

1. <u>REPORT DATE:</u>	July 17, 1986	2. <u>BUREAU AGENDA NO.</u>	
3. <u>BUREAU:</u>	Rates		JUL-86-R-828
4. <u>SECTION(S):</u>	Tariff	5. <u>PUBLIC MEETING DATE:</u>	
6. <u>APPROVED BY:</u>			
Director:	Birx 7-4386		July 24, 1986
Supervisor:	Patrick 3-3600		
7. <u>MONITOR:</u>			
8. <u>PERSON IN CHARGE:</u>			
9. <u>DOCKET NO.:</u>	R-850152		
10. (a) <u>CAPTION</u> (abbreviate if more than 4 lines)			
(b) Short summary of history & facts, documents & briefs			
(c) Recommendation			

(a) Philadelphia Electric Company
 (Home office-Philadelphia, Pennsylvania)
 Filing in compliance with a final order.

(b) In a public meeting on June 26, 1986, the Commission permitted the utility to file a tariff supplement, effective June 27, 1986, increasing rates by \$350,797,000 and to be phased in over a three (3) year period with the 4th, 5th and 6th years compensating the utility for the unrecovered revenues.

On June 27, 1986, the utility filed Supplement No. 23 to Tariff Electric-PA PUC No. 26, effective June 27, 1986, increasing rates by \$350,797,000. The supplement also contains a revised Energy Cost Rate as provided for in the Commission's Order.

(c) The Tariff Division recommends that the Commission permit Supplement No. 23 to Tariff Electric-PA PUC No. 26 to become effective June 27, 1986, and the utility notified by Secretarial letter.

**DOCUMENT
FOLDER**

11. MOTION BY: Commissioner Chm. Taliaferro Commissioner Shane - No
 Commissioner
SECONDED: Commissioner Fischl Commissioner

CONTENT OF MOTION: Staff recommendation adopted.

DOCKETED
 AUG 13 1986

Docket No. R-850152

Caption: PENNSYLVANIA PUBLIC UTILITY COMMISSION v PHILADELPHIA ELECTRIC COMPANY

7/24/86
110
REPORT FOLDER

JUSTIFICATION FOR LATE SUBMISSION
OR CARRY-IN MATTERS FOR
PUC PUBLIC MEETING

The undersigned represents to the Commission that this report/order could not be submitted seven (7) days before the scheduled meeting because it involves:

- A. 1. a matter of health and safety.
2. meeting a Commission or court-designated deadline (The failure to meet this deadline is explained on the attached memorandum)
3. urgent public need or convenience which could not reasonably be foreseen.
4. request initiated by a Commissioner -
(name) _____

B. Facts in support of the foregoing (15 words or less):

Bureau Office of Special Assistants

Bureau Head Cheryl Walker Davis, Director

July 23, 1986

(Date)

S. abstr

1. <u>REPORT DATE:</u> July 24, 1986	:	2. <u>BUREAU AGENDA NO.</u> JULY-86-OSA-72*
3. <u>BUREAU:</u> Office of Special Assistants	:	
4. <u>SECTION(S):</u>	:	5. <u>PUBLIC MEETING DATE:</u> JULY 24, 1986
6. <u>APPROVED BY:</u> Director: Cheryl Walker Davis Supervisor:	:	
7. <u>MONITOR:</u>	:	
8. <u>PERSON IN CHARGE:</u> Joe Noel	:	
9. <u>DOCKET NO:</u> R-850152	:	
10. (a) CAPTION (abbreviate if more than 4 lines) (b) Short summary of history & facts, documents & briefs (c) Recommendation	:	

C.W.D.

(a) PENNSYLVANIA PUBLIC UTILITY COMMISSION v. PHILADELPHIA ELECTRIC COMPANY

(b) Before the Commission for consideration is a Petition for Reconsideration ("Petition") of our Opinion and Order entered on June 27, 1986 in this proceeding, filed by the City of Philadelphia ("City") on July 11, 1986, pursuant to 52 Codes §§5.572. Philadelphia Electric Company ("PECO") filed an Answer to the Petition on July 23, 1986.

(c) The Office of Special Assistants recommends that the Commission adopt a proposed Opinion and Order denying the Petition.

11. MOTION BY: Commissioner	Commissioner
	Commissioner
SECONDED: Commissioner	Commissioner

CONTENT OF MOTION:

July 24, 1986

SUBJECT: R-850152; Pennsylvania Public Utility Commission v. Philadelphia Electric Company

TO: The Commission

FROM: Cheryl Walker Davis, Director
Office of Special Assistants

CWD

MATTER BEFORE THE COMMISSION:

Before the Commission is a Petition for Reconsideration filed by the City of Philadelphia on July 11, 1986. City, in its Petition, contends, among other things, that under PECO's phase-in plan, the \$351 million revenue increase approved by us in the Order is guaranteed in the sense that all of the deferred revenues would be recovered even if it would be necessary to go beyond the deferred revenue recovery period (years four through six) to accomplish the total revenue recovery.

DISCUSSION:

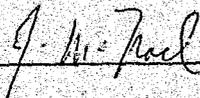
City misconceives the revenue phase-in plan when it describes the plan as a guaranteed revenue recovery plan. This Commission in the Order determined that PECO had established an annual revenue increase requirement which would be phased-in over a period of time. There is no retroactivity or "reaching-back" when a utility is actually deferring the immediate annual collection of an approved level of revenues. Furthermore, because of the stay-out agreed to by PECO and the foregoing of any interest on the deferred revenues, the Company's phase-in plan will actually benefit its customers since it is quite likely that the Company will experience increased costs during the deferral period.

RECOMMENDATION:

The Office of Special Assistants recommends that the Commission

adopt a proposed Opinion and Order which would deny the Petitions and Supplemental Petitions for Reconsideration.

Prepared by:

A handwritten signature in cursive script, appearing to read "J. M. Noel", is written above a horizontal line.

J. M. Noel

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held

Commissioners Present:

Linda C. Taliaferro, Chairman
Frank Fischl
Bill Shane

Pennsylvania Public Utility Commission

R-850152

v.
Philadelphia Electric Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration is a Petition for Reconsideration ("Petition") of our Opinion and Order entered on June 27, 1986 in this proceeding, filed by the City of Philadelphia ("City") on July 11, 1986, pursuant to 52 Pa. Codes §§5.572. Philadelphia Electric Company ("PECO") filed an Answer to the Petition on July 23, 1986.

History of the Proceeding

1. On September 27, 1985, PECO filed Supplement No. 15 to its Tariff Electric-Pa. P.U.C. No. 26 to become effective November 27, 1985. The Supplement was designed to produce an annual base rate increase of \$681,760,000, based upon an adjusted level of operations using a historic test year ended June 30, 1985, and a future test year ending June 30, 1986.
2. By Order entered November 1, 1985, we allowed Supplement No. 15 to be suspended by operation of law, pursuant to Section 1308 of the Public Utility Code, 66 Pa.

C.S. §1308, until June 27, 1986, and instituted an investigation, at Docket No. R-850152, into the lawfulness, justness and reasonableness of the proposed rates and of existing rates.

3. On June 27, 1986, we entered an Opinion and Order (the "Order") which authorized PECO to file a tariff supplement increasing electric operating revenues by approximately \$351 million, to be phased in over a three year period.

Discussion

In Duick v. PG&W, 56 Pa. P.U.C. 533 (1982), we stated the criteria which apply in reaching a determination of whether a Petition for rehearing or reconsideration should be granted, to wit:

A petition for rehearing under the provisions of 66 Pa. C.S. §703(f), properly must seek the reopening of the record for the introduction of additional evidence of some sort. As grounds therefore it must allege newly discovered evidence, not discoverable through the exercise of due diligence prior to the close of record....

* * * *

A Petition for reconsideration under the provisions of 66 Pa. C.S. §703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsylvania Railroad Company case, wherein it was said that [p]arties..., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them....

City, in its Petition, contends that under PECO's phase-in plan, the \$351 million revenue increase approved by us in the Order is guaranteed in the sense that all of the deferred revenues would be recovered even if it would be necessary to go beyond the deferred revenue recovery period (years four through six) to accomplish the total revenue recovery. City also contends that the revenue guarantee penalizes those customers who would choose to conserve and therefore decrease their electric demand and electric bills.

Under the application of PECO's Unrecovered Revenue Rider, revenues deferred during the first two years will be collected in years four, five and six. The Company stated that revenue recovery will be precisely tracked to avoid any over or under collections. PECO states that the amount of revenue deferred is not guaranteed and that revenues will vary with the actual sales levels during the first two years rates are in effect.

City further contends that utilities are provided an opportunity to recover Commission approved rates, not a guarantee of such recovery; that utilities are not allowed to "reach-back" and collect additional revenues if achieved revenues prove to be insufficient, and that this Commission sets rates on a prospective basis. All of the City's arguments contained in the Petition were also covered in City's Main Brief and were considered by the Commission in its adjudication in this proceeding. In accordance with Duick, the City has alleged no grounds, such as new or novel arguments, which would support the grant of reconsideration; however, we will briefly comment on certain of the City's allegations.

City misconceives the revenue phase-in plan when it describes the plan as a guaranteed revenue recovery plan.

This Commission in the Order determined that PECO had established an annual revenue increase requirement which would be phased-in over a period of time. There is no retroactivity or "reaching-back" when a utility is actually deferring the immediate annual collection of an approved level of revenues. Furthermore, because of the stay-out agreed to by PECO and the foregoing of any interest on the deferred revenues, the Company's phase-in plan will actually benefit its customers since it is quite likely that the Company will experience increased costs during the deferral period.

Conclusion

In accordance with the foregoing discussion, we conclude that the City Petition should be denied; THEREFORE,

IT IS ORDERED: That the Petition filed by the City of Philadelphia on July 11, 1986, requesting reconsideration of our Opinion and Order entered on June 27, 1986, is denied.

BY THE COMMISSION,

Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED:

ORDER ENTERED:

DISSENTING OPINION OF COMMISSIONER BILL SHANE

RE: Pa. PUC v. Philadelphia Electric Company
R-850152
JUL-86-OSA-71*



The Commission's Order states two reasons for denying the Petitions for Reconsideration filed by the Office of Consumer Advocate, the Governor's Energy Council, and the Utility User's Group/University of Pennsylvania. First, the Commission rules that the excess capacity section (66 Pa. C.S. §1323) of the recent revisions to the Public Utility Code does not apply here because the case was not "pending before the Commission" on the date the law was signed. Second, the Commission finds that even if the new law does apply, it does not require reversal of the Commission's prior conclusion that Limerick I does not represent excess capacity. For the following reasons, I dissent.

The Commission's decision to apply or not apply the new law should not hinge on technical arguments over whether the case is "pending before the Commission." The General Assembly, after exhaustive debate, established a new policy on excess capacity, and the Governor signed that policy into law. Since this Commission is a creation of the Legislature, it ought to seek to effectuate the Legislature's intent by grasping this opportunity to apply the new policy. Instead, the Commission reveals its hostility toward the policy by examining only whether it is required

to apply the new law to this case. I submit that the Commission's refusal to apply the new excess capacity standards constitutes an abuse of discretion.

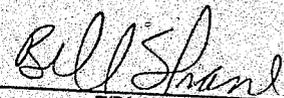
The Commission's Order could stop here, however, recognizing the weakness of its position that the new law should not be applied to this case, the Commission next attempts to reconcile its ruling with the new standards. Section 1323 states, in relevant part:

. . . . [A] rebuttable presumption is created that a unit or units or portion thereof shall be determined to be excess capacity unless found to be needed to meet the utility's customer demand plus a reasonable reserve margin in the test year or the year following the test year, or, if it is a base load unit, it is also found to produce annual economic benefits which will exceed the total annual cost of the plant during the test year or within a reasonable period following the test year.

This language was clearly intended to protect ratepayers by tightening the Commission's standards on excess capacity; however, the Commission's strained interpretation fails to honor this intent. The Commission concludes that Limerick I's projected annual economic benefits beginning in 1994 satisfy the requirement that the unit provide annual economic benefits "during the test year or within a reasonable period following the test year." The obvious intent of this language was to synchronize, roughly, the inclusion of the new unit in rates with the realization of economic benefits by the ratepayers. The Commission's decision refuses to effectuate this intent by granting rate base recognition to a plant which will not provide economic benefits for at least eight years. The factors which the Commission relies upon in concluding that this is a reasonable period are the usual circumstances surrounding a base-load

plant. If the Legislature believed that the plant should be included in rates in such a case, it would not have attempted to change the Commission's standards on excess capacity.

In a nutshell, the Commission's Order frustrates the policy of the General Assembly. First, the Commission relies upon a technical loophole and refuses to apply the new law to this case. Second, the Commission eviscerates the new law by interpreting it in a manner which does not carry out the legislative intent. I dissent from this arrogant decision.



BILL SHANE
COMMISSIONER

DATED: _____

7/24/86

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120
Public Meeting held September 25, 1986

Commissioners Present:
Linda C. Talliaferro, Chairman
Frank Fischl
Bill Shane

Petition of Philadelphia Electric Company, Docket No. P-850055
to discontinue from normal operation Plymouth Meeting Nos. 9 and 15 combustion turbine units at Plymouth Station, Plymouth and sixteen combustion turbines at Richmond Station, Philadelphia



ORDER

BY THE COMMISSION:

On August 30, 1985, Philadelphia Electric Company ("PECO") filed a petition seeking permission to permanently retire two combustion turbines at Plymouth Station and sixteen combustion turbines at Richmond Station. Plymouth Meeting Nos. 9 and 15 and Richmond Nos. 21, 22, 31, 32, 41, 42, 43, 44, 51, 52, 61, 62, 71, 72, 73, and 74 are combustion turbines having a net generating capacity of 458 megawatts (MW).

On September 11, 1985, the Office of Consumer Advocate ("OCA") filed a response to PECO's petition to discontinue service. The OCA requested that the Commission "refrain from ruling on the merits of this Petition until the close of the upcoming Limerick 1 rate case."

At the Public Meeting held on January 10, 1986, the Commission granted PECO's Petition and an order was entered on January 21, 1986.

A Petition for Reconsideration and Stay Pending

Reconsideration was filed on February 5, 1986 by the Office of Consumer Advocate ("OCA"). OCA requested that the Commission grant the Petition for Reconsideration and "either consolidate this matter for decision with the current base rate case or simply refrain from ruling finally on the merits of this matter until the close of the base rate case." The OCA also requested that the Commission stay the effect of its order of January 21, 1986 pending a determination on the merits of its Petition for Reconsideration.

The OCA requested in its petition that the Commission reconsider its decision of January 21, 1986 so that the OCA and other parties would have a full and fair opportunity to litigate the question

of whether the retirements of these units are beneficial to ratepayers at this time. The OCA pointed out that its office had filed testimony on this issue in the then current rate investigation at R-850152 but that the testimony had not been filed until after the Commission had acted on PECO's petition to discontinue. The OCA argued that reconsideration would produce substantial benefits because it would enable the Commission "to consider all relevant factors, including the impact of these proposed retirements, in determining the appropriate ratemaking treatment to be accorded Limerick capacity in the current rate case."

Although action was not taken on the OCA petition at the time, the issue of the combustion turbines and the 458 MW generated by the retirement units was addressed in the subsequent PECO rate investigation at R-850152. The Administrative Law Judge in the Recommended Decision and this Commission in the Opinion and Order at R-850152 considered these matters in the context of the excess capacity discussions. (R.D., pp. 71-76 and Commission Opinion and Order, pp. 34-39).

The Commission Opinion and Order, which addressed this issue extensively, concluded:

ALJ Matuschak recommends that we reject the position of the Complainants finding that:

PECO has provided independent system planning considerations that support the retirement of the units singled out by complainants, Richmond Unit 9 and Southwark Units 1 and 2, are old and inefficient to operate. The 458 CTs no longer serve any useful purpose. The Richmond 9 unit and the Southwark Units 1 and 2 have been retired primarily because they are old and inefficient steam units. (PECO St. 14, p. 25) PECO routinely has been projecting a 35-year nominal life for most of its fossil-fueled steam units. Richmond 9 was 35 years old when retired and the Southwark units were about 38 years old when retired. (R.D., p. 75)

We agree with the ALJ's reasoning and conclusion regarding the Southwark and Richmond units. We find that, while the Company may have been able to prolong the life of these stations for a year or two, the actual age of those units indicates that their retirements were not imprudently accelerated by PECO.

We also agree with the ALJ's finding relative to the 458 MW of GT generation. However, in view of the extensive exceptions filed by

the OCA on this issue, we consider it appropriate to expand upon the ALJ's reasoning.

In brief, the OCA argues that adoption of the ALJ's recommendation would permit PECO to retire 458 MW of CT capacity approximately 10 years before it was originally scheduled to be retired in order to "make room" for Limerick 1. According to the OCA, the end result would be to allow PECO, or any utility, to avoid an excess capacity adjustment simply by accelerating the retirement of the cheapest capacity on its system at the customer's expense (OCA Exceptions, p. 3).

We find that the OCA has largely ignored the purpose which the CT capacity was intended to serve on PECO's system and, as a result, has misconstrued and overstated the value of that capacity. We note with approval the rebuttal of the Company in its Reply Exceptions (pp. 26-27) wherein it states:

Thus, the CTs in question were never intended to remain in service until a date certain. They were always intended to be a stop gap, interim solution to severe capacity shortages until new baseload capacity could be built. Limerick 1 is that baseload capacity. These facts have consistently been recognized and approved by the Commission.

The CTs in question were obtained at the direction of the Commission, were reviewed regularly as Limerick 1 was being constructed and finally were retired with the permission of this Commission. In light of this regulatory history, it is simply inaccurate to suggest that PECO is retiring the units in question solely to avoid an excess capacity adjustment.

The ALJ has concluded that, with Limerick on line, PECO has a reserve margin of 28% over peak requirements. He notes that this is 3% greater than the Company's planning objective of 25%, but since baseload capacity is not added megawatt by megawatt a "reasonable increase in reserve capacity must be allowed before excess

capacity comes into play" (R.D. page 74). The ALJ finds that the record in this case fails to substantiate any PECO excess capacity.

We agree with and adopt ALJ Matuschak's recommendation on this issue. Accordingly, we will not make any of the adjustments proposed by the various Complainants here.

(Commission Order, pages 35-37).

The issue of the retirement of PECO's combustion turbines, which are the subject of the current petition has been addressed on a number of occasions and there has been ample opportunities for those parties who oppose the retirement of the units to present their respective positions. As noted above, responses were filed to PECO's original petition and the matter was argued again in the rate investigation. The Commission Order of January 21, 1986 at this docket and the Opinion and Order at R-850152 set forth in considerable detail the rationale for this Commission's actions on this issue. The current Petition for Reconsideration does not present a sufficient or compelling argument which would warrant our reconsideration in this matter.

Reconsideration is a matter of Commission discretion and, although reconsideration may be granted at any time for sufficient cause, we believe that reconsideration is not warranted in this instance. We believe that the concerns raised by the OCA have been adequately addressed in the rate case and require no elaboration. The original decision to grant PECO's Petition to Discontinue will not be disturbed. The Petition for Reconsideration filed by OCA will be denied for the reasons set forth in this Order; THEREFORE,

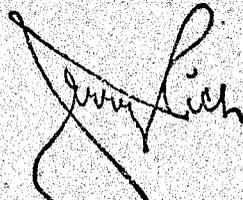
IT IS ORDERED:

1. That the Petition for Reconsideration and Stay filed by OCA is denied.

2. That the record at Docket P-850055 is hereby closed.

3. That a copy of this Order shall be served on all parties of record at Docket Nos. P-850055 and R-850152.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Jerry Rich", written in a cursive style.

Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: September 25, 1986

ORDER ENTERED: OCT 02 1986