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UNITED STATES OF AMERICA '84 NOV -5 P2:09
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)
)
Philadelphia Electric Company) Docket Nos. 50-352 OC
) 50-353 OC
(Limerick Generating Station,)
Units 1 and 2))

APPLICANT'S ANSWER TO INTERVENOR DEL-AWARE
UNLIMITED, INC. REVISED CONTENTIONS V-14 AND V-16

Preliminary Statement

In ALAB-785,^{1/} the Appeal Board held that intervenor Del-Aware Unlimited, Inc. ("Del-Aware") must be given an opportunity for a hearing on two issues: (1) the impact of withdrawals of water at Point Pleasant for Limerick on the salinity of the Delaware River,^{2/} and (2) the impact of the Point Pleasant pumping station on the Point Pleasant Historic District.^{3/} The Appeal Board directed that Del-Aware reformulate its two contentions "in light of the specific information included in the FES."^{4/}

1/ Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), ALAB-785, 20 NRC (September 26, 1984).

2/ Id. at 26-33.

3/ Id. at 42-45.

4/ Id. at 32, 45 (emphasis in original).

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On October 3, 1984, the Licensing Board directed Del-Aware to resubmit and reformulate Contentions V-14 and Contention V-16 in compliance with ALAB-785.^{5/} Subsequently, the Appeal Board denied Del-Aware's petition for reconsideration of two aspects of ALAB-785, one of which sought to expand Contention V-16 beyond that which was authorized for resubmission.^{6/}

Applicant opposes the resubmitted contentions as lacking in basis and specificity with regard to the Limerick FES and therefore not in conformance with ALAB-785 and the October 3, 1984 Order of this Board.^{7/} Moreover, much of the proposed contentions exceeds what the Appeal Board authorized for resubmission in ALAB-785. Accordingly, the proposed contentions should be denied.

Argument

Contention V-14. Portions of this contention exceed its permissible scope under ALAB-785. The Appeal Board specifically held that Del-Aware's allegations regarding the

5/ "Order" (October 3, 1984).

6/ ALAB "Order" (October 10, 1984).

7/ To preserve the point on the record, Applicant also objects to the admission of these contentions for the reasons previously expressed in the various pleadings before this Board, the Appeal Board and the Commission. See generally Applicant's Petition for Review of ALAB-785 (October 17, 1984).

Delaware Canal are "beyond the scope" of the contention.^{8/} Similarly, the Appeal Board ruled out consideration of the impacts of sound barriers, which may or may not be necessary to mitigate transformer noise impacts.^{9/} Presumably, this is what Del-Aware now means in referring to "transformer pads and possible walls" at the site. Such impacts were excluded from the resubmitted contention by the Appeal Board because "Del-Aware did not put [the issue] squarely before the Board."^{10/}

The remainder of the contention alleges a loss of natural hillside frame by intrusions of cleared areas and parking lots. Contrary to the express direction of the Appeal Board that any resubmitted contention must allege

^{8/} ALAB-785 at 48. The Appeal Board noted that none of Del-Aware's originally submitted contentions "refers to the Delaware Canal or to any other National Historic Landmark." Id. at 49. The Appeal Board further stated that, by raising concerns about the Delaware Canal, "Del-Aware is clearly injecting a new element into its contention." Id.

^{9/} Id. at 46-48.

^{10/} Id. at 48. Moreover, those aspects were not part of the originally submitted contention. See Contention V-14 in Supplemental Petition of Coordinated Intervenors at 67 (November 24, 1981). ALAB-785 did not authorize the addition of new aspects to this contention. For the same reason, "locational and functional alternatives" pleaded in the revised contention may not be litigated. As the Appeal Board stated, the sole issue framed for litigation is whether the Staff's review "might be inadequate under Section 106 of [the National Historic Preservation Act]." ALAB-785 at 45.

"specifically why that review might be inadequate under section 106 of [the National Historic Preservation Act],"^{11/} Del-Aware has baldly asserted that such impacts will occur "[c]ontrary to the FES." Nowhere does Del-Aware analyze the Memorandum of Agreement signed by the U.S. Army Corps of Engineers, the Pennsylvania State Historic Preservation Officer, and the Advisory Council on Historic Preservation, which stipulates the conditions by which potentially adverse construction and operation impacts on the Historic District will be avoided, minimized or mitigated.^{12/} Accordingly, Del-Aware has failed to comply even minimally with the threshold requirement imposed by the Appeal Board for admitting this contention.^{13/} The contention should therefore be denied.

Contention V-16. Similarly, this proposed contention exceeds what the Appeal Board authorized. In direct contravention of the Appeal Board's decision, Del-Aware again attempts to inject issues of "water quality (dissolved oxygen levels) in the Delaware River, and receiving waters, causing problems with fish, drinking water and other uses,

^{11/} ALAB-785 at 45.

^{12/} See FES §5.7.

^{13/} Moreover, the other references which Del-Aware cites to support the contention are too nebulous to provide any basis under 10 C.F.R. §2.714(b).

and requiring major construction."^{14/} In denying reconsideration, the Appeal Board ruled out any consideration of water quality other than salinity in the Delaware River.^{15/}

Specifically, the Appeal Board ruled that water quality issues related to the "receiving waters," i.e., the East Branch Perkiomen Creek, were pleaded separately in Contention V-16c, which Del-Aware abandoned by failure to appeal the Licensing Board's denial of the contention.^{16/} In seeking review of ALAB-785 by the Commission, even Del-Aware recognized that the remand order excluded "potential downstream effects of the diversion on dissolved oxygen levels."^{17/} Accordingly, the contention as proposed goes beyond the original contention, and thus violates ALAB-785, except as it relates to alleged impacts on salinity levels in the Delaware River.

Likewise, many of the "bases" alleged by Del-Aware pertain to the irrelevant subject of project alternatives

^{14/} Del-Aware's Revised Contentions at 1-2 (October 19, 1984).

^{15/} ALAB "Order" at 1 (October 10, 1984).

^{16/} ALAB "Order" at 2-3 (October 10, 1984).

^{17/} Del-Aware's Petition for Review of ALAB-785 at 2 (October 10, 1984). In this regard, an observation of the Appeal Board is equally applicable here: "We are necessarily forced to conclude that Del-Aware has been either duplicitous in its petition for reconsideration or shockingly unfamiliar with the content and timing of its own filings over the course of this proceeding." ALAB "Order" at 3 n.3 (October 10, 1984).

that allegedly would involve lower salinity impacts (e.g., the Tocks Island project, the Merrill Creek project, eliminating or "reducing" Limerick, using Schuylkill River water, and cancelling Limerick, Unit 2). However, salinity impacts of other alternatives are not at issue. The only question permitted by ALAB-785 is whether the FES correctly states that salinity impacts of the Point Pleasant project will be insignificant. Incredibly, Del-Aware attempts to inject the issue of project alternatives into its contention even though the Appeal Board explicitly rejected its arguments on these points.^{18/}

Moreover, the proposed contention, like resubmitted Contention V-14, fails to comply with the threshold requirement of ALAB-785 that it show some inadequacy in the specific information included in the Limerick FES.^{19/} Rather, the contention asserts, without any factual grounds, that "[t]he diversion will, contrary to the DRBC's contention adopted by the Staff in the FES (Section 9 and Appendix O), adversely and unacceptably affect salinity levels."^{20/} Del-Aware fails to join issue on any statement in the FES which supports the Staff's conclusion that, "[b]ecause Limerick's

^{18/} ALAB-785 at 57-64; ALAB "Order" at 3-4 (October 10, 1984).

^{19/} ALAB-785 at 32.

^{20/} Del-Aware's Revised Contentions at 1 (October 19, 1984).

withdrawal is only a small percentage of even the minimum river flow to be maintained at Trenton, the effects of this withdrawal on salinity levels are expected to be insignificant."^{21/}

The documentary references by Del-Aware on salinity are vague and unintelligible. It is impossible to discern any particular issue Del-Aware wishes to litigate. Some of the studies upon which Del-Aware relies are not a part of the record, have not been provided to the Board and parties, and are not even sufficiently identified for the Board or parties to obtain independently. In any event, the mere citation of such documents does not, in and of itself, show any specific deficiency in the Staff's analysis of salinity in the FES.

The Board should certainly not permit Del-Aware another opportunity to reformulate proper contentions. In permitting Del-Aware an opportunity to resubmit its contentions, but requiring their reformulation in light of specific alleged deficiencies in the FES on these two contentions, the Appeal Board put Del-Aware on notice that the requirements for specificity and bases would be strictly enforced. Moreover, the Appeal Board has repeatedly cautioned

^{21/} FES at pages 9-27 to 9-28. DRBC's analysis of salinity is discussed extensively in Appendix O of the FES at pages O-27 to O-33.

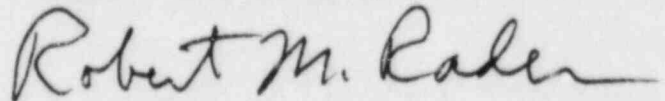
Del-Aware that it must bear the consequences of submitting inadequate and sometimes unintelligible pleadings.^{22/}

Conclusion

For the reasons discussed more fully above, Del-Aware has failed to comply with the requirements of ALAB-785 for resubmitting Contentions V-14 and V-16. Instead, it has impermissibly sought to inject extraneous matters into those contentions and has failed to identify any specific defect in the FES regarding the Staff's evaluation of salinity impacts or compliance with Section 106 of the National Historic Preservation Act for the Historic District. Accordingly, the proposed contentions should be denied and Del-Aware should be dismissed as a party.

Respectfully submitted,

CONNER & WETTERHAHN, P.C.



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Counsel for the Applicant

November 2, 1984

^{22/} E.g., ALAB-785 at 33 n.76; ALAB "Order" at 3 (October 10, 1984).

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Answer to Intervenor Del-Aware Unlimited, Inc. Revised Contentions V-14 and V-16," dated November 2, 1984 in the captioned matter have been served upon the following by deposit in the United States mail this 2nd day of November, 1984:

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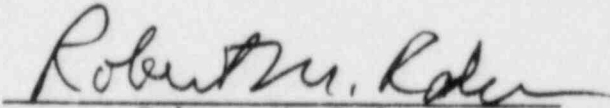
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