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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges

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

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In the Matter of

PHILADELPHIA ELECTRIC COMPANY

(Limerick Generating Station,
Units 1 and 2)

Docket No. 50-352
50-353

January 24, 1983

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

On September 26, 1982, intervenor Del-Aware Unlimited, Inc. filed an Application for Approval of Petition to Amend Contentions. Del-Aware's filing seeks to add three new contentions, as follows:

V-22. The plan for construction of Limerick and proposed Management Plan for the River presently includes, as an integral part thereof, the construction of a proposed pumped storage facility at Merrill Creek, several miles upstream on the Delaware River from Point Pleasant. Operation of this reservoir would have substantial and significant adverse environmental effects, including causing increased salinity in the Delaware River. Final approval has not been given by the Delaware River Basin Commission. Increased salinity would be caused, inter alia, by withdrawals from the Delaware River which would take place at various periods of the year, including

spring and late summer and early fall when flows in the river are almost at the minimum necessary to prevent salt water intrusion, harming (in the spring) oyster production and spawning, and in the late summer and fall, public water supplies in Philadelphia and Camden, affecting millions of people, as well as contaminating with saline water the major drinking water aquifers in the Delaware River in the vicinity of Philadelphia and Camden.

V-23. New decisions presently being made and implemented by the DRBC establish that the water needs of the River must be satisfied with continuing increases in depletive uses, of which Point Pleasant is one. Major new construction will be required, with attendant significant costs and consequences.

V-24. Concurrently, the Pa. P.U.C. has decided that continued construction of Limerick Unit 2 is not in the public interest. In these circumstances, the benefit-cost determination in 1975 is no longer valid, and the River follower method must be reconsidered, and Schuylkill River alternative for supplemental cooling water considered. Such alternatives are available and preferable.

Subsequently, the Board permitted Del-Aware to "focus and refine" proposed contention V-24 (Tr. at 1724). Inexplicably, Del-Aware has not filed its new wording for the proposed contention with the Board. However, the new wording was apparently communicated to the Applicant and the Staff, and the Staff attached this wording to its Response to Del-Aware's Modified Contention V-24 (October 15, 1982). Contention V-24, as modified, is as follows:

V-24. The OL Application is based on the CP approval for two units. The ALAB based its CP Approval of the river follower method on a favorable BC ratio. However, newly changed circumstances and newly disclosed facts make this conclusion obsolete and an inappropriate basis for proceeding. Specifically, the Pennsylvania P.U.C. determined on August 27, 1982, that only one unit should be built,

and the DRBC staff disclosed in July and August 1982, that Merrill Creek (a) is necessary to offset the water depletion attributable to PPD, not merely to supply water to Limerick, because sustainable levels are less than thought in 1975, and (b) will involve spring and summer skimming which, when combined with PPD, will adversely affect oyster spawning and public water supply, and dissolved oxygen levels. This decrease in levels of benefit combined with increased costs renders the SCWS a poor solution, adversely affects the 1975 benefits/cost conclusions, and requires a new finding as to whether Limerick continues to have a positive benefit/cost ratio, and whether other water supply alternatives are preferable. In particular, Schuylkill River alternatives are available and preferable, both from an economic and environmental perspective.

Before discussing the adequacy of the proposed contentions, we address the claim made by both the Staff and the Applicant that Contention V-24, as modified, should be excluded because the modification expanded the scope of the proposed contention contrary to the instructions of the Board. Applicant's Answer to Revised Contention at 6 (October 5, 1982); Staff Response to Modified Contention at 1-2 (October 15, 1982). The gravamen of the contention, both as originally proposed and as modified, is that the possible cancellation of one of the two units of the Limerick plant since the cost/benefit analysis approved by the Appeal Board in 1975 render that analysis no longer valid, and that as a result Schuylkill River alternatives must be considered. Both wordings for the contention rely on the August 27, 1982 Opinion and Order by the Pennsylvania Public Utility Commission concerning the Limerick Nuclear Generating Station investigation. It is true that the more recent phrasing of the contention refers to Delaware

River Basin Commission (DRBC) statements concerning the Merrill Creek reservoir. However, it is apparent from the transcript that Del-Aware considered Merrill Creek related to this proposition. See, e.g., Tr. at 1726. Therefore, we do not find that this is a reason to exclude the newly worded contention V-24.

Both the Applicant and the Staff argue that Del-Aware has failed to make a sufficient showing that its proposed contentions satisfy the criteria set forth in 10 C.F.R. § 2.714(a)(1) for late contentions. See Staff Response at 4-6 (dated October 1, 1982); Applicant's Answer at 9-11 (September 24, 1982). Del-Aware has addressed the relevant factors. See Application for Approval of Petition to Amend Contentions at 2-5 (September 20, 1982). Since we find that Del-Aware has failed to satisfy the requirements of 10 C.F.R. § 2.714(b) for Contentions V-23 and V-24, and that Contentions V-22 and V-23 are not admissible for other reasons, we need not attempt to balance the factors governing the admissibility of late contentions.

We turn, therefore, to a consideration of the individual proposed contentions.

V-22

Contention V-22 addresses the environmental impacts of the proposed Merrill Creek reservoir. We are precluded by the decision of the Appeal Board at the construction permit stage from reviewing a decision by the DRBC directing or permitting the Applicant to proceed with Merrill Creek or any other reservoir in the Delaware River Basin which would augment the "river follower" mode of operation (other than as such a decision might present collateral nuclear safety issues). See Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), ALAB-262, 1 NRC 163, 206 (1975).^{1/} The Appeal Board apparently had concluded that the DRBC would approve such a supplemental reservoir only if it would improve an already favorable cost/benefit balance found to exist with the river follower mode of operation. Id.

^{1/} This would not preclude us, however, from considering impacts of the Point Pleasant intake in light of the possible existence of the Merrill Creek Reservoir. Thus, for example, if Merrill Creek were shown to affect flows by Point Pleasant, the impact of the intake at those flows could be considered by this Board.

at 201-02.^{2/} Therefore, proposed contention V-22 is not admitted.

V-23

Contention V-23 is very vague, and therefore fails to meet the requirements for admissibility of reasonable specificity and basis. 10 C.F.R. § 2.714(b). The contention is apparently not limited to new construction related to operation of the Limerick plant or to the Point Pleasant diversion. Thus it would appear to extend beyond the scope of this hearing. Moreover, as it relates to "continuing increases in depletive uses" of the Delaware River, this is clearly an overall water allocation question. We have repeatedly held that allocation decisions are made by DRBC and not reviewable by this Commission. See Memorandum and Order, LBP-82-72, 16 NRC _____, (September 3, 1982); Memorandum and Order, slip op. at 18-19 (July 14, 1982); Special Prehearing Conference

^{2/} Specifically, the Appeal Board, in rejecting the CP Licensing Board condition that the NRC conduct its own environmental review of any DRBC decision authorizing a supplemental reservoir, held:

The DRBC being a federal agency for NEPA purposes, it will now be for that agency alone to determine whether the construction and utilization of a supplemental reservoir represents a better alternative than operation as a "river follower". If its determination is in the affirmative, it can direct the applicant to proceed with the reservoir. In any event, its decision concerning the reservoir will not be subject to review by this Commission (except to the extent that such a decision might have any collateral safety implications).

¹ NRC at 206 (footnote omitted).

Order, LBP-82-43A, 15 NRC 1469, 1484-85 (1982). For these reasons, this contention is not admitted.

V-24

Both the Staff and the Applicant argue that there is no basis for considering the possibility that Unit 2 will not be completed. Applicant's Answer at 7; Staff Response at 4. They note that there is currently an application pending with the NRC for an operating license for Unit 2. Shortly before this contention was filed, the Pennsylvania Public Utilities Commission (PUC) issued an order which stated:

1. [E]ither the cancellation or suspension of construction at Limerick Unit II would be in the public interest.
- ***
3. That should Philadelphia Electric Company choose not to suspend construction of Limerick II, then the Commission, pending completion of Unit I: (a) shall not approve any new securities issuances, the proceeds of which will be used, in whole or in part, for construction of Unit II, and (b) shall deny recovery of AFUDC (Allowance For Funds Used During Construction) on any additional investment in Unit II at such time as recovery is sought.

Limerick Nuclear Generating Station Investigation, No. I-80100341,
slip op. at 4 (PaPUC August 27, 1982).^{3/}

The Applicant was given 120 days by the PUC to decide whether to suspend or cancel construction of Unit 2 in light of this order. Id. at 28. The Applicant appealed the order and, we are informed by counsel for the Applicant, succeeded in having it reversed by a Pennsylvania state court. See letter from Troy B. Conner, Jr. (Dec. 17, 1982). This apparently makes it less probable that Unit 2 will be cancelled. However, it appears that no opinion has been issued yet which explains the reason for the reversal of the PUC order. Thus, it is not certain that the circumstances which led to the Public Utilities Commission order have so changed that cancellation of Unit 2 appears speculative. We do not possess enough facts with respect to the near term intent of either the PUC or the Applicant to conclude that the present possibility of cancellation of Unit 2 is so remote that it may be ignored in considering environmental impacts pursuant to NEPA. However, we need not take further steps to ascertain the existing facts in order to rule

^{3/} The PUC order was apparently adopted on May 7, 1982 and entered August 27, 1982. Yet, the Board was not notified of it until, at the Board's request (Tr. 1553), the Staff served a copy of the order on the Board and the parties to this proceeding on October 13, 1982. The Board wishes to remind the parties of their obligation to keep the Board informed of changing circumstances bearing on the case. See Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 406 n.26 (1976). See also Public Service Company of Oklahoma, ALAB-505, 8 NRC 527, 531-32 (1978); Duke Power Company (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-143, 6 AEC 623, 625-26 (1973).

on the admissibility of Contention V-24, assuming arguendo that Unit 2 is cancelled, for the reasons explained below.

The possibility that only one unit will be completed at Limerick does not in and of itself require us to reconsider the entire supplementary cooling water system. In our Special Prehearing Conference Order we ruled that we would only re-examine the construction permit stage finding that the proposed supplementary cooling system would be acceptable in the context of contentions which were based on changed circumstances raising the possibility of impacts sufficiently different to justify their consideration at the operating license hearing stage. See e.g. 15 NRC at 1457-58, 1461, 1479-80. Further, we stated that: "[A]bsent a determination of significantly increased environmental impacts, we will not consider issues concerning the overall acceptability of the river follower method of cooling." 15 NRC at 1464. Thus, we will not consider alternative cooling systems unless it can be shown that they are made possible only if Unit 2 is deleted, and there is a basis in support of a contention that they could have significantly smaller environmental impacts than the proposed Point Pleasant diversion river follower system.

Contention V-24 alleges that Schuylkill River alternatives are available and are economically and environmentally preferable. There would be two possibilities for Schuylkill River alternatives. One would be an allocation of water directly from the Schuylkill; the other would

be a storage reservoir on the Schuylkill. Both of these possibilities require allocations of water within the Delaware River Basin. Such allocations, as we have repeatedly held (see page 6, supra), are within the jurisdiction of the DRBC, and the NRC can not order withdrawals from the Schuylkill which have not been authorized by the DRBC. Therefore, we consider Schuylkill River alternatives only as they are possible within existing DRBC decisions.

The DRBC has authorized withdrawals from the Schuylkill for cooling of the Limerick units when the flow at Pottstown is 530 cubic feet per second (cfs) and one unit is operating or when the flow is 560 cfs and two units are operating. Withdrawals from the Perkiomen Creek have been authorized for cooling Limerick when the flow at Graterford is 180 cfs and one unit is operating or when the flow is 210 cfs and two units are operating. DRBC Docket No. D-69-210CP. In addition, there is a temperature limitation on withdrawals from the Schuylkill. Id.; Tr. 1220-21.

At the construction permit stage, the Appeal Board found that it would be necessary to use the Point Pleasant diversion to supply supplementary cooling water to Limerick because at times the flows in the Schuylkill and the Perkiomen would be insufficient for Limerick to operate at its full capacity. See Philadelphia Electric Co., ALAB-262, supra, 1 NRC at 168. To assist us in determining whether this would change materially if only one unit were constructed at Limerick, we requested the parties to provide us with historical data indicating the

percentages of time that water from the Point Pleasant diversion would have been necessary for operation of one unit and of two units. In addition, we sought information on changes which could affect flows in the future such that the relative percentages of time that one unit as compared to two units could operate would differ materially from that shown historically. Tr. 3621-22.

The Applicant has indicated, for the years 1971 to 1981, the percentage of time that water would have been available from the Schuylkill or the Perkiomen for one unit and for two units. See Applicant's Response to Licensing Board's Request for Information Regarding Historical Record of Flows for the Schuylkill River and East Branch Perkiomen Creek (November 9, 1982) at App. B. In addition, the Applicant has provided the daily data for the period upon which it relies for the percentages. Id. at App. A. The data is not complete for every year. However, it appears from the examination of the data provided that, with the exception of the data for 1971 and 1981 (for each of which, as Applicant indicated, data is provided for only a few months), the data is reasonably representative of the year. Del-Aware, in fact, states that it does not disagree with the Applicant's historical data on flows. See Del-Aware's Response to Licensing Board's Request for Information Regarding Flows in Schuylkill River (November 16, 1982) at 1-2. (Del-Aware's Response).

Based on this data, it appears that supplementary cooling water would have been necessary for a two unit operation at Limerick between 21 and 57 percent of the time. On average, over the nine years, supplementary water would have been necessary 34 percent of the time. For one unit, supplementary cooling water would have been necessary between 19 and 55 percent of the time. It would have been required an average of 31 percent of the time. Thus, supplementary cooling water would have been necessary for one unit operation only 3 percent less of the time than for two unit operation.

This difference of three percent is manifestly insignificant in view of the requirement for supplementary cooling water more than 30 percent of the time even with only one unit operating. In this we agree with the conclusions of the Pennsylvania Department of Environmental Resources (see Commonwealth of Pennsylvania, Department of Environmental Resources, Environmental Assessment Report and Findings, Point Pleasant Water Supply Project (August 1982) at 28-29) and the Delaware River Basin Commission staff (see letter from Gerald M. Hansler to Commissioner Weston (Nov. 17, 1982), attachment entitled "Staff Response to Petitioners' Factual Allegations of 9/24/82" at 5-6 (supplied by Applicant as Attachment 2 to letter of November 27, 1982 from Troy B. Conner, Jr.)) that the Point Pleasant diversion would, on the basis of historical data, be necessary to supply cooling water for Limerick even if a decision were made to cancel Unit 2.

Del-Aware has attempted to show that more water will be available from the Schuylkill than is indicated by the historical data. Thus, it argues that the temperature restriction is arbitrary and that if the restriction were removed, water would be available from the Schuylkill more frequently. Del-Aware's Response at 3-4. The temperature restriction, however, is a condition imposed by the DRBC, and we are without authority to modify it. Nor has any showing been made that the DRBC will change it. Therefore, there is no basis to consider that more water could be taken from the Schuylkill than is currently authorized by the DRBC, or even that some speculative and unquantified change in the temperature restriction would cause a material change in the availability of the Schuylkill for one or two units of Limerick.

Del-Aware also suggests that water from the Blue Marsh reservoir could be available to supplement flows in the Schuylkill. Del-Aware's Response at 4-5. However, when DRBC placed the flow restrictions on withdrawals from the Schuylkill for Limerick, it specified that the flow in question was to be measured without including future augmentation from DRBC sponsored projects. DRBC Docket No. D-69-210CP. Blue Marsh releases cannot, therefore, be used as supplementation to the Schuylkill flows which would permit more frequent withdrawals for Limerick. See Hansler at Tr. 1206-07.

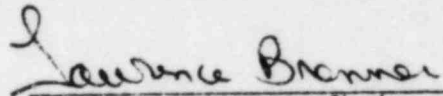
Del-Aware argues that additional water could be purchased from the City of Philadelphia or could be supplied by construction of a reservoir

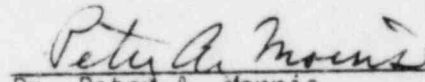
in the Schuylkill River basin. Del-Aware's Response at 5-6. We have consistently ruled, however, that before we will consider an alternative, its availability must be related to the hypothesized deletion of Unit 2. See Tr. at 1215-16, 3624-25. As Del-Aware in effect concedes, there has been no showing that these alternatives would not have been equally available for two units. See Del-Aware's Response at 6. Therefore, the proper time to consider them would have been at the construction permit stage. They are not appropriate for consideration now because they are not related to the argued changed circumstance of the possible cancellation of Unit 2 since that time.

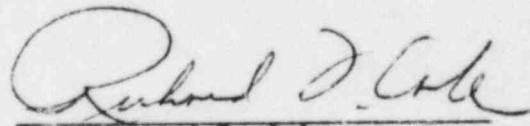
Since we find no basis for concluding that less environmentally damaging alternatives for supplying adequate cooling water would be made available by an assumed deletion of Unit 2, Contention V-24 is denied.

For the above reasons, Del-Aware's petition to add Contentions
V-22, V-23, and V-24 is denied.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD


Lawrence Brenner, Chairman
ADMINISTRATIVE JUDGE


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Bethesda, Maryland
January 24, 1983