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RELATED CORRESPONDENCE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

I
Lewis/Hodgdon
Chan/Chandler
Rutberg
FP

In the Matter of)
Philadelphia Electric Company)
(Limerick Generating Station,)
Units 1 and 2))

82 OCT 14 P3:37

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH
Docket No. 50-352-OL
50-353-OE

Reply due
Oct. 12, 1982

MOTION OF INTERVENOR DEL-AWARE UNLIMITED, INC. FOR
CHANGE OF HEARING SCHEDULE, CONSOLIDATION
OR TO STRIKE STAFF TESTIMONY

Del-AWARE Unlimited, Inc., by its counsel, hereby moves pursuant to 10 C.F.R. § 2.730 that the Board revise its hearing schedule to permit completion of fact-gathering and NEPA compliance and more thorough consideration of the issues herein, and allow for consolidation of all cooling water issues and avers as the basis thereof the following:

1. On June 1, 1982, the Board ordered that special hearings be held on the supplemental cooling water system, such hearings to be scheduled to permit a decision prior to the inception of construction, in order to allow consideration of potentially necessary changes in such construction in order to minimize or prevent environmental and other damage. The Board directed the applicant to advise the Board as to the proposed construction schedule.

2. By letter dated June 30, 1982, the applicant advised the Board, inter alia, that the cooling water system

was required to be operational in 1984, and the governing constraint was the necessity to limit construction in the River to the November-March season, and that it would be necessary to commence construction in the River by December 15, 1982, this being the "initial phase" of construction. In responding, Del-AWARE Unlimited agreed to the staff's proposed schedule of disposition based on this constraint, with the caveat that information be furnished to justify the necessity to construct the river at the inception of construction. (Staff letter of July 7, 1982) The Board has similarly expressed interest in this aspect. (Conference call of July 21 and Order of September 9, 1982.)

3. The applicant's September 16 Submission and other evidence discloses that the foregoing representations were false and misleading. In depositions on August 6, 1982, the project engineer testified that it was not necessary to complete or begin construction in the river as the first phase of construction of the project. Indeed, he acknowledged that the construction plan shows the in-river construction in Phase Three (Exhibit A), though he claimed that the phasing really has no rhyme or reason. (Tr. 66) The total construction period would be 22-25 months and that construction in the river might take only one (November-March) season. Indeed judging by the cost of river construction (\$1,000 per foot (Exhibit D-34) and a trench of 245 feet), it is ludicrous to suggest 150 days might not be adequate.

4. In its submission of September 16, 1982, and testing, the Applicant not only failed to justify the December 15 date, but also failed to inform the Board of relevant constraints which will preclude meeting its proposed schedule.

5. Applicant's representations to the Board have been dishonest, inconsistent, and incomplete as detailed hereinafter. At its deposition, and in its September 16 Submission, Applicant claims the SCWS is needed for fuel loading and that fuel loading is scheduled for July-October, 1984. (Tr. 56, 61) Yet, in its reports to staff, the applicant has estimated October of 1984 for the "completion" of the Limerick Unit 1, (Letter of September 21, 1982). Completion is a prerequisite to fuel loading. Thus, fuel loading cannot occur until after October, 1984.

6. The applicant has also claimed that the plant cannot be tested, which occurs prior to completion of construction, without the completion of the supplemental cooling water system. (Tr. 56) However, if this were true, this would mean that the diversion would not be completed, according to Applicant's schedule, until after the scheduled completion of construction of Unit 1, which is internally inconsistent. Thus, either the supplemental cooling water is not needed for testing, or testing is not expected until late 1984.

7. The December 15, 1982 date for inception of construction is already obsolete, in that the milestone dates precedent to such construction have not been met. Specifically, the NWRA did not advertise for bids until September 3, 1982, although the schedule called for NWRA to advertise for bids on August 15, 1982. Further, on September 1, 1982, a majority of the County Commissioners, whose approval of bids is required, publically expressed their intention to obtain a new and independent financial analysis prior to determining whether construction will take place at all. Moreover, Bradshaw Reservoir is necessary to the system and the applicant has estimated a 24 month construction period for Bradshaw Reservoir, but has not yet started construction. Bradshaw plans were provided to Del-AWARE only on September 22, 1982. PECO's PUC proceeding for overriding local zoning for Bradshaw and/or its pumphouse is pending before the Pennsylvania PUC. The system cannot function without Bradshaw, and it would be improvident in the extreme to construct Bradshaw without approval of its pumphouse.

8. No materials are available for installation in the River, and delivery time is 9-12 months. (Exhibit D-67)

9. In fact, Applicant has not plan to have the SCWS in 1984. In internal documents, PECO has estimated April, 1985 for completion of the SCWS (Exhibit D-37-1), thus

contradicting its representations and sworn testimony, and establishing that the River intake can be accomplished in 1983-84 and 1984-85, if necessary, without deferring system completion.

10. The applicant's dishonesty is motivated by its desire to accelerate construction for political reasons, as shown by Exhibit D-35a. Moreover, it is prejudicial to a proper decision.

11. On the present record, the staff is unable to complete its environmental review, and thus its DES until after the conclusion of the hearings. Its testimony shows the incompleteness of its reviews. Staff requests for information are still being served on the Applicant. (Exhibit A) In addition to precluding appropriate NEPA staff review, required for initial decision by 10 C.F.R. § 51.5, this fact also means that the data is not available to make such an evaluation with relevant consultation as required by the National Environmental Policy Act and the Regulations. Staff has not yet coordinated with the agencies with fisheries expertise, as required by the Fish & Wildlife Coordination Act, 16 U.S.C. § 661 et. seq. Moreover, Del-AWARE witnesses have found that critical information has not been sought, much less provided. Present hearings, on at least staff testimony, are thus contrary to the Commission's regulations.

12. Further prejudice comes from segmentation of issues. Although this Board has ordered hearings on certain aspects of the issues, other potential issues have been referred to the staff as suggested by the Board SPCO, by request of Del-AWARE dated July 2, 1982, having previously been brought to the attention of the staff repeatedly since June, 1981 by letter, and the staff having notified the applicant for the need for such review at least as early as January 5, 1981. These issues deal with the impacts defined as construction impacts. Many of the facts relating to these issues are overlapping with those presently before the Board. Del-AWARE has asked the staff to refer the matter to the Board to be consolidated with the present proceeding, or to recommend to the Commission that it do so. (Exhibit B) No responsive reply has been received from the staff.


13. A major common issue which has not been addressed is the effect of the cessation of Unit 2, required by the Pennsylvania P.U.C. Order of August 27, 1982, on the need and feasibility of the system as proposed.

14. In these circumstances the interests of justice and expeditious resolution would be furthered by the consolidation of these issues. The intervenor has again solicited the staff to do so by letter dated September 23, a copy of which is attached hereto as Exhibit C.

15. Despite extreme hardship, and constantly changing plans and data, Del-AWARE's counsel has complied substantially with every date established by this Board for discovery and filing, and has requested no delays. Compliance with this unnecessary schedule has caused extreme prejudice to Del-AWARE in that it has had to incur unnecessary costs of discovery which could have been avoided had a normal schedule been set.

16. In light of all the foregoing, it is clear that present construction is unnecessary and prejudicial, and that the present schedule of hearings is not optimal, is unnecessary, and is not in the public interest, and is contrary to rule and statute.

WHEREFORE, Del-AWARE moves that the Board suspend the hearings to commence on thirty days notice, direct applicant to withhold any construction pending decision, and that the Board certify to the Commission the issue of inclusion in these proceedings by way of consolidation the Requests previously made to the staff regarding construction impacts and changes, and award reasonable attorney's fees to Del-AWARE because of the unnecessary burdens imposed by applicant's false claims.



ROBERT J. SUGARMAN
Attorney for Del-AWARE
Unlimited, Inc.

OF COUNSEL:

SUGARMAN & DENWORTH
Suite 510
121 South Broad Street
Philadelphia, PA 19107
(215) 546-0162

September 27, 1982

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CERTIFICATE OF SERVICE

I hereby certify that I have served copies of the Foregoing Motion of Intervenor Del-AWARE Unlimited, Inc. for Change of Hearing Schedule and Consolidation of Issues by mailing a copy of the same to the following persons this 27th day of September, 1982.

Lawrence Brenner, Esq., Chairman
Administrative Judge
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Richard F. Cole
Administrative Judge
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Peter A. Morris
Administrative Judge
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Stephen H. Lewis, Esq.
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Troy B. Conner, Jr., Esq.
Conner and Wetterhahn
1747 Pennsylvania Avenue
Washington, D.C. 20006

Mr. Edward G. Bauer
Vice President & General Counsel
Philadelphia Electric Company
2301 Market Street
Philadelphia, PA 19101



Robert J. Sugarman



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

RECEIVED

SEP 24 1982

SUBMITTED

Docket Nos.: 50-352/353

SEP 21 1982

Mr. Edward G. Bauer, Jr.
Vice President & General Counsel
Philadelphia Electric Company
2301 Market Street
Philadelphia, Pennsylvania 19101

Dear Mr. Bauer:

Subject: Request for Additional Information - Limerick Environmental Review

Pursuant to our recent environmental site visit and earlier submittals of draft environmental questions, the Aquatic and Terrestrial Sections of the Environmental Engineering Branch, and the Hydrologic Section of the Hydrologic and Geotechnical Engineering Branch have requested the information delineated in Enclosure 1. Much of this material has already been telecopied to you. Several of the items contained in the enclosure represent modified forms of earlier draft questions. For convenience, the numbering system employed in the draft submittals has been preserved here. Accordingly, in cases where a draft question has been deleted or where a response has already been received, the appropriate indication is given.

Please provide us, within 7 working days from receipt of this letter, with the date(s) on which you plan to respond to the above. In cases where you have already provided responses (based on receiving our telecopied requests), please indicate so. Any questions concerning this information request should be directed to Dr. Harvey Abelson (301) 492-9774, the Licensing Project Manager.

Sincerely,

A. Schwencer, Chief
Licensing Branch No. 2
Division of Licensing

Enclosure:
As stated

cc: See next page

EXHIBIT 20

SUGARMAN & DENWORTH

ATTORNEYS AT LAW

SUITE 510, NORTH AMERICAN BUILDING

121 SOUTH BROAD STREET

PHILADELPHIA, PENNSYLVANIA 19107

(215) 546-0162

ROBERT J. SUGARMAN
JOANNE R. DENWORTH

SUITE 803
1201 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004
12021 737-4480

ROBERT RAYMOND ELLIOTT, P. C.
COUNSEL

* NOT ADMITTED IN PA.

9/11
Referred
NRC
LP

September 3, 1982

(Mr.) Harold Denton
Director
Division of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

RE: Philadelphia Electric Co.
50-352
50-353

Dear Mr. Denton:

This will supplement my letters to you dated July 6, 1982, and August 13, 1982, regarding the necessity for reopening and reconsidering the construction permits for the above projects in light of the changes thereto, and the present conditions.

Recently, in reviewing documents produced by Philadelphia Electric Company, we discovered a letter written by NRC staff dated January 5, 1981, copy enclosed, in which NRC staff committed to engage in a thorough review of the Point Pleasant diversion at the OL stage, due to the unavailability of detailed information at the CP stage. In our view, this letter makes it clear that there must be a thorough review of all aspects of the Point Pleasant diversion, and not only limited to so-called operating impacts, or those arising from "changes".

Despite the staff's intention, as expressed in the January 5, 1981 letter, it appears that such will not be the case, based on the Licensing Board SPCO of June 1, 1982 reaffirmed in its July 14, 1982 Order. The Board held that consideration will be limited to operating effects and to changes since the original CP proceeding. At the same time, in responding to our July 6, 1982 letter the staff in its July 9, 1982 letter to PECO, limited its information request to project changes since the 1973-75 period.

EXHIBIT B

The foregoing suggests that consideration of effects will be limited to those resulting from project changes since the earlier plan.

Indeed, in its response dated August 20, 1982, PECO not only construed the staff request in this limited fashion, but further limited itself to a comparison of the environmental impacts of the changes, and further indicated that the DRBC proceedings could be cited in lieu of discussing the actual impacts in many cases.

In this posture, there appears to be no assurance of the thorough environmental consideration committed by the staff in its letter of January 5, 1981, and also committed to the DRBC and EPA, as reflected in the DRBC proceedings of February 18, 1981. (Copy enclosed)

While there was an Environment Impact Statement in 1973, the staff relied on the DRBC EIS for matters regarding the Point Pleasant diversion, and the DRBC EIS said that the details were not sufficiently developed to evaluate the impacts of the intake at Point Pleasant. (DRBC EIS, at p34, copy enclosed)

Thus, unless present plans are changed, there will have been no thorough review of the Point Pleasant diversion at any time. Dramatic changes continue to occur. Most importantly, I wish to bring to your attention the action of the Pennsylvania Public Utility Commission on August 27, 1982 ordering Philadelphia Electric Company to cancel or suspend construction on Unit 2. I request that the staff take note of this action by the Pennsylvania PUC that Unit 2 is not needed and will not be built at any time certain as determinative of the need and necessity for the construction. In the context of our pending Request to Suspend, etc. it requires new consideration of alternative sources of cooling water supply in light of the necessity for only half of the previously required supplemental water supply.

Also, I request that you take cognizance of the recent action of the Delaware River Basin Commission in accepting its Level B Study, and publishing its staff findings in the draft Background Report on Interstate Water Management in July, 1982, indicating that reevaluation of the adequacy of water in the Delaware River to support depletive uses without unacceptable consequences has led to a determination that such resources are inadequate.

In addition, the Level B Study also establishes that depletive withdrawals in the non-tidal section of the river adversely affect dissolved oxygen levels at the upper end of the estuary, which is crucial to the passage of fish through that section of the river.

Thus, these changes together should lead to a determination by the NRC that the CP proceedings must be reopened, and reexamined in light of the present factual circumstances, leading to a determination that the depletive use of the water for Limerick Units 1 and 2 is no longer supportable, based on the findings of the PUC and DRBC.

Also, I would like to call your attention to the recent identification of various toxic substances in the Delaware River water, which is proposed to be transported into the Neshaminy and Perkiomen Creeks as a result of the project, this being information which was not available or considered at the CP stage. While seemingly this is a change in circumstance which should warrant consideration in the OL proceeding, the Board has indicated that absent a showing that the transfer of toxics is attributable to a change in the project design, this matter is foreclosed as having been decided at the CP stage. (Order of June 1, 1982, Order of July 14, 1982, at 10-11.) Yet this clearly seems a change in circumstance which requires consideration.

Finally, I would like to note for your attention the Board's Order of July 14, 1982, holding that impacts of the project on the Point Pleasant eligible historic district and the Delaware Canal, arising through blasting and defacement of the area, are construction rather than operating impacts. Since the review of the intake and the Point Pleasant aspects of the diversion were limited to the matters available to and reported by the DRBC, and the DRBC had no details on these subjects, design not having been far enough advanced at that time, these matters should further be considered as a change in the CP record requiring reconsideration of the conditions on the permits.

For more than a year now, by correspondence and at the Prehearing Conference, Del-AWARE has been calling on the NRC to conduct a thorough environmental review of the Point Pleasant project. For more than a year, we have been told that such a review would be forthcoming. (Correspondence enclosed) Only in June, 1982 were we informed that construction impacts should be separately addressed. Now that we have filed a formal Request under § 2.206, as suggested by the Licensing Board, and have seen the

September 3, 1982

proceedings as they are developing, it is clear that unless there is a substantial change in the thrust and scope of the review, there will be no thorough evaluation of the Point Pleasant diversion. At the same time, the applicant has suggested that construction will begin on December 15, 1982, thus as a practical matter prejudicing, if not foreclosing, opportunity for remedial action after that time.

In view of the necessity to address these matters in a timely fashion, I urge you to immediately initiate proceedings as requested in our letter of August 13, 1982. Specifically, I ask you to initiate a proceeding in the Commission. In the event of your failure to do so promptly, we will have to consider other options that may be open to us.

Thank you for your consideration.

Sincerely



Robert J. Sugarman

RJS/amh

Enclosures

September 23, 1982

Mr. Harold Denton
Director
Division of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Denton:

I acknowledge receipt of Mr. Eisenhut's letter of September 10, 1982, concerning Del-AWARE's Section 2.206 Request regarding the Limerick Generating Station.

Unfortunately, as I have repeatedly stated to the staff, the current proposal is for this project to be under construction on December 15, 1982. Mr. Eisenhut's letter continues the Staff's refusal to act on the Request in a timely fashion. Indeed, reviewing the NRC regulations, I observed that the Commission reserves a 25 day period following the staff decision in order to decide what to do about such decisions. See 10 CFR Section 2.206 (C-1). Thus, the staff timetable will preclude any assurance that the Commission will reach a decision or take action prior to the time of proposed inception of construction.

The staff's non-responsiveness to the merits of the Petition is inexplicable. This is especially true in light of the decision of the Pennsylvania PUC, which I called to your attention on September 3, 1982, calling for the cessation of construction on Unit 2, and the consequent need for a new benefit-cost determination to reflect the need for the Delaware River diversion. I call your attention to people of the State of Illinois vs. NRC, U.S. Ct. App. September, 1980, and the Boston Edison case of 1981.

It is with some growing frustration over Del-AWARE's inability to obtain any responsive answer that I now request once again that the staff respond to our Request in a timely manner. I also wish, once again, to call your attention to the fact that we have been requesting such action of the staff since June, 1981, and in fact, the staff letter to PECO dated January 5, 1981, indicated that the staff was aware of its responsibility at that time.

EXHIBIT ←

Any indication that the Licensing Board hearings should be based upon as the basis for decision on this Request is obviously inappropriate, in view of the fact that the Licensing Board itself stated that we should apply to the staff for this relief because the issues to be raised here are not appropriate in the Licensing Board proceeding.

Again, in view of the overlapping factual setting of this request with the Operating Licensing Board hearings scheduled for October 4-8, I think I am at least entitled to an answer to the questions, "Why does it not make sense to combine these proceedings?" "Why cannot the staff take timely action in eighteen months?"

A responsive response, I suggest, is the least relief to which Del-AWARE is entitled.

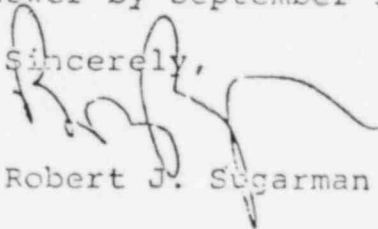
I am also enclosing another copy of the Pennsylvania PUC Order directing the cessation of construction on Unit 2, and in light of recent electrical utilization trends as reported, showing continuing downward use, I suggest that the staff must take account of the fact that there will likely never be any need for any further action with respect to Unit 2, and the consequent necessity to reevaluate supplemental cooling water alternatives.

In this connection, I also wish to bring to your attention September 14, 1982 letter from U.S. Fish & Wildlife Service and the Army Corps of Engineers suggesting the necessity for reconsidering their alternative evaluation in light of the Pennsylvania PUC action, and further proposing an alternative in the Schuylkill River basin for obtaining supplemental cooling water, in light of the likely reduced need.

While the Operating License Board has noted, without endorsing or relying upon, the statement of the director of the Neshaminy Resources Authority that the project would be constructed even without PECO participation, I wish to bring to your attention a letter obtained from PECO files showing that the opposite statement was in fact made by the same individual, thus rendering his affidavit unbelievable and incredible. A copy is enclosed.

I request a responsive answer by September 30, 1982.

Sincerely,


Robert J. Sugarman

RJS/llw

osures