

DISSENTING OPINION OF COMMISSIONER BILL SHANE

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

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

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

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

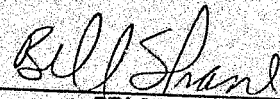
The Commission's Order could stop here, however, recognizing the weakness of its position that the new law should not be applied to this case, the Commission next attempts to reconcile its ruling with the new standards. Section 1323 states, in relevant part:

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

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

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

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



BILL SHANE
COMMISSIONER

DATED: 7/24/86