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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

Docket Nos. 50-352 OL
50-353 OL

NRC STAFF RESPONSE TO DEL-AWARE'S PROPOSED
CONTENTIONS REGARDING LOW POWER OPERATION

I. INTRODUCTION

On May 16, 1984, Del-Aware filed a motion to admit one of two alternative contentions with respect to Philadelphia Electric's request for authorization to load fuel and operate the facility at power levels of up to 5%.^{1/} For the following reasons, the Staff opposes Del-Aware's motion.

II. DISCUSSION

This motion is based largely upon a misapprehension of the procedure by which Philadelphia Electric is obtaining authorization to operate at low power. Del-Aware apparently envisions that Philadelphia Electric must submit a lengthy application similar to the original application for

^{1/} The letter transmitting the contentions is dated May 17, 1984; however, the certificate of service is dated May 16, 1984.

DESIGNATED ORIGINAL
Certified By *[Signature]*
[Signature]

an operating license filed pursuant to 10 C.F.R. §§ 50.30 et seq. or the application to receive unirradiated fuel filed pursuant to 10 C.F.R. §§ 70.21, 70.22. Del-Aware, however, is incorrect. In the situation where a Licensing Board is holding operating license hearings, an applicant seeks authorization to conduct low power testing or operate at low power by filing a motion with the Licensing Board. Other parties are, of course, permitted to respond. If the Applicant's motion is opposed, the Licensing Board must make findings on all contested matters relevant to the activity being authorized. The Director of Nuclear Reactor Regulation makes the necessary findings on other matters. Assuming all findings are favorable to the Applicant, the motion requesting low power testing should then be granted. 10 C.F.R. § 50.57(c). As Del-Aware indicates, Philadelphia has filed such a motion, "Applicant's Motion For An Expedited Partial Initial Decision and Issuance of A Low Power License For Fuel Loading and Low-Power Testing" (May 9, 1984). That motion is the "application" for a low power license.

Once Del-Aware's misperception is cleared with respect to the procedures by which Philadelphia Electric receives authorization to operate at low power, it can be seen that Del-Aware's motion should be denied. The Commission has stated that "10 C.F.R. § 50.57(c) does not generally contemplate that a new evidentiary record, based on litigation of new contentions, would be compiled on the motion for fuel loading and low

power testing." Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-5. 13 NRC 361, 362 (1981). The Commission has further indicated that a request for low power operation falls within the scope of an application for a full-term full power license and is controlled by the record already developed in the operating license hearing. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-82-39, 16 NRC 1712, 1714). With respect to low power operation at Diablo Canyon, the Appeal Board noted that:

Low power testing is a normal, necessary and expected step in the life of every nuclear plant. This is true whether such testing is planned under the authorization of a separate fuel loading and low power testing license, as in the case of Diablo Canyon, or scheduled as the first step toward operation under the authority of a full power license. Low power testing, unlike full power operation, is not intended to produce electrical power, and it is not an alternative to full power operation. The brief period of low power testing does not involve any environmental impacts different from those already evaluated in the EIS for full term, full power operation.

Pacific Gas And Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 794 (1983).

In Limerick, the contentions with respect to the SCWS have been litigated, a partial initial decision has been issued^{2/} and an appeal is pending. In its motion Del-Aware makes no attempt to articulate why

^{2/} Philadelphia Electric Company (Limerick Generating Station, Units 1 and 1), LBP-83-11, 17 NRC 413 (1983).

the record already developed in connection with the SCWS is not adequate for the Licensing Board to grant Philadelphia Electric's motion to authorize low power authorization. That being so, Del-Aware is requesting precisely what the Commission has directed should not occur; litigation, within the context of low power operation, of a matter that has already been litigated in the context of an operating license hearing. Moreover, it is the Appeal Board and not the Licensing Board which currently has jurisdiction over matters relating to SCWS. Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), ALAB-726, 17 NRC 755 (1983); Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 1), ALAB-699, 16 NRC 1324 (1982).

Furthermore, Del-Aware's contentions fail to meet the specificity requirements of 10 C.F.R. § 2.714(b). As discussed above, Del-Aware has offered no indication that any adverse safety or environmental effects would be posed by permitting low power operation to begin without supplementary cooling water being available.

Del-Aware's failure to show how the SCWS affects Philadelphia Electric's application for low power operation makes it unnecessary to balance the criteria, set forth in 10 C.F.R. § 2.714(a), for late-filed contentions. Even so, the Staff will briefly discuss them.

Criterion (i) - Good cause, if any, for failure to file on time.

This factor weighs against Del-Aware. To be sure, Philadelphia Electric's motion for authorization to operate at low power is dated May 9, 1984 and Del-Aware filed its motion one week later. However,

Del-Aware has not offered any new information which suggests that safety or environmental concerns would be posed by not having available supplementary cooling water while Limerick operates at low power. That being so, there is no good cause for the untimely filing of these contentions.

Criterion (ii) - The availability of other means whereby the petitioner's interest will be protected.

With respect to the specific concern of this motion, that low power operation should not be authorized without the availability of supplemental cooling water, there are no other means for Del-Aware to protect its interest. This factor therefore weighs in Del-Aware's favor.

Criterion (iii) - The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.

To meet this criterion, a petitioner should delineate with as much particularity the issues it plans to cover, identify prospective witnesses, and summarize their proposed testimony. Mississippi Power and Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982). Del-Aware claims it will "present the testimony of Bucks County and the deposition transcripts alluded to and other material evidence." As best as can be discerned from Del-Aware's motion, the witnesses Del-Aware plans to present would testify as to the progress of or obstacles facing the construction of the Point Pleasant Diversion. However, Del-Aware has offered no indication that any of its witnesses would be competent to talk about whatever safety or environmental concerns Del-Aware believes are posed by permitting low power operation to

begin without supplemental cooling water. That being so, Del-Aware has not shown it would contribute to a sound record.

Criterion (iv) - The extent to which the petitioner's interest will be protected by existing parties.

The Staff concedes that this factor weighs in favor of Del-Aware.

Criterion (v) - The extent to which the petitioner's interest will broaden the issues or delay the proceeding.

Contrary to Del-Aware's claim, admission of either of Del-Aware's contentions would broaden the issues and delay the proceeding. Contentions on the SCWS have been litigated, a partial initial decision has been issued and an appeal is pending. For the Licensing Board to once again entertain contentions on the SCWS will certainly broaden the issues and likely delay the proceeding. The schedule is tight for litigating the remainder of the contentions and for the filing of proposed findings of fact and conclusions of law. That schedule would be significantly disrupted by requiring evidentiary presentations on the ability to operate at low power without supplementary cooling water.

Balance of Criteria (i) - (v)

Although Criteria (ii) and (iv) weigh in Del-Aware's favor, they receive lesser weight than the other three criteria. South Carolina Gas and Electric Company (Virgil C. Summer Nuclear Station, Unit 1),

ALAB-642, 13 NRC 881, 898 (1981). In this case, Criteria (i), (iii), and (v) weigh strongly against Del-Aware. That being so, the balance of the five factors tips against admitting either of Del-Aware's contentions.^{3/}

III. CONCLUSION

For the foregoing reasons, the Staff opposes Del-Aware's motion and urges that it be denied.^{4/}

Respectfully submitted,



Michael N. Wilcove
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 5 day of June, 1984

^{3/} Because Del-Aware's motion fails to explain what adverse consequences would flow from operating at low power without the availability of supplemental cooling water, it is clear that Del-Aware has also failed to meet any of the standards for reopening the record, i.e., that the motion (1) be timely, (2) address a significant safety or environmental issue and (3) contain newly proffered material that would lead to a different result than had been reached initially. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-598, 11 NRC 876, 879 (1980).

^{4/} Since Del-Aware's motion offers nothing to indicate that adverse consequences will result from operating at low power without supplementary cooling water and the Licensing Board has already rendered favorable findings with respect to the supplementary cooling water system, the SCWS does not now stand in the way of the Licensing Board authorizing Philadelphia Electric to operate at low power. In fact, the SCWS is arguably not even relevant to low power operation and hence not a matter on which the Licensing Board would even need to make findings before authorizing low power operation. See 10 C.F.R. § 50.57(c).

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO DEL-AWARE'S PROPOSED CONTENTIONS REGARDING LOW POWER OPERATION" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, this 5th day of June 1984:

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