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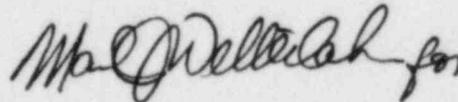
Mr. Harold R. Denton
Director
Office of Nuclear
Reactor Regulation
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

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

Dear Mr. Denton:

On January 15, 1985, we submitted "Comments of Philadelphia Electric Company Del-Aware's Request Under 10 C.F.R. Section 2.206." I am resubmitting that document to reflect publication of the "Request for Action Under 10 C.F.R. Section 2.206 Regarding Supplemental Cooling Water for the Limerick Facility" at 50 Fed. Reg. 1650 (1985) and to allow correction of minor typographical errors.

Sincerely,



Troy B. Conner, Jr.

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

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

By letter dated November 21, 1984, Del-Aware Unlimited, Inc. ("Del-Aware") submitted "a renewed and amended and updated petition under Section 2.206." The sole basis for the request is a letter from J.F. Paquette, Jr., Vice President Finance and Accounting, Philadelphia Electric Company, to Jerry Rich, Secretary, Pennsylvania Public Utility Commission, dated October 30, 1984. That letter in pertinent part states:

Low Power Licensing of Unit #1 occasioned a new review of the remaining steps to achieve commercial operation. As a result we now estimate that the earliest date for commercial operation of Limerick Unit #1 will be during the Third Quarter of 1985, if an interim supply of supplemental cooling water is available by May 1985. This represents a revision of two to five months from the previous estimate of the earliest commercial operation date and will result in an increase in the total cost of Limerick Unit #1 of approximately \$30 million per month.

Del-Aware interprets this as a decision by PECO to utilize an identified interim source of supplemental cooling water for the Limerick Generating Station. Petitioner requests the Commission Staff to "require that PECO provide to the Commission a full disclosure of its intended sources, and the environmental consequences thereof, prior to issuing the full commercial license." The relief requested by Del-Aware is essentially the same as previously requested by

Del-Aware before the Director and before the adjudicatory boards of the Commission. Del-Aware presents absolutely nothing new which would require the institution of a proceeding pursuant to 10 C.F.R. Section 2.206.

There is no need to redocument the history of the NRC's consideration of supplemental cooling water supplies for the Limerick Generating Station. In both the Director's Decisions and numerous decisions by the presiding Atomic Safety and Licensing Board and Appeal Board, the background and current status of this matter have been discussed.^{1/} In particular, both the Director and the adjudicatory boards have discussed the actions that PECO as the Applicant in the proceeding must take should it change its plans and modify its pending proposal to rely on a source of supplementary cooling water other than the Delaware River via the river follower method. There is absolutely no reason to institute a proceeding in order to inform the Company that it must inform the NRC that it has selected a source of supplemental water, interim or otherwise, other than described in the application.

In accordance with the Commission's regulations under 10 C.F.R. Section 2.101, it is the responsibility of the

^{1/} See ALAB-785, 20 NRC 848 (1984), aff'g in pertinent part, LBP-83-11, 17 NRC 413 (1983); LBP-74-44, 7 AEC 1098 (1974), aff'd in pertinent part, ALAB-262, 1 NRC 163 (1975); DD-84-13, 19 NRC 1137 (1984).

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.

The Director has previously addressed the possibility that an alternative to the Point Pleasant diversion might be required. In its 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 Pleasant Diversion Project, PECO's current actions appear clearly directed at ensuring 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.2/

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 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 speculative nature. There is nothing in your letter which would cause me to reconsider this question.3/

2/ DD-84-13, 19 NRC at 1141.

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

In its September 10, 1984 letter to Mr. Sugarman, counsel for Del-Aware, the Director again declined to institute a proceeding to consider alternatives to the Point Pleasant project. In this regard, the Director stated:

The basic licensing function of the Commission is to review project proposals submitted by an applicant. I have noted this in earlier correspondence. In this matter, the Point Pleasant Diversion Project was submitted for review by PECO at both the construction permit and operating license stage of the proceeding. To the extent a submitted proposal is no longer viable, an applicant may submit an alternative for the Commission's consideration. In this context, the actions you request are inappropriate.

The Licensing Board has similarly rejected contentions relating to alternatives to Point Pleasant for the same reasons discussed by the Staff as quoted above. In the interest of brevity, we direct your attention to the discussion of the Licensing Board's action in "Comments of Philadelphia Electric Company on Del-Aware's Request Under 10 C.F.R. 2.206," [page] transmitted by letter dated December 29, 1983 at 9, and "Comments of Philadelphia Electric Company on Del-Aware's Request Under 2.206," transmitted by letter dated August 21, 1984 at 9.

In Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), ALAB-785, 20 NRC 848, 884 (1984), the Atomic Safety and Licensing Appeal Board rejected the same argument Del-Aware advances here, i.e., that

alternatives to the river follower method must be examined.

The Board held:

What Del-Aware is seeking, in fact, is an order directing PECO to abandon Unit 2 and to rely on a source of supplementary cooling water for the remaining Unit 1 other than the Delaware River via the river-follower method. But we have no legal basis here for making such an order. There is no question that PECO has some formidable obstacles to surmount if it is to operate both Limerick Units 1 and 2 in the manner currently proposed. Whether PECO will change its plans to effect an easier resolution of the problems confronting it is a matter for PECO's management, and possibly its shareholders, to decide. But the fact is we now have before us PECO's application for a license to operate two units, using the river-follower method to supplement the plant's cooling water system. We have previously approved the river-follower method in ALAB-262, supra. The purpose of this proceeding, in that regard, is consideration of the impacts of any subsequent changes relating to that supplementary cooling system. Except the two matters that we have determined should have been, but were not, litigated,* we agree with the Licensing Board's conclusion that the impacts of the subsequent changes are not significant. In the absence of a finding to the contrary, we are without the legal predicate to dictate to PECO that it must pursue other options.**

* * * * *

* Viz., Del-Aware's contentions on salinity and the impacts on the Point Pleasant Historic District. See pp. 866-70, 874-76, supra.

** Of course, if PECO does change its plans and modify its pending application accordingly, it is obliged to notify us and the parties promptly. Tennessee Valley

Authority (Browns Ferry Nuclear Plant, Units 1, 2 and 3), ALAB-677, 15 NRC 1387, 1391-94 (1982). And, as the Licensing Board correctly observed, in such circumstance the Commission "would have to reconsider its previous assessment of environmental impacts in light of changes proposed by PECO." Licensing Board Memorandum and Order of June 1, 1983 (unpublished), at 9 n.3. The parties would also have to be afforded an opportunity to challenge any newly amended, significant portion of the application. See Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-778, 20 NRC 42, 48 (1984).

Thus, the Appeal Board placed the obligation upon PECO, as the Applicant, to notify the Commission should its plans regarding the operation of Limerick Generating Station change. PECO certainly recognizes its obligation to inform the Commission and will do so should the circumstances dictate. However, Philadelphia Electric Company remains committed to the use of water for the Limerick Generating Station as discussed in the application and as extensively litigated over the last decade and Mr. Paquette's letter does not represent any deviation. The letter merely reflects a change in the commercial operation date of Limerick. It also reflects the reality that sustained power operation during the summer months may not be possible without a supplemental source of water.

PECO's stated intention to pursue completion of the Point Pleasant project as the source of supplementary cooling water for Limerick was the very basis of the recent

decision by the Court of Common Pleas of Bucks County in ruling that Neshaminy Water Resources Authority and Bucks County would be required to take all necessary actions to complete the project.^{4/} In that decision, the Court granted PECO's request for specific performance of the contract between PECO and NWRA to require it "immediately to recommence and complete construction of the Point Pleasant pumping station and the combined transmission main" and similarly ordered Bucks County "to do all things which are necessary to implement and comply with its contractual obligations so that the construction and completion of the Point Pleasant pumping station and the combined transmission main may be completed"^{5/} In securing specific performance of the contract, PECO successfully argued that any attempt to obtain other sources of supplemental cooling water for Limerick would be fraught with uncertainty and would jeopardize the commercial operation of the facility. On this point, the Court emphatically sustained PECO's position, stating:

As a prerequisite to the issuance of an operating license by the [Nuclear] Regulatory Commission (NRC), the successor to the Atomic Energy Commission (AEC), the licensing body for the operation of Limerick, an extensive environmental impact study had been done

^{4/} Daniel J. Sullivan, et al, v. County of Bucks, et al., No. 84-8358 (Pa. Ct. Common Pleas) (January 3, 1985).

^{5/} Id. at 46.

with respect to the Point Pleasant project as a source of supplementary cooling water. If some alternative application were to be made by PECO for some other source, it is likely that a new environmental impact study would be required. An environmental study requires and consumes a great deal of time, effort and money.

. . . .

The regulatory permitting process is a long and tortuous one. This fact alone is probably the best argument for holding that neither PECO nor NP/NW are anyway remiss in their obligations for failure to seek and attempt to secure alternative sources. They have been swimming in these turbulent waters for so long that no one can blame them for refusing to take another plunge.^{6/}

Accordingly, the very principle consistently espoused by the Director and the Adjudicatory Boards of the NRC in rejecting Del-Aware's argument has also been sustained by the Court of Common Pleas of Bucks County in Pennsylvania.

Having raised identical matters before the Licensing Board and Appeal Board, Del-Aware cannot circumvent the hearing and appeal processes by allegations under 2.206. As the Commission held in Indian Point and Diablo Canyon,

^{6/} Id. at 19, 38. Additionally, the Court noted that there is "no assurance that PECO will be able to obtain an alternative source of supplemental cooling water in the absence of the Point Pleasant project" because there is "no evidence to indicate that either DER, DRBC or the United States Corps of Engineers will authorize withdrawal of water from Blue Marsh Reservoir in Berks County or a relaxation of the regulatory restriction on PECO's withdrawal of water from the Schuylkill River when the water temperature exceeds 59 degrees Fahrenheit." Id. at 20.

parties must be prevented from using 10 C.F.R. 2.206 procedures as a vehicle for reconsideration of issues previously decided. 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).

Moreover, Del-Aware is collaterally estopped from attacking the previous rulings by the Director which, as explained, decided in Applicant's favor the issue which Del-Aware seeks to raise here again. For the sake of brevity, Applicant incorporates its previous argument discussed in Section III of its Comments on Del-Aware's Request Under 10 C.F.R. §2.206, transmitted by letters dated December 29, 1983 at 12-14 and August 21, 1984 at 10.

For these reasons, Del-Aware has failed to demonstrate that a proceeding should be instituted pursuant to Sections 2.202 and 2.206 of the Commission's Rules of Practice.