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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

APPLICANT'S ANSWER TO DEL-AWARE UNLIMITED, INC.'S
"SUPPLEMENT TO REQUEST FOR RECONSIDERATION REGARDING
THE IMPACT OF FEDERAL MEMBER CONCURRENCE IN DRBC
ORDER AND RENEWED REQUEST FOR RECONSIDERATION OF
SCOPE AND ENVIRONMENTAL IMPACTS TO BE CONSIDERED"

Preliminary Statement

On August 25, 1982, Del-Aware Unlimited, Inc. ("Del-Aware") filed a pleading supplementing its previous request for reconsideration by the Atomic Safety and Licensing Board ("Licensing Board" or "Board") of its ruling that concurrence by Commissioner Tribbitt, the federal representative of the Delaware River Basin Commission ("DRBC"), effectively precludes the Licensing Board from "considering matters concerning the allocation of Delaware River water for cooling Limerick." ^{1/} Del-Aware also asked that the Board again reconsider its ruling as to the scope of review for the environmental impacts attributable to the construction of the Point Pleasant project. ^{2/} The fancied

1/ Memorandum and Order at 18-19 (July 14, 1982).

2/ See Special Prehearing Conference Order at 81-89 (June 1, 1982).

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basis for these requests is the fact that Del-Aware's counsel has just discovered a letter dated January 5, 1981 from the NRC Staff to Applicant, stating that the Staff would examine environmental impacts associated with the Point Pleasant diversion as part of its review of the Limerick application.

Applicant opposes these requests as without merit and untimely. There is absolutely nothing inconsistent with the text of the cited letter and the previous rulings by the Licensing Board on the scope of permissible contentions relating to supplemental cooling water. Further, any statement by the Staff as to the scope of its intended review regarding its preparation of the final environmental statement ("FES") for Limerick would not, in any event, be binding upon the Licensing Board in determining its delegated jurisdiction in this proceeding. As to the DRBC federal representative's concurrence, there is certainly nothing in the correspondence which indicates that Commissioner Tribbitt was aware of, let alone agreed with, any statement in the Staff's letter as creatively interpreted by Del-Aware.

Alternatively, the Board need not reach the merits of these requests, which are based upon publicly available correspondence between the Staff and Applicant more than a year and a half ago. There is no reason why Del-Aware or its counsel could not have obtained this document earlier and submitted it with its proposed contentions in accordance

with the NRC Rules of Practice and the orders of the Licensing Board for adjudicating supplemental cooling water contentions. The effort by the Licensing Board and parties to conclude the hearing of these contentions under an expedited schedule simply cannot withstand attempts by Del-Aware to expand the issues and reconsider legal rulings by the Board upon the "discovery" of documents by Del-Aware's counsel which have long been available in the public record. Accordingly, these requests should be denied.

Argument

I. The NRC Staff Letter Cited By Del-Aware Does Not Reflect Nonconcurrence By The Federal Representative In The DRBC Decisions On The Point Pleasant Diversion.

By letter dated January 5, 1981, Mr. Robert L. Tedesco, Assistant Director for Licensing, Division of Licensing reviewed with the Applicant the Staff's position regarding preparation of a Probabilistic Risk Assessment study for Limerick, which had been discussed at a presentation on December 9, 1980 at Pottstown, Pennsylvania. Mr. Tedesco noted that during the course of the public meeting held on that date, several issues, including the Point Pleasant diversion, were raised by members of the public. Mr. Tedesco then stated that the Staff would thoroughly review the environmental impacts associated with the diversion, which should be thoroughly discussed in the yet to be filed application. The letter does not indicate that a copy was forwarded to any other individuals.

On this basis alone, Del-Aware now asserts that the letter "further corroborates" its interpretation of the DRBC federal representative's concurrence in the allocation decisions because it "confirms the perception of EPA and federal member's action DRBC [sic], by showing that the Staff itself had that perception of its undertaking." 3/

Del-Aware's argument is difficult to understand. It is obviously a non sequitur to conclude that the federal representative's intentions can be gleaned from a letter transmitted by the NRC Staff. There is no reason to believe that Commissioner Tribbitt even saw the letter, which does not purport to reflect his position in particular or, more generally, that of DRBC. There is no showing that the letter had any effect whatsoever on Commissioner Tribbitt's concurrence or that it reflects his personal thinking.

II. NRC Staff Letter Has No Bearing Upon
The Jurisdiction Of The Licensing
Board To Pursue Issues Related To The
Point Pleasant Diversion Plan.

Del-Aware also argues that because the letter from Mr. Tedesco states that "the staff will thoroughly review the environmental impacts associated with diversion of Delaware River water," the Staff did not intend to limit its review to impacts resulting from changes which occurred since the construction permit stage. This assertion is likewise without foundation and should be rejected.

3/ Del-Aware's Supplement and Renewed Request at 2 (August 25, 1982).

The Board has already carefully analyzed the breadth of its jurisdiction and responsibility with regard to considering environmental impacts at the operating license stage. In reviewing the requirements under 10 C.F.R. §51.21 for the preparation of the Environmental Report at the operating license stage, the provisions of the Limerick construction permits for the protection of the environment and the applicable precedents in the NRC case law, the Licensing Board has properly concluded that it lacks jurisdiction at the operating license stage to consider construction impacts, absent significantly changed circumstances which will create operational impacts not previously anticipated.

The mere statement by the Staff that it intends to review environmental impacts thoroughly certainly does not indicate that it would require Applicant to do more than what is required under the Commission's regulations for the preparation of an Environmental Report. In perspective, the letter simply states that the Staff will take the customary "hard look" at environmental impacts as described by the Appeal Board in its review of the Initial Decision at the construction permit stage. ^{4/}

It is also instructive that, at the time the letter was written, the application for operating licenses had not yet

^{4/} See Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), ALAB-262, 1 NRC 163, 186 (1975).

even been filed. ^{5/} Thus, the formal statement of the Staff's legal position on the proper scope of review has been clearly propounded in the various pleadings filed with the Board in response to proposed contentions on supplemental cooling water and related pleadings. It is crystal clear that the Staff has taken the position that under 10 C.F.R. Part 51 the scope of review with regard to supplemental cooling water issues is very limited, based upon the review already conducted by DRBC and the concurrence of its federal representative in the allocation decisions. It is difficult to see how the contrary impression can be gleaned from correspondence predating submission of the application and the Staff's scoping of environmental issues for the Limerick FES.

As further enlightenment, it is noted that Mr. William J. Dircks, Executive Director of Operations, stated at a conference on NEPA and NRC regulations sponsored by the Atomic Industrial Forum in October 1981 that one of the primary problems in the NRC Staff's environmental review is, in fact, the submission of duplicative information at the operating license stage. Mr. Dircks stated:

[T]he staff often runs into an abundance of information which essentially repeats the environmental information provided at the construction permit stage.

^{5/} The application, including formal submission of the Environmental Report, inter alia, was tendered on March 17, 1981 and docketed on July 27, 1981.

Unnecessary and redundant information, in addition to increasing the expense of license application, slows the staff review of the submittal by requiring a large amount of information to be sifted in order to find the changed or new environmental information which would be subject to detailed analysis. 6/

Elaborating upon this statement, Mr. Daniel R. Muller, Assistant Director for Environmental Technology, stated:

We have found that the utilities have submitted extensive environmental information which we have not needed for our OL reviews. This unnecessary information has resulted in additional work for both of us. From your point of view you have had to pay for developing information and for putting it in a form that is acceptable to the NRC. From our point of view we have had to bore through mountains of extra information that is not relevant to the review. This has been costing us both money and time. . . . I hope [revised requirements in Regulatory Guide 4.2 on operating license applications] will significantly abbreviate the amount of information that is included in your ERs. 7/

Even if the Staff did intend to expand the scope of its FES for Limerick beyond the areas delineated by the Licensing Board in its orders, such consideration would not expand the jurisdiction of the Licensing Board as governed by the Notice of Opportunity for Hearing in this proceeding.

8/ As the Board has noted, the Staff has an independent function in preparing the FES, and, while the

6/ See Nuclear Industry, Vol. 28, p.12 (November 1981).

7/ Id.

8/ See generally SPCO at 83.

Board can provide guidance, it "cannot force the Staff to act" accordingly. ^{9/} In the Offshore Power Systems proceeding, the Appeal Board also had occasion to state "that the staff must have both independence and time to fulfill its environmental obligations." ^{10/} Thus, even a contrary position by the Staff would not enlarge the Licensing Board's jurisdiction.

III. The Requests For Reconsideration Are Untimely And Should Therefore Be Denied.

In addition to their lack of merit, the requests for reconsideration by Del-Aware based upon the NRC Staff letter dated January 5, 1981 are clearly untimely. Although Del-Aware attempts to justify its lateness in stating that its counsel learned of the document only through recent discovery efforts, discovery does not relieve an intervenor of its obligation to search the public record for relevant documents in support of its contentions.

The Appeal Board in the Catawba proceeding has recently provided excellent guidance on this point. Intervenors in that case sought to justify the submission of late contentions on the ground that new information had become available. The Appeal Board distinguished between newly "discovered" and newly available information, stating that its earlier precedents expressed "the belief that an

^{9/} Memorandum and Order at 17 (July 14, 1982).

^{10/} Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 206 (1978).

intervention petitioner has an ironclad obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to enable it to uncover any information that could serve as the foundation for a specific contention." ^{11/} Del-Aware has failed to meet this "ironclad obligation" in this instance. Its requests should therefore be rejected as untimely.

In its answer to the initial request for reconsideration by Del-Aware, Applicant discussed the Commission's policy and applicable NRC precedents regarding the observance of prescribed time limits, including the special considerations noted by the Licensing Board in this proceeding. For the sake of brevity, Applicant will not repeat this discussion but incorporates it by reference herein. ^{12/} These authorities demonstrate additional cause for the denial of Del-Aware's requests as untimely.

^{11/} Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC ____ (August 19, 1982) (slip op. at 13).

^{12/} See Applicant's Answer to Application for Reconsideration by Del-Aware Unlimited, Inc. at 7-10 (August 19, 1982).

Conclusion

For the reasons discussed above, Del-Aware's further requests for reconsideration are without merit and have been filed out of time. Each request should be denied.

Respectfully submitted,

Troy B. Conner, Jr. / RMR

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Counsel for the Applicant

September 1, 1982

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Answer to Del-Aware Unlimited, Inc.'s 'Supplement to Request for Reconsideration Regarding the Impact of Federal Member Concurrence in DRBC Order and Renewed Request for Reconsideration of Scope and Environmental Impacts to be Considered,'" dated September 1, 1982 in the captioned matter have been served upon the following by deposit in the United States mail this 1st day of September, 1982:

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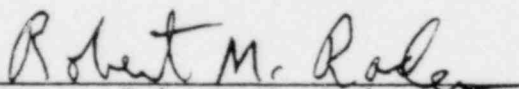
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