

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
JUL 15 1982

Before the Atomic Safety and Licensing Board

In the Matter of )  
Philadelphia Electric Company ) Docket No. 50-352  
(Limerick Generating Station, ) 50-353  
Units 1 and 2) )

APPLICATION FOR RECONSIDERATION

In its July 14, 1982 Order, based on an affidavit of Gerald Hansler, Executive Director of the Delaware River Basin Commission, the Board determined that the Federal Representative to the DRBC had concurred in the decision to allocate Delaware River water to Limerick, and thus held that the DRBC decision precludes consideration of the allocation question herein.

In view of the Board disposition and Hansler affidavit, intervenor has located a copy of the transcript of the February 18, 1981 meeting of the DRBC, where the DRBC placed the PECO diversion in its Comprehensive Plan, and gave project approval to the NWRA and PECO projects, subject to reconsideration based on the NRC determination in the case of the PECO diversion. The transcript of Commissioner Tribbit's comments, attached hereto as Exhibit A, clearly contradicts the factual information on which the Board's July 14 decision was based. It shows clearly that the Federal Member based his concurrence explicitly on his understanding that the NRC would resolve all environmental issues relating to the withdrawal of Delaware River water (the allocation).

The key element of Commissioner Tribbitt's comments begins with his having inserted into the record a letter to NRC from EPA, as follows:

"Philadelphia Electric Company's Limerick nuclear facility is a complex project that has been controversial for many years. We have recently been involved in numerous meetings with the Delaware River Basin Commission concerning plans to permit diversion of water from the Delaware River, in part for supplemental cooling water supply for the facility. We are particularly concerned with the consumptive use of scarce water resources, the mechanisms for provision of the necessary storage, and the physical and biological impacts on the natural streams which will convey the flows to Limerick.

"Therefore, we were pleased to hear from the DRBC, from Dr. Sam Worth, [sic] at NRC in Washington, and from the article quoting you in the Philadelphia Inquirer, February 10, 1981, that NRC is planning to prepare draft and final Environmental Impact Statement supplements prior to issuance of an operating license for Limerick.

"We were also encouraged to note that you will be including review of the impacts of the supplemental cooling water diversion. DRBC has indicated that they would like to consult and coordinate with you on those portions of the EIS.

"Since, as required by the National Environmental Policy Act, EPA will be reviewing the EIS, we would like to participate in the project scoping meeting so as to address the concerns we have raised in the past and provide for the resolution in a timely fashion during EIS preparation. We are looking forward to working with you."  
(Tr. 47-48)

Commissioner Tribbitt then made the following statement:

"Mr. Chairman, if I might on behalf of the federal government just as other Commissioners are expressing themselves: In trying to correlate the responsibilities of various federal agencies on any subject that may be before a regulatory board such as the Delaware River Basin Commission -- sometimes with a great many opinions on authorities and jurisdictions, and with EPA being one of those who for some time had been one of the

leading agencies to voice objections, it is quite clear to me with this communication dated February 17 that EPA has no particular problem with diversions and they are looking directly to NRC for any EIS's relative to the subject matter before us and not to this particular regulatory agency.

"Under those circumstances the Federal Representative feels he can very well cast an affirmative vote on these two matters before the Commission."

In context, Commissioner Tribbitt's remarks clearly show that he was concerned about EPA's opposition, and that having been reassured that EPA was not unalterably opposed to the diversions as such, but was concerned with PECO's diversion, particularly relating to consumptive water use, mechanisms for storage, and physical and biological impacts on the Perkiomen (which are Intervenor's concerns as well), he felt able to vote for the PECO and NWRA diversions "because he was reassured that NRC would address the entire cooling water issue, including the diversion itself, and its impacts, and that EPA would be satisfied.

Del-AWARE Recognizes that the Board has decided that DRBC as a whole did not condition its approval on NRC review of the Point Pleasant project (July 14 Order, at 10). Del-AWARE does not now seek further review of that decision.

Nor in this context, is it so important what the NRC in fact committed to do.

What is important, and despositive, is as stated in the SPCO, "Whether the Federal Representative can be deemed to have concurred in the operation allocation decision." (SPCO, at 96)

Del-Aware submits that Commissioner Tribbit's concurrence was clearly based on his understanding that the NRC would determine the issues.

With this new information, Del-AWARE respectfully submits that the Board should reverse its determination of July 14 and hold that the Federal Member of the DRBC did not finally concur in the disposition of the diversion, and hence that there is no preemption of that matter from this proceeding by the virtue of Section 15.1(s)1 of the Compact.

Any other determination would fly completely in the face of Governor Tribbitt's remarks, and leave this Board in the position of deciding preliminarily at the outset of a long proceeding on the basis of an affidavit which is contradicted by the facts

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Sugarman', written over a horizontal line.

ROBERT J. SUGARMAN  
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Date: August 8, 1982

Neshaminy Watershed Project will provide an adequate water supply not only to a significant area, but also to a major segment of the population in the Commonwealth of Pennsylvania. New York State has in the past supported the project as a component of the Delaware River Basin Commission's Comprehensive Plan. The proposed modifications to the project are based on the increased need for water and are a prudent approach, and New York State continues to support this project with a favorable vote.

With respect to the Philadelphia Electric Company portion of the docket, New York State in the past has also supported this project as an element of the Delaware River Basin Commission's Comprehensive Plan. The proposed increase in capacity of the reservoirs does not represent a major change in the project, and New York State intends to vote affirmatively for this portion also.

COMMISSIONER TRIBBITT: Mr. Chairman, I have four communications. The first is from the Executive Director to NRC; the second, from NRC to the Executive Director; the third, the letter addressed to me from EPA which you took the liberty to read; and, finally, a communication from EPA to NRC. I respectfully request that with the exception of the EPA letter the Secretary read

EXHIBIT A

these communications.

SECRETARY WHITALL: This is from Mr. Hansler to Mr. Eisenhut of NRC:

"This is to confirm our recent conversation concerning the Limerick nuclear generating plant on the Schuylkill River in Pennsylvania. It is my understanding that the Nuclear Regulatory Commission intends to prepare an Environmental Impact Statement on the operating license aspect of the Limerick plant which is now under construction. If this is the case, it would be very much appreciated if you could so inform me in writing as soon as possible. The Delaware River Basin Commission intends to act on the Point Pleasant Pumping Station project, an adjunct to Limerick, within the near future."

And then he gives our telephone number.

The second letter, replying to Mr. Hansler, is from Mr. Tedesco, Assistant Director for Licensing of the Division of Licensing of NRC, and the date is December 16, which is one day following the date of the previous letter.

"This is in response to your letter of December 15, 1960 to Mr. Darrel Eisenhut concerning the



preparation of an Environmental Impact Statement for the Limerick generating station during the Nuclear Regulatory Commission operating license review. As required by NRC regulation contained in 10CFR Part 51, applicants for an operating license must submit an Environmental Report which will be reviewed by NRC as part of its National Environmental Policy Act review requirements.

"Based upon the applicant's Environmental Report the NRC staff will review the environmental impacts associated with the operation of the LGS, including those facilities that are required to support its operation. This review will specifically consider information and data that have been developed subsequent to the issuance of our final environmental statement for the construction permits. After completion of this review both draft and final environmental statements will be issued."

The remaining letter is addressed to Mr. Tedesco of the NRC from Mr. George Pent, Chief of the Environmental Impact Branch of EPA, and it is dated February 17, 1981.

"Philadelphia Electric Company's Limerick nuclear facility is a complex project that has been controversial for many years. We have recently been involved in numerous meetings with the Delaware River Basin Commission concerning plans to permit diversion of water from the Delaware River, in part for supplemental cooling water supply for the facility. We are particularly concerned with the consumptive use of scarce water resources, the mechanisms for provision of the necessary storage, and the physical and biological impacts on the natural streams which will convey the flows to Limerick.

"Therefore, we were pleased to hear from the DRBC, from Dr. Sam Worth at NRC in Washington, and from the article quoting you in the Philadelphia Inquirer, February 10, 1981, that NRC is planning to prepare draft and final Environmental Impact Statement supplements prior to issuance of an operating license for Limerick.

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on those portions of the EIS.

"Since, as required by the National Environmental Policy Act, EPA will be reviewing the EIS, we would like to participate in the project scoping meetings so as to address the concerns we have raised in the past and provide for their resolution in a timely fashion during EIS preparation. We are looking forward to working with you."

COMMISSIONER TRIBBITT: Mr. Chairman, without objection I request that those communications which have been read be made part of this public hearing record.

CHAIRMAN PICCO: Any objections from the panel? (None) They will be entered as part of the record.

COMMISSIONER TRIBBITT: Mr. Chairman, if I might on behalf of the federal government just as other Commissioners are expressing themselves: In trying to correlate the responsibilities of various federal agencies on any subject that may be before a regulatory board such as the Delaware River Basin Commission -- sometimes with a great many opinions on authorities and jurisdictions, and with EPA being one of those who for some time had been one of the leading agencies to voice objections, it is quite clear to me with this communication dated February 17 that

EPA has no particular problem with diversions and they are looking directly to NRC for any EIS's relative to the subject matter before us and not to this particular regulatory agency.

Under those circumstances the federal representative feels he can very well cast an affirmative vote on these two matters before the Commission.

COMMISSIONER EICHLER: I would like to point out initially that when my colleague from Pennsylvania mentioned that he did not think there would be any more need for power plants in the fresh water part of the Basin I held my breath for a moment; and then he went on to say that he thought they could be located in the Ohio and Susquehanna. I was gratified to hear that.

We have paid a great deal of attention to these dockets before the Commission. I personally attended the hearing in Kulpville and have looked at the record very extensively and have studied the project to a great extent, and I have felt that it is one of the most complex and certainly one of the most important projects that has come before the Commission in the time that I have been on it. It was with that in mind that we spent as much time in Delaware looking at this as we did.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion of Del-AWARE Unlimited, Inc. to Compel Answers to Interrogatories and Application for Reconsideration were served by hand on the persons listed below.

Lawrence Brenner, Esq., Chairman  
Administrative Judge  
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*Robert J. Sugarman msc*  
Robert J. Sugarman

Dated: August 9, 1982