PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held January 15, 1988

Commissioners Present:

Bill Shane, Chairman
Linda C. Taliaferro
Frank Fischl
William H. Smith

Petition of Philadelphia Electric Company to Modify Previous Orders Regarding Nuclear Decommissioning

R-850152

P-870282
File also at
R-79060865
R-80061225
R-811626
R-822291
R-842590
R-850152

OPINION AND ORDER

BY THE COMMISSION

On December 29, 1987, the Philadelphia Electric Company ("PECO" or the Petitioner) filed its Petition to Modify Previous Orders Regarding Nuclear Decommissioning. No party has filed a response of any type.

DISCUSSION

The Petition is the owner of all or a portion of the following nuclear generating units: Peach Bottom Unit Nos. 2 and 3, Salem Unit Nos. 1 and 2, and Limerick Unit No. 1.

The Commission has since 1980 included in PECO's cost of service for ratemaking purposes with respect to Pennsylvania intrastate rates, various amounts for the cost of decommissioning the above listed nuclear generating units.

Consistent with its proposals and the Commission's Orders, we understand that the Petitioner has established escrow

accounts for decommissioning the Nuclear Generating Units; has deposited into those accounts the amount of decommissioning expense allowances included in rates son an after-tax basis; and, has required the escrow agents to invest those funds in tax-free securities issued by the Commonwealth of Pennsylvania and its political subdivisions, agencies and authorities, with the limitations that the securities purchased should at a minimum be rated Single A, with maturities in the 8 to 12 year range. We further understand that as of November 30, 1987, approximately $30.5 million was in the escrow accounts, exclusive of approximately $5.7 million in deferred taxes for funds collected prior to 1984.

We also are informed that prior to 1984, the Petitioner did not claim any Federal income tax deductions in connection with nuclear decommissioning costs recognized in its rates, based upon its understanding that such expenditures were not currently deductible.

In 1984, the Tax Reform Act of 1984, Pub. L. No. 98-369, 98 Stat. 494 (1984), was enacted and this legislation provides that, beginning in 1984 and except as otherwise permitted under the Internal Revenue Code (the "Code"), 26 U.S.C. §1 et seq., taxpayers may claim a Federal Income Tax deduction for decommissioning costs only as "economic performance" of the decommissioning process occurs (i.e., the actual performance of decommissioning the Nuclear Generating Units). Consequently, utility companies are required to pay as much as 34% (under current Federal income tax rates) or 46% (under Federal income tax rates in effect in 1986 and prior taxable years since 1980) of the decommissioning costs recognized in rates as Federal income taxes, where the costs are recognized in rates prior to economic performance of the decommissioning process.

In addition to the foregoing, the Tax Reform Act of 1984 added Section 468A to the Code. See 26 U.S.C. §468A.

Utility companies are permitted under that section to claim current Federal income tax deductions for their deposits into a qualified "Nuclear Decommissioning Reserve Fund", as that term is defined therein:

> §468A. Special Rules for Nuclear Decommissioning Costs
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> (a) In General--If the taxpayer elects the application of this section, there shall be allowed as a deduction for any taxable year the amount of payments made by the taxpayer to a Nuclear Decommissioning Reserve Fund (hereinafter referred to as the "Fund") during such taxable year.

The IRC §468A(b) further provides that deposits into a Nuclear Decommissioing Reserve Fund and the associated tax deduction will be limited to the lesser of the nuclear decommissioning costs allowed for ratemaking purposes or the taxpayer's "ruling amount":

> (b) Limitation on Amounts Paid into Fund.--The amount which a taxpayer may pay into the fund for any taxable year shall not exceed the lesser of--
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> (1) the amount of nuclear decommissioing costs allocable to the fund which is included in the taxpayer's cost of service for ratemaking purposes for such taxable year, or
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> (2) the ruling amount applicable to such taxable year.

IRC §468A(d) further provides that no deduction will be allowed unless the utility company requests, and receives, a schedule of ruling amounts:

> (d) Ruling Amount.--For purposes of this section--
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> (1) Request Required.--No deduction shall be allowed for any payment to the fund unless the taxpayer

requests, and receives, from the Secretary a schedule of ruling amounts.

On July 9, 1986, the United States Treasury Department adopted temporary regulations to implement IRC §468A. 51 Fed. Reg. 25033-49 (July 10, 1986). These regulations provide, in Section 1.468A-5T(a)(1), that a Nuclear Decommissioning Reserve Fund must be organized as a trust, rather than an escrow or other arrangement:

> (a) Qualification requirements--(1) In general. A nuclear decommissioning fund must be a trust established or organized and maintained at all times in the United States for the exclusive purpose of providing funds for the decommissioning of a nuclear power plant. A separate nuclear decommissioning fund is required for each electing taxpayer and for each nuclear power plant with respect to which an electing taxpayer possesses a direct ownership interest. An electing taxpayer can maintain only one nuclear decommissioning fund for each nuclear power plant with respect to which the taxpayer elects the application of section 468A.

The regulations further provide in Section 1.468A-5T(a)(2), that a Nuclear Decommissioning Reserve Fund generally is not permitted to accept any contributions in cash or property other than cash payments with respect to which a deduction is allowed under IRC §468A:

> (2) Limitation on contributions Except as otherwise provided in paragraph(b)(1)(ii) of §1.468A-6T (relating to the acquisition of an interest in a nuclear power plant from a taxpayer that maintained a nuclear decommissioning fund with respect to such nuclear power plant), a nuclear decommissioning fund is not permitted to accept any contributions in cash or property other than cash payments with respect to which a deduction is allowed under section 468A(a) and paragraph (a) of 1.468A-2T. Thus, for example, securities

may not be contributed to a nuclear decommissioing fund even if the taxpayer or a fund established by the taxpayer previously held such securities for the purpose of providing funds for the decommissioning of a nuclear power plant.

The regulations further provide, in Section 1.468A-5T(a)(3)(i)(C), that to the extent the assets of a Nuclear Decommissioning Reserve Fund currently are not required to pay decommissioing costs or the administrative costs of the Fund, they are to be invested in the following securities:

> (1) Public debt securities of the United States;
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> (2) Obligations of a State or local government that are not in default as to principal or interest; or
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> (3) Time or demand deposits in a bank (as defined in section 581) or an insured credit union (within the meaning of section 101(6) of the Federal Credit Union Act, 12 U.S.C. 1752 (7) (1982)), located in the United States.

The regulations further provide, in Section 1.468A-8T(b)(2)(i), that deposits into a Nuclear Decommissioning Reserve Fund for taxable years ending on or after July 18, 1984 and beginning before January 1, 1987, must be made within 30 days after receiving a ruling amount applicable to such taxable year:

> (2) Time for making payment to a nuclear decommissioning fund. The amount of any cash payment to a nuclear decommissioing fund that relates to a taxable year that ends on or after July 18, 1984, and begins before January 1, 1987, shall be deemed made during such taxable year if--
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> (i) The taxpayer makes such payment on or before the 30th day after the date the taxpayer receives a ruling

amount applicable to such taxable year; and

(ii) The taxpayer irrevocably designates the amount of such payment as relating to such taxable year on the Election Statement attached to its Federal income tax return (or amended return) for such taxable year.

We are informed that on June 26, 1987, the Petitioner filed with the Internal Revenue Service ("IRS") a request for schedules of ruling amounts with respect to the Nuclear Generating Units. The Petitioner anticipates that the IRS may issue these schedules as early as mid-January, 1988. Once the IRS issues schedules, the Petitioner will have only thirty days to make deposits to a Nuclear Decommissioning Reserve Fund with respect to the taxable years 1984 to 1986.

To ensure that the Petitioner can take advantage of these recent changes in the Federal income tax law by deducting contributions to Nuclear Decommissioning Reserve Funds on a current basis, the Petitioner requests permission to make three modifications to its current nuclear decommissioning practices so that the Petitioner's funding of nuclear decommissioning costs will be fully consistent with IRC §468a and the corresponding regulations as follows:

(a) First, the Petitioner requests permission to establish Nuclear Decommissioning Reserve Funds with respect to the Nuclear Generating Units, and to make contributions to such Funds in accordance with the schedules of ruling amounts that the Petitioner receives from the IRS, as those schedules may be revised from time-to-time. The Petitioner will negotiate with an appropriate trustee, and a copy of the trust agreement for each of the Nuclear Decommissioning Reserve Funds will be furnished to the Commission upon execution. Because the regulations provide that the Peti-

tioner's nuclear decommissioning costs may be deposited into a Nuclear Decommissioning Reserve Fund only to the extent that such costs are included in a schedule of ruling amounts issued by the IRS, and the Petitioner's schedules of ruling amounts will not include all of the Petitioner's nuclear decommissioning costs (e.g., the portion of the costs attributable to taxable years before 1984 is not subject to IRC §468A), the escrow accounts already established by the Petitioner and approved by the Commission would continue to exist, and the Petitioner requests permission to continue making deposits into such escrow accounts in accordance with Commission orders to the extent that nuclear decommissioning costs recognized in rates cannot be deposited into Nuclear Decommissioning Reserve Funds.

(b) Second, the Petitioner requests permission to withdraw investments from the Petitioner's escrow accounts to the extent that such investments were funded by deposits that are included in the schedules of ruling amounts issued by the IRS, and to deposit into the Petitioner's Nuclear Decommissioning Reserve Funds in accordance with the schedules of ruling amounts (i) these withdrawn investments, if either future regulations or the IRS (through future administrative pronouncements) permit such a "rollover" of investments, or (ii) an equivalent amount of other funds, if the IRS precludes such a "rollover".

(c) Third, the Petitioner requests the Commission to permit the Petitioner to invest its nuclear decommissioning funds, whether in previously approved escrow accounts or in Nuclear Decommissioning Reserve Funds, in all of the securities described in Section 1.468A-5T(a)(3)(i)(C) of the regulations, as such regulations may be amended from time-to-time, rather than only in Pennsylvania tax-exempt securities.

Petition, pp. 8-9.

In its Petition, PECO has emphasized that its request will not increase its rates, because it is not seeking any change or increase in its annual accruals for nuclear decommissioning, but is limiting its request to "changes in the mechanism designed to hold and manage nuclear decommissioning funds until the Nuclear Generating Units are decommissioned" (Petition, p. 12). PECO continues and states that to the extent that invested funds are increased, as a result of reduction or elimination of taxes, future accruals may be reduced and customer rates lowered.

We have examined PECO's Petition closely and find that the relief is similar if not identical to that which was sought by the Pennsylvania Power & Light Company, which we approved on August 20, 1987, at P-870231. We found there and again find here that the Petitioner's requests are reasonable and in the public interest[1/] THEREFORE,

IT IS ORDERED:

1. That the Petition to Modify Previous Orders Regarding Nuclear Decommissioning, filed by the Philadelphia Electric Company on December 29, 1987 be, and hereby is, approved.

2. That the Philadelphia Electric Company be, and hereby is, authorized to establish a trust account or accounts for the receipt and holding of nuclear decommissioning funds.

3. That the Philadelphia Electric Company be, and hereby is, directed to deposit in said trust account or accounts, the full pre-tax amounts permitted by the Internal Revenue

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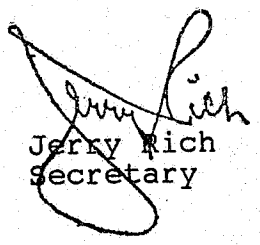
1/ We caution PECO that the subject of the size of trust management fees will be closely examined during rate proceedings and otherwise, as may be appropriate, in order to ensure that they are as low as is reasonably possible.

Service for both past and future years. Further, that amounts currently held in escrow accounts and any future accruals not qualifying for deposit in trust accounts shall be deposited and maintained in escrow accounts.

4. That the Philadelphia Electric Company be, and hereby is, authorized to cause such funds, both those in trust accounts and escrow accounts, to be invested in the types of investments specified in Section 1.468A-51(a)(3)(i)(C), of the Internal Revenue Regulations as they may exist from time to time.

BY THE COMMISSION,



Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: January 15, 1988

ORDER ENTERED: JAN 21 1988