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FEDERAL EXPRESS MAIL

May 29, 1986

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SECRETARY'S OFFICE
Public Utility Commission

Mr. Jerry Rich, Secretary
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North Office Building
P.O. Box 3265
New Filing Section
Secretary's Bureau, Room B-18
Commonwealth & North Streets
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission v. Philadelphia Electric Company, R-850152

Dear Secretary Rich:

Enclosed for filing in regard to the above-captioned matter please find an original and nine (9) copies of the Reply Exceptions of The City of Philadelphia.

The City's Reply Exceptions have been served upon the Administrative Law Judge and all parties of record as per the attached Certificate of Service.

Sincerely,

Charles E. Rainey, Jr.

Charles E. Rainey, Jr.
Assistant City Solicitor

enclosure
cc: All Parties of Record

CERJ: kyt

DOCUMENT
FOLDER

CERTIFICATE OF SERVICE

I hereby certify that I have served two (2) copies of the following document, Reply Exceptions of the City of Philadelphia, upon the following persons by hand delivery on May 30, 1986, or by Federal Express mail on May 29, 1986, which service satisfies the requirements of 52 Pa. Code §1.54:

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SECRETARY'S OFFICE
Public Utility Commission

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
V.	:	DOCKET NO. R-850152
PHILADELPHIA ELECTRIC COMPANY	:	

REPLY EXCEPTIONS OF THE CITY OF PHILADELPHIA

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Dated: May 30, 1986

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MAY 30 1986

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I. INTRODUCTION

In the following Reply Exceptions, the City of Philadelphia ("City") will not attempt to respond to each of the arguments made by opposing counsel in their Exceptions. Most of those arguments were adequately addressed in the Administrative Law Judge's ("ALJ") Recommended Decision and in the City's Main and Reply Briefs. Rather, these Reply Exceptions will be limited to responses to arguments of opposing counsel not previously rebutted and additional responses on certain issues where some further clarification is deemed necessary.

II. ECONOMIC IMPACT ANALYSIS

A. PECO's Alternative Rate Proposal Must Be Rejected Because It Would Also Have An Adverse Economic Impact Upon The Philadelphia Metropolitan Area

The Philadelphia Electric Company ("PECO" or "Company") has finally conceded that an annual revenue increase which does not significantly exceed the rate of inflation would appropriately balance ratepayer and shareholder interests. PECO Exceptions at 7. In support of its alternative proposal to increase rates by $450 million over three years ("Alternative Rate Proposal") in lieu of its original request for a $671 million rate increase, PECO stated as follows:

> With respect to PECO ratepayers, the alternative increase affords substantial benefits. Under the Company's phase-in proposal, ratepayers will experience annual rate increases of approximately 5%, which is approximately the projected long-term level of inflation. The phase-in plan, coupled with the two-year base rate increase stay-out, will ensure that PECO ratepayers and the economy of the Company's service territory will suffer no adverse economic impact.

Id. The City commends PECO's recognition of the necessity of setting increased annual rates -- if found to be appropriate, just and reasonsable -- which are commensurate with the rate of inflation. However, contrary to PECO's assertions, its Alternative Rate Proposal would not establish increased annual rates which are commensurate with the rate of inflation. Rather, PECO's Alternate Rate Proposal would increase annual rates substantially above the rate of inflation.

PECO's Alternative Rate Proposal results in an 18.91% overall

increase.[1] This equates to an annual rate increase of 6.3% -- and not 5% as PECO has claimed -- over a three-year phase-in period. The present and projected rate of inflation over the next three (3) years is 4%.[2] City Main Brief at 4. Rates established under PECO' Alternative Rate Proposal would, therefore, exceed the rate of inflation by 55% to the detriment of the regional economy.

The Wharton Policy Modeling Workshop, University of Pennsylvania ("Wharton PMW") established that 19,196 new job opportunities in the Philadelphia Metropolitan Area[3] would be lost if PECO's original request to increase rates by 28.2% over three years were adopted. City Main Brief at 18. The Wharton PMW further established that job growth in the Philadelphia Metropolitan Area would not be adversely affected by a rate increase of 16% or less phased-in over three (3) years.[4] City Main Brief at 14.

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[1]PECO's $450 million alternative rate increase is 67% of its original request for $671 million. PECO's alternative rate increase thus results in an 18.9% overall increase (67% of the original 28.2% overall increase). The average annual increase over three (3) years under PECO's Alternative Rate Proposal is, therefore, 6.3%.

[2]PECO failed to support its assertion that the long-term inflation rate is 5%. It also failed to establish the relevance of a long-term inflation projection to a three-year phase-in plan.

[3]The Philadelphia Metropolitan Area or region includes the Pennsylvania counties of Philadelphia, Bucks, Delaware and Montgomery and the New Jersey counties of Burlington, Camden and Gloucester. City Main Brief at 3-4.

[4]Assuming 4% inflation and 3% U.S. job growth.

PECO's originally requested increase of 28.2% is, therefore, 12.2% greater than the 16% "safe-level" of increased rates. The overall increase of 18.9% under PECO's alternative rate increase is 2.9% above the safe-level of increased rates. PECO's Alternative Rate Proposal would, therefore, result in 4,560 new jobs lost in the Philadelphia Metropolitan Area or 23.77%[5] of the 19,196 new jobs which would be lost under PECO's original proposal. Of the 4,560 new jobs lost under PECO's Alternative Rate Proposal, 3,650 would be lost in PECO's service territory, and 1,900 would be lost in the City of Philadelphia.[6] These are impermissibly high numbers of new job opportunities which would be lost and, therefore, the PUC must reject PECO's Alternative Rate Proposal. The Pennsylvania Public Utility Commission ("PUC" or "Commission") must view the ALJ's recommended 4% annual increase[7] as a ceiling for setting rates in this case in light of current inflation trends. City Exception's at 1; City Main

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[5]The figure 23.77% was derived by dividing 2.9 by 12.2.

[6]The new jobs lost in PECO's service territory under the Company's Alternative Rate Proposal was derived by taking 23.77% of the 15,373 new jobs lost in PECO's service territory under PECO's original Rate Proposal. (See, City Reply Brief at 12). The new jobs lost in the City of Philadelphia under PECO's Alternative Rate Proposal was similarly derived by taking 23.77% of the 8,000 new jobs lost in the City under PECO's original Rate Proposal. (See, City Main Brief at 10).

[7]The ALJ recommended that PECO be granted a $302 million or 12.1% rate increase. He further recommended that this increase be phased-in over three (3) years at an annual increase of 4%.

Brief at 13.

B. PECO's Request To Recover Interest On The Deferred Revenues Under Another Alternative Phase-In Plan Must Also Be Rejected Because Such A Plan Would Negate The Benefits of Phasing-In Rates

In another alternative Rate Proposal, PECO has proposed to recover interest on the deferred revenues under a "somewhat less than $450 million" rate increase. PECO Exceptions at 7,n.6. PECO stated that:

> Alternatively, the Commission could approve an increase somewhat less than $450 million and allow the recovery of carrying charges on revenue deferred under the phase-in plan. This would increase 1987 earnings per share by approximately $0.11 without increasing the total revenue allowance during the three-year phase-in period.

Id. This alternative plan must also be rejected because such a plan would negate the benefits of phasing-in rates. It would not serve the regional economy well to postpone rate shock from the phase-in period to the deferred revenue recovery period by allowing interest to be recovered on the deferred revenues. See, City Main Brief at 35.

C. The ALJ Properly Denied PECO's Motions To Strike The Testimonies Of Dr. Arie Schinnar

PECO has taken exception to the ALJ's rulings denying its motions to strike the testimonies of Dr. Arie Schinnar. PECO Exceptions at 70. PECO's motions were based on allegations that it was provided insufficient information regarding the Wharton PMW study. The City has addressed those allegations in its Main and Reply Briefs and, therefore, will not do so again here. City Main Brief at 45-46; City Reply Brief at 1-11; Appendix, pp.1-3. In summary, overwhelming evidence of record established that PECO's allegations were

totally void of merit and constituted a calculated tactic on PECO's part to avoid addressing the substance of the Wharton PMW study. Id. The ALJ, therefore, properly denied PECO's motions to strike Dr. Schinnar's testimonies.[8]

It is further noted that PECO, as previously stated, has conceded that rate increases which closely track the rate of inflation would not adversely impact upon the Philadelphia regional economy. PECO Exceptions at 7. This is the thrust of the City's position in this case. Thus, PECO has removed from contention the major rate-setting principle established by Wharton PMW in this proceeding. PECO's motions to strike the Wharton PMW study are, therefore, contradictory and must not be given any weight by the PUC.

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[8]PECO did not appeal to the PUC the ALJ's rulings denying the Company's motions to strike Dr. Schinnar's testimonies.

III. CONCLUSION

For the reasons stated herein, the City of Philadelphia respectfully requests that the PUC reject all of the arguments and recommendations of opposing parties which are inconsistent with the City's positions.

Respectfully submitted,

DATED: May 30, 1986

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May 29, 1986

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SECRETARY'S OFFICE
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Re: Pennsylvania Public Utility Commission, et al.
v. Philadelphia Electric Company
Docket No. R-850152

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Room B-18 - New Filing Section
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Harrisburg, PA 17120

Dear Secretary Rich:

Enclosed for filing with the Commission please find the original and nine (9) copies of the Reply Exceptions On Behalf Of Philadelphia Area Industrial Energy Users Group (PAIEUG) in the above-captioned Docket. All parties of record have been provided with copies as evidenced by the attached Certificate of Service.

Very truly yours,

McNEES, WALLACE & NURICK

By David M. Kleppinger
David M. Kleppinger

DMK/jf
Enclosures
cc: All Parties of Record (w/encl.)

DOCUMENT FOLDER

CERTIFICATE OF SERVICE

Pennsylvania Public Utility Commission, et. al., :
v. : Docket No. R-850152
Philadelphia Electric Company :

I hereby certify that I have served a copy of the foregoing document on all known parties of record to this proceeding, all by first class mail (unless otherwise indicated) properly addressed as follows:

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Harrisburg, PA

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SECRETARY'S OFFICE
Public Utility Commission

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION, et al.,	:	
v.	:	Docket No. R-850152
PHILADELPHIA ELECTRIC COMPANY	:	

REPLY EXCEPTIONS
OF
PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP*

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BUDD COMPANY - THE HUNTING PARK PLANT
LIQUID AIR CORPORATION
LUKENS STEEL COMPANY
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Dated: May 30, 1986

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION, et al.,	:	
v.	:	Docket No. R-850152
PHILADELPHIA ELECTRIC COMPANY	:	

REPLY EXCEPTIONS
OF
PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP

I
INTRODUCTION

The Philadelphia Area Industrial Energy Users Group (PAIEUG) has already presented over one hundred pages of argument to the Commission in the form of a Main Brief, a Reply Brief and Exceptions to Administrative Law Judge Matuschak's Recommended Decision. In addition, these arguments by PAIEUG relied upon the sworn prefiled testimony of well-respected expert consultants from the firms of Kennedy and Associates and Drazen-Brubaker & Associates, Inc. This testimony consisted of nearly one hundred, seventy pages of text and countless supporting exhibits.

Given this amount of information already available to the Commission in its de novo review, little needs to be added to the PAIEUG position by way of these Reply Exceptions.

However, two developments contained in the Exceptions of other parties necessitate a brief reply.

1. The Utility User's Committee/University of Pennsylvania excepted to the ALJ's Decision to allocate Limerick Unit I on the basis of the average of each class's contribution to the four coincident peaks. While this exception is not surprising and basically repeats prior arguments made by UUC/UP, this party's continual confusion with the concept of cost causation and the effects of a capacity planning decision require a reply. Furthermore, UUC/UP continues to ignore the evidence of record and confuses the position of PAIEUG concerning the relationship between reliability considerations of Limerick Unit I and cost allocation considerations for Limerick Unit I.

2. PAIEUG will reply to the Exceptions of PECo which apparently attempt to offer a revenue requirement settlement figure to the Commission after the close of this record which is not substantiated by PECo's own evidentiary presentation.

II

REPLY EXCEPTIONS

A. THE COMMISSION SHOULD UPHOLD ALJ MATUSCHAK'S ALLOCATION OF LIMERICK UNIT I BASED ON PECO'S 4 SUMMER COINCIDENT PEAKS AND DENY THE EXCEPTION OF UUC/UP ARGUING FOR AN ENERGY-BASED ALLOCATION FOR LIMERICK UNIT I CAPACITY COSTS.

UUC/UP devoted twenty-three pages of Exceptions to the ALJ's Decision to continue allocating Limerick Unit I with the same methodology utilized for PECo's all other production and transmission plant. This methodology conforms with every Commission decision in PECo base rate cases for at least the last 15 years. Nonetheless, UUC/UP continues its repetitious argument containing the same deficiencies discussed in PAIEUG testimony and briefing. At this late stage of the proceeding, PAIEUG will simply list the defects and errors in the methodology advocated by UUC/UP:

(1). The gold-plated analogy at p.33 of the UUC/UP Exceptions actually supports the ALJ's Decision. The gold-plating would be deemed an imprudent expenditure and not recoverable from ratepayers. Similarly, a prudent portion of PECo's investment in Limerick I is the demonstrated need for the capacity at some point in the future. However, the notion of fuel cost savings has been demonstrated by UUC/UP's own witness to be a

misnomer in light of the negative net benefits for Limerick I over its service life. Therefore, the incurrence of investment for energy savings would be imprudent and not recoverable from ratepayers under the logic of the gold-plated analogy presented by UUC/UP.

(2). The UUC/UP criticism of the ALJ for ignoring its study, as well as that of PAIEUG and the OCA, that Limerick Unit I will never provide economic benefits is also applicable to the UUC/UP's own argument concerning cost allocation. If a plant will <u>some day</u> be needed for capacity reasons as is the case with Limerick Unit I, but will <u>never</u> provide economic benefits in the form of fuel savings exceeding those capacity costs, then the proper allocation methodology should emphasize the capacity aspect of the plant as opposed to the energy aspect of the plant as proposed by UUC/UP.

(3). The UUC/UP selection of a 90% energy allocator for Limerick Unit I is based upon an arbitrary split of capacity and energy responsibility and totally ignores the load growth projections upon which the Limerick I construction decision was based in the late 1960s and

early 1970s. The rate design for Rate HT flowing from the UUC/UP cost allocation methodology for Limerick Unit I would produce a tail block energy charge of 5.91¢/kwh compared to the PECo proposal of 3.75¢/kwh. This would represent a remarkable increase in the demand cost component of the Rate HT tail block in excess of 255% and sign the death warrant for large scale industrial concerns in the PECo service territory.

(4). The UUC/UP cost-of-service allocation methodology is incomplete and fails to demonstrate what impact on other class rates-of-return would flow from their proposed methodology.

(5). Other parties also advocating energy-based allocations of Limerick Unit I do not agree with the 90% allocator presented by UUC/UP. The OCA has utilized a 64.1% energy-based allocation for Limerick Unit I as opposed to the 90% utilized by UUC/UP.

(6). UUC/UP blatantly misstates the testimony of PAIEUG witness Falkenberg. Mr. Falkenberg never testified that reliability considerations were not the cause of the costs of Limerick. Rather, Mr. Falkenberg testified that presently Limerick Unit I will not add to the reliability of the PECo system. However, Mr. Falkenberg did testify that Limerick Unit I would be needed for system reliability as early as 1990-1991. In constrast, Mr. Falkenberg, on behalf of PAIEUG, as well as the witnesses presented by UUC/UP testified that no net economic benefits would flow from Limerick Unit I over its entire service life. Therefore, any allocation methodology based on these perceived benefits of fuel savings are inappropriate given the fact that no party believes that they will actually materialize.

(7). The UUC/UP mischaracterization of Mr. Falkenberg's testimony underscores their constant confusion with cost causation and the effect of a system planning decision. Mr. Falkenberg testified to

the effects of the decision to continue with the construction of Limerick Unit I. He did not directly testify to the cause of that decision.

(8). The comparisons made by UUC/UP between Limerick Unit I and Three Mile Island Unit I are inappropriate in light of the substantially different life cycle cost/benefit analyses for these two generating stations. Furthermore, UUC/UP ignores the fact that TMI-I was originally allocated on the basis of peak demands before it was removed from Met-Ed's and Penelec's rate base. Only upon its return to service did the Commission reverse itself on the cost allocation question. Again, the justification given by the Commission for the energy allocation of TMI-I focused on large energy users as the primary beneficiaries of the low cost energy produced by that Unit. Unfortunatey, PAIEUG and UUC/UP both agree that there will be no beneficiaries among large energy users for power produced by Limerick Unit I and thus an allocation methodology based on those phantom benefits should be rejected.

(9). Other precedents cited by UUC/UP ignore this Commission's constant adherence to the 4CP method for PECo. These citations ignore the differences in load characteristics between Duquesne Light Company and PECo which may justify an average and excess demand method on the Duquesne system while supporting a 4CP method on the PECo system. The North Carolina Utilities Commission has reversed itself on at least two occasions and allocated capacity costs on a 100% demand basis in two Duke Power Company proceedings following the Carolina Power & Light Company proceeding cited by UUC/UP. See, Duke Power Company, 60 PUR 4th 333, 336 (1984); Duke Power Company, 69 PUR 4th 375 (1975).

(10). UUC/UP should not be surprised that no party came forward to dispute Dr. Wirtshafter's analysis which led to the conclusion that Limerick Unit I would have to operate approximately 13,622 hours/year for fuel savings to outweigh capacity costs. No dispute was necessary because Dr. Wirtshafter's calculations support the PAIEUG position that, because Limerick Unit I will eventually be need for capacity reasons but will never provide net economic benefits to PECo's

ratepayers in the form of fuel savings, it must be allocated on a coincident peak basis. Dr. Wirtshafter's own theory self destructs by the analysis presented at pp. 51-53 of the UUC/UP Exceptions.

The above deficiencies in the UUC/UP argument provide the Commission with ample support to deny its Exception and uphold the ALJ's Decision regarding the 4CP allocation for Limerick Unit I and all other PECo production and transmission plant. However, the persistence of UUC/UP regarding the cost allocation issue is actually misplaced. UUC/UP, like PAIEUG, is composed of customers served under PECO's Rate HT. Even UUC/UP should realize that their own proposed allocation for Limerick Unit I would assign greater cost responsibility to Rate HT as a class and, therefore, standing alone, the energy-based allocation of Limerick Unit I would not be in the best interests of either UUC/UP or PAIEUG. The real issue disputed by UUC/UP is the rate design within Rate HT. UUC/UP would "load-up" the tail block energy charge to a level of 5.91¢/kwh including 3.31¢/kwh of demand costs.

UUC/UP has challenged the Rate HT rate design in prior PECo base rate proceedings, and a predecessor organization, the Building Owners and Managers Association, appealed the issue to the Commonwealth Court. Having consistently been rejected by the Commission as well as the Commonwealth Court, UUC/UP is now attempting to argue its rate design position through a

cost allocation methodology. See, Pennsylvania Public Utility Commission v. Philadelphia Electric Company, R.I.D., 438 p.98; Boma v. Pennsylvania Public Utility Commission, 79 Pa. Commonwealth Court 598 (1984). The Commission must recognize that UUC/UP is attempting to make its same rate design arguments through a cost allocation presentation and the Commission is bound to uphold its prior decisions on the Rate HT rate design from numerous earlier PECo decisions as well as the appeals of those decisions to the Commonwealth Court.

For the foregoing reasons, the Exception noted by UUC/UP regarding the cost allocation methodology must be unequivocably denied by the Commission.

B. THE COMMISSION MUST DENY THE EXCEPTION OF PECO WHICH APPARENTLY OFFERS A $450 MILLION ADDITIONAL REVENUE REQUIREMENT AS A SETTLEMENT FIGURE.

At page 7 of its Exceptions, the Company presents a minimum revenue requirement increase which would maintain the Company's existing financial position and not permit that condition to further deteriorate. This revenue increase figure of $450 million exceeds the ALJ's Recommendation by approximately $150 million but is $220 million less than PECo's original request. The entire focus of this proceeding has addressed the Company's original request for $670 million base rate increase. PAIEUG does not believe it appropriate for PECo to now place a minimum requirement figure

on the table for further consideration by the Commission. The evidence of record has not addressed the $450 million figure and a gross injustice would be served on all parties participating to this proceeding if the Commission were to seriously consider an apparent offer of settlement at this late stage of the proceeding.

PAIEUG urges the Commission to make its decision based upon the evidence of record, the ALJ's Recommended Decision and the Briefs and Exceptions filed by each party. However, the Commission's consideration of all parties' Exceptions should be limited to positions stated in those Exceptions which have been previously addressed by that respective party throughout this proceeding. The $450 million revenue requirement stated by PECo at p.7 of its Exceptions does not meet this criteria and should be ignored by the Commission.

III
CONCLUSION

For the foregoing reasons, PAIEUG urges the Commission to deny the above-referenced Exceptions as filed by UUC/UP and PECo and grant the Exceptions as originally filed by PAIEUG to the ALJ's Recommended Decision.

Respectfully submitted,

By David M. Kleppinger

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Dated: May 30, 1986

General Services Administration
Office of General Counsel
Washington, DC 20405

May 29, 1986

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MAY 30 1986
SECRETARY'S OFFICE
Public Utility Commission

Mr. Jerry Rich, Secretary
Pennsylvania Public Utility Commission
North Office Building - Room G-18
Commonwealth & North Streets
Harrisburg, PA 17120

Re: Pa. P.U.C. v. Philadelphia Electric Company
Docket No. R-850152

Dear Mr. Rich:

Enclosed for filing with the Commission in the above-referenced docket are an original and nine (9) copies of the Reply Exceptions of the General Services Administration - Complainant.

An extra copy of this transmittal letter is enclosed; please date-stamp it when received and return to us in the enclosed self-addressed envelope.

If any questions arise with respect to this filing, please contact GSA counsel Michael J. Ettner at (202) 566-1156.

Sincerely,

LMShinn
LEONARD M. SHINN
Acting Chief Counsel for
Regulatory Intervention

Enclosures

cc: All Parties of Record

ORIGINAL

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSIONS

RECEIVED
MAY 30 1986
SECRETARY'S OFFICE
Public Utility Commission

PENNSYLVANIA PUBLIC UTILITY COMMISSION, et al.	)	
v.	)	Docket No. R-850152
PHILADELPHIA ELECTRIC COMPANY	)	

REPLY EXCEPTIONS
Of The
GENERAL SERVICES ADMINISTRATION
On Behalf Of The
FEDERAL EXECUTIVE AGENCIES

DOCKETED
JUN 2 - 1986

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Due: May 30, 1986

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Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION, et al.	)	
v.	)	Docket No. R-850152
PHILADELPHIA ELECTRIC COMPANY	)	

REPLY EXCEPTIONS
Of The
GENERAL SERVICES ADMINISTRATION
On Behalf Of The
FEDERAL EXECUTIVE AGENCIES

INTRODUCTION

The United States General Services Administration ("GSA"), a complainant in the above-referenced docket, has received and reviewed the Exceptions to the Recommended Decision of ALJ Joseph P. Matuschak, filed by the parties to this case on May 23, 1986. GSA finds it necessary to respond to several points raised in the Exceptions of Philadelphia Electric Company ("PECO" or the "Company") with respect to the ALJ's cost of capital determinations.

In his recommended decision, Judge Matuschak found an overall fair rate of return of 12.00% to be appropriate for use in developing a proper level of rates in this case. Rec. Dec.

pp. 87-108. The common equity cost rate for PECO was set at 14.25%, with no adjustment for selling and issuance expenses. Id., pp. 106-107. PECO contends these findings are "unreasonably low" and "clearly inadequate", and it requests these findings be rejected by the Commission. PECO Exceptions, pp. 53-60. For the reasons stated below, GSA believes PECO's specific criticisms of the ALJ's rate of return determinations are inconsistent, misleading, and unwarranted.

COST OF CAPITAL

I. PECO's Exceptions Are Based On a Piecemeal Update And Should Be Rejected Unless Other Comparable Updates of Capital Costs Are Reflected Also.

PECO argues that the ALJ's finding of a 10.62% embedded cost of debt (Recommended Decision, pp. 92-93) is in error. PECO Exceptions, pp. 54-55. The Company now argues its embedded cost of debt should reflect actual refunding of the Limerick Credit Agreement. The purported effect of this refunding is a 10.76% embedded cost of debt. While GSA does not object to use of new factual information to quantify PECO's capital costs, the Company's proposed change represents a piecemeal update of financial data, and unless other changes that have occurred in capital costs are also incorporated in the ultimate finding, the Company's proposal here should be rejected. A consistent approach is required.

Additional changes to cost of capital elements that must be made if the Commission accepts PECO's singular proposal include: (1) a reduction in the ALJ's finding as to PECO's cost of floating-rate debt, and (2) a reduction in the ALJ's finding as to PECO's cost of preferred stock. First, a reduction in short-term debt costs is necessary because the Recommended Decision uses a 7.29% figure (based on T-Bill Futures contract yields) to estimate yields on floating-rate issues. This rate is clearly excessive in light of current actual short-term yields, current

short-term yield forecasts, and current Futures contract yields. Based on the Federal Reserve Statistical Release, H.15(519), dated May 19, 1986, and U.S. Financial Data from the St. Louis Federal Reserve Bank, dated May 15, 1986, commercial paper, certificates of deposits, and other short-term rates are currently well below the 7.29% rate adopted by the Recommended Decision. The most recently reported short-term yields from these publications range between 6.52% and 6.73%. In fact, yields in excess of 7.0% have not been recorded since early April 1986.

Forecasts for short-term yields also reveal that the 7.29% figure is excessive. The Blue Chip Financial Forecasts for May 1, 1986 shows consensus forecasts for commercial paper yields ranging from 6.7% to 6.9% for the remainder of 1986. Futures contract yields similarly support short-term debt costs below 7.0%. While GSA believes the record amply demonstrates that Future contract yields are not an acceptable indicator of near-term yields (see GSA's Initial Brief, pp. 9-10; GSA St. No. 1, pp. 3-5; GSA St. No. 1A, pp. 2-3 and Schedule 15), if the Commission chooses to use such yields, the most recent data should be used. Relying on recent data from The Wall Street Journal, Treasury Bill Futures contract yields for settlement in June 1986 (which is the only basis for the ALJ's finding) have averaged near 6.1%.

Based upon the above data of actual current short-term yields, consensus forecasts of short-term yields, and T-Bill Futures contracts, PECO's floating-rate debt yields should be based on short-term yields of no greater than 6.75%. If the Commission wishes to be consistent with the Company's view that Futures contract yields for June 1986 settlement should be the basis for the floating-rate yields, then a 6.1% figure should be used. Use of the 6.1% value leads to a 21 basis point reduction in the Recommended Decision finding for PECO's costs for Pollution Control Notes.

Futhermore, to produce a complete and consistent update of PECO's capital costs, the ALJ's finding of a 10.50% cost of preferred stock must be reduced to reflect current information. The Commission may take notice of actual costs to the issuing company for recent preferred stock issuances, as follows:

Issuing Company	Date Issued	Debt Rating	Cost(%)
Central Power & Light	4/22/86	a2/A	5.03%
Washington Water Power	4/16/86	baa1/BBB+	6.09%
Toledo Edison	3/05/86	baa2/BB-	9.55

Source: EBASCO Analysis of Public Utility Financing, Nos. 4-P to 6-P, 1986.

These actual data indicate current costs of preferred stock to be well below the 11.8% cost used in the Recommended Decision as the

prospective cost of a proposed new issue. Indeed, current costs are also below the 10.10% figure recommended by GSA witness Winter (GSA St. No. 1A, pp. 10-11). Use of data on the Toledo Edison issuance, which is most similar to the prospective PECO offering, supports the development of a 10.38% cost for the preferred stock component of the capital structure. This 10.38% figure should be used to complete the update initiated by the Company.

Finally, the Commission should note that the piecemeal update proposed by PECO represents a continuation of its previous efforts to improperly boost its cost of capital. Throughout the course of this proceeding, these efforts have centered on proposed new debt or preferred stock issuances and outdated cost estimates for these issuances. As GSA has previously documented, the Company used selective foresight by including in its case certain proposed issues while excluding others. GSA Initial Brief, pp. 7-8. For example, the Company's testimony filed in September 1985 contained no mention of a debt issue that actually occurred in October, 1985, yet included estimated data on an issuance planned for May 1986. One difference between these issues was that recognition of the former would have decreased PECO's cost of debt while the latter increased the Company's finding.

PECO's estimated costs for the proposed issues included in its filing have consistently proven to be excessive once actual results were available. (GSA Initial Brief pp. 11-12). The actual costs of the debentures that are the basis for PECO's latest piecemeal update, are yet another example of Company estimated costs that exceed actual costs.

While GSA recognizes the difficulty of accurate forecasting during a period in which interest rates have fallen sharply, this is also the economic environment in which a piecemeal updating of data has become beneficial to the Company. In the current instance, a partial update became beneficial to the Company because of the ALJ's reduction in PECO's proposed cost of debt. Once the Recommended Decision was released, the partial update became the "lesser of two evils": either PECO now admits the actual costs of the debentures were less than the Company initially estimated, or it accepts the ALJ's cost of debt finding. Absent the ALJ's reduction, there was no reason for PECO to introduce the actual data, and this data may not have entered into the determination here. After all, the Company has not chosen to update its recommendation concerning yields on floating-rate debt issues, even though new data relevant to this calculation are available. This was an update not to its benefit. For the Commission to allow PECO's partial update option to be exercised when beneficial to the Company but otherwise ignored, is clearly inequitable to the ratepayer and

should not be allowed.

In light of the above, GSA recommends that either the ALJ's decision as to PECO's cost of debt be accepted, or a full and even-handed update of the cost of short- and long-term debt and preferred stock be conducted. The Company's proposed piecemeal update, alone, should be rejected.

II. The ALJ's Proposed 14.25% Cost of Common Equity Is Fully Adequate. PECO's Exception to This Finding Is Not Supported by Fact.

PECO has filed an exception to the Recommended Decision's proposed 14.25% common equity cost rate, calling this finding "clearly inadequate." PECO Exceptions, pp. 55-60. PECO's complaint focuses on alleged flaws in the ALJ's discounted cash flow (DCF) and risk premium analyses. GSA disagrees with PECO's assertions (none of which are new). The Commission should adopt the 14.25% equity return finding without change.

The Company argues that both the DCF yield and growth components found reasonable by the ALJ are too low. PECO finds a 1.5% growth rate too low because, in its opinion, it is based on forecasted growth rates while historic dividend and earnings growth rates have been ignored. However, PECO has misstated the facts concerning the growth rate issue. First, the 1.5% figure is not based solely on forecasts. The 1.5% figure, in fact,

exceeds most recent forecasts for both dividends and earnings. Recent dividend and earnings growth forecasts average 1.0% and 0.4%, respectively. Approximately 70% of these recent forecasts fall below 1.5% (GSA St. No. 1A, Schedule 18). Secondly, historical growth rates recorded by PECO do not support a growth rate in excess of 1.5%. For example, only twice in the past 25-years have PECO's dividends and stock price recorded concomitant 5-year average growth rates in excess of 0.0% (GSA St. No. 1, Schedule 9). Only over more lengthy historical holding periods has PECO demonstrated an ability to grow at a rate nearer the 1.5% level. If not for the growth rates recorded during these more lengthy historical periods, the ALJ would have been justified in finding a growth rate below 1.5%.

Concerning the yield finding adopted by the Recommended Decision, PECO argues that its stock price has recently fallen below $18.00 per share and therefore an analysis predicated upon a stock price above $19 a share is no longer valid. First, it should be noted that the ALJ's yield finding is not solely based on a stock price in excess of $19. In fact, the $17.86 average share price for May 1986, derived by PECO (PECO Exceptions, p. 57), supports a yield of only 12.3% ($2.20 divided by $17.86) which is below the yield implicit in the ALJ's cost of equity finding of 14.25%. A 12.3% yield plus the 1.5% growth rate indicates a cost of equity of only 13.8%.

Furthermore, PECO has long insisted that an increase in stock price implied an increase in growth rate. If PECO's logic is applied to the current circumstances, the recent decline in stock price indicates a necessary reduction in investor-expected growth rates. Therefore if a higher yield is used in the DCF model to reflect the lower stock price, the growth rate should correspondingly be reduced. While GSA believes this logic is clearly faulty, it is exactly the argument used by PECO to support a higher growth rate when PECO's stock price was rising (PECO Exceptions, p. 57).

PECO also challenges the Recommended Decision's risk premium finding. The Company argues both the base to which the risk premium is added and the premium itself are understated. First, the Company argues 11.75%, not the ALJ's 11.34%, should be the base to which the premium is added. No clear justification is offered for the 11.75% figure other than it is what the Company "claimed". Also, if the Company would update its information, as it selectively chose to do in the context of debt costs, even the ALJ's 11.34% figure is excessive. Both Moody's Bond Record and Standard and Poors Bond Guide for May 1986 show current yields-to-maturity on PECO debt at well below 11%. Most yields on PECO long-term debt fall closer to 10% with some yields as low as 9.6%. In light of these current yields, the ALJ's finding of 11.34% should be reduced, not increased as requested by PECO.

PECO's claim that the Recommended Decision's risk premium of 3.07% is understated is also groundless. As GSA witness Winter has documented, risk premiums historically available to investors in utility stocks have on average ranged between 182 and 359 basis points (GSA Statement No. 1, p. 42). These premiums are based on differences in actual returns on utility stocks and returns on long-term government bonds. Since returns on utility bonds have generally exceeded those available on government bonds, the above premiums should be reduced to be applicable to the ALJ's analysis. Such a reduction would place the ALJ's 307 basis-point premium nearer the upper end of a range of reasonableness, and indicates the 3.07% figure is fully adequate, if not excessive.

III. Contrary to PECO's Assertions, The Rate of Return Adopted in the Recommended Decision Is Fully Adequate And, In Some Respects, Excessive.

PECO's Exceptions complain that its cost of capital has been understated in the Recommended Decision. PECO Exceptions, pp. 56-60. PECO cites prior Commission rate orders granting higher returns, and makes a plea for an extra return cushion in view of PECO's above average risk. Id., p. 59. None of these arguments are new; they have been completely and fairly addressed by the ALJ. GSA believes the Recommended Decision's cost of capital findings are, as a whole, fully adequate. Indeed, the Recommended Decision grants PECO the comfortable cushion it sought.

For example, PECO's request for an extra measure of relief was granted in part in the Recommended Decision's treatment of debt discounts, premiums, and issuance costs. Rec. Dec., p. 93. In rejecting GSA's proposal on this issue, the Recommended Decision essentially gives PECO the benefit of cost-free capital associated with those items. The Company proposed, and the ALJ accepted, a straight line amortization method for recovering the premium paid for debt redemption. This method ignores interest earned on amounts periodically recovered, as was fully documented by GSA witness Winter (GSA St. No. 1A, pp. 7-10). The ALJ's acceptance of straight line amortization of premiums paid for debt redemption, without recognition of interest earned on amounts periodically recovered, has resulted in an overstatement of PECO's cost of debt, thereby granting the Company the "cushion" it considers necessary.

In addition, The Wall Street Journal of May 23, 1986, reported PECO plans to redeem the remainder of its 17.625% debt on July 1, 1986. A further reduction in PECO's cost of debt is likely as a result of this issuance because of downward trends in PECO's cost of debt. The market now suggests PECO's cost of new debt is below the 11.8% effective cost apparently accepted by the Recommended Decision. Other examples of how the Recommended Decision grants PECO a fully adequate—and arguably greater than necessary—rate of return, appear in the area of the current cost of preferred stock, common stock, and floating-rate debt issues,

and have been discussed in preceding paragraphs of this reply.

In light of these development, there is no evidence that the Recommended Decision has understated the cost of capital as claimed in the Company's exceptions. PECO's prayer for a higher return should be rejected.

CONCLUSION

For the reasons set forth above, GSA respectfully requests that the Commission reject PECO's Exceptions as they relate to the cost of capital issue, and to instead adopt the Recommended Decision's findings of a 12.00% overall cost of capital, including a 14.25% cost of equity.

Dated at Washington, D.C. this 29th day of May, 1986.

Respectfully submitted,

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Certificate of Service

I hereby certify that on May 29, 1986, I served copies of the Reply Exceptions of the General Services Administration upon the following parties to Docket No. R-850152.

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ORIGINAL

May 29, 1986

RECEIVED
MAY 30 1986
SECRETARY'S OFFICE
Public Utility Commission

AIRBORNE

Jerry Rich, Secretary
Pa. Public Utility Commission
Room B-18, North Office Building
Harrisburg, PA 17120

Re: Philadelphia Electric Company,
Docket No. R-850152

Dear Secretary Rich:

Enclosed herewith for filing in the above-referenced docket please find an original and nine (9) copies of the Reply to Exceptions of United States Steel Corporation - Complainant.

Please acknowledge receipt of the enclosures by having the extra copy of this transmittal letter time-stamped and returned to me in the enclosed self-addressed envelope.

Very truly yours,

Kenneth R. Pepperney

Kenneth R. Pepperney

/mab

Enclosures

cc (w/enc.): All Parties of Record

RECEIVED
MAY 30 1986
SECRETARY'S OFFICE
Public Utility Commission

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY
COMMISSION, et al.

R-850152

v.

PHILADELPHIA ELECTRIC COMPANY

JUN 2 - 1986

REPLY TO EXCEPTIONS OF
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PENNSYLVANIA PUBLIC UTILITY
COMMISSION, et al.

R-850152

v.

PHILADELPHIA ELECTRIC COMPANY

REPLY TO EXCEPTIONS OF
UNITED STATES STEEL CORPORATION -
COMPLAINANT

I. INTRODUCTION

United States Steel Corporation ("USS") filed its Exceptions to the Recommended Decision of Administrative Law Judge Matuschak ("ALJ") on May 21, 1986. USS now files this Reply to certain of the Exceptions to that decision filed by other parties, specifically, the Exceptions of the Office of Consumer Advocate ("OCA"), the Utility User's Committee/ University of Pennsylvania ("UUC") and the Action Alliance of Senior Citizens, et al. ("AASC").

II. ARGUMENT

The OCA and UUC propose to allocate PECO's investment in baseload generating plant on the basis of energy.[1/] This

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1/ AASC attacks PECO's cost study, which used a demand allocation for such costs.

proposal rests upon a fundamental misapprehension of the generation planning process. It ignores proper application of the principles of cost causation. The Commission, therefore, should affirm the ALJ's rejection of it.

The proposal to allocate the capital costs of baseload generating plant on the basis of energy rests upon the argument that PECO builds such plants, with their relatively high capacity costs, in order to secure lower cost energy. However, this argument misapprehends the true nature of the generation planning process. As Mr. Pollock pointed out, utilities must justify additional baseload generating capacity and they rarely, if ever, attempt to do so without a demand forecast. (Pollock Rebuttal, at 5.) The fact that in many cases baseload plants are cancelled or postponed when forecasted demand shrinks also establishes the irrefutable tie between generation plant investment and demand. (Id. at 6.)

The arguments in favor of an energy allocation of capacity costs confuse the effect of operating baseload units at high capacity factors (fuel savings) with the cause of their construction. (Id.) Utilities choose to invest in generation facilities first and foremost to meet anticipated demand. Once the decision to construct is made, the utility then determines the most efficient type of plant to serve its load pattern. However, the utility never arrives at this second step of the planning process unless it passes the first step, and the first step rests upon demand. The proponents of allocating capacity costs on the basis of energy fail to recognize that the

relative costs (both investment and fuel) for different types of generating units come into play in the planning process only (1) after the utility satisfies the system peak demand criterion, and (2) within the limits set by the utility's load pattern.

Stated another way, the fundamental flaw in the energy allocation argument is that it begins with the end of the generation planning process rather than with the beginning. It conveniently ignores the fact that PECO would have no generating units at all if PECO did not first have a requirement to meet a certain peak demand on its system. It also conveniently ignores the fact that PECO would not be building baseload units if its load pattern called instead for the construction of peaking units (or vice-versa). The proponents of energy allocation claim that their preferred allocation methodology is premised on the generation planning process. In fact, it ignores the truly significant part of that process with respect to cost causation.

The argument for an energy allocation also relies upon an alleged need to "match" the burden of the capital costs of PECO's nuclear generating plants with the "benefits" of those plants. The argument holds that high load factor customers get more of the fuel savings from such plants and, therefore, should pay more of the capacity costs of such plants. However, this argument ignores the fact that there is no entitlement to energy produced from particular types of generation for which capacity cost responsibility has been allocated. It also

ignores the fact that the relatively low load factor of certain classes both explains and justifies the difference between the capacity costs allocated to them and the use which they make of the capacity available to them.[2/]

The "cost-benefits" theory is completely at odds with the accepted principle of cost-causation. (Pollock Rebuttal, at 3.) In addition, the cost-benefit approach fails to accord the full benefits necessary to the customer classes which would be saddled with the burdens of it. If certain customers are to pay a greater share of above-average capacity costs from baseload units, then those customers should receive a greater share of below-average cost energy from those units. (Id., at 3-4.) The proposals in this case to allocate the capital costs of PECO's baseload units on an energy basis fail to achieve this necessary result and were properly rejected by the ALJ. (Id., at 7-11.)

The OCA and the AASC also reiterate their request for an "essential needs" residential rate. This rate would be funded

> "through a targeted application of Commission-ordered reductions in the overall rate increase request. Specifically, as the revenues allocated to the residential class are reduced, the OCA proposes that those reductions would be applied first to the essential use blocks." (OCA Exceptions, at 66.)

[2/] The same phenomenom applies to and refutes the UCC's criticism of the HT demand ratchet.

By confining the source of "funding" in this way, the OCA and AASC apparently hope to mute opposition to their proposal from customers in other classes. However, as past PECO rate cases have shown, there is an extreme danger that the burden will in fact fall on customers in other classes. Many of these customers, such as USS, face hardship of their own. For example, USS's steel operations are in an intense competitive struggle against domestic and foreign competitors in a market characterized by worldwide overcapacity. On April 29, 1986, USS publicly announced that it had recorded a loss of $249 million for the first quarter of 1986.

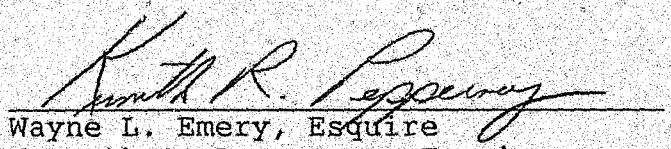
Quite clearly, it is not only the residential ratepayer, or a particular kind of residential ratepayer, who has problems with the high cost of PECO's electricity. Numerous kinds of customers have their own problems and their own equities which they feel would justify preferential rate treatment. In such a situation, the only fair way for the Commission to deal with all of these customers is to base rates on cost-of-service. To the extent that the OCA and AASC request a departure from this standard, their request should be rejected.

III. CONCLUSION

The Commission should reject the proposal to allocate capacity costs on the basis of energy. The Commission also

should reject the UCC's challenge to the HT demand ratchet and the OCA/AASC's request for a preferential residential rate.

Respectfully submitted,



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Attorneys for
UNITED STATES STEEL CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of May, 1986, I served a copy of the Reply to Exceptions of United States Steel Corporation -- Complainant on all parties of record by placing the same in the U. S. mail, first class, postage prepaid.

Kenneth R. Pepperney

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May 30, 1986

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MAY 30 1986

SECRETARY'S OF
Public Utility Comm

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
Harrisburg, PA 17120

Attn: New Filing Section
Room B-18
North Office Building

RE: Pa. PUC et al v. Philadelphia
Electric Company (Docket R-850152 etc.)

Dear Secretary Rich:

I am delivering for filing today the original plus
copies of the Pennsylvania Food Merchants Association Reply
Exceptions. Copies are being served today on all active par
of record in this proceeding.

Sincerely,

Bernard A. Ryan, Jr.

BAR,Jr/et

Enclosure

cc: All Active Parties of Record

FOLDER

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION, et al.	:	
v.	:	Docket No. R-850152
PHILADELPHIA ELECTRIC COMPANY	:	

CERTIFICATE OF SERVICE

I certify that I have today served copies of the Pennsylvania Food Merchants Association Reply to Exceptions by first class mail as follows:

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Dated: May 30, 1986.



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MAY 30 1986

SECRETARY'S OFFICE
Public Utility Commission

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION, et al.	:	
	:	Docket No. R-850152
v.	:	
PHILADELPHIA ELECTRIC COMPANY	:	

PENNSYLVANIA FOOD MERCHANTS ASSOCIATION REPLY TO EXCEPTIONS

DOCKETED

JUN 2 - 1986

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Preliminary Comment

The Pennsylvania Food Merchants Association ("PFMA") is a trade association whose members own and operate retail supermarkets and convenience food markets throughout Pennsylvania, including the service territory of Philadelphia Electric Company ("PECO"). Service to those stores is generally provided under PECO's rate schedules GS or PD.

PFMA took no position on the level of the rate increase that should be awarded to PECO but it was an active participant in the rate structure portions of this historic rate case. Charles A. Larson, the expert witness who testified for PFMA, supported the PECO proposals for the allocation of its requested rate increase among the customer classes based on the results of the PECO 4 concident peak ("4CP") cost allocation study for the future test year ended June 30, 1986. Mr. Larson also proposed two rate design changes affecting only the GS and PD rate classs, namely, lower tail block energy charges from those rate classes and the extension of a time-of-use adjustment now found only in the HT rate schedule to the GS and PD rate schedules.

In the rate structure portions (pages 145 through 167) of his comprehensive Recommended Decision, Administrative Law Judge Joseph P. Matuschak discussed the numerous alternative

proposals concerning the cost of service methodology, the class revenue allocations and the design of the various rates in the PECO tariff. The Administrative Law Judge concluded that the PECO proposals in this area were appropriate and consistent with the Commission's prior decisions in this area, and he rejected all of the alternative rate structure and rate design proposals that had been put forward by the parties in this case, including the two rate design recommendations advocated by PFMA.

While PFMA is disappointed that its recommendations for the two modest revisions to the design of the rates for the GS and PD customers were not approved, on balance it considers the Recommended Decision to be a fair and reasonable one with respect to the rate structure issues that were presented in this very complex rate case. For that reason it elected not to file Exceptions to Judge Matuschak's Recommended Decision. PFMA now submits this Reply to Exceptions (1) to note its general support for the Recommended Decision on rate structure matters, and (2) to state in summary fashion why it supported the cost of service study submitted by PECO and accepted by Judge Matuschak rather than the alternative proposals advanced by several other parties in their briefs and in the Exceptions they filed to the Recommended Decision.

Energy or Demand Based Allocation of Limerick One

PECO's cost-of-service study in this case (Exhibit WFS-1) allocates the investment in the new Limerick nuclear unit on the same 4 Coincident Peak methodology the utility has used for years in allocating investment in the company's production plant. That approach was endorsed by PFMA as well as by the Commission Trial Staff, the City of Philadelphia, the Philadelphia Area Industrial Energy Users Group[1] and the Southeastern Pennsylvania Transportation Authority and the National Railroad Passenger Corporation ("SEPTA/AMTRAK"). Proposals for the allocation of that investment on an energy basis in lieu of PECO's demand based allocation were advocated by the Office of the Consumer Advocate and several other parties. Those energy based alternative alloction proposals, and the corresponding rate design recommendations advanced by the same parties which favor low load factor, on-peak energy usage, are inconsistent, unbalanced and inappropriate in the context of this proceeding. They

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1. PAIEUG endorsed the 4CP methodology while advocating modifications in the cost study to correct certain errors it perceived in that study.

should be rejected here just as they have been in all of PECO's recent rate cases.

An energy allocation of the Limerick One investment is inconsistent with the cost-of-service studies submitted by PECO in rate cases stretching back over the last decade or so. It is inconsistent with the Commission precedents that approved the 4CP methodology in all of those rate cases. And, as presented here, it is internally inconsistent in that its proponents seek to apply the energy based allocation only to this newest addition to PECO's production plant, while continuing the usual demand based allocation of all of the remaining PECO generating facilities, including several other nuclear units.[2]

The energy allocation proposals are unbalanced in favor of low load factor, primarily on-peak general service and industrial consumers. While tilting the allocation of the Limerick investment towards the large volume, high load factor customers on the capital cost side of the equation, the proposals that have been made here do not include any corresponding allocation to

---

2. An energy based allocation is even inconsistent with the prior testimony of one of its advocates in this case, Robert L. Figley, who in the last PECO base rate case supported PECO's demand based allocation rather than the energy allocation advocated by certain other parties in that case. (Tr. 3598-3600).

those customers of an appropriate share of the operating cost reductions that result from PECO's investment in such a nuclear base load plant. The proposals are thus skewed to benefit the most inefficient commercial and industrial consumers while further burdening the high load factor customers who have been subsidizing the utility's other customers for so many years under PECO's prior tariffs.

To reverse the Commission's repeated rejection of such energy based allocation proposals by abandoning the consistently applied 4CP methodology in a rate case of this magnitude would be contrary to the concepts of rate continuity and gradualism in rate structure modification. The PECO proposals for the allocation of the rate increase will result in a generally equal sharing of that increase by the various customer classes. The burdens that this potentially very large rate increase will impose on all of PECO's customers certainly should not be aggravated for certain groups of those customers by simultaneously implementing such a drastic change in the rules that have previously been applied for distributing rate increases among the classes.

For more detailed responses to these various energy allocation proposals, see the rebuttal testimony submitted by Messrs. Sundermeir (PECO Stmt. 24A, pp. 1-7), Pollock (PAIEUG Stmt. 3A, pp. 2-23), Rudden (SEPTA/AMTRAK Stmt. 1A, pp. 6-8) and

Ileo (City Stmt. 3, pp. 9-29) as well as the discussion of these matters in the PFMA Main Brief, pages 16-19, and the PECO Main Brief, pages 7-148 through 7-155.

Conclusion

In its Main Brief, the Commission Trial Staff pointed to the "very real possibility of 'rate shock' [to all of PECO's customers] should the company receive all or most of its request for additional revenue." The Trial Staff therefore recommended that any rate increase awarded to the utility "....be distributed among the various rate classes in as uniform a manner as possible... given the cost to provide service." The Staff's rate structure recommendations were then concisely summarized:

> "Although Staff recognizes that there may be certain flaws in the company's implementation of its cost of service analysis, it does not believe that they are significant enough to preclude the use of the company's proferred cost of service methodology in this proceeding. Staff, therefore, recommends that the company's four coincident peak cost of service study be accepted as an appropriate guide to be used in allocating any rate increase granted in this proceeding. Concurrently, it is recommended also that any such increase be allocated among the rate classes proportionally to the company's allocation proposal." Commission Trial Staff Main Brief, pp. 260-61.

PFMA agrees with the Trial Staff that this simply is not the time for reconsidering once again the radical changes in PECO's rate structure that have been advanced by several of the parties in this case, particularly since they have been so often proposed and rejected by the Commission in past PECO rate cases. Administrative Law Judge Matuschak in his Recommended Decision obviously concurs in that judgment. The rate structure recommendations in his Recommended Decision should be adopted by the Commission.

Respectfully Submitted,

Bernard A. Ryan, Jr.
Attorney for Pennsylvania Food
Merchants Association

Dated: May 30, 1986.

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May 30, 1986

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Mr. Jerry Rich, Secretary
Pennsylvania Public Utility Commission
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Re: Pennsylvania Public Utility Commission v.
Philadelphia Electric Company, Docket No. R-850152

Dear Mr. Rich:

Enclosed for filing with the Commission is an original and nine (9) copies of the Reply to Exceptions to the Recommended Decision dated May 13, 1986 submitted jointly on behalf of the Southeastern Pennsylvania Transportation Authority ("SEPTA") and the National Railroad Passenger Corporation ("Amtrak").

Very truly yours,

J. Thomas Morris

JTM/ejz
Enclosures

cc: Honorable Joseph P. Matuschak (w/ encl.)
All parties (w/ encl.)

I hereby certify that I am, this 30th day of May, 1986, serving by special messenger (except where noted below), the Reply to Exceptions of the Southeastern Pennsylvania Transportation Authority and the National Railroad Passenger Corporation, upon the persons listed below:

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J. Thomas Morris

DATED: May 30, 1986

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MAY 30 1986

SECRETARY'S OFFICE
Public Utility Commission

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

NATIONAL RAILROAD PASSENGER CORPORATION	:	COMPLAINT DOCKET
	:	NO. R-850152C-007
v.	:	
PHILADELPHIA ELECTRIC COMPANY	:	

SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY	:	COMPLAINT DOCKET
	:	NO. R-850152C-008
v.	:	
PHILADELPHIA ELECTRIC COMPANY	:	

REPLY OF SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY AND THE NATIONAL RAILROAD PASSENGER CORPORATION TO EXCEPTIONS TO THE RECOMMENDED DECISION DATED MAY 13, 1986

Of Counsel:

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J. Thomas Morris, Esquire

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1600 Avenue of the Arts Building
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Philadelphia, PA 19107

May 30, 1986

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DOCUMENT

JUN 2 - 1986

I. INTRODUCTION

In the Recommended Decision dated May 13, 1986, Administrative Law Judge Joseph P. Matuschak (hereafter "the ALJ") joined PECO, the P.U.C. Trial Staff, SEPTA, Amtrak, the City of Philadelphia, the Philadelphia Area Industrial Energy Users Group, United States Steel Corporation and the Pennsylvania Food Merchants Association in recommending that the Four Coincident Peak ("4CP") method used in PECO's cost of service study be approved. SEPTA and Amtrak jointly submit this Reply to the exceptions that have been filed by the Office of Consumer Advocate (OCA), the Utility Users Committee/University of Pennsylvania (UUC/UP), and the Consumers Education and Protective Association (CEPA) challenging PECO's 4CP cost of service study and the revenue allocation based on such study.[1]

II. The ALJ's Approval of PECO's 4CP Cost of Service Study And The Revenue Allocation Based On Such Study Should Be Upheld By The Commission

As in past rate cases, the OCA and several intervenors have challenged the approval of PECO's 4CP allocation of production and

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[1]To a large extent, the issues raised in these exceptions have been fully briefed in the Main Brief and Reply Brief filed by SEPTA and Amtrak, as well as in the briefs filed by PECO, the P.U.C. Trial Staff and other parties supporting the 4CP method. Therefore, an extensive re-analysis of the issues is unnecessary and where appropriate, portions of these prior submissions will be referenced in lieu of repeating the entire arguments set forth therein.

transmission plant costs. The same arguments presented here by such intervenors have been considered and consistently rejected by the Commission in past PECO rate cases. Indeed, PECO's 4CP allocation has been approved by the Commission in the past seven PECO rate cases. As in past cases, these intervenors have presented no adequate reasons whatsoever for rejecting the Company's 4CP cost of service study in this case.

It cannot be denied that peak responsibility allocation methods, such as PECO's 4CP method, are well recognized as one of the leading allocation methodologies (See Reply Brief of SEPTA and Amtrak at p.8). In addition to the numerous instances in which the Commission has approved PECO's 4CP allocation, similar peak responsibility cost of service studies have been approved in recent cases in Pennsylvania and other jurisdictions. See, e.g., Pa. P.U.C. v. Pennsylvania Power and Light Company, 67 P.U.R. 4th 30, 87 (1985); Re Union Electric Company, 53 P.U.R. 4th 565 (Illinois, 1983); Re Ohio Edison Company, 55 P.U.R. 4th (1983); Re Arkansas Electric Cooperative, 65 P.U.R. 4th 269 (1985); Re Utah Power and Light Company, 48 P.U.R. 4th 435 (1982). PECO's 4CP allocation has been shown to be particularly appropriate in view of the Company's strong summer peaking tendency and PECO's need to maintain sufficient capacity to meet such peak demands (See PECO Reply Brief at p. 7:37). In addition, the 4CP method sends appropriate price signals to customer classes encouraging them to reduce their summer demands and also encouraging off-peak usage (See Id.; Main Brief of SEPTA and Amtrak at p. 21).

The OCA, UUC/UP and CEPA have argued that the 4CP method fails to account for the fact that base load capacity is built not only for system reliability purposes, but also to achieve energy savings. Therefore, they argue that the extra costs incurred to achieve energy savings (i.e. the cost in addition to the cost of a peaker unit) are not incurred to meet peak demand and should not be allocated on the basis of demand. For example, the UUC/UP at pp. 33-34 of their Exceptions compare these additional costs to the costs of gold plating on an imaginary generating plant built to meet peak demand and suggest that the costs of gold plating cannot be justified as necessary to meet peak demand. Any such analogy is inaccurate, however, since the cost of gold plating on a generating unit would certainly be deemed imprudent and would not be allocated on the basis of demand, energy or any other basis. Assuming, as one must, that the Commission will allow recovery only of prudently incurred costs of used and useful generation plant, the analogy fails and the reasoning behind the analogy in no sense demonstrates that prudently incurred fixed capital costs are not properly allocated on a demand basis.

Additionally, the alternative energy-weighted allocation methods that have been proposed[2] are based on an incomplete and

---

[2]It should be noted that while the UUC/UP criticizes the 4CP method, this intervenor has declined to advocate any specific alternative allocation method (N.T. at p. 3924). Ironically, the UUC/UP recommended that an across-the-board equal percentage increase be applied to the current rates -- which are based on PECO's 4CP study in the last case (N.T. at pp. 3925-3926).

asymmetrical analysis of electric power costs. On the one hand, they propose to allocate capacity costs that they assert are incurred for energy savings on the basis of energy use. This proposal is based on the theory that customers "should bear responsibility for those costs in proportion to the benefits they derive from the investments" (OCA St. No. 8 at p.14). However, these intervenors propose no corresponding allocation of the savings that result from investment in such capacity. As a result, customers paying more (based on energy usage) for the benefits of energy cost-saving capacity would not receive the corresponding benefits of such capacity. For example, if a customer using more energy pays a greater share of the capital costs of a base load unit, the customer should be given recognition for the lower fuel costs incurred to the extent that the customer is an off-peak or high load factor customer using proportionately more base load power. However, the proponents of an energy-based cost allocation do not propose any such allocation of energy costs corresponding to the time or manner of use. Thus, the proposed energy-weighted allocation methods fail to achieve their supposed purpose of allocating costs in proportion to benefits received (See Main Brief of SEPTA and Amtrak at pp. 20-21).

The principal effect of such alternative allocation methods would be to shift greater costs to off-peak and high load factor customers (See Main Brief of SEPTA and Amtrak at p. 21; Reply Brief of PECO at pp. 7:38-39). Thus, such methods would discourage off-peak usage and, as recognized by the Commission in the last PECO rate case, would "remove a great deal of existing incentives for large commercial

and industrial customers to reduce demand." Pa. P.U.C. v. PECO, R-842590, January 25, 1985 Opinion and Order at p. 133.

In conclusion, the intervenors proposing various energy-based cost allocation methodologies have advanced no adequate reasons whatsoever for abandoning the 4CP method, a method that has been consistently applied in numerous past PECO rate cases -- even where a substantial portion of PECO's net generation plant consisted of nuclear base load plant (See Main Brief of SEPTA and Amtrak at p. 20). Moreover, there are serious disadvantages to pricing based on the alternative methodologies, most notably, such pricing serves to discourage off-peak usage and efforts to reduce demand. For all of the foregoing reasons, PECO's 4CP cost of service study and the revenue allocation based on such study should be approved.

Respectfully submitted,

REED SMITH SHAW & McCLAY

By:



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May 30, 1986

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Public Utility Commission

Jerry Rich, Secretary
Pennsylvania Public Utility
Commission
Post Office Box 3265
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Re: Pennsylvania Public Utility Commission v. Philadelphia Electric Company, Docket No. R-850152

Dear Secretary Rich:

Enclosed please find for filing with the Commission the original and nine (9) copies of the Replies of Respondent Philadelphia Electric Company to Exceptions to the Recommended Decision of Administrative Law Judge Joseph P. Matuschak in the above-referenced proceeding.

As the attached Certificate of Service indicates, copies of these Replies to Exceptions have been served on all parties of record.

Sincerely,

Walter R. Hall, II

Walter R. Hall, II

WRH,II:das

Enclosures

DOCUMENT
FOLDER

cc: The Honorable Joseph P. Matuschak
All Parties of Record
The Honorable Linda Taliaferro, Chairman
The Honorable Frank Fischl, Commissioner
The Honorable Bill Shane, Commissioner

I hereby certify that I have on this day served a copy of the aforementioned Replies Exceptions on the following parties:

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SECRETARY'S OFFICE
Public Utility Commission

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION, ET AL.	:	
	:	
	:	Docket No. R-850152
v.	:	
	:	(1986)
PHILADELPHIA ELECTRIC COMPANY	:	

REPLIES OF RESPONDENT PHILADELPHIA ELECTRIC COMPANY TO EXCEPTIONS

To the Recommended Decision of
Administrative Law Judge Joseph P. Matuschak

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I. INTRODUCTION

On May 23, 1986, Philadelphia Electric Company ("PECO" or the "Company") filed with the Pennsylvania Public Utility Commission (the "Commission") its Exceptions to the Recommended Decision of Administrative Law Judge Joseph P. Matuschak (the "ALJ"), issued May 14, 1986.[1/]

The Company believes the $302 million revenue increase proposed by the ALJ to be phased in over a three-year period without recovery of carrying charges on the deferred revenue to be clearly inadequate and inequitable. Such a rate increase will cause unacceptable financial results to the detriment of both Company ratepayers and shareholders and should therefore be rejected.[2/] The ALJ's proposed $302 million revenue increase (PECO Exc., pp. 3-6):

(i) could necessitate a reduction in the Company's $2.20 dividend since earnings per share will equal only $2.06 in 1987 ($1.98 if FASB 71 is adopted) and will be reduced thereafter by attrition, such earnings also constituting an approximate 25% decline from 1985 earnings;[3/]

1/ The Company herewith replies to the Exceptions filed by the Commission Trial Staff ("Trial Staff"), the Office of Consumer Advocate (the "OCA") the Governor's Energy Council ("GEC"), the City of Philadelphia ("City"), Philadelphia Area Industrial Energy Users Group ("PAIEUG"), the Utility Users Committee/University of Pennsylvania ("UUC/UP"), the United States Steel Corporation ("U.S. Steel"), the Consumers Education and Protective Association, et al. ("CEPA"), and Southeastern Pennsylvania Transportation Authority and the National Railroad Passenger Corporation. To a large extent the arguments presented in opposing party exceptions simply restate arguments presented to the ALJ and which are fully addressed in PECO's Initial Brief ("I.B.") and Reply Brief ("R.B.").

2/ Trial Staff, in its Exceptions, asserts that additional errors exist which would reduce the revenue allowance to $270 million. As explained below in Section VI(I), the Company does not agree with Trial Staff's "corrections." The financial results produced by a $270 million increase, without considering the effects of proposed FASB 71, are projected to be: 1987 earnings per share $1.97; return on common equity 10.9%; SEC coverage excluding AFUDC 1.9x; and cash flow as a percentage of total capitalization 2%. These results, of course, are even more severely inadequate than are produced by a $302 million increase.

3/ If the amendment to FASB 71 is adopted, (PECO I.B., pp. 2-40 to 2-42), 1987 earnings (continued)

(ii) would at least threaten and possibly cause a reduction in the Company's BBB- bond rating to below investment grade as rating agency defined financial indicators will fall under the Recommended Decision into the BB category;

(iii) would in light of the above, seriously threaten the Company's ability to attract capital to maintain its construction program recently found to be needed and in the public interest by the Commission; and

(iv) would, if the proposed $302 million revenue increase is combined with a substantial imprudency disallowance, such as is contained in the Recommended Decision and proposed to be increased by opposing parties and FASB 71 is adopted, as the ALJ recognizes is likely (R.D. pp. 169-70), would result in a projected earnings per share of a negative $.80 during 1987, an equity return of a negative 4%; relevant financial indicators well within the BB range; and mortgage coverage well below 2.0x, thus precluding the attraction of capital through mortgage bonds. Thus, under the Recommended Decision with its imprudency adjustment, the severely adverse results described in items (i) to (iii) above will become a certainty to the great disadvantage of PECO shareholders and ratepayers.

The result of the ALJ's seriously deficient revenue allowance and his unsupportable and extreme prudency disallowance will be an era in which the financial community will view PECO with alarm. Investors will lack confidence in the Company's

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would have to be reduced to reflect the ALJ's failure to allow carrying charges on the deferred revenue. This would reduce 1987 earnings per share to $1.98.

securities, market values will decline, and PECO will be cut off from the capital markets and prevented from raising the capital required to complete its construction program needed to provide safe and reliable service to Southeastern Pennsylvania. Clearly, all thoughts of a voluntary two-year stay-out must be abandoned, and any significant adverse financial or economic trend could cause a financial emergency for the Company. Obviously, as the Recommended Decision itself produces these extreme results, the financial results and effects of the additional adjustments and prudency disallowances proposed by opposing parties are much worse and thus do not merit serious consideration.4/

To avoid these adverse results, the Company believes that, at a minimum, the ALJ's inadequate revenue allowance must be increased to $450 million and the additional adjustments and imprudency disallowances proposed in opposing party Exceptions must be rejected. Alternatively, the Commission could allow the recovery of carrying charges on the revenue deferred under the phase-in plan which would improve 1987 earnings by approximately $.11/share and reduce the minimum necessary increase to slightly above $400 million. Any increase below $400 million should be phased-in over no more than two years. Such a phase-in would reduce the adverse effects of any such inadequate revenue allowance. Moreover, and for the same reason, carrying charges on the deferred revenue balance should be allowed. A revenue increase of $450 million or $400 million with carrying charges would approximately maintain the Company's 1985 level of earnings per share and would solidify the Company's BBB-, minimum investment grade bond rating, thus providing PECO with the opportunity to attract capital, preserve the common equity investment of shareholders, and to continue its construction program, which the Commission has found to be necessary and in the public interest (PECO Exc., pp. 4 & 7).

4/ The financial results of the Staff and OCA total case positions are set forth in detail in the Company's Initial Brief (pp. 2-6 to 2-11). Under these proposals, with the adoption of FASB 71 amendments, PECO's retained earnings would be reduced to a negative $416 million. The Company would be in default of its credit agreements as the total common stock equity account would decline to $2.21 billion or only 29% of total capital. PECO could pay no dividends on preferred or common stock, and the Company would be precluded from raising additional capital on reasonable terms.

That such an increase is not inequitable to ratepayers is demonstrated by the fact that both U.S. Steel and PAIEUG, representing a group of major PECO customers with a significant financial interest in the outcome of this proceeding, have supported a revenue allowance of approximately $400 million.[5/] Moreover, the ALJ himself determined that an equitable balance of ratepayer and shareholder interests required an approximate $360 million increase (R.D., pp. 181-82). Significantly, a $360 million increase would produce 1987 earnings per share approximately equal to PECO's current $2.20 dividend and thus substantially reduce the likelihood of the major adverse financial effects of the Recommended Decision as described above.

The ALJ's inadequate revenue allowance coupled with the FASB 71 required write-off of the Limerick 1 imprudency disallowance produces devastating financial consequences for PECO. Thus, correction of the ALJ's incorrect imprudency adjustment is a major necessity. The Company has presented numerous separate and well-documented analyses by experienced Company officials and highly qualified independent experts demonstrating that the project could not have been completed and placed in service much before February 1986, due to late-imposed NRC design requirements, NRC licensing constraints, and construction constraints (PECO I.B., pp. 4-15 to 4-68; R.B., pp. 4-42 to 4-60; PECO Exc., pp. 10-22). The reasonableness of these analyses was confirmed by a separate evaluation into potential project acceleration performed by Theodore Barry and Associates ("TB&A") (PECO I.B., pp. 4-63 to 4-65). Because of the many conservative assumptions contained in these analyses, the Company believes that this evidence demonstrates that the 1976 and 1978 deferral announcements caused no project schedule extension, and therefore no cost disallowance is appropriate. Additional support for this conclusion is found in the Company's cost and schedule comparisons which further demonstrate that the deferral announcements had little or no schedule effect (PECO I.B., pp. 4-2 to 4-15). Finally, the Company submitted a revenue requirements analysis which

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5/ See PAIEUG I.B., p. 60 and Appendix B; U.S. Steel I.B., p. 7.

reveals that there is no net increase in project cost to PECO's ratepayers even if one accepts the 27-month delay proposed by the OCA (PECO I.B., pp. 4-165 to 4-169; R.B., pp. 4-23 to 4-24).

It cannot be overemphasized that, in PECO's opinion, the overwhelming evidence in this proceeding clearly demonstrates that no imprudency disallowance is justified on account of the alleged imprudency of the 1976 and 1978 deferral announcements. However, if the Commission should decide, erroneously, that an adjustment is appropriate, the Company submits that the most reasonable alternative position is the construction schedule analysis presented by TB&A. This analysis indicates that project completion could not have been achieved prior to January 1984 (PECO Exc., p. 13). This analysis, although itself flawed and conservative due to several simplifying assumptions, represents the maximum schedule advancement, i.e., 9 months, with even limited support in the record and would result in a $170.4 million disallowance (PECO Exc., p. 13 and Appendix A). It should be noted that this would not be the first time that a TB&A analysis has been adopted, as this Commission has previously accepted the results of TB&A's prudence review of PECO's oversight of the Salem construction project and employed TB&A to perform a management and operations review of General Public Utilities following the TMI-2 incident. See Pa. P.U.C. v. Philadelphia Electric Co., RID-438 (Feb. 5, 1979); Pa. P.U.C. v. Metropolitan Edison Co., 37 PUR4th 77 (1980).

The level of disallowance under the TB&A analysis is also supported by a second independent evaluation presented in the Company's Exceptions, i.e., the OCA's quantification as adjusted to reflect certain largely uncontroverted offsetting items. Specifically, the unrebutted record evidence in this proceeding demonstrates that the $554.9 million OCA imprudency adjustment adopted by the ALJ, even ignoring its invalidating errors and unsupported assumptions (PECO Exc., pp. 8-53), fails to reflect several cost offsets which would reduce the maximum acceptable disallowance to approximately $120.1 million. If combined with the OCA's alleged additional $42 million error identified in the OCA's Exceptions (pp. 22-23), a total disallowance of $162.1 million

is derived, which is slightly below the disallowance required for a 9-month delay (PECO I.B., pp. 4-106 to 4-107; 4-136 to 4-140; Exc. pp. 15-20). Thus, if the Commission chooses erroneously to adopt an imprudency disallowance, the maximum adjustment with even flawed support in the record is $170.4 million.

Trial Staff asserts that evidence as to a utility's financial condition is not to be considered by the Commission in setting just and reasonable rates (TS Exc., pp. 2-4). This position is inconsistent with prior Commission orders in PECO rate proceedings, other Pennsylvania rate orders, commission orders from other jurisdictions, and all relevant appellate court precedent (PECO R.B., p. 2-6). Indeed, the cases cited by Trial Staff to support its argument that a utility's financial condition should not be considered actually support PECO's contention that a careful consideration of the Company's financial condition is an appropriate and necessary part of the Commission's determination of just and reasonable rates in this proceeding.

In Pennsylvania Electric Co. v. Pa. P.U.C., ___ Pa. ___, 502 A.2d 130, 133-34 (1985) (the Penelec case), the Pennsylvania Supreme Court expressly stated that a necessary element of the balancing of ratepayer and shareholder interests is the financial integrity of the utility:

> "In short, Hope sets forth a balancing test... for the determination of 'just and reasonable' rates, to be applied with the aim of protecting consumers ... while seeking to preserve the financial integrity of utility companies.
>
> * * *
>
> The decision in Hope enumerated certain legitimate areas of concern for investors, those being that a company have sufficient revenue to cover operating and capital costs, that the return on equity be commensurate with returns on enterprises having similar risks, and that the company be able to maintain credit and attract capital. These investor interests are appropriate factors to be weighed in the balancing analysis under Hope...."

Thus, under the Penelec case, investor interests must be considered, and the balancing of interests, based on sound policy and proper evidence, must achieve an end result, the success of which "must be measured as much by the success with which [Commission

orders] protect [ratepayer] interests as by the effectiveness with which [Commission orders] 'maintain credit ... and ... attract capital.'" 502 A.2d at 134.

Moreover, contrary to Trial Staff's view, the Penelec case does not authorize the Commission to make legally erroneous or factually unsupported rate base and expense adjustments under the guise of equitable balancing. The long-established principle that a utility is entitled to a fair opportunity to recover all reasonable expenses and to earn a fair return on prudent investment in used and useful property devoted to public service is unchanged by the holding in Penelec, and the failure to allow such fair return is confiscatory and cannot be upheld. See, e.g., Ben Avon Borough v. Ohio Valley Water Co., 271 Pa. 363, 114 A. 369 (1921); Keystone Water Co. - White Deer District v. Pa. P.U.C., 19 Pa. Cmwlth. 292, 339 A.2d 873 (1975), aff'd, 477 Pa. 594, 385 A.2d 946 (1980); Solar Electric Co. v. Pa. Pub. Serv. Comm'n, 76 Pa. Super. 255, aff'd, 271 Pa. 385, 114 A. 373 (1921); Alabama Power Co. v. Alabama Pub. Serv. Comm'n, 422 So.2d 767 (Ala. 1982). Thus, the Commission cannot adopt a legally incorrect or evidentiarily unsupported imprudency, excess capacity or other adjustment on the improper basis that it satisfactorily "balances" the equities between shareholders and ratepayers.

With respect to other issues, the opposing parties' Exceptions simply represent to the Commission all the adjustments presented to and rejected by the ALJ. As fully set forth in the Company's Initial and Reply Briefs, opposing parties' arguments in support of these adjustments are based on errors of law and regulatory policy or on mischaracterization of the record evidence. Of particular importance are the efforts of certain parties to continue to press for even larger imprudency adjustments and for major excess capacity adjustments. Response to these issues is set forth in Sections II and III, respectively. The Company's response to other opposing party Exceptions is briefly summarized in Sections IV, V, and VI.

II. EXCEPTIONS SEEKING ADDITIONAL IMPRUDENCY DISALLOWANCE OF LIMERICK 1 COSTS SHOULD BE REJECTED.

A. The ALJ Correctly Rejects Trial Staff's Proposed $1.1 Billion Limerick Imprudency Adjustment.

Trial Staff excepts to the ALJ's rejection of its proposed $1.1 billion imprudency disallowance on the grounds that the ALJ mischaracterized its adjustment, rejected its methodology for irrelevant reasons, and applied an incorrect legal standard (TS Exc., pp. 6-18). As set forth below, these arguments are clearly incorrect and Staff's exception should therefore be denied.

Staff's analysis contains numerous unsupported assumptions and methodological errors which render it invalid as a method for quantifying the alleged effects of the 1976 and 1978 deferral announcements (PECO I.B., pp. 4-81 to 4-93). The most serious of these errors is that Staff's quantification analysis is grounded on the unsupported and impossible assumption that Limerick 1 could have been simultaneously construction-completed and placed in-service in April 1981 (PECO I.B., pp. 4-81 to 4-82). Staff Witness Dougherty admitted that neither he nor any of the auditors who performed Staff's quantification analysis was qualified to determine whether Limerick could actually have been completed and in-service by this time, and in fact no such analysis was performed (PECO I.B., p. 4-81). Thus, Staff's analysis is based on an entirely hypothetical and impossible Limerick completion schedule. Indeed, the impossibility of achieving completion by April 1981 regardless of the deferral decisions, due to NRC design restraints and other factors beyond the Company's control, has been conclusively demonstrated through comprehensive and detailed schedule analyses presented by the Company and also by OCA (PECO I.B., pp. 4-23 to 4-80; R.B., p. 4-67). Moreover, as the ALJ found, by failing to demonstrate whether the plant could have been completed by April 1981, Staff failed to establish the fundamental requirement under the prudence standard that a causal relationship exist between the allegedly imprudent conduct and the costs which it seeks to disallow (PECO I.B., pp. 4-61 to 4-67).

Staff's quantification analysis also contains numerous additional errors and improper approximations, all of which it has acknowledged and, excepting one, remain uncorrected (PECO I.B., pp. 4-86 to 4-87). Specifically, Staff's analysis failed to (1) consider the 15-month startup and testing phase at Limerick in spreading direct costs to the pre-April 1981 period for purposes of AFUDC determination; (2) quantify the increase in AFUDC rates resulting from the need to raise an additional $1.027 billion of capital in order to meet an April 1981 completion date; (3) use a realistic cash flow spread over the 42-months prior to April 1981; (4) reflect additional capitalized PURTA taxes which would have been incurred under Staff's proposed construction schedule; (5) consider the effects of increased overtime late in the project and reflect proper wage rate differentials between April 1981 and October 1984; and (6) use appropriate producer price indices to reflect material price increases (PECO I.B., pp. 4-87 to 4-93). Staff does not now nor did it at anytime during this proceeding contest the accuracy of these criticisms (PECO I.B., pp. 4-87 to 4-93).

Despite its recognition of these errors, Staff continues to assert that its proposed quantification analysis should be adopted. Staff first contends that the ALJ and the Company have mischaracterized its quantification methodology (TS Exc., pp. 6-8). This argument is merely an exercise in semantics and should be ignored. The Company submits that there is no significant difference between the ALJ's and Company's description of Staff's methodology and that articulated by Staff in its Exceptions. Moreover, this argument does not change the fact that Staff's quantification is based on a completely unrealistic assumption that Limerick 1 could have been completed and placed in-service by April 1981.

Staff further contends that the Company's criticisms of its hypothetical schedule are irrelevant because its quantification analysis reflects all labor and material quantities actually required to complete the plant (TS Exc., pp. 8-9). This is incorrect. Although Staff's analysis may reflect the actual number of labor and material units, its admitted purpose was to calculate the escalation and AFUDC which could have been saved

if the plant would have been completed by April 1981. As noted above, this completion date was clearly unachievable. Thus, Staff's analyses does not quantify reasonably achievable cost savings based on when Limerick 1 could have realistically been completed and is therefore of no value in this proceeding.

Staff also asserts that the ALJ applied an incorrect legal standard by requiring that a causal connection be established between the allegedly imprudent deferral announcements and Staff's recommended adjustment (TS Exc., pp. 10-13). In support of its position, Staff contends that the requirement of causation was expressly rejected in Duquesne Light Co. v. Pa. P.U.C., No. 69 C.D. 1985 (April 16, 1986) and Re: Beaver Valley 1 Generating Station, 57 Pa. P.U.C. 371 (1982). This simply is not true.

In the Duquesne case, the Commission adjudicated the utilities' right to recover expenses prospectively by establishing a pricing mechanism for the purchase of coal from the Quarto mine. In effect, the Commission established a mechanism to "normalize" the cost of purchases, and in affirming the Commission's decision the Commonwealth Court properly relied upon prior Commission decisions in which other expenses were adjusted to a normalized level even though prudently incurred. Slip Op. at 6-7. In contrast, this case involves the Company's historic investment in a nuclear generating facility which PECO is seeking to include in rate base and upon which it is entitled to earn a return. Unlike expenses, the Company's rate base reflects the known historic original cost investment in plant in service which is not adjusted to reflect a normalized level. As such, Duquesne is clearly inapplicable and does not stand for the proposition that causation is no longer a requirement before a utility's allegedly imprudent investment can be disallowed from rate base.

Similarly, Staff's reliance on the Beaver Valley decision is misplaced. The first passage from that case quoted by Staff clearly sets forth the legal requirement of causation before costs may be disallowed. Moreover, the second passage merely indicates that the utility failed to meet its burden of establishing that its costs were prudent. As noted above, this is clearly not the case here as the Company has submitted substantial and virtually

unrebutted evidence that the 1976 and 1978 deferral announcements were not the proximate cause of any schedule extension.

The Staff further asserts that causation is not required since the purpose of this proceeding is to establish just and reasonable rates by balancing the interests of ratepayers and shareholders, and therefore the focus of the Commission's inquiry is only on whether PECO's actions were imprudent (TS Exc., p. 11). Such a position is contrary to all prior Court and Commission precedent which clearly establishes that causation is a fundamental requirement under the prudence standard, including rate proceedings (PECO I.B., pp. 3-1 to 3-8; R.B., pp. 4-1 to 4-3).

Staff's quantification clearly does not represent a reasonable balancing of shareholder and ratepayer interests. To the contrary, Staff's proposal, if accepted, would result in disastrous financial consequences for PECO while providing for no increase to ratepayers (PECO I.B., pp. 2-7 to 2-8; TS Main Brief, pp. 233-58). The financial consequences to the Company of the adoption of the Staff proposal, or the total approximate $800 million disallowance of the OCA, would be dire. As set forth in PECO's Initial Brief (pp. 2-11), the write-offs of the Staff proposed disallowance, required by the proposed amendment to FASB 71, would reduce earnings per share by $5.00 in the year of the write-off. PECO's retained earnings would be reduced to a negative $416 million, and the Company would be in default of its credit agreements as the total common stock equity would decline to only 29% of total capital. As a result, PECO could pay no dividends on common or preferred stock. Under these conditions, the Company would be precluded from raising additional capital on reasonable terms to provide service to its customers. A slightly less severe, but essentially identical result, would occur under the OCA's proposed approximate $800 million total adjustment.[6/]

6/ Staff also advances a number of additional arguments in support of its proposal, each of which are without merit. Staff asserts that its approach gives effect to the findings of imprudency by the Commission in its 1980 Investigation Order (TS Exc., p. 15). However, both the Company's and the OCA's analyses also "give effect" to the Commission's Order, as each attempts, improperly in the case of the OCA's analysis, to quantify the impact of the 1976 and 1978 deferral announcements. Simply because (continued)

B. Assertions Of Imprudence Respecting The Mark II Containment Are A Mischaracterization Of The Record And Should Be Rejected.

OCA and GEC except to the ALJ's refusal to disallow $194.1 million of Limerick 1 and Common costs based on alleged "errors" of General Electric ("GE") in the design of Limerick's Mark II containment (OCA Exc., pp. 25-37; GEC Exc., pp. 15-16). This argument is based on serious legal error and a severe misrepresentation of the record and was properly rejected by the ALJ (PECO I.B., pp. 3-46 to 3-75; R.B. pp. 3-1 to 3-9). Due to the technical and factual complexity of this matter, a careful review of the briefs below is absolutely necessary to a proper understanding and disposition of this issue.

OCA makes no allegation that PECO was in any way imprudent as respects the Mark II problem, but bases its proposed adjustment solely on GE's alleged failure (i.e. its error) to include in the original Mark II containment design the hydrodynamic loads which were investigated by GE, the AEC/NRC and the Mark II owners in the 1970s. PECO has presented unrebutted evidence that GE engaged in a thorough testing and analysis program during the late 1950's and early 1960's (i.e. five separate series of tests were conducted) to verify the adequacy of the pressure suppression containment design. No significant hydrodynamic phenomena were discovered during that program which either the AEC, GE or the technical community believed would have design significance. What limited phenomena were observed during early tests occurred because of the test facility's small size, atypical configuration to actual nuclear plant containments, use of atypical steam flow conditions for containment LOCA or SRV events and other atypical features. During later tests in the early 1960's, one of whose purposes was to investigate further the limited phenomena observed in the early tests and which were accurate and comprehensive simulations of expected plant operating and accident conditions, no such effects were observed (PECO

Staff has attempted this same result provides no basis for acceptance of its analysis, especially in view of the significant errors previously described. Staff further contends that it was inconsistent for the ALJ to reject Staff's "hypothetical" schedule while accepting the OCA's computer-simulated completion date (TS Exc., p. 10). Both analyses contain numerous unsupported assumptions and errors and should not be accepted.

I.B., pp. 3-54 to 3-55; R.B., p. 3-4). As testified by Dr. Salomon Levy, a Senior General Electric Official who was involved in Mark II reactor design during the 1950s through the 1970s, and by Dr. Roger J. Mattson, a Senior NRC Staff Official since the 1960s, all significant test data was reported to the AEC, was repeatedly reviewed by it in licensing the Mark II containment at numerous reactors over the years and until 1975 hydrodynamic forces were believed by the AEC and the entire technical community to have no safety or design significance (PECO I.B., pp. 3-51 to 3-67; R.B. pp. 3-2 to 3-8).

The additional evaluations of the Mark II containment conducted during the period 1975-1982 occurred because of increases in the NRC's standard of plant safety assurance, not because of any perception by the NRC or others in the industry that previous safety evaluations were improperly or incompletely done (PECO I.B., pp. 3-63 to 3-64). That there existed no "errors" is further clear from the very long-term and substantial program required employing the combined resources of the AEC, foreign nuclear industry regulators, the foreign and domestic nuclear industry, and the technical community to determine what, if any, plant alterations were required due to these small forces (PECO I.B., p. 3-65).

Indeed, OCA Witness Hanauer's own testimony, despite its vague and entirely undemonstrated allusions to "GE error," establishes the correctness of this position with its extended description of the complexity and sophistication of the late 1970s test program (PECO I.B., p. 3-65). Clearly, as the ALJ found (R.D., p. 85),

> "by virtue of the overwhelming evidence in this record, both as to quantity and quality, there was no imprudency either by GE or PECO in connection with the design, redesign and rework relating to the Mark II containment as affecting Limerick 1."

As also recognized by the ALJ (R.D., p. 79), this exact issue of alleged GE imprudence in design of the Mark II containment has already been adjudicated by the Commission after a thorough review of identical OCA allegations in Pa. P.U.C. v. Pennsylvania Power and Light Company, 57 Pa. P.U.C. 559 (1983). In that case, the Commission, based on substantively identical evidence as presented by the OCA in this

case, concluded that GE was not imprudent since the hydrodynamic loads were not discoverable at any earlier time. Further, the Commission held that: "The problem was not in identifying the loads but determining the impact of the loads on the plant and how to design for that impact" (57 Pa. P.U.C. at 578-579). All of the evidence presented on this issue, including that presented by the OCA, as described above, affirms the accuracy of these Commission determinations (PECO I.B., pp. 3-63 to 3-65).

OCA seeks to avoid this prior Commission determination by asserting the presence in this case of allegedly "new information" (OCA Exc., pp. 30-36). This "new information" consists solely of two pressure suppression containment test reports, selected out of a multitude of such reports either entered into or discussed upon the record of this case. These reports contain the results of the first large scale tests conducted on the pressure suppression concept at a Pacific Gas & Electric Company facility known as the Condensing Tank Facility ("CTF") in 1958 and 1959 and a report on the small scale Mark III tests which began in 1969. However, as recognized by the ALJ, this "new evidence" provides absolutely no support for the OCA's proposed adjustment nor does it call into question the Commission's prior determination (PECO I.B., pp. 3-52 to 3-65; R.B., pp. 3-4 to 3-7). First, the Commission should note that OCA's "expert" on the Mark II issue, Dr. Hanauer did not offer testimony supporting the OCA's argument as to the meaning or significance of these reports. The OCA relies solely upon interpretation advanced for the first time in its ALJ Briefs of fragmentary excerpts from those reports taken out of context and upon unrelated, entirely undemonstrated assertions of imprudence or error by its Witness Hanauer as support for its proposed imprudency finding.

Second, PECO Witness Levy explained, without contrary testimony being offered by the OCA, that the hydrodynamic effects which occurred at the CTF were deliberately induced under conditions which cannot exist during actual reactor operation, LOCA or SRV conditions, or other conditions which may exist during plant operation or accident. In sum, the "bouncing", "pressure pulse" and other phenomena observed were the result of deliberate testing to determine what would happen if the steam suppression

capability of the containment water pool was exceeded. The results were reported to the AEC, i.e. the test report quoted by the OCA was provided to the AEC (Tr. 4997), and further tests were conducted to assure that these phenomena would not occur in the actual pressure-suppression containment environment (which was not simulated by the CTF) either during operation or under accident conditions (also not simulated by the CTF tests). These tests, conducted in 1960 at PG&E's Humboldt Bay and in 1963 at its Bodega Bay facilities, with test parameters in part specified by the AEC and with AEC observers present, were carefully designed to simulate actual pressure-suppression containment conditions, including both normal operation and possible accident conditions (PECO I.B., pp. 3-51 to 3-56, 3-60 to 3-61; R.B., pp. 3-2 to 3-5). As is obvious from the fact that the OCA has not quoted from the reports of these later, more extensive and important tests, which were submitted for the record and which were submitted to the AEC as the basis for Mark 1 and Mark II plant licensing (i.e. including Limerick), no significant hydrodynamic effects were observed (PECO I.B., pp. 3-60 to 3-61; R.B., 3-2 to 3-5). Indeed, Dr. Mattson presented specific references to AEC licensing documents and ACRS meetings where the specific phenomena referred to by the OCA were discussed and rejected as being of no significance to design (PECO I.B., pp. 3-55 to 3-56, 3-60 to 3-63; R.B., p. 3-7). Accordingly, the OCA's assertions relative to the significance and results of the CTF tests misrepresents that which actually occurred.

OCA's reliance on the 1970 Mark III test results is even more unfounded. As Dr. Levy explained, these tests were conducted in small scale facilities (i.e. about 1/2000th scale) and employed horizontal discharge vents unlike the vertical vents in the Mark II design. Their purpose was to evaluate a possible new pressure suppression containment concept much different from the Mark II (PECO St. 34A, p. 7; PECO Ex. SL-1; IR-OCA 28-30 to 41) For this reason, the test results were reasonably considered inapplicable to the Mark II design by both the AEC and the industry. The OCA also seriously errs in asserting that the hydrodynamic phenomena present in these early tests were the same or similar to the forces which were discovered in the mid-1970's (OCA Exc., p. 28). As Dr. Levy explained (PECO St. 34A, pp. 2-3):

> "The hydrodynamic effects observed in the Condensing Tank Facility are different from the LOCA condensation oscillation observed in the 4T facility about 15 years later. The Condensing Tank Facility vibrations are produced by an unstable mode of condensation produced by high water temperatures near the vent exits, while the 4T condensation oscillations are produced at low water temperatures and are set mostly by the vent length and its response to sound waves traveling through it."

OCA further asserts that the CTF test results and the Mark III test results warranted further analysis by GE, which analysis was not performed (OCA Exc., pp. 32-35). However, the potential for hydrodynamic loads was reanalyzed after both of these tests. As described in PECO's Initial Brief (pp. 3-54 to 3-58), after the CTF test, the ACRS required further analysis of the pressure suppression containment. These tests were performed at Pacific Gas & Electric's Moss Landing Power Plant, in test facilities and under conditions which more nearly matched actual plant design and operation than the CTF tests. Further, in the case of the small scale Mark III test, Drs. Levy and Mattson have explained that increased scale tests were carried out after observation of the hydrodynamic effects.

The OCA further contends that GE was imprudent because it allegedly incorrectly assumed that safety relief valve ("SRV") forces would be accounted for by the loss of coolant accident ("LOCA") analysis (OCA Exc., pp. 32-35). Again, this is an OCA position which was not supported by its expert witness. Potential SRV loads were considered by GE, federal regulators and the technical community to be fully addressed by the existing design (PECO I.B., pp. 3-61 to 3-64; R.B., pp. 3-6 to 3-7). In fact, in a passage originally included in OCA's Main Brief (pp. III-98 to III-99), but conveniently excluded from its Exceptions (p. 33), PECO witness Levy notes that the containment was designed for the break of the largest primary system pipe, which would produce considerably larger and higher flow rates than any SRV opening. Also, as witness Hanauer confirmed (Tr. 2781-2783), operating procedures and adopted plant modifications (i.e. rams-head quencher devices) at U.S. plants were believed and are still believed to preclude temperatures in the suppression pool from rising to the level needed to cause serious SRV hydrodynamic loads. For all of these reasons, SRV discharges were not considered a matter deserving significant

concern by GE or federal regulators until the mid-1970s (PECO I.B., pp. 3-61 to 3-65; R.B., pp. 3-6 to 3-7). At this time, the NRC concluded that its then current standards as to what constitutes reasonable assurance of safety required that an additional evaluation of these loads be performed and that additional precautions to assure safety be taken, i.e. a more sophisticated quencher device was employed (Tr. 4991-4994).

Finally, to the extent that its argument relies upon the testimony of its witness Hanauer, the OCA's argument is also in error. Dr. Hanauer acknowledged many significant errors in his own testimony and further admitted the accuracy of the bulk of the facts cited by PECO as establishing no imprudence (PECO I.B., pp. 3-58 to 3-62). For example, Dr. Hanauer admits that his original contention that the Mark II design posed serious concerns of containment failure was in error (OCA St. 2A, pp. 34-35; Tr. 491). Nevertheless, OCA in its Exceptions (p. 29) continues to rely on this admittedly incorrect assertion.

OCA also continues to adhere to the clearly baseless position that federal regulators played no role in the development of the pressure suppression containment in the Mark II design (OCA Exc., pp. 35-36). In fact, as described above, the AEC and the ACRS were fully apprised of the results of the GE early tests. Representatives of the AEC and ACRS were present at some of these tests and specified additional parameters which were to be tested. OCA's suggestion, implied from a quotation from the cross-examination of Dr. Hanauer, that the AEC review of the pressure-suppression containment was superficial prior to its licensing as safe for use in this country, is: (1) conclusively refuted by the contrary facts presented by PECO Witness Mattson of detailed and extensive AEC review; (2) requires this Commission to accept that the AEC failed to perform its statutory duty (i.e., to assure public safety) in licensing the construction and operation of the many Mark I and Mark II plants licensed prior to 1975; and (3) is not in fact supported by the Hanauer quotation. Witness Hanauer continues to state that "there was a technical review of the basis, both theoretical and test basis, for these [containment designs] and they were accepted" and "[the AEC] reviews were conducted that were believed to be adequate and approvals were given" (Tr. 2769-2770).

In fact, while asserting without supporting analysis that PECO and GE "should have known of the Mark II hydrodynamic loads", Dr. Hanauer admits that, despite his position as Chairman of the ACRS when that body and the AEC reviewed the Mark II containment for the first time in approving the construction of the Shoreham plant, and despite having available to the ACRS and/or the AEC Staff virtually all of the test results presented in this record, he perceived no significance in these loads and recommended that the plant be licensed (Tr. 2771). Indeed, in 1972, and with the additional results from the early Mark III tests available to him at the AEC, Dr. Hanauer drafted a Memorandum to top AEC management proposing that no further pressure suppression containments be licensed because of six different safety concerns. None of those concerns raised or were related to hydrodynamic forces (PECO I.B., pp. 3-59 to 3-60; PECO Ex. 6). Dr. Hanauer subsequently advised Congress that his Memorandum should not be interpreted to question the safety assurance of the Mark I and II containments, but rather merely to suggest that the administrative complexities of licensing those containment concepts were such that their further use should be discouraged (PECO Ex. 7; Tr. 2774-2775).

OCA also heavily relies upon the Commission's decision in Re Salem Nuclear Generating Investigation, 70 PUR4th 568 (1985) ("ECR-8 Order") (OCA Exc., pp. 27-28). PECO has appealed this determination to the Commonwealth Court at No. 3204 C.D. 1985 and believes it to be very seriously in error. PECO believes that the effect of the ECR-8 Order is to improperly make the utility a guarantor of the operation of its generating units because costs are disallowed without a finding of imprudence. Such a result is directly contrary to well-established Pennsylvania law that recovery of incurred costs cannot be denied without a showing of imprudent conduct. See, e.g., Pa. P.U.C. v. PP&L, supra.

Furthermore, the OCA's $194.1 million adjustment is seriously overstated (PECO I.B., pp. 3-69 to 3-75; R.B., pp. 3-8 to 3-9). OCA Witness Hanauer admits that only the incremental costs, i.e. those costs which would not have been incurred if the original Mark II design had incorporated the hydrodynamic loads, can be disallowed. However, OCA does not contest the fact that its cost disallowance figure is the Company's quantification

of all Mark II costs, including those non-incremental costs which would have been necessary even if the loads had been fully incorporated into the original Mark II design. The Company, on the other hand, performed a careful analysis of whether each item in the Mark II portion of the cost reconciliation constituted an incremental or non-incremental cost, and calculated that of the $194.1 million total of Mark II costs, only $55 million was the incremental cost of the Mark II problem.

The OCA also notes that the owners of two BWR Mark II plants have sued GE over the hydrodynamic loads problem (OCA Exc., p. 30). However, the Advocate fails to point out that the owners of six other Mark II plants have not sought recovery from GE. As PECO Witness Boyer testified, the two suits that have been brought involve plants which are markedly different from Limerick and other Mark II units. The Zimmer unit has been cancelled and, because of its substantially earlier schedule than Limerick, was more heavily impacted by the Mark II revision effort with substantial additional costs than was Limerick (PECO I.B., pp. 3-73 to 3-74). WNP-2 has a steel containment, instead of the pre-stressed concrete vessel at Limerick. Mr. Boyer explained that the engineering analysis and construction conditions, as well as the costs of modifying such a containment for the Mark II loads are significantly different from those at Limerick (Tr. 5046-47). Finally, Mr. Boyer testified that, if evidence of GE fraud or litigable error is uncovered in the future, there being none presented on this record, the Company will indeed file suit (Tr. 5045).

C. OCA Exceptions Regarding PECO Indirect Costs Should Be Rejected.

The OCA asserts that the ALJ erred in reducing the disallowance for PECO indirect costs on the ground that all of these costs are time-related and would have been avoided if Limerick 1 had been completed by July 1982 (OCA Exc., pp. 23-25). This assertion ignores the substantial and unrebutted record evidence submitted by the Company in this proceeding. A substantial portion of these costs is not related to the schedule as they are associated principally with startup and operating activities and would have been incurred in their entirety regardless of when the plant was completed (PECO I.B., pp. 4-140 to 4-144; R.B., p. 4-38). Moreover, the remaining PECO costs in the OCA's adjustment are only

partially time related. The ALJ thus properly reduced the OCA's proposed disallowance by $55 million dollars.

The OCA further asserts that the startup and operating staff probably began activities at Limerick prior to 1979 and therefore indirect PECO costs associated with plant startup and operations increased as a result of the extended schedule. This is also incorrect. The OCA has provided no analysis demonstrating that this in fact occurred at Limerick. In contrast, Company Witness Clarey examined the actual timing of expenditures for the major costs accounts for startup and operating activities. This analysis demonstrated that on average only 10% of these costs were incurred prior to July 1982 and even these costs were expended in support of startup activities which did not begin in earnest until July 1982 (PECO R.B., pp. 4-38 to 4-39). Accordingly, and contrary to the OCA's assertion, the Company has demonstrated with specific, unrebutted analyses that these costs could not have been avoided by earlier plant completion and therefore OCA's exception should be denied.

III. THE ALJ PROPERLY CONCLUDED THAT PECO DOES NOT HAVE EXCESS CAPACITY WITH THE ADDITION OF LIMERICK 1.

A. Introduction: The Excepting Parties' Positions Fail To Substantiate Any Excess Capacity In PECO's System.

After a thorough review of all of the evidence and briefs presented by the parties on the issue of excess capacity, ALJ Matuschak correctly found "that there is no justification for an excess capacity adjustment in this proceeding" (R.D. at 73) (emphasis added). Nevertheless, the OCA, UUC/UP, PAIEUG and GEC (the "excepting parties") have excepted to this finding. The basis for their exceptions is not that the ALJ erred in failing to apply the Commission's recent decisions defining the doctrine of excess capacity in Pennsylvania. Indeed, ALJ Matuschak has been at the forefront in recognizing and recommending, where appropriate, excess capacity adjustments in prior rate cases. Rather, the excepting parties seek to challenge the ALJ's finding because he chose not to follow their suggestion that he artificially inflate PECO's total generating capacity by including certain retired units that are not now in service, not available for PJM dispatching, and not included in PECO's requested rate base in this proceeding. The ALJ properly rejected this

unprecedented approach suggested by the excepting parties, finding that the record in this proceeding "fails to substantiate any PECO excess capacity" (R.D. at 76).

The justification advanced for including the retired units in PECO's calculation of its total capacity is the suggestion that other utilities might be able to avoid a finding of excess capacity by arbitrarily retiring some of their generating units when a new plant is brought on line. This suggestion, however, completely ignores: (a) the well-settled law in Pennsylvania; (b) the independent planning considerations in this case; and (c) the unique regulatory history of the retired units in question. The broader question of whether the Commission should ever consider previously retired units in making its determination regarding excess capacity need not be answered in this proceeding. PECO's recently retired units are all properly removed from its generating system, and they should not be "unretired" to penalize PECO unfairly in this proceeding. When the retired units are properly excluded from the calculation of PECO's total capacity, it is readily apparent that PECO does not have excess capacity.7/

The weakness of the OCA's position on excess capacity is perhaps most obvious from the lead argument advanced in its exceptions: PECO's prior attempts to sell portions of Salem 2 and Limerick capacity. This is an entirely irrelevant and peripheral matter which does not establish excess capacity today as this Commission has defined it in the "accepted, technical sense." See Pa. P.U.C. v. Pennsylvania Power & Light, Docket No. R-842651, p. 17 (April 25, 1985). The OCA clearly is attempting to establish indirectly that which it cannot prove directly.

In addition, the OCA has consistently attempted to conceal the weaknesses of its proposed excess capacity adjustment by conveniently ignoring controlling facts and legal precedents. First, throughout this proceeding, the OCA has simply ignored this

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7/ In its Initial Brief (pp. 5-1 to 46) and its Reply Brief (pp. 5-1 to 19), PECO concisely summarizes the substantial evidence supporting the ALJ's Recommended Decision's finding of no excess capacity. In this portion of its Reply Exceptions, PECO will only highlight some of the numerous weaknesses in the excepting parties' positions. For a full discussion of these issues, PECO urges the Commission to review fully PECO's Initial and Reply Briefs.

Commission's most recent excess capacity decision in Pa. P.U.C. v. West Penn Power Co., Docket No. R-842632 (Aug. 25, 1985), wherein this Commission rejected the very analysis put forth by the excepting parties in this proceeding (PECO I.B., pp. 5-22 to 26).

Second, the OCA has presented to the Commission only a truncated version of its analysis of PECO's purported excess capacity. For example, in its Exceptions, the OCA cuts off its schedule of PECO's purported excess capacity at the year 1990 (OCA Exc., p. 10). However, the OCA's complete schedule demonstrates that even when the retired Southwark and CT units are added to PECO's capacity, PECO does not have any excess capacity beginning in the year 1991 (OCA St. 5, Schedule 1). The OCA apparently wants this Commission to ignore the fact that, even under the OCA's worst case scenario, all of the purported excess capacity would be eliminated within only five years. In addition, the OCA truncates its quasi-life cycle comparison of Limerick and the CTs (which under its approach results in the $1.5 billion figure) just as Limerick begins to show substantial yearly net benefits over the CTs (PECO I.B., pp. 5-7 to 8).

Third, the OCA consistently has deleted a critical sentence from its quotation of this Commission's Order of January 21, 1986, which approved the retirement of the 458 MW of CTs (e.g., OCA Exc., p. 14; PECO I.B., p.5-9). The deleted sentence reads: "We are acting on the merits of the instant petition and our decision is based upon the facts at hand as discussed herein" (Order of January 21, 1986 at 2) (emphasis added). The "facts at hand," as found by this Commission, include the following:

> "These combustion turbines were installed during 1970 and 1971 to provide a short lead-time solution to severe capacity shortages which were experienced during the late 1960's and early 1970's. The addition of these units averted further major interruptions until new base load capacity could be installed. With the addition of Limerick 1 (1,055 megawatts) this capacity is no longer required."

(Id. at 1). The OCA has conveniently ignored the unique regulatory history of these CTs. Moreover, despite ample opportunities in this proceeding, the OCA has not provided any "new facts" that would change the "facts at hand" before this Commission when it approved the retirement of the CTs.

Finally, both the OCA and UUC/UP expend considerable effort discussing life cycle analyses. These analyses are not an independent test for determining whether excess capacity exists in the first instance; they come into play only after excess capacity is found to exist. Therefore, life cycle analyses are not relevant here because PECO's electric generating system does not have excess capacity. However, to the extent considered, the PECO analysis demonstrates that Limerick 1 will produce annual economic benefits exceeding its annual costs within a reasonable period (PECO I.B., pp. 5-53 to 54).

B. The ALJ's Finding That PECO Does Not Have Excess Capacity Is Consistent With The Commission's Prior Decisions.

The ALJ's finding that PECO does not have excess capacity is firmly within the mainstream of this Commission's recent decisions defining the used and useful standard and the doctrine of excess capacity in Pennsylvania. E.g., Pa. P.U.C. v. West Penn Power Co., Docket No. R-842632 (Aug. 28, 1985); Pa. P.U.C. v. Pennsylvania Power and Light Co., Docket No. R-842651 (April 26, 1985) ("PP&L II") (see also PECO I.B., pp. 5-1 to 6, 22 to 26, 44 to 48). In PP&L II, this Commission defined the "useful" component of the used and useful standard, which is the focus of an "excess capacity" analysis, as follows:

> "The primary meaning of 'useful' in the present context is that the plant and its associated capacity contribute no more than necessary to system reliability in the accepted, technical sense. In other words, the question is whether the Company's total capacity, including the plant in question, is commensurate with the requirements for peak demand plus a reasonable reserve margin relative to the Company's own system and to its PJM obligation."

PP&L II, supra, at 17 (emphasis in original).

The Commission's excess capacity analysis can be broken down into two steps. The initial step compares the company's total generating capacity with its projected peak demand plus a reasonable reserve margin (PECO I.B., p.5-2). If this comparison reveals no excess, then the inquiry stops at that point. If this threshold comparison reveals an excess, the Commission then exercises its judgment and discretion to determine the extent, if any, of the adjustment to be made (Id.). In exercising its discretion, this Commission has focused, inter alia, on the relative magnitude and duration of the apparent excess, West

Penn Power at 45; PP&L II at 18-19, and the life cycle benefits accruing from the plant in question (PECO I.B., pp.5-47 to 53).

No party is suggesting that PECO has excess capacity under the Commission's threshold calculation absent the inclusion of some combination of already retired units in the calculation of PECO's total capacity. When PECO's total capacity is calculated with the retired units properly excluded, PECO's reserve margin is 28% in 1986 and declines to 26% by 1989 (PECO I.B., pp. 5-41 to 42, 46; PECO R.B., p. 5-18). These reserve margins are well within the bounds of reasonableness.8/ See West Penn Power at 45; Pa. P.U.C. v. Philadelphia Electric Co., 55 Pa.P.U.C. 78, 95 (1981) ("[w]e consider a 164-megawatt 'excess' reasonable"). Application of the Commission's prior decisions, therefore, fully supports the ALJ's finding that PECO does not have excess capacity and that Limerick 1 is a used and useful addition to PECO's electric generating system.

C. The ALJ Properly Excluded The Retired Units From The Calculation Of PECO's Total Capacity.

The excepting parties take issue with the ALJ's exclusion of the retired units in calculating PECO's total generating capacity, apparently believing that this case will somehow encourage other utilities to retire generating units before such retirements can be justified in order to avoid excess capacity penalties. However, in their zeal to create an excess capacity issue, the excepting parties have conveniently overlooked the facts of record. The retirements at issue in this case were not hastily undertaken to avoid a potential excess capacity adjustment. Rather, as the ALJ found, PECO established "independent system planning considerations that support the retirement of the units singled out by complainants" (R.D. at 75). Moreover, the Commission has been heavily involved in

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8/ Even assuming, arguendo, that the retired units are included in determining PECO's total capacity and, as the OCA suggests, PECO has 450 MW of excess capacity, it is important to note that: (a) this 450 MW figure is determined with a minimum reserve margin and not with a maximum or reasonable reserve margin; (b) a significant portion (57.3%) of Limerick 1 is still "useful" from the start (PECO I.B., pp. 5-44 to 46; PECO R.B., p. 5-19); and (c) all of Limerick 1 will be needed within five years (Id.) Thus, even if the OCA's position were accepted in its entirety, the imposition of an excess capacity adjustment would not be warranted in this proceeding.

overseeing the regulatory process by which the CTs were obtained, placed in service and subsequently retired. Accordingly, a finding of no excess capacity is consistent with the Commission's prior decisions and with sound regulatory policy and will not undermine the doctrine of excess capacity as it may apply to other utilities in the future.

1. Independent System Planning Considerations Support The Exclusion Of The Retired Units.

The ALJ properly concluded that PECO had demonstrated independent system planning reasons for retiring Southwark units No. 1 and 2, Richmond unit No. 9 and the 458 MW of CTs. As the ALJ found, the Southwark and Richmond units are old, inefficient units that had reached or exceeded their projected 35-year nominal lives (R.D. at 75-76, PECO I.B., pp. 5-26 to 27).

In addition, PECO demonstrated the system planning considerations underlying the retirement of the CTs. The CTs no longer serve any of the purposes for which CTs are used on PECO's system (PECO I.B., p. 5-30), and are no longer required to provide peaking capacity (Id.). Indeed, experience has shown that for planning purposes, the PJM must assume that only 50% of the CTs will start at any given time when called upon to operate (Id.).

2. The Regulatory History Of The CTs In Question Supports Their Exclusion From PECO's Total Capacity.

The OCA asserts that the CTs in question were "originally scheduled to remain in service until 1996" (OCA Exc., p. 3). This assertion is incorrect and is not supported by record evidence. PECO has set forth the extensive regulatory history of the CTs in its Briefs (PECO I.B., pp. 5-26 to 33; PECO R.B., pp. 5-8 to 13). This regulatory history may be summarized as follows:

- In the late sixties and early seventies, Pennsylvania utilities were experiencing capacity shortages as a result of a rapid increase in demand for electricity.
- This Commission actively encouraged PECO and other utilities to construct and install new baseload capacity.

- The CTs in question were installed at the direction of the Commission in the early 1970's as an interim measure to avert supply interruptions until baseload capacity could be built.

- In the 1980 Limerick 1 investigation, the Commission found that Limerick 1 should be brought on line as soon as possible with full recognition that PECO was intending to retire 1,215 MW of various oil and gas turbines by 1990.

- In the 1981, 1982 and 1984 PECO rate cases, the Commission approved (over the objection of the OCA) the collection of $40 million in lease cancellation payments. In affirming the 1981 rate case decision, the Commonwealth Court noted that the CTs "will become obsolete" as of the in-service date of Limerick 1. Green v. Pa. P.U.C., 81 Pa. Cmwlth. 55, 473 A.2d 209 (1984) (emphasis added).

- In the 1984 Limerick 2 Investigation, the ALJ rejected the proposals of the OCA, GEC and PAIEUG to "unretire" the CTs, based on principles of res judicata and based on a finding that any such life extensions would add more costs than savings.

- In the 1984 Limerick 2 Investigation, this Commission found that additional baseload capacity "will be required by 1992." The system presented by PECO in that proceeding included Limerick 1 but excluded all of the retired units in question.

- By Orders dated October 8, 1985 and January 21, 1986, this Commission approved the retirements of the units in question based, inter alia, on the foregoing facts.

Thus, the CTs in question were never intended to remain in service until a date certain. They were always intended to be a stop gap, interim solution to severe capacity shortages until new baseload capacity could be built. Limerick 1 is that baseload capacity. These facts have consistently been recognized and approved by the Commission. E.g., Pa. P.U.C. v. Philadelphia Electric Co., 55 Pa. P.U.C. 78, 94, n. 11 (1981). The OCA contends, however, that it is circular to justify the retirement of the CTs on the basis of new capacity and then justify the capacity on the basis of the retirements (OCA Exc., pp. 12-13). Nevertheless, when examined from the perspective of the regulatory history of the CTs, it is apparent that it is the OCA's reasoning that is circular. The CTs were installed solely as an interim measure awaiting baseload capacity, and now that baseload capacity is available, it is indeed circular to suggest that the existence of the CTs somehow prevents the baseload

capacity from being needed on the system (PECO I.B., pp.5-27 to 33). The CTs in question were obtained at the direction of the Commission, were reviewed regularly as Limerick 1 was being constructed and finally were retired with the permission of this Commission. In light of this regulatory history, it is simply inaccurate to suggest that PECO is retiring the units in question solely to avoid an excess capacity adjustment.

3. The Exclusion Of The Units In Question Is Consistent With The Commission's Prior Decisions And The Prospective Nature Of The Used And Useful Standard.

The exclusion of the retired units in question is consistent with this Commission's decisions, particularly the recent case of Pa. P.U.C. v. West Penn Power Co., Docket No. R-842632 (Aug. 28, 1985). In West Penn Power, this Commission rejected the argument that two units that had been properly mothballed pursuant to Commission orders should be included in the utility's total capacity for purposes of an excess capacity adjustment. Moreover, the facts of the instant case are more compelling than in West Penn Power, because: (a) the PECO units in question are retired (as opposed to mothballed) and thus not subject to future recall; (b) PECO is not seeking to include the Southwark or Richmond units in its ratebase and is not seeking depreciation for them; (c) PECO is not seeking recovery of any fuel stocks or maintenance; and (d) the PECO units have not been reactivated for any period (PECO I.B., pp. 5-22 to 23).

The exclusion of these units from the calculation of PECO's total capacity also is consistent with the prospective focus of the used and useful standard. In contrast with the prudence standard, the used and useful standard focuses on a company's generating system "during the time the rates will be in effect." Pa. P.U.C. v. Philadelphia Electric Co., 37 PUR4th 381, 387 (1980), aff'd 61 Pa. Cmwlth. 285, 433 A.2d 620 (1981). PECO has submitted for rate review in this proceeding the actual system that will operate during the time the rates set by this Commission will be in effect. The excepting parties propose a hypothetical system that selectively includes units that are not part of the Company's requested rate base. This hypothetical approach would require this Commission: (a) to speculate as to how far forward or backward to look in determining whether a retirement

occurred because of a particular installation of new capacity; (b) to examine the prudence of all retirement decisions; (c) to isolate and evaluate economic comparisons between retired units and new capacity; and (d) to relitigate rate base issues every time changes in the economy would affect the relative economics of new capacity versus retired units (PECO R.B., pp. 5-4 to 8).

Moreover, the OCA strains to find precedential support in this Commission's Order of May 2, 1986 regarding the Petition of Duquesne Light Co., Docket No. P-860103. That Order, however, is irrelevant to this proceeding because: (a) Duquesne was seeking to place the units in question in cold storage rather than retire them, and thus their status at the time of future rate cases would be uncertain; (b) the Commission has had a long history of regulatory involvement with the CTs retired by PECO, not just a single retirement order; and (c) in any event, the OCA has failed to establish in this proceeding any new facts as to why PECO's CTs should not have been retired.

Finally, finding no support for its unprecedented approach to determining total system capacity in Pennsylvania decisions, the OCA points to two foreign decisions ostensibly to support its proposed excess capacity argument (OCA Exc., pp. 15-16). These decisions, however, are inapposite at best. Thus, there is no suggestion in this proceeding that PECO failed properly to maintain or use the units in question, as was the case in Kansas City Power & Light Co., Case No. EO-85-185 (Mo. P.S.C. May 5, 1986). In addition, the record in this case is replete with evidence of the system planning and regulatory reasons for the retirements at issue and their long-term planning history. This is in sharp contrast to Wolf Creek, 70 PUR4th 475, 514 (Kansas S.C.C. 1985), where the utility presented virtually no evidence to support the reasons for retirement. Indeed, the Wolf Creek decision actually supports PECO's position because it advocates the use of a five-year "planning horizon perspective" in evaluating a claim of excess capacity (Id. at 510-11) (see PECO R.B., pp. 5-15 to 16). If this Commission adopts the five-year planning horizon employed in Wolf Creek, then no excess capacity could be found in this case even under the OCA's approach (see OCA St. 5, Schedule 1; PECO R.B., pp. 5-15 to 16, 19).

4. The Retirements In Question Are Justified By The Need For Additional Baseload Capacity.

PECO has demonstrated that Limerick 1 provides certain benefits, by virtue of being a large, baseload generating unit, that the retired CTS could not provide (PECO I.B., pp. 5-33 to 37).[9/] Limerick 1 is needed to optimize PECO's generating mix by supplying a substantial portion of PECO's continuous load (Id. at 5-34). Indeed, even with Limerick 1 on line, PECO will still be a net importer of energy (R.D. at 74; PECO I.B., p. 5-34).

Notwithstanding PECO's demonstrated need for baseload capacity, the OCA attempts to set forth an artificial economic criterion for determining whether a utility needs baseload capacity. Pursuant to this "alternative" criterion, the OCA undertook a "quasi-life cycle analysis" that produced a figure of $1.5 billion, purportedly representing the costs of Limerick 1 over the retired CTs. The OCA states in its Exceptions that this analysis is "unrebutted and uncontested" (OCA Exc., p. 4) (emphasis in original). Once again the OCA substitutes overstatement for analysis.

First, as noted above, the OCA's "quasi-life cycle analysis" is truncated. The OCA cuts off the analysis at an arbitrarily short period, just as Limerick 1 begins to show net benefits over the CTs (PECO R.B., pp. 5-7 to 8).

Second, adoption of the OCA's arbitrary short-term economic comparisons would result in regulatory pressures in the direction of building a system made up entirely

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9/ UUC/UP suggests that by virtue of being a large baseload plant, Limerick 1 decreases overall system reliability (UUC/UP Exc., pp. 3-6). The Commission, however, has rejected as "peripheral" reliability arguments that do not address the issue of excess capacity in the "primary reliability sense." PP&L II at 17 (PECO I.B., p. 5-38). This Commission also has recognized that for purposes of system reliability, "the sheer size and diversity" of the PJM system "serves to invalidate" the argument that the addition of a large baseload facility adversely impacts system reliability. Limerick 2 Investigation, Docket No. I-840381, pp. 31-37 (1985). In addition, the UUC/UP's "detailed analysis" of system reliability (UUC/UP Exc., p. 5) is seriously flawed. The UUC/UP's "detailed analysis" uses 1976 data from the NEPOOL Interconnection which has "significantly different characteristics" than PJM (PECO St. 14B, p. 5; see PECO I.B., pp. 5-39 to 41). When PECO witness Rush undertook the same analysis using a methodology suggested by the UUC/UP's own source, and using PJM-specific data made available in this proceeding, Mr. Rush demonstrated that Limerick 1 has a greater reliability value than the retired CTs, Southwark and Richmond, even when his significant variable is reduced by as much as 80% (PECO St. 14B, Exs. CHR-3(b) and (c); see PECO I.B., pp. 5-40 to 41 and Schedule V-4).

of CTs. The cost per MW of capacity associated with the CTs will always be less than the cost per MW of capacity associated with large baseload plants. However, the cost of energy is less from a large baseload unit because CTs are extraordinarily expensive to operate on an extended basis. Thus, a short-term focus on only minimizing cost per MW leads to uneconomic decisions in terms of the total value of generation added to the system. The OCA's approach would set Pennsylvania utilities on a course of returning to the baseload shortages of the late sixties and early seventies (PECO I.B., pp. 5-24 to 26; PECO R.B. 5-6 to 8).

Third, the OCA approach would require PECO, in effect, to become a "PJM junkie" (OCA St. 5, p. 19; PECO St. 15A, p. 24). Adopting such an approach would distort the function and purpose of the PJM (PECO St. 14A, p. 17; see PECO I.B., p. 5-37).

D. Attempts To Sell Portions Of Salem 2 and Limerick Capacity Do Not Establish The Existence Of Excess Capacity.

The OCA attempts to establish excess capacity on the basis of PECO's attempts to sell portions of its capacity from the Salem 2 and Limerick plants in the 1982 to 1984 time frame. These past sale attempts are completely irrelevant to the question of excess capacity today. Excess capacity is determined not by such extraneous factors as past sale attempts, but on the basis of how PECO's total capacity compares with its peak demand requirements plus a reasonable reserve margin at the time the analysis is conducted (PECO I.B., pp. 5-3 to 6). Whatever the reasons for the sale attempts, they do not alter one important fact: PECO does not have an excess of capacity as calculated pursuant to the Commission's clearly articulated standards.

With respect to the reasons for selling the capacity, the OCA simply repeats in its Exceptions the portion of the quotation from PECO witness Paquette that was contained in the OCA's Brief (OCA Exc., p. 7), without even attempting to address PECO's response that the quotation is taken out of context and does not support the OCA's assertion (PECO R.B., pp. 5-16 to 17). Moreover, recent load and peak demand growth has increased PECO's capacity needs from the time it commenced its sale efforts (PECO R.B., p. 5-17).

E. The Recommended Decision Properly Recognizes The Irrelevancy Of Life Cycle Analyses In This Proceeding, Which, Even If Relevant, Demonstrate That Limerick 1 Will Produce Positive Economic Benefits Over Its Operating Lifetime.

The OCA and UUC/UP except to the Recommended Decision on the basis that the "ALJ failed to consider" the life-cycle analyses they presented in this proceeding (OCA Exc., p. 18, UUC/UP Exc., p. 9). Life-cycle analyses, however, may have some relevance only after excess capacity is found to exist (see PECO I.B., 5-47 to 52; PECO R.B., pp. 5-19 to 21).10/ Because the ALJ has correctly determined that Limerick 1 does not represent excess capacity, it is perfectly appropriate that the ALJ included no extended analysis of the various life-cycle presentations.

Moreover, the evidence presented in this proceeding confirms the wisdom of the Commission's reluctance to rely on life-cycle analyses for determining whether a plant is used and useful. Limerick 1's perceived life-cycle value is the subject of wide disagreement and can only be "determined" by resort to speculative projections, minor adjustments to which can dramatically change the life-cycle result (PECO I.B., pp. 5-53 to 65). Both PECO and the OCA have noted, for example, that the life cycle results presented in this proceeding range from a possible net benefit of $4.0 billion for Limerick 1 to a possible net cost of up to $4.8 billion (PECO I.B., p. 5-51; OCA Exc., p. 19).

10/ Although the OCA recognizes that life-cycle analyses are not relevant where a plant is not excess capacity, the UUC/UP seems to suggest, for the first time in its Exceptions, that a showing of life-cycle benefits is an independent standard which must be satisfied before a plant can be "useful" (OCA Exc., p. 18; UUC/UP Exc., p. 11 and 25; see PECO R.B., pp. 5-19 to 21). The imposition of life-cycle analyses as an independent standard for ratemaking purposes is not only plainly inconsistent with Commission precedent, it also systematically and unfairly places all investment risks on PECO by limiting return on its investments to the lesser of actual cost or perceived market value and by introducing speculative and arbitrary considerations into the ratemaking process (PECO I.B., pp. 5-45 to 52).

The UUC/UP criticism that PECO's position has been inconsistent because it relied on a life-cycle presentation to justify completion of Limerick 1 in the 1980 Limerick Investigation is inapposite to this proceeding (UUC/UP Exc., pp. 9-10). While life cycle analyses provide a meaningful basis for evaluation of the timing of capacity completions and the selection between capacity alternatives, life cycle analyses are not relevant to the Commission's inquiry in determining whether a plant is used and useful for short-term ratemaking purposes.

Despite the questionable relevance of life-cycle analyses to this proceeding, the Company has established at least the following:

- Limerick 1 will yield positive net benefits over its 39-year life of up to $4.0 billion after recovering the cost of its construction, and its annual economic benefits will exceed its annual costs within a reasonable period (8 years) following the test year. Even the PAIEUG and OCA analyses acknowledge that Limerick 1 will produce positive annual benefits within 9 and 15 years respectively, a clearly reasonable period relative to the life of the plant (OCA Exc., p. 19; see PECO I.B., pp. 5-53 to 55 and Appendix D).

- Although the OCA and UUC/UP seek to paint a picture of uniformity among the various life-cycle analyses showing that Limerick 1 is uneconomic, the intervenors' analyses are dramatically inconsistent with one another and, in fact, support the reasonableness of the Company's life cycle analysis (PECO I.B., pp. 5-55 to 64 and Appendix D; PECO R.B., pp. 5-24 to 26).

- Correction of flaws in the intervenors' analyses concerning key adverse variables swings each of the intervenor's results in favor of a conclusion of net benefits from Limerick 1 (PECO I.B., pp. 5-53 to 64 and Appendix D; PECO R.B., 5-24 to 32).

In addition, the UUC/UP has strenuously argued in its Exceptions that the evidence presented in this proceeding "supports an excess capacity adjustment larger than that applied in the Susquehanna 2 case," a case where 100% of Susquehanna 2 was excluded from rate base (UUC/UP Exc., pp. 16-20). However, such a comparison is incorrect and misleading because the Commission found that the entire plant was excess capacity in the Susquehanna 2 proceeding whereas in this proceeding the Company has established, and the ALJ has recommended, that no excess capacity adjustment for Limerick 1 is appropriate. Further, the time-related and geographic circumstances surrounding the life-cycle analyses of Limerick 1 and Susquehanna 2 are dramatically different and do not allow for meaningful comparisons (PECO R.B., pp. 5-21 to 24).

F. Limerick 1 Is A Used and Useful Addition To PECO's Electric Generation System.

In summary, PECO has demonstrated that with the addition of Limerick 1, its electric generation system does not have excess capacity. The ALJ properly concluded "that there is no justification for an excess capacity adjustment in this proceeding" (R.D. at 73). Accordingly, Limerick 1 represents used and useful generation for PECO's customers.

IV. THE ALJ PROPERLY REJECTED OPPOSING PARTY PHASE-IN, SINKING FUND DEPRECIATION, AND ENERGY COST SAVINGS GUARANTEE PROPOSALS.

The ALJ adopts a three-year phase-in of its proposed revenue allowance with recovery of the deferred balance in years four through six without recovery of carrying charges (R.D., 175-77). In doing so, the ALJ rejects the extreme phase-in plans proposed by opposing parties (R.D., pp. 172-75). The ALJ also rejects the proposals of several parties that the Company be required to guarantee Limerick 1 energy savings (R.D., pp. 178-80). No party specifically excepts to the six-year length of the phase-in plan adopted by the ALJ, but fault him for rejecting various proposed modifications. No party, however, on Exceptions, has presented a developed alternative phase-in proposal.11/

GEC and PAIEUG except to the ALJ's phase-in plan because it does not reflect a purported declining Limerick 1 revenue requirement. Specifically, in the case of PAIEUG, the ALJ rejects its proposed use of a six-year average revenue requirement for Limerick 1 (GEC Exc., p. 7; PAIEUG Exc., pp. 7-8). As fully explained in the Company Briefs (PECO

11/ The City of Philadelphia supports a three-year phase-in of the ALJ's $302 million revenue allowance because it does not exceed the annual rate of inflation and thereby avoids economic harm to the Company's service territory (City Exc., p. 1). The City bases this conclusion on the study performed by Witness Schinnar which does not provide any support for this proposition. In response to the Schinnar study, PECO submitted the testimony of expert witnesses who demonstrated that Witness Schinnar's results were grossly overstated and that the actual economic effect of PECO's full rate request would be small (PECO I.B. pp. 2-24 to 26, Appendix A, p.p. A-33 to 45). PECO's experts also established that Witness Schinnar's study was based on a model that is inadequately documented, unverifiable, and incapable of validation (PECO I.B., pp. 2-16 to 24; Appendix A, pp. A-1 to 23). Thus, any conclusions based on the Schinnar study are useless as a tool for decision making in this proceeding. Indeed, PECO twice moved to strike Witness Schinnar's testimony for failure to provide adequate discovery and validation of his model.

I.B., pp. 2-54 to 2-57; PECO R.B., pp. 2-25 to 2-26), the use of an average revenue requirement for Limerick 1 is fundamentally inconsistent with all established ratemaking principles. Neither the Company nor any party to this case purports to establish rates based on rate base, revenue, expense and return projections for the next six years, and apart from the phase-in plan the Company's rates are free to move up and down over the next six years. Use of a six-year average revenue requirement for Limerick 1 is therefore totally inconsistent with all other parts of this rate case. Moreover, PAIEUG's adjustment is premised on the completely false assumption that the Limerick 1 revenue requirement over the next six years is known and measurable, when PAIEUG's own witness admitted on cross-examination that this was not the case. The ALJ agreed and properly rejected this proposal (R.D., p. 174).

GEC contends that the phase-in adopted by the ALJ guarantees the recovery of deferred revenues. This is incorrect and is based on a misunderstanding of the plan. As repeatedly and fully explained by the Company in testimony (PECO St. 18D, p. 6) and in Brief (PECO I.B., p. 2-45 n.8), the plan does not guarantee the amount of deferred revenue that will be collected, but only that whatever amount is deferred will be recovered from ratepayers in the phase-out period. This approach will place the Company and ratepayers in the same position as if there had been no phase-in. Moreover, given the prospect of increased sales, it is likely that the deferred amounts will be collected in less than the three-year phase-out period and thus the Company's proposal protects ratepayers from paying more revenue than the amount deferred under the phase-in plan.

UUC/UP excepts to the ALJ's phase-in proposal because it rejects UUC/UP Witness Chernick's value based pricing approach (UUC/UP Exc., pp. 28-31). As set forth in the Company's Initial Brief (pp. 2-57 to 2-58), value based pricing, as proposed by Witness Chernick, would result in a net rate decrease in this proceeding and would achieve financial results far worse than any of the other phase-in plans proposed in this case. Moreover, a value based pricing approach is completely unprecedented and has never been adopted in any jurisdiction. Therefore, the ALJ properly rejected this proposal (R.D., p. 178), and the exceptions of UUC/UP should be denied.

In addition to strict phase-in plans, GEC and PAIEUG proposed the use of sinking fund depreciation for Limerick 1 as a further technique for phasing-in the increase. As set forth in the Company's Briefs (PECO I.B., pp. 2-51 to 2-54; pp. 2-56 to 2-57; PECO R.B., pp. 2-24 to 2-25), the use of sinking fund depreciation is not an accepted practice for investor-owned electric utilities, creates a substantial risk of non-recovery of investment, increases the revenue requirement associated with Limerick 1 by over $6 billion over its life, and is not in accordance with generally accepted accounting principles. GEC's claim that the use of sinking fund depreciation does not harm the Company's financial condition is simply wrong.[12/] GEC also claims that the problems sinking fund depreciation presents with respect to FASB 71 should be ignored since they are based on "conjecture" (GEC Exc., p. 10). As the Company explained in its Briefs (PECO I.B., pp. 2-40 to 2-44; PECO R.B., pp. 2-8 to 2-10) and as the ALJ agreed (R.D., pp. 169-71), it is clear that an amendment to FASB 71 will be adopted which incorporates a time limitation on phase-in plans and that a phase-in plan which violates that limit would create an unacceptable degree of uncertainty whether deferred revenues would ever be recovered, thus increasing investment risk and the cost of capital to the detriment of ratepayers. Therefore, as the ALJ concluded, "[w]hile the exposure draft has not been formally adopted, [t]he Commission should act conservatively and assume its adoption, since it is proposed to be retroactive in effect." (R.D., p. 170).

PAIEUG objects to the ALJ's denial of its sinking fund depreciation proposal, claiming that the ALJ's criticisms of the sinking fund approach do not apply to PAIEUG Witness Falkenberg's "PP&L style sinking fund depreciation methodology."[13/] (PAIEUG

12/ As described above, the Company has presented unrebutted evidence in this proceeding that sinking fund depreciation would deprive PECO of necessary cash flow during a critical construction period. Moreover, GEC's sinking fund proposal was predicated on the Company's receiving its full requested rate increase. GEC has proposed substantial disallowances which, when coupled with the use of sinking fund depreciation, would have devastating financial consequences to PECO quite apart from the negative effect on the Company's cash flow.

13/ The "PP&L method" refers to the sinking fund method adopted by the Commission in Pa. P.U.C. v. Pennsylvania Power & Light Co., 55 PUR4th 185, 229-30 (1983); 67 (continued)

Exc., pp. 8-9). As Mr. Wroblewski explained in his sur-surrebuttal testimony (PECO St. 21B, p. 3 and Schedules 3 & 4), the sinking fund methodology proposed by PAIEUG Witness Falkenberg is not the same modified sinking fund method which the Commission adopted in the two PP&L cases. The sinking fund adopted by the Commission in those cases as applied to Limerick 1 is set forth in Schedule 3 of Mr. Wroblewski's sur-surrebuttal testimony and shows a total lifetime capital cost for this method of $13.3 billion. Schedule 4 of that testimony illustrates Witness Falkenberg's approach as applied to Limerick 1 which shows a total lifetime capital cost of $15.8 billion.

Finally, several parties have excepted to the ALJ's rejection of their proposals that the Company be required to either guarantee a 65% capacity factor or $207 million in energy savings for Limerick 1. In their Exceptions, opposing parties note alleged uncertainties associated with the Limerick 1 water supply and state that this condition makes Limerick 1 like Salem 2 where the Commission required PECO to guarantee energy savings for that unit. These arguments are in error.

Initially, the Commission did not require PECO to guarantee Salem 2 energy savings. Rather, the Company volunteered to do so. Moreover, the water supply uncertainties at Limerick are no different from the normal uncertainties surrounding the operation of generating plants in general. All plants experience scheduled and forced outages for a wide variety of reasons, e.g., normal maintenance, operating problems, disruption of fuel supply, etc. The Commission does not require utilities to guarantee operation against such events and should not require PECO to guarantee the operation of Limerick 1.

V. OPPOSING PARTY EXCEPTIONS RESPECTING THE ALJ'S ENERGY COST RATE MODIFICATION SHOULD BE REJECTED.

The ALJ (R.D., pp. 183-85) proposes to implement the Commission's ECR 8 Order within the Company's existing ECR by adjusting the definition of the "E" factor to

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PUR4th 30, 48 (1985).

allow reconciliation of only 80% of experienced over/under collections.[14/] The Company's preferred position, as fully explained in its Initial Brief (pp. 6-1 to 6-27), is that the existing ECR mechanism should be retained, or at a minimum, a cap should be placed on the maximum annual gain or loss to ratepayers and shareholders. The Company presented extensive evidence in support of its position; however, the ALJ granted a Trial Staff Motion to Strike this testimony on the ground that it addressed issues which should not be litigated in this proceeding. The Company has excepted to the ALJ's ruling (PECO Exc., p. 70).

If an 80%/20% ECR is to be adopted and no cap is to be implemented, the Company believes that the ALJ's approach is consistent with the Commission's ECR-8 Order, would minimize the administrative burden placed on the Commission and the Company, would reduce the risk to which the Company and its customers would be exposed under the 80%/20% ECR, and would maintain a flexible system by which the Commission can respond in a timely fashion to changing conditions in the energy market (PECO I.B., pp. 6-2 to 6-5; pp. 6-11 to 6-18). For the reasons set forth below, the various exceptions of Trial Staff, OCA, and GEC on these ECR modification issues should be denied.

Trial Staff objects to the ALJ's adoption of the Company's proposal that the 20% unreconciled portion of energy costs be examined annually in the Company's ECR filings and argues that the 20% of energy costs should be normalized and included in base rates (TS Exc., p. 62). In support of its position, Staff asserts that the Company's proposal is illegal under 66 Pa.C.S. § 1307, inconsistent with the Commission's ECR 8 Order, and will vitiate the incentive nature of the 80%/20% ECR. These arguments are without merit and should be rejected.

With respect to the legality of PECO's proposal, as explained in the Company's Initial Brief (pp. 6-16 to 6-18), the Commonwealth Court in Community Central Energy Corp. v. Pa. P.U.C., 51 Pa. Cmwlth. 142, 413 A.2d 1197 (1980), held that the Commission has the discretion under Section 1307 of the Public Utility Code not to order full

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14/ The mechanics of the Company's proposal are set forth in detail in the Company's Initial Brief at pp. 6-3 to 6-5.

reconciliation under an ECR for good cause shown. Staff cites Butler Township Water Co. v. Pa. P.U.C., 81 Pa. Cmwlth. 40, 473 A.2d 219 (1984), (which held that Commission determinations must be based on an examination of the evidence on a particular issue and not decided solely on the basis of a prior articulated policy) as making "it more than likely that ... an attempt made by the Commission to disallow 20% as part of part of the reconciliation process without a specific imprudency finding, will be ... overturned on appeal." (TS Exc., p. 64). However, Butler Township was a base rate case and has no relevance to the proper interpretation and application of Section 1307 which, the Commonwealth Court held, gives the Commission discretion not to order full reconciliation. Moreover, any Commission determination must have a supportable basis to withstand appellate review. If Trial Staff's proposed form of partial reconciliation (i.e., base rate inclusion) could be supported on appeal as providing a needed incentive to efficient operation, then that same purpose would support the Company's procedurally different but substantively identical proposal.

With respect to the Commission's Order, that Order fully and clearly supports ECR recovery of the 20% non-reconcilable costs (PECO I.B., pp. 6-13 to 6-16). While there arguably may be some ambiguity in the order, the Company believes its position is fully consistent with the ECR No. 8 Order and is far superior on policy and other grounds as explained in its Initial Brief. Indeed, the Company's proposal fully carries out the incentive nature of the Commission ECR 8 Order, and is clearly superior to Staff's in this regard (PECO I.B. pp. 6-11 to 6-15). The Company's proposal will provide the Commission with a better opportunity to evaluate the reasonableness of PECO's energy costs. Moreover, it takes into account the current extreme volatility of energy costs, particularly oil prices. Under Staff's proposal, the 20% energy cost component can be changed only when the Company files a base rate case and only after nine months of investigation. This lag in reflecting changes in energy costs is intolerable from both the Company and ratepayer point of view in that it creates serious risks of substantial over or under collections. Staff argues that PECO's existing ECR created substantial over/under collections. This, however, simply

serves to demonstrate the volatility of energy costs and thus the seriousness of the risks which Staff's less responsive rate proposal imposes upon the Company and its ratepayers. Staff also claims that normalization "is how every unreconciled expense is established" and that "[t]here is no reason to treat these unreconciled energy expenses ... any differently" (TS Exc., p. 68). This statement ignores the Company's undisputed evidence on the volatility and uncontrollability of energy prices which provides a substantial reason why normalization is inappropriate in this instance and would be "intolerable," as the ALJ stated (R.D., p. 184).15/

GEC excepts to the ALJ's rejection of its proposed performance standard for Company nuclear units. GEC admits, as the ALJ stated, that its proposal "seeks to modify the Commission's ECR 8 Order" and that its testimony on this issue was therefore stricken but asserts that it should be considered despite this because it "can be implemented in other ways" (GEC Exc., p. 4). However, neither GEC Witness Wilson nor GEC in its Brief or Exceptions provides the ALJ, the Commission, or the Company with any hint as to what these alternatives might be. It would be a violation of PECO's due process rights to notice and hearing to establish such a standard employing a methodology never identified or discussed on the record in this case.

As the ALJ correctly ruled, the establishment of a nuclear performance standard is not an issue properly presented in this proceeding (Tr. 3961, 3963). This is particularly true in light of the Commission's on-going generic proceeding on generating unit performance standards.

Finally, GEC's proposal should be rejected on the merits because, as fully set forth in PECO's Initial Brief (pp. 6-19 to 6-22), it is riddled with errors and is not an

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15/ Staff also argues that PECO's proposal is inefficient because it will require the Commission to consider PECO's energy costs in both ECR and base rate proceedings. What Trial Staff fails to note is that the same is true under its own proposal, and Trial Staff would add the further complexity to base rate cases of the extremely difficult task of trying to establish a normalized level of energy costs. The Company's proposal avoids this arduous and problematic task and thus is much easier to administer than Trial Staff's proposal.

incentive provision at all, but a thinly disguised penalty which assures that the Company will suffer a substantial loss under virtually all conceivable circumstances. In summary, GEC's proposal is duplicative of the 80%/20% ECR; fails to reflect the historic or projected operation of PECO nuclear units or industry performance; is unbalanced and biased because it prescribes the loss of 100% of additional energy costs but allows retention of only 50% of additional energy savings; in combination with the 80%/20% ECR, it imposes a penalty on the Company even if its units operate within the performance standard; and is inconsistent with the performance standards adopted in other jurisdictions.

The Company's energy cost projection proposal for the first year of the 80%/20% ECR is set forth in PECO Exhibit JJC-3. This forecast is the result of negotiations among the parties on the last day of hearings on this issue and should be accepted for use in this case. The OCA excepts to the ALJ's adoption of this proposal with respect to oil prices and asserts that the Commission should adopt some oil price other than those presented on the record in this proceeding. The OCA's exception should be denied.

First, despite adequate opportunity, the OCA did not present any evidence in this case as to the oil prices to be employed in calculating the 80%/20% ECR. The OCA should not be permitted to avoid its decision not to present evidence on this issue by asking the Commission to ignore the record developed in this proceeding.

Second, the Company's energy cost rate is made up of a variety of components and projections, e.g., sales, capacity factors, operation of other PJM units, two-party purchases, coal and oil prices, to name but a few. All of these components change over time, not just oil prices. The OCA seeks to change one component after the record has closed and ignore all other factors which affect total energy costs. If the OCA's proposal on oil prices is adopted, then fairness and consistency dictate that there be a complete rerun of energy cost forecast at the time the Commission enters its final Order to reflect the variability in all components of the Company's energy case. However, such a re-projection would defeat the purpose of the development of an evidentiary record on this issue in this proceeding, and should be rejected.

Third, OCA's references to an oil price of $17 per barrel is misleading and incorrect. As Mr. English explained, this represents the price PECO paid for one spot purchase of oil and does not reflect the average value of PECO oil inventory either now or over the period rates will be in effect, according to the Company's most recent projections (Tr. 4358-61). Oil prices are currently very volatile. The OCA's attempt to rely on a spot price at a particular point in time to establish an average oil price for the first year rates will be in effect is obviously inappropriate and should be rejected. Mr. Carroll specifically asked Mr. English what average price he expected PECO to pay for oil for the first year rates set in this proceeding are in effect, and he concluded this price would be $24 per barrel for 1% No. 6 oil. The OCA had adequate opportunity to present any alternative evidence it wished on this matter and chose not to do so.

Finally, OCA contends that the Company has not committed to the use of PECO Exhibit JJC-3 "as the basis for its energy cost rate price in this case" (OCA Exc., p. 58). This is incorrect. As stated above, PECO's energy cost projections set forth in Exhibit JJC-3 are the basis for the first year of 80%/20% ECR. Trial Staff devotes significant discussion to criticizing various aspects of the Company's energy cost projections. This discussion should be ignored since both Trial Staff in its Exceptions and Trial Staff's witness accept the Company's energy cost projection for the first year of the ECRF. In addition, however, Trial Staff seeks to employ the one-year oil price estimate in Exhibit JJC-3 as the first year oil price projection in its three-year normalized projection. This is inappropriate and should be rejected. A change in the first year estimate obviously will impact future projections and to simply take a revision to the first-year projection without revising the second and third year projections on the same basis is clearly in error and should be rejected. The three-year projection in PECO Exhibit JJC-2 is the only consistent three-year projection on the record in this case, and it has been accepted by Trial Staff Witnesses Rosenthal and Hosler (TS St. ECR-2, pp. 10-11).

VI. REVENUE REQUIREMENT ISSUES

A. Normalized Outage Rate Base Adjustment

Trial Staff excepts to the ALJ's rejection of its proposed adjustment reflecting an alleged excessive forced outage rate (TS Exc., pp. 38-40). However, Staff has simply presented no evidence to support the contention that PECO's outage rate is excessive. Rather, it bases its argument solely on the fact that the Company's outage rate is higher than the PJM average (PECO I.B., pp. 7-11 to 7-12; R.B., pp. 7-2 to 7-3). The fact that the Company's rate is greater than average clearly does not prove it is excessive, and the Company has submitted extensive and unrebutted evidence explaining the reasons for this higher outage rate level (PECO I.B., pp. 7-12 to 7-13). Staff's adjustment is also in direct contravention of recent Commission determinations regarding the prudence of outages at PECO's coal and nuclear plants, which contributed to its forced outage rate (PECO I.B., pp. 7-13 to 7-14). Finally, Staff erroneously assumes that the 3.21% forced outage rate adjustment required PECO to install additional generating capacity, and its adjustment contains two significant computational errors which render it invalid (PECO R.B., pp. 7-3, 7-13 to 7-15).

B. Cash Working Capital

The arguments contained in Trial Staff and OCA exceptions regarding cash working capital are fully set forth in the Company's Initial (pp. 7-38 to 7-47) and Reply (pp. 7-7 to 7-10) Briefs, and this discussion fully supports the ALJ's acceptance of the Company's cash working capital claim. Further comment is only required with regard to late payment charges and the lag associated with the payment of federal income taxes.

Staff asserts that the Company's claimed revenue lag should be reduced to reflect the impact of customers who pay their bills late (TS Exc., pp. 31-32). However, as Staff's own witness acknowledged on cross-examination, the Company is entitled to recover the carrying costs caused by late paying customers and that his adjustment would deny all recovery by both flowing through to ratepayers all revenue recovered in the late payment charge and eliminating these dollars from the Company's cash working capital claim (PECO

I.B., pp. 7-40 to 7-41). Given these admissions from its own witness, it is not surprising that Staff did not even mention this issue in its Main Brief. In its Exceptions, Staff states that a similar adjustment was adopted by the Commission in Pa. P.U.C. v. UGI Corp., Docket No. R-832331 (Jan. 27, 1984). In that case, the Commission rejected the utility's argument that revenues associated with the collection of late payment charges had been flowed through to ratepayers because those costs were also being claimed as an operating and maintenance expense. In contrast, in this proceeding the Company has presented unrebutted evidence and the Staff's witness has agreed that all dollars associated with late payments are flowed through for the benefit of ratepayers. The UGI case therefore, provides no support for Staff's position.

Consistent with many prior PECO rate orders, the ALJ properly rejected the OCA's and Trial Staff's arguments that the lag days associated with federal income tax payments should be reduced to reflect the assumed use of a statutory payment schedule (PECO I.B., pp. 7-44 to 7-45; R.B., p. 7-9). The OCA asserts that the Company may qualify for an exception to the estimated tax penalty provision if the statutory payment schedule is employed (OCA Exc., pp. 37-38). As explained in the Company's Reply Brief (pp. 7-9 to 7-10), although PECO could qualify for this exception, doing so would require a substantial increase in its estimated tax payments and would further increase its cash working capital requirement. The OCA asserts that this Company position was articulated for the first time in its Reply Brief and therefore has no evidentiary support and should be ignored (OCA Exc., p. 38). However, the OCA conveniently fails to mention that the OCA raised this argument for the first time in its Main Brief before the ALJ. Indeed, the only record evidence on this issue appears in the cross-examination of Company Witness Sileo during the sur-surrebuttal phase of this proceeding (OCA M.B., pp. VI-10 to VI-12; Tr. 4030-33), who testified that none of the exceptions applies to PECO. Given the late date on which the OCA first raised this issue and the Company's obvious inability to submit a timely response on the record, it clearly was appropriate for PECO to respond in its Reply Brief.

C. Cost of Equity

As explained in the Company's Exceptions (pp. 53-59), the record in this proceeding clearly demonstrates that PECO is entitled to an equity cost rate of at least 15.65%. Indeed, correcting the ALJ's equity cost rate recommendation for several obvious errors demonstrates that, at a minimum, the Company should receive the opportunity to earn an equity cost rate no lower than 15% (PECO Exc., p. 59). Contrary arguments advanced in the exceptions of OCA and Trial Staff are fully addressed in PECO's Initial (pp. 7-63 to 7-83) and Reply (pp. 7-12 to 7-19) Briefs, and therefore only brief additional comment is required.

OCA asserts that the ALJ erred in relying on a risk premium analysis because of the volatility of bond interest rates (OCA Exc., p.42). This Commission has repeatedly relied upon both the DCF and risk premium methodologies in determining the cost of equity, and it is only the OCA which has relied upon a single cost of equity method, i.e., the DCF method, in this proceeding (PECO R.B., p. 7-18). In any event, the results of the risk premium analysis are no more volatile or uncertain than the growth rate calculation under the DCF approach, as both are affected by fluctuations in capital costs and require the application of informed judgment. The OCA is also incorrect in asserting that the ALJ should have adopted the 2% risk premium calculated by the FERC for average risk electric utilities, in view of the uncontested fact that PECO is clearly an above average risk utility (PECO R.B., p. 7-19). Moreover, as explained in the Company's Exceptions (p. 58), if the ALJ's analysis were corrected to properly apply his averaging methodology, the Company's risk premium would be 4.15%, or substantially greater than that proposed by the OCA.

The OCA further argues that the ALJ erred in refusing to reduce the Company's equity cost rate allowance to reflect the perceived risk in completing Limerick Unit 2 (OCA Exc., pp. 42-43). As explained in the Company's Initial (pp. 7-75 to 7-77) and Reply (p. 7-15) Briefs, PECO's cost of equity is what the marketplace says it is, and the OCA's recommendation is inconsistent with that result and with all Commission precedent, including an express rejection of this argument in the Company's last rate proceeding.

There is also absolutely no evidence that the .75% figure developed by the OCA represents the risk associated with Limerick 2 completion (PECO R.B., p. 7-15). Moreover, the OCA is simply wrong in asserting that such an adjustment is consistent with the Commission's Limerick 2 Order (PECO R.B., p. 7-15 n.13).

Finally, Trial Staff's exceptions to the ALJ's dividend yield calculations and rejection of its witnesses' risk spread analysis are fully rebutted in the Company's Initial Brief (pp. 7-70 to 7-74) and, therefore, should be denied.

D. Pro Forma Revenues

OCA contends that the ALJ erred in refusing to increase PECO's pro forma sales and revenues to reflect a computed difference in weather-corrected actual and budgeted sales for the first 5 months of the future test year (OCA Exc., pp. 46-47). As demonstrated in the Company's Initial (pp. 7-88 to 7-91) and Reply (pp. 7-21 to 7-22) Briefs, this adjustment was properly rejected because (1) the OCA's assumption that actual sales have exceeded budgeted levels is incorrect -- actual sales were below budgeted levels by 22,844 mwh for the first 6 months of the future test year; (2) OCA's assumption that an increase in sales over budgeted levels results in increased revenues is incorrect -- sales can increase for many reasons which may or may not affect total revenues; (3) for the first 6 months of the future test year, PECO's actual revenues were $16.2 million below budget; and (4) the OCA's adjustment is incomplete as it looks only at actual versus budgeted sales and does not consider actual versus budgeted expenses, which also affect PECO's income available for return (PECO I.B., p. 7-91; PECO R.B., pp. 7-22 to 7-23). With regard to this latter point, actual figures for the first 6 months of the future test year show that PECO's operating income was $21.8 million below budget and that PECO's current rates do not produce enough income to make the Company whole (PECO I.B., p. 7-91; R.B., pp. 7-22 to 7-23). Thus, if any adjustment is to be made, it should be to increase PECO's revenue requirement to reflect this clear and substantial deficiency.

E. Customer Accounts Expense

Trial Staff asserts that its proposed reduction in customer accounts expense based on a comparative study of PECO and five other metropolitan utilities should have been accepted by the ALJ (TS Exc., pp. 45-46). First, there is no conceptual basis for Staff's apparent belief that higher customer accounts expense is unreasonable as these costs may be the result of a number of reasons including excellent customer contact and service (PECO I.B., p. 7-108). Second, the Company has clearly demonstrated that Staff's analysis fails to consider significant differences between these utilities and PECO which affect customer accounts expense (PECO I.B., pp. 7-109 to 7-110). The Company presented a detailed analysis based on hard data, in contrast to Staff's mere speculation, which demonstrates the significant impact that these differences have on an individual utility's customer accounts expense and, when adjustments are made to correct for some of these errors in Staff's analysis, the results show that PECO's level of customer accounts expense is well within the range of costs experienced by Staff's comparison group (PECO I.B., pp. 7-111 to 7-112).

F. Wage Expense

Trial Staff asserts that it was error for the ALJ not to adjust the Company's wage expense claim to reflect the differential between the actual and budgeted number of employees (TS Exc., pp. 52-53). As explained in the Company's Initial Brief (pp. 7-106 to 7-107), Staff's adjustment reflects only one component of the Company's total wage and benefit expense claim, i.e., the number of employees, while ignoring a number of other components including overtime and the amount of contract labor, which substantially contribute to the level of these costs. Moreover, actual and budgeted payroll levels were virtually identical for the 3-year period relied upon by Staff, and actual levels in fact exceeded budgeted levels by 0.17%, thus demonstrating that the Company has been extremely accurate in projecting payroll expenses (PECO I.B., pp. 7-107 to 7-108). In response, Staff asserts for the first time in its Exceptions that overtime expenses should not be considered in developing a normalized level of wage expense as such costs may have been

incurred for abnormal or "special" circumstances (TS Exc., pp. 52-53). However, Staff has provided no analysis whatsoever demonstrating that any of the Company's overtime expense is imprudent, excessive or related to abnormal or non-recurring events. Clearly, overtime is part of the normal cost of providing electric utility service to ratepayers, and it would be unreasonable not to consider such costs in formulating a normalized expense level.

G. Amortization of Nuclear Fuel Projects

OCA asserts that it was error for the ALJ to approve the amortization of costs associated with certain cancelled uranium mines because these projects were never used and useful in providing electric service to ratepayers (OCA Exc., pp. 50-51). As explained in its Initial (pp. 7-122 to 7-123) and Reply (p. 7-33) Briefs, the Company's claim is identical to that approved by the Commission for the Pioneer Uravan project in PECO's last rate proceeding. Moreover, the Company is only seeking a return of and not a return on these expenses. Since the used and useful standard applies only to rate base determinations, OCA's argument is legally incorrect and should be rejected. The Company's investment in these projects has not been challenged as being unreasonable or imprudent, is clearly part of the Company's overall cost of providing utility service to the public and, therefore, should be approved.

H. Other Rate Base and Expense Exceptions

The remaining issues raised in the exceptions of Trial Staff and OCA merely reiterate arguments which were previously advanced and rejected by the ALJ. The Company's response to these arguments is set forth in its Initial and Reply Briefs as indicated below and fully supports the ALJ's Recommended Decision.

1. Materials and Supplies - Coal Inventories (Trial Staff Exception II.B; PECO I.B., pp. 7-33 to 7-35; PECO R.B., pp. 7-6 to 7-7).

2. Non-Fuel Materials and Supplies (Trial Staff Exception II.C; PECO I.B., pp. 7-35 to 7-37; PECO R.B., p. 7-7).

3. Continuing Property Records Audit - Adjusting Entry No. 4 (Trial Staff Exception II.E; PECO I.B., pp. 7-22 to 7-23; PECO R.B., pp. 7-5 to 7-6).

4. Land Held for Future Use (OCA Exception IV.B; PECO I.B., pp. 7-26 to 7-28).

5. Expense for Outages at Nuclear and Coal Units (Trial Staff Exception IV.F; PECO I.B., pp. 7-95 to 7-98; PECO R.B., pp. 7-23 to 7-24).

6. Inflation (OCA Exception VI.B; PECO I.B., pp. 7-101 to 7-109; PECO R.B., pp. 7-26 to 7-27).

7. Decommissioning Expense (Trial Staff Exception IV.D; PECO I.B., pp. 7-130 to 7-131).

8. Heaton Byberry Transmission Line (OCA Exception IV.D; PECO I.B., pp. 7-124 to 7-125; PECO R.B., p. 7-33).

9. Eddystone 1 Transition Tube Replacement (Trial Staff Exception IV.C; PECO I.B., pp. 7-100 to 7-101).

I. Trial Staff Computation Errors

Trial Staff identifies what it perceives as several "computational" errors in the Recommended Decision's tax calculations. However, in several instances, e.g., the OCA's imprudency adjustment for the 1976 and 1978 deferral announcements and the adjustments for deferred state income taxes and deferred taxes on capitalized overheads, the ALJ simply adopted the OCA's proposed calculation rather than that presented by Trial Staff. In PECO's view, disagreement with another party's adjustment is simply not a "computational" error, particularly where the sponsoring party, in this case the OCA, did not except or otherwise attempt to "correct" its own adjustment.

J. Rate Structure

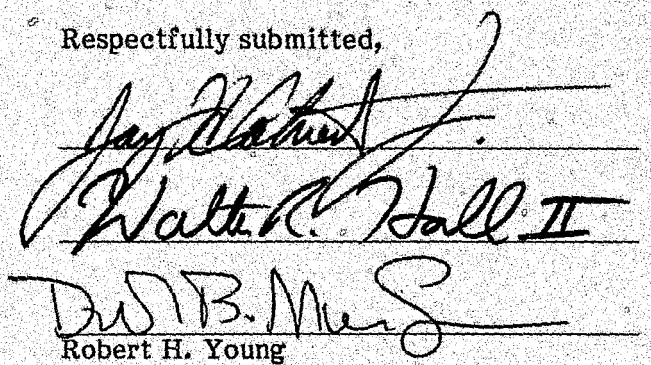
The ALJ, after full consideration of the wealth of competing rate structure evidence, adopted the Company's proposed cost of service study, allocation of the revenue increase, and rate design. The various arguments advanced by opposing parties in their Exceptions simply rehash the arguments presented to and rejected by the ALJ, and simply seek to relitigate issues and adjustments that have been repeatedly considered and rejected by the Commission in prior PECO rate cases. The Company's cost of service methodology is essentially identical to that presented by the Company and approved by the Commission in PECO's last eight rate proceedings. The Company's proposed allocation of the rate increase is consistent with that cost of service study and strikes a fair balance between the extreme position advanced by opposing parties, who simply seek to reduce the revenue increase

assigned to them at the direct expense of others. With respect to rate design issues, the UUC/UP proposal to abolish the demand ratchet in Rates HT and PD simply fails to acknowledge that the Commission has repeatedly rejected identical arguments and that this result has been upheld on appeal. Similarly, the essential use rates proposed by OCA and CEPA have been rejected by the Commission on the ground that they provide substantial benefits to customers who do not need help in paying their electric bills and injure many poor customers by requiring them to pay higher rates.

VII. CONCLUSION

For the reasons set forth above and as is more fully discussed in PECO's Exceptions, the Recommended Decision, if adopted by the Commission, would deny the Company the just and reasonable rates to which it is entitled. The Recommended Decision should, therefore, be modified and the Commission should approve the full amount of the increase requested in Supplement No. 15.

Respectfully submitted,



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MAY 30 1986
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Public Utility Commission

May 30, 1986

Secretary Jerry Rich
Pennsylvania Public Utility Commission
North Office Building
New Filing Section, Room B-16
Harrisburg, PA 17120

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

Dear Secretary Rich:

Enclosed for filing with the Commission is the original and nine copies of the Reply Exceptions of the Governor's Energy Council to the Recommended Decision in the above-captioned proceeding.

I hereby certify that we are today serving copies of this document on all active parties.

Sincerely,

Roger E. Clark

Roger E. Clark
Chief Counsel

Enclosures

cc: The Honorable Joseph P. Matuschak
All Active Parties

CERTIFICATE OF SERVICE

I hereby certify that I have this 30th day of May, 1986, served a copy of the Reply Exceptions of the Governor's Energy Council in Docket No. R-850152 upon the following by first class mail (postage prepaid) or hand delivery:

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MAY 30 1986
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Public Utility Commission

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	)	
v.	)	
Philadelphia Electric Company	)	R - 850152

REPLY EXCEPTIONS OF THE GOVERNOR'S ENERGY COUNCIL

TO THE RECOMMENDED DECISION OF

ADMINISTRATIVE LAW JUDGE JOSEPH P. MATUSCHAK

DOCKETED
JUN 2 - 1986

May 30, 1986

Roger E. Clark
Chief Counsel

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I. Introduction

The exceptions filed by the Governor's Energy Council addressed various shortcomings and errors in the Recommended Decision, including the lack of any performance based standards or requirements for the Company's generating units, problems with the approved phase-in plan, the failure to make revenue adjustments for excess capacity and the Mark II errors, and the unreasonably high oil price assumptions approved for the Energy Cost Rate. Many of these same issues were raised in the exceptions filed by other parties to this proceeding. The GEC continues to believe that these issues in the Recommended Decision should be modified by the final order of the Commission.

Rather than repeat the discussion of these issues in the reply exceptions, the GEC wishes to focus on a key argument in the exceptions filed by the Company that is a serious distortion of the ratemaking process.

II. The Company's argument that the rate increase should be determined on the basis of its impact on the Company's financial position is without legal merit.

The Company begins its exceptions with a prediction of dire financial consequences if the Commission does not increase the revenue increase allowed in the Recommended Decision. In the

introduction to its exceptions, the Company asserts that the Recommended Decision:

> ... would produce a seriously adverse impact on the Company's financial condition, which confiscates existing shareholder investment, imperils the Company's ability to attract capital on reasonable terms, and therefore does not properly balance ratepayer and shareholder interests.

PECO, page 1.[1] The Company goes on to state that:

> ...at a minimum, the Commission should approve a revenue increase that maintains the Company's existing financial position and does not permit that condition to further deteriorate.

PECO, page 7. The Company then asks the Commission to approve a revenue increase of $450 million, noting that such an increase would allow the Company to approximately maintain its 1985 level of earnings per share and solidify its BBB bond rating. The Company claims that this $450 million revenue increase would provide for:

> ... only modest improvements to the Company's financial condition and is thus only marginally fair to PECO shareholders, who have suffered continued confiscation of their investment during the construction of Limerick 1.

PECO, page 7.

This argument should be rejected by the Commission for two reasons. The first reason is that the Company's suggestion that the balancing of shareholder and ratepayer interests guarantees a utility's financial integrity is contrary to Pennsylvania law.

---

[1]Unless otherwise noted, all citations are to the exceptions filed by the various parties to this proceeding.

As the Pennsylvania Supreme Court stated in Pennsylvania Electric Co. v. Pa. P.U.C., ___ Pa. ___, 502 A.2d 130, 134 (1985), appeal dismissed, 54 U.S.L.W. 3772 (May 27, 1986),

> We find no authority, in Hope or in other decisions, indicating that broad public interests are to yield to the interests of investors whenever the financial integrity of a utility company is imperiled.

In its exceptions, the Company claims that the revenue increase should be $450 million because that is the amount it claims is necessary for the Company to maintain its current financial integrity. The Pennsylvania Supreme Court directly rejected this type of reasoning in ratemaking cases, stating:

> If the impact of diminished financial integrity were shifted from utility companies to the consumers, as would be the case if utilities were regarded as having a constitutionally guaranteed right to rates which would preserve their financial integrity, elevating their rates above those levels that would otherwise be regarded as providing a "just and reasonable" return on assets utilized in the public service, the result would effectively circumvent the longstanding principle ... that property included in a rate base must be "used and useful" in the public service. Specifically, rate bases which had been determined through the exclusion of non-useful property would be rendered superfluous because the resulting rates would have to be adjusted upwards, whenever the financial integrity of the enterprise was in peril, and the effect upon rates would be the same as if portions of the non-useful property, such as the Three Mile Island nuclear reactors, had not been excluded from the rate base in the first instance.

Id., page 135. The GEC submits that the Company's suggestion that the size of the revenue increase should be determined on the

basis of its impact on the Company's financial indicators is a serious distortion of the ratemaking process which is clearly contrary to the statutory and the case law.

The second reason to ignore the Company's argument that the Recommended Decision will produce serious adverse financial impacts on the Company is that there is no evidence in the record to support that claim and what other information is available[2] suggests that such a prediction is factually incorrect. The GEC suggests that the Company's dire predictions of financial ruin should be critically examined and rejected for lack of supporting evidence.

---

[2]Such as stock market figures.

III. Conclusion.

The GEC calls on the Commission to make substantial changes to the Recommended Decision of Administrative Law Judge Joseph P. Matuschak. The ratepayers need the protection of a nuclear performance standard to ensure they are not forced to bear the costs of poor performance. Changes are needed in the phase-in plan so that it is reasonable. Further adjustments are needed to the Company's revenue request to address the problems of excess capacity and the Mark II negligence. Finally, changes are needed to the Company's oil price projections to assure that the Energy Cost Rate is based on a reasonable projection of energy costs.

Respectfully submitted,

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by:

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May 30, 1986

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Public Utility Commission

Mr. Jerry Rich, Secretary
Pennsylvania Public Utility Commission
North Office Building
Commonwealth and North Streets
Harrisburg, Pennsylvania 17120

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

Dear Mr. Rich:

Enclosed for filing with the Commission is an original and nine (9) copies of the Reply to Exceptions of Philadelphia Electric Co. and PAIEUG on Behalf of Utility User's Committee/University of Pennsylvania.

Very truly yours,

Larry B. Selkowitz

LBS/jd

enclosures

cc: Honorable Joseph P. Matuschak w/encl.
All parties w/encl.

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MAY 30 1986

SECRETARY'S OFFICE
Public Utility Commission

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
	:	DOCKET NO. R-850152
v.	:	
PHILADELPHIA ELECTRIC COMPANY	:	

DOCKETED

JUN 2 - 1986

REPLY TO EXCEPTIONS OF PHILADELPHIA ELECTRIC COMPANY AND PAIEUG ON BEHALF OF UTILITY USER'S COMMITTEE/ UNIVERSITY OF PENNSYLVANIA

DOCUMENT FOLDER

Submitted by:

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Dated: May 30, 1986

1. REPLY TO EXCEPTION II OF PHILADELPHIA ELECTRIC CO.

In its Exception II, PECO argues that its rate increase proposal should be accepted and to do otherwise would imperil its financial standing. As has been true throughout this proceeding, PECO argues for its unprecedented huge rate increase without regard for the consequences to the economy and to the people of Southeastern Pennsylvania. For years, PECO has argued to this Commission that its approach must be approved or there will be terrible consequences for the utility and its ability to provide electric service. In this case, more than ever before, the Commission can observe the flip side of the argument. The consequence of accepting PECO's position is to inflict significant harm on the economy of the PECO service territory.

It is important, therefore, for the Commission to review the work of Arie P. Schinnar, Ph.D, on behalf of the City of Philadelphia, (City Statement No. 1) which provides a specific model upon which to quantify <u>one</u> aspect of the hardship likely to be caused if PECO's proposal is approved - namely, impact on employment. Although PECO itself has recognized on the record the close negative connection between rate increases and employment (see UUC/UP Exhibit Nos. 1, 2, 6 and City Statement No. 1A, pp. 10-12), it categorically rejects Dr. Schinnar's estimate that PECO's proposal, unless modified by this Commission, will result in loss of job growth by as much as

19,000 new jobs by the end of the PECO three-year phase-in period. This conclusion PECO finds speculative and unsupported even when its own witness in this case, Dr. Lewis J. Perl, testified in the Lukens Steel case on behalf of PECO that a 0.376% increase in rates would result in a loss of 1,127 jobs. (See UUC/UP Exhibit Nos. 1 and 6). When Dr. Schinnar took Dr. Perl's suggestions in this case and modified Dr. Perl's approach, the result was a projected loss of 20,764 jobs if PECO's proposal is accepted by this Commission in this case. City Statement No. 1A, pp. 10-12.

It is clear that PECO's attack on Dr. Schinnar and, implicitly, on its own witness, Dr.Perl, is motivated by fear that this Commission will recognize one of the painfully obvious truths in this case: the economic impact of PECO's proposal is likely to be severe. Clearly, loss of jobs is only one aspect of the problem: Public institutions will have to raise taxes or fees or reduce services; the poor will be ground further into the despair and hopelessness of being unable to pay for essential human needs. It is respectfully represented that Dr. Schinnar's testimony is so clear and convincing in its overall thrust that arguments over the exact numbers he projects are irrelevant. A distinguished author, consultant and professor at the world famous Wharton School (see his 13 page Curriculum Vitae in Appendix I to City

Statement No. 1), he explains the direct and indirect effects of an electric price increase as follows:

> Q. How then does an electricity price rise produce direct and indirect effects?
>
> A. Suppose the educational sector is faced with a higher electricity rate. We expect certain conservation measures to take place, but not enough to offset the increased electricity bill. In the long run the educational sector is likely to react to the increased rates by seeking alternate energy sources (exemplified by the cogeneration steam plant planned jointly by the University of Pennsylvania and AMTRAK).
>
> But in the short run, the direct effect on the educational sector of the price hike will be as follows: Responding to the budgetary strain of the larger electricity bill, the educational sector is likely to 1) reduce its purchases of other goods and services (such as health services, additional employment) and 2) increase the price it charges for its educational services (tuition). These are the direct effects.
>
> What happens next because of the actions taken by the educational sector constitutes the indirect effects. For example, health services will face a lower demand for its service by the educational sector because of shortage of funds. Faced with a higher price for educational services (along with its own higher electricity bill), health services will moderate its purchase of education and possibly increase the price of health services to alleviate its budgetary problems. The educational sector now faces added budgetary problems emanating from the drop in demand for its services and higher bills for health benefits. . . and so it goes. These indirect effects are as severe as the direct effects, in my opinion.

City Statement No. 1, pp. 23-24. See also, pp. 30-31 for a discussion of the rate increase on the poor.

It is respectfully submitted that to an unprecedented degree, this Commission is faced with the practical consequences of a rate increase that is so large that there are serious and realistic concerns about the ability of PECO customers to sustain it. As Dr.Schinnar summarizes his findings:

> The effect of the implementation of PECO's Rate Proposal, obtained through simulations with the Philadelphia STARLOC Model, it is a loss of new job growth by as much as 19,000 new jobs the the end of the three-year phase-in period. 8000 of these new jobs lost would be lost in Philadelphia. Most of the loss will be in the service sector of the economy. Among ratepayers, lower-income residential ratepayers would be the most severely affected.

City Statement No. 1, p. 5.

Interestingly enough, Dr. Schinnar documents that PECO's huge rate increase is even dangerous for PECO. As discussed on pages 16 and 17 of his testimony and as shown in Table 6, PECO may be threatening the area economy needlessly since its large rate increase may so depress demand for electricity as to leave it substantially short in its revenue projections.

In simple legal language, Dr. Schinnar's analysis is credible, based on careful, easily understood premises and procedures and is deliberately understated and conservative. PECO's rebuttal to Dr. Schinnar, as capably demonstrated in the Main Brief of the City of Philadelphia, is lacking in both

substance and credibility. It is beyond credibility and credulity that the same company that claimed in sworn testimony before this Commission only a few years ago that a rate increase of 0.376% would result in the loss of 1,127 jobs (UUC/UP Exhibit Nos. 1 and 6) would now claim that a rate increase of approximately one hundred times in magnitude would result in little or no impact on jobs.

This Commission should reject PECO's position as inconsistent and not credible. It should approach this case with the care and caution that the large numbers deserve. Public utilities were created to promote economic progress and opportunity, not to impede or prevent them. PECO has been on notice for years that it was proceeding with Limerick based on its assurances that Limerick was needed and good for its customers. It was never anyone's understanding that PECO was building Limerick for its own benefit. If this Commission must make adjustments, based on the law and the evidence, to PECO's claim, then this is a risk PECO has always known it faced. If PECO must find a way to cut back on its expenditures so as to avoid economic distress of major magnitude to its customers, then it must do so. A healthy utility company and a severely sick service territory are not compatible. We urge the Commission to take into account the economic health of the Southeastern Pennsylvania region in setting rates in this case. We specifically urge that this Commission build on the ALJ's

decision and make appropriate adjustments, as argued for by the various parties (particularly on excess capacity), so that the final result in this case will be consistent with previous Commission precedent and will minimize, to the greatest possible degree, the economic harm to the economy of Southeastern Pennsylvania.

2. REPLY TO EXCEPTIONS OF THE PAIEUG

In its Exception III-C, PAIEUG alleges that the ALJ erred in not lowering the recommended HT tail block rate from 3.75 cents to 3.18 cents per kwh. It believes that the reduction is necessary to purge the block of capacity related charges. UUC/UP strongly urges this Commission to reject PAIEUG's argument, for, to accept it would only compound the error inherent in PECO's proposal and accepted by the ALJ. This error is the failure to allocate the energy related costs of Limerick on an energy basis, the result of which is an increase in the tail block charges. This subject is fully briefed at pages 42 to 63 of our Main Brief, pages 15-20 of our Reply Brief and in Exception Number 3. However, it bears repeating that Limerick's costs (which are energy related) must be allocated on an energy basis. This will indeed result in capacity costs being recovered in the tail block. However, rather than being an error, this result is the only correct one, in that all capacity costs are not, per se, demand

related. Moreover, Limerick's costs, in fact, are almost exclusively related to energy and it follows that they should be recovered accordingly.

Respectfully submitted,

WIDOFF REAGER SELKOWITZ & ADLER, PC.

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CERTIFICATE OF SERVICE

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Dated: May 30, 1986

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May 30, 1986

IN REPLY PLEASE
REFER TO OUR FILE

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SECRETARY'S OFFICE
Public Utility Commission

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

Dear Secretary Rich:

Enclosed please find the original and nine copies of Staff's Replies to Exceptions in the above captioned case. Copies today are being served on all parties of record as indicated on the attached certificate of service.

Very truly yours,

Marlane R. Chestnut
Assistant Counsel

MRC:cew

Enc.

xc: As per certificate of service.

FOLDED

PENNSYLVANIA PUBLIC UTILITY COMMISSION

v.

PHILADELPHIA ELECTRIC COMPANY

DOCKET NO. R-850152

COMMISSION TRIAL STAFF REPLIES TO EXCEPTIONS TO THE RECOMMENDED DECISION DATED MAY 13, 1986

DOCKETED
JUN2 - 1986

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I. INTRODUCTION

These are Commission Trial Staff's Replies to the Exceptions filed on May 23, 1986 in response to the Recommended Decision issued by Administrative Law Judge Joseph Matushak. Failure to reply to certain specific exceptions raised by the various parties should not be construed as a waiver of Staff's position on the issues in question. On such issues Staff will rely on the arguments and discussion contained in its Main and Reply Briefs, and in its Exceptions.

II. PECO HAS MISSTATED THE BURDEN OF PROOF (PECO Exceptions, pp. 9-10 and passim).

In its Exceptions PECO has misstated the burden of proof it bears. There can be no doubt that the burden of affirmatively establishing by substantial evidence the prudency and reasonableness of all claimed Limerick costs is on PECO; it is not correct that Staff and the intervenors must affirmatively demonstrate imprudence. In this particular case, the underlying lack of prudence already has been determined by the Commission in its Limerick #1 investigation; therefore, the company cannot establish that its entire Limerick rate base claim is reasonable. Although not required under applicable legal principles, both Staff and OCA have more than met their burden of presenting prima facie cases by demonstrating the unreasonableness of the portion of company's claim resulting from the imprudent instruction delays.

In addition, the company is incorrect that Commission prudency adjustments must involve a finding of proximate cause. As explained in detail by Staff, this is an administrative proceeding instituted pursuant to §1308 for the purpose of establishing just and reasonable rates, not a tort action. Reasonableness in this context relates to prudency, not negligence. See, Staff's Main Brief at pp. 226-28 and Exceptions at pp. 11-13 for a complete discussion.

Therefore, the Commission should reject PECO's blatant attempt to evade the consequences of its actions by presenting a standard of proof which shifts the burden from the company to Staff and the intervenors.

III. THE COMMISSION MUST BALANCE THE INTERESTS OF BOTH THE COMPANY AND ITS RATEPAYERS IN THIS CASE.

The Company has devoted the initial section of its exceptions to describing how its financial interests require this Commission's rejection of the Recommended Decision (PECO exceptions, p. 1-8). Contrary to the position advanced in the Company's exceptions, the interests of the Company and its shareholders are not the only ones to be examined in this matter. The submission of this case for adjudication by the Commission requires the establishment of a delicate balance in fashioning a final result. The balance must take into account the interests not only of the Company's shareholders but also of the ratepayers who must in the final analysis contribute to the revenue requirement to be established in this proceeding. It is submitted that this case with its complex issues and large record must turn on this fundamental fact.

The Pennsylvania Supreme Court recently considered this balancing in Pennsylvania Public Utility Commission v. Pennsylvania Gas and Water Co., 492 Pa. 326, 424 A.2d 1213 (1980) cert denied 454 U.S. 824 (1981), where it stated:

> In construing the statutory norm of fair valuation, we must, of course, view that standard within the context of the enactment as a whole. Accordingly, we find that the overriding principle governing the PUC's performance of its duty is to determine 'just and reasonable' rates pursuant to the Public Utility Law. Thus, the 'fair value' must reflect rates that are 'just and reasonable.' The ratemaking

> function consists of a two-step process to effectuate the paramount responsibility of fixing 'just and reasonable' rates: fair valuation of utility property and the ascertainment of a reasonable rate thereon. There is ample authority for the proposition that the power to fix 'just and reasonable' rates imports a flexibility in the exercise of a complicated regulatory function by a specialized decision-making body and that the term 'just and reasonable' was not intended to confine the amibt of regulatory discretion to an absolute or mathematical formulation but rather to confer upon the regulatory body the power to make and apply policy concerning the appropriate balance between prices charged to utility customers and returns on capital to utility investors consonant with constituional protections applicable to both.

492 Pa. at 331, 424 A.2d at 1219 (emphasis added, citations omitted).

The Company's shareholders have the right to a reasonable return on their investment, one which does not effect a confiscation of their property. The ratepayers have an equal right to be charged rates for utility service which are not oppressive or unreasonable. As developed the Trial Staff's main brief at pages 226-32, in balancing this interest the Commission also has the obligation to protect the public from being victimized by the monopoly power of a public utility. In the present case the Commission has previously determined that PECO's decisions to delay Limerick construction in 1976 and 1978 were imprudent. The final result in this matter must protect the ratepayers from the costs of PECO's imprudency. The Staff believes that its proposed Limerick rate base adjustment identifies in a reasonable manner the

economic consequences of the Company's imprudent actions. It is submitted a balanced result in this matter will protect the ratepayers from these imprudent costs.

A. The Company's Interests Are Not Paramount In This Matter.

The Public Utility Code contemplates that not only the Company's interests but also those of its ratepayers must be taken into account in establishing utility rates. The Company has raised the spector of its financial doom should the Presiding Officer's Recommended Decision be adopted by the Commission (PECO exceptions, p. 2-7). As developed in pages 229 to 232 of the Staff's main brief, the Company's predictions of the economic consequences of acceptance the Recommended Decision or of the Staff's or the OCA's proposed Limerick adjustments are simply not persuasive in view of PECO witness Pacquette's admission that the predictions contemplated no reduction in expenses by the Company (Tr. 4831-2).

The Company's imprudent delays in constructing Limerick have raised the risk of a substantial rate base disallowance for Limerick Unit 1 in this case. As noted by the Pennsylvania Supreme Court in Pennsylvania Electric Co. v. Pennsylvania Public Utility Commission, _____ Pa. _____, 502 A.2d 130 (1985) appeal dismissed (U.S. Supreme Court Dkt. No. 85-1493, filed May 27, 1986), it is not the role of regulation to protect utilities from all business risks.

> In cases where the balancing of consumer interests against the interests of investors causes rates to be set at a 'just and reasonable' level which is insufficient to ensure the continued financial integrity of the utility, it may simply be said that the utility has encountered one of the risks that imperil any business enterprise, namely the risk of financial failure. The express language of the Hope decision weighs against regarding utilities as a protected class of business enterprises which are to be relieved of such normal business risks. Specifically, it was stated in Hope, 320 U.S. at 603, 88 L.Ed. at 345, that investment returns to utility owners 'should be commensurate with returns on investments in other enterprises having corresponding risks.' (emphasis added). In addition, the Hope decision observed, 'regulation does not insure that the business shall produce net revenues.'

_____ Pa. _____, 502 A.2d at 134 (citation omitted).

In this matter the Company's interests are not paramount. Its predictions of financial hardship simply are not determinative factors in this case's resolution. A just result in this matter must equitably balance the interests of all parties.

B. The Company Has Improperly Changed Its Positions In Its Exceptions.

The Company has changed its position on a number of issues in its exceptions. These modifications include the acceptance of a revenue increase of $450 million in lieu of the amount originally requested (PECO exceptions, p. 4, 7); and offerring the Commission a number of alternative adjustments in response to the ALJ's Limerick imprudency quantification (PECO exceptions, p. 22). The Trial Staff submits that

such extensive modifications of position are improper because they substantially erode the integrity of the Commission's hearing process. By changing its position in its exceptions, the Company denies the other parties a meaningful opportunity to respond with other evidence or to return with a coherent response. It is submitted that these actions adversely effect the due process rights of the other parties.

The Company's actions are simply a tawdry effort to negotiate directly with the Commission. Initially it must be noted that the Company's actions are in violation of the Commission's procedural rules. Section 5.501(3) of the Commission's regulations, 52 Pa. Code §5.501(3), provides in pertinent part:

> The party with the burden of proof shall, in its main or initial brief, completely address, to the extent possible, every issue raised by the relief sought and the evidence adduced at hearing.

By changing positions in its exceptions, the Company in effect is raising new issues literally at the twelfth hour in the case. The other parties are simply left in the role of bystanders.

The present case presents the third time in the recent past that the Company has substantially changed litigated positions in its exceptions. In its last rate case at R-842590, the Company resisted a Consumer Advocate demand that PECO tie down or guarantee the projected energy savings from the Salem II Unit. See the Recommended Decision

of ALJ Klovekorn at p. 13-5. In its exceptions, the Company changed its position on the issue and did guarantee the projected Salem II energy savings. See the Commission's order at p. 44. In the Limerick Unit 2 Investigation at I-840381, the Company initially opposed any cost containment program and then subsequently stated conditions which it insisted on. See ALJ Turner's Recommended Decision at p. 370-81. In its exceptions, the Company again substantially changed its position. See the Commission's order at p. 77-82. In each case, the other parties were denied an opportunity to present evidence or to meaningfully react to these changes of position by the Company.

It is submitted that such abrupt changes of position also present an issue of credibility concerning the Company's evidentiary presentations before the Commission's ALJ. The Trial Staff believes that the instant case should be decided on the basis of the issues litigated before the Presiding Officer and not on the positions newly advanced in the Company's exceptions.

IV. RATE BASE

A. As Correctly Found by the ALJ, PECO's Claims that the 1976 and 1978 Delays Resulted in no Schedule Extensions or Increased Costs Are Inherently Incredible (PECO Exceptions, pp. 10-35).

In its Exceptions, PECO continues to insist that there were no delay decisions that affected Limerick's construction schedule, just "deferral announcements." As properly found by the ALJ in the Recommended Decision (RD, p. 50), this claim is inherently incredible.

In 1974, 1976 and 1978 the company - through its Board of Directors - made a series of decisions to delay the completion date of the Limerick project. Those decisions had been effectuated by the time of the Limerick #1 investigation in 1980. The Commission was not evaluating the "deferral announcements;" the subject of the investigation was the prudency of the delays themselves and PECO in that proceeding presented evidence purporting to establish the reasonableness of those decisions. Thus, PECO witness Pacquette stated:

> In evaluating the 1976 postponement based on capacity and financial factors, it is also important to appreciate the context within which these decisions were being made. . . Based on such an historic regulatory concept, it was clearly the view of the Company that Limerick should not be completed well in advance of the need for it. Accordingly, when our growth forecasts began to level off and it became apparent that

we would not need Limerick's capacity in 1981 and 1983, it was entirely consistent with corporate and regulatory policy to slow down the construction of that plant in order to avoid bringing it on line in advance of its need. This policy appeared to be confirmed when in the rate proceedings of 1975 and 1976 questions were raised by the Commonwealth of Pennsylvania concerning reserve margins and the possibility that the Company then had "excess capacity" which should be eliminated from its rate base. Although the PUC rejected the Commonwealth's arguments in that case, it did indicate that the Company would be required to justify its installed capacity in the next rate case. In such an environment the Company concluded that the public interest did not warrant a speedy completion of Limerick. Indeed the questions concerning the Company's "excess capacity" indicated that there was certainly some risk that if the Company brought on the Limerick plant in 1981 and 1983, the Public Utility Commission might exclude it from rate base with very dire financial consequences to the Company. Offsetting all of these factors dictating a delay in the Limerick construction schedule, there was, of course, recognition by the Company of the possibility that such a delay could result in a higher ultimate cost for the Limerick station. The amount of this increased cost could, of course, not be accurately determined on any of the postponement dates. However, there was little question that additional AFUDC would be accrued as a result of the postponement, and it was also clear that the maintenance of the construction staff for a longer period at the site would increase overhead costs.

Balancing these factors, it was clear that the cost to the customers would be greatly reduced in the short term from a postponement of Limerick since they would not have to pick up the carrying costs for the plant in 1981 and 1983 but would have these costs postponed for at least two years. In other words, the delay decision involved clear

> short-term benefits to customers offset by possible long-term burdens, although the exact amount of those long-term burdens could not be precisely determined at that time. (PECO Stmt. 9, pp. 10-12, cited in ALJ Klovekorn's Initial Decision at pp. 51-52; emphasis supplied.)

The Commission's Limerick #1 order makes it clear that the Commission's intent was to evaluate the three delays for reasonableness. Thus, the order notes that the investigation was undertaken to determine "the costs of construction delays at Limerick and whether those delays were reasonable" (56 PaPUC at p. 50, emphasis supplied). The order went on "In 1976, to match growth in capacity additions with a lower spring 1976 load forecast, PECO further delayed construction . . ." (56 PaPUC at p. 56) and made many other references to the delays:

> It appears from the record before us, that PECO's 1976 and 1978 construction delays were caused by PECO's financial difficulties which in turn were caused by its ambitious construction program and its ever decreasing load growth. . . . (Order at p. 60, emphasis supplied).

The company claims at page 42 of its Exceptions that "First, although the Company did reduce expenditures on the Project in 1976 and 1977, it did not do so in 1978 to 1980." This assertion was expressly rejected by the Commission in its Limerick #1 order at page 57:

> Although PECO witness Pacquette testified that from 1978 to 1980 the company authorized and spent moneys to maintain the 1983-85 service dates, the record indicates that direct expenditures were

reduced from the budgeted amount of $529 million to $479 million. (Record citation omitted).

PECO attempts to establish that it "consistently made an aggressive effort to construct Limerick #1 as quickly as circumstances would allow" by pointing to "construction target schedules that were always earlier . . . than the publicly announced schedules . . . (PECO Exc., p. 38).

The ALJ properly rejected this contention. The fact is that the construction target schedule was irrelevant since, as admitted by PECO's own witness Boyer, Bechtel and all people at the site were aware of the publicly announced completion date, which also was the date used by PECO in all its official filings, annual reports and the bimonthly status reports submitted to this Commission (Tr. 5039, 5052-53). Obviously, it would have been impossible for the company to have kept the "publicly announded schedule" secret from the site workers.

In addition to its assertion that it did not decide in 1976 and 1978 to delay Limerick's completion dates but merely issued "deferral announcements," PECO presents another of its standard "yes, but" arguments. This one goes "Yes, there were delays, but (a) they weren't our fault and (b) they didn't result in any cost increases." This self-serving contention should be rejected by the Commission for the following reasons:

1. Similar testimony was rejected by the Commission in the Beaver Valley 1 investigation, I-79070314. See, Staff Main Brief, pp. 143-46.

2. It is not correct that the construction delays and increased costs solely resulted from NRC-mandated changes. See, Staff Main Brief, pp. 152-65. In this connection, there are two additional points to be made. First, while in its Main Brief, PECO attributes 68% of the increased Limerick costs to regulatory causes (PECO M.B., p. 3-20), in its Exceptions the company seems to be asserting that all of the cost increases were occasioned by NRC requirements (PECO Exc., p. 42). In addition, the company's claims that its congestion restraint analysis (presented by "high level PECO and Bechtel management officials") shows dry well congestion was caused by additional NRC equipment and design changes. This assertion is not supported by substantial evidence of record. The company presented an exhibit (PECO Exh. JJC-2) which purported to show the "substantial additional commodities --- [which] include large and small pipe, pipe hangers, cable tray and conduit" (Tr. 5086). On cross-examination, the "high level PECO and Bechtel management officials" could find only one example of a cable tray in the 84 photographs submitted (Tr. 5086-87). Nor could these "high level PECO and Bechtel management officials" identify any safety-related conduit (Tr. 5088).

3. The PECO-sponsored TBA retrospective analysis is without merit. See, Staff Main Brief, pp. 165-75.

4. The testimony of PECO witnesses, Perl and Hieronymous is without merit. See, Staff Main Brief, pp. 176-199.

Staff respectfully submits that PECO must not be allowed to evade the Commission's prior findings of imprudence. The ALJ properly found, as discussed in Staff's Main and Reply Briefs, that the burden of proof is on the company to establish the reasonableness of its Limerick #1 claim. (RD, pp. 12-13). As recognized by the Commonwealth Court in Berner v. PUC, 382 Pa. 622, 116 A.2d 738 (1955):

> [T]he appellants did not have the burden of proving that the plant additions were improper, unnecessary or too costly; on the contrary, that burden is, by statute, on the utility to demonstrate the reasonable necessity and cost of the installations and that is the burden which the utility patently failed to carry.

382 Pa. at 631, 116 A.2d at 744 (emphasis in original).

It is clear beyond cavil that PECO failed to sustain this burden. As the Commission previously determined, PECO delayed construction in 1976 and 1978 primarily to avoid an excess capacity adjustment, thus putting the interest of shareholders ahead of that of the ratepayers. In its Limerick #1 testimony the company recognized that its delay decisions would burden its customers in the long term but chose to rely on its self-styled "regulatory philosophy" of the "preference of short-term cost-savings over long-term cost increases" (Pacquette, Stmt. 9).

Not only did PECO fail to sustain its burden, the record is clear that Staff and the intervenors presented ample evidence to establish the unreasonableness of the costs claimed by PECO. Staff's adjustment - whose accuracy

was not challenged by the company - looked only at the inflation-caused escalation in costs which occurred during the delay period while the OCA instead looked at when the plant should have been completed. While these analyses rest on completely different bases, each is more than sufficient to rebut the company's case.

Staff urges the Commission not to lose sight of the fact that even before this proceeding PECO's rates were among the highest in the country; they currently are double those of West Penn. The Commission cannot consider only the financial viability of PECO when it makes its decision but also must take into account the financial viability of PECO's ratepayers as well. See, the Pennsylvania Supreme Court's decision in Pennsylvania Electric Company v. PUC, _____ Pa. _____, 502 A.2d 130 (1985).

The appropriate balancing of interests required by the Supreme Court demands that the excess costs resulting from PECO's imprudent scheduling of the Limerick construction be disallowed regardless of the impact on PECO's economic well-being.

B. Staff Did Not Recommend an Equity Disallowance in this Proceeding (PECO Exceptions, pp. 20-21).

In its Exceptions, PECO asserts that Staff witness Rosenthal proposed a Limerick equity disallowance penalty, and presents a calculation which purports to establish

that such a penalty would equal $48,491,000 on a revenue basis. (PECO Exceptions, pp. 20-21). This is incorrect.

It is correct that in his direct testimony Mr. Rosenthal mentioned an equity penalty as an option; this option was rejected in favor of the Limerick construction adjustment presented by the Staff witnesses (Staff Stmt. RAR-1, pp. 7-8). While an equity disallowance appropriately was employed by the Commission in the most recent PP&L proceeding, it is not a suitable approach for the case at bar. The Commission expressly found no imprudency in the construction of Susquehanna 2; the adjustment was made solely because of an excess capacity situation. Therefore, it was appropriate for PP&L's ratepayers and shareholders to share the risk. In contrast, Staff's proposal to adjust PECO's claim for Limerick is based on the Commission's prior findings of imprudence. In this situation, it would be senseless and inequitable for PECO's ratepayers to bear any of the imprudently incurred costs. To put it another way, an equity disallowance is an appropriate adjustment only if there is no finding of imprudence.

In addition, the equity disallowance in PP&L was calculated on the total investment in Susquehanna #2 allowed in rate base, not just the portion deemed excess capacity. Should the Commission therefore adopt PECO's suggestion that the equity portion be disallowed then it should be on the total cost of the plant, not just on the imprudent portion of those costs.

Finally, Staff does not accept the calculation presented in PECO's Exceptions at p. 21. It is not only improper as discussed supra in Section but is incorrect as well. In its Exceptions, the OCA stated that the correct adjustment to the cost of Limerick, based upon the ALJ's findings, is $596.9 million, not the $554.9 million used by PECO (OCA Exceptions, pp. 22-23). Also, the deferred taxes improperly may include AFUDC as discussed in Staff's Exceptions.

Therefore, Staff respectfully urges the Commission to reject the equity disallowance proposed by PECO. While Staff did consider making such an approach, it rejected this option because it is not an appropriate basis for an imprudency adjustment.

C. PECO's Revenue Requirements Analysis was properly disregarded by the Presiding Officer.

The Company has excepted to the Recommended Decision's failure to consider a revenue requirements analysis sponsored by the Company as an offset to any imprudency related costs suffered by PECO's ratepayers as a result of the construction delays in the Limerick Station (PECO exception, p. 48-53). The Trial Staff submits that the Presiding Officer properly found that this type of evidence was previously rejected by the Commission and that secondly, that the analysis itself is so speculative, inconsistent with the Company's own testimony and unrealistic as to be worthy of no serious consideration.

Though its witness Thomas P. Hill, Jr., PECO sponsored testimony which attempted to quantify the revenue requirement impact on customers for Limerick Unit 1 and common plant, assuming a November 20, 1983 in service date as proposed by OCA witness O'Brien. Mr. Hill calculated that $339 million (on a June 30, 1986 present worth basis) is attributable to additional revenues needed to maintain mortgage coverage for the earlier in service data (PECO St. 18E). This figure was subsequently modified by corrections to $335 million (Tr. p. 4698). As developed on pages 202-3 of the Trial Staff main brief, this kind of economic argument was previously offered by the Company in the Limerick I investigation at I-8010034 and found to be unpersuasive by both the Presiding Officer and the Commission. See ALJ Klovekorn's Initial Decision,

pages 45-6 and Commission's Opinion at 56 PaPUC at 61. In the present case, the Company has unsuccessfully raised the same type of economic benefit argument. Using generous amounts of hindsight, the Company now finds a financial benefit to ratepayers in its prior behavior which the Commission found to be imprudent. The Trial Staff submits that the Presiding Officer appropriately found this testimony to be unpersuasive (R.D. p. 56-7).

Initially it must be noted that this kind of financial impact testimony itself is highly speculative and hypothetical. It is instructive to note that in the Limerick I Investigation, practically every major cost projection by the Company has turned out to be incorrect. These predictions bravely advanced by the Company at the time included a $4.6 billion total Limerick Station Cost, a 70% capacity factor and a total O & M cost for 1983-94 in the range of $133-92 million (See 56 PaPUC at 64). The revenue requirements testimony advanced by the Company in this proceeding is so speculative and hypothetical as to be rejected out of hand. Much of it suffers from the same wishful thinking that infected the Company's Limerick I predictions. It is submitted that in view of the Company's past track record on this type of hypothetical testimony, the revenue requirement testimony is simply not credible.

As developed in pages 200-15 of the Trial Staff's main brief, the Company's revenue requirement analysis is also inconsistent with traditional ratemaking concepts and

inconsistent with the testimony of the Company's own witnesses. Initially it must be noted that the testimony of the Company's chief financial witness is curiously inconsistent on the Company's financing ability in the period. In his direct testimony, Mr. Pacquette appears to state that the Company could not finance any more than it did in the period 1975-85 (PECO St. 3). On rebuttal, Mr. Pacquette returned to sponsor a hypothetical OKA financing plan which could have been used to finance the OCA Limerick completion scenario (PECO St. 3B). Such a sudden change of position in successive testimonies raises significant credibility questions.

The revenue requirement derived from Mr. Pacquette's OKA financing plan also is inconsistent with the traditional ratemaking formula used in Pennsylvania. As developed on pages 204-6 of the Trial Staff main brief, the Company's financing plan would not have increased PECO's rate base, operations and maintenance expenses, cost of capital or any other ratemaking element which might have permitted the Commission to grant PECO rate increases over and above those granted in its numerous rate cases that were adjudicated during the period 1975-85. Additional revenues under the financing plan are unsupported by any element of the Pennsylvania ratemaking formula.

The Company's financing plan is also inconsistent with Mr. Pacquette's direct and cross examination testimony since it does not contemplate the use of alternative methods of financing which were available to the Company at the time. As summarized on pages 206-15 of the Trial Staff's main brief,

Mr. Pacquette testified extensively on the availability of alternative financing for the Company in the period. The exclusion of these funds from the hypothetical financing plan is inconsistent with the Company's testimony and fatal to the plan's plausibility and credibility. The Trial Staff submits that the ALJ properly disregarded this evidence.

D. The ALJ Properly Rejected the Comparison Evidence Sponsored by PECO Witnesses Hieronymus and Perl.

The Company has excepted to the ALJ's rejection of the nuclear power plant comparison testimony sponsored by PECO witnesses Hieronymus and Perl (PECO Exceptions, p. 44). The Presiding Officer found such testimony to be unpersuasive and unsupported by the record (R.D. pp. 55-9). The Trial Staff submits that the Presiding Officer's rejection of this testimony was appropriate and should be adopted by the Commission. As developed in detail in pages 176-99 of the Trial Staff's main brief, the testimony of these witnesses is riddled with inconsistencies and methodological and mathematical errors. In view of the prior inconsistent statements of both of these witnesses, this testimony lacks any credibility and should be completely disregarded by the Commission.

E. The ALJ Properly Included Only 50 Percent Of Limerick Common Plant In Rate Base.

Philadelphia Electric Company has argued in its Exceptions (p. 60-61) that the Administrative Law Judge ignored the "unrebutted evidence" of the company that all of Limerick common plant is used and useful and should be included in rate base. The company contends that the ALJ's decision was limited to one of policy and that Commission policy cannot serve as the sole basis for a decision.

While PECO's arguments may provide an interesting issue, the fact is that the decision of the ALJ was based upon more than policy. The Judge's decision was based upon a recognition of the shared benefits and risks experienced between customers served by both units. As the Judge stated:

> By dividing the common plant between two units, the Commission effectively divides the risks, costs, and benefits. Such division is both fair and appropriate and should be applied in this case.

(R.D., p. 23).

The ALJ's decision does not constitute a blind recitation of Commission policy. The ALJ considered Commission policy as it applied to the facts in the instant proceeding and found this policy to be appropriate and reasonable based upon the testimony provided by the various witnesses. The ALJ also relied upon PECO's rationale for following the 50/50 policy with respect to the Salem common plant as

support for the application of the Commission policy to the Limerick plant. As PECO stated:

> We believe that the above described accounting is proper for the Philadelphia Electric Company because it provides a better matching of costs and revenues and because it also meets the economic objective of allocating large common costs in proportion to savings and benefits of sequentially installed units.

(OCA Ex. 70, Tr. 1519)(R.D., p. 22).

Staff submits that the ALJ's decision was based upon sound Commission policy which is derived from facts applicable to multi-unit plants. Limerick I is not unique from prior multi-unit generating stations to which the Commission policy has been applied. Clearly, the ALJ was correct to limit the inclusion of common plant in rate base to 50 percent. The ALJ's decision on this issue should be adopted.

F. The ALJ's Exclusion Of Costs Associated With Construction Errors Of Bechtel Was Proper.

PECO has excepted to the ALJ's disallowance of certain costs associated wtih potential claims against Bechtel. PECO relies heavily in its exceptions on the fact that these items represent potential claims against Bechtel and that there is no analysis by Staff to establish that these costs actually resulted from contractual error.

Staff believes these two points can be dismissed by referencing the Commission's own filing regulations and

Section 315 of the Public Utility Code. With respect to the analysis, it should be noted that the list of errors was provided pursuant to the Commission filing regulations at 52 Pa. Code §53.53, II-A-B which requested:

> Q. 3. Whenever a utility proposed to add a major generating station to rate base, the utility shall identify:
>
> * * *
>
> b. All outstanding claims against project managers, contractors and/or suppliers and their estimated costs.
>
> (emphasis added).

Apparently, PECO recognized the nature of the items listed in its response to the filing regulations and provided the applicable data. Further analysis clearly would have been redundant.

With regard to the characterization of these items as "potential" claims, Staff would direct the Commission's attention to Section 315 of the Public Utility Code, 66 Pa. C.S. 3315, which places the burden of proof on the company. PECO has the statutory duty to establish that these costs are properly recoverable from ratepayers, not that they may be recoverable from ratepayers. PECO has not met that burden of proof on this issue.

Finally, with regard to the assertion that these items are associated with regulatory changes, it should be remembered that PECO has identified these items as "outstanding claims against project managers" pursuant to the filing regulations. The ALJ properly concluded that the subject

list consisted of errors in construction which resulted in work being redone. Such costs were considered inappropriate for inclusion in rate base. As the Judge concluded:

> To do so, would result in double counting for the work by allowing a return on both the correct and incorrect construction, resulting in ratepayers providing a return on portions of the plant twice.
>
> (R.D., at p. 40).

The ALJ recognized that the inclusion of these costs would require ratepayers to pay for the poor quality work and the replacement work and that such a determination would be unreasonable. The Judge's decision on this issue should be sustained.

G. The ALJ's Adoption of Adjusting Entry No 9 is Proper.

Adjusting Entry No. 9 represented reclassifications from plant in service accounts to various income, expense and deferred accounts totaling $15,596,177. Of this amount, the company agreed with the reclassification of $261,747 but disagreed with the reclassification of the remaining $15,334,430.

Trial Staff's adjustment was based upon the application of the provisions of the Uniform System of Accounts which required that certain costs be classified as expenses instead of capital costs. Staff maintained that these costs were for work done at the company's nuclear stations which involved minor items of property that were not significant

enough to satisfy the resultant substantial addition criteria required to be classified as capital items.

The Administrative Law Judge concluded, based upon the record evidence, that Staff's adjustment was in compliance with the provisions of the Uniform System of Accounts. (R.D., p. 44). Staff submits that the Judge's decision is supported by the record and the Uniform System of Accounts and should be sustained.

Judge Matuschak also concluded that the company's argument that it should be allowed to recover these expenses through an expense amortization was without merit. The ALJ recognized that PECO's argument involved a retroactive recovery of previously incurred expenses which the company could have claimed in prior proceedings had the costs been properly accounted for by the company. As the Judge held:

> This position is without merit, since we agree with Trial Staff that it is contrary to basic ratemaking, which does not require dollar for dollar matching of revenue collected and revenue requirement established and approved. The items claimed in this Adjusting Entry should have been claimed as an expense instead of a capital item. It would be a violation of standard ratemaking concept to go back and expense such items and seek to recover them through rates. This would constitute retroactive ratemaking which is precluded.
>
> (R.D., p. 45).

PECO dismisses the ALJ conclusion by characterizing the issue simply as an "accounting dispute" and argues that the question should turn not on when the expenses are incurred but rather on when they are recorded. PECO, however,

cites no authority for this argument. PECO also dismisses ALJ Matuschak's discussion of retroactive ratemaking as an over-simplistic approach.

PECO's attitude toward this issue as a simple accounting dispute and the Judge's decision as a "mere reference to 'retroactive ratemaking'" demonstrates a total disregard for the ratemaking process and minimizes the responsibilities placed upon the Commission to ensure that rates are just and reasonable.

The issue of retroactive ratemaking with regard to previously incurred expenses has been dealt with on numerous occasions and the law is quite clear on such matters. Retroactive ratemaking is clearly prohibited in this Commonwealth. The issue of whether recovery of previously incurred but currently recorded expenses constitutes retroactive ratemaking was dealt with in Philadelphia Electric Company v. Pennsylvania Electric Company, 502 A.2d 722 (1985). In that case the issue involved the deferred accounting of certain operating and depreciation expenses associated with pollution control facilities. The subject expenses were incurred prior to the company's then current rate case but had been deferred for accounting purposes. The Court sustained the Commission's decision which disallowed recovery of these expenses. The Court stated:

> The utility here contends that it is entitled to recover by means of customer charges all of its reasonable expenses; that the expenses associated with the Eddystone and Cromby generating plant

pollution control facilities are indisputedly reasonable and have been incurred, at least in part, in order to more sufficiently serve the ratepayers; and, therefore, that the Commission's denial of this claim is in error.

This straightforward syllogism embodies a fundamental flaw. While it is a correct statement of abstract regulatory policy that utilities are entitled to recover operational and other expenses reasonably incurred in providing the public service, the means by which this entitlement has been translated into concrete regulatory practice includes the uniform use in this Commonwealth of normalized expenses projected by the utility with reference to a "test year" which is, at the time of the rate setting proceeding, both future and hypothetical. Thus, the pollution control facilities' expenses here at issue were incurred by PECO during a period which constituted a portion of the "test year" concerning which the utility has adduced evidence of its projected expenses in support of its rate increase request next previous to that here subject to review.

Simply put, these pollution control facilities' expenses were not, for whatever reason, anticipated by the utility nor made the subject of evidence before the Commission in this previous rate case and the question presented by PECO's claim for deferred expenses in the instant proceeding is whether a utility may properly found a claim for increased prospective rates on past expense items which were greater than anticipated by the utility's proofs supporting the customer charges in effect.

* * *

In our judgment, the Commission has here correctly applied these basic regulatory tenets. The general rule is that there may be no line examination of the relative success or failure of the utility to have accurately projected its

> particular items of expense or revenue and an excess over the projection of an isolated item of revenue or expense may not be, without more, the subject of the Commission's order of refund or recovery, respectively, on the occasion of the utility's subsequent rate increase requests.
>
> An exception to this rule in the case of retroactive recovery of unanticipated expenses has been recognized where the expenses are extraordinary and nonrecurring.
>
> (cites omitted).

In the present case the expenses incurred were not extraordinary or unanticipated and do not warrant special treatment. Staff maintains that the ALJ correctly applied standard ratemaking principles with respect to these issues and the Recommended Decision should be adopted.

V. RATE OF RETURN

A. The Administrative Law Judge's Common Equity Cost Rate Recommendation Is Supported by the Record and Should be Adopted by the Commission.

After an extensive review of the parties' positions, the Presiding Officer recommended a 14.25% common equity cost rate for PECO (R.D. p. 106). Trial Staff did not except to the ALJ's common equity cost rate recommendation but did object to some of the reasoning used by the ALJ (T.S. exceptions, p. 35-7). The Company has excepted to the Presiding Officer's common equity cost rate on the basis that it is inadequate (PECO exceptions, p. 55-60). The Trial Staff submits that the Administrative Law Judge's common equity cost rate recommendation is supported by the record and should be adopted by the Commission.

The common equity cost rate recommended by the Presiding Officer is identical to that proposed in the Trial Staff's updated and rebuttal rate of return testimony (Trial Staff St. ARO-2, p. 6) and the number advocated in the Trial Staff briefs filed in this matter (See T.S. Main Brief p. 12, 17-21; T.S. Reply Brief p. 6-15). In its typical, abusive fashion, the Company claims to have discovered errors in all of the parties' rate of return testimonies and in the ALJ's inadequate attempt to review and decide the issue. The Company's own rate of return testimony, however, is highly suspect and its common equity claim has traditionally been overstated.

The specific weaknesses in PECO witness Brennan's testimony are discussed in detail on pages 21-6 of the Trial Staff's main brief. As developed there, Mr. Brennan's recommendations are excessive and demonstrate the overstatement characteristic of his testimony in other PECO rate cases. Even though Mr. Brennan agreed on cross-examination that rising inflation was a major factor affecting cost of capital (Tr. p. 10), Staff witness O'Donnell's review of Mr. Brennan's recommendations in the current and past PECO cases revealed that reduced inflation and interest rate levels were not recognized in Mr. Brennan's recommendations (Trial Staff St. ARO-2, p. 1-3; Trial Staff Ex. ARO-2A, Schedule 1, pages 2-3). This overstatement continues in the present case and pervades the arguments supporting the Company's rate of return exceptions.

The common equity cost rate adopted by the ALJ is supported by the testimony of Trial Staff witness Andrew R. O'Donnell. The Company's criticism's of the Staff's dividend growth factor used in its DCF calculation are refuted in pages 6-12 of the Trial Staff's reply brief. Likewise, the criticisms concerning the Staff's risk spread method are also fully answered in pages 13-6 of the Staff's reply brief. The criticism raised in the Company's exceptions are simply rehashes of arguments previously rejected. They deserve no better fate before the Commission.

The Company has argued in its exceptions that the ALJ's common equity cost rate recommendation must be incorrect

per se, since it is lower than a number of recently decided water and telephone cases (PECO exceptions, p. 59). What this argument ignores is the fact that capital costs have declined significantly since 1981, particularly in the last six months. Trial Staff witness O'Donnell directed attention to that fact in his direct and updated testimony and considered it in his analysis (Trial Staff St. ARO-1, p. 2; Trial Staff St. ARO-2, p. 6). The information relied on in the cases cited by the Company is stale relative to this case. As noted by the ALJ, the most recent market information should be used in determining the appropriate common equity cost rate for the Company. Indeed Company witness Brennan filed updated testimony in which he reduced his common equity recommendation by 1.3% (PECO St. 28B, p. 2). Even with this reduction, the Company's claim remains overstated. The Trial Staff's testimony and exhibits, along with the most recent market data, support the ALJ's recommendation which should be adopted by the Commission.

VI. REVENUES AND EXPENSES

A. The ALJ Properly Disallowed PECO's Claim For Costs Associated With The Salem 1 Management Evaluation Program.

PECO has excepted to the ALJ's rejection of its claim for the company's share of costs associated with the Salem 1 Management Evaluation Program. The Company has referenced its Main Brief and Reply Brief for support of its position.

The ALJ has reviewed the company's briefs and the evidence presented on this issue and has found the company's case to be without merit. The Judge recognized that the responsibility for the subject expense should not be passed through to ratepayers. The Judge concluded:

> While it may be true, as contended by the Company, that the audit was a prudent and reasonable program, it was made necessary by the imprudent and unreasonable operation at the plant. Any benefits from the audit that may have flowed to ratepayers beyond addressing the Salem 1 breaker incident were incidental.
>
> This audit was not part of the Company's normal operating procedures which ratepayers ordinarily support. It was undertaken under the impetus of the Salem 1 breaker incident and the NRC's questioning of PSE&G's management in the wake of that incident.
>
> (R.D., p. 120).

The ALJ's conclusion was based upon substantial evidence and should be affirmed by the Commission.

B. The ALJ's Decision On The Amortization of Reserve Deficiencies In The Decommissioning Fund Balances The Interest Of Current And Future Ratepayers.

The ALJ adopted Trial Staff recommendation that the reserve deficiencies which have accrued in the decommissioning fund be amortized over the remaining life of the units. Staff argued that the amortization period should be extended in order to avoid burdening only current ratepayers with this expense. As Staff witness Mayer testified:

> My method is fair to all ratepayers, both current and future. The Reserve Deficiency has developed as the result of a re-evaluation of decommissioning fund needs, as well as inadequate earnings of the fund historically to keep pace with the cost increases determined by that re-evaluation, and as such, is not the liability of any particular group of ratepayers. To charge only current ratepayers for this expense is simply unfair.

(Trial Staff Statement MGN-1, p. 5)

The ALJ clearly recognized that the Commission must evaluate the effects of its decisions on present and future ratepayers and ensure that one group does not bear an inordinate amount of the burden in relation to the benefits it experiences. The ALJ weighed these matters and properly concluded that the costs of the deficiency should be shared. The Commission should adopt the Judge's decision.

C. ALJ Matuschak Properly Rejected PECO's Claim For Decommissioning Expenses Of Peach Bottom 1.

Section 315 of the Public Utility Code 66 Pa. C.S. §315, clearly places the burden of proof in the instant case on the company. The ALJ after a review of the record found that PECO did not meet its burden with respect to this issue. As the ALJ pointed out, PECO failed to seek to recover these costs from ratepayers who benefited from Peach Bottom 1 despite the fact that it was not precluded from seeking such recovery. In addition, the Judge found that PECO had not demonstrated whether responsibility or contribution for these costs were required by the contract with the Atomic Energy Commission.

Staff submits that the Judge properly applied Section 315 to PECO's claim and that the record supports his determination. The Judge's decision on this issue should be adopted.

VII. TAXES

The Company has excepted to several of the tax adjustments adopted by the ALJ (PECO exceptions, p. 64-7). It should be noted that the Staff has excepted to the OCA's consolidated tax adjustment adopted by the ALJ (T.S. exceptions, p. 54-6) and has also offered corrections to what it believes are tax related computational errors in the Recommended Decision (T.S. exceptions, p. 80-9). In this argument, the Staff will briefly respond to the Company's exceptions to the Staff sponsored tax adjustments accepted by the ALJ.

A. Normalization of Construction Overheads.

The Presiding Officer adopted Trial Staff and OCA adjustments that the deferred taxes on capitalized overheads be flowed through to ratepayers, thereby reducing the Provision for Deferred Income Taxes (R.D. 141-2). As developed in the Trial Staff's main (p. 96-102) and reply (p. 31-3) briefs, the adjustment adopted by the ALJ is consistent with the Pennsylvania Supreme Court's direction in Barasch v. Pennsylvania Public Utility Commission, 507 Pa. 496, 491 A.2d 94 (1985) and has a de minimis effect on the Company's cash resources. As noted in the Staff's reply brief (p. 32-3), the Company's argument that the Commission's prior tax determinations in other PECO rate cases are somehow Commission-made rates which cannot be changed retroactively is simply wrong.

B. Deferred State Income Taxes.

The ALJ accepted an adjustment sponsored by both the Trial Staff and the OCA to amortize previously deferred state income taxes (R.D. p. 143). This adjustment is extensively explained in the Trial Staff's main (p. 102-5) and reply (p. 31-3) briefs and is required by this Commission's prior interpretations of the Supreme Court's Barasch decision. The Company's exception on this issue (PECO's exceptions, p. 66) fails to identify any compelling reason why the ALJ's acceptance of this adjustment should be reversed by the Commission.

VIII. CONCLUSION

For the reasons stated in Commission Trial Staff's Main and Reply Briefs, Exceptions and these Replies to Exceptions, Staff respectfully urges the Commission to adopt the Recommended Decision issued on May 14, 1986 by Administrative Law Judge Matuschak with the modifications recommended in Staff's Exceptions.

Respectfully submitted,

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For the Trial Staff of the
Pennsylvania Public Utility Commission

Dated: May 30, 1986

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COMMONWEALTH OF PENNSYLVANIA

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MAY 30 1986
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Public Utility Commission

DAVID M. BARASCH
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(717) 783-5048

May 30, 1986

Jerry Rich, Secretary
Pennsylvania Public Utility
Commission
P.O. Box 3265
Harrisburg, PA 17120

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

Dear Secretary Rich:

Enclosed for filing please find an original and nine (9) copies of the Office of Consumer Advocate's Reply Exceptions in the above-captioned proceeding.

As per the attached Certificate of Service, copies have been served upon all parties of record.

DOCUMENT
FOLDER

Sincerely,

Irwin A. Popowsky
Assistant Consumer Advocate

Enclosure
2108X

cc: Hon. Linda C. Taliaferro, Chairman
Hon. Frank Fischl, Commissioner
Hon. William R. Shane, Commissioner
All parties of record

CERTIFICATE OF SERVICE

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

I hereby certify that I am this 30th day of May, 1986, serving either in person or by first class mail the foregoing document, Reply Exceptions Of The Office Of Consumer Advocate, in the above-captioned proceeding.

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SECRETARY'S OFFICE
Public Utility Commission

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION

v.

PHILADELPHIA ELECTRIC COMPANY

Docket No. R-850152

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I. INTRODUCTION

The bulk of the Company's Exceptions -- and thus the majority of the following Reply Exceptions -- deal with the finding of the Administrative Law Judge that the imprudent delays in the Limerick 1 construction project added $554.9 million to the cost of the unit which may not properly be charged to PECO ratepayers. As will be set forth fully in Section II of these Reply Exceptions, the ALJ's ruling that Limerick 1 could have been completed 27 months earlier at a substantially lower cost was fully supported by the evidence of record and should be affirmed by this Commission.

By way of introduction, however, the OCA will address two general concerns raised by the Company's Exceptions. These issues are 1) the Company's non-record attempt in its Exceptions to negotiate an alternative Limerick delay adjustment and overall rate level with the Commission; and 2) the Company's misuse of the proposed FASB 71 accounting standards as a basis for refusing to make the required rate disallowance in this case.

First, the Company has attempted to resume its practice of disregarding the hearing process and dealing directly with the Commission in Exceptions by suggesting a number of "alternative" Limerick delay adjustments which were not suggested by the Company on the record or in Briefs to the ALJ. PECO Exceptions at 13-22 and Appendix A. The Company has even gone so far as to suggest an overall level of rate relief ($450 million) under which it would accede to a three-year equal percentage phase-in of its rate request and a two-year base rate increase stay-out. PECO Exceptions at 7.

PECO utilized this tactic in its last base rate case at R-842590, when it was able to overcome ALJ Klovekorn's recommendation that Salem 2 be excluded from rates by offering, in its Exceptions, to guarantee the level of energy savings projected for the first 14 months of the unit's inclusion in PECO's base rates. Pa. PUC v. Philadelphia Electric Company, 58 Pa. PUC 743, 778 (1985).

Then, in the Limerick 2 Investigation at I-840381, the Company overcame the adverse Recommended Decision of ALJ Turner by suggesting, in its Exceptions, that the Commission issue an Order Nisi setting forth a cost containment program to be "offered by the Commission for acceptance or rejection by PECO." Limerick Unit No. 2 Nuclear Generating Station Investigation, I-840381 (December 5, 1985); PECO Exceptions at 40.

In the present case, ALJ Matuschak properly and totally rejected the Company's contentions that the 1976 and 1978 "deferral announcements" either had no effect on the Limerick 1 completion schedule or that, if they had an effect, the cost of the schedule delays was either negligible or non-existent. Having failed to convince the ALJ of the merits of its position, the Company has developed, through an Appendix to its Exceptions and in the argument and footnotes to the Exceptions, a number of alternative adjustments, which, though still "flawed" in the Company's view, are "substantially more supportable" than the OCA adjustment adopted by the ALJ. PECO Exceptions at 22.

The OCA submits that if the Company thought its alternative adjustments were more supportable than the OCA's adjustment, then the time to propose those adjustments was on the record before the Administrative Law Judge. Similarly, the Company should have advised the

ALJ and the parties that a $450 million rate increase would permit a three-year phase-in (in equal percentages) and a "two-year base rate increase stay-out" with "no adverse economic impact" on PECO's ratepayers or the economy of the Company's service territory. PECO Exceptions at 7.

The Company's attempt to negotiate its rate increase directly with the Commission, however, must be rejected. As noted by Commissioner Shane in dissenting from the Commission's Order proposing a cost containment program for completion of Limerick 2:

> The real message behind the Commission's action is that proposals need not be put forth on the record, where they will be subject to cross-examination before an ALJ, but that it is a better strategy to wait and then raise the issue directly to the Commission.

I-840381; Dissenting Opinion at 5.

Based on the record evidence in this proceeding, the OCA submits that its proposed Limerick 1 delay adjustment, as essentially adopted by the ALJ, was appropriate and should not be diluted by the Company's late-filed attempts to soften the impact of the adjustment.

Second, the OCA would urge the Commission not to be influenced by the Company's attempt to prevent the Commission from making a substantial plant delay adjustment because of the alleged financial effects of such an adjustment under proposed revisions to Financial Accounting Standards Board, Statement of Financial Accounting Standards No. 71, Accounting for the Effects of Certain Types of Regulation (FASB 71). See PECO Exceptions at 4-6. As its title implies, the purpose of FASB 71 is to account for the effects of regulation. The purpose of regulation is not to account for the effects of FASB 71.

The OCA submits that it would be a violation of this Commission's duty to set just and reasonable rates if it were to refrain from excluding imprudently incurred costs from rates simply because of the manner in which the accounting profession has decided (or, in fact, tentatively proposed to decide) to report such an adjustment for financial reporting purposes.

II. LIMERICK 1 CONSTRUCTION COST

A. Introduction

The ALJ found "unpersuasive" PECO's position that Limerick 1 could not have been completed and placed in commercial operation prior to February, 1986. R.D. 58. In arriving at his conclusion, the ALJ properly rejected two PECO assertions which he found to be simply not credible. The first assertion was that two publicly announced construction delays, which served to move the planned in-service date of Limerick 1 from 1981 to 1985, had no actual effect on the ultimate in-service date of the Unit. The second assertion was that, contrary to all prior Company statements, delay of the in-service date of Limerick 1 either had no effect on, or actually benefitted, ratepayers. Perhaps the ALJ stated it best when he characterized the Company's position on this matter to be that "[e]vidently the best defense is a good offense." R.D. at 56.

The OCA submits that the ALJ was correct in rejecting PECO's rationalizations regarding the cost and effect of the 1976 and 1978 delays. The Company should not be permitted to include in rates more than a half billion dollars of costs which were imprudently incurred.

The ALJ adopted the OCA's analysis in this case which concluded that, but for the 1976 and 1978 delays, Limerick 1 could have completed construction and loaded fuel by July, 1982, and been in commercial operation by November, 1983. Limerick 1's actual dates were October, 1984, and February, 1986, respectively. The OCA submits that its analysis is reasonable and that the earlier dates could have been achieved had PECO sought to finish Limerick 1 in an expeditious and prudent manner.

The OCA's Main and Reply Briefs presenting the construction delay evidence and discussion are extensive and detailed. The Commission is referred to Section III of each Brief for further review of this issue.*

Before discussing the errors in PECO's Exceptions, the OCA would note the Company's disregard for proper administrative procedure. PECO's Exceptions are replete with "calculations" of various delay quantifications which were never offered into the record of the case. One such example is Appendix A to PECO's Exceptions. The Company there presents a calculation of the cost of delay based upon a January, 1984, construction completion date. This calculation appears now, for the first time, in PECO's Exceptions. PECO has also presented a number of other cost calculations in its Exceptions for the first time. See, e.g., PECO Exceptions at 16, 19 and 21. These must similarly be rejected.

---

* As set forth in the OCA's Exceptions, the OCA believes that the ALJ somewhat understated the correct Limerick delay adjustment. See OCA Exceptions at 22-25. The OCA would also agree with the correction proposed by the Trial Staff at pages 81-83 of its Exceptions that, in calculating the tax depreciation effect of this adjustment, the AFUDC portion of the adjustment must be deducted from the tax basis.

More prejudicial than the non-record calculations, however, is PECO's implicit offer to the PUC of construction adjustments it might find acceptable. The Company, at page 22, presents three construction disallowances which it believes are "more supportable" than the OCA adjustment adopted by the ALJ. One is based upon improper PECO adjustments to the OCA's analysis. The second is based on a January, 1984, fuel load date which no PECO witness has adopted as reasonable. The third is based on an equity disallowance applied to the OCA's adjustment. None of these three suggested disallowances was presented by a PECO witness during the litigation of the case. It is totally inappropriate for PECO to bargain with the PUC now that the ALJ has adopted OCA's construction disallowance. The Company's approach to litigation must be rejected.

B. Limerick 1 Could Reasonably Have Been Constructed By July, 1982, And In Commercial Operation By November, 1983.

As noted above, the Company's position in this proceeding is that two delays in construction, in 1976 and again in 1978, which served to extend the announced construction completion schedule for Limerick 1 by a total of four years, actually had no effect on the schedule or cost to ratepayers of the unit. PECO Exceptions at 13. The OCA submits that the ALJ was correct in rejecting the Company's arguments.

The delay adjustment presented by the OCA is based upon a Limerick specific critical path schedule analysis. This analysis was described at pages III-21 to III-30 of the OCA's Main Brief and will be further discussed below. In addition, it is important to note that, despite PECO's claims to the contrary, it was very much possible to build

a 1055 megawatt GE BWR Mark II plant on the schedule accepted by the ALJ. Indeed, PECO's neighboring utility, PP&L, did just that at Susquehanna 1. In fact, as the OCA noted in its Main Brief, Limerick 1 construction was actually ahead of Susquehanna 1 during the early years of its schedule. OCA M.B. at III-52. It was only after PECO began stretching out the Limerick schedule that Susquehanna construction caught up with Limerick and finished earlier and at a substantially lower cost.

As the evidence in this case shows, Susquehanna is very similar to Limerick. Both plants are GE BWR Mark II designs, of approximately 1055 MW, with cooling towers, built by Bechtel, located in Pennsylvania, subject to the same PUC regulation, in the same NRC Region, in the same craft labor and wage market, and subject to the same NRC regulations. Tr. 1146-1150. Susquehanna entered commercial operation on June 8, 1983, more than 5 months before the OCA's suggested commercial operation date for Limerick 1, of November 20, 1983 and more than 32 months before Limerick 1's actual commercial operation date of February, 1986.

Moreover, Susquehanna 1 cost considerably less than Limerick 1. Even excluding the effects of additional AFUDC, which are substantial, PECO's own witness showed that the direct costs of Susquehanna 1 were $746 million less than the direct costs of Limerick 1. PECO St. 4, Sch. 2; OCA Exh. 61. Thus, completion of a GE BWR Mark II plant in Pennsylvania on the schedule, and for the price developed by the OCA's experts was not impossible. It was only due to PECO's deliberate extension of the construction schedule that Limerick 1 took as long as it did. As stated by OCA witness O'Brien:

> In spite of all of PECO's "even if" speculations, the simple fact is that Limerick was not completed sooner because PECO did not try to complete it sooner.

OCA St. 1B at 3.

In addition to Susquehanna 1, another plant, LaSalle Unit 1 in Illinois, was completed in the time frame proposed by the OCA and adopted by the ALJ. LaSalle 1 loaded fuel in April, 1982, and entered Commercial Operation in January, 1984, at a total Direct Cost, excluding AFUDC, of $1,043 million. PECO St. 4, Sch. 2, OCA Exh. 61.

Throughout this proceeding, comparisons have been made between Limerick and Susquehanna or LaSalle. The construction duration comparisons to the two other plants are quite informative. This was recognized by the Administrative Law Judges in the New York Public Service Commission's Shoreham Investigation which addressed schedule delays and mismanagement at another GE BWR Mark II, the Shoreham Nuclear Plant. In a discussion which was adopted by the Commission at 71 PUR 4th 262, 325, the ALJ stated:

> Staff's schedule delay adjustment of $610,329,000 assumes that the plant should have been in commercial operation no later than August 1, 1982. This is based on 21 months of delay attributable to excessive craft manhours, a pre-diesel failure fuel load date of August 1983, and eight months for testing and fuel loading.
>
> Staff also compared Shoreham to Susquehanna I and LaSalle I, two plants with Mark II containment designs that received their construction permits soon after Shoreham. Shoreham's construction period, 133 months as of April 1984, exceeded that of LaSalle I and Susquehanna I. These two plants averaged 103.5 months from construction permit date to fuel load date. The similar results of the two methods supports the conclusion that Shoreham should have gone into commercial operation no later than August 1, 1982.

Recommended Decision at 130-131, (March 1985) (emphasis added; footnote and citations omitted).

Staff witness Robert A. Rosenthal also noted the significant cost differential between Limerick and Susquehanna. Thus, he stated:

> Susquehanna 1 and 50% of common were recognized at $1,846,960,000, while unit 2 was $2,104,770,000. It should be noted that the respondent's claim for Limerick 1 and common is virtually equivalent to the combined claims for both Susquehanna units and their common. Yet, these two projects were parallel in their 1974 timetables.

Staff St. RAR-1 at 6 (emphasis added). The OCA submits that it was incumbent upon PECO to show why its ratepayers should pay so much more for Limerick 1 than PP&L ratepayers are paying for a comparable plant. As shown by the evidence of this case, as adopted by the ALJ, a substantial reason for the cost difference was the imprudent delays in the Limerick construction program. These additional costs should not be charged to ratepayers.

C. PECO's Construction Analyses Were Properly Rejected By The ALJ.

1. Introduction

The OCA's construction delay adjustment was based on a Limerick specific critical path analysis performed by OCA witnesses James J. O'Brien and Dr. Stephen H. Hanauer. The ALJ discussed the analysis in his Recommended Decision at pages 66-68. The Company's Exceptions simply repeat assertions from its Initial and Reply Briefs regarding alleged errors in the OCA's analysis. The OCA refuted PECO's position at length in its Main and Reply Briefs to the ALJ. OCA M.B. at III-37 to III-66. The primary faults with PECO's assertions will now be discussed.

The OCA submits that Limerick 1 was not completed earlier than actually occurred due to management delay decisions, not insurmountable external events. Further, these management decisions did affect actual

construction. Mr. O'Brien discussed the effect of the announced delays on construction as follows:

> Q. Mr. O'Brien, can you explain why this and other activities highlighted by TBA were late, even compared to a contemporaneous construction schedule?
>
> A. Yes, the simplest explanation was given by Dr. Parkinson in his now-famous "law" which I will paraphrase as follows:
>
> > The quantity of work always expands to fill the available time.
>
> Thus, tasks were not completed timely with reference to the so-called "target schedules" because they were unrealistic - the targets could not be met because PECO had already announced that it did not intend for the targets to be met, and would not fund construction so that the targets could be met.
>
> PECO believed in 1976 that it had six years until fuel load, and in 1978, PECO delayed fuel load again so that there were still six years of construction ahead. Had PECO been at all serious about meeting its target schedules, everybody--craft labor, subcontractors, supervision, and management-would have approached the job very differently.

OCA St. 1B at 13 (emphasis added).

PECO's assertion that Limerick's completion date could only have been advanced by a few months and possibly by as little as 25 days if construction had not been delayed for a total of four years in 1976 and 1978 was properly rejected by the ALJ. See PECO Exceptions at 12. It is, of course, not difficult to prove that what actually occurred did occur. The Commission has found the delays imprudent, however, and the OCA submits that the ALJ was correct in finding that the evidence presented in this case shows that, had PECO not delayed, construction and licensing could have proceeded at a reasonable pace, and fuel load and commercial operation could have been achieved 27 months earlier than actually occurred, or by November, 1983.

2. The ALJ Properly Rejected PECO's Regulatory Restraint Argument.

The Company has asserted as a main argument that NRC licensing requirements would have prevented earlier completion of Limerick 1. PECO Exceptions at 11. The ALJ properly rejected the Company's arguments regarding this point.

OCA notes that an analysis of when Limerick 1 could have been completed but for the 1976 and 1978 construction delays must not confuse cause and effect. The fact that in 1978 PECO set an October, 1984, construction completion and fuel load date had a number of corollary effects. The effects of the Company's delay decisions should not now be used to try to prove that even if the delays had not occurred, the schedule would still have stretched to October, 1984.

The Company's analysis in this case, in fact, does confuse cause and effect, particularly in its discussion of the effects of NRC requirements at Limerick. PECO has stated that a number of new or revised NRC requirements were imposed during the period 1979-1984 and alleged that these requirements would have prevented earlier construction completion. PECO Exceptions at 10-12. The effects of the requirements, however, must be considered in light of the extended schedule at Limerick which the Company had set for itself.

It must be recognized that the requirements imposed by the NRC were not imposed upon Limerick alone. OCA St. 2, Sch. SHH-6. The Company's Exceptions reference NRC-imposed design changes. PECO Exceptions at 12. Virtually all of these same NRC requirements were imposed upon all comparably designed nuclear plants, including LaSalle

and Susquehanna. OCA M.B. at III-26. It was Limerick's extended schedule, however, which allowed additional regulatory revisions to be implemented based upon the later projected completion date.

For example, in its Initial Brief, PECO cited an NRC requirement that a mechanical equipment program had to be implemented at Limerick. PECO I.B. at 4-36. That requirement, however, was not identified by the NRC as a licensing condition until June 17, 1982, or just one month before Limerick could have been completed under the OCA's analysis. Id. Clearly the NRC would have approached this requirement differently for a plant less than one month away from construction completion than it did for a plant which had more than two years of construction remaining. OCA St. 2A at 19. Yet, in the hearing below, the Company improperly relied upon this requirement as one of the regulatory impediments to completion of construction in 1982.

OCA also submits that other examples of requirements cited by PECO were not finally defined by the NRC until after the July, 1982, completion date and thus would not have prevented completion by that date. See, e.g., PECO Exceptions at 46-47. A number of NRC requirements upon which the Company relies for a later construction completion date were not even fully defined by the NRC until January, 1983, or 6 months after Limerick 1 construction could have been completed. OCA R.B. at III-7. Many NRC requirements were in fact, imposed on Limerick. The OCA submits, however, that the fact that construction completion was still two years away strongly influenced the manner and timing with which they were applied to, and implemented at, Limerick.

OCA witness Hanauer addressed this issue in his testimony as follows:

> Q. What would have happened to a mid 1982 Limerick with respect to the requirements imposed by the NRC staff during or after 1982, for example, ATWS, environmental qualification of mechanical systems, and the severe accident risk assessment.
>
> A. I believe that these requirements would have been imposed on Limerick, but I believe that their implementation would have been scheduled in such a way as not to impose major delays on the licensing of a plant which had already been completed. Specifically, if Limerick Unit 1 had been completed, ready for fuel loading, by mid 1982, and licensed at that time for low power operation, as I have stated could have been the case, these 1982, 1983 and 1984 requirements could have been implemented after fuel loading.

OCA St. 2A at 19 (emphasis added).

The OCA submits that if the Company had been on a July, 1982, construction completion schedule, the filing and implementation of necessary NRC requirements certainly could have occurred more promptly, as they did at other plants like Susquehanna. The OCA would note that throughout the time period that PECO was scheduling its efforts to implement NRC requirements, the October, 1984, fuel load date had already been established. Tr. 4759-61. An example of the effect of the later schedule can be seen in Limerick's compliance filing for fire protection regulations. The regulations were issued in 1976 and 1978, but PECO's filing was not even made until 1981. Id. Moreover, throughout the time period when PECO was reviewing and designing Limerick to comply with new or revised NRC requirements, Susquehanna was completing construction on a schedule similar to that which OCA witness O'Brien determined was reasonable for Limerick 1. PECO witness Mr. Sproat agreed with this on cross-examination as follows:

Q. Will you agree with me that throughout the time period that Limerick was meeting with the NRC on how to comply with fire regulations Susquehanna was completing construction and in fact was loading the fuel?

A. For at least part of that period, yes.

Tr. 4763.

The OCA submits that the implementation of the same NRC requirements on very different schedules at Susquehanna and Limerick serves to highlight the fact that, as OCA witness Hanauer stated, the NRC responded to both Susquehanna's shorter schedule and Limerick's longer schedule as the circumstances required or allowed.

Finally, PECO witness Sproat agreed that, when certain NRC requirements actually turned out to be difficult to implement, the NRC extended the compliance date. Thus, with respect to environmental qualification requirements, Mr. Sproat stated on cross-examination as follows:

Q. Do you have an opinion as to why the date was extended by the NRC?

A. It was extended because many of the plants had trouble, once they had identified certain pieces of equipment that needed to be replaced -- they had difficulty in finding replacement pieces of equipment that were qualified to act in the environments in which they were being placed. And because this was an industry-wide concern, it really wasn't the fault of the licensees, but a problem with the supply industry, the NRC allowed that implementation date to slip.

Q. So the NRC was sensitive to the effect of its regulations on the industry, you would say?

A. In this particular case, yes.

Tr. 4765-4766 (emphasis added).

PECO's position on NRC requirements for Limerick 1 improperly relies heavily upon what actually transpired. PECO presented an analysis which purports to show when Limerick 1 could have been completed taking into consideration NRC requirements. The Company concluded that the earliest Limerick 1 could have received an operating license was May, 1984. PECO Exceptions at 11. Incredibly, however, PECO witnesses also noted that several items at Limerick 1 could not have been completed to support fuel load any earlier than October 1, 1984, or only 25 days sooner than actually occurred. PECO Exceptions at 12. The major flaw in the Company's analysis was discussed by OCA witness Dr. Hanauer as follows:

> The analysis of Company witnesses has concentrated on what actually happened; that is, how plant construction actually proceeded and how NRC licensing actually proceeded.
>
> * * *
>
> [I]n general this exercise assumes that all NRC requirements were immutable; that is, the NRC would have imposed the same requirements on Limerick Unit 1 if construction had been completed in 1982 as was the case for Limerick Unit 1 whose construction was completed in late 1984.

OCA St. 2A at 10-11.

The OCA submits that the Company's assumptions about the NRC licensing process are unrealistic. The OCA does not dispute that NRC requirements would have been implemented at Limerick 1; rather, OCA submits that the timing of implementation in relation to plant fuel load and commercial operation would have been different. PECO assumes that all NRC requirements were not only immutable, but that the schedule for implementation, i.e., pre-fuel load, was immutable. Dr. Hanauer responded to this position as follows:

Q. Could the NRC review have been completed by mid 1982?

A. I believe it could. It wasn't attempted, because plant completion was still two years away.

Q. What would have been the licensing requirements?

A. The basic requirements of Limerick would probably have ended up looking pretty much like the requirements that Limerick actually had to meet. However, the implementation schedule for these requirements would not necessarily have been the same. Evidence from the other licensing reviews during this period shows that a large number of requirements for plants licensed in 1980-82 had their implementation postponed to a later time.

* * *

[T]he NRC soon began to see at the time, that these schedules had been developed without an adequate appreciation of what was required to implement the various new requirements. The result was a wholesale postponement of implementation of many of the requirements.

OCA St. 2A at 16-18 (emphasis added).

PECO has unrealistically asserted that the NRC would have been completely inflexible in licensing a Limerick 1 completed in 1982 due to the higher population around the plant and the licensing contentions filed by intervenors. PECO Exceptions at 11. Dr. Hanauer commented on PECO's inflexible assumptions as follows:

I believe that PECO and the NRC would have devised a way to accomplish an abbreviated review of the essential features of the Limerick plant and the Limerick site, so as to enable a preliminary safety decision to be made on a schedule consistent with the mid 1982 construction completion date of Limerick Unit 1.

OCA St. 2A at 22.

PECO's contentions regarding the impact of high population near Limerick were also properly rejected by the ALJ. PECO Exceptions at 30.

Dr. Hanauer indicated that higher population, while possibly affecting commercial operation, would not normally affect the construction schedule itself. Thus he stated during cross-examination as follows:

> If we are talking now about construction costs it would cost more only if it had different design features, and I have testified that this plant did not end up with significantly different design features as far as I know due to its high population density.
>
> * * *
>
> I don't know any reason for the construction schedule to be affected by the high population density.

Q. Would you not expect, Dr. Hanauer, that the Nuclear Regulatory Commission would require a plant located in a high population density area to install greater safety features of an engineering and construction nature than in a plant not located in such a zone?

A. I feel that this is not the case and it used to be a very strongly held position of the Atomic Energy Commission and the later NRC that they would not do this.

Tr. 2818-2819 (emphasis added).

As part of its alleged NRC restraint case, PECO presented to the ALJ the scenario that a competently completed and quality assurance documented Limerick 1 would have been forced to sit idle for two years before the NRC was able to reviewing the Limerick Probabilistic Risk Analysis (PRA). PECO Exceptions at 11, PECO I.B. at 4-49, 50. The NRC requested the Limerick PRA in May, 1980, and PECO completed and submitted it to the NRC just 10 months later, in March, 1981. PECO Exh. RJM-1 at 21. The Company asserted that even if Limerick 1 had been nearing completion of construction in 1982, the NRC would not have reviewed and approved the PRA until May, 1984, and that for this whole two year period the plant would have remained shut down. Such an outcome is particularly

incredible when one considers that the ultimate licensing result of the PRA was that,

> The NRC Staff found very low societal risk at Limerick, low enough that risk comparisons ceased to have regulatory impact.

PECO Exh. RJM-1 at 23-24.

OCA witness O'Brien addressed the Company's argument on this point as follows:

> Dr. Mattson would have us believe, however, that even if the plant had been completed earlier, the consequences of the PRA could have been satisfied only in the way that they were, regardless of how much that delayed operations. I contend that the matter was handled as it was because it was assured that it would not delay the construction critical path to Fuel Load.
>
> The Company's approach on this issue demands that we accept the hypothesis that the sense of the NRC would have been the same in 1977-78 with regard to a plant scheduled for completion in 1982 as it was in 1980-81 for a plant scheduled to be completed in 1984. It most certainly would not.
>
> In sum, I cannot accept the constant insistence by PECO licensing witnesses that history as it was negotiated or transpired would have been precisely the same three years earlier.

OCA St. 1B at 8-9 (emphasis added).

Similarly, OCA witness Dr. Hanauer stated:

> Q. What would have happened in this respect if Limerick construction had been completed by mid 1982?
>
> A. I believe that in these circumstances the NRC reviewers and their management and the Company would have had a different attitude toward what could have been accomplished by the fuel load date and what could and should be postponed until after that time. This might have resulted in more issues being litigated in the hearing before the Board, since presumably the Company would not have caved in and agreed to have implemented items whose implementation was not possible or practicable before the mid 1982 fuel load date.

OCA St. 2A at 25 (emphasis added).

In conclusion, the OCA submits that PECO's position on the effect of NRC regulation was properly rejected by the ALJ. Mr. O'Brien best characterized Company witness Mattson's position on this as follows:

> Dr. Mattson has testified that the critical path to fuel load was not at Limerick at all, but at the offices of the NRC.
>
> * * *
>
> It is inconceivable to me to suggest that if Limerick Unit 1 had been properly completed in conformance with the then-existing NRC regulations, including the requirement for documentation, by early to mid-1982, the NRC would nonetheless have forced the plant to remain idle for two years before issuing an operating license.

OCA St. 1B at 7.

The OCA submits that PECO's entire NRC regulatory requirements argument is based upon an unrealistic assessment of both its own and the NRC's reactions to a less protracted construction schedule. The extended schedule resulted in a different approach to Limerick than would have occurred had PECO decided to complete the plant by July, 1982.

PECO also has asserted that litigation surrounding PECO's license application would have impeded earlier completion. PECO Exceptions at 29. In fact, litigation did not impact upon Limerick 1's construction completion or low-power operating license in October, 1984. Further, the effect of NRC litigation after October, 1984, on Limerick's full power testing and commercial operation has been specifically allowed for in Mr. O'Brien's analysis. For example, while Susquehanna took just one year to go from fuel load to commercial operation, Mr. O'Brien used PECO's actual duration of 16 months (i.e, from October 1984 to February

1986). This provided for all effects of litigation on Limerick's full power license and commercial operation.

3. The Company's Construction Schedule Analyses Are Seriously Flawed and Were Properly Rejected By The ALJ.

In addition to its erroneous reliance on NRC licensing restraints to earlier completion of Limerick 1, PECO has claimed that the OCA's critical path construction analysis, as adopted by the ALJ, is in error. PECO Exceptions at 22. The OCA submits that each of PECO's arguments was successfully rebutted on the record and in the OCA's Main and Reply Briefs. OCA M.B. at III-42 to III-56, OCA R.B. at III-15 to III-26.

The construction analyses PECO presented as rebuttal on the issue of an earlier construction completion were based upon the critical path schedule presented by OCA witness O'Brien. PECO Exceptions at 26. Through a variety of manipulations, PECO adjusted Mr. O'Brien's schedule in an attempt to show that Limerick 1 could not have been completed by the date he developed. The manipulations by PECO of Mr. O'Brien's critical path schedule, however, were improper and were correctly rejected by the ALJ as a basis for measuring the effects of the 1976 and 1978 delays.

Although PECO presented a number of critical path schedule analyses on rebuttal (see, e.g., PECO Exh. JCC-1/JRC-1), the two basic construction analyses, Cases 1 & 2, contained numerous errors. One major error was that, by relying heavily on as-built schedules, PECO improperly constricted the apparent available work time in critical areas. See OCA M.B. at III-44 to III-47. Obviously, the more "as-built" activities one

includes in the schedule, the more the hypothetical looks like the actual. That, however, incorrectly assumes that PECO would not have done anything differently if it had been attempting to complete Limerick 1 construction and load fuel sooner than October, 1984.

PECO has also erroneously claimed that manpower density limits would have prevented completion of the plant by July, 1982. PECO Exceptions at 25-26. As was shown on the record, however, the Company had misstated the manpower density limits allowed for by Mr. O'Brien's analysis. Tr. 5131. OCA M.B. at III-46. The Company's claim resulted from its improper adjustments to Mr. O'Brien's critical path analysis. Id. As shown in OCA's Main Brief, Mr. O'Brien's schedule did not require manpower density limits above the maximum level which PECO itself stated could be sustained at Limerick 1. Id.

The Company has also repeated its assertion that the OCA analysis failed to allow for Limerick's high levels of commodities. PECO Exceptions at 25. This assertion is incorrect. As the OCA indicated on its Main Brief at III-45 to III-48, Mr. O'Brien's schedule accomodated Limerick's manpower, manhours, and also all of Limerick's actual bulk commodities such as concrete, pipes, hangers, etc.

Mr. O'Brien commented on the man-hour and commodity issue as follows:

> Q. What conclusions do you draw from your manpower density analysis?
>
> A. The simple result is that it shows that reasonable manpower density limits would not have prevented the completion of Limerick Unit 1 by July 1982. Because that is true, however, it also shows that JJO'B-13 was properly expanded to include all of the as-built direct manhours it actually took to build the plant.

> Direct manhours are expended to install commodities. Therefore all of the commodities that manpower installed are also embraced in my network. And, once again it is proven that if you don't try to complete your facility, you won't. The means, however, were available.

OCA St. 1B at 21 (emphasis added).

The reasonableness of the OCA's schedule analysis, as adopted by the ALJ, can be seen from a schedule comparison of Limerick 1 and Susquehanna 1 prepared by PECO based on commodities and unit installation rates.

During the course of the proceeding, PECO witness Coughlin prepared PECO Exhibit JRC-2 which was a Susquehanna/Limerick commodity and unit installation rate comparison. Mr. Coughlin's stated intention was to try to show that if Susquehanna had had to install Limerick's commodities, Susquehanna's schedule would have been much longer. Mr. Coughlin's analysis was developed by inserting Limerick's commodity levels into a simplified schedule of Susquehanna 1. His analysis had Susquehanna beginning construction on June 21, 1974, the date Limerick received its Construction Permit. Tr. 5097. Using Susquehanna's unit installation rates, and Limerick's commodities, he developed an earliest possible Susquehanna 1 completion date.

Mr. Coughlin's schedule and results presented a number of important insights. First, his schedule revealed that Limerick's construction had a substantial head start on Susquehanna's construction even though Limerick received its construction permit 7 months later. OCA M.B. at III-49 to III-52. In a number of major commodity categories, including structural concrete and large pipe, Limerick was far ahead of

Susquehanna. It was only as PECO delayed Limerick construction that it slipped behind Susquehanna. OCA St. 1B at 25-27. Second, Limerick construction was ahead of Susquehanna despite the fact that Limerick's installation rates were lower for a number of major commodities. Id. Thus, if Limerick's installation rates had been as good as Susquehanna's, it would have been even further along than it was. Id. Mr. O'Brien commented on the Susquehanna/Limerick schedule comparison as follows:

> Limerick was in a far better position than Susquehanna to "hit the ground running" when its Construction Permit was issued, and this momentum is clearly evident in the early construction activities and through the time period until Limerick's funding was cut back. For example, even a quick review of JRC-2 indicates over one full year for mobilization at Susquehanna 1, while Limerick had mobilized in 1970 and again in 1973, and as noted above, had achieved 10% concrete poured within 5 months of receipt of its Construction Permit. If this unneccessary year of mobilization is removed from Mr. Coughlin's JRC-2 schedule, his fuel load date would be reduced from April, 1984, to March, 1983.

OCA St. 1B at 25-26 (emphasis added).

The commodity installation rates at Susquehanna compared to Limerick were stated by Mr. O'Brien to be as follows:

Concrete	27 percent better at Susquehanna
Large Pipe	38 percent better at Susquehanna
Large Pipe Hangers	21 percent better at Susquehanna
Small Pipe	12 percent better at Susquehanna
Cable Tray & Gutter	8 percent better at Susquehanna
Conduit	40 percent better at Susquehanna

> Only in the areas of Wire and Cable, and Connections did Limerick produce higher sustained monthly installation rates. Thus, in six out of eight bulk commodities compared, Susquehanna bettered Limerick installation rates by significant amounts.

OCA St. 1B at 23 (emphasis in original). Further he stated,

Thus, even though Limerick had increased quantities for some commodities, I believe that if Limerick's construction performance had matched Susquehanna's, Limerick's fuel load would have been achieved substantially earlier than PECO suggests was possible.

OCA St. 1B at 27 (emphasis in original; footnotes omitted).

Thus, PECO's schedule comparison to Susquehanna ultimately showed that all of Limerick's commodities could have been installed in a substantially shorter schedule than actually occurred. This serves to show the reasonableness of Mr. O'Brien's schedule and the appropriateness of its adoption by the ALJ.

The Company has also alleged that Mr. O'Brien's analysis was wrong because it was based upon the original 1974 Limerick construction schedule. PECO Exceptions at 22. This assertion is misplaced. OCA M.B. at III-53. Mr. O'Brien stated that, in fact, his construction schedule included over 2 1/2 years on top of the 1974 schedule. This period gave PECO credit for the 1974 delay, additional time to remedy the Mark II problem, plus 7 1/2 extra months. OCA M.B. at III-53 to III-54. Mr. O'Brien stated:

Q. Your analysis has been criticized because of your use of a June 1974 MSCS schedule which was later revised as to scope and activity sequences. Do these modifications affect your analysis in any way?

A. No, they do not. I added two years plus 7 1/2 months to the 1974 schedule which allows for all additional scope changes and the manpower to install them. I will show when I discuss Mr. Coughlin's Case 1 and 2 analyses that by the addition of this time, as reflected in JJO'B-13, activity durations were sufficiently expanded to embrace all as-built, installed commodities and manpower.

The OCA submits that it is clear that Limerick 1 could have been completed on the schedule presented by Mr. O'Brien and adopted by the

ALJ. Mr. O'Brien's schedule allowed ample time to complete critical path containment work with what PECO has called reasonable manpower density levels. This schedule also allows for installation of all of Limerick's commodities. Further, PECO's comparison of Limerick to Susquehanna only served to show that early Limerick construction was ahead of Susquehanna and that the Limerick schedule would not have been extended due to construction related activities.

D. The ALJ Properly Relied Upon The Evidence Presented By The OCA Witnesses.

PECO has attempted to discredit the expertise of the OCA witnesses. PECO Exceptions at 32-34. The OCA submits that the ALJ was correct in relying on the OCA's witnesses, both of whom are highly qualified. The OCA presented two technical experts on the cost quantification of the 1976 and 1978 delays, Mr. James J. O'Brien and Dr. Stephen H. Hanauer. Mr. O'Brien, who presented the actual construction schedule and cost analyses, is Chief Executive Officer of O'Brien-Kreitzberg and Associates (OKA). Mr. O'Brien is a registered professional engineer in the states of Pennsylvania, New Jersey, New York and Georgia. He is a Fellow of the American Society of Civil Engineers, a member of the Project Management Institute, the Society for Advancement of Management, the Institute of Industrial Engineers and the ANSI Committee on Network Standards, among others. OCA St. 1, Sch. JJO'B-1.1.

Mr. O'Brien is a recognized expert in the field of critical path management (CPM) and is one of the organizers of the Society of CPM Consultants. His book "CPM in Construction Management" (McGraw-Hill) has been recognized as one of the definitive works in the critical path

management field. He has also written seven other books, including "Contractor's Management Handbook," "Management With Computers," and "Scheduling Handbook." OCA St. 1, Sch. JJO'B-1.1.

Mr. O'Brien has been responsible for the management or scheduling of a myriad of construction projects, including power plants, government buildings, hospitals, schools, water pollution control plants, highways, transit lines, industrial complexes, postal facilities, military facilities and others. OCA St. 1, Sch. JJO'B-1.1.

Mr. O'Brien's firm currently has responsibility for management or scheduling of projects valued at over $1 billion dollars. Tr. 5133.

Dr. Stephen H. Hanauer presented testimony on Nuclear Regulatory Commission (NRC) constraints to earlier plant completion and on General Electric's imprudence with respect to errors in the design of the Mark II pressure suppression containment. Dr. Hanauer has spent 35 years in the field of nuclear engineering, including 12 years with the NRC and its predecessor the Atomic Energy Commission (AEC) in senior technical and managerial positions. OCA St. 2, Sch. SHH-1. These positions included Director-Division of Safety Technology, Director-Division of Human Factors Safety, Director-Unresolved Safety Issues Program, Assistant Director for Plant Systems, Technical Advisor to the Executive Director for Operations, and member of the AEC's Advisory Committee on Reactor Safeguards. Dr. Hanauer has also held the positions of Professor of Nuclear Engineering and Professor of Mechanical Engineering.

Dr. Hanauer has previously testified for the OCA before the Pennsylvania PUC in the investigation of Philadelphia Electric Company's Energy Cost Rate Statement No. 8. Docket No. M-840375, etc. In that

proceeding, Dr. Hanauer's testimony provided the evidentiary basis for the Commission's $25.9 million replacement power cost disallowance due to imprudent management practices on the part of PECO or its agents in operating the Salem 1 nuclear plant. See Order entered October 30, 1985, at 17-64, 70 PUR 4th 568 at 578-604 (1986).

E. The Company's Arguments That Ratepayers Were Not Harmed As A Result Of The 27 Month Delay Must Be Rejected.

After years of claiming that delay in Limerick 1 would cost millions or hundreds of millions of ratepayer dollars, PECO now asserts that it has found a flaw in its previous analyses and that ratepayers are actually better off as a result of the delays in Limerick 1 construction. PECO Exceptions at 15. The OCA submits that PECO's benefit of delay argument was properly rejected by the ALJ.

As noted by the ALJ, this Commission has considered and rejected this argument once in its Order in the Limerick Investigation. R.D. at 56-57. The Company has incorrectly asserted that the ALJ rejected its argument regarding the economic benefits of delay solely in reliance upon the Commission's prior finding. PECO Exceptions at 17-18. The fact is that the ALJ specifically rejected PECO's economic benefit argument "as not being supported by the evidence." R.D. at 56-57. It was only after dismissing PECO's arguments that the ALJ noted his agreement with the PUC's earlier Limerick 1 ruling.

The ALJ was correct in dismissing PECO's argument for a host of reasons. Perhaps the primary flaw in the Company's analysis, however, is that it suffers from the assumption that Limerick 1 necessarily would have been granted 100% rate treatment if it had entered commercial

operation in 1983. One of the reasons cited by ALJ Klovekorn for PECO's delay in construction was the fear of an excess capacity adjustment. I.D. at 53. As noted by the ALJ, PECO witness Paquette's testimony in the Limerick Investigation, in fact, cited a 66% reserve level in 1981 if Limerick 1 had been on line at that time. R.D. at 65.

OCA witness Knudsen commented on PECO's position with respect to rate treatment of a completed Limerick 1 in 1983. He noted that the Company's position is quite speculative in light of both the excess capacity Limerick 1 would have represented in 1983 and also the power markets in that time frame. Thus, Mr. Knudsen stated as follows:

> Q. Mr. Knudsen, assuming the plant had been completed earlier and that it had cost less, is the customer basically indifferent whether the plant was completed or not? That is, isn't there a trade off between the AFUDC credit and having to pay a current return on the investment?
>
> A. That argument concerning the comparative capital return on the investment presupposes that the rate treatment of the plant in a 1982-1983 time frame would have been to place it totally in base rates. In fact, there would have been two other options. First, the record indicates that Limerick 1 would have represented excess capacity on the PECO system in the relevant time frame. I believe it is very plausible, therefore, that all or a part of Limerick would have been excluded from rates on that basis.
>
> Secondly, PECO was selling the output from Salem Unit #2 to Jersey Central Power and Light Company (JCP&L) in 1982 and 1983. That contract was set to expire at the end of 1984. It was no secret that JCP&L was actively looking for firm load to purchase and had, at that point, been foiled in its attempt to bring power (900 megawatts) from Canada under Lake Erie. JCP&L subsequently purchased 945 megawatts of capacity from Pennsylvania Power & Light Company (PP&L).
>
> Thus, while it is true that PECO ratepayers avoided paying capital charges on Limerick #1 for 27

> months, we can only speculate as to whether all or part of the plant would have been sold to another utility or excluded as excess capacity if it had been completed earlier. One cannot simply assume, therefore, that ratepayers would have had to pay 100% of Limerick costs if the plant had been completed on schedule.

OCA St. 7 at 17-18 (emphasis added).

The Kansas Corporation Commission adopted a position quite similar to Mr. Knudsen's on this issue in its Wolf Creek decision as follows:

> In this context, however, it is not reasonable to even attempt to determine whether ratepayers benefited from construction delays. In addition to posing the wrong question, such an analysis requires questionable assumptions to be made. For instance, Mr. DeStefano's analysis assumed full rate base treatment of Wolf Creek under both the February 1984 and April 1985 completion date scenarios. Given our decision in other portions of this order, such assumptions are unwarranted. We cannot speculate what rate base treatment would have been accorded Wolf Creek had it been completed fourteen and one-half months earlier. We may safely assume, however, that under the considerations we apply today, the treatment of Wolf Creek could vary over time. We find that exclusion of AFUDC associated with the controllable delay is a reasonable method of quantifying the cost of that delay.

Re Wolf Creek Nuclear Generating Facility, 70 PUR 4th 475, 507 (1985) (emphasis added).*

Similarly, the New York Public Service Commission (NYPSC) rejected Long Island Lighting Company's (LILCO) delay/benefit argument with respect to delays at the Shoreham Nuclear Plant. The NYPSC held as follows:

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* The Commission also adopted excess capacity adjustments for the various Wolf Creek owners.

LILCO and Shoreham-Wading River also argue that since the company's customers will be required to pay amounts which are almost equal on a present value basis, regardless of when the plant becomes operational, no delay adjustment should be made. The company bases this argument on a "revenue stream" analysis that compares the present value of customer-contributed funds under two scenarios: the first assumes that the plant enters service and all costs are deemed prudent for ratemaking purposes, while the second assumes that the plant remains out of service and AFUDC continues to accumulate.

The company's analysis, however, does not take into account the fact that by failing to bring the plant into service in 1982, LILCO incurred a cash flow crisis that threatened its viability and increased its cost of capital. In addition, if Shoreham had begun operation on schedule, LILCO's customers would have been the beneficiaries of substantial savings in fuel costs.

Shoreham-Wading River also argues that any delay adjustment will be overstated because it will erroneously include an amount representing AFUDC which, it alleges, is not properly disallowed as an imprudent expense. This argument lacks merit, for if a given cost was imprudently incurred, and is therefore not allowable as an element of rate base, it follows necessarily that interest charges, or AFUDC, upon that imprudent expenditure must also be disallowed. Therefore, we shall deny the exception on this point.

Re Long Island Lighting Co., 71 PUR 4th 262, 323 (1986) (emphasis added).

Finally, if the additional direct, indirect and AFUDC costs resulting from PECO's delays are permitted in rates, this would result in inequitable and incorrect regulatory responses to utility actions. OCA witness Knudsen addressed this issue as follows:

> Assuming these circumstances, it would then be particularly difficult to reconcile the treatment accorded the Limerick plant with that accorded PP&L's Susquehanna Units 1 and 2. In the latter cases, the Susquehanna units were found to be prudently

constructed at costs much lower than those of Limerick. Management was found to have completed the plants prudently, but was confronted with excess capacity adjustments in both instances when rate recognition was requested. In response, PP&L moved in the first instance to sell its excess capacity and in the second was required to bear the consequences in terms of a denial of all equity return on the unit.

Compare this to a plant which was delayed at substantial expense to avoid an excess capacity adjustment. On one hand, where a plant is efficiently built, but unneeded, the Commission orders a sharing of the costs of excess capacity. On the other hand, a plant is not efficiently built but is delayed in order to avoid a penalty. The proposal to recover a return on and a return of all costs of the latter plant, including the cost of delay, is patently unfair.

It is also instructive to compare PECO's proposed treatment of Limerick Unit #1 with its own treatment of Salem Unit #2. In the latter instance, PECO sold its share of the output from the unit and moved all the costs and benefits below the line until the sale was terminated. When PECO sought base rate inclusion for Salem Unit #2, the plant certainly did not include an allowance for AFUDC and direct and indirect costs that would have been incurred if the plant had been delayed rather than sold.

If PECO is unchecked on this issue, any incentive a utility would have for efficiency in construction is defeated. Indeed, utilities would be given an incentive not to manage effectively.

OCA St. 7 at 20-21 (emphasis added).

The Company's argument also ignores a number of other costs resulting from the longer construction schedule. These costs were noted by OCA witness Knudsen as follows:

Because the plant was not finished earlier, there were a number of corollary consequences. First, as noted by Mr. O'Brien, there were substantial overhead and other indirect costs that were a result of extending the schedule. Those costs, and the AFUDC on them, would have been totally avoided if the plant had been completed 27 months earlier. Second, it is reasonable to assume that customers paid higher fuel

costs in the interim. If the customers had had to pay for a portion of the plant, they would have been entitled to fuel savings. But even if the output had been sold, the effect of 1000 megawatts of nuclear capacity on the PJM grid would have been to reduce the PJM running rate. Moreover, PECO's existing nuclear capacity operated so poorly during the past few years that the advantage of Limerick Unit #1 in terms of PECO energy savings might have been greater than otherwise expected.

Third, because the plant was not finished earlier, there was additional burden placed on existing facilities with concomitant expense increases.

Fourth, because the plant was not finished earlier, there were continuing pressures on capital markets which were reflected, for example, in an 18.75% debt issuance and a PUC allowed 17.75% return on equity in the relevant time period.

Lastly, delay not only raised the overall cost of the plant in terms of material and labor but, with an inflated AFUDC rate (incorporating the capital charges above), that cost escalation was compounded.

OCA St. 7 at 18-19 (emphasis added).

In addition to the above errors, the Company's calculation of the benefit to ratepayers from delay relies upon three unrealistic assumptions. These assumptions concern pre-commercial costs, post-retirement costs, and lower capacity factors. Out of a calculation of a $448 million present value benefit of delay for Limerick 1 and 50% of Common, PECO calculates a present value benefit of $234 million due to an assumed cost in the years 2022-2024 to replace Limerick ($169 million plus $65 million), and a present value benefit of $339 million due to supposed higher financing requirements in the years 1975-1985. PECO Exceptions at 51. Further, as Staff witness Robert Rosenthal pointed out, the Company's analysis includes a hypothetical derating of Limerick 1 in summer months due to water unavailability thus reducing early year

energy savings. Staff St. RAR-2 at 6. Each of the assumptions underlying the Company's analysis should be rejected as a basis for quantifying costs of delay.

The OCA submits that PECO's first purported benefit of delay--delay of a replacement unit in the year 2022--is extremely speculative. Staff witness Rosenthal called PECO's analysis "a significant departure" from prior approaches, Staff St. RAR-2 at 5, and noted that:

> The departure from prior techniques has produced a net present value cost of $169 million in carrying charges and $65 million in operating costs for a total of $234 million. This amount is over 66% of Mr. Hill's postulated delay benefit and represents extreme speculation on the course of events in the years 2022 to 2024.

Id. (emphasis added).

PECO's second purported benefit from the 27 month delay is the avoidance of higher financing requirements during Limerick's construction. PECO's analysis, however, improperly assumed that had Limerick 1's construction schedule been advanced, PECO would not have made any other changes to its operating or construction budgets or priorities. Thus, for example, PECO assumed Limerick Unit 2 construction on the same schedule as actually occurred, Tr. 4844, that PECO would retain 100% ownership of both Limerick units even though efforts to sell or share portions of the station were made throughout the 1970's and into 1982, Tr. 4845, and that Salem 2 ownership would have been retained by PECO throughout its construction period even though the output of the plant was sold as soon as it went into commercial operation, Tr. 4845. Finally, PECO assumed the same level of wage increases for PECO

employees; the same number of PECO employees; and the same level of non-Limerick construction expenditures. Id.

Obviously, if PECO assumed that all additional earlier Limerick 1 financing was incremental to other concurrent actual financing, the Company's total financing costs would increase. There is no dispute that PECO was having some financial difficulties in the late 1970's, due primarily to its ambitious multi-plant construction projects and particularly to simultaneous construction of Limerick 1 and 2. PECO's hypothetical assumptions, however, are completely unrealistic. The OCA submits that PECO could have reordered its financing priorities had it desired to complete Limerick 1 on a timely schedule. As Mr. O'Brien stated,

> It should be noted that, to the extent manpower availability and cash flow uncertainty were jeopardizing the Unit 1 fuel load date, the conditions were exacerbated by the simultaneous construction of Unit 2.

OCA St. 1 at 15.

The Commission, in fact, addressed PECO's financial activities in its Decision in the Limerick Investigation as follows:

> It appears, from the record before us, that PECO's 1976 and 1978 construction delays were caused by PECO's financial difficulties, which in turn were caused by its ambitious construction program and its ever decreasing load growth; conditions similar to those causing the 1974 delay. While it is true that PECO's financial condition deteriorated from its 1974 levels, we are of the opinion that, at the least, PECO's ambitious construction plans exacerbated its financial difficulties.

56 Pa. PUC at 60.

For all of the above reasons, the OCA submits that the ALJ was correct in rejecting PECO's purported benefit of delay analysis.

F. The OCA's Quantification Of The Costs Of The 27-Month Delay Is Reasonable And Is Supported By The Company's Own Prior Analyses.

PECO has excepted to the ALJ's adoption of the OCA quantification of the costs of the 27 month dealy. The OCA addressed this issue at length in its Main Brief. OCA M.B. at III-30 to III-37, III-67. Perhaps the strongest support for the OCA's quantification of the cost of a 27-month delay, however, can be found in one of PECO's own documents from 1981.

The Company has asserted in the present case that regulatory and other externally imposed changes added approximately $1 billion in increased plant costs. PECO Exceptions at 37. Similarly, in its Initial Brief PECO asserted that 68% of the increase in the direct cost of Limerick was the result of regulatory requirements and externally imposed conditions. PECO I.B. at 3-20, 27, 44. OCA St. 1 at 6-7. Both of these representations are contradicted by a 1981 cost analysis the Company prepared for its Board of Directors. That analysis, included in a document entitled the Limerick Briefing Book, was presented at a meeting of the PECO Board of Directors with top officers of Bechtel Power Corporation and General Electric Company. OCA Exh. 85. In the Company's analysis developed for its Board of Directors, PECO calculated that only 11% of the cost increase in Limerick from October, 1975, was due to plant design or scope changes. Id. By comparison, overheads associated with the longer schedule, escalation due to the longer schedule, and AFUDC due to schedule/cost/interest rate changes, totalled 82% of the overall cost increase. Id.

The cost breakdown PECO developed was as follows:

Plant design or scope changes	11%	$ 233 Million
Installation rate variance	3%	64 Million
Overheads associated with longer schedule	13%	275 Million
New Taxes	4%	85 Million
Escalation due to longer schedule	19%	402 Million
AFUDC due to schedule/cost/interest rate changes	50%	1059 Million
	100%	$2118 Million

Id. at 13 (footnote omitted). Clearly, on a total cost basis, it was the extension of the schedule which even PECO itself found to be the primary cost increasing force.*

The Company has asserted that there is an error in the OCA's quantification of the costs of the delays in Limerick 1's construction. PECO asserts that Mr. O'Brien failed to include certain PURTA taxes in his delay calculation. PECO Exceptions at 20. The OCA submits that the Company's positions on the specifics of quantification are in error.

The OCA's quantification of the cost of the 27 months of delay is presented in OCA St. 1B, at 35, and Sch. JJO'B-30.1-30.6. The quantification presented therein incorporated a revision to include additional overheads and PURTA taxes where necessary. Thus, contrary to PECO's assertions, Mr. O'Brien's calculations as shown in Sch. JJO'B-30.1-30.6 properly include all necessary PURTA taxes. Compare Sch. JJO-B-17.4 (revised), 24.1-26 to Sch. JJO'B-30.1-30.6. The Company's other assertions regarding the OCA's quantification are similarly in error. See OCA M.B. at III-67.

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* It should also be noted that the Limerick Briefing Book ascribed the 1976 and 1978 delays principally to reduced load growth, and not financial causes. OCA Exh. 85 at 14-16.

G. The Company's Plant Cost Comparison Should Be Rejected.

The Company asserted that the ALJ should have found that Limerick 1 is an average cost plant and thus had a reasonable construction schedule and final cost. PECO Exceptions at 14. The OCA submits that the ALJ was correct in rejecting PECO's arguments. Even if Limerick 1 was an average cost plant, that would not be evidence of prudent management by PECO.

Thus, as the Kansas Commission stated in dismissing the utility's plant comparisons for Wolf Creek,

> We reject the suggestion that comparisons of statistical data provide proof of the quality of management performance at any project. The statistics merely offer numerical comparisons of certain variables and do not provide evidence of prudent management action or guidance to direct and control the project or to mitigate potentially harmful situations.
>
> * * *
>
> The owners did compare the overall schedule at Wolf Creek to other nuclear power plant construction schedules. They conclude that Wolf Creek's shorter construction schedule is evidence of management prudence. We do not believe such a comparison can be so conclusive. Comparing one plant to other plants in the industry does not adjust for inconsistencies among the plants. Wolf Creek may have had a shorter schedule than other plants, but we find, based on PMA's analysis, that it had a longer schedule than it should have had because the owners failed to avoid or mitigate controllable delay.

70 PUR 4th 475, 498, 503 (1985) (emphasis added).

Moreover, the plant cost comparison relied on by PECO, as presented by Dr. Perl, is quite unimpressive. After correcting his cost comparison twice, Dr. Perl presented an analysis which found Limerick close to average for "standardized" nuclear plants costs. PECO I.B. at

4-8. What the Company fails to mention in its cost discussion is that Limerick 1's actual direct costs are $2,868/kw (in 1984 $) compared to an actual average direct cost for Dr. Perl's comparison group of $2,035/kw. On an actual cost basis Limerick is clearly much more expensive than the average for all other plants. After "standardizing" other plants to Limerick, Dr. Perl developed an average cost for his comparison group of $2,791/kw. PECO I.B. at 4-8. This standarized average cost was still less than Limerick's cost. What is most impressive from Dr. Perl's cost comparison presentation is the large number of plants which cost less than Limerick on an actual basis, including LaSalle at $1,328/kw and Susquehanna at $1,774/kw, compared to Limerick 1's cost of $2,868/kw. Of Dr. Perl's sample group, 23 plants are less expensive than Limerick while only 13 are more expensive. PECO St. 11 Correction to Addendum of Lewis J. Perl.

H. Conclusion

The OCA has presented evidence to show that, but for the delays in construction, PECO could have completed construction and loaded fuel at Limerick 1 by July, 1982, and placed the plant into commercial operation by November, 1983. PECO has taken the position that no matter what it would have done in the late 1970's, Limerick 1 construction could not have been completed any earlier than actually occurred or at most a few months earlier. PECO Exceptions at 13. The OCA submits that the Company's arguments prove only that what actually happened did, in fact, occur. PECO's testimony cannot, however, be relied upon to determine when Limerick 1 could have been completed but for the 1976 and 1978 delays. The ALJ therefore correctly rejected PECO's arguments on the construction issues. R.D. at 58.

Perhaps the fundamental flaw in all of PECO's presentation was noted by Mr. O'Brien when he stated,

> As a professional construction manager, I have worked on numerous complex projects in an effort to complete them timely, and have further dedicated myself to the study, development and broad dissemination of state-of-the-art project management systems to aid the construction industry accomplish that goal. I have never heard of a project that was completed earlier than the owner's stated intentions and funding limitations. Thus, in spite of all of PECO's "even if" speculations, the simple fact is that Limerick was not completed sooner because PECO did not try to complete it sooner.

OCA St. 1B at 3 (emphasis added).

ALJ Matuschak's Recommended Decision adopted OCA's position that, but for the 1976 and 1978 delays, Limerick 1 could have completed construction and loaded fuel by July, 1982, and been in commercial operation by November, 1983. The OCA submits that these dates are reasonable and could have been achieved had PECO sought to finish Limerick 1 as expeditiously as prudently possible. The substantial costs incurred by PECO due to the delays in construction are not properly chargeable to ratepayers. The ALJ's determination is consistent with the findings of ALJ Klovekorn and the Commission in the Limerick Investigation and also the holdings of Commissions in other jurisdictions.

The Commission should, therefore, reject PECO's Exceptions on this issue and adopt the OCA's proposed adjustment, which was substantially adopted by the ALJ.

III. LIMERICK COMMON PLANT

PECO argues that the ALJ erred in recommending the removal from rates of 50 percent of Limerick's common facilities. PECO Exceptions at

60-61. The OCA submits that PECO has not presented any reason why this Commission should overturn its well-reasoned policy on this issue. The ALJ's recommendation, therefore, should be adopted by this Commission.

The ALJ correctly found that this Commission has consistently refused to permit 100 percent of common facilities in rates with the first unit of a multiple-unit plant. See R.D. at 21 and cases cited therein. The Company does not except to the ALJ's characterization of Commission precedent. Rather, the Company argues that this long-standing Commission policy "cannot serve as the sole basis for determination of a particular issue." PECO Exceptions at 60.

Initially, the OCA would note that the ALJ did provide a valid rationale for following this policy in this case. Thus, the ALJ found:

> By dividing the common plant between two units, the Commission effectively divides the risks, costs, and benefits. Such division is both fair and appropriate and should be applied in this case.

R.D. at 23.

In addition, as the ALJ noted, PECO itself previously provided a valid rationale for equally dividing the costs of common facilities between the units. Thus, in an accounting submittal to the Federal Power Commission regarding the Salem units, PECO stated:

> We believe that the above-described accounting is proper for the Philadelphia Electric Company because it provides a better matching of costs and revenues and because it also meets the economic objective of allocating large common costs in proportion to savings and benefits of sequentially installed units.

R.D. at 22, quoting OCA Exh. 70 and Tr. 1519.

Further, as the ALJ stated at pages 23-24, OCA witness Knudsen demonstrated that the experience at Pennsylvania's other nuclear plants

has shown the wisdom of this Commission's policy. See R.D. at 24, quoting OCA St. 7 at 22-23.

PECO's final argument is that some 92 percent of Limerick's common facilities are necessary in order for unit 1 to operate. PECO Exceptions at 61. PECO, however, fails to even mention, let alone distinguish, this Commission's decision in Pa. PUC v. Duquesne Light Co., 54 Pa. PUC 695, 43 PUR 4th 27 (1981) (see R.D. at 22-23), where an identical argument was rejected. In fact, as the ALJ noted, Duquesne had there argued that more than 99 percent of Beaver Valley's common facilities were needed for Unit 1. R.D. at 22-23. As Judge Matuschak noted, PECO ignored this decision. R.D. at 22.

The OCA submits, therefore, that PECO has not presented any reason for this Commission to overturn its long-standing policy on this issue. The facts and policy considerations present in this case fully support the ALJ's recommendation to include only 50 percent of Limerick common plant in rates at the present time.*

IV. MEASURES OF VALUE

A. The ALJ Correctly Recommended That, Since The Bradshaw Reservoir Land Is Part of Limerick Common Plant, 50 Percent Of That Land Must be Excluded From Rate Base Until Limerick 2 Is In Service.

OCA submits that the ALJ was correct in concluding that, in light of the Company's statement that the Bradshaw Reservoir is Limerick

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* The Company correctly notes that, based on its final updated exhibit, the correct rate base adjustment for 50 percent of common plant is $631,859,000, not the $639,512,000 used by the ALJ. PECO Exceptions at 60. In addition, the Staff (at 81-83) has correctly noted that the portion of common plant which represents AFUDC should be deducted for calculating tax depreciation. Staff is also correct that Limerick common plant adjustments should reflect a book depreciation rate of 2.69 percent.

common plant, 50 percent of the land on which that Reservoir is being built should be excluded from rate base at this time. This recommendation carries on the Commission's established policy of including only 50 percent of common with the first unit of a two unit station. R.D. at 27-28; see OCA M.B. at II-5. The Company's exception should be denied and the ALJ's adjustment adopted.

V. RATE OF RETURN

PECO's exception to the ALJ's recommendation of a 14.25 percent return on common equity lacks merit. As OCA pointed out in its Exceptions at 40-45, the ALJ's recommendation is excessive. Moreover, PECO's specific arguments against the ALJ are without merit.

In particular, OCA submits that the ALJ correctly rejected PECO's claimed growth rate for use in a discounted cash flow analysis. In fact, PECO witness Brennan overstated the investor-expected PECO growth rate. Thus, Mr. Brennan assumed that investors expect the recent historic growth in PECO's return to continue. Such an expectation, however, would require investors to expect PECO's rate of return to grow to 21.47 percent in the next five years. OCA St. 3 at 52. Moreover, in updating his testimony, Mr. Brennan unreasonably increased an already excessive growth expectation. See OCA M.B. at VII-19 to VII-22. Accordingly, the ALJ was justified in rejecting PECO's testimony on this issue.

PECO's reliance on the Federal Energy Regulatory Commission's recommended generic rate of return is also misplaced. FERC's most recent determination, dated April 16, 1986, is that a fair benchmark rate of

return for the average electric utility in the current period is 12.89 percent. Generic Determination of Rate of Return on Common Equity for Public Utilities, 51 Fed. Reg. 14982, 14983. If weight is to be placed on FERC's recommendation, this 12.89 percent figure, not the outdated figure noted by PECO, should be considered. OCA urges that the Commission deny PECO's exceptions on this issue.

VI. REVENUES AND EXPENSES

A. The ALJ's Denial of PECO's Claim to Amortize The Costs Of The Salem 1 Management Evaluation Should Be Adopted.

PECO has excepted to the ALJ's recommendation that its claim to amortize the costs of the Salem 1 Management Evaluation be denied. PECO Exceptions at 67; R.D. 118-121. The ALJ determined that these costs were past, non-recurring expenses. Such non-recurring expenses may not generally be recovered from ratepayers. Pa. PUC v. Duquesne Light Co., 54 Pa. PUC 695, 718 (1981); Pa. PUC v. T.W. Phillips Gas and Oil Co., R-811615 (May 30, 1984), Mimeo at 4. Moreover, as the ALJ stated, this expense was incurred as a result of "imprudent and unreasonable operation at the [Salem 1] plant." R.D. 120; Re Salem Nuclear Generating Station, 70 PUR 4th 568 (1985); OCA M.B. at VIII-9 through VIII-13, OCA R.B. at VIII-3. OCA submits that the denial of the amortization of this non-recurring expense resulting from problems this Commission has determined were imprudent is proper and should be adopted.

B. The ALJ's Recommendation That Current Ratepayers Not Be Charged For $5.5 Million Of Limerick 2 Investigation Costs Was Correct.

The ALJ recommended that PECO not be permitted to collect from current ratepayers $5.5 million that the Company spent for the Limerick 2

investigation. R.D. 127-128. PECO has excepted to this recommendation. PECO Exceptions at 68. OCA submits that the ALJ was right to conclude that "it would be inequitable to ask current ratepayers to subsidize costs of a plant now but which may only serve future ratepayers several years later." R.D. 127. It should be noted that the ALJ did not recommend that PECO never be allowed to collect those expenses. He only recommended that current ratepayers should not have to pay these costs. As OCA witness Bleiweis testified, these expenses can more properly be capitalized, as NRC licensing expenses already are, and the Company can seek recovery of them when and if the plant for which they were incurred, Limerick 2, is providing service to ratepayers. OCA St. 4 at 36; see OCA M.B. at VIII-17 through VIII-19; OCA R.B. at VIII-4 through VIII-5. OCA urges that this Commission adopt the ALJ's recommendation that PECO not be permitted to recover these expenses in current rates.

C. The ALJ Correctly Determined That PECO's Claim For Costs of Decommissioning Peach Bottom 1 Should Be Denied At This Time.

The ALJ recommended that PECO should not be allowed further Peach Bottom 1 decommissioning costs at this time. R.D. 122-124. OCA and Trial Staff had recommended this adjustment. OCA M.B. at VIII-19 through VIII-27; OCA R.B. at VIII-5 through VIII-6. The ALJ found that PECO "has not met its burden in claiming this expense." R.D. 124. OCA submits that the ALJ was correct and his adjustment should be adopted.

D. OCA Submits That The Commission Must Determine Whether The ALJ's Recommendations Regarding Two Adjustments Comply With Commission And Court Orders On Those Issues.

PECO has excepted to the ALJ's recommendations on two expense issues rooted other cases. PECO Exceptions at 68-69. The first is the adjustment ordered by the Commission in Keystone Alliance v.

Philadelphia Electric Co., C-78080459 (September 24, 1985). The second issue is transmission plant which was allowed as safety-related construction work in progress at Pa. PUC v. Philadelphia Electric Company, 58 Pa. PUC 7 (1983), but is now before this Commission on remand from the Commonwealth Court. The ALJ set forth the method by which he would implement the applicable orders. R.D. at 139-141. OCA submits that the Commission must determine whether the ALJ's recommendations comply with those orders.

VII. TAXES

A. The ALJ Correctly Recommended That PECO's Accumulated Balance Of Deferred State Income Taxes Be Flowed Back To Ratepayers.

PECO has excepted to the ALJ's recommended adoption of an OCA and Trial Staff recommendation to flow back to ratepayers PECO's accumulated balance for deferred state income taxes. PECO Exceptions at 66; R.D. at 143. In Pa. PUC v. Bell of Pennsylvania, R-842779 (October 24, 1985) the Commission determined that, in light of Barasch v. Pa. PUC, 507 Pa. 496, 492 A.2d 94 (1985), there was no further need for the utility to maintain a deferred state income tax balance. The Commission therefore ruled that those funds should be flowed back over five years to increase the likelihood that the funds would be returned to those ratepayers who contributed them, and accordingly ordered an adjustment similar to that recommended by the ALJ here. OCA submits that, for the reasons stated by the Commission in Bell, the ALJ's recommendation is correct. See OCA M.B. at VIII-35 through VIII-37.*

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* Trial Staff noted (at pages 86-89 of its Exceptions) that the ALJ adopted the OCA's quantification of this adjustment, rather than the Staff's. The OCA would not object to the Staff's methodology.

B. The ALJ Correctly Determined That Tax Benefits From Capitalized Construction Costs Should Flow Through To Ratepayers And The Accumulated Balance For Such Benefits Should Be Flowed Back To Ratepayers.

The ALJ concluded that tax benefits associated with capitalized construction costs should be flowed through to ratepayers, and the accumulated balance for such taxes should be flowed back to ratepayers over 5 years. R.D. 141-142. PECO asserts that these tax benefits should be normalized now and reflected in rates when the projects with which they are associated are also reflected in rates. PECO Exceptions at 64-65. OCA submits that the flow through of the tax benefits is required by the "actual taxes paid doctrine." Since PECO currently receives the tax benefits, they must be reflected in current rates. Barasch v. Pa. PUC, 507 Pa. 496, 492 A.2d 94 (1985). The Commission recognized this in Pa. PUC v. Metropolitan Edison Co., R-842770 (October 25, 1985), and denied a request to normalize such taxes in that case. Id. at 67-70. The second part of the recommended adjustment, the flow back of the accumulated balance for such taxes, will return these funds to the ratepayers who helped create them. Accordingly, OCA submits that the ALJ's recommended adjustment should be adopted.*

C. The ALJ Correctly Recommended That Tax Savings From PECO's Consolidated Tax Return Must Be Reflected In Rates.

The ALJ recommended acceptance of OCA's adjustment reflecting tax savings from participation in a consolidated tax return, in keeping

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* As with deferred state taxes, the Staff contends that the OCA's quantification of this adjustment, which was adopted by the ALJ, understates the ratemaking effect of the adjustment. Again, the OCA would not object to the adoption of the Staff's methodology. Trial Staff Exceptions at 86-89.

with the Pennsylvania Supreme Court's ruling that such savings must be reflected in rates. Barasch v. Pa. PUC, 507 Pa. 561, 493 A.2d 653 (1985); R.D. 143-144. PECO has excepted to this recommendation. PECO Exceptions at 66. Trial Staff has excepted to the adoption of OCA's methodology and calculation of this adjustment. Trial Staff Exceptions at 54-56. OCA submits that both exceptions lack merit and that the ALJ's recommended adjustment should be adopted.

1. PECO's Exception Is Without Merit.

PECO's exception repeats the arguments it made throughout this case that the Commission should not reflect any consolidated tax savings. These Company arguments are contrary to the requirements of Barasch and should be rejected by this Commission.

In addition, PECO asserts that there is a double-count between this adjustment and the one made in the last PECO gas division case to reflect consolidated tax savings allocable to that division. This is not correct. The OCA's adjustment solely reflects those savings which are allocable to the Electric Division. See OCA St. 4 at 29-31. See also OCA M.B. at VIII-33.

2. Trial Staff's Exception Is Without Merit.

Trial Staff has excepted to the method used by OCA to calculate the consolidated tax savings adjustment. Trial Staff Exceptions at 54-56. OCA would point out that Trial Staff raised this argument for the first time in Exceptions.

Trial Staff excepts to the methodology used to calculate the adjustment adopted by the ALJ, which first combines all taxable losses and then allocates them among all tax-gain subsidiaries. Trial Staff proposes another methodology, which combines profits and losses of

non-utility subsidiaries and applies any resulting net loss to the utility. OCA witness Bleiweis testified as follows that the methodology Trial Staff now proposes is inappropriate:

> [T]he actual tax savings is only dependent upon that subsidiary which has a taxable loss. No matter how many profitable subsidiaries there may be, utility or non-utility, the tax savings is still equal to 46% times the tax loss. Therefore, to add together the profits and losses of the subsidiaries and then apply any resultant loss as a tax savings, defeats the purpose and theory of the consolidated tax adjustment.

OCA St. 3 at 32-33. Trial Staff presented no rebuttal to Mr. Bleiweis's adjustment, and no evidence that Mr. Bleweis's method was unsound. OCA would note that OCA's methodology in this case has been accepted by the Commission in the past. Pa. PUC v. Continental Telephone Co., R-850044 (February 6, 1986), Order at 49; Pa. PUC v. Philadelphia Electric-Gas Division, 60 PUR 4th 101, 130-131 (1984).

Finally, OCA would note that there is no record basis for Trial Staff's assertion that if the methodology it now proposes had been used, "There would not have been a significant tax savings to allocate." Trial Staff Exceptions at 55. Neither Trial Staff nor PECO has presented any analysis to show that this assertion is true. In fact, the only quantification of PECO's consolidated tax savings, which legally must be reflected in rates, is that presented by Mr. Bleiweis.

OCA therefore submits that the Trial Staff's argument is without merit. OCA's adjustment uses a reasonable method accepted by the Commission in the past, and, in keeping with the ALJ's recommendation, should be adopted.

D. The Salem 2 Tax Benefits Must Continue To Be Returned To Ratepayers.

PECO has excepted to the ALJ's recommendation that the Company be required to continue to return to ratepayers the $6.9 million payment the Company received as part of its sale of tax benefits associated with Salem 2. PECO Exceptions at 67; R.D. 140-141. This adjustment is needed to carry out this Commission's order at Pa PUC v. Philadelphia Electric Co., 58 Pa. PUC 743, 809-811 (1985), which mandated that this payment be returned to ratepayers. See OCA M.B. at VIII-39 through VIII-41. OCA urges adoption of this adjustment, as recommended by the ALJ.

VIII. RATE STRUCTURE

A. The Cost Of Service And Revenue Allocation Exceptions Of The Philadelphia Area Industrial Energy Users Group (PAIEUG) Should Be Denied.

The OCA submits that the Exceptions of the Philadelphia Area Industrial Energy Users Group (PAIEUG) on rate structure issues should be rejected. Particularly, PAIEUG's proposal to modify PECO's cost of service study and to allocate a revenue increase on a zero-fuel basis must not be adopted by the PUC.

PAIEUG's proposed zero fuel increase is inappropriate for this rate case. The OCA recognizes that a zero-fuel approach was used in certain prior PECO rate cases as a means to close the alleged disparity between residential and other classes' rates of return. Such additional closure is not necessary in this case and, in fact, would not even be achieved by a zero-fuel based allocation.

Even using PECO's cost of service study, which the OCA contends is biased against residential customers, the return produced by class

Rate R is 96% of system average, while that of Rate HT is only 84%. OCA M.B. at IX-22.

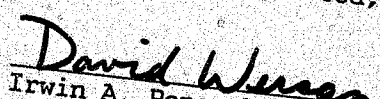
A zero-fuel based allocation would move HT even further from 100% of system average. OCA St. 8A at 4-5. Further, it would achieve this result by increasing overall residential rates by a substantially higher percentage than for Rate HT. Id. PAIEUG's suggestion that the higher recommended rate increase for the residential class is acceptable due to the lower overall increase adopted by the ALJ is not relevant. Given the relative rates of return of Rate R and Rate HT, PAIEUG's zero-fuel proposal is simply unjustified at any level of rate increase.

PAIEUG's proposal also ignores the fact that energy costs are integrally related to the overall rate increase request. As discussed in the OCA's Main Brief and Exceptions, Limerick 1 was constructed not only to meet peak load but to supply energy throughout the year. OCA M.B. Section IX.B; OCA Exceptions, Section IX. A rate increase based upon the Limerick plant, therefore, must consider fuel costs in any revenue allocation. OCA St. 8 at 5-6. In fact, large high load factor HT customers receive the predominant benefit of the lower energy costs of baseload power plants.

PAIEUG's adjustments to the Company's cost of service study are also inappropriate and should be rejected for the reasons set forth in OCA's Main Brief at IX-22 to IX-29.

Respectfully submitted,

David M. Barasch,
Consumer Advocate



Irwin A. Popowsky
Scott J. Rubin
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DATED: May 30, 1986

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ORIGINAL

May 29, 1986

RECEIVED
MAY 30 1986
SECRETARY'S OFFICE
Public Utility Commission

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
North Office Building
P.O. Box 3265
Harrisburg, PA 17120

Re: Pa. P.U.C. v. Philadelphia Electric Co.,
Docket No. R-850152

Dear Secretary Rich:

Enclosed for filing with the Commission are three copies of the calculation of experienced over/under collections under the Company's ECR for the fifteen months ended April 30, 1986. This $3,799,382 overcollection will be utilized in the "E" factor calculation in the Company's Energy Cost Rate Factor No. 1, which, if approved by the Commission, will be effective on June 27, 1986.

The Company had previously submitted, in the above-captioned proceeding, an estimated "E" factor based on actual over/under collection through January 31, 1986 and estimated through April 30, 1986, and had indicated at that time that revised figures would be submitted to reflect actual results.

As shown below, I have today served copies of this document on all parties to this proceeding and ALJ Matuschak.

Sincerely,

David B. MacGregor
Counsel for
Philadelphia Electric Company

DBM/lm
Enclosure
cc: Hon. Joseph P. Matuschak
All Parties, Docket No. R-850152

DOCUMENT FOLDER

PHILADELPHIA ELECTRIC COMPANY-ELECTRIC OPERATIONS
ENERGY COST RATE RECONCILIATION
REPORT ENDED APR'86

	TOTAL SYSTEM SALES KWH	CURRENT ENERGY COST MILLS/KWH	ACTUAL TOTAL ENERGY COST $	ALLOC. FACTOR	ACTUAL ENERGY COST PECO RETAIL CUSTOMER $	RETAIL CUSTOMER SALES KWH	ACTUAL ENERGY COST RECOVERED IN BASE RATES $	ENERGY COST OVER BASE $	(F/ST)-B - 3.627 MILLS/KWH	FUEL REVENUE EXCL. GRT $	HT TIME OF USE ADJ. $	TOTAL REVENUE INCLUDING SALEM 2 CREDIT $	SALEM 2 CREDIT REVENUE EXCL. GRT $
	1	2=3/1X 1000	3 (A)	4 (B)	5=3X4	6 (C)	7=6XBASE	8=5-7	9	10=9X6	11 (D)	12=11+10	13 (E)
FEB'85	2520132788.	28.754	72464096.	0.9741	70587276.	2459350733.	69299585.	1287691.	-3.868705	-9515156.	-414940.	-9930096.	-6468921.
MAR'85	2274670800.	24.779	56365062.	0.9755	54984118.	2216448759.	62455093.	-7470975.	-4.865725	-10784629.	-770448.	-11555077.	-8039259.
APR'85	2180772632.	22.277	48581504.	0.9758	47405832.	2127576959.	59950864.	-12545032.	-5.447320	-11590102.	-300059.	-11890161.	-7716913.
MAY'85	2133269785.	19.773	42180903.	0.9770	41210742.	2080384413.	58621072.	-17410330.	-5.798760	-12063547.	-222280.	-12285827.	-7545742.
JUN'85	2176308704.	20.080	43699744.	0.9775	42716500.	2124535844.	59865171.	-17148671.	-5.811175	-12346047.	505451.	-11840596.	-7705883.
JUL'85	2406564458.	28.947	69663946.	0.9812	68354264.	2355394746.	66370313.	1983951.	-5.811175	-13687609.	499633.	-13187976.	-8543229.
AUG'85	2527057557.	25.602	64698734.	0.9807	63450048.	2474913183.	69738104.	-6288056.	-5.811175	-14382152.	589708.	-13792444.	-8976733.
SEP'85	2494818450.	20.879	52090306.	0.9735	50709913.	2429767806.	68465997.	-17756084.	-5.811175	-14119805.	507674.	-13612131.	-8812987.
OCT'85	2279767534.	23.167	52815081.	0.9816	51843283.	2237250322.	63041240.	-11197957.	-5.811175	-13001051.	-280078.	-13281129.	-8114708.
NOV'85	2121277797.	14.992	31801244.	0.9791	31136598.	2073592014.	58429676.	-27293078.	-5.811175	-12050004.	-310982.	-12360986.	-7521105.
DEC'85	2647071434.	25.551	67635562.	0.9777	66127289.	2383962890.	67175306.	-1048017.	-5.811175	-13853621.	-386213.	-14239834.	-8646848.
JAN'86	2658454320.	25.758	68476206.	0.9772	66914948.	2596367462.	73160442.	-6245494.	-5.811175	-15087945.	-387747.	-15475692.	-9417258.
FEB'86	2502194484.	18.599	46538407.	0.9774	45486639.	2447173069.	68956443.	-23469804.	-5.811175	-14220949.	-294448.	-14515397.	-8876117.
MAR'86	2363816345.	15.695	37101276.	0.9791	36325859.	2312957381.	65174513.	-28848654.	-5.811175	-13441000.	-303522.	-13744522.	-8389305.
APR'86	2199175737.	18.473	40625306.	0.9794	39788425.	2152965163.	60666252.	-20877827.	-5.480745	-11800449.	-209928.	-12010377.	-3610490.
YEARLY TOTAL	35485352825.												
TO DATE		794737377.		777041734.	34472640744.	971370071.	-194328337.			-191944066.	-1778179.	-193722245.	-118385498.

BASE = 28.178 MILLS/KWH.

(A) TOTAL ENERGY COST = FUEL COST + NET INTERCHANGE - HT SUPPLEMENTAL ENERGY.

(B) SEE SCHEDULE E-4 PAGE 3 OF 4 FOR DEVELOPMENT.

(C) DOES NOT INCLUDE HT SUPPLEMENTAL ENERGY

(D) PER COMMISSION ORDER ENTERED MAY 21, 1982 AT RATE CASE NO. R-811626, PAGE 60.

(E) TOTAL SALEM 2 CREDIT REFUNDED($118,385,498) LESS THE AMOUNT GUARANTEED ($113,253,293) LEAVES $5,132,205 WHICH IS AUTOMATICALLY INCLUDED IN CURRENT PERIOD OVER/(UNDER) RECOVERY.

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Public Utility Commission

JUN 2 - 1986

REFERENCE:
Energy Cost Rate Factor
Statement No. 1
Schedule E-4
Sheet 1 of 4

PHILADELPHIA ELECTRIC COMPANY-ELECTRIC OPERATIONS
ENERGY COST RATE RECONCILIATION
REPORT ENDED APR'86

	SALEM 2 ALLOCATED JURISDICTION SAVINGS 14	SALEM 2 SAVINGS SHORTFALL 15=13+14	CURRENT PERIOD O/U RECOVERY 16=12-8-15	INT. RATE 17	INT. FACTOR 18	INTEREST 19=16X17X18/100
FEB'85	0.	-6468921.	-4748866.	13.75	23./12	-1251524.
MAR'85	0.	-8039259.	3955157.	13.75	22./12	997029.
APR'85	1485476.	-6231437.	6886308.	13.75	21./12	1657018.
MAY'85	7519825.	-25917.	5150420.	14.25	20./12	1223225.
JUN'85	9970993.	2265110.	3042965.	14.00	19./12	674524.
JUL'85	7630189.	-913040.	-14258887.	13.50	18./12	-2887425.
AUG'85	8696156.	-280577.	-7223811.	12.75	17./12	-1304801.
SEP'85	8990350.	177363.	3966590.	13.00	16./12	687542.
OCT'85	10793991.	2679283.	-4762455.	13.00	15./12	-773899.
NOV'85	9828783.	2307678.	12624414.	13.25	14./12	1951524.
DEC'85	4043490.	-4603358.	-8588459.	13.00	13./12	-1209541.
JAN'86	5941645.	-3475613.	-5754585.	12.50	12./12	-719323.
FEB'86	7349978.	-1526139.	10480546.	12.00	11./12	1152860.
MAR'86	6607430.	-1781875.	16886007.	12.00	10./12	1688601.
APR'86	0.	-3610490.	12477940.	11.50	9./12	1076222.
YEARLY TOTAL TO DATE	88858306.	-29527192.	30133284.			2962032.

REFERENCE:
Energy Cost Rate Factor
Statement No. 1
Schedule E-4
Sheet 2 of 4

PHILADELPHIA ELECTRIC COMPANY-ELECTRIC OPERATIONS
ALLOCATION FACTOR
BASED ON GENERATION

	SYSTEM GENERATION 40	BLI TO PE 41	PE TO CP SALES 42	SALES TO LANSDALE 43	INTERDPT SALES 44	SE TO CP SALES 45	SALES APPLICABLE TO LOSS FACTOR 46=42+43+44+45	CALCULATED GENERATION 47=46/(1-.03587)	NUMERATOR 48=40+41-47	ALLOCATION FACTOR 49=48/40
FEB'85	2432300000.	0.	37140942.	9230000.	6035348.	8375765.	60782055.	63043423.	2369256577.	0.9741
MAR'85	2459907000.	3359.	36046000.	8940000.	5030103.	8205938.	58222041.	60388164.	2399522195.	0.9755
APR'85	2281412000.	2061.	31549937.	9280000.	5225833.	7139903.	53195673.	55174793.	2226239268.	0.9758
MAY'85	2384003000.	704.	32159000.	9000000.	4863764.	6862608.	52885372.	54852947.	2329150757.	0.9770
JUN'85	2384685000.	0.	31190000.	8380000.	5504347.	6698513.	51772860.	53699045.	2330985955.	0.9775
JUL'85	2821969000.	1333.	37390000.	800000.	5328546.	7651166.	51169712.	53073457.	2768896876.	0.9812
AUG'85	2808889000.	866.	39339870.	0.	5490888.	7313616.	52144374.	54084381.	2754805485.	0.9807
SEP'85	2543991000.	1109.	52409359.	0.	5481741.	7159544.	65050644.	67470822.	2476521287.	0.9735
OCT'85	2393143000.	886.	30040864.	0.	5176011.	7300337.	42517212.	44099045.	2349044841.	0.9816
NOV'85	2368102000.	812.	34973000.	0.	5019995.	7692788.	47685783.	49459910.	2318642902.	0.9791
DEC'85	2732546000.	1230.	43790000.	0.	5307226.	9680079.	58777305.	60964087.	2671583143.	0.9777
JAN'86	2827562000.	5293.	46420000.	0.	5854092.	9812766.	62086858.	64396770.	2763170523.	0.9772
FEB'86	2528181000.	1270.	40114581.	0.	6011785.	8893049.	55019415.	57066386.	2471115884.	0.9774
MAR'86	2521579000.	1003.	36605000.	0.	5610777.	8643187.	50858964.	52751148.	2468828855.	0.9791
APR'86	2331845000.	837.	33274000.	0.	5468736.	7467838.	46210574.	47929817.	2283916020.	0.9794

REFERENCE:
Energy Cost Rate Factor
Statement No. 1
Schedule E-4
Sheet 3 of 4

REFERENCE:
ENERGY COST RATE FACTOR
STATEMENT NO. 1
SCHEDULE E-4
Sheet 4 of 4

Philadelphia Electric Company
Reconciliation of Correction Factor
February 1986 through April 1986

Beginning Balance 1-31-86 ($77,167,876)

Amount Recovered by "E" Factor:

	kWh Sales to Pa. Jurisdictional Customers	"E" Factor Mills/kWh (Excl. GRT)	
Feb '86 & Mar '86	4,760,130,450	6.069025	28,889,351
April 1986*	995,423,443	6.069025	6,041,250
	1,157,541,720	2.790510	3,230,132
Overcollection at 4-30-86			39,844,493
Applicable Interest due customer			2,962,032
Ending Balance 4-30-86 (To be refunded via "E" factor effective 6-27-86)			$3,799,382

*Sales split due to proration of new and old rate

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THE BENJAMIN FOX PAVILION

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Public Utility Commission

June 3, 1986

Pennsylvania Public Utility Commission
Commonwealth of Pennsylvania
Harrisburg, Pa. 17120

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Gentlemen:

We oppose the increase in rates requested by Philadelphia Electric Company for the following reasons:

1) The customers should not have to pay for the increased costs due to the cost over-runs for the nuclear plants. Customers have no control over the management. Control is exercised by the shareholders. If the management makes mistakes shareholders must bear the responsibility. The first step should be to have the company either reduce or eliminate shareholders' dividends.

2) The cost of Unit #2 must not be borne in the rate base, since it can only be included in the rate base when placed into service. There is a question of whether it should be placed into service. The fault lies with the management and the cost should not be borne by the customers.

3) The suggested rate increases by Philadelphia Electric Company are so severe that it would place too much of a financial burden on customers. We are sure that many customers cannot afford the increases suggested.

4) If the increases in rates were to be approved, many customers would invest in equipment to provide co-generation of electric power. This would have a reverse effect upon Philadelphia Electric by their loss of customers and their loss of revenues. It would also have a greater impact on customers who cannot afford co-generation, since they would be faced with even greater rate increases to make up for the difference not being borne by the large users who install the co-generators.

We hope that the Public Utility Commission will take into account the serious economic plight which will result to customers by the raising of electric rates requested by Philadelphia Electric Company.

Sincerely yours,

William L. Fox

WLF/B

FOXCROFT SQUARE JENKINTOWN, PA. 19046 215-886-2000

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

June 18, 1986

IN REPLY PLEASE
REFER TO OUR FILE

Jerry Rich, Secretary
Pa. Public Utility Commission
Post Office Box 3265
Harrisburg, PA 17120

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Public Utility Commission

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

Dear Secretary Rich:

By letter dated May 29, 1986, respondent, Philadelphia Electric Company ("PECO") filed an ECR statement which purported to show the "E" factor balance as of April 30, 1986 which the company intends to use in its new Energy Cost Rate Factor No. 1, to be effective June 27, 1986. This submission was intended to update that previously filed during the base rate proceeding so as to reflect the actual experience from February 1, 1986 through April 30, 1986. Staff's review of this update shows that it contains an error which results in an incorrect ending balance.

PECO's updated data includes 15 months of over/undercollections; the first 12 months of these were included in the January 31, 1986 balance used to compute ECR No. 10 which became effective April 1, 1986. This 12-month undercollection has been used improperly to offset the subsequent three months of overcollection interest, thereby improperly reducing the interest associated with the overcollection. The fact is that a portion of the 12-month undercollection has been recouped via ECR No. 10 from April 1, 1986 through June 27, 1986. This partial recoupment is not reflected in the interest calculation of the company's update.

The interest due to be returned to PECO's ratepayers, therefore, should be $3,182,692 rather than the $2,962,032 claimed by the company.

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to properly reflect the fact that a portion of the 12-month undercollection will be recouped prior to the June 27, 1986 effective date of the new ECRF. This can be accomplished by reducing the monthly over/undercollections during the 12-month ECRF period by 23.09 percent based on projected annual sales in ECR No. 10 for the period April-June 1986. The corrected "E" factor balance as of April 30, 1986, therefore, is $4,020,042 rather than the $3,799,382 in PECO's update.

Sincerely,

Marlane R Chestnut

Marlane R. Chestnut
Assistant Counsel

Attachment
MRC:gdp

cc: Active Parties of Record

PECO 'E' Factor Interest Calculation
Reflecting Recoupment Via ECR #10 During April, May and June, 1986

Month	PECO Reported Over/(Under) Collections $	Percent Outstanding as of 6/27/86*	Over/(Under) Balance as of 6/27/86 $	Interest Rate	Interest Factor	Inte $
Feb. '85	(4,748,866)	76.91	(3,652,353)	13 3/4	23/12	(962,5
Mar.	3,955,157	76.91	3,041,911	13 3/4	22/12	766,8
Apr.	6,886,308	76.91	5,296,259	13 3/4	21/12	1,274,4
May	5,150,420	76.91	3,961,188	14 1/4	20/12	940,7
Jun	3,042,965	76.91	2,340,344	14	19/12	518,7
Jul.	(14,258,887)	76.91	(10,966,510)	13 1/2	18/12	(2,220,71
Aug.	(7,223,811)	76.91	(5,555,833)	12 3/4	17/12	(1,003,52
Sep.	3,966,590	76.91	3,050,704	13	16/12	528,78
Oct.	(4,762,455)	76.91	(3,662,804)	13	15/12	(595,20
Nov.	12,624,414	76.91	9,709,437	13 1/4	14/12	1,500,91
Dec.	(8,588,459)	76.91	(6,605,384)	13	13/12	(930,258
Jan. '86	(5,754,585)	76.91	(4,425,851)	12 1/2	12/12	(553,231
Sub-Total	(9,711,209)		(7,468,892)			(734,991
Feb. '86	10,480,546	100	10,480,546	12	11/12	1,152,860
Mar.	16,886,007	100	16,886,007	12	10/12	1,688,601
Apr.	12,477,940	100	12,477,940	11 1/2	9/12	1,076,222
Sub-Total	39,844,493		39,844,493			3,917,683
Totals	30,133,284		32,375,601			
Total Interest Due @ 4/30/86						3,182,692

*Percent of ECR #10 12-month Under Collection at 1/31/86 not recouped via ECR #10

April-June 1986 $.7691 = 1 - \frac{6,386,750 \text{ MWH Sales Projected ECR \#10 April-June 1986}}{27,657,69 \text{ MWH Sales Total Projected ECR \#10 Year}}$

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing document(s), either personally or by first class mail, upon the persons addressed below:

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Dated: June 18, 1986

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ORIGINAL

June 20, 1986

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

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
North Office Building
Room B-18 - New Filing Section
P. O. Box 3265
Harrisburg, PA 17120

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Public Utility Commission

Dear Secretary Rich:

Enclosed for filing with the Commission are the original and two (2) copies of the Motion Requesting Clarification of Commission's June 12, 1986 Polling Session on behalf of the Philadelphia Area Industrial Energy Users Group (PAIEUG) in the above-captioned Docket. All parties of record have been provided with copies as evidenced by the attached Certificate of Service.

Very truly yours,

McNEES, WALLACE & NURICK

By David M. Kleppinger
David M. Kleppinger

DMK/fam
Enclosures
cc: All Parties of Record (w/encl.)
Chairman Linda C. Taliaferro
Commissioner Frank Fischl (w/encl.)
Commissioner Bill Shane (w/encl.)
Office of Special Assistants (w/encl.)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JUN 20 1986
SECRETARY'S OFFICE
Public Utility Commission

PENNSYLVANIA PUBLIC UTILITY COMMISSION, et al.	:	
v.	:	Docket No. R-850152
PHILADELPHIA ELECTRIC COMPANY	:	

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Public Utility Commission

MOTION REQUESTING CLARIFICATION OF
COMMISSION'S JUNE 12, 1986 POLLING SESSION

COMES NOW Philadelphia Area Industrial Energy Users Group ("PAIEUG") requesting a clarification by the Commission of its position as stated at the June 12, 1986 Polling Session on Issue No. 38 - Cost of Service: Production and Transmission Plant and on Issue No. 44 - Tariff Revisions: Rate HT. The lack of a Commission majority on Issue No. 38 and the inconsistency of the cost of service positions of the Commissioners as they relate to Issue No. 44 regarding HT rate design require clarification for PAIEUG members who are highly energy intensive industrial customers severely impacted by any modification to the design of Rate HT and particularly to the tail block energy charge of Rate HT. PAIEUG believes that all parties to the proceeding will be better served by a clarification prior to the issuance of the Commission's final order and large industrial customers on the PECo system will have the

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opportunity to evaluate their production schedules in light of the potential impacts on the Rate HT design. In support of this clarification, PAIEUG states as follows:

1. At the Polling Session conducted on June 12, 1986, the Commission unanimously adopted PECo's Rate HT rate design methodology as described at Issue No. 44 Tariff Revisions: Rate HT. PECo's Rate HT rate design methodology is dependent upon the unit cost data developed from the cost of service study and the resulting demand and energy charges for Rate HT are driven by the method for allocating production and transmission plant. PECo Statement No. 24, P. 10 - 11; PECo Statement No. 24 (a), P. 26 - 27. Therefore, the interrelationship between the cost of service study methodology and the Rate HT rate design requires consistency in the Commission's positions on these two issues.

2. At the Polling Session conducted June 12, 1986, the Commissioners issued the following votes concerning Issue No. 38 - Cost of Service: Production and Transmission Plant:

> Commissioner Shane: University of Pennsylvania position which allocates 90% of Limerick Unit I on energy and 10% on demand;
>
> Commissioner Fischl: Office of Consumer Advocate method constituting a peak and average cost of service study which allocates 64.1% of production and transmission plant on the basis of energy.
>
> Chairman Taliaferro: the ALJ position which adopted PECo's four coincident peak cost of service study.

Without a majority position on the cost of service study, PAIEUG and other Rate HT ratepayers cannot anticipate what demand and energy charges on Rate HT will result because the unit costs for demand, energy and customer charges are extracted from the cost of service study results.

3. The potential variations in the Rate HT rate design in light of the Commissioners' lack of majority on the cost of service allocation of production and transmission plant severely impacts PAIEUG members. The Rate HT rate design which would be dictated by each of the Commissioners' positions as stated at the June 12, 1986 polling would be:

RATE HT	CHMN. TALIAFERRO	COMM. FISCHL	COMM. SHANE
Customer Charge	$264.15	$264.15	$264.15
Demand Charge	$ 9.44 per KWh	$ 6.35 per KW	$ 5.77 per KW
First 150 Hrs. Use	9.64¢ per kWh	9.30¢ per kWh	9.40¢ per kWh
Next 150 Hrs. Use	6.68¢ per kWh	7.51¢ per kWh	7.64¢ per kWh
Additional Hrs. Use	3.75¢ per kWh	5.75¢ per kWh	5.91¢ per kWh

See PECo Stmt. 24A, p. 4.

Each of these rate designs assumes that the entire revenue request by PECo is granted and underscores a dramatic effect on the Rate HT tail block energy charge. The fact that the Commission unanimously adopted the PECo's Rate HT rate design methodology would dictate a 3.75¢ per kWh tail block. However, because the HT rate design is dependent on the cost allocation

methodology for production and transmission plant, Commissioners Shane and Fischl have issued inconsistent positions which would produce tail block energy charges of 5.91¢ per kWh and 5.75¢ per kWh respectively. This danger of utilizing cost of service study methodologies which are inconsistent with PECo's rate design methodology was discussed at PAIEUG's Main Brief at Pages 57 - 60.

4. The potential impact on PAIEUG members could be devastating if the HT rate design apparently supported by Commissioner Fischl or Commissioner Shane is ultimately adopted. Approximately, 3 billion kWhs of energy are consumed in the Rate HT tail block, and 1.4 billion of those kWhs are consumed by PECo's seven largest customers. Volume IV-C-1, Pages 10 - 11, PECo Filing Requirements. These seven largest Rate HT customers would provide PECo with $52.9 million of revenue from the tail block energy charge if it is priced at 3.75¢ per kWh as supported by Chairman Taliaferro. Id. If Commissioner Shane's adoption of the University of Pennsylvania cost allocation methodology is carried through the HT rate design to produce a 5.91¢ per kWh tail block, these same customers would provide PECo with $83.4 million in revenue from the tail block energy charge for an increase of 57.6% above PECo's requested revenue from these customers at full rate relief levels. Comparably, if Commissioner Fischl's recommendation for

allocating production and transmission plant is adopted and the resulting HT tail block becomes 5.75¢ per kWh, the seven largest Rate HT customers would provide PECo with revenue of $81.2 million from the tail block energy charge for an increase of 53.3% above PECo's requested revenue levels at full rate relief.

While PAIEUG recognizes that the Commission has reduced PECo's overall rate increase request, the implications for Rate HT rate design of the cost of service positions as stated by Commissioners Shane and Fischl will remain extremely significant and potentially devastating to PAIEUG members. For illustrative purposes, assuming a 5.0¢ per kWh tail block energy charge for Rate HT at the Commission approved revenue requirement for PECo and under Commissioners Shane's or Fischl's cost allocation methodologies, the same seven largest Rate HT customers would provide PECo with $70.6 million in revenue from the tail block energy charge for an increase of 33.3% above that requested by PECo from these customers at full rate relief levels.1/ These additional revenues extracted from the largest Rate HT customers relate only to the tail block energy

1/ For a typical individual large high load factor Rate HT customer who consumes approximately 270 million kwh/year in the tail block, a 5.0¢/kwh tail block energy charge would provide PECo with revenue $3.4 million in excess of what PECo would have received from the proposed tail block with full rate relief.

charge and not to any other increases applicable to the customer, demand or initial energy blocks.

5. Given these potential dramatic impacts, along with the fact that PECo is in the unique situation where any decision on the allocation of production and transmission plant in a cost of service study dictates certain results in its Rate HT rate design, PAIEUG urges the Commission to clarify the positions as stated in its Polling Sessions by finding Chairman Taliaferro's cost allocation recommendation to constitute the only methodology even remotely consistent with the unanimously approved Rate HT rate design. Significant controversy after the issuance of the final order can be averted if these problems can be resolved prior to that time.

WHEREFORE, for the foregoing reasons, PAIEUG respectfully requests that the Commission clarify its position as indicated at the June 12, 1986 Polling Session recognizing the intricate relationship on the PECo system between any Commission decision which impacts the cost of service study allocation methodology

for production and transmission plant and the internal rate design for Rate HT.

Respectfully submitted,

McNEES, WALLACE & NURICK

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Attorneys for: Philadelphia Area Industrial Energy Users Group

DATED: June 20, 1986

CERTIFICATE OF SERVICE

Pennsylvania Public Utility Commission, et. al., :
v. :
Philadelphia Electric Company : Docket No. R-850152
:

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David M. Kleppinger

Dated this 20th day of June, 1986, at

Harrisburg, PA

RECEIVED
JUN 23 1986
SECRETARY'S OFFICE
Public Utility Commission

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION, et al.

v.

PHILADELPHIA ELECTRIC COMPANY

DOCKET NO. R-850152

RESPONSE TO MOTION REQUESTING CLARIFICATION OF COMMISSION'S JUNE 12, 1986 POLLING SESSION

Introduction

The Philadelphia Area Industrial Energy User Group ("PAIEUG") filed a Motion Requesting Clarification of Commission's June 12, 1986 Polling Session. This document was filed and served on June 20, 1986. Although styled a motion requesting clarification, it is a thinly disguised attempt to argue why the Commissioners should change their respective positions on the issues rather than an objective request for clarification. Filed in the latter stages of deliberations by the Commissioners, it undermines the integrity of the deliberative process and throws into chaos the ability of the Commission to deliberate and decide cases based on the complete Record and Briefs filed in accordance with established rules of procedure.

The motion attempts to make new arguments regarding the impact of various allocation theories, makes assumptions regarding

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the total level of rate relief which are not justified, (given the recommendations of the Administrative Law Judge and the Commission's own polling decisions), and, finally, provides misleading "conclusions" regarding the impact of any Commission decision. This last point is especially troubling because PAIEUG is providing calculations that cannot and should not be filed at this stage in the case.

The issues in this case have been briefed on at least four occasions: Briefs and Reply Briefs before the Administrative Law Judge and Exceptions with Reply Exceptions before this Commission. Further, PAIEUG is well aware that it may ask for reconsideration once a final order has been issued. That is when any desired clarification could be sought, if needed. PAIEUG is making certain assumptions based on the Commission's deliberations that are both speculative and inaccurate. Its pleading is no more than an attempt to influence the Commission's decision to the prejudice of the other parties and in violation of the Commission's rules on appropriate and permitted pleadings. We, therefore, ask that this document be stricken, and more importantly that the Commissioners and the staff of the Office of Special Assistants do not consider it in any way whatsoever in reaching a final decision in this case. In support of this request we set forth the following specific reasons:

1. The allowance of this request represents an undue interference with the deliberations of the Commission and is not authorized by Commission rules and regulations.

2. The acceptance of this document will prejudice the other parties in this case who have not been given equal opportunity to file comments and make further argument during the deliberation process and will not have time to do so. All parties have had, up to this point, an equal opportunity to present the various positions and this additional pleading presents an unfair opportunity to plead an "extra" time.

3. The material contained in the Request for Clarification is inaccurate and misleading. Without further arguing the merits, it is sufficient to note that the amounts set forth in the document as alleged rate impact (1) are based on the full level of rate relief sought by PECO and (2) are presented as additional rate increases to certain HT customers, when in reality they represent only certain possible increases built into the tail block without including the likely off-setting decreases in both the fixed demand charge and the earlier blocks of the HT rate.

On this last point it must be remembered that the issue raised by PAIEUG deals with rates wholly within the HT class. There is no additional revenue requirement being ascribed to these customers. Therefore, by the force of logic, any increases

in the relative amount billed under the tail block must be matched by equal decreases in amounts billed in other portions of the rate. This irrebuttable fact is totally disregarded in PAIEUG's presentation.

4. Any alleged errors in the Commission decision can be the subject of petitions for reconsideration timely filed within the rules of this Commission.

5. Consideration of this pleading at this late stage of the deliberations by this Commission is a violation of the fundamental rights of fairness and due process of all other intervenors who have seen fit to follow the rules regarding submissions to this Commission.

WHEREFORE, for all of the above reasons, we respectfully urge this Commission to strike PAIEUG's request, to give it absolutely no consideration whatsoever in the final decision-making in this case, and to advise PAIEUG and other parties that such pleadings, filed during the decision-making process, will lead to sanctions against such parties in the future.

Respectfully submitted,

WIDOFF REAGER SELKOWITZ & ADLER, PC

By: _____
Mark P. Widoff, Esquire

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Larry B. Selkowitz, Esquire
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Dated: June 23, 1986

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Response To Motion Requesting Clarification Of Commission's June 12, 1986 Polling Session on behalf of Utility User's Committee/ University of Pennsylvania ("UUC/UUP) to be placed in the United States Mail, first class, postage prepaid, to the individuals listed below:

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COMMONWEALTH OF PENNSYLVANIA
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June 23, 1986

IN REPLY PLEASE
REFER TO OUR FILE

Jerry Rich, Secretary
Pa. Public Utility Commission
Post Office Box 3265
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RECEIVED
JUN 23 1986
SECRETARY'S OFFICE
Public Utility Commission

Re: Pennsylvania Public Utility Commission
v.
Philadelphia Electric Company

Docket No. R-850152

Dear Secretary Rich:

Enclosed for filing please find an original and three (3) copies of Commission Trial Staff's Response To PAIEUG's Motion For Clarification in the above-captioned proceeding. Copies have been served on the Administrative Law Judge and all active parties of record.

Very truly yours,

Marlane R. Chestnut
Assistant Counsel
For Commission Trial Staff

DOCUMENT FOLDER

Enclosure

MRC:gdp

cc: Honorable Joseph P. Matuschak, ALJ
All Active Parties of Record

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JUN 23 1986

SECRETARY'S OFFICE
Public Utility Commission

PENNSYLVANIA PUBLIC UTILITY COMMISSION :

v. :

PHILADELPHIA ELECTRIC COMPANY :

Docket No. R-850152

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JUN 24 1986

DOCUMENT FOLDER

STAFF'S RESPONSE TO PAIEUG'S MOTION FOR CLARIFICATION

AND NOW comes the Trial Staff ("Staff") of the Pennsylvania Public Utility Commission ("Commission"), by its counsel, and files this response to the Motion for Clarification ("Motion") filed on June 20, 1986 by the Philadelphia Area Industrial Energy Users Group ("PAIEUG"), and respectfully represents as follows:

The Motion as filed is improper and unnecessary, and therefore should be denied by the Commission. It is totally improper for a party, after the record has been closed, to attempt to lobby the Commission in an attempt to get a polling decision changed. Staff recognizes that the Motion was designed to afford as much due process protection to the other parties as possible; the fact remains, however, that it constitutes an egregious violation of both the rules of practice and procedure promulgated by this Commission as well as fundamental principles of fairness and due process. The Commission should not permit this or other circumventions of the rules for self-serving purposes on the part of any party.

In addition, the Commission should deny the Motion because it is moot and unnecessary. First, the final order is scheduled to be issued June 26, 1986, well before any action can be taken on the Motion. Second, it is presumptious of PAIEUG to assume that the Commission is unable to comprehend the significance of its polling on the various issues, or that the order will not reconcile the various rate structure components.

WHEREFORE, for the reasons stated above, Staff respectfully requests that the Commission reject PAIEUG's Motion for Clarification of Commission's June 12, 1986 Polling Session.

Respectfully submitted,

Marlane R. Chestnut

Marlane R. Chestnut
Assistant Counsel
For the Trial Staff of the
Pennsylvania Public Utility
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Dated: June 23, 1986

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I hereby certify that I am serving the foregoing document(s), either personally or by first class mail, upon the persons addressed below:

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Dated: June 23, 1986

COMMONWEALTH OF PENNSYLVANIA

ORIGINAL

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JUN 23 1986

SECRETARY'S OFFICE
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June 23, 1986

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

Dear Secretary Rich:

Enclosed for filing please find an original and 3 copies of the Response Of The Office Of Consumer Advocate To "Motion Requesting Clarification Of Commission's June 12, 1986 Polling Session" in the above-captioned matter. As per attached Certificate of Service, copies have been served upon all parties of record.

Sincerely,

Irwin A. Popowsky
Assistant Consumer Advocate

3146P
Enclosure
cc: All parties of record
Hon. Linda C. Taliaferro, Chairman
Hon. Frank Fischl, Commissioner
Hon. William R. Shane, Commissioner
Office of Special Assistants

CERTIFICATE OF SERVICE

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

I hereby certify that I am this 23rd day of June, 1986, serving either in person or by first class mail the foregoing document, Response Of The Office Of Consumer Advocate To "Motion Requesting Clarification Of Commission's June 12, 1986 Polling Session", in the above-captioned proceeding.

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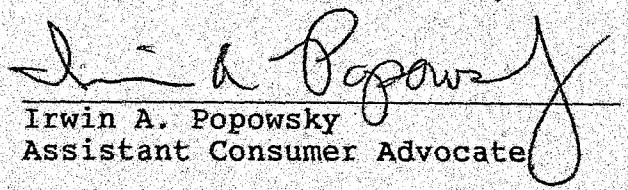
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Irwin A. Popowsky
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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SECRETARY'S OFFICE
Public Utility Commission
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PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
v.	:	Docket No. R-850178
PHILADELPHIA ELECTRIC COMPANY	:	

RESPONSE OF THE
OFFICE OF CONSUMER ADVOCATE TO
"MOTION REQUESTING CLARIFICATION OF
COMMISSION'S JUNE 12, 1986 POLLING SESSION"

The Office of Consumer Advocate (OCA) is in receipt of a pleading filed June 20, 1986, in the above-captioned matter entitled "Motion Requesting Clarification of Commission's June 12, 1986 Polling Session." The Motion was filed by the Philadelphia Area Industrial Energy Users Group (PAIEUG) and purports to seek a "clarification" of the positions taken by the individual Commissioners regarding certain cost of service and rate design matters which were the subject of the Commission's non-binding polling on the Philadelphia Electric Company (PECO) rate case on June 12, 1986.

The purpose of this Response is to urge the Commission to disregard in its entirety the Motion of PAIEUG and the arguments contained therein.

PAIEUG's request is totally inappropriate and unauthorized by the Commission's rules of practice and procedure. PAIEUG cites no Commission regulation which permits such a pleading on the basis of the Commission's non-binding polling, and, to the OCA's knowledge, there is none. It is neither possible in the applicable time frame, nor appropriate under the Commission's regulations, for the other parties to respond to the substantive allegations contained in PAIEUG's request. The prejudice to these parties will therefore be substantial if the Commission even considers PAIEUG's unprecedented request at this late date.

Contrary to the allegations of PAIEUG, the Commission cannot "clarify" its positions at this time because there is nothing to clarify. The Commission has not issued either a final or tentative decision but has only conducted a non-binding polling which has no legal effect. In fact, what PAIEUG is seeking is not a clarification at all but a reversal of the cost of service positions which were apparently endorsed by Commissioners Shane and Fischl at the June 12, 1986, polling. Thus, at page 6 of its Motion, PAIEUG "urges the Commission to clarify the positions as stated in its Polling Sessions by finding Chairman Taliaferro's cost allocation recommendation to constitute the only methodology even remotely consistent with the unanimously approved HT rate design." In other words, PAIEUG wishes Commissioners Shane and Fischl to "clarify" their positions by adopting the contrary position which was apparently endorsed by Chairman Taliaferro at the

June 12, 1986 polling. Obviously, this is not a clarification, but a preemptive request for reconsideration of a Commission order which has not even been adopted or entered by the Commission.

The issues of cost allocation and rate design were vigorously litigated during this proceeding and were the subject of extensive briefing, exceptions, and reply exceptions. PAIEUG has cited to no relevant change in the law or factual circumstances which have occurred since the close of the record and which should therefore be considered by the Commission in its final order. These important issues should be decided on their merits as set forth during the Commission's proceedings and should not be influenced one way or the other by the contents of PAIEUG's impermissible pleading.

The purpose of the Commission's non-binding polling is not to set off a round of additional pleadings and reply pleadings in which the parties get to refine their positions in light of the Commissioners' publicly stated preferences. If, as PAIEUG purportedly fears in this case, the majority Commission positions on various issues are not properly reconciled in the Commission's final order then the parties have a number of post-order procedural avenues open to them. It is improper, however, for one party to attempt to influence the development of the final order at a time and in a manner which is not permitted by the Commission's rules and which does not provide the other parties with the time or opportunity to present an adequate substantive response.

The OCA therefore urges the Commission to disregard the Motion for Clarification submitted by PAIEUG and to state that it will not entertain such motions, based on Commission polling, in the future.

Respectfully submitted,

Irwin A. Popowsky
David Wersan
Assistant Consumer Advocates

David M. Barasch
Consumer Advocate

DATED: June 23, 1986

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DIAL DIRECT (215) 963-5448

HAND DELIVERED

June 24, 1986

RECEIVED
JUN 24 1986
SECRETARY'S OFFICE
Public Utility Commission

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
North Office Building
P.O. Box 3265
Harrisburg, PA 17120

Re: Pa. P.U.C. v. Philadelphia Electric Company,
Docket No. R-850152

Dear Secretary Rich:

Enclosed for filing with the Commission are three copies of a revised calculation of experienced over/under collections under the Company's ECR for the fifteen months ended April 30, 1986. This $4,020,042 overcollection will be utilized in the "E" factor calculation in the Company's Energy Cost Rate Factor No. 1, which, if approved by the Commission, will be effective on June 27, 1986. This "E" factor calculation replaces that submitted in the above-captioned proceeding on May 29, 1986, and is consistent with the recalculation of the E-Factor data contained in the letter from Assistant Counsel Chestnut to Secretary Rich dated June 18, 1986.

In this new "E" factor calculation, the over/under collections on which the interest computation is based (Schedule E-4, Sheet 2 of 4), have been reduced for the months February 1985 through January 1986 to reflect the effect on the interest computation of the over/under collections which have been partially refunded/collected through operation of ECR Statement No. 10 (2nd revised) during the three-month period April 1, 1986 through June 27, 1986.

FOLDER

As shown below, I have today served copies of this document on all parties to this proceeding and ALJ Matuschak.

Sincerely,

David B. MacGregor
Counsel for Philadelphia
Electric Company

DBM/b

Enclosures

cc: Honorable Joseph P. Matuschak
All Parties, Docket No. R-850152

CERTIFICATE OF SERVICE

I hereby certify that I have on this date served copies of the aforementioned document on the following parties:

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Counsel for Philadelphia
Electric Company

PHILADELPHIA ELECTRIC COMPANY-ELECTRIC OPERATIONS
ENERGY COST RATE RECONCILIATION
REPORT ENDED APR'86

	TOTAL SYSTEM SALES KWH	CURRENT ENERGY COST MILLS/KWH	ACTUAL TOTAL ENERGY COST $	ALLOC. FACTOR	ACTUAL ENERGY COST PECO RETAIL CUSTOMER $	RETAIL CUSTOMER SALES KWH	ACTUAL ENERGY COST RECOVERED IN BASE RATES $	ENERGY COST OVER BASE $	(F/ST)-B - 3.627 MILLS/KWH	FUEL REVENUE EXCL. GRT $	HT TIME OF USE ADJ. $	TOTAL REVENUE INCLUDING SALEM 2 CREDIT $	SALEM 2 CREDIT REVENUE EXCL. GRT $
	1	2=3/1X 1000	3 (A)	4 (B)	5=3X4	6 (C)	7=6XBASE	8=5-7	9	10=9X6	11 (D)	12=11+10	13 (E)
FEB'85	2520132788.	28.754	72464096.	0.9741	70587276.	2459350733.	69299585.	1287691.	-3.868705	-9515156.	-414940.	-9930096.	-6468921.
MAR'85	2274670800.	24.779	56365062.	0.9755	54984118.	2216448759.	62455093.	-7470975.	-4.865725	-10784629.	-770448.	-11555077.	-8039259.
APR'85	2180772632.	22.277	48581504.	0.9758	47405832.	2127576959.	59950864.	-12545032.	-5.447320	-11590102.	-300059.	-11890161.	-7716913.
MAY'85	2133269785.	19.773	42180903.	0.9770	41210742.	2080384413.	58621072.	-17410330.	-5.798760	-12063547.	-222280.	-12285827.	-7545[illegible]
JUN'85	2176308704.	20.080	43699744.	0.9775	42716500.	2124535844.	59865171.	-17148671.	-5.811175	-12346047.	505451.	-11840596.	-7705883.
JUL'85	2406564458.	28.947	69663946.	0.9812	68354264.	2355394746.	66370313.	1983951.	-5.811175	-13687609.	499633.	-13187976.	-8543229.
AUG'85	2527057557.	25.602	64698734.	0.9807	63450048.	2474913183.	69738104.	-6288056.	-5.811175	-14382152.	589708.	-13792444.	-8976733.
SEP'85	2494818450.	20.879	52090306.	0.9735	50709913.	2429767806.	68465997.	-17756084.	-5.811175	-14119805.	507674.	-13612131.	-8812987.
OCT'85	2279767534.	23.167	52815081.	0.9816	51843283.	2237250322.	63041240.	-11197957.	-5.811175	-13001051.	-280078.	-13281129.	-8114708.
NOV'85	2121277797.	14.992	31801244.	0.9791	31136598.	2073592014.	58429676.	-27293078.	-5.811175	-12050004.	-310982.	-12360986.	-7521105.
DEC'85	2647071434.	25.551	67635562.	0.9777	66127289.	2383962890.	67175306.	-1048017.	-5.811175	-13853621.	-386213.	-14239834.	-8646848.
JAN'86	2658454320.	25.758	68476206.	0.9772	66914948.	2596367462.	73160442.	-6245494.	-5.811175	-15087945.	-387747.	-15475692.	-9417258.
FEB'86	2502194484.	18.599	46538407.	0.9774	45486639.	2447173069.	68956443.	-23469804.	-5.811175	-14220949.	-294448.	-14515397.	-8876117.
MAR'86	2363816345.	15.695	37101276.	0.9791	36325859.	2312957381.	65174513.	-28848654.	-5.811175	-13441000.	-303522.	-13744522.	-8389305.
APR'86	2199175737.	18.473	40625306.	0.9794	39788425.	2152965163.	60666252.	-20877827.	-5.480745	-11800449.	-209928.	-12010377.	-3610490.
YEARLY TOTAL TO DATE	35485352825.		794737377.		777041734.	34472640744.	971370071.	-194328337.		-191944066.	-1778179.	-193722245.	-118385498.

BASE = 28.178 MILLS/KWH.

(A) TOTAL ENERGY COST = FUEL COST + NET INTERCHANGE - HT SUPPLEMENTAL ENERGY.

(B) SEE SCHEDULE E-4 PAGE 3 OF 4 FOR DEVELOPMENT.

(C) DOES NOT INCLUDE HT SUPPLEMENTAL ENERGY

(D) PER COMMISSION ORDER ENTERED MAY 21, 1982 AT RATE CASE NO. R-811626, PAGE 60.

(E) TOTAL SALEM 2 CREDIT REFUNDED($118,385,498) LESS THE AMOUNT GUARANTEED ($113,253,293) LEAVES $5,132,205 WHICH IS AUTOMATICALLY INCLUDED IN CURRENT PERIOD OVER/(UNDER) RECOVERY.

FOLDED
JUN 23 1986
FILED
RECEIVED
JUN 24 1986
SECRETARY'S OFFICE
Public Utility Commission

REFERENCE:
Energy Cost Rate Factor
Statement No. 1
Schedule E-4
Sheet 1 of 4

PHILADELPHIA ELECTRIC COMPANY-ELECTRIC OPERATIONS
ENERGY COST RATE RECONCILIATION
REPORT ENDED APRIL 1986

	SALEM 2 ALLOCATED JURISDICTION SAVINGS 14	SALEM 2 SAVINGS SHORTFALL 15=13+14	CURRENT PERIOD O/U RECOVERY 16=12-8-15	ADJUSTED CURRENT PERIOD O/U RECOVERY 16A (NOTE A)	INT. RATE 17	INT. FACTOR 18	INTEREST 19=16AX17X18/100
FEB'85	0	-6,468,921	-4,748,866	-3,652,353	13.75	23/12	-962,547
MAR'85	0	-8,039,259	3,955,157	3,041,911	13.75	22/12	766,815
APR'85	1,485,476	-6,231,437	6,886,308	5,296,259	13.75	21/12	1,274,412
MAY'85	7,519,825	-25,917	5,150,420	3,961,188	14.25	20/12	940,782
JUN'85	9,970,993	2,265,110	3,042,965	2,340,344	14.00	19/12	518,776
JUL'85	7,630,189	-913,040	-14,258,887	-10,966,510	13.50	18/12	-2,220,718
AUG'85	8,696,156	-280,577	-7,223,811	-5,555,833	12.75	17/12	-1,003,522
SEP'85	8,990,350	177,363	3,966,590	3,050,704	13.00	16/12	528,789
OCT'85	10,793,991	2,679,283	-4,762,455	-3,662,804	13.00	15/12	-595,206
NOV'85	9,828,783	2,307,678	12,624,414	9,709,437	13.25	14/12	1,500,917
DEC'85	4,043,490	-4,603,358	-8,588,459	-6,605,384	13.00	13/12	-930,258
JAN'86	5,941,645	-3,475,613	-5,754,585	-4,425,851	12.50	12/12	-553,231
FEB'86	7,349,978	-1,526,139	10,480,546	10,480,546	12.00	11/12	1,152,860
MAR'86	6,607,430	-1,781,875	16,886,007	16,886,007	12.00	10/12	1,688,601
APR'86	0	-3,610,490	12,477,940	12,477,940	11.50	9/12	1,076,222
YEARLY TOTAL TO DATE	88,858,306	-29,527,192	30,133,284	32,375,602			3,182,692

NOTE A: THE FEB'85 THROUGH JAN'86 AMOUNTS REFLECTED IN ECR #10, WHICH WILL BE EFFECTIVE DURING THE MONTHS OF APRIL, MAY, AND JUNE 1986, ARE REDUCED HERE BY THE RATIO OF APRIL, MAY, AND JUNE 1986 SALES (6,386,750 MWH) TO 12 MONTHS ENDED MARCH 1987 SALES (27,657,689 MWH), SO THAT ONLY THE REMAINING 9 MONTHS OF EFFECTIVENESS ARE REFLECTED IN ECRF #1.

REFERENCE:
Energy Cost Rate Factor
Statement No. 1
Schedule E-4
Sheet 2 of 4

PHILADELPHIA ELECTRIC COMPANY-ELECTRIC OPERATIONS
ALLOCATION FACTOR
BASED ON GENERATION

	SYSTEM GENERATION 40	BLI TO PE 41	PE TO CP SALES 42	SALES TO LANSDALE 43	INTERDPT SALES 44	SE TO CP SALES 45	SALES APPLICABLE TO LOSS FACTOR 46=42+43+44+45	CALCULATED GENERATION 47=46/(1-.03587)	NUMERATOR 48=40+41-47	ALLOCATION FACTOR 49=48/40
FEB'85	2432300000.	0.	37140942.	9230000.	6035348.	8375765.	60782055.	63043423.	2369256577.	0.9741
MAR'85	2459907000.	3359.	36046000.	8940000.	5030103.	8205938.	58222041.	60388164.	2399522195.	0.9755
APR'85	2281412000.	2061.	31549937.	9280000.	5225833.	7139903.	53195673.	55174793.	2226239268.	0.9758
MAY'85	2384003000.	704.	32159000.	9000000.	4863764.	6862608.	52885372.	54852947.	2329150757.	0.9770
JUN'85	2384685000.	0.	31190000.	8380000.	5504347.	6698513.	51772860.	53699045.	2330985955.	0.9775
JUL'85	2821969000.	1333.	37390000.	800000.	5328546.	7651166.	51169712.	53073457.	2768896876.	0.9812
AUG'85	2808889000.	866.	39339870.	0.	5490888.	7313616.	52144374.	54084381.	2754805485.	0.9807
SEP'85	2543991000.	1109.	52409359.	0.	5481741.	7159544.	65050644.	67470822.	2476521287.	0.9735
OCT'85	2393143000.	886.	30040864.	0.	5176011.	7300337.	42517212.	44099045.	2349044841.	0.9816
NOV'85	2368102000.	812.	34973000.	0.	5019995.	7692788.	47685783.	49459910.	2318642902.	0.9791
DEC'85	2732546000.	1230.	43790000.	0.	5307226.	9680079.	58777305.	60964087.	2671583143.	0.9777
JAN'86	2827562000.	5293.	46420000.	0.	5854092.	9812766.	62086858.	64396770.	2763170523.	0.9772
FEB'86	2528181000.	1270.	40114581.	0.	6011785.	8893049.	55019415.	57066386.	2471115884.	0.9774
MAR'86	2521579000.	1003.	36605000.	0.	5610777.	8643187.	50858964.	52751148.	2468828855.	0.9791
APR'86	2331845000.	837.	33274000.	0.	5468736.	7467838.	46210574.	47929817.	2283916020.	0.9794

REFERENCE:
Energy Cost Rate Factor
Statement No. 1
Schedule E-4
Sheet 3 of 4

Philadelphia Electric Company
Reconciliation of Correction Factor
February 1986 Through April 1986

Beginning Balance 1-31-86			($77,167,876)
Amount Recovered by "E" Factor:			
	kWH Sales to Pa. Jurisdictional Customers	"E" Factor Mills/kWh (Excl. GRT)	
Feb '86 & Mar '86	4,760,130,450	6.069025	28,889,351
April 1986*	995,423,443	6.069025	6,041,250
	1,157,541,720	2.790510	3,230,132
Overcollection at 4-30-86			39,844,493
Applicable Interest due customer			3,182,692
Ending Balance 4-30-86 (To be recouped via "E" factor effective 6-27-86)			$4,020,042

*Sales split due to proration of new and old rate

June 20, 1986
0034/79H

ORIGINAL

COMMONWEALTH OF PENNSYLVANIA

OFFICE OF CONSUMER ADVOCATE
1425 Strawberry Square
Harrisburg, Pennsylvania 17120

DAVID M. BARASCH
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(717) 783-5048

DOCUMENT FOLDER

June 27, 1986

RECEIVED
JUN 27 1986
SECRETARY'S OFFICE
Public Utility Commission

Mr. Jerry Rich, Secretary
PA Public Utility Commission
Room G-18, North Office Bldg.
Harrisburg, PA 17120

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

Dear Secretary Rich:

Enclosed for filing please find an original and 3 copies of the Consumer Advocate's Petition For Reconsideration in the above-captioned matter. As per attached Certificate of Service, copies have been served upon all parties of record.

Sincerely,

Scott J. Rubin
Assistant Consumer Advocate

3150P
Enclosure
cc: All parties of record

CERTIFICATE OF SERVICE

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

I hereby certify that I am this 27th day of June, 1986, serving either in person or by first class mail the foregoing document, Petition For Reconsideration, in the above-captioned proceeding.

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Scott J. Rubin
Assistant Consumer Advocate

RECEIVED
JUN 27 1986
SECRETARY'S OFFICE
Public Utility Commissio

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
v.	:	
PHILADELPHIA ELECTRIC COMPANY	:	Docket No. R-850152

DOCUMENT FOLDER

DOCKETED
JUN 30 1986

PETITION FOR RECONSIDERATION

Pursuant to 52 Pa. Code §5.572, the Office of Consumer Advocate (OCA) hereby petitions Your Honorable Commission to reconsider its Opinion and Order entered June 27, 1986, in the above-captioned proceeding, and avers in support as follows:

1. The Commission has indicated that Petitions for Reconsideration "may properly raise any matters designed to convince the Commission that it should exercise its discretion" to rescind or amend all or part of a prior order. Duick v. Pa. Gas and Water Co., C-R0597001, Order at 6 (Jan. 4, 1983). The Commission also stated that it expects petitions for reconsideration to raise "new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission." Id.

2. In concluding that Philadelphia Electric Company (PECO or the Company) did not have excess generating capacity, the Commission appears to have overlooked or not addressed the issue of whether the addition of Limerick 1 would provide net economic benefits to PECO ratepayers anytime in the reasonably near future. See Order at 34-37.

3. The economic costs and benefits of Limerick 1 were extensively litigated by the parties to this proceeding and, the OCA submits, is a critically important issue which must be decided by the Commission before it can be properly determined whether all or part of Limerick 1 constitutes excess generating capacity. Yet, the Commission's Order addresses the life-cycle economic costs and benefits of Limerick 1 in but a single paragraph at page 37, and never addresses the issue of when, if ever, the Commission expects all or any part of Limerick 1 to begin to provide any net economic benefits to PECO ratepayers.

4. Each party who presented evidence on this issue (OCA, PECO, PAIEUG, UUC/UP) agreed that Limerick 1 would not provide a current net benefit (i.e, benefits exceeding costs in a year) to ratepayers until 1994 at the earliest (UUC/UP found that Limerick 1 would never provide a current benefit). See OCA Main Brief at IV-23 to IV-26. No party, including PECO, presented evidence which even purported to demonstrate that

Limerick 1 would produce net economic benefits on an annual basis before 1994.

5. Each party who presented evidence on this issue (OCA, PECO, PAIEUG, UUC/UP) agreed that Limerick 1 would not provide a cumulative net benefit to ratepayers (i.e., net present value benefits to-date exceeding costs to-date) until 2006 at the earliest. All parties other than PECO found that Limerick 1 would never provide a cumulative net benefit. See Id.

6. Using PECO's own input assumptions for Limerick 1, the OCA demonstrated in unrebutted testimony that ratepayers would benefit by more than $1.5 billion over the next decade if PECO's 458 megawatts of combustion turbines were retained, in lieu of an equal amount of Limerick capacity. This $1.5 billion figure includes all of PECO's foreseeable benefits from Limerick 1 (e.g., energy savings, capacity benefits, etc.). See OCA Main Brief at IV-21 to IV-23.

7. The OCA submits, therefore, that the Commission erred in failing to consider the overwhelming evidence which demonstrated that Limerick 1 would not produce net economic benefits to ratepayers either now or in the reasonably near future. The OCA, therefore, respectfully urges the Commission to reconsider its finding on this matter and to adopt the OCA's proposed excess capacity adjustment regarding Limerick 1.

WHEREFORE, the Office of Consumer Advocate respectfully petitions Your Honorable Commission to reconsider its Opinion and Order and to reduce PECO's rates to reflect the finding that at least 450 megawatts of Limerick 1 represents unneeded, uneconomical excess generating capacity.

Respectfully submitted,

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