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ROBERT J. SUGARMAN
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DOCKETING & RECORDS
MANAGER

February 11, 1982

Lawrence Brenner, Esquire
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

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

RE: Philadelphia Electric Company
(Limerick Generating Station
Units 1 and 2)
Docket Nos. 50-352, 50-353

Dear Sirs:

At the pretrial on January 6, 1982, the Board inquired to the status of various actions required by the Pennsylvania Department of Resources. At that time, I indicated that I had knowledge of matters disclosed to me by the Department which I did not feel free to communicate. Since that time, the Department has pronounced its decision to withdraw the water quality certification Section 401 issued in connection with the 404 permit determination by the Corps of Engineers regarding the Point Pleasant intakes. I enclose herewith a copy of DER's withdrawal letter.

Also, at the hearing, Philadelphia Electric was invited to submit copies of the DRBC rules applying to the matter of adjudicatory hearings, and also a copy of the unpublished Order of the Third Circuit regarding the NRC's prior decision.

Delaware has now reviewed the DRBC Rules and ascertained the reasons why no adjudicatory hearing was requested in connection with the February 18, 1981 final approval by the DRBC under Section 3.8 of its regulations. Those rules and regulations of DRBC make it clear that protestants have no right to request a hearing, and the question as to a scheduling of a hearing depends on the Executive Director's exercise of discretion (Section 2-3.10(a), pages 18 and 19). No provision is made for appeal to the Commission of a determination

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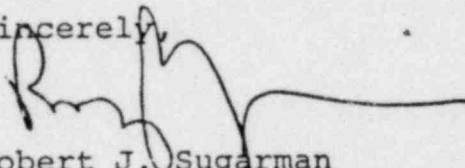
U.S. Nuclear Regulatory Commission
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by the Executive Director not to schedule a hearing. Nor do the provisions in Article 5 of the Rules relate to this matter, since it arises as a result of non-Section 3.8 proceedings.

Thus, while the DRBC has provision for hearings, such hearings, other than at the instance of the applicant, are completely discretionary with the Commission, and the failure of the Commission to hold such a hearing in this matter cannot certainly be considered a waiver or the equivalent of a hearing for purposes of this Board's action.

Copies of this letter are being sent to the service list as customary.

Sincerely,

A handwritten signature in dark ink, appearing to read 'R. Sugarman', with a long horizontal flourish extending to the right.

Robert J. Sugarman
Attorney for Petitioner
Del-AWARE Unlimited, Inc.

Service List

:nsw
L. Els.

1315 Walnut Street - Suite 1200
Philadelphia, Pennsylvania 19107
(215) 238-6596

Hon. Anthony J. Mazullo, Jr.
Environmental Hearing Board
Blackstone Building
First Floor Annex
112 Market Street
Harrisburg, Pa. 17101

Robert J. Sugarman, Esq.
Sugarman and Denworth
Suite 510, No. Amer. Bldg.
121 South Broad Street
Philadelphia, Pa. 19107

Hershel J. Richman, Esq.
Cohen, Shapiro, Polisher, Shiekman & Cohen
PSFS Building
12 South 12th Street
Philadelphia, Pa. 19107

re: Del-AWARE Unlimited, Inc. v.
Commonwealth of Pennsylvania,
Department of Environmental
Resources, EHB No. 81-146-M

Dear Mr. Mazullo and Counsel:

Enclosed, as promised, are copies of the letter sent today to Mr. Flowers of the Keshaminy Water Resources Authority and the notice, also sent today, which is to be placed in the Pennsylvania Bulletin of February 6, 1982. I will track the notice through the bureaucracy in Harrisburg to make sure that it is, indeed, sent in for that issue of the Bulletin. Any questions should be directed to me.

Sincerely yours,

Louise S. Thompson
Louise S. Thompson
Attorney for the Department

cc: Maxine Woelfling, Esq.
Eugene E. Dice, Esq.

RECEIVED

JAN 28 1982

SUGARMAN AND DENWORTH

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Department of Environmental Resources

1875 New Hope Street
Norristown, Pennsylvania 19401
215 631-2425

January 27, 1982

Robert A. Flowers
Executive Director
Pennsylvania Water Resources Authority
P.O. Box 378
Jarlison, PA 18029

Re: Water Quality Certification of
Point Pleasant Diversion

Dear Mr. Flowers:

The Department has determined that, pursuant to §401 of the Federal Water Pollution Control Act, 33 USC §1341, we are obliged to publish, for public comment, notice of receipt of any application for certification of any project requiring a Federal permit pursuant to §404 of the Federal Act, prior to taking action on the application. Since the Department did not publish notice that it had received the Authority's application for certification dated May 11, 1981, we hereby withdraw the subsequent Department certification issued by letter dated August 14, 1981.

In the February 6, 1982 issue of the Pennsylvania Bulletin, the Department will publish notice that 1) on May 11, 1981, the Department received from the Authority an application for water quality certification pursuant to §401 of the Federal Act, and 2) the Department has withdrawn its August 14, 1981 certification and will reconsider the Authority's application in light of all comments received within thirty (30) days after publication of notice.

This action of the Department may be appealed to the Environmental Hearing Board, First Floor Annex, Blackstone Building, 112 Market Street, Harrisburg, PA 17120, (717) 787-3483, by any aggrieved person pursuant to Section 1921-A of the Administrative Code of 1929, 71 P.S. §510-21; and the Administrative Agency Law, 2 Pa. C.S. Chapter 5A. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the regulations governing practice and procedure before the Board may be obtained from the Board.

If you have any questions concerning this action, please contact me at the above telephone number.

Very truly yours,

CHARLES REIM
Chief, Planning Section

CR:smc

cc: Louise S. Thompson, Esq.
Eugene E. Dice, Esq.
Maxine Wolfing, Esq.
✓ Marshal J. Pickman, Esq./William Carlin, Esq.
Robert G. Sugarmen, Esq.
Re 30 C58