

DISSENTING OPINION OF COMMISSIONER BILL SHANE

RE: Pa. PUC v. Philadelphia Electric Company

R1850152

JUN-86-OSA-57

The most positive thing I can say about today's ruling is that decisions of this ilk are becoming the exception instead of the rule. The Commission has rejected arguments for an excess capacity adjustment and for a guarantee of the projected fuel savings from Limerick I. It has decreased the imprudency adjustment recommended by the Administrative Law Judge, thus increasing the cost to be borne by the customers. It has granted PECO an equity return of 14.75%, as opposed to the 14.25% recommended by the ALJ. In short, the Commission has departed from the policy of sharing risks between ratepayers and stockholders; instead it has heaped all of the risks on the ratepayers. For this reason, I dissent.

No utility needs the discipline of bearing its own risks more than PECO. In 1970, PECO estimated the cost of Limerick I and 100% of common plant at \$344 million, but the cost at completion in 1985 was \$3.8 billion, an increase of over 1000%. Even after reducing this amount to allow for only 50% of common plant and to reflect PECO's imprudent decisions to delay construction in 1976 and 1978, ratepayers are being forced to pay \$2.8 billion for Limerick I. Why should the ratepayers bear the risk of this disastrous price increase? It was PECO's decision to build nuclear plants; therefore, PECO should bear some of the risk

* See Averch & Johnson Behavior of the Firm Under Uncertainty, *Journal of Political Economy*, Vol. 70, No. 2, (1962).

Public Meeting of June 28, 1985
Of course, the Company will argue that the Limerick plants are necessary to meet the needs of its customers; that it really has the best interests of its customers at heart. This argument is disputed vigorously by the customers themselves. PECO's efforts to gain approval for completion of Limerick II and to increase its rates to pay for Limerick I have been opposed by groups representing every class of customer. A more plausible explanation for the Company's strategy is that it can increase its profits by increasing its rate base*, and that the Company's management has a pro-nuclear bias. While most observers of the electric utility industry emphasize the importance of flexibility in planning to meet future electric demand, PECO stubbornly marches ahead with its plans to build base-load nuclear plants. The attitude of PECO's management is reflected in a recent article by James L. Everett, the Chairman of the Board and Chief Executive Officer of the Company ("A Letter to Thomas Alva Edison," Public Utilities Fortnightly, Vol. 116, No. 12, December 12, 1985). Mr. Everett extols the virtues of base-load plants while decrying the supposed shortsightedness of residential and industrial customers, regulators, the financial community, and anyone else who will have to pick up the tab for the plants. Nowhere does the article mention alternative energy production (from cogenerators and small power producers) or energy conservation as options for supplementing base-load plants. PECO is pursuing the riskiest course of action and the Commission is loading this risk on the Company's ratepayers. I am optimistic, however, that in the future PECO will be required to bear more of the risk of its decisions. The PUC "Sunset Bill" (House

*/ See Averch & Johnson, Behavior of the Firm Under Regulatory Constraint, 52 Am. Econ. Rev. 1052 (1962).

Bill 1639), if enacted in its most recent form, would create a presumption that a base-load plant is excess capacity unless it is "used and useful" to meet demand and it produces net-economic benefits during the test year or within a reasonable period following the test year. Since even the Company concedes that Limerick I will not produce net-economic benefits for at least 20 years (OCA Exceptions, P. 19), this language would, ~~it it were law,~~ require an excess capacity adjustment in this case. The excess capacity amendment would give some protection to ratepayers when PECO seeks to include Limerick II in rates, and it might even reverse today's decision if it is made retroactive. In addition, the Sunset Bill contains language requiring the Commission to consider "performance factors" in setting rates. The Commission would be required to examine the efficiency and cost-effectiveness of PECO's generating capacity, whether PECO has encouraged energy supply alternatives such as conservation, cogeneration, and small power production, and whether PECO has acted to contain the costs of constructing new generating units. It makes sense to base PECO's rates upon its performance instead of upon the extravagance of its construction program.

I would also consider allowing competition as a means of regulating PECO more effectively. The Commission has had some experience with competition in the telephone and natural gas industries. This competition could take the form of allowing customers to switch from PECO to another utility or requiring PECO to wheel power from alternative energy producers to customers. PECO's stockholders, not its ratepayers, should bear the brunt of any losses which the Company might suffer due to competition.

My message to PECO's customers is that I share your dissatisfaction with today's decision. We can at least hope that the decision generates greater momentum for utility reform in Pennsylvania, though I doubt that will comfort you much when you get your electric bill.

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COMMISSIONER

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