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UNITED STATES OF AMERICA OFFICE OF SECRETARY
NUCLEAR REGULATORY COMMISSION DOCKETING & SERVICE
BRANCH

ATOMIC SAFETY AND LICENSING BOARD

BEFORE ADMINISTRATIVE JUDGES:

SERVED SEP 10 1982

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

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

Docket No. 50-352
50-353

September 10, 1982

ORDER
(DENYING DEL-AWARE'S PETITION TO AMEND CONTENTIONS)

On August 25, 1982, Del-Aware Unlimited, Inc. filed an Application for Approval of Petition to Amend Contentions by which it sought admission of a modified Contention V-16c as follows:

- (a) The operation of the supplemental cooling water system utilizing Delaware River water will cause industrial heavy metal and organic and inorganic industrial chemical toxic and other pollution of the Perkiomen Creek, which pollution would be unhealthy and unsafe, a violation of water quality laws, and an injury to public health and safety, and
- (b) As a secondary effect, by enabling construction of the Point Pleasant diversion, would induce and cause diversion of toxics in the Delaware River water into the Neshaminy Creek, and thereby into the public

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drinking water system proposed to be operated by Neshaminy Water Resources Authority (which will utilize that diverted water), in lieu of other sources available to NWRA.

This new proposed contention contains elements of Del-Aware's original contentions V-16c and V-17. Both of these contentions were rejected by the Licensing Board in its Special Prehearing Conference Order (SPCO) (June 1, 1982) at 98-99. Del-Aware sought reconsideration of the denial of Contention V-17, stating that the change in the intake location, in January 1982, meant that the likely hydrology of the source of intake water had shifted and that the diverted water would now be "some combination from the Delaware River and from Tohikon (sic) Creek." Request of Delaware Limited (sic), Inc. For Reconsideration of Aspects of Special Pre-hearing Conference Order (undated, but apparently timely mailed on June 17) at 6. In its July 14, 1982 order concerning objections to the SPCO, the Board found that the change in the intake location and its consequences, as alleged by Del-Aware, were irrelevant to Contention V-17, but could be relevant to the admissibility of Contention V-16c. The Board indicated that, "If it later becomes apparent that the intake will be located where it allegedly will take in more seriously degraded water, we would be willing to consider whether there was justification for admitting this as an untimely contention." Order at 11.

As the Staff recognized, the Board was interested in a comparison of the quality of the water which would be diverted from the presently proposed location and the quality of water which would have been diverted from the location considered at the construction permit stage. (Staff response of September 7, 1982, at 5). Del-Aware has not provided any such comparison. There is nothing to support a claim that the water quality will be worse at the presently proposed location. Indeed, the data provided by Del-Aware on concentrations of trichloroethylene (TCE) in the Delaware River suggest that the concentrations do not vary significantly upstream and downstream of Point Pleasant or from concentrations in the Tohickon Creek. See Application for Approval of Petition to Amend Contentions (August 25, 1982) at Exhibit B, Applicant's Answer to Del-Aware Unlimited, Inc.'s Application for Approval of Petition to Amend Contentions (September 3, 1982), at 5-6.

When the Board issued its July 14 order, it was under the impression that the new proposed location was significantly closer to the outfall of the Tohickon Creek than the previous location had been. Thus, the Board conceived that the mix of Tohickon Creek and Delaware River water could have changed significantly. This in turn could have formed part of a basis for a contention alleging a material change subsequent to the NRC construction permit approval if adequate basis was also provided for a difference in water quality between the Delaware River and Tohickon Creek. It now appears that the intake will be moved further out into the Delaware and eighteen feet north. See Public Notice attached to Applicant's Answer

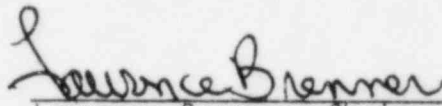
to Del-Aware Unlimited, Inc's. Application for Approval of Petition to Amend Contentions. Such a slight change does not, on its face, suggest a significant change in the quality of the water taken in and, as discussed above, Del-Aware has provided no basis for a finding that the quality of the Delaware River water withdrawn would for any reason differ significantly from the situation considered at the construction permit approval stage.

Both the Applicant and the Staff argue that Del-Aware's petition is untimely because it relies on information which has, in general, been available for some time and does not address the factors in 10 CFR §2.714(a) for nontimely filings of contentions. It may be that the Board's approach to the admissibility of contentions on the water issues should have been apparent to Del-Aware based on the prehearing conference briefs and arguments, and that Del-Aware should have indicated at the time of the January, 1982 intake location change its perception of the effect of that change on the quality of the water diverted. Certainly the factors for late contentions should have been addressed since the Board indicated in its July 14 order that a further submission would be of "an untimely contention." Order at 11. Since the proposed contention is not being admitted for the reasons discussed above, however, we need not decide whether the contention could have been denied for reasons of lateness.

For the reasons discussed above, Del-Aware's petition to amend contentions is DENIED.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD


Lawrence Brenner, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland
September 10, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

In the Matter of
Philadelphia Electric Company
(Limerick Generating Station,
Units 1 and 2)

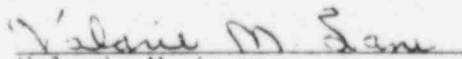
Docket Nos. 50-352
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COURTESY NOTIFICATION

As circumstances warrant from time to time, the Board will mail one copy of its orders and memoranda directly to each party, petitioner or other interested participant. This is intended solely as a courtesy and convenience to those served to provide extra time. Official service will be separate from the courtesy notification and will continue to be made by the Office of the Secretary of the Commission. Unless otherwise stated, time periods will be computed from the official service.

I hereby certify that I have today mailed the following: "Order (Denying Del-Aware's Petition to Amend Contentions)", of this date to the person designated on the attached Courtesy Notification List.


Valarie M. Lane
Secretary to Judge Brenner
Atomic Safety and Licensing
Board Panel

Bethesda, Maryland
September 10, 1982

COURTESY NOTIFICATION LIST

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