

January 17, 1986

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

TO: William H. Smith, Chief  
Administrative Law Judge

FROM: Joseph P. Matuschak  
Administrative Law Judge

Enclosed please find an original and a copy of: 1) Order on Memorandum Opinion, 2) two Orders on Discussion, 3) Ruling on Petition of Philadelphia Electric Company for Stay of the December 20, 1985 Granting Motion in Limine, 4) Application for Order to Depose OCA Witnesses James J. O'Brien and Stephen J. Hanauer. A copy of each Order has been sent to the following parties of record.

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Enclosures (10)

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JAN 22 1986

SECRETARY'S OFFICE  
Public Utility Commission

Pennsylvania Public Utility  
Commission :  
: v. :  
Philadelphia Electric Company :

Docket Number

R-850152

DOCKETED  
JAN 22 1986

MEMORANDUM OPINION

Before  
Joseph P. Matuschak  
Administrative Law Judge

DOCUMENT  
FOLDER

Background

This proceeding was initiated on September 27, 1985 with the filing by the Philadelphia Electric Company (PECO or Company) of Supplement No. 15 to its Tariff Electric - Pa. P.U.C. No. 26. Supplement No. 15 is designed to produce an increase in the Company's annual revenues of approximately \$670.7 million based on budgeted sales for a future test year ending June 30, 1986. A major issue in this case is the proposed inclusion in rates of the capital and operating costs of the Limerick Nuclear Generating Station Unit I and 100% of the Common Plant.

On November 20, 1985, Commission Trial Staff (Trial Staff) filed its Motion in Limine to make a preliminary determination of the nature of the evidence that may be admitted into the record in the above captioned matter.

Trial Staff, in its motion, alleged that the Commission had previously considered the prudence of PECO's construction of the Limerick Station in Re Limerick Nuclear Generation Station, I-80100341, 56 Pa. P.U.C. 47 (1982), aff'd 501 Pa. 153, 460 A.2d 734 (1983). That proceeding was an investigation ordered on October 10, 1980 wherein the Commission:

[C]oncluded that an investigation should be opened "so that information can be gathered in an orderly and expeditious manner before PECO seeks to include Limerick in its rate base as used and useful property." Further we concluded that an independent investigation of Limerick was appropriate so as to prevent the then pending rate investigation from becoming burdened with additional issues which would have to be decided within the statutory period set forth in §1308 of the Public Utility Code. [56 Pa. P.U.C. p. 50]

In that proceeding, 38 days of evidentiary hearings were held, and the matter was concluded on August 27, 1982. Among the issues considered by the Commission were the prudence (1) of the initial decision by PECO to begin construction of the Limerick generating stations; (2) of the 1974 delay in Limerick's construction schedule wherein PECO postponed the projected in-service dates by two years; (3) of the 1976 decision by PECO wherein it further delayed construction and revised the in-service dates for Limerick Units Nos. I and II from 1981-83 to 1985-87, respectively; and (4) of the 1978 decision by PECO to further delay and reschedule the in-service dates of Limerick from 1983-85 to 1985-87, respectively.

In that proceeding, the Commission made the following observations and conclusions:

In his initial decision, ALJ Klovekorn finds that PECO's "actions in the 1968-74 period were reasonable and its decision at that time was a valid exercise of management discretion." We agree. [56 Pa. P.U.C. p. 54]

\* \* \*

[W]e are of the opinion that PECO's initial decision to build a nuclear station at Limerick was reasonable at the time it was made, and was a valid exercise of managerial discretion. [56 Pa. P.U.C. pp. 54-55]

\* \* \*

[T]he ALJ concluded that PECO's 1974 delay was reasonable and that the 1976 and 1978 delays may have been unreasonable.

[56 Pa. P.U.C. p. 59]

\* \* \*

[W]ith regard to the OCA's exceptions, we reiterate our position that as no claim has been made for inclusion or exclusion of costs associated with Limerick we deem it inappropriate to allocate these costs. The issue of any allocation or sharing of costs is properly reserved for a future rate proceeding.

[56 Pa. P.U.C. p. 60]

\* \* \*

[W]e are of the opinion that PECO management did not exercise judgment sufficient to meet our reasonable man standard in delaying construction at Limerick in 1976 and 1978. Having so found, we are requested by staff and the OCA to quantify the costs of the delay to rate-payers. We are of the opinion that to do so at this time is inappropriate.

[56 Pa. P.U.C. p. 61] [Emphasis supplied]

In its motion, Trial Staff requests that we rule that the Commission's prior finding that the Limerick 1976 and 1978 construction delays were unreasonable is prima facie evidence of that finding and is conclusive on the parties to this proceeding. It cites Section 316 of the Public Utility Code, 66 Pa. C.S. §316, which provides in pertinent part:

Whenever the commission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review.

Trial Staff avers that the Commission's determination concerning the reasonableness of the 1976 and 1978 Limerick construction delays was not set aside, annulled or modified by the Pennsylvania Supreme Court in its affirmance of the Commission's investigation order.

The Supreme Court described the Commission's delay conclusion in footnote 7 to its opinion, stating:

Further, the opinion accompanying the PUC's order contained criticism, of an advisory nature, directed at PECO's decision in 1976 and 1978 to defer completion of the Limerick facilities. Such mere criticism, however, does not constitute an adjudication and cannot be reviewed on appeal.  
[501 Pa. at 161, 460 A.2d at 739]

In support of its motion in limine, Trial Staff makes the following contention:

No party should be permitted to relitigate this issue in the current proceeding. All of the parties in the Commission's prior Limerick Investigation received a full and fair opportunity to present evidence concerning the prudence of the Company's decision to delay Limerick construction in 1976 and 1978. No useful purpose would be served by relitigating this issue in the present case. Moreover it would be a misuse of the Commission's limited administrative resources to reconsider this already resolved issue in the present case. The Trial Staff submits that the only part of this issue that should be examined in the instant proceeding is the quantification of the effects of the unreasonable construction delays upon the Company's Limerick rate base claim.  
[Trial Staff's Petition, pp. 3-4]

PECO filed its Answer and New Matter averring that the motion should be denied for the following three reasons:

- (1) The Commission did not render an adjudication, make a determination or issue a finding respecting PECO's 1976 or 1978 construction deferrals in its 1980 Limerick Investigation Order;
- (2) The Supreme Court affirmed, based on representations made to it by the Commission, that the Commission had failed to issue such an adjudication, determination or order; and
- (3) As the instant proceeding is the first proceeding in which PECO has claimed rate base inclusion in which the issue is ripe for decision and thus the first proceeding in which PECO has had an opportunity to exercise the statutory and constitutional right to present evidence and argument on this issue under 66 Pa. C.S. §332(c).

Trial Staff filed its reply to PECO's new matter, wherein it submitted that:

- (1) The Commission's language [regarding the 1976 and 1978 delays] indicates that a finding of unreasonable management actions was made;
- (2) Although this is the first case in which PECO has claimed rate base inclusion of the costs of Limerick, it denies that this is the first opportunity PECO has had to litigate the propriety of its management actions;
- (3) PECO, in defending its decision to delay Limerick construction, argued to the Commission as follows:

"PECO urges the Commission to reject Trial Staff's various arguments in its Order concluding this proceeding. As noted in the Commission's Order of October 10, 1980, a principal purpose of this investigation has been to examine 'the cost of construction delays at Limerick and whether those delays were unreasonable.' Trial Staff and all other parties to this investigation, including PECO, have had a full opportunity to develop the record upon this issue."

[PECO Reply Brief, I-80100341, p. 116]  
[Emphasis added]

- (4) In essence PECO has had the opportunity to exercise its statutory and constitutional right to present evidence and argument on the issue of its prudence in delaying Limerick construction.
- (5) The Commission finding [as to Limerick construction delays] simply bifurcated the issues of prudence and resolved the issue of the Company's prudence adversely to PECO in the Investigation at Docket No. I-80100341.
- (6) Even if it is true that the Pennsylvania Supreme Court held that this Commission's finding of managerial imprudence in PECO's 1976 and 1978 deferral decisions was not a reviewable adjudication, that holding is not determinative on the conclusiveness of this Commission's finding.

- (7) The Supreme Court's action affirmed the Commission's final order and did not set aside, annul or modify the finding.
- (8) A finding resolves a particular issue; adjudication resolves cases.
- (9) Section 316 is stated in the disjunctive and also includes rules, regulations, findings and determinations.
- (10) PECO has already received due process to which it is entitled on the issue of liability for imprudence.

Oral argument on the motion was held before us on December 20, 1985.

Following the oral argument, because of the urgency of a timely resolution of this matter, and in order that all parties, so desiring, could have an opportunity to seek timely review of our ruling on the motion, we entered, on December 20, 1985, an order in which we:

- (a) Granted the motion in limine of the Trial Staff.
- (b) Incorporated by reference the record at I-80100341 insofar as it relates to the decisions of PECO to initially construct the Limerick generating stations and to delay construction of Limerick in 1974, 1976 and 1978.
- (c) Granted Trial Staff's motion that the Commission's prior findings at I-80100341 that PECO's decisions in 1976 and 1978 to delay Limerick construction were unreasonable, are conclusive upon the parties in this proceeding.
- (d) Sua sponte, held that the Commission's prior findings at I-80100341 that PECO's decisions initially to construct the Limerick generating stations and to delay the Limerick construction in 1974 were reasonable, are likewise conclusive upon the parties in this proceeding.
- (e) Ruled that the evidence submitted regarding the reasonableness or unreasonableness of PECO's decision initially to construct Limerick and its decisions to delay construction in 1974, 1976 and 1978 is stricken, and further evidence thereto shall not be admissible in this proceeding.

At the same time, we indicated that we would subsequently file a Memorandum Opinion further discussing the basis of our ruling.

Section 316 of the Public  
Utility Code; Res Judicata;  
and Collateral Estoppel

The principles of res judicata (claim preclusion) and collateral estoppel (issue preclusion) are implicit in Section 316 of the Public Utility Code. Our ruling rests neither on Section 316, nor on res judicata, nor on collateral estoppel, as we herein explain.

(a) Section 316 of the  
Public Utility Code

Trial Staff places primary reliance in its motion upon Section 316 of the Public Utility Code.

We agree with PECO that such reliance on Section 316 here is unfounded. This section provides that "any rule, regulation, finding, determination or order" of the Commission shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review.

This section of the Code is not applicable unless the parties make no timely appeal [of an appealable issue] for judicial review, or where a timely appeal is taken [of an appealable issue], and upon judicial review the appellate court has refused to set aside, annul or modify the determination of the Commission.

In this connection, the Pennsylvania Supreme Court refused to review the Commission's findings of the imprudency of the Limerick 1976

and 1978 delays in construction, on the ground that such findings were not final, did not constitute an adjudication, were not "ripe" for review, and hence were unappealable.

The Commission's findings regarding the Limerick decision to construct Limerick, and its 1974, 1976 and 1978 decisions to delay construction, did not constitute a final adjudication in this matter because the Commission made no order as to the effect of such findings. Standing alone, such findings had no legal effect. No right to judicial review existed at this stage; hence the controlling element - the right to judicial review - of Section 316 had not been fulfilled. <sup>1/</sup>

Trial Staff urges that Section 316 requires only that two conditions be met: (1) there must be a prior finding by the Commission; and (2) the finding shall not have been disturbed upon appellate review. We agree.

We disagree, however, with Trial Staff's conclusion that with respect to PECO's liability for its imprudent managerial decisions in 1976 and 1978, both conditions have been met and the statute should be applied. The flaw in Trial Staff's argument is that there has been no judicial review because the court held that such findings were not reviewable at this stage. Trial Staff's citation of Philadelphia Electric Co. v.

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<sup>1/</sup> Consider the analogy of a jury verdict. Upon such verdict, the parties may file motions for new trial or judgment N.O.V. The verdict (though a finding) is not final or appealable unless and until judgment is entered on the verdict.

Pa. P.U.C., 61 Pa. Cmwlth Ct. 325, 433 A.2d 620 (1981) must be distinguished, since there a final adjudication involving a finding by the Commission was made. See also: City of Erie v. Pa. P.U.C., 60 Pa. Cmwlth Ct. 106, 430 A.2d 1037 (1981); Morgan Drive Away, Inc. v. Pa. P.U.C., 16 Pa. Cmwlth Ct. 293, 328 A.2d 194 (1974); Philadelphia Suburban Water Co. v. PennDOT, 36 Pa. Cmwlth Ct. 8.

(b) Res Judicata

The general rule for res judicata to apply is that a final judgment must have been entered. The Commission made no final determination at I-80100341 as to the effect of the reasonableness or unreasonableness of the Limerick construction or delays. Since there was no adjudication, res judicata does not apply.

The Commission's Rules of Practice in 52 Pa. Code, Section 1.8 defines "adjudication" as "An order, decree, decision, determination, or ruling by the Commission affecting personal or property rights, privileges, immunities, duties, liabilities, or obligations of the parties to the proceeding in which the adjudication is made."

[Emphasis supplied]

An important concept which differentiates an adjudication from other administrative processes is that adjudication must lead to a disposition having some determinative consequences for the parties to the proceeding. ITT Corporation v. International Brotherhood of Electrical Workers, 419 U.S. 428, 42 L. Ed. 2d 558, 955 S. Ct. 600 (1975). The courts have long considered the touchstone of finality to the fixing of obligations or relationships. Standing alone, such findings of the Commission were lifeless, and fixed no obligation nor imposed any liability on PECO. The findings were merely preparatory to further proceedings in a rate case when PECO would propose to include Limerick in its rate base. While PECO argues that if the Commission's determination as to the imprudence of the 1976 and 1978 delays were "findings", this could have affected PECO's standing in the financial markets, this argument is without merit, for the same financial result, if any, would have resulted if the Commission's actions were considered as mere "criticisms."

(c) Collateral Estoppel

Nor is collateral estoppel involved in our ruling.

The doctrine of collateral estoppel is an important element of our legal system. It provides a necessary degree of finality to decisions rendered by the courts. Finality is a desirable objective in administrative proceedings as well.

In Superior's Brand Meats, Inc. v. Lindley, 62 Ohio St. 2d 133, 403 NE 2d 996, 999, the court said:

We recognize the need for flexibility applying the doctrine of collateral estoppel to administrative decision-making process; however, because of the need for finality, we hold that ordinarily where an administrative proceeding is of a judicial nature and where the parties have had an adequate opportunity to litigate the issues involved in the proceeding, the doctrine of collateral estoppel may be used to bar litigation of issues in a second administrative proceeding. In so ruling we join numerous courts including the United States Supreme Court. United States v. Utah Construction and Mining Co. 384 U.S. 394, 86 S. Ct. 1545, 16 L. Ed. 2d 642. See also Davis, Administrative Law Text (3rd Ed. 1972) Section 1801, et seq.

But collateral estoppel applies only where the administrative agency's findings are final, and such findings are final only upon the opportunity for judicial review. Here, no opportunity for judicial review has been provided, since the Supreme Court held that the findings on the imprudency of the 1976 and 1978 Limerick delays were not "ripe" for review. Hence collateral estoppel is not applicable.

Commission's Investigation  
of Limerick

While it is true that the Commission's investigation at I-80100341 included the matter of approval by the Commission of PECO's security registration, as contended by the Company, the investigation went beyond such matter in purpose. It also, inter alia, included: "The cost of construction delays at Limerick and whether those delays were reasonable."

It is clear from the Commission's discussion and stated purpose in I-80100341, that the investigation was to include the question of prudency of the construction of Limerick and of the 1974, 1976 and 1978

delays is construction. Because the Commission realized that because of the magnitude of these issues - along with all the other issues involved in a rate case - they could not be adequately addressed within the statutory time constraints of Section 1308 of the Code, so it provided for an independent investigation of these issues (which would involve no statutory time constraints) before PECO sought to include Limerick in its rate base. It was obviously intended that the Commission's findings in this respect would be incorporated in the first rate case where Limerick would be included by PECO in its rate base, and that the findings of the Commission would be binding upon the parties in such rate case.

#### Nature of Investigation

It would serve no useful purpose to cite or refer to the many references to the binding or nonbinding results of an investigation by an administrative agency, since the form of the investigation, the right to be heard, the judicial or non-judicial nature, and other requirements and processes vary with statutory and procedural necessities.

Suffice it is to say that in the Commission's Limerick investigation at I-80100341 the parties had the right to a full and open hearing.

#### Rate Case at R-850152

In our consideration of Trial Staff's motion limine we must take note of the monumental task which faced the Commission in its Limerick Investigation at I-80100341, and in the present rate case.

The very enormity of the proposed rate increase requested here, approximately \$670 million, is the largest rate increase requested in this Commonwealth. And the potential impact upon ratepayers of PECO is so great that PECO itself proposes that the increase in rates be phased-in over three years.

This enormous rate increase request largely arises out of the Company's proposed inclusion in its rate base its investment in Limerick Unit No. 1.

Bifurcation or  
Ancillary or In-Aid  
Treatment of the  
Commission's Investigation  
at I-80100341

Trial Staff also bases its motion on the ground that the Limerick issues were bifurcated by the Commission at I-80100341.

It is our view that the Commission's findings of the imprudency of PECO's 1976 and 1978 decisions in I-80100341 are not covered either in Section 316 of the Code, or by the principles of res judicata or collateral estoppel.

In our opinion, however, the findings of such imprudency are conclusive upon the parties to both I-80100341 and R-850152, upon the ground that this issue was bifurcated, or treated as ancillary or an in-aid to the first rate case in which PECO would propose to include Limerick in its rate base, and this is that case.

While the findings by the Commission as to the imprudency of the 1976 and 1978 Limerick delays may not be final or conclusive for all

purpose, such findings are conclusive upon the parties herein as issues which has been determined in a bifurcated, ancillary or in-aid preparatory process as part of this rate case.

Because of the magnitude of the issue of PECO's prudence in the Limerick construction activities, the Commission realized that such issue could not be adequately addressed in the on-coming rate case where such issue would be relevant along with all the other issues of a normal rate case within the statutory time constraints of Section 1308 of the Code.

Consequently, the Commission extracted this issue for a bifurcation, or an ancillary or in-aid treatment before PECO proposed to include Limerick in its rate base. This was a pragmatic, lawful and justified exercise of the Commission's discretion. In so extracting this issue for independent investigation, the Commission would (1) have an opportunity to address the issue with no statutory time constraints, (the investigation took almost two years to complete), and (2) reduce its burden in addressing adequately all the issues in the on-coming rate case of PECO.

That the Commission's procedure in preliminarily making a finding of fact on the question of the prudence of PECO's 1976 and 1978 Limerick 1976 and 1978 delays may have been unprecedented or novel, does not render such procedure an improper exercise of its discretion. The problem was unprecedented; adequate procedures had to be implemented to assure to PECO's ratepayers and all parties an adequate treatment of a Limerick rate case proceeding. Administrative agencies have considerable latitude to shape their remedies within the scope of statutory authority. Securities and Exchange Com. v. Cheverly Corp. 332 U.S. 194, 91 L. Ed. 1995, 67 S. Ct. 1575.

To suggest that the Commission's investigation and its finding of imprudence of the 1976 and 1978 Limerick delays in I-80100341 are not binding upon the same parties in this rate case is absurd and without merit. Such a contention would reduce the Commission's investigation on this issue of prudence to a vain and useless exercise. The Legislature could not have intended or contemplated redundant methods of relitigation.

PECO had the opportunity to fully litigate this issue in the investigation at I-80100341. It now seeks a "second bite of the apple."  
After fully litigating this issue before the Commission at I-80100341, and after taking its chances of a favorable finding by the Commission - after the verdict was not to its complete liking - it now seek to retry the issue.

PECO would require trying the issue of prudence of Limerick de novo, and again hearing evidence which the Commission had heard and passed on. Thus, it would seek the unlikely expectancy of a reversal of position by the Commission.

The further contention of PECO that it did not present all its available evidence has even less merit. Nowhere does it aver that it has discovered evidence to be presented in this rate case on this issue which was not available at the time of the Limerick investigation. If it withheld or neglected to present all its evidence on the issue at I-80100341, it did so as its own peril. PECO cannot claim that it was deceived in any manner either in the notice of the Limerick investigation or in the investigative process.

If, indeed, as it now states, it has other evidence to present, the proper procedure would have been to seek reconsideration of the

Commission's findings at I-80100341, or a reopening of that proceeding for further evidence after discovered. Marz White Way Tours v. Pa. P.U.C., 204 Pa. Super. Ct. 43; 201 A.2d 446 (1964).

### Due Process

PECO's argument that our ruling denies it due process is without merit.

It is true that the Commission is clearly bound by due process provisions of constitutional law and by the principles of common fairness. Town Development Inc. v. Pa. P.U.C. 50 Pa. Cmwlth Ct. 104 (1980); Smith v. Pa. P.U.C., 192 Pa. Super. Ct. 424, 162 A.2d 80 (1960); Shenandoah Suburban Bus Lines, Inc., 158 Pa. Super. Ct. 638 (1946). A review of the record shows that PECO has not been deprived of its due process rights.

PECO had clear notice of the nature of the proceeding at I-80100341. The Commission Order, dated October 10, 1980, initiating its 1980 Limerick Investigation at Docket I-80100341, addressed the scope of the proceeding in the following language.

We are opening this investigation proceeding so that information can be gathered in an orderly and expeditious manner before PECO seeks to include Limerick in its rate base as used and useful property. This approach will enable us to proceed without the pressures of time associated with rate cases.  
[Order, p. 1]

Furthermore all parties in this rate case had the opportunity to present evidence on the issue of the Limerick prudence at I-80100341. In addition, the parties there had the right to cross-examine witnesses,

to examine documents, and to file briefs, reply briefs and exceptions.

While the Commission made findings as to the reasonableness of the Limerick construction and delays, it made no final quantification or determination as to the effect of imprudency of the 1976 and 1978 delays for three reasons: (1) there was not sufficient evidence in the record to enable the Commission to determine the dollar effect, if any, of such imprudency; (2) it was not then known what costs would be included in its rate base on account of the Limerick investment; and (3) it was not yet known whether all of the Limerick investment would be included in PECO's rate base, or whether any portion of the ownership of Limerick might be sold and not included in rate base.

Nowhere does PECO contend that it did not have an opportunity to assert its rights and fully litigate the question of prudency of its Limerick activities, including the 1974 and 1978 delays. In fact, PECO quite frankly explained to the Commission the opportunity which all parties had to litigate the issue in its Reply Brief:

PECO urges the Commission to reject Trial Staff's various arguments [that PECO was imprudent in 1976 and 1978] in its Order concluding this proceeding. As noted in the Commission Order of October 10, 1980, a principal purpose of this investigation has been to examine "the cost of construction delays at Limerick and whether those delays were reasonable." Trial Staff and all other parties, including PECO, have had a full opportunity to develop the record upon this issue. [Staff Reply to New Matter (Exhibit 2)]

If this is so, how can the Company validly allege prejudice in our ruling? No one is entitled to be heard on a constitutional point which does not prejudicially affect him in the case. Commonwealth v. Alderman, 275 Pa. 483, 487, 191A 551, 553.

We did not, as contended by PECO, hold that the Commission's prudence finding of PECO's 1976 and 1978 delay decisions "was a conclusive and binding adjudication upon the parties in the current proceeding." Nor did we hold that the Commission's findings of imprudence of the Company's 1976 and 1978 Limerick delays "was the subject of a final and binding adjudication, order, determination, or finding in the 1980 Limerick investigation." We said just the opposite. While we did say that the Commission's findings of imprudence at I-80100341 were conclusive upon the parties in this proceeding, we stated that such findings were not final, were not an adjudication, and were not affected by Section 316 provisions or re judicata or collateral estoppel principles.

The Commission's finding of the imprudence of PECO's 1976 and 1978 Limerick deferrals, incorporated into the record of this proceeding, as having been made as ancillary or in-aid to this proceeding, together with all other findings, conclusions and orders will be subject to judicial review at the conclusion of this rate case. Whether there was error of law or lack of evidence to support the Commission's findings, determination or order can be tested upon judicial review at the conclusion of this proceeding.

Where the preliminary determination is without legal effect in and of itself, due process will be satisfied if there is an opportunity to be heard before any final order of the agency becomes effective.

Ewing v. Mytinger & Casselberry, 339 U.S. 594, 70 S. Ct. 370, 94 L. Ed. 1088.

Abuses of managerial discretion may be buffered against consumer impact through exercise of the Commission's rate-setting powers, disallowing rate increases which would reimburse utilities for expenditures imprudently made. Park Towne v. Pa. P.U.C., 61 Pa. Cmwlth Ct. 285, 295-97; 433 A.2d 610, 615-617 (1981).

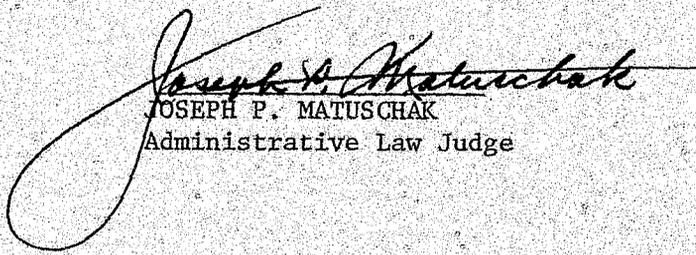
Preliminary, procedural, ancillary or intermediate actions or rulings of an administrative agency which are not directly reviewable, are subject to review at the time of the final agency action.

### Conclusion

We deal with this matter in accordance with analogous principles of evidence and our concept of equity and fairness.

With the many issues involved in this extraordinary rate case, both in content and in multi-million dollar impact, we find no justification for relitigation of issues which had already been litigated before the Commission in a prior bifurcated, ancillary or in-aid proceeding to this rate case.

January 17, 1986

  
JOSEPH P. MATUSCHAK  
Administrative Law Judge