

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



Before the Atomic Safety and Licensing Board

In the Matter of )  
 )  
Philadelphia Electric Company ) Docket Nos. 50-352  
 ) 50-353  
(Limerick Generating Station, )  
Units 1 and 2) )



APPLICANT'S ANSWER TO PETITION FOR  
INTERVENTION OF DEL-AWARE UNLIMITED, INC.

Preliminary Statement

On August 21, 1981, the Nuclear Regulatory Commission ("Commission" or "NRC") published a notice in the Federal Register entitled Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), Receipt of Application for Facility Operating Licenses; Consideration of Issuance of Facility Operating Licenses; Availability of Applicant's Environmental Report; and Opportunity for Hearing" ("Notice"). <sup>1/</sup>

In response to the Notice, a petition for intervention was filed by Del-Aware Unlimited, Inc., attached to a cover letter to the Secretary, dated September 21, 1981. Applicant is advised that the postmark on the letter to the Secretary is dated September 22, 1981. The cover letter reflects that the NRC Staff and Applicant's counsel were served on September 22, 1981. The certificate of service, which was

1/ 46 Fed. Reg. 42557 (August 21, 1981).

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also mailed on September 22, 1981, likewise indicates service on September 22, 1981.

The petition is signed by Del-Aware's counsel. However, the petition is not supported by the statements of individual Del-Aware members asserting an interest in the proceeding and authorizing Del-Aware to represent that interest. For the reasons discussed more fully below, petitioner Del-Aware has failed to satisfy the requirements for organizational standing in an NRC proceeding. Also, the "aspects" of the proceeding it wishes to pursue have already been resolved or are within the primary jurisdiction of other agencies. Finally, the petition is untimely. Accordingly, the petition should be denied.

Argument

I. Petitioner Has Failed To Satisfy The Requirements For Organizational Standing.

Under the Commission's Rules of Practice, a petition to intervene in a licensing proceeding may be granted only if the requirements of 10 C.F.R. §§2.714(a)(2) and (d) have been satisfied. In essence, the regulations require the petitioner to state his specific interest in the proceeding and explain how that interest may be affected by the outcome of the proceeding.

It is now well settled that "organizations . . . are not clothed with independent standing to intervene in NRC licensing proceedings. Rather, any standing which [an

organization] may possess is wholly derivative in character." Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 390 (1979).<sup>2/</sup> In other words, an organizational petitioner must establish that at least one of its members has legal standing to intervene in this proceeding under the rules applicable to individual petitioners.

In response to the petition of Marvin I. Lewis to intervene in this proceeding, Applicant has stated its position as to the necessary particularization of an identifiable interest in a licensing proceeding, including an explanation of how that interest would be affected by any given outcome in the proceeding. This position is equally applicable to the generalized statements of petitioner Delaware herein. Rather than furnish the Licensing Board with repetitive pleadings, Applicant hereby incorporates and respectfully refers the Board to its answer to the Lewis petition for a statement of the additional authorities upon which it relies in opposing the instant petition.<sup>3/</sup>

The Del-Aware petition states that petitioner is an organization of more than 500 members who reside in Bucks

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<sup>2/</sup> See also Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-79-18, 9 NRC 728 (1979); Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73 (1977).

<sup>3/</sup> Petitioner herein has been served a copy of Applicant's answer to the Lewis petition.

County and in Montgomery County who use water from the Delaware River and its tributaries.<sup>4/</sup> All of the allegations in the petition pertain to cooling water supply issues. However, assuming that the Commission could properly consider such matters,<sup>5/</sup> the petition is not supported by the statement of any Del-Aware member attesting to his use of water from the Delaware River and tributaries furnishing cooling water to the Limerick plant (i.e., the Perkiomen Creek), or otherwise stating facts sufficient to demonstrate its personal interest in the proceeding. Instead, the petition simply states in general terms that Del-Aware members are residents of the area and depend on these waters.

The failure of Del-Aware to delineate the interests of its members is fatal to the petition. In the Allens Creek decision in ALAB-535, the Appeal Board emphasized that the Licensing Board "was not merely entitled but obligated to satisfy itself that there was at least one member of the Guild with a particularized interest which might be affected by the outcome of the proceeding" and, further, that the Board was not required "to presume that the [petitioner] had a member with the requisite affected interest on the strength of nothing more than the naked representation in its petition that a certain number of [petitioner's] members reside

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4/ Del-Aware petition at 1.

5/ In Part II, infra, Applicant demonstrates that these environmental issues have been fully analyzed and that prior determinations should not be reopened.

within 'close proximity' to the site of the proposed facility."<sup>6/</sup>

The Appeal Board explained its rationale as follows:

Although it may be reasonable to suppose that most (perhaps all) [petitioner's] members share that dedication as well as subscribe to the general objectives of the organization as spelled out in the petition, it scarcely follows perforce that each considers that construction of the Allens Creek facility would invade some personal interest "arguably within the zone of interests sought to be protected or regulated" by either the statutes this Commission enforces or the Constitution. Insofar as we are aware, joining and retaining membership in [petitioner] does not signify adherence to any particular views regarding the desirability of nuclear power facilities, either from a civil liberties standpoint or otherwise. Nor, more importantly, does there appear to be any necessary link between holding [petitioner] membership and possessing an interest which might be affected by the construction or operation of such a facility. Indeed, for all that appears on this record, the personal interests of any particular [petitioner] member might be advanced, rather than harmed, by the construction of Allens Creek - i.e., the proposed licensing action would cause the member no injury in fact at all.

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Absent disclosure of the name and address of one such member, it is not possible to verify the assertion that such members exist. In a footnote in their brief, the amici curiae endeavor to brush this consideration aside by noting that the veracity of [petitioner's] allegation that it has nearby members that has never been challenged and, were it to be, the Board below could require

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<sup>6/</sup> ALAB-535, 9 NRC at 391-92.

a [petitioner] officer to submit an affidavit attesting to the truthfulness of the allegation. What this line of reasoning ignores is that both the Board and the other parties were entitled to be provided with sufficient information to enable them to determine for themselves, by independent inquiry if thought warranted, whether a basis existed for a formal challenge to the truthfulness of the assertions in [petitioner's] petition. Beyond that, we are unprepared to accept amici's implicit theses that standing may be established by means of an affidavit which makes conclusory assertions not susceptible of verification by either other litigants or the adjudicatory tribunal. We know of no authority for such a novel and unattractive proposition, which to us runs counter to fundamental concepts of procedural due process. 7/

Because petitioner in Allens Creek did not satisfy this requirement, its petition to intervene was denied.

The same approach has been taken in a number of other licensing cases. For example, in the Enrico Fermi proceeding, the Board stated that an organization which seeks to intervene on the basis of the interest of its members "must identify specifically the name and address of at least one effective member who wishes to be represented by the organization."<sup>8/</sup> In Waterford, the Board similarly stated that institutional standing requires the representative to demonstrate that at least one of its members has satisfied the "injury in fact" and "zone of interest" tests and has at

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7/ Id. at 392-93 (footnote and citations omitted) (emphasis in original).

8/ Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73 (1977).

least implicitly authorized the organization to represent his interests.<sup>9/</sup> More recently, the Licensing Board in the Perry proceeding also stated the requirement that petitions for intervention "be accompanied by one or more affidavits stating the place of residence of members on whom standing is based and stating that the organization is authorized to represent the member's interests."<sup>10/</sup>

In the Big Rock Point proceeding, the Licensing Board held that intervention must be denied because the organization had failed to identify specific members by name and address, provide a statement by such members authorizing the organization to represent it, and provide a statement of the member's interests which would be affected by the proposed action.<sup>11/</sup> And in Comanche Peak, the Licensing Board reiterated that while an organization can establish standing through its members whose interests may be affected, the "specific members must be identified, how their interest may be affected must be shown, and the members' authorization to the organization must be stated . . . ."<sup>12/</sup>

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<sup>9/</sup> Louisiana Power and Light Company (Waterford Steam Electrical Station, Unit 3), Docket No. 50-382, "Memorandum and Order" (March 7, 1979) (slip opinion at 4).

<sup>10/</sup> Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-440 and 50-441, "Memorandum and Order Scheduling Prehearing Conference Regarding Petitions for Intervention" (April 9, 1981) (slip opinion at 6).

<sup>11/</sup> Consumers Power Company (Big Rock Point Nuclear Plant), Docket No. 50-153, "Memorandum and Order" (September 25, 1979) (slip opinion at 4).

<sup>12/</sup> Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-79-18, 9 NRC 728, 729 (1979).

Accordingly, the unsupported statements by petitioner fail to establish the requisite personal interest of its members necessary for intervention.

Moreover, Del-Aware's mere exhibition of some interest in the supply of cooling water for Limerick is not a basis for intervention because the Supreme Court "has held that an organization's mere interest in a problem, 'no matter how long-standing the interest and no matter how qualified the organization is in evaluating the problem,' is not sufficient for standing to obtain judicial review."<sup>13/</sup>

II. The Aspects Petitioner Wishes To Litigate Relate to Water Supply Issues Which Have Been Finally Resolved Or Are Within The Primary Jurisdiction Of Other Agencies.

The "aspects" as stated by petitioner all appear to fall into one of two categories. The first category involves matters which have been thoroughly reviewed by the Commission and by the Delaware River Basin Commission ("DRBC") several years ago. Absent some showing of significantly changed conditions in accordance with 10 C.F.R. §51.21, there is no basis for this Board to consider such matters. The petitioner has only baldly alleged changed circumstances without setting forth any specific aspect thereof. See generally Alabama Power Company (Joseph M. Farley Nuclear Plant, Units 1 and 2), CLI-74-12, 7 AEC 203 (1974).

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<sup>13/</sup> Westinghouse Electrical Corp. (Export to South Korea), CLI-80-30, 12 NRC 253, 258 (1980), citing Sierra Club v. Morton, 405 U.S. 727, 739 (1972).

The second category involves matters recently approved by the DRBC or pending before the United States Army Corps of Engineers. The petitioner apparently seeks to relitigate the issues decided by those agencies in this proceeding. The respective roles of other agencies was recognized by the Appeal Board in ALAB-262,<sup>14/</sup> which distinguished between the responsibilities of the DRBC and the NRC. As such, there is no basis for the NRC to relitigate the issues before those agencies or to substitute its judgment therefor. Accordingly, petitioner has set forth no specific aspect for its standing which would permit them to be admitted as parties.

The basis for this understanding between the NRC and DRBC as regards compliance with NEPA in considering water supplies for Limerick is explained in the decision of the Appeal Board approving the issuance of construction permits for Limerick. See Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), ALAB-262, 1 NRC 163 (1975).

The primary jurisdiction of DRBC over water supply issues in Limerick was described by the Appeal Board as follows:

Responsibility for water supply and water quality matters concerning the Delaware River and its tributaries is vested in the Delaware River Basin Commission (DRBC), a regional agency

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<sup>14/</sup> Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), ALAB-262, 1 NRC 163 (1975).

created by intergovernmental compact. Under the terms of the compact, DRBC has jurisdiction over both the development of water storage facilities to augment the water supply in the Basin during periods in which the natural flow of fresh water is reduced, and the allocation of water to approved projects within the Basin. (Delaware River Basin Compact §§2.7, 3.1-3.8, 4.1-4.5, 75 Stat. 692-96). DRBC regulates the supply and use of water in the Basin through a comprehensive plan which it has devised. 15/

As noted by the Appeal Board, environmental review of the water supply components for Limerick involved in the Point Pleasant Diversion Plan was conducted by DRBC and resulted in the issuance of its Final EIS in February 1973. The opinion of the Appeal Board is clear that the Staff properly utilized DRBC's findings and conclusions in preparing its own Limerick FES. 16/ The Appeal Board stated:

In sum, we hold that the DRBC had authority to prepare an environmental impact statement on the Point Pleasant Diversion project in compliance with the requirements of NEPA. It was therefore entirely appropriate for this Commission's staff to use that statement as a basis for its own assessment of the impact of the Point Pleasant Diversion insofar as Limerick is concerned. 17/

The preeminence of DRBC with regard to water supply matters is emphasized by the Appeal Board in categorically rejecting a condition to the construction permit attached by the

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15/ 1 NRC at 167-68.

16/ Id. at 171.

17/ Id. at 189.

Licensing Board which would have required the NRC to conduct its own environmental review of any DRBC decision authorizing a supplemental reservoir for the supply of supplemental cooling water. In this regard, the Appeal Board said:

The latter portion of that condition, requiring this Commission to conduct its own environmental review of any DRBC decision authorizing a supplemental reservoir, stemmed from the Board's mistaken view as to the status of the DRBC. The DRBC being a federal agency for NEPA purposes, it will now be for that agency alone to determine whether the construction and utilization of a supplemental reservoir represents a better alternative than operation as a "river follower." If its determination is in the affirmative, it can direct the applicant to proceed with the reservoir. In any event, its decision concerning the reservoir will not be subject to review by this Commission (except to the extent that such a decision might have any collateral safety implications). 18/

All of the environmental impacts which petitioner herein seeks to relitigate were encompassed within the voluminous record of environmental review compiled by DRBC over a period of a decade in that proceeding. Essentially, DRBC's environmental analyses reviewed the project from the viewpoint of the availability of water supplies in the affected areas and anticipated adverse effects upon water quality, biota and marine life, wildlife, recreational uses,

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18/ Id. at 205-06.

endangered species and their critical habitats, and historic sites.

These matters have been comprehensively considered by DRBC in two separate environmental reviews. The first of these was DRBC's Final Environmental Impact Statement for the Point Pleasant project, issued in December 1973. This review incorporated the views and comments from numerous State and federal agencies, including the United States Environmental Protection Agency, the Department of the Interior, and the Army Corps of Engineers.

After the applications were filed for final agency approval for those components of the project not previously approved, DRBC again conducted a thorough examination of environmental factors to determine whether any changed circumstances had occurred with respect to the Point Pleasant Diversion Plan. Again, the views of all concerned State and federal agencies were solicited and obtained. The resulting draft Environmental Assessment was made available for public comment and circulated among the various responsible agencies for their comments in February 1980. In August 1980, DRBC published its Final Environmental Assessment, concluding that no changed circumstances existed and reaffirming its prior determination that environmental impacts from the diversion were minimal and could be effectively mitigated.

A public hearing was then conducted from November 18 to December 12, 1980, at which time members of the public were permitted to make oral or written submissions. After a careful review of all the matters contained in its exhaustive record, DRBC issued a decision on February 18, 1981 in Docket D-79-52 CP, granting approval to all components of the Point Pleasant Diversion Plan not previously approved.<sup>19/</sup>

This decision by DRBC was subsequently taken to the United States District Court for review in Delaware Water Emergency Group, et al. v. Gerald M. Hansler, et al., Civil Action No. 80-4372 (E.D. Pa., August 17, 1981), in which a number of organizations and individuals contended that these environmental impacts had not been adequately considered. In its decision,<sup>20/</sup> the Court reaffirmed DRBC's basic jurisdiction over water resources within the Delaware River Basin under its Compact and reviewed in detail the history of agency review as to the water supply aspects of the Limerick project. In sustaining the adequacy of DRBC's review, the Court stated:

A study of the record and admitted factual background of this case makes abundantly certain that the final plan that has now been granted approval by DRBC for construction has been (1) subject to almost constant study by

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<sup>19/</sup> A copy of the DRBC decision in Docket No. D-79-52 CP (February 18, 1981) is attached for the convenience of the Board.

<sup>20/</sup> A copy of the Court's "Memorandum Opinion and Order" is attached for the convenience of the Board.

many public and private entities for at least fifteen years last past; (2) approved and included in the DRBC Comprehensive Plan in substantial concept for many years; (3) the subject of at least three FEIS's by three different agencies. 21/

In commenting upon DRBC's most recent environmental analysis, the Court stated:

The Final Environmental Assessment (FEA) issued on August 15, 1980, is a detailed document. A careful review of that document convinced me that its substantive content is sufficiently detailed and thorough to meet the substantive statutory requirements of 42 U.S.C. §4332(2)(C), and contains adequate discussion of all of the five enumerated statutory particulars. 22/

Further, what the Court had to say about the nature of plaintiffs' challenge in that case is equally applicable to the attempt by petitioner herein to relitigate issues long resolved:

In effect, plaintiffs seek to re-open and challenge portions of the Comprehensive Plan that have long been approved. It is plain from the complaint and plaintiffs' briefs and argument that they disagree with the basic concept of diverting water from the Delaware River for the two projects, although the immediate relief sought is a declaration that the §3.8 approvals are procedurally invalid because DRBC did not cause another FEIS to be prepared on the applications. All of the same issues that plaintiffs contend have been inadequately considered in

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21/ Slip opinion at 16.

22/ Id. at 28.

the environmental assessment and by DRBC were considered when DRBC, after presentation of prior environmental impact statements, added the Point Pleasant pumping station to the Comprehensive Plan with a proposed maximum water withdrawal of 150 mgd. 23/

Finally, the Court addressed itself to the proper standard of review in determining whether additional analysis was necessary. Its conclusion is relevant because it bears upon the standard of changed circumstances utilized by the NRC in considering environmental impacts in licensing proceedings under 10 C.F.R. §50.21, discussed below. The Court said:

The question is not whether the projects themselves will have some significant adverse environmental impact, but whether the changes in the projects heretofore approved will have some significant adverse environmental impact not previously considered. Regardless of how strict a standard of review is applied, the decision to proceed without another environmental impact statement was legally valid and proper. DRBC's action was reasonable; it was based upon a full consideration of facts and circumstances of the case; it was done with deliberation and not in an arbitrary or capricious manner, and to the extent that DRBC was vested with any discretion in deciding to proceed by way of a "negative declaration," there was no abuse of discretion. The record establishes that DRBC complied with all challenged statutory and regulatory requirements. 24/

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23/ Id. at 32-33.

24/ Id. at 47-48.

No changed circumstances are alleged in the instant petition.<sup>25/</sup> Given the plenary jurisdiction of DRBC over such matters, as acknowledged by the Appeal Board in ALAB-262, there is no warrant for litigating anew DRBC's comprehensive environmental analysis in this proceeding.<sup>26/</sup>

While a number of the petitioners herein participated in one form or another in the proceeding before DRBC,<sup>27/</sup> Del-Aware chose not to participate.

As noted above, the NRC in the construction permit proceeding reviewed the environmental analysis performed by DRBC as part of the Staff's own Final Environmental Statement at the construction permit stage. The adequacy of this review was upheld by the Appeal Board in ALAB-262. Nevertheless, from the statements in its petition, petitioner apparently seeks to reopen the review made by the Commission at the

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<sup>25/</sup> The bare assertion to the contrary by petitioner in paragraph 4 is certainly not a basis for initiating yet another environmental review of the same issues by the NRC at the operating license stage.

<sup>26/</sup> In like manner, it has always been known that permits would have to be obtained from other agencies, e.g., the issuance of the necessary certification or waiver from the Pennsylvania Department of Environmental Resources pursuant to Section 401 of the Clean Water Act, 33 U.S.C. §1341(a)(1). See generally Public Service Company of Indiana, Inc. (Marble Hill Generating Nuclear Generating Station, Units 1 and 2), ALAB-459, 7 NRC 179, 189 (1978).

<sup>27/</sup> Limerick Ecology Action, Keystone Alliance, Air and Water Pollution Patrol, Consumers Education and Protective Association, and Friends of the Earth were participants. See attached Appendix G to DRBC Final Environmental Assessment for the Neshaminy Water Supply System (August 1980).

construction permit stage, approved by the Appeal Board in 1975 and affirmed by the Third Circuit Court of Appeals in the same year.<sup>28/</sup>

With regard to consideration of environmental impacts under 10 C.F.R. Part 51, the Commission has enunciated the scope of review in the regulations governing the preparation of the Applicant's Environmental Report at the operating license stage. Thus, 10 C.F.R. §51.21 provides in relevant part that the report should discuss the same matters described at the construction permit stage "but only to the extent they differ from those discussed or reflect new information in addition to that discussed" (emphasis added) at the construction permit stage. Information contained in the earlier Environmental Report or the Staff's Final Environmental Impact Statement may be incorporated by reference.

Such a rehash of the issues as proposed by petitioner violates the accepted concept of a "lead agency" in conducting an environmental review. Under this approach, the comprehensive findings of the lead agency, the Environmental Impact Statement or Assessment of the lead agency is utilized in turn by other, coordinating federal agencies with jurisdiction over all or a portion of the same project.<sup>29/</sup>

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28/ Environmental Coalition of Nuclear Power, et al. v. NRC, No. 75-1421 (3d Cir., November 12, 1975). This decision is discussed in Delaware Water Emergency Group, supra at 14-15.

29/ The "lead agency" approach has been expressly approved by CEQ in 40 C.F.R. §1501.5 and by the courts in Silentman v. Federal Power Commission, 566 F.2d 237 (D.C. Cir. 1977); Henry v. Federal Power Commission, 513 F.2d 395 (D.C. Cir. 1975).

As noted, the primacy of DRBC as to water supply issues was acknowledged by the Appeal Board at the construction permit stage. All of the evidence in the record which the boards considered, including DRBC's Final Environmental Impact Statement, led to the conclusion by the NRC that anticipated adverse environmental impacts did not tip the cost-benefit balance against the plant.

Years ago, the Commissioners stated the basic rule that "an operating proceeding should not be utilized to rehash issues already ventilated and resolved at the construction permit stage" in the absence of "any supported assertion of changed circumstances or the possible existence of some special public interest factors in the particular case." Alabama Power Company (Joseph M. Farley Nuclear Plant, Units 1 and 2), CLI-74-12, 7 AEC 203 (1974). This holding is equally applicable and dispositive here.

It is respectfully submitted that petitioner should not be permitted to relitigate all of the environmental impacts associated with the supplemental cooling water supply components for Limerick adjudicated at the construction permit stage. Nor should petitioner, for the reasons discussed above, be permitted to relitigate the environmental findings of DRBC and other federal agencies.

III. The Petition Is Untimely.

As a final matter, it is noted that the last day for submitting a petition to intervene in this proceeding was September 21, 1981. It is clear from petitioner's filings that the Staff and Applicant's counsel were served out of time on September 22, 1981.<sup>30/</sup> Under the NRC Rules of Practice, a filing is deemed to be complete as of the time of deposit in the mail, but only if proper service has been effected. Thus, the rules provide:

All documents offered for filing shall be accompanied by proof of service on all parties to the proceeding or their attorney of record as required by law or by rule or order of the Commission. The staff of the Commission shall be deemed to be a party. <sup>31/</sup>

Service upon a party by mail is complete upon deposit in the United States mail.<sup>32/</sup> Thus, since both the NRC Staff and Applicant were not served until September 22, 1981,<sup>33/</sup> the filing was not consummated until that date and, hence, was out of time.

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<sup>30/</sup> It is less than clear whether the petition was actually mailed to the Secretary on September 21, 1981, the date indicated on the cover letter. Applicant is advised that the postmark is dated September 22, 1981.

<sup>31/</sup> 10 C.F.R. §2.701(b).

<sup>32/</sup> 10 C.F.R. §2.712(d)(3).

<sup>33/</sup> There is no date on the certificate of service, as required under 10 C.F.R. §2.712(e), but the "cc" on petitioner's cover letter indicates service on that date.

It is submitted that petitioner does not meet the criteria for late intervention under 10 C.F.R. §2.714(a)(1)(i)-(v). The decisions of the Appeal Board indicate that timely compliance with the rules is mandatory for intervention as a matter of right.<sup>34/</sup> As the Appeal Board explained in the Three Mile Island proceeding:

10 C.F.R. §2.714(a) expressly provides that non-timely intervention petitions "will not be entertained" absent a determination by the Licensing Board "that the petitioner has made a substantial showing of good cause for failure to file on time." As construed by the Commission in its West Valley decision two years ago [Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273 (1975)], the "good cause" determination is to be made on the basis of consideration of both the substantiality of the justification offered for the late filing and the four factors specifically enumerated in Section 2.714(a). See also Project Management Corp. (Clinch River Breeder Reactor Plant), ALAB-354, NRCI-76/10 383, 388-89 (October 29, 1976). In this connection, the Commission stressed that "[l]ate petitioners properly have a substantial burden in justifying their tardiness. And the burden of justifying intervention on the basis of the other factors in the rule is considerably greater where the latecomer has no good excuse." West Valley, 1 NRC at 275. <sup>35/</sup>

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<sup>34/</sup> The licensing boards have held petitioners represented by counsel to strict standards, noting that an attorney "should have been aware of the Federal Register notice." Washington Public Power Supply System (WPPSS Nuclear Project No. 2), LBP-79-7, 9 NRC 330, 337 (1979).

<sup>35/</sup> Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 2), ALAB-384, 5 NRC 612, 615 (1977) (footnotes omitted) (emphasis added). This statement of the Rule was reiterated by the Appeal Board subsequently in Duke Power Company (Cherokee Nuclear Station, Units 1, 2 and 3), ALAB-440, 6 NRC 642, 643 (1977) and Duke Power Company (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-431, 6 NRC 460, 462 (1977).

More recently, in Midland the Appeal Board sustained the denial of a petition for intervention where contentions had been filed two weeks later than required under the Licensing Board's order. The Appeal Board noted that petitioner had "offered no coherent or plausible excuse for the delay and thus has failed to establish the requisite 'good cause' and other factors set forth in 10 CFR 2.714."<sup>36/</sup> It is significant that the Appeal Board held petitioner to this strict standard, despite his pro se status, because no excuse for lateness had been shown and "the order clearly set" the filing dead-<sup>37/</sup>line.

These requirements were also recently discussed by the Appeal Board in the Perkins proceeding, where the Appeal Board also denied a late petition for intervention, stating that a late petitioner must "affirmatively demonstrate" that it deserves tardy admission to the proceeding.<sup>38/</sup>

It is submitted that strict observance of filing deadlines is also mandated by the Commissioner's Statement of Policy on Conduct of Licensing Proceedings,<sup>39/</sup> which expresses the Commission's attitude that all reasonable measures should

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<sup>36/</sup> Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-624, 12 NRC 680, 682 (1980).

<sup>37/</sup> Id. at 682 n.4.

<sup>38/</sup> Duke Power Company (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-615, 12 NRC 350, 352 (1980).

<sup>39/</sup> 46 Fed. Reg. 28533 (May 27, 1981).

be taken to expedite the conclusion of hearings on reactor operating licenses. Specifically, the Commission directed that licensing boards "are encouraged to expedite the hearing process by using those management methods already contained in Part 2 of the Commission's Rules and Regulations" and added that its "reemphasis of the use of such tools is intended to reduce the time for completing licensing proceedings."<sup>40/</sup>

The Commission's specific guidance that the boards should "satisfy themselves that the 10 CFR 2.711 'good cause' standard for adjusting times fixed by the Board were prescribed by Part 2 has actually been met before granting an extension of time"<sup>41/</sup> is equally applicable to the requirement that late petitioners establish "good cause" under 10 C.F.R. §2.714. Here, no justifiable excuse, let alone "good cause," has been demonstrated. The petition should therefore be denied as late.

#### Conclusion

For the reasons discussed more fully below, petitioner has failed to satisfy the requirements for intervention in an NRC proceeding as applied to organizations. It has not established the personal interests of its members in the outcome of the proceeding demonstrated its authority

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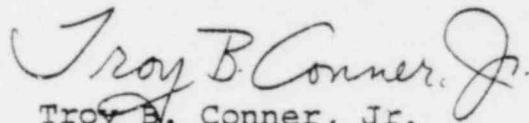
<sup>40/</sup> Id. at 28534.

<sup>41/</sup> Id.

to represent any such interests. Further, petitioner has failed to satisfy the requirements for late intervention, under 10 C.F.R. §2.714. Accordingly, the petition should be denied. Applicant has no objection, however, to a limited appearance by petitioner pursuant to 10 C.F.R. §2.715(a).

Respectfully submitted,

CONNER & WETTERHAHN



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Counsel for the Applicant

October 7, 1981

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
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PHILADELPHIA ELECTRIC COMPANY ) Docket Nos. 50-352  
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Units 1 and 2) )

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Answer to Petition for Intervention of Del-Aware Unlimited, Inc.," in the captioned matter have been served upon the following by deposit in the United States mail this 7th day of October, 1981. A copy of Applicant's answer to the Marvin I. Lewis petition has also been served on petitioner.

Judge Lawrence J. Brenner  
Chairman, Atomic Safety and  
Licensing Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

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Chairman, Atomic Safety and  
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Judge Peter A. Morris  
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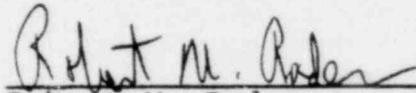
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DOCKET NO. D-79-52CP

DELAWARE RIVER BASIN COMMISSION

Philadelphia Electric Company  
Bradshaw Reservoir, Pumping Station  
and Transmission Main  
Bucks and Montgomery Counties, Pennsylvania

PROCEEDINGS

This is an application submitted by the Philadelphia Electric Company (PECO) on August 2, 1979, for review of a reservoir, pumping station and water transmission line project. The application was reviewed for revision of the project in the Comprehensive Plan and approval under Section 3.8 of the Delaware River Basin Compact. Simultaneously, the Delaware River Basin Commission (DRBC) considered an application [D-65-76CP(8)] submitted by Neshaminy Water Resources Authority (NWRA) to withdraw water from the Delaware River and pump it into the reservoir which is a portion of this project.

The DRBC prepared an environmental assessment on the proposal by NWRA and included in the assessment the proposal by PECO for Bradshaw Reservoir, a pumping station and transmission main to East Branch of Perkiomen Creek.

The assessment concluded that an environmental impact statement on the North Branch Water Treatment Plant (NBWTP) and a new environmental impact statement on the Point Pleasant Diversion Plan were not necessary. Accordingly, on February 15, 1980, the Executive Director gave notice of his intention to issue a negative declaration based upon the environmental assessment, in accordance with the Commission's Rules of Practice and Procedure applicable at the time. Numerous comments were received in response to the Executive Director's notice of intent and the Commission responded to the comments in a Final Environmental Assessment issued with the Negative Declaration on August 25, 1980.

A public hearing on this Comprehensive Plan revision and approval of this project under Section 3.8 of the Compact was held on November 18, 1980. Testimony was received from 77 speakers and written statements were received from 184 parties prior to the close of the hearing on December 12, 1980. Four of the five designated alternate Commissioners were present at the hearing and each alternate Commissioner has received the complete record of the hearing.

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Applications must also be submitted to the Pennsylvania Department of Environmental Resources for permits covering the Bradshaw Reservoir and waterway facilities, pursuant to the Pennsylvania Dam Safety and Encroachments Act.

Applications have been submitted to the U. S. Army Corps of Engineers for the project facilities.

#### DESCRIPTION

Purpose.-- The purpose of this project is to provide an additional source of cooling water for PECO's Limerick Generating Station.

Location.-- The general location of the project facilities is shown on Figure A attached hereto. More specifically, Bradshaw Reservoir will be located southeast of Bradshaw Road and northwest of the Danboro-Point Pleasant Pike in Plumstead Township, Bucks County, Pennsylvania. The transmission main from the reservoir will parallel the Texas Eastern pipeline's right-of-way through Plumstead and Bedminster Townships in Bucks County to a point approximately 0.3 miles west of Route 113, then continue to and enter the East Branch Perkiomen Creek at river mile 92.47-32.3-11.3-23.8.

Service area.-- Bradshaw Reservoir and the transmission main will be used to augment flows in the East Branch Perkiomen Creek for downstream use by PECO's Limerick generating station. The reservoir will also store water for release to the North Branch Neshaminy Creek.

Design criteria.-- PECO is constructing the two-unit Limerick nuclear generating station on the Schuylkill River in Limerick Township, Montgomery County, Pennsylvania. During low flow periods, the Schuylkill River cannot supply sufficient water to maintain full plant operations and PECO has requested, and the DRBC has approved, by Docket D-69-210CP, withdrawal, under certain conditions, of water from the Perkiomen Creek and the Delaware River as supplemental sources of supply.

The NWRA has agreed to deliver water to the proposed Bradshaw Reservoir for use by PECO in accordance with the Comprehensive Plan of DRBC. PECO will construct the Bradshaw Reservoir, booster pumping station and transmission main to East Branch Perkiomen Creek. The capacity of the reservoir has been increased from 35 mg to 70 mg to provide additional reserve capacity. The maximum quantity to be pumped by the booster pump station to East Branch Perkiomen Creek is 42 mgd plus 10 percent allowance for losses or a total maximum of 46.2 mgd.

The proposed Bradshaw Reservoir is designed to accommodate differing discharge flow rates, to provide water to allow the Limerick station to operate for one day without additional sources, and to provide for settling of silts and suspended solids. It is not required for the safe shutdown of the reactors. The reservoir may also be used to store water for release by gravity to the North Branch Neshaminy Creek.

Facilities.-- Bradshaw Reservoir will be constructed on a 28-acre field, will have a storage capacity of 70 mg and a surface area of approximately 18 acres. It will consist of four 900' long earthen dikes, varying in height from 5' to 20', depending on ground contour, and have a maximum depth of 13'. The dikes will be rip-rapped on the inner surface to prevent erosion and will be constructed of impervious soil excavated at the site. The bottom of the reservoir will be impervious soil or compacted material brought in from off-site. The reservoir is designed to have an 18 mg operating capacity, 46 mg for emergency storage and 6 mg for silt buildup. NWRA's pumping station at Point Pleasant will transfer up to 95 mgd of water from the Delaware River to the reservoir and/or to a by-pass line to the North Branch Neshaminy Creek. A pump house on the westerly side of the reservoir will withdraw water from the reservoir and pump it through the transmission line to East Branch Perkiomen Creek. The pump station will have several vertical turbine pumps to accommodate the various pumping demands. The station will be supplied by two separate electric power lines. A gated outlet at the pump house will feed water by gravity to the North Branch transmission main. Automatic controls will be installed to operate pumps and regulate levels and flows.

The proposed 35,400', 48" diameter transmission main to the East Branch will parallel and form a common corridor with the Texas Eastern Transmission Corporation pipeline and discharge to the creek through an impact-type energy dissipator consisting of a concrete box and spur channel rip-rapped on the sides and bottom. The main will not cross any significant streams and the only major road crossings will be U.S. Route 611 and PA. Route 413. Pipeline grade will generally follow the ground surface with a minimum cover of 3 feet. The main will be installed in a steel casing or enclosed in additional concrete at all road and stream crossings. Air relief control and blow-off valves will be provided where needed and enclosed in concrete vaults.

Flow depth and velocity under maximum pumpage rates and median East Branch streamflow conditions will be below that which occurs naturally during flood periods and the higher velocity generated by pumping will be less than the erosion limits.

Under average streamflow conditions, it is estimated the minimum pumpage from mid-April through mid-November, will be 27 cfs.

Cost.-- The cost of the reservoir, pump station and transmission main is estimated to be \$8,700,000.

Relationship to the Comprehensive Plan.-- The Limerick Nuclear Generating Station was included in the Comprehensive Plan by Docket D-69-210 on March 29, 1973 and by Docket D-69-210 (Final) on November 5, 1975. The Point Pleasant Pumping Station, including Bradshaw Reservoir, booster pumping station and transmission main to East Branch Perkiomen, was included by Docket D-65-76(3) on March 17, 1971.

#### FINDINGS

The proposed modifications to the Bradshaw Reservoir, pumping station and transmission main by PECO do not alter the purpose of the project as currently stated in the Comprehensive Plan. The only significant change is the increase in the storage capacity of the reservoir.

The DRBC prepared an Environmental Assessment, in accordance with the National Environmental Policy Act of 1969, the DRBC Rules of Practice and Procedure, Article IV, and as directed by Resolution 80-11 to determine whether an Environmental Impact Statement should be prepared for the NBWTP and to review the impacts of its related components described in DRBC's FEIS of 1973 to see if that document needed to be updated.

The assessment also concluded that subsequent documents support the conclusions of the FEIS on the Point Pleasant Diversion Plan, required by the NEPA of 1969 and issued by DRBC in February 1973, that the project is feasible and provides a beneficial use of water resources in the Neshaminy and Perkiomen Watersheds and is not detrimental to the Delaware River, provided that mitigating measures are implemented as listed in the FEIS under "Conclusions," page 3. Consequently, the assessment recommended a "Findings of No Significant Impact" (Negative Declaration) on the NBWTP and recommended no supplementary EIS be prepared on the related components.

The water quality of the Delaware River is compatible with that of East Branch Perkiomen Creek and no treatment will be required for the inter-basin transfer.

The conditions of Docket D-69-210CP require that the withdrawal of Delaware River water at Point Pleasant for use at the Limerick Generating Station not reduce the flow as measured at the Trenton gage below 3,000 cfs (1940 mgd) and that such use will not be permitted when the flow as measured at the Trenton gage is less than 3000 cfs (1940 mgd), provided that annually after pumping from the Delaware River has commenced, the rate of pumping will be maintained at not less than 27 cfs (17.5 mgd) throughout the normal low flow season for the protection of aquatic life in Perkiomen Creek and its East Branch regardless of ultimate downstream consumptive use requirements. During periods of high natural flow in East Branch Perkiomen Creek, pumping from Point Pleasant shall be kept at a level so as not to aggravate high water levels.

The revised project does not conflict with nor adversely affect the Comprehensive Plan.

In the course of the DRBC proceedings on the pending project, numerous issues have been raised regarding the operation of the Limerick Nuclear Generating Station, including the safety of said facility, evacuation planning in the event of a nuclear accident, and the need for new generating capacity in the PECO system.

These issues generally lie beyond the statutory jurisdiction of DRBC, and DRBC has no authority or expertise to render a decision on such questions. These issues do, however, fall within the proper jurisdiction and expertise of other Federal and State agencies, particularly the Nuclear Regulatory Commission and the Pennsylvania Public Utility Commission. In rendering a decision on the docket, the DRBC in no way intends to prejudice or influence the outcome of proceedings in those forums. In particular, DRBC notes that prior to operation of Limerick, PECO must apply for and obtain an operating permit from the NRC. By letter dated December 16, 1980, the NRC has indicated its intent to prepare and complete a new or supplemental Environmental Impact Statement as part of the proceedings on the operating permit. DRBC believes and expects that the NRC will address fully and adequately all of the safety and environmental issues regarding operation of Limerick. In the event that review by other State and Federal agencies results in a modification to the operation or the design of this project, DRBC has so conditioned this docket to allow a reopening, reconsideration, and revision of this project approval as necessary.

The DRBC will coordinate and confer with the Nuclear Regulatory Commission concerning all issues relevant to provisions of water supply.

#### DECISION

I. The description of the proposed project in the Comprehensive Plan is hereby revised to agree with the project as described above.

II. The project, as described above, with modifications specified hereinafter, is approved pursuant to Section 3.8 of the Compact, subject to the following conditions:

A. All project facilities shall be available at all times for inspection by the DRBC.

B. The withdrawal of water from the Delaware River at the Point Pleasant Pumping Station for diversion into the East Branch Perkiomen Creek must conform with the schedule and conditions listed in DRBC Docket D-69-210CP.

C. PECO shall maintain a minimum flow of 27 cfs (17.4 mgd) in the East Branch Perkiomen Creek at the proposed Bucks Road stream gage throughout the normal low flow period beginning with the day the booster station commences pumping and ending when pumping is no longer required for the operation of the Limerick Generating Station. The rest of the year PECO shall maintain a minimum flow of 10 cfs (6.5 mgd).

D. All project facilities shall be operated at all times to comply with all requirements of the DRBC.

E. Sound practices of excavation, backfill, and reseeding shall be followed to minimize erosion and deposition of sediment in streams.

F. Upon completion of construction of the approved project, the sponsor shall submit a statement to the DRBC, signed by the sponsor's engineer or other responsible agent, advising the Commission that the construction has been completed in compliance with the approved plans, giving the final construction cost of the approved project.

G. This approval shall expire three years from date below unless prior thereto the sponsor has expended substantial funds (in relation to the cost of the project) in reliance upon this approval. The project sponsor shall notify the DRBC, in writing, the date that construction of the project is started and the scheduled completion date within 10 days of that starting date.

H. The area served by this project is limited to the service area as described above. Any expansion beyond this area is subject to review in accordance with Section 3.8 of the Compact.

I. The applicant shall develop a program to monitor all water supply facilities including storage and distribution systems for leakage. The program must be approved by the Executive Director and the monitoring results shall be submitted within six months of this approval and thereafter as requested by the Commission. The applicant shall proceed expeditiously to correct leakages identified by the monitoring.

J. All above ground facilities shall be designed and landscaped to complement the surrounding environment.

K. Operating schedules for pumping shall be designed to eliminate rapid fluctuations of the streamflows.

L. The applicant shall be responsible for the operation of the project facilities in a manner that will insure compliance with all streamflow and use limitations. The applicant shall arrange for the following items to be recorded, in a manner acceptable to the Executive Director, in the office of the DRBC in the morning of each working day.

1. The recorded daily average streamflow for the previous day in the East Branch Perkiomen Creek.

2. The quantity of water transferred to East Branch Perkiomen Creek on the previous day.

3. The estimated quantity of water to be transferred to East Branch Perkiomen on that day.

In addition, the applicant shall submit reports, monthly, indicating all of the above quantities.

M. The applicant shall provide adequate detours during construction affecting local roads. U. S. Route 611 and PA. Route 413 will be kept open at all times. A temporary road shall be installed when necessary to insure compliance with this requirement.

N. The applicant shall inspect and monitor the portion of East Branch Perkiomen Creek immediately below the discharge, at river mile 92.47 - 32.3 - 11.3 - 23.8, on a regular basis and following any significant period of flood flows. If such inspection discloses significant erosion of the bank or bed of the East Branch Perkiomen Creek below the discharge, the applicant shall promptly correct such erosion, stabilize and revegetate any exposed portion of the streambank. Reports of such monitoring, and any corrective action taken, shall be filed with the Executive Director within two weeks of each inspection or action.

O. Nothing herein shall be construed to exempt the project sponsor from obtaining all necessary permits and/or approvals from other State, Federal or local government agencies having jurisdiction over this project.

P. The Commission reserves the right to reopen this docket at any time, and to reconsider this decision and any and all conditions imposed hereunder in light of further information developed by, or decisions rendered in, pending or future proceedings conducted by other State and Federal agencies concerning the development and operation of the Limerick Nuclear Generating Station and related facilities. The Commission may at any time modify existing conditions, or impose additional conditions, upon the construction and operation of this facility to reflect new or changed information or to conform to requirements imposed on the project by other agencies.

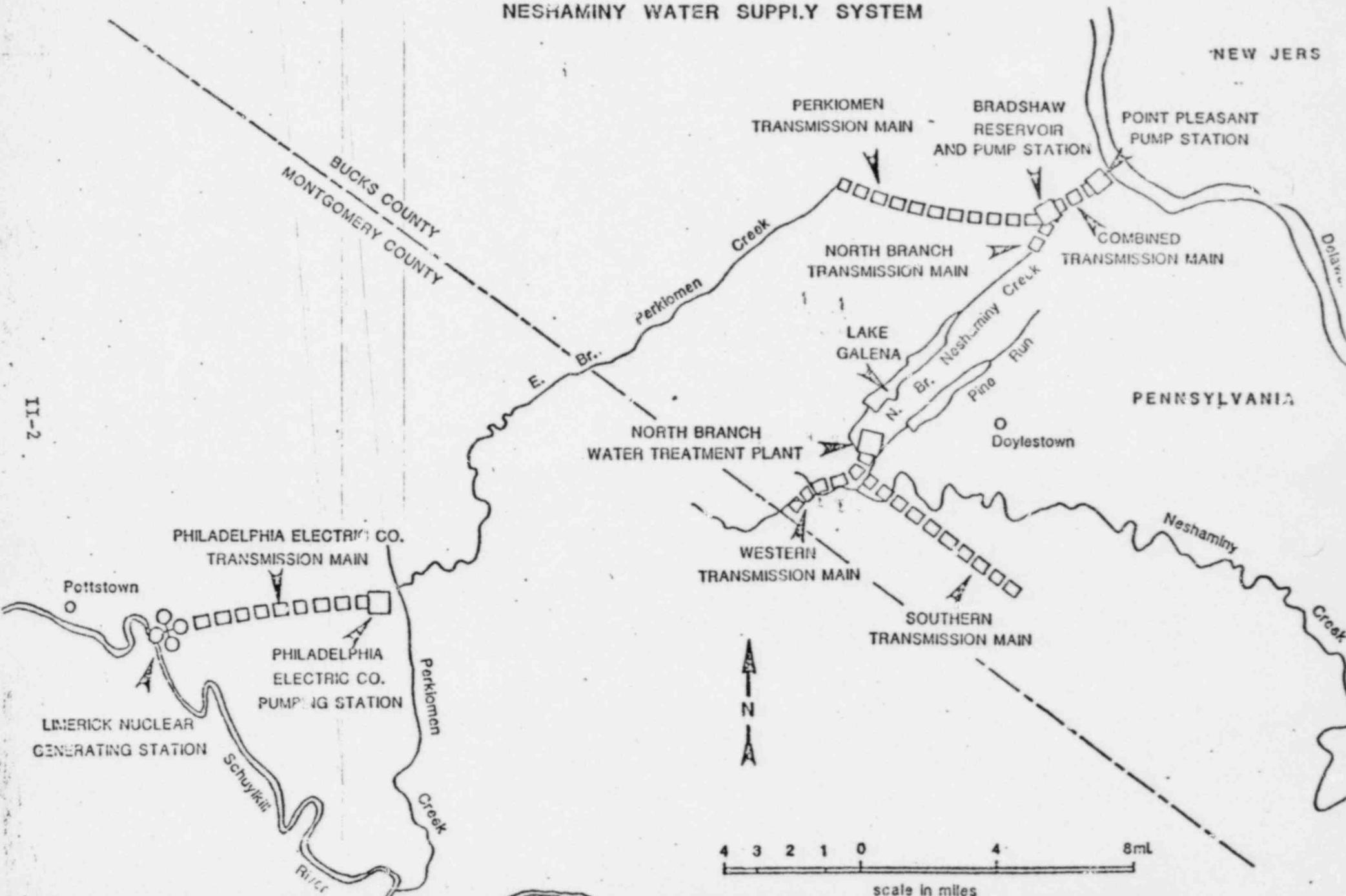
Q. For the duration of the drought emergency declared by the Commission on January 15, 1981, or any subsequent drought emergency, water service or use by the project sponsor pursuant to this approval shall be subject to the prohibition of those nonessential water uses specified in Commission Resolution No. 81-5 to the extent that they may be applicable and to any other emergency resolutions or orders adopted hereafter.

BY THE COMMISSION

DATED: February 18, 1981

FIGURE A

NESHAMINY WATER SUPPLY SYSTEM



II-2

4 3 2 1 0 4 8ml  
scale in miles

## PUBLIC OBJECTORS

Projects considered in this revised assessment have been the subject of considerable controversy for more than ten years. Many arguments for and against the projects and countless questions have been presented in that time. This assessment has endeavored to address significant concerns which have been raised.

The following list contains names of public agencies and private groups which have recently opposed the projects (or elements), or who have reservations concerning procedural matters. Not included are names of those who fully support the projects or those who, while they have great concern and have raised many questions, have not taken a position for or against.

The names were compiled from letters, from the transcript of a public hearing held by NWRA and from newspaper articles. Except for legislators, names of individuals are not included.

- ✓ 1. Air and Water Pollution Patrol
2. Alley Friends Architects
3. Banning, Rita, Montgomery County Commissioner
4. Bedminster Township Board of Supervisors
5. Blythewood-Briarwood Civil Group
6. Bordentown City, New Jersey
7. Bridgeton Township Supervisors
8. Buckingham Township Board of Supervisors
9. Buckingham Township Civic Association
10. Bucks County Conservancy
11. Bucks County Conservation Alliance
12. Bucks County Land Use Task Force
13. Burlington, City of, New Jersey
14. Central Bucks Clean Energy Collective
15. Chalfont Borough Council, Bucks County
16. Clean Energy Collective
17. Clean Water Action Project
18. Consumer Action in the Northeast
19. Consumers Education and Protective Association International, Inc.
20. Cooks Creek Watershed Association
21. Delaware River Skad Fishermans Association
22. Delaware Valley College of Science and Agriculture
23. Delaware Valley Conservation Association
24. Delaware Valley Protective Association
25. Delaware Water Emergency Group
26. Federation of Sportsman's Clubs, Bucks County
27. Federation of Sportsman's Clubs, Northampton County
28. Four-County Task Force on Tocks Island Dam
- ✓ 29. Friends of the Earth in the Delaware Valley
30. Giammarco, Henry J., Pennsylvania State Representative
31. Green Valley Association
32. Hutton Recycling Circle, U.S.A.
33. Island Civic Association

- ✓ 34. Keystone Alliance
- 35. Kostmayer, Peter, Congressman, 8th District, PA
- 36. League of Conservation Voters
- 37. Lehigh River Restoration Association
- 38. Lenape Land Association
- ✓ 39. Limerick Ecology Action
- 40. Lower Makefield Township Park & Recreation Board
- 41. Merrill Creek Coalition
- 42. Montgomery County Commissioners
- 43. Montgomery County Well Owners Association
- 44. Morrisville Borough Planning Commission
- 45. National Audubon Society, Bucks County Chapter
- 46. New Britain Township, Bucks County
- 47. New Jersey Dept. of Environmental Protection, Div. of Fish and Wildlife
- 48. New Jersey Dept. of Environmental Protection, Div. of Water Resources
- 49. New Jersey Federation of Sportsmen's Clubs
- 50. Northwestern Lehigh Citizens Coalition
- 51. Oak Lane Neighbors for a Nuclear Free World
- 52. Open Space, Inc.
- 53. Paunacussing Watershed Association
- 54. Pennsylvania Air & Water Pollution Patrol
- 55. Pennsylvania Federation of Sportsmen's Clubs
- 56. Pennsylvania Fish Commission
- 57. Philadelphia Federation of Sportsmen's Clubs
- 58. Plentiful Energy from Non-Nuclear Sources
- 59. Plumstead Township Civic Association
- 60. Point Pleasant Fire Company Ambulance Corps
- 61. Pollution Control Group of Lower Bucks County
- 62. Salvatore, Frank A., Pennsylvania State Representative
- 63. Save the Delaware Coalition
- 64. Sellersville, Borough of
- 65. Sierra Club, Eastern Pennsylvania Group
- 66. Social Concerns Committee, Lower Bucks Unitarian Fellowship
- 67. Solebury Township Board of Supervisors
- 68. Students for Human Rights, Bucks County Community College
- 69. Susquehanna Environmental Advocates
- 70. Tinicum Civic Association
- 71. Tinicum Township Board of Supervisors
- 72. Trout Unlimited, Southeastern Pennsylvania Chapter
- 73. Tullytown Borough Council
- 74. Unami Sunburst Alliance of the Upper Perkiomen Valley
- 75. U.S. Dept. of Interior, Fish and Wildlife Service
- 76. U.S. Environmental Protection Agency, Region III
- 77. Upper Makefield Township Board of Supervisors
- 78. Warren County Planning Office
- 79. Wilson, Benjamin H., Pennsylvania State Representative
- 80. Yardley Borough Council