing to make this adjustment, amounting to some $1,250,000 in revenue requirement; it should be ordered to make the adjustment and restructure rates accordingly.

ARGUMENT

This is a limited and unusual Appeal in that it seeks not to reverse the Commission's decisions as to specific issues, but rather to require the Commission to take final action consistent with its own decisions. Thus, as to rate structure, the Court is asked to require the Commission to implement its own decision that there should be equalization of cost responsibility within the HT and PD classes. As to excess capacity, the Court is asked to require the Commission to implement the Administrative Law Judge's decision which represents the minimum adjustment proposed by three of the five Commissioners. And, in the alternative, should the Commission not be ordered to restore the excess capacity adjustment, it should be ordered by this Court to make the interest-tax-revenue requirement adjustment which it acknowledged is appropriate if the Administrative Law Judge's capacity adjustment is to be reversed.

Each of these matters will be considered in turn.

I. THE COMMISSION ERRED IN ADOPTING A RATE SCHEDULE IMPOSING A DISPROPORTIONATE SHARE OF THE UTILITY'S COSTS ON APPELLANTS IN FACE OF ITS OWN RECOGNITION THAT SUCH EQUALIZATION OF COST RESPONSIBILITY IS PROPER AND IN FACE OF THE UTILITY'S GRUDGING DEMONSTRATION THAT IT IS POSSIBLE

The Commission consistently and repeatedly called for "a restructuring of the HT and PD rates which will eliminate, to the extent reasonably possible, variations in rates of return

from customers within those classes". (Order of February 5, 1979)

That determination, as made in its initial decision, was repeated by the Commission in two subsequent written directions to the Company, its Order of March 9, 1979 and its Secretarial Letter of July 31, 1979.

In the Secretarial Letter, the Commission specifically reiterated its objective as "redesigned rate schedules from which revenue derivation hews more closely to cost incurrance at various demand levels and load factors".

Specifically, the Secretarial Letter called at a minimum for the Company to submit an alternative "which might strike a middle ground balance" between the Commission-ordered rate design in its ordering paragraph 10 in the February 5, 1979 Order and the Company's Alternative 1, from which rate schedule this Appeal is taken.

In its October 1, 1979 response to the Secretarial Letter, the Utility has acknowledged that such a rate form, representing a "middle ground balance" is possible, and in fact submitted such in a form of a copy of the rates which it had submitted in a subsequent rate proceeding.

In sharp contrast is the actual Alternative 1 rate design which the Utility submitted and which the Commission determined by its Orders of March 9, 1979 and March 28, 1980 would apply during the entire period when the rates approved in the instant

proceeding were to be in effect.

Such Alternative 1 rate design does not in fact narrow the inequality of return between mid-demand and high-demand HT and PD customers, the "variations in rate of return" which the Commission desired to eliminate. That fact was revealed clearly by the Utility's own calculations submitted as Appendix "A" to its "Answer to Objection and Motion to Dismiss Tariff Electric PAPUC No. 25" and attached to this Brief as Appendix "A". What that Appendix "A" shows is that the divergence in returns between mid-demand (500 and 1400 kw.) and high-demand range customers at all of the load factors set forth is widened, not narrowed. Thus, for example, at the 400 hour level the previous supplement 67 rates resulted in a 2% divergence between mid and high-demand while Alternative 1 rates approved by the Commission in the instant proceeding have a 2.2% or 2.3% divergence. At the 600 hour level supplement 67 rates had a divergence of 1.7% to 1.8% between the mid and high-demand range while the divergence under Alternative 1 rates is 2%. Thus, the Alternative 1 rates exacerbate the very problem with which the Commission was concerned when it declared that rates of return should be equalized.[6]

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6. The Commission's statement in its March 9 Order that the HT and PD Alternative 1 schedules "appear to accomplish a significant reduction in the inequality of returns from customers within those schedules" is simply not correct as to the inequality between mid-demand and high-demand users at

The result is that apartment house users who are in the mid-demand range and who have an average use of 400 to 500 hours (Exhibit Parktowne 48) are being required by Alternative 1 rates to provide a rate of return of 10.7% to 10.9% while large industrial users over 50,000 KW are being required to provide a return of only 8.5% to 8.9% (Appendix "A").

Such a result violates the applicable statutory mandate that rates be "just and reasonable" (Act of May 28, 1937, P.L. 1053, Art. III §301), and that there be no discrimination as among customers (Act of May 28, 1937, P.L. 1053, Art. III §304).

So the Commission itself determined in its Order of February 5, 1980 and effectively reiterated in its Order of March 5, and Secretarial Letter of July 31, in its repeated calls for a rate structure which would not continue to require apartment house owners such as Appellants to contribute a greater profit to the Utility on the investment made on their behalf than is

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at load factors in the relevant ranges, and that is the inequality which the Commission Order of February 5, 1979 addressed. It is true that the Alternative 1 rates did reduce the inequality between low-load factor (150 hours) users and medium and high-load factor users, and although this is appropriate, it simply is not the problem the Commission was seeking to solve. Ironically, the equalization as between low-load factor and higher load factor customers was accomplished at the price of a rate increase as high as 16% against an overall average of less than 8% rate increase, in contrast to Appellants' proposal that no rate increase be greater than the Utility's original applied-for increase of 11.5%. Thus, Appellants' request for fair treatment could be accomplished with a greater fidelity to the concept of rate continuity than the Utility's Alternative 1 proposal concurred in by the Commission.

provided by the largest customers served in the HT and PD classes.

Such a rate structure is in fact possible, as the Utility itself acknowledged in its October 1, 1979 submission.

The Commission was obviously thwarted in its desire to have a rate structure equalizing rates of return by the Utility's desire to delay as long as possible such a restructure which would require its largest industrial customers to pay the increased rates representing their fair share. The Commission proved its own worst enemy by calling for a specific methodology to accomplish its goals (paragraph 10 of the Order of February 5, 1979) which the Utility could prove would not work. The Utility was thus able to play on the Commission's desire to conclude the rate case and thereby obtain the acceptance of a rate structure which exacerbated the very divergence which the Commission was attempting to eliminate.

That, even after so doing, the Commission persisted in its requirement that the Utility develop a rate structure complying with the Commission's policy intent, is the best demonstration of the importance the Commission attached to the need for equalized cost responsibility within the HT and PD classes.

The issue thus presented for the Court is simple. It is the Pennsylvania Public Utility Commission which has determined that there is no justification for "varying rates of return from customers within those classes (HT and PD), and consequently the

maintenances of any variations which exist today". It is the Utility which acknowledged (October 1, 1979 submission) that a rate form is available which can accomplish the desired Commission result to "eliminate, to the extent reasonably possible, variations in rates of return from customers within those classes".

Under the circumstances, this Court should order the Commission and the Utility to implement the Commission's own decision by adopting retroactively to July 4, 1978 a rate structure equalizing rates of return with the HT and PD classes.

For the Court to do so is entirely consistent with its views as expressed in U.S. Steel Corp. v. Pa. P.U.C., 37 Commonwealth Ct. 173 (1978) and U.S. Steel Corp. v. Pa. P.U.C., 37 Commonwealth Ct. 195 (1978). As the Court pointed out in the latter case, "...the establishment of a rate structure is an administrative function peculiarly within the expertise of the Commission". It denominates such as "factual questions for the Commission whose findings must be upheld and supported by competent evidence" (at page 211). Here, it is the Commission's conclusion which Appellants seek to have implemented.

II. THE COMMISSION ERRED IN REJECTING, WITHOUT EXPLANATION, THE ADMINISTRATIVE LAW JUDGE'S $40 MILLION ADJUSTMENT FOR EXCESS CAPACITY IN FACE OF ITS ACCEPTANCE OF THE REASONING OF THE ADMINISTRATIVE LAW JUDGE AND THE EXPRESSION OF AGREEMENT OF THREE OF THE FIVE COMMISSIONERS WITH SUCH AN ADJUSTMENT

The Commission in the instant proceeding has done precisely what this Court condemned in West Penn Power Company v. Pennsylvania Public Utility Commission, 33 Commonwealth Ct. 403 (1978), to wit, without adequate explanation, made a significant determination as to rate base which appears to be inconsistent with the Commission's own reasoning.

As in that case, the Commission here adopted practically entirely the reasoning suggested to it, here by the Administrative Law Judge, and then reached a conclusion precisely inconsistent with the foregoing analysis, without any explanation.

The inevitable inference is that the Commission appears to be so totally result and "pragmatic adjustment" oriented that it feels free to provide a reviewing Court with no rational explanation for its conclusions. And that is precisely what this Court condemned in West Penn Power.

In the instant case, the Commission opinion is even more lacking in internal consistency than that of the Commission in the West Penn Power case, in view of the fact that:

1. The recommendation of the Administrative Law Judge to eliminate $40 million from the rate base as representing excess capacity was consistent with the Commission's previous expres-

sion of concern of that excess capacity and its prior instruction, referred to in its Order here, to investigate excess capacity in the subsequent rate filing (the instant proceeding).

2. The Commission adopted the language of the Administrative Law Judge pointing out that the excess capacity here was a far more serious problem than in the preceding case which gave rise to the expression of Commission concern. As the Administrative Law Judge and the Commission noted, in the preceding case the prediction had been for a reserve beyond its maximum annual demand decreasing from a high of 34% in 1976 to 22.1% by 1980 and 16.1% by 1981, whereas in fact the reserve in the test year of 1977 was 47.5% and the Utility was forecasting a reserve in 1980 of 39% and in 1981 of 35%.

3. The Commission adopted the language of the Administrative Law Judge citing its own prior decision in Pennsylvania Public Utility Commission v. Pennsylvania Power Company, R.7711 0521 (1978) to the effect that investors should bear part of the risk of excess capacity.

4. The Commission adopted practically entirely the language of the Administrative Law Judge that:

> The Company, unlike other business enterprises, has an affirmative duty to provide facilities to serve the needs of its customers. Its errors in trying to meet such criteria should not be its sole responsibility, nor the sole responsibility of the rate payers. Under such circumstances there should be a sharing of the burden of excess capacity. (Recommended decision, pp. 29-30)

The Commission's formulation of that language (p. 14 of the Commission Order of February 5, 1979) makes only two changes. It combines the first two sentences, evidently as a matter of style, and then changes the word "such" in the last sentence to the word "appropriate".

But, whereas, based upon such reasoning, the Administrative Law Judge then concludes "...the excess capacity of the Company should be eliminated from rate base"; the Commission Opinion concludes, after listing some "considerations" that:

> While we are acutely aware of and concerned with the financial burden which true 'excess capacity' might impose upon rate payers, we are unwilling to make any adjustment based upon alleged 'excess capacity' based upon the record in this proceeding.

So much for the Opinion's internal inconsistency.

But the situation is far more egregious than than in the West Penn Power case. For not only is the opinion of the Commission lacking in internal consistency and lacking in adequate explanation for its conclusion, it is inconsistent with the expressed views of three of the five Commissioners in the very session in which the decision was made.

Chairman Goode expressed the view that the Administrative Law Judge's proposed adjustment was appropriate. That adjustment, at the allowed original cost return rate of 9.837%, ($2,850,000/$2,489,000 X 8.59%) would have eliminated the need for revenue in the amount of $8,300,000 (9.837% X $40 million X

2.1095). Commissioners Johnson and Carter recommended that excess capacity should be eliminated as a burden upon rate payers by the alternative method of imputing revenue to the availability of such excess capacity for sale. Commissioner Carter suggested a revenue need reduction of $9.84 million and Commissioner Johnson suggested a revenue need reduction of approximately $17 million. Thus the smallest adjustment suggested by any of the three Commissioners who agreed that capacity was in excess and an adjustment needed to be made, was the $8,300,000 adjustment recommended by the Administrative Law Judge and the Chairman through the rate base exclusion.[7]

Not only is the adjustment recommended by the Administrative Law Judge the minimum recommended by any of the three Commissioners favoring a capacity reduction. It is a far lower adjustment than that which Appellants believe the record justifies and requires. As the record indicates:

1. Assuming the need for a 20% reserve for the PJM Pool to which the Utility belongs, PECO's anticipated reserve obligation to meet that Pool need was in fact 11.8% in the test year, and simple mathematics therefore demonstrates an excess test

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7. The accuracy of this iteration of the deliberations by the Commissioners on December 28, 1978 is not disputed in the Utility's response to the Petition for Modification, Correction and Reconsideration and is presumably accepted as accurate by the Commission in its Order entered May 16, 1979, denying that Petition when it notes that "we are all well aware of those comments at the time".

year reserve of almost 2,000MW, some 2.6 times the amount of capacity excluded by the Administrative Law Judge, and an excess large enough to justify Appellant's proposed additional exclusions of turbine capacity at Eddystone 3 and 4.

2. As to future years, assuming the need for a 25% reserve to meet a one day in ten year's failure probability, the Company's evidence would appear to justify a reserve of 9% to 10%, assuming (a) the same probability and extent of failure is accepted on generating equipment as it experienced by the Company's customers because of transmission and distribution failure, the probability of service interruption for less than an hour a year, and recognizing (b) the ability to reduce voltage up to 5% to avoid outage, and (c) the diversity in the PJM Pool. Measured against such a standard and even assuming the Company's outrageously excessive sales' estimates are accurate, the excess reserve will remain in the 1900MW range for the next decade at least.

Absent a more adequate explanation, the $40 million excess capacity adjustment should be restored, consistent with the record, the recommended decision of the Administrative Law Judge, and the expressed views of three of the five Commissioners.

III. IN THE ALTERNATIVE TO THE RESTORATION OF THE ADMINISTRATIVE LAW JUDGE'S EXCESS CAPACITY ADJUSTMENT, THE COMMISSION SHOULD BE DIRECTED TO COMPLETE THE ELIMINATION OF THE ADJUSTMENT BY AFFORDING RATE PAYERS THE TAX BENEFIT ASSOCIATED WITH THE INVESTMENT IN EXCESS CAPACITY.

The Commission's elimination of the Administrative Law Judge's excess capacity adjustment imposed on rate payers the obligation to reimburse the Utility for the interest it is required to pay on debt incurred to construct that capacity.

The payment of such interest by the Utility creates a tax benefit in that the related deduction from income reduces the Utility's taxes. Inasmuch as the rate payers are also required to reimburse the Utility for its taxes, they are clearly entitled to recognition in the tax calculation of the interest which they are required to reimburse the Utility.

The Commission's mathematical formula for accomplishing this credit to rate payers for interest is set forth more fully in the Statement of Facts.

What the Commission did in its February 5, 1979 Order was to restore the interest obligation without restoring the interest benefit.

That such was in error is in effect acknowledged by the Commission in its Order of May 16, 1979, at least to the extent of $1,249,000.[8]

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8. For a description of the correct revenue impact of the error, $1,713,000, and the method by which it was derived see footnote 1, Statement of Facts.

The Commission's attempt to explain away its error and to justify failing to correct it are without merit. Its comments in its Order of May 16, 1979, that it could have imposed an equivalent additional burden upon rate payers by adopting some other interest cost or by making other revenue adjustments suggests that the Commission is reaching its conclusion about the rate increase by some method other than the analysis of rate base, revenue and expense and return which it is charged to make by law. The comment by the Commission that the adjustment should not be made "on an after-the-fact basis" is unwarranted in that the error was pointed out to the Commission as soon as the parties became aware of it, to wit, when the Commission issued its Order of February 5, 1979.

The tax calculation reflected in the Commission Order, and the related revenue requirement, is only justified if the Court orders the Commission to restore the excess capacity adjustment as prayed for above. It the Court permits the Commission's decision to eliminate the excess capacity adjustment to stand, it should order the Commission to make the full adjustment by reducing return to the extent of at least $1,249,000, and adjusting rates accordingly.

CONCLUSION

For the reasons above stated, this Honorable Court should remand the Commission's decision and Order of February 5, 1979 and its subsequent Orders of March 9, 1979 and April 7, 1980 with instructions: (a) to restructure the HT and PD rates to eliminate inequality in rates of return provided by customers at various demand levels, (b) to restore the elimination of the $40 million excess capacity adjustment, or (c) in the alternative to restoration of the excess capacity adjustment, to require the Commission to afford rate payers the benefit of the associated interest deduction, all effective as of July 4, 1978, the effective date of the rate increase.[9]

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9. The relief requested in (a) represents no loss to the Utility but merely requires the rebilling of those customers in the HT and PD classes who bore less than their share of costs and rebates to those customers, such as Appellants, who have borne more than their fair share of the costs. The relief requested in (b) or (c) does require rebates to all customers of the Utility from and after July 4, 1978, until the effective date of the succeeding rate increase.

APPENDIX A

Rate of Return Earned from Rate HT
Customer Types As Measured Based
Upon PECO 1977 Cost of Service Data

Demand	Supplement No. 67 Rates			Paragraph 10 Rates			Alternative 1 Rates		
	Hours Used			Hours Used			Hours Used		
	150	400	600	150	400	600	150	400	600
25 1/	4.7%	5.6%	5.2%	13%	9.9%	9.3%	6.9%	8.7%	8.9%
100	8%	6.2%	6.1%	15.1%	10.1%	9.1%	11.1%	10.6%	10.7%
500	8.1%	6.6%	6%	16.2%	10.2%	9.1%	11.4%	10.7%	10.9%
1,400	8.1%	6.6%	5.9%	16.5%	10.2%	9.1%	11.4%	10.8%	10.9%
50,000	7.2%	4.6%	4.2%	16.6%	10.2%	9.1%	10.4%	8.5%	8.9%

1/ 25 KW is the minimum billing demand on Rate HT. There are few customers served at this usage level, and in fact only approximately 71 customers per month out of a total of 1,739 Rate HT customers have billing demands which fall below 75 KW. Accordingly, for purposes of measuring the cost of service effectiveness of alternative rate forms a 100 KW usage level provides a more informative benchmark.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG, Pa. 17120

October 22, 1980

IN REPLY PLEASE
REFER TO OUR FILE

B-80052671
B-80052675

Francis C. Barbush, Chief Clerk
Commonwealth Court of Pennsylvania
Sixth Floor, South Office Building
Harrisburg, Pennsylvania 17120

Re: Philadelphia Electric Company

v.

Pennsylvania Public Utility Commission
No. 1211 Commonwealth Docket 1980

Dear Mr. Barbush:

Enclosed for filing in the above referenced proceeding is an original and three copies of the Respondent's Application for Consolidation for Argument of the appeal in Park Towne and Madway Engineers and Constructors, No. 1111, C.D. 1980, with the above captioned appeal.

Copies of the application are being served in accordance with the Proof of Service.

Sincerely,

William T. Hawke

William T. Hawke
Counsel

WTH:GC

Enclosures

COMMONWEALTH COURT OF PENNSYLVANIA

PHILADELPHIA ELECTRIC COMPANY Petitioner	:	No. 1211
vs.	:	Commonwealth Docket 1980
PENNSYLVANIA PUBLIC UTILITY COMMISSION Respondent	:	

APPLICATION FOR CONSOLIDATION FOR ARGUMENT

NOW, this 22nd day of October 1980, comes Respondent, Pennsylvania Public Utility Commission, (Commission) and hereby requests that the Court order the consolidation of the appeal in Park Towne and Madway Engineers and Constructors, No. 1111 C.D. 1980, with the above captioned appeal for the purposes of oral argument, pursuant to Pa. R.A.P. 513, and assigns the following reasons therefor:

1. Both appeals are concerned with various provisions of a series of orders issued by the Commission in the proceeding before the Commission designated Rate Investigation Docket 438.

2. Both appeals involve portions of a common record before the Commission.

3. The parties, including the Intervenors, to both appeals are nearly identical.

WHEREFORE: The Commission requests that the Court exercise its descretion under the provisions of Pa. R.A.P. 513

and order the consolidation of the two appeals at 1211 C.D. 1980 and 1111 C.D. 1980, for the purposes of oral argument.

Respectfully submitted,

William T. Hawke

William T. Hawke
Counsel

Attorney for the Pennsylvania
Public Utility Commission

PROOF OF SERVICE

I hereby certify that I am this day serving a copy of Respondent's Application for Consolidation for Argument upon the persons and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121. Service by first class mail addressed as follows:

Walter R. Hall, Esq.
Morgan, Lewis & Bockius
123 South Broad Street
Philadelphia, PA 19109

Martha W. Bush, Esq.
Assistant Consumer Advocate
Office of Consumer Advocate
Strawberry Square, 14th Floor
Harrisburg, PA 17120

Mark B. Segal, Esq.
Community Legal Services, Inc.
Sylvania House
Juniper & Locust Streets
Philadelphia, PA 19107

Charles J. Streiff, Esq.
Wick, Vuono & LaVelle
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Jerrold M. Moss
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510 Walnut Street
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Harvey Bartle, III, Esq.
Attorney General
Commonwealth of Pennsylvania
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Edward Riehl, Esq.
McNees, Wallace & Nurick
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108

Andre C. Dasent, Esq.
Deputy City Solicitor for Energy
Legal Department - 15th Floor
Municipal Services Building
Philadelphia, PA 19107

Dated this 22nd day of October, 1980

William T. Hawke
Counsel for Pennsylvania
Public Utility Commission

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG, Pa. 17120

IN REPLY PLEASE
REFER TO OUR FILE

B-80052671
B-80052675

Office of the Prothonotary
Commonwealth Court of Pennsylvania
Sixth Floor, South Office Building
Harrisburg, Pennsylvania 17120

Re: Philadelphia Electric Company

Pennsylvania Public Utility Commission
No. 1211 Commonwealth Docket 1980

Park Towne and Madway Engineers and Constructors

v.

Pennsylvania Public Utility Commission
No. 1111 Commonwealth Docket 1980

Gentlemen:

Enclosed for filing in the above referenced proceedings is an original and three copies of the Respondent's Petition for an Enlargement of Time within which to file its briefs and record designations. As recited in the prayer of the petition, it is requested that the time for filing of briefs by the Intervenors be similarly enlarged.

Copies of the petition are being served in accordance with the Proof of Service.

Sincerely,

William T. Hawke

William T. Hawke
Counsel

WTH:GC

Enclosures

COMMONWEALTH COURT OF PENNSYLVANIA

PARK TOWNE AND MADWAY ENGINEERS AND CONSTRUCTORS Petitioners	:	No. 1111
vs.	:	Commonwealth Docket 1980
PENNSYLVANIA PUBLIC UTILITY COMMISSION Respondent	:	
PHILADELPHIA ELECTRIC COMPANY Petitioner	:	No. 1211
vs.	:	Commonwealth Docket 1980
PENNSYLVANIA PUBLIC UTILITY COMMISSION Respondent	:	

PETITION FOR AN ENLARGEMENT OF TIME

NOW, this 21st day of October, 1980, comes Respondent, Pennsylvania Public Utility Commission (Commission), and hereby petitions for an enlargement of time within which to file its briefs and record designations in the above captioned proceedings, pursuant to Pa. R.A.P. 105(b), and assigns the following reasons therefor:

1. Pursuant to a thirty day letter request for an extension of time, Petitioners Park Towne and Madway Engineers & Constructors, and Philadelphia Electric Company filed their respective briefs on or about August 27, 1980.

2. Pursuant to a grant of a Commission letter request for an extension of time, the filing date for the Respondent's and Intervenors' briefs is now October 27, 1980.

3. The record before the Commission in this proceeding is one of the largest ever created; a total of 59 days of hearings produced 8949 pages of transcript plus numberous prepared statements, and also contains in excess of 100 exhibits. The briefs of the parties exceeded 1100 pages. Regretably, the Commission Staff Counsel who participated in this proceeding, and who was solely familiar with the issues and the testimony and exhibits relevant thereto, has since left the Commission Staff and is not available to represent the Commission in these appeals.

4. The necessity of assigning new counsel, unfamiliar with the record in this proceeding, coupled with the current heavy workload being borne by the Commission's staff, has resulted in unavoidable delays in preparing the Commission's briefs.

5. Counsel for the various Petitioners and the Intervenors have been telephonically contacted regarding the instant petition for an enlargement of time, and have interposed no objection.

WHEREFORE; the Commission hereby requests an enlargement of time of 22 days, or until November 18, 1980, within which to file Respondent's and Intervenors' briefs in the above captioned proceedings, together with a concomitant enlargement of the time for serving and filing the record designations and the reproduced record.

Respectfully submitted,

William T. Hawke
Counsel

Joseph J. Malatesta, Jr.
Chief Counsel

Attorneys for the Pennsylvania
Public Utility Commission

PROOF OF SERVICE

I hereby certify that I am this day serving two copies of Respondent's Petition for an Enlargement of Time upon the persons and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121.

Service by first class mail addressed as follows:

Walter R. Hall, Esq.
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Martha W. Bush, Esq.
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Mark B. Segal, Esq.
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For CEPA, et al.

Charles J. Streiff, Esq.
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For United States Steel

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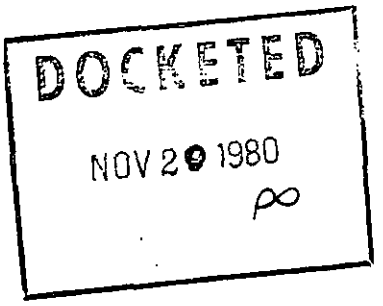
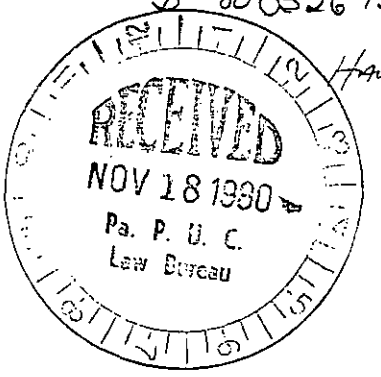
Andre C. Dasent, Esq.
Deputy City Solicitor for Energy
Legal Department - 15th Floor
Municipal Services Building
Philadelphia, PA 19107
For City of Philadelphia

Dated this 21st day of October, 1980

William T. Hawke
Counsel for Pennsylvania
Public Utility Commission

B-800526 71
B-800526 75





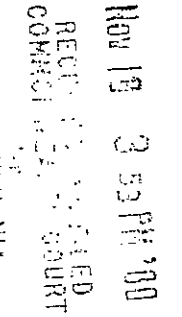
Hawke

COMMONWEALTH COURT OF PENNSYLVANIA

PARK TOWNE AND MADWAY ENGINEERS AND CONSTRUCTORS Petitioners	:	No. 1111
vs.	:	Commonwealth Docket 1980
PENNSYLVANIA PUBLIC UTILITY COMMISSION Respondent	:	
PHILADELPHIA ELECTRIC COMPANY Petitioner	:	No. 1211
vs.	:	Commonwealth Docket 1980
PENNSYLVANIA PUBLIC UTILITY COMMISSION Respondent	:	

PETITION FOR AN ENLARGEMENT OF TIME

NOW, this 18th day of November, 1980, comes Respondent, Pennsylvania Public Utility Commission (Commission), and hereby petitions for an enlargement of time within which to file its briefs and record designations in the above captioned proceedings, pursuant to Pa. R.A.P. 105(b), and assigns the following reasons therefor:



1. Pursuant to a thirty day letter request for an extension of time, Petitioners Park Towne and Madway Engineers & Constructors, and Philadelphia Electric Company filed their respective briefs on or about August 27, 1980.

2. Pursuant to a grant of a Commission letter request for an extension of time, the filing date for the Respondent's and Intervenors' briefs were extended to October 27, 1980.

3. Pursuant to the Respondent's Petition for an Enlargement of Time, dated October 21, 1980, the filing date for Respondent's and Intervenors' briefs was extended to November 18, 1980.

4. The record before the Commission in this proceedings is one of the largest ever created; a total of 59 days of hearings produced 8949 pages of transcript plus numerous prepared statements, and also contains in excess of 100 exhibits. The briefs of the parties exceeded 1100 pages. Regrettably, the Commission Staff Counsel who participated in this proceeding, and who was solely familiar with the issues and the testimony and exhibits relevant thereto, has since left the Commission Staff and is not available to represent the Commission in these appeals.

5. The necessity of assigning new counsel, unfamiliar with the record in this proceeding, coupled with the current heavy workload being borne by the Commission's staff, has resulted in unavoidable delays (of even greater magnitude than were perceived at the time of the October 21, 1980 petition) in preparing the Commission's briefs.

6. Counsel for the various Petitioners and the Intervenors have been telephonically contacted regarding the instant petition for an enlargement of time, and have interposed no objection.

WHEREFORE; the Commission hereby requests an enlargement of time of 3 days, or until November 21, 1980, within which to file Respondent's and Intervenors' briefs in the above captioned proceedings, together with a concomitant enlargement of the time for serving and filing the record designations and the reproduced record.

Respectfully submitted,

William T. Hawke

William T. Hawke
Counsel

Joseph J. Malatesta, Jr.
Chief Counsel

Attorneys for the Pennsylvania
Public Utility Commission

PROOF OF SERVICE

I hereby certify that I am this day serving two copies of Respondent's Petition for an Enlargement of Time upon the persons and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121. Service by first class mail addressed as follows:

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Dated this 18th day of November, 1980.

William T. Hawke
Counsel for Pennsylvania
Public Utility Commission

Johns

B-800526 71
B-800526 75

PARK TOWNE AND MADWAY ENGINEERS AND CONSTRUCTORS, Petitioners	:	IN THE COMMONWEALTH COURT OF PENNSYLVANIA
v.	:	
PENNSYLVANIA PUBLIC UTILITY COMMISSION, Respondent	:	No. 1111 C.D. 1980
PHILADELPHIA ELECTRIC COMPANY, Petitioner	:	
v.	:	
PENNSYLVANIA PUBLIC UTILITY COMMISSION, Respondent	:	No. 1211 C.D. 1980

O R D E R

NOW, November 20, 1980, upon consideration of respondent Pennsylvania Public Utility Commission's petition for an enlargement of time in which to file its brief and record designations for the reproduced record, said petition is hereby granted. Respondent shall file and serve its brief and record designation on or before November 21, 1980.

P.J.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG, Pa. 17120

November 21, 1980

IN REPLY PLEASE REFER TO OUR FILE

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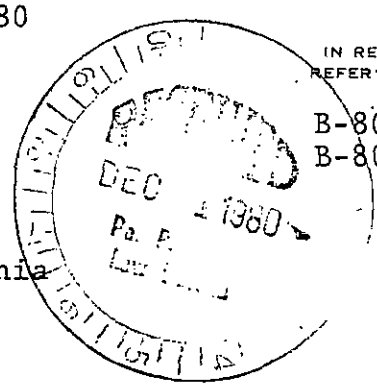

G. Ronald Darlington, Esquire
Prothonotary
Commonwealth Court of Pennsylvania
620 South Office Building
Harrisburg, Pennsylvania 17120

Park Towne and Madway Engineers
and Constructors

v.

Pennsylvania Public Utility Commission
No. 1111, Commonwealth Docket, 1980

Dear Mr. Darlington:

Enclosed are three copies of Respondent's Designation of Contents of Reproduced Record and Proof of Service form in the above-captioned case.

Sincerely,

W. T. Hawke

William T. Hawke
Counsel

WTH:gc

Enclosures

cc: All parties named in
the proof of service

PARK TOWNE AND MADWAY ENGINEERS AND CONSTRUCTORS, Petitioners v. PENNSYLVANIA PUBLIC UTILITY COMMISSION, Respondent	:	IN THE COMMONWEALTH COURT OF PENNSYLVANIA No. 1111 C.D. 1980
PHILADELPHIA ELECTRIC COMPANY, Petitioner v. PENNSYLVANIA PUBLIC UTILITY COMMISSION, Respondent	:	 No. 1211 C.D. 1980

RESPONDENT'S DESIGNATION OF
CONTENTS OF REPRODUCED RECORD

TO THE HONORABLE, THE PRESIDENT JUDGE AND JUDGES OF THE COMMONWEALTH COURT OF PENNSYLVANIA:

Respondent, Pennsylvania Public Utility Commission pursuant to Rule 2154 of the Pennsylvania Rules of Appellate Procedure, hereby designates the following additional and expanded portions of the record in this proceeding for inclusion in the reproduced record at No. 1111 Commonwealth Docket 1980:

1. Petition for Modification, Correction and Reconsideration, filed February 20, 1979 by Consumer Advocate, Park Towne and ACORN.

2. Petition for Reconsideration, filed February 21, 1979, by Park Towne.

3. Motion to Dismiss Petitions for Modification, Correction and Reconsideration, filed March 1, 1979 (response to 1 above).

4. Commission Order entered February 5, 1979, page 90.

Respectfully submitted,

William T. Hawke
Counsel

Attorney for the Pennsylvania
Public Utility Commission

WTH:gc

COMMONWEALTH COURT OF PENNSYLVANIA

PARK TOWNE AND MADWAY ENGINEERS AND CONSTRUCTORS,	:	
	:	No. 1111
Petitioners	:	Commonwealth Court
	:	Docket 1980
v.	:	
PENNSYLVANIA PUBLIC UTILITY COMMISSION,	:	
Respondent	:	

BRIEF FOR RESPONDENT

PENNSYLVANIA PUBLIC UTILITY COMMISSION

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COUNTER-STATEMENT OF THE CASE

The Commission generally agrees with Petitioners,' Park Towne and Madway Engineers and Constructors (Park Towne), recitation of the events of this proceeding, as contained in Park Towne's "Statement of the Case." Brief for Petitioners, p. 4-13. The Commission generally objects, however, to the argumentative style of Park Towne's "Statement of the Case", and particularly objects to any relevance that Park Towne attempts to accord to oral statements of Public Utility Commissioners that were not memorialized in subsequent orders of the Commission.

COUNTER-STATEMENT OF THE QUESTIONS

I. Whether the Commission's Orders, structuring the HT and PD rate schedules such that revenue derivation corresponded more closely to cost incurrance, represent an appropriate exercise of administrative discretion?

II. Whether the Commission's refusal to make a $40 million rate base adjustment for excess capacity is supported by the record?

III. Whether the Commission's refusal to make a de minimus interest expense adjustment was appropriate under the circumstances?

ARGUMENT

I. THE COMMISSION'S ORDERS, STRUCTURING THE HT AND PD RATE SCHEDULES SUCH THAT REVENUE DERIVATION CORRESPONDED MORE CLOSELY TO COST INCURRANCE, REPRESENT AN APPROPRIATE EXERCISE OF ADMINISTRATIVE DISCRETION.

Before commencing the Commission's legal argument in support of its Orders structuring two of PECO's rate schedules, it is appropriate to review the Commission's attempts to alleviate undesirable variations in those schedules.

In its Order entered February 5, 1979, the Commission recited what it considered to be some of the undesirable features of the design or structure of the existing HT and PD rate schedules.[1/] (Order entered February 5, 1979, mimeo p. 99). The Commission noted:

> While we have stated that there are non-cost considerations which may prompt or justify varying rates of return between different classes of customers, we do not, at least at this time, perceive an ability to apply non-cost considerations within the HT and PD classes which would justify varying rates of return from customers within those classes, and consequently the maintenance of any variations which exist today.

1/ Rate HT is identified in PECO's tariff as "Rate HT High Tension Power"; this rate schedule covers untransformed electric service from PECO's standard high tension lines, where the customer installs, owns, and maintains any transforming, switching and other receiving equipment. Rate PD is identified "Rate PD Primary - Distribution Power"; this rate schedule is similar to Rate HT, except that PD service is supplied from PECO's primary supply lines, which are of lower voltage than high tension lines.

> Consequently, we will order herein, a restructuring of the HT and PD rates which will eliminate, to the extent reasonably possible, variations in rates of return from customers within those classes.

(Order entered February 5, 1979, mimeo p. 99) (Emphasis added).

And in ordering paragraph number 10, the Commission provided:

> 10. That Respondent, when filing revised tariff schedules for rates PD and HT, redesign the schedules to provide for:
>
> a. A separately stated customer charge set at average cost;
>
> b. A single demand charge set at average cost;
>
> c. A single energy charge set at average cost; and,
>
> d. Eliminate the 100 hour provision in the minimum charge clause, substituting therefore the customer charge."

(Order entered February 5, 1979, mimeo p. 102).

This unchallenged action by the Commission represented an initial attempt to respond to Park Towne's complaint regarding the inequality of returns provided by customers within the HT and PD classes (See February 5, 1979 order, mimeo p. 98).

Thereafter, PECO filed a tariff including rate schedules HT and PD, in compliance with the requirements of paragraph 10 of the Commission's Order. Additionally, PECO filed alternate rate schedules (Alternative 1), which it claimed more nearly satisfied the Commission's objective to reduce variations in rates of return within the customer

classes. Upon analysis of this compliance filing, the Commission concluded that it may have been in error in ordering a restructuring of rate schedules HT and PD in the fashion in which it did in ordering paragraph 10, for it found that rates designed in that fashion distributed the increase to various customers within those classes in an extremely disproportionate and disruptive manner. Some customers would have received increases as great as 80%, while others might have received rate decreases (March 9, 1979 Order). Consequently, having found that the Alternative 1 rate schedules did not allocate the revenue increase in a disproportionate manner and that since "these schedules appear to accomplish a significant reduction in the inequality of returns from customers within those schedules," the Commission permitted the Alternative 1 rate schedules HT and PD to go into effect. (Order entered March 9, 1979).

Further, the Commission decided to reconsider on the existing record, its determination of the structure of respondent's (PECO's) rate schedules HT and PD. The affected parties were granted an opportunity to file briefs on the subject of the appropriate structure for of rate schedules HT and PD. The Commission noted that it was not departing from the declared intent expressed in its February 5, 1979 Order to "eliminate, to the extent reasonably possible, variations in rates of return from customers within those classes," and limited the issue:

> The issue to be reconsidered by the Commission is whether the alternative rate design submitted by the respondent (Philadelphia Electric Company) or some other structure of rate schedules HT and PD is the most appropriate means of reducing the present inequality of returns[2/] within the schedules, given the present circumstances and the existing record. (Emphasis added)

The existing circumstances were that the rate proceeding had terminated and the record had been closed, and that any action which might be contemplated would require that it be supported by evidence in the existing record.

Thereafter, on July 31, 1979, after considering the briefs filed by the parties, the Commission sent a Secretarial letter to PECO indicating that it was not satisfied with the posture of the record regarding the design of the HT and PD rates, and "that it believed that it would be appropriate for alternatives to be developed which might strike a middle ground balance between the Commission-ordered rate design...and the Company's Alternative 1 submitted as part of its Compliance filing...." (R.)

The Commission directed PECO to respond to the Secretarial letter not later than October 1, 1979. PECO

2/ The phrase "the present inequality of returns" is read to refer to the existing rates rather than the alternative rates approved by this Order, since the alternative rates were not yet in effect. This, however, is not to assert that the Alternative 1 rate schedules do not result in divergent returns.

did respond in a timely manner, and submitted as its proposal for a "middle-ground" rate design the tariff structure which it already had proposed, and the Commission was investigating, in another rate case commenced July 27, 1979, at Rate Investigation Docket R-79060865. This subsequent investigation was not concluded until May 9, 1980, at which time the "middle-ground" rate design as proposed by PECO on October 1, 1979, went into effect insofar as it related to the HT and PD schedules.

By Order entered April 7, 1980, at R.I.D. 438, the Commission concluded that the Alternate 1 tariff schedules which had been approved in the Order entered March 9, 1979, should not be modified, specifically noting that "[a] decision in this latter proceeding [R-79060865] will be forthcoming in the near future." (Order entered April 7, 1980).

In summary, the salient events are as follows:

1. In the Order entered February 5, 1979, the Commission sought to eliminate, to the extent reasonably possible, the variations in the rate of return from customers within the HT and PD classes.

2. In the Order entered March 9, 1979, the Commission stated that the results of its directed rate structure were disruptive, and that while the Alternative 1 rates accomplished a measure of its objective, it desired to reconsider the matter on the existing record, and requested briefs on the subject.

3. The July 31, 1979 Secretarial Letter recited that the Commission was still unsatisfied with the posture of the matter and requested that the utility try again for a "middle ground".

4. PECO's response noted that it had proposed a tariff structure which was then under investigation in an ongoing general rate increase proceeding; thereafter, the Commission entered its April 7, 1980 Order affirming its decision to permit the Alternate 1 tariffs to remain in effect, pending a final order in the ongoing rate case at R-79060855.

Park Towne now requests your Court "to require the Commission to implement its own decision that there should be an equalization of cost responsibility within the HT and PD classes." Thus, Park Towne desires to change (if not reverse) Orders in a matter in which the Commission has been invested with a flexible limit of judgment. See Armco, Inc. v. Pa. P.U.C., ____ Pa. Commonwealth Ct. ____, ____ A. 2d ____ (No. 2565 C.D. 1978, filed November 14, 1980).

A. CONTRARY TO PARK TOWNE'S ARGUMENTS, THE ALTERNATIVE 1 HT AND PD RATE SCHEDULES DO IN FACT REDUCE THE INEQUALITY OF RETURNS

Park Towne's argument that the Alternate 1 rates do not narrow the inequality of returns simply is wrong factually.

As noted, the Commission's expressed intent in its February 5, 1979 Order was to seek "the elimination, to the extent reasonably possible, of variations in the rate of

return...." In its March 9, 1979 Order, the Commission found that the Alternative 1 rates accomplished "a significant reduction in the inequality of returns...." In disputing the Commission's finding in its March 9, 1979 Order, Park Towne relies on "Appendix A" to "Answer to Objection and Motion to Dismiss Tariff Electric Pa. P.U.C. No. 25", (Brief for Petitioners, p. 31), which was a response by PECO to one of Park Towne's numerous pleadings in the proceeding before the Commission. Although the cited pleading is a docket entry, and is a part of the official record before the Court, the accuracy of the data shown in Appendix A has not been tested by cross-examination, and therefore is of undetermined accuracy and questionable reliability. However, since Park Towne has relied upon the data set forth therein, a response is appropriate.

Park Towne states that the "divergence", a term not used by the Commission, in "returns between mid-demand (500 and 1400 kw) and high-demand range customers at all of the load factors [hours of use] set forth is widened not narrowed." We agree that the divergence on the basis of absolute percentage points is as shown, and is greater.[3/]

3/ For example, under the existing rates (Supplement 67) at 400 kwh of usage, mid-demand (1400 kw) customers provided a 6.6% return, and high-demand (50,000) users provided 4.6%, or 2.0% less than mid-demand. Under the Alternate 1 filing mid-demand customers provided a 10.8% return, while high demand users provided a 8.5% return, or 2.3% less than mid-demand.

However, if stated on the basis of the percentage of variation, the percentage variation is less under the Alternate 1 tariff. For example, at the 400 kilowatt hours of use under the then existing rates, (Supplement 67) the figures for return were 6.6% (mid-demand) and 4.6% (high-demand), or 43% higher (6.6-4.6/4.6). The comparable calculation under the Alternative 1 rates is 10.8% - 8.5%, divided by 8.5, or 27% higher. At the 600 kilowatt hours level, also cited by Park Towne, the calculations are:

Supplement 67-- 6.0% - 4.2% = 1.8/4.2 = 43% higher; and

Alternative 1-- 10.9% - 8.9% = 2.0/8.9 = 22% higher[4/]. Thus, it is true that the percentage of the variation was, in fact, reduced substantially under the Alternative 1 filing.

In light of the fact that the Commission stated in the Order entered March 9, 1979, that the Alternative 1 rates significantly reduced the inequality of returns from customers, it seems abundantly clear that the Commission was referring to differences quantified by percentage of variation, as distinguished from percentage points of return. The important point, however, is that the Commission was correct in finding in the Order entered March 9, 1979, that the Alternative 1 rates do accomplish a reduction in the inequality of returns.

4/ A 22% higher rate of return does not mean that rates are 22% higher. Since the return is only a small portion of the rates being charged, the actual difference in rates charged would be less than 4%.

B. THE ALTERNATIVE 1 RATES DO NOT VIOLATE THE STATUTORY PROHIBITION AGAINST UNREASONABLE PREJUDICE OR DISADVANTAGE

The applicable statutory standard regarding rate relationships between customers at the time this proceeding was before the Commission, is set forth in Section 304 of the Public Utility Law, 66 P.S. §1144, now 66 Pa. C.S. §1304. While Park Towne characterizes the statutory prohibition as providing "that there be no discrimination as among customers", (Brief for Petitioner, p. 20), the statutory provision in fact provides, in pertinent part, that:

> No public utility shall, as to rates, make or grant any unreasonable preference or advantage to any person...or subject any person...to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, either as between localities or as between classes of service. (Emphasis added)

What is prohibited is not discrimination or mere differences in rates, but rather any unreasonable preferences or advantages. United States Steel Corporation v. Pennsylvania Public Utility Commission, 37 Pa. Commonwealth Ct. 173, 390 A. 2d 865 (1978) (U.S. Steel I). The burden of proof on appeal to show that a particular rate structure adopted by the Commission is unreasonably discriminatory is on the appellant. Armco; U.S. Steel (I). That burden of proof is dual in nature; in order to establish an unreasonable difference, it is essential that the complainant show both an advantage to one class of customers, and a resulting injury

or prejudice to the complainant. Examples of such undue prejudice include proof that one class is subsidizing another class, or proof that the complainant unreasonably is being charged a higher rate than that charged to a competitor. United States Steel Corporation v. Pennsylvania Public Utility Commission, 37 Pa. Commonwealth Ct. 185, 390 A. 2d 849 (1978). Park Towne has not met, and indeed has not even addressed, its burden to show that the Commission's rate structure determination worked an advantage to one class of customers with a resulting disadvantage to another class.

The bare fact that the Commission sought in its March 9, 1979 Order to achieve a rate structure which had less variance in the rates of returns between classes,[5/] does not mean that the existing variance or discrimination rose to the level prohibited by the statute. Certainly, the Commission has the power to order changes in rate structure, either in response to cost considerations or socio-economic considerations, U.S. Steel I, even absent a finding that the existing structure was unreasonably discriminatory. Park Towne has not recited any evidence indicating that the pre-February 5, 1979, or post March 9, 1979 rates were unreasonably discriminatory. Accordingly, it is clear that Park Towne's naked allegations cannot support a finding that

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5/ And again it is emphasized that mere differences in rates between classes of rates is not prohibited. U.S. Steel(I); Philadelphia Suburban Transportation Company v. Pennsylvania Public Utility Commission, 3 Pa. Commonwealth Ct. 184, 281 A. 2d 179 (1971).

any Commission Order entered in the proceeding below violated Section 304 of the Public Utility Law, 66 P.S. §1144, now 66 Pa. C.S. §1304. Armco; U.S. Steel I.

Park Towne seeks the simplistic solution to its perceived but unproved assertion of unreasonable discrimination, requesting that "this Court should order the Commission and the Utility to implement the Commission's own decision by adopting retroaction to July 4, 1978 a rate structure equalizing rates of return within the HT and PD classes." (Brief for Petitioner, p. 22). Park Towne's suggestion and argument in support thereof lacks merit.

The establishment of a new rate structure must find some support in the record, in view of the many considerations involved in such a determination. Some pertinent considerations were noted by the Commission:

> While we recognize that cost of service is always an important and normally the primary basis of pricing, it is not the only consideration. In the first place, even though the cost of service studies may be done in a craftman-like manner, this does not mean that they can be blindly relied upon. Judgment and some assumptions must be made in cost of service studies; cost of service studies are not perfect or precise. In addition, cost-based principles of ratemaking may be tempered by social circumstances and the desire to avoid abrupt changes in existing rate patterns and cost levels. Non-cost factors such as the ability of various customer classes to pay, ability to pass on the utility costs, and value of service should be taken into consideration.

(Order entered February 5, 1979, mimeo p. 90). (emphasis added). Not only has Park Towne recited no record evidence that would permit the establishment of a "rate structure equalizing rates," it has recited no record evidence justifying the establishment of any rate structure other than that found by the Commission. Further, Park Towne's request for a structure totally equalizing rates, is contrary to the Commission's expressed decision (which Park Towne does not challenge) that the rates should be designed so as to eliminate variations "to the extent reasonably possible." (Order entered February 5, 1979, p. 99).

While Park Towne characterized the October 1, 1979 response by PECO as acknowledging "that a rate form is available which can accomplish the desired Commission result to 'eliminate, to the extent reasonably possible, variations in rates of return from customers within those classes'" (Brief for Petitioner, p. 22), that letter made no such statement. The rate structure suggested was merely proffered by PECO in response to the Commission's request for a "middle-ground balance". As already noted, the latter proposal was subject to extensive investigation in the subsequent rate case; not until that investigation (R-79060865) was complete, could the October 1, 1979 proposal go into effect. In fact, the October 1, 1979 proposal, insofar as it related to the HT and PD schedules, did go into effect at the termination of the subsequent rate case on May 9, 1980.

Essentially, Park Towne's argument is that, in view of the Commission's finding that the rate variations should be eliminated to the extent reasonably possible, it was entitled to an immediate total equalization of rates. There simply is no law, however, which requires the Commission to apply its theories of rate design in drastic or total, as opposed to gradual, stages. As noted earlier and expressed by the Commission, "cost-based principles of ratemaking may be tempered by social circumstances, and the desire to avoid abrupt changes in existing rate patterns and cost levels." (Order entered February 5, 1979, p. 90). Consequently, Park Towne's arguments lack merit and should be rejected.

Finally, one additional point must be made in regard to Park Towne's request for an equalization of rates retroactively to July 4, 1978, the date the investigation began; this request is inappropriate in view of the "Commission-made rate" doctrine. When the Commission finds a rate, or rate structure, to be lawful, such a pronouncement has the force of a statute, and the company and all affected persons have a right to rely on it. Cheltenham & Abington Sewerage Company v. Pennsylvania Public Utility Commission, 344 Pa. 366, 25 A. 2d 334 (1938). Thereafter, those lawful rates known as "Commission-made rates" may be changed only after notice and opportunity to be heard, and may be changed prospectively only, i.e., from the date the investigation terminates. Cheltenham & Abington Sewerage Company;

Lancaster Ice Manufacturing Company v. Pennsylvania Public Utility Commission, 185 Pa. Superior Ct. 615, 138 A. 2d 262 (1958). In the instant case, the Commission's investigation into the HT and PD rate schedules did not terminate until April 7, 1980; consequently, any relief which Park Towne may be entitled to, commences April 7, 1980, not July 4, 1978 the date the investigation at R.I.D. 438 began.

II. THE COMMISSION'S REFUSAL TO MAKE A $40 MILLION RATE BASE ADJUSTMENT FOR EXCESS CAPACITY IS SUPPORTED BY THE RECORD

In the proceeding below, the Administrative Law Judge recommended that PECO's rate base be reduced by approximately $40 million by reason of his conclusion that PECO had excess capacity beyond its need to serve the public adequately. The Commission's discussion of the evidence submitted by the various parties is found at pages 10-15 of its Order entered February 5, 1979. (R.). The Commission did adopt much of the Administrative Law Judge's discussion of the facts and general considerations which have a rational bearing upon the subject matter, including a statement that the risk of excess capacity was a business risk which should be borne, in part, by investors. However, contrary to the Administrative Law Judge's recommendation, the Commission concluded that such an adjustment was inappropriate based upon the facts in the record.

Park Towne's position that the Commission's conclusion was inconsistent with its discussion, and was made without explanation, lacks merit. In fact, Park Towne's argument does not even address the narrow issue before your Court regarding the Commission's decision not to make a $40 million rate base adjustment. That question is whether there is substantial evidence in the record supporting the Commission's determination. See The York Water Company v.

Pennsylvania Public Utility Commission, ____ Pa. Commonwealth Ct. ____, ____ A. 2d ____ (1980). Accordingly, Park Towne's argument fails to make an appropriate assignment of error.

First, Park Towne's repeated implications that the Commission was bound by, or was required to give great weight to the Administrative Law Judge's Recommended Decision and conclusion, is contrary to case law. It is settled that "[a] broader grant of power to the Commission in the disposition of initial decisions in cases it chooses to review can scarcely be imagined." G.G.&C. Bus Co., Inc. v. Pennsylvania Public Utility Commission, ___ Pa. Commonwealth Ct. ____, 400 A. 2d 941, 944 (1979). Essentially, Park Towne's argument is that reasonable minds cannot differ, and that given the facts recited and the principles enunicated, the legal conclusion that an adjustment to rate base was appropriate, is necessarily the only conclusion; this proposition is not the case. G.G.&C.

Second, noticeable by its absence is any argument by Park Towne that the Commission's conclusion is not supported by substantial evidence. Of the many considerations involved in determining whether an excess capacity adjustment should be made, the Commission enunciated five having a rational bearing upon a determination of the amount of reserve capacity which is both needed and reasonable, above which, capacity might be viewed as "excess capacity". (Order entered February 5, 1979) The Commission's conclusion

in this matter was that the utility had met its burden of proof that all of its plant capacity was in fact used and useful. It is submitted that the Commission's conclusion, although it is contrary to that of the Administrative Law Judge, is supported by substantial evidence submitted by PECO's expert witnesses, when viewed in light of the considerations which are relevant to arriving at a conclusion on the subject.

Third, the Commission's Order entered February 5, 1979, is not impeachable by means of any comments made during the Commission's deliberations and discussion leading to a final vote. At its Public Meeting of December 28, 1978, the Commission considered the Recommended Decision of the Administrative Law Judge issued at Rate Investigation Docket R.I.D. 438. After a lengthy discussion of the various issues involved, the Commission voted. That vote was implemented by, and memorialized in, a written opinion and Order which was entered on February 5, 1979. The discussion and deliberations (leading to a final vote) which took place on December 28, 1978, simply are not matters subject to, or relevant to appellate review, and are not part of the record on appeal. See Yellow Cab Company v. Pennsylvania Public Utility Commission, 32 Pa. Commonwealth Ct. 513, 381 A. 2d 185 (1977). Accordingly, Park Towne's argument on this latter subject should be rejected as being an improper assignment of error in a Petition for Review which is in the nature of an appeal from a final administrative adjudication.

Finally, Park Towne's argument that the Commission failed to specify or explain its reasons for declining to make an excess capacity adjustment, also is unpersuasive and lacks merit. In excess of four pages of text, the Commission's Order entered February 5, 1979, recited the expert opinion evidence submitted by the Consumer Advocate, Park Towne, and PECO. (R.) After detailing the pertinent considerations involved in analyzing excess capacity issues, the Commission expressly refused to make any such adjustment "based upon the record in this proceeding." (Order entered February 5, 1979, p. 15). Basically, in the instant case, the Commission was faced with a choice of two alternative actions -- either to make the adjustment based upon one of two parties' expert witnesses' testimony, or to make no adjustment based upon PECO's experts' opinions. The Commission's conclusion in this case was not defective for lack of specifity, but rather "amounted to an implicit acceptance of the thesis of the party which prevailed [PECO] and a rejection of the contentions of the loser [Park Towne and the Consumer Advocate]." UGI Corporation v. Pennsylvania Public Utility Commission, ____ Pa. Commonwealth Ct. ____, 410 A. 2d 923, 935 (1980). Certainly, the Commission's findings in this case are not so inadequate as to leave the court wholly uninformed as to how or why the Commission decided not to make an excess capacity adjustment. Compare: West Penn Power v. Pennsylvania Public Utility Commission,

____ Pa. Commonwealth Ct. ____, 381 A. 2d 1337 (1979), wherein your Court was forced to remand a case to the Commission, in lieu of making an independent judgment on the record.[6/] In West Penn Power, unlike the instant case, there was an insufficient nexus between the Commission's belief that the company had excess reserve capacity, and the total dollar amount disallowed, which amount exactly equaled the entire second stage of a proposed two stage increase.

Therefore, it is submitted that the Commission's refusal to make an excess capacity adjustment was supported by the record, and should be affirmed.

6/ In fact, if Park Towne's reliance on West Penn Power is upheld, the instant decision should not be reversed, but rather remanded for a more detailed explanation of the evidentiary weighing process, which is peculiarly within the discretion of the factfinder. Pa. P.U.C. v. Pennsylvania Gas & Water Co., 19 Pa. Commonwealth Ct. 214, 341 A. 2d 239 (1975); rev'd on other grounds, Pa. P.U.C. v. Pennsylvania Gas & Water Co., ____ Pa. ____, ____ A. 2d ____ (No. 35 May Term 1978, filed February 1, 1980).

III. THE COMMISSION'S ELECTION NOT TO MAKE AN INTEREST EXPENSE ADJUSTMENT WAS NOT AN ABUSE OF DISCRETION UNDER THE EXISTING CIRCUMSTANCES.

Subsequent to the Commission's Order entered February 5, 1979, several petitions were filed. Specifically, a joint Petition for Modification, Correction and Reconsideration was filed by the Consumer Advocate, Park Towne and ACORN, on February 20, 1979; and on February 21, 1979, a separate Petition for Reconsideration was filed by Park Towne. And on March 1, 1979, PECO filed a Motion to Dismiss Petitions for Modification, Correction and Reconsideration. In essence, the first two petitions requested the Commission to modify an alleged incorrect interest expense deduction when computing income taxes. The first petition would have had the Commission increase the interest expense deduction by the difference between $103,555,000 and $102,388,000, or $1,167,000. (R.) The second petition would have had the Commission increase the interest expense deduction by $1,572,850. (R.) In fact, neither of these figures are correct. The Commission did utilize an incorrect interest expense deduction, and its interest expense deduction should have been increased by $1,147,000.[7/] The resulting revenue impact is $1,249,000.

7/ Appendix "A" of this Brief contains a derivation of the $1,147,000, and a reconciliation with the $1,167,000 and $1,572,850 figures.

This error in the amount used for the interest expense deduction was acknowledged by the Commission in its Order entered May 16, 1979. (R.) However, in declining to make the $1.249 million revenue decrease, the Commission similarly declined to make several other adjustments which, if made, would have increased revenues allowed by $1.44 million. These adjustments represent errors made by the Commission and noted by PECO in its Motion to Dismiss the two petitions. (R.) The Commission, in deciding not to make the adjustment, stated:

> [T]he error if any is $1,147,000. If this adjustment were to be made it would result in an indicated reduced revenue requirement of $1,249,000 or a reduction of 1.58% of the authorized increase. We have considered the fact that calculated interest expense is an artificial number, that the capital structure adopted was rounded to an even percentage and that a change of one tenth of one percent changes the calculated interest expense by $200,000, and further that the interest cost adopted was an even percentage [8%] and that had the Consumer Advocate's cost of 7.92% been adopted, the indicated interest expense would be lowered by $1,036,000 [which amount translates to an additional revenue requirement of $1,128,300]. Regulation is an art not a science and the requested adjustment urges a degree of precision which is unwarranted, at least on an after the fact basis. We are also mindful that the Respondent in its Motion to Dismiss, raised other possible adjustments, which if adopted would indicate an increase in revenue requirements of some $1,400,000. We decline to make the requested adjustment.

(Order entered May 16, 1979).

In terms of return on PECO's $2,850,000,000 fair value rate base, Park Towne's proposed $1.249 million dollar revenue impact represents between an .04% and .05% difference in the Commission's rate of return finding.[8/] No adjustment for the error was appropriate in view of the Commission's expressed considerations regarding other adjustments which could have (and maybe should have) been made, and the de minimus effect of such an adjustment. This Court expressly has recognized the fact that seemingly large dollar adjustments in major rate cases can be considered de minimus, when compared with the total amount in controversy. In UGI Corporation v. Pennsylvania Public Utility Commission, ____ Pa. Commonwealth Ct. ____, 410 A. 2d 923 (1980), this Court rejected the Consumer Advocate's contentions that the Commission must specifically adjudicate every issue raised; in so holding, Judge Rodgers noted:

> If OCA prevailed in full on all of the three issues UGI's operating expenses would be reduced by only $292,000 in this case with twelve contested issues involving millions of dollars.

Id. at _____, 410 A. 2d at 934-935. The $292,000 figure in UGI represented only 6.34% of the total $4.6 million allowed by the Commission. Certainly, it was reasonable for the Commission to conclude that a $1.2 million error, or

---

8/ $2,850,000,000 x .0004 = $1,140,000
$2,850,000,000 x .0005 = $1,425,000

1.58% of the $78.9 million allowed, was de minimus, particularly in view of the additional fact that other errors, which would have had the effect of increasing revenues, were discovered but not made.

CONCLUSIONS

For all of the foregoing reasons, it is requested that the Commission Orders entered February 5, 1979, March 9, 1979, May 16, 1979, and April 7, 1980 be affirmed.

Respectfully submitted,

William T. Hawke
Counsel

Joseph J. Malatesta, Jr.
Chief Counsel

For Pennsylvania Public
Utility Commission

P.O. Box 3265
Harrisburg, PA 17120
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The first petition asserts $103,555,000 is the proper debt interest deduction to be utilized when computing income tax expense (which in turn affects revenue requirement). The petition indicated this amount was derived by multiplying the rate base of $2,488,824,000 (properly it should have been identified as the original cost measure of value as adjusted by the Commission) by the weighted cost of debt (8% debt cost times 52% debt).

Although the methodology is correct, the petition contains either a mathematical or typographical error; $2,488,824,000 times .08, times .52 equals $103,535,000. Therefore, the adjustment to the debt interest deduction, to utilize in the compilation of the income statement in order to reflect the reinstatement of the original cost the ALJ disallowed at the original cost measure of value, should have been $103,535,000 minus $102,388,000 or $1,147,000.

The second petition utilized a different methodology when developing the amount by which the interest expense deduction should have been increased in order to reflect the reinstatement of the original cost the ALJ disallowed. This alternate methodology, should have produced a result indentical to that produced by the first method; however, the calculation yielded an increase in interest expense of $1,572,850 rather than 1,147,000.

APPENDIX

This apparent disparity is explained as follows: the debt interest deduction of $102,388,000 the ALJ utilized and the Commission subsequently failed to adjust for the re-instatement of the original cost, was in error. Rather than $102,388,000, the debt interest deduction, prior to adjustment should have been $101,962,182. This is derived by multiplying the ALJ's adjusted original cost measure of value of $2,451,014,000 times 52% debt, times 8% debt cost. $101,962,182 plus $1,572,850 equals $103,535,032, or $32 in excess of the amount of debt interest deduction derived by the methodology utilized in the first petition.

With the foregoing in mind, the proper adjustment to start with, in order to compute the amount by which the revenue requirement was overstated due to failure to increase debt interest expense, is the $1,147,000. Therefore the revenue requirement effect is: $1,147,000 times .51628 (tax effect), times 2.1095 (net to gross multiplier), equals $1,249,000.

PROOF OF SERVICE

I hereby certify that I am this day serving two copies of Respondent's Designation of Contents of Reproduced Record and Brief of Respondent upon the persons and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121; Pa. R.A.P. 2187(b); and Pa. R.A.P. 2154(b). Service by first class mail addressed as follows:

Walter R. Hall, Esq.
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Office of Consumer Advocate
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Andre C. Dasent, Esq.
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Legal Department - 15th Floor
Municipal Services Building
Philadelphia, PA 19107

Dated this 21st day of November, 1980

W. T. Hawke

William T. Hawke
Counsel for Pennsylvania
Public Utility Commission

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG, Pa. 17120

November 24, 1980

IN REPLY PLEASE
REFER TO OUR FILE

B-80052671
B-80052675

G. Ronald Darlington, Prothonotary
Commonwealth Court of Pennsylvania
Sixth Floor, South Office Building
Harrisburg, Pennsylvania 17120

In re: Appeal of Park Towne and Madway Engineers and Constructors and
Philadelphia Electric Company
No. 1111 C.D. 1980
No. 1211 C.D. 1980
Commonwealth Court of Pennsylvania

Dear Mr. Darlington:

Enclosed is the supplemental certified record in the above-captioned matter.

Very truly yours,

Sandra L. Sierer
Appeals Clerk

cc: Jerrold V. Moss, Esq.
Edward J. Riehl, Esq.
Robert H. Young, Esq.
Martha Bush, Esq.
Charles J. Streiff, Esq.
Mark B. Segal, Esq.
Andre C. Dasent, Esq.

PARK TOWNE AND MADWAY ENGINEERS AND CONSTRUCTORS, Petitioner	:	IN THE COMMONWEALTH COURT OF PENNSYLVANIA
V.	:	
PENNSYLVANIA PUBLIC UTILITY COMMISSION, Respondent	:	No. 1111 C.D. 1980
PHILADELPHIA ELECTRIC COMPANY, Petitioner	:	IN THE COMMONWEALTH COURT OF PENNSYLVANIA
V.	:	
PENNSYLVANIA PUBLIC UTILITY COMMISSION, Respondent	:	No. 1211 C.D. 1980

SUPPLEMENTAL CERTIFICATION OF THE RECORD

TO THE HONORABLE, THE PRESIDENT JUDGE AND JUDGES OF THE COMMONWEALTH COURT:

PENNSYLVANIA PUBLIC UTILITY COMMISSION DOES HEREBY CERTIFY THAT the attached is the supplemental record of said Commission in the matter of the Petition for Review filed by Park Towne and Madway Engineers and Constructors and Philadelphia Electric Company, from the findings, determination and orders of the Commission in the Rate Investigation proceeding of Pennsylvania Public Utility Commission v. Philadelphia Electric Company, Rate Investigation Docket No. R.I.D. 438, said supplemental record consisting of the following:

Answer to Objection and Motion to Dismiss Tariff Electric Pa. P.U.C. No. 25, filed by Philadelphia Electric Company, received February 22, 1979;

Objection to, and Motion to Dismiss, PECO's Proposed Tariff Electric PA PUC No. 25 as to HT and PD Classes, filed by Park Towne and Madway Engineers and Constructors, received February 24, 1979;

IN TESTIMONY WHEREOF, PENNSYLVANIA PUBLIC UTILITY COMMISSION has caused its seal to be hereunto affixed, duly attested by its Assistant Secretary this twenty-fourth day of November, 1980.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

ATTEST:

Joseph Rossi

Assistant Secretary

R-800526711
R-800526751
HAWLCE

MORGAN, LEWIS & BOCKIUS
COUNSELORS AT LAW
123 SOUTH BROAD STREET
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WASHINGTON
NEW YORK
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LOS ANGELES
MIAMI
PARIS
ASSOCIATED OFFICE

THOMAS P. GADSDEN
DIAL DIRECT (215) 875-5234

December 12, 1980

Francis C. Barbush, Chief Clerk
Commonwealth Court of Pennsylvania
620 South Office Building
Harrisburg, PA 17120

Re: Park Towne and Madway Engineers and Constructors
v.
Pennsylvania Public Utility Commission
No. 1111 Commonwealth Docket 1980

Philadelphia Electric Company
v.
Pennsylvania Public Utility Commission
No. 1211 Commonwealth Docket 1980

Dear Mr. Barbush:

On August 27, 1980, Petitioners Park Towne and Madway Engineers and Constructors ("Park Towne") and Philadelphia Electric Company (the "Company") filed their Designation of Contents of Reproduced Record and Proof of Service form in the above-captioned proceedings. Concurrent with those filings, each Petitioner served upon all parties of record its respective Brief Without Definitive Record Pagination pursuant to Appellate Rule 2187(b).

The Respondent, the Pennsylvania Public Utility Commission, and the various intervenors in both cases were granted a thirty-day extension to file their Briefs by letter dated September 15, 1980. By Orders issued on October 23, 1980 and November 20, 1980, the Court further extended the filing period until November 21, 1980.

Due to certain unanticipated difficulties which have been encountered in their preparation, Park Towne and the Company will be unable to file Reproduced Records by the present due date of December 15, 1980. Accordingly, it is respectfully requested that the time for the filing of the Reproduced Record at Nos. 1111 and 1211 Commonwealth Docket 1980 be extended for one week,

or until December 22, 1980. We are advised by counsel for Petitioner Park Towne that it joins in this request. In addition, counsel for all parties who by Praecipe or Notice of Intervention have indicated an intention to participate in these two appeals have been consulted and have stated that they have no objection to such an extension.

Sincerely,

Thomas P. Gadsden

Thomas P. Gadsden
Counsel for Philadelphia Electric Company

tjk

cc: All Parties of Record

B-800526 71
B-800526 75
Hawke

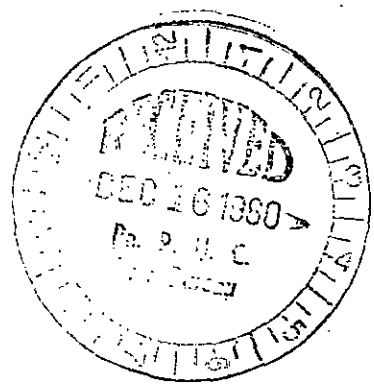
Commonwealth Court of Pennsylvania

HARRISBURG, PENNSYLVANIA 17120

OFFICE OF THE PROTHONOTARY

December 15, 1980

TELEPHONE:
(717) 787-5884 - 787-8836



Thomas P. Gadsden, Esq.
Morgan, Lewis & Bockius
123 South Broad Street
Philadelphia, Pa. 19109

Re: Park Towne et al. v. Pa. PUC
No. 1111 C. D. 1980

Phila. Electric Company v. Pa. PUC
No. 1211 C. D. 1980

Dear Mr. Gadsden:

In response to your letter dated December 12, 1980, the reproduced record shall be filed with the Court on or before December 22, 1980.

Very truly yours,

Francis C. Barbush

Francis C. Barbush
Chief Clerk

FCB:slr

cc: All Parties of Record

B-80052671
B-80052675

Commonwealth Court of Pennsylvania

HARRISBURG, PENNSYLVANIA 17120

March 31, 1981

OFFICE OF THE PROTHONOTARY

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See attached list of counsel

Re: Park Towne and Madway
Engineers and Constructors
Phila. Electric Company v.
Pa. PUC
Nos. 1111 and 1211 C. D. 1980

Gentlemen and/or Madames:

Notice is hereby given that argument on the above case is fixed for:

Wednesday, June 3, 1981 - 9:30 A.M., E.D.S.T.
Before the Court sitting en banc, Supreme Court Room
Fourth Floor, Main Capitol Building
Harrisburg, Pennsylvania

Kindly confirm receipt of this notice by signing and returning to me the enclosed copy of same. Also, if your address is different from that appearing above, please advise us of the change so that your argument book will be mailed to the correct address.

Very truly yours,

Francis C. Barbush

Francis C. Barbush
Chief Clerk

FCB:slr
Enclosure

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B-800526 71
B-800526 75

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PARK TOWNE and MADWAY ENGINEERS and CONSTRUCTORS, Petitioners	:	
v.	:	No. 1111 C.D. 1980
PENNSYLVANIA PUBLIC UTILITY COMMISSION, Respondent	:	
LUKENS STEEL COMPANY et al., Intervenors	:	
PHILADELPHIA ELECTRIC COMPANY, Petitioner	:	
v.	:	No. 1211 C.D. 1980
PENNSYLVANIA PUBLIC UTILITY COMMISSION, Respondent	:	
LUKENS STEEL COMPANY et al., Intervenors	:	

BEFORE: HONORABLE JAMES C. CRUMLISH, President Judge
HONORABLE THEODORE O. ROGERS, Judge
HONORABLE GENEVIEVE BLATT, Judge
HONORABLE JOHN A. MacPHAIL, Judge
HONORABLE MADALINE PALLADINO, Judge

ARGUED: June 3, 1981 - Harrisburg

OPINION

OPINION BY JUDGE ROGERS FILED: August 17, 1981

On August 5, 1977, the Philadelphia Electric Company (PECO) filed with the Pennsylvania Public Utility Commission (Commission) Supplements Nos. 72 and 73 to its Tariff Electric--Pa. P.U.C. No. 24 to become effective October 4, 1977. Supplement No. 72 eliminated the fuel adjustment clause for residential and small commercial customers while rolling into their base rates approximately 0.9 cents per kwh and created a new energy adjustment clause for all other customers, primarily large commercial and industrial, rolling into their base rates a portion of the present charge. By Supplement No. 73, PECO proposed a base rate increase in annual revenues in the amount of about $115.8 million or 11 per cent based on operating results for the test year ending December 31, 1977. Complaints against the proposed rate increase were filed by, among others, Park Towne and Madway Engineers and Constructors (Park Towne), apartment house owner customers of PECO, and the Consumer Advocate.

To R.I.D. 438 the Commission initiated an investigation of the proposed rates and suspended both Supplements. By order adopted September 26, 1977, the Commission declined to lift the suspension of Supplement No. 72, but gave PECO interim relief in the form of continued accruals of Allowance of Funds During Construction (AFDC) on its

investment in Salem No. 1 nuclear plant from July 1 to December 31, 1977, although the plant had gone on line June 30, 1977. The Commission further directed that the Administrative Law Judge (ALJ) assigned to the case file an interim decision indicating what additional relief, if any, should be granted. Pursuant to this Order, a Recommended Order was issued by the ALJ on December 30, 1977, calling for the approval of an interim revenue increase of $32.5 million. (PECO had by this time made it clear that, by reason of events happening since its filing, Supplement No. 72 would no longer be an effective measure for increasing revenues and should therefore not be further considered by the Commission.)

On February 24, 1978, the Commission allowed the company interim relief in the amount of $11.883 million. In response to a petition by PECO requesting the establishment of temporary rates to provide additional relief in the amount of $41.8 million, the Commission on July 10, 1978, established temporary rates at the level of the previously effective interim relief, $11.883 million.

On November 15, 1978, the ALJ presented a recommended order allowing $73,247,000 of additional annual revenues. On December 28, 1978, the Commission held a public session and adopted an order, finally entered February 5, 1979, allowing an increase of annual revenues of $78,894,000 and requiring PECO to restructure rates for the HT (high-tension voltage) and PD (primary voltage) customers so as to "eliminate to the extent reasonably possible variations in rate of return from customers within these classes." Park Towne and PECO

each filed appeals from this order. A rate schedule (Alternative 1) was submitted by PECO and eventually adopted by the Commission by an order entered April 7, 1980. Park Towne also appealed the April 7, 1980, order.

Our review is limited to a determination of whether constitutional rights have been violated, an error of law committed, or whether the findings, determinations and order of the Commission are supported by substantial evidence. Blue Mountain Consolidated Water Company v. Pennsylvania Public Utility Commission, ___ Pa. Commonwealth Ct. ___, 426 A.2d 724 (1981).

We shall first examine Park Towne's questions.

I. PARK TOWNE'S APPEAL

A. Rate Structure

Park Towne contends that the Commission erred in approving what it terms a discriminatory rate schedule assertedly imposing a disproportionate share of the utility's costs on mid-demand (HT-500 and 1,400 kw, PD-125 and 175 kw) HT and PD rate class customers causing them to provide PECO with a disproportionately higher return on cost for service than that contributed by low (HT-25 and 100 kw, PD-25 kw) and high (HT-50,000 kw, PD-500 kw) demand apartment owners.

In its February 5, 1979, order, the Commission recognized fault in the rate structure proposed in PECO's tariffs and suggested a plan for restructuring the rate schedule HT and PD.

On February 20, 1979, Park Towne, the Consumer Advocate and an another public interest group filed a Petition for Modification, Correction and Reconsideration by the Commission of certain aspects of the February 5, 1979, order, including the rate structure in issue. The Commission agreed to reconsider rate structure especially as PECO demonstrated that the Commission-ordered rate design increased some customer's rates more than 80% while decreasing the rates of others. PECO offered another rate structure, Alternative 1, which the Commission found "to accomplish a significant reduction in the inequality of returns from customers within those schedules." The Commission then ordered Alternative 1 to be put into effect temporarily and opened the rate structure issue for reconsideration of whether Alternative 1 or some other structure would be more effective in reducing the inequality of rates of return. On April 19, 1979, the Commission expressed dissatisfaction with the record, ordered PECO to submit additional information suggesting that other alternatives "be developed which might strike a middle ground balance between the Commission-ordered rate design" and Alternative 1. PECO then suggested as a possibility proposed Rate PD and HT tariff sheets appearing in its later rate case filed as Supplement No. 6 at R.I.D. 865 (test year ending March 31, 1980). Finally, by order entered April 7, 1980, the Commission adopted the Alternative 1 rate structure for use for revenues allowed in this proceeding.

Parke Towne argues that the Commission, by adopting Alternative 1, failed to accomplish its proclaimed goal to "eliminate to the extent reasonably possible, variations in rates of return from customers" in Rate HT and PD classes. Park Towne insists that although Alternative 1 reduces the inequality between low-load factor users and median and high-load factor users, it actually increases the inequality between mid-demand and high demand users. Park Towne asks us to require the installation in this case of the rate structure proposed by PECO for the later (R.I.D. 865) case, which Park Towne contends is the only structure which is fair to it.

The question of reasonableness of rates and the difference between rates in their respective classes is an administrative question for the Commission to decide and this court's scope of review is limited. Peoples Natural Gas Co. v. Pennsylvania Public Utility Commission, 47 Pa. Commonwealth Ct. 512, 409 A.2d 446 (1979). Rate structure is a matter peculiarly within the Commission's flexible limit of judgment. U.S. Steel Corp. v. Pennsyvlania Public Utility Commission, 37 Pa. Commonwealth Ct. 173, 390 A.2d 865 (1978). The burden of proving that rates set by the Commission are discriminatory is on the customers challenging such rates. U.S. Steel, supra. To prove discrimination, Park Towne was bound to show that PECO was bent on collecting more than a reasonable rate from Park Towne (and other mid-demand customers) for the purpose of supplying a deficiency created by inadequate

rates charged other customers. Alpha Portland Cement Co. v. Public Service Commission, 84 Pa. Superior Ct. 255 (1925). All that Park Towne here proved was that some other users in different demand classes pay lower rates than mid-demand HT users. We have repeatedly held that such differences do not establish the existence of unreasonable or discriminatory rates:

> Differences in rates between classes of customers based on such criteria as the quantity of electricity used, the nature of the use, the time of the use . . . , or based on differences of conditions of service, or cost of service are not only permissible but often are desirable and even necessary to achieve reasonable efficiency and economy of operation.

Philadelphia Suburban Transportation Co. v. Pennsylvania Public Utility Commission, 3 Pa. Commonwealth Ct. 184, 196-197, 281 A.2d 179, 186 (1971). See also, U.S. Steel, supra; U.S. Steel Corp. v. Pennsylvania Public Utility Commission, 37 Pa. Commonwealth Ct. 195, 390 A.2d 849 (1978). Park Towne's complaint on this account is without effect and we will affirm the Commission's April 7, 1980, order establishing the structure.

B. Excess Capacity

Park Towne contends that the Commission erred in rejecting the ALJ's recommendation of a $40 million downward adjustment of PECO's rate base for excess capacity. Park Towne's contention is based first on the fact that at the December 28, 1978, meeting which produced the order entered February 5, 1979, three of the five Commissioners allegedly orally declared their belief that an adjustment for excess capacity would be appropriate. Park Towne

advances these comments as establishing that a majority of the Commission was favorable to an adjustment; and proposes that the Commission's later opinion and order not providing for any adjustment must be reversed. We disagree. Comments of individual Commissioners at meetings at which prospective adjudicatory action is under consideration are, of course, not binding on the individuals, much less the Commission. Park Towne does not charge the Commission or any member with want of fairness or impartiality; there is no suggestion of lack of due process in the Commission's deliberations; and the impressionistic comments of the Commissioners at the public meeting are in the circumstances simply irrelevant. Yellow Cab Co. v. Pennsylvania Public Utility Commission, 32 Pa. Commonwealth Ct. 573, 381 A.2d 185 (1977).

Park Towne next asserts that because the Commission in its adjudication reproduces much of the ALJ's discussion of excess capacity, it was somehow bound to reach his result; and that its decision not to make a disallowance for excess capacity is without rational explanation and requires us to remand for further explanation. West Penn. Power Company v. Pennsylvania Public Utility Commission, 33 Pa. Commonwealth Ct. 403, 381 A.2d 1337 (1978).

The ALJ's writing reproduced by the Commission was primarily a general statement of facts and certain legal concepts and by no means compelled a disallowance for excess capacity. The Commission expressed its awareness of problems faced by utilities in constantly having to tailor capacity to demand, caused by, inter alia,

the increasing duration of construction periods and the enormous size of modern base load units, and wrote: "While we are acutely aware of and concerned with the financial burden which true 'excess capacity' might impose upon rate payers, we are unwilling to make any adjustment based upon alleged 'excess capacity' based upon the record in this proceeding." As indicated by its use of the adjectives "true" and "alleged" with the term "excess capacity", the Commission may have concluded that PECO had established that the property it asked to be included in rate base was used and useful in rendering service and that this evidence, not that adduced by opposing parties . . . had preponderated. UGI Corp. v. Pennsylvania Public Utility Commission, 49 Pa. Commonwealth Ct. 69, 410 A.2d 923 (1980).

"What constitutes used and useful utility property is committed to the discretion of the Commission." Bell Telephone Co. v. Pennsylvania Public Utility Commission, 47 Pa. Commonwealth Ct. 614, 629, 408 A.2d 917, 925 (1979). "In the area of adjustments to rate base, the Commission has wide discretion." UGI, 49 Pa. Commonwealth Ct. at 79, 410 A.2d at 929. We affirm the Commission's order declining to adjust rate base for asserted excess capacity.

C. Interest Expense Adjustment

On February 21, 1979, Park Towne filed a Petition for Reconsideration of the Commission's February 5, 1979 order seeking that $1,147,000 be deducted from the allowance for federal taxes because the Commission had failed, in computing taxes, to include as an expense to PECO the interest on debt which would be attributable to the approximate $40 million which the ALJ had removed for excess capacity but which the Commission had restored.

The Commission agreed that the putative federal tax obligation was understated by $1,249,000 and that if an adjustment were made revenue requirements would be reduced in the same amount. The Commission declined to make any adjustment because (1) PECO had pointed out other computation errors indicating adjustments which would increase revenue requirements by $1,400,000 and which the Commission likewise refused to make; and (2) because the capital structure component had been rounded to an even 8%, and if the lower figure of 7.92% advocated by some parties had been adopted the figure in contention would be lowered by $1,036,000. The Commission concluded, in denying the Petition, that "the requested adjustment urges a degree of precision which is unwarranted." We agree.

II. PECO'S APPEAL

A. Reduction in Salem Unit No. 1 Construction Cost.

In May, 1968, PECO, together with Public Service Electric and Gas Company of New Jersey (PSE&G), Atlantic City Electric Company and Delmarva Power and Light Company, executed an agreement to jointly construct two 1090 megawatt nuclear generating units to be located in Salem, New Jersey. By this agreement PSE&G was primarily responsible for the design, construction and operation of the units. The first of these light water nuclear reactors, Salem No. 1, went into commercial operation on June 30, 1977. On the basis of its 42.59 per cent ownership share of the estimated $1.2 billion project (including both units) PECO requests that Salem No. 1 and designated parts of the plant common to both units be included in its rate base at a value of $287 million.

After Salem Unit No. 1 was completed, at the instance of the Consumer Advocate and his New Jersey counterpart, Theodore Barry and Associates, a private consulting firm, conducted a so-called audit of PSE&G's construction practices. On the basis of Barry's report the Administrative Law Judge and the Commission concluded that PSE&G imprudently managed the construction of Salem No. 1, that PECO failed adequately to monitor PSE&G, that $10.5 million of PECO's share of the Salem No. 1 expenditures "would not have been made had prudent management been exercised" and that $10.5 million should be eliminated from rate base.

We agree with the Commission that PECO's customers are not required to reimburse the utility, through rate charges, for expenditures imprudently made. As the Supreme Court wrote in

Pennsylvania Public Utility Commission v. Pennsylvania Gas & Water Co., ___ Pa. ___, ___, 424 A.2d 1213, 1220 (1981), quoting Ben Avon Borough v. Ohio Valley Water Co., 260 Pa. 289, 309, 103 A. 744, 750 (1918):

> The original cost of the property is not to be taken as controlling [in the ascertainment of the fair value of a utility's property for ratemaking purposes], for there may have been extravagance in purchasing, or bad management . . . .

The Barry report lends sufficient support to the conclusion that some of the Salem No. 1 construction costs exceeded those which PSE&G should have achieved through the exercise of prudent management. Specifically it identifies five categories of management practices which, in the authors' opinion, could have been improved by PSE&G. The construction cost savings that would have resulted from the use of what the authors term "preferred management practices" are also estimated. The estimated savings are then divided into those designated as "hard savings" and those designated as "soft savings." PECO's share of the hard savings attributable to the failure to properly manage the construction of Salem No. 1 is estimated to be $5.9 million and PECO's share of the soft savings is estimated to be $15.0 million. The Commission arrived at the ordered $10.5 million reduction in the cost of Salem No. 1 by choosing "the approximate midpoint between [the estimated figures for hard and soft savings]."

PECO challenges this aspect of the Commission's order on the ground that the cost reduction includes amounts not attributable,

even by the terms of the Barry report, to "improvidence or other bad management" on the part of either PSE&G or (by some principle of joint or vicarious liability) to PECO. It is conceded by the Commission that in the absence of such improvidence or bad management or other wrongdoing in the construction of Salem No. 1 all costs actually incurred should be considered in determining the value of the nuclear plant for the purpose of fixing just and reasonable rates. Pennsylvania Power & Light Co. v. Public Service Commission, 128 Pa. Superior Ct. 195, 216-217, 193 A.427, 433-434 (1937). See also, Pittsburgh v. Pennsylvania Public Utility Commission, 370 Pa. 305, 318, 88 A.2d 59, 66 (1952).

To repeat: The Commission arrived at the $10.5 million figure simply by choosing, without further explanation, one-half of the total of hard and soft savings as estimated by Barry Associates. Such a composite judgment is inherently ambiguous; and it makes it impossible for us to determine which of the many cost items, estimates and assumptions contained in the report were thereby accepted by the Commission and which were rejected. See West Penn Power Co., 33 Pa. Commonwealth Ct. at 406, 381 A.2d at 1339. But we may not in reviewing the PUC's orders assume duties and perform functions committed to the Commission, such as the weighing of evidence and the drawing of factual inferences. However, we may not abdicate our special duty to provide meaningful appellate review of the Commission's determinations. As we will show in some detail, it is unclear whether the estimated soft savings contained

in the Barry report were intended by definition or in fact to represent costs that could have been avoided through the use, by PSE&G, of prudent management practices. In addition, several items contained within the soft savings and involving a large percentage of the total are clearly unrelated to any managerial imprudence. Therefore, we are compelled to reverse the Commission's Order and to remand the record for a description of the considerations based on the record which led it to accept as the cost of imprudence exactly one-half of the total, made up of numerous separate items, of both hard and soft savings appearing in the Barry report. Cf. Pennsylvania Gas and Water Co. v. Pennsylvania Public Utility Commission, 33 Pa. Commonwealth Ct. 143, 149, 381 A.2d 996, 1000 (1977), reversed on other grounds.

The report describes the distinction between hard and soft savings as follows:

> The "hard" impact reflects the minimum cost savings which PSE&G management should have attained if it had practiced accepted management practices. While the "soft" impact reflects the maximum cost savings attainable if all activities had been performed effectively throughout the project.

It is reasonable and within the factfinding function of the Commission to infer managerial imprudence from testimony quantifying "savings which PSE&G should have attained if it had practiced accepted management practices." (Emphasis added.) However, no such normative implications are present in the Barry definition of soft savings. It seems to us that "savings attainable if all activities had been performed effectively throughout the project" is not compatible with any notion of imprudent management when

common experience and, indeed, discussion in the Barry report itself, tells us that construction activities are often "performed ineffectively" as a result of things other than imprudent management. For example, the Barry report emphasizes the effect on performance of a lengthy pipe fitters' strike and other items of mischance, possibly the cause of much of the soft savings.

This latter point is clearly expressed in the report's discussion of the source and nature of the estimated soft savings. The largest single item of potential soft savings in the construction of Salem No. 1 ($21 million out of a total soft savings of $45.2 million) is attributed in the report to failings in PSE&G's "work force utilization." Nevertheless, the audit contains the following summary of findings and conclusions with respect to PSE&G's work force management practices during the course of the construction of Salem No. 1:

> Work force management functions were performed well at the project level. However, opportunities existed to improve the performance of work force management evaluation and control functions at the supervisory level.

In explaining these opportunities for improved supervision the report presents a chart in which work force management functions are divided into five general categories and eighteen specific elements. As to each of the eighteen elements PSE&G is assigned a grade for its performance at the project and supervisory level: a total of thirty-six grade assessments. The possible grades are defined as follows:

A = performed effectively
B = performed satisfactorily, but could be improved
C = not performed effectively

Since PSE&G receives a "C" grade in only one of the thirty-six element (having to do with field reports on productivity), it is clear that the $11.4 million difference between the hard and soft savings attributable to failings in work force management must result from the inclusion in soft savings of construction costs that might have been reduced if PSE&G had altered managerial practices which were graded "performed satisfactorily, but could be improved." Obviously, to the degree that PSE&G performed effectively and got A's or satisfactorily and got B's, it was not guilty of imprudent management.

The second largest component of potential soft savings (which, together with failings in work force utilization, account for nearly 80% of the total) is in the area of "rework", that is, construction tasks which must be redone for various reasons including human failure, changes in federal design regulations and engineering errors. As described above, the performance of PSE&G in minimizing the necessity for rework was evaluated by comparing the management techniques actually used with "preferred management practices." In those instances where the preferred practice was not used by PSE&G the report presents an estimate of the resulting increase in construction costs and the aggregate of those increases is reflected in the estimated total potential hard and soft savings. However, it is clear from the testimony of

James O. Love, a manager of Theodore Barry and Associates and co-author of the report, that the denomination of a particular management practice as preferred does not imply that PSE&G's use of another technique was imprudent or unreasonable. For example, Mr. Love testified as follows:

> A: . . . It is also my observation that a large percentage of rework is due to interference from various piping systems, conduits, things of that nature, valves, and I think there has been a very rapid evolution in the state of the art in identifying these interferences and eliminating them prior to going into the field and encountering them after the fact, so to speak.
>
> . . . .
>
> Q: Now, I believe one of the preferred practices which it is indicated in your report which could go a long way toward reducing rework caused by construction interference is the use of a mathematical model to predict when interference might occur. Is that not correct?
>
> A: Yes. We were happy to point out that this mathematical model was an innovation, it is a current state of the art development, something that really was not available from the beginning of the Salem project, but one which should cut down the rework, for example, on Unit 2, and on Hope Creek considerably, if applied successfully.
>
> Q: And I take it in your comment, this is an innovation that Public Service has participated in and is currently employing in its construction activities?
>
> A: That is correct.

Obviously, the discovery of innovative management techniques not available during the construction process does not by itself render the conduct of the managing utility unreasonable or the cost of construction extravagant.

Moreover, in calculating the soft savings attributable to the possibility of decreased rework the report expressly "[a]ssume[s] all $12 million of labor costs were correctable . . ."; an assumption Mr. Love admitted on cross-examination was not based on fact because rework was caused by many things other than fault of management such as, notably, changes in the Nuclear Regulatory Commission's regulations. Mr. Love described the assumption as intended only to establish an upper limit on potential cost savings and to correct for any possibility that the amount of rework had been understated.[2]

In conclusion, no evidence other than that contained in the Theodore Barry and Associates' report was adduced challenging the propriety of the inclusion of actual construction costs of Salem No. 1 in rate base. As the New Jersey Board of Public Utilities found in rejecting the Theodore Barry audit as evidence of mismanagement on the part of PSE&G "the major portion of the audit supports PSE&G's position that it constructed the Salem facility in a reasonable and prudent manner." Indeed the audit's overall assessment of PSE&G's management of the construction project lends scant support to the charges of malfeasance:

> Overall, PSE&G recognized the need for and made appropriate moves toward implementing an organization and a level of management control appropriate for today's large and complex power stations construction projects. PSE&G's tradition of designing its own power plants in the past provided perspective and experience in this regard. While changes that were instituted by PSE&G provided benefits to the Salem project, implementation of certain other methods, practices, procedures, systems and organization would have contributed to minimizing costs of the Salem project . . . .

Therefore, insofar as the Commission's Order excludes from the Salem Unit No. 1 cost figures $10.5 million of costs incurred by PECO, it is reversed and we will remand for findings and conclusions on this issue.

B. Additional AFDC for the Salem Unit

At the time PECO filed Supplements Nos. 72 and 73, Salem No. 1 had gone into service so that the Allowance for Funds used During Construction (AFDC) could not be accrued, but no return or annual depreciation could be received by PECO on capitalized AFDC accruals because the Salem unit had not yet been included in rate base, and could not be until the resolution of the rate case. By its September 26, 1977, order, the Commission allowed PECO to continue to accrue "on its books" AFDC on PECO's share of Salem No. 1 and the plant in common with Salem No. 2 for the period July 1, 1977, to December 31, 1977. According to accounting principles, such AFDC would be charged to an income account and would therefore be treated as earnings. It appears also that PECO needed to increase its reportable earnings in order to improve its bond coverage and the Commission asserts that it authorized the continued accrual as interim relief only to assist PECO with this problem.

After the September 26, 1977, order, PECO requested an opinion of the Chief Accountant of the Federal Power Commission (now the Federal Energy Regulatory Commission) as to whether the accounting of such AFDC as an expense would be permissible under the FPC System of Accounts in view of the fact that the Salem unit would be in operation during the accrual period. The FPC replied that any AFDC accrued after the inservice date of the Salem unit would not be permitted in PECO's accounting.

The ALJ in his recommended decision on interim relief found that the attempt by the Commission's September 26, 1977, order

to provide immediate relief by way of an increase in PECO's reportable earnings had been frustrated and suggested interim dollar rate relief in the amount of $32,500,000 on an annual basis. On February 24, 1978, the Commission, determining that 2.4 times bond coverage was that which was required by PECO, found that an increase in revenues at an annual rate of $11.883 million would increase PECO's indenture coverage to 2.4 times and accordingly gave PECO $11.883 million as interim relief.

PECO claimed, and still claims, that the Commission intended by its September 26, 1977, order to allow PECO to include the $8.493 AFDC accrued after the unit went in service in its rate base. The Commission explained in its February 5, 1979 final order that it refused to include the $8.493 million of AFDC in rate base as capitalized earnings because: "At the time of our September 26, 1977, order . . . we suffered under the mistaken belief that allowing such accrual . . . would provide a form of reportable earnings. Such was not to be the case." At the same time the Commission made it clear that the $11.883 million interim dollar rate relief granted on February 24, 1978, was not a supplement to the AFDC accruals but a substitute for them as evidenced by the dollar relief being calculated by the Commission to provide the exact requisite indenture coverage. Of course, we must give great deference to the Commission's interpretation of its own orders. See, Purolator Security, Inc. v. Pennsylvania Public Utility Commission, 32 Pa. Commonwealth Ct. 175, 378 A.2d 1020 (1977).

Further, if PECO's interpretation were effected, the $8.493 million added to rate base would produce an additional future revenue requirement, over the life of the Salem unit of approximately $40 million. As it observed in its brief on this appearl, the Commission, which was attempting to deal with an interim rate relief problem, could hardly have intended to burden the rate payers in future years in the amount of approximately $40 million in order to give PECO $8.493 million in earnings in 1977.

The Commission's denial of PECO's claim to include in rate base $8.493 million from the AFDC accrued between July 1, 1977, and December 31, 1977, is affirmed.

The Commission's action, by its order of February 5, 1979, disallowing the amount of $10.5 million of Philadelphia Electric Company's share of the cost of constructing Salem Unit No. 1 in rate base is reversed and the record is remanded for findings, conclusions and a disposition of this issue consistent with this opinion; the Commission's order of February 5, 1979, is otherwise affirmed; the order of April 7, 1980, is affirmed.

Theodore O. Rogers, J.

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1. The grading schema is elsewhere defined as follows:

A = activity performed satisfactorily
B = performance of activity could have been improved
C = performance of activity should have been improved

2. There is considerable evidence contained in the audit that PSE&G is, in fact, an industry leader in the minimization of construction rework. For example, the following assessment appears at Page 74 of the report:

> PSE&G made other decisions that increased capital costs, based on prior experience but, without specific economic analyses. An example is their selection of cables having a good balance of electrical, radiation, and flame retardant characteristics. Although NRC regulations and industry standards at the time the cables were purchased did not require these same quality characteristics, the regulations and standards in effect at present do require cables similar to those selected by PSE&G. Other utilities that purchased what appeared to be less expensive cables have incurred costly retrofit charges.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PARK TOWNE and MADWAY ENGINEERS and CONSTRUCTORS, Petitioners	:	
v.	:	No. 1111 C.D. 1980
PENNSYLVANIA PUBLIC UTILITY COMMISSION, Respondent	:	
LUKENS STEEL COMPANY et al., Intervenors	:	
PHILADELPHIA ELECTRIC COMPANY, Petitioner	:	
v.	:	No. 1211 C.D. 1980
PENNSYLVANIA PUBLIC UTILITY COMMISSION, Respondent	:	
	:	
LUKENS STEEL COMPANY et al., Intervenors	:	

ORDER

AND NOW, this 17th day of August, 1981, it is ordered that the Commission's action, by its order of February 5, 1979, disallowing the amount of $10.5 million of Philadelphia Electric Company's share of the cost of constructing Salem Unit No. 1 in rate base is reversed and the record is remanded for findings, conclusions and a disposition of this issue consistent with this opinion; the Commission's order of February 5, 1979 is otherwise affirmed; the order of April 7, 1980 is affirmed.

CERTIFIED FROM THE RECORD

AUG 17 1981

Francis C. Barbush
CHIEF CLERK

Theodore O. Rogers, J.

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG, Pa. 17120

June 16, 1981

IN REPLY PLEASE
REFER TO OUR FILE

B-80052671
B-80052675

G. Ronald Darlington, Prothonotary
Commonwealth Court of Pennsylvania
Sixth Floor, South Office Building
Harrisburg, Pennsylvania 17120

Supplemental record

In re: Appeals of Park Towne and Madway Engineers and Constructors and Philadelphia Electric Company
No. 1111 C. D. 1980 and No. 1211 C. D. 1980, respectively
Commonwealth Court of Pennsylvania

Dear Mr. Darlington:

Enclosed is the supplemental certified record in the above captioned matters.

Very truly yours,

Carol J. Barnes

Carol J. Barnes
Appeals Clerk

RECEIVED AND FILED
COMMONWEALTH COURT
OF
PENNSYLVANIA
JUN 16 3 19 PM '81

cc: Jerrold V. Moss, Esq.
Edward J. Riehl, Esq.
Robert H. Young, Esq.
Martha Bush, Esq.
Charles J. Streiff, Esq.
Mark B. Segal, Esq.
Andre C. Dasent, Esq.

PARK TOWNE AND MADWAY ENGINEERS AND CONSTRUCTORS, Petitioners	:	IN THE COMMONWEALTH COURT OF PENNSYLVANIA
v.	:	
PENNSYLVANIA PUBLIC UTILITY COMMISSION, Respondent	:	No. 1111 C. D. 1980
PHILADELPHIA ELECTRIC COMPANY, Petitioner	:	IN THE COMMONWEALTH COURT OF PENNSYLVANIA
v.	:	
PENNSYLVANIA PUBLIC UTILITY COMMISSION, Respondent	:	No. 1211 C. D. 1980

SUPPLEMENTAL CERTIFICATION OF THE RECORD

TO THE HONORABLE, THE PRESIDENT JUDGE AND JUDGES OF THE COMMONWEALTH COURT:

PENNSYLVANIA PUBLIC UTILITY COMMISSION DOES HEREBY CERTIFY THAT the attached is the supplemental record of said Commission in the matter of the petitions for review filed in the above-captioned matters from the findings, determination and order of the Commission in the Investigation of Philadelphia Electric Company, Docket No. R.I.D. 438, said supplemental record consisting of the following:

Order of the Commission, entered February 5, 1979;
Order of the Commission, entered March 9, 1979;
Order of the Commission, entered March 9, 1979;

IN TESTIMONY WHEREOF, PENNSYLVANIA PUBLIC UTILITY COMMISSION has caused its seal to be hereunto affixed, duly attested by its Assistant Secretary this sixteenth day of June, 1981.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

ATTEST:

Johanne Rossi

Assistant Secretary

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. REPORT DATE: August 28, 1981	2. BUREAU AGENDA NO. SEPT-81-L-29
3. BUREAU: Law	
4. SECTION(S): Rates	5. PUBLIC MEETING DATE: September 4, 1981
6. APPROVED BY: Director: Malatesta 3-3190 Supervisor:	
7. MONITOR: Johnson	
8. PERSON IN CHARGE: Sayre 3-2804	
9. DOCKET NO: B-80052671, B-80052675, B-80062683	

10. (a) CAPTION (abbreviate if more than 4 lines)
(b) Short summary of history & facts, documents & briefs
(c) Recommendation

(a) Park Towne and Madway Engineers v. Pa. P.U.C. (B-80052675; R.I.D. 438)
Phila. Electric Co. v. Pa. P.U.C. (B-80052671; R.I.D. 438)
Phila. Electric Co. v. Pa. P.U.C. (B-80062683; R-79060865)

(b) The Commonwealth Court reversed and remanded a $10.5 million rate base reduction made in R.I.D. 438 and R-79060865 due to imprudent management of the construction of the Salem 1 nuclear unit. The Court indicated a smaller reduction would be proper. Otherwise the rate orders were affirmed.

(c) That the Commission not petition the Pennsylvania Supreme Court for allowance of appeal of the Commonwealth Court's decisions.

11. MOTION BY: Commissioner Johnson — Commissioner Chm. Shanaman - Yes; Commissioner Cawley - Absent
SECONDED: Commissioner Taliaferro — Commissioner

CONTENT OF MOTION: Staff recommendation adopted.

Philadelphia Electric Company,
Petitioner

vs.

Pennsylvania Public Utility Commission,
Respondent

No. 1211 C.D. 1980

Form 2571/2572(e)-3 (Rev. 6-21-76)

CERTIFICATE OF CONTENTS OF REMANDED RECORD
AND NOTICE OF REMAND
UNDER
PENNSYLVANIA RULES OF APPELLATE PROCEDURE 2571 and 2572(e)

IN THE
COMMONWEALTH COURT OF PENNSYLVANIA

THE UNDERSIGNED, Prothonotary (or Deputy Prothonotary) of the Commonwealth Court of Pennsylvania, the said court being a court of record, do hereby certify that annexed to the original hereof is a true and correct copy of the whole and entire record as remanded from said court, in the following matter:

in compliance with Pennsylvania Rule of Appellate Procedure 2571.

The date on which the record has been remanded is Oct 22, 1981

An additional copy of this certificate is enclosed with the original hereof and the clerk or prothonotary of the lower court or the head, chairman, deputy or secretary of the other government unit is hereby directed to acknowledge receipt of the remanded record by executing such copy at the place indicated and by forthwith returning the same to the address set forth in Annex A.

Francis C. Barbish
Pro Prothonotary
Chief Clerk

[Seal of Court]

Record Received:

_____
(signature)

_____
title

cc: Parties or counsel of record.
Administrative Office of Pennsylvania Courts.

Attach to:
Form 907(b)
1112(b)
1122
1123(a)-1
1311(b)
1322
1514(a)
1934
2571/2572

ANNEX A
Commonwealth Court

Address all written communications to:

Office of the Prothonotary
Commonwealth Court of Pennsylvania
Sixth Floor, South Office Building
Harrisburg, Pennsylvania 17120

Filings may be made in person at the above office (except Saturdays, Sundays and legal holidays observed by Pennsylvania courts) between 9 A.M. and 4 P.M.

Information may be obtained from the following:

Francis C. Barbush, Chief Clerk
Commonwealth Court of Pennsylvania
(717) 787-5884 or
(717) 787-8836

Pleadings and similar papers (but not paperbooks) may also be filed as follows:

Commonwealth Court of Pennsylvania
Philadelphia Filing Office
The Old Federal Courthouse
Chestnut Street at 9th
Second Floor, Room 2050
Philadelphia, Pennsylvania 19107

The hours of the Philadelphia Filing Office are 9 A.M. to 4 P.M.

Under Pa. R.A.P. 3702 writs or other process issuing out of the Commonwealth Court shall exit only from the Harrisburg Office and shall be returnable thereto.

2. Upon consideration of respondent's petition for enlargement of time, and it appearing that petitioners' do not oppose said enlargement, said petition is granted and respondents and intervenors shall file and serve briefs and record designations on or before November 18, 1980.

J.

CERTIFIED FROM THE RECORD

OCT 23 1980

Francis C. Barbush
CHIEF CLERK

B-800526 7 +
B-8005267 5

PARK TOWNE AND MADWAY ENGINEERS AND CONSTRUCTORS,	:	IN THE COMMONWEALTH COURT
Petitioners	:	OF PENNSYLVANIA
v.	:	
PENNSYLVANIA PUBLIC UTILITY COMMISSION,	:	
Respondents	:	No. 1111 C.D. 1980
	:	
PHILADELPHIA ELECTRIC COMPANY,	:	
Petitioner	:	
v.	:	
PENNSYLVANIA PUBLIC UTILITY COMMISSION,	:	
Respondents	:	No. 1211 C.D. 1980

O R D E R

NOW, October 23, 1980, it is hereby ordered as follows:

1. Respondent Pennsylvania Public Utility Commission's motion to consolidate the above captioned petitions for review is hereby granted;

OA-501-A 10-66

COMMONWEALTH OF PENNSYLVANIA

SUBJECT: 1111 CD 1980, 1211 CD 1980 11-26-81

TO: PUC

FROM: Commonwealth Court of Pa

Enclosed supplemental record being returned; Original Record was remitted earlier this month.

Rm 504

3-7058

END