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January 17, 1986

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JAN 21 1986

SECRETARY'S OFFICE
Public Utility Commission

Honorable Joseph P. Matuschak
97 East Main Street
Uniontown, PA 15401

Re: Pennsylvania Public Utility Commission v.
Philadelphia Electric Company
Docket No. R-850152

Dear Judge Matuschak:

Enclosed please find an original and two(2) copies of the Answer of Philadelphia Electric Company to Occidental Chemical Corporation's Motion to Compel.

As indicated in the attached Certificate of Service, copies of the enclosed Answer have been served upon all parties of record.

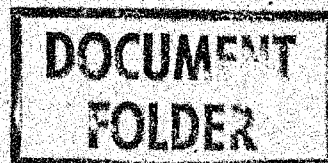
Sincerely,

David B. MacGregor/j

David B. MacGregor
Counsel for Philadelphia
Electric Company

mab
Enclosures

cc: All Active Parties
Secretary Rich



CERTIFICATE OF SERVICE

I hereby certify that I have caused copies of the Answer of the Philadelphia Electric Company to Occidental Chemical Corporation's Motion to Compel by federal express mail to all active parties in the Limerick No. 1 Rate Proceeding at Docket No. R-850152.

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Dated: January 17, 1986

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKETED

JAN 22 1986

PENNSYLVANIA PUBLIC UTILITY
COMMISSION

v.

PHILADELPHIA ELECTRIC COMPANY

Docket No. R-850152

DOCUMENT
FOLDER

ANSWER OF PHILADELPHIA ELECTRIC COMPANY
TO OCCIDENTAL CHEMICAL CORPORATION'S MOTION TO COMPEL

NOW COMES Philadelphia Electric Company ("PECO" or "the Company") by its counsel, and files this answer opposing Occidental Chemical Corporation's ("Occidental") Motion to Compel. In support thereof, the Company respectfully represents the following:

1. On January 15, 1986, Occidental filed with the Administrative Law Judge a pleading entitled "Motion to Compel Responses to First Set of Interrogatories of Occidental Chemical Corporation."
2. Occidental's Motion seeks to compel responses to two categories of interrogatories and data requests. The first category includes certain interrogatories as to which Occidental alleges no responses have been received as of the date of its Motion. The second category includes a single interrogatory, No. 47, as to which Occidental is seeking to compel the

production of certain studies belonging to and in the sole possession of the Pennsylvania-New Jersey-Maryland Interconnection ("PJM"). Occidental also seeks additional relief in the form of an extension of time within which to file its direct testimony. Occidental's direct testimony is due on January 22, 1986.

3. Answers to all outstanding interrogatories from Occidental's Set I were served on January 16, 1986, or one day after the Motion to Compel was received by the Company. As to the first category of interrogatories, therefore, Occidental's Motion to Compel is moot.

4. Because PECO has served all outstanding interrogatory responses within one day following receipt of Occidental's Motion, no basis exists for extending the time for filing Occidental's direct testimony, as follows:

(a) Occidental provides absolutely no support for its assertion that the interrogatory responses at issue are in any way important or necessary to the filing of Occidental's testimony or that the failure to receive such responses to these interrogatories a few days earlier would have had any impact on Occidental's ability to file its testimony on time. If Occidental's position is adopted, then any party arguably could delay the filing of its testimony and undermine the schedule established in this proceeding by simply alleging, with

no proof of harm or injury, that its interrogatory responses were not received within the 15-day limit. Clearly, a party should be required to make some showing of prejudice or harm before being allowed to extend the filing date of its testimony. As set forth above, Occidental has made no such showing.

(b) Of equal importance, any inability of Occidental in filing its direct testimony, is the sole result of Occidental's own actions, and should not be attributed to Philadelphia Electric Company. This proceeding was commenced in September of 1985, but Occidental did not choose to intervene until November 27, 1985. Occidental did not mail its First Set of Interrogatories until December 23, 1985, which is almost three months after this case was filed and only one month prior to the date on which Occidental's testimony is due. Occidental was fully aware of the scheduling constraints at the time that it intervened and at the time that it served its interrogatories, and should not be permitted to disrupt the schedule in this proceeding because of its own obvious failure to litigate its case in a timely manner.

(c) It should also be emphasized that the failure to answer all of Occidental's interrogatories within the 15-day limit was completely outside the Company's

control. PECO has received over 1,000 interrogatories in this proceeding. Although the Company has done its best to answer these interrogatories in a timely fashion, it is obviously inevitable when dealing with this volume of discovery requests that not all interrogatories can be answered within a 15-day period. The Company has done its best to answer all interrogatories in a timely fashion, and has been in constant communication with the various parties to determine priority questions to which a response is needed to prepare for cross-examination or for the filing of testimony, and has expedited the production of answers to such questions. In this regard, it should be noted that PECO went out of its way to answer certain Occidental interrogatories that related to the testimony of PECO witnesses Sundermeir and Williams well before the expiration of the 15-day period in order to permit Occidental to cross-examine these witnesses. PECO served such responses by Federal Express, Saturday delivery, to counsel's home in order to facilitate counsel's preparation for cross-examination. Where the failure to respond within 15 days is clearly beyond the control of the Company, a party should be required to show some evidence of harm in order to receive a filing date postponement for its testimony.

(d) Further, the Company strongly believes that matters of this kind are better resolved informally, without resort to formal motions and rulings by the ALJ. The Company has worked closely with Occidental and other parties to provide information needed for cross-examination and the filing of testimony. At no time did Occidental either formally or informally ask the Company for a voluntary agreement to extend the filing date of its testimony.

(e) Finally, Occidental's request for an extension of 15 days from the date of receipt of its last interrogatory answer is clearly excessive. The last responses were served on January 16, 1986, which would allow Occidental to file its testimony on January 31, 1986, or 9 days late. Where a number of Occidental's interrogatories were answered early, most were answered on time, and the remaining answers were supplied at most one week late. Where the failure to respond on time was beyond the Company's control, and where Occidental has demonstrated no specific harm, a nine day extension is clearly not justified and should be rejected.

5. With respect to the second category of interrogatories, PECO served timely responded to Interrogatory No. 47. Occidental, however, is seeking to compel production of certain studies that are referenced in PECO's response as being

proprietary to PJM. PECO's response is complete and accurate as stated. Interrogatory 47 requests the Company to provide copies of all studies relied upon in developing its 25% planning revenue margin. The Company's 25% planning revenue margin is based upon its contractual obligation to PJM. These obligations are established by PJM and provided to PECO, and PECO has supplied this information to all parties in the Direct Testimony of Cary Rush. Occidental now seeks to review the underlying computer studies performed by PJM in establishing PECO's contractual obligation to PJM. This request should be denied for four reasons:

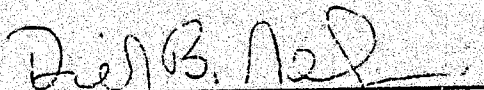
- a) First, the information requested is not responsive to the interrogatory. PECO has provided all information on which it relied in establishing its 25% planning reserve margin. PECO did not review or rely specifically upon the PJM computer program to establish its reserve margin.
- b) Second, the studies referenced in PECO's response to Interrogatory No. 47 belong to PJM and are currently in the possession of PJM. These studies have not been disseminated to PECO and are not in PECO's possession.
- c) Third, PECO clearly should not be compelled to provide information which it does not have. PJM considers these studies to be confidential and

proprietary to PJM, and release of these studies to a third party would require the permission of the entire 11-member PJM Management Committee. Release of these studies, therefore, is not within PECO's possession or control, and PECO consequently cannot produce them.

d) Occidental has made no showing whatever that the requested information is critical or even relevant to Occidental's case, despite several informal inquiries by PECO. Clearly, Occidental should not be allowed to disrupt the schedule established in this proceeding because it has not been able to review information which PECO did not rely on, which is not in PECO's possession, and which is proprietary to PJM, and which has not been shown to be relevant to Occidental's case.

WHEREFORE, Philadelphia Electric Company requests that Occidental Chemical Corporation's Motion to Compel and its request for postponement be denied.

Respectfully submitted,



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Dated: January 17, 1986