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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

BEFORE ADMINISTRATIVE JUDGES:

Lawrence Brenner, Chairman
Dr. Richard F. Cole
Dr. Peter A. Morris

In the Matter of	Docket Nos. 50-352-OL 50-353-OL
PHILADELPHIA ELECTRIC COMPANY	
(Limerick Generating Station, Units 1 and 2)	August 24, 1984

MEMORANDUM AND ORDER REJECTING LATE-FILED CONTENTIONS FROM FOE AND AWPP, DENYING AWPP'S SECOND REQUEST FOR RECONSIDERATION OF ASBESTOS CONTENTION, DENYING AWPP'S MOTION TO ADD A PVC CONTENTION AND COMMENTING ON AN INVALID INFERENCE IN DEL-AWARE'S MAY 17, 1984 FILING

1. Late-Filed Contentions from FOE and AWPP

On May 31, 1984, with the safety hearings in this proceeding concluded, and only the offsite emergency planning issues and one environmental issue left to litigate, we received from Friends of the Earth (FOE), represented by Robert L. Anthony, fifteen contentions "based on new matter" opposing the Applicant's May 9, 1984 motion for an expedited partial initial decision and issuance of a low power license. Then on July 3, 1984, with only the offsite emergency planning issues

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left to litigate, we received from Air and Water Pollution Patrol (AWPP), represented by Frank R. Romano, a new environmental contention.

Since it is now years after the Limerick proceeding began, the intervenors, to have their contentions admitted, must meet not only the bases and specificity requirements of 10 C.F.R. § 2.714(b), but also the requirements of 10 C.F.R. § 2.714(a)(1) for the admissibility of late-filed contentions. The fact that FOE's contentions are in response to the Applicant's motion for a low power license does not mean they are not late-filed, for such a motion "does not give rise to a proceeding separate and apart from a pending full-power operating license proceeding." Pacific Gas and Electric Co. (Diablo Canyon, Units 1 and 2), CLI-82-39, 16 NRC 1712, 1715 (1982). No separate proceeding is required, because 10 C.F.R. § 50.57(c), which permits such motions, "does not generally contemplate that a new evidentiary record, based on litigation of new contentions, would be compiled on the motion for fuel loading and low power testing." Pacific Gas and Electric Co. (Diablo Canyon, Units 1 and 2), CLI-81-5, 13 NRC 361, 362 (1981). The record compiled in the operating proceeding can be relied on in determining whether the motion for a low power license should be granted, for

> low power testing is a normal, necessary and expected step in the life of every nuclear plant. This is true whether such testing is planned under the authorization of a separate fuel loading and low power testing license . . . or scheduled as the first step toward operation under the authority of a full power license.

Pacific Gas and Electric (Diablo Canyon, Units 1 & 2), ALAB-728, 17 NRC 777, 794 (1983). FOE addresses the criteria on late-filed contentions and thus appears to understand that the Applicant's motion has not generated a new proceeding.

AWPP must also meet the test for reopening the record, */ for, although the whole record will not close until the offsite emergency planning contentions are litigated, AWPP's new contention is completely unrelated to emergency planning, and an appealable partial initial decision is issuing on the safety and environmental part of the record. See Long Island Lighting Co. (Shoreham, Unit 1), LBP-83-30, 17 NRC 1132, 1136-38 (1983). It is arguable that FOE also should meet the test for reopening, since, besides the offsite emergency planning contentions, only an environmental contention remained to be litigated when FOE filed its new contentions, and FOE's new contentions raise only safety issues. However, we need not decide whether to apply that test to FOE's contentions, because, as we determine below, those contentions can be rejected just for lacking bases or specificity. Also, in our view, application of the test for reopening adds little, if anything, to the application of the criteria for the admission of a late-filed

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*/ The test requires that (1) the motion to reopen be timely, (2) there be new evidence of a significant safety or environmental question, and (3) the new evidence might materially affect the outcome. See e.g., Diablo Canyon, ALAB-728, 17 NRC at 800 n.66.

contention, at least when the new contentions are unrelated to issues which were litigated. This is because the factors addressed by the criteria for reopening are necessarily considered when the factors addressed by the criteria on late-filed contentions are balanced. For example, if the record is to be reopened, the new issue must be significant (Diablo Canyon, ALAB-728, 17 NRC at 800 n.66), and if a late-filed contention is to be admitted, it must be shown that the petitioner may reasonably be expected to assist in developing a sound record (10 C.F.R. § 2.714(a)(1) (iii)); but the petitioner's assistance is worthwhile, and the record sound, only if the issues the contention raises are significant. In addition, as late-filing intervenors like to point out, the extent to which admission of a late-filed contention may delay a proceeding -- a factor which must be considered in deciding whether to admit the contention -- is properly balanced against the significance of the issues the contention raises. Shoreham, LBP-83-30, 17 NRC at 1143-44.

Given our understanding of the relation between the significance of an issue in a late-filed contention and the balancing of the five criteria for admitting it, it is appropriate for us to discuss the bases and specificity of the proposed contentions before we apply the five criteria. We discuss FOE's contentions first.

Bases & Specificity of FOE's Contentions

FOE's contentions are very poorly pleaded. We discuss each contention at least briefly, but it is worth setting out here a list of the kinds of deficiencies the contentions so blatantly exhibit. Some are vague; others appear to be based on a belief that mere speculation that something might go wrong, or not be done, is enough to generate litigation; some appear to be based on poor reading of the documents cited by FOE; many merely cite concerns expressed in various NRC documents; and none of them give any reason why the facts alleged in them demonstrate that low power operation would be unsafe.

FOE does not label its first assertion a contention, probably because it raises no safety issue, but rather questions the legal sufficiency of the Applicant's motion for a low power license. FOE asserts that 10 C.F.R. § 50.57(c), the regulation which authorizes applications for low power licenses, "provides for up to only 1% of full power," and that therefore the Applicant's motion for a license for operation up to 5% of power is not authorized. To the contrary, the regulation says, in pertinent part, "The Applicant may . . . make a motion . . . for an operating license authorizing low-power testing (operation at not more than 1 percent of full power . . .), and further operations short of full power . . ." (emphasis supplied).

FOE Contention 1 asserts that a low power license cannot be issued to the Applicant until we have reached a decision on FOE's Contentions V-3a and V-3b, which deal with the ability of plant structures to withstand nearby petroleum and natural gas pipeline explosions and fires. In the partial initial decision which we are issuing in a few days, we have ruled in the Applicant's favor on both contentions.

FOE Contention 2 asserts that no low power license can be granted until the Independent Design Review (IDR), only recently approved by the NRC, has been carried through. The contention does not provide any specificity or basis, in fact or regulation, which shows either a particular unresolved safety problem or that completion of the IDR is required for low power operation. Moreover, the contention asserts no deficiency in either the program or the Staff's review of it.

FOE Contention 3 simply cites an April 30, 1984 Notice of Violation dealing with the training, responsibilities, and management supervision of System Startup Engineers. The contention provides no basis for thinking that the Staff does not adequately understand the nature of the violation or that the Staff and the Applicant will not see to it that the causes of the violation are corrected. At no point in a proceeding, but especially not after the safety and environmental issues have been litigated, is the mere citation of a Staff inspection report finding of some deficiency sufficient basis for an admissible contention.

FOE Contention 4 simply cites a May 9, 1984 letter from the Staff to the Applicant requesting more information for the Staff's review under NUREG-0737. The request appears to raise no safety issue, and FOE says nothing to the contrary. If a mere citation to a Notice of Violation cannot be the basis of an admissible contention, the mere citation to a request for information certainly cannot be.

FOE Contention 4a quotes a May 4, 1984 Staff letter to the Applicant, which accompanied NRC Inspection Report 84-05: "The inspections of the Radiation Protection Program [RPP] found that the majority of the program, needed to support fuel load and power operation, had not been established." FOE then says that the Applicant should not be allowed to load fuel until after the Program is established. We would have thought that, given the "needed . . . " clause of the very passage FOE quotes, it was obvious there would be no fuel loading before the Program was established. FOE proffers no basis to the contrary. We add that the letter also says that during the inspection, no violations were observed, and that no reply to the letter is required. The concern the letter expresses is not that fuel load might occur before the RPP was established, but that by not leaving enough time to review the RPP, the Applicant was risking delay of fuel loading. See May 4, 1984 Staff letter, ¶ 3.

FOE Contention 5 construes a May 8, 1984 letter from the Applicant to the Staff to say that procedures meant to conform to Generic Letter

83-28, "Required Actions Based on Generic Implications of Salem ATWS Events," July 8, 1983, would not be in effect until September 1, 1984. FOE then contends that there is no assurance that the Applicant will be able to put those procedures into effect by the September date. The contention would have the burden of argument put on the wrong party: The Applicant is not required to produce proof in opposition to a mere speculation that it will not be able to meet a certain date. The initial burden is on the intervenor to come up with something more than speculation.

We note also that the contention misrepresents the scope of the procedure which the Applicant says will not be in effect until September 1, 1984. FOE leaves the impression that the Applicant is referring to all the procedures meant to conform to Generic Letter 83-28. In fact, however, the Applicant is referring only to a procedure which deals with control of vendor technical manuals. See id., at 3. We note also, for reference when we apply the criteria on admission of late-filed contentions, that although the letter FOE cites is dated May 8, 1984, the letter says that the Applicant's commitment to the September date was contained in a November 10, 1983 letter to the Staff. See the May 8, 1984 letter at 2.

FOE Contention 6 asserts quite broadly that no fuel can be loaded until "further checks of quality control in construction have been carried out" and "welds passed in error by faulty inspection" corrected.

But neither of the bases the contention cites is sufficient to make the contention admissible. One of the bases FOE cites is a sentence in NRC Inspection Report 84-17/84-05, April 25, 1984: ". . . the practice of documenting a nonconforming condition and/or authorizing rework/repairs on ASME Code items on IPRN instead of NCR was of concern to the inspector." However, the very paragraph in which this sentence occurs begins, and ends, by announcing that the issue is now closed. FOE does not say why it should be opened. Again, we note for reference later that the concern the quoted sentence reports was first expressed in a 1981 inspection report.

The other basis Contention 6 cites is a welding issue marked "open" at 3-5 in the inspection report from which we just quoted. The report says that the defects about which there is still concern are minor. Id., at 5. Both the Staff and the Applicant have invested much effort in bringing the issue to a satisfactory close. Moreover, this item "76-06-01," labeled the "broomstick affair" by AWPP, was fully litigated as part of AWPP's Contention VI-1. Again, for reference, we note that the issue first arose in 1976. Id., at 3.

Contention 7 simply cites four sections from an NRC inspection report attached to an April 18, 1984 letter from the Director of NRC's Division of Licensing to the Commissioners. The four sections have to do with welding and materials substitution. The report, however, is dated June 29, 1983. FOE does not say why, eleven months after the

report was issued, certain parts of it should now be subject to litigation. In relation to Contentions 6 and 7, we note that FOE sat by silently while AWPP's welding contention was litigated, and was decided in favor of the Applicant.

FOE Contention 8 asserts that all the violations listed in Enclosure 2 of the May 7, 1984 letter from the Staff to the Applicant, at 27, must be "completely rectified" before fuel loading. Enclosure 2 is Region I's Systematic Assessment of License Performance (SALP) from December 1, 1982 to November 30, 1983. A chart at page 27 of the enclosure reports that for that year-long period, there were seven violations of Severity Level IV and also seven of Severity Level V, but none for Severity Levels I - III. We note that Severity Level I is the most serious, V the least. FOE neglects to mention that the letter the enclosure accompanies says,

> Our overall assessment of your performance in the construction of the facility is that there is effective management attention and involvement, oriented toward nuclear safety in all functional areas evaluated. Your achievement of a Category I rating in five of eight functional areas indicates a determination on the part of management to achieve a high level of performance.

The Applicant achieved no less than Category II in any functional area. About Category I, the SALP says, at 6, "Reduced NRC attention may be appropriate." About Category II, it says, "NRC attention should be maintained at normal levels." Id. There is here no basis for a

contention. For reference later, we note that the SALP was available at least to the Applicant as early as February 13, 1984. Moreover, the violations the SALP counts were surely the subject of Notices of Violation available much before February 1984. If a mere citation to a Notice of Violation is not sufficient basis for an admissible contention, then neither is a mere citation to a year-end count of such notices.

FOE Contention 9 says that NRC Inspection Report 84-14/84-04, April 20, 1984, identifies several differences between the FSAR and the systems as built, several unresolved construction items, and, by reporting that some containers of nuclides were thrown in trash cans, raises the question of whether the Applicant can handle radioactive material. FOE neglects to say that no violations were reported and that the Report contains accounts of measures the Applicant has taken to cure identified shortcomings, as well as plans the NRC has to maintain watch on certain areas. See, e.g., the account of the trash can incident, id., at 10. FOE does not say why litigation would increase assurance that the matters identified in the Report will be adequately dealt with.

FOE Contention 10 merely cites an April 30, 1984 Staff letter to the Applicant as basis for the assertion that "the security program at Limerick is not adequate to allow fuel loading." However, the letter points to no shortcoming in the security program, and the NRC Inspection Report attached to the letter, No. 50-352/84-13, dated April 27, 1984

says, "Implementation of the Licensee's security program is progressing as scheduled."

FOE Contention 11 is more prophecy than allegation: "PECo has moved uranium fuel to the Limerick site without waiting for a decision by the Commission on our appeal, dated April 5, 1984 from the decision of the Appeal Board, March 30, 1984. We believe the Commission will decide in our favor . . . . " The contention then incorporates by reference all the violations and deficiencies alleged in FOE's pleadings before the Appeal Board and the Commission.

The Applicant had every right to move fuel to the site. The Appeal Board lifted its temporary stay of an issuance of the Part 70 license (see Philadelphia Electric Co. (Limerick, Units 1 and 2), ALAB-765, 19 NRC 645, 658 n.22 (March 30, 1984)), and the Commission declined to stay the Appeal Board order, finding that FOE had failed to show, inter alia, that it was likely to prevail on the merits. See Philadelphia Electric Co. (Limerick, Units 1 and 2), 'Order" (April 26, 1984). We note that the Commission has since declined to review the Appeal Board's decision. See Philadelphia Electric Co. (Limerick, Units 1 and 2), "Memorandum" (June 15, 1984). Thus, the Applicant was not obliged not to receive fuel before the Commission had ruled on the merits of FOE's appeal.

Contention 12 alleges that "dangers from an explosion or the railroad have not been evaluated for the hazard to fuel being

transported from outside storage to the fuel hoistway in the plant," and that FOE was "prevented from examining witnesses on the railroad blast during [litigation of] Cont. V-3a and b." This scenario is encompassed by the bases for our March 16, 1984 order on the Part 70 license application, which found no safety concern due to postulated accidents to the new fuel. Philadelphia Electric Co. (Limerick, Units 1 and 2), LBP-84-16, 19 NRC 857, affirmed, Philadelphia Electric Co. (Limerick, Units 1 and 2), ALAB-765, 19 NRC 645 (1984). See also Philadelphia Electric Co. (Limerick, Units 1 and 2), ALAB-778, 20 NRC ___ (July 23, 1984).

FOE Contention 13 alleges that the Applicant's study of the effects of high energy line breaks (HELB), sent to the Staff on May 4, 1984, is deficient because it excludes lines which operate 2% or less of the time above 200° F. or 275 psig. See id., § 2.3. FOE contends that these lines are "most subject to rupture because of the fluctuation in heat and pressure and they could trigger other breaks . . . In addition the effects of HELB breaks on fuel handling have not been evaluated . . . ." The latter issue is impliedly dealt with in our March 16 Part 70 order, and appeals of it, as just discussed. As for the lines which are not considered in the study, FOE has not proffered any specifics or basis for thinking that the lines excluded ought to be included, other than non-expert speculation by Mr. Anthony.

Last, FOE Contention 14 alleges that the Applicant's ever-optimistic projection of fuel-load dates "suggests . . . a possible glossing over of safety issues . . . . " The mere citing of some reason the Applicant might have to gloss over safety is no basis whatsoever for an admissible contention. Rather, an intervenor must proffer evidence of some glossing over.

It should be clear by now how utterly indistinguishable FOE's contentions are, in their baselessness and their carelessness, from contentions hastily thrown together in an effort to achieve mere delay in the conclusion of the low power issues part of this proceeding.

Bases and Specificity of AWPP's Environmental Contention

We come next to AWPP's new environmental contention, less apparently frivolous than FOE's contentions, but nonetheless not admissible. In discussing AWPP's contention, we take into account an unauthorized July 25, 1984 Response AWPP made to the Staff's Response to the contention, and AWPP's August 10, 1984 reply to the Applicant's Motion to Strike the unauthorized response. The Applicant's Motion is soundly argued but the unauthorized reply may have made the contention appear even less admissible.

The contention alleges that "neither Applicant nor Staff have adequately studied whether . . . routine turbine stack, or other

releases of radioactive nuclides will result in exceeding the EPA Maximum Containment Levels (MCL) for gross alpha, radium 226 [an alpha emitter], and radium 228 [not an alpha emitter]." As basis, AWPP cites "recent findings of gross alpha approaching the MCL of 5 pico Curies [per liter of water]." AWPP is concerned that reactor releases might result in closing wells -- especially municipal wells -- within ten to fifteen miles from the plant.

Neither the contention nor the unauthorized response says how a turbine stack could release alpha-emitters or radium 228. The contention and the unauthorized Response do not even proffer a basis for thinking that these elements could reasonably be expected to be released from any point in the plant. The Applicant's Response cites contrary evidence which AWPP does not address. See id. at 7 n.13. Simple fear that the plant might regularly release alpha-emitters and radium 228 is no basis for an admissible contention. Also, the contention and AWPP's later documents say almost nothing about the wells, except that they are drinking water wells in Montgomery County. But how many they are, how close they are to the plant, whether they are municipal, and, perhaps most important, how they were studied, the contention and later documents say nothing about.

Finally, the contention misrepresents the law. AWPP neglected to give a citation for its claim that the EPA MCL on gross alpha is 5 pico Curies per liter (pCi/l). The Applicant managed, though, to find what

AWPP must have been referring to: 40 C.F.R. § 141.15. However, that section sets a limit of 5 pCi/l on the two radiums AWPP lists, not on gross alpha. Section 141.15's limit on the latter is 15 pCi/l.

AWPP needn't have entered its whole direct case in order to get the contention admitted, but one would have thought that after three filings the contention might have become accurate on the law and less mysterious about the sources of the elements in question, the nature of the wells, the mechanism by which they might become polluted, and the kind of analyses Ambler performed. As is true of each of FOE's contentions, AWPP's is not pleaded with a care proportioned to the significance the intervenor attributes to the issue raised by the contention.

Application of the Criteria for Admission of Late-Filed Contentions to FOE's and AWPP's Contentions

FOE's and AWPP's contentions could be rejected simply because they lack bases, but neither do they survive application of the five factors 10 C.F.R. § 2.714(a)(1) requires to be balanced in determining whether a late-filed contention is admissible.

Two of the factors, 10 C.F.R. § 2.714(a)(1)(ii) and (iv), weigh in the Intervenors' favor: With some exceptions, no other party to the proceeding has litigated similar contentions, and the Intervenors have

no other means by which to protect their alleged interests, or at least no other means comparable to the means litigation provides.

A third factor, whether an intervenor has good cause for failure to file on time (Section 2.714(a)(1)(i)), weighs in FOE's favor on all its contentions except 5 through 8, which, as we noted when we discussed their bases, rely on material available well before April 1984 -- 1976 in one case. But AWPP has not made a case that it has good cause to file its environmental contention late, for, despite having made three filings on the contention, and despite requests by the other parties for clarification, AWPP still has not said how "recent" the "recent findings" on which AWPP bases the contention are. "Recent" can easily mean "a few years ago."

The remaining factors, Section 2.714(a)(1)(iii) and (v), weigh heavily against both Intervenors. Admission of the contentions would clearly broaden and delay the proceeding considerably, for the record is closed, and a Partial Initial Decision about to issue, on all phases of the proceeding except offsite emergency planning issues. Further, as we noted in our discussion of the bases and specificity of the contention, AWPP says very little about where the releases it is concerned about would come from, what quantities would be released and transported, how they would cause damage, or to precisely what water supplies they would cause damage. The contention is far too vaguely drafted to permit a conclusion that it does not harbor a host of issues the litigation of

which would considerably delay the proceeding. AWPP says that any finding which indicates something which can cause "over-riding economic and/or health problems, which neither Applicant nor Staff considered, must be litigated irrespective of when found." AWPP's August 10 Reply to Applicant's Motion to Strike. But AWPP has not taken the trouble to show us that these "recent findings" it refers to indicate a threat. Thus, as far as we can tell, the considerable delay we would risk by admitting this contention would be for naught.

As to the last of the five criteria, Section 2.714(a)(1)(iii), neither FOE nor AWPP has shown that its participation could reasonably be expected to assist in the development of a sound record. "When a petitioner addresses this criterion it should set out with as much particularity as possible the precise issues it plans to cover, identify its prospective witnesses and summarize their proposed testimony." Mississippi Power and Light Company, et al., (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982).

It is arguable that FOE has set out the precise issues it plans to litigate, but it has said nothing about witnesses. It apparently plans to rely on cross-examination. Given FOE's contentions, and past participation in the evidentiary hearing in this case, we do not foresee that cross-examination will bring about any sound addition to the record. Most of the contentions rely on documents which appear to show that the Applicant and the Staff have the matters discussed in them well

in hand. FOE offers only poor reading and suspicion to the contrary. Neither poor reading nor suspicion assists in the development of a sound record.

AWPP's showing under the Grand Gulf standard is a sort of complement to FOE's. AWPP identifies its prospective witnesses and might be said to have summarized proposed testimony, but it is nearly as vague as possible about the precise issues it plans to cover. Moreover, its summary of proposed testimony is no more than an indication of the conclusions AWPP would like drawn from the testimony. However, a proper summary, besides stating a conclusion, also summarizes evidence and argument.

On balance, the Intervenors have no one else, and no place else, to plead their cases, but they also have almost no cases to plead. Given this balance, it is reasonable to expect that admission of these contentions would only generate useless delay.

2. Denial of AWPP's Second Request for Reconsideration of Asbestos Contention and Motion to Add a PVC Contention

On June 8, 1984, AWPP moved the Board to reconsider our then three month old denial of its late-filed contention that operation of the Limerick cooling towers will present a health hazard by contaminating the air and drinking water withdrawn from the Schuylkill River with

asbestos fibers from the asbestos cement board which is used in the cooling tower drift eliminators. The Board previously had heard extensive oral argument on March 8, 1984, in order to give AWPP every opportunity to explain its position even though its papers were manifestly insufficient to support admission of the late-filed contention, even if it had been timely filed. After the argument, the Board orally denied the contention as to both the alleged hazards to the air and drinking water. We denied the contention because it lacked bases, because it was very late by over two years without good cause, and because a balancing of all the factors applicable to late-filed contentions weighed heavily against admission of the contention. Tr. 8356-60. This ruling was confirmed in our "Order Confirming Miscellaneous Oral Record Rulings" (unpublished), slip op. at 3-4 (March 15, 1984). As we had noted in our oral rulings, among many other fatal flaws in AWPP's proposed late contention, it is not sufficient basis for AWPP to say asbestos can be a health hazard, there is asbestos in the cooling towers, ergo operation of the towers creates a health hazard from asbestos. Tr. 8356-57.

After our above ruling, AWPP filed a totally insufficient motion for reconsideration, dated March 19, 1984. We summarily denied this motion on March 27, 1984.

Almost three months later, on June 8, 1984, AWPP filed a totally insufficient second motion for reconsideration. It is denied summarily.

It is too late to merit any consideration. The time limit for motions for reconsideration has been clearly and repeatedly set forth by this Board as ten days, in addition to five days for regular mail service of the ruling which is the subject of the motion. In addition, AWPP's June 8, 1984 motion fails to address, let alone successfully rebut, the many reasons set forth for our March 5, 1984 rejection of the contention.

Most recently, in what has become a frivolous fusillade of foundationless filings by AWPP on this subject, AWPP moved, on August 16, 1984, for the admission of a late-filed contention that the use of polyvinyl chloride (PVC) instead of the originally proposed asbestos splash bars in the cooling towers will contaminate the air and drinking water. On August 20, 1984, AWPP filed an "Addendum" to address the fifth criterion for admissibility of late-filed contentions. The history on this contention is that when AWPP originally filed its asbestos contention on February 15, 1984, it had alleged hazards from asbestos used in the splash bars. In fact, Applicant had altered its original plans and used PVC, and so, on March 5, 1984, AWPP modified its contention to allege hazards from the use of asbestos in the cooling tower drift eliminators, rather than the splash bars. As noted above, this modified asbestos contention was denied.

There is no good cause for this very late August 16, 1984 motion, other than AWPP's representative saying he just read something

(unidentified) about PVC causing adverse health effects. This late-filed contention is denied. It is very late even if measured from the March 1984 time when AWPP was informed directly that PVC was being used in the splash bars. Moreover, the contention lacks bases and specificity for the same reason noted by us in our March 8, 1984 ruling with respect to asbestos. It is not sufficient to allege that because PVC can produce health hazards, if it is used in the Limerick plant there will ipso facto be a health hazard caused by operation of Limerick. Also, the lack of good cause for the very late filing, the lack of apparent significance of the issue, the lengthy delay its admission after the close of the record (and just before issuance of a P.I.D.) would cause, and the lack of any evidence of a contribution by AWPP to the record on this issue (plans to contact a possible witness in the future do not suffice), weigh heavily against admission of AWPP's PVC contention.

For all the above reasons, AWPP's PVC contention is not admitted as an issue in controversy.

3. Del-Aware

It is unnecessary to recite again the many previous rulings of this Board with respect to consideration of Del-Aware's contentions, many of them late-filed, regarding the proposed Point Pleasant diversion supplemental cooling water system. Our most recent ruling is the

April 19, 1984 "Memorandum and Order Denying Del-Aware's Motions to Reopen the Record to Admit Late-Filed Contentions . . ." (unpublished).

Subsequent to this April 19 order, on May 17, 1984, Del-Aware filed additional contentions purportedly triggered by the Applicant's request for a low power operating license. In addition, Del-Aware has improperly filed a series of letters before us relating to the proposed supplemental cooling water system. In our April 19, 1984 ruling, we set forth our view that jurisdiction over Del-Aware's claims regarding the supplemental cooling water system now lies with the Appeal Board, as part of its appellate review of our March 8, 1983 Partial Initial Decision (P.I.D.). LBP-83-11, 17 NRC 413. Del-Aware now appears to recognize this, and has filed an August 3, 1984 Motion with the Appeal Board to set aside our P.I.D. This motion appears to include the matters Del-Aware previously had raised before us and the Appeal Board in its series of letters.

The only matter deserving comment at this point is the possible inference (it is far from clear) from Del-Aware's May 17 filing before us that a low power license could not be issued until it is either certain that the proposed Point Pleasant diversion found acceptable by this Board will be finally approved by State and local authorities, or that an alternative supplemental cooling system will be proposed by the Applicant and litigated before us. We disagree.

The proposed supplemental cooling water system is just that -- supplemental. It is not needed for even full power operation for certain times of the year (generally the fall through spring months when low flow and high water temperatures do not preclude use of the Limerick plant's Schuylkill River water intake). It also is not needed for safe operation of the plant, as the ultimate heat sink for safe shutdown is the onsite spray pond.

We have held several times now that unless and until the Applicant proposes an alternative supplemental cooling water system, there is no purpose in speculating whether the one found acceptable by us will not, in fact, be permitted by other authorities. See e.g., April 19, 1984 order, supra, slip op. at 9. Issuance of a low power operating license would not change this. Del-Aware provides no basis, nor does one appear, for finding that low power testing cannot be conducted at least at times (particularly from the fall of '84 into the spring of '85), if not at all times, through use of the primary Schuylkill River cooling water intake. Moreover, even beyond low power operation, Del-Aware supplies no basis, and none appears, under the Atomic Energy Act or the National Environmental Policy Act, for an illogical finding that a completed facility which meets all applicable requirements for an NRC operating license should not be permitted to operate at all, because it will not be able to operate all the time unless and until an approved cooling water system supplemental to the Schuylkill River cooling water supply is completed.

For this reason, issuance of a low power or even a full power operating license would provide no basis to alter our decision not to consider any further supplemental cooling water system issues which depend on the predictive assumption that the proposed Point Pleasant diversion will not be completed. If and when it is certain that there is a concrete different alternative being proposed by the Applicant for its supplemental cooling water needs, then and only then would the NRC have to consider the effect of any specific proposed changes on the previous assessment of environmental impacts. See our April 19, 1984 order, supra, slip op. at 9. Indeed, Del-Aware itself has argued that only the Schuylkill River, as supplemented by releases from existing reservoirs on the Schuylkill River system, should be relied on for cooling water for Limerick. If Del-Aware's proposal is in fact proposed by the Applicant and approved by the Delaware River Basin Commission (which has authority over such water allocation decisions), then there will be no supplemental cooling water system requiring a new environmental review.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

Lawrence Brenner

Lawrence Brenner, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland
August 24, 1984

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In the Matter of PHILADELPHIA ELECTRIC COMPANY (Limerick Generating Station, Units 1 and 2)	Docket Nos. 50-352-OL 50-353-OL August 24, 1984

COURTESY NOTIFICATION

As circumstances warrant from time to time, the Board will mail copies of its memoranda and orders directly to each party, petitioner or other interested participant. This is intended solely as a courtesy and convenience to those served to provide extra time. Official service will be separate from the courtesy notification and will continue to be made by the Office of the Secretary of the Commission. Unless otherwise stated, time periods will be computed from the official service.

I hereby certify that I have today mailed copies of the Board's "Memorandum and Order Rejecting Late-Filed Contentions from FOE and AWPP, Denying AWPP's Second Request for Reconsideration of Asbestos Contention, Denying AWPP's Motion to Add a PVC Contention and Commenting on an Invalid Inference in Del-Aware's May 17, 1984 Filing" to the persons designated on the attached Courtesy Notification List.

Valarie M. Lane
Valarie M. Lane
Secretary to Judge Brenner
Atomic Safety and Licensing
Board Panel

Bethesda, Maryland
Attachment

Troy B. Conner, Jr., Esq.
Mark J. Wetterhahn, Esq.
Conner and Wetterhahn
1747 Pennsylvania Avenue, N.W.
Suite 1050
Washington, DC 20006

Benjamin H. Vogler, Esq.
Ann P. Hodgdon, Esq.
Nathene A. Wright, Esq.
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Mr. Frank R. Romano
Air and Water Pollution Patrol
61 Forest Avenue
Ambler, PA 19002

Mr. Robert L. Anthony
Friends of the Earth in
the Delaware Valley
103 Vernon Lane, Box 186
Moylan, PA 19065

Robert J. Sugarman, Esq.
Del-Aware Unlimited, Inc.
Sugarman, Denworth & Hellegers
16th Floor Center Plaza
101 North Broad Street
Philadelphia, PA 19107