

LAW OFFICES

CONNER & WETTERHAHN, P.C.

1747 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20006

TROY B. CONNER, J.P.
MARK J. WETTERHAHN
ROBERT M. RADER
INGRID M. OLSON
ARCH A. MOORE, JR.*
ROBERT H. PURL
OF COUNSEL
*NOT ADMITTED IN D.C.

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(202) 833-3500

CABLE ADDRESS: ATOMLAW

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

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

Dear Mr. Denton:

In response to the letters to you from Robert J. Sugarman, Esq. dated July 13, 1984 and May 23, 1984, requesting relief pursuant to 10 C.F.R. §2.206, I am hereby submitting "Comments of Philadelphia Electric Company on Del-Aware's Request Under 10 C.F.R. §2.206." For the reasons stated more fully therein, the matters raised by Del-Aware are repetitious of previous requests for relief denied by the Director and, in any event, inappropriate under Section 2.206. Further, the matters discussed by Del-Aware fail to raise any significant environmental concern which warrants relief. Accordingly, the relief requested by Del-Aware with respect to the construction permits for the Limerick Generating Station, Units 1 and 2, should be denied.

Sincerely,

Troy B. Conner Jr.
Troy B. Conner, Jr.
Counsel for the Applicant

TBC/dlf
Enclosure

cc: Eugene J. Bradley, Esq.
Robert J. Sugarman, Esq.

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PDR AJOCK 05000352
G PDR

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COMMENTS OF PHILADELPHIA ELECTRIC COMPANY ON
DEL-AWARE'S REQUEST UNDER 10 C.F.R. §2.206

Preliminary Statement

By letter dated May 23, 1984, Del-Aware Unlimited, Inc. ("Del-Aware") requested the Director, Nuclear Regulator Regulation, to "immediately modify and reopen your decision" of April 25, 1984, which denied the second of two applications by Del-Aware for relief under 10 C.F.R. §2.206.^{1/} Specifically, Del-Aware requested that the Director "advise PECO of the need to supplement its application to provide alternative sources of supplemental cooling water, and establish procedures to deal with such amended application."^{2/}

In essence, Del-Aware criticized the Staff for not reviewing alternatives to the Applicant's plan to obtain supplemental cooling water from the Point Pleasant diversion, despite the Director's express finding that "PECO's current actions appear clearly directed at insuring that the PPD Project goes forward" and that concerns "that

^{1/} See Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), DD-84-13, 19 NRC ____ (1984).

^{2/} Del-Aware also requested that the Director promptly inform the Commission of such actions as requested, reopen Del-Aware's denied petition under Section 2.206, and provide the Commission with supplemental Staff briefing.

alternative sources of cooling water may be required for the Limerick Facility are premature and speculative at this time."^{3/} The Director responded to this request by letter dated June 29, 1984. The Director stated that Del-Aware's request was "essentially a repetition of the request" previously made under Section 2.206, denied by the Director in his decision of April 25, 1984. The Director further stated that there was nothing in Del-Aware's more recent request which would justify reconsideration of the Director's determination that consideration of alternative sources of cooling water for Limerick are "premature and speculative."^{4/}

By letter dated July 13, 1984, Del-Aware requested that its July 13 and May 23 letters be treated as a new petition under Section 2.206. Del-Aware requested the Director to consider a decision by the Pennsylvania Environmental Hearing Board, regarding flow limitations in the East Branch Perkiomen Creek, and certain actions by the Pennsylvania Public Utility Commission ("PUC").

^{3/} Director's Decision Under 10 CFR 2.206 (April 25, 1984) (slip op. at 5).

^{4/} Letter from Harold R. Denton, Director, Office of Nuclear Reactor Regulation, to Robert J. Sugarman, Esq. at 1 (June 29, 1984). The Director also disagreed with Del-Aware's charge that the Staff had mischaracterized the issues in briefing the Commission, stating that the Staff "routinely briefs the Commission in a professional and objective manner assessing the facts as it sees them." Id. at 2.

Treating Del-Aware's letters as a request under Section 2.206, its petition is deficient in several serious respects. First, the petition does not seek any particular relief having any nexus to the Limerick construction permits. The Director has repeatedly found that Del-Aware's allegations concerning alternative sources of supplemental cooling water for Limerick are hypothetical and speculative. Moreover, no showing has been made that the validity or effectiveness of the construction permits would be affected by State regulatory actions regarding the Point Pleasant Project. Specifically, no basis has been shown for the Director to "modify, suspend or revoke" the Limerick construction permits.

Second, the petition fails to state any basis for relief. As the Director noted in his decision and subsequent correspondence, Del-Aware's present allegations are essentially a restatement of its earlier contention that actions by Bucks County necessitate immediate consideration of alternatives to Point Pleasant. In our view, a party may not invoke the formidable procedures under Section 2.206 simply by restating allegations previously found unmeritorious by the Director. However it may be labeled, the resubmission of a denied petition is not a proper application under Section 2.206.

Finally, matters alleged as to actions by the PUC and the Environmental Hearing Board fail to identify any "major change in facts material to resolution of major

environmental issues."^{5/} Further, Del-Aware's allegations regarding such matters are simply irrelevant to any possible form of relief regarding the Limerick construction permits. At most, the actions of those State agencies concern operational impacts of the Point Pleasant diversion. The same allegations have been repeatedly brought before the Licensing Board and rejected. The decisions of the Licensing Board may not be collaterally reviewed by the Director in the manner requested by Del-Aware. Accordingly, the petition should be denied.

Discussion

I. Speculation Concerning Possible Alternatives to the Point Pleasant Diversion Does Not Justify Modification of the Limerick Construction Permits.

Del-Aware has requested that its letters of May 23 and July 13, 1984 be treated as a petition under 10 C.F.R. §2.206. In relevant part, Section 2.206 states:

(a) Any person may file a request for the Director . . . to institute a proceeding pursuant to §2.202 to modify, suspend or revoke a license, or for such other action as may be proper. . . . The requests shall specify the action requested and set forth the facts that constitute the basis for the request.

. . . .

^{5/} Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), DD-82-13, 16 NRC 2115, 2127 (1982), citing Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), DD-79-10, 10 NRC 129, 130-31 (1979).

Nothing in Del-Aware's instant petition requests the Director to modify, suspend or revoke the Limerick construction permits. The Director has previously ruled that his authority with regard to similar allegations by Del-Aware pursuant to Section 2.206 is limited to a request to suspend, modify or revoke the Limerick construction permits.^{6/} The lack of any such request by Del-Aware renders its petition deficient.

Del-Aware's petition is also defective in asking that the Director advise Applicant "of the need to supplement its application to provide alternative sources of supplemental cooling water." In accordance with the Commission's regulations under 10 C.F.R. §2.101, it is the responsibility of the applicant for a license to prepare and submit its application as prescribed by the applicable rules and regulations. Nowhere in Section 2.201 or elsewhere in the regulations is the NRC authorized to require an applicant to utilize one particular source of supplemental cooling water as opposed to another.^{7/} While the Commission's regulations

6/ Director's Decision Under 10 CFR 2.206 (April 25, 1984) (slip op. at 10).

7/ As regards Staff responsibilities in the filing of an application, Section 2.101(a)(1) simply states that a "prospective applicant may confer informally with the staff prior to the filing of an application." Under Section 2.101(a)(3), the Director is required to docket the application upon determining that it is "complete and acceptable."

under 10 C.F.R. Part 51 require full consideration of environmental impacts attributable to any supplementary cooling water supply discussed in the application, nothing in Part 51 authorizes the Director to select or require the applicant to select sources of cooling water other than those in the application.^{8/}

The Director has previously addressed the possibility that an alternative to the Point Pleasant diversion might be required. In his April 25, 1984 decision, the Director rejected Del-Aware's claim that actions by Bucks County seeking to terminate the project require immediate consideration of another alternative. The Director stated:

The information provided by Petitioners indicates no lessening of the resolve of PECO to go forward with the Point Pleasant Diversion Project. Indeed, PECO has availed itself of its legal remedies to ensure that the PPD Project will go forward as currently configured. Should the Point Pleasant Diversion Project ultimately fail, and should PECO then identify an alternative proposal to supply supplemental cooling water to the Limerick Facility, action by the NRC would then be appropriate. Such an alternative would have to be reviewed in the same fashion as the Point Pleasant Diversion Project was examined by this agency prior to issuance of a construction permit. However, far from proposing an alternative to the Point

^{8/} 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).

Pleasant Diversion Project, PECO's current actions appear clearly directed at insuring that the PPD Project goes forward. Concerns that the Point Pleasant Diversion Project may not be completed and, consequently, that alternative sources of cooling water may be required for the Limerick Facility are premature and speculative at this time. I decline to commit this agency's resources to examine such questions given their speculative nature at this time.9/

The Director took the same position in responding on behalf of Chairman Palladino to a letter from Representative Kostmayer, concerning his inquiry as to the NRC's review of the Point Pleasant Project. In a letter dated April 2, 1984 replying to Representative Kostmayer, the Executive Director for Operations stated:

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.10/

9/ Director's Decision Under 10 CFR 2.206 (April 25, 1984) (slip op. at 5).

10/ Letter from William J. Dircks, Executive Director for Operations, to the Honorable Peter H. Kostmayer at 3 (April 2, 1984).

More recently, the Director restated the Staff's position in response to Del-Aware's letter of May 23, 1984. The Director's response correctly states the need to consider alternatives to the Point Pleasant diversion remains problematical:

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 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 speculative nature. There is nothing in your letter which would cause me to reconsider this question.11/

In Applicant's previously submitted comments upon Del-Aware's prior request for relief under Section 2.206, we noted that Del-Aware's arguments relating to actions taken

11/ Letter from Harold R. Denton, Director, Office of Nuclear Reactor Regulation to Robert J. Sugarman, Esq. at 1-2 (June 29, 1984) (footnote omitted).

by Bucks County attempting to terminate the project had been the subject of contentions proposed by Del-Aware in the licensing proceeding. As further noted, the presiding Atomic Safety and Licensing Board rejected those contentions for the same reasons discussed by the Staff in the correspondence quoted above. In the interest in brevity, we incorporate those comments herein.^{12/}

Additionally, the Licensing Board has more recently denied virtually the same contention resubmitted by Del-Aware. In a Memorandum and Order issued April 19, 1984, the Licensing Board denied several late, post-hearing contentions filed by Del-Aware and held, inter alia:

Finally, Del-Aware, again repetitively, argues that the Point Pleasant diversion project will not be completed due to various legal and political decisions, including action by the Bucks County Commissioners. As we have pointed out in rejecting late-filed Contention V-28, 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. See June 1, 1983 Order, supra at 9 n.3.^{13/}

^{12/} See Comments of Philadelphia Electric Company on Del-Aware's Request Under 10 C.F.R. §2.206, transmitted by letter dated December 29, 1983.

^{13/} 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).

Having raised the issue before the Licensing Board, Del-Aware cannot circumvent the hearing and appeal process by allegations under Section 2.206. As the Commission held in Indian Point and Diablo Canyon, parties must be prevented from using 10 C.F.R. 2.206 procedures as a vehicle for reconsideration of issues previously decided.^{14/}

Moreover, Del-Aware is collaterally estopped from attacking the previous rulings by the Director which, as explained, decided in Applicant's favor the issue of potential alternatives Del-Aware raises again here. Again, for the sake of brevity, Applicant incorporates its previous discussion in Section III of its Comments on Del-Aware's Request Under 10 C.F.R. §2.206, transmitted by letter dated December 29, 1983.

^{14/} Consolidated Edison of New York, Inc. (Indian Point, Unit Nos. 1, 2 and 3), CLI-75-8, 2 NRC 173, 177 (1975); Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-6, 13 NRC 443 (1981). See also Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2), DD-83-11, 18 NRC 293, 295 (1983). As the Commission further stated in the Bailly proceeding, Section 2.206 procedures are inapposite where the allegedly changed circumstances "do not include any actual or demonstrated impacts of construction activities on the environment, but rather petitioners' grounds for believing the Final Environmental Statement to be in error, out of date, or incomplete, and the Licensing Board decision authorizing issuance of the construction permit therefore to be void." Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), CLI-78-7, 7 NRC 429, 434 (1978).

II. The Actions of Other Agencies do not Warrant Modification of the Limerick Construction Permits.

Del-Aware cites the decision of the Environmental Hearing Board on June 18, 1984,^{15/} which sustained the validity of various permits issued by the Department of Environmental Resources, but required the imposition of a restriction on flow velocity in the East Branch Perkiomen Creek to prevent erosion. The decision also 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 petition makes no factual or legal showing why this finding requires "that the Commission now address the potential for alternatives, and consider the impact on the applicant's ability to operate the plant as proposed,"^{16/} or how, in any event, the requirement of an

^{15/} Del-Aware Unlimited, Inc. v. Commonwealth of Pennsylvania, Department of Environmental Resources, et al., Adjudication of the Environmental Hearing Board (June 18, 1984).

^{16/} Letter from Robert J. Sugarman, Esq. to Harold Denton, Director, Office of Nuclear Reactor Regulation at 2 (July 13, 1984).

NPDES permit for discharges into the East Branch Perkiomen has any relevance to the Limerick construction permits. No attempt is even made by Del-Aware to establish any such connection.

Del-Aware's allegation that the requirement of an NPDES permit necessitates consideration of alternatives to Point Pleasant is entirely without merit. Its statement that Bucks County engineers have determined that a treatment facility would be necessary is utterly unsupported by the Environmental Hearing Board's decision or any other record.^{17/} The Environmental Hearing Board did not, as Del-Aware implies, 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 the East Branch or North Branch, but this is the very question which the NPDES permit process is designed to answer.^{18/}

^{17/} Obviously, the Bucks County engineers have no particular legal expertise in determining what would be required to obtain an NPDES permit or how it would be conditioned. In any event, the allegations are extraordinarily self-serving. As Del-Aware has pointed out in its previous submissions to the Director, Bucks County is now engaged in litigation attempting to terminate the agreement of Neshaminy Water Resources Authority to participate in the Point Pleasant project.

^{18/} Adjudication of the Environmental Hearing Board at 99.

Accordingly, the Environmental Hearing Board did not have before it sufficient sampling data to determine whether any treatment of Delaware Water prior to discharge into the East Branch Perkiomen would be necessary. It expressly left this question for determination by the Department of Environmental Resources, which would issue the NPDES permit. None of this has the vaguest relationship to the Limerick construction permits.

In the same vein, the action by the Pennsylvania PUC on June 22, 1984 in light of the Environmental Hearing Board decision is also irrelevant. For the same reason that the Environmental Hearing Board decision itself fails to justify action by the NRC.^{19/} The PUC Resolution issued July 6, 1984 regarding an investigation into Limerick Unit 2 is unrelated to any environmental or safety concern within the jurisdiction of the NRC.^{20/} As discussed below, the NRC has rejected Del-Aware's earlier arguments and contentions based on the PUC's actions with regard to Unit 2.

^{19/} Further, the PUC memorandum of June 26, 1984 merely takes notice of the Board's decision and grants the parties 30 days to file comments.

^{20/} As the Director has previously ruled, "the Commission will not institute proceedings to explore the purely economic impacts of construction activities or deficiencies at a site." Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Unit 1), DD-84-1, 19 NRC 471, 475 (1984).

In rejecting the first of Del-Aware's petitions pursuant to Section 2.206, the Director considered allegations that Unit 2 might be suspended or cancelled in light of actions by the PUC. The Director properly concluded that such actions were irrelevant to the Point Pleasant project, holding:

Alternatives to the PPD Project have also been reviewed. There is no indication in the reviews conducted to date that the environmental impacts associated with alternatives would significantly decrease were Limerick a one-unit station. Alternatives to the PPD Project were considered at the construction permit review of the Limerick Facility and the PPD Project was found acceptable. More recent environmental assessments have confirmed this finding. Even if consideration of alternatives were now appropriate, suggested alternatives such as water storage in the Schuylkill River Basin are not feasible at this time. Thus, I conclude that the possible suspension or cancellation of one of the Limerick units does not require any action to be taken with respect to the current construction permits.^{21/}

Similarly, the Licensing Board has repeatedly rejected Del-Aware's contentions that deletion of Unit 2 would make a difference in environmental impacts. Most recently, the Board held:

^{21/} Limerick, supra, DD-82-13, 16 NRC 2115, 2132 (1982). It is noted that the Environmental Hearing Board also found that alternatives to Point Pleasant for even one unit at Limerick had been properly considered and found unacceptable by the Department of Environmental
(Footnote Continued)

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 ruling 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 6-7.22/

Accordingly, the actions of neither the Environmental Hearing Board nor the PUC do not constitute "new information regarding the issue under consideration" which identifies "a significant unresolved safety issue or a major change in the facts material to the resolution of major environmental issues."^{23/} Water quality parameters of Delaware River water to be diverted to the East Branch will be determined by the Department of Environmental Resources during its

(Footnote Continued)

Resources. See Adjudication of Environmental Hearing Board at 40-49, 147-49.

22/ 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 7-8).

23/ Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), DD-79-21, 10 NRC 717, 719 (1979) (footnote omitted).

review of the NPDES permit application. The hypothetical elimination of Unit 2 has already been assumed by the NRC for purposes of its environmental review. Moreover, neither of those issues has any factual or legal nexus to the Limerick construction permits.