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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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USNRC

Before the Atomic Safety and Licensing Appeal Board

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Administrative Judges

Christine N. Kohl, Chairman  
Gary J. Edles  
Dr. Reginald L. Gotchy

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

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APPLICANT'S ANSWER TO MOTION BY  
DEL-AWARE UNLIMITED, INC. TO SET ASIDE  
THE PARTIAL INITIAL DECISION BASED ON NEW EVIDENCE

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TABLE OF CONTENTS

	<u>Page</u>
Preliminary Statement . . . . .	1
Argument . . . . .	4
I.    The Decision of the Pennsylvania Environmental Hearing Board Does Not Warrant Reopening . . . . .	4
A.    Potential for Erosion in the East Branch Perkiomen Creek . . . . .	4
B.    Requirement for an NPDES Permit . . . . .	8
II.   Actions by the Pennsylvania PUC Do Not Warrant Reopening the PID . . . . .	11
III.  Discussion in 1972 of a Decision Not to Channelize the East Branch Perkiomen Creek Raises No New Issue . . . . .	13
IV.   Other Documents Cited by Del-Aware do not Support Schuylkill River Alternatives for Limerick Unit 1 . . . . .	16
V.    The Staff Has Not Engaged in any Ex Parte Communications . . . . .	20
VI.   It is Not the Obligation of Boards or the Staff to Develop or Require Submission of Potential Alternatives . . . . .	21
Conclusion . . . . .	24

TABLE OF CITATIONS

Cases

<u>Natural Resources Defense Council v. Morton</u> , 458 F.2d 827 (D.C. Cir. 1972) . . . . .	24
--	----

Nuclear Regulatory Commission Issuances

<u>Cleveland Electric Illuminating Company</u> (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741 (1977) . . . . .	12
<u>Consumers Power Company</u> (Midland Plant, Units 1 & 2), ALAB-684, 16 NRC 162 (1982) . . . . .	6
<u>Detroit Edison Company</u> (Greenwood Energy Center, Units 2 and 3), ALAB-376, 5 NRC 426 (1977) . . . . .	11
<u>Detroit Edison Company</u> (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760 (1982)	7
<u>Duke Power Company</u> (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460 (1982), <u>rev'd on other</u> <u>grounds</u> , CLI-83-19, 17 NRC 1041 (1983) . . . . .	15
<u>Duke Power Company</u> (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041 (1983) . . . . .	15
<u>Houston Lighting &amp; Power Company</u> (Allens Creek Nuclear Generating Station, Unit 1), ALAB-582, 11 NRC 239 (1980) . . . . .	11
<u>Kansas Gas &amp; Electric Company</u> (Wolf Creek Generating Station, Unit No. 1), ALAB-424, 6 NRC 122 (1977) . . . . .	11
<u>Kansas Gas &amp; Electric Company</u> (Wolf Creek Generating Station, Unit No. 1), Docket No. 50-482 OL, "Initial Decision (Operating License)" (July 2, 1984) . . . . .	8
<u>Long Island Lighting Company</u> (Shoreham Nuclear Power Station, Unit 1), LBP-83-30, 17 NRC 1132 (1983) . . . . .	7
<u>Long Island Lighting Company</u> (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387 (1983) . . . . .	7
<u>Louisiana Power &amp; Light Company</u> (Waterford Steam Electric Station, Unit 3), ALAB-753, 18 NRC 1321 (1983) . . . . .	7

<u>Metropolitan Edison Company</u> (Three Mile Island Nuclear Station, Unit 1), Docket No. 50-289 SP, "Memorandum," (ALAB Order) (November 29, 1983) . . . . .	6
<u>Mississippi Power &amp; Light Company</u> (Grand Gulf Nuclear Station, Units 1 & 2), ALAB-704, 16 NRC 1725 (1982) . . . . .	7
<u>Northern States Power Company</u> (Tyrone Energy Park, Unit 1), ALAB-464, 7 NRC 372 (1978) . . . . .	13
<u>Northeast Nuclear Energy Company</u> (Montague Nuclear Power Station, Units 1 and 2), LBP-75-19, 1 NRC 436 (1975) . . . . .	20
<u>Pacific Gas and Electric Company</u> (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-81-5, 13 NRC 361 (1981) . . . . .	8
<u>Pacific Gas and Electric Company</u> (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-82-39, 16 NRC 1712 (1982) . . . . .	8
<u>Philadelphia Electric Company</u> (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423 (1982) . . . . .	5
<u>Philadelphia Electric Company</u> (Limerick Generating Station, Units 1 and 2), LBP-83-11, 17 NRC 413 (1983) . . . . .	1, 10
"Memorandum and Order (Concerning Objections to June 1, 1982 Special Prehearing Conference Order)" (July 14, 1982) . . . . .	5
"Confirmatory Memorandum and Order (Denying Motion of Del-Aware to Change Hearing Schedule)" (October 20, 1982) . . . . .	8
"Memorandum and Order - Denying Petitions of Del-Aware for Reconsideration and to Admit a Late Contention" (March 8, 1983) . . . . .	17, 18
"Order" (July 20, 1983) . . . . .	5
"Order" (September 2, 1983) . . . . .	5



"Memorandum and Order Denying Del-Aware's Motions to Reopen the Record to Admit Late-filed Contentions V-30, V-31, V-32, V-33, V-35 and V-36" (April 19, 1984) . . .	3, 16, 24
"Director's Decision under 10 CFR §2.206" (April 25, 1984) . . . . .	21
"Memorandum" (July 11, 1984) . . . . .	2
"Order" (August 9, 1984) . . . . .	1
<u>Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610 (1976) . . . . .</u>	11
<u>Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-493, 8 NRC 253 (1978) . .</u>	20
<u>Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), CLI-83-23, 18 NRC 311 (1983) . . . . .</u>	15
<u>Southern California Edison Company (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-171, 7 AEC 37 (1974) . . . . .</u>	12
<u>Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 &amp; 2), ALAB-413, 5 NRC 1418 (1977) . . . . .</u>	11
<u>Toledo Edison Company (Davis-Besse Nuclear Power Station), ALAB-300, 2 NRC 752 (1975) . .</u>	8
<u>Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167 (1983) . . . . .</u>	7

Statutes

Section 402 of the Clean Water Act, 33 U.S.C. §1342 . . . . .	9
--	---

Nuclear Regulatory Commission  
Regulations

10 C.F.R. §2.101 . . . . .	23
10 C.F.R. §2.102(a) . . . . .	20

10 C.F.R. §2.206 . . . . .	7, 21
10 C.F.R. §2.714(a) . . . . .	6, 7
10 C.F.R. §2.780 . . . . .	20
10 C.F.R. §51.45 . . . . .	23
10 C.F.R. §51.50 . . . . .	23

Issuances of the Pennsylvania  
Environmental Hearing Board

Adjudication of the Environmental Hearing Board (June 18, 1984) . . . . .	11, 19
--	--------

Miscellaneous

49 Fed. Reg. 9353 (March 12, 1984) . . . . .	23
49 Fed. Reg. 24512 (June 14, 1984) . . . . .	23
Final Environmental Statement Related to the Operation of Limerick Generating Station, Units 1 and 2 (April 1984) . . . . .	3
Section 5.3.2.3 . . . . .	10
Section 5.5.2.3 . . . . .	15
Letter dated April 2, 1984 from William J. Dircks, Executive Director for Operations, to the Honorable Peter H. Kostmayer . . . . .	22
Letter dated May 15, 1984 from Robert J. Sugarman, Esq. to Christine N. Kohl, Esq. . . . .	2
Letter dated June 29, 1984 from Harold R. Denton to Robert J. Sugarman, Esq. . . . .	22
Letter dated July 5, 1984 from Robert J. Sugarman, Esq. to Christine N. Kohl, Esq. . . . .	2
Letter dated July 13, 1984 from Robert J. Sugarman, Esq. to Harold R. Denton . . . . .	7

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DEL-AWARE UNLIMITED, INC. TO SET ASIDE  
THE PARTIAL INITIAL DECISION BASED ON NEW EVIDENCE

Preliminary Statement

On August 6, 1984,<sup>1/</sup> Appellant Del-Aware Unlimited, Inc. ("Del-Aware") filed a motion seeking to set aside the Partial Initial Decision ("PID") issued by the Atomic Safety and Licensing Board ("Licensing Board") on March 8, 1983.<sup>2/</sup> The PID relates solely to the supplementary cooling water system for the Limerick Generating Station ("Limerick").

Del-Aware's motion embodies matters raised with the Atomic Safety and Licensing Appeal Board ("Appeal Board") by

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1/ The motion is dated July 31, 1984 and the certificate of service bears the same date. The cover letter and postmark to the Atomic Safety and Licensing Appeal Board enclosing the motion is dated August 6, 1984. The copy of the motion received by Applicant's counsel was postmarked August 6, 1984. By Order dated August 9, 1984, the Appeal Board ruled that the time for a response would run from that date.

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

letter of July 5, 1984. Following its receipt of the letter, the Appeal Board issued a Memorandum, dated July 11, 1984, declining to take any action with regard to any of the "requests" in Del-Aware's July 5, 1984 letter or any future letter. The Appeal Board stated that Del-Aware must formally submit appropriate pleadings for the Board to entertain its request for relief.

This is the second motion by Del-Aware requesting the Appeal Board to set aside the PID in addition to yet another filed with the Licensing Board. By letter dated May 15, 1984, Del-Aware cited various actions by the Neshaminy Water Resources Authority in Bucks County with regard to the Point Pleasant project in support of its allegation that Point Pleasant is not a viable source of supplementary cooling water. Del-Aware asked the Appeal Board to "direct the Licensing Board to direct the applicant to file a revised plan."<sup>3/</sup>

In an earlier motion to reopen the PID before the Licensing Board, Del-Aware sought to raise issues as to the status of Limerick Unit 2 in the context of proceedings before the Pennsylvania Public Utility Commission.<sup>4/</sup> The latter motion was denied by the Licensing Board along with

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<sup>3/</sup> Letter from Robert J. Sugarman, Esq. to Christine N. Kohl, Esq. et al. at 3 (May 15, 1984).

<sup>4/</sup> Del-Aware's Motion to Reopen PID Proceeding (February 17, 1984).

other late-filed contentions, which the Licensing Board held were "neither new nor worthy of reconsideration, let alone significant issues which would change the results reached by us in the P.I.D. or in our orders rejecting previous Del-Aware contentions."<sup>5/</sup>

As with its earlier pleadings requesting the Licensing Board and Appeal Board to set aside the PID, Del-Aware's allegations are legally defective. Proceedings before other agencies do not require the Nuclear Regulatory Commission ("NRC or Commission") to reevaluate environmental impacts it has already reviewed concerning the existing supplementary cooling water system for Limerick.<sup>6/</sup> Nor is the Licensing Board required, as Del-Aware asserts, to identify and evaluate alternatives to the Point Pleasant project because of legal opposition in other agency proceedings.

Insofar as Del-Aware purports to cite "new" evidence, it has failed to raise any matter which is truly new or which raises any significant environmental concern justifying a reopening of the closed record on supplementary

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<sup>5/</sup> Limerick, supra, "Memorandum and Order Denying Del-Aware's Motions to Reopen the Record to Admit Late-filed Contentions V-30, V-31, V-32, V-33, V-35 and V-36" (April 19, 1984) (slip op. at 6). The Licensing Board noted that Del-Aware's Motion to Reopen the PID "duplicates the arguments in its other motions and is also rejected." Id. at 3 n.3.

<sup>6/</sup> The Final Environmental Statement related to Limerick was issued April 1984.



cooling water contentions. Accordingly, the motion to reopen and set aside the PID should be denied.

Argument

I. The Decision of the Pennsylvania Environmental Hearing Board Does Not Warrant Reopening

A. Potential for Erosion in the East Branch Perkiomen Creek

The diversion of water from Point Pleasant to the East Branch Perkiomen Creek will provide supplementary cooling water for Limerick. In an Adjudication issued June 18, 1984, the Environmental Hearing Board of the Commonwealth of Pennsylvania ("EHB") rejected a number of claims by Del-Aware and others attempting to vacate various permits issued by the Department of Environmental Resources ("DER") for the Point Pleasant project. The EHB nonetheless determined that one of the permits sought by Applicant herein would be remanded to DER for imposition of a restriction on the flow velocity in the East Branch of two feet per second.

Del-Aware's argument that these findings would have sustained Del-Aware's allegations in proposed Contention V-16 is ultimately self-defeating because it demonstrates Del-Aware's extreme untimeliness.<sup>7/</sup> This contention was

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<sup>7/</sup> In its initial filing of contentions, Del-Aware proposed Contention V-16(c) as follows:

"The discharge of the water into the Perkiomen, and into the Schuylkill will cause toxic pollution  
(Footnote Continued)

denied by the Licensing Board because, first, it lacks specificity, and second, because "the impacts on the Perkiomen and Schuylkill were considered at the construction permit stages," and no significant changes at the operating licensing stage had been alleged.<sup>8/</sup>

If Del-Aware objected to the Licensing Board's denial of its proposed contention, it should have appealed the ruling when it appealed the PID.<sup>9/</sup> Del-Aware is, in effect, attempting to amend its previously filed exceptions or file

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(Footnote Continued)

and thus substantially and adversely affect fishing and drinking water supplies. The discharge into the Perkiomen will also cause destabilization, flooding and otherwise adversely affect the Perkiomen.

See Supplemental Petition of Coordinated Intervenors at 69½ (November 24, 1981).

8/ Limerick, supra, LBP-82-43A, 15 NRC at 1486. The Licensing Board reaffirmed its ruling on Del-Aware's request for reconsideration. See Limerick, supra, "Memorandum and Order (Concerning Objections to June 1, 1982 Special Prehearing Conference Order)" (July 14, 1982) (slip op. at 9).

9/ Exceptions to the PID were filed by Del-Aware on March 21, 1983 but, in light of a motion before the Licensing Board to admit a related late contention, Del-Aware was given to July 18, 1983 to file a brief in support of these exceptions. The Appeal Board subsequently struck the documents filed by Del-Aware as its brief and gave it until August 19, 1983 to file a proper brief. See Limerick, supra, "Order" (July 20, 1983). Del-Aware's brief was served on August 23, 1983, along with a motion seeking leave to file out time, which the Appeal Board granted. See Limerick, supra, "Order" (September 2, 1983).

new exceptions to the PID out of time. This is clearly impermissible.<sup>10/</sup>

Del-Aware does not ask this Board to admit and adjudicate any new contentions itself.<sup>11/</sup> Even so, the decision of the EHB would not justify admission of a new contention. The requisite "good cause" for lateness is clearly lacking. It is not the date of the decision but rather the availability of the evidence presented to the EHB which determines when Del-Aware could have raised this contention with the Licensing Board. As noted, it filed such a contention in 1981. Del-Aware filed its appeals before the EHB in 1982.<sup>12/</sup> Del-Aware has failed to show why those witnesses would not have been available to testify before the Licensing Board.<sup>13/</sup>

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<sup>10/</sup> See, e.g., Consumers Power Company, (Midland Plant, Units 1 & 2), ALAB-684, 16 NRC 162 (1982). See also Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 1), Docket No. 50-289 SP, "Memorandum" (ALAB Order) (November 29, 1983) (holding that a party may not "amend" its appeal).

<sup>11/</sup> At pages 5-6 of its Motion, Del-Aware apparently addresses the criteria for admitting late contentions under 10 C.F.R. §2.714(a)(1)(i)-(v).

<sup>12/</sup> On July 19, 1982, Del-Aware filed the first of several appeals before the EHB, challenging the validity of permits issued by DER on behalf of Applicant and Neshaminy Water Resources Authority. Other related appeals were filed in September 1982.

<sup>13/</sup> As to the other criteria for late contentions, the EHB decision establishes that there are other adequate means to protect Del-Aware's interests. Del-Aware's  
(Footnote Continued)

Nor has Del-Aware addressed, much less satisfied, the additional three requirements for reopening a closed record in order to pursue new contentions.<sup>14/</sup> In Diablo Canyon, the Commission held that where a party moves to reopen the record on new contentions, it "must satisfy both the standards for admitting late-filed contentions, 10 CFR 2.714(a), and the criteria established by case law for reopening the

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(Footnote Continued)

interests have been adequately represented by the Staff in the preparation and publication of the DES and FES for Limerick. Also, Del-Aware is pursuing allegations related to the EHB decision with the Staff in a petition under Section 2.206. See letter dated July 13, 1984 from Robert J. Sugarman, Esq. to Harold R. Denton, Director, Office of Nuclear Reactor Regulation. A copy is attached for the convenience of the Board.

As to assisting in the development of a sound record, Del-Aware has not complied with requirement of Grand Gulf that "[w]hen a petitioner addresses this criterion it should set out with as much particularity as possible the precise issues it plans to cover, identify its perspective witnesses, and summarize their proposed testimony." Mississippi Power & Light Company (Grand Gulf Nuclear Station, Units 1 & 2), ALAB-704, 16 NRC 1725, 1730 (1982). See also Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1177 (1983); Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387, 399 (1983).

It is incontestable that admission of new contentions at this extremely late stage will greatly broaden the issues and delay the outcome of the proceeding. See e.g., Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760, 1765-66 (1982); Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), LBP-83-30, 17 NRC 1132, 1146 (1983).

<sup>14/</sup> See generally Louisiana Power & Light Company (Waterford Steam Electric Station, Unit 3), ALAB-753, 18 NRC 1321, 1324 (1983); Fermi, supra, ALAB-707, 16 NRC at 1765.



record."<sup>15/</sup> For the reasons discussed above, which largely subsume the considerations for reopening, Del-Aware has failed to satisfy the requirements for reopening. Moreover, inasmuch as the EHB decision is more restrictive from the perspective of erosion prevention than previous requirements, it does not support the request for any further action by the NRC.<sup>16/</sup>

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<sup>15/</sup> Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-82-39, 16 NRC 1712, 1715 (1982), citing Diablo Canyon, supra, CLI-81-5, 13 NRC 361 (1981).

<sup>16/</sup> At page 2 of its motion, Del-Aware appears to assert that evidence presented to the EHB and Pennsylvania PUC could have been presented to the Licensing Board if it had deferred hearings on the supplementary cooling water contentions until after issuance of the FES. Del-Aware filed its Amended Petition to Intervene with Regard to the Application by PECO Before the PUC for a Finding of Necessity for a Pumpouse at the Bradshaw Reservoir on July 15, 1982. Its assertion as to its inability to present witnesses from the EHB and PUC cases any earlier is therefore disingenuous.

Moreover, Del-Aware substantially benefited from the expedited hearing on its contentions and acquiesced in the early hearing date. Limerick, supra, "Confirmatory Memorandum and Order (Denying Motion of Del-Aware to Change Hearing Schedule)" (October 20, 1982); Toledo Edison Company (Davis-Besse Nuclear Power Station), ALAB-300, 2 NRC 752, 766-67 (1975); Kansas Gas & Electric Company (Wolf Creek Generating Station, Unit No. 1), Docket No. 50-482 OL, "Initial Decision (Operating License)" (July 2, 1984) (slip op. at 4 n.2). See also Applicant's Brief in Opposition to Exceptions by Del-Aware Unlimited, Inc. at 24-37 (October 3, 1983).



B. Requirement for  
an NPDES Permit

Del-Aware asserts that the EHB decision necessitates "the construction by PECO of a sewage treatment plant to treat the diverted water prior to discharging it into the East Branch of the Perkiomen Creek."<sup>17/</sup> Del-Aware asserts that such construction will delay operation of the Point Pleasant diversion at least until the fall of 1986.

The EHB decision does not "entail" construction of a treatment plant as asserted by Del-Aware, but, applying Pennsylvania law, merely requires that National Pollutant Discharge Elimination System ("NPDES") permits under Section 402 of the Clean Water Act, 33 U.S.C. §1342, be obtained for discharges from the Bradshaw Reservoir into the East Branch Perkiomen and North Branch Neshaminy Creeks.

Del-Aware's motion makes no factual or legal showing why this finding requires further action by the NRC at this time or, more specifically, a reopening of the PID. The requirement that another permit be obtained does not necessarily entail any further environmental review. In this instance, the application for an NPDES permit to allow the diversion of Delaware River water into the East Branch Perkiomen requires no further review by the NRC because the relative quality of these water sources was fully addressed

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<sup>17/</sup> Del-Aware's Motion to Set Aside Based on New Evidence at 2 (August 6, 1984).

by the NRC in Section 5.3.2.3 of its Final Environmental Statement.<sup>18/</sup> Accordingly, no new information has been divulged by the issuance of the EHB decision.

In any event, Del-Aware's allegation that the requirement of an NPDES permit necessitates consideration of alternatives to Point Pleasant or reopening of the PID is entirely without merit. No basis whatever is furnished for its conclusion that construction of a sewage treatment plant will be necessary to treat diverted water prior to discharge into the East Branch Perkiomen. Specifically, the EHB did not find that any special measures must be taken in order to obtain an NPDES permit. The Board simply noted that the permit review process would determine any necessary conditions:

Of course, it may be these substances occur in such small amounts in the Delaware River water that no treatment will be required before discharging into

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<sup>18/</sup> Del-Aware did not appeal the Licensing Board's denial of its proposed Contention V-16c regarding alleged "toxic pollution" of the Perkiomen as quoted and discussed in note 7 and the accompanying text, supra. Moreover, Del-Aware itself stipulated to the dismissal of admitted Contention V-16b, which alleged that "toxics are present in substantial quantity and there is therefore a substantial risk of groundwater contamination and hydraulic saturation." Del-Aware had asserted in this contention that "[t]here has been no evaluation of the likely impacts of seepage of water and toxics from the Bradshaw Reservoir and transmission mains on groundwater level and quality." See Supplemental Petition of Coordinated Intervenors at 69 $\frac{1}{2}$  (November 24, 1982). The withdrawal of this contention by stipulation is discussed in the PID. Limerick, supra, LBP-83-11, 17 NRC at 418, 440 (1983).

the East Branch or North Branch, but this is the very question which the NPDES permit process is designed to answer. 19/

Accordingly, the EHB expressly left this question for determination by the Pennsylvania Department of Environmental Resources, which would issue the NPDES permit.

II. Actions by the Pennsylvania PUC  
Do Not Warrant Reopening the PID

Del-Aware cites various actions taken by the Pennsylvania Public Utility Commission ("PUC") concerning its issuance of an order to show cause why the construction of Limerick Unit 2 is in the public interest. Del-Aware makes no connection between this investigation and the PID or environmental impacts attributable to the Point Pleasant diversion in general. Notwithstanding Del-Aware's characterization of the order, the PUC explicitly stated that the order arises from its duty "to guarantee just and reasonable rates and to maintain adequate service." The NRC lacks jurisdiction to consider such matters.20/

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19/ Adjudication of the Environmental Hearing Board (June 18, 1984) (slip op. at 99).

20/ E.g., Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 614 (1976); Houston Lighting & Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-582, 11 NRC 239, 243 n.8 (1980); Kansas Gas & Electric Company (Wolf Creek Generating Station, Unit No. 1), ALAB-424, 6 NRC 122, 128 n.7 (1977); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 & 2), ALAB-413, 5 NRC 1418, 1420-21 (1977); Detroit Edison Company (Greenwood  
(Footnote Continued)

Del-Aware also discusses the PUC's review of a decision by an Administrative Law Judge regarding PECO's application for the Bradshaw Reservoir pumphouse. Del-Aware is apparently referring to a memorandum issued June 26, 1984 postponing the PUC's review pending the receipt of comments by the parties on the EHB decision issued June 18, 1984. Again, Del-Aware makes no connection between this procedural action and its request to reopen the PID or environmental impacts attributable to the Point Pleasant diversion.

The Commission is well aware that bringing a nuclear power plant on line requires licenses, permits and approvals from a number of State and federal regulatory agencies in addition to the NRC. Accordingly, the Commission has consistently taken the position that it will not defer its proceedings until other regulatory proceedings have been completed or other approvals obtained, just because an intervenor speculates that such permits or approvals will not ultimately be obtained.<sup>21/</sup> As the Appeal Board stated in Tyrone: "The requirements of State law are beyond our ken; such matters are for the State regulatory

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(Footnote Continued)

Energy Center, Units 2 and 3), ALAB-376, 5 NRC 426, 428 (1977).

21/ Southern California Edison Company (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-171, 7 AEC 37, 39 (1974). See also Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 748 (1977).

commission."<sup>22/</sup> Accordingly, the status of the proceeding before the PUC does not require the NRC to delay or reconsider matters on which it has already closed its record.<sup>23/</sup>

III. Discussion in 1972 of a Decision  
Not to Channelize the East Branch  
Perkiomen Creek Raises No New Issue

In support of its assertion that erosion will occur in the East Branch Perkiomen Creek, Del-Aware sites a memorandum of a meeting among Applicant's employees and consultants on December 12, 1972 concerning potential environmental impacts in the East Branch. Contrary to Del-Aware's characterization of the Memorandum, it clearly states the conclusion of Applicant's representative and its technical consultant that no erosion would result from the maximum discharge even without channelization. The memorandum states:

Dave Marano stated that Dr. Rainey had felt that no stream channel work of any type would be the best solution for the East Branch ecological problem and questioned why a channel should be installed. The existing stream channel can handle the peak pumping rate (65 cfs) at a depth of two feet and, in general, should be within the banks of

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<sup>22/</sup> Northern States Power Company (Tyrone Energy Park, Unit 1), ALAB-464, 7 NRC 372, 375 (1978).

<sup>23/</sup> As stated at note 16, supra, the PUC proceeding related to the Bradshaw Reservoir pumphouse has been in progress since mid-1982. The parties have routinely advised the Appeal Board of developments regarding the PUC investigation into Limerick Unit 2 initiated by Order dated August 27, 1982. Neither of these matters therefore constitutes new information supportive of late-filed contentions for the reasons discussed in Part I, supra.



the stream which are approximately 3-6 feet high. . . . Probably the only reason for the improved channel would be to firmly establish P.E.'s liability with regard to passage of the peak pumping rates; without such a channel, it is possible that P.E. might be blamed for any damage that was incurred as a result of a flood on a stream. . . .

At this point, Dr. Rainey reiterated his position that no channel work should be performed on the East Branch. He pointed out that stream channels are formed during times of flood and that during the rising stage of the flood most of the erosion takes place, whereas, on the following stage, the water becomes relatively clear except for colloidal materials. He felt that the existing channel, which had been formed by the past flood flows, should not be materially affected by the peak pumping rate which is much less than the usual flood. In addition, channel work would destroy the ecology of that part of the stream and the resulting erosion from this work would be expected to deposit silt in the stream as far down as Sellersville. . . . E.H. Bourquard was of the opinion, based upon observations of the West Branch of Codorus Creek and York County, at 65 cfs would erode a relatively stable channel into the existing stream bed below the point of discharge but that such erosion would be limited in amount and occur over a period of years.<sup>24/</sup>

It is only after this discussion that the memorandum states the group's consensus that channelization would have

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<sup>24/</sup> Memorandum on meeting of December 12, 1972 entitled "Environmental Impact Statement of Philadelphia Electric on the Limerick Nuclear Power Plant" at 2-4. In the copy of the memorandum provided by Del-Aware, it is not possible to determine whether emphasized  
(Footnote Continued)

a far greater adverse impact on stream ecology than any erosion expected from the increased flows. But as the group previously concluded, no further erosion or very little erosion was anticipated. This is consistent with the discussion in the Environmental Report at Section 5.1.3.3 and the Final Environmental Statement at Section 5.5.2.3. that some minimal erosion might occur in the upper reaches of the East Branch during an initial period of stream channel stabilization.<sup>25/</sup> Del-Aware's assertions therefore fail to satisfy the requirements for reopening and admission of late-filed contentions for the same reasons discussed in Part I, supra.

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(Footnote Continued)

portions of the text were underlined by the memorandum writer.

<sup>25/</sup> Inasmuch as the matters discussed in the memorandum were previously known to Del-Aware in the publicly available record, the memorandum could not independently support a new, late-filed contention. Thus, the memorandum relied upon by Del-Aware would, at most, have evidentiary value. As the Commission stated in Catawba "an intervenor in an NRC proceeding must be taken as having accepted the obligation of uncovering information in publicly available documentary material." Duke Power Company (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1048 (1983). Or, as the Appeal Board likewise stated below in Catawba, "an intervention petitioner has an ironclad obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to enable it to uncover any information that could serve as the foundation for a specific contention." Catawba, supra, ALAB-687, 16 NRC 460, 468 (1982), rev'd on other grounds, CLI-83-19, 17 NRC 1041 (1983). The Commission subsequently reaffirmed its holding in Catawba. Public Service  
(Footnote Continued)

IV. Other Documents Cited by Del-Aware  
Do Not Support Schuylkill River  
Alternatives for Limerick Unit 1

Del-Aware asserts that certain memoranda from Applicant's files show that Schuylkill River alternatives would provide sufficient supplementary cooling water for one unit at Limerick. Initially, Del-Aware correctly states that the Licensing Board rejected its proposed contention that a supplementary cooling water source on the Schuylkill would suffice for one unit. The basis for the Board's repeated denial of this contention was most recently stated in its Memorandum and Order issued April 19, 1984 as follows:

Much of Del-Aware's current spate of motions is grounded on its belief that Limerick Unit 2's present status of being deferred due to action by the Pennsylvania PUC is tantamount to cancellation of that unit. But again, Del-Aware ignores the fact that this is an old point previously raised by Del-Aware and disposed of by us. In prior rulings, we assumed arguendo that only Unit 1 would be operated. We found, similar to Judge Kranzel's finding, that "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." See our March 8, 1983 order, supra at 6-7.26/

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(Footnote Continued)

Company of New Hampshire, (Seabrook Station, Units 1 and 2), CLI-83-23, 18 NRC 311 (1983).

26/ Limerick, supra, "Memorandum and Order Denying (Footnote Continued)

In the Memorandum and Order dated March 8, 1983 to which it referred, the Licensing Board recounted its earlier ruling "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."<sup>27/</sup> As applied to Del-Aware's proposed contention that Schuylkill River alternatives to Point Pleasant be considered, the Board held:

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

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(Footnote Continued)

Del-Aware's Motions to Reopen the Record to Admit Late-filed Contentions V-30, V-31, V-32, V-33, V-35 and V-36 (April 19, 1984) (slip op. at 7-8).

<sup>27/</sup> Limerick, supra, "Memorandum and Order - Denying Petitions of Del-Aware for Reconsideration and to Admit a Late Contention" (March 8, 1983) (slip op. at 5).



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.<sup>28/</sup>

Thus, whether or not Schuylkill River alternatives are physically feasible for one unit at Limerick is irrelevant to the Board's rationale in denying that contention.

Moreover, the memoranda cited by Del-Aware do not, as it asserts, establish any Schuylkill alternative sufficient to meet the supplementary cooling water needs of even one unit. The first memorandum (Exhibit C) states: "Preliminary calculations indicate that the entire water supply (8,000 a-f) storage can barely meet the needs of one unit at Limerick under average conditions." (Emphasis added.) As

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<sup>28/</sup> Id. at 7. The Board also noted "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." Id. at 8.



to the Blue Marsh Dam and Reservoir, the memorandum states that "Blue Marsh is an acceptable alternative water supply on a temporary basis for one unit because it is built and presently under-utilized." (Emphasis added.)

The other memorandum (Exhibit D) is consistent with this conclusion, stating that the average consumptive water need for even one unit at Limerick (27 cfs) for the average number of days each year that supplementary cooling water is needed would not be available from Blue Marsh because it would draw down the reservoir to levels not permitted by the U.S. Army Corps of Engineers as operator of the reservoir.

As with other matters raised, Del-Aware has failed to demonstrate that its arguments about Schuylkill alternatives satisfies the requirements for reopening and late contentions, or that the specific documents upon which it relies provide any information previously unavailable on the public record. To the contrary, the rules regarding the availability of water from Blue Marsh have long been established. Information relating to these rules and alleged Schuylkill alternatives has long been available to Del-Aware.<sup>29/</sup> Nothing alleged by Del-Aware meets the standards for late-filed contentions or reopening as discussed in Part I, supra.

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<sup>29/</sup> See, e.g., Adjudication of the Environmental Hearing Board (slip op. at 40-47, 147-149) (June 18, 1984).

V. The Staff Has Not Engaged  
in any Ex Parte Communications

Del-Aware asserts, on the basis of handwritten notes of a meeting between the NRC Staff and Applicant on April 17, 1984 (Exhibit E), that the Staff has engaged in "an ex parte staff contact with PECO." Del-Aware claims that this informal meeting "obviously reflected a [sic] improper contact with PECO, concealed from intervenors and the public, and contrary to the staff's public representations, and to 10 C.F.R. §27.80 [sic]."<sup>30/</sup>

This assertion is baseless. The Commission's rules against ex parte communications under Part 2 apply to improper contacts with decision-making tribunals, not to contacts, informal or otherwise, between an applicant and the NRC Staff, which is also a party. The Commission's boards have consistently ruled that the NRC Staff may confer off the record with any party to a proceeding.<sup>31/</sup> Indeed, §2.102(a) expressly states: "The staff may request any one party to the proceeding to confer with the staff informally."

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<sup>30/</sup> Del-Aware's Motion to Set Aside Based on New Evidence at 3.

<sup>31/</sup> See e.g., Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-493, 8 NRC 253, 269 (1978); Northeast Nuclear Energy Company (Montague Nuclear Power Station, Units 1 and 2), LBP-75-19, 1 NRC 436, 437 (1975).

Substantively, the notes of the meeting simply show that Applicant was briefing the Staff to update it on the status of the Point Pleasant project. In content, the notes are wholly unexceptional. Nothing in the notes reflects improper conduct or anything else which would be a basis for reopening the PID or admitting new contentions. It is difficult to perceive what relief, if any, Del-Aware is seeking with respect to this matter.

VI. It is Not the Obligation of  
Boards or the Staff to Develop  
or Require Submission of  
Potential Alternatives

The remainder of Del-Aware's motion requests the Appeal Board to order the Licensing Board and/or NRC Staff to identify and evaluate alternatives to the Point Pleasant project for supplementary cooling water for Limerick. As is clear from its answers to Del-Aware's succession of petitions, Applicant disagrees with Del-Aware's allegations regarding the viability of the Point Pleasant project. The Licensing Board has repeatedly rejected such assertions in the several post-hearing orders discussed above.<sup>32/</sup>

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<sup>32/</sup> The Staff has likewise rejected these arguments in rulings denying Del-Aware's petitions under 10 C.F.R. §2.206. In his April 25, 1984 decision, the Director of Nuclear Reactor Regulation expressly rejected Del-Aware's claim that actions by Bucks County seeking to terminate the project require immediate consideration of other alternatives. The Director stated that current information "indicates no lessening of the resolve of PECO to go forward" with the project,  
(Footnote Continued)

In questioning the viability of the project, Del-Aware seeks to litigate the very contention consistently denied by the Licensing Board. The instant request to reopen therefore constitutes an impermissible, late-filed appeal on the issue of the project's viability. Moreover, this same argument was also the basis of Del-Aware's request to set aside the PID it previously filed by letter dated May 15, 1984. In the interest of brevity, Applicant respectively refers the Appeal Board to its prior discussion of those issues as incorporated herein.<sup>33/</sup>

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(Footnote Continued)

and noted that "PECO has availed itself of its legal remedies to ensure that the [Point Pleasant Diversion] Project will go forward as currently configured." The Director concluded that "PECO's current actions appear clearly directed at insuring that the [Point Pleasant Diversion] Project goes forward." Limerick, supra, "Director's Decision under 10 CFR §2.206" (April 25, 1984) (slip op. at 5).

The same position was taken by the Executive Director for Operations in responding on behalf of Chairman Palladino by letter dated April 2, 1984 to Representative Kostmayer (copy attached) as follows: "Absent a specific proposal from PECO describing such a change the NRC staff considers it to be premature and no more than speculation to comment on the nature or timing of further required reviews or the need for further hearings." Letter from William J. Dircks, Executive Director for Operations, to the Honorable Peter H. Kostmayer at 3 (April 2, 1984).

The Director of Nuclear Reactor Regulation recently reiterated the same position in a letter to Del-Aware's counsel dated June 29, 1984 (copy attached), where he declined to take further actions requested by Del-Aware regarding project alternatives.

33/ See Applicant's Answer to Request by Del-Aware  
(Footnote Continued)



Even on the merits, Del-Aware's request for relief has no legal basis. Contrary to Del-Aware's assertion, nothing in 10 C.F.R. Part 2, Appendix A makes it "incumbent upon the Commission and its staff" to prepare alternatives to be substituted for the Point Pleasant project. The Commission's regulations under 10 C.F.R. §2.101 make it the responsibility of the applicant for a license to prepare and submit its application as prescribed by the applicable rules and regulations.

While the Commission's regulations under 10 C.F.R. Part 51 require full consideration of environmental impacts attributable to any supplemental cooling water supply described in the application, nothing in Part 2 or Part 51 authorizes the Staff or any adjudicatory board to select or require the applicant to select sources of cooling water beyond those in the application.<sup>34/</sup>

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(Footnote Continued)

Unlimited, Inc. to Set Aside the Partial Initial Decision on Supplementary Cooling Water System Contentions (May 30, 1984). The NRC Staff likewise opposed reopening and took the position that Del-Aware had failed to demonstrate that the Point Pleasant project is no longer viable. See NRC Staff Response to Del-Aware's Motion to Set Aside the Partial Initial Decision on the Environmental Effects of the Supplementary Cooling Water System (SCWS) (June 4, 1984).

<sup>34/</sup> See generally 10 C.F.R. §§51.45 and 51.50. Part 51 was recently revised by the Commission as the result of rulemaking, but the essential elements of evaluating environmental impacts remain unchanged. See 49 Fed. Reg. 9353 (March 12, 1984); 49 Fed. Reg. 24512 (June 14, 1984).



As the Licensing Board has held time and again, "if the Applicant were to materially change its proposed supplemental cooling water system because the Point Pleasant diversion is not permitted to operate by other opposing bodies, the NRC would have to consider the effect of any such changes on the previous assessment of environmental impacts."<sup>35/</sup> Otherwise, there is no basis for any action by the NRC, including a reopening of the PID or admission of new contentions.<sup>36/</sup> Accordingly, no relief on Del-Aware's allegations is warranted.

#### Conclusion

For the reasons discussed more fully above, Del-Aware has not met the Commission's requirements for reopening a closed record and admitting new, late-filed contentions. In fact, Del-Aware seeks to raise old matters which were decided adversely to it by the Licensing Board, which could have been submitted to the Licensing Board for decision on a

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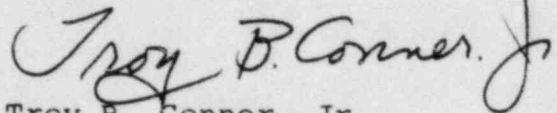
<sup>35/</sup> Limerick, supra, "Memorandum and Order Denying Del-Aware's Motions to Reopen the Record to Admit Late-filed Contentions V-30, V-31, V-32, V-33, V-35 and V-36" (April 19, 1984) (slip op. at 9).

<sup>36/</sup> Del-Aware mistakenly relies upon Natural Resources Defense Council v. Morton, 458 F.2d 827 (D.C. Cir. 1972). That decision merely states the customary rule that reasonable alternatives must be considered. It does not require pre-selection of other alternatives once one alternative has been chosen, simply based upon the speculation of opponents of the project regarding its viability.

timely basis. Del-Aware's request to reopen the PID and for other relief should therefore be denied.

Respectfully submitted,

CONNER & WETTERHAHN, P.C.

A handwritten signature in cursive script that reads "Troy B. Conner, Jr." with a large, sweeping flourish at the end.

Troy B. Conner, Jr.  
Robert M. Rader

Counsel for Philadelphia  
Electric Company

August 21, 1984

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

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

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DEPT. OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Answer to Motion by Del-Aware Unlimited, Inc. to Set Aside the Partial Initial Decision Based on New Evidence," dated August 21, 1984 in the captioned matter, have been served upon the following by deposit in the United States mail this 21st day of August, 1984:

*Christine N. Kohl, Esq. Chairman Atomic Safety and Licensing Appeal Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Dr. Richard F. Cole Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555
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*Dr. Reginald L. Gotchy Atomic Safety and Licensing Appeal Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Atomic Safety and Licensing Appeal Panel U.S. Nuclear Regulatory Commission Washington, D.C. 20555
Judge Lawrence Brenner, Esq. Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Docketing and Service Section Office of the Secretary U.S. Nuclear Regulatory Commission Washington, D.C. 20555
* Hand Delivery	

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Robert M. Rader  
Robert M. Rader



JUL 25 1984

Received 7/24/84

*SLW*

SUGARMAN, DENWORTH & HELLEGERS

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'84 AGO 23 A11 045

OFFICE OF  
DOCKETING  
BRANCH  
ROBERT RAYMOND ELLIOTT, P. C.  
COUNSEL  
NOT ADMITTED IN PA

July 13, 1984

Mr. Harold Denton  
Director  
Office of Nuclear Reactor Regulation  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Dear Mr. Denton:

In light of your response to my letter of May 23, 1984, I would like to have you treat that letter and this letter as a new petition under 10 CFR 2.206. Accordingly, I request that you consider my May 23, 1984 letter, as a 2.206 petition, which this letter will supplement.

On June 18, 1984, the Pennsylvania Environmental Hearing Board held that the PECO discharge into the East Branch Perkiomen Creek would require compliance with water quality standards. Bucks County's engineers have determined that this would require a sewage treatment plant in order to remove the heavy metals contained in the Delaware River water, and other pollutants, and that the timeframe to provide such a system would be three to five years.

On June 22, 1984, the Pennsylvania PUC indefinitely postponed a decision on PECO's request for permission to build the Bradshaw Reservoir and pump station, a necessary portion of the proposed diversion, because of the EHB decision.

Copies of the Environmental Hearing Board decision and the PUC order are enclosed.

On July 6, 1984, the Pennsylvania PUC adopted a resolution establishing a new investigation into Limerick Unit II, and in that order, required that the Philadelphia Electric Company show cause why the completion of Limerick Nuclear Generating Station, Unit II, would be in the public interest. A copy of PUC Motion is enclosed.

This combination of circumstances, along with those previously asserted by Del-AWARE in its previous 2.206 proceed-

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Mr: Harold Denton

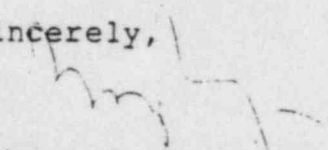
2

July 12, 1984

ings (which are incorporated as being cumulative to the present one), require, in our view, that the Commission now address the potential for alternatives, and consider the impact on the applicant's ability to operate the plant as proposed.

In light of the circumstances, you are requested to respond to this 2.206 petition as quickly as possible, and your failure to respond within thirty days, will be treated as a denial for purposes of appeal.

Sincerely,

  
Robert J. Sugarman  
Counsel for Del-AWARE  
Unlimited, et. al.

r10.rjs/sp  
enclosures



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

To: Eugene J. Bradley, Esq.  
From: Nancy Knuth

APR 02 1984

L/M

DOCKETED  
USNRC

\*84 AGO 23 A11:45

Docket Nos. 50-352/353

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

The Honorable Peter H. Kostmayer  
United States House of Representatives  
Washington, DC 20515

Dear Congressman Kostmayer:

I am responding to your letter of February 29, 1984 to Chairman Palladino concerning the supplemental cooling water supplies for the Limerick Generating Station now being constructed by the Philadelphia Electric Company near Pottstown, Pennsylvania.

With respect to the regulatory requirements of the NRC, there are two aspects of water supplies for the operation of the Limerick Generating Station that are considered in the NRC's review process. One aspect is that of the radiological safety review and concerns the availability of a supply of water to permit the safe shutdown of the reactor in the event of loss of the normal cooling water supply. This requirement is met at the LGS by the provision of an onsite spray pond which does not depend on the supplementary cooling water system. Thus, the supplementary cooling water system is not safety-related and is not reviewed as part of the NRC's radiological safety review. Rather, the supplemental cooling water supply is needed only to optimize operation of LGS.

A second aspect of the NRC's review of water supplies for the LGS is the assessment of the environmental impact of operation of the LGS. This review is conducted pursuant to the National Environmental Policy Act and in accordance with the Commission's implementing regulations. The results of this review are set forth in a Draft Environmental Statement, which was issued for public comment. After consideration of public comments, the document is issued as the Final Environmental Statement. The statement contains the staff's assessment of the benefits and costs, both economic and environmental, of the project under consideration, as that project is proposed by the applicant. Since the supplementary cooling water system does have an impact upon the environment, it is included within the applicant's environmental report and was evaluated in the staff's DES published in June 1983. Comments on the DES have been received and evaluated and the Final Environmental Statement is currently being prepared.

4-2-84

Your first question related to when PECO would require supplemental cooling water to replace evaporated cooling water. Since, as discussed above, the supplemental cooling water is not required for safety reasons, the NRC has virtually no regulatory requirements relating to the source of cooling water or the quantities that would be required at the various stages of normal plant operation for the cooling towers. The applicant's proposal for use of Delaware River water as supplementary cooling water is a derivative of regulatory requirements imposed by the Delaware River Basin Commission on usage of Schuylkill River water. The supplementary cooling water would not be required for fuel loading. The supplementary cooling water system is needed only when DRBC limitations preclude PECO from taking water for consumptive useage from the Schuylkill River. Power production would be possible only part of the year without the supplemental water.

Question No. 2 asked for the NRC schedule for milestones relevant to the need for supplemental cooling water. At the present time, the completion of hearings now being held before the NRC's Atomic Safety and Licensing Board regarding PECO's application for full power operating licenses is not expected before January 1985. However, under 10 CFR 50.57(c) an applicant may make a motion to the Licensing Board for an operating license authorizing low power testing and further operation short of full power operation. If PECO should make such a request in the future, it is possible that the limited operations sought could be authorized earlier provided the specific findings required by 10 CFR 50.57(c) are made and support such operations. PECO has not informed the staff of any plans in regard to 10 CFR 50.57(c). One or the other of the above approaches would be a prerequisite to licensing and subsequent fuel loading, and startup testing prior to power operation. Typically, two to three months elapse from fuel loading until a BWR is ready to operate above 5% power. Due to the uncertainty on when these events may take place, the staff is unable to provide, at this time, a more precise schedule of the licensing milestones as they may relate to the applicant's need for supplemental cooling water.

Question No. 3 asked whether NRC would have any permitting function with respect to replacement supplemental cooling water sources. The NRC does not issue permits with respect to the allocation of water resources. That is within the purview of other governmental agencies including, in this instance, the Delaware River Basin Commission.



As noted previously, the NRC's interest in the supplemental cooling water extends to evaluating the environmental impacts of the system as currently proposed by the applicant in the LGS Environmental Report pursuant to NEPA. Should an alternative to the present supplemental system be proposed by PECO, the staff would have to consider the matter with respect to whether the NRC's environmental impact statement adequately disclosed the costs and benefits of station operation. Absent a specific proposal from PECO describing such a change the NRC staff considers it to be premature and no more than speculation to comment on the nature or timing of further required reviews or the need for further hearings.

Question No. 4 asked whether supplemental cooling water from an existing reservoir could be made available to PECO.

The allocation of the water of the Delaware River Basin is not under the jurisdiction of the NRC and therefore is not affected by the rules of the Commission. Should the Limerick application before the Commission be amended to include a supplemental cooling water supply from an existing reservoir, the rules of the NRC would require that this aspect of the amended application be given the customary environmental review prior to the issuance of an operating license for the facility. Again, the NRC staff considers that absent such a specific proposal from the applicant accompanied by a detailed description and supporting schedules, it is premature and no more than speculation to predict the answers to this question.

Question No. 5 asked whether there is any reason to believe that NRC procedures and requirements would delay the operation of Unit 1. The applicant's current estimate of readiness for fuel loading is August 1, 1984. As noted above, an initial decision by the ASLB on the operating license application is not expected before January 1985. On this basis, there would be a regulatory impact of about five months. This impact could possibly be reduced by some amount if the applicant were to request and be granted an operating license authorizing less than full power operation pursuant to 10 CFR 50.57(c) as discussed earlier.

I trust that these discussions have been responsive to your concerns. If you have further questions, please contact us.

Sincerely,

(Signed) William J. Dircks

William J. Dircks  
Executive Director for Operations

**Congress of the United States**  
**House of Representatives**  
**Washington, D.C. 20515**

February 29, 1984

Mr. Nunzio Pallidino, Chairman  
Nuclear Regulatory Commission  
Washington, D.C. 20555

Dear Mr. Chairman:

Philadelphia Electric Company (PECo) seeks to obtain supplemental cooling water (to replace evaporated cooling water) for its Limerick Nuclear Plant by way of a diversion from the Delaware River located in my district. The county government is unalterable opposed to the diversion, as am I, and since the county must operate the water supply system, it appears that responsible governmental management calls for consideration of alternatives.

PECo has expressed serious concern regarding delays which might occur in the NRC operating license process in the event supplemental cooling water from Blue Marsh Reservoir is used. This reservoir has been constructed by the Corps of Engineers pursuant to Congressional authorization authorizing it for, among other things, industrial water supply.

I am writing to you in an effort to obtain the Commission's best possible guidance as to the best way to minimize the time involved in approving a new supplemental water source for PECo, so as not to delay the operation of unit 1.

Would you please advise me, as quickly as possible of the Commission's position on the following questions:

1) At what state in the permitting process will PECo require supplemental cooling water to replace evaporated cooling water? For example, will it require supplemental cooling water for fuel load, for 5% testing, or for commercial operation after issuance of an operating license? The previous question is meant to address both operating characteristics and regulatory requirements imposed by NRC. Also, is there a need for relatively minor amounts of supplemental cooling water at earlier stages? (Water to replace small amounts of evaporated water may be available from sources which would not be able to supply the full amount needed for full operation.)

62-10-2

Mr. Nunzio Pallidino

February 29, 1984

Page 2

2) What is the NRC schedule for the milestones relevant to the need for supplemental cooling water, in the small and large quantities discussed in answer to question 1. Specifically, please indicate the date on which the NRC expects to complete the process which will lead to PECO's need for the major amounts of replacement cooling water on an ongoing basis. If substantial amounts are needed for testing at other interim steps, please so advise.

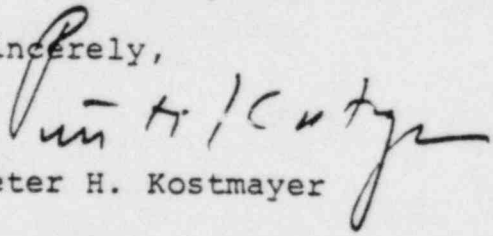
3) Inasmuch as the supplemental cooling water source systems were not the subject of NRC construction permits, would the NRC have any permitting function with respect to replacement supplemental cooling water sources? If not, would the NRC have any other purpose in reviewing such sources? If so, what would be the nature of such review and assuming that the replacement supplemental cooling water source is an existing reservoir designated for water supply purposes (or for water quality flow augmentation), what is the Commission's estimate of the time frame involved in making such review, and what would be the information required? How much time would be required to consider the information once the information is supplied to the Commission. Would there necessarily be public hearings, and if so, who would conduct them and how long would they take?

4) Taking into account the timing and sequencing of the need for the supplemental cooling water, and the NRC's review responsibilities, as described in the previous answers, could the supplemental cooling water from an existing reservoir be made available to PECO if, and as needed prior to the completion of such procedures, under the rules of the NRC? If so, at what stage could it be made available, and how soon could that occur?

5) Given the panel forecast of March 1985 for the Licensing Board Rule on an operating license, and given further, that PECO can obtain supplemental cooling water as needed from the Schuylkill River until April, 1985, pursuant to its existing permit, is there any reason to believe that NRC procedures and requirements would delay the operation of PECO at Limerick unit 1?

These questions relate to matters which are time-sensitive, and I would therefore appreciate your providing the expedited consideration. If any of the information requested is available at the present time, I would appreciate your supplying that information to my office immediately. I would also appreciate your advising me as to the date on which you would expect to provide a full response.

Sincerely,

  
Peter H. Kostmayer

PHK/lq





UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

JUL - 3 1984

Docket Nos. 50-352/353

JUN 29 1984

DOCKETED  
USNRC

✓ LIM  
LIM 2-20

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Philadelphia, PA 19107

'84 AGO 23 A11:45

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

Dear Mr. Sugarman:

I am in receipt of your letter to me of May 23, 1984. Your letter requests that the Nuclear Regulatory Commission advise the Philadelphia Electric Co. (PECO) of a need to supplement its pending application for an operating license to provide alternative sources of supplemental cooling water for the Limerick facility. As you are aware, both of PECO's applications, for a construction permit for the Limerick facility and for an operating license for that facility, described a supplemental cooling water system for the Limerick facility for consideration by the Nuclear Regulatory Commission. That supplemental cooling water system was evaluated at the construction permit phase and is currently being evaluated as part of the operating license proceeding. Your letter suggests that the Commission should direct PECO to provide alternatives to the supplemental cooling water system presently under consideration. This is essentially a repetition of the request contained in the "Application of Del-AWARE Unlimited, et al. under Section 2.206" filed by you with the Commission of December 16, 1983, on behalf of Del-AWARE and to which I responded in my "Director's Decision Under 10 CFR 2.206" dated on April 25, 1984.<sup>1</sup>

In my Decision, I determined that action on the part of NRC would be appropriate to review alternatives to the currently proposed supplemental cooling water system if the current proposal should for some reason fail and if PECO should then identify an alternative proposal to supply supplemental cooling water for the Limerick facility. I noted that any alternative would then have to be reviewed in the same fashion as the original proposal was examined by the agency prior to the issuance of a construction permit. In my Decision, I further noted that PECO's current actions appear clearly directed at insuring completion of the presently proposed supplemental cooling water system and that concerns that the project may not be complete and consequently that alternative sources of cooling water may be required for the Limerick facility are thus premature and speculative. On this basis, I declined to commit the agency's resources to examine such questions given their

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<sup>1</sup>Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), DD-84-13, 1984--NRC(1984)



speculative nature.<sup>2</sup> There is nothing in your letter which would cause me to reconsider this question. You should be advised that the Commission has declined to review my Decision and, accordingly, that Decision became final agency action on May 21, 1984.

With respect to your request for documents, many staff documents are routinely placed in the Public Document Room and would be available for your review there. Additional document requests may be appropriate in individual adjudicatory proceedings pursuant to 10 CFR Part 2, "Rule of Practice For Domestic Licensing Proceedings" or under the more general provisions of the Freedom of Information Act. See 10 CFR Part 9.

With respect to your letter of May 23, 1984 directed to Ms. Ann Hodgdon, Esq., a copy of which was appended to your letter to me, I note that that letter contains a number of characterizations by you of the substance of a briefing given to the Commission on April 24, 1984, by the NRC staff. I do not share your belief that the staff mischaracterized the issues. The staff routinely briefs the Commission in a professional and objective manner assessing the facts as it sees them. This was done in this instance. I can understand that there may be differences of opinion with respect to the issues at hand. However, I believe your charges with respect to the presentation of the staff are unfounded.

Sincerely,  
Original Signed by  
H. R. Denton

Harold R. Denton, Director  
Office of Nuclear Reactor Regulation

cc: See next page

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<sup>2</sup>If PECO changes its plan on sources of cooling water, some delay may result. However, this is a matter of concern to PECO. Absent a revised submittal, as indicated above, I do not intend to take action.

Limerick

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Limerick

- 3 -

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