

CORRESPONDENCE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

'82 SEP 27 A11

OFFICE OF SECRET
DOCKETING & SER
FRANCH

In the Matter of)
)
PHILADELPHIA ELECTRIC COMPANY) Docket Nos. 50-352 OL
(Limerick Generating Station) 50-353 OL
Units 1 and 2))

MOTION OF DELAWARE RIVER BASIN COMMISSION TO QUASH ANY SUBPOENA
ISSUED TO GERALD M. HANSLER PURSUANT TO THE APPLICATION OF
DEL-AWARE UNLIMITED, INC.

Pursuant to 10 C.F.R., Section 2.720(f), the undersigned, General Counsel of the Delaware River Basin Commission (DRBC), hereby moves this body to quash any subpoena that has been issued commanding Gerald M. Hansler, Executive Director of DRBC, to appear and testify at the hearings scheduled for the week of October 4, 1982, for the following reasons:

1. As of the date of this Motion, neither DRBC or Mr. Hansler has received a subpoena in connection with these proceedings. The undersigned, however, has been advised by counsel for the Nuclear Regulatory Commission (NRC) that a subpoena has been issued for Mr. Hansler's testimony at the request of Del-AWARE Unlimited, Inc. (Del-AWARE). DRBC has been further advised that Del-AWARE has submitted a Motion setting forth the testimony of Mr. Hansler which purports to summarize the statements made during the deposition of Mr. Hansler which was taken as a part of these proceedings on August 31, 1982. The memorandum submitted by Del-AWARE does not purport to seek statements from Mr. Hansler that

go beyond those statements already made at this deposition and a full transcript of this deposition is available to NRC. Del-AWARE has not informed DRBC of its application for a subpoena nor has it discussed with DRBC the testimony it desires from Mr. Hansler.

2. The NRC, through its attorney, Elaine I. Chan, Esquire, at the time of the deposition of Mr. Hansler, also requested DRBC to respond to eight specific questions. Under date of September 14, 1982, DRBC submitted its response to these questions together with an explanatory cover letter from Mr. Hansler. (Letter attached.)

3. Robert J. Sugarman, Esquire, on behalf of Del-AWARE, by letter of September 3, 1982, also requested DRBC's response to nine specific questions. DRBC's responses to these questions were submitted to Mr. Sugarman, other counsel and the NRC on September 14, 1982.

4. The NRC, therefore, now has before it for consideration in connection with the present hearing the full deposition of Mr. Hansler and the additional information set forth in the responses to the inquiries from NRC and Mr. Sugarman.

5. In view of the information already available to NRC, DRBC objects to the issuance of a subpoena which would require testimony from Mr. Hansler on the grounds that additional information from DRBC by way of such testimony is not necessary, that the requirement of additional testimony constitutes an unreasonable burden on DRBC and Mr. Hansler in view of the information

submitted and that any additional statement from Mr. Hansler would not be relevant to the issues now under consideration by the NRC.

6. The validity of DRBC's environmental process and the propriety of Section 3.8 approval embodied in DRBC's dockets No. D-65-76CP(8) and No. D-79-52CP has been passed upon by the federal courts and upheld. Delaware Water Emergency Group vs. Hansler, 536 F. Supp. 26 (E.D. Pa. 1981). DRBC has provided additional information in connection with these dockets and the environmental review conducted in connection therewith. This additional material is submitted in response to inquiries of NRC or Mr. Sugarman. DRBC's actions on these matters, however, are based upon the entire record compiled in connection with these dockets and the subsequent judicial proceedings and to the extent that there is any inconsistency between this official record and the material submitted to NRC, the official record must prevail. Neither Mr. Hansler, as Executive Director, or any other member of DRBC's staff can change the determinations made by DRBC nor can any explanation provided on this basis supersede the basis set forth in the official record. For this reason, the information that Mr. Hansler can provide to NRC is limited as above-stated and to the extent that Mr. Hansler or the staff of DRBC are capable of providing this information, it has already been submitted as above-indicated. Further testimony can only duplicate what has been submitted. The application of Del-AWARE and the summary of testimony Del-AWARE expects from Mr. Hansler does not indicate any intention or necessity to go beyond the information that has been submitted.

7. The scope of the present hearing before this Board is limited to three specific issues. To the extent that DRBC is capable of providing any input, all requested information has been submitted. The testimony of Mr. Hansler, therefore, is not required and his statements would not be relevant if Del-AWARE now seeks to go beyond these three specific issues.

8. Finally, to the extent that NRC is considering matters that fall within DRBC's jurisdiction, Section 15.1(s)(1) of DRBC's Compact, a section added by the U.S. Congress, provides that for projects included within the Commission's Comprehensive Plan:

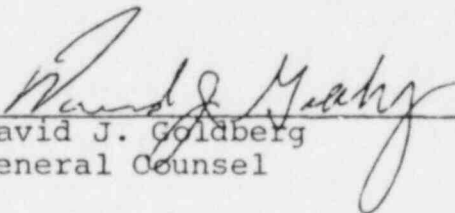
"... the exercise of any powers conferred by law on any officer, agency or instrumentality of the United States with regard to water and related land resources in the Delaware River Basin shall not substantially conflict with any such portion of such comprehensive plan..."

The two dockets approved by DRBC involving the Point Pleasant project provide for the inclusion of this entire project within the DRBC's Comprehensive Plan. This action is not only binding on all federal agencies as above-provided, but Mr. Hansler, as Executive Director, cannot modify or diminish the validity of the action taken by the DRBC Commissioners in this regard. For this reason, any further testimony of Mr. Hansler is not relevant to any issues now subject to NRC determination.

WHEREFORE, DRBC respectfully requests that any subpoena that may have been issued commanding the testimony of Gerald M. Hansler be quashed pursuant to the provisions of 10 C.F.R., Section 2.720(f).

Respectfully,

DELAWARE RIVER BASIN COMMISSION



David J. Goldberg
General Counsel

Dated: September 22, 1982



DELAWARE RIVER BASIN COMMISSION

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GERALD M. HANSLER
EXECUTIVE DIRECTOR

HEADQUARTERS LOCATION
25 STATE POLICE DRIVE
WEST TRENTON, N. J.

September 14, 1982

Dear Miss Chan:

The material enclosed, herewith, is being submitted to the Nuclear Regulatory Commission (NRC) pursuant to its request by you on August 31, in connection with the application now pending before it concerning the Limerick nuclear power plant. The Delaware River Basin Commission (DRBC) is endeavoring to cooperate fully with your agency in this matter. At the outset, however, the request for information that DRBC has received from NRC and the objectors to this permit raises a concern that the information being submitted may be misinterpreted or taken out of context. In an effort to avoid such a result, DRBC considers it important for NRC to understand the nature of the actions heretofore taken by DRBC in connection with the Neshaminy Water Resources Authority (NWRA) and Philadelphia Electric Company (PECO) applications and the docket approvals that have been issued.

This project has an extensive history before DRBC extending back for approximately 15 years. DRBC actions concerning this project are set forth in a number of different docket decisions. Most recently, DRBC acted upon NWRA's and PECO's applications which resulted in the adoption of dockets D-65-76CP(8) and D-79-52CP. These dockets were adopted only after an extensive environmental review. The approval of these dockets has placed this project in DRBC's Comprehensive Plan and has provided the review and approval required by Section 3.8 of the Commission's Compact and its Rules of Practice and Procedure.

The validity of DRBC's environmental process and the propriety of the 3.8 approval embodied in the above-cited dockets has been passed upon by the federal courts and upheld. See Delaware Water Emergency Group vs. Hansler, 536 F. Supp. 26 (E.D. Pa. 1981), affirmed on Opinion below, 681 F. 2d 805 (3rd Cir. 1982). The Opinion of District Court Judge VanArtsdalen describes the history of this project, including the actions most recently taken by DRBC in detail and should be included within NRC's record of deliberations.

The purpose of the DRBC review and approval process was to determine whether the diversions from the Delaware River required for the operation of the project were permissible under DRBC's regulations and its Compact. By approving this project, with specific conditions set forth in each of the dockets, DRBC has determined that such withdrawals are proper and that such a project is in conformity with the requirements of the federal law. To the extent that DRBC has jurisdiction with regard to these matters, the inclusion of this project within DRBC's Comprehensive Plan is binding on the Federal Government. Subsection s(I) of Section 15.1 of DRBC's Compact specifically provides that when a project has been included within DRBC's Comprehensive Plan:

"... the exercise of any powers conferred by law on any officer, agency or instrumentality of the United States with regard to water and related land resources in the Delaware River Basin shall not substantially conflict with any such portion of such comprehensive plan..."

The additional information being provided herein by the DRBC is for the assistance of the NRC but should in no way imply a recognition by DRBC that the validity of its determinations are subject to redetermination based upon only the materials submitted herein by any federal agency which may have jurisdiction over other aspects of this project.

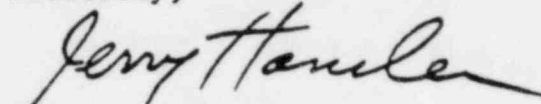
Insofar as NRC's jurisdiction is concerned, DRBC has consistently taken the position that the issue as to whether the Limerick Nuclear Generating Station should be licensed as an operating facility was not a matter for DRBC decision. Docket D-79-52CP specifically states:

"In the course of the DRBC proceedings on the pending project, numerous issues have been raised regarding the operation of the Limerick Nuclear Generating Station, including the safety of said facility, evacuation planning in the event of a nuclear accident, and the need for new generating capacity in the PECO system. These issues generally lie beyond the statutory jurisdiction of DRBC, and DRBC has no authority or expertise to render a decision on such questions. These issues do, however, fall within the proper jurisdiction and expertise of other Federal and State agencies, particularly the Nuclear Regulatory Commission and the Pennsylvania Public Utility Commission. In rendering a decision on the docket, the DRBC in no way intends to prejudice or influence the outcome of proceedings in those forums. In particular, DRBC notes that prior to operation of Limerick, PECO must apply for and obtain an operating permit from the NRC. By letter dated December 16, 1980, the NRC has indicated its intent to prepare and complete a new or supplemental Environmental Impact Statement as part of the proceedings on the operating permit. DRBC believes and expects that the NRC will address fully and adequately all of the safety and environmental issues regarding operation of Limerick. In the event that

review by other State and Federal agencies results in a modification to the operation or the design of this project, DRBC has so conditioned this docket to allow a reopening, reconsideration, and revision of this project approval as necessary."

We would hope that these introductory remarks will avoid any confusion as to the respective jurisdictions of the agencies.

Sincerely,



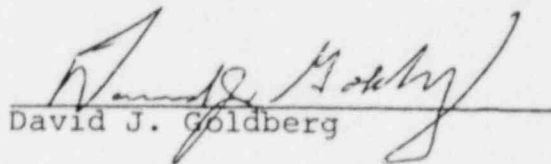
Gerald M. Hansler

Elaine I. Chan, Esquire
Office of Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Enclosures

CERTIFICATE OF SERVICE

A copy of the attached Motion to Quash any Subpoena Issued to Gerald M. Hansler has this 22nd day of September 1982, been delivered to the individuals or parties indicated below by depositing a copy of the same with the U.S. Post Office at West Trenton, New Jersey.


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