

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

BEFORE ADMINISTRATIVE JUDGES
Lawrence Brenner, Chairman
Dr. Richard F. Cole
Dr. Peter A. Morris

OFFICE OF THE
SECRETARY & STAFF

SERVED AUG 25 1982

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

Docket Nos. 50-352
50-353

August 24, 1982

ORDER

(Concerning Motion To Compel Answers To Interrogatories)

This order rules on Del-Aware's August 9, 1982 "Motion to Compel Answers to Interrogatories" of the Applicant, Philadelphia Electric Company (PECo). Applicant filed its answer to the motion on August 13, 1982.

In NRC proceedings the scope of information which may be obtained through discovery is somewhat broader than that which is admissible as evidence at the hearing. Thus, any unprivileged matter which is relevant to the subject matter is discoverable as long as it is reasonably calculated to lead to the discovery of admissible evidence. 10 CFR §2.740(b)(1). However, interrogatories are to be answered on the basis of currently available information and may not require the performance

of new research. If no information is currently available, stating that fact is an acceptable, and indeed possibly revealing, answer.

As Del-Aware notes, the Board had indicated in its August 2 conference call that many of the Applicant's objections were well taken. Many of the interrogatories to which Applicant originally objected have been abandoned or the disputes between Del-Aware and the Applicant have been resolved. Therefore, it is no longer the case that "many" of the interrogatories which are the subject of Del-Aware's present motion to compel are objectionable.

Interrogatory 1(d)-(f)

Applicant is ordered to provide answers to Interrogatory 1, subparts d, e, and f. The Applicant's objections to this interrogatory apparently apply only to those parts of the interrogatory which seek information concerning flows of 3,000 cfs or less. However, it appears that PECO may take water by the diversion when flows are 3,000 cfs or less if it provides compensatory water. Moreover, the Neshaminy Water Resources Authority (NWRA) can apparently use the diversion when flows are less than 3,000 cfs. It may be that at the hearing the Board will determine that impacts of such use by NWRA are separable and need not be considered. However, the Board is not prepared to make such a decision at this time. Thus, in light of the potential for use of the diversion by PECO and/or the NWRA when flows are 3,000 cfs or less, this interrogatory seeks sufficiently relevant information for discovery and should be answered.

Interrogatory 1(g)

This interrogatory seeks information on compensatory storage to maintain the Delaware River flow. Such storage to maintain river flow could affect flow rate. This in turn could be relevant to contention V-15 and V-16a (in part) and to contention V-16a. Therefore, the Applicant is ordered to answer this interrogatory.

Interrogatory 1(i)

Interrogatory 1(i) concerns minimum surface water elevation bearing in mind use of the diversion during low flow periods. For the reasons discussed in connection with interrogatories 1(d)-(f), this is sufficiently relevant to require an answer at this discovery stage of the proceeding.

Interrogatory 3

This interrogatory concerns debris and ice conditions in the river. In its motion to compel answers to interrogatories, Del-Aware argues that such conditions could affect the need for dredging and maintenance which will adversely affect the peace and tranquility of the proposed historic district. Thus, the interrogatory is relevant to contention V-16a and must be answered.

Interrogatory 5

It is not clear to the Board exactly what information is sought by Interrogatory 5. It apparently relates to salinity studies. Salinity changes relate to the allocation decision and are not related to any admitted contentions. If other impacts of withdrawal are intended to be encompassed by the interrogatory, they are not specifically described. Therefore, insofar as this interrogatory has any specificity, it concerns matters beyond the scope of admitted contentions and need not be answered.

Interrogatory 9

This interrogatory seeks information concerning compensatory storage provided by the Merrill Creek Reservoir. It is relevant for the reasons discussed in connection with Interrogatory 1(g). Therefore, it must be answered.

Interrogatory 11

Interrogatory 11 seeks information regarding the economic savings to Bucks County and PECO arising from the construction of the joint project. The method of financing construction and the economics of joint construction are not relevant to any of the admitted contentions. Therefore, this interrogatory need not be answered.

Interrogatory 12

Interrogatory 12 seeks information concerning the timing of construction of the diversion. This information is not relevant to the admitted contentions, but it could become relevant to the Board's deliberations if the Board were to consider issuing a stay. Therefore, since the information is apparently available now and it might assist the Board to act efficiently after the hearing with respect to considering a stay of construction, this interrogatory should be answered.

Interrogatory 13

This interrogatory concerns the operating plan for the Point Pleasant intake. The Applicant's view which would limit the relevant matter sought by this interrogatory to the Bradshaw Reservoir and contention V-16b is too narrow. The interrogatory fairly encompasses matters concerning the intake which could be relevant to contention V-15 and V-16a (in part) and to contention V-16a. However, proposed releases to the Perkiomen Creek are beyond the scope of any of the admitted contentions and the Applicant's answer need not concern them.

Interrogatory 17 (a) & (b)

Interrogatory 17 concerns compliance with Section 316(b) of the Clean Water Act. Del-Aware in its motion to compel answers to its

interrogatories sufficiently establishes the relevance of this information to impacts of the intake and to the admitted contentions. Therefore, the Applicant is ordered to answer this interrogatory.

Interrogatory 20

Interrogatory 20 seeks information concerning reports or evaluation of reports submitted to PECO by intervenors or opponents to PECO. In its motion to compel answers to its interrogatories, Del-Aware clarified this interrogatory to seek "information relating to any evaluations or reviews of information submitted by Del-Aware or its experts regarding the admitted contentions." Motion to Compel Answers to Interrogatories at 14. As so clarified, the interrogatory seeks relevant information and PECO is ordered to answer it. We note that PECO accepts this view in its answer.

Interrogatory 21

This interrogatory, which concerns use of data from the NWRA February 1979 Environmental Report in preparing the July 1979 Report, is listed in the summary of the motion to compel answers to interrogatories as one which Del-Aware seeks to have answered. However, Del-Aware does not discuss it in the body of its motion. The Applicant objects to this interrogatory insofar as it goes beyond the three admitted contentions. The Applicant notes in its answer to the motion to compel answers that it would not object to this interrogatory if it

were clarified in a manner similar to that used for Interrogatory 20. The Applicant is correct that this interrogatory should be limited to the subjects of the admitted contentions. The Applicant is directed to answer the interrogatory as so limited.

Interrogatory 8

This interrogatory is listed in Del-Aware's summary in its motion to compel answers as an interrogatory which it seeks to have the Applicant answer. Del-Aware does not discuss it in the body of its motion and neither, understandably, does the Applicant. Therefore, it is not necessary that the Board rule on this interrogatory.

Conclusions

Del-Aware's motion to compel answers to interrogatories is granted as to interrogatories 1(d)-(f), 1(g), 1(i), 3, 9, 12, 13 (as limited), 17, 20 (as clarified), and 21 (as limited). It is denied as to interrogatories 5 and 11.

Answers to those interrogatories for which the Board has granted the motion to compel answers must be received by Del-Aware and the Staff by September 1, 1982.

Del-Aware and the Applicant were informed of the content of this order on August 23, 1982.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

Lawrence Brenner
Lawrence Brenner, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland
August 24, 1982