



DON ADAMS
STATE SENATOR
JASPER, TEXAS

The Senate of
The State of Texas

March 9, 1977

Chairman:
Senate Administration Committee
Vice Chairman:
Senate Finance Committee

Honorable Garrett Morris, Chairman
Public Utility Commission of Texas
7800 Shoal Creek Blvd.
Austin, Texas 78757

Dear Mr. Chairman:

The purpose of this letter is to explain my understanding of the legislative intent of Section 41(a) of the Public Utility Regulatory Act relating to the inclusion of construction work in progress in a utility's rate base. My letter is prompted by the Commission's involvement in three cases. I understand that the Commission disallowed construction work in progress in the Southwestern Bell decision, allowed it in the Central Power and Light decision, and that the Commission staff recommends allowance in the Texas Power and Light case. I hope that my understanding of Section 41(a) can be of some help in the Commission's case by case resolution of this issue.

The Public Utility Regulatory Act was a result of compromise between the House and Senate. As I explained in a recent article:

"The House bill which received serious consideration was strong to the point of being confiscatory in the area of rate base and ratemaking, but weak in the area of ethics of the Commission. The Senate bill which received serious consideration left something to be desired in the ratemaking process, but was extremely strong in the ethics provision." 28 Baylor L.Rev. 773,774 (1976).

The House and Senate compromised as a result of this conflict-- "[s]pecifically, the House accepted the Senate version of Commission ethics; the rate base was a true compromise between the House and Senate versions of the bill." Ibid. at 775.

The rate base was to include only property "used and useful", i.e., property dedicated to public service, but construction work in progress could be included "where necessary to the financial integrity" of a utility. My

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understanding of this compromise is to allow construction work in progress, on a case by case basis, when construction work in progress is a major item so as to place a utility in financial duress if the item is not included. To justify an exception to the general rule of disallowance of construction work in progress, the financial health and needs of the utility should clearly outweigh the disadvantages to the customers caused by including construction work in progress in the rate base.

The phrase "necessary to the financial integrity" was not intended to mean that all utilities should be guaranteed a AAA bond rating. If experience shows that a utility is having substantial difficulty raising capital, then inclusion of some or all of the construction work in progress in the rate base is probably justified. One possible solution to this problem would be to phase construction work in progress into the rate base over a reasonable number of years.

The Legislature recognized that a rigid rule was unwise. Consequently, Commission decisions will involve compromise and discretion. With respect to construction work in progress, this should mean caution and selectivity.

With kindest regards, I am

Sincerely yours,

A handwritten signature in black ink, appearing to read "Don Adams", written over the typed name.

Don Adams

DA/dc

cc: Alan R. Erwin
George M. Cowden