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USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION 83 SEP -6 110:19

ATOMIC SAFETY AND LICENSING APPEAL BOARD

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

Administrative Judges:

Christine N. Kohl, Chairman  
Gary J. Edles  
Dr. Reginald L. Gotchy

SERVED SEP 6 1983

In the Matter of )

PHILADELPHIA ELECTRIC COMPANY )

(Limerick Generating Station, )  
Units 1 and 2) )

Docket Nos. 50-352 OL  
50-353 OL

ORDER

September 2, 1983

Applicant has moved to strike the brief of appellant Del-AWARE Unlimited, Inc., and to dismiss the latter's exceptions to the Licensing Board's decisions concerning the supplementary cooling water contentions. Applicant argues that the brief (1) was untimely and we should not have accepted it;<sup>1</sup> (2) relies on extra-record material; and (3) does not comply with the Commission's briefing requirements (e.g., the brief does not have a statement of facts or explicit references to Del-AWARE's exceptions).

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<sup>1</sup> Del-AWARE's brief was due to be filed on Friday, August 19, 1983. Instead, it was filed on Tuesday, August 23, along with a motion to accept it out of time. We received the brief on August 25 and that same day granted the request to accept it late.

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We deny applicant's motion. First, applicant has provided no basis for reconsideration of our decision to accept a brief that was filed two business days late. Our view remains that Del-AWARE established good cause for a grant of such a small extension. More important, applicant does not even suggest that it has been prejudiced in any way by our acceptance of the late filing. Second, to the extent Del-AWARE relies on extra-record material, applicant is free to point that out in its responsive brief. Further, we are fully competent to discern what material has been admitted to the record and what has not been. Third, although the brief has some deficiencies and suffers from an obvious lack of proofreading, we believe that the issues it raises (principally legal, rather than factual) are nonetheless amenable to intelligent challenge and discussion in a responsive brief.<sup>2</sup>

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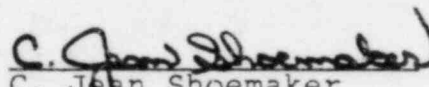
<sup>2</sup> Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-693, 16 NRC 952 (1982), upon which applicant relies for its position that Commission precedent requires a grant of its motion, is clearly distinguishable. Noting that our concern was "not with technical pleading requirements, but with the basic obligation of an intervenor . . . to 'structure [its] participation so that it is meaningful,'" we dismissed an appeal because the intervenor's three-page brief was devoid of any cogent argument. Id. at 957. Our comparison of that document with the 28-page brief filed here by Del-AWARE reveals no similarities. The complaints that applicant voices go more to the merits of Del-AWARE's arguments, rather than to their manner of presentation. In this

(Footnote Continued)

Applicant's motion to strike Del-AWARE's brief and to dismiss its appeal is denied. In accordance with applicant's alternate request, applicant's responsive brief is due within 30 days of this order (i.e., by October 3, 1983). The NRC staff's brief is due within 40 days (i.e., by October 12, 1983).

It is so ORDERED.

FOR THE APPEAL BOARD

  
C. Jean Shoemaker  
Secretary to the  
Appeal Board

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(Footnote Continued)  
connection, we remind Del-AWARE that it "must bear full responsibility for any possible misapprehension of its position caused by the inadequacies of its brief."  
Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), ALAB-666, 15 NRC 277, 278 (1982).