

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'82 OCT -4 A10:59

Before the Atomic Safety and Licensing Board OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

APPLICANT'S ANSWER TO MOTION BY DEL-AWARE
UNLIMITED, INC. TO STRIKE THE TESTIMONY OF
E.H. BOURQUARD IN CERTAIN RESPECTS

Preliminary Statement

On September 27, 1982, Del-Aware Unlimited, Inc. ("Del-Aware") filed a motion to strike the testimony of Everett H. Bourquard, one of Applicant's witnesses in this proceeding, concerning the design, configuration and construction of the Point Pleasant intake. Nothing asserted by Del-Aware affects the relevance or materiality of the testimony or the witness's professional qualifications. Moreover, all of the matters raised by Del-Aware merely go to the weight which the Atomic Safety and Licensing Board ("Licensing Board" or "Board") should give to this testimony. The motion to strike should therefore be denied.

Argument

The entire underpinning of the motion to strike Mr. Bourquard's testimony is Del-Aware's assertion that he has not conducted "studies" of the "hydrolics [sic] or hydrology of river currents in various configurations" or of the

"hydrolics [sic] of eddies." ^{1/} This assertion is not supported by Del-Aware's citations to Mr. Bourquard's deposition, which indicates, to the contrary, that Mr. Bourquard has performed other intake engineering work and has prepared studies pertaining to the hydraulics and hydrology of the river flow at the projects he has engineered. ^{2/} At the reference cited by Del-Aware, Mr. Bourquard simply indicated that he had not performed a "microstudy" of a particular eddy. ^{3/}

The statement of professional qualifications attached to Mr. Bourquard's testimony fully supports his competence to testify as to the design, structure and operation of the Point Pleasant intake. Mr. Bourquard holds a Bachelor of Science degree in Engineering and has completed graduate work in Soils Mechanics, Hydrology, Advanced Hydraulics and Fluid Mechanics. He has 27 years of experience as President and Chief Engineer of his firm, which specializes in water resources engineering for water supply, flood control, dams and reservoirs, water resources, drainage, and waste water projects. He also has 14 years of experience in earlier Government employment with related water resource design and construction projects. It should be noted that almost all

^{1/} Del-Aware's Motion to Strike the Testimony of E.H. Bourquard at 1.

^{2/} Deposition of Everett H. Bourquard (August 6, 1982) (Tr. 4-6).

^{3/} Id. at 7.

projects undertaken by Mr. Bourquard include hydrologic and hydraulic studies and investigations. Mr. Bourquard is therefore certainly qualified to render the proffered testimony. See generally Duke Power Company (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-669, 15 NRC 453, 475 (1982).

Del-Aware also errs in alleging that Mr. Bourquard has attempted to render a "biological opinion" as to particular species of fish. Mr. Bourquard simply expressed a professional opinion as to the design criteria of wedge wire screens to minimize the impingement and entrainment of aquatic life. The "biological opinion" as to the impact upon shad which might be exposed to the wedge wire screen intakes was in fact proffered by Paul L. Harmon. 4/

Even though Del-Aware's arguments lack merit, the points it has raised would, at most, bear upon the weight the Licensing Board should give Mr. Bourquard's testimony, not the admissibility.

As the Appeal Board stated in McGuire, ALAB-669, supra, the Commission utilizes Rule 702, Federal Rules of Evidence, in determining the admissibility of expert testimony. Under this rule, a witness qualified as an expert by "knowledge, skill, experience, training, or education" may testify if "scientific, technical, or other specialized knowledge will

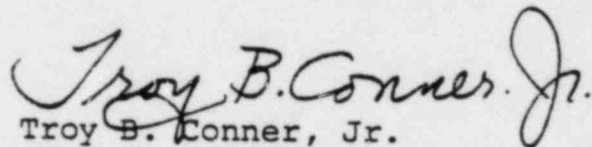
4/ Applicant's Testimony on "Water Issues" (September 20, 1982) at ¶9 et seq. See e.g., ¶¶15-17.

assist the trier of fact to understand the evidence or to determine a fact in issue." 5/ And as stated by the Board in the Skagit proceeding, a licensing board "is granted considerable discretion in determining the qualifications of a witness as an expert, but once so determined, the evidence adduced need not be accepted in its entirety, and likewise, need be given only the weight that the [licensing board] concludes is persuasive." 6/

Conclusion

For the reasons discussed above, the motion to strike is without merit and should be denied.

Respectfully submitted,



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

Counsel for Applicant

October 1, 1982

5/ McGuire, ALAB-669, supra at 475.

6/ Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), Docket Nos. 50-514 and 50-515, "Order Denying Intervenors' Motion to Strike" (November 4, 1976) (slip op. at 5).