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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

Docket Nos. 50-352 OL
50-353 OL

OFFICE OF REGULATORY
ADMINISTRATION & SERVICE
WASHINGTON, D.C.

NRC STAFF RESPONSE TO DEL-AWARE
UNLIMITED, INC'S REVISED CONTENTIONS

I. INTRODUCTION

On October 19, 1984, Del-Aware Unlimited, Inc., filed two reformulated contentions pursuant to the Atomic Safety and Licensing Appeal Board's decision in ALAB-785 ^{1/} and the Licensing Board's Order of October 3, 1984. For the reasons discussed below, the NRC staff opposes the admission of Del-Aware's contentions.

II. BACKGROUND

In ALAB-785, the Appeal Board reversed in part the Licensing Board's decision in LBP-83-11, 17 NRC 413 (1983) and remanded to the Licensing Board for its consideration two contentions proposed by Intervenor Del-Aware regarding impacts of the Supplemental Cooling Water System (SCWS) on the proposed historic district of Point Pleasant and on salinity in the Delaware River. The Licensing Board was to provide Del-Aware an opportunity

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

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to reformulate its contentions in light of information in the Staff's Final Environmental Statement. ALAB-785, slip op. at 32-33, 45, 65. On October 3, 1984, the Licensing Board issued an Order providing Del-Aware an opportunity to reformulate and resubmit its contentions.

III. DISCUSSION

The Commission's regulations in 10 C.F.R. § 2.714(b) require that a party proposing a contention to be litigated submit its proposed contention with its bases set forth with reasonable specificity. In this case, the scope of the remand and thus the scope of the contention is further governed by ALAB-785. It is within this framework that the Staff considers the admissibility of Del-Aware's resubmitted contentions.

A. V-14

Del-Aware's resubmitted contention V-14 states as follows:

V-14 Contrary to the FES, The project will permanently destroy the ambiance and integrity of a [sic] eligible National Historic District (Point Pleasant), by causing a permanent loss of the natural hillside frame, by intrusions of cleared areas, parking lots, transformer pads and possible walls not disclosed to, or considered by, the Advisory Council and not considered by the Corps, including a major impact on the National Historic Landmark (Delaware Canal) included in the District. Locational and functional alternatives to avoid the harm exist.

Basis: Studies of the Bucks County Conservancy; Courtroom statement of U.S. Attorney in Del-AWARE v. Baldwin (neither the Corps nor the other parties to the Memorandum of Understanding [sic] considered or passed upon the hillside); actual scenery (which can be substantially restored if the project is dropped). Regarding alternatives; see V-16 and see PECO 1979 Assessment and other PECO documents.

The Staff's objections to the admission of this contention are:

- (1) Del-Aware has failed to show a relationship between the impacts asserted in the proposed contention and any requirement of the National

Historic Preservation Act (NHPA) (16 U.S.C. §470, et seq.), specifically as related to the responsibility of the NRC; (2) Del-Aware has expanded the contention to include concerns explicitly excluded by the Appeal Board from the scope of the remand; and (3) Del-Aware has failed to set forth its bases for this contention with sufficient specificity.

1. Asserted Impacts and NHPA

The resubmitted contention fails to take account of information that has become available since the original contention was proposed in late 1981. ^{2/} Although Del-Aware mentions the Staff's FES, it does not, contrary to the direction of the Appeal Board, allege "specifically why the [Staff's FES] review might be inadequate under Section 106

^{2/} As originally submitted the contention stated:

Construction of the line through the Point Pleasant Historical District and surrounding natural areas will substantially destroy their historical character. This effect has not been reviewed in light of the determinations of eligibility for the district, by any federal agency.

BASIS: Since the DRBC approval in February, 1981, the Point Pleasant Village has been determined eligible for the National Register of Historic Places by the SHPO. Of course, it includes the applicant's intake, conduits and pump station. At the time of the DRBC approval, no district had been approved and the environmental reviews stated that the project was some distance from the Village. The blasting and permanent clearance of the hillside which the historic survey determined was a major feature of the district will permanently and irreparably destroy its integrity. The pumphouse will be a substantial and determinable intrusion. The 15 foot rip rap wall at the river's edge will ruin a beautiful natural border of the District.

The Staff has reviewed Del-Aware's Contention V-14 as originally proposed because the Appeal Board made clear that the scope of the remand was not to exceed the original scope of the contention. See ALAB-785, slip op. at 43-45.

of NHPA." ALAB-785, slip op. at 45 (Emphasis in original). The Appeal Board also pointed out in this regard that the Licensing Board had been correct in observing that, in order to comply with NHPA, "the staff may properly rely on the historical impact reviews of other agencies." ALAB-785 at 45, n. 110.

The Staff's FES, NUREG-0974 (April 1984), discusses historical and archeologic impacts at 5-36. Del-Aware's resubmitted contention, contrary to the Appeal Board's direction, fails to allege specifically what requirement of § 106 of the NHPA (16 U.S.C. § 470f) is inadequately treated there. The Staff's own reading of § 106 has not identified any requirement that the FES has failed to meet.

References to "a permanent loss of the natural hillside frame," "intrusions of cleared areas" and "parking lots" do not provide support for an allegation of adverse impacts on the proposed historic district. Del-Aware has failed to provide a basis for its apparent position that NHPA requires that a proposed historic district "frame" be considered as if it were included in the district itself. ^{3/}

2. The Scope of the Remand

Transformer pads, possible walls and the National Historic Landmark Delaware Canal need not be considered by the Licensing Board, as

^{3/} The Memorandum of Agreement, to which Del-Aware seems to be referring in its basis, may be found following Tr. 1118 as an exhibit to the Staff's testimony on Contention V-16a. The plans for the pumping station at Point Pleasant have not changed since the Staff submitted its testimony on a related matter, Del-Aware's Contention V-16a concerning noise impacts.

they were explicitly excluded from the scope of the remand by the Appeal Board in ALAB-785, slip op. at 43, 46-49. In ALAB-785, the Appeal Board stated that it found no merit in Del-Aware's argument that the Licensing Board should have considered the impact on the Delaware Canal of the potential need for baffling walls, since Del-Aware had never properly sought to raise the matter and had not pursued it after it arose at the hearing in connection with the possible need to mitigate transformer noise. The Appeal Board reasoned that since neither Del-Aware's proposed Contention V-14, which was rejected, nor its V-16a, which was litigated, addressed the National Historic Landmark Delaware Canal, and since Del-Aware had failed to seek in a timely manner to amend and expand its Contention V-16a to include its specific concern about the effect of sound barriers on the Canal, Del-Aware's attempt to raise the matter on appeal came too late. Id. at 46-49.

3. Basis and Specificity

Del-Aware's statement of basis lacks specificity. Del-Aware references a number of documents without pointing to information in any of them which would support its contention. For example, the reference to the "PECo 1979 Assessment and other PECO documents" is so vague that the Staff is not able to identify what documents are relied on, much less what information in those documents would support a claim that there is some requirement in § 106 of the NHPA that is not satisfied by the Staff's FES.

Therefore, Del-Aware's V-14 does not state an admissible contention.

B. V-16

Del-Aware's resubmitted Contention V-16 states:

V-16 The diversion will, contrary to the DRBC's contention adopted by the staff in the FES (Section 9 and Appendix O), adversely and unacceptably affect salinity levels and water quality (dissolved oxygen levels) in the Delaware River, and receiving waters, causing problems with fish, drinking water and other uses, and requiring major construction, and could be reduced or eliminated to avoid that impact. The FES inappropriately gave DRBC, not DOI or NRC, the "last word", and failed to reflect NRC's independent judgment.

Basis: FES Section 9; DOI letter, July 1983; Interstate Water Management Agreement of 1983 and DRBC staff review of its Recommendations, including the review and staff comment of the Basinwide Drought Management Plans, (April 1984), the New Jersey studies pursuant to the Agreement, (Draft, Summer 1984) and the plans to reactivate Tocks Island show that there is a significant present and projected salinity intrusion caused by low flow and diversions of which Limerick is a significant part. Oyster bed problems documented by DOI, use of DRBC contentions over DOI studies and conclusions not justified or qualified. Blue Marsh flows planned to prevent salinity (FES, D-3) will be less effective than Delaware River flows would be. (See Merrill Creek EIS). Tocks Island and Merrill Creek studies show the extent of construction needed. (See FES appendix O, showing DRBC reliance on future construction. Gky studies for Bucks County (April, June, 1984) show this can be avoided by eliminating or reducing Limerick, or taking water from the Schuylkill (with lesser impacts). Cancellation of Unit II is in the public interest, contrary to FES, in that only \$700 million spent, and no need for energy; cancellation will also reduce risks of accident. Re" receiving waters, see EHB Decision pp 26-27, 100-02, (6/18/84) regarding impact on receiving waters.

The staff opposes the admission of resubmitted Contention V-16 because (1) it fails to state a contention with the requisite basis and specificity; and (2) it is beyond the scope of the remand.

1. Lack of Basis and Specificity

Although Del-Aware mentions the Staff's FES, it fails to state how the specific information included in the FES regarding salinity

impacts of Limerick's use of Delaware River water is in error. Apparently, Del-Aware believes that the impact of the withdrawal of water for Limerick on the salinity of the Delaware River will be greater than thought by the DRBC and the NRC staff; however, it offers no basis whatsoever for its belief. Contrary to Del-Aware's assertion that the NRC staff's reliance on the DRBC's analysis of water quality impacts of the withdrawal of water for Limerick is "inappropriate," the Appeal Board cited with approval a Licensing Board statement that "Del-Aware would have a heavy burden of specifying why any NRC reliance on analysis by DRBC (or other agencies) was improper. ALAB-785 at 32, citing LBP-82-43A, 15 NRC at 1485. ^{4/}

^{4/} The Staff notes in this regard that NRC staff reliance on DRBC's water quality analysis was endorsed by the Appeal Board in ALAB-262. Similarly, the Environmental Hearing Board (EHB) of the Pennsylvania Department of Environmental Resources (DER) endorsed a DER reliance on DRBC water quality analysis:

"The impacts on ... salinity intrusion [is a matter] which require[s] scientific analysis, including water quality modelling. The Delaware River Basin Commission has the legal authority, the expertise and the resources to perform such analyses, and it is customary for DER to rely upon the DRBC to conduct such analysis.... DRBC and DER concluded that salinity control in the Delaware Estuary would not be exacerbated by withdrawals at Point Pleasant because: (1) salt water from Delaware Bay is repelled by all flows of fresh water entering the Estuary above River Mile 90; (2) the Schuylkill enters the Delaware Estuary above River Mile 90; (3) 90% of the NWRA withdrawal at Point Pleasant will be returned to the Delaware; (4) PECO withdrawals at Point Pleasant pose no significant concern for salinity when the Delaware flows at Trenton equal or exceed 3000 cfs; and (5) PECO cannot withdraw water at Point Pleasant below the 3,000 cfs flow level without discharging an equal amount of water into the Delaware (from the Merrill Creek Reservoir). Indeed, DRBC determined and DER concluded that salinity objectives can be met in the Delaware Estuary with releases from existing reservoirs, even during a record drought like that of the mid-1960's, so that even at flows well below 3,000 cfs no substantial saltwater intrusion problems are expected.

Del-Aware Unlimited, Inc. v. Pennsylvania, Nos. 82-177-H and 82-219-H (Pa. E.H.B. June 18, 1984). At 128-29. This decision is discussed in ALAB-785, slip op. at 16.

No basis is offered for Del-Aware's allegations regarding adverse impact on salinity levels. ^{5/} As regards the studies offered as basis by Del-Aware, the Staff is familiar with most of them, and many of them are in the record of this proceeding. However, the Staff is unable to discern which parts of which documents would support which part of the contention. No nexus between the statement of basis and the statement of the contention is provided.

2. Scope of the Remand

The Appeal Board made clear in ALAB-785 and again in its Order on reconsideration that the remand of Contention V-16 was to be limited to salinity. ALAB-785, slip op. at 32-33; Order of October 10, 1984. Assertions regarding "dissolved oxygen levels," "receiving waters," "problems with fish, drinking water and other uses," "require[ments for] major construction" are beyond the scope of the remand and should not be entertained by the Licensing Board. Further, the Appeal Board pointed out in ALAB-785 that the admission and litigation of any reformulated salinity contention "must, of course, be tied to changes or new information that has come to light since the issuance of the construction permit for Limerick." Id. at 33, n. 73. However, Del-Aware has totally ignored the Appeal Board's admonition and has not even addressed the

^{5/} Further, the Staff would note that in both its contention and its basis Del-Aware refers to the Staff's adopting DRBC "contentions." The DRBC is not a party in the Limerick operating license proceeding and did not file contentions. However, although the DRBC did not file contentions, it did provide an analysis, which appears as Appendix O of the FES. This analysis would seem to the Staff to answer most of the concerns underlying Del-Aware's basis. However, Del-Aware does not directly challenge that analysis.

FES-CP, ^{6/} let alone the question of whether or not there have been changes since that time affecting the validity of the analysis.

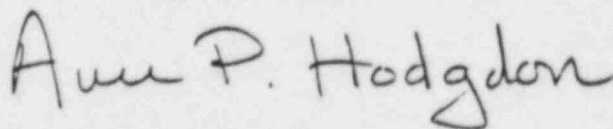
As the EHB's decision in Del-Aware v. Commonwealth ^{7/} makes clear, impacts of withdrawal on salinity levels in the estuary are the same whether the water is withdrawn from the Schuylkill or from the Delaware.

Del-Aware has failed to comply with the Appeal Board's direction governing the remand; its V-16 does not state an admissible contention.

IV. CONCLUSION

For the reasons discussed, the Licensing Board should deny Del-Aware's proposed contentions V-14 and V-16.

Respectfully submitted,



Ann P. Hodgdon
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 7th day of November, 1984

^{6/} The FES-CP, like the FES-OL, relies for its assessment of salinity impacts on the DRBC. It is the Staff's opinion that the analysis retains its validity. The final paragraph of that analysis (at 5-4 of the FES-CP) states:

It is worth noting that consumptive use of brackish water from the tidal Delaware River and Bay, no less than consumptive use of fresh water, unless compensated by regulation of fresh water inflow during critical low-flow periods, will result in greater concentrations of sea salts in the estuary and upstream advanced of any given isochlor.

^{7/} See n.5 supra.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO DEL-AWARE UNLIMITED, INC'S REVISED CONTENTIONS" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, or as indicated by a double asterisk by hand-delivery, this 7th day of November 1984:

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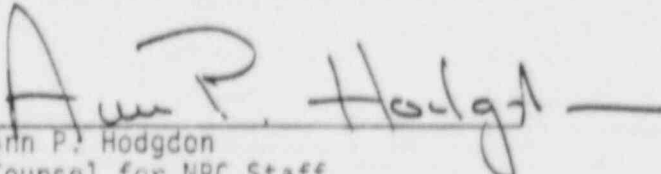
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