

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

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

PETITION FOR RECONSIDERATION  
OR CERTIFICATION FOR APPEAL

Pursuant to 10 CFR § 2.714(a), 2.718(i) and (m), and 2.751a(a), Del-Aware Unlimited, Inc., requests reconsideration or, in the alternative, certification for appeal, of the Board's Order dated January 24, 1983, denying its application to amend its contentions.

The proposed new contentions were designed to raise issues of dramatic changed circumstances regarding the selection of the river follower method by the Atomic Energy Commission in 1975, and the drastic alteration of the benefits and costs of that mode of proceeding. Specifically, they related to the fact that Merrill Creek, the proposed compensating reservoir, is now fully regarded as essentially a permitted program, although lip service is continuing to be paid to the necessity for awaiting completion of the Environmental Impact Statement. Secondly, the contentions

were intended to raise the impacts of that decision on the Delaware River, including the effects of the Merrill Creek operation on the River as a part of the Point Pleasant diversion operation. Thirdly, the contentions were intended to raise issues relating to the DRBC Parties' and staff's recent (July, 1982) recognition of the necessity for revising its Management Plan for the River in light of the inadequacy of water, and therefore to raise the increased costs of the Point Pleasant diversion. Finally, the proposed contentions were intended to obtain Board consideration of the effect of deleting Unit 2 at Limerick, and the reduced benefit side of the benefit-cost equation.

In combination, these contentions sought permission to litigate the issues whether the benefits of diverting water at Point Pleasant in relation to the facts as they were presented to the Commission in 1973-75 were so reduced, and the costs so increased, that reconsideration was warranted.

The Board has rejected the consideration, essentially on the grounds that the reduction in benefits attributable to the potential reduction of 50% in the need for water, are not cognizable unless the alternative options are made possible by the reduction in the size of Limerick. Del-Aware never contended that these options were made possible by that consideration; rather, Del-Aware contended and contends that they are made more economically attractive. Secondly, the Board seems to conclude that an increase in costs of the diversion is not cognizable because such costs are

assessed by the Delaware River Basin Commission.

The DRBC has consistently taken the position that the evaluation of the need for the water at Limerick is a matter for this Board. This Board, repeatedly, has taken the position that the evaluation of the extent of need and justification for allocating the water in the Delaware River to the project is for the Delaware River Basin Commission.

In these circumstances, the DRBC and this Board have created a division of responsibility such that no one is responsible to determine<sup>whether</sup> the need for water at Limerick is sufficient to justify the cost to the Delaware River in supplying such water, relative to the other potential sources of water for Limerick, and the other uses of Delaware River water.

This relative cost/benefit is essential to the NEPA process, which is in turn a critical part of the burden and responsibility of both DRBC and this Board.

While Del-Aware does not contest the responsibility of the DRBC to make water allocations, it does contest the interpretation of an allocation decision of DRBC as stated by this Board, and this Board's refusal to allow litigation of the NEPA balancing in deciding on the operating license. There is no basis in the record or otherwise for concluding that the DRBC has weighed the relative need for the water against the benefits in making its allocation decision, nor is there any basis for concluding that the DRBC has concluded all other potential water allocations in making any given

allocation, or even made a comparative analysis. Indeed, in his deposition, Mr. Hansler expressly stated that the DRBC does not make such a relative weighing. (Dep. 121-131, Tr.1224 following)

Del-Aware has previously and repeatedly attempted to bring to the attention of this Board the fact that when DRBC approved the diversion, it did so on the basis of EPA's acquiescence which motivated the federal member to vote as he did, and the New Jersey member to change his position and vote for the project, and which in turn was based on an expressed commitment of the staff of this Commission to carry out detailed environmental analysis of the impacts of the diversion.

The Board's refusal to exaluate the necessity for imposing this cost on the Delaware River in view of the potential deletion of Unit 2, and therefore the lesser justification for the diversion, extends its prior rulings to this new condition.

Del-Aware would point out in requesting reconsideration, that the Board never tied its Special Prehearing Conference Order to the issue of deletion of one unit, in fact it is a nonsequitur to do so, as it appears on page 9 of the Memorandum Order of January 24, 1983. It is a non sequitur because the deletion of one half the need is simply the converse of increased environmental impacts; it alters, significantly, the need or justification for incurring the previously identified environmental impacts.

To ignore this parallel condition is a non sequitur. In other words, the fact that a given alternative might have been possible with two units does not exclude the fact that it may be much more feasible and desirable with one unit, and thus promote a significantly smaller environmental effect.

Furthermore, it is unjustifiable to require a proponent of a proposed contention to prove the contention in advance. Del-Aware is obviously unable to prove that the DRBC will change the conditions on the Schulkyll withdrawal, since the DRBC is an advocate of the Point Pleasant diversion, and PECO has not asked.

However, this is not a required showing; all that is required is for Del-Aware to show that the NRC should find and determine that the environmental effects of the proposed Point Pleasant diversion are unacceptable, in part because there are substantially preferable alternatives in the Schulkyll River, which the DRBC could permit, and which have not been sought by the applicant. This would lay the burden of going forward where it properly can be carried; on the applicant.

Equally, with respect to Blue Marsh, the Board's interpretation of the flow restriction as precluding reliance on Blue Marsh is totally unsupported. The Hansler testimony does not in any way justify the conclusion that Blue Marsh releases could not be used as supplementation for Schulkyll flows. First, contrary to Hansler, Blue

Marsh was sponsored by the United States Army Corps of Engineers, not the Delaware River Basin Commission. Moreover, it appears that the intention of the provision was to prevent PECO from taking advantage of releases financed and caused by other entities, especially the DRBC. If PECO were to buy a share of the Blue Marsh storage, it would not be taking from a DRBC sponsored project in this sense. While Del-Aware cannot now prove the meaning of the provision, it is clearly capable of that interpretation, and is the only one that would make sense. Surely the fact that DRBC sponsorship, whatever that means, cannot be relevant in itself; what is relevant is who pays for the storage. At least, Del-Aware should have an opportunity to prove its interpretation before it is rejected, without an opportunity for any discovery or proof.

Finally, with respect to other alternatives, such as purchase from the City of Philadelphia, the City of Philadelphia letter attached to Del-Aware's response suggests that the City can handle 28 million mgd because of its interconnection system in the city, whereas there is no indication that the interconnection capability could have handled 46 mgd, thus permitting this approach for two units. Thus, it is simply not true that they are "not related to the argued changed circumstance of the possible cancellation of Unit 2 since that time" (page 14) just because they may have been possible for two units. It is

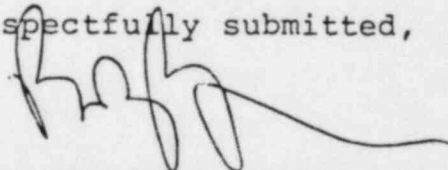


an unjustified jump in logic to state that they are "not related" because they may have been possible for two units. There has, in fact, been a showing that these alternatives would not have been equally available for two units, but beyond that, the contention stage is not a stage for "showings", but rather for statements for contentions and bases, not evidence.

In short, the Board's refusal to consider circumstances creating major changes in needs and resources and relative costs and benefits, is an unjustifiably narrow interpretation of its responsibility, and Del-Aware requests that it be reconsidered.

In light of the importance of this issue, Del-Aware further requests that, in the event the Board refuses to reconsider, that the issue be certified to the Commission for appeal, as provided in the Rules.

Respectfully submitted,



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DATED: February 2, 1983

CERTIFICATE OF SERVICE

I hereby certify that I have this 2nd day of February, 1983, served a copy of the foregoing Petition for Reconsideration or Certification for Appeal by mailing a copy of the same to the following persons:

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