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C O N T E N T S

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By Mr. Hall	1445		1567	
By Mr. Delaney		1448		
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E X H I B I T S

<u>NUMBER</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
<u>PECo Statement</u>		
No. 10 (Abrams)	1377	1377
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<u>Staff Exhibit</u>		
No. 13 (IR-OCA-10-3)	1481	1502
No. 14 (PECo Statement No. 9 from I-80100341)	1491	1502
No. 15 (Transcript excerpts from 3-31-81 in I-80100341)	1492	1502
No. 16 (Excerpts from PECO brief in No. 2365 Comm. Ct. 1982)	1496	--
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P R O C E E D I N G S

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2 ADMINISTRATIVE LAW JUDGE JOSEPH MATUSCHAK: This is
3 the time and place for further hearing in the matter of
4 Pennsylvania Public Utility Commission against the
5 Philadelphia Electric Company, Docket Number R-850152.

6 Before we proceed with further testimony in this
7 matter we have scheduled oral arguments on the motion in
8 limine of the Commission Trial Staff.

9 MR. DELANEY: Your Honor, with your indulgence,
10 what I propose to do is briefly state the basis of the
11 motion and allow the company to respond to that, and then
12 have a rebuttal opportunity after that.

13 JUDGE MATUSCHAK: Very well.

14 MR. HALL: Mr. Delaney, you will be making your
15 argument though, I take it, and the company will have an
16 opportunity to respond to that?

17 MR. DELANEY: Surrebuttal; is that what you are
18 stating?

19 MR. HALL: It does seem to me that your obligation
20 is to state more than simply the basis for the motion.
21 You make your argument, we reply and then you have
22 rebuttal.

23 MR. DELANEY: Certainly.

24 Your Honor, as I see it, one of the major issues
25 in this case, if not the major issue, is the introduction

1 into rate base of Limerick Unit No. 1. Now, people who
2 have traced the development of the construction of plant
3 through the Commission proceedings would have to see this
4 event as almost anticlimatic in the way that the plant
5 has gotten tremendous amounts of attention by the
6 Commission in the period of its construction.

7 I have attempted to trace that back, and I note
8 that as far back as June 1978 in R.I.D. 438 there was an
9 extensive hearing conducted before you concerning facts
10 of the plant's construction.

11 I would note that in the initial decision -- or
12 actually the recommended decision at R-79060865 Judge
13 Klovekorn devotes an extensive part of his recommended
14 decision to reviewing the plant's construction and the
15 positions of parties in the case concerning whether the
16 plant should be finished, or complaining about the delays
17 in its construction.

18 These were part of rate cases in which this issue
19 was raised in a limited manner.

20 JUDGE MATUSCHAK: It 438 it was not directly
21 involved. In the beginning of that rate case the company
22 indicated it would not delay construction of Limerick 1
23 and 2, and before the case was concluded the company
24 changed its position and determined that it would delay
25 construction of Limerick 1 and 2 two years; and although

1 not directly involved in the rate case, itself, we reported
2 it as a related matter to the Commission and suggested
3 that the Commission look into it before further moneys
4 were expended, to determine whether that was in the public
5 interest.

6 MR. DELANEY: Yes, I would note that the change in
7 position by the company in the course of the litigation
8 in that case caused you to conduct an extensive hearing
9 on, I believe, June 13, 1978 in that proceeding when the
10 company presented witnesses and arguments on the issue
11 of the construction of the plant.

12 There were more extensive examinations subsequent
13 to these two rate cases, and those examinations are the
14 1980 Limerick investigation conducted before Judge Klove-
15 korn and the subsequent Limerick 2 investigation just
16 recently concluded in the spring of this year before
17 Administrative Law Judge Turner, and resolved by a
18 Commission Order of December 5th.

19 The basis of the Staff's motion goes to what we
20 believe to be clear findings in the Commission's first
21 Limerick 1 Order. Judge Klovekorn issued an extensive
22 recommended decision in that case. In the course of his
23 decision he reviewed -- well, let me back up a little bit.

24 As is not uncommon in extensive Commission investi-
25 gations, it was initiated by a series of Commission Orders.

1 These Orders identified issues to be examined in the course
2 of the investigation. One of the subsequent Orders after
3 the initial beginning of the investigation defined as one
4 of the areas to be examined in the investigation the facts
5 of the delays in the Limerick construction and whether those
6 delays were reasonable.

7 The proceeding then went on I believe 39 hearing
8 days and over 4,000 pages of transcript. Judge Klovekorn
9 issued a recommended decision that comprehensively examined
10 many of these issues.

11 There is an extensive discussion of both the com-
12 pany's testimony and the intervenors' testimony on the
13 issue of the reasonableness of the company's delay in 1974,
14 1976 and 1978 in the construction of the Limerick plant.

15 What Judge Klovekorn concluded was that the '74
16 delay was reasonable, but the '76 and '78 delays were not.

17 JUDGE MATUSCHAK: I think he further concluded that
18 the initial decision to construct Limerick was also reason-
19 able.

20 MR. DELANEY: Yes, he did. But I am focusing
21 primarily on the delays.

22 Everyone filed exceptions on the decision to the
23 Commission, and the Commission made its decision in May
24 of 1982, and then finally issued an extensive Order on
25 it, resolving the investigation, in August of 1982.

1 That Order adopted many of Judge Klovekorn's findings
2 and also had its own independent discussion of several
3 of Judge Klovekorn's conclusions. One of the conclusions
4 tht is expressly adopted, and in fact to some extent
5 elaborated on, in the Commission's opinion is the reasonable-
6 ness of the '76 and '78 delays.

7 I have in my reply to the company's new matter a
8 brief paragraph excerpt of the Commission's conclusion.
9 If you will bear with me, I will read it very quickly.

10 "Considering the foregoing," -- which was the
11 discussion of the evidence about the delays in Judge
12 Klovekorn's conclusions -- "we are of the opinion that
13 PECO's management did not exercise judgment sufficient
14 to meet our reasonable man standard in delaying construction
15 at Limerick in 1976 and '78. Having so found, we were
16 requested by Staff and the OCA to quantify the cost of
17 delay to ratepayers. We are of the opinion that to do
18 so at this time is inappropriate. We have not been presented
19 in this proceeding a claim for recovery of any of the costs
20 associated with construction of the plants; and, consequent-
21 ly, we can make no adjustments to any claims.

22 "Further, if PECO should sell all or part of the
23 Limerick or its capacity to other utilities, the deduction
24 of all or part of the cost of delay from PECO's claim,
25 if any, would be materially affected. We therefore, find

1 it unnecessary to quantify at this time and in this pro-
2 ceeding the costs associated with the 1976 and '78 delays."

3 The line that I just read are contained at 56 PA
4 PUC, page number 61.

5 Essentially what the Commission did was adopt the
6 approach that Judge Klovekorn had taken to the matter,
7 which was to make a finding of unreasonable action on the
8 part of the company, but to delay to a later time the
9 actual quantification of the effects of the delay.

10 Finally, following the issuance of the Order the
11 company appealed it to the Commonwealth Court, and with
12 a lot of procedural skirmishing the Commonwealth Court
13 reversed the Commission's opinion in December of 1982,
14 and issued a decision, an actual opinion, on the matter
15 in January.

16 At the Commission's request, the matter was argued
17 in front of the Supreme Court on its April list, and in
18 May of 1982 the Supreme Court entered an opinion which
19 reversed the Commonwealth Court opinion and affirmed the
20 Commission's initial Limerick decision of August of '82.

21 I should note at this point that among the issues
22 that were litigated in the Commonwealth Court was included
23 a substantial evidence attack by the company on the
24 Commission's findings concerning the prudence of the '76
25 and '78 construction delays.

1 Those issues were carried up to the Supreme Court,
2 and the Supreme Court really mentions them only in a foot-
3 note to its Opinion, and in effect chooses not to rule
4 on that part of the appeal at that time. And the footnote
5 I have cited in my original motion, Footnote 7 to the
6 Opinion, which is at page 501 PA 161 and 460 Atlantic 2nd
7 739, states, "Further, the opinion accompanying the PUC's
8 Order contained criticisms of an advisory nature directed
9 at PECO's decision in 1976 and '78 to defer completion
10 of the Limerick facilities. Such mere criticism, however,
11 does not constitute an adjudication and cannot be reviewed
12 on appeal."

13 The overall action of the Supreme Court, however,
14 was to affirm the Commission's Order and reinstitute it.

15 There were subsequent filing by the company in
16 compliance with the Commission's 1982 order.

17 At this time, however, the essence of our motion
18 goes to the kinds of evidence that you should receive in
19 the present case. It is doubtlessly true that the company
20 is not first making its claim for the inclusion of the
21 Limerick 1 unit in its rate base in this case.

22 What we argued in our motion is that in view of
23 the Commission's -- in my opinion -- express findings of
24 unreasonable conduct by the company in delaying the
25 construction in '76 and '78, that the company should not

1 be permitted in this proceeding to introduce additional
2 evidence on that issue, and, secondly, to relitigate the
3 facts, which I believe have been conclusively established
4 in the prior Investigation Order.

5 What we have relied on in our motion in limine is
6 Section 316 of the Public Utility Code. In part what that
7 section says is that "Whenever the Commission shall make
8 any rule, regulation, finding, determination or order,
9 the same shall be prima facie evidence of the facts found
10 and shall remain conclusive upon all parties affected
11 thereby unless set aside, annulled or modified on
12 judicial review."

13 JUDGE MATUSCHAK: Isn't the problem therein that
14 the Supreme Court stated that it was not appealable and
15 they would not review it? Isn't that section conditioned
16 upon review?

17 MR. DELANEY: I don't believe so, Your Honor. What
18 the company has argued in its answer is that the language
19 of the Supreme Court's Footnote 7 says that the conclusion
20 was not an adjudication; therefore, it makes this section
21 inoperative. And I would submit that that's not supported
22 by the wording of the section.

23 If you will note, the section is stated to encompass
24 a number of actions by the Commission. These are stated
25 disjunctively; it's not that each one has to be a rule

1 or regulation or finding, but that any of these will do.
2 And I will submit that in the Commission's own language
3 in the Limerick 1 Order it said that they had found that
4 that the company was unreasonable in its delays.

5 JUDGE MATUSCHAK: The only problem we have, or the
6 only difficulty we have is that that section seems to
7 indicate if there is a finding or determination or order,
8 after a review by the Court that that matter will be
9 conclusive and in the nature of res judicata, available
10 in any other proceeding as estoppel or res judicata in
11 those proceedings. We don't have that here. We don't
12 have that here.

13 MR. DELANEY: My response would be, Judge Matuschak,
14 that the wording in the section give the effect, the
15 operative effect described in the first several clauses
16 of the section. The language that you just recited to
17 me is introduced by "unless set aside, annulled or
18 modified on judicial review." I don't think there is a
19 connection between the two. I don't --

20 JUDGE MATUSCHAK: But the Court says: we are not
21 even going to look at it. It is not appealable; we are
22 not going to look at it. So if they don't look at it,
23 they can't annul it or modify it or do anything else.

24 MR. DELANEY: Exactly.

25 JUDGE MATUSCHAK: You are not contending in this

1 case that any finding of the Commission in the Limerick
2 investigation is binding on anybody in any case in any
3 manner, are you?

4 MR. DELANEY: The Limerick 1, yes. The purpose
5 of our motion is to say that the unreasonable construction
6 delay findings are binding on the company and conclusive
7 of the facts found in this proceeding.

8 JUDGE MATUSCHAK: But the section, itself, says
9 that that result or that conclusion is only available
10 upon review by the Courts.

11 MR. DELANEY: I disagree because the last section
12 which describes judicial review, in my belief, is stated
13 conditionally. I don't think that the first part of the
14 section needs the affirmance upon judicial review to be
15 effective.

16 JUDGE MATUSCHAK: There may be other grounds upon
17 which your position might be well-taken, but I don't
18 think it is on the grounds of 316. I don't think 316
19 has anything to do with this.

20 MR. DELANEY: We haven't argued in front of you
21 that res judicata or collateral estoppel applies; our
22 argument has been solely on 316. What we are offering
23 to you in this proceeding -- or the position that we are
24 taking -- is not uncommon in the Commission. There will
25 be proceedings where one conclusion is reached, and then

1 there will be subsequent proceedings where that is applied.
2 I know, Judge Matuschak, you did the CAPCO investigation
3 Order.

4 JUDGE MATUSCHAK: Yes, we have that.

5 MR. DELANEY: That was an extensive proceeding on
6 the prudence of cancellation decisions concerning construc-
7 tion of nuclear power plants. The conclusion was made --

8 JUDGE MATUSCHAK: And the prudence of some delays
9 in that case too.

10 MR. DELANEY: Correct. And then subsequently they
11 were applied in Penn Power and I believe in the Duquesne
12 Light rate cases, again findings being made in prior
13 Commission orders and being applied in a subsequent one.

14 There is an even more direct example, I think, in
15 the Beaver Valley investigations. Then you had a long
16 multi-year investigation again dealing with prudence in
17 the operation of nuclear power plants or matters related
18 to nuclear power plants. There was a series of Commis-
19 sion orders. One of the Commission orders assessed
20 liability, and then the investigation continued on
21 quantifying the effects of purchased power due to outages
22 the Commission found to be unreasonable.

23 JUDGE MATUSCHAK: I think you are on stronger grounds
24 there.

25 MR. DELANEY: I would note that through that period

1 Duquesne Light was appealing all the interim Commission
2 orders.

3 JUDGE MATUSCHAK: How long did the investigation
4 of Limerick 1 take? Didn't that take about two years?

5 MR. DELANEY: Nearly two years.

6 JUDGE MATUSCHAK: And there were 38 hearing dates
7 in that investigation.

8 MR. DELANEY: That's correct. That's my under-
9 standing.

10 What we argued to you though is that I believe that
11 all the conditions of Section 316 have been met. I don't
12 believe the section is written in such a way that requires
13 judicial review for the conclusive effect of the prior
14 finding on a case to have application, and I think, in
15 my view, that position is supported by the wording of
16 Section 316, which has the conditional word "unless" that
17 precedes the description of the effect of judicial review.

18 I don't know if you have any questions, Your Honor.
19 Otherwise, I would have Mr. Hall respond, and then I
20 may have some rebuttal.

21 JUDGE MATUSCHAK: I want to hear from the company
22 first.

23 MR. DELANEY: Thank you, Your Honor.

24 MR. HALL: If Your Honor please, are you limiting
25 argument to the company and and the Trial Staff?

1 JUDGE MATUSCHAK: Does anyone else take the position
2 of the Commission Staff in this proceeding?

3 MR. WERSAN: Yes, Your Honor.

4 JUDGE MATUSCHAK: You may be heard.

5 There is one question I want to ask Mr. Delaney
6 first.

7 MR. DELANEY: Surely, Your Honor.

8 JUDGE MATUSCHAK: Mr. Delaney, you are asking us
9 in this proceeding to accept the Commission's determination
10 or finding that the Philadelphia Electric Company's decisions
11 with regard to the 1976 and 1978 delays were not reasonable?

12 MR. DELANEY: That's correct, Your Honor.

13 JUDGE MATUSCHAK: All right. Now, the Commission
14 in that investigation also determined that Philadelphia
15 Electric's decision on the initial construction and
16 Philadelphia Electric's delay decision in 1974 -- and ALJ
17 Klovekorn took the same position -- that those decisions
18 were reasonable. Now you are submitting half a cake here.
19 What about the other half?

20 MR. DELANEY: The Commission Staff has not presented
21 any positions in this case and will not to contest those
22 other findings.

23 JUDGE MATUSCHAK: That's what I wanted to know.

24 MR. WERSAN: Your Hoonor, the Consumer Advocate
25 supports the motion in limine by Staff. I think Mr.

1 Delaney's filing and his arguments are fairly comprehensive,
2 but there are a few things I would like to note. The thing
3 that the Consumer Advocate's office finds relevant is the
4 facts that we are talking about here occurred in the 1976
5 to 1978 time period, and they were known, they were done,
6 they were finished by the time of the Limerick investigation.

7 The company had notice that those delays were going
8 to be litigated. They presented direct testimony directly
9 on it. In fact, they appended that testimony to their
10 current testimony in this case to show what it was that
11 they stated at that time.

12 We believe, therefore, that the company had adequate
13 notice and opportunity to litigate those issues.

14 It is our understanding that the reason the original
15 investigation proceeded was because the issues that were
16 involved were too lengthy and too involved to go into a
17 normal rate case; and in fact there was a concurrent rate
18 case going on at the time that did not include these issues.

19 The OCA is not planning to litigate the '74, or
20 the prudence or reasonableness of any other delays in this
21 case or the company's decisions to go forward; rather the
22 OCA intends to present evidence on the costs of those delays
23 and how they should be treated in this case.

24 We think the Beaver Valley investigation is on point.
25 The Commission often bifurcates investigations, first to

1 make a finding of liability; and if a finding of liability
2 or unreasonableness is found the Commission will then go
3 and quantify that. And I think that's appropriate in this
4 case.

5 Taking that position, of course the company then
6 from the final decision in this case could appeal the entire
7 package, the reasonableness and costs. That only, in our
8 opinion, makes sense. But we will not be relitigating
9 that issue -- or we certainly do not desire to relitigate
10 that issue unless you hold it open.

11 JUDGE MATUSCHAK: It would be your position that
12 the Supreme Court would refuse to accept or review findings
13 of fact piecemeal by piecemeal?

14 MR. WERAN: I don't think they would if it is
15 presented in a final order by the Commission. In the
16 Beaver Valley case it has been a series of proceedings
17 that I think is still before the Commonwealth Court, and
18 the record in that case is quite extensive and a number
19 of Commission orders are referred to, and have to be referred
20 to in the briefs in order to present the complete picture.

21 JUDGE MATUSCHAK: I think the Supreme Court indicated,
22 if they didn't exactly say, that the matter was not ripe
23 for decision. and the Commission's findings in the matter
24 and their conclusions were not final adjudications.

25 MR. WERSAN: I think there was not a need at that

1 time to finally resolve this, as perceived by the Supreme
2 Court. The issue of what would happen in the future with
3 Limerick 1 was yet to come, whether or not the company
4 would present it in rates, whether it would attempt to
5 sell it as it did a portion of its share in Salem 2; a
6 number of things have happened in the intervening period.

7 So we think the proceeding, the progression, is logi-
8 cal, and it is now time to decide how much those delays
9 cost.

10 JUDGE MATUSCHAK: Do you think the Commission
11 Staff's reliance on 316 is valid? That section provides
12 that findings of fact, conclusions, determinations and
13 orders of the Commission shall be conclusive upon review.
14 In this case the Supreme Court refused to review it,
15 refused to hear it, said it wasn't appealable; so can we
16 rest on 316, or does 316 have anything to do with this
17 proceeding?

18 MR. WERSAN: I haven't phrased my arguments in terms
19 of 316. I don't mean to cast light on the Staff's position.
20 We haven't pursued it from that angle. In terms of perceiv-
21 ing this as a continuing litigation we are not yet at the
22 stage where a final determination or adjudication is
23 presented for the Court to resolve and to use as collateral
24 estoppel in the future.

25 JUDGE MATUSCHAK: Staff has also taken a position

1 that this is in the nature of a bifurcated position by
2 the Commission. It took a position and it decided to
3 determine it preliminarily for inclusion in the coming
4 rate case.

5 MR. WERSAN: We agree with that, Your Honor.

6 JUDGE MATUSCHAK: In that case, I think there is
7 more solid ground.

8 MR. WERSAN: That is all I have to say. Thank you,
9 Your Honor.

10 JUDGE MATUSCHAK: Mr. Hall?

11 MR. HALL: Thank you, Your Honor.

12 If Your Honor please, the company's position on
13 this matter is simple and straightforward. At the
14 conclusion of the 1980 Limerick investigation and after
15 noting the apparent criticisms of the the company's
16 decision-making respecting the 1976 and 1978 deferral
17 decisions, the company appealed the Commission's 1982
18 Order.

19 The Commonwealth Court reversed that Order in its
20 entirety. Following an appeal by the Commission Staff,
21 the Supreme Court affirmed the Commission upon the
22 single issue of what the Court termed the Commission's
23 adjudication. The Court used that word with respect to
24 the application of Section 1903, the Commission's authority
25 to refuse to register securities certificates to be used

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for the purpose of constructing Limerick 2.

In its Order, and at the specific request of the company, the Supreme Court reviewed the Commission's language stating the criticisms with respect to the company's decision-making of the 1976 and 1978 deferral decisions. The Court held with respect to that language that it constituted -- and I quote here -- "mere criticism;" further , that it was -- and I quote again -- "of an advisory nature." And finally -- and I quote again -- "it did not constitute an adjudication and cannot be reviewed on appeal."

In making those determinations, I believe the Supreme Court has established the law for this case, and has established conclusively the effect and significance of the Commission's language respecting the 1976 and 1978 decisions. That effect is that those are not final conclusions, determinations or findings.

JUDGE MATUSCHAK: Let me ask you, Mr. Hall, would you also state that the conclusion of the Commission that the initial decision of the Philadelphia Electric Company initially to construct Limerick, and PECO's decision in 1974 to delay the construction of Limerick are also open questions in this proceeding, and are not binding on us or on the parties to this proceeding?

MR. HALL: Your Honor, those particular issues were not appealed to the Supreme Court. We have no --

1 JUDGE MATUSCHAK: I know, but whether they were
2 appealed or not, the Supreme Court said that those matters,
3 the delays, were mere criticisms and were not appealable,
4 and they were not going to review them. Doesn't the same
5 matter apply as to the '74 delay and the original construc-
6 tion of Limerick? Do you want the Commission and the
7 Consumer Advocate to come in and try those issues again
8 in this proceeding?

9 MR. HALL: I believe that is a matter for Your Honor
10 to determine. However, the Supreme Court's --

11 JUDGE MATUSCHAK: If we say that the '76 and '78
12 decisions are final, then don't we have to say that the
13 Commission decision as to the original construction and
14 the '74 delay are also -- excuse me. If you take the
15 position that the '76 and '78 delays are not final and
16 they are open to be relitigated in this proceeding, then
17 must we not also take the position that the Commission's
18 finding that the original investment in Limerick by PECO's
19 and PECO's '76 delay are also open questions to be
20 litigated in this proceeding?

21 MR. HALL: No, Your Honor, I don't believe that
22 you can reach that conclusion. That is a conclusion that
23 you can reach under the Supreme Court's order, but I don't
24 think it is necessarily the correct conclusion.

25 JUDGE MATUSCHAK: The Supreme Court didn't make

1 any order.

2 MR. HALL: Your Honor, the Supreme Court reviewed
3 specifically the Commission's language and the Commission's
4 statements respecting the '76 and '78 decisions, reviewing
5 the language in the order on those decisions.

6 JUDGE MATUSCHAK: Didn't the Commission use the
7 same language about the '74 delay as it used about the
8 '76 and '78 delays? And if those were, as you say, advisory,
9 wouldn't the Supreme Court have taken the same position?

10 MR. HALL: No, I don't believe so, Your Honor. The
11 Commission with respect to the 1976 and 1978 deferral
12 decisions said the issue was not ripe for decision. Now,
13 the Commission in --

14 JUDGE MATUSCHAK: Neither was the Commission's
15 '74 delay a matter that would have been ripe for decision
16 on that same theory.

17 MR. HALL: If Your Honor chooses to decide that,
18 I would not dispute it. However, I do not believe that
19 the Supreme Court Order classifies decisions other than
20 the '76 and '78 deferral decision language. That is what
21 the Court reviewed. The Court reviewed that language.

22 JUDGE MATUSCHAK: The Court didn't review it. The
23 Court just said: we are not going to review it; it is not
24 appealable. We noticed it, but we are not going to review
25 it.

1 MR. HALL: But in reaching that conclusion, the
2 Court reviewed the language. The company requested the
3 Court to review it, and the Court in fact reviewed it,
4 and issued the footnote in its decision specifically
5 deciding the issues which the company had presented to
6 it.

7 The other findings of the Commission -- or state-
8 ments of the Commission --

9 JUDGE MATUSCHAK: The Court did not review it
10 because they said, "Such mere criticism, however, does
11 not constitute adjudication and cannot be reviewed on
12 appeal."

13 MR. HALL: But to do that the Court had to review
14 and determine the effect of the Commission's language in
15 the section dealing with the '76 and '78 deferral decisions.
16 They did that. That was specifically presented to them
17 by the company, and they rendered a decision which said:
18 this is not an adjudication; it is not an appealable
19 issue. That is the determination by the Supreme Court.

20 JUDGE MATUSCHAK: Did the Commission's finding
21 concerning the '76 and '78 delays have any effect -- did
22 it aggrieve anybody; did it have any effect upon anybody,
23 standing alone?

24 MR. HALL: The Supreme Court concluded, based upon
25 is review of the language in that decision, and based upon

1 the representation that was made to it by the Commission
2 as to what that language meant, and particularly that it
3 did not constitute a determination or adjudication, that
4 no, it did not aggrieve because in fact it was "mere
5 criticism." It was a mere advisory statement.

6 JUDGE MATUSCHAK: I think the Supreme Court adopted
7 the language that either the Commission Staff or the company
8 had used in their brief. Isn't it true that the finding
9 of the Commission as to the '76 and '78 delays as being
10 unreasonable did not bind anybody, had no effect on anybody
11 standing along, had no effect on anybody and did not bind
12 anybody, and they would not bind anybody until the Commis-
13 sion determined what effect that would have on the company's
14 request for reimbursement of the costs that were caused
15 by those delays?

16 MR. HALL: Your Honor, that is not what Trial Staff
17 is contending. Trial Staff is contending in this proceed-
18 ing that in fact that language in the Commission Order
19 does bind the company, that it is final, that it is con-
20 clusive, and that all that is left to be done is to
21 quantify the loss to the company with respect to that.

22 JUDGE MATUSCHAK: Let me ask you: here is a pro-
23 ceeding that the Commission said in its Limerick decision
24 at I-80100341-- they said that they concluded that the
25 investigation should be open so that the information can

1 be gathered in an orderly and expeditious manner before
 2 PECO seeks to include Limerick in rate base as used and
 3 useful property. Further it said, "We conclude that an
 4 independent investigation of Limerick is appropriate so
 5 as to prevent the pending rate investigation from becoming
 6 burdened with additional issues which would have to be
 7 decided within the statutory period set forth in Section
 8 1308 of the Public Utility Code."

9 And we note that in that proceeding 38 days of
 10 hearings were held. Now, there were some other issues
 11 besides the Limerick delays, the construction delays; but
 12 that proceeding extended over a period of about two years.
 13 Wasn't the Commission trying to be pragmatic about the
 14 thing and say: well, here's the Limerick delays --the
 15 delays and construction issues are of such vast importance
 16 and are so complicated that they cannot be dealt with
 17 in a rate case proceeding in the time constraints of a
 18 rate case proceeding; so we are going to decide that issue
 19 preliminarily so that those issues will not have to come
 20 up again in the rate case itself? Isn't that what you
 21 feel that the Commission felt or considered in that case?

22 MR. HALL: Your Honor, I did not read that into
 23 the Commission's order in establishing the investigation.
 24 The Commission said: this is a factfinding investigation;
 25 we are seeking to accumulate facts. That does not, in

1 my view, give the appropriate and constitutionally required
2 notice of precisely what the Commission is going to rule
3 and what the ultimate decision would be.

4 JUDGE MATUSCHAK: We are troubled a little bit,
5 to be frank. We are troubled a little bit by three things,
6 first, the Commission's statement that it is initiating
7 a factfinding investigation. Second we are troubled a
8 little bit by ALJ Klovekorn's statement that this matter
9 can be brought up at an additional time; and, third, we
10 are disturbed a little bit by the language of the Supreme
11 Court that says that the Commission's discussions and
12 conclusions were merely advisory. Frankly, we are a
13 little troubled by that, but basically we go to the heart
14 of the thing and we see the Commission recognizing that
15 the Limerick construction delays were of such magnitude
16 that they could not properly be addressed in the rate
17 case.

18 This is what we think was a pragmatic decision,
19 to say: well, those issues we are going to take out of
20 the rate case and decide independently where we don't
21 have any time constraints, and that's exactly what they did.

22 MR. HALL: I would agree with you, Your Honor,
23 up to the point of the decision. The Commission
24 obviously chose to hold an investigation to obtain
25 facts. By obtaining those facts the Commission would be

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able and the Staff and other parties would be able to formulate their positions and to litigate the issue in the appropriate rate case, and I believe that is what the Commission was ordering.

JUDGE MATUSCHAK: The language of the Commission -- that is to investigate facts -- that disturbed me. However, after they said that they said -- they used the other language; they said: we concluded that Limerick issues were of such magnitude that, in effect, they cannot be addressed adequately in a rate case, so we are going to put them where we can resolve those issues where we don't have the time constraints.

MR. HALL: Your Honor, I do not read the Commission's Order -- and throughout the proceeding there was clear uncertainty with respect to what the Commission's intent on the matter was. It was the position of many of the parties that the Commission could not find or adjudicate in that particular order. And, of course, there was uncertainty in the ALJ's language in the determination which held that: no, we don't decide this matter; we don't issue a finding or conclusion.

However, Your Honor, I think the point is that in the Commission's Order there was not a clear notice that these matters were to be adjudicated in a rate case context and with the rate case issues, and that I think is a problem

1 with respect to the provision of appropriate due process.

2 Further, and finally, I think the Supreme Court
3 in this case reviewed the effect of the Commission's Order
4 and determined that it was not a final and conclusive
5 order.

6 I do have one other argument to make to Your Honor,
7 which I think is significant, in response to Trial Staff's
8 position --

9 JUDGE MATUSCHAK: Doesn't the Supreme Court saying
10 it wasn't a final order destroy your position that it was
11 a final order -- didn't the Supreme Court decision or
12 finding that there was not a final order destroy your
13 contention that the original investments and the '74
14 decision should be open in this proceeding and relitigated
15 here?

16 MR. HALL: It is not my position, Your Honor, that
17 any part of the Commission's Order was final, other than
18 that part which the Supreme Court determined, that being
19 the issue of whether or not the Commission had authority
20 under Section 1903 to refuse to register securities
21 certificates.

22 JUDGE MATUSCHAK: What is wrong about the Commission
23 recognizing the magnitude of the problem involved in the
24 Limerick construction delays; what is wrong in the Commission
25 decision that those things were of such magnitude that

1 within the time constraints of a rate case with all the
 2 other issues that come up in a rate case that it is impossible
 3 to properly address the Limerick issues, and so preliminarily
 4 stating that we will resolve those issues for incorporation
 5 into the rate case, itself?

6 MR. HALL: Your Honor, if the Commission is clear
 7 in the notice that it provides to the litigants as to
 8 what its intent is --

9 JUDGE MATUSCHAK: Let me ask you in that connection
 10 this: wasn't this an investigation that was referred to an
 11 Administrative Law Judge and didn't you, the company, and
 12 all the parties have an opportunity to present evidence
 13 and to cross-examine the witnesses, and to file briefs
 14 with the Administrative Law Judge, to take exceptions to
 15 the Administrative Law Judge's decision to the Commission;
 16 didn't all the parties have that opportunity?

17 MR. HALL: Yes, Your Honor. The company did have
 18 that opportunity, as did the other parties. However, the
 19 issues of the proceeding were not clear with respect to
 20 the effects of the matter in a subsequent rate decision.
 21 I think that, under due process concepts of notice, would
 22 prevent this proceeding, the first Limerick investigation,
 23 from being used conclusively.

24 JUDGE MATUSCHAK: It is your position that we have
 25 to start de novo on the Limerick issue in this rate case?

1 MR. HALL: It is my position, Your Honor, that the
 2 Supreme Court has ruled that the Commission did not issue
 3 an adjudication with respect to the '76 and '78 decisions,
 4 and that since the Commission did not issue an adjudication,
 5 as its order indicates it did not, in my opinion, and as
 6 the Supreme Court has determined it did not, that those
 7 specific issues are not precluded in this proceeding.

8 JUDGE MATUSCHAK: Well, it was not an adjudication
 9 because the finding that the Commission made had no effect
 10 on anybody, and until it does have an effect on anybody
 11 it wouldn't be an adjudication, would it?

12 MR. HALL: I disagree with that, Your Honor. If
 13 the Commission had issued a final adjudication holding
 14 that the company was imprudent with respect to the 1976
 15 and 1978 deferral decisions, and simply because the
 16 Commission did not choose to quantify the specific costs
 17 related to that decision, that would not prevent the
 18 Order from affecting the company.

19 JUDGE MATUSCHAK: How could it affect the company;
 20 how could -- standing alone how could a finding by the
 21 Commission that PECO's delay decisions were imprudent,
 22 how could that affect the company, standing alone with
 23 nothing more?

24 MR. HALL: Obviously, it would put a very serious
 25 cloud over the company, its future earnings, its financial

1 condition, it would affect --

2 JUDGE MATUSCHAK: It wouldn't cost the company a
3 penny.

4 MR. HALL: It would cost the company's shareholders
5 a significant penny, I suspect.

6 JUDGE MATUSCHAK: It wouldn't prevent the company
7 -- it wouldn't state the company was not allowed
8 to recover any moneys that were the result of those
9 delays.

10 MR. HALL: Your Honor, if it does not state that
11 the company is denied the opportunity to recover the costs
12 of those delays, then it seems to me the Commission has
13 not rendered a decision; it has not rendered an adjudica-
14 tion. Then it is not conclusive upon the company. And
15 that is what the Supreme Court held.

16 JUDGE MATUSCHAK: Suppose the company had no other
17 evidence to offer in this case on the Limerick matter.
18 Suppose the company had no further evidence to offer other
19 than what it offered in the Limerick investigation. Is
20 it your position then that we must go through that litiga-
21 tion in this rate case again?

22 MR. HALL: It is my position, Your Honor, that the
23 issue of the 1976 and 1978 decisions are not precluded.
24 I believe the Supreme Court's order clearly held that.

25 JUDGE MATUSCHAK: What you are telling us is that

1 the Commission's investigation served no useful purpose.

2 MR. HALL: I don't say that at all, Your Honor.

3 JUDGE MATUSCHAK: What purpose would it have served
4 if the findings from that case have no effect and all the
5 matters have to be relitigated?

6 MR. HALL: Two things, Your Honor. The Commission's
7 1980 Limerick investigation was a very broad-based pro-
8 ceeding. The major focus and function of that proceeding
9 and the major attention expended on that proceeding by
10 both the company and the parties were with regard to the
11 issue of whether construction of the Limerick units should
12 be permitted to continue.

13 JUDGE MATUSCHAK: Let me change it then. Are you
14 telling us that the Commission's investigation of the
15 original construction of Limerick, the prudence of that
16 decision, and the Commission's consideration of whether
17 the delays in '74 and '76 and '78 were prudent or not
18 have no effect?

19 MR. HALL: Your Honor, I don't believe the Commission
20 made decisions with regard to whether the '76 and '78
21 deferral decisions were prudent or not. I believe the
22 Supreme Court has reviewed the Commission's language and
23 has held that they did not.

24 JUDGE MATUSCHAK: I think the Supreme Court -- if
25 it is merely a finding of fact and there are other

1 facts to be found, then is it your position that as each
2 fact is developed that any of the parties have the right
3 to go to the Supreme Court and have that fact reviewed,
4 or do they have to wait for a final decision in the matter
5 before the Supreme Court will review all the facts in any
6 order that the Commission will issue them?

7 MR. HALL: Your Honor, I believe that the Commission
8 has to make its decision in a single proceeding. I don't
9 believe that the Commission can have separate dockets and
10 separate proceedings and seek to in those separate dockets
11 and separate proceedings issue rulings with regard to a
12 piece of this puzzle and a piece of that one and then
13 try to fit them all in at some future time.

14 That is what the rules of res judicata and collateral
15 estoppel have been developed to regulate, and those rules
16 do not apply here. There is no issue preclusion under
17 res judicata or collateral estoppel.

18 Unless those rules apply then I don't think the
19 Commission can issue subsidiary determinations in
20 different dockets and different cases directed at different
21 purposes, and at the end of that whole process, that very
22 diffuse process, which prevents the litigants from properly
23 focusing on the issues in the proceeding, come forth
24 with a ruling that says: you are bound by all of these
25 disparate matters put together. That prevents the

1 litigants, in my view, from fully and thoroughly presenting
2 to the Commission the facts in an organized and appropriate
3 manner to permit an informed and reasoned decision.

4 JUDGE MATUSCHAK: You have already done that, and
5 isn't there a due process involved in having those findings
6 of the Commission in the Limerick case incorporated in
7 this case, and then the whole thing adjudicated and reviewed
8 by the Appellate Courts?

9 MR. HALL: I do not believe so, Your Honor. I do
10 not believe that the company has had its full opportunity
11 to present to this Commission the facts and information
12 respecting these decisions and their full effects. The
13 1976 and 1978 deferral decisions were but a small part
14 of a much larger investigation whose major purpose and
15 effect was directed at should Limerick continue; and that
16 is where most of the attention of the parties, of the
17 Commission and the Administrative Law Judge were held, and
18 throughout the proceeding the Administrative Law Judge and
19 the parties generally did not view the deferral decisions
20 as a fact-gathering exercise as being one that would result
21 in a final order adjudicating prudence.

22 It was not until the Commission issued its order
23 that that was done.

24 JUDGE MATUSCHAK: Is it your position that all of
25 the litigation before the Administrative Law Judge and the

1 exceptions directed to the Commission, all of that was
2 a useless exercise?

3 MR. HALL: Not at all, Your Honor. I think in part

4 --

5 JUDGE MATUSCHAK: What purpose did it serve?

6 MR. HALL: The first major purpose and principal
7 purpose of the proceeding was to determine whether or not
8 the Commission should permit the issuance of securities
9 certificates or should take some other action related to
10 whether Limerick 1 and 2 should continue. That was the
11 principal purpose.

12 Beyond that, the second purpose that I saw was that
13 the Commission had available to it -- and the other parties
14 to that proceeding were given available to them -- a
15 statement of the facts, and of the general parameters of
16 the company's decisions respecting the construction of
17 Limerick, the decisions to continue, the decisions to
18 defer, the construction management processes; all of those
19 being made available to those parties prior to the
20 initiation of the rate case for use by those parties in
21 preparing themselves for the ultimate case in which the
22 issues would be clearly drawn and decided.

23 Now if Your Honor please, there is one other point
24 -- there are several other points that I would like to
25 make. One is that under the Administrative Agency Law

1 and under this Commission's regulations, if Trial Staff's
2 position were correct that a finding, such as Trial Staff
3 asserts the language on the '76 and '78 decisions is, is
4 conclusive on the company and cannot be reviewed in this
5 proceeding, then in fact that language would have to
6 constitute an adjudication.

7 It would, under the prescriptions of the Administra-
8 tive Agency Law and this Commission's own regulations,
9 be required to be an adjudication. The Supreme Court has
10 held that it is not. An adjudication as stated in this
11 Commission's regulations, and in similar language and similar
12 provisions as provided with respect to the Administrative
13 Agency Law, is defined as follows: An order, decree,
14 decision, determination or ruling by the Commission affect-
15 ing personal or property rights, privileges, immunities,
16 duties, liabilities or obligations of the parties to the
17 proceeding in which the adjudication is made.

18 It is my position that if Trial Staff is correct
19 that the Commission can make -- or has made -- a finding
20 which is final and conclusive on the company with respect
21 to imprudence with regard to the 1976 and 1978 decisions,
22 that would certainly be a ruling by the Commission which
23 would affect personal and property rights.

24 If one looks at the case law under these provisions,
25 one finds that a ruling can be considered as one affecting

1 personal and property rights even though there are to be
2 subsequent proceedings which shall deal with the same matter
3 and shall even address the same matter. It is not required
4 that this be the last step in whatever administrative process
5 is involved.

6 I would refer Your Honor to Allegheny Ludlam Steel
7 Corporation versus Pennsylvania PUC, 459 Atlantic 2nd,
8 1218, where the Supreme Court held that a Commission
9 approval of an ECR, though that ECR was to be subject to
10 further examination through a 1307(e) reconciliation process,
11 and through the possibility of complaints relating to
12 prudence, was an adjudication, and was reviewable.

13 I would refer you to Baker versus the Pennsylvania
14 Human Relations Commission, 462 Atlantic 2nd 881, a Common-
15 wealth Court decision in 1983, and also Commonwealth versus
16 the Borough of East Washington, 351 Atlantic 2nd, 687,
17 in which decisions by administrative agencies other than
18 the Commission were held to be adjudications though in
19 fact those decisions were subject to de novo review by
20 the Court of Common Pleas.

21 JUDGE MATUSCHAK: In the Allegheny Ludlam case the
22 original Commission proceedings involved whether the rates
23 charged were proper, and the Commission determined that
24 they were not, that they were excessive. And the statute
25 provided that there be no reparations unless there was

1 a petition filed for reparations, and that the Commission
2 finding that the rates were excessive was a final decision
3 and unless an appeal was taken that there could be no
4 petition for reparations allowed. Is that what you are
5 referring to?

6
7 MR. HALL: I don't believe so, Your Honor. There
8 are several Allegheny Ludlam cases. This particular one
9 involved a challenge by Allegheny Ludlam to the consti-
10 tutionality of the Commission's processes in approving
11 ECR changes at the beginning of the ECR year, and one of
12 the issues that arose in that proceeding is whether that
13 process constituted an adjudication, because in fact the
14 matter was to be reviewed further by the Commission in
15 the 1307(e) process and the rates were not considered
16 Commission-made rates.

17 The Court reviewed the allegations of Allegheny
18 Ludlam that the matter was in violation of due process,
19 and treated the Commission's approval of the ECR as an
20 adjudication to do that, and found it to be so, and then
21 rejected the due process arguments of Allegheny Ludlam.

22 JUDGE MATUSCHAK: I don't think anyone contends
23 in this case that the Commission's finding of competency
24 or adjudication -- I don't think anybody is alleging that
25 they were adjudications. The Supreme Court said there
weren't, and the Commission Staff said there weren't, and

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the company said there weren't. I think everybody agrees that they are not adjudications. But does the outcome of this motion depend on whether the Commission's conclusions and findings in the Limerick investigation were adjudications or not?

MR. HALL: Your Honor, I believe that it does. I believe that unless in fact those statements in the Commission's opinion are adjudications then this Commission cannot place them upon the company as being conclusive.

JUDGE MATUSCHAK: Is it your position that under Section 1308 that if the Commission perceives issues that may arise in the pending rate case, that the Commission cannot -- if they conclude that those issues cannot be determined within the time constraints of 1308 that the Commission does not have the right to determine preliminarily those issues which it perceives cannot be adequately discussed and reviewed and addressed in the rate case?

MR. HALL: Your Honor, I don't believe that we reached that question in this case. In this case the Pennsylvania Supreme Court has ruled that the Commission did not make an adjudication or decision respecting --

JUDGE MATUSCHAK: You haven't answered my question. The question is: is it your position that the Commission perceiving certain issues that are of such magnitude that

1 it is physically impossible to adequately and properly
2 address those issues with all the other issues, the general
3 issues in the rate case, within the time constraints of
4 the rate case, that the Commission does not have the right
5 to extract those issues and treat them preliminarily for
6 inclusion in the pending rate case?

7 MR. HALL: Your Honor, we did not object to the
8 Commission's initiating the Limerick investigation
9 proceeding. My position on this motion has not required
10 me to examine the question you just asked. I don't at
11 this point have any position as to whether the Commission
12 could extract such issues from a rate case.

13 We certainly at Philadelphia Electric Company had
14 no objection in 1980 to the Commission's investigating
15 and obtaining facts, assisting itself in performing its
16 regulatory functions by holding the investigation that
17 it did, and we did not object.

18 JUDGE MATUSCHAK: When the Commission initiated
19 its investigation they said: We consider it appropriate
20 so as to prevent the then-pending rate investigation from
21 becoming burdened with additional issues which would have
22 had to be decided within the statutory period set forth
23 in 1308 of the Public Utility Code. Isn't that what the
24 Commission says? If you don't take this issue of Limerick
25 out, then there will not be an adequate opportunity to

1 resolve and to adjudicate all the issues that may arise
2 in the rate case within the statutory period of time, and
3 so that is the reason we are going to take this issue out
4 and advert that their conclusion in that independent
5 investigation will become a part of the rate case?

6 MR. HALL: I don't believe that the Commission's
7 order said it was going to do that. I think --

8 JUDGE MATUSCHAK: They didn't say it, no, but
9 didn't they imply it when they said that, that they will
10 take this out so it won't have to be a burden with the
11 other issues that will be in the rate case; didn't they
12 imply that that was to be part of the rate case, itself?

13 MR. HALL: Your Honor, I read the Commission's
14 Order as saying that we are initiating an investigation
15 to gather facts, to gather facts in advance of the rate
16 case. It is not clear to me and it was not clear to me
17 in the litigation of that proceeding that the Commission
18 intended that investigation, that early proceeding, to
19 actually adjudicate the issues which it wanted facts
20 gathered on.

21 As we, the company, and as I understood the order
22 as we went through the process, indeed, the Commission
23 was gathering facts, it was obtaining information in
24 preparation for litigation in the decision of the rate
25 case. And that is the way we read the Commission's order.

1 And I think the Supreme Court in its review of the Commis-
2 sion's result has affirmed that that is what has occurred.

3 JUDGE MATUSCHAK: Very well.

4 MR. HALL: If Your Honor please, I believe I have
5 one or two additional points that I would like to cover.
6 As Your Honor is aware, the Trial Staff motion relies upon
7 Section 316 of the Code. The Commission Staff does not
8 assert that under either res judicata or collateral estoppel
9 principles that the company could be barred in this proceed-
10 ing or that the Commission is precluded from reviewing
11 the '76 and '78 decisions --

12 JUDGE MATUSCHAK: I think we will agree with you
13 that Section 316 does not apply here in this instance.

14 MR. HALL: In that regard, Your Honor, I would merely
15 make one other statement, which is that 316 has been in
16 the Code for as much as seventy years in various forms;
17 it has never been interpreted in any application, to my
18 knowledge, by the Court or by the Commission to apply
19 in circumstances or to achieve the result that Trial Staff
20 is seeking to achieve here.

21 JUDGE MATUSCHAK: We think the Commission Staff's
22 reliance on 316 is unfounded. We don't think it has
23 anything to do with this issue.

24 MR. HALL: Secondly, Your Honor, I think the
25 alternative position which the Commission Staff has

1 presented to you here today is that the Commission should
2 be permitted to have several different orders involving
3 pieces of a single adjudication, and they have advanced
4 the Beaver Valley orders as being an example of this.

5 I would argue to Your Honor -- and I believe it
6 is in fact the case -- that that is not an analogous
7 situation to this hearing. In Beaver Valley there were
8 three orders. The first order was a rate order. In that
9 first order the Commission did not adjudicate any part
10 of the issue respecting the prudence of the outages at
11 Beaver Valley. The issue was simply raised on the record,
12 the issue was raised as being a question of whether Beaver
13 Valley was used and useful and should be included in rate
14 base, and alternatively should because of the outage the
15 company be denied recovery of energy costs.

16 JUDGE MATUSCHAK: Then the case that has some
17 implications, that has some similarity to this case, is
18 the CAPCO investigation which involved some Ohio utilities
19 in two jurisdictions, the Duquesne Light Company and
20 Pennsylvania Power Company. And in that case the issues
21 were whether the delays that were made in construction
22 were imprudent.

23 There was also the issue of whether the construction
24 of seven nuclear plants in the first instance was prudent,
25 and there was also the issue of whether upon cancellation

1 of four of those nuclear plants the companies' sunk costs
2 should be recovered in a rate case.

3 MR. HALL: If Your Honor please -- and Your Honor
4 was the Administrative Law Judge --

5 JUDGE MATUSCHAK: Those issues, especially the one
6 regarding the recovery of some costs, was not litigated
7 in the rate case, itself. The Commission says that
8 the ALJ allowed recovery without return; we adopted his
9 decision, and so we are complying with that resolution.

10 MR. HALL: If Your Honor please, there may be a
11 distinction between the two cases. I am not as intimately
12 familiar as you are with the CAPCO investigations. The
13 distinction that I would see is that in this case it is
14 clear, based upon the Supreme Court's review and determina-
15 tion, that the Commission did not decide the issues of
16 which Trial Staff is seeking to conclude the company on
17 here.

18 Similarly, as I recall from the CAPCO investigation,
19 the Commission did not decide the deferral decision issues
20 in that investigation either, to the best of my knowledge.
21 The issue that may have been decided in CAPCO -- and it
22 may be that all of the parties agreed with that -- was
23 the issue of prudence of the cancellation of those earlier
24 nuclear plants. That may have been an issue that all
25 parties agreed upon.

1 I am not aware, Your Honor, of the basis of the
2 Commission's conclusion in the Duquesne and Penn Power
3 rate cases as to why that issue would not be relitigated.
4 It may simply be that the parties all agreed that in fact
5 those costs were imprudent, based upon the facts gathered
6 in the CAPCO investigations, and it may be that the CAPCO
7 order did not address them. I don't know that.

8 JUDGE MATUSCHAK: They didn't agree because those
9 issues were challenged in the rate case, itself. Those
10 issues were challenged on appeal in the rate case, itself.

11 MR. HALL: Your Honor, I am not sure they were
12 challenged on the question of imprudency. They were
13 challenged on the question of whether or not they Commission
14 had the authority as a ratemaking matter to approve and
15 permit the recovery of sunk costs. I don't think it was
16 argued that sunk costs were imprudent at all.

17 JUDGE MATUSCHAK: We will agree that there may have
18 been a difference in that the Commission in that case
19 as to the recovery of sunk costs may have been a policy
20 statement, a policy finding, rather than a finding of
21 fact as the Commission found in this case. There may be
22 that difference.

23 MR. HALL: One final comment, Your Honor: on this
24 particular matter with respect to the Beaver Valley decisions,
25 I do want to be clear that it is the company's under-

1 standing that the Commission essentially issued a single
2 major decision in Beaver Valley, that being the second
3 order on the issue of energy cost recovery. The third
4 order was simply an order on reconsideration. I believe
5 that is a single investigatory proceeding on a specific
6 issue involved as established in a Commission investigation
7 at a single docket number.

8 Here we are talking about two dockets four years
9 apart with a different rendition of issues.

10 If Your Honor would give me a moment?

11 JUDGE MATUSCHAK: Yes.

12 (Pause.)

13 MR. HALL: One final matter which I would like to
14 call to Your Honor's attention is that the company perceives
15 very serious difficulties in attempting to effectuate the
16 Trial Staff's theory of bifurcation if it were to be
17 attempted by the Commission. The company does not perceive
18 how one would quantify the costs of deferral in the 1976
19 and 1978 decisions in any reasonable manner if one were
20 to attempt to say or hold that the company's decisions have
21 been found imprudent.

22 One would need to know the basis of those decisions
23 and the basis of Commission adjudication with respect to
24 a number of facts that were presented to the Commission
25 in the first Limerick investigation, and had been represented

1 here, but which were not adjudicated expressly by the
2 Commission in its order. And, therefore, the company is
3 unable to perceive how Your Honor and how the Courts
4 in reviewing, and how the current Commission sitting
5 today, could examine that 1982 order and say: there there
6 was a determination of prudence; our role now is simply
7 to quantify it.

8 If you look at the facts relative to the time
9 period required for Limerick construction, they are
10 a very interrelated and difficult set of facts, and
11 principally the question of the company's financial ability
12 to litigate further. What the Trial Staff and the Consumer
13 Advocate are asking you to do, Your Honor, I believe is
14 to establish that, and having established that I think
15 Your Honor will find it extremely difficult to come up
16 with any quantification that says the company couldn't
17 have built this plant any more differently than Susquehanna
18 or anyone else.

19 I think Your Honor has to have -- all I'm trying
20 to say is I think Your Honor has to have, and I think the
21 Commission now has to have all pieces of this puzzle before
22 it, all facts, all evidence for it to review in order for
23 it to make an informed and knowledgeable decision with
24 respect to what the costs are and what costs would be
25 prudent or imprudent related to the length of time

1 required to construct Limerick.

2 JUDGE MATUSCHAK: Are you stating, Mr. Hall, that
3 we should in this proceeding, this rate case proceeding,
4 condense the Limerick issues together with all the other
5 issues involved in the rate case proceeding, that we should
6 condense the Limerick issues which took two years to resolve,
7 that we should condense those issues and, together with
8 all the other issues in this rate case, into the statutory
9 period provided under 1308?

10 MR. HALL: If Your Honor please, Your Honor does
11 not have before you 90 percent of the issues in the Limerick
12 1 investigation. The major focus and effort in that
13 investigation was, as with the Limerick 2 investigation
14 just concluded, should the plant go forth. And 90 percent
15 of the testimony in evidence -- or even a higher percentage
16 -- was directed to that subject.

17 The parties, I believe, and the Commission have
18 before them, and have had before them for some time, the
19 factual underpinnings and prerequisites with respect to
20 the company's decision-making in the late '70s and early
21 '80s with regard to the construction of Limerick. That
22 I think should permit the parties and the Commission --
23 I think it was the purpose of the first Limerick investiga-
24 tion to obtain that data to permit the parties and the
25 Commission to decide that issue in this proceeding under

1 the statutory time period.

2 I thank you, Your Honor, for the opportunity for
3 oral argument.

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1 JUDGE MATUSCHAK: When you are ready.

2 MR. DELANEY: Thank you, Your Honor.

3 Let me start with one of the last things that
4 Mr. Hall said. He seemed to indicate that the posture that
5 our motion would put you in was deciding something that
6 couldn't be decided, that is the quantification of the costs
7 of the delay.

8 Well, we indicated in our prehearing memorandum that
9 it was our intention to really present before you evidence that
10 will lead to a conclusion of what were the effects on the
11 ratepayers of the delay. That is an issue to be confronted
12 in our view in this case, and you will have new evidence to do
13 that; so I don't think that is a legitimate concern.

14 JUDGE MATUSCHAK: I think you have another issue as
15 to whether the decisions of the company were prudent or not,
16 whether they are entitled to recover all or any of their
17 expenditures caused by any of the delays.

18 MR. DELANEY: Let me address what Mr. Hall said as
19 I scribbled it down. He spoke for about 50 minutes. I don't
20 think my reply will be that long.

21 The points that he raised, I would have to say that
22 I don't agree with any of them, really. Initially I would
23 note an inconsistency in Mr. Hall's position. You asked
24 him several times about the effect of the Commission findings
25 in the prior order favorable to the company. I tried to

1 listen as carefully as I could. I don't know that Mr. Hall
2 gave you the same answer every time you asked it.

3 I think that a consequence of our motion is that
4 at least the Trial Staff doesn't intend to contest the prior
5 findings that were favorable to the company -- I view this
6 as the company taking the bitter with the sweet -- the favor-
7 able findings about the prudence of the decision to construct
8 and continue construction. I think they held the '74 delay
9 certainly was reasonable. I think they even addressed the
10 siting of the plant. To my knowledge, the Staff is not
11 contesting any of those things. I can't speak for the other
12 parties.

13 You spoke in some detail about the language of the
14 Supreme Court's opinion in the footnote. I think what you
15 really have to understand in terms of interpreting the
16 language of the Supreme Court is the appellate buzz words
17 that are contained in the footnote. I think that reading
18 is necessary by the way appellate avenues are opened to
19 Commission orders.

20
21 The Commission orders are everyone is guaranteed
22 a right of review in I believe it's Article 9 of the
23 Pennsylvania Constitution. That right of review is
24 implemented by the Pennsylvania Rules of Appellate Procedure,
25 and Chapter 15 is the section of those rules that address

1 appeals of Commission orders.

2 It uses very general language about what is appealable,
3 and the result of this is that a frequently litigated issue
4 in terms of appellate litigation is: what kind of order
5 can be reviewed by an Appellate Court of an administrative
6 agency. The rules and the statutes themselves don't really
7 provide that much guidance.

8 There are basically two ways it can be done. There
9 is the 702(b) method which allows someone who has an
10 interlocutory order to request permission and then have it
11 reviewed in the Appellate Court. Then the other language
12 says that the final orders can be reviewed. I think if
13 you open up any Advance Sheet of the Pennsylvania Reporter,
14 you will find cases that try and figure out what is an
15 appealable order.

16 There are several lines of cases that try to address
17 that issue. Many of them are based on, I think, a 1952
18 U.S. Supreme Court case called Cohen versus Beneficial
19 Finance.

20 I raise this only because one of the analyses used
21 in determining whether something is final for purposes of
22 appeal look to the effect of the order on the party. Often
23 the courts use the language of trying to determine whether
24 it was an adjudication.

25 In my view, the language that is in this Pennsylvania

1 Supreme Court footnote that talks about the Commission's find-
2 ing uses some of these terms in dealing with it. I don't
3 think the fact that they refuse to review the finding at
4 this point has anything really to do with the basis of our
5 motion which looks to a section of the Public Utility Code,
6 which in my view again does not require withstanding
7 judicial review as a condition precedent to its application.

8 Again, I think all that is required is, a prior
9 Commission finding unannulled or set aside on judicial
10 review is conclusive on the parties subsequently. In my
11 view, all of those conditions are met in the current case.

12 Now, there was a lot of language in the company's
13 answer and reply about language in the briefs. Well, I
14 think that the company is somewhat on thin ice by raising
15 these things because what they've tried to cite as the
16 Commission's position -- and so there is no misunderstanding,
17 when these things are in the court, it's the Commission
18 taking the position, not the Trial Staff -- that we
19 conceded issues in our brief. Let me see if I can find
20 the language here.

21 (Pause.)

22 MR. DELANEY: Yes, page 10 of their reply quotes
23 language from our brief and construes it to be some kind
24 of concurrence in their position.

25 Well, in my view that kind of argument really isn't

1 supported by the facts and really isn't worthy of the company.
2 That little quote there is taken from a brief of about
3 70 pages and it's taken from the statement of the case.

4 If you read the appellate rules on what you are
5 permitted to do in the statement of the case, you're not
6 supposed to make argument. This was a summary of the
7 Commission orders.

8 I think the company has some implication of the
9 tentative nature of this kind of statement by virtue of
10 the footnote which says that, although they can't understand
11 them, statements are made later in the brief that seem to
12 suggest it's a finding.

13 Well, I will certainly be glad to provide you a
14 copy of our brief and you can see that the position of the
15 Commission throughout the litigation was that these were
16 binding findings on the company, and I would submit that
17 the company certainly had the same view since they initiated
18 the appellate litigation and took these issues as far as
19 they could take them and they went all the way to the
20 Supreme Court.

21 So I don't think there was ever any misunderstanding
22 on the part of the company of the nature of the Commission's
23 actions. If there were, then I have to wonder why they
24 bothered to appeal them.

25 Now, I would have to comment that the company's

1 position on the efficacy of Commission investigations to me
2 makes no sense at all. What Mr. Hall seems to be saying is
3 that the Commission can hold extensive hearings and produce
4 thousands of pages of transcript, can put all kinds of
5 resources into an investigation that collects facts, the
6 company can spend millions of dollars in litigating a case --
7 and I would note that in the present case that the company
8 has a claim for its litigation expenses in the Limerick 2
9 case of \$5.5 million -- what Mr. Hall seems to be indicating
10 is that all of this can be spent, all of this effort can be
11 made, the Commission can grind out orders, parties can file
12 briefs, we can go to appellate courts, and none of it is
13 binding on the company; it has no effect at all.

14
15 Well, I think that stands a lot of Pennsylvania
16 administrative law on its head.

17 There is another interesting part to this. If you
18 read the portion of Judge Klovekorn's decision that we are
19 dealing with, you will see that there is an extensive
20 recitation on the issue. In my view, once you read his
21 rather detailed explanation of the evidence that was in front
22 of him, he then concludes and makes a finding that is adverse
23 to the company on the issue, and, indeed, he details in his
24 order much of the same kind of evidence that you will hear
25 today.

1 In my view, the reason that he does not accept the
2 finding or make a finding that is consistent with the
3 company's position is because of a credibility determina-
4 tion. This is certainly my interpretation. You can certainly
5 read it and draw your own conclusion. But it is my belief
6 after laying out lots of evidence that the company produced,
7 he makes a conclusion contrary to their position.

8 Now, if that is true, if the conclusion adverse
9 to the company by the Administrative Law Judge is based on
10 credibility, then what is the point of now having that
11 relitigated in front of you and for you to draw the opposite
12 conclusion with the same witness giving practically the
13 same evidence, same testimony?

14 In fact, the company has produced as part of one
15 of its witness' statements today a copy of the exact testimony
16 given in March of 1981 in front of Judge Klovekorn. Are
17 you now to redecide and second-guess Judge Klovekorn's
18 credibility decision? I don't think that is what administra-
19 tive law and the idea and finality of litigation is all
20 about.

21 It is not appropriate that people continue to
22 litigate until they finally get it right. I submit that the
23 company had a full shot at this the first time through; and,
24 indeed, if you look at my reply to their New Matter, I
25 quote part of their exceptions. That is on page 2.

1 Let me just read the quote. "PECo urges the Commission
2 to reject Trial Staff's various arguments in its order
3 concluding this proceeding. As noted in the Commission's
4 order of October 10, 1980, the principal purpose of this
5 investigation has been to examine the cost of construction
6 delays at Limerick and whether those delays were reasonable.
7 Trial Staff and all other parties to this investigation,
8 including PECO, had a full opportunity to develop the record
9 on this issue."

10 I am impressed really with Mr. Hall's ability to
11 have a straight face and say in front of you that the
12 company did not have an opportunity to litigate this. Anyone
13 remotely familiar with the volume of evidence in the
14 Limerick 1 investigation knows that the company had more
15 than adequate opportunity to present its evidence and, indeed,
16 is again trying to present the same evidence with the same
17 witnesses in front of you today.

18 Now, I would note that the company has introduced
19 this due process element into its reply and that the company
20 really never had notice that somehow sooner or later one
21 of the findings in the initial investigation was going to
22 be applied against them in a subsequent rate case.

23 Well, in my view that is simply not supported by
24 the series of orders that the Commission entered through
25 this period, each of which becomes more increasingly defined

1 in terms of the issues to be examined in the proceeding. It
2 clearly states that one of the issues is the reasonableness
3 of the delays.

4 Now, I would submit that recently Commonwealth
5 Court has resolved these kinds of due process challenges
6 in a way that is fatal to the company's position on this.
7 I will simply cite the case to you and you can read it and
8 draw your own conclusion. It is contained in our reply to
9 their New Matter. It is a case called Cohen versus the
10 Pennsylvania Public Utility Commission at 78 Commonwealth
11 Court 545, 468 A.2nd 1143. That deals with the specific
12 issues of notice in the beginning of a proceeding of a
13 potential adverse result.

14 Again, that raises the question to me: if the
15 company did have notice in the first case that it might
16 have an adverse result, why is it introducing identical
17 testimony in this case?

18 I would note that in the appellate litigation, the
19 company never litigated the issue that the Commission's orders
20 were not final in terms of the August, 1982 Lintrick investi-
21 gation order. The company took it to court very promptly
22 and litigated it as well as they could through the period.
23 They never raised an issue that somehow the order was not
24 final.

25 Now, there was a lot of discussion about the use of

1 evidence and whether findings in one proceeding could be
2 used in another. I would first direct your attention to
3 another footnote in the Supreme Court's decision which is
4 Footnote No. 5. That footnote addresses an argument expressed
5 by the company, again a due process argument about use of
6 evidence from a contemporaneous rate case and the Limerick 1
7 order. The court upholds that saying that the company had
8 not been deprived of due process in that result.

9 I would note that I think the CAPCO decision is
10 very on point in terms of having a prior finding. I would
11 note that the proceedings in that case that I am familiar
12 with had an investigation in which you were the Presiding
13 Officer, Judge Matuschak, in which you concluded that
14 actions of the company, Dugesne and Penn Power, cancelling
15 nuclear power plants being constructed in Ohio was prudent.
16 That issue was then subsequently accepted in a later rate
17 case; again, a finding made at another docket in a time
18 prior to the rate case adjudications and then subsequently
19 being applied in the later cases.

20 Now, Mr. Hall has made statements that such a result
21 is impossible and illegal. Well, I would cite to you a 1982
22 Commonwealth Court case which raises this issue pretty
23 directly, a case that I litigated for the Commission, called
24 City of McKeesport versus the Pennsylvania Public Utility
25 Commission, which is at 65 Commonwealth Court 179, 442 A.2nd 30.

1 In that case, briefly it involved a municipal
2 authority providing water service out of its territorial
3 limits. It, without coming to the Commission, raised its
4 rates. People subsequently complained to the Commission about
5 the illegal nature of the rates. The Commission held the
6 rates to be illegal.

7 The borough then took an appeal to Commonwealth
8 Court saying -- excuse me. At a subsequent proceeding, there
9 were refunds ordered by the Commission.

10 The borough took an appeal and one of the issues
11 that addressed the opinion is that it was the borough's
12 position that it was impossible for findings in one order to
13 be then applied in a subsequent order, and the court clearly
14 upholds that procedure.

15 Now, I would note, as you discussed, there is
16 Commission precedent for this which is the Beaver Valley case.
17 I don't agree with Mr. Hall's description of the Beaver Valley
18 case. I think if you read through the orders, you will
19 clearly see that the issue of liability is determined in a
20 prior order and the subsequent and final proceedings in the
21 case go to quantification of purchased power costs, right on
22 point with what we are advocating to you.

23 Now, there was a lot of discussion about adjudications
24 and the requirement of adjudication. They described another
25 case that I had done in the Commonwealth Court called

1 Allegheny Ludlum Steel Corporation. I don't think it really
2 supports what Mr. Hall advanced it for. That case was a
3 little bit unusual, because instead of being an appeal of
4 a Commission order, it was an original jurisdiction action
5 in the Commonwealth Court. Basically what it was was a
6 declaratory order action.

7 The steel company was advancing that the Commission's
8 actions in making a preliminary approval of a new BCR for
9 West Penn Power was illegal because of the way the Commission
10 had actually adopted the order, which was simply acting on
11 a report at a public meeting, because they had not had an
12 opportunity to have due process opportunities prior to when
13 the Commission acted.

14 The issue of whether or not it was an adjudication
15 really went to the case law about what due process requires.
16 The Pennsylvania law and, as I understand, the U.S. Supreme
17 Court law in a case called Matthews versus Elridge says
18 that due process opportunities come into play when there is
19 an adjudication or the prospect of an adjudication which
20 then requires that the party be afforded due process. That
21 is how the adjudicatory language enters that case, and I
22 don't think it supports what I understood Mr. Hall to be
23 arguing.

24 Now, again, developing that thought a little more,
25 the presence of an adjudication in my view is not required

1 for the operation of Section 316, and I think that is
2 supported by several of the things that Mr. Hall said.

3 He read to you sections of the Commission's
4 regulations and the definition of adjudication in the
5 Administrative Agency Law. Surprising in my view and
6 conclusive of my argument I would submit is the fact that
7 when they define adjudication, the word "finding" is not
8 included in the recitation of events that give rise to an
9 adjudication. In my view, that supports the idea that a
10 finding is not necessarily an adjudication. In fact, we
11 submit in our reply that a finding concludes an issue; an
12 adjudication concludes the case. There is a distinction
13 between the two. I think it is recognized in the case. The
14 cases the company cites in its Answer, I believe, support
15 our recitation of the difference between the two.

16 I would note just finally that the order of August,
17 1978 that we had discussion about this morning by its own
18 terms declares itself to be a declaratory order. So I would
19 think the fact that that language is expressly in the order
20 should alert the company to the potential consequences of
21 the declarations contained in that order, and indeed the
22 company did act immediately to take it to a higher level of
23 review to protect its interests. To me that kind of activity
24 is inconsistent with some of the things that Mr. Hall was
25 arguing to you this morning.

1 Your Honor, I think that is all the response that I
2 have. If you have any questions, I will certainly be glad
3 to answer them.

4 JUDGE MATUSCHAK: Thank you.

5 Mr. Hall?

6 MR. HALL: If Your Honor will permit me just a
7 brief moment.

8 JUDGE MATUSCHAK: Mr. Hall, before you start, if
9 the company were to present the same evidence here that it
10 presented in the Limerick investigation, would you then not
11 be asking us to overrule the Commission in its finding of
12 imprudency?

13 MR. HALL: No, Your Honor, I don't believe so,
14 because I don't believe the Commission has made a finding of
15 imprudency.

16 The Supreme Court has reviewed the Commission's
17 language and has said it is advisory criticism; it is mere
18 criticism.

19 I think, obviously, as Your Honor reviews this
20 case, Your Honor certainly will be cognizant of what the
21 Commission stated in its order and will give it weight and
22 effect, quite perhaps, but it is not preclusive.

23 JUDGE MATUSCHAK: Did the Commission say "having so
24 found"? Wouldn't that imply a finding?

25 MR. HALL: The Commission also states that the ALJ

1 made imprudence findings. We presented to Your Honor a
2 statement of the ALJ's conclusion, and that statement very
3 clearly says that the ALJ made no finding. He says "may
4 have been; appears to have been."

5 My position, Your Honor, is that that is all the
6 Commission said and intended to say, and indeed they
7 represented that fact to the Supreme Court in the argument
8 which led the court to make the determination that it did.
9 It clearly said, "We have not decided whether or not the
10 company can recover these costs." If they have not decided
11 whether or not the company can recover these costs, then
12 they have not made an imprudency determination, because
13 that is the issue of imprudence.

14 JUDGE MATUSCHAK: I don't know whether that is
15 necessarily an issue of imprudence or not. As we view it, and
16 we have so held in the Pennsylvania Power Company, that even
17 if the action of the company were prudent, if there were such
18 extraordinary circumstances that could not be anticipated,
19 that there may be a balancing there of that risk that resulted
20 as a result of those unforeseen circumstances.

21 MR. HALL: I'm sorry; I did not follow Your Honor.

22 JUDGE MATUSCHAK: We held there that even if the
23 company's actions were prudent, if there were such extra-
24 ordinary circumstances which arose that could not be
25 anticipated by anybody, that all the risk may not fall on

1 the ratepayers, but it may be that the Commission may want
2 to balance the risk as between the investors and the rate-
3 payers.

4 MR. HALL: I'm afraid though if you reverse that,
5 I have never seen a Commission determination that suggested,
6 despite the presence of imprudence, ratepayers may be
7 required to pay the costs of company decision-making.

8 JUDGE MATUSCHAK: I think we will have to agree with
9 you there; that if it is imprudent, then we would anticipate
10 that the Commission would rule that those costs are not
11 recoverable, if a delay had any monetary effect.

12 MR. HALL: Yes. However, it seems to me that when
13 the Commission says whether or not the costs should be
14 recoverable -- the Commission said that -- that goes to
15 the imprudency decision. It does not go to the question of
16 whether or not there exists costs. That was dealt with by
17 the Commission in a separate line of its statement to the
18 Supreme Court.

19 I would like to emphasize and point out that the
20 inclusion of this language that I am referring to by the
21 Commission in the statement of the case to the Supreme
22 Court is a matter of significance and supports the company's
23 position and not the Trial Staff's.

24 The statement of the case sets forth non-argument,
25 non-controverted matters. It sets forth what the party

1 accepts, what they perceive as being the statement of facts
2 which are not controverted. I think by including a statement
3 in their statement of the case to the Supreme Court represent-
4 ing to them that the Commission had not determined whether
5 or not these costs should be recoverd or the magnitude of
6 the costs or whether any costs existed, all of which were
7 separately listed, the Commission clearly characterized and
8 established its view of what it had said and the significance
9 of what it had said in its 1982 order.

10 A couple of additional items, Your Honor. As I
11 understand Mr. Delaney's argument, he agrees with me that
12 the Allegheny Ludlum case did review the issue of what
13 constitutes an adjudication. I believe if you look at that
14 case, Your Honor, you will see that it is reviewed in the
15 context of Pennsylvania law and particularly the Administra-
16 tive Agency Law and that that provision is explicitly
17 discussed.

18 The City of McKeesport case and also the PECO versus
19 Pennsylvania PUC case which Mr. Delaney cites in his reply
20 are clearly inapplicable. Those are cases where there was
21 a final adjudication by the Commission, final and reviewable.
22 We are not dealing with that here.

23 The UGI case is similarly inapplicable. These issues
24 that we are discussing are highly fact based. In the UGI
25 case, the court found based upon the facts presented that

1 UGI had the notice. I don't believe that you can do that
2 here. The facts are different.

3 Mr. Delaney argued that Judge Klovekorn had made
4 a finding which, in Mr. Delaney's view, was based on the
5 credibility of the company's witnesses and suggested to
6 Your Honor that Your Honor could not review that finding
7 in this proceeding because, obviously, credibility is a
8 matter in the hearing room.

9 However, Judge Klovekorn himself expressly stated
10 that he was making no finding and the issue was to be
11 resolved in this case. Thus, certainly Judge Klovekorn
12 did not perceive the point advanced by Mr. Delaney as being
13 a bar to consideration of the issue here.

14 Your Honor, that is all that I have.

15 JUDGE MATUSCHAK: Thank you.

16 We understand the importance of a ruling on this
17 motion as early as possible, so that we are prepared to
18 render an interim decision at this time.

19 Having reviewed the pleadings filed in connection
20 with Trial Staff's Motion in Limine in this proceeding and
21 having heard oral arguments today, we will rule now on the
22 motion so that the parties, so desiring, may seek timely
23 review by the Commission. Because of the importance of this
24 matter, we will follow our ruling by a Memorandum Opinion
25 more fully discussing the basis of our interim decision.

1 While some aspects relating to the motion may be
2 of first impression, some overall precedent had been
3 established in the CAPCO investigation at I-79070315 and
4 I-79070317, in which we had presided, involving two
5 jurisdictional electric utilities--together with certain
6 Ohio electric utilities--Duquesne Light Company and
7 Pennsylvania Power Company.

8 Trial Staff in its motion alleged that the Commission
9 had considered the prudence of Philadelphia Electric
10 Company's construction of the Limerick Station in:
11 Re: Limerick Nuclear Generating Station, I-80100341, 56 Pa.
12 P.U.C. 47. That proceeding was an investigation ordered
13 on October 10, 1980, wherein the Commission had said it had
14 concluded that an investigation should be opened "so that
15 information can be gathered in an orderly and expeditious
16 manner before PECO seeks to include Limerick in its rate
17 base as used and useful property."

18 Further it said, "We concluded that an independent
19 investigation of Limerick was appropriate so as to prevent
20 the then pending rate investigation from becoming burdened
21 with additional issues which would have had to be decided
22 within the statutory period set forth in Section 1308 of
23 the Public Utility Code.

24 We note that in that proceeding, 38 days of
25 evidentiary hearings were held and that the matter was

1 concluded almost two years from its initiation on August 27,
2 1982.

3 Among the issues considered by the Commission there
4 were the prudence, first, of the initial decision by PECO
5 to begin construction of the Limerick nuclear generating
6 station; two, of the 1974 delay in Limerick's construction
7 schedule wherein PECO postponed the projected in-service
8 dates by two years; third, of the 1976 decision by PECO
9 wherein it further delayed construction and extended the
10 in-service dates of Limerick Nos. 1 and 2 from 1981-'83 to
11 1983-'85, respectively; and, four, of the 1978 decision by
12 PECO to further delay and reschedule the in-service dates
13 of Limerick from 1983-'85 to 1985-'87, respectively.

14 It is apparent that the Commission, recognizing
15 that these issues could not be adequately addressed with
16 all the other issues involved in a rate case, when PECO
17 would seek to include Limerick in rate base, as a pragmatic
18 procedure, directed that such issues be determined in an
19 independent proceeding in the nature of a bifurcation or as
20 an ancillary or in-aid aspect of this rate case.

21 These issues were addressed in the Limerick
22 proceeding in an open and full hearing in which Trial Staff
23 and all the other parties, including PECO, had a full
24 opportunity to develop the record on this issues.

25 In the Limerick proceeding, the Commission found

1 that the initial decision of PECO to construct Limerick
2 and the decision to delay the in-service dates of Limerick
3 in 1974 were prudent; and that PECO's decisions in 1976
4 and 1978 to further delay the in-service dates of Limerick
5 were imprudent or unreasonable.

6 In its Motion in Limine, Trial Staff requests that
7 we rule that the Commission's prior finding that Limerick
8 1976 and 1978 construction delays were unreasonable be con-
9 clusive on the parties to this proceeding. Trial Staff's
10 reliance for such request on the basis of Section 316 of
11 the Public Utility Code, however, is unfounded.

12 We will, however, grant Trial Staff's motion on
13 the ground that the Commission's findings at I-80100341 of
14 imprudence in the 1976 and 1978 Limerick construction delays
15 should be incorporated into this rate proceeding in the nature
16 of a bifurcation or as an ancillary or in-aid aspect of this
17 rate case, and that all parties having had an opportunity
18 to develop a record in a full and open hearing in said
19 Limerick investigation, such findings by the Commission
20 are conclusive on the parties in this proceeding.

21 Likewise, we hereby determine that the same
22 treatment shall be afforded to the Commission's prior
23 findings of fact that the PECO's initial decision to
24 construct Limerick and its 1974 construction delays were
25 prudent when made.

1 We render the following Interim Order:

2 It is ordered, first, that the Motion in Limine by
3 Trial Staff that we make a preliminary determination of the
4 nature of the evidence that may be admitted into the record
5 in this rate proceeding at R-850152 is hereby granted.

6 Two, that the record at I-80100341, insofar as it
7 relates to the decisions of Philadelphia Electric Company
8 to initially construct the Limerick nuclear generating
9 station and to delay construction of Limerick in 1974, 1976
10 and 1978, are incorporated by reference into the record of
11 this proceeding.

12 Three, that Trial Staff's motion that we determine
13 that the Commission's prior findings at I-80100341 that
14 Philadelphia Electric Company's decisions in 1976 and 1978
15 to delay Limerick construction were unreasonable are
16 conclusive upon the parties in this proceeding is hereby
17 granted.

18 Four, that sua sponte, we further determine that the
19 Commission's prior findings at I-80100341 that Philadelphia
20 Electric Company's decisions initially to construct the
21 Limerick nuclear generating station and to delay the Limerick
22 construction in 1974 were reasonable are likewise conclusive
23 upon the parties in this proceeding.

24 Five, that the evidence heretofore admitted in
25 this proceeding insofar as it relates to the reasonableness

1 or unreasonableness of Philadelphia Electric Company's
2 initial decision to construct the Limerick nuclear generating
3 station and its decisions to delay Limerick construction in
4 1974, 1976 and 1978, is hereby stricken and that further
5 evidence relating thereto shall not be admissible in this
6 proceeding.

7 We will take a ten-minute recess.

8 (Recess.)
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1 JUDGE MATUSCHAK: Are counsel ready?

2 (No response.)

3 JUDGE MATUSCHAK: Mr. Hall, do you have testimony
4 to offer?

5 MR. HALL: If Your Honor please, our next witness
6 will be Mr. William A. Abrams.

7 Mr. Abrams, would you take the stand?
8 Whereupon,

9 WILLIAM A. ABRAMS

10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. HALL:

13 Q Mr. Abrams, would you state your full name, the
14 organization with which you are affiliated, and your posi-
15 tion, for the record, please?

16 A Yes. My name is William A. Abrams. I am with
17 Duff and Phelps, Inc., in Chicago.

18 The third?

19 Q Your position.

20 A Group Vice-President, and I am Vice-Chairman of
21 our credit rating committee.

22 Q Mr. Abrams, do you have before you a document
23 identified in its right-hand corner as "PECo Statement No.
24 10, Direct Testimony of William A. Abrams"?

25 A Yes, sir, I do.

1 Q Is this in fact your direct prepared testi-
2 mony prepared for use in this proceeding?

3 A Yes, it is.

4 Q Mr. Abrams, do you have any corrections or modi-
5 fications to make to this document at this time?

6 A No, sir, I do not.

7 Q Mr. Abrams, is the data presented in this testi-
8 mony true and correct to the best of your knowledge and
9 belief?

10 A Yes, it is.

11 MR. HALL: Your Honor, I would ask that Mr. Abrams'
12 testimony be identified for use in this record as PECO
13 Statement No. 2.

14 JUDGE MATUSCHAK: It may be so marked.

15 (Whereupon, the document was marked
16 as PECO Statement No. 10 for
17 identification.)

18 MR. HALL: And I would ask that it be admitted into
19 the record.

20 JUDGE MATUSCHAK: PECO Statement No. 10 is admitted
21 into the record, subject to any timely motion to strike or
22 any other objections.

23 (Whereupon, the document marked as
24 PECO Statement No. 10 was received
25 in evidence.)

MR. HALL: Your Honor, Mr. Abrams is available for
cross-examination.

JB
1 JUDGE MATUSCHAK: Staff.

2 CROSS-EXAMINATION

3 BY MR. DELANEY:

4 Q. Good morning, Mr. Abrams; my name is Dan
5 Delaney. I have some questions on your direct testimony.

6 Initially, in your testimony, Mr. Abrams, you
7 describe your experience with Duff and Phelps, and I think
8 on page 2 you talk about some of your functions with the
9 firm.

10 A. Yes, sir.

11 Q. You indicate that until 1980, your primary
12 responsibility was to analyze groups of individual utility
13 companies, particularly in California, the midwest and the
14 east coast.

15 A. Yes, sir.

16 Q. For the east coast companies that you followed,
17 can you identify them for us, please?

18 A. At that time it would have been companies like
19 Public Service of New Hampshire, Central Maine Power Com-
20 pany. Those are the principal ones I can recall.

21 Q. Did you follow any Middle Atlantic companies?

22 A. Not at that time, no -- I'm sorry; I did follow
23 Duke Power Company and Carolina Power and Light and South
24 Carolina Electric and Gas.

25 Q. What about Pennsylvania companies?

j4

1 A. No, sir, I did not.

2 Q. In that period when you were following specified
3 companies in those areas, did you testify in any of their
4 rate cases in support of their request for rate relief?

5 A. No, sir, not at that time.

6 Q. Further on page 2 you talk about your position
7 as Chairman of the Utility Fixed Income Rating Committee.

8 A. Yes, sir.

9 Q. Could you indicate what your responsibilities
10 were in that position?

11 A. Yes. We had a committee at that time, from the
12 early-'70s until 1980, which was a utility credit rating
13 committee, and I was in charge of that committee and in
14 charge of all of our fixed income ratings and our fixed
15 income research.

16 We met regularly on a quarterly basis to review the
17 companies. We met whenever there were special issues to
18 be considered in the ratings of the securities. And as
19 time went on, we also began to meet with the companies as
20 they came in to see us. This is before we had gone into
21 public ratings.

22 But in the late-1970s, perhaps starting in '77 or
23 '78 -- I don't recall exactly -- companies began to come
24 in to see us, so then we began meeting directly with those
25 companies.

1 Q And this was for the purpose of making ratings
2 on those companies?

3 A Yes, sir. We also met with the analysts, of
4 course, who followed the companies.

5 Q At the time that you were collecting informa-
6 tion, and, I assume, issuing ratings on these companies,
7 in the time period that you described, did you testify in
8 any of the rate cases in support of rate relief for any of
9 the utilities that you were rating?

10 A I very possibly did.

11 Q Further on that page you speak of your duties
12 since 1980, and you indicate that they have been entirely
13 with Duff and Phelps' Fixed Income Rating Service.

14 A Yes, sir.

15 Q Could you explain that to us?

16 A Well, in 1980, we went public with our ratings,
17 as it were. Prior to that time our ratings had been pri-
18 vate ratings for our investor/clients only. After that
19 time, we went into the public rating business, such as
20 Moody's and Standard & Poor's had been in for some years.

21 That required several things. One, it meant that
22 every company that was going to be publicly rated by us
23 had to come in to visit us.

24 Two, it meant that because of SEC requirements, I
25 could no longer be involved in following any companies

j6

1 directly, and everybody on the committee had to be exclu-
2 sively removed from following individual companies.

3 So since that time what I have done has exclusively
4 been on the credit rating committee. There is now only
5 one credit rating committee at Duff and Phelps, and I am
6 in charge of the utilities fixed income research, adminis-
7 tratively responsible for the electric utility section of
8 the utilities. I have people working with me who handle
9 the telephone and the energy, the pipeline, the gas, et
10 cetera.

11 That is basically the change.

12 Q Again, this activity is addressed to producing
13 ratings for the utilities who --

14 A For the utility companies, yes.

15 Q I believe on page 4 of your testimony you state
16 that Duff and Phelps provides independent, objective and
17 professional investment research to a very large cross-
18 section of investors of all types.

19 A Yes, sir.

20 Q That statement is on page 4 of your testimony.
21 You further indicate that since 1980, these ratings
22 have been public.

23 A Yes, sir.

24 Q Does Duff and Phelps currently issue public
25 ratings of the Philadelphia Electric Company?

j7

1 A. Yes, sir.

2 Q. Does Duff and Phelps have any internal policies
3 concerning its employees or officers providing testimony
4 in utility rate cases when the company is issuing ratings
5 of those utilities?

6 A. Would you repeat your question so I'm sure that
7 I have all of it?

8 Q. Does Duff and Phelps have any internal policies
9 or prohibitions concerning its employees or officers pro-
10 viding testimony in utility rate cases when the company is
11 issuing ratings on those utilities?

12 A. Company rate cases? Give me the last part of
13 that.

14 Q. Yes; utility rate cases of utilities that are
15 also being rated by Duff and Phelps.

16 A. In other words, your question is: do we have
17 any policies with respect to employees who might testify
18 in rate cases?

19 Q. Right; while the company is simultaneously
20 issuing ratings of the utilities.

21 A. Our ratings are always in effect. We have
22 numbers of policies. Those policies are financial and
23 they also involve our work in the firm.

24 Financially, we on the credit rating committee
25 cannot invest in any instrument of any company which we

j8

1 rate, personally.

2 Secondly, if we are involved in any rate case work
3 for a company, or we are involved in any other kind of work
4 for a company of a consulting nature, we absent ourselves
5 from any decision on the rating of that company's securi-
6 ties during the time we are employed in that process.

7 So, in other words, I would not vote on ratings for
8 a company such as Philadelphia Electric Company while I
9 was in the process of preparing and then delivering testi-
10 mony for them, until after the rate order was out.

11 Q Mr. Abrams, are you testifying in this matter
12 as an employee of Duff and Phelps, or as an independent
13 contractor?

14 A Oh, no; an employee of Duff and Phelps.

15 Q Could I ask you what you're being paid for your
16 testimony in this case?

17 A I don't know. It's on a time and expense basis.

18 MR. DELANEY: Could I ask the company to provide
19 us that information: what is Mr. Abrams' fee in the
20 present case?

21 MR. HALL: Yes; it will be provided.

22 BY MR. DELANEY:

23 Q I would assume that that would be paid to the
24 company, is that your understanding, Mr. Abrams, and not
25 directly to you?

1 A. Oh, to my firm, yes; not to me.

2 Q. Mr. Abrams, on page 4 of your testimony you
3 state that one of the purposes of your testimony is to
4 present your and Duff and Phelps' views about the reason-
5 ableness and necessity of the company's 1976 and 1978 de-
6 cisions to reduce its capital expenditures.

7 Do you see that reference in your testimony there?

8 A. Yes, sir.

9 Q. By this do you mean its decisions to delay con-
10 struction of the Limerick plant in 1976 and '78?

11 A. Yes, sir.

12 Q. Are you familiar with the Commission's, the
13 Pennsylvania Commission's, 1982 Limerick decision?

14 A. I am not intimately familiar with it, but I am
15 aware of the order.

16 Q. Is it one of the purposes of your testimony to
17 respond to the Commission's criticisms of the company's
18 decisions in 1976 and '78 to delay Limerick construction?

19 A. I had not looked upon my testimony as being in
20 response to the Commission's 1982 order, but my impressions
21 of what did happen in 1976 and 1978.

22 Q. Well, then, maybe you can explain to me what
23 you mean by the language on page 4, "the reasonableness and
24 necessity of the company's 1976 and '78 decisions to re-
25 duce its capital expenditures."

1 By "reducing its capital expenditures," is that
2 reference to the deferral decisions made by the company
3 concerning the construction of Limerick?

4 A. Yes, that was involved in it; yes, sir.

5 Q. What does "the reasonableness and necessity of
6 the company's" decisions refer to? Would it be correct
7 that your testimony is supporting that reasonableness and
8 necessity?

9 A. Yes, sir.

10 Q. I would note on pages 5, 6 and 7 of your testi-
11 mony you discuss the qualitative and quantitative aspects
12 of the analysis of a utility's financial integrity.

13 A. Yes, sir.

14 Q. I think that that discussion primarily is on
15 page 6.

16 Now, looking to the first full paragraph on page 6
17 where you listed the quantitative aspects of the analysis,
18 in preparing your testimony for this case, did you examine
19 each of these factors for the Philadelphia Electric Company
20 for each year in the period 1970 to 1981?

21 A. We're talking here about the qualitative as-
22 pects I discuss on the top of page 6?

23 Q. Correct.

24 A. This is a general discussion on the various
25 things that we would look at. Did I look at each one of

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1 these for each year --

2 Q For the Philadelphia Electric Company in the
3 period 1970 to 1981.

4 A I don't think you would quite do it that way.
5 I mean, you look at changes in years.

6 Q Did you examine each of these factors and each
7 of the changes in that time period in preparing your
8 testimony?

9 A I considered them where they were important. I
10 can't say that I examined each one of them each year. Some
11 I just knew had not changed.

12 Q So that your response, as I understand it, is
13 that you examined some, but not all?

14 A Yes. I think that would be fair.

15 Q And your inquiry was to the changes in them in
16 that period?

17 A Yes. For example, I would have been interested
18 in changes in power supply. I would have been interested
19 in changes in fuel cost, things of that sort; big things
20 in this type of case that hit the company.

21 Q In the second paragraph on page 6 you list the
22 quantitative -- maybe I have them reversed. Qualitative
23 is the second paragraph.

24 A The qualitative is the first paragraph. The
25 quantitative is the second paragraph.

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1 Q Very well. In preparing your testimony for this
2 case, did you examine each of these factors that are in the
3 second full paragraph on page 6 for the Philadelphia Elec-
4 tric Company for each year in the period 1970 to 1981?

5 A Yes, I believe I did, and I think you will find
6 them expressed in my exhibits at the back.

7 Q I would note that on page 7 of your testimony
8 you describe the role of regulation on the financial
9 integrity of a utility.

10 A Yes, sir.

11 Q In preparing your testimony in this matter, did
12 you review the company's rate regulation in the period 1970
13 to '81 by the Pennsylvania Public Utility Commission?

14 A I looked at the amounts of rate relief they had
15 gotten and when they had got that; yes. I did not re-read
16 the cases.

17 Q I note that your discussion is of a general
18 nature on page 7 and page 8, discussing considerations of
19 reviewing the regulation in this state.

20 Do you see where I am referring you to?

21 A Yes, sir.

22 Q It begins on the bottom of page 7, and goes to
23 the top of page 8.

24 Are you familiar with the Pennsylvania law concern-
25 ing the concept of a fair value rate base, the use of an

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1 historic versus a projected future test year, or statutory
2 suspension periods for rate cases in Pennsylvania during
3 the period of your study?

4 A. Yes, sir.

5 Q. Can you tell us how the law changed on the fair
6 value of rate base through the period you have examined?

7 A. I think it was in '78, there was a legislative
8 change and there was no longer fair value. You went to
9 original cost.

10 Q. How about the historic versus projected future
11 test year?

12 A. Then the future test year was permitted after
13 that time. Permitted, not mandated, if I recall correctly.

14 Q. What about the state positions on statutory
15 suspension periods for litigation of rate cases?

16 A. I don't recall what that was.

17 Q. So you are unfamiliar with that aspect?

18 A. I don't recall the change on that.

19 Q. So your response is that you don't --

20 A. This is the type of thing that the analyst who
21 follows the company would have specifically known.

22 Q. I would note on page 8 of your testimony you
23 describe the importance of fuel clauses and their operation.

24 Now, the period that you examined the operations of
25 the company, are you familiar with the numbers and types of

j14

1 fuel clauses used by the company in its electric operations?

2 A. No, sir. I am familiar with the fact that they,
3 beginning in '74 or '75, began to defer fuel costs.

4 Q. Do you know how many were based on historic
5 costs and how many were based on projected future fuel
6 costs?

7 A. No, sir.

8 Q. Do you know how many were subject to a recon-
9 ciliation at the end of its period of operation?

10 A. No, sir.

11 Q. Do you know what percentage of the company's
12 current expenses are fuel-related?

13 A. Current expenses?

14 Q. Yes.

15 A. I could give that to you.

16 (Witness computing on calculator.)

17 A. On a consolidated basis, including gas, it's 38
18 percent. I don't know whether in here I have the electric
19 operations. I think I have the electric operations.

20 (Witness computing on calculator.)

21 A. And 31 percent for electric. That was for the
22 year 1984.

23 Q. Could you identify for the record the document
24 that you retrieved that number from?

25 A. Yes. This is the company's 1984 Financial and

1 Operating Supplement to the Annual Report.

2 Q Is it also true that you made a calculation at
3 this point to determine that number?

4 A Yes, sir.

5 Q Did you refer to those documents in the course
6 of preparing your testimony in this matter, or make those
7 calculations for each year?

8 A I didn't refer to these -- this Annual Report
9 was 1984. I referred to similar documents for the period
10 1970-1980.

11 Q In the course of your review did you determine
12 and calculate the percentage of the company's expenses that
13 were devoted to fuel for each year in the period 1970 to
14 1981?

15 A I don't recall that I did that, no, sir.

16 Q So you hadn't traced this figure for the company
17 in the period that is the subject of your testimony?

18 A I don't believe I did.

19 Q On pages 9 and 10 of your testimony you describe
20 the importance of a current cash return on CWIP. Do you
21 see what I'm referring to, Mr. Abrams, pages 9 and 10 of
22 your testimony?

23 A Yes, sir.

24 Q In preparing your testimony for this case, did
25 you examine the Pennsylvania Commission's policies of

j16

1 recognizing CWIP for ratemaking purposes in the period
2 1970 to '81?

3 A. Yes, sir.

4 Q. Can you describe those policies for us?

5 A. CWIP was denied in approximately 1975 when the
6 company requested it. In 1980, the company -- '79, I be-
7 lieve, the company requested it, and in 1980, the company
8 was denied a higher allowed return on common equity and
9 additional cash earnings to enable it to go forward with
10 its construction program.

11 Then subsequently, I think it was '81 or '82, CWIP
12 was applied for and again denied in about '81 or '82.

13 Q. So if I understand your response correctly, you
14 are indicating that it was the policy of the Pennsylvania
15 Commission through this period to recognize no amount of
16 CWIP in the company's rate base in the period 1970 to '81?

17 A. You used the word "no." I'm not aware whether
18 "no" is correct. Sometimes short-term CWIP is allowed. I
19 don't know whether that was the case or not.

20 Q. The question that I asked you was: were you
21 aware of the policies, and you responded with rate case
22 conclusions. But my question was really: do you know
23 whether the Pennsylvania Public Utility Commission per-
24 mitted any CWIP in utility rate bases in the period 1970
25 to 1981?

1 A. I'm not aware that there was any substantial
2 amount of CWIP permitted. I don't know if there were any
3 small amounts.

4 Q. So the answer is that you do not know the answer
5 to the question?

6 A. No; I don't think that's quite true.

7 Q. Then can you describe what amounts, if any,
8 were --

9 A. I don't know what amounts. If there were small
10 amounts, that's possible. I was concerned in this with
11 large amounts of CWIP, major CWIP treatment.

12 Q. Is a current cash return for CWIP currently
13 permitted by Pennsylvania law, to your knowledge?

14 A. I don't know what the law permits.

15 Q. In the first part of your testimony, Mr. Abrams,
16 specifically pages 1 to 19, you provide a general discus-
17 sion of the electric utility industry and its overall
18 financial condition during the 1970s. Are you familiar
19 with that area of your testimony?

20 A. Yes, sir.

21 Q. Would you agree that during this period, the
22 electric utility industry which you have described in-
23 cluded companies which were not involved in nuclear con-
24 struction programs?

25 A. There were some, yes.

1 Q. That were not involved.

2 A. That were not involved in nuclear construction.

3 Q. So your answer is yes?

4 A. That's right.

5 Q. Would you also agree that the industry included
6 companies that were very strong financially with Aa or
7 even Aaa bond ratings?

8 A. Yes.

9 Q. Would you also agree that the industry in this
10 period also included companies that not only deferred con-
11 struction of nuclear plants, but canceled plants that were
12 second units outright in multiple unit sites?

13 A. Yes.

14 Q. Isn't it true that everything being equal, the
15 financial condition of the companies which canceled plants
16 or units would have improved through the reduction of
17 capital expenditures?

18 A. I'm sorry; would you repeat that?

19 Q. Isn't it true that everything else being equal,
20 the financial condition of the companies which canceled
21 plants or units in this period would have improved due to
22 the reduction in capital expenditures by those companies?

23 A. The financial planning of the company?

24 Q. The financial condition.

25 A. Oh; financial condition of the company would --

j19

1 everything else being --

2 Q. Equal.

3 A. -- equal. I don't know that you can say "every-
4 thing else being equal." I mean, you must make certain
5 assumptions: one, that the company did not need the plant;
6 two, that they got recovery of the costs; and, three, that
7 the alternative to completing the plant at the time did
8 not appear to be more expensive for the company and the
9 ratepayers.

10 Now, if you make those assumptions, yes, the com-
11 panies that were able to shed plant, sell or cancel plant,
12 -- and PECO did some of that -- that would improve their
13 financial condition.

14 Q. Would you agree that canceling or deferring
15 construction of plants in this period would reduce the
16 capital expenditures of the utilities that took those
17 actions?

18 A. Yes.

19 Q. Would you agree that the reduction of capital
20 expenditures could have a positive effect on the financial
21 conditions of the companies that took those actions?

22 A. It could have if there were no corresponding
23 adverse results from those cancellations.

24 Q. Mr. Abrams, isn't it ultimately a management
25 decision whether to delay, cancel or continue building a

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1 plant?

2 A. No. The utility industry is -- in a non-
3 utility industry, in a non-regulated industry, I think
4 perhaps you could make that statement about a particular
5 facility, a particular warehouse.

6 In the utility industry you have a lot of people,
7 agencies, government organizations, that go into the de-
8 cision process, and you have the utility mandate to serve
9 a territory, number one; you have the government policies
10 that want certain types of plants built because they want
11 to get away from burning certain types of fuels, or they
12 want to support a certain type of new program, such as a
13 nuclear program; you have the regulatory process involved.
14 In some states plants are certified. In those states and
15 perhaps other states, commissions give approval for
16 financing.

17 So there is much more involvement, and I don't think
18 you can clearly say that management is responsible. I have
19 seen states where the management wanted to go ahead with
20 plant and the commission has ordered it suspended. So that
21 is not a management decision.

22 Q. In the period that you describe in your testi-
23 mony, are you familiar with the Pennsylvania Commission's
24 actions concerning utilities that canceled nuclear power
25 plants in that period?

j21

1 A. I can't recall specifically what --

2 Q. Are you familiar with the cancellation by
3 Duquesne Light and Pennsylvania Power of plants being
4 built by the CAPCO group in Ohio in 1978, I think the
5 cancellation was? Are you familiar with that incident?

6 A. I thought that cancellation was a little bit
7 later than that.

8 Q. It may well have been. Are you familiar with
9 that?

10 A. I'm familiar that it was canceled. I cannot
11 recall specifically what the treatment was. I believe
12 that they received recovery of their costs with no return,
13 but I stand subject to correction on that.

14 Q. Do you know in the circumstance of that case
15 whether the Pennsylvania Public Utility Commission directed
16 those utilities to suspend construction of the plants or
17 ordered them to cancel them?

18 A. I don't think that that was at the direction of
19 the Pennsylvania Commission.

20 Q. Do you know whether the Pennsylvania Commission
21 has certification powers such that it certifies the need
22 for plant prior to its construction?

23 A. No, they do not certify the plant, but they do
24 approve the financings for the construction budget.

25 Q. When they approve the financing for the

j22

1 construction of the plant, to your knowledge, is there any
2 guarantee that the Commission will subsequently recognize
3 those investments in rate base?

4 A. To my knowledge, no.

5 Q. In this part of your testimony that we are dis-
6 cussing you also discuss the returns earned by utilities
7 during this period.

8 A. Yes, sir.

9 Q. Would you agree that a major reason for de-
10 creasing utility returns net of AFUDC was the increasingly
11 large investment in nuclear plants in this period?

12 A. It could have been any kind of plants in the
13 period.

14 Q. So your answer is: yes, it could be for any
15 large investment in construction.

16 A. Any large, long-term investment that dragged on.

17 Q. Would you agree that in many jurisdictions
18 during this period CWIP was not allowed in utility rate
19 bases?

20 A. Yes.

21 Q. Would you further agree that it becomes very
22 difficult for a utility to earn its allowed rate of return
23 when a large portion of its funds are invested in CWIP?

24 A. Oh, yes.

25 Q. Would you agree that prudent management would be

j23

1 aware of such policies of its regulatory agency and take
2 these policies into consideration in its planning and
3 capital budgeting process?

4 A. I don't think that when these plants were begun,
5 not only by Philadelphia Electric Company, but many, many
6 other companies, in the early-'70s or late-'60s, that it
7 was ever contemplated that the construction programs would
8 go on as long as they did, that it would take as long to
9 build these plants.

10 I don't think that they ever contemplated, and cer-
11 tainly we didn't contemplate, that inflation would go up as
12 much, that interest costs would go up as much. And so
13 there were changed conditions that developed after the
14 process of construction had already started that were
15 wanting solutions. In some parts of the country they got
16 them; in other parts, they did not.

17 Q. Would you agree that prudent management of a
18 utility would require some prior examination of these kinds
19 of potentials before it went forward with construction?

20 A. No, sir. I don't think prudent management could
21 have foreseen that.

22 Q. Would you agree that prudent management would
23 involve an examination of foreseeable consequences of
24 action?

25 A. If you are asking me whether a management should

1 examine every possibility and contingency that it can
2 possibly imagine, sir, we would not have an electric indus-
3 try or any industry in this country, because every scenario
4 would show the extreme ridiculous -- let's call it the
5 extreme depressing outlook of gloom and doom, and that
6 would be there and everybody would say: we're not going
7 to do anything because interest rates could go to 30 per-
8 cent; inflation rate could go to 100 percent, or whatever
9 it is down in South America and some of these countries.
10 We are not going to do anything. You would have had no
11 building in this country.

12 Q That's an interesting response, Mr. Abrams.

13 A So that is not prudent. We're not talking
14 about prudent management.

15 Q My question really was not to every potential
16 or possible thing.

17 A Well, yes, it was. Because exactly what
18 happened --

19 Q How about if I repeat the question, and then you
20 can see whether that is the case or not.

21 I asked you if you agreed that: wouldn't prudent
22 utility management be aware of such policies of its regu-
23 latory agency -- and I am speaking now to inclusion of
24 CWIP in rate base -- and take those policies into consider-
25 ation in its planning and capital budgeting process?

1 A. Yes.

2 Q. But you have indicated to me that it is im-
3 possible for a utility to be knowledgeable of what the
4 state CWIP practices were in terms of its planning for
5 building construction, --

6 A. Sir, --

7 Q. -- generating facilities.

8 A. These construction programs were -- when these
9 construction programs were started by these companies in
10 the late-'60s, nobody thought of CWIP, nobody thought CWIP
11 would be necessary because nobody thought that the circum-
12 stances which brought about its necessity would come along.

13 And you asked me if prudent management wouldn't
14 have figured this all out, and I said, well, we hadn't
15 thought in the early-'70s that inflation would go the way
16 it has gone.

17 Q. When did Philadelphia Electric Company, if you
18 know, begin construction of the Limerick unit?

19 A. I don't recall the specific year. It could have
20 been '72 or '71. It was delayed in '74.

21 Q. Are you indicating to me that in that time period
22 there were no public utility commissions in the country
23 that recognized CWIP in rate base?

24 A. I was referring to the late-'60s when you're
25 making these plans.

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Q. Let's go to the time when the company began construction of the plant. Was CWIP in rate base a totally foreign concept in terms of utility regulation at that time?

A. In the early-'70s it had begun. Now, just what year, I don't recall. But in the '60s, nobody had thought of it.

Q. And your testimony now is that there were no public utilities in the country that were recognizing CWIP in rate base in the '60s?

A. CWIP in rate base with an offset of AFC, yes. I am not aware of any company back in the '60s, or any state in the '60s, that I can recall, -- I do take that back; Kentucky did. Kentucky did. But that was a different format.

Q. So I take it your response then is that you can remember one state utility commission in that period?

MR. HALL: Excuse me; I wish you would let him finish his answers.

BY MR. DELANEY:

Q. Were you finished, Mr. Abrams?

A. That has been a long-standing thing, and Kentucky just never had any AFC. So they allowed CWIP in rate base periodically. That is the only jurisdiction that I can recall.

1 Q. This was in the 1960s?

2 A. In the '60s, yes.

3 Q. And that is the only one that you're aware of?

4 A. Yes. But it was not a change that was made for
5 circumstances that were developing; it has been, as I
6 understand it, Kentucky tradition.

7 Q. Let's move to the latter part of your testimony,
8 pages 19 to 30, where you describe the company's conditions
9 in the 1970 and '80 period.

10 A. Yes, sir.

11 Q. Do you know how many generating facilities the
12 company had under construction in this period?

13 A. Well, I haven't counted them. They had a lot
14 of them. I think I list the major ones in my testimony.

15 There was the Peach Bottom, the Salem and the
16 Eddystone Units. That is listed on page 21.

17 Q. How many of these units were nuclear? Is that
18 indicated there also?

19 A. Peach Bottom and Salem are nuclear.

20 Q. How many of these units are solely owned by the
21 company?

22 A. I don't remember that. I don't know that.

23 Q. Do you know what the company's ownership, if
24 any, and the in-service dates for the company's Peach Bottom
25 Units are?

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1 A. I can get that information for you, but I don't
2 have it at hand.

3 Q. Did you have it at the time you reviewed this
4 testimony and utilize it in preparing your testimony?

5 A. No.

6 Q. You did not.

7 A. It's here, but it was not an issue.

8 Q. Do you know what the company's percentage of
9 ownership and in-service dates for the company's Salem
10 Units are?

11 A. No, sir.

12 Q. You do not know when either of these units
13 went into the company's rate base?

14 A. They came in in the late-1970s for Unit 1 on
15 Salem; I think it was 1977 or '78 there was a drop in
16 earnings because they had not had offsetting rate relief.

17 Unit 2, if I recall correctly, came in in the early-
18 1980s. Was it '81 or '82? I do not remember which.

19 Q. So you are indicating it is '81 or '82 for the
20 second unit?

21 A. That is my recollection, subject to check.

22 Q. Are you familiar with the company's plants
23 currently under construction at Limerick, Pennsylvania?

24 A. I have been there.

25 Q. How many units are under construction?

1 A. Two.

2 Q. Do you know what the percentage of completion of
3 the second unit is?

4 A. No, I don't remember the number precisely, but
5 I can give you that, too, if you bear with me.

6 (Witness perusing document.)

7 A. I will have to check on that. I can supply
8 that to you.

9 Q. I would assume, then, that that is not a factor
10 that you examined in your analysis?

11 A. No, sir. I was looking at this much earlier
12 period.

13 Q. Are you aware that during the period 1974 to
14 '81, PECO continued to expend funds on Limerick Unit 2
15 construction?

16 A. Yes, sir.

17 Q. Did you specifically evaluate the prudence of
18 continuing to spend money on Unit 2 in light of PECO's
19 poor financial condition and decreasing load growth
20 estimates?

21 A. Looking back, which is what I was doing in this
22 testimony, is looking back and trying to convey to you
23 what our impressions were in that period when these deci-
24 sions were made. It made sense to go on with Unit 2 for
25 a company that had a heavy dependence on oil. That was one

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1 of our concerns with Philadelphia Electric for many years,
2 when the government was telling us that there would be no
3 more gas to burn and there would be limited oil out in the
4 future, and that the prices were going to go up, up, up;
5 and, indeed, they did go up in 1979.

6 When you're building a two-unit plant, one of the
7 economies of building a plant -- well, first of all, one
8 of the strengths at that time of building a nuclear plant
9 is that you decrease the company's dependence upon oil.

10 One of the strengths of building a two-unit plant
11 is that there are certain economies in the construction
12 process. When your workers are through putting rivets in
13 here on Unit 1, they can go over and work on that same
14 project on Unit 2, and you get a flow of work, and you get
15 a flow of work materials.

16 You also get bigger price advantages on your pur-
17 chases of materials; you are buying larger quantities;
18 things of that sort.

19 So it made sense to go ahead with the two units
20 somewhat simultaneously and to attempt to continue 2 while
21 you're building 1 because you could do the combination
22 cheaper than if you stopped construction on Unit 2.

23 Q. So that what you're testifying now is that, in
24 your opinion, it was prudent for them to continue construc-
25 tion of Unit 2 in the time period described in your

1 testimony?

2 A. I don't wish to pass myself off as an expert on
3 the precise prudence, as you would want to define it, of
4 actions taken by the company with respect to mechanical
5 construction and things of that sort.

6 I said that it appeared sensible to us, and I tried
7 to choose those words carefully. I am trying to give my
8 impressions sitting on a rating committee in the 1970s.

9 Q. So from your last response would it be true that
10 your testimony really does not attempt to measure the com-
11 pany's prudence of its actions concerning its construction
12 in the period '70 through '81?

13 A. I am talking about physical construction now.

14 Q. Certainly; and I am referring to continuing con-
15 struction, specifically, on Limerick Unit 2.

16 A. What I am talking about in my testimony is the
17 financial reasonableness of the decisions to cut construc-
18 tion budgets.

19 My testimony addresses what we would look at and
20 what we did look at, and that is the financial effects of
21 cutting construction budgets and delaying Limerick in 1976
22 and 1978 because of the company's financial strain.

23 I do not attempt to pass myself off as an engineer
24 who can get into the prudence of making precise evaluations
25 of when you should go forward with Unit 2 and when you

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1 shouldn't from a cost standpoint and all of that.

2 I said only that it seemed sensible to us to con-
3 tinue it.

4 Q Let's return to page 4 of your testimony here,
5 Mr. Abrams. As I understand it, mid-way down the page you
6 talk about your and Duff and Phelps' views about the
7 reasonableness and necessity of the company's decisions,
8 and you specify at least two decisions there.

9 Now, if I understand some of your prior responses,
10 they were indicating that your view of reasonableness did
11 not involve any consideration of prudence of the company's
12 actions in those periods.

13 A I didn't say that.

14 MR. HALL: Your Honor, I would like to object to
15 Mr. Delaney's question. I think Mr. Delaney is trying to
16 force both the testimony and Mr. Abrams' prior responses
17 into a legal mode.

18 Mr. Abrams is not here expressing legal opinions
19 such as prudence. He is here presenting facts to Your
20 Honor and to the Commission with respect to what his views
21 are as a financial expert, which facts this Commission can
22 then take and use in a prudence context.

23 Mr. Delaney is constantly trying to press the wit-
24 ness to say "I am giving opinions on prudence." I don't
25 believe the testimony says that, and I don't believe the

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1 cross-examination says that either.

2 MR. DELANEY: Two responses, Your Honor. I have
3 the right to ask him to explain any of his answers.

4 JUDGE MATUSCHAK: The question of prudence may in-
5 volve many things.

6 MR. DELANEY: I would note that he uses the word
7 "reasonableness" in his explanation of the purpose of his
8 testimony.

9 JUDGE MATUSCHAK: Well, reasonableness of delaying
10 or advancing construction may involve many aspects. The
11 financial condition of a company may not be the only aspect
12 that is considered. In fact, that might be a part of the
13 balancing that a reasonable man must give. The fact that
14 he has only a dollar in his pocket might make it reasonable
15 for him to buy a hamburger instead of a steak, but that is
16 not the only thing. He may have the ability to borrow \$10;
17 then he can buy himself a steak. So it is not that simple.

18 What you are trying to do is attach the whole area
19 of reasonableness and prudence to one aspect.

20 MR. DELANEY: Did you overrule the objection, Your
21 Honor?

22 JUDGE MATUSCHAK: We will sustain the objection.

23 MR. HALL: I believe I am objecting to Mr. Delaney's
24 repeated effort to get this witness to state his answers in
25 terms of legal concepts of prudence, and the

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1 characterizations which Mr. Delaney has made of his testi-
2 mony in that regard.

3 I think the witness has clearly stated that his
4 answers are presented as a financial expert and with re-
5 gard to general concepts of reasonableness as he perceives
6 them as a financial expert presenting facts to the
7 Commission.

8 JUDGE MATUSCHAK: We will sustain the objection.

9 BY MR. DELANEY:

10 Q As I understand one of your prior answers,
11 Mr. Abrams, you indicated that in your opinion it was
12 reasonable for the company to simultaneously construct
13 Limerick Units 1 and 2 during the period of your examina-
14 tion of their financial condition.

15 A No, sir. I did not use the word "reasonable."
16 I said, if I recall correctly -- and I stand corrected
17 subject to the record. I said that it seemed to us to
18 make sense--and I said to you that I deliberately used that
19 phraseology because I did not want to represent myself as
20 an expert in the mechanics of these areas.

21 I said it seemed to us to make sense to go ahead
22 with 2 while you're doing 1 because there are certain man-
23 power and material economies that can be effected. You've
24 got workers of certain skills; they complete a process on
25 Plant 1, they can go and start that process on Plant 2.

j35

1 Q Mr. Abrams, would you agree that a large amount
2 of construction expenditures would affect a company's finan-
3 cial condition, a utility company's financial condition?

4 A Well, for an extremely large company -- what
5 might be a large amount of construction for one company
6 might be nothing to another company.

7 Q How about a multi-billion dollar nuclear gener-
8 ating station?

9 A A multi-billion dollar nuclear generating sta-
10 tion is a financial strain to most companies. However, it
11 becomes more of a strain to companies whose earnings are
12 not good than to companies whose earnings are good.

13 Q How about the simultaneous construction of
14 several multi-billion dollar nuclear generating stations?

15 A It is a challenge, but it has been done by com-
16 panies. Duke Power has done it.

17 Q These kinds of activities by a company, would
18 they be examined in terms of your setting ratings for their
19 securities?

20 A Yes.

21 Q Now, you indicated that to you it made sense
22 that the company was constructing Units 1 and 2 in the
23 period of your examination of their financial condition.

24 A Yes.

25 Q Can I direct your attention to page 27 of your

1 testimony? Actually, at the bottom of page 26 you describe
2 a down-rating of PECO's securities by Duff and Phelps in
3 1976.

4 A. Yes, sir.

5 Q. And if I read your further testimony on page 27
6 correctly, you state, "The committee was concerned about
7 whether rate increases would be adequate and about the
8 level of internal financing which would be necessary to
9 finance PECO's capital programs."

10 A. Yes.

11 Q. So the amount of construction that the company
12 had at that time was a factor in the down-rating of its
13 bonds, as I understand that testimony.

14 A. The combination of the company's earnings level,
15 coverage level, and financial needs, yes; those were all
16 reasons for the downgrade. But it was not one item alone.

17 Q. Did you specifically evaluate the potential
18 financial benefits of canceling Limerick Unit 2 in any year
19 in the period of your study?

20 A. No, sir.

21 Q. Would you agree that this was a continuing option
22 of PECO's management to take such action during the period
23 of your study?

24 A. I don't know whether that was an option or not.

25 Q. Is it a possible action they could have taken in

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1 this period?

2 A. I don't know, sir.

3 Q. So your answer is that you don't know?

4 A. I do not know.

5 Q. Let me ask you: what do you think the free mar-
6 ket would think of a non-regulated company which continued
7 to expend huge sums of money for new plant despite clear
8 evidence that the growth of its market was declining?

9 MR. HALL: Objection, Your Honor. I don't believe
10 it has been established in this record that the market for
11 the sale of electricity in the Philadelphia Electric market-
12 place is declining.

13 Trial Staff has not presented any predicate to that
14 question.

15 JUDGE MATUSCHAK: The motion is sustained. There is
16 no foundation for the question.

17 BY MR. DELANEY:

18 Q. Mr. Abrams, I think you indicate in the initial
19 beginnings of your career as an analyst that you worked in
20 non-utility areas.

21 A. Yes, sir.

22 Q. I would direct your attention to the first page
23 of your testimony. And in 1958-1959, you worked as a
24 principal of a management consultant firm in making analyses
25 and recommendations for merger acquisition situations and

1 consulted on financial planning.

2 A. Yes, sir.

3 Q. Then you indicate further that you were involved
4 in corporate finance.

5 A. Yes, sir.

6 Q. Looking to that experience, let me ask you
7 again: what would you think the market reaction would be
8 to a non-regulated company which continued to expend huge
9 sums of money for a new plant despite evidence that the
10 growth of its market was declining or that its sales were
11 leveling off?

12 MR. HALL: I repeat my objection. The objection
13 went to the assumption that there is evidence or there
14 exists a declining market in the Philadelphia Electric
15 service territory for the sale of electricity.

16 MR. DELANEY: I would note that my prior question
17 made no reference to electricity and specifically said
18 "non-regulated company."

19 JUDGE MATUSCHAK: Could we have the question re-read?
20 (Whereupon, the reporter read from the record, as
21 requested.)

22 MR. HALL: If Your Honor please, I did not hear the
23 word "non-regulated," and accepting the question as a hypo-
24 thetical, I withdraw the objection.

25 JUDGE MATUSCHAK: Very well.

1
2 THE WITNESS: In the first place, it would be unusual
3 for an unregulated company to be making huge capital invest-
4 ments in a plant to serve a declining market, and that is
5 because their capital investments normally are not such
6 long term. I can think of only one place where you might
7 have a fairly long term, several years, three, four years,
8 would be in the steel industry. They do it, incidentally.
9 They have done it to an extent down in the Gary area where
10 they have modernized their plant for a generally declining
11 market, but they anticipate that their own share of that
12 market is going to go up.

13 The non-regulated industries can cycle their capital
14 investments closer to the timing of their market develop-
15 ment. Unfortunately, the utility industry is faced with
16 several -- incidentally, non-regulated business can go be-
17 yond a territory for its business. If the market is not
18 good in a particular area, they might have their plant
19 there; they can sell all over the world.

20 A utility company has different constraints upon it,
21 and because of those different constraints, it has had
22 different policies directing its revenues, its rate treat-
23 ment; there has been sort of what I like to call a compact
24 between regulation and the need to supply electricity to a
25 territory.

Unfortunately, in the last 15 years, the construction

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1 of plant has taken far longer, and the forces of the
2 economy upon the service area, as well as conservation,
3 pricing, because of fuel cost increases, et cetera, have
4 caused fluctuations, fairly wide fluctuations, in market
5 demand. These have not been predictable in the time frame
6 that we are looking at here where these plants were started
7 in the early-1970s, and starting with late '73-'74, princi-
8 pally with the oil embargo, you had the fluctuations in
9 the demand curve and you have had the conservation, which
10 has tapered energy growth beyond what had been anticipated.

11 So in answer to your question, I don't think that
12 you could have had a non-utility company doing this kind
13 of financing, nor do I think you would have. I have to
14 give a very vague answer to a very vague hypothetical
15 question.

16 I don't think you would have had the circumstance,
17 but had you had the circumstance, I don't think the company
18 could have done it. I don't think the market would have
19 bought the securities.

20 BY MR. DELANEY:

21 Q I note that your prior response, a major part
22 of it, dealt with electrical utilities, and my question
23 really was to an unregulated industry or company; and I
24 think that you indicated in the initial part of your answer
25 that you didn't think that that was possible, if I have

j41

1 correctly described and characterized your initial response.
2 Then you went into your discussion of regulation in the
3 electric industry.

4 Let me ask you the same question, though, asking
5 whether it would have been reasonable for a company to have
6 put money into construction of some kind of a large facil-
7 ity at a time -- again, an unregulated company, at a
8 time when the clear evidence of the growth of its market
9 was declining and its sales were leveling off, again, would
10 it have been reasonable for a company to have taken such
11 actions at those times?

12 A. I don't think --

13 MR. HALL: Mr. Delaney, your question, are you
14 speaking of a regulated or an unregulated company in this
15 question?

16 MR. DELANEY: I indicated unregulated.

17 MR. HALL: You're speaking of a regulated company?

18 MR. DELANEY: Unregulated.

19 MR. HALL: Unregulated company.

20 MR. DELANEY: Yes.

21 BY MR. DELANEY:

22 Q. Do you understand the question to be directed to
23 an unregulated company, Mr. Abrams?

24 A. Say this again.

25 Q. Do you understand my question to be directed --

j42

1 A. Would you ask it again, please?

2 Q. Okay. I asked you whether you think it would be
3 reasonable for a non-regulated company to continue to ex-
4 pend huge sums of money for a new plant or facility despite
5 clear evidence that the growth of its market was declining
6 or that sales were leveling off? I'm asking you whether,
7 in your opinion, those kinds of actions at those times
8 would be reasonable for an unregulated company.

9 MR. HALL: Your Honor, I object to the question. I
10 think it was answered. That is precisely the same question
11 that Mr. Abrams gave his answer.

12 MR. DELANEY: No. I think you objected, or asked
13 for a clarification, without Mr. Abrams responding.

14 MR. HALL: No, Your Honor, I believe that was the
15 question that was asked that led Mr. Abrams to explain
16 about the steel industry and making investments; that
17 while the general market may be declining, the share would
18 expand.

19 MR. DELANEY: The prior question asked what he
20 thought the market would think of such a company. This
21 question requests his opinion of the reasonableness of
22 that kind of behavior on the part of an unregulated
23 company.

24 MR. HALL: I will withdraw the objection.

25 THE WITNESS: You can have reasons for doing, in a

1 non-regulated business, what you are suggesting. You can
2 have a company that is producing a product that it must
3 produce and it must sell in order to produce and sell other
4 products that are compatible with it.

5 So even though you might have a shrinking market in
6 this one area, you might have to make capital expenditures
7 to sustain your other markets.

8 But absent some reason of that type, the suggestion,
9 the pure suggestion that you're making -- your question
10 was: would it be reasonable to continue going on losing
11 markets and building a facility? And I am also assuming
12 in my answer that if you finish the facility, there will be
13 no market for you to sell in. It probably would not be
14 reasonable to go on.

15 BY MR. DELANEY:

16 Q I would note that starting on page 21 you
17 describe the company's decision to delay Limerick construc-
18 tion in '76 and '78.

19 Now, would you agree that before a utility makes a
20 decision such as delaying construction of a generating
21 plant, a decision which could have substantial impact on
22 its ratepayers in terms of rates and service, that it
23 should consider the interests of both its ratepayers and
24 shareholders before it makes such a decision?

25 A. I think it should; yes.

j44

1 Q On Schedule 5 of your testimony, you list a number
2 of utilities that delayed construction of generating plants
3 in the period 1970 to 1980.

4 A Yes.

5 Q Now, in preparing your testimony, what kind of
6 qualitative and quantitative analysis did you do for the
7 companies listed on your Schedule 5 in terms of comparing
8 them to Philadelphia Electric Company in the period 1970
9 to 1981?

10 A I did not attempt to compare them at all.

11 Q So it would be your testimony that you did not
12 evaluate any of those companies in comparison with PECO
13 using the factors you list on page 6 of your testimony?

14 A No, sir. I had no purpose in doing that in this
15 testimony.

16 Q Again, your comments on page 20 of your testi-
17 mony about the '76 and '78 decisions to delay Limerick
18 construction, is it your testimony that PECO could not have
19 raised additional capital if it had decided to maintain its
20 construction schedule?

21 A Well, we were concerned at that time about the
22 ability of the company to raise the amount of capital it
23 had scheduled. We were able to keep our ratings where we
24 had them, in other words, lower them only as far as we did.
25 I testified later on in my testimony that we would probably

j45

1 have reduced them further and faster had they not cut their
2 construction budgets.

3 So I do not believe that they could have raised
4 substantially more money, let's say a billion dollars or so
5 in that period, to adhere to their original schedule, 1974
6 schedule, and raise that money without debilitating their
7 coverages and their capital ratios to such an extent that
8 they would have quickly been non-investment grade.

9 Q When you prepared your testimony, did you make
10 a comprehensive study of the additional amounts of first
11 mortgage bonds, preferred stock or common equity which
12 PECO might have been able to issue in the years '74 through
13 1980 had PECO chosen to maintain its construction schedule?

14 Did you study any of those instruments?

15 A You would have had to issue approximately \$500
16 million worth of mortgage bonds, approximately \$150 million
17 worth of preferred stock, and maybe \$350 million more worth
18 of common stock.

19 But whether you could have or not, you were bucking
20 -- you could not have done that, because you were bucking,
21 even with what they were financing, you were bucking their
22 mortgage indenture requirements, which I believe is 2
23 times, on coverage. So there were times when they couldn't
24 sell securities even then because they had to wait until
25 earnings came up and they could build up their coverage

j46

1 again. So they could not have handled that kind of
2 financing. They would have had to go to debentures; they
3 would have had to go to other types of financing, much of
4 which, you know, the type of thing we call "junk bonds,"
5 third mortgage bonds, second mortgage bonds, which wasn't
6 being done then. That market wasn't there to this extent
7 at that time.

8 Q My question was: in preparing your testimony,
9 did you make a comprehensive study of these possibilities?

10 A Of what possibilities?

11 Q Additional amounts of first mortgage bonds,
12 preferred stock, common equity, in the period?

13 A I just told you that in order to do it, they
14 would have needed \$500 million in mortgage bonds.

15 Q Let me submit, Mr. Abrams, that your answer is
16 not responsive to my question.

17 MR. HALL: I think it is very responsive. He has
18 directly explained to you his considerations in the matter.

19 MR. DELANEY: I think the witness has given me his
20 observations, but the question was: did he study these
21 things in preparing his testimony?

22 MR. HALL: But I think he is entitled to explain to
23 you why he thinks his answer, answers your stated question.

24 MR. DELANEY: It is the second time I asked the
25 question. I would like an answer.

j47

1 MR. HALL: He is giving you an answer. Why don't
2 you listen to it?

3 THE WITNESS: Sir, if you're going to need \$500
4 million of first mortgage bonds to finance an accelerated
5 program, and you've got a coverage test of 2 times and you
6 are at that 2 times coverage test throughout much of this
7 period, you know that you cannot sell \$500 million worth of
8 bonds; you don't have to make a detailed study to find out
9 can you do it. It is not there.

10 BY MR. DELANEY:

11 Q Did you attempt to determine if PECO could have
12 made additional use of bank credit through revolving credit
13 agreements, term loans or other bank instruments in the
14 period of your study?

15 A They raised -- they had a revolver of some \$800
16 million which they negotiated for the program that they had.
17 I do not know that they could have gotten another billion
18 dollars. They could not have gotten, I don't think, another
19 billion dollars at that time of bank debt. It would have
20 thrown their coverage ratio -- if they did that, their
21 coverage ratios would be thrown out of kilter; their capi-
22 tal structure would be thrown out of kilter, because you
23 have a billion dollars worth of debt.

24 Q Did you specifically analyze any or all of PECO's
25 security offerings during this period from the standpoint of

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1 attempting to determine whether there were alternative modes
2 of financing which could have been used, or if those maturi-
3 ties could have been changed?

4 A. No, sir.

5 Q. Did you specifically examine PECO's dividend
6 policy in each of the years 1974 through 1980, to see
7 whether an alternative dividend policy might have affected
8 PECO's stock price or helped to conserve internal funds?

9 A. No, sir.

10 Q. Would you agree that in an inflationary economy,
11 one effect of delaying plant construction is to increase
12 the final cost of the project because of increases in
13 materials, wages and capital?

14 A. Yes, sir.

15 Q. Wouldn't the final cost of the plant also in-
16 crease due to the compounding effect of AFUDC?

17 A. Yes, sir.

18 Q. Would you agree that PECO's delays in construc-
19 tion resulted in a larger Limerick investment than would
20 have occurred had PECO been able to maintain its schedule?

21 A. Yes.

22 Q. Is it also true that as a result of this in-
23 creased cost, PECO had to raise larger amounts of capital
24 in the years subsequent to the delays?

25 A. Yes, but not to the full extent that it would

j49

1 appear, because part of that additional cost was AFC --
2 well, they did, because they had to raise the cash to pay
3 the dividend; yes. So the answer to your question is yes.

4 Q Are you familiar with PECO's Limerick credit
5 term loan agreement which initiated during the 1983-1984
6 period?

7 A I don't recall that one specifically.

8 Q I think you described it in your prior answer.

9 A Is that the 800-and-some-odd million dollar one?

10 Q Yes.

11 A I know they have it, but I don't know anything
12 more about it.

13 Q Do you know why they entered into this type of
14 financing?

15 A Yes.

16 Q Can you explain why, to your knowledge?

17 A To my knowledge, it was to back-stop financing
18 for Limerick in case they were not able to finance conven-
19 tionally with mortgage bonds, that they would have that
20 financing available to them.

21 Q Would you agree that probably one of the prob-
22 lems in their raising funds was the amount of construction
23 they had underway in the period?

24 A That was one of the problems.

25 Q Let me direct your attention to page 21 of your

j50

1 testimony, lines 8 and 9. Is it your opinion that lower
2 than expected load growth forecasts were a major factor in
3 PECO's decision to delay construction in 1976 and '78?

4 A. I think that that was part of the factor, yes;
5 certainly.

6 Q. On page 21, lines 3 to 5, you note in your
7 testimony that PECO's 1978 delay announcement lowered the
8 three-year 1978 to 1980 construction forecast by \$88
9 million.

10 A. Yes, sir.

11 Q. In your opinion, is \$88 million a significant
12 figure in comparison to the construction expenditures the
13 company was making at the time?

14 A. I would like to have \$88 million.

15 Q. So would I.

16 (Witness perusing document.)

17 A. I just wanted to be sure where these figures --
18 what importantly the '78 construction delay did is it re-
19 duced your outlook here in -- well, in the first place, the
20 actual for 1977 came in lower by over \$50 million than the
21 prior forecast.

22 The '78 figure was higher, but the '79 figure was
23 lower.

24 Q. Could I ask what schedule of your testimony you
25 are reading?

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1 A. I'm looking at Schedule 7.

2 So, yes, I think \$98 million is a significant amount
3 of money.

4 Q. Are you aware that Mr. Paquette has testified
5 that PECO still expended the amount of money budgeted prior
6 to the 1978 delay in that period?

7 MR. HALL: Your Honor, I am going to object to that
8 characterization. I don't believe it is accurate.

9 JUDGE MATUSCHAK: How much more cross-examination
10 do you have?

11 MR. DELANEY: One more question, Your Honor.

12 (Pause.)

13 MR. DELANEY: I am looking for the reference in
14 Mr. Paquette's testimony.

15 MR. HALL: Your Honor, if it will assist the matter,
16 it is in fact the case that Mr. Paquette and Mr. Boyer
17 testified that the company obtained additional funds from
18 its Board of Directors to permit the Limerick units to re-
19 main on the earlier schedule, but they did not, and
20 Mr. Paquette did not testify, that they spent the same
21 budgeted level of funds as had previously been budgeted.
22 There was a reduction. Moreover, there was a reduction in
23 non-Limerick expenditures.

24 If that will assist Mr. Delaney.

25

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1 BY MR. DELANEY:

2 Q Are you aware, Mr. Abrams, that the company
3 continued to spend money on Limerick construction in the
4 time period of its announced delay in '78?

5 A Yes, sir.

6 Q Mr. Abrams, would you accept that your analysis
7 is primarily an assessment of PECO's financial circumstances
8 given the path that it chose to follow, rather than a
9 rigorous examination of what its financial options were
10 had it chosen other alternatives?

11 A No, sir.

12 Q Did you not previously agree that you did not
13 attempt to determine if PECO could have made additional
14 use of bank credit through revolving credit agreements,
15 term loans or other bank instruments?

16 A I said that I thought it would have been very
17 difficult for them to have done much in that direction.
18 First of all, there were not junk bond markets that there
19 are today, and I cited in the case of going further into
20 the banks, that that would have been bank debt; that would
21 have been debt, and that would have added potentially a
22 billion dollars to their debt structure, which would have
23 skewed their capital structure, and it would have raised
24 their interest expense and would have lowered their cover-
25 ages, and it would have been a circuitous thing that would

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1 have resulted in downgradings. It would not have maintained
2 their financial integrity.

3 MR. DELANEY: I think I will rest my cross-
4 examination on Mr. Abrams' prior answers to a series of
5 questions on that matter.

6 Your Honor, at this point I would move to strike
7 the portion of his testimony, on the basis of your motion
8 in limine, that examines the reasonableness for the com-
9 pany's deferral decisions in '76 and '78, which I believe
10 begins on page 21 of his testimony.

11 MR. HALL: Your Honor, I would oppose the motion.
12 I would note first that we are going to ask Your Honor to
13 certify Your Honor's ruling to the Commission.

14 Secondly, I believe all of this testimony, as well
15 as much of the other testimony that Mr. Delaney and other
16 Staff Counsel have been asking be struck, all goes to the
17 issue of quantification, independently of whether it goes
18 to the issue of reasonableness.

19 I think that this particular testimony especially
20 goes strongly to the issue of what Your Honor can find or
21 could find could possibly be the costs of the delays that
22 occurred in '76 and '78 and the company's decisions.

23 MR. DELANEY: Your Honor, might I just respond?
24 Mr. Abrams testified, in response to my questions, that
25 the purpose of his testimony was to examine the

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1 reasonableness of the company's actions. He has language
2 on page 4 of his testimony that says: decisions in 1976
3 and '78 to reduce the capital expenditures and the point
4 of view of the effect of those decisions upon its financial
5 condition and risk. I asked him whether he was referring
6 to construction deferral decisions of the company in that
7 time period, and he agreed he was.

8 JUDGE MATUSCHAK: We will defer ruling until we
9 have a chance to examine the transcript.

10 MR. DELANEY: Very well, Your Honor.

11 MR. HALL: Your Honor, I would also ask the oppor-
12 tunity to file written briefs on this matter before Your
13 Honor rules.

14 MR. DELANEY: Which matter?

15 JUDGE MATUSCHAK: If any party wishes to file
16 memorandum of law, we will accept it.

17 MR. DELANEY: Your Honor, could I ask a clarifica-
18 tion?

19 Mr. Hall, what are you suggesting filing the briefs
20 on the issue of?

21 MR. HALL: What I am suggesting is that we would
22 like the opportunity to brief and argue before Your Honor,
23 perhaps argue, to what extent this testimony goes to issues
24 of reasonableness or prudence, or whether it goes to issues
25 of quantification, and whether there is any inconsistency

1 if it goes to both.

2 It is the company's position that regardless of how
3 it may be used for reasonableness, if it also goes to quan-
4 tification, it comes into the record.

5 MR. DELANEY: I have a suggestion, Your Honor. We
6 will continue to make such motions throughout the company's
7 case. Perhaps at the conclusion of their direct case we
8 could sort out --

9 JUDGE MATUSCHAK: We would like that briefed because
10 the prudence of the delays may come to other matters besides
11 the financial condition of the company.

12 MR. DELANEY: Your Honor, could I suggest that we
13 do that at the end of the company's direct case?

14 JUDGE MATUSCHAK: How much time do counsel wish to
15 brief that?

16 MR. HALL: I think the suggestion that we do it at
17 the end of the company's direct case is fine. I take it
18 that will be approximately January 10 that we would be
19 filing the briefs. That is acceptable to the company.

20 MR. DELANEY: Perhaps we could work out a schedule
21 and give it to Your Honor at a later date, in that time
22 period sometime.

23 JUDGE MATUSCHAK: Very well. Let's recess until
24 2:00.

25 (Whereupon, at 12:57 p.m., the hearing was adjourned,
to be reconvened at 2:00 p.m., this same day.)

AFTERNOON SESSION

(2:00 p.m.)

1
2
3 JUDGE MATUSCHAK: Mr. Rubin, are you ready to
4 proceed?

5 MR. RUBIN: Yes, Your Honor, Before we continue
6 with the cross-examination of Mr. Abrams, I have distributed
7 to Your Honor, to the court reporter and to the parties
8 copies of what I would like to have marked as OCA Exhibit
9 No. 65. These are the documents which we referred to during
10 the cross-examination of Mr. Rush on Monday which were then
11 under a proprietary agreement with the company. We have
12 since discussed the matter with the company and it is my
13 understanding that they have no objection to the documents
14 getting into the record in the form in which they appear
15 and will be Exhibit No. 65.

16 MR. HALL: That is my understanding as well, Your
17 Honor.

18 JUDGE MATUSCHAK: Very well. OCA Exhibit No. 65
19 is admitted into evidence.

20 (Whereupon, the document was
21 marked as OCA Exhibit No. 65
22 for identification, and was
received in evidence.)

23 JUDGE MATUSCHAK: You may proceed.

24 MR. RUBIN: Thank you, Your Honor.
25

1 Whereupon,

2 WILLIAM A. ABRAMS

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

5 CROSS-EXAMINATION

6 BY MR. RUBIN:

7 Q Good afternoon, Mr. Abrams.

8 A Good afternoon.

9 Q My name is Scott Rubin. I am with the
10 Consumer Advocate's Office.

11 Now first, I believe you stated earlier today that
12 you never before testified for the Philadelphia Electric
13 Company; is that correct?

14 A That is right, sir.

15 Q Do you know if anyone from Duff & Phelps has
16 ever testified at a previous Philadelphia Electric Company
17 rate case?

18 A Yes. The gentleman who is now the president
19 of our firm, Francis E. Jeffries, has testified on one or
20 several occasions in the past.

21 Q Do you know if that testimony was before this
22 Commission?

23 A Yes, I believe it was.

24 Q Mr. Abrams, am I correct that your testimony
25 presents an evaluation of the financial condition of

1 Philadelphia Electric during the 1976 to 1981 period and also
2 an evaluation of the investment community's perception of
3 the company's condition during that time period?

4 A. Yes, sir; my and our perception of the company
5 during that period.

6 Q. Is the actual financial condition of the company
7 after 1981 relevant to the investment community's perception
8 of the company during the 1976 to '81 time period?

9 A. I would think it would not be since it would
10 have been a completely big unknown when we were looking at
11 the company in '75, '76, '77, '78, '79.

12 Q. Could you turn to page 29 of your testimony?

13 A. Yes.

14 Q. On lines 5 and 6, you refer to decisions where
15 this Commission refused to allow construction work in
16 progress into rates; is that correct?

17 A. Yes, sir.

18 Q. And you refer to the Commission's decision at
19 R-811626. Do you know the date of the Commission's decision
20 in that case?

21 A. I don't remember the dates applicable to these
22 particular order numbers. There was a refusal in 1975, if
23 I recall correctly, and in 1979 there was what I would have
24 called a cash type of request where the company had asked
25 for a higher return on equity and cash in order to proceed

1 in an orderly fashion with the construction of Limerick. I
2 think that was requested in '79 and was denied in May of 1980.

3 Q Mr. Abrams, would you accept that the Commission's
4 decision in R-811626 was issued in May of 1982?

5 A Yes.

6 Q So would I be correct that that decision could
7 not have affected investors' perceptions of the company
8 during the 1976 to 1981 time period?

9 A Well, during the '76 to '80 time period, we
10 were hoping that the Commission would, despite the '75 order,
11 find a favorable decision. This was just a --

12 Q Mr. Abrams, I think I've asked you a question
13 specifically dealing --

14 MR. HALL: Mr. Rubin --

15 MR. RUBIN: -- with an order of the Commission in
16 May of 1982.

17 MR. HALL: Excuse me, Mr. Rubin. Your question was:
18 does the order that came out in 1982 affect investor
19 perceptions during the '76 to '80 period. He is answering,
20 I believe, why CWIP is an important issue and, therefore,
21 may have. I think you've got to let him answer the question.

22 MR. RUBIN: Mr. Hall and Your Honor, I thought my
23 question was a very specific and very simple one.

24 JUDGE MATUSCHAK: Well, answer the question first
25 and then you can explain.

1 THE WITNESS: We had hoped through this period of
2 following Philadelphia Electric Company that the Commission
3 would allow CWIP. The '82 order was the final dashing of
4 that hope. The May, 1980 order was the signal that we
5 were not going to have that kind of cash benefit.

6 In '80 is when we downgraded the company to the
7 present 9 rating.

8 BY MR. RUBIN:

9 Q Mr. Abrams, could you turn to page 12 of your
10 testimony?

11 A Yes.

12 Q Here on roughly lines 4 through 14, you recite
13 a number of factors which you feel are important. This
14 paragraph starts, "Until recent years," and then you go on.

15 Does the information you refer to on lines 4 through
16 14 refer to a period before or after 1981?

17 A Before.

18 Q Could you turn to page 9? I am looking here
19 at lines 17 through 21.

20 A Yes.

21 Q Here you make a statement relating to I believe
22 you call it the importance of the rate base issue in today's
23 environment.

24 By using the term "today," are you referring just
25 to the perceptions of investors now in 1985?

1 A. No. Rate base was always an important issue.
2 The only thing is that in the 1960s and '70s, rate base
3 was a non-issue in the sense -- let me put it this way: it
4 was a non-concern in the sense that rate base disallowances
5 were not of any magnitude being made. So the investors
6 expected that the rate base recognition would be there by
7 the Commission. There might be differences on rate of
8 return. There were differences on operating expenses and
9 various things like that.

10 Major rate base disallowances are working capital
11 would be disallowed and things like that, but major plant
12 disallowances were not the order of the day. This is what
13 I'm trying to get to in this.

14 Q. Could you look at I believe the section starts
15 on page 8, line 17 and goes through to page 9, roughly
16 line 21. This whole section is an answer to the question
17 of why the recognition of rate base is considered important
18 by investors.

19 Now, do you answer this question based on investors'
20 perceptions today or on their perceptions in the 1976 to
21 1981 time period?

22 A. Both.

23 Q. Mr. Abrams, would you characterize the -- I
24 believe you said there are roughly 250 clients of Duff &
25 Phelps; is that right?

1 A. Yes, sir.

2 Q. Would you characterize those clients as
3 institutional investors?

4 A. Yes, sir.

5 Q. Am I correct that only your clients receive
6 your publication?

7 A. At that time?

8 Q. Yes.

9 A. Yes.

10 Q. And until 1980, even your ratings were not
11 made public?

12 A. They were leaked.

13 Q. You did not make them public?

14 A. We did not make them public, but they were
15 leaked. Bypassing the meter is what we call it.

16 Q. So the documents which you attached as part
17 of your Schedule 8 were not available to the general public
18 during the 1976 to 1981 time period; is that right?

19 A. No, sir; and those particular types of
20 documents still are not made available to the general
21 public. We have other types of documents that we issue to
22 the public in the form of press releases and things of that
23 sort.

24 Q. Could you turn to page 10 of your testimony,
25 and I'm looking at roughly lines 17 through 19.

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A. Yes.

Q. You state here that if construction work in progress is not granted, that ultimately rates would go up. Is that a fair summary?

A. Yes, sir.

Q. In your opinion, are investors concerned that rates may go up in the future?

A. Sure. Yes, investors are concerned that rates would go up. They would like to see rates go up as little as possible yet giving them a fair return.

Now, they don't like to see rates go up for fuel cost increases. At Philadelphia Electric, most of its rate increases have been for fuel cost increases. But they are concerned with rates going up, certainly.

Q. I am a little puzzled, I guess. If we assume, hypothetically, that the return that the investors would actually receive would be the same under, say, two different levels of rates -- I realize that might be unlikely, but if we could assume that the amount of money actually getting to investors wouldn't vary, why would investors be concerned over how high the rate was?

A. Because the higher the rate is, the harder it is to get the necessary rate relief that you need on an ongoing basis from a Commission. Now, that's not to say

1 that companies with very low rates don't also have trouble
2 getting rate increases. But the higher the rates are -- and
3 one of the measures that you look at is where are this
4 company's rates versus another company's rates.

5 Q. Mr. Abrams, are you familiar with the current
6 financial condition of Philadelphia Electric Company?

7 A. In general, yes, I am.

8 Q. Would you be familiar with, say, the current
9 stock price and dividends and that sort of thing of the
10 company?

11 A. Not specifically, no. I am in the fixed income
12 area, so I don't keep track of pricing.

13 MR. RUBIN: Thank you, Mr. Abrams.

14 No more questions, Your Honor.

15 JUDGE MATUSCHAK: Any further cross-examination of
16 this witness?

17 MR. RAINEY: No questions, Your Honor.

18 MR. KLEPPINGER: No, Your Honor.

19 JUDGE MATUSCHAK: Any redirect?

20 MR. HALL: No, Your Honor.

21 JUDGE MATUSCHAK: One question.

22 If the company had decided not to delay in '76 and
23 '78 and proceeded to construct the plants as they had been
24 planned, what effect would that have had on the financial
25 condition of the company?

1 THE WITNESS: Unless they receive an adequate amount of
2 additional rate relief -- if you assume the same amount of
3 rate relief that they got, their coverages would have gone
4 down; their capital structure would have become more
5 leveraged; it is possible that the price of their common
6 would have gone down and there would have been more dilution
7 to earnings; and I believe because of these financial factors,
8 the ratings on their securities would have gone down. In
9 other words, we would have lowered the ratings. They could
10 well have gotten out of investor grade. That would have
11 precipitated far larger increases in the cost of money
12 because they would have been in that low investment grade
13 range.

14 I do not know whether at that time with the money
15 markets the way they were that such a poorly rated company
16 as that would have been could have secured enough capital
17 to have stayed on the pre-1976 schedule.

18 JUDGE MATUSCHAK: Have you quantified in any manner
19 what that amount would have been in dollars and cents?

20 THE WITNESS: I tried to do it earlier. I mean, I've
21 done it mentally. I tried to do it earlier in my testimony.

22 If you assume they need a billion dollars of money,
23 the normal conventional financing would have been approxi-
24 matly \$500 million of first mortgage bonds. Their indenture
25 coverage is 2 times. They were bucking that 2 times with

1 virtually every issue of bonds that they sold. Sometimes
2 they couldn't sell even the bonds they did sell because they
3 didn't have the coverage for them.

4 The \$500 million of bonds would have increased their
5 interest expense by \$50 million to, say, \$60 million or more
6 a year. Now, that wouldn't have all happened in one year,
7 but it would have built up to that.

8 To maintain a 2 times coverage on that, you need
9 \$100 million to \$120 million of pre-tax operating earnings
10 which they wouldn't have had. So it becomes an impossible
11 situation. How do you say what it is going to cost? You
12 can't do the conventional --

13 JUDGE MATUSCHAK: It may be impossible, but that's
14 what, apparently, we have to decide in this case as to how
15 any cost of delay would have been offset by other matters.
16 That is why I'm trying to get your help.

17 THE WITNESS: I've tested the conventional and with
18 the rates that were in effect, it is my opinion they could
19 not have done the conventional type of financing. They could
20 not have sold mortgage bonds, which would have been the
21 cheapest bonds they could have sold.

22 So then they would have had to go into markets such
23 as Public Service Company of New Hampshire has had to go
24 into. Those markets were not yet developed at that time.
25 Whether they would have developed for Philadelphia Electric

1 Company as they developed in the '80s for Public Service
2 of New Hampshire, I don't know. But they would have had to
3 go into the second mortgage, possibly the third mortgage,
4 all that type of thing.

5 Let's say that in the '70s that interest rate would
6 have been 15 to 20 percent, depending upon the year. If they
7 had to raise a billion dollars that way, you can see that
8 the costs there would be \$150 million to \$200 million a
9 year of interest expense.

10 Your pre-tax operating earnings to maintain just
11 a 2 times coverage on that would have had to go up by
12 \$300 million to \$400 million.

13 So the cost becomes fantastic. It's like buying
14 a house. If you've got money and you've got a good down-
15 payment, you've got good credit, you can get the lowest bank
16 or savings and loan rate on a mortgage. If you don't have
17 it, you buy with 1 percent or 5 percent, you buy under a land
18 contract, you're paying more for it and you have a harder
19 time finding the money.

20 JUDGE MATUSCHAK: That is what is troubling us.
21 Even if money was available --

22 THE WITNESS: The costs would have been far higher.
23 I can't say today that it would have been available. There
24 is no assurance that it would have been available. It was --
25

1 JUDGE MATUSCHAK: Do you have any suggestions as to
2 how one would quantify as to the difference between the cost
3 of delay and any offsetting that would be done by the factors
4 that you indicated, differences in cost of money and so
5 forth?

6 THE WITNESS: Well, I think that you would have to
7 take the cost -- assume that the dollars not spent was
8 a billion dollars, and I think you would have to recognize
9 that conventional financing could not have been accomplished.
10 I think you would have to accept that the company would have
11 been downgraded earlier and would possibly be below investment
12 grade.

13 Now, there were periods in the '70s when even a
14 BBB security could not reach money markets. Investors were
15 not buying BBB; or if they could reach it, the premium was
16 high and the term was short, five years, three years, seven-
17 year money rather than traditional 30-year money. That sets
18 a whole new scenario so far as your repayment schedule is
19 concerned.

20 You probably have to recognize that the company
21 could not sell enough common stock to maintain its equity
22 ratio.

23 Then you calculate the cost of that higher debt,
24 and that would have to be added to the embedded cost of
25 debt, the debt that the company already had for the

1 remaining construction that they did do. It gets very
2 complicated, because even that remaining construction, they
3 would not be able to do a lot of the financing they did do.
4 So a lot of their financing in the late 1970s would have been
5 at far higher cost than it was on their books.

6 It becomes a very long-term study. It is hard to
7 go back accurately ten years, but you can come up with a
8 pretty good approximation of it.

9 JUDGE MATUSCHAK: It is possible to approximate?

10 THE WITNESS: It is possible to approximate it within
11 a range.

12 JUDGE MATUSCHAK: You have not done that?

13 THE WITNESS: No, sir.

14 JUDGE MATUSCHAK: That's all I have.

15 MR. HALL: I have nothing, Your Honor.

16 JUDGE MATUSCHAK: Thank you.

17 (Witness excused.)

18 MR. HALL: Your Honor, we have Mr. Paquette
19 available next. He is outside at the moment speaking with
20 Ms. Ferkin on a matter. I will go get him if we can have
21 a five-minute recess.

22 JUDGE MATUSCHAK: Until he comes in, can we discuss
23 something about the scheduling of the 30th and 31st of
24 December? Those dates were sort of tentative dates as I
25 understood it. Are we still firm on those dates? Will we

1 have to have those hearings on those dates?

2 MR. DELANEY: I understood they were carry-over
3 dates, Your Honor.

4 JUDGE MATUSCHAK: We can go off the record.
5 (Discussion off the record.)

6 JUDGE MATUSCHAK: Back on the record.

7 Whereupon,

8 JOSEPH F. PAQUETTE, JR.

9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. HALL:

12 Q Mr. Paquette, would you state your full name
13 and position with Philadelphia Electric Company for the
14 record?

15 A My name is Joseph F. Paquette, Jr. I am Vice-
16 President of Finance and Accounting for Philadelphia
17 Electric, 2301 Market Street, Philadelphia.

18 Q Mr. Paquette, do you have before you a document
19 entitled "PECo Statement 3, Direct Testimony of Joseph J.
20 Paquette, Jr."?

21 A Yes, I do.

22 Q Is this document, in fact, your prepared direct
23 testimony for use in this proceeding?

24 A Yes, it is.
25

1 Q Mr. Paquette, do you have any changes or
2 corrections to make to the document as of this time?

3 A No.

4 (Pause.)

5 (Document handed to witness.)

6 Q Mr. Paquette, have you had occasion to review
7 your testimony with regard to whether there should be any
8 corrections or additions?

9 A Yes. There is one table from my Statement 3
10 that we discovered a minor error that we would like to
11 correct at this time with a revision to that Table 4.

12 If I could take a minute, Judge, I will point out:
13 the basic error was in about the middle of the page, a line
14 called "Deferred Income Taxes" under the right-hand column
15 labelled "Pro forma 1986." In the original testimony, that
16 number was "77." The correction is that that is "72."

17 JUDGE MATUSCHAK: Which table is that, please?

18 THE WITNESS: Table 4; about the middle of the page,
19 a little bit below the middle of the page, a line called
20 "Deferred Income Taxes," the right-hand column. In the
21 original testimony, the number was shown as "77." On
22 the correction it is shown as "72." That was the only
23 error.

24 Of course, when that gets added into the totals
25 below that and various ratios computed from that number,

1 some of the other numbers change very slightly but not
2 significantly.

3 BY MR. HALL:

4 Q Mr. Paquette, after making this change to the
5 testimony, is the data provided in the statements made in
6 the testimony true and correct to the best of your knowledge
7 and belief?

8 A Yes.

9 MR. HALL: Your Honor, I would ask that Mr. Paquette's
10 statement be identified for use in this record as PECO
11 Statement No. 3.

12 JUDGE MATUSCHAK: The motion is granted.

13 (Whereupon, the document was
14 marked as PECO Statement
No. 3 for identification.)

15 MR. HALL: I would request that Mr. Paquette's
16 statement be admitted into the record.

17 JUDGE MATUSCHAK: PECO Statement 3 is admitted into
18 evidence subject to any timely motions to strike, objections,
19 or any other motions.

20 (Whereupon, the document
21 marked as PECO Statement
No. 3 was received in
evidence.)

22 MR. HALL: Your Honor, Mr. Paquette is available
23 for cross-examination.

24 JUDGE MATUSCHAK: Staff?
25

1 MR. DELANEY: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. DELANEY:

4 Q. Good afternoon, Mr. Paquette. My name is
5 Dan Delaney. I represent the Trial Staff. I have some
6 questions on your direct testimony.

7 Could you turn to page 6, please?

8 A. Yes.

9 Q. At the top of page 6, lines 3 to 6, you
10 describe the company's intention not to request another
11 electric base rate increase before September 27, 1987 unless,
12 in the company's judgment, a failure to file such a request
13 would jeopardize its financial viability.

14 Do you see the language I'm referring you to?

15 A. Yes.

16 Q. Who would make such a decision whether the
17 company should return to the Commission for another base
18 rate increase before that time?

19 A. That would be decided by the company's top
20 management; the Chairman and the President together in
21 consultation with probably myself and other members of
22 senior management.

23 Q. On what basis would such a decision be made?

24 A. It would be made on the basis of whether our
25 ability to continue the company's service to its present

1 customers and to continue its construction program and
2 ability to raise capital was being jeopardized or not.

3 Q So the decision to return to the Commission
4 would be a unilateral one on the part of the company?

5 A That would be something that the company, as
6 stated here, would make in its judgment, yes.

7 Q So then it's true that this stay-out could,
8 therefore, be revoked at any time by the company's decision
9 as made by its top management?

10 A It's true, but, as we said here, we would only
11 do it if conditions otherwise would jeopardize our financial
12 ability and impair service to our customers either present
13 or future.

14 Q If such circumstances were to arise, how would
15 the company's phase-in plan be affected by this interim
16 rate increase?

17 A I don't think I can make a judgment on that.
18 That will depend on what kind of a phase-in program the
19 Commission permits as a result of this proceeding.

20 Q For purposes of the question, Mr. Paquette,
21 assume that the plan advanced by the company in its filing
22 is accepted by the Commission.

23 A I would think if the Commission granted us
24 the phase-in program that we have requested and in the amount
25 that we have requested and, as I understand your question,

1 that even under those circumstances we were faced with a
2 situation that jeopardized our financial viability that
3 required us to seek another rate increase before September,
4 1987 -- that is the basis of your question?

5 Q. Right.

6 A. -- then I would think that that decision at
7 that time would probably have no effect on the phase-in
8 program because we would be in a position where despite
9 the Commission having granted us everything we asked for,
10 some other event happened or some event happened that forced
11 us to come back to the Commission for another rate increase
12 before September of '87.

13 So I would assume that we would be in a position
14 then of at least not removing the phase-in plan, because
15 we would obviously need the phase-in revenue plus some
16 additional revenue that would be sought to overcome whatever
17 financial emergency we were faced at that time.

18 Q. Might that not increase the amounts being
19 phased in, modification of the subsequent amounts to be
20 recovered through the surcharge in the later years?

21 A. I don't know whether I would call it a change
22 in the phase-in. It would require us to seek more revenue
23 than we were then authorized by the Commission to collect
24 from our customers. It is I think an obvious answer to the
25

1 situation that we would be in. We would be back for more
2 revenue because current revenues as then authorized, meaning
3 the phase-in plan, were not sufficient.

4 I don't know whether we would seek another phase-in
5 or just a temporary rate increase to get us out of that
6 financial emergency or a permanent rate increase. It would
7 depend on the circumstances that existed at that time.

8 Q The portion of the company's filing in the
9 current case concerning the phase-in, does the contemplate
10 that the Commission will award the company the full amount
11 of the increase? Is that conditional on that kind of result
12 in the case?

13 A Is your question related to the phase-in plan
14 being conditional?

15 Q Correct.

16 MR. HALL: I'm sorry, Mr. Delaney; I'm struggling
17 to understand what your question is. Are you saying: is
18 the phase-in conditional on the total amount of revenue
19 provided?

20 MR. DELANEY: Yes; that's what I'm inquiring about.

21 THE WITNESS: Could I try to re-express it to make
22 sure I understand it?

23 BY MR. DELANEY:

24 Q Sure.

25 A Are you asking me that if the Commission gave

1 us only 90 percent of the amount we asked for, that we
2 would not be satisfied with a phase-in of the amount, but
3 we would insist that it all go into effect immediately as
4 opposed to a phase-in?

5 Q Without seizing on a specific amount, if the
6 Commission granted the company less than it asked for, would
7 that affect the company's part of the filing where it is
8 requesting that the amount be phased in?

9 A The company would still be willing to accept
10 a phase-in plan. I think, however, that -- I think we
11 may have made it clear in somebody's testimony that we would
12 request that any amount disallowed by the Commission be
13 removed from the last step and then, hopefully not necessary,
14 but then go into the second step. So that we would at least
15 receive the full amount of our first-step request in the
16 first year of application of these rates and that the
17 additional amounts be permitted in the second step and then
18 finally into the third step.

19 Am I true that that has been --

20 MR. HALL: Mr. Williams expressly describes exactly
21 what Mr. Paquette just said.

22 MR. DELANEY: Fine; thank you.

23 BY MR. DELANEY:

24 Q Could you turn to page 13 of your testimony,
25 Mr. Paquette?

1 A. Yes.

2 Q. Starting on line 9 of that page, you describe
3 the external conditions that impacted the company's
4 financial planning from 1970 to 1980.

5 Do you see the reference?

6 A. Yes.

7 Q. In this time period, how many generating
8 plants was the company constructing?

9 A. At the beginning of the period we had under
10 construction Peach Bottom Unit 2, Peach Bottom Unit 3.
11 I believe Salem Units 1 and 2 were started at the early
12 part of that period. We also had in the early half of the
13 decade the construction of Eddystone Units 3 and 4. They
14 were oil-fired units. We were in the process also of
15 installing about 400 megawatts of combustion turbines that
16 were primarily located at Croyden.

17 We had on the drawing boards at one time another
18 nuclear unit at what we call the Fulton site. We had I
19 believe it was a preliminary agreement to share in the
20 construction of a nuclear unit to be built by Delmarva which
21 was called Summit. Of course, we had Limerick 1 and 2
22 starting in the early part of the decade.

23 There may have been some small amount of gas
24 turbines located throughout our system that were also
25 constructed during this period. I believe that is the

1 complete list.

2 Q. Would I be correct that the nuclear units among
3 the group that you've listed would be the Peach Bottom units,
4 the Salem units, Limerick units and the subsequently
5 cancelled Fulton and Summit units?

6 A. That is correct.

7 Q. Could you indicate to us the percentage of
8 ownership and the in-service dates for the Peach Bottom
9 units?

10 A. We own 42.5 percent of both Peach Bottom units.
11 Unit 1 went in service in I think it was mid-1974. The
12 second unit followed I believe within 6 months. The remaining
13 part of that ownership of that plant, 42 percent is owned
14 by Public Service of New Jersey and 7.5 percent is owned
15 each by Delmarva Power and Light and by Atlantic City
16 Electric.

17 Q. For the Salem units, can you indicate to us
18 the percentage of ownership and the in-service dates?

19 A. For the Salem units, which, of course, are
20 operated by Public Service of New Jersey, the ownership
21 percentages are identical to what they are at Peach Bottom.
22 Unit No. 1 at Salem went in service in 1977, and Unit No. 2
23 was completed -- I believe it was completed in 1979, but it
24 didn't go into service until around 1981.

25 Of course, we sold the output of Salem No. 2 under

1 a contract to Jersey Central until the end of 1984, and
2 then it was included in our rate base in the rate increase
3 that we got in January of this year.

4 Q Would I be correct, Mr. Paquette, that the
5 only nuclear units under construction in this period by
6 the company that were owned solely by the company were the
7 Limerick Units 1 and 2?

8 A. That is correct.

9 Q As a general matter, would it be correct to
10 say that the company's construction program in the '70s
11 affected its financial condition?

12 A. I don't think the answer is as simple as that.
13 The company's financial condition was certainly affected by
14 a lot of things during this period. Rampant inflation
15 was certainly one of them, and our inability to recover the
16 costs as rapidly as the costs were being incurred I think
17 was the most significant factor that impacted us.

18 Q Would you agree in this period that the
19 company was spending significant amounts of money in this
20 construction that you've just described?

21 A. Yes. The company had a large construction
22 program which we undertook to meet the growing needs of
23 energy for our customers.

24 Q Would you agree further that this large
25 construction program did have some effect on the company's

1 financial condition?

2 A. I don't think you can isolate things to that
3 effect, because it is a combination of the construction
4 program and whether we had the sufficient earnings to
5 attract the capital and whether we had sufficient revenues
6 coming in to produce the earnings necessary to attract the
7 capital. There are a lot of interrelated things. I don't
8 think you can point to any one.

9 Q. Would you agree that among the interrelated
10 things, though, was the amount of money the company was
11 spending through this period on the construction programs
12 that you described?

13 A. The size of the program I guess certainly had
14 some impact on the financial condition of the company.

15 Q. I would note on page 15 of your testimony
16 concerning the construction program -- I don't think that
17 is the correct reference. But in one of those pages in your
18 testimony, you speak of the cancellation of the Fulton plant
19 as an example of the company's weakened condition, I believe.
20 It is page 15, lines 17 through 20.

21 A. Page 15 --

22 Q. Lines 17 through 20. You speak in terms of
23 reduced peak load and sales forecasts.

24 A. Right.

25 Q. And those were factors that contributed to the

1 cancellation of both the Fulton and Summit plants in 1975?

2 A. Right. But it is not what you originally started
3 out to say about weakened financial condition. It was
4 a reduced peak load.

5 Q. Do you think the company's financial condition
6 was a factor in the cancellation?

7 A. No.

8 Q. It was simply peak load?

9 A. That's right.

10 Q. On page 19 of your testimony you talk about
11 a Theodore Barry & Associates' study, and I think the testimony
12 about that was received yesterday.

13 Can you indicate to us how was TB&A selected for
14 performing the analysis, if you know?

15 A. How were they selected?

16 Q. Yes.

17 A. Theodore Barry was selected by the company and
18 our counsel to prepare testimony in this case, to review
19 the prudence and the construction management of the Limerick
20 project. As part of that assignment, they reviewed other
21 deferral decisions that were made at the same time that
22 we were making ours back in the mid-'70s. So it was a part
23 of the overall assignment that they had in this case.

24 Q. I note at page 19, you list some of their
25 conclusions. You actually list names of utilities.

1 Are you aware that TB&A's primary criteria for
2 choosing this group was on the basis of announced construction
3 delays for financial reasons in 1974 and in years subsequent
4 to '74?

5 A. I believe that is true, yes.

6 Q. Are you also aware that TB&A stated in its
7 testimony that the comparison group which was used was not
8 an exhaustive one?

9 A. Was not?

10 Q. Was not an exhaustive one.

11 A. Well --

12 Q. Well, let me continue -- because it was
13 quite likely that other companies delayed construction for
14 financial reasons but did not make a public announcement to
15 that effect.

16 A. Yes. I remember reading that, yes, in their
17 testimony.

18 Q. Are you further aware that TB&A agreed during
19 cross-examination yesterday that they did not know how many
20 companies would fit in this comparison group if both
21 announced and unannounced delays were considered?

22 A. I was not aware of that. I wasn't here yester-
23 day. I wasn't aware of that statement.

24 Q. So then you wouldn't be aware that TB&A also
25 agreed that they did not know how PECO would compare with

1 the total population of electric utilities which took such
2 a delay?

3 A. No, I am not aware of that.

4 Q. Apart from TB&A's conclusions stated on pages
5 18 and 19, I believe, have you done any independent analysis
6 on your own in making such a comparison with other utilities
7 and their actions within the period that you describe in
8 your testimony concerning construction projects?

9 A. No, I have not.

10 Q. So, therefore, you would agree that you do not
11 know how PECO would compare with the total population of
12 electric companies which had nuclear construction delays
13 both announced and unannounced during the 1970s for financial
14 reasons?

15 A. That is correct.

16 Q. Let me direct your attention to pages 22 and
17 23 of your testimony. There you discuss the uncertainty
18 affecting financial decision-making in the '70s.

19 During this period, which is 1970 to 1980, is it
20 true the company continued to spend money on Limerick Unit 2?

21 A. Yes.

22 Q. Considering the uncertainty that you discussed
23 as well as PECO's financial condition and decreasing peak
24 load forecast, do you still believe that it was prudent to
25 continue to spend money on Limerick Unit 2 at this time?

1 A. I absolutely do, because all throughout this
2 period our engineering studies continued to indicate that
3 there was a definite need for Limerick 2 and that completion
4 of Limerick 2 was the most economical path to follow in
5 supplying the future needs of our service territory.

6 Q. Would you agree that the company's construction
7 costs, though, were higher in that period because of its
8 decision to continue to construct the second unit at Limerick?

9 A. I guess you have to answer that: higher than
10 what? If we had made a decision to cancel Limerick 2, we
11 undoubtedly would have had to have made a decision to build
12 something else in its place and that could very well
13 have ended with us spending more money than we did spend
14 finishing Limerick 2.

15 Q. So from your last response then, the company
16 never gave any serious consideration to cancelling Unit 2 or
17 freezing the expenditures on the unit in the early 1970s?

18 A. I don't recall any study that indicated that
19 that would have been a prudent course of action. So to my
20 recollection --

21 Q. Let me ask you then: did you specifically
22 evaluate the potential and financial benefit of cancelling
23 Unit 2 in any year during this period or suspending construc-
24 tion of the unit in any year in that period?

25 A. In the whole period of the decade, we may have.

1 I think by the time we got to the end of the decade when we
2 were getting involved with the first Limerick investigation,
3 I believe that was one of the things that we were required to
4 look at, But my mind is hazy as to whether that fell within
5 1980 or not. But it is quite possible that by the end of this
6 period that that might have been one of the things that we
7 had to study for the first Limerick investigation.

8 Q Mr. Paquette, would you agree that it was always
9 an option of PECO's management to make such a decision in
10 that time period?

11 A Whether we had the option to consider cancelling
12 Limerick 2?

13 Q Well, that was a decision in that time period
14 that could have been made by the company. Would you agree
15 to that?

16 A I suppose it is a decision that we could have
17 considered, but it would have had some very, I think, adverse
18 implications and it could not have been made alone by the
19 company, because I think such a drastic decision, if we had
20 wanted to make it, would have certainly had to involve
21 regulatory authorities; it certainly would have had to
22 involve the NRC and the Pennsylvania Commission before we
23 would take such a drastic step.

24 Q Concerning the Pennsylvania Commission, I assume
25 that your response indicates that you would approach them in

1 terms of trying to recover the sunk costs on the cancelled
2 unit?

3 A. I'm just referring to the basic decision to
4 cancel and whether that was a satisfactory course of action,
5 what implications it might have had on our ability to supply
6 our customers.

7 I know the Commission in the '70s -- and I can't
8 remember the exact time frame -- had a very lengthy investiga-
9 tion going on statewide -- it was ID-something -- about the
10 utility's construction programs and capacity additions.

11 My recollection is that they were very concerned
12 about the utility's plans. I think this was when Lewis Carter
13 was Chairman. An investigation went on for a long time and
14 maybe it was never concluded, but the word that I remember
15 was that the Commission was very much interested in what
16 plans we had. Nobody was talking about sunk costs at all.

17 I believe we would have had to have discussed
18 cancellation with the Commission.

19 Q. You previously described in your testimony the
20 company's decisions in the '70s to cancel the Fulton and
21 Summit plants.

22 Did the company come to the Commission first and
23 ask its permission before it made that decision to cancel
24 those plans?

25 A. No, because in those cases construction -- I

1 know in the Fulton case, I don't believe construction had
2 even started, and I believe that was the case with Summit.
3 There had been money spent on engineering, but construction
4 had not started and I don't believe we had a construction
5 license for either plant.

6 Q Would you agree that in an inflationary economy,
7 one effect of delaying plant construction is to increase
8 the ultimate cost of the project because of increases in
9 materials, wages and capital?

10 A I don't think that is a necessary conclusion.
11 A lot would depend on how much of the materials need to be
12 acquired. It would also depend on the construction techniques
13 used. Perhaps by stretching or delaying a schedule, perhaps
14 more efficient techniques can be utilized in building the
15 unit and managing the unit. Perhaps more efficient materials
16 and supplies or pieces of equipment could come on the market
17 in the interval. So that you might be able to buy the same
18 piece of equipment cheaper even though it is in an inflation-
19 ary environment.

20 I don't think you can come to any definite conclusion

21 Q So if I understand your response then, it is
22 your position that inflation would have no effect on a
23 deferral so that costs would not rise?

24 A I didn't say that. I just said I don't think
25 it is a necessary conclusion that delay will result in an

1 increase in the cost.

2 Q Let me direct your attention to Table 6 of your
3 testimony, Mr. Paquette.

4 A Yes.

5 Q On that table, you have a listing of GNP
6 deflator rates for the period 1970 to 1984. Looking down
7 that list, is it not true that many of those numbers are
8 above 5 percent in the period?

9 A Yes.

10 Q And in fact, in the last several years of
11 that decade -- in fact, in 1980 you go to 9.2 percent; in
12 '79, 86. Do you see what I'm referring to?

13 A Yes.

14 Q Don't you think that a deferral through those
15 periods might lead to increases in cost when it was begun
16 again?

17 A I stand on my previous answer. I don't think
18 it is necessarily true that it has to happen.

19 Q Would you accept that it could happen that in
20 periods of higher inflation, the deferral could lead to
21 increased costs due to inflation?

22 A I think it could, and I think it is also
23 possible it could result in a lesser cost.

24 Q Assuming a deferral, wouldn't the ultimate cost
25 of the plant also increase due to the compounding effect of

1 AFUDC?

2 A. That will depend on the trend in interest rates
3 over the project. You couldn't, again, make any conclusive
4 prediction on that, because you could have financed it --
5 if you kept it on the original schedule, you could have
6 financed it at interest rates that were higher than what
7 you might at a later date on a delayed construction basis,
8 and that will impact the rate that you apply AFUDC on and
9 that could well offset the impact of delay that is caused
10 by the compounding.

11 Q. If I understand your response, you are saying
12 that there would be no increase in cost to the company
13 by the effect of AFUDC? Is that your response?

14 A. I think I said that it isn't necessarily true
15 that it will result in an increase. It could be either way.

16 Q. I understand your testimony now to be that it
17 could increase the cost.

18 A. Yes, and it could decrease the cost.

19 Q. Would you agree that PECO's delays resulted
20 in a larger Limerick investment than would have occurred if
21 PECO had been able to maintain its schedule?

22 A. I have not made an analysis of that, so I can't
23 comment.

24 Q. So the answer is: you don't know the answer?

25 A. Yes.

1 Q If these delays resulted in an increased cost,
2 would you agree that PECO had to raise larger amounts of
3 capital in the years subsequent to the delay?

4 A That would depend on whether the company took
5 actions in other pockets of its construction program. Because
6 we didn't just finance Limerick. There were other projects.
7 You would have to look at the entire construction program to
8 make a definitive answer.

9 Q When you say "took other actions," do you mean
10 deferring other construction projects?

11 A Either deferring or eliminating such as we did
12 with the Fulton and the Summit projects.

13 Q Which would have the effect of reducing the
14 amount of construction monies being spent by the company in
15 the time period?

16 A Yes. So there could be an offset to the
17 increased capital necessary to finance a higher project
18 cost, if that was true.

19 Q Mr. Paquette, let me direct your attention to
20 page 22 of your testimony.

21 A Yes.

22 Q I believe on that page you indicate that the
23 major goal of your financial planning during this period
24 was to maintain your bond ratings.
25

1 A. Yes.

2 Q. And that's on lines 15 through 17.

3 Would you agree that your bonds were downgraded from
4 Aa to A in October of 1974 and from A to A-minus in 1976?

5 A. I believe you are quoting from the ratings given
6 to us by only one of the major rating agencies, that being
7 the Moody's -- no; I'm sorry -- well, you may have mixed
8 up two things.

9 Q. Would you agree that there were downgradings
10 in the company's bonds in that period?

11 A. Yes. In the period of the '70s, yes.

12 Q. Would you also agree that the company's bonds
13 were downgraded three times in the early 1980s from A-minus
14 to BBB-plus, in April of 1980; from BBB-plus to BBB in
15 June of 1981; and from BBB to BBB-minus in September of 1982?

16 A. Yes. That was the change in ratings by
17 Standard & Poor's.

18 Q. So there was a reduction in the company's bond
19 ratings as I've described?

20 A. Yes. But I think, as I've indicated in my
21 testimony, we were successful in both the S&P rating and in
22 the Moody's rating to maintain our A rating approximately
23 from 1974 to 1981.

24 That was a very, very critical and I think perhaps
25 the most important financial event that we were able to

1 accomplish in this period. Because in this period of
2 particularly the early '70s but then the middle and later,
3 those of us that were in the financial markets were very,
4 very fearful of what might happen if we lost an A rating.
5 As Mr. Abrams said earlier, there was no BBB or junk bond --
6 junk bonds even being BB -- but there was no junk bond
7 market at the time.

8 It was the consensus of the investment bankers that
9 for a utility to finance at all, it had to have an A rating.
10 To drop below that, it was felt that utilities would certainly
11 see a significant rise in their cost of capital but very
12 likely lose the ability to raise capital.

13 There was a time there when there just wasn't any
14 utility that was raising capital at any rating lower than an A.
15 A lot of purchasers, particularly institutional investors,
16 were not able to buy a security if it was rated lower than
17 an A rating. So we did everything we could to maintain that
18 A rating, and I think we were successful for quite a long
19 period of time.

20 Q But the things that you feared did come to pass
21 later in the mid part of that decade and later in the early
22 '80s, is that correct, which was the downgrading of the bonds?

23 A Yes. We did get a downgrading below the A
24 category, but interestingly enough, at that time the markets
25 changed.

1 Q. But you weren't able to --

2 A. Utilities did find, the market did find that
3 you could get to a BBB rating and there would still be capital;
4 but in the '70s nobody believed that that could happen.

5 Q. Let me direct your attention to page 30 of
6 your testimony and specifically lines 17 to 19.

7 A. What line on page 30?

8 Q. Page 30, lines 17 to 19.

9 A. Yes.

10 Q. You mention there a \$400 million revolving
11 loan/credit agreement which you negotiated through domestic
12 banks in 1980.

13 A. Yes.

14 Q. With that reference, let me ask you, Mr. Paquette,
15 how often and in what amount did you use this revolving
16 credit agreement?

17 A. We negotiated the revolving line of credit to
18 be used primarily as a backup sort of line of insurance in
19 the event that we were precluded from accessing the permanent
20 capital markets. It was to take care of an event like a real
21 earth-shaking event in the capital markets where just in
22 general capital wasn't available or if something particular
23 happened to the company that would preclude us.

24 As a result, we did not intend to use it frequently,
25 but there were times when we did borrow \$100 million or

1 \$200 million for short periods of time either between
2 financings or waiting for a financing to take place.

3 I don't have the exact record, but it was not used
4 very frequently.

5 The same was true of the \$100 million Eurodollar
6 Revolver. We did borrow under it, but it wasn't used
7 extensively.

8 MR. DELANEY: For both of those agreements, Mr. Hall,
9 could you provide us details of how often and how much they
10 were used by the company in the period we are discussing
11 here, which is the references on page 30, lines 17 to I
12 think 20 about the Eurodollar Revolver and the \$400 million
13 revolving loan/credit agreement?

14 My question would be how often the company used them
15 and in what amounts.

16 MR. HALL: Yes, we can do that.

17 MR. DELANEY: Thank you.

18 BY MR. DELANEY:

19 Q Let me direct your attention to pages 30 and 31.
20 On those pages you discuss the innovative financing that
21 the company developed. Among the things you mention are
22 tax-exempt pollution-control notes that PECO issued in 1972
23 and also in 1977 and 1981.

24 Can you tell me, if you know, Mr. Paquette, is this
25 type of financing unique to PECO or is it a common type of

1 financing which has been used by other electric utilities
2 in this time period?

3 A. We were not unique, but I believe with the
4 1972 financing we were one of the first utilities in the
5 state to take advantage of it. It certainly was also
6 utilized by other utilities around the country.

7 Q. Going to page 31, you mention at the top of
8 that page the use of floating rate, monthly-demand, pollution
9 control notes.

10 When were these notes issued?

11 A. It certainly has been within the last three or
12 four years.

13 Q. And in what amounts were they issued; do you
14 know?

15 A. I believe we have a total of about \$250 million--
16 I think we have about \$250 million outstanding today.

17 If you give me a minute, I think I can check the
18 number.

19 Q. Certainly.

20 (Witness perusing document.)

21 A. I must correct that number. It is about
22 \$150 million. The listing of those are included on page
23 B-19a of Exhibit TPH-2.

24 Q. And you are responding to the prior question
25 about the floating rate, monthly-demand, pollution control

notes?

1 A. Yes. There are five separate issues. They
2 are called variable rate due the Year 2012, 2013, et cetera,
3 and the total of them is about \$159 million.

4 Q. Also right under there, you indicate as
5 No. 4 on the top of page 31, "\$10 depository preferred stock
6 to open up sales to smaller, retail purchasers."

7 When were these securities issued, Mr. Paquette?

8 A. Again, in the '80s. There have been three
9 separate issues, and I think the first one was about three
10 or four years ago.

11 Q. And the leasing agreements which you describe
12 on lines 7 through 10, when did they take place?

13 A. At various times. The lease of the combustion
14 turbines was initiated in 1972, as I recall; computer equip-
15 ment and fleet vehicles, throughout the whole period; the
16 magnesium oxide facilities, one lease was negotiated at the
17 end of 1984 and another one at the end of 1983, because there
18 were two separate facilities; and the nuclear fuel for
19 Peach Bottom and Salem, I think the Peach Bottom lease has
20 been in existence for I would imagine around eight years now,
21 the Salem lease for about three or four years.

22 Q. And finally, the Limerick Credit Agreement
23 described on page 31, do you see the reference?
24

25 A. Yes..

1 Q. When was this initiated?

2 A. We originally negotiated this in 1982 for a
3 bigger amount. It was intended, hopefully, to convince the
4 Commission when they were settling on the first Limerick
5 investigation that we -- we had hoped to be able to convince
6 the Commission that we had sufficient access to capital to
7 finish both Units 1 and 2 without a further delay of
8 Limerick Unit 2.

9 So we negotiated an agreement with the banks for a
10 line of \$1.2 billion. The Commission ultimately refused to
11 let us continue, as you know, with Limerick 2 at that time.
12 We were then forced to reduce the line of credit to
13 \$800 million. I think it was either resolved sometime in
14 '83 or early '84.

15 Q. If I understand your response, is it true that
16 the company initially approached the Commission with this
17 agreement to seek approval of an amount of \$1.1 billion in
18 terms of a proposed securities registration with the
19 Commission?

20 A. You said \$1.1 billion. I'm not sure if it was
21 \$1.1 billion or \$1.2 billion, but it was a bigger amount than
22 the \$800 million, yes.

23 Q. Let me direct your attention to page 20 of
24 your direct testimony, Mr. Paquette.

25 A. Yes.

1 Q. On that page, you describe the impact of the
operation of the ECR on the company's and PP&L's operation?

2 A. Yes, except that it wasn't called an ECR at
3 that time. It was some other name.

4 You're talking about the fuel adjustment clause?

5 Q. Yes.

6 Your description on that, I think, goes from about
7 line 2 to the balance of that page and onto the next page.

8 A. Yes.

9 Q. Could you turn to Table 11 in your testimony,
10 which I think refers to that testimony, that portion of
11 the testimony, Table 11?

12 A. Yes.

13 Q. Now, I think on the last line of that schedule,
14 which is Table 11, which is labelled "Average Per Year,"
15 you show an amount of purchases of 7,670 megawatt-hours.

16 Do you see the reference at the bottom of the first
17 column, the 7,670?

18 A. Yes; 7,670,000 kilowatt-hours.

19 Q. Would you agree, subject to check, that that
20 averages to 875 megawatts of around-the-clock purchases?

21 A. What was the number?

22 Q. 875 megawatts.

23 A. 875 Mw at 100 percent capacity factor?

24 Q. Well, around the clock.
25

1 A. And around the year?

2 Q. Right.

3 A. I will accept it subject to check, yes.

4 Q. Would it be true that these purchases were
5 all made pursuant to the PJM contracts in effect at the
6 time?

7 A. I believe they were. There could have been
8 minor amounts in here for purchases from some of our
9 neighboring utilities that weren't technically under the
10 PJM agreement, but the vast majority would be under the
11 PJM agreement, yes.

12 Q. Would it be also true that the PJM contracts
13 have not changed substantially since that time in their
14 purchase evaluation in terms of what it cost to purchase
15 electricity through the interchange?

16 A. I believe that is true. The arrangement is a
17 split savings arrangement, but I'm not an expert on the
18 history, and I would like the opportunity, if that's an
19 important answer, to check the history of the agreement.

20 Q. And if you know, there is nothing in the PJM
21 agreement that restricts the private bilateral agreements
22 between two members such as your sale of the Salem output
23 previously to Jersey Central or PP&L's slice of system sale
24 to Jersey Central?

25 A. I believe that is true.

1 Q. Would it also be true to your knowledge that
2 nothing in the PJM agreement prevents private bilateral
3 arrangements between members and non-members?

4 A. I know that is done today, so it is permissible
5 today. I'm just not sure whether it was true throughout
6 this period of history that we're looking at.

7 Q. Would it also be true that you negotiated no
8 such private bilateral agreements to purchase power, though
9 you were purchasing substantial quantities of power in this
10 period?

11 A. I can't comment on that. I know in recent
12 years we have negotiated a number of purchases from parties
13 outside of the interconnection. I just don't recall how
14 far back in the history they go.

15 Q. On Table 11, the time period you examine there
16 is 1974 to 1980. You cannot answer the question for any
17 of those years?

18 A. No; I just don't recall whether in that period
19 we were also involved with two-party agreements with parties
20 outside the interconnection.

21 MR. DELANEY: Could you provide us that information,
22 Mr. Hall, whether in the time period identified on Table 11
23 the company had any existing bilateral agreements for the
24 purchase of the power that avoided the split savings valuation
25 in terms of what the company was paying for the power?

MR. HALL: Yes, we can do that.

1
2 MR. DELANEY: And also indicate how much was actually
3 purchased each year under those agreements.

4 BY MR. DELANEY:

5 Q Let's turn to page 27 of your testimony. On
6 page 27, you are discussing attrition of earnings due to
7 high inflation and delay or reduction in rate relief. I
8 think that discussion is on lines 13 through 16.

9 Do you see where I am referring?

10 A Yes.

11 Q I would assume that in speaking of inflation,
12 you are referring to the GNP deflator rates which we
13 previously examined in Table 6 of your testimony?

14 A Yes.

15 Q And I also would assume that in speaking of
16 attrition, you are referring to the results of the last line
17 on Table 7 of your testimony, if you want to turn to that?

18 A Yes.

19 Q And it is labelled "Deficiency," which is the
20 very last line on the bottom of the chart which is Table 7?

21 A Yes.

22 Q On that same chart, focusing on the line that
23 says "Depreciation," which is the seventh entry in the
24 column on the left-hand side, it says "Depreciation" and it
25 has a number of figures running through the time periods

there.

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A. Yes.

Q. Do you know, Mr. Paquette, during this period whether the company made a depreciation decision similar to the claims in this case which would reduce the depreciation expense?

A. No. I am not familiar with the history of our depreciation. There may have been -- I know every year, depending on the mix of the assets, it is possible that the specific depreciation rate could increase or decrease. So we could have seen what might appear to be a nominal decrease, but my recollection is that we did not make any significant reductions in depreciation rates in this period.

Q. Mr. Paquette, your response is that you don't remember or that you don't know?

A. I don't recall any, but we would have to check the records to be precisely sure.

MR. DELANEY: Could I ask you, Mr. Hall, to make that check?

MR. HALL: This is a check to determine what?

MR. DELANEY: The question was: during this period, did the company make any depreciation decisions similar to the claims in this case which would reduce the depreciation expense in the period on the chart?

MR. HALL: Similar to claims made in this case, you

1 mean --

2 MR. DELANEY: Which I think is referring to page 5
3 of Mr. Paquette's testimony.

4 MR. HALL: Do you mean reductions or lengthening
5 of the service life of facilities --

6 MR. DELANEY: Extending the depreciable lives of
7 generating stations as a result of the planned implementation
8 of life extension programs.

9 BY MR. DELANEY:

10 Q Mr. Paquette, if you know, is it the company's
11 policy to grant a general wage increase each year on
12 August 1st during the '70s and '80s?

13 A Yes. We have had a practice of granting a
14 general wage increase for people below certain levels of
15 salary automatically on -- not automatically, but granting
16 an increase that is intended to offset the impact of
17 inflation, yes.

18 Q Is it the company's practice in this period
19 to grant merit increases to any or all of its employees?

20 A Well, the company has what I would call a
21 standard wage and salary plan that does permit employees who
22 qualify through performance to earn merit increases.

23 Q So the answer is yes, as I understand it?

24 A Yes. We have a plan that allows employees to
25 earn merit increases based on performance.

1 Q. This plan was effected in the period 1970 to
2 1980?

3 A. We have had plans in effect throughout the
4 period, yes.

5 Q. And merit increases were awarded to employees
6 in this period?

7 A. Yes; to those who qualified, yes.

8 Q. During the construction of Limerick 1 from
9 1974 on, is it true there have been no general layoffs of
10 employees announced by the company such as Met-Ed had to
11 do with its TMI work force?

12 Q. I am not familiar with what Three Mile Island
13 and GPU and Met-Ed did. The company has not had a specific
14 layoff program. However, during the period of the '70s we
15 did have very tight controls on the hiring of new employees
16 and we were successful through restrictions on hiring and
17 through at least one early retirement program, we were
18 successful in reducing the number of employees from 1972,
19 I believe, through 1979 by almost a thousand people.

20 Q. Tell me, Mr. Paquette, has there been any year
21 since 1975 when no merit increases were granted to any
22 employee by the company?

23 A. I don't believe there is any year that we have
24 not granted some merit increase to some employees.

25 MR. DELANEY: May I have a moment, Your Honor? I

am looking for an exhibit that I have marked.

1 JUDGE MATUSCHAK: Yes.

(Pause.)

2 MR. DELANEY: At this time I would like to have marked
3 for identification as Staff Exhibit No. 13 an interrogatory
4 response by the company which is in response to IR-OCA-10-3.

5 JUDGE MATUSCHAK: Very well.

6 (Whereupon, the document was
7 marked as Staff Exhibit No. 13
8 for identification.)

9 JUDGE MATUSCHAK: Is this a good time for a recess?

10 MR. DELANEY: I had only a small additional amount of
11 cross for Mr. Paquette, but we can break now, if you wish.

12 JUDGE MATUSCHAK: Before we do take a break, we had
13 some off-the-record discussion about the possible cancellation
14 of the hearings on the 30th and 31st. Have we resolved that
15 matter?

16 MR. HALL: If we can finish Mr. Paquette today --
17 and I understand the other parties are willing to defer
18 Dr. Perl to the 6th through the 9th; and I've got to make
19 a telephone call to see if he is available -- then I think
20 the answer is yes. Am I correct on that?

21 MR. DELANEY: That is my understanding, Your Honor.

22 MR. HALL: We will know when we come back from
23 break, Your Honor.

24 JUDGE MATUSCHAK: Fine. Then let's take a ten-
25 minute recess.

(Recess.)

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JUDGE MATUSCHAK: Are we ready to proceed?

MR. DELANEY: Your Honor, I think Ms. Ferkin wanted to make a remark before I continued to cross-examine Mr. Paquette, with your indulgence.

MS. FERKIN: Thank you, Mr. Delaney.

Your Honor, I simply wanted to note for the record that we provided you and the parties with a copy today of a document in which we, number one, request a postponement for filing date of certain of GEC's testimony; and, secondly, we withdraw a previously filed motion to compel answers to interrogatories.

That has been provided to you and the parties today, and filed with the Commission.

MR. HALL: Your Honor, we will review the motion. We have not yet had a chance to do so. It is not something that I can do off the top of my head here.

We will be prepared to provide Your Honor with a response to the GEC position early the week after next.

JUDGE MATUSCHAK: Very well.

MS. FERKIN: Thank you, Your Honor.

BY MR. DELANEY:

Q Mr. Paquette, I think right before the break I distributed and had marked for identification Staff Exhibit 13, a response to an OCA Interrogatory, which I think is OCA 10-3.

1 Now, focusing on general wage increases, I believe
 2 the interrogatory response I just gave you presents the
 3 percentage wage increase and the GNP price deflator for
 4 1976 through 1985, which is set up on a chart in that inter-
 5 rogatory response.

6 Do you see what I am referring to?

7 A. Yes.

8 Q. Looking at your Table 6 to your testimony where,
 9 again, you have listed GNP deflator rates, --

10 A. Yes.

11 Q. -- would you agree that the entries in the
 12 columns labeled "GNP" on Staff Exhibit 13 are approximately
 13 the same amounts that you show on Table 6?

14 A. Yes; they are approximately the same. I think
 15 1981 is slightly different, but many years look the same.

16 Q. Looking at the last chart on that Staff Exhibit
 17 13, the last column on the right side, is it not so that
 18 that indicates that there has not been a year in the period
 19 examined in the interrogatory, which is 1976-1985, in
 20 which there has not been a wage increase granted to the
 21 company's employees?

22 A. That's correct. There has been a wage increase
 23 granted to the employees that this applies to, which isn't
 24 all employees; but they have received one every year.

25 Q. Following up on your response, which employees

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1 does this apply to?

2 A. It applies to employees who are below a speci-
3 fied salary level only. I just can't recall the level,
4 but it is basically -- generally, the management and super-
5 visory employees do not get the automatic increase on
6 August 1. They are entirely on a merit program that takes
7 effect at other times during the year. And then the
8 officers' salaries are set by the Board in the month of
9 April, as of April 1.

10 Q. Directing the question to the group of employees
11 that you have just identified as not being encompassed in
12 Staff Exhibit 13, was there any period in the time examined
13 in the interrogatory when those employees did not receive
14 any merit increases?

15 A. Do you mean did receive?

16 Q. Did not.

17 A. Could you repeat the question?

18 Q. In the time period examined in Staff Exhibit 13,
19 for the group of employees that you have previously iden-
20 tified as not being encompassed in the response, was there
21 any year in that period where none of those employees were
22 granted merit increases?

23 A. Every year there are employees who receive no
24 merit increase, either because they are at the top of their
25 particular salary grade or that their performance was such

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1 that they weren't entitled to one.

2 But in terms of the body of employees, every year
3 there were some dollars available for merit increases for
4 this other group.

5 Q. Returning to --

6 A. I should make one other point clear, that the
7 condition I'm talking about of separation of employees is
8 a relatively new thing. We have gotten to where we are
9 today through a series of transitions, and I would guess
10 that roughly before 1980, or somewhere in that period, all
11 employees, except for officers, received the general wage
12 increase on August 1.

13 Then since that time we have gradually come over to
14 the point where we are today of having only the employees
15 generally below the supervisory level receive the August 1
16 increase, which is the condition that exists today.

17 Q. You indicated that that took effect in the post-
18 1980 years?

19 A. Yes.

20 Q. Would it be true that in the time period
21 examined in Staff Exhibit No. 13, that the company did not
22 seek any wage concessions from its employees?

23 A. Could you define a "wage concession" for me?

24 Q. Either foregoing increases or reducing salaries.

25 A. We do not have a union contract under which such

1 a thing would be negotiated.

2 It is true, we do not in general lower salaries of
3 our employees. We increase them as indicated on this
4 table.

5 Q Looking at Staff Exhibit 13 again, is it not
6 true that for a number of years the company granted wage
7 increases above the level of inflation?

8 A That's true in some years. In other years, as
9 the table indicates, the increases had been below the level
10 of inflation.

11 The standard that we use in setting the amount of
12 the August 1 increase is not simply what is the rate of
13 inflation.

14 We do look at the CPI Index, because we think that
15 impacts employees more than the GNP.

16 As you will notice, there are some years when the
17 amount of the increase has been slightly higher than the
18 CPI Index, and there have been other years where it is
19 lower.

20 In general, when the CPI Index is rising at high
21 levels, we have not given as much as the CPI increase. In
22 other years when the CPI is coming down, we are slightly
23 ahead.

24 I think if you look at the average over this period,
25 you will see that the average wage increase is very close

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1 to the average increase in the CPI. That is one factor.

2 The other factor is that we do try to remain com-
3 petitive in our wage rates with the salary increases given
4 by other utilities. The one that we watch closest is the
5 utility that is across the river from us in Philadelphia;
6 that is Public Service of New Jersey.

7 Their contract is a negotiated one, and we feel it
8 is a good proxy for the true market conditions that exist
9 in our environment; and so we balance between what is
10 happening with the CPI Index and what we see happening with
11 contracts of utility employees both in New Jersey and
12 around the country.

13 Q Would you agree, Mr. Paquette, subject to check,
14 that the company's wages have increased 107.7 percent,
15 while the GNP price deflator results in an 84.4 percent
16 increase?

17 A I will take it subject to check.

18 Q And as I understand your testimony concerning
19 the company's condition through this period, that all of
20 this was taking place while the company was in a weak
21 financial condition.

22 A The company was certainly not in the best of
23 financial health during this period, but it certainly was
24 also important that we maintain a proficient labor force
25 and attract the kinds of people that are necessary to

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1 continue to operate an ongoing business.

2 So it was necessary for us to try to pay competi-
3 tive wages, because we have to look at the long-run as well
4 as the short-run situation.

5 Q On page 31 of your testimony you discuss the
6 company's announced delays in the Limerick construction
7 schedule in 1976 and '78. Do you see that portion of the
8 testimony?

9 A Yes.

10 Q As I understand it, the purpose of this testi-
11 mony is to respond to the criticisms in the Commission's
12 Limerick investigation order concerning the company's de-
13 cision to delay construction of those units in 1976 and
14 '78; is that correct?

15 A Are you talking about what is just on page 31?

16 Q You discuss that issue generally in probably
17 ten pages or so from that page.

18 A Well, the purpose --

19 Q Would you agree that one of the purposes of
20 presenting this testimony is to respond to those criticisms?

21 A The purpose of my testimony is to provide data
22 for the record, and for the Commission, to have in evalu-
23 ating the many issues that will be presented in this case
24 as it decides the proper treatment for the Limerick No. 1
25 investment as we try to put it in the rate base.

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1 Q Let me direct your attention to, I believe,
2 page 37 of your testimony where you are asked whether you
3 agree with the comments of the ALJ and the PUC in the first
4 Limerick investigation.

5 Do you see the reference that begins on line 2?

6 A Yes.

7 Q As I understand, the purpose of that portion of
8 your testimony at least is to respond to those criticisms;
9 is that not correct?

10 A Yes.

11 Q Mr. Paquette, would you agree that when a util-
12 ity makes a decision which has the potential for a large
13 impact in terms of rates and service on its ratepayers,
14 such as a decision to delay construction of a generating
15 plant, that it should consider both the interests of its
16 shareholders and ratepayers before making that decision?

17 A Yes.

18 Q On pages 35 and 36 of your testimony, you state
19 there that in 1978 the company announced a two-year comple-
20 tion deferral pursuant to a general reduction in the com-
21 pany's construction program.

22 A Which particular line are you referring to?

23 Q It begins on the bottom of page 35, actually,
24 and goes to the top of 36. That is the sentence that
25 bridges the two pages.

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1 A. Yes.

2 Q. Now, you further state that most of the reduc-
3 tion was, however, in non-Limerick construction programs.

4 If that is so, why did the company announce a two-
5 year construction deferral because of reductions in con-
6 struction programs if they were not involved with Limerick?

7 A. Because of the fact that our financial condition
8 had not improved, basically, from 1974, we announced a re-
9 duction in -- a planned reduction in 1978 in order to con-
10 tinue with our program of maintaining our credit rating.

11 As we continually approached the rating agencies
12 and others in the financial markets, we still were getting
13 the message that Philadelphia Electric should try to mini-
14 mize its capital spending relative to its income; and so
15 we felt in 1978 that it would be to our advantage and to
16 our customers' advantage to announce a further reduction.

17 However, we tried, and I think we were successful
18 in making that announcement without impacting the dollars
19 available to the Limerick project so that we could keep it,
20 at least in the field, keep it on an '83/'85 schedule.

21 Q. Now, as I understand it, Mr. Paquette, you
22 testified as a witness in the Commission's prior Limerick
23 investigation; is that correct?

24 A. Yes, I did.

25 MR. DELANEY: At this time, Your Honor, I would

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1 like to have marked as Staff Exhibit 14 "PECo Statement
2 No. 9" from the Commission investigation at I-80100341.

3 JUDGE MATUSCHAK: Very well.

4 (Whereupon, the document was marked
5 as Trial Staff Exhibit No. 14 for
6 identification.)

7 BY MR. DELANEY:

8 Q. Mr. Paquette, does that represent all of your
9 direct testimony filed in that proceeding?

10 A. It appears to be; yes.

11 Q. I would assume that the date of February 1981
12 in the lower left-hand corner of the front page would indi-
13 cate that the testimony had been prepared at that time?

14 A. I believe that was when it might have been sub-
15 mitted.

16 MR. HALL: Yes; I believe that's right.

17 THE WITNESS: Yes; which was very close to when it
18 was prepared.

19 BY MR. DELANEY:

20 Q. Now, you also were cross-examined concerning
21 that testimony in the 1980 Limerick investigation; is that
22 true?

23 A. Yes.

24 MR. DELANEY: Your Honor, at this point I would like
25 to have marked for identification as Staff Exhibit 15 por-
tions of Mr. Paquette's cross-examination from 1981,

j66

1 which would be portions of the transcript from the hearing
2 date of Tuesday, March 31, 1981, before Administrative Law
3 Judge Klovekorn.

4 JUDGE MATUSCHAK: Very well.

5 (Whereupon, the document was marked
6 as Trial Staff Exhibit No. 15 for
7 identification.)

8 BY MR. DELANEY:

9 Q. Let me direct your attention to pages 38 and 39
10 of your current testimony.

11 A. Current?

12 Q. Correct. I think on the paragraph that begins
13 on the bottom of page 38 and goes to the top of page 39,
14 I think that you are discussing the Commission's order on
15 that page; and on lines 15 through 18, you --

16 A. Of which page?

17 Q. Page 38.

18 -- you describe a comparison of the company's finan-
19 cial condition for the periods April of 1976, May of '78
20 and August of '82.

21 A. Right.

22 Q. Then in the next paragraph you indicate: "As
23 shown, our financial position was substantially the same
24 in each period." And that discussion continues on to page
25 39, and I think you referenced higher on page 38, a Table
16. Could you turn to that, please?

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1 A. (Witness complying.)

2 Q. On that Table 16 is a schedule which has a num-
3 ber of financial indicators for the company in columns
4 labeled "April 1976," "May 1978" and "August 1982;" is that
5 correct?

6 A. Yes.

7 Q. In the period 1981-82, is it true that the
8 Commission granted the company approximately \$400 million
9 in rate relief effective in 1981 and '82?

10 A. (No response.)

11 Q. I can give you the references. The first one
12 is the order at Docket No. R-811686, Commission Opinion
13 and Order entered May 21, 1982, which increased the com-
14 pany's rates \$221.7 million.

15 The second order was at Docket No. R-80061225,
16 Opinion and Order entered April 24, 1981, which increased
17 the company's rates \$188 million.

18 A. The date of the first one referred to was what
19 again?

20 Q. May 21, 1982.

21 A. '82. And the total dollars that you came up
22 with?

23 Q. I believe it is \$221.7 million.

24 A. Yes. And the second one, \$180-something-million?

25 Q. \$188 million.

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A. Yes.

Q. Which was entered --

A. That was the final orders, yes; I agree.

Q. As I understand your testimony, these large amounts of rate relief did not substantially improve the company's position in 1982?

A. In some ways, it did. As you can see, our earnings per share were higher in August of '82. Of course, the second rate increase that you just referred to didn't take effect until May of '82, so that the 12 months ending August data would have reflected only a few months of that second rate increase. But it would have reflected a full year of the increase that became effective in April of '81.

As you can see, earnings per share were higher than in the prior two years. However, the mortgage coverage ratio was in between the two years. The SEC coverage without AFUDC was between the two. Common stock price was below the other two years, or the other two columns.

So it was a mixture of being better in some categories and being not so good in other categories. I think you could maybe conclude that we were a little bit better off in August of '82. The whole point of this table being that the Commission thought it was appropriate to suspend construction in August of '82 when we were either equal or

1 better than we were in '76 and '78 when we made the deci-
2 sion to suspend.

3 Q As I understand your response then, the effects
4 of the rate relief in '82 and '81 did change some indica-
5 tors, but did not substantially improve the company's
6 financial position?

7 A Overall, it did not substantially improve it
8 as of August of '82, but since that time we have continued
9 to show some improvement.

10 Q When you say "since that time," what kind of
11 time period are you talking about?

12 A To today, to December of 1985. Some measures
13 are improved; others are not as good.

14 Q In the two-and-a-half year period since August
15 of 1982, the two years and four months.

16 A Three years.

17 Q Three-and-a-half that you are responding to.

18 A Yes.

19 Q Going back to the Commission's Limerick order,
20 do you recollect whether that order was appealed by the
21 company?

22 A Yes, the 1982 order was appealed.

23 MR. DELANEY: Your Honor, I would like to have
24 marked for purposes of identification a number of the
25 Court documents in that case.

1 As Staff Exhibit No. 16, I would like to have
2 marked the brief for the company, portions of the brief for
3 the company, at 2365 C.D. 1982.

4 JUDGE MATUSCHAK: So marked.

5 (Whereupon, the document was marked
6 as Trial Staff Exhibit No. 16 for
7 identification.)

8 MR. DELANEY: As Staff Exhibit No. 17, I would like
9 to have marked the company's reply brief at 2365 Common-
10 wealth Court 1982. It is actually portions of the company's
11 reply brief.

12 JUDGE MATUSCHAK: So marked.

13 (Whereupon, the document was marked
14 as Trial Staff Exhibit No. 17 for
15 identification.)

16 MR. DELANEY: Finally, as Staff Exhibit No. 18, I
17 would like to have marked a portion of the company's answer
18 and application opposing petitioner's application for stay
19 pending appeal in the Supreme Court of Pennsylvania at No.
20 23 E.D. Appeal Docket 1983, which is one page and
21 Mr. Paquette's affidavit attached to the back of it.

22 JUDGE MATUSCHAK: Very well.

23 (Whereupon, the document was marked
24 as Trial Staff Exhibit No. 18 for
25 identification.)

MR. DELANEY: Your Honor, that concludes my cross-
examination of Mr. Paquette.

I would at this time move to strike those portions of

1 his testimony that address the prudence of the company's
2 decisions to delay Limerick construction in 1976 and '78.

3 JUDGE MATUSCHAK: We will defer ruling on the mo-
4 tion to strike.

5 MR. DELANEY: At this time I also would move into
6 evidence Commission Staff Exhibits 13, 14, 15, 16, 17 and
7 18.

8 MR. HALL: Your Honor, I would object to the moving
9 into evidence of Staff Exhibits 15, 16, 17 and 18. None
10 of those exhibits were used in the cross-examination of
11 Mr. Paquette in any way. Therefore, I think it is inappro-
12 priate for Staff --

13 JUDGE MATUSCHAK: I'm having trouble hearing you.
14 We're having some competition over there.

15 MR. HALL: Your Honor, I would object to the moving
16 into evidence of Staff Exhibits 15, 16, 17 and 18 on two
17 grounds.

18 First, Mr. Delaney did not use these exhibits in any
19 way in his cross-examination of Mr. Paquette. They have
20 not been authenticated. There has been no offer as to what
21 they are expected to prove or what issues they are directed
22 to.

23 Secondly, Mr. Delaney has very selectively pulled
24 portions of Mr. Paquette's earlier cross-examination and
25 portions of the company's briefs, but has not offered the

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1 documents to which the briefs were responding to, those
2 documents filed by the Commission's staff with the Court;
3 and, therefore, Your Honor is not given the opportunity to
4 understand the context of these particular documents here.

5 I think if Mr. Delaney wants to put into this
6 record the record before the Commonwealth and Supreme
7 Court, he should do it in its entirety; and if he wants to
8 put into this record the cross-examination of Mr. Paquette
9 from the first Limerick investigation, he should do that
10 as well in its entirety.

11 MR. DELANEY: Answering the second thing first,
12 Your Honor, the company certainly is free to offer whatever
13 additional portions of any of the documents that I have
14 offered as to be responsive, and the Staff would certainly
15 have no objection to that.

16 Foundations were laid through the cross-examination
17 of Mr. Paquette, in which he admitted that the things had
18 been appealed, laying the foundation for the fact that
19 there were appellate documents filed by the company in the
20 matter. He indicated that he had previously filed direct
21 testimony in the Limerick 1 investigation, which is 14.

22 He indicated he had been cross-examined on this
23 testimony, which is 15.

24 And the appellate materials, he indicated that an
25 appeal had been taken of the entire matter.

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1 If the company wants to supplement them with other
2 materials, I certainly wouldn't object.

3 MR. HALL: Your Honor, simply because an appeal has
4 been taken or Mr. Paquette has been cross-examined doesn't
5 make it relevant to this proceeding in any way, or to
6 Mr. Paquette's testimony.

7 The only appropriate use of putting material into
8 the record during the cross-examination of a witness is to
9 use it to cross-examine that witness and to contest the
10 various parts of his testimony.

11 No foundation has been shown as to what relevance
12 these documents have, either to this proceeding generally
13 or to Mr. Paquette's testimony.

14 MR. DELANEY: Your Honor, I think all of them are
15 responsive to portions of his testimony. I think that
16 those can be examined, and they are all responsive to por-
17 tions of his current direct testimony.

18 I did ask him questions which established their
19 existence and laid some foundation for them. I don't think
20 it is necessary that I take him through every part of them.

21 The company can supplement a response in terms of
22 its own exhibits.

23 JUDGE MATUSCHAK: We will overrule the objection to
24 Staff Exhibit 15.

25 What about the copies of pleadings that were filed,

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1 16, 17 and 18?

2 MR. DELANEY: Your Honor, the last portion of the
3 questions I asked Mr. Paquette concerned, I believe, his
4 Chart No. 16, which talked about the company's financial
5 conditions in the periods '76, '78 and '82.

6 In many of the materials filed with the Commonwealth
7 Court as part of its substantial evidence challenge to the
8 Commission's ruling about the financial ability of the com-
9 pany to construct simultaneously the two plants, it was
10 advancing arguments that the substantial rate relief in the
11 periods had substantially improved the company's financial
12 position, such that there was no basis for the Commission's
13 conclusions.

14 I can give you the references in the exhibits. I
15 think it is relevant to see what kinds of representations
16 were being made to the appellate courts in this time period.

17 JUDGE MATUSCHAK: There is some question in our mind
18 as to the relevancy of pleadings which were not actually
19 evidence in the previous case.

20 We will defer ruling on Exhibits 16, 17 and 18.

21 MR. DELANEY: Very well.

22 MR. HALL: Would Your Honor permit the company to
23 offer as its exhibit the entire cross-examination --

24 JUDGE MATUSCHAK: On 15, we will permit the company
25 to file the entire cross-examination.

1 MR. HALL: We will do that, Your Honor.

2 JUDGE MATUSCHAK: What is your position, Mr. Hall,
3 as to the admissibility of briefs that are filed in pre-
4 vious cases. Is that a matter of evidence, or is that a
5 matter of argument that should be presented?

6 MR. HALL: Your Honor, I think that is a matter of
7 argument, although it might conceivably become a matter
8 that is relevant to Your Honor's ruling on the motion in
9 limine, at which time the positions of the various parties
10 and the level of argument before the appellate agencies
11 may have some relevance.

12 At this point I see no relevance to the documents
13 that Mr. Delaney is offering here. As I understand it,
14 Mr. Delaney is trying to assert that the company has been
15 inconsistent in its position before the courts that it
16 could continue with the Limerick 2 Unit back in the early-
17 1980s, despite a Commission ruling that said no, the
18 company couldn't, which was affirmed by the Supreme Court.

19 So while we may have had a different view, in point
20 of fact, our view was rejected, and after final appeal.

21 MR. DELANEY: In response, Your Honor, I would note
22 that we were very surprised when we received the company's
23 brief and it had these extra record materials in it, none
24 of which were in the Limerick 1 record. So it was being
25 advanced as new evidence at the time of the filing of the

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1 brief, since, as you can see looking at page 23 of Exhibit
2 16, that there are no record references, and there could
3 not be because this was extra record evidence being
4 offered in an appellate matter.

5 The same is true of the reference in 16 -- actually,
6 in 17.

7 MR. HALL: Mr. Delaney, I'm not sure what the rele-
8 vance of that was, but, obviously, the brief is discussing
9 the Commission's bringing of evidence in from the rate
10 case.

11 MR. DELANEY: Let me respond to the last exhibit,
12 though, Your Honor.

13 Exhibit 18, in my view, contains similar language
14 and is an affidavit of Mr. Paquette. It is not --

15 MR. HALL: As the Court rules permit.

16 JUDGE MATUSCHAK: We have some concern as to whether
17 briefs themselves should be admitted in evidence, or
18 whether they should be referred to in any argument the
19 parties have.

20 Ordinarily, briefs are not part of the record.

21 We will defer ruling on 16, 17 and 18.

22 MR. DELANEY: Very good. That's all I have. Thank
23 you, Your Honor.

24 (Whereupon, the documents marked as
25 Trial Staff Exhibits Nos. 13, 14
and 15 were received in evidence.)

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1 JUDGE MATUSCHAK: Consumer Advocate.

2 MR. WERSAN: Thank you, Your Honor.

3 Your Honor, I would like to start off by showing
4 Mr. Hall a copy of a document which we received through
5 discovery under an agreement with the company, which we
6 would like to use in the cross of Mr. Paquette. But I
7 would like to give Mr. Hall an opportunity to review it.

8 (Document shown to Counsel Hall by Counsel Wersan.)

9 MR. WERSAN: Your Honor, I ask your forbearance.
10 We provided the company with documents approximately two
11 weeks ago which we received under agreement, and we gave
12 them notice of our use of them; but the company had not
13 gotten back to us about whether or not they needed any
14 kind of protection for these documents. So I am giving
15 the company an opportunity at this time to express their
16 desired use in terms of making them exhibits and whether
17 or not they need any protection.

18 MR. HALL: Mr. Wersan's statement is correct. We
19 reviewed this one, and it is fine.

20 MR. WERSAN: All right. Then, Your Honor, at this
21 time I would like to mark for identification OCA Exhibit
22 66, which is a copy of a document provided to the Office
23 of Consumer Advocate by Philadelphia Electric Company.

24 I would note that names of non-Philadelphia Electric
25 persons or other companies have been deleted in order to

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1 avoid any problems of confidentiality.

2 JUDGE MATUSCHAK: Very well.

3 (Whereupon, the document was marked
4 as OCA Exhibit No. 66 for
5 identification.)

6 CROSS-EXAMINATION

7 BY MR. WERSAN:

8 Q Mr. Paquette, have you ever seen this document
9 before?

10 A Yes, I have.

11 Q In the lower left-hand corner there are the
12 initials "WCA." Would you know who that person would be?

13 A Yes. That was a gentleman named Wayne Astley,
14 a former Vice-President, now retired.

15 Q And I notice that you are copied on this docu-
16 ment in the lower left-hand corner, along with Mr. Kasum,
17 who used to hold the position currently occupied by
18 Mr. Rush.

19 A That's correct.

20 Q In the first sentence of this memo, which is
21 dated August 12, 1976, it states, "At this meeting I stated
22 that PE should not move Limerick up to 1981 due to the
23 effect on earnings per share of putting such a large unit
24 in before actually needed."

25 Could you tell me what is meant by that statement
in terms of "due to the effect on earnings per share" and

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1 "putting such a large unit in before actually needed"?

2 A. I believe that Mr. Astley was referring to the
3 fact that -- at this time, in 1976, the scheduled service
4 date for Limerick 1 was 1983. So what he was referring to
5 was that if we advance the unit, the commercial operation
6 date of the unit, from 1983 up to 1981, it would have an
7 effect on earnings per share by the advancement because of
8 the termination of AFUDC and the expensing of the operating
9 and maintenance expenses of the unit, which would have an
10 adverse impact on earnings per share unless the Commission
11 granted us a rate increase to support putting the unit in
12 service in 1981.

13 So that was his way of explaining the financial im-
14 pact of advancing a unit.

15 Q. Would I interpret that to mean when you dis-
16 cussed whether or not the Commission would allow the unit
17 in rates, that it contemplates the possibility of some
18 excess capacity adjustment or some revenue adjustment by
19 the Commission?

20 A. I don't think it means that at all. He was just
21 stating a fact, that the unit would have an impact on earn-
22 ings per share. I don't think he was making a judgment at
23 all as to whether we would or we wouldn't get full recovery
24 of that.

25 Q. What is meant by "putting such a large unit in

1 before actually needed"? Needed for what?

2 A. At that time, our load projections, as I recall,
3 our load projections indicated that Limerick 1 was needed
4 to maintain our minimum standard of reserve margin in 1983.

5 Q. Along that line, Mr. Delaney made an exhibit of
6 your testimony from the first Limerick investigation, and
7 identified it as Staff Exhibit 14.

8 Am I correct that you appended a portion of your
9 statement from the original Limerick investigation in your
10 current testimony?

11 A. Yes.

12 Q. But you did not include the entire document; is
13 that correct?

14 A. That's correct. We did not put the qualifica-
15 tions and the general discussion of the company's financial
16 condition, but concentrated on the earlier testimony that
17 related to the decisions around the three delays.

18 Q. Am I correct that you didn't put in the last
19 page of testimony in that document, page 18, which I would
20 like to refer you to now?

21 A. You are correct.

22 Q. Would I be correct that the first main paragraph
23 on page 18 of your original testimony stated that, "If
24 Limerick were in service this summer, our installed capacity
25 would amount to about 9800 megawatts, which would represent

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1 a reserve margin of about 66 percent above the 1981 expected
2 peak demand;" is that correct?

3 A. Yes.

4 Q. Mr. Paquette, you discuss the financial diffi-
5 culties that Philadelphia Electric stated it was in during
6 the time period when the decisions to delay Limerick were
7 announced; is that correct?

8 A. Yes.

9 Q. When the company was in this financial position
10 that you have described in your testimony, did the company
11 inform its shareholders of its precarious situation?

12 A. I don't think I would describe the condition as
13 precarious. But I do believe that we pointed out at various
14 times the need for the company to improve its earnings,
15 which required rate relief and other measures.

16 I believe we did point it out.

17 MR. WERSAN: Your Honor, at this time I would like
18 to mark for identification OCA Exhibit No. 67, which is a
19 portion of the Philadelphia Electric Company Annual Report
20 for 1977.

21 JUDGE MATUSCHAK: Very well.

22 (Whereupon, the document was marked
23 as OCA Exhibit No. 67 for
24 identification.)

24 BY MR. WERSAN:

25 Q. Do you see this 1977 Annual Report excerpt?

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A. Yes.

Q. What I have enclosed is a letter from the Chairman of the Board to the shareholders as included in that document.

A. Yes.

Q. I would like to refer you to the first paragraph of the first page of the letter from Chairman Gilkeson. Doesn't he state, as of March 1, 1978, that "1977 was a year of continued progress for Philadelphia Electric Company. Electric kilowatt-hour sales set new records." And then in the last sentence of that first paragraph, "Reflecting this progress and our confidence in the future, the quarterly dividend was increased from 41 cents per share to 45 cents per share beginning in June." Is that correct?

A. That is correct. That was the first dividend increase that the company had had in ten years.

Q. And in the beginning of the third paragraph he states, "For the year, common stock earnings were \$133 million, an increase of 6 percent over last year." Is that correct?

A. That's true. Of course, we go on to point out that the 1977 earnings benefited by 11 cents, which was pretty much all the increase, due to a non-recurring revenue increase due to a conversion of our customers from bi-monthly to monthly meter readings. So that was a one-shot,

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1 more or less of an accounting change, if anything. If we
2 hadn't had that, we wouldn't have shown any growth in
3 earnings.

4 Q But you wouldn't characterize Mr. Gilkeson's
5 letter to the shareholders as pessimistic about the future
6 of the financial stability of Philadelphia Electric Company,
7 would you?

8 A I think he is not necessarily optimistic. He
9 says right in the second paragraph that we had problems.
10 "The economy continues sluggish. Our sales growth was
11 disappointing. Inflation continues to significantly impact
12 our expenses. Regulatory delay in approving needed rate
13 increases for incurred costs continue to penalize earnings."

14 And on the second page he talks about the suspension
15 of a rate increase. And "Pending completion of the hear-
16 ings we have asked for interim rate relief because our
17 earnings have been decreasing as a result of the Salem unit
18 being in service but not in rate base."

19 I don't think that is necessarily an optimistic
20 projection of the future of the company.

21 Q Am I correct that in this report you are using
22 1983 and 1985 in-service dates for Limerick?

23 A I beg your pardon.

24 Q At the time of this report, the company had a
25 1983 and 1985 in-service date for the Limerick Units.

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A. Yes. This was just about the time that we were reviewing the schedule for Limerick, and as we had discussed earlier, the official schedule was '83/'85. We had announced our intention later on in the year to delay by two years, but we actually did not do that in the field.

MR. WERSAN: Your Honor, at this time I would like to mark for identification a portion of the Annual Report from 1978, and mark that as OCA Exhibit No. 68.

JUDGE MATUSCHAK: Very well.

(Whereupon, the document was marked as OCA Exhibit No. 68 for identification.)

1 BY MR. WERSAN:

2 Q Do you recollect the 1978 Annual Report, Mr.
3 Paquette?

4 A Yes.

5 Q I would like to refer you to the last page of
6 this document, particularly the right-hand column at the
7 first main paragraph.

8 A Excuse me; which paragraph?

9 Q The right-column at the top of the paragraph.

10 A At the top, right.

11 Q Am I correct that that paragraph begins by
12 discussing the economy of the Eastern Seaboard, conserva-
13 tion by customers, and reduced estimates of rate of growth
14 of electric kilowatt sales for Philadelphia Electric?

15 A Right.

16 Q And then it goes on to state, "Due to the reduced
17 growth rate the two Limerick nuclear generating units have
18 been rescheduled to go in service in 1985 and 1987. The
19 rescheduling of Limerick enabled the company to reduce
20 total expenditures for the next three years, 1979 through
21 1981, from \$1.65 billion to \$1.40 billion, a reduction
22 of \$250 million;" is that correct?

23 A Yes, that's correct as it is stated, although
24 I would like to point out that the tense of that sentence
25 as we've printed it was not entirely correct, because what

1 we were talking about in that last sentence was the future,
2 and we should have, perhaps to be more accurate, have said:
3 enable the company to reduce future anticipated expenditures.
4 It more or less sounds like we had, you know, already
5 achieved that reduction, which we hadn't. And this is
6 consistent with my testimony that we announced a delay, but
7 that we still on a year-to-year basis provided the project
8 with sufficient funds to remain on the '83-'85 schedule.

9 MR. WERSAN: Your Honor, at this time I would like
10 to show Mr. Hall another document, which I would then like
11 to mark for identification if he doesn't have any problems.

12 (Counsel Wersan and Counsel Hall confer.)

13 MR. WERSAN: I understand the company will allow
14 me to mark this, Your Honor, and so I would like to mark
15 this as OCA Exhibit 69.

16 JUDGE MATUSCHAK: Very well.

17 (Whereupon, the document was
18 marked as OCA Exhibit No. 69
for identification.)

19 BY MR. WERSAN:

20 Q Mr. Paquette, let me ask you: do you know a
21 gentleman named David Hunt with the Philadelphia Electric
22 Company?

23 A Yes.

24 Q What position does he occupy -- or did he occupy?

25 A At the time I believe he was a supervisor in

1 the System Planning Division under Mr. Kasum.

2 Q Kasum, K-a-s-u-m-?

3 A K-a-s-u-m, who was on the previous document.

4 Q What I have identified as OCA Exhibit Number
5 69 is a memo regarding a meeting of 8/16/76 on shared
6 capacity; is that correct?

7 A Yes, I believe this represented the minutes of
8 a meeting with another utility where we were considering
9 the possibility of sharing capacity with another utility
10 who was also going to be installing a unit.

11 Q And am I correct that the first sentence of the
12 second paragraph of the Summary of Statements and Positions
13 was that, "PE is not interested in the sale of the ownership
14 of a share of Limerick since its cash flows are quite
15 satisfactory with the present 1983-85 Limerick service
16 dates;" is that correct?

17 A That is what the document says, but that does
18 not represent the official position of the company at that
19 time. Mr. Hunt was not in the Finance Department; he was
20 in the System Planning Department, and he had no basis
21 for making a position or statement like that. That state-
22 ment did not represent the official position of the
23 company, financial management or executive management.

24 Q If I could now refer you to page 11 and 12 of
25 Appendix B of your testimony, which is an excerpt from

1 your testimony in the original Limerick investigation.

2 At the very bottom of the page --

3 A What page did you say again -- excuse me.

4 Q Pages 11 and 12, really the last two pages of
5 your document.

6 A Right.

7 Q You are there discussing the 1978 estimate of
8 a one-year delay in the revenue requirements?

9 A Yes.

10 Q And am I correct that on the top of page 12
11 you state that because of this delay -- or the effect of
12 this delay was a savings of \$350 million in base rates,
13 offset by the higher operating expenses by about \$160
14 million due to the continued purchases of energy; is that
15 correct?

16 A At most -- yes.

17 Q And would I be correct that what that represents
18 is that the \$350 million would have been the increased
19 base rate effect of including Limerick in rates, and the
20 \$160 million would have been the offsetting energy savings
21 that you anticipated for the unit in that time frame?

22 A Yes.

23 Q Would you agree that the comparable base rate
24 effects being seen in the current rate case today are
25 approximately \$950 million for the base rate cost of

1 Limerick, with only \$207 million projected for the fuel
2 savings from that unit?

3 A They sound like the approximate numbers. I
4 would take them subject to check. Yes.

5 Q Now you testified at page 4 of your testimony
6 in this case that you have testified before the Federal
7 Power Commission concerning the wholesale rate proceeding
8 involving service to the Borough of Lansdale, and that
9 would be at lines 4 to 6. Do you see that?

10 A Yes.

11 Q Am I correct that the Borough of Lansdale is
12 no longer a customer of Philadelphia Electric Company?

13 A That is correct.

14 Q Do you know why it left Philadelphia Electric's
15 service as being a customer?

16 A No, I do not know.

17 Q Do you know who currently serves the Borough
18 of Lansdale?

19 A I believe they are served by Pennsylvania Power
20 and Light.

21 Q Now if I could refer you to page 13 of your
22 testimony, you state at the top of that page your belief
23 that the company needs to have Limerick Unit 1 and common
24 plant -- and I assume 100 percent of common plant --
25 promptly in rate base to provide a fair return, continued

1 reliable service and, finally, to provide the necessary
2 access to reasonable cost capital for continuing our
3 construction program; is that correct?

4 A Yes.

5 Q Would you agree that well over half of your total
6 company construction budget over the next four years is
7 devoted to Limerick Unit 2 and common?

8 MR. HALL: I'm sorry, Mr. Wersan, would you say that
9 again please?

10 BY MR. WERSAN:

11 Q Would you agree that well over half of Philadelphia
12 Electric's total construction budget for the next four years
13 is devoted to Limerick 2 and currently common, under the
14 assumption that all physical plant goes in rates today?

15 MR. HALL: Which were the next four years? Starting
16 from today?

17 THE WITNESS: You said each; right?

18 BY MR. WERSAN:

19 Q 1986, 1987, 1988 and 1989; is that correct?

20 MR. HALL: Over 15 percent?

21 THE WITNESS: Over 50. That looks approximately
22 correct.

23 BY MR. WERSAN:

24 Q Am I correct that, as presented in your testimony,
25 if Philadelphia Electric were granted the full rate increase

1 requested in this case, the pro forma mortgage coverage
2 ratio would be 4.6 times?

3 A That's what is indicated for the test year
4 conditions in 1986. But I do point out that we will never
5 achieve that number because the rate increase that we have
6 asked for will not be fully effective until basically the
7 12 months ending June, 1987; and we would expect to see
8 further attrition -- or a lower rate of return in that
9 year than we achieved in the calendar year. And then,
10 furthermore, that will probably be the peak coverage, what-
11 ever that number will be, because beyond that the coverage
12 ratio would probably decline as we issue more securities.

13 Q Is that the end of your answer?

14 A Yes.

15 Q If I could refer you to page 6 of your testimony,
16 in particular line 9, the sentence starting in the middle
17 of that line. You state that, "The company has made every
18 effort to keep this increase as low as possible." Isn't
19 it correct that the company has requested 100 percent of
20 common facilities in the rate base with Limerick 1 in this
21 case, even though every previous multi-unit nuclear plant
22 brought on line in Pennsylvania has gone into rates with
23 just 50 percent of common?

24 A I know in our case what you say is true. I'm
25 not so sure that that has happened in every rate case in

1 Pennsylvania. But I will accept it as it applies to
2 Philadelphia Electric's multi-unit plant.

3 MR. WERSAN: Your Honor, at this time I would like
4 to mark for identification OCA Exhibit 70. This is a docu-
5 ment which was part of Mr. Paquette's attachments in the
6 Philadelphia Electric Company rate case at R.I.D. 438, and
7 it was attachment PH within that case.

8 JUDGE MATUSCHAK: Very well.

9 (Whereupon, the document was
10 marked as OCA Exhibit No. 70
for identification.)

11 BY MR. WERSAN:

12 Q Are you familiar with this document, Mr. Paquette?

13 A Yes, I am.

14 Q Can you state what it was?

15 A It was a letter that we wrote to what was then
16 the Federal Power Commission, now FERC, requesting their
17 permission for us to continue to accrue AFUDC on 50 percent
18 of the common plant associated with the Salem nuclear plant.
19 The FERC regulations required then, and still require now,
20 that 100 percent of the common plant go in service with
21 the first year with a multi-unit plant. And in our Peach
22 Bottom rate case the Commission had established the
23 principle of a 50/50 splitting. The Salem case was upon
24 us here in 1977, and I forget whether this was written
25 before or after we had filed the rate increase; probably

1 it was a little bit before -- yes, this was before we
2 were filing the rate increase for Salem 1 and before it
3 was to go into service; and we were asking the Federal
4 Power Commission to change its regulations to permit us
5 to account for the common plant consistent with the way
6 the Pennsylvania Commission was probably going to regulate
7 it for ratemaking.

8 Q And am I correct that on page 2 you provide some
9 background on the regulatory treatment of common facilities
10 in Pennsylvania, and you cite the Peach Bottom station
11 and the Three Mile Island station; is that correct?

12 A Right.

13 Q And then in the dicussion on the bottom of the
14 page, am I correct that you state, "We believe that the
15 above-described accounting is proper for Philadelphia
16 Electric Company because it provides a better matching of
17 costs and revenues and because it also meets the economic
18 objective of allocating large common costs in proportion
19 to savings and benefits of sequentially installed units;"
20 is that correct?

21 A That's what the letter said, yes.

22 Q If I could refer you to the third page of that
23 document, the second paragraph, the first sentence states,
24 "Although cash flow would benefit if all of the common
25 facilities were included in rate base when Unit 1 is placed

1 in service, it must be recognized that the common facilities
2 are designed and sized to service both units;" is that
3 correct?

4 A That's correct. As was described in the letter
5 though, I must note that in this case I think Mr. Boyer
6 has testified that for Limerick well over 90 percent of
7 the common plant investment is required for No. 1, even
8 if we had no Unit No. 2. So this statement may have been
9 true for Salem, but I don't believe that it is true for
10 Limerick.

11 Q On the other hand, you don't know if it isn't
12 true, since you don't have knowledge of the physical
13 requirements of the station and you are only referring
14 to Mr. Boyer; is that correct?

15 A I'm referring to my knowledge of Mr. Boyer's
16 testimony as it relates to Limerick. I don't recall the
17 specifics of the common plant investment for Salem. Salem
18 is a different type of reactor, as you are well aware;
19 it is a boiling water reactor, and the circumstances there
20 regarding the common plant, I'm not sure what they are.

21 Q Mr. Paquestte, am I correct that starting in
22 1980 and every year thereafter --

23 A Could I just correct one thing? Salem is a
24 pressurized water reactor. I meant to say it is different
25 than Limerick. Limerick is a boiling water reactor and

1 Salem is a pressurized water reactor.

2 Q That is correct.

3 Now let me start over. Am I correct that starting
4 in 1980 and every year thereafter a proposal was made by
5 PECO shareholders to terminate construction at Limerick
6 1, 2 or both?

7 A That's been an item on the proxy. I think you
8 generally described it correctly, yes.

9 Q And am I also correct that in each year the
10 company Board of Directors opposed those proposals?

11 A Yes.

12 Q And also each of those proposals had been rejected
13 by the majority of the shareholders?

14 A By a vast majority of the shareholders.

15 MR. WERSAN: Your Honor, at this time I would like
16 to mark for identification as OCA Exhibit 71 an excerpt
17 from IR-OCA-3-5, which is the vote tallies on these votes
18 from 1980 through 1985.

19 JUDGE MATUSCHAK: Very well.

20 (Whereupon, the document was
21 marked as OCA Exhibit No. 71
for identification.)

22 BY MR. WERSAN:

23 Q Mr. Paquette, if I could refer you to page 8
24 of the Appendix to your testimony?

25 A Page 8 of the Appendix?

1 Q Appendix B, which is your testimony from the
2 prior case.

3 A Yes.

4 Q And at the end of the first long paragraph you
5 discuss the company's concerns over excess capacity and
6 the risk that if the company brought on the Limerick plant
7 in 1981 or 1983 the Commission might exclude it from rate
8 base with very dire financial consequences to the company;
9 is that correct?

10 A Yes.

11 Q And I assume that when you discuss excess
12 capacity you are referring to the situation where PECO's
13 reserves would exceed required PJM reserves?

14 A Yes, that's what we had in mind, and of course
15 what we were worried about in connection with that was
16 if there was an exclusion that was significant it could
17 reduce our bottom line in our earnings and that could have
18 an impact on our ability to raise capital for the construc-
19 tion program, which would not be in the best interests
20 of the customers in the future.

21 Q So if Limerick 1 were to have come on at a point
22 at which there might have been excess capacity, there was
23 a company concern that the Commission will disallow some
24 portion of rate base or otherwise disallow revenues; correct?

25 A That was one of the factors, admittedly, that

1 was considered. It was not anywhere near the primary reason
2 of why we decided to delay the schedule.

3 Q I understand that, Mr. Paquette, but I'm focusing
4 on the excess capacity portion here. I think you have
5 discussed some of the other reasons in the rest of your
6 testimony.

7 A Yes. I'm responding to that. Excess capacity
8 was certainly something that we knew was a possibility,
9 and it couldn't be ignored, but it was not the primary
10 reason for the delay. The reason why it was even considered
11 at all was the possibility that it could impact our earn-
12 ings -- and excess capacity disallowance could impact our
13 earnings to the extent it might inhibit our ability to
14 raise capital.

15 Q But if the plant were delayed until its
16 addition to reserves and demand were more closely in
17 proportion, would I be correct that the possibility of
18 an excess capacity adjustment is reduced?

19 A If the unit is delayed until there is a better
20 match between need and --

21 Q Yes.

22 A -- capacity, that the chance of an excess
23 capacity adjustment is less, I would have to agree, yes.

24 Q Right. So if you compared the two cases of
25 bringing it on early when it might be excess capacity,

1 and delaying it, in the first case there might be a revenue
2 adjustment by the Commission whereas in the latter case
3 during the years of delay the company would be continuing
4 to accrue AFUDC on the construction and then present that
5 as part of its claim for the whole plant; would that be
6 an accurate description of what could occur?

7 A That's one of the possibilities.

8 MR. WERSAN: Your Honor, could I have one moment?

9 JUDGE MATUSCHAK: Yes.

10 (Discussion off the record.)

11 JUDGE MATUSCHAK: Did you conclude whether Dr.
12 Paquette would be available for the 6th or the 9th? Is
13 it the concensus of counsel that we cancel the hearings
14 for December 30 and 31?

15 MR. HALL: Yes, absolutely.

16 MR. RAINEY: I'm sorry, Your Honor; we will be
17 finishing up with Paquette today?

18 JUDGE MATUSCHAK: Beg pardon.

19 MR. RAINEY: We will be finishing up with Paquette
20 today; we will take whatever time is necessary to complete
21 cross-examination of Mr. Paquette today?

22 MR. HALL: The company is prepared to do that.

23 JUDGE MATUSCHAK: Very well.

24 You may proceed.
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BY MR. WERSAN:

Q Mr. Paquette, in your testimony you make reference to a study in 1978 which shows revenue savings for the first year of about \$190 million for a one-year delay on Unit 1; do you recall that?

A Yes.

Q Do you recall whether or not that study was developed by Philadelphia Electric in response to an interrogatory of the Office of Consumer Advocate in R.I.D. 438?

A I know that the data was submitted in the record at that time as a result of the Consumer Advocate interrogatory, but whether it was originally developed for that purpose or whether we had done it on our own before, I can't recall.

MR. WERSAN: Your Honor, I would like to show Mr. Paquette a copy of Statement 1-F which was his direct testimony concerning reasons for the decisions to reschedule the Limerick project in R.I.D. 438.

BY MR. WERSAN:

Q If you would look at page 2 of that first answer, does that state that, as shown in Table 1 of Exhibit T-5, which was developed in response to Consumer Advocate interrogatory No. 80, the short term effects of rescheduling the Limerick unit would reduce the revenue requirements;

1 for the one-year in-service delay the revenue savings are
2 \$189 million in the first year and \$40 million to \$50
3 million in higher expenses for the next six years, and
4 a lesser increase thereafter; is that correct?

5 A Yes. I should point out that in --

6 Q Well, let me ask this question: do you recall
7 whether that interrogatory response was developed before
8 or after the decision to delay?

9 A I honestly can't recall. What rate case was
10 this?

11 Q R.I.D. 438.

12 A Which was what?

13 Q 1978. '77-'78 actually.

14 It was my reading of this that you provided it
15 in response to a Consumer Advocate interrogatory, and I
16 assume the Consumer Advocate wouldn't have asked an
17 interrogatory on revenue requirements delay unless you
18 had already announced the delay; is that a fair assumption?

19 MR. HALL: No.

20 MR. WERSAN: Let Mr. Paquette answer that please.

21 MR. HALL: The only thing I remember --

22 MR. WERSAN: I'm not asking you, Mr. Hall. I'm
23 asking Mr. Paquette.

24 THE WITNESS: I believe that the interrogatory came
25 in -- at least the interrogatory was asked after we made

1 the decision, because on page 1 of this exhibit the question
2 is, "Would you please discuss the reasoning behind the
3 company's recent decision to reschedule the in-service
4 dates of Limerick from '83-85 to '85-87?"

5 Again, I don't know when the study was done. It
6 could have well been done before the decision was made.
7 All this proves is that the Consumer Advocate asked the
8 question after the decision was announced.

9 BY MR. WERSAN:

10 Q But you don't recall the timing of this study
11 and the delay and the announcement of the delay?

12 A No, I just can't recall.

13 Q Thank you.

14 MR. WERSAN: That's all I have, Your Honor.

15 THE WITNESS: I was going to say in reviewing this
16 material in connection with this case, we did find an
17 error in that earlier study that somewhat changes the
18 numbers. It doesn't change the conclusion, but it is an
19 error that reduced the penalty of delay by a few million
20 dollars per year, but not a significant amount.

21 JUDGE MATUSCHAK: Is there further cross-examina-
22 tion of Mr. Paquette?

23 MR. RAINEY: The City will defer to the Governor's
24 Energy Council, Your Honor.

25 JUDGE MATUSCHAK: Very well.

CROSS-EXAMINATION

1
2 BY MR. FERKIN:

3 Q Good afternoon, Mr. Paquette.

4 A Good evening.

5 Q Mr. Paquette, at page 7 of your testimony --

6 A Yes.

7 Q Actually at pages 6 and 7 you describe the
8 company's financial planning process?

9 A Yes.

10 Q And you mention the process which goes into
11 building a so-called basic forecast done annually for
12 five years; is that correct?

13 A Yes.

14 Q And you also mention the company's financial
15 model, or FINAN.

16 A Yes.

17 Q Am I correct that the FINAN model was not utilized
18 in the company's preparation for this rate case?

19 A That is correct.

20 Q And, in fact, the FINAN model has not been utilized
21 for financial planning since the Limerick 2 investigation
22 by the company; is that correct?

23 A Well, I wouldn't say it hasn't been used. We
24 have just not updated the runs that were made in the Limer-
25 ick 2 investigation. But the data that we used is still

1 available to us. It is utilized to the extent needed.

2 Q Mr. Paquette, at pages 5 and 6 of your direct
3 testimony you mention and you describe briefly the company's
4 base proposal in this proceeding; is that correct?

5 A Yes.

6 Q And that proposal provides for a three-year phase-
7 in with a three-year recovery of deferred revenues; is
8 that correct?

9 A Yes.

10 Q Mr. Paquette, were you present in the hearing
11 last Friday when Mr. Williams testified?

12 A No, I was not.

13 Q Let me try it this way: Mr. Williams mentioned
14 in his cross-examination that there had been discussions
15 among company officials regarding various lengths of time
16 for phase-in of this rate request.

17 A Yes.

18 Q Were you present at those discussions?

19 A Yes, I was.

20 Q Mr. Williams mentioned in his cross-examination
21 that at one point in these discussions an eight-year
22 phase-in was discussed; do you recall that?

23 A I don't recall an eight-year plan comparable
24 to our three-year plan. We did look at other alternatives
25 for minimizing the full impact of the rate increase, but

1 I don't recall a plan, in other words, to stagger the
2 rate increase in this case three percent a year for eight
3 years. It may have been; I just don't recall it.

4 Q So with respect to the eight-year possible phase-
5 ing --

6 A Could I ask a point of clarification? When you
7 say eight years, I understand that in our plan that we have
8 proposed, that the nomenclature is now calling that a
9 six-year phase-in, three and three.

10 When you say eight, is that equivalent to four and
11 four, or do you mean eight and then recovery later?

12 Q I'll be honest; I'm not sure. Mr. Williams,
13 as I recall his testimony, didn't define what portion of
14 the eight years was actual billing and what was deferral.
15 Do you recall in what proportion your discussion was?

16 A We may have looked at it four and four; if that
17 what he had in mind --

18 Mr. Williams is shaking his head.

19 Yes, I do remember a four and four year deferral
20 for the recovery of the total, for what you might call
21 an eight-year phase-in plan.

22 Q Mr. Williams also in his cross-examination last
23 week mentioned that one negative aspect of this now four
24 and four year phase-in was that an estimated \$500 million
25 in carrying charges would be associated with that proposal.

1 Do you recall discussions of that figure?

2 A Yes, that would be the loss of interest to the
3 company by the deferring of revenue and not attaching an
4 interest component to the recovery of the revenue in the
5 latter four years, yes; whereas under the plan that we
6 have proposed the company is, in effect, giving up about
7 \$250 million of foregone interest.

8 Q In your response to one of my earlier questions,
9 Mr. Paquette, you mentioned that you considered a number of
10 alternatives other than the three and three year plan that
11 is proposed here. Do you recall any of the alternatives
12 other than the three and three year plan that is proposed
13 here; do you recall some of the alternatives other than
14 the plan proposed here and the four and four year plan
15 we have just been discussing?

16 A I believe we also looked at what would be a two
17 and two. I believe that was the plan that was submitted
18 by Pennsylvania Power and Light in its Susquehanna 2 case.
19 We looked at that, and the four-year that you described.
20 We also looked at the possibility of changing the
21 depreciation schedule in a fashion similar to what Pennsyl-
22 vania Power and Light had proposed. Those, I think, are
23 the major ones.

24 MS. FERKIN: Mr. Hall, with respect to the two
25 and two year proposal and the changing depreciation schedule

1 proposal that Mr. Paquette just referenced, I would like
2 to make an on the record data request for any work papers
3 or support documentation related to those proposals.

4 MR. HALL: That's fine.

5 BY MR. FERKIN:

6 Q Just as a hypothetical, Mr. Paquette, from your
7 perspective as a financial analyst -- is that a fair term?

8 A How about officer?

9 Q Financial officer for a company, okay -- hypo-
10 thetically, if you were going to develop a phase-in for
11 a base rate increase of on the order of \$950 million less
12 \$200 million in fuel savings, and let's say you thought
13 you would want to extend it over over ten years -- let's
14 say five years of collection and five years of deferral;
15 what issues would you want to consider in determining
16 whether that was a proposal you would want to pursue?

17 A I don't think the period is so important. I
18 think there just are certain fundamentals that you have
19 to consider in any phase-in plan.

20 On the one hand, you want to make sure that from
21 the utility's standpoint you would be providing the
22 utility with sufficient revenues to maintain access to
23 capital and earn a fair return, and from the customer's
24 standpoint, balancing that on the other side, trying to
25 minimize the impact on customers to the extent necessary.

1 I don't think overall our rate filing, the amount
 2 that we are asking for, is anywhere near as significant
 3 as some of the other utilities that are requesting around
 4 the company that are going for extended phase-in plans.
 5 Some of the utilities are needing rate increases on the
 6 order of 50 and 60 percent, and they have attempted longer
 7 phase-in plans. I think our increase at 28 percent is
 8 smaller than most of the other rate increases needed to
 9 put nuclear units in service, and, therefore, I think ours
 10 can justify a smaller phase-in period.

11 The real critical thing is really maintaining the
 12 financial integrity of the utility, both from the cash
 13 flow and earnings, and also the uncertainty that the finan-
 14 cial community will certainly attach to the ultimate
 15 collectibility of the revenues that are deferred. The
 16 larger that amount is, and the longer it takes to collect
 17 it, the more uncertain that the financial community will
 18 look at that, and the less reliability and certainty they
 19 will put on the current income statements that will be
 20 produced, that will certainly -- in our case, we will
 21 accrue the deferred revenue, but the main question will
 22 be: will the financial community, the analysts and rating
 23 agencies, include that revenue in our coverages, and will
 24 the investor give credit to that in the earnings per share
 25 that we report.

1 AS you know right now, there is a lot of just --
2 I don't want to use the word "disallowance," but discounting
3 of the amount of earnings that come from AFUDC. And in
4 our case with Limerick in service and with the revenue
5 increase -- and assuming part of it is deferred revenue
6 -- there is a great danger that the financial community
7 will assign the same discounting to the deferred revenue
8 that they do to the allowance for costs.

9 So that, in my mind, is the main considerations
10 they have to take into effect for any phase-in plan regard-
11 less of whether it is five years, ten years or twelve years.

12 Plus there is one other factor, and that's meeting
13 the accounting standards which, I understand, has already
14 been discussed on the record with the implications of
15 FASB '71.

16 Q Yes, I think Mr. Farling discussed some of
17 those. You said your main concern is maintaining the
18 financial integrity of the company. Have you pinpointed a
19 particular coverage ratio that the company would need
20 to maintain in support of that goal?

21 A I think, as I've indicated in my testimony, it
22 is critical that the company be able improve itself to
23 get back to an A rating status. The data shown on Table
24 5 -- we don't have mortgage coverage there, but we -- well,
25 we have, as calculated by S&P we have pre-tax interest

1 coverage excluding AFUDC that would be on the borderline
2 of the bottom range of a single A, but the other measures
3 that they use would keep us in a Bbb category. And that
4 even assumes that all of the rate increase, both cash and
5 deferred, is counted fully and not discounted. If S&P
6 decides to discount some of the deferred revenue, we
7 wouldn't even do as well as indicated on Table 5.

8 So these numbers that are shown here on Table 5
9 as the S&P standards I think are a good minimum benchmark
10 for us to strive for in order to get ourselves back to
11 a single A rating.

12 And, as I indicated in my testimony, if we get 100
13 percent of this rate increase, we won't achieve -- I don't
14 think we will achieve a single A rating.

15 Q Let me move on for just a minute. Do you have
16 with you the response to a data request, Data Request TPH-1,
17 GEC, dated 12-13-85?

18 A TPH-GEC dated 12-13-85?

19 Q Yes, was that response prepared by you or under
20 your direction?

21 A Yes.

22 MS. FERKIN: Your Honor, I would like this document
23 marked as GEC Exhibit No. 4 for identification.

24 JUDGE MATUSCHAK: Very well.
25

1 (Whereupon, the document
2 was marked as GEC Exhibit No.
3 4 for identification.)

4 BY MR. FERKIN:

5 Q Do you also have with you, Mr. Paquette, a
6 document that has already been admitted in this proceeding
7 as OCA Exhibit 27? That is a response to an OCA interroga-
8 tory, 1-26.

9 A Is that the company's five-year forecast dated
10 May 31, 1985?

11 Q Yes.

12 A Yes, I have it.

13 Q Am I correct that OCA Exhibit 27 is the company's
14 latest available financial forecast?

15 A Yes.

16 Q Is OCA Exhibit 27 the forecast you referred to
17 at page 7, line 14 of your direct testimony; and that
18 is the line that says, "Employing data produced by this
19 forecasting process, have you made estimates of the company's
20 earnings and interest coverage ratios with and without
21 the requested rate increase?"

22 A Well, the date which is referred to on line 14
23 is the data included on Tables 1 to 5. Also as a part
24 of that forecast process we produced the data that is shown
25 in this May 31, 1985 sheet.

Q So the information displayed on Tables 1

1 through 5 was produced as part of the same process that
2 produced OCA Exhibit 27; is that correct?

3 A Yes, with of course recognizing that when we
4 put my testimony together and submitted it this year, some
5 things had changed from May of '85 to September, and so
6 therefore in my testimony in developing Tables 1 to 5 we
7 did adjust for the known major changes such as lower interest
8 rates, a slightly -- I believe we changed slightly some
9 construction figures to reflect the fact that Limerick
10 1 would be delayed in going into service until February
11 of '86, whereas the May forecast assumed it would go into
12 service during 1985. I believe those are the major differ-
13 ences.

14 Q You just referred to the change in construction
15 figures. In preparing Tables 1 through 5 would I be correct
16 that you upped the increase in construction figures to
17 reflect the delay in Limerick 1 on line?

18 A Well, we reflect the fact -- that's right, that
19 Limerick 1 would be delayed in going into service; there-
20 fore, it would accrue more AFUDC, and, correspondingly,
21 it would delay the recognition of the time when depreciation
22 would accrue and comparable -- deferred taxes would start
23 to be generated and things like that.

24 Q Mr. Paquette, would you refer to the document
25 that has been marked as GEC Exhibit 4?

1 A Yes.

2 Q In the data request signified as GEC Exhibit
3 4 we asked you for a number of specific -- or to amplify
4 certain information about the five-year forecast, OCA
5 Exhibit 27.

6 A Yes.

7 Q And in Item 2 we asked you to define the term
8 "other" which appeared under the Internal Sources of
9 Financing category on OCA Exhibit 27. Now in response
10 to that you included in your definition of "other"
11 retained earnings; is that correct?

12 A Yes.

13 Q For each of the years in the five-year forecast,
14 Mr. Paquette, can you estimate what percentage of that
15 figure represents retained earnings?

16 A We have used an estimate of \$50 million in each
17 year for retained earnings.

18 Q So that estimate of \$50 million each year is
19 assumed in the "other" figure under Internal Sources of
20 Financing"?

21 A That is correct, for the forecast years, '86
22 through '89. In each year we have \$50 million of retained
23 earnings.

24 Q And that \$50 million, your figure, is an estimate,
25 not a computer figure; is that correct?

1 A That is exactly right. It's an estimate based
2 on a historic average over the last -- I forget whether
3 it is the last five or the last ten years. But it just is
4 an estimate, and it's just a plugged-in number. It does
5 not correlate to any return on investment in the forecast.

6 Q And similarly it would not correlate to any
7 forecast of revenues and expenses for the forecast year?

8 A That is correct.

9 Q Back to your direct testimony for just a moment,
10 Mr. Paquette, if you would hold on to GEC Exhibit 4 while
11 we are doing this. At page 7 of your direct testimony
12 at line 5 and 6 you talk about some of the considerations
13 that are involved in planning the securities offerings
14 the company plans for external financing?

15 A Yes.

16 Q Or to comprise its external financing?

17 A Yes.

18 Q You mention on page 7 of your direct testimony
19 coverage ratios as one consideration; is that correct?

20 A Yes.

21 Q On GEC Exhibit 4 we asked you for assumptions
22 as to coverage ratios in OCA Exhibit 27, and your answer,
23 I believe, was that no such specific assumptions were made;
24 is that correct?

25 A That's correct.

1 What I am referring to in my testimony relates
2 primarily to the considerations made in planning the coming
3 year, more or less the budget where we have specific and
4 reliable -- relatively reliable information on what our
5 earnings revenue and expenses and earnings will be, and
6 so that we can see whether, first of all, in planning
7 the coming year we have enough coverage to issue the
8 mortgage bonds that we plan; what's the prospects for
9 continuing the rating or improving it or, hopefully, not
10 the possibility of a down rating. And all those factors
11 are considered, but specifically, and more so, in design-
12 ing and planning the financing program for the upcoming
13 year where we can have a much closer perspective on things.

14 Q The coverage ratios on page 7 of your direct
15 testimony really refer to the budget?

16 A More so to the budget, but, yes, but in looking
17 ahead to the forecast we have also got to consider
18 coverages, but admittedly in the forecast, the further
19 out we go, the muddier or the cloudier that future becomes
20 and you can't say specifically what earnings or what
21 coverage will be because a great part of the future will
22 depend on what rate relief is granted to the company,
23 particularly in situations like we are in now with Limerick
24 1 going in service, and in the middle of this particular
25 rate case. So we can't make a definitive prediction of

1 what our earnings or coverages will be until we know
2 specifically what will be the final result of this rate
3 proceeding. It's at that time, as we normally have in
4 the past when we have gotten a final order from the
5 Commission, that the immediate future is generally a little
6 bit more secure, at least the predictability of it is a
7 little more secure, and it is under those conditions
8 we have had to make decisions as to whether we can go
9 forward or not with the current construction program, and
10 we will undoubtedly have to make a similar assessment at
11 the end of this proceeding.

1 Q Just to follow up on that line, Mr. Paquette,
2 am I correct that the coverage ratios displayed or
3 discussed at Table 5 of your testimony are the same coverage
4 ratios that OCA Exhibit No. 27 assumes for 1985 and 1986,
5 given the fact that Table 5 covers 1985 and 1986?

6 A No. There would be a slight difference, because
7 the Exhibit GEC 4, as I mentioned earlier, relates to fore-
8 casts and budget information that was available in May of
9 1985, and at that time we thought interest rates were going
10 to be roughly -- well, new money, were going to be 14 percent.

11 But by the time I filed my testimony and we prepared
12 the information shown on Tables 1 through 5, the cost of
13 money had lowered, new debt estimated to cost us 12.5
14 percent; I believe, or 12--I guess it was 12.5, so that
15 given the same sales and revenue, we would have slightly
16 improved coverages in my testimony as compared to conditions
17 that existed in May.

18 Q Back to OCA Exhibit No. 27 for a moment, Mr.
19 Paquette, does OCA Exhibit No. 27 incorporate projected
20 dividends on common and preferred stock?

21 A They do not reflect that -- of course, we assume
22 we are going to be paying dividends, but the amount and the
23 timing is not specifically projected because of our assump-
24 tion that retained earnings will be \$50 million a year.

25 So, we do not predict what earnings are going to be

1 or what the dividend is going to be. We just assume that the
2 difference between those two numbers, whatever they are,
3 will be \$50 million per year.

4 MS. FERKIN: Can I have a moment, Your Honor?

5 (Pause.)

6 MS. FERKIN: I am going to show counsel for the
7 company what I represented to counsel for the company last
8 week as the inputs and outputs from the company's financial
9 model, FINAN runs in the Limerick 2 investigation.

10 Last week, I pursued a line of cross-examination
11 with Mr. Hill, and company counsel accepted subject to
12 check, or in fact actually accepted that what I am showing
13 company counsel today were in fact the outputs from the
14 FINAN runs in the Limerick 2 investigation.

15 MR. HALL: I'll accept it subject to check.

16 BY MS. FERKIN:

17 Q. Mr. Paquette, have you seen these runs?

18 A. I probably did when the Limerick 2 show cause
19 investigation was getting prepared, but it has been quite a
20 while.

21 Q. I would like to discuss for a couple of minutes
22 a couple of excerpted pages from those runs. Last week, I
23 marked these excerpts as GEC Exhibit No. 2. I marked it
24 for identification.

25 Mr. Paquette, if you could turn to the forecast data

1 page in OCA Exhibit No. 27, and if you could turn as well
2 to the second page of the document I have marked as GEC
3 Exhibit No. 2?

4 A. You mean the first page of data or the second
5 page of data?

6 Q. The second page of data.

7 A. Okay.

8 Q. That page states at the top, "Philadelphia
9 Electric Company, Consolidated Statement of Source and
10 Application of Funds"?

11 A. Yes.

12 Q. I would like to, on OCA Exhibit No. 27, direct
13 your attention to the line that reads, "Total Construction
14 Expenditures," if you could.

15 A. Yes.

16 Q. Now, would you agree with me that on OCA Exhibit
17 No. 27, the amount for total construction expenditures in
18 1985 is estimated at \$962 million?

19 (No response.)

20 Q. I am on Exhibit No. 27.

21 A. Exhibit No. 27, 1985, \$962 million?

22 Q. Right.

23 A. Yes.

24 Q. And for 1986, the estimated total construction
25 expenditures are \$864 million?

1 A. Yes.

2 Q. Now, could you direct your attention by way of
3 comparision to what I have marked as GEC Exhibit 2?

4 A. Yes.

5 Q. Looking at the lines marked "Additions to
6 Utility Plant and Nuclear Fuel" for 1985?

7 A. Yes.

8 Q. Would you say that that amount is approximately
9 \$752 million?

10 A. That's correct.

11 Q. And for 1986, the amount is approximately \$781?

12 A. Million.

13 Q. Excuse me, \$781 million.

14 A. Right, yes.

15 Q. Can you explain the difference between the
16 forecasted amounts for total expenditures and the estimates
17 or the projections that appear in the FINAN run for
18 additions to plant, nuclear fuel which I would say are the
19 equivalent of construction expenditures?

20 A. I cannot explain it. It may have something to
21 do with the assumptions of when Limerick 1 may have been
22 finished and in commercial operation.

23 Without an analysis of all the inputs to the
24 Limerick 2 show cause FINAN run, I can't give you an answer
25 at this time.

1 Q Let's look for a moment at the projections for
2 1987 and 1988 construction expenditures. In OCA Exhibit
3 No. 27, the five year forecast, would you agree that the
4 estimate shown for construction expenditure is \$962
5 million?

6 A That's correct.

7 Q And \$985 million in 1988?

8 A That's correct.

9 Q Turning to the FINAN run, would you agree that
10 the estimates shown are, for 1987, approximately \$948
11 million?

12 A Yes.

13 Q And for 1988, \$1,152,000,000?

14 A Yes.

15 Q Now, Limerick 1 will be in commercial operation,
16 according to your estimates, in February of 1986, is that
17 correct?

18 A Yes. To our latest forecast in Exhibit No. 27
19 or whatever it's called, the May forecast, you'll note
20 that that assumed commercial operation in the fourth
21 quarter of 1985.

22 Q You had suggested that the difference between the
23 FINAN estimates of construction expenditures and the OCA
24 Exhibit No. 27 estimates of construction expenditures might
25 be due to different on-line days assumed for Limerick 1, is

1 that correct?

2 A. Calendar year 1985, yes, that's a certain part
3 of the difference, and also a little bit of 1986, because
4 you can see on Exhibit No. 27, we do have \$20 million in
5 for 1986.

6 Q. That wouldn't be true for 1987 and 1988 --

7 A. When we get to 1987, it wouldn't be the service
8 date of Limerick 1. However, I would note that 1987, the
9 numbers are very close, \$962 million on one hand and
10 \$947 million.

11 There was a big difference for 1988, and I think it's
12 obvious that the reason is all in nuclear fuel. If you
13 see in your Exhibit No. 2, there is \$230 million forecasted
14 for nuclear fuel, whereas in Exhibit No. 27, there was only
15 \$8 million of nuclear fuel.

16 And the reason for that difference is that in the
17 Limerick 2 show cause proceeding, we assumed that we would
18 continue to own and finance the Limerick fuel, whereas in
19 the forecast of May, we assumed that we would negotiate a
20 nuclear fuel lease for Limerick, similar to the ones we have
21 for Peach Bottom and Salem.

22 And that is included somewhere in -- that fact or
23 that assumption is included in one of the footnotes to that
24 exhibit, so that if you remove that \$229 million difference,
25 the numbers are a lot closer.

1 Q. Thank you, Mr. Paquette, that was very helpful.

2 MS. FERKIN: I have no further questions for Mr.
3 Paquette. I would like at this time to move into evidence
4 GEC Exhibit No. 4.

5 JUDGE MATUSCHAK: Any objections?

6 MR. HALL: No, Your Honor.

7 JUDGE MATUSCHAK: GEC Exhibit No. 4 is admitted into
8 evidence. (Whereupon, the document marked
9 GEC Exhibit No. 4 was
10 received into evidence.)

11 MS. FERKIN: I would also note for the record that
12 in off-the-record discussions with the company, we made a
13 data request for some additional workpapers and other
14 information related to OCA Exhibit No. 27, and we expect we
15 receive that soon.

16 JUDGE MATUSCHAK: Very well.

17 MR. WERSAN: Your Honor, if I may, I omitted to move
18 into evidence OCA Exhibits Nos. 22 through 71. I would like
19 to do that at this time.

20 MR. HALL: No objection, Your Honor.

21 JUDGE MATUSCHAK: OCA Exhibits Nos. 66 through 71 are
22 admitted.

23 (Whereupon, the documents
24 marked OCA Exhibits Nos. 66
25 through 71 were received in
evidence.)

CROSS-EXAMINATION

1
2 BY MR. RAINEY:

3 Q Good evening, Mr. Paquette.

4 A Good evening.

5 Q My name is Charles Rainey, and I am appearing
6 on behalf of the City of Philadelphia. First of all, I
7 would like to make a request on the record for all of
8 those responses which are being supplied to the Governor's
9 Energy Council, both on the record as well as off the record
10 requests, and I would also request that those be sent to
11 myself as well as to Gregory Palast.

12 MR. HALL: Yes, we will do that.

13 MR. RAINEY: Thank you.

14 BY MR. RAINEY:

15 Q Mr. Paquette, I would like to refer your
16 attention to page 5 of your testimony, lines 11 through 14.
17 There you state, "In developing this rate increase applica-
18 tion, we have taken a number of steps to minimize the
19 financial impact on the customers and the economy of our
20 service territory," is that correct?

21 A Yes.

22 Q Mr. Paquette, have you performed an economic
23 impact study of the rate increase on the economy of the
24 service territory?

25 A No, we have not.

1 Q I would like to now refer your attention to
2 lines 22 through 25 of the same page, and there you state,
3 "In addition, we have requested a three-year phase-in of
4 the total rate increase in order to enable our customers
5 to better adjust to the increase through orderly, predicta-
6 ble increments," is that correct?

7 A. Yes.

8 Q Would you explain what you mean by "enable our
9 customers to better adjust to the increase"?

10 A. What that refers to is giving our customers
11 sufficient advance notice, particularly industrial custom-
12 ers where the cost of electricity may be a significant
13 factor in their operations, but to have a predictable
14 pattern of rate increases which can be budgeted and allo-
15 cated as opposed to trying to hit them with the full 28
16 percent in one year without sufficient time to adjust
17 their operations accordingly.

18 The same thing would also apply to residential
19 customers, to enable them to see what is coming in the
20 coming years, to take whatever steps they can take to
21 either conserve electricity or manage their budgets in a
22 better way.

23 We just thought it would be helpful all around for
24 all of our customers, to get it in steps as opposed to one
25 big increase.

1 Q Have you conducted any studies, Mr. Paquette,
2 with respect to the effect on the budgets of the customers
3 of the increase?

4 A Not to my knowledge, no.

5 Q Mr. Paquette, in conversation earlier on the
6 record with the Governor's Energy Council, you talked
7 about discussions with the company in respect to the
8 various phase-in and phase-out periods.

9 Could you tell us what examples of other company
10 phase-out periods you observed or that you looked at?

11 MR. HALL: I believe we did that with GEC. Didn't
12 you answer that very question?

13 THE WITNESS: Yes, but he wants to know some
14 specifics.

15 I mentioned the one that I am aware of, and I believe
16 it was -- one of the Kansas companies had requested a ten-
17 year phase-in. I am not familiar with what their phase-out
18 was.

19 Pennsylvania Power and Light, as I remember,
20 requested a two-year phase-in and I think it was a two-year
21 phase-out. Those are the ones that I remember, and there
22 may be others. I just can't recall.

23 BY MR. RAINEY:

24 Q Do you remember with respect to those companies
25 what the effect on their financial standings were of their

1 use of a more extended --

2 A. No, we didn't go into that. We were just
3 interested in what were the plans for the phase-in, and then
4 decide whether it was something that might be worthy of
5 consideration for our case.

6 Q. Mr. Paquette, I'd now like to refer your
7 attention to page 7, lines 5 through 9. And there, is it
8 correct that you refer to various considerations for the
9 security offerings to fund external requirements?

10 A. Yes.

11 Q. And you list coverage ratios, rating considera-
12 tions, market environment, capitalization ratios, is that
13 correct?

14 A. Yes.

15 Q. And these were all considerations that went into
16 your basic five-year forecast, is that correct?

17 A. Well, some of them more than others. But as I
18 mentioned earlier, those considerations, particularly
19 coverage ratios and rating considerations, are of prime
20 concern in planning the immediate one or two year financings,
21 and as I say here, in planning the actual size and type
22 of each security offering.

23 So, it is more of the immediate things rather than
24 looking way out to the future. In looking out to the
25 future, the primary consideration is capitalization ratios.

1 We like to maintain a capitalization ratio structure
2 of approximately 50 percent debt, 12 percent preferred and
3 38 percent common equity.

4 Q. Mr. Paquette, do you have coverage ratios, have
5 you calculated coverage ratios which are reflective of what
6 appears in the five year forecast in OCA Exhibit No. 27
7 for each of the years?

8 A. As I mentioned earlier, we have in my testimony
9 the coverages for 1986, using the assumptions of the rate
10 increase. Comparable numbers out in the forecast will be
11 highly dependent on how much rate relief is granted by the
12 Commission.

13 Q. Are you saying that you do or do not have those
14 coverage ratios for the five year period beyond 1986?

15 A. I do not have coverage ratios that illustrate
16 what they will be with the rate increase in it.

17 Q. Do you have any of the other considerations that
18 appear on page 7 at the lines mentioned?

19 A. I believe we do have the capitalization ratios,
20 because in determining the dollars, after we have gone
21 through and determined the amount to be financed, the
22 specific amounts that are shown there to be raised each
23 year as indicated in one of the footnotes -- I think we
24 give what our goals are -- no, I don't.

25 But we do have the numbers that if you take our

1 present capitalization and forecast the specific issues to
2 be sold and subtract the issues that will be refunded, I
3 can tell you what the capitalization ratios will be in
4 each of the forecast years.

5 Q I see that in GEC Exhibit No. 4. However, you
6 are stating that you don't have, for the period beyond 1986,
7 the coverage ratios, rating considerations or market
8 environment?

9 A Excuse me just a moment.

10 (Witness conferring with PECO personnel.)

11 No, I do not have -- of course, market environment
12 is a nebulous thing. And as I say in Footnote 1 of Exhibit
13 No. 27, the forecast information has been set forth in
14 anticipation that revenues in the forecast will be
15 sufficient to support the projected construction
16 expenditures, internal sources of cash flow and financing.

17 So, in effect, that means that the market environment
18 will be sufficient for us to raise the capital and that we
19 will have sufficient earnings to do so.

20 And as I said earlier, I do not have a projection of
21 coverage ratios, assuming the full impact of the rate
22 increase comparable to Tables 1 to 5 of my testimony.

23 Q Could you calculate those coverage ratios and
24 other considerations? Is that something you can do?

25 A May I consult?

1 (No response.)

2 (Witness conferring with PECO personnel.)

3 Yes, that could be developed. We would have to
4 make assumptions consistent with my testimony in terms of
5 interest rates, but we could develop coverages for the
6 five year period ending in 1989, with the rate increase
7 factored in.

8 MR. RAINEY: I would ask that that material be
9 made available. This in fact is an oral, formal data
10 request.

11 BY MR. RAINEY:

12 Q. At this time, I would like to refer your
13 attention to page 9 of your testimony, lines 17 through 21.

14 A. Yes.

15 Q. And there you state that a \$75 million revenue
16 disallowance would depress 1985 mortgage interest coverage
17 from 2.5 times covered to 2.3 times coverage, is that
18 correct?

19 A. Yes.

20 Q. Could you tell us, Mr. Paquette, what effect
21 a \$75 million revenue deferral collected during a
22 phase-out period would have on mortgage interest coverage?

23 A. I can't tell you the number. It would depend on
24 a number of things, of course, which year are you talking
25 about.

1 Q For 1985.

2 MR. HALL: Excuse me. You said "phase-out period."
3 Are you assuming there is a phase-out during 1985?

4 MR. RAINEY: Actually, what we can do is look at the
5 period proposed in this particular case. And if you in
6 fact look at the period from 1986 through the phase-in and
7 phase-out period proposed, what would be the effect of
8 deferral of revenues in 1986 over that period of time.

9 MR. HALL: Do you mean deferral or disallowance?

10 MR. RAINEY: Deferral, as opposed to disallowance.

11 THE WITNESS: Well, a deferral could have no impact
12 on one hand and it could have some impact on the other. It
13 all depends on whether the analyst includes the deferred
14 revenue in his calculation of earnings that go into the
15 formula to calculate coverage.

16 Some analysts will count that as good revenue, and
17 others will count it as revenue to be discounted.

18 BY MR. RAINEY:

19 Q So, are you saying that mortgage coverage in fact
20 could change, become depressed as a result of a deferral?

21 A Yes. And I think I made that point earlier in my
22 testimony, that when you look at, for instance, Table 4,
23 where I have shown in the right hand column what our various
24 coverage ratios will be assuming a full year of the rate
25 increase, of the full rate increase, and also a full year

1 impact of Limerick's costs, that our mortgage coverage
2 ratio could be as high as 4.6 for that test year,

3 And I said that that assumes that all the revenue
4 that is deferred in 1986 is includable in that test. And
5 for this case, in the very first year, if the Commission
6 grants our request for the full amount and one-third of it
7 in cash and two-thirds of it deferred, you're talking about
8 about \$400 million or \$500 million, \$450 million I think,
9 being deferred, being recorded as revenue but to be
10 collected in a future year.

11 If that \$450 million is not includable in our
12 coverage ratio, it will have a significant impact of lowering
13 this 4.6 and lowering the 3.2 SEC with AFUDC, corresponding.

14 We have assumed for these purposes that it is all
15 includable, but if an analyst or a rating agency decides
16 that that deferred revenue is not to be included, these
17 numbers would be significantly lower.

18 Q So, in looking at Table 4, interest coverage
19 ratios, your statement would be applicable for mortgage
20 SEC with AFUDC and SEC without AFUDC?

21 A Yes.

22 Q As far as the SEC method is concerned, are you
23 counting all of the revenues as recovered, even though you
24 are talking about a deferral period? You are actually going
25 to talk about booking the recovery of all of the moneys

1 associated with the deferral period, is that correct?

2 A. Well, this number, if I understand your question
3 correctly, this number had been computed on the assumption
4 that first of all the Commission grants us the entire rate
5 increase, and decides to accept our phase-in plan.

6 But for the purposes of calculating this number, it
7 ignores the fact that some of that revenue will not actually
8 be collected in 1986 or in the first year.

9 It assumes that all of it is collected and recorded
10 as revenue.

11 Q. Mr. Paquette, would you agree under the company's
12 proposed phase-in plan, that its net cash flow will increase
13 in succeeding years, 1987, 1988 and 1989 following the first
14 year?

15 A. Yes. The impact of the rate increase will build
16 up as time goes on, assuming the phase-in plan. If the
17 Commission grants us exactly what we have asked for, we will
18 have in year 1 a 9 percent increase that's cash.

19 In the second year, that 9 percent, or 9.4, and
20 another 9.4 on top of it; and then in the third year,
21 another 9.4 percent, to get up to the total of 28 percent.

22 And then in the fourth year, we will have that plus
23 the recovery of a part of what was deferred in years 1 and 2.
24 And that amount would not increase any further, but it would
25 continue for roughly three years, and then the phase-out

1 revenue would terminate.

2 Q So, in reference to Table 5, Mr. Paquette, if
3 we look at II, under the phase-in plan, net cash flow as
4 you just stated would increase after 1986 during the period
5 1987, 1988 and 1989, is that correct?

6 A Let me just consult.

7 (Witness conferring with PECO personnel.)

8 For purposes of this table, the number that you are
9 referring to, the 3.5 for pro forma 1986 with full rate
10 increase?

11 Q Yes.

12 A In order to be as conservative as we could, for
13 purposes of that calculation, we assumed that the entire
14 rate increase approved would be billed and collected as
15 cash in the first year.

16 So, there would not be a buildup, because this
17 assumes that all 28 percent, for the purposes of this
18 calculation, all 28 percent is billed and collected in 1986.
19 So, to that extent, it overstates the number.

20 In the real world, of course, we will collect only a
21 third of it in cash.

22 Q Returning back to Table 4, Mr. Paquette,
23 specifically details of internal sources, under the proposed
24 phase-in plan, would the total internal sources build up over
25 the course of the phase-in period?

1 A. Yes, I believe they would. And it probably
2 would be commensurate with the buildup that is shown on
3 Exhibit No. 27.

4 Q. I would like to make an oral data request, Mr.
5 Paquette, if you could provide us with the details of
6 internal sources through 1989 as shown on Table 4. Is that
7 doable?

8 A. Yes.

9 Q. Thank you.

10 I would like to refer your attention at this time to
11 page 18 of your testimony, lines 21 through 23.

12 A. That was page 18?

13 Q. Yes, sir.

14 A. Yes.

15 Q. And there, it states, "As shown on the table," --
16 and that's Table 9 -- "despite our A rating throughout this
17 period, our financial condition was even below the average
18 of Moody's Baa rated utilities," is that correct?

19 A. Yes.

20 Q. And if I can refer your attention now to Table 9,
21 it shows that using the benchmark for rating agency indica-
22 tors such as pre-tax interest coverage, it compares
23 Philadelphia Electric Company with similarly rated electric
24 utilities, is that correct?

25 A. Well, it compares us to companies that were rated

1 A and Baa, yes.

2 Q And as you have previously stated in earlier
3 cross-examination, it shows that PECO's financial indicators
4 are below A and Baa utility, despite its A rating, is that
5 correct?

6 A Yes.

7 Q Would you agree that bond rating agencies do not
8 rely solely on benchmark indicators?

9 A Yes. I think I have indicated that in my testi-
10 mony. That is not the only factor considered, yes, but it
11 is, as I understand it, the primary things looked at, but
12 there are other factors.

13 Q I would like to make a final oral data request
14 for the most recent rating agency reports which appear at
15 Appendix A of your testimony.

16 A Yes. We will do that.

17 MR. RAINEY: Thank you.

18 I have no further questions of the witness at this
19 time, Your Honor.

20 JUDGE MATUSCHAK: Any further cross-examination?

21 MR. KLEPPINGER: Yes, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. KLEPPINGER:

24 Q Good evening, Mr. Paquette. My name is David
25 Kleppinger. I represent the Philadelphia Area Industrial

1 Energy Users Group.

2 Briefly, on page 6 of your testimony where you
3 discuss the stayout provision until September 27, 1987, am
4 I correct that that stayout date assumes the continued
5 construction program at Limerick Unit 2?

6 A. Well, I think it assumes the construction -- not
7 the construction, just to take care of an contingency that
8 might face the company.

9 Q. Well, if the company were not to accept the
10 Commission's cost containment program offered to it
11 December 5, 1985, and ultimately the Commission then
12 ordered cancellation of the unit, would that move this date
13 forward or backward in your mind?

14 A. I can't judge that right now. It would depend
15 on how fast we would want to seek recovery of the sunk costs,
16 what impact the decision had on the price of the company's
17 stock, whether we would have to write off any of the
18 investment.

19 A decision to cancel rather than to continue would
20 probably involve termination of AFUDC on that investment,
21 and we would just have to see how the market responds and
22 what kind of accounting adjustments we might have to take,
23 and just go forward and make a judgment and see how
24 everything sifts out, and see whether our financial
25 viability is jeopardized or not.

1 But I can't tell you specifically that it will
2 happen when earnings per share are at this level, or
3 coverages are at that level, or the market price of our
4 stock is at a different level.

5 Q But when you selected the 1987 date, you are
6 saying that you didn't make a conscious assumption in
7 arriving at that date that, yes, we do plan on proceeding
8 with the Limerick 2 construction, or no, there is an
9 uncertainty there that we may not continue?

10 A No, that wasn't the reason for doing it. What
11 we were trying to do here, and apparently it is not being
12 received that way, but what we tried to do here was just to
13 tell our customers that we hope that we don't have to come
14 back for another rate increase before two years.

15 And I really think we won't have to, but we couldn't
16 make a flat out statement that we wouldn't, because you
17 can't predict all of the great uncertainties that might face
18 the company or the world today, so we just have to leave an
19 out somewhere to protect ourselves in an extreme emergency.

20 And that is really all that was intended for.

21 Q What I am trying to do is get some understanding
22 of the language, jeopardizing your financial viability. Now,
23 at Table 13 appended to your testimony, you give us a quick
24 rundown of all the rate cases since 1970.

25 I take it you are generally familiar with those rate

1 filings and have been involved at some level with the
2 majority or all of those rate filings, is that correct?

3 A. That's right.

4 Q. Now, at the time the company decided to make
5 those requests for rate relief, was it the company's
6 perception that their financial viability was in jeopardy
7 without the rate relief requested? Are those the types of
8 conditions that will have to prevail September 27, 1987, or
9 conditions worse? That is really what I am trying to get a
10 feel for.

11 A. There were some cases here, and I can't remember
12 the specific ones, where we either had run out of mortgage
13 coverage -- in other words, our ratio was at or about to be
14 2 or below 2 -- that we filed for the rate increase and
15 requested that the Commission grant a part of it promptly,
16 which they could do in those days at the end of the 60 day
17 waiting period as an interim rate increase so that we could
18 restore our coverage ratio so that we could continue to
19 finance that year.

20 And I would say that is getting close to a condition
21 of jeopardizing our financial ability. I forget which case
22 that was, but I know there was one in this period.

23 Q. The standard in that situation that we are looking
24 at was the mortgage coverage ratio?

25 A. At that time, yes. It could be something that

1 could be a factor in the future.

2 Q At page 9 of your testimony, you indicate that
3 the Commission's tentative decision in the ECR-8 investiga-
4 tion could depress earnings per share by 20 cents at line 20.
5 Do you see the reference?

6 A Yes.

7 Q Now, is that 20 cents per share a reduction to,
8 what, your estimated 1987 earnings per share of \$2.79, as
9 reflected on Table 1?

10 A Yes. As you of course may know, the Commission
11 issued a final order and we did write that off in September,
12 and our earnings today are down around \$2.59, 58 or 59, for
13 the 12 months ending November.

14 Q So that, if you were to obtain the relief being
15 requested in this proceeding, your pro forma earnings per
16 share for 1986 of \$2.79 would represent somewhat of an
17 increase over actual earnings per share earned in 1985, is
18 that correct?

19 A Well, once again, the pro forma conditions, we
20 will never see them, because the pro forma assumes that
21 Limerick 1 was in service for that whole year, and that the
22 rate increase was in service for that whole year.

23 And that will not happen in calendar 1986, because
24 this rate increase cannot become effective before or will
25 not, undoubtedly, become effective before the end of June.

1 So that, the best we could see is a half-year effect
2 of the rate increase and a half-year effect of the expensing
3 of the impact of Limerick going in service.

4 Q Do you have an estimate of what your earnings
5 per share in 1986 would be with only one-half a yearly
6 increase?

7 A No, I don't. We are in the process of preparing
8 our budget for 1986 right now. It has not been finalized,
9 so I don't have that estimate.

10 Q You couldn't tell us if it would be above or
11 below the \$2.59 that's anticipated for 1985?

12 A I would imagine it would be above the \$2.59 for
13 1985, but I don't think at this point I can tell you whether
14 it will be as high as \$2.79 or not.

15 MR. KLEPPINGER: Thank you, Mr. Paquette.

16 That's all I have, Your Honor.

17 JUDGE MATUSCHAK: Any redirect?

18 MR. HALL: Your Honor, I may have a brief redirect,
19 if you will give me a few minutes with the witness.

20 JUDGE MATUSCHAK: Five minutes.

21 (Recess.)

22 JUDGE MATUSCHAK: On the record.

23 MR. HALL: If Your Honor please, I have two questions
24 on redirect for Mr. Paquette.

25

REDIRECT EXAMINATION

1
2 BY MR. HALL:

3 Q Mr. Paquette, during your cross-examination,
4 and I forget which counsel it was, you were asked a
5 question with regard to the phase-in program.

6 And I believe in stating your answer to that
7 question, you noted that the phase-in program that the
8 company has proposed in this rate case will cost the
9 company approximately \$250 million.

10 Would you state why that is so, please?

11 A By deferring revenue from the first three years
12 and then collecting it in the latter three years of this
13 six year period, and by agreeing now not to request that
14 the money be returned with interest from the customer, the
15 company is giving up the use of that money that it otherwise
16 would have had if it collected the full amount of rate
17 increase in the first year.

18 And calculating the loss of that money that's
19 deferred at a nominal interest rate today comes up with the
20 grand total of approximately \$250 million of foregone
21 interest that the company is giving up by not requesting
22 that the recoupment include an interest factor from the
23 customers.

24 Q Secondly, Mr. Paquette, you were asked during
25 cross-examination whether the company was aware of the

1 possibility of an excess capacity adjustment during the
2 period of the late 1970's. Do you recall that cross-
3 examination?

4 A. Yes.

5 Q. Was the company at that time also aware of the
6 potentiality of imprudency adjustments to rate base claims
7 for generating plants?

8 A. Yes, we certainly were. Prudency issues were
9 starting to appear in the seventies, as I recall it,
10 around the country for various types of construction
11 management issues, and as a matter of fact we were faced
12 with one in the Salem No. 1 rate case regarding the
13 prudency of the company's surveillance of Public Service
14 during the construction of Salem No. 1, and the Commission
15 ultimately disallowed an amount, as I remember, somewhere
16 around \$10 million and \$15 million from our rate base
17 because of alleged mismanagement on our part of watching
18 over the Public Service construction of the project.

19 MR. HALL: Your Honor, that's all the questions that
20 I have.

21 MR. WERSAN: Your Honor, if I may have just one
22 second, I think I have a followup question.

23 (Pause.)

24 MR. WERSAN: Your Honor, it is my understanding that
25 the company is going to make a transcript of Mr. Paquette's

1 cross-examination from the first Limerick investigation an
2 exhibit to expand that portion which Mr. Delaney presented.
3 Therefore, I will not make an exhibit out of this section
4 of Mr. Paquette's cross-examination, but I would like to
5 bring it to your attention and to his attention after that
6 redirect from Mr. Hall.

7 This is a portion of Mr. Paquette's cross-
8 examination in that case. I am afraid I don't have the
9 exact page number. It didn't Xerox.

10 RE-CROSS-EXAMINATION

11 BY MR. WERSAN:

12 Q But it was the final page of what was handed to
13 you, Mr. Paquette, if I could refer you to line 6 of the
14 final page.

15 The question was put to you, "It was your opinion
16 that the Commission would conceivably make an excess
17 capacity adjustment if the plant were actually brought on
18 line sooner than it was needed, that the Commission would
19 not make an adjustment when the plant did come on line to
20 the AFUDC, the additional AFUDC that accrued as a result of
21 the delay."

22 Your answer was, "Yes, we do not anticipate that
23 with the delay, that the Commission would adjust the final
24 cost of Limerick when we got around to requesting it in
25 rate base." And you continue, and that will all be part of

1 the record. Is that correct, Mr. Paquette? Was that your
2 response in that case?

3 A. I believe what I was referring to was that we
4 did not, as I said, we did not anticipate that the
5 additional AFUDC that would be accrued during delay would
6 be disallowed by the Commission. I think that was a hope
7 on our part, that it does support the statement that I just
8 made, that we were aware that prudence issues were coming
9 to the forefront.

10 I think this solidifies the previous answer I gave to
11 Mr. Hall.

12 MR. WERSAN: Thank you. That's all I have, Your
13 Honor.

14 JUDGE MATUSCHAK: Anything further?

15 MR. HALL: I have nothing.

16 JUDGE MATUSCHAK: If there is nothing further of
17 this witness, we will adjourn --

18 (Witness excused.)

19 MR. WERSAN: Your Honor, if I may, before we
20 adjourn, I have nothing more for Mr. Paquette, but I would
21 like to state on the record today that next week the Office
22 of Consumer Advocate will be filing with Your Honor and the
23 other parties two statements that have been developed by
24 witnesses for the Consumer Advocate's Office.
25

1 Under an agreement with the company prior to the
2 initiation of this rate case, the Consumer Advocate has
3 been developing a review of the construction and the costs
4 of delays of the Limerick 1 station.

5 Under that agreement with the company, we have
6 provided and developed that testimony prior to the normal
7 schedule for the case, and attempted to get it to them
8 within 60 days of the filing of the direct rate case by
9 the company.

10 We in fact provided Office of Consumer Advocate
11 Statement No. 2, the direct testimony of Stephen H.
12 Hanauer, I think the day before Thanksgiving, and we
13 provided OCA Statement No. 1, the direct testimony of James
14 J. O'Brien, I believe two weeks previous to today.

15 We provided them to the company to give them an
16 opportunity to review those testimonies, to see whether or
17 not there is information that we used that they consider
18 confidential or proprietary.

19 They have informed us that this is not a problem at
20 this date, and we will be supplying that to all parties and
21 Your Honor next week.

22 And I just wanted to give you notice that that
23 testimony had been provided to the company prior to our
24 cross-examination, and will be provided to all parties.

25 JUDGE MATUSCHAK: Very well.

1 MR. HALL: Your Honor, I simply concur in the
2 accuracy of Mr. Wersan's statement. I too have two
3 matters which I would like to state for Your Honor.

4 One, the company is at this time planning to seek
5 review by the Commission of Your Honor's ruling earlier
6 today, and would anticipate filing a, I believe it is now
7 called a petition for review of a material question, with
8 the Commission early next week.

9 Your Honor had indicated that you might issue a
10 written order. Is my memory correct on that?

11 JUDGE MATUSCHAK: We indicated we would issue the
12 order today. We would file a memorandum opinion supplement-
13 ing the reasons for our order.

14 The order itself you can take as is in the record.
15 We won't issue another order.

16 MR. HALL: When does Your Honor contemplate issuing
17 the memorandum opinion?

18 JUDGE MATUSCHAK: We're taking off next week, and
19 probably the 30th and 31st. I believe that under the new
20 procedural rules,-- Mr. Delaney can tell me -- you can ask
21 for Commission review without asking us to certify the
22 question, as was the rule before.

23 MR. HALL: That is correct, Your Honor.

24 JUDGE MATUSCHAK: Is that correct, Mr. Delaney?
25 Under the new procedural rules, I don't think they have to

1 come to the ALJ to get a certification. I think they
2 can go direct to the Commission and ask for review.

3 MR. DELANEY: That's my recollection, Your Honor.

4 JUDGE MATUSCHAK: They changed it in the new rules,
5 and this case started after those new rules were placed in
6 effect.

7 MR. DELANEY: That's correct.

8 JUDGE MATUSCHAK: So, I think if you seek review,
9 you could ask the Commission to review our decision directly
10 without asking us to certify the question to the Commission.

11 MR. HALL: We can do that, Your Honor.

12 JUDGE MATUSCHAK: We suggest you look at the rules,
13 That is my recollection.

14 MR. HALL: I have the rules in front of me. The only
15 think I was thinking of is that it does provide seven days
16 for the filing of the brief, and obviously the briefs would
17 be keyed to Your Honor's opinion.

18 I am simply thinking of the timing. But we will
19 work that out. Your Honor will be issuing an opinion
20 sometime after you return.

21 JUDGE MATUSCHAK: Very well.

22 MR. HALL: Secondly, Your Honor, I would request that
23 Your Honor request of Mr. Delaney that he formally file a
24 written version of his motion to strike which will in fact
25 list the various portions of the company's testimony that he

1 wishes struck under Your Honor's ruling, and that we then
2 be given the opportunity, shall we say a week after that
3 document is filed, to present Your Honor with briefs and
4 also reply briefs explaining why we believe that material
5 should not be struck, because it may relate to issues
6 which are perceived to be other than simply the 1976 and
7 1978 deferral decisions, their reasonableness and justness.

8 JUDGE MATUSCHAK: Well, because there may be some
9 hazy portions of that testimony that may be in question,
10 we will direct Mr. Delaney of Trial Staff to particularize
11 those sections that its motion pertains to.

12 MR. DELANEY: Fine, Your Honor. I'll be glad to do
13 it.

14 JUDGE MATUSCHAK: And we will give the company an
15 opportunity to respond.

16 MR. HALL: Could we establish a schedule, Mr. Delaney,
17 for doing that now?

18 MR. DELANEY: Sure. Does this have to go on the
19 record?

20 MR. HALL: No, it does not.

21 (Discussion off the record.)

22 MR. HALL: Your Honor, in an off the record discus-
23 sion between Mr. Delaney, myself and Your Honor, it has
24 been agreed that the Prosecutory Staff -- and I would
25 request that this be expanded to all other parties -- in

1 other words, all motions that are to be made based on Your
2 Honor's motion in limine decision should be filed by all
3 parties on January 3. Supporting and opposing memoranda
4 should be filed by all parties on January 10, and reply
5 memoranda should be filed on January 15.

6 And thereafter, I think Your Honor could render a
7 decision.

8 JUDGE MATUSCHAK: Very well.

9 MR. HALL: The last thing I wish to note, Your Honor,
10 we are talking with the Consumer Advocate at the moment with
11 regard to discovery against the two statements that the
12 Consumer Advocate identified as being filed to Your Honor
13 next week, but as having already been received by us.

14 We are seeking by agreement to establish both
15 informal discovery sessions and a date for a deposition of
16 at least Mr. O'Brien. It is my understanding at this
17 point that the Consumer Advocate agrees to our request in
18 this regard.

19 We will however be filing a formal request with
20 Your Honor simply to do the paperwork with regard to the
21 deposition. It is my understanding of the rules that we
22 need to file something with you on that. We will be doing
23 that early next week.

24 JUDGE MATUSCHAK: Very well. If there is nothing
25 further, we have our next evidentiary hearings scheduled for

1 January 6, 7, 8 and 9 in Philadelphia, is that correct?

2 MR. KLEPPINGER: Yes, Your Honor.

3 JUDGE MATUSCHAK: What witnesses do you intend to call
4 call on those dates, Mr. Hall?

5 MR. HALL: We will be calling rate structure
6 witnesses, I believe, who will be limited to Mr. Williams
7 and Mr. Sundermeier.

8 MR. WERSAN: And also Dr. Perl.

9 MR. HALL: And Dr. Perl, if the other parties wish
10 him to return.

11 MR. KLEPPINGER: It seems to me, Mr. Hall, you
12 should probably schedule Dr. Perl for the 6th, in the event
13 that we don't use all four days on rate structure, that not
14 everyone has to stick around for Perl on the 9th. You said
15 he was available the 6th and the 9th. I think probably the
16 6th is the best day to lock him into.

17 JUDGE MATUSCHAK: Very well. If there is nothing
18 further, we will finally adjourn.

19 (Whereupon, at 6:27 p.m., the proceedings were
20 adjourned, to reconvene at 10:00 a.m., Monday, January 6,
21 1986 in Philadelphia, Pennsylvania.)
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C E R T I F I C A T E

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

COMMONWEALTH REPORTING COMPANY, INC.

By: John A. Kelly

John A. Kelly

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