

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

I
Lewis / Hodgdon
Chan / Chandler
Rutberg
FF

In the Matter of

82 OCT 14 P3:37

Philadelphia Electric Company

) Docket No.
OFFICE OF SECRETARY
DOCKETING & SERVICE
) BRANCH

50-352-OL
50-353-OL

Reply due

(Limerick Generating Station,
Units 1 and 2)

Oct. 12, 1982

MOTION TO STRIKE THE TESTIMONY OF DR. MICHAEL T. MASNIK

Del-AWARE Unlimited, pursuant to the Board's order, files its motion to strike the testimony of Dr. Michael T. Masnik and avers as the basis thereof, the following:

1. Prior to conducting any study of this matter, Dr. Masnik told NWRA consultant Harold Brundage that he had no problem with the project and would not see any problem with it going ahead. Brundage wrote a letter concerning these statements by Masnik to his client, which letter is attached as Exhibit A. In these circumstances, Masnik, having made up his mind prior to conducting his study, cannot be regarded as a creditable witness.

2. Prior to being employed by the NRC, Masnik was employed by Ichthyological Associates, which employed Brundage, the consultant to NWRA. IA has also frequently been a consultant to Philadelphia Electric Company. The relationship between the two companies was underlined by Masnik's decision to go to IA's

headquarters and discuss the matter with Brundage before conducting any investigation of the matter, and indeed proceeds to rely on Brundage (E.g., A-7) despite his prior relationship with IA, his commitment to Brundage, and Brundage's affiliation.

3. Masnik also ignored the fact that Brundage's opinion regarding Shortnose Sturgeon was based on an assumed river velocity of 1.0 fs or more at all times past the intake, and misstates his conclusions, despite this matter having been fully been explored. (Q7)

4. Masnik deliberately overstates the conclusion of Brundage and the Endangered Species Act 7 § Consultation - Biological Opinion. (A8) He ignores that fact that NMFS states that their conclusion is based on presently available information, which is sparse, and assumes a river flow velocity of 1 fs.

5. The proposed witness also bases his testimony on the "lack of observed spawning in the vicinity", and deliberately ignores the fact that there has been no effort to observe such spawning in the area. (A9)

6. The witness biases his opinion by using "mean monthly discharges" as the relevant discharge for evaluating water flow in the intake relative to the river, whereas the fish survive on minimum instantaneous discharges. (A14)

7. Masnik's testimony is not based on a final environmental Impact Statement, as required by 10 C.F.R. § 51.52,

WHEREFORE

For the foregoing reasons, the testimony of witness Masnik would be misleading, is unqualified, and would be inappropriate being received by the Board, and should be excluded.

A handwritten signature in dark ink, appearing to read 'R. J. Sugarman', is written above a horizontal line.

ROBERT J. SUGARMAN

Attorney for Del-AWARE

Unlimited,

September 27, 1982