

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

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REQUEST FOR LATE FILED CONTENTION V-26

1. Del-AWARE Unlimited, by its counsel, hereby requests that the Board give its permission for petitioners to file Late Filed Contention V-26, and avers as the basis thereof the following:

I. CONTENTION

V-26 The parties to the Supreme Court Decree of 1954, 347 U.S. 995 (1954), have just announced the signature of a revised management plan for the Delaware River, which will reduced the minimum flow objective at Trenton to 2,700 cfs, in "drought warning", and to 2,500 cfs in drought conditions, and have eliminated all minimum flow objectives in times of drought emergency. As a result, the basis of computation of the reliability of the river follower method as utilized by the Appeal Board in its 1975 decision, and utilized by Applicant and the staff witnesses in this proceeding, i.e., the extent of outage of the facility, and the frequency and seasonality of operation of the intake at flows less than 3,000 cfs, have been drastically altered.

As a result, neither the original determination of the viability of the river follower method, nor the applicant's and staff's evidence concerning the impacts of withdrawals at different seasons (especially in the spawning season and the larval stage) properly address the likely impacts.

These matters in combination with those asserted as a basis for Contentions V-22, V-23, V-24 and V-25, compel the admission of a late filed contention to consider and dispose of these critical matters.

(Should it be argued that Merrill Creek will maintain the minimum low flow, Del-AWARE points out that its efforts to consider Merrill Creek in this proceeding have consistently been rebuffed; in any event, Merrill Creek would have an increased burden to maintain 3,000 cfs flow, which there is no showing it can do.)

2. Pursuant to 10 C.F.R. §2.714a(1), Del-AWARE sets forth in the following paragraphs its justification for the admission of this Contention.

3. The parties to the Supreme Court Decree announced their agreement on the new Delaware River Management Plan on February 23, 1983. Obviously, the reduced flows, drastically affecting the viability of the river follower method, and the relevance of the testimony offered by applicant in support of its contentions that there would be no adverse effect of the intake because the 3,000 cfs minimum flow would protect fish during the spawning and larval seasons most of the time, could not have been presented prior to that time.

4. It is important to understand that the Delaware River Basin Commission has not changed its conditions on PECO's withdrawal at Point Pleasant. That conditions remains that in the absence of compensating releases, PECO must stop withdrawing when the flow in the River drops below 3,000 cfs. Now that 3,000 cfs has been eliminated in non

drought conditions by agreement of the parties who constitute a majority of the DRBC, it is clear that there will be no maintenance of 3,000 cfs flow. Even when the objective in non drought conditions, was 3,000, it was violated more than 10% of the time, as recognized in the Appeal Board's decision of 1975. Now that it is not an objective, it is incredible to think that such a deviation will not dramatically increase.

5. In addition, the Board will recall, the testimony of applicant's witnesses at the hearings regarding the effect of the intake was heavily premised on the applicants position that flows would not drop below 3,000 cfs more than rarely, during the spawning and larval seasons for American Shad. Now that the 3,000 cfs has been eliminated, there is no reason to suppose that minimum would be maintained, and there is no basis for believing that the new flow objectives will not be violated as frequently as the old ones were.

6. There is no other means to protect petitioner's interest. The argument that the staff makes in its response to Del-AWARE's previous petition, dated February 25, 1983, is fatuous, irresponsible, and woefully contrary to the public interest. The Pennsylvania Fish Commission, it is true, had no alternative, as it stated, to issue a permit for blasting after having been limited in its consideration of the matters it could consider, by the Attorney General of Pennsylvania, to the effects of blasting as such. Del-AWARE has not appealed before any local Zoning Board; what

happened was that the Township of Plumstead filed suit in Common Pleas Court in Bucks County to stop the project (now pending because it violated local zoning. As to the DRBC, it did refuse a petition to reopen its proceedings.

However, there is no showing that the regulations referred to deals with any other proceeding in any other body, and is intended in any way to require this Board to abdicate its responsibility under its statutes. The staff's effort to drag in such other proceedings, therefore, is completely unjustified, especially in light of the lack of showing that other agencies will or have the jurisdiction to protect the interest sought to be protected herein.

7. The petitioners, based on the staff's resistance to any consideration of these issues, are the only ones likely to present the material necessary for the Board to consider these issues.

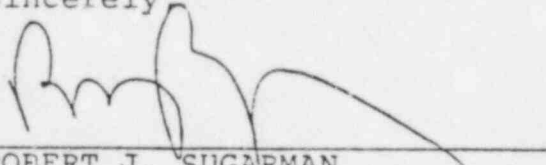
Again, from the staff's pleadings, it is obvious that no other party will protect the interest asserted by petitioner.

8. The petitioner's participation will not broaden the proceedings at all. These proceedings are required to include the full range of appropriate issues related to the operation license, including changed circumstances, and petitioner's participation will merely insure that.

For the forgoing reasons, it is requested that the Board permit the filing of Del-AWARE's Contention V-26 as a

late filed contention.

Sincerely

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

ROBERT J. SUGARMAN
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March 8, 1983

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Request For Late Filed Contention V-26 by mailing a copy of the same to the following persons this 8th day of March, 1983.

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