

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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MAR 11 1986

SECRETARY'S OFFICE
Public Utility Commission

Pennsylvania Public Utility
Commission

R-850152

v.

Philadelphia Electric Company

DOCUMENT
FOLDER

RULING ON COMMISSION TRIAL
STAFF MOTION DATED JANUARY
6, 1986 TO STRIKE TESTIMONY
OF PHILADELPHIA ELECTRIC
COMPANY

DOCKETED
MAR 12 1986

Background

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

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

Trial Staff, in its motion, alleged that the Commission had previously considered the prudence of the Limerick Station in Re Limerick Nuclear Generation Station, I-80100341, 56 Pa. P.U.C. 47 (1982) aff'd 501 Pa. 153, 460 A.2d 734 (1983).

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

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

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

The Commission agreed with the ALJ that PECO's 1974 delay was reasonable.

As to PECO's 1976 and 1978 delays, the Commission said:

[W]e are of the opinion that PECO management did not exercise judgment sufficient to meet our reasonable man standard in delaying construction at Limerick in 1976 and 1978
. . . .

In its motion, Trial Staff requested that we rule that the Commission's prior finding that the Limerick 1976 and 1978 construction delays were unreasonable is conclusive upon the parties in this proceeding.

On December 20, 1985 we issued a bench order in which we:

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

The Commission affirmed our ruling by order adopted January 17, 1986 and entered on January 21, 1986.

At I-80100341 the Commission refused to quantify the cost of the 1976 and 1978 delay decisions of PECO for lack of sufficient evidence in the record, and directed that such quantification of the 1976 and 1978 delay decisions by PECO be determined in this rate proceeding.

In reliance of our ruling of December 20, 1985, Trial Staff, on January 3, 1986, filed its motion to strike certain specific identifiable written testimony filed the PECO in Statements Nos. 1, 3, 8, 10, 11, and 15.

Subsequently on January 15, 1986 Trial Staff filed an amended motion to strike, wherein it moved to strike additional testimony included in PECO's Statements Nos. 3 and 11, and making certain corrections to its original motion to strike.

The Company contends that to the extent certain PECO testimony addresses both the issues of the reasonableness of its delay decisions and the quantification of the costs resulting from those decisions, such testimony should not be stricken.

Briefs and reply briefs were filed by Trial Staff and PECO. A reply brief was filed by the Office of Consumer Advocate (OCA). Oral argument was also held.

Discussion

Included in PECO's submissions in this proceeding are pre-filed written testimony, as well as oral, rebuttal, surrebuttal and surrebuttal testimony, which may involve relitigation of the reasonableness of the 1976 and 1978 Limerick construction delay decisions considered by the Commission at I-80100341, and matters which may have some relevancy in regard to the quantification of the costs of such delay decisions. Some, of the testimony may address both the reasonableness issue and the quantification issue.

To comply with Trial Staff's request that we strike certain pre-filed written PECO testimony specifically identified by Statement, page and line numbers would only invite further motions to strike other similar testimony as subsequently entered in the transcript and as contained in rebuttal, surrebuttal and sur-surrebuttal testimony, to even further extended litigation.

We are under strict time constraints in this rate case. With the voluminous record before us, we have neither the time nor the inclination to engage in the time-consuming and burdensome task of examining the record to distinguish which word, phrase, sentence, line or page of PECO's testimony should be stricken under Trial Staff's motion or under anticipated further motions to strike.

This proceeding is not before a jury. We believe that we, in the first instance and subsequently, the Commission, will be further able to determine the relevant testimony to be considered on the quantification issue.

In our opinion, a general ruling in this matter will establish a sufficient criteria upon which the parties may rely, and provide a sufficient and adequate guideline for the presentation of any further evidence by the parties.

ORDER

IT IS ORDERED:

1. That the motion of Commission Trial Staff, dated January 3, 1986, to strike certain testimony submitted by Philadelphia Electric Company, and the amended motion to strike dated January 15, 1986 are hereby granted to the extent they are not inconsistent with the following provisions.

2. That to the extent that any testimony submitted or to be submitted by Philadelphia Electric Company which relates solely to the issue of the reasonableness of the Company's 1976 and 1978 decisions to delay construction of Limerick No. 1 is hereby stricken and may not be relied upon by the parties. For clarification, such stricken testimony shall include, but not be limited to:

- (a) Testimony relating to the financial constraints and the impact of such alleged constraints on the Company's 1976 and 1978 decisions, as fully litigated at I-80100341.
- (b) Testimony as to load growth, capacity needs, excess capacity concerns, fear of Commission sanctions, and economic benefits of the Company as resulting in the Company as resulting in the 1976 and 1978 delay decisions, as fully litigated at I-80100341.
- (c) Testimony relating to Company's concern for ratepayers' interests and extent of rate relief granted, as related to the reasonableness of Company's 1976 and 1978 delay decisions.
- (d) Any other testimony to supplement the record at I-80100341 regarding the reasonableness of 1976 and 1978 delay decisions.

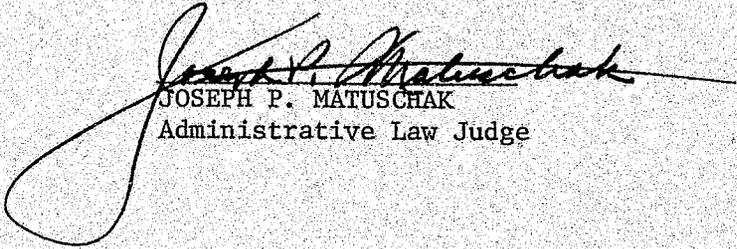
3. That to the extent that certain Company testimony addresses both the issues of the reasonableness of its 1976 and 1978 delay decisions and the quantification of the costs resulting from those decisions, such testimony is permitted only for the purpose of quantification, will not be stricken, and Trial Staff's motion inconsistent thereto is denied.

4. That to the extent that the Company's testimony relates to what portion of the delay could not have been avoided due to external factors even if the Company had not intentionally delayed construction of Limerick No. 1 in 1976 and 1978, will not be stricken, and Trial Staff's motions inconsistent thereto is denied.

5. That to the extent that the Company's testimony relates to how long Limerick No. 1 construction was delayed as a result of the 1976 and 1978 delay decisions, rather than whether the delay decisions were prudent or necessary, such testimony will not be stricken, and Trial Staff's motions inconsistent thereto is denied.

6. That we reserve judgment to make such further ruling on the motions as may be deemed just and proper following conclusion of testimony in this matter.

March 10, 1986


JOSEPH P. MATUSCHAK
Administrative Law Judge

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