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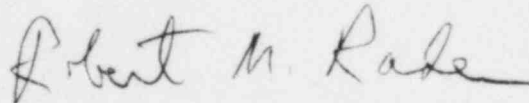
Dr. Peter A. Morris  
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U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

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

Gentlemen:

Enclosed is a copy of the "Petition to Reopen and for Reconsideration and, to Set Aside Prior Orders, and to Take Other Action as Appropriate" filed by Del-Aware Unlimited, Inc. before the Delaware River Basin Commission on September 2, 1982. We refer to this petition by Del-Aware at page 16, footnote 24 of "Applicant's Answer to Request by Del-Aware Unlimited, Inc. for Admission of New, Late Filed Contentions V-30, V-31, V-32, and V-33," filed on December 29, 1983.

Sincerely,



Robert M. Rader

Enclosure  
cc: Service List

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## BEFORE THE DELAWARE RIVER BASIN COMMISSION

IN RE: NESHAMINY WATER RESOURCES	)	Docket No. D-65-76-CP
AUTHORITY AND PHILADELPHIA	)	
ELECTRIC COMPANY'S WITHDRAWAL FROM	)	Docket No. D-69-210-CP
THE DELAWARE RIVER AT POINT	)	
PLEASANT.	)	Docket No. D-79-52-CP

PETITION TO REOPEN AND FOR RECONSIDERATION AND, TO SET  
ASIDE PRIOR ORDERS, AND TO TAKE OTHER ACTION AS APPROPRIATE

Del-AWARE, Unlimited, Inc., Val Sigstedt, Honorable Rita Banning, Limerick Ecology Action, Delaware Water Emergency Group, Hutton Recycling Coalition, Phyllis Zitzer, Richard McNutt, Mary Ellen Noble, Virginia Forrest, C. J. Gilmore, Anne P. Carney, Judy Zipkin, Jane and Falton Cross, Lee Goldberg, Carla Van Dyk and Michelle and Graham Kinsman, by their attorneys, petition this Honorable Commission to reopen and set aside its Orders in the within proceedings, pursuant to Section 3.8 of the Compact and Sections 2-1.4, 2-1.7, 2-4.16 of the Rules, and the Administrative Procedure Act, 5 U.S.C. §701 et seq., and aver as the basis thereof the following:

1. On February 18, 1981, this Commission granted "final" approval, under Section 3.8 of the Compact and to the inclusion in the Comprehensive Plan, of the proposed Neshaminy Water Resources Authority and Philadelphia Electric Company withdrawals via an intake at Point

Pleasant, Pennsylvania, of 95 mgd, subject to certain understandings, conditions, and limitations.

2. All or most of the Petitioners were objectors regarding the foregoing Orders.

3. No construction has been initiated in reliance on the above-mentioned Orders.

4. Reconsideration, reopening, and rescission is warranted and necessary in the public interest for the following reasons, all of which have come into existence and/or been newly recognized since February 18, 1981:

A. This Commission's Level B Study, and the draft Recommendations of the Parties regarding Interstate Basin Management, and Background Report, issued in July, 1982, reflect a recognition of the inability of the Delaware River Basin to reliably sustain the proposed withdrawal without unacceptable adverse effects on the water quality and water use needs of the Basin. The Level B Study and the Recommendations specifically acknowledge that the proposed withdrawal will further expand depletive withdrawals beyond the capacity of Basin supplies to prevent salinity contamination, and to insure against excessive dissolved oxygen sags in drought and severe drought conditions, in violation of the present salinity and dissolved oxygen standards, in the absence of substantial additional storage capacity. Thus, when joined with existing uses, there is not adequate water to support the proposed use. In these circumstances, Commission must rescind the above-mentioned Orders.

B. There is no present or foreseeable likelihood that the new offsetting storage proposed in the Level B Study and Recommendations can and will be provided in full, or at least, there is no commitment to do so, and prerequisite environmental reviews are not yet completed, thus legally precluding a present decision. Moreover, the Commission's environmental studies of Merrill Creek show that withdrawals for storage would exacerbate present inability to reliably meet salinity standards. Other proposed storage projects have not been studied and/or present similar or other problems. Implementation of the proposed Point Pleasant withdrawals in the absence of a determination of approvability and feasibility of the necessary replacement or additional storage, would practically preclude the no build option, which must be preserved in order to make meaningful environmental decisions regarding the proposed replacement and additional storage.

C. The proposed depletive use for Limerick Unit 2 is not a beneficial use of the waters. The decision of the Pennsylvania Public Utility Commission at Docket No. 180100431, on August 27, 1982, represents a decision by Pennsylvania that present or near-term construction of Limerick Unit is not in the public interest. This finding requires rescission or suspension of the Order with regard to 23 mgd for Unit 1, and implementation of an alternative available to supply the needs for cooling Unit 1, which would not further harm the Delaware River, including (a)

placing the already constructed cooling towers in series, (b) providing alternative storage in the Schuylkill River Basin, deemed less desirable for two units, but more desirable than Point Pleasant for one unit, and which might be directed by this Commission in the public interest, (c) utilizing storage available at the Blue Marsh Reservoir, and (d) utilizing other potential local sources of supply in the Schuylkill River Basin, directly or indirectly under the control of this Commission.

D. Relevant agencies have identified an adverse impact on a National Historic Landmark and on very significant archeological sites, which might require, pursuant to procedures set forth by the Advisory Council on Historic Preservation, in situ preservation of the archeological finds as a result of preproject test digging and studies or entail loss of significant unique resources.

E. Contrary to expectation, it is now clear that in its present location, the intake will adversely affect Lower Black Eddy, a spawning and nursery area, and an important shore fishing area, through the creation of turbidity and through entrainment and impingement, thus destroying a significant habitat for American shad, a major species, and other species.

F. The National Marine Fisheries Service has identified the probable presence of shortnosed sturgeon, an endangered species, in the nursery and/or spawning stages, rendering them subject to injury by the project, and



recommended further studies to determine such effects. While NMFS believed that the intake design would limit exposure, its finding was based in part on the erroneous information supplied to it that the intake would not operate at maximum velocity when river flows are lower than 3,000 cfs (Trenton).

G. Philadelphia Electric Company has identified TCE's, and the Environmental Protection Agency has identified significant amounts of other toxic materials, in the Delaware River from the Lehigh confluence downstream, and including Point Pleasant, which would adversely impact the Perkiomen and Neshaminy Creeks, and cause toxicity in those creeks and the groundwater aquifers, since the Perkiomen is a recharge stream in some reaches.

H. The NWRA use is not a beneficial use in that

(1) Local suppliers in Warminster and Warrington no longer need Delaware River water because Pennsylvania DER has determined that the water quality in their local wells is suitable for human consumption as a result of treatment.

(2) Contrary to previous information, this Commission's ground water study has established the availability of adequate new groundwater sources in local aquifers to supply Bucks and Montgomery County needs.

(3) Use of these resources would add to rather than deplete river flows, and thus aid in meeting water quality and use objectives.

(4) The dedication of Lake Nockamixon for drought flow augmentation in the River makes it no longer detrimental to use Lake Nockimixon for drought flow augmentation of local water supply rather than of the Delaware River, contrary to the situation in 1980.

I. The approvals should be reopened and reconsidered as a result of the individual and cumulative impact of all of these factors, which require a finding that the withdrawal is not a beneficial use of the water, that there is not adequate water available to permit them, and that less consumptive alternatives are available in light of the changing economic and water needs within the Delaware River Basin, and this Commission's concern over the cumulative effect of depletive withdrawals in the Delaware River Basin.

5. In its 1981 decisions, expressly and in subsequent correspondence, this Commission made it clear that it was leaving resolution of matters relating to historic impacts and local effects of the intake on fish to the U.S. Army Corps of Engineers and NMFS. Thus, the 1981 decisions themselves require reconsideration and reevaluation in light of the present state of the record on those matters, as described in paragraph 4.

6. In its 1981 PECO decisions, this Commission or at least its federal member deferred final determination of the Limerick withdrawal, including determination of the environmental issues related thereto, to the Nuclear Regulatory Commission. In that the Point Pleasant diversion

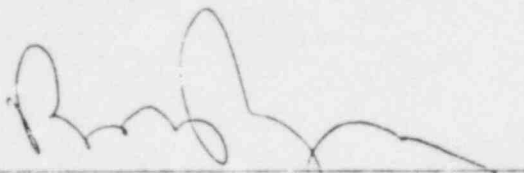
is no longer financially viable without the Limerick subsidies, the Nuclear Regulatory Commission has recognized the need to evaluate certain environmental impacts of the diversion in more depth. However, the NRC Board has held that this Commission's determination as to the environmental impacts of the allocation of Delaware River water to Limerick (as distinguished from the specific aspects of the diversion) in February 1981 is final. In that this Commission or at least its federal member did not so finally determine, it is necessary for this Commission to reconsider its prior determination in light of the significance now placed on it by the NRC, which is inconsistent with this Commission's action as of February 1981. The present state of the record is that since neither Commission has accepted responsibility for setting forth and weighing all the environmental effects and full range of benefits and costs with respect to the Point Pleasant diversion, no such disclosure or weighing pursuant to the National Environmental Policy Act is or will have been made by any agency unless this Commission does so.

6. As a result of the foregoing, the decisions represented and reflected in the above-mentioned dockets in February, 1981, are no longer in the public interest, are incompatible with the Compact and the Commission's Comprehensive Plan, and must be reconsidered, revised, rescinded, and reopened.



7. In light of the foregoing, implementation of the project as approved will substantially and adversely affect the petitioners, their members, the environment, and the interest of users of the river throughout the Delaware River Basin, and therefore cannot be permitted to stand, consistent with the Compact, the National Environmental Policy Act of 1969, the Historic Preservation Act Amendments of 1980, the Endangered Species Act, the Fish and Wildlife Coordination Act, Section 404 of the Clean Water Act, Section 10 of the River and Harbors Act, and the Atomic Safety and Licensing Act, and the regulations thereunder, respectively.

WHEREFORE, petitioners request that the Commission reopen, and, after hearing, set aside, and rescind its Orders of February 1981 in these proceedings, and award such other relief as may be just and appropriate, including attorney's fees and costs.



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September 2, 1982