

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges:
Lawrence Brenner, Chairman
Dr. Richard F. Cole
Dr. Peter A. Morris

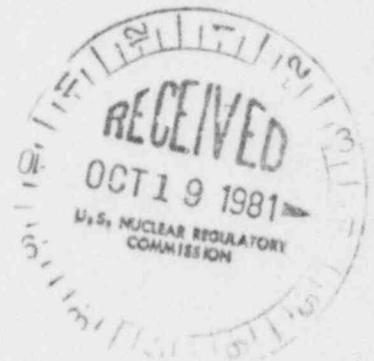


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In the Matter of)
PHILADELPHIA ELECTRIC COMPANY)
(Limerick Generating Station,)
Units 1 and 2))

Docket Nos. 50-352
50-353
October 14, 1981

MEMORANDUM AND ORDER SETTING
SCHEDULE FOR SUBMISSION OF CONTENTIONS AND
OTHER PRELIMINARY INFORMATION



Contentions

The Licensing Board is currently considering the petitions to intervene and the responses thereto filed by the Philadelphia Electric Company (Applicant) and the NRC Staff.^{1/} A preliminary review

^{1/} We have received sixteen petitions to intervene (some of these may be requests for limited appearances as noted below), and two requests to participate as representatives of the Commonwealth of Pennsylvania pursuant to 10 CFR § 2.715(c). Neither the Applicant nor the Staff have responded to the filing by Clarence Wells, which is discussed below. In addition, we have not received the Staff's response to the petition of Steven Levin, or the Applicant's response to the petition of the Commonwealth of Pennsylvania submitted by Robert W. Adler, Esq. An alphabetical list of the non-governmental petitioners, and the representatives thereof, is attached to this order.

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leads the Board to believe that many, perhaps most, of the petitioners have or will be able to demonstrate compliance with the intervention requirements of 10 CFR § 2.714, subject to the requirement that each petitioner be able to advance at least one admissible contention. Accordingly, in order to provide the petitioners with sufficient time to finalize contentions, we establish the following schedule at this time. The Board estimates that we will rule on the standing of petitioners shortly after receiving the further information requested below, but it is possible that our ruling may not be issued until after the date for the filing of contentions.

1. Contentions shall be filed so that they are received by November 17, 1981 by the Board, Counsel for the NRC Staff, and Washington, D. C. Counsel for Applicant. (The remainder of the service list shall be served by first class mail deposited no later than November 17.)

2. Answers by the Applicant and Staff to contentions shall be served by November 30, 1981. The Board's copies shall be received on that same day.

3. Responses by petitioners to the answers of the Applicant and Staff shall be served^{2/} by December 16, 1981.

The Board will schedule a special prehearing conference for approximately the first week in January 1982 to consider, inter alia, the contentions, the objections to the contentions, and the responses by petitioners to the objections.

^{2/} "Served" means deposited in the first class mail or hand-delivered. See 10 CFR §2.712.

The petitioners are directed to confer with each other and use their best efforts to coordinate the filing of contentions. To the fullest extent possible, the petitioners are strongly encouraged to file a joint statement of contentions. This joint statement shall set forth, in an organized fashion, the contentions of all petitioners and a delineation of which petitioner or petitioners are advancing each contention. The Board will have little tolerance for multiple filings by petitioners of separate contentions which are essentially the same, notwithstanding some differences in wording.

The first part of each contention shall clearly, and as concisely and simply as possible given the subject matter, set forth what it is that the petitioner seeks to litigate. There shall also be a second part of each contention pleaded labeled "basis". This section should fully set forth the petitioner's support for the contention with, in the words of 10 CFR § 2.714(b), "reasonable specificity". It is often helpful for petitioners to give specific references to the portions of any technical documents being relied upon to support the basis for a contention, and for the pertinent excerpt from the reference to be attached to the statement of contentions.

Although some petitioners have filed contentions, the Board requires that all contentions which petitioners seek to advance be refiled. In part, this is because contentions filed to date have not had the benefit of the coordination among the petitioners which the Board is requiring.

In addition, some of the preliminary contentions are poorly organized, redundant, and unclear and therefore fall short of the standards of clarity and drafting described above.

In addition to the coordination among petitioners which we have required above, the Applicant and the Staff, separately or together, are encouraged to confer with petitioners, either prior to the filing of contentions or shortly thereafter. The representatives of the Commonwealth of Pennsylvania should also be invited to participate in informal conferences among the petitioners and the Applicant or the Staff.

Availability of FSAR and ER

The Applicant and/or the Staff in coordination with each other, promptly shall make available during normal business hours up to date copies of the Applicant's OL stage Final Safety Analysis Report (FSAR) and Environmental Report (ER) in State College and Philadelphia, and at a location in or near Media, Pennsylvania.^{3/} The Applicant or Staff

^{3/} If the Applicant prefers, copies may be provided directly to the representatives of ECNP and Friends of the Earth in the Delaware Valley as an alternative to public locations in State College and Media, Pennsylvania.

The Applicant need only supply one copy of the FSAR and ER to the Board, rather than the normal three copies. It should be sent to Judge Cole. In addition, the Board requests the Applicant to have an up to date copy of the FSAR and ER for our use at all prehearing and hearing sessions.

shall file a memorandum setting forth where these documents have been made available.

Copies of the FSAR and ER are also available for inspection at the Pottstown Public Library, 500 High Street in Pottstown, which is the local public document room for this proceeding, and at the Commission's main public document room, 1717 H Street, N.W., Washington, D. C.

Additional Information from Petitioners

As a result of the Board's preliminary review of the petitions to intervene and the responses of the Applicant and the Staff, we have determined that further information from some petitioners would be useful in our deliberations on the issue of standing. The following information shall be served by the petitioners requested to provide it as soon as possible, and no later than October 26, 1981. We have not decided that the information requested necessarily is determinative of the question of standing, but the Board will draw a negative inference, which could be determinative, from a failure to respond on time.

1. Clarence Wells filed a letter to the Commission, dated August 24, 1981, which appears to be a limited appearance statement but which could be a petition to intervene as a formal party to the hearing. The Staff and Applicant have not responded, apparently under the assumption that Mr. Wells intended only to comment in a limited appearance statement.

Mr. Wells, along with Samuel and Clarissa Cooper, and Steven Levin, shall state whether they intended to request formal party status as an intervenor.^{4/} If so, they shall comply with the requirements of section 2.714 and set forth their interests and how they believe their interests may be affected by the results of this proceeding.

The Board has also just received a handwritten letter dated September 30, 1981 (served by Docketing and Service on October 8), from Helene Greenstein which appears to be a limited appearance statement, although Mrs. Greenstein states that she wishes to intervene. We note that Mrs. Greenstein is one of the named members which ECNP relied upon for its claim for derivative standing as an organization. The due date for timely petitions to intervene was September 21, 1981. As in the case of the three petitioners discussed above, Mrs. Greenstein shall inform the Board and the parties if she intended to request formal party status as an individual separate from her organization, ECNP. If so, she shall comply with the requirements of 10 CFR § 2.714, including the requisite showing to justify late petitions to intervene. She shall also indicate why she

^{4/} A person wishing to participate in the adjudicatory licensing hearing may do so in depth by filing a petition to intervene as a formal party, or less formally by making a limited appearance statement either in writing, or orally at opportunities to be provided. "A limited appearance statement is not evidence. Its impact upon the decision-making process is much less direct -- it serves to alert the Board and the parties to areas in which evidence may need to be adduced." Iowa Electric Light & Power Co. (Duane Arnold), ALAB-108, 6 AEC 195, 196 at n. 4 (1973).

would be prejudiced if she is required to consolidate her participation with ECNP.

2. The Environmental Coalition on Nuclear Power (ECNP), the Keystone Alliance, and the Consumers Education and Protective Association (CEPA), each filed petitions based on derivative standing through individual members. No affidavits of members were supplied, although the petitions of ECNP and the Keystone Alliance promise that affidavits of members will be supplied. Each of these organizations is directed to file an affidavit by a person with authority to so state giving the authorization of the organization to intervene in this proceeding and the authorization of the representative filing the petition to act on behalf of the organization. In addition, each organization shall file affidavits of individual members setting forth that they are members, authorizing the group to act on their behalf, and setting forth their interests and how those interests may be affected by the results of this proceeding.

The affidavits in support of the petition to intervene of Friends of the Earth in the Delaware Valley (FOE) filed by Robert L. Anthony, with the exception of Ms. O'Leary's affidavit, do not state whether the affiants are members of FOE. Mr. Anthony, or other members of FOE with knowledge, shall file an affidavit identifying which of the affiants are members of FOE.

3. The National Lawyers Guild, Philadelphia Chapter (Guild) has not identified any individual members. The Guild shall also file the affidavits required above of ECNP, the Keystone Alliance and CEPA.

The Guild also appears to seek standing on behalf of prisoners at Graterford Correctional Institution concerned with their disposition in the event of an emergency at the Limerick facility. If the Guild wishes to pursue this as a possible ground for standing, it shall set forth the location of the prison in relation to the nuclear power plant and shall supply the affidavits of prisoners not due to be discharged within the next three years setting forth their interests and how those interests may be affected by the results of this proceeding, and authorizing the Guild to intervene on their behalf as their attorney in this proceeding.

The Guild further seeks standing on the basis of its interest in the impact on civil liberties of both alleged illegal surveillance of opponents of the Limerick plant by the Applicant and security measures required to safeguard nuclear power plants. If the Guild wishes to pursue this as a possible ground for standing, it shall set forth why it believes this issue is within the zone of interests to be protected by the Atomic Energy Act, the National Environmental Policy Act, or the Energy Reorganization Act. In addition, the Guild shall be specific as to whether it is representing specific individuals who allege their civil liberties have been or will be infringed illegally by the Applicant as a result of this proceeding. If so, the Guild shall supply the affidavits

of such individuals authorizing the Guild to represent them, or an affidavit by a person with knowledge of the facts setting forth substantive reasons, if any, why such affidavits cannot be filed.

4. Del-Aware Unlimited, Inc. has filed a petition which depends upon the derivative interest through its members in the alleged adverse effect of the operations proposed by the Applicant on the supply and quality of surface waterways, principally the Delaware River, and groundwater in the vicinity of the proposed Bradshaw Reservoir. Two members of Del-Aware are named, but no information is supplied as to their specific grounds for standing. Del-Aware shall supply the affidavits of individual members setting forth their authorization for Del-Aware to intervene on their behalf and their interests and how those interests may be affected by specific alleged adverse effects on water (as alleged in the petition) as a result of this proceeding.

On a more extended schedule, at the time it sets forth its contentions, Del-Aware shall address the arguments against relitigation of the "water issues" advanced in the responses to its petition filed by the Applicant and the Staff. This should include legal arguments on the estoppel or other binding effect of the Commission's construction permit proceeding, the determinations of the Delaware River Basin Commission and the U. S. Environmental Protection Agency or their designees under the Clean Water Act and related statutes, and related litigation. If Del-Aware claims it is not in privity to any party to another proceeding

for purposes of applying collateral estoppel, the implications for Del-Aware's situation in this proceeding of Parklane Hosiery Co. v. Leo M. Shore, 439 U.S. 322, 58 L.Ed.2d 552 (1979), shall be addressed. See Cleveland Electric Illuminating Co. (Perry, Units 1 and 2), LBP-81-24, 14 NRC _____, slip op. at 39-42 (July 28, 1981).

In addition, and also at the time it sets forth contentions, Del-Aware shall provide specifics and the bases therefor in as much detail as possible of what material new information it would advance in support of its particular "water issues" contentions which was not considered in the other proceedings and determinations and how that information, if proven, would change the result of the prior determinations.

5. John Shniper, Esq., has filed a petition to intervene on behalf of himself which states, inter alia, that he lives within ten miles and has his office within four miles of the proposed Limerick plant. Charles Bruce Taylor has filed a petition to intervene which states, inter alia, that he lives within five miles of the proposed plant. The Staff has taken the position that each of these petitioners has not alleged how their interests may be affected by operation of the Limerick facility (or otherwise by the results of this proceeding). The Board is not deciding at this time whether the Staff's view is an accurate interpretation of the totality of each petition, or whether petitioners who live as close to a proposed nuclear power plant as do Messrs. Shniper and Taylor need explicitly add a statement that they believe they may be adversely

affected in a particular way by an identified happenstance during normal and/or abnormal operation of the nuclear power plant. However, in order to assist our deliberations, Messrs. Shniper and Taylor each are requested to provide additional information in response to the Staff's position, including a supplementary statement of their interests and how they believe those interests may be affected by the results of this proceeding.

6. Dr. William A. Lochstet has filed a petition to intervene in this proceeding as an individual. In addition, as noted above, ECNP has filed a petition to intervene as an organization. The Board takes note of the fact that Dr. Lochstet filed a request for a hearing and appeared at a prehearing conference in the Three Mile Island, Unit 1 restart proceeding in his capacity as Secretary of ECNP. Accordingly, Dr. Lochstet shall state whether he was still an officer or member of ECNP at the time he filed his petition in this proceeding, and if so, how he would be prejudiced by being required to participate in this proceeding under ECNP's banner if ECNP is admitted as an intervenor.

Dr. Lochstet, very superficially, appears to request that the Board consider permitting his intervention as a matter of discretion, presumably in the event we find he does not meet the requirements for standing. Dr. Lochstet is correct in anticipating that his grounds for standing as of right preliminarily appear to us to be tenuous. However, it is also our preliminary view that he has supplied no reasons for the Board to consider

whether he is entitled to discretionary intervention. A bare reference to his doctorate in physics, and the fact that he is a party to the TMI-2 technical specification proceeding (to which we understand he was admitted as of right by agreement of the parties and for which there is essentially no record upon which to assess his contribution), and without any showing of the specific issue to which he would contribute in this proceeding, does not even show a serious attempt to meet the requirements for discretionary intervention.

7. In addition to the above specific requests for further information from petitioners, all petitioners are free to supplement their statements of interests and how they may be affected in response to the positions expressed by the Applicant and Staff on the same schedule we have set for the submission of the specific information -- October 26, 1981. Petitioners who accept this general invitation are requested to be concise, particularly in view of the fact that the Board believes it has made specific requests for the supplementary information which will be most material to our deliberations when considered with the original petitions.

The "Aspect" Requirement

The Applicant, with respect to most if not all petitioners, and the Staff apparently with respect to some petitioners, have taken the position that a petitioner has not met the standing requirements of 10 CFR § 2.714 because the petition does not set forth the specific "aspects" of the subject matter of the proceeding as to which the petitioner wishes to intervene. 10 CFR § 2.714(a)(2). The Staff has cited one, and the Applicant two, licensing board decisions which in our view state that those boards were unsure as to what an "aspect" was or why they were looking for one. Metropolitan Edison Co. (TMI-1 Restart), Docket No. 50-289, Memorandum and Order Ruling on Petitions [Etc.], slip op. at 6 (unpublished) (September 21, 1979); Consumers Power Co. (Midland, Units 1 and 2), LBP-78-27, 8 NRC 275, 277-78 (1978). While there may be other decisions discussing the aspect requirement, the two decisions cited are the only ones of which this Board was aware.

The Board has preliminarily compared the changes between the prior and current versions of section 2.714, reviewed the Commission's Statement of Considerations for the current version (43 Fed. Reg. 17798, April 26, 1978), and considered the bifurcated schedule for filing statements of interests and contentions under the current version of section 2.714. Based on this, it is the Board's preliminary view that these considerations lead to the holding that either as a matter of law or as a matter of practical application of the bifurcated schedule for filings

under section 2.714, or both, there is no purpose served and therefore no requirement to consider "aspects" (in addition to interests and how they may be affected' in advance of and separate from contentions when dealing with a timely petition to intervene as of right. (Contentions at an earlier stage than normally required, and therefore perhaps denoted aspects, would be important in determining whether a petitioner has satisfied the requirements for discretionary intervention.)

The Applicant and the Staff, and any petitioner that wishes to comment, are invited to submit their comments on the Board's preliminary view of the general lack of materiality of the "aspect" requirement. Any such comments shall be served by October 26, 1981.

Discovery Schedule
(and Schedule for Staff Review and Applicant Construction)

The parties shall serve a joint report by December 16, 1981, indicating agreements and disagreements as to whether a discovery schedule other than that provided by the Rules of Practice should be established at or shortly after the first special prehearing conference, and if so, what that schedule should be.

In order to consider the overall schedule for prehearing matters, including discovery, it would assist the Board and the parties for the Staff to file at its earliest convenience its estimated schedule for

issuance of its primary review documents and supplements along with the Staff's estimates of the completion of construction of each Limerick unit. The Staff should update this information from time to time if and when there are material changes. The Applicant may respond if it disagrees with the Staff's estimates for the completion of construction.

Notice of Appearance

All attorneys who have filed documents or who plan to otherwise participate in this proceeding, and who have not already done so, shall file by October 26, 1981 notices of appearance in proper form pursuant to 10 CFR § 2.713(b).

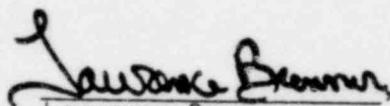
Service of Documents

Until further order dismissing a petitioner, or otherwise limiting the service list, all pleadings, letters and formal technical exchanges between the Applicant and Staff filed in this proceeding (except for extensive discovery materials enclosed with a discovery response) shall be served, and a dated and signed certificate of service shall so indicate, on all petitioners and parties and on all appropriate Commission offices. The certificate of service accompanying this order provided by the Commission's Docketing and Service Section (not to be confused with the attached alphabetical "List of Petitioners") is correct and shall be used with the following additional addresses: (The Board is sending a copy of

this order to Mrs. Greenstein since we have invited information from her. She need not be placed on the service list unless she declares her intent to be a formal intervenor.)

1. Atomic Safety and Licensing Board Panel
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555
2. Atomic Safety and Licensing Appeal Panel
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555
3. Docketing and Service Section
Office of the Secretary
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

 Chairman
Lawrence Brenner
ADMINISTRATIVE JUDGE

Bethesda, Maryland

October 14, 1981

LIST OF PETITIONERS

Mr. Frank R. Romano
Air and Water Pollution Patrol
61 Forest Avenue
Ambler, PA 19002

Steven P. Hershey, Esq.
Consumer's Education and
Protective Association
Sylvania House
Juniper and Locust Streets
Philadelphia, PA 19107

Samuel and Marissa B. Cooper
P.O. Box 16
Colora, MD 21917

Robert J. Sugarman, Esq.
Del-Aware Unlimited, Inc.
Berle, Butzel, Kass & Case
2115 Bainbridge Street
Philadelphia, PA 19146

Environmental Coalition on Nuclear
Power
Dr. Judith H. Johnsrud, Co-Director
433 Orlando Avenue
State College, PA 16801

Robert L. Anthony
Friends of the Earth of the
Delaware Valley
103 Vernon Lane, Box 186
Moylan, PA 19065

Alan J. Nogee
The Keystone Alliance
3700 Chestnut Street
Philadelphia, PA 19104

Steven Levin
11 Beard Circle
Phoenixville, PA 19460

Mr. Marvin I. Lewis
6504 Bradford Terrace
Philadelphia, PA 19149

William A. Lochstet
119 E. Aaron Drive
State College, PA 16801

Judith A. Dorsey, Esq.
Limerick Ecology Action
1315 Walnut Street, Suite 1632
Philadelphia, PA 19107

Donald S. Bronstein, Esq.
The National Lawyers Guild
Third Floor
1425 Walnut Street
Philadelphia, PA 19102

John Shniper, Esq.
Meeting House Law Bldg. &
Gallery
Mennonite Church Rd.,
Schuylkill Rd. (Rte. 724)
Spring City, PA 19475

Mr. Charles Bruce Taylor
24 West Tenth Avenue
Collegeville, PA 19426

Joseph H. White, III
11 South Merion Avenue
Bryn Mawr, PA 19010

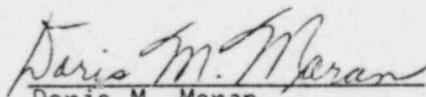
Clarence Wells
376 S. Sugan Rd.
New Hope, PA 18938

COURTESY NOTIFICATION

As circumstances warrant from time to time, the Board will mail one copy of its orders and memoranda directly to each party, petitioner or other interested participant. This is intended solely as a courtesy and convenience to those served to provide extra time. Official service will be separate from the courtesy notification and will continue to be made by the Office of the Secretary of the Commission. Unless otherwise stated, time periods will be computed from the official service.

In addition to the service of this Memorandum and Order made by the Commission's Docketing and Service Section to their official service list, I hereby certify that I have today mailed, by first class mail postage prepaid, the Board's Memorandum and Order of this date to:

Mrs. Helene Greenstein
P. O. Box 51
Limerick, Pennsylvania 19468


Doris M. Moran
Clerk to the Board

Bethesda, Maryland

October 14, 1981