

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

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

Docket Nos. 50-352-OL  
50-353-OL

March 8, 1983

MEMORANDUM AND ORDER - DENYING PETITIONS  
OF DEL-AWARE FOR RECONSIDERATION AND  
TO ADMIT A LATE CONTENTION

Del-Aware Unlimited, Inc. ("Del-Aware") is an intervenor in this proceeding with admitted contentions concerned with the supplementary cooling water system, particularly the environmental impact of operation of the Point Pleasant intake in the Delaware River and its associated pump station. We have completed the evidentiary hearing on all of Del-Aware's admitted contentions. The Partial Initial Decision ("P.I.D.") on those contentions is being issued today. LBP-83-11, 17 NRC \_\_\_\_\_. It concludes that operation of the proposed Point Pleasant intake would have no significant adverse environmental impact on fish species of concern in the Delaware River, on recreational activities in the river, or, with noise mitigation should it later prove necessary, on the peace and tranquility of the proposed Point Pleasant historic district.

Reconsideration

By petition of February 2, 1983, Del-Aware seeks reconsideration of our January 24, 1983, "Memorandum and Order (Denying Del-Aware's Petition to Amend Contentions)". That fifteen page order, for the reasons set forth therein, denied Del-Aware's request to admit three late-filed supplementary cooling water system contentions, designated V-22, V-23 and V-24. That order, both explicitly and implicitly, was based on the extensive discussion in the June 1, 1982 Special Prehearing Conference Order ("SPCO"), LBP-82-43A, 15 NRC 1423, 1456-88 (1982). Also pertinent, given some of Del-Aware's passing comments in its petition for reconsideration regarding our decision not to litigate water allocation decisions made by the Delaware River Basin Commission (DRBC) are the Board's: "Memorandum and Order (Denying Del-Aware's Request for Reconsideration of DRBC Preclusion on Water Allocation Issues)", LBP-82-72, 16 NPC \_\_\_\_ (September 3, 1982); and Memorandum and Order (Concerning Objections to June 1, 1982 Special Prehearing Conference Order), slip op. at 9-10, 16, 18 (July 14, 1982) (unpublished).

We decline to reconsider the denial of Del-Aware's proposed Contentions V-22, V-23 and V-24. We also decline to revisit the reasoning and rulings in our earlier orders to the extent Del-Aware's request of February 2, 1983 appears to be a very late attempt to yet again seek reconsideration of those earlier rulings.

Since we reaffirm the rationale set forth in the January 24, 1983 ruling that proposed Contentions V-22, V-23 and V-24 not be admitted, there is no need to repeat it. However, in light of some of the statements in Del-Aware's petition and the responses thereto by the Applicant and Staff, there are some points which should be kept in mind.

For the reasons discussed in the SPCO, we held that we would admit those of Del-Aware's supplementary cooling water system contentions which raise the possibility of sufficiently different impacts as a result of changed circumstances since the construction permit stage cost-benefit analysis finding that the system would be acceptable. SPCO, supra, 15 NRC at 1461. See also e.g., 15 NRC at 1458-59. We did not require, as implied by Del-Aware, an advance evidentiary showing that a changed impact of the supplementary cooling water system, alleged in a particular contention, would result in a significantly increased environmental impact relative to that evaluated at the construction permit stage. Indeed, we recognized that while the Appeal Board at the construction permit stage had found that the now proposed river follower method of supplementary cooling would be acceptable, it would be appropriate for this Board to consider any particular alleged environmental impacts of the proposed supplementary cooling method which became ascertainable after the construction permit decision as the proposed plan gained greater concreteness. SPCO, supra, 15 NRC at 1462.

As we have had previous occasion to note, the broad legal arguments raised by Del-Aware and considered by this Board must be focused on the

particular contentions raised. LBP 82-72, supra, 16 NRC at \_\_\_\_ (slip op. at 6-7). Otherwise, the unfortunate effect is to obfuscate the rulings actually applied by the Board to the admissibility of Del-Aware's proposed contentions. As these were applied, the Board admitted those of Del-Aware's contentions which, with reasonable particularity and basis, noted a change in circumstance since the construction permit stage which we found to be within our jurisdiction, and merely alleged a resultant or exacerbated adverse operational environmental impact which reasonably appeared to us to be possible given the change in circumstances. This is illustrated by our rulings on the contentions, particularly those which were deemed admissible. SPCO, supra, 15 NRC at 1483-86, 1479.

The approach described above was applied to enable this Board to ascertain factually, on the basis of the evidentiary hearing, the particular adverse environmental impacts of the river follower method of cooling due to the changes in circumstances. In the P.I.D. we have concluded that the impacts would be insignificant. With the exception of a state-of-the-art sound barrier which is easily installable around the pump station transformers if operational tests prove it necessary, we found that no adjustments to the location or design of the proposed supplementary cooling water system would be warranted given the insignificant environmental impacts found on the basis of the litigated contentions. Moreover, we found that the impacts of the in-river location of the intake as now proposed would certainly be no greater than that of the shoreline location evaluated at the construction permit



stage, and would very probably be less. P.I.D., supra, 17 NRC at \_\_\_\_ (slip op. at 1-2, 35-36, 37, 38-39, 47, and 49).

One of Del-Aware's proposed contentions, designated V-19, was timely filed and therefore considered in the SPCO. It alleged in effect that the entire overall concept of the proposed supplementary cooling water system with its dependence on the Point Pleasant intake in the Delaware River, should be abandoned in favor of allegedly preferred alternatives of: storage on the Schuylkill River, dry cooling towers or deletion of Unit 2. In the SPCO, we held that at the operating license stage we would not consider totally different alternative methods of cooling, consideration of which would necessarily call into question the previously found overall acceptability of the proposed method of cooling, in the absence of a determination of significantly increased environmental impacts of the Point Pleasant diversion river follower system. SPCO, supra, 1464, 1487-88.\* We distinguished contentions advocating alternatives to the previously approved overall proposed cooling method employing the Point Pleasant diversion from contentions

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\* There were additional reasons for not admitting proposed Contention V-19, as noted in the SPCO. 15 NRC at 1487. One of them, that DRBC would be the proper body to determine whether additional allocations of Schuylkill River water should be permitted for the Limerick plant, has been reiterated many times. See e.g., our January 24, 1983 ruling on contentions, slip op. at 9-10, 13, the subject of the instant Del-Aware motion for reconsideration, and earlier orders cited at p. 2 above.

alleging changed impacts of and needed adjustments to the design and location used for the proposed method. Id. at 1464.

The thrust of our reasoning was that if our findings after the early evidentiary hearing on allegedly changed impacts of the Point Pleasant diversion were that in fact the impacts would be insignificant, at this operating license stage there would be no reason to consider outright rejection of the concept of the Point Pleasant diversion river follower method found acceptable at the construction permit stage. As summarized and referenced above, we have now made that factual determination in the P.I.D.

The late-filed Contention V-24, the rejection of which Del-Aware urges we reconsider, appears to be a better articulated version of some combined elements of rejected Contention V-19. As discussed in our order of January 24, 1983, at pp. 6-7, based on the contention as framed and re-framed, we perceived it to be dependent on the premise that Unit 2 would be deleted. This was supported by Del-Aware's argument that it had good cause for late-filing based on a then-recent ruling by the Pennsylvania Public Utilities Commission which Del-Aware alleged would lead to the deletion of Unit 2. We held the contention not admissible because the amount of time that cooling water would be unavailable without the Point Pleasant diversion of Delaware River water, given the applicable DRBC conditions and water allocations, would not vary

significantly between operation of two Limerick units and, arguendo, operation of just Unit 1.

Given our ruling that the alleged alternative of depending on the Schuylkill River (and Perkiomen Creek) for cooling Limerick without use of the Point Pleasant diversion is not made feasible even if Unit 2 is deleted, we did not further have to consider whether there is a basis in support of a contention that increased use of the Schuylkill could have significantly smaller environmental impacts of operation than the proposed Point Pleasant diversion river follower system. (Order of January 24, 1983, at p. 9). However, consistent with our decision above on the prerequisite set forth in the SPCO for examining different alternative supplementary cooling methods, before we would admit the contention we would first have had to find that the alleged environmental impacts of the proposed system were significant. As noted, we have found to the contrary. Accordingly, now with the benefit of the P.I.D., even if increased use of the Schuylkill were feasible despite DRBC's determinations of water allocation, there appears to be no basis for Del-Aware to contend that the alternative supplementary cooling water system of increased use of the Schuylkill River would have significantly smaller environmental impacts than operation of the proposed system.

Del-Aware now argues on reconsideration that it does not contend that use of Schuylkill River water without the need for the Point

Pleasant diversion of Delaware River water to supplement it is now made possible by an assumed deletion of Unit 2, but that it is made more economically attractive. We will address this argument below as part of Del-Aware's petition to add another late-filed contention, designated V-25. We note, however, that to a large extent Del-Aware appears to be reiterating its old arguments that the DRBC should either change its limitations governing withdrawal of Schuylkill River water for Limerick, or its limitations on additional Schuylkill River water storage available for Limerick, or its determination, taking into account available water allocations on the Schuylkill, that Delaware River water should be allocated for Limerick. We reiterate that such allocation decisions made by the DRBC are not reviewable by us.

#### Late-Filed Contention

By petition of February 14, 1983, Del-Aware seeks to advance a late-filed contention, designated V-25. This contention, and the supporting petition, appears to be an amplification of Del-Aware's argument in its petition for reconsideration that a combination of factors, including increased costs of the units and deletion of Unit 2, has changed the economic viability or attractiveness of the Limerick plant such that the proposed supplementary cooling water system must be reconsidered.

Del-Aware's petition is wide ranging and, regrettably, not very clear in its thesis. We will not repeat aspects of our discussion above



or in previous orders which are pertinent to some of Del-Aware's passing points. It is apparent, however, that the contention depends on the assumption that under our NEPA jurisdiction we should examine alternatives because they may be cheaper. However, as the Appeal Board has explained, unless the proposed alternative has environmental disadvantages in comparison to possible alternatives, differences in financial cost are not pertinent to our consideration. Consumers Power Company (Midland, Units 1 and 2), ALAB-458, 7 NRC 155, 162-63 (1978), and cases cited therein at 162, n. 21.

In other words, neither NEPA nor any other statute gives us the authority to reject an applicant's proposal solely because an alternative might prove less costly financially. Monetary considerations come into play in only the opposite fashion -- i.e., if an alternative to the applicant's proposal is environmentally preferable, then we must determine whether the environmental benefits conferred by that alternative are worthwhile enough to outweigh any additional cost needed to achieve them.

Id. at 163, n. 25.

Accordingly, for this reason alone the contention would be rejected.

In addition, the contention is very late when measured by the November, 1981 date for the timely filing of contentions in this proceeding. The notion that increased costs of Limerick since the construction permit approvals only became apparent since a cost increase

announced by the Applicant in January, 1983, is not credible. Indeed, the petition refers to a previous 1980 cost estimate.

A balance of the factors of 10 C.F.R. § 2.714(a)(1) does not overcome the very weak showing on the important first factor of good cause for failure to file on time. Having completed the hearing and issued our decision on the supplementary cooling water system, and given the apparent new desire for a financial inquiry, the proposed contention would broaden the proceeding greatly and would appear to delay substantially completion of consideration of all supplementary cooling water system matters beyond today. Indeed, the result would be the absurd one of litigating whether the Point Pleasant diversion should be rejected as an alternative while it is being built. Preparatory work on the diversion has begun, and, given our findings that there will be no significant operational environmental impacts, we would have no basis to impede the Applicant's involvement in completion of the proposed supplementary cooling water system. Del-Aware has not provided any information on how it would assist, through expert witnesses or otherwise, in the development of a sound record. Moreover, given the unexcused lateness and the finding that the factors previously discussed weigh strongly against admission, even a favorable finding on this factor would not warrant admitting the contention.

We note that the broad nature and lack of clarity of the contention is such that even if it had been timely filed, it would not be admitted in its present form under the specificity and basis standards of

10 C.F.R. § 2.714. Accordingly, even at this late date, the contention would not be in a posture ready for the conduct of efficient discovery, to be followed by efficient, focused litigation.

Request for Certification

The P.I.D., in combination with this instant ruling rejecting Del-Aware's requests that supplementary cooling water system contentions in addition to those litigated now be admitted as issues, results in the completion of consideration by the Board of all issues advanced by Del-Aware in the proceeding and terminates Del-Aware's participation before us. Therefore, Del-Aware may now appeal our P.I.D. on the merits of its litigated contentions and our various rulings that other contentions advanced by Del-Aware not be admitted as issues for litigation.

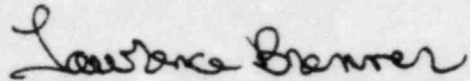
Accordingly, there is no need to consider Del-Aware's request that we certify (or refer) our ruling on the request for reconsideration. In any event, we agree with the views set forth in the responses of the Applicant and Staff that the denial of admissibility of the subject contentions fails to satisfy any of the factors required for certification or referral.

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For all of the reasons stated above, Del-Aware's petitions for reconsideration and to file a late contention, as well as its request to certify the petition for reconsideration, are denied.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

A handwritten signature in cursive script, reading "Lawrence Brenner".

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Lawrence Brenner, Chairman  
ADMINISTRATIVE JUDGE

Bethesda, Maryland  
March 8, 1983