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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
DOCKETING & SERVICE

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

APPLICANT'S OPPOSITION TO APPLICATION BY
DEL-AWARE UNLIMITED, INC. FOR ISSUANCE
OF SUBPOENAS TO GERALD M. HANSLER,
GEORGE PENCE AND WILLIAM MARAZZO

Preliminary Statement

On August 9, 1982, Del-Aware, Unlimited, Inc. ("Del-Aware") made application to the Atomic Safety and Licensing Board ("Licensing Board" or "Board") for the issuance of a subpoena pursuant to 10 C.F.R. §2.720(a) commanding Gerald M. Hansler, Executive Director, Delaware River Basin Commission ("DRBC") to appear and give his deposition at the office of Del-Aware's counsel on August 17, 1982. A separate application for, inter alia, George Pence, an employee of the United States Environmental Protection Agency, Region III, and William Marazzo, Commissioner, Philadelphia Water Department, was made on August 3, 1982.

As to Mr. Hansler, the instant application has been made more than two weeks after the final deadline set by the Licensing Board for the issuance of notices of depositions

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and comes in the midst of an already overcrowded deposition schedule. ^{1/} Moreover, DRBC has provided a thorough and detailed analysis of all environmentally related information concerning the Point Pleasant Pumping Station in its Final Environmental Impact Statement (1973) and its Final Environmental Assessment (1980) and all related documents, all of which are on file and available for public inspection at the DRBC headquarters in West Trenton, New Jersey. It is unclear why Del-Aware believes that Mr. Hansler, as Executive Director, can provide any additional information. Further, the application as to Mr. Pence and Mr. Marazzo is improper since no testimony relevant to the three granted issues is involved. Accordingly, Philadelphia Electric Company ("Applicant") opposes the application for a subpoena for these reasons, as discussed more fully below.

Argument

I. The Application For a Subpoena for Mr. Hansler Should be Denied as Inexcusably Late.

As the Board has noted on a number of occasions, the schedule for litigating the supplemental cooling water contention is extremely tight. ^{2/} In its Order dated July 13, 1982, providing a litigation schedule, the Board

^{1/} Thus, depositions by Del-Aware and Applicant are now scheduled for August 10, 11, 12, 13, 14, 16, 17, and 20, the last day for completion of discovery, including the taking of depositions.

^{2/} See Special Prehearing Conference Order ("SPCO") at 88-89 (June 1, 1982).

specifically cautioned the parties that a "tight schedule" exists. In addition to the difficulties inherent in staying on schedule, further depositions beyond the scope of the Board's deadline can only distract the Staff from the completion of its own environmental review, a priority which the Board has twice noted. ^{3/}

Particularly under the circumstances of this aspect of the proceeding, strict compliance with the Board's deadline is necessary. The Commission has recently reemphasized the need for licensing boards to manage discovery so that it be completed promptly and efficiently. Among the objectives stated by the Commission was confinement of discovery to established "time frames for the completion of both voluntary and involuntary discovery." ^{4/} This salutary purpose will be lost if parties are permitted to wander weeks beyond the deadline imposed by a licensing board under the most stringent circumstances.

II. Any Information Relating to
Admitted Contentions Available
From DRBC is Already Contained
In Its Environmental Statements.

In its application for subpoena Del-Aware states that Mr. Hansler "may provide" relevant testimony "relating to the flow in the Delaware River, the operations of the Point

^{3/} SPCO at 89; Memorandum and Order Concerning Objections to June 1, 1982 SPCO at 17-18 (July 14, 1982).

^{4/} Statement of Policy on Conduct of Licensing Proceedings, CLI-8-1-8, 13 NRC 452, 456 (1981).

Pleasant intake and the likely effects of the proposed management plan on the Delaware River on flows at the intake." As the Board has pointed out in its previous orders, questions as the flow of the Delaware River and the diversion at Point Pleasant go to the heart of DRBC's authority to allocate waters of the Delaware River Basin and grant approvals pursuant to Section 3.8 of its Compact. ^{5/} Thus, DRBC has thoroughly considered such matters and described in great detail all environmental impacts that it anticipates will occur as a result of the diversion of Delaware River water at Point Pleasant.

However, there has been no showing by Del-Aware that Mr. Hansler, as Executive Director of DRBC, has any special knowledge or information relating to the subject matter of the contentions beyond the exhaustive compilation of environmental data in the environmental statements prepared by DRBC in 1973 and again in 1980. Each of these environmental statements and supporting documents are and have been available for public inspection at the DRBC headquarters in West Trenton, New Jersey. ^{6/} Both in this

^{5/} SPCO at 70-71; Memorandum and Order Concerning Objections to June 1, 1982 SPCO at 10.

^{6/} In addition to other matters, Del-Aware states that Mr. Hansler can testify "as to the practice of the Delaware River Basin Commission regarding waiver of intake withdrawal restrictions during emergencies." This portion of the application is clearly without merit inasmuch as no radiological emergency could require

(Footnote ^{6/} continued on next page)

proceeding as well as its separate request for action to the Director of Nuclear Reactor Regulation under 10 C.F.R. §2.206, Del-Aware has shown complete familiarity with these documents and an ability to obtain and utilize them.

Further, it appears likely that in deposing Mr. Hansler, Del-Aware intends to engage in "an unlawful attempt to explore the mental processes of a government official." Securities & Exchange Commission v. Perera Co., 47 F.R.D. 535, 537 (S.D.N.Y. 1969). As the Executive Director of DRBC, Mr. Hansler may not be called upon by a litigant such as Del-Aware to explain the reasons for the decision by DRBC to grant final Section 3.8 approval for the Point Pleasant diversion. As stated above, it is unnecessary, in any event, to probe for such an analysis, which is clearly and comprehensibly delineated in the docket decisions themselves and the underlying environmental record.

Del-Aware has also failed to justify the burden inherent in discovery against a nonparty such as Mr.

6/ (Continued)

extra withdrawals at the Point Pleasant diversion. All Delaware River water diverted at Point Pleasant for Limerick is only supplemental cooling water. The Limerick spray pond is the ultimate heat sink. See FSAR Section 2.2.3.1.5. As DRBC expressly stated in its decision approving the allocation for Limerick in Docket No. D-79-52 CP at 2-3 (February 18, 1981), the diversion from the Delaware "is to provide an additional source of cooling water for PECO's Limerick Generating Station. . . . It is not required for the safe shutdown of the reactors." Any other water "emergency" does not relate to Limerick.

Hansler. Under NRC practice, a stronger showing of relevance and materiality must be made where a subpoena is sought against a nonparty. Specifically, the movant must show: (1) that the information sought is otherwise unavailable; and (2) that it has minimized the burden placed on the nonparty. See Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-122, 6 AEC 322 (1973); Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-118, 6 AEC 263 (1973). No such demonstration has been made by Del-Aware in this instance, particularly in light of the voluminous environmental record compiled by that agency on the Point Pleasant diversion, which is publicly available. It is further submitted that an even stronger showing should be made before the NRC compels the attendance of another federal agency's high-level officials at depositions. Again, no such showing has been made.

III. The Testimony Sought From
Mr. Marazzo and Mr. Pence
is Irrelevant.

In its application, Del-Aware states that Mr. Marazzo, the Commissioner of the Water Department of the City of Philadelphia, has knowledge "concerning the potential for the City of Philadelphia to provide supplemental cooling water to Philadelphia Electric Company's Limerick Generating Station from the Delaware River and/or the Schuylkill River." However, the Licensing Board has already ruled that the consideration of alternative sources for cooling water is beyond its jurisdiction at the operating license stage

and has rejected proposed contentions on this subject. ^{7/}
Thus, Del-Aware's statement alone, on its face, demonstrates that the proposed testimony is wholly irrelevant to any of the three contentions granted by the Licensing Board.

Similarly, the testimony sought from Mr. Pence, whom Del-Aware identifies as an employee of the United States Environmental Protection Agency, is also irrelevant. Del-Aware's vague references to EPA's findings regarding "the impact of the project" does not identify any relevant area of inquiry relating to any of the three contentions granted to Del-Aware by the Licensing Board. The views of the EPA were communicated to DRBC as part of its normal process for obtaining comments from appropriate agencies as part of its general review. No showing whatsoever has been made that any information relevant to the three contentions is forthcoming now from EPA. Also, it does not appear that Mr. Pence is offered by EPA as an official spokesman for the agency. Absent a specific showing of relevance to the three issues, the request for subpoena should be denied.

Further, as discussed above, no strong showing has been made to compel the attendance of either of these nonparty, public officials at depositions.

Conclusion

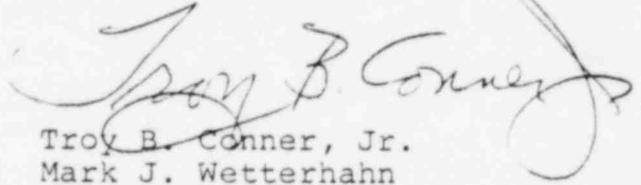
For the reasons discussed above, Applicant respectfully submits that the application of Del-Aware for the requested

^{7/} See SPCO at 100.

subpoenas should be denied as untimely and/or lacking in relevance. Del-Aware has also failed to make the requisite showing under the rules for the issuance of a subpoena to a nonparty, public official.

Respectfully submitted,

CONNER & WETTERHAHN, P.C.

A handwritten signature in cursive script, appearing to read "Troy B. Conner, Jr.", written in dark ink.

Troy B. Conner, Jr.
Mark J. Wetterhahn
Robert M. Rader

Counsel for the Applicant

August 10, 1982

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Opposition to Application by Del-Aware Unlimited, Inc. for Issuance of Subpoenas to Gerald M. Hansler, George Pence and William Marazzo" dated August 10, 1982, in the captioned matter, have been served upon the following by deposit in the United States mail or by hand delivery as indicated below this 10th day of August, 1982:

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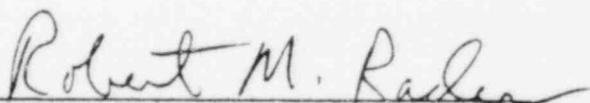
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