

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

ATOMIC SAFETY AND LICENSING BOARD

'84 NOV -9 A11:18

BEFORE ADMINISTRATIVE JUDGES:

Helen F. Hoyt, Chairperson  
Dr. Richard F. Cole  
Dr. Jerry Harbour

SEARCHED  
SERIALIZED  
INDEXED & FILED  
BRANCH

SERVED NOV 9 1984

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

Docket Nos. 50-352-OL  
50-353-OL

ASLBP No. 81-465-07 OL

November 8, 1984

MEMORANDUM AND ORDER ON DEL-AWARE'S REMANDED AND  
REVISED ENVIRONMENTAL CONTENTIONS V-14 AND V-16

This Board concluded, after a hearing on certain contentions submitted by intervenor Del-Aware Unlimited, Inc. (Del-Aware), that the Limerick plant's use of water from the Delaware River would cause no adverse environmental impact. LBP-83-11, 17 N.R.C. 413 (1983). The Board had rejected Del-Aware's contentions V-14 and V-16 before the hearings. Del-Aware appealed the decision and argued, among other things, that the Board had erred in rejecting V-14 and V-16. The Appeal Board agreed in part, ruling that this Board should have accepted two issues in V-14 and V-16: The impacts of Limerick's withdrawal of Delaware River water at Point Pleasant on the salinity of the River and on the Point Pleasant Historic District. See ALAB-785, 20 N.R.C. \_\_\_\_ (September 26, 1984). However, after this Board's decision on the impact of Limerick's use of Delaware River water, both issues were

DS02

treated by the NRC Staff in its Final Environmental Statement (FES) (NUREG-0974). Thus, rather than simply accept V-14 and V-16, the Appeal Board remanded with instructions that Del-Aware be given an opportunity to resubmit the two contentions after they had been revised in light of the FES and the Appeal Board's rulings on the proper scope of the contentions. See ALAB-785, slip op. at 31-32, 45 (September 26, 1984). The Appeal Board also noted that the revised and resubmitted contentions would not be subject to the standards in 10 C.F.R. § 2.714(a)(1) for accepting late contentions (id. at 32 n. 70), but that, of course, the contentions would have to be pleaded in accord with the requirement in § 2.714 for bases and specificity. Id. at 3. Del-Aware petitioned the Appeal Board for reconsideration, urging that the permissible scope of the revised contentions be enlarged. On October 10, 1984, the Appeal Board denied the Petition on all counts.

Del-Aware submitted revised versions of V-14 and V-16 on October 19, 1984. The Applicant and the Staff filed answers opposing acceptance of the contentions on November 2, 1984 and November 7, 1984, respectively. We reject both contentions and state our grounds below. Both exceed the scope permitted them by the Appeal Board and are pleaded without adequate bases and specificity. With the rejection of these two contentions, Del-Aware has no contention in litigation and thus is no longer a party in this proceeding.

V-16: Salinity

The Appeal Board ruled that a resubmitted V-16 would have to be tied to changes or new information that had come to light since the

issuance of the construction permit for Limerick, and would have to allege specifically why the analysis in the FES of the impact of the Point Pleasant Diversion (PPD) project on the salinity of the water in the Delaware River was inadequate. ALAB-785, slip op. at 32 (September 26, 1984). The Board noted that the Staff was permitted to rely on the data and inferences drawn by the Delaware River Basin Commission (DRBC) on this issue. Id. at 29 n. 65. In denying Del-Aware's Petition for reconsideration, the Appeal Board refused to enlarge the permissible scope of V-16 to include considerations of aspects of water quality other than salinity or of "receiving waters" (i.e., East Branch Perkiomen Creek). October 10, 1984 Order.

Nevertheless, Del-Aware, in its resubmitted V-16, mentions no changes or information that might have come to light since the construction permit was issued, and asserts, without the specificity the Appeal Board required, that the DRBC's conclusions on salinity are wrong and that the FES "inappropriately" gives the DRBC the "last word." Del-Aware also attempts to include in V-16 the very issues the Appeal Board rejected in denying Del-Aware's Petition for reconsideration. Del-Aware appends to the revised text of V-16 a long paragraph entitled "Basis," but the paragraph consists only of unargued assertions stating principally that certain documents and projects show that the PPD project will contribute to a "significant present and projected salinity intrusion" which can be eliminated by alternatives to the PPD project. Some of the documents Del-Aware cites are not in the record and have not been distributed to the parties and the Board; others are too

imprecisely cited to find; only two of the citations include page references. In sum, Del-Aware provides no nexus between the statement of basis and the statement of the contention.

V-14: Point Pleasant Historic District

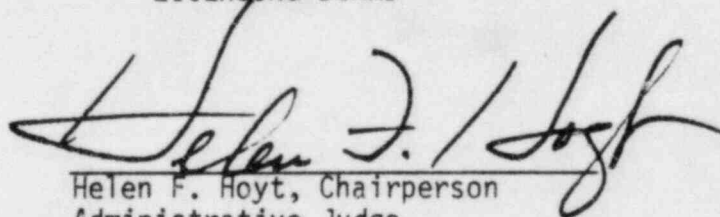
Again, as with V-16, the Appeal Board ruled that a resubmitted V-14 would have to allege specifically why the analysis in the FES of the impact of the PPD project on the Point Pleasant Historic District was inadequate. ALAB-785, slip op. at 45 (September 26, 1984). As before, the Board noted that the Staff could "properly rely on the historical impact reviews of other agencies." Id. at 45 n. 110. The Appeal Board explicitly ruled that issues concerning the impact on the Historic District of sound barriers which might be installed at the PPD, or the impact of the PPD on the Delaware Canal, would be beyond the scope of an acceptable revised V-14. Id. at 46-49. The Appeal Board also ruled that alternatives to the PPD project were not to be considered (id. at 57-64), and the Board reaffirmed this ruling in denying Del-Aware's Petition for reconsideration. October 10, 1984 Order at 3-4.

Nevertheless, drafting as if the Appeal Board had set no standards for the resubmission of these contentions and no limits on their scope, Del-Aware simply asserts that the FES and, by implication, the Memorandum of Agreement among the U.S. Army Corps of Engineers, the Pennsylvania State Historic Preservation Officer, and the Advisory Council on Historic Preservation, on which the FES relies (see the FES, § 5.7), inadequately analyze the impacts of the PPD--including "possible walls" (i.e., sound barriers) and impacts on the Delaware Canal--and

advantages of alternatives. Del-Aware's "Basis" here is even thinner than its "Basis" for V-16. It consists largely of extremely vague citations to various "studies" and "documents" and to a courtroom statement in a case identified only by name. Apparently, Del-Aware's counsel expected this Board to use the minimal information in his citations to find the material he cites, then find relevant passages in the material, and finally, determine which parts of the contentions those passages support. Del-Aware's counsel in effect expected the Board to draft acceptable revisions of the contentions. The Board is not obliged to do so. Commonwealth Edison Co. (Zion, Units 1 & 2), ALAB-226, 8 A.E.C. 381, 406 (1974).

For the reasons given above, Del-Aware's revised and resubmitted contentions V-14 and V-16 are rejected, and Del-Aware is accordingly no longer a party in the Limerick proceeding.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

A handwritten signature in cursive script, appearing to read "Helen F. Hoyt", is written over a horizontal line.

Helen F. Hoyt, Chairperson  
Administrative Judge

Dated at Bethesda, Maryland  
this 8th day of November, 1984.