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USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

82 JUL 28 P231

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY  
& SERVICE  
BRANCH

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

APPLICANT'S OBJECTIONS TO INTERROGATORIES  
AND REQUEST FOR PRODUCTION OF DOCUMENTS  
OF DEL-AWARE UNLIMITED, INC. TO APPLICANT  
AND MOTION FOR A PROTECTIVE ORDER

Preliminary Statement

Pursuant to the Order dated July 13, 1982 of the Atomic Safety and Licensing Board ("Licensing Board" or "Board") establishing a schedule for the litigation of three contentions concerning supplemental cooling water for Limerick, intervenor Del-Aware Unlimited, Inc. ("Del-Aware") served its discovery requests 1/ upon Philadelphia Electric Company ("Applicant") on July 21, 1982. While every effort will be made by Applicant to accommodate the legitimate needs of Del-Aware for information necessary to litigate these issues on a timely basis, much of the information sought by Del-Aware far exceeds the scope of the three specific contentions granted it by the Board in its Special

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1/ These included interrogatories, a request for production of documents and a notice for the taking of some 17 depositions.

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Prehearing Conference Order, dated June 1, 1982 ("SPCO") and its subsequent Order, dated July 14, 1982 ("Order on Objections").

Accordingly, Applicant has enumerated specific objections pursuant to 10 C.F.R. §2.740b(b) and also moves pursuant to 10 C.F.R. §2.740(c) for a protective order limiting discovery to relevant areas within the bounds of the admitted contentions. <sup>2/</sup> The application of these objections to the general legal principles regarding discovery in licensing proceedings and the specific ground rules established by the Board in this case require the entry of a protective order against many of Del-Aware's discovery requests, which plainly exceed the bounds of relevant matters.

In view of the existing time constraints, this pleading is being served upon Del-Aware by express mail or the equivalent on July 27, 1982 and hand-delivered by courier to the members of the Board and the NRC Staff on July 28, 1982. It is requested that Del-Aware's time to respond to the

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<sup>2/</sup> Under the NRC discovery rules, it is sufficient to interpose objections. See Northern States Power Company (Tyrone Energy Park, Unit 1), Docket No. STN 50-484, "Memorandum and Order Ruling on Motions to Compel Discovery" (November 17, 1978) (slip op. at 2-3); Puget Sound Power and Light Company (Skagit Nuclear Power Project, Units 1 and 2), Docket Nos. STN 50-522 and STN 50-523, "Order Granting and Denying Certain Requests for Discovery" (February 9, 1978) (slip op. at 1). In this instance, however, Applicant is also filing a motion for a protective order to expedite a ruling by the Licensing Board on the objections.

motion be shortened to August 3, 1982, and that it serve its response to the Licensing Board, Applicant and the NRC Staff by express mail. Answers to interrogatories are presently due on August 14, 1982. Requested documents are to be produced by August 20, 1982. As noted, Del-Aware has also noticed the taking of some 17 depositions. The deadline for answering Del-Aware's interrogatories is August 4, 1982. The Board's ruling will also provide helpful guidance to the parties at depositions, where Del-Aware is likely to pursue the same line of questioning. With guidance from the Board, many depositions can be shortened and some may be altogether eliminated (e.g., deposition of "NWRA Official Responsible for Financial Planning").

#### Argument

In its SPCO and Order on Objections, the Licensing Board clearly established the basic principles for litigating issues relating to the Point Pleasant project. First, the Board held that environmental impacts attributable to construction of the project are beyond its jurisdiction at the operating license stage. <sup>3/</sup> Second, the Board held that it lacks jurisdiction and is statutorily precluded from reviewing water allocation decisions of the Delaware River Basin Commission ("DRBC"), including DRBC findings which were necessarily bound up with such decision-making, <sup>4/</sup> e.g., impacts on downstream water

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<sup>3/</sup> SPCO at 83; Order on Objections at 4-5.

<sup>4/</sup> SPCO at 70, 95-96; Order on Objections at 10.

quality resulting from its decision to permit the diversion of Delaware River water. <sup>5/</sup> Third, the Board ruled that financial arrangements between Applicant and Neshaminy Water Resources Authority ("NWRA") are irrelevant and that the NRC lacks jurisdiction to review the need for the entire project as a whole or specific components to be used solely by NWRA which allegedly would not be built "but for" Limerick. <sup>6/</sup>

Applying these ground rules to the proposed contentions, the Board determined that only three narrow contentions of Del-Aware passed muster for consideration at the operating license stage, as set forth for convenience below:

Contentions V-15 and V-16a (in part) -  
The intake will be relocated such that it will have significant adverse impact on American shad and short-nosed sturgeon. The relocation will adversely affect a major fish resource and boating and recreation area due to draw-down of the pool.

Contention V-16a - Noise effects and constant dredging maintenance connected with operations of the intake and its associated pump station will adversely affect the peace and tranquility of the Point Pleasant proposed historic district.

Contention V-16b - Seepage of water and toxics from Bradshaw Reservoir will cause a risk of groundwater contamination and hydraulic saturation.

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<sup>5/</sup> Order on Objections at 18-19.

<sup>6/</sup> SPCO at 73-81; Order on Objections at 8-9.

Notwithstanding the express rulings by the Licensing Board denying certain broader contentions, Del-Aware now seeks, by discovery, to expand the litigation beyond these three admitted contentions to include, in effect, all past decisions by the NRC and DRBC concerning the entire Point Pleasant project as to both construction and operational impacts. A number of the interrogatories address impacts attributable to withdrawals from the Schuylkill River, which is not, of course, even a part of the Point Pleasant project. <sup>7/</sup> Other interrogatories attempt to delve into areas which the Board has specifically ruled out, such as financial arrangements between Applicant and NWRA and the basis for NWRA's participation in the project, <sup>8/</sup> blasting impacts, <sup>9/</sup> salinity intrusion and other downstream water quality issues. <sup>10/</sup> Matters wholly unrelated to any existing contention, such as possible outages due to debris and ice conditions, <sup>11/</sup> are also included. At least one interrogatory <sup>12/</sup> requests information which would necessarily require Applicant to conduct research and perform analyses to generate the requested data, contrary to

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<sup>7/</sup> See Interrogatories 8(a), 8(b), 10 and 18.

<sup>8/</sup> See Interrogatory 11.

<sup>9/</sup> See Interrogatories 4 and 19.

<sup>10/</sup> See Interrogatories 5, 6 18, 20 (in part) and 21 (in part).

<sup>11/</sup> See Interrogatory 3.

<sup>12/</sup> See Interrogatory 1.

established principles of discovery. To the extent such research or analysis is necessary, the interrogatories are objectionable. <sup>13/</sup>

Even under the most liberal interpretation of the discovery rules, parties are entitled to obtain only information which tends to support or negate allegations in the contentions, or which is reasonably calculated to lead to such information. Susquehanna, supra, ALAB-613, 12 NRC at 331; Commonwealth Edison Company (Byron Station, Units 1 and 2), Docket Nos. 50-454-OL and 50-455-OL, "Protective Order" (February 22, 1982) (slip op. at 2); Pacific Gas & Electric Company (Stanislaus Nuclear Project, Unit 1), LBP-78-20, 7 NRC 1038, 1040 (1978); Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), LBP-77-13, 5 NRC 489, 491 (1977).

Because Del-Aware's discovery requests clearly exceed the scope of permissible discovery and are not reasonably calculated to lead to admissible evidence for these reasons and as discussed in Applicant's objections below, its

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<sup>13/</sup> Approving the statement of this principle by the Licensing Board in the Susquehanna case, the Appeal Board held that "a party is not required to engage in extensive independent research. It need only reveal information in its possession or control (although it may be required to perform some investigation to determine what information it actually possesses). Pennsylvania Power and Light Company (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 334 (1980). See also Boston Edison Company (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, 1 NRC 579, 584 (1975).

interrogatories should be disallowed. Del-Aware's requests for production of documents, which are keyed to its interrogatories, are correspondingly objectionable and should also be disallowed to the extent they seek the same information. As discussed previously, the Board should likewise rule that these subjects may not be pursued during depositions, which are scheduled to commence shortly. Obviously, the pursuit of such irrelevant issues beyond the admitted contentions can only delay the proceeding and render more difficult the parties' compliance with the Board's schedule for the completion of a hearing on supplemental cooling water issues in a timely manner. <sup>14/</sup> Applicant is therefore entitled to a protective order to protect against such abuses of the discovery process and to avoid unnecessary delay in the hearing of these issues. <sup>15/</sup>

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<sup>14/</sup> While the Board expressed the hope that informal discovery on these issues would suffice (SPCO at 89), the tightness of the schedule for litigating these contentions renders formal action by the Board necessary to avoid delay and an unwarranted expansion of the issues. Guidance provided by the Board in ruling on Applicant's objections and motion for a protective order should also obviate the need for telephone rulings by the Chairman during the taking of depositions on objections to questions beyond the scope of the three specific contentions.

<sup>15/</sup> It is also noted that Del-Aware's discovery requests to the NRC Staff are improperly broad and evidently are intended for the improper purpose of relitigating construction impacts. Further, Del-Aware has not complied with the procedures set forth in 10 C.F.R. §2.744 for requesting production of NRC records and documents.

Specific Objections

Interrogatories 1(d), (e), and (f): These interrogatories ask Applicant to provide information on the rate of flow of the Delaware River when the Point Pleasant Pumping Station is in operation. Applicant objects to these interrogatories insofar as such information does not exist at the present time on the ground that Applicant may not be compelled to conduct research or perform analyses in order to generate information not in its possession. To the extent Applicant has such information, it will be provided.

Applicant further objects insofar as these interrogatories as well as Interrogatory 1(a) seek information relating to the diversion of water at the Point Pleasant Pumping Station when the flow of the Delaware River at Trenton is less than 3000 cfs. The DRBC has expressly conditioned operation of the pumping station upon this minimum flow level as a condition of its allocating Delaware River water for Limerick. Since the NRC cannot alter this condition, <sup>16/</sup> flow rates below 3000 cfs are irrelevant to any contention.

Interrogatory 1(g): This interrogatory requests information relating to compensatory storage to maintain Delaware River flow. Applicant objects to this interrogatory on the grounds that is beyond any admitted contention and that any plans for additional reservoirs to

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<sup>16/</sup> See SPCO at 90.

maintain the flow of the Delaware River are necessarily part and parcel of DRBC's responsibilities in allocating Basin water, which the Board has already determined is beyond its jurisdiction. <sup>17/</sup> The interrogatory is therefore irrelevant and beyond the scope of any admitted contentions.

Interrogatory 1(i): This interrogatory relates to operation of the intake by NWRA at low flow periods even if not operated for Applicant's use. Applicant objects to this interrogatory on the ground that it concerns periods during which the intake will be operated by NWRA independent of any use of water by Applicant. The Board has already ruled that environmental impacts arising from NWRA's independent use of the Point Pleasant facilities are not attributable to Limerick and therefore are beyond the Board's jurisdiction.<sup>18/</sup>

Interrogatory 2: Applicant will provide such information as it may have on this subject. However, it objects to any question as to "PECO's application to the Corps of Engineers . . ." on the Point Pleasant intake because no such application exists.

Interrogatory 3: This interrogatory seeks information as to whether the intake will be subject to frequent or occasional outage due to debris and ice conditions in the river. Applicant objects to this interrogatory on the

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<sup>17/</sup> See SPCO at 70, 96-97; Order on Objections at 18.

<sup>18/</sup> SPCO at 76-77; Order on Objections at 8-9.

ground that outages due to debris and ice conditions in the Delaware River are beyond the scope of any of the admitted contentions. Nor is the potential for ice damage to the intake structure relevant.

Interrogatory 4: This interrogatory concerns "proposed initiation of blasting and the impacts of blasting on the Pennsylvania Canal." Applicant objects to this interrogatory on the ground that blasting impacts on the Pennsylvania Canal are construction matters beyond the scope of the admitted contentions. The Board has disallowed Del-Aware's Contention V-13, which specifically sought to litigate alleged adverse impacts on the Pennsylvania Canal resulting from construction in general and blasting in particular. <sup>19/</sup>

Interrogatory 5: This interrogatory asks for information regarding "downstream impacts of the water withdrawal at Point Pleasant," i.e., in the Eastern Branch of the Perkiomen Creek, the Schuylkill River and the Delaware River, which have been considered in conjunction with other studies. Applicant objects to this interrogatory on the ground that it is irrelevant to any of the admitted contentions. Such "downstream impacts" i.e., seasonal salinity changes on oyster production, control of salinity intrusion, and compensatory storage requirements to maintain minimum flow of the Delaware River, are also beyond the

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<sup>19/</sup> SPCO at 92.

Board's jurisdiction. As noted in the objection to Interrogatory 1(g), supra, the Board has already determined that water quality impacts such as these are inextricably bound up in the DRBC decision to allocate water to the project. <sup>19/</sup> Downstream impacts of water withdrawal (salinity intrusion, in particular) clearly relate to proposed Contention 16, which the Board has stricken, based upon the preclusive and binding effect of DRBC's determinations.

Interrogatory 6: This interrogatory concerns "anticipated impacts on water quality in the Perkiomen Creek." Applicant objects to this interrogatory as irrelevant to any admitted contention for the reasons discussed in the objection to Interrogatory 5, supra.

For example, subsection (f) of this interrogatory apparently pertains to erosion and sedimentation impacts in the Perkiomen Creek, which are plainly beyond the scope of the admitted contentions and subject to the same preclusion.

Interrogatories 8(a) and (b): These interrogatories ask for information concerning the possible use of alternative reservoirs to supply supplemental cooling water for Limerick, including increased allocations from the Schuylkill River. Applicant objects to this interrogatory as irrelevant inasmuch as it clearly relates to the subject alternatives for the supply of cooling water and their

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<sup>19/</sup> See page 8, supra.

relative economic feasibility. The Board has already rejected these issues in denying proposed Contention V-19.<sup>21/</sup> The existence of reservoir alternatives is therefore beyond the scope of any admitted contention.

Interrogatory 9: This interrogatory asks for an indication of "the extent of compensatory storage" which the Merrill Creek Reservoir is expected to provide. Applicant objects to this interrogatory as irrelevant for the reasons discussed in the objections to Interrogatory Nos. 5 and 6, supra. Compensatory storage necessary to maintain minimum flow requirements of the Delaware River is beyond the scope of any admitted contention and, like other water allocation matters, within the exclusive jurisdiction of the DRBC.

Interrogatory 10: This interrogatory relates to "the basis for the limitation on withdrawal of water from the Schuylkill River." Applicant objects to this interrogatory inasmuch as it relates to withdrawal of water from the Schuylkill River, which is not even part of the Point Pleasant project and, a fortiori, does not relate to any of the admitted contentions. A specific contention on withdrawal of water from the Schuylkill River was denied by the Board.<sup>22/</sup> Moreover, as discussed in the objections to Interrogatories 5, 6 and 9, the Board has ruled that limitations on the withdrawal of water are part of DRBC's

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<sup>21/</sup> SPCO at 100.

<sup>22/</sup> Id. at 90.

function in allocating water resources in the Delaware River Basin and are not reviewable by the NRC.

Interrogatory 11: This interrogatory broadly addresses economic factors associated with the Point Pleasant project and particular projections and usages by Bucks County. Applicant objects to this interrogatory as irrelevant and beyond the scope of any admitted contention. The interrogatory seeks information regarding water supply needs of Bucks County and cost factors involving construction of the Point Pleasant project. Allegations on these points were raised in Contentions V-17 and V-18, which were rejected by the Board as beyond the requirements of NEPA review for Limerick. <sup>23/</sup> Further, the Board specifically rejected the "but for" analysis upon which these contentions were based and at which this particular interrogatory is obviously aimed. <sup>24/</sup>

Interrogatory 12: This interrogatory asks Applicant to describe studies "relating to the phasing of the construction of the Point Pleasant diversion." Applicant objects to this interrogatory as irrelevant inasmuch as it relates per se to construction and construction impacts. The Board has ruled that it lacks jurisdiction over such matters, <sup>25/</sup> and has specifically disallowed contentions

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<sup>23/</sup> SPCO at 99-100.

<sup>24/</sup> Id. at 76; Order on Objections at 8-9.

<sup>25/</sup> SPCO at 83; Order on Objections at 9.

alleging construction impacts, e.g., Contentions V-11, V-13 and V-14. 26/

Interrogatory 13: Applicant objects to this interrogatory to the extent that it involves "proposed releases to the Perkiomen Creek" from the Bradshaw Reservoir. Contention V-16b, the only one of possible relevance, relates only to the Bradshaw Reservoir.

Interrogatories 17(a) and (b): Applicant objects to these interrogatories on the ground that matters pertaining to the necessity of discharge permits under the Clean Water Act are irrelevant to any contention. The Board has in fact denied proposed Contention 20, which sought to litigate the necessity of "water quality discharge permits for the Perkiomen and Schuylkill River discharges" under the Clean Water Act, including the "application of best available technology for the intake at the Delaware River."27/

Further, as a matter of information to the Board and parties, the Pennsylvania Department of Environmental Resources has determined that no such discharge permit will be required for the Point Pleasant facilities.

Interrogatory 18: This interrogatory likewise seeks information regarding "water quality in the Perkiomen Creek and Schuylkill River." Applicant objects to this interrogatory as irrelevant inasmuch as the inquiry is

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26/ SPCO at 91-92; Order on Objections at 4-5.

27/ See SPCO at 101.

directed to downstream water quality in the Perkiomen Creek and water quality in the Schuylkill River. As discussed above, in the objection to Interrogatories 5, 6, and 9 supra, downstream water impacts in the Perkiomen Creek are unrelated to any admitted contention and, as the Board has determined, are an integral part of DRBC's water allocation decisions. Also, for the reasons discussed in the objection to Interrogatory 10, supra, withdrawals from the Schuylkill River are wholly unrelated to the Point Pleasant project.

Interrogatory 19: This interrogatory also relates to construction blasting. Applicant objects to this interrogatory for the reasons discussed in the objection to Interrogatory 4, supra, i.e., that blasting construction is irrelevant to any admitted contention. Proposed Contention V-13 on this subject was disallowed by the Board. 28/

Interrogatory 20: This interrogatory seeks information submitted by "intervenors and other opponents of PECO" in other proceedings regarding a broad range of alleged environmental impacts. Applicant objects to this interrogatory for the reasons discussed above, insofar as it pertains to environmental impacts downstream of the Point Pleasant Pumping Station and Bradshaw Reservoir and impacts from blasting. Applicant will review its files to determine any reports submitted by such intervenors and opponents relating to the three issues. As a matter of information, GKY Associates and Ezra Golub are unknown to Applicant.

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28/ SPCO at 92.

Interrogatory 21: This interrogatory asks Applicant to describe the extent to which data in the NWRA Environmental Report relating to its application before the DRBC was considered in preparing Applicant's environmental report. Applicant objects to this interrogatory insofar as it goes beyond the three admitted contentions and addresses impacts beyond the Point Pleasant Pumping Station and Bradshaw Reservoir. Applicant will review its files to determine any reports submitted by such intervenors and opponents relating to the three issues.

Conclusion

For the reasons discussed more fully above, the Board should sustain Applicant's objections and enter a protective order that the objectionable interrogatories need not be answered and that related documents need not be produced. The Board should also proscribe further inquiry into the same irrelevant areas during the taking of depositions.

Respectfully submitted,

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July 27, 1982

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Objections to Interrogatories and Request for Production of Documents of Del-Aware Unlimited, Inc. to Applicant and Motion for a Protective Order," dated July 27, 1982 in the captioned matter have been served upon the following by Federal Express this 27th day of July, 1982:

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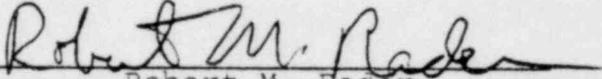
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