

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

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In the Matter of)
)
Philadelphia Electric Company) Docket No. 50-352-OL
) 50-353-OL
(Limerick Generating Station,)
Units 1 and 2))

EXCEPTIONS TO PARTIAL INITIAL DECISION OF ASLB
(ON SUPPLEMENTARY COOLING WATER SYSTEM CONTENTIONS)

Pursuant to the Board's rules, and case law, as stated, the Intervenor Del-Aware Unlimited, Inc. hereby files the following exceptions to the decision of the ASLB dated March 8, 1983:

1. The Board acted contrary to law in failing to complete a draft environmental impact statement prior to making a partial initial decision; the hearings were no substitute for such a statement, because the intervenor did not have the opportunity to review and comment on the findings, discussions, and conclusions of the Commission (as represented by the staff, nor of the Board as represented by the Partial Initial Decision), before a final decision was reached, contrary to the National Environmental Policy Act, and the CEQ and NRC rules thereunder. (Order Denying Del-Aware Motion, October 4, 1982).

2. The Board acted contrary to law in failing to find a necessity for an Environmental Impact Statement, prior to a Partial Initial Decision, and prior to a full decision by a Commission, and instead issued what amounts to a Negative Declaration

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on the segment of a project, in a situation in which an Environmental Impact Statement is being prepared. By finding and holding that the results of the Partial Initial Decision may be included in the DEIS without the opportunity for comment prior to the DEIS becoming final, the Board has effectively pre-determined the results of the NEPA study, and undermined the validity of the entire study, by its lapse in failing to include an opportunity for public comments on the staff conclusions regarding the initial study. (Conclusions of Law 3,4).

3. The Board improperly failed to take timely action to permit timely intervention and to otherwise require the staff to supply its draft conclusions to the public 30 days prior to the initiation of the hearings, and made a partial initial decision without having given notice of its intention to do so. (Order of March 8, 1983).

4. The Board erred in failing to include in the scope of the hearings the impacts on the river of the intake, including the impacts on fish, of the operation of Merrill Creek reservoir, despite the fact that Del-Aware demonstrated the probability of construction of Merrill Creek reservoir, and the DRBC Order that it be built. (Orders of June 1, 1982, September 4, 1982, January 24, 1983, March 8, 1983, et al.)

5. The Board improperly failed to include within the scope of the hearings the issue of the impacts of the intake on dissolved oxygen and salinity levels in the Delaware River, despite the previous commitment of the Commission, through its staff,

to do so, in connection with the approval by the Delaware River Basin Commission of the project. (Orders of July 14, 1982, September 4, 1982, and October 4, 1982).

6. The Board failed to permit the intervenor to prove the absence of need for the diversion, and therefore the necessity to reconsider the impacts of the diversion, in light of the fact that the Pennsylvania PUC had determined that present completion of Unit Two is contrary to the public interest, and therefore the environmental consequences of the project need to be reconsidered, as well as reconsidering alternatives available for one unit, as a consequence of the PUC determination. (Order of January 24, 1983, March 8, 1983, Testimony of Gerald Hansler, passim Order of October 4, 1982, striking testimony of witnesses McCoy, Kauffman, et al.)

7. The Board erred in failing to include within the scope of the proceedings the impact of the project on the Perkiomen Creek, in light of the changed circumstances surrounding the need for the project. (Order of June 1, 1982).

8. The Board erred in failing to include within the scope of the proceedings the impact of the water intake location in the Delaware River, and erroneously attributed to the DRBC a final decision that the water be provided from the Delaware River, whereas in fact, the DRBC had not made a comprehensive decision, but on the contrary, had expressly conditioned approval on the review by this Commission of the environmental impacts of the diversion, and also excluded consideration of the historic impacts in fixing the location. (See #5, supra).

9. The Board erred in concluding that the operating impacts of the diversion would be limited to those involved in maintenance of the historic structures, and excluding those adverse impacts of the operation of the project through the construction and the retention of massive disruptive activities, structural measures, permanently disrupting the historic district. (Order of July 14, 1982).

10. The Board erred in failing to consider the impacts on the eligible historic district of the proposed actions or mitigating measures for noise, and failing to consider the adverse effect of them, since the most probable mitigating measure would be a 20 to 30 foot high wall located less than 20 yards from a National Historical Landmark, Pennsylvania Canal. (Opinion of March 8, 1983).

11. The Board erred in failing to consider the existence of the Pennsylvania Canal, a National Historic Landmark, and in failing to consider alternative locations for the diversion which would avoid or minimize the adverse effect on the Canal through the complete elimination of noise impact, and the need for mitigative measures which would themselves adversely affect the Landmark as stated above, contrary to section 110(f) of the Historic Preservation Amendments of 1980, section 110(f), 40 U.S.C. § 478 f-(2). (Opinion of March 8, 1983).

12. The Board erred in failing to consider the effects of the intake's operation at the flows below 2500 cfs, even though the record before it showed that the Delaware River had consistently been unable to maintain the previous flow objectives, and

despite its Director's testimony, had no indication that it would be able to maintain its new flow objectives, which are dependent on construction of new reservoirs, which are not assured. (F F 17, 72, 68, 69, 70, 119).

13. The Board erred in failing to take into account the repeated exposures of larvae to the intake that will occur due to the fact that even if the outer edge of the upstream flow is as found by the Board, some 75 feet closer to the Pennsylvania shore than the intake, there is an area of circular flow which, while flowing downstream, will flow back into the eddy and back upstream, thus exposing fish on multiple occasions to the intake, and multiplying a five percent exposure by the number of such exposures and circulation. (F F 24, 25)

14. The Board erred in failing to recognize the importance of the Point Pleasant pool to the full recovery of the American Shad in the Delaware River as a significant concern, in limiting its concern to the impact of the intake on the population of the species on the Delaware River Basin as a whole, contrary to the Fish and Wildlife Coordination Act, the National Environmental Policy Act, and the Endangered Species Act. (F F 121-24, 34).

15. The Board erred in failing to require proper Spring sampling and testing of assumptions about habits before concluding there would be little likelihood of harm to shortnosed sturgeon, an endangered species, contrary to the Endangered Species Act. (F F 79-94). In light of its finding on noise, the Board erred in failing to require action to select a location for the project

which would minimize harm to the National Historic Landmark, by minimizing the intrusion of the project into the ambience and environment of the Pennsylvania Canal. (F F 159, CL3).

16. The Board failed to consider the impact of the presence of the facility on the Landmark and the District, notwithstanding that the eligibility and determination as to the District and the Landmark, respectively, occurred after the completion of the CP proceedings, and this constituted a change in circumstance requiring re-examination. (Order of July 14, 1982).

17. The Board and the staff erred in failing to conduct a full evaluation of the environmental impacts of the diversion, specifically the dissolved oxygen and salinity effects of the withdrawal of water from the Delaware River, despite the commitment to the Delaware River Basin Commission federal representative and others to do so, which commitment formed a basis of the DRBC approval. (Orders of August 25, 1982, October 4, 1982, March 8, 1983).

18. The Board erred in failing to consider the Merrill Creek project, which is now substantially committed as a reality, as part of the environmental consequences of the supplemental cooling water diversion. (Order of January 25, 1983).

19. The Board erred in failing and refusing to consider an alternative sources of cooling water supply in the Schuylkill River, including run of the river, use of Blue Marsh or Green Lane reservoirs, both existing reservoirs, and/or construction of a reservoir at Red Creek or Mill Creek, tributaries in the Schuylkill River; increased water availability in the Schuylkill basin, com-

bined with lesser needs for energy reflected in the PUC determination that Unit Two is not needed, made these alternatives of water feasible, and therefore should have been considered. (Orders of January 24, 1983, March 8, 1983).

20. The Board erred in refusing to admit evidence concerning the downstream effects of the diversion, and in failing and refusing to consider alternatives to the diversion which would not deplete flows in the Delaware River between Point Pleasant and the mouth of the Schuylkill River. (Orders of June 1, 1982, July 14, 1982, Rulings of testimony of Kauffman and McCoy).

21. The Board erred in failing and refusing to consider impacts of the diversion in transferring toxic and other pollutants to the Perkiomen Creek, and in failing in refusing to consider other impacts on that Creek, of the diversion. (Order of June 1, 1982).

22. The Board erred in refusing to credit the witnesses who testified from personal knowledge or expertise that the intake will be in the downstream eddy flows (the circular movement) at low flow conditions. (F F 23-25).

23. The Board erred in failing to find that the intake would be located in an area of eddy and Tohickon Creek flows at expectable times of low flow, and that screen orientation would cause eddy flows to enter the intake, and expose larvae repeatedly to the long screens, causing significant entrainment and impingement of shad larvae. (F F 73, 74, 89-90, 101, 118, 120, 23-25).

24. The Board erred in refusing to discredit staff and applicant witnesses regarding the location of the intake, in view of their clear pre-commitment and bias. (F F 19-124).

25. The Board erred in refusing to find a likelihood of entrainment or impingement of shortnosed sturgeon, contrary to the evidence. (F F 93-94).

26. The Board erred in not requiring relocation of the intake, despite clear evidence its location was chosen because of permitting considerations irrelevant to its impact.

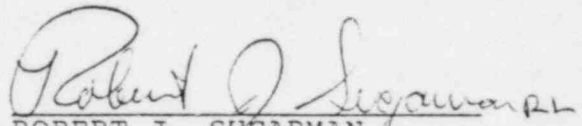
27. The Board erred in refusing to find that low bypass velocities combined with repeated exposure, orientation and size of the intakes, will cause significant losses of shad and sturgeon. (F F 26-34).

28. The Board erred in failing to find that failure of the Lumberville Wing Dam will cause significant increases in fish loss by reducing the water depth above the intake. (F F 15, 50-56).

29. The Board erred in refusing to find that the intake will be subject to frequent and serious damage to major parts, causing increased velocities in the remaining portions, frequent major repair work of heavy parts, and disruption to the area. (F F 161-68).

For the foregoing reasons, intervenor moves that the Appeal Board set aside and reverse the determination of the Licensing Board, and remand the mattership for further action as appropriate.

Respectfully submitted,



ROBERT J. SUGARMAN
Attorney for Intervenor Del-Aware
Unlimited

OF COUNSEL:

SUGARMAN & DENWORTH
Suite 510
121 S. Broad Street
Philadelphia, PA 19107
(215) 546-0162

March 21, 1983

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Exceptions to Partial Initial Decision of ASLB, (On Supplementary Cooling Water System Contentions) by mailing a copy of the same to the following persons this 21 day of March, 1983.

Lawrence Brenner, Esq., Chairman
Administrative Judge
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Richard F. Cole
Administrative Judge
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Peter A. Morris
Administrative Judge
U.S. Nuclear Regulatory Commission
Washington, DC 20555

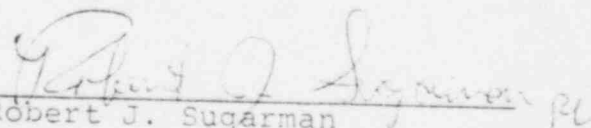
Ann Hodgdon, Esq.
Benjamin H. Vogler, Esq.
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Troy B. Conner, Jr. Esq.
Conner and Wetterhahn
1747 Pennsylvania Avenue
Washington, DC 20006

Edward G. Bauer, Esq.
Vice President & General Counsel
Philadelphia Electric Company
2301 Market Street
Philadelphia, PA 19101

Secretary
U.S. Nuclear Regulatory Commission
Attn.: Chief, Docketing & Service Branch
Washington, DC 20555

Atomic Safety and Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555


Robert J. Sugarman