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ROBERT J. SUGARMAN

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SUITE 803

1201 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20004

(202) 737-4480

ROBERT RAYMOND ELLIOTT, P.C.*
COUNSEL

* NOT ADMITTED IN PA.

December 16, 1983

Secretary
U.S. Nuclear Regulatory Commission
Attn: Chief, Docketing & Service Branch
Washington, D.C. 20555

Re: In the matter of PHILADELPHIA ELECTRIC COMPANY
Docket NO. 50-352-353

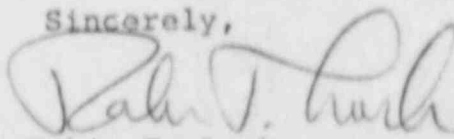
Dear Sir:

Enclosed herewith please find the following document
for filing:

APPLICATION OF DEL-AWARE UNILIMITED ET AL UNDER
SECTION 2.206

A copy of this document has been served upon all counsel
pursuant to the attached Certificate of Service.

Sincerely,



Robin T. Locke

RTL/kc

Enclosures

cc: All Counsel

8405160210 840425
PDR ADDOCK 05000352
A PDR

| | | | | |
|--|------------|---------------------------------|---|------------------|
| FROM: Robin T. Locke Sugarman & Denworth | | ACTION CONTROL | DATE: | CONTROL NO. |
| | | COMPL. DEADLINE | 1/13/84 | 13903 |
| | | INTERIM REPLY | | DATE OF DOCUMENT |
| | | FINAL REPLY | | 12/16/83 |
| TO: Secretary | | FILE LOCATION | PREPARE FOR SIGNATURE OF | |
| | | | <input type="checkbox"/> CHAIRMAN | |
| | | | <input type="checkbox"/> EXECUTIVE DIRECTOR | |
| | | | OTHER: Denton | |
| DESCRIPTION <input checked="" type="checkbox"/> LETTER <input type="checkbox"/> MEMO <input type="checkbox"/> REPORT <input type="checkbox"/> OTHER | | SPECIAL INSTRUCTIONS OR REMARKS | | |
| 2.206 Application of Del-Aware Unlimited ET AL that the staff reopen the construction permits & interim initial decision of the Licensing Board regarding supplemental cooling water at Limerick 1 & 2 | | | | |
| ASSIGNED TO | DATE | INFORMATION ROUTING | | |
| Cunningham, ELD | 12/21/83 | Denton | | |
| Eisenhut | 1/4/84 | Hurley | | |
| <i>Nowak</i> | | Case/Denton | | |
| <i>Schubert</i> | | 1. PPAS | | |
| <i>Martin</i> | <i>1/5</i> | 2. Spels | | |
| | | 3. Mattson | | |
| | | 4. Vollmer | | |
| | | 5. Thompson | | |
| | | 6. Grace | | |
| | | 7. Snyder | | |

NRC FORM 232
(5-82)

EXECUTIVE DIRECTOR FOR OPERATIONS
PRINCIPAL CORRESPONDENCE CONTROL

SECY-83-2644

No. SECY-83-2644 Logging Date 12/20/83

NRC SECRETARIA?

TO: ☐ Commissioner _____ Date _____

☒ Exec. Dir./Oper. ☐ Gen. Counsel

☐ Cong. Liaison ☐ Solicitor

☐ Public Affairs ☐ Secretary

☐ _____ ☐ Inspector & Auditor

☐ _____ ☐ Policy Evaluation

Incoming: Robin T. Locke

From: Sugarman & Denworth

To: SECY Date 12/16/83

Subject: 2.206 petition--adequacy of xxxx water in the Delaware River Limerick 1 & 2

- ☐ Prepare reply for signature of:
- ☐ Chairman
 - ☐ Commissioner _____
 - ☐ EDO, GC, CL, SOL, PA, SECY, IA, PE
 - ☐ Signature block omitted
 - ☐ _____ ID&R-5 PEC/ Limerick 1 & 2
 - ☐ Return original of incoming with response

☒ For direct reply* Suspense: Dec-20 Jan 5

☐ For appropriate action

☐ For information

Rec'd Off. EDO
Date... 12-21-83 ...
Time... 7:30 ...

Remarks: Docket

For the Commission: billie

*Send three (3) copies of reply to Secy Correspondence and Records Branch

SUGARMAN & DENWORTH

ATTORNEYS AT LAW

ROBERT J. SUGARMAN
JOANNE R. DENWORTH
ROBIN T. LOCKE

SUITE 810, NORTH AMERICAN BUILDING
121 SOUTH BROAD STREET
PHILADELPHIA, PENNSYLVANIA 19107
(215) 546-0162

SUITE 803
1201 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004
202 737-4460

ROBERT RAYMOND ELLIOTT, R.C.*
COUNSEL
*NOT ADMITTED IN PA.

December 16, 1983

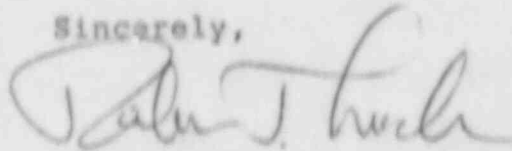
Mr. Harold Denton
Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: In the matter of PHILADELPHIA ELECTRIC COMPANY
Docket No. 50-352-353

Dear Mr. Denton:

Enclosed herewith please find a copy of the
APPLICATION OF DEL-AWARE UNLIMITED ET AL UNDER SECTION 2.206,
the original of which has been forwarded to the Secretary for
filing.

Sincerely,



Robin T. Locke

RTL/ke

Enclosures

cc: All Counsel

8512203790

PAK 2/10

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In The Matter of :
: PHILADELPHIA ELECTRIC COMPANY : Docket Nos. 50-352
: 50-353
(Limerick Generating Station, :
Units 1 and 2) :

APPLICATION OF DEL-AWARE UNLIMITED ET AL UNDER
SECTION 2.206

Petitioners hereby renew their request that the staff reopen the construction permits heretofore granted, as well as the interim initial decision of the Licensing Board dated March 8, 1983, regarding supplemental cooling water, and aver as the basis thereof the following:

1. In its comments on the draft Environmental Impact Statement Operating License for the proposed project, dated August 15, 1983, the US Environmental Protection Agency brought out the fact that the EIS fails to deal with the information that has been developed recently regarding the adequacy of water in the Delaware River. This is the subject which the NRC had committed to cover in the EIS in its letter dated December 16, 1980 to the Delaware River Basin Commission, on the basis of which the DRBC approved the project in February, 1981, without an EIS. The staff letter of January 5, 1981 to the applicant bears out this undertaking.

83/2200502

PDR 30pp.

2. As found by EPA, the failure to complete this commitment, which was the basis of EPA acceding to the DRBC action, is a serious and fatal defect, and requires rectification before the operating license can be properly approved, and before the EIS can be finalized. It also precludes reliance on the DRBC approval as final and binding. Among other things, the DRBC itself reserves the right to reopen the docket based on the findings of this Commission, and that reservation is operational at this time as a result of the Commission's failure to deal with the subject in the EIS, as found by EPA.

3. Since a source of supplemental cooling water is essential to the operation of Limerick, the changed circumstances which have come into existence in the last few weeks regarding the likelihood of completion of the water diversion project require that an alternative source of supplemental cooling water be obtained immediately. (infra)

4. Test fuel load is now apparently being planned for October, 1984, and while supplemental cooling water will not likely be necessary until the Spring of 1985, regulatory processes must be begun in order to be completed in time for the Limerick need.

5. Adequate water exists to handle Limerick's needs at the Blue Marsh Reservoir, but although PECO has stated that it will take an alternative source of water if one is offered to it, it has taken no action to secure the Blue Marsh supply. Unless this Agency requires that PECO

take such action, PECO will refuse to do so indefinitely, and thereby prejudice the availability of adequate supplemental cooling water.

6. The events which have made it likely that PECO will not have the Point Pleasant diversion available in time are especially the Ordinance passed by the Bucks County Commissioners on November 18, 1983, in which the Commissioners voted to take over the Point Pleasant project, having previously announced their intention to halt it. A copy of the Ordinance and the Commissioners' previous announcements (May 18, 1983, September 21, 1983) is attached as Exhibit A.

7. In addition, the staff previously accepted the assurance of the Director of the NWRA in an affidavit, in determining that the NRC need not consider all the primary and secondary consequences of the Point Pleasant diversion as being attributable to Limerick. That affidavit stated that NWRA would build the project even without PECO.

8. It is now clear, as a result of the Commissioners' ordinance, that the project will not be completed without the participation of PECO. Indeed, on November 29, 1983, PECO sued the County and NWRA seeking a mandatory injunction to compel construction. A copy of PECO's complaint is attached hereto as Exhibit B. Therefore the PECO project is the operative cause of all the primary and secondary effects of Limerick, previously described in Del-AWARE's previous Petition and supplemental Petition under Section 2.206.

Accordingly, based on the new circumstances, that Petition should now be granted. Since PECO sued the County and NWRA seeking a mandatory injunction to compel its construction, the diversion facilities should now be considered as a facility under Section 103 of the Atomic Energy Act, requiring a construction permit. A copy of the Court's Order is attached hereto as Exhibit C.

9. In addition, this Commission has never analyzed the physical impacts of the construction of the Point Pleasant project. On May 21, 1983, there occurred a major rockslide, which caused upwards of one million dollars in damages, and threatens to reoccur. The draft EIS indicated the potential for hillside collapse after completion of construction, and this condition also will continue. Furthermore, there has been substantial physical damage to the area from construction, all of which the Licensing Board refused to consider in the Operating License proceedings. In the circumstances, reconsideration of the physical impacts on the environment of construction of the Point Pleasant diversion are required.

10. In addition to the foregoing, the effects not identified at the construction permit stage on the East Branch of the Perkiomen have been now identified in detailed testimony before the Pennsylvania Public Utilities Commission and Environmental Hearing Board. Copies of these transcripts are available to the staff on request. Based on this testimony, it is clear that there will be a significant

amount of erosion and destruction of stream habitat as a result of the construction of the project.

Based on all the foregoing, it is respectfully submitted that the NRC should now grant the Section 2.206 petition and reopen the Limerick construction permit proceedings. Because of the imminence of construction and decisions by this and other agencies, it is respectfully requested that a decision on this Petition be rendered within 30 days.

Respectfully submitted,

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

ROBERT J. SUGARMAN

Of Counsel

SUGARMAN & DENWORTH
121 S. Broad Street
Suite 510
Philadelphia, PA 19107
(215) 546-0162

Dated: December 16, 1983
185

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Application of Del-AWARE Unlimited Et Al Under Section 2.206 by mailing a copy of the same to the following persons this 8th day of December, 1983.

Christine N. Kohl, Esq., Chairman
Administrative Judge
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Stephen F. Eilperin
Administrative Judge
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Reginald L. Gotchy
Administrative Judge
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Ann Hodgdon, Esquire
Benjamin H. Vogler, Esquire
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Troy B. Conner, Jr. Esquire
Conner and Wetterhahn
1747 Pennsylvania Avenue
Washington, D.C. 20006

Edward G. Bauer, Esquire
Vice President & General Counsel
Philadelphia Electric Company
2301 Market Street
Philadelphia, PA 19101

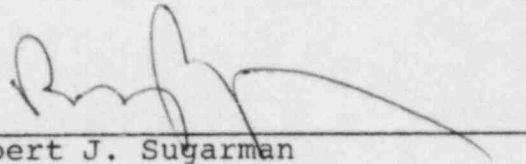
Secretary
U.S. Nuclear Regulatory Commission
Attn.: Chief, Docketing & Service Branch
Washington, DC 20555

Atomic Safety and Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Charles W. Elliott, Esquire
Brose and Poswistilo
1101 Building
11th & Northampton Streets
Easton, PA 18042

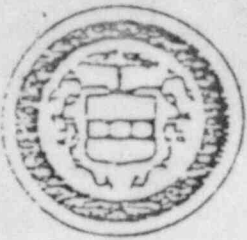
Martha W. Bush, Esquire
Kathryn S. Lewis, Esquire
1500 Municipal Service Building
15th and J. F. Kennedy Blvd.
Philadelphia, PA 19107

Jay M. Gutierrez, Esquire
U.S. Nuclear Regulatory Commission
Region I
631 Park Avenue
King of Prussia, PA 19406

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

Robert J. Sugarman

Dated: December 8, 1983



COUNTY OF BUCKS
OFFICE OF THE COMMISSIONERS

Administration Building, Doylestown, Pa. 18901

215-348-2911

215-752-0281

County Commissioners

ELAINE PETUCH ZETTICK, Chairman

ANDREW L. WARREN, Vice-Chairman

CARL F. FONASH

May 18, 1983

Neshaminy Water Resources Authority
2875 Old York Road
P. O. Box 378
Jamison, PA 18929

Attention: Mr. Joseph E. Johnson, Chairman

Dear Mr. Johnson:

Please be advised that we, the Bucks County Commissioners, hereby withdraw approval of contracts for the Point Pleasant Pumping Station and Combined Transmission Main heretofore executed between Neshaminy Water Resources Authority and Mergentime Corporation, Wertz Engineering Company, Reiter Construction Company, Inc. and Philips Brothers Electrical Contractors, Inc. This action is taken pursuant to Article I, Section 1.02 of the Agreement and Lease between the N.W.R.A. and the County.

We are demanding that the Authority immediately terminate construction at the site, and to terminate the Authority's contractual obligations involving the Point Pleasant Pumping Station and Combined Transmission Main.

We are further directing that the Authority take appropriate legal steps to amend the Trust Indenture, Agreement and Lease to eliminate the Point Pleasant Pumping Station and Combined Transmission Main from the "Project".

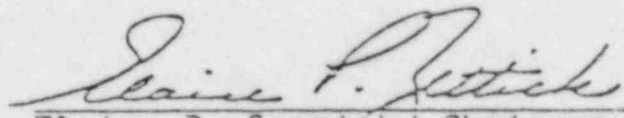
Also, please be advised that we are notifying the Montgomery County Commissioners that we will not be fulfilling our contract with Montgomery County to supply water from the

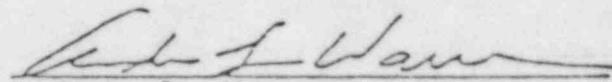
May 18, 1983

Point Pleasant Pumping Station.

We are also by separate communication notifying Philadelphia Electric Company that we are terminating our contract with them to operate the Point Pleasant Pumping Station.

Very truly yours,


Elaine P. Zettick, Chairman


Andrew L. Warren

710-11

ORDINANCE NO. 59

AN ORDINANCE SIGNIFYING THE INTENTIONS OF BUCKS
COUNTY TO ACQUIRE THE PROJECTS OF THE NESHAMINY
WATER RESOURCES AUTHORITY UNDER THE PROVISIONS
OF THE MUNICIPALITY AUTHORITIES ACT OF 1945.

BE IT ENACTED AND ORDAINED by the Board of County Commissioners of Bucks County, Pennsylvania, AND IT IS HEREBY ENACTED AND ORDAINED by the authority of the Board of Commissioners as follows:

Section 1. On June 13, 1966, by Ordinance No. 11 of Bucks County, the Board of Commissioners of Bucks County, Pennsylvania established a municipal authority under the provisions of the Municipality Authorities Act of 1945 (Act of May 2, 1945, P.L. 382, as amended) known as the Neshaminy Water Resources Authority.

Section 2. The initial projects which the Neshaminy Water Resources Authority was authorized to undertake included: to acquire, build, construct, improve, maintain and operate, own, lease, either in the capacity of lessor or lessee, flood control projects, low head dams, water works, water supply works, water distribution system, lakes and appurtenant parks, recreation grounds and facilities.

Section 3. The Neshaminy Water Resources Authority was originally created by the Bucks County Commissioners in part because of then applicable limits on long-term borrowing by a County, which limits could be lawfully evaded by the creation of a municipal authority.

Section 4. Since the time when the Neshaminy Water Resources Authority was organized, changes in applicable law, including the Local Government Unit Debt Act, have occurred which make any borrowings of the Neshaminy Water Resources Authority a part of the stated and acknowledged debt of the County of Bucks, thereby eliminating one of the original purposes for which the Neshaminy Water Resources Authority was created.

Section 5. The Neshaminy Water Resources Authority has established as its first project the construction and acquisition of facilities for the control of floods, development of water resources, the conservation of soil, and assistance to recreation, including the construction and acquisition of reservoirs for the purposes of water supply and flood control and the construction of one or more intakes and pumping stations to take water from the Delaware River, and the construction of parks and recreational facilities adjoining certain of the reservoirs. The project, subsequent to its initial design has been expanded to include construction of a water treatment plant and certain pumping facilities for treated water.

Section 6. The project, as undertaken by the Neshaminy Water Resources Authority, is either completed or contracts have been awarded which are a substantial step toward completion of the project.

Section 7. Bucks County now desires to acquire the project, pursuant to Section 321(A) of the Municipality Authorities Act.

Section 8. The reasons for Bucks County's intention to acquire the project include the results of a referendum question on the May 17, 1983 primary ballot, the concerns of the Bucks County Commissioners over the terms of certain contracts which require the issuance of bonded debt for a longer term than is thought possible or practical, and their desire to have direct control over the terms and financial impact of the project.

Section 9. Bucks County assumes all of the obligations, contracts, assets and liabilities of the Neshaminy Water Resources Authority with respect to the project, and the proper officers of the County are authorized and directed to take such actions and execute such documents as are necessary to assume all obligations incurred in connection with the project.

Section 10. All bonded indebtedness previously incurred by the Neshaminy Water Resources Authority shall, upon adoption of this Ordinance, be secured by the full faith and credit of the County of Bucks.

Section 11. All ordinances and resolutions, or parts thereof, inconsistent herewith are hereby repealed or rescinded.

DULY PRESENTED AND ENACTED at a meeting of the Board of Commissioners of the County of Bucks, Pennsylvania, held the day of , 1983.

Attest:

Elaine P. Zettick, Chairman

County Chief Clerk
(SEAL)

Andrew L. Warren

Carl F. Fonash

Board of County Commissioners



COUNTY OF BUCKS
OFFICE OF THE COMMISSIONERS

Administration Building, Doylestown, Pa. 18901

215-348-2911

215-752-0281

County Commissioners

ELAINE PETUCH ZETTICK, Chairman

ANDREW L. WARREN, Vice-Chairman

CARL F. FONASH

May 18, 1983

MAY 20 1983
MJB

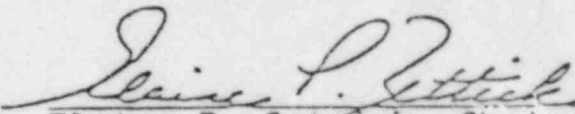
Montgomery County Commissioners
Montgomery County Court House
Norristown, PA 19401

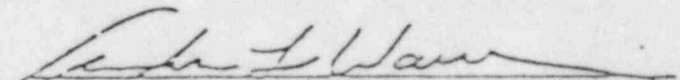
Attention: Mr. Paul B. Bartle, Chairman

Dear Mr. Bartle:

Please be advised that we, the Bucks County Commissioners, hereby terminate the County's obligation under the Neshaminy Water Supply System Water Sales Agreement dated January 14, 1981 to supply water to your County from the Point Pleasant Pumping Station.

Very truly yours,


Elaine P. Zettick, Chairman


Andrew L. Warren

cc: Ms. Rita C. Banning
Mr. Allen Meyers
Mr. A.W. Martin
Frederic M. Wentz, Esq.
Mr. Harry Borchers, Jr., - North Penn Water Authority
Mr. Peter Lukens - North Wales Water Authority
Mr. Robert A. Flowers - Neshaminy Water Resources Authority

RECEIVED MAY 26 1983

IN THE COURT OF COMMON PLEAS
OF BUCKS COUNTY

| | | |
|--------------------------------|---|-------------|
| DANIEL J. SULLIVAN, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| and | : | |
| | : | |
| PHILADELPHIA ELECTRIC COMPANY, | : | |
| | : | |
| Plaintiff-Intervenor, | : | |
| | : | |
| v. | : | |
| | : | |
| COUNTY OF BUCKS, et al., | : | No. 83-8358 |
| | : | |
| Defendants. | : | |

COMPLAINT IN EQUITY OF PLAINTIFF-INTERVENOR
PHILADELPHIA ELECTRIC COMPANY

1. Plaintiff-Intervenor Philadelphia Electric Company ("PECO") is a corporation organized and existing under the laws of Pennsylvania and has its principal place of business at 2301 Market Street, Philadelphia, Pennsylvania 19101.

2. Defendant County of Bucks ("Bucks County") is a political subdivision of the Commonwealth of Pennsylvania.

3. On or about June 13, 1966, Bucks County established, by ordinance of its Commissioners, the Neshaminy Water Resources Authority ("NWRA"), pursuant to the Municipality Authorities Act of 1945 ("the Act"), 53 P.S. §§ 301-322.

4. On or about February 12, 1980, PECO and NWRA entered into a written agreement, entitled Agreement Between the Neshaminy Water Resources Authority and Philadelphia Electric Company for the Construction and Operation of Water Supply Facilities ("the Construction and Operation Agreement"). This Agreement was approved in writing by Bucks County. A copy of the Construction and Operation Agreement is attached as Exhibit F to the Complaint filed by plaintiff Daniel J. Sullivan in this action and is incorporated herein by reference.

5. The Construction and Operation Agreement provides, inter alia, for NWRA to construct (or cause to be constructed) and to operate certain water facilities adjacent to the Delaware River at Point Pleasant, Bucks County, Pennsylvania ("the Project"). The Project is a component of the Neshaminy Water Supply System, which is the result of two decades of planning and review by government authorities and is designed to serve various water needs in Bucks and Montgomery Counties, including public water for Central Bucks County and Central Montgomery County, Pennsylvania. The Project is also designed and intended to provide supplemental cooling water for PECO's electric generating plant presently under construction at Limerick, Pennsylvania. The Construction and Operation Agreement provides that the Project shall supply water sufficient to meet PECO's needs for the Limerick plant, as set forth in the Agreement, in an amount up to 46 million gallons per day, as needed.

6. The Project constitutes an essential component for supplying supplemental cooling water for PECO's Limerick station. The Project, or various aspects thereof, including the present design of the supplemental cooling water system, have been the subject of approvals and permits issued by or pending before various federal and state agencies, including the Nuclear Regulatory Commission, the Army Corps of Engineers, the Delaware River Basin Commission, the Department of Environmental Resources, and the Public Utility Commission.

7. To date, PECO has invested approximately 2.7 billion dollars in the Limerick facility.

8. The Construction and Operation Agreement provides, in paragraph 16, that the Agreement shall not be assigned by NWRA to Bucks County except to the extent necessary to permit Bucks County to operate and maintain the Project, and Bucks County, by its Commissioners, signified its approval of the Agreement and accepted its terms and conditions by joining in its execution.

9. On or about January 14, 1981, Bucks County, NWRA, and Montgomery County entered into a written agreement, entitled Neshaminy Water Supply System - Water Sales Agreement - Bucks and Montgomery Counties ("the Water Sales Agreement"). A copy of the Water Sales Agreement is attached as Exhibit E to the Complaint filed by plaintiff Daniel J. Sullivan in this action and is incorporated herein by reference.

10. The Water Sales Agreement provides, inter alia, that Bucks County shall construct, or cause to be constructed by NWRA, certain water facilities, including the Project.

11. The Water Sales Agreement specifically recognizes the Construction and Operation Agreement and PECO's rights thereunder, and it contains provisions to safeguard PECO's rights under the Construction and Operation Agreement.

12. Pursuant to the two Agreements, NWRA entered into several contracts for construction of the Project. The aggregate amount of these construction contracts is in excess of 11 million dollars. Construction work on the Project commenced on or about January 10, 1983, and is in progress.

13. On or about May 18, 1983, Bucks County, by its Commissioners, sent letters to NWRA, Montgomery County, and PECO, copies of which are attached hereto as Exhibits A, B, and C, respectively, and incorporated herein by reference.

14. By these letters, Bucks County purported to terminate and abrogate its obligations under the Construction and Operation Agreement and the Water Sales Agreement. It further demanded that NWRA terminate construction of the Project and terminate NWRA's obligations under the two agreements, and it purported to withdraw its approval of NWRA's various construction contracts for the Project.

15. On or about May 25, 1983, the Bucks County Commissioners unanimously passed a Resolution purporting to terminate Bucks County's participation in the Project and to

terminate its obligations under the Water Sales Agreement and the Construction and Operation Agreement.

16. On or about June 20, 1983, Bucks County commenced an action in this Court against NWRA (No. 83-04408), seeking a preliminary and permanent injunction against all further construction of the Project. Preliminary relief was denied by the Court on July 14, 1983.

17. Since May 1983, the Bucks County Commissioners have repeatedly made public declarations, including sworn depositions by a majority of the Commissioners in this action, of their intention to prevent further construction and completion of the Project, and to impose an immediate sixty-day moratorium on all construction, pending further steps to terminate the Project.

18. On or about November 18, 1983, the Bucks County Commissioners passed Ordinance No. 59 of Bucks County. A copy of Ordinance No. 59 is attached as Exhibit G to the Complaint filed by plaintiff Daniel J. Sullivan in this action.

19. In Ordinance No. 59, Bucks County purports to:

(a) acquire the Project from NWRA, pursuant to § 18(A) of the Act, 53 P.A. § 321(A) (erroneously cited in the Ordinance as § 321(A) of the Act); and

(b) assume all the obligations and contracts of NWRA and respect to the Project.

20. Pursuant to § 18(A) of the Act, Bucks County cannot acquire the Project from NWRA unless, inter alia, it

assumes all of the obligations incurred by NWRA with respect to the Project.

21. Despite Bucks County's purported assumption of all obligations with respect to the Project, Bucks County and its Commissioners, by their public declarations, have made evident that they in fact have no intention of fulfilling and performing the obligations of NWRA under the various contracts relating to the Project, including the Construction and Operation Agreement and the Water Sales Agreement, but rather have adopted Ordinance No. 59 in furtherance of a scheme, plan, and program to terminate the Project.

22. Bucks County, through its Commissioners, passed Ordinance No. 59 with the specific purpose and intent of preventing and interfering with the performance of the Construction and Operation Agreement and the Water Sales Agreement, and thereby impeding and obstructing PECO's rights under those Agreements.

23. The halting or cancellation of the Project would cause irreparable harm to PECO. There are no feasible alternative sources of cooling water available that would permit the operation of PECO's Limerick plant to commence without substantial delays. Even if an alternative source can be found, it would be subject to lengthy delay for design and lengthy proceedings for approvals by various governmental authorities, including the Delaware River Basin Commission, the Nuclear Regulatory Commission, and the Department of Environmental Resources.

24. The Project is a unique work, the loss of which to PECO would not be wholly compensable in damages.

25. A moratorium on construction would irreparably delay completion of the Project because of permit limitations on when certain phases of the construction can be carried on.

26. Even if the Project is eventually constructed or if an alternative source of cooling water ultimately becomes available, PECO will have suffered substantial damage by reason of the delay in the operation of PECO's Limerick plant caused by Bucks County.

27. A year of delay will add approximately 400 million dollars to the cost of the Limerick facility. The full extent of the delay and, therefore, the total damages that would be sustained by PECO as a result of Bucks County's actions to halt the Project are not presently ascertainable because of the uncertainty as to the time and cost required to obtain the necessary approvals for an alternative source of supplemental cooling water and to design and construct such a facility.

28. In addition to the foregoing, the cost of replacement power because of delay in the commercial operation of the Limerick plant is estimated to exceed 185 million dollars per year.

29. Total damages to PECO and its customers as a result of the foregoing could substantially exceed two billion dollars.

COUNT I

Invalidation of Ordinance No. 59

30. The averments of paragraphs 1 through 29 above are incorporated herein by reference as if set out in full.

31. Ordinance No. 59, insofar as it pertains to the Project, is invalid because it was adopted in bad faith, since Bucks County does not intend to perform the obligations of NWRA with respect to the Project, including the obligations of NWRA under the Construction and Operation Agreement and the Water Sales Agreement, as required by § 18(A) of the Act.

32. Paragraph 16 of the Construction and Operation Agreement, specifically approved by Bucks County and its Commissioners, prohibits any assignment by NWRA to Bucks County, except to the extent necessary to permit Bucks County to operate and maintain the Project. Accordingly, Bucks County has waived any right that it may have under the Act to assume the Project during its construction phase, and Ordinance No. 59 is to that extent invalid.

33. Ordinance No. 59, insofar as it pertains to the Project, is invalid under § 14 of the Act, 53 P.S. § 317, because the revenue bonds issued by NWRA with respect to the Project have not been finally paid and discharged.

34. Ordinance No. 59, insofar as it pertains to the Project, is invalid because it purports to compel NWRA to convey the Project to Bucks County, in violation of the provisions of the Trust Indenture between NWRA and Doylestown

National Bank and Trust Company dated March 1, 1967, including section 9.08 thereof. A copy of the Trust Indenture is attached as Exhibit C to the Complaint filed by plaintiff David J. Sullivan in this action.

35. Ordinance No. 59, insofar as it pertains to the Project, is invalid because it is not in accordance with the requirements of the Local Government Unit Debt Act, 53 P.S. §§ 6780-1 to -609.

36. PECO lacks a complete and adequate remedy at law.

WHEREFORE, PECO requests that the Court enter an order:

(a) declaring Ordinance No. 59 to be invalid insofar as it pertains to the Project;

(b) preliminarily until final hearing, and permanently thereafter, enjoining Bucks County, and all persons acting on its behalf, from taking any action to assume ownership or control of the Project or any part thereof, or to compel NWRA to convey or release to Bucks County ownership or control of the Project or any part thereof, pursuant to or under color of any authority purportedly granted by Ordinance No. 59, or from taking any other action to halt, prevent, impede or delay the construction or completion of the Project;

(c) in the alternative, enjoining Bucks County, and all persons acting on its behalf, from taking any action to assume control of the Project or any part thereof until construction is completed;

(d) in the further alternative, appointing a receiver for the Project until construction is completed;

(e) awarding PECO its damages for the delay in construction caused by the unlawful passage of Ordinance No. 59; and

(f) granting such other and different relief as is just.

COUNT II

Injunctive Relief for Anticipatory Breach of Contract

37. The averments of paragraphs 1 through 36 above are incorporated herein by reference as if set out in full.

38. By its aforesaid conduct, Bucks County has unequivocally repudiated its obligations under the Construction and Operation Agreement and the Water Sales Agreement and the obligations of NWRA, which Bucks County has purported to assume, under those Agreements.

39. PECO lacks a complete and adequate remedy at law for Bucks County's anticipatory breach and repudiation of its contractual obligations.

WHEREFORE, PECO requests that the Court enter an order:

(a) preliminarily until final hearing, and permanently thereafter, enjoining Bucks County, and all persons acting on its behalf, from taking any action to assume control

of or to halt, prevent, impede, or delay the construction or completion of the Project;

(b) in the alternative, appointing a receiver for the Project until construction is completed;

(c) awarding PECO its damages for Bucks County's anticipatory breach and repudiation of its obligations; and

(d) granting such other and different relief as is just.

COUNT III

Injunction Against Tortious Interference by Bucks County

40. The averments of paragraphs 1 through 39 above are incorporated herein by reference as is set out in full.

41. By its letters dated May 18, 1983, by passage of Ordinance No. 59, and by other means, Bucks County, by its Commissioners, has willfully and maliciously interfered and attempted to interfere with and prevent the performance of NWRA's obligations to PECO under the Construction and Operation Agreement.

42. Bucks County has taken these actions with full knowledge of NWRA's obligations to PECO under the Construction and Operation Agreement and with the express intent of causing a breach of the Agreement. In this regard, Bucks County has acted without any legal justification and is guilty of willful misconduct.

WHEREFORE, in the alternative to Counts I and II, PECO requests that the Court enter an order:

(a) enjoining Bucks County, and all persons acting on its behalf, from interfering with or seeking to interfere with, prevent, or delay performance of the Construction and Operation Agreement;

(b) awarding PECO its damages sustained by the tortious interference committed by Bucks County thus far; and

(c) granting such other and different relief as is just.

COUNT IV

Specific Performance of the Construction and Operation Agreement

43. The averments of paragraphs 1 through 42 above are incorporated herein by reference as if set out in full.

44. Bucks County's purported termination of the Construction and Operation Agreement is without authority, good cause, or legal justification or excuse. All conditions precedent to the obligations imposed by the Agreement on Bucks County and on NWRA (which obligations Bucks County has purported to assume) have been satisfied.

45. PECO lacks a complete and adequate remedy at law.

WHEREFORE, in the alternative to Counts I and II, PECO requests that the Court enter an order:

(a) declaring that the Construction and Operation Agreement remains in full force and effect;

(b) directing Bucks County to specifically perform its obligations and those of NWRA under the Construction and Operation Agreement;

(c) prohibiting Bucks County, and all persons acting on its behalf, from taking any action to impede, prevent or delay the construction and operation of the Project, in accordance with the Construction and Operation Agreement;

(d) awarding PECO its damages for the delay in performance of the Construction and Operation Agreement caused by Bucks County's actions;

(e) directing such further action as is necessary or appropriate to implement the mandate of the Court, including, if necessary, the appointment of a receiver for the Project; and

(f) granting such other and different relief as is just.

COUNT V

Damages for Breach of the Construction and Operation Agreement

46. The averments of paragraphs 1 through 45 above are incorporated herein by reference as if set out in full.

WHEREFORE, PECO requests, in the further alternative, that judgment be entered in its favor and against Bucks County for such damages as are sustained by PECO by reason of Bucks County's breach of the Construction and Operation Agreement, in an amount to be determined at trial.

COUNT VI

Specific Performance of the
Water Sales Agreement

47. The averments of paragraphs 1 through 46 above are incorporated herein by reference as if set out in full.

48. PECO is an intended third-party beneficiary under the Water Sales Agreement.

49. Bucks County's purported termination of the Water Sales Agreement is without authority, good cause, or legal justification or excuse. All conditions precedent to the obligations imposed by the Agreement on Bucks County and on NWRA (which obligations Bucks County has purported to assume) have been satisfied.

50. PECO lacks a complete and adequate remedy at law.

WHEREFORE, in the alternative to Counts I and II, PECO requests that the Court enter an order:

(a) declaring that the Water Sales Agreement remains in full force and effect;

(b) directing Bucks County to specifically perform its obligations and those of NWRA under the Water Sales Agreement;

(c) prohibiting Bucks County, and all persons acting on its behalf, from taking any action to impede, prevent or delay the construction and operation of the Project, in accordance with the Water Sales Agreement;

(d) awarding PECO its damages for the delay in performance of the Water Sales Agreement caused by Bucks County's actions;

(e) directing such further action as is necessary or appropriate to implement the mandate of the Court, including, if necessary, the appointment of a receiver for the Project; and

(f) granting such other and different relief as is just.


COUNT VII

Damages for Breach of the Water Sales Agreement

51. The averments of paragraphs 1 through 50 above are incorporated herein by reference as if set out in full.


WHEREFORE, PECO requests, in the further alternative, that judgment be entered in its favor and against Bucks County for such damages as are sustained by PECO by reason of Bucks

County's breach of the Water Sales Agreement, in an amount to be determined at trial.


Howard Gittis
Bernard Chanin
Jeffrey S. Saltz

OF COUNSEL:

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Attorneys for Philadelphia
Electric Company

VERIFICATION

VINCENT S. BOYER hereby states that he is Senior Vice President of Philadelphia Electric Company and, as such, is authorized to make this statement on its behalf, and that the facts set forth in the foregoing Petition of Philadelphia Electric Company for Intervention are true and correct to the best of his knowledge, information and belief.

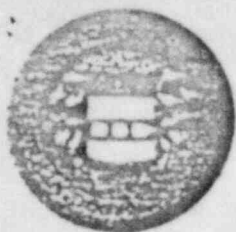
This statement is made subject to the penalties of 18 Pa. C. S. § 4909 relating to unsworn falsification to authorities.



VINCENT S. BOYER

Date: November 28, 1983

MAY 23 1983



COUNTY OF BUCKS

OFFICE OF THE COMMISSIONERS

Administration Building, Doylestown, Pa. 18901

215-348-2911

215-752-0281

County Commissioners

ELAINE PETUCH ZETTICK, *Chairman*

ANDREW L. WARREN, *Vice-Chairman*

CARI E. FONASH

May 18, 1983

Philadelphia Electric Company
21st and Market Streets
Philadelphia, PA 19103

Attention: Mr. Vincent Boyer
Vice President

Dear Mr. Boyer:

Please be advised that we, the Bucks County Commissioners, are hereby terminating our contract with you to operate the Point Pleasant Pumping Station pursuant to the Agreement between the Neshaminy Water Resources Authority and Philadelphia Electric Company dated February 12, 1980.

Very truly yours,


Elaine P. Zettick, Chairman

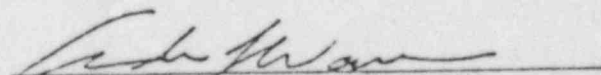

Andrew L. Warren

EXHIBIT "C"

Text of denial of temporary injunction

DANIEL J. SULLIVAN

COUNTY of BUCKS and ELAINE P. ZETTICK, ANDREW L. WARREN and CARL F. FONASH — Individually and as Members of the Board of Commissioners of the County of Bucks and NESHAMINY WATER RESOURCES AUTHORITY

Opinion and order of the court

On November 18, 1983, the Board of Commissioners of the County of Bucks adopted Ordinance 59 whereby the county sought to take over the project of the Neshaminy Water Resources Authority (NWRA) having to do with the water diversion project at Point Pleasant under and pursuant to the Municipality Authorities Act of 1945 and specifically Section 18 (A) of that Act. See the Act of July 10, 1957, P.L. 683, Section 3, 43 P.S. 321 (A). By virtue of that ordinance the county likewise purported to assume all of the obligations incurred by the Authority with respect to that project. Virtually immediately upon the enactment of that ordinance the plaintiff herein, as a taxpayer and as in the nature of a class action on behalf of all taxpayers of Bucks County, instituted this action in equity to enjoin the county from implementing that ordinance. The County of Bucks and the three County Commissioners were named as defendants as was the Authority. Contemporaneous with the filing of the action in equity an application was made for a temporary restraining order. A hearing was held on November 29, 1983. At the beginning of the hearing Philadelphia Electric Company (PECO) as well as the North Penn Water Company and the North Wales Water Company petitioned for and were permitted to intervene on the side of the plaintiff. PECO likewise filed its own complaint in equity and likewise sought a temporary restraining order.

At the hearing evidence was presented on behalf of the plaintiff as well as the Authority, PECO and the two water companies. No evidence was presented by the County although the depositions of Commissioners Carl Fonash and Andrew Warren were made part of the record on behalf of the plaintiff. Essentially it was the position of the plaintiff that on the present state of the record the ordinance was of no effect because the County is without power to assume the project and the obligations of the Authority, that what the County purports to do would be an infringement of contractual rights under prohibitions of the United States and Pennsylvania Constitution against impairment of contract, and further that irreparable harm would result if the County were to take over the project and the ensuing obligations.

A preliminary injunction will issue only where there is an urgent necessity to avoid injury which cannot be compensated for by damages and should never be awarded except when the rights of the plaintiff are clear. It should not issue unless greater injury will be done by refusing it than by granting it. *Heiman v. Dixon*, 293 Pa. 83 (1955).

The essential prerequisites for the issuance of a preliminary injunction are: (1) that it is necessary to prevent immediate and irreparable harm which could not be compensated by damages; (2) that greater injury would result by refusing than by granting it; (3) that it properly restores the parties to their status as they existed immediately prior to the alleged wrongful conduct. Of great significance is the determination that the activities sought to be restrained are actionable and that the injunction sought is reasonably suited to abate such activity. Unless the plaintiff's right is clear and the wrong manifest, a preliminary injunction will not generally be awarded. *Allee Home, Inc. v. Caddie Homes, Inc.*, 415 Pa. 177 (1963).

A preliminary injunction should only be granted where injury is imminent and, if committed, irreparable, and will not generally be awarded where the complainant's right is not clear or where the wrong is not manifest. *Keystone Guild, Inc. v. Passas*, 399 Pa. 48 (1960); *Hilltown Township v. Mager*, 6 Pa. Commonwealth Court 80 (1972); *Zebie v. School District of the City of Pittsburgh*, 4 Pa. Commonwealth Court 642 (1972); and *Alabama Binder and Chemical Corp. v. Pennsylvania Industrial Chemical Corp.*, 430 Pa. 214 (1963). The plaintiff must establish that it is his legal right, not doubtful or uncertain, to the specific relief sought. Otherwise the preliminary injunction should not issue. *Vulcanized Rubber and Plastic Company v. Scheckler*, 400 Pa. 405 (1960). In determining the propriety of a temporary restraining order the court does not make a searching inquiry into the facts, and particularly refrains from making any evaluation of the merits or the facts of the underlying dispute. *Ferloff Brothers, Inc. v. Cardonick*, 406 Pa. 137 (1962).

We do not believe that the plaintiff has established the clear legal right which constitutes a prerequisite to the issuance of a temporary restraining order.

We are not convinced on this brief record that it has been demonstrated that the County lacks the power under the relevant provisions of the Municipality Authorities Act to take over the project and the Authority's obligations under Section 18 (A) of the Act. The plaintiff relies in this regard upon *County of Atiflin v. Atiflin County Airport Authority*, 437 A.2d 761 (Commonwealth Court 1981). In that case the Commonwealth Court held that the lower court did not err in dismissing the action in mandamus brought by the County to implement the enactment of its ordinance under this section. The Court held that, mandamus representing an extraordinary remedy which will not be granted in doubtful cases and will issue only where there is clear and specific legal right in the plaintiff and a corresponding duty in defendant, the plaintiff's right was not sufficiently clear. That case was distinguished by an opinion of this court in *Lower Southampton Township Board of Supervisors v. Lower Southampton Township Municipal Authority*, 39 Bucks Co. L. Rep. 74 (1982).

On this record there are several distinguishing features. To begin with, in *Atiflin*, it was noted that there had been no compliance with the Local Government Unit Debt Act, the Act of April 28, 1978, P.L. 124, No. 32, Section 1, 53 P.S. 6780-1 et seq., preliminary to the assumption by the County of the debt obligations of the Airport Authority. In this case and on this record, it is established that the County complied with the provisions of this Act, or rather its predecessor, in 1973 with respect to the bond indentures of the Authority and that is evidenced by a certificate of compliance issued by the Department of Consumer Affairs.

The court in *Atiflin* was likewise concerned with and to some extent applied Section 14, 53 P.S. 317, of the Municipality Authorities Act and read that section together with Section 18 (A). The distinction between these two sections is apparent on their face and was graphically described in the *Lower Southampton Township* case. Essentially Section 18 (A) deals with the circumstance where the creating governing body determines to take over the project from the Authority it created thereby, logically, assuming all of the debts and obligations of the Authority. Section 14 deals with a situation where the Municipal Authority determines to divest itself of some or all of its projects by conveying them to the governing body. Obviously, the Legislature recognized that a Municipal Authority should not be permitted to foist its debts and obligations upon the governing body without its consent. Therefore, before a Municipal Authority may

divest itself of its projects, it must first demonstrate that it has paid and discharged all bonds issued by it under Section 14 but no such requirement is set forth in Section 18 (A). In fact, Section 18 (A) specifically provides that the governing body in implementing that section shall assume "all of the obligations incurred by the Authorities with respect to that project." We can understand why the Commonwealth Court in *Atiflin* may have been concerned about this particular facet of the case where there was no demonstrated compliance with the Local Government Unit Debt Act. In addition, the bond obligations in *Atiflin* specifically provided that those bond obligations shall not be assigned or transferred to any other party. No such prohibition is found in the bond indentures in the case before us. Therefore, plaintiff has failed to demonstrate a clear right to the relief he seeks based upon his argument of unlawfulness of the ordinance.

In this record we are unable to find sufficient evidence to establish the plaintiff's clear right to the injunction it seeks at this stage of the proceedings based upon the impairment of contract argument. Clearly both the United States and Pennsylvania State Constitutions prohibit any legislative action by the State or its units of local government which impair the integrity of existing contracts. See *United States Trust Company of New York v. New Jersey*, 431 U.S. 1, 97 S.Ct. 1505, 52 L. Ed. 2d 92 (1977); *Pennsylvania Labor Relation Board v. Zelem*, 458 Pa. 399 (1974) and *Helicon Corp. v. Borough of Brownsville*, 445 A.2d 118 (Pa. Commonwealth Court 1982). However, the only thing that has happened thus far in this case is the adoption of the ordinance in question. No actions have been taken as yet by the County to implement that ordinance. Obviously there would be no impairment of contract rights if the County takes over the project, assumes all debts and other obligations, and then proceeds to fulfill the contract obligations which it would then have assumed. The thrust of the plaintiff's contention in this regard is, essentially, an anticipatory breach by the County based upon certain public statements made by the County Commissioners, which are not of record, and the depositions of both Commissioners Fonash and Warren. Commissioner Warren in his deposition clearly and unequivocally testified that it is his intention once the ordinance is implemented to stop the project and breach various of the contracts entered into by the Authority (and in some cases the County as well). However, Commissioner Fonash was somewhat less forthcoming. Essentially, it was his testimony that he desired that the project be stopped but that his intention at the time of the deposition was merely to declare a moratorium of 60 days on the construction itself, pursuant to the construction contract, and then attempt to negotiate some alternative with the contracting parties. It is far from clear from his deposition that it is his intention, under all circumstances, to flat out breach the various contracts with PECO and Montgomery County. Although it may be argued that the implementation of this ordi-

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its projects. It must first demonstrate that it has paid and discharged all obligations by it under Section 14 but no such evidence is set forth in Section 18 of the ordinance. (A) specifically prohibits a governing body in implementation of the ordinance shall assume "all of the obligations of the project." We can understand the Board's position in *Attilin* may be concerned about this particular case where there was no demonstration with the Local Government Act. In addition, the bond in *Attilin* specifically provided that obligations shall not be assumed to any other party. No obligation is found in the bond in the case before us. Therefore, the Board failed to demonstrate a clear relief he seeks based upon his unlawfulness of the ordinance. We are unable to find sufficient evidence to establish the plaintiff's position in the injunction it seeks at this time. The proceedings based upon the contract argument. Clearly, the United States and Pennsylvania courts prohibit any legislative action of the State or its units of local government which impair the integrity of existing contracts. See *United States Trust Co. v. New Jersey*, 431 U.S. 1, 97 S. Ct. 1158 (1977); *Pennsylvania Board of Zoning v. Zelem*, 459 Pa. 399, 339 A.2d 115 (Pa. Commonwealth 1965). However, the only thing that has been said in this case is the adoption of the ordinance. No actions have been taken yet by the County to implement the ordinance. Obviously there would be no breach of contract rights if the County over the project, assumes all obligations, and then fulfill the contract obligations. The plaintiff's contention in this case is essentially, an anticipatory breach based upon certain public actions made by the County Commissioners are not of record, and the deposition of Commissioners Fonash and Commissioner Warren in his deposition and unequivocally testified that the ordinance is implemented and the project and breach of the contracts entered into by the County in some cases the County as well. Commissioner Fonash was less forthcoming. Essentially, it is testimony that he desired that the project be stopped but that his intention at the deposition was merely to create a moratorium of 60 days on the construction and then attempt to negotiate some arrangement with the contracting parties. It is clear from his deposition that it is under all circumstances, to flatly deny the various contracts with PECO and Montgomery County. Although it may be the implementation of this ordinance

may work, in some way, a forfeiture on the outstanding bonds, that matter is far from clear in view of Fonash's testimony that it would be his intention to stand behind and pay off the bonded indebtedness as required by the indentures. Furthermore, we are not satisfied, on this record, that the implementation of the ordinance, standing alone, would somehow impair the security of the bond holders. Compare *United States Trust Co. of New York v. New Jersey*, supra. Essentially, the difficulty with plaintiff's position at this time, is that the only thing that has happened thus far has been the enactment of an ordinance, solely a legislative action by the Board of Commissioners.

Footnote 1: There is a further question of whether the breach of a contract resulting in an award of damages constitutes an unconstitutional impairment of contract.

It is true that at the hearing there was some evidence of the possible damages which could occur to the County if the contracts with PECO and Montgomery County were breached. There was likewise testimony regarding the damages due to the contractor himself. These latter damages, although running into several million dollars, are not of sufficient magnitude as to constitute irreparable injury. However, there was testimony from PECO to the effect that a breach of its contract and the failure to deliver water to its Limerick plant when the first reactor is anticipated to be ready for operation, sometime in the late summer of 1964, would result in damages of approximately \$50,000,000.00 per month until such water is delivered and the reactor put into operation. Quite obviously, if the ultimate were to occur and it were to take PECO anywhere from two to five years, as testified, to find an alternative source of cooling water for its reactor, the damages are not only probably irreparable, (to the taxpayers of Bucks County as well as PECO) but in fact staggering. However, until a sufficient and adequate record can be made to establish clearly and unequivocally that this is what may reasonably be anticipated to occur, we do not believe that a temporary restraining order is appropriate absent a clear showing of right.

We believe that the decision we reached today is not only consistent with but dictated by the constitutional principle of separation of powers and the judicial principle of judicial restraint. It is presumed that municipal officers act properly for the public good. *Robinson v. Philadelphia*, 400 Pa. 80 (1960) and *Hyam v. Upper Montgomery Joint Authority*, 395 Pa. 446 (1960). Courts will not sit in review of municipal actions involving discretion, in the absence of proof of fraud, collusion, bad faith or arbitrary action equating an abuse of discretion. *Blumenschein v. Pittsburgh Housing Authority*, 379 Pa. 556 (1954). In the absence of proof of fraud, collusion, bad faith or abuse of power, courts do not inquire into the wisdom of municipal actions and judicial discretion should not be substituted for administrative discretion. *Goodman Appeal*, 425 Pa. 23 (1967) and *Parker v. Philadelphia*, 391 Pa. 242 (1958). See also *Webber v.*

Philadelphia, 431 Pa. 179 (1970).

No court has the power to strike down a statute except for constitutional reasons, even where it believes the statute unwise or productive of socially undesirable results. *Estate of Armstrong v. Pennsylvania Board of Probation*, 405 A.2d 1099 (Pa. Commonwealth Court 1979). The judiciary should not intrude into the legislative area of government unless it is demonstrated that the legislative body, whether it be at the State level or municipal, has acted in a manner violative of the Constitution, Acts of the General Assembly or the organic law of the municipality or in a manner wherein the legislative body lacks the power or authority to act. The wisdom of the legislative act is not within the court's judgment. *Mastriangelo v. Buckley*, 433 Pa. 352 (1969). It is not sufficient that opponents disagree with the wisdom of the legislative body's action. A court of equity will not substitute its determination of what may be wise for the decision of the appropriate governmental body, absent a showing of bad faith, or abuse of power. *Parker v. Philadelphia*, supra. The question of the wisdom of the acts of a legislative body are, ordinarily, not for the court, there being a presumption that the legislative officials act lawfully in the exercise of their discretion. We recognize that it is the duty of the court to inquire into that exercise, and if it is found that the discretion of the other branch of government has been abused, we may interfere and relieve against oppressive or arbitrary action. *Steining v. Allegheny County*, 332 Pa. 474 (1936). However, it is the duty of this court to execute the legislative will in the manner prescribed in statutes so long as no constitutional provision is violated, regardless of the hardship of a particular case or whether our opinion as to what the law ought to be coincides with that of the Legislature. *Chester School District's Audit*, 301 Pa. 203 (1930).

The means chosen by the Legislature must be reasonably designed to achieve permissible ends. However, the role of the judiciary in scrutinizing the particular approach selected by the legislative body is a limited one. We do not, at the invitation of a disgruntled taxpayer or taxpayers, reassess the wisdom and expediency of alternative methods of solving public problems. It is the province of the Legislature and not the judiciary to determine the means necessary to confront and solve public problems. Our inquiry is limited to a determination of whether the means selected are so demonstrably irrelevant to the policy of the Legislature as to be arbitrary and irrational. *Tosto v. Pennsylvania Nursing Home Loan Agency*, 460 Pa. 1 (1975). As was stated in *Leahy v. Farrell*, 362 Pa. 52 (1949):

"Under the system of division of governmental powers it frequently happens that the functions of one branch may overlap another. But the successful and efficient administration of government assumes that each branch will cooperate with the others. As was said by the late Chief Justice Moschisler (when a Judge in Common Pleas No. 1 of Philadelphia) reported in

Commonwealth v. Agathos, 210 Pa. 372, 406 A.2d 1158, the presumption always is that public officers will perform a public trust not that they will default therein or abuse that trust, and we prefer to believe that the legislature have performed, and will continue to perform, their trust, rather than to stand in any fear of a wrong being attempted at some time in the future by one branch of the government against another even if the power to commit such a wrong is admitted to exist, which we thoroughly believe is not so." (Italics in original).

Bearing these principles in mind, we believe that the evidence presented at the hearing was insufficient to justify the entry of the temporary restraining order because that would constitute a direct intrusion into the legislative and executive functions of the Board of County Commissioners. We emphasize that our action today merely denies the applications for a temporary restraining order. We have not reached nor could we, the ultimate merits of the controversy engendered by these complaints of equity. Thus far the Board of County Commissioners has merely enacted an ordinance which, on the surface, it has the right to do. Thus far no further actions have been taken. Although they may be anticipated as their results may be ominous, we are not in position at this time to make these determinations. We do not, at this time, know whether the Board of County Commissioners will in fact breach the various contracts involved in these proceedings. Only one of three Commissioners has unequivocally stated his intention to do so. The second has equivocated, the third incumbent has not been heard from and her term of office will end on the first Monday of January, 1964. The person elected to replace that Commissioner has likewise not been heard from. Therefore, at this time, to attempt to assume what the actions of the Board of County Commissioners will be is purely speculation on a basis upon which we do not believe we may take the serious step of intruding ourselves into the legislative function.

The foregoing should not be construed in any way as a determination that upon an appropriate record the injunctive relief sought will not finally be granted. We do not decide whether or not, ultimately, *Attilin* would be a basis upon which to find that the County's actions in attempting to take over the project are unlawful. We are unable to determine at this time that the actions taken by the County in the future, whatever they may be, will have the effect of impairing various of the contract rights before us. Without knowing these matters, we obviously are unable to determine with sufficient clarity that there will be irreparable harm.

For the foregoing reasons we deny the application for a temporary restraining order.

And now, to wit, this 5th day of December 1963, it is hereby ordered that the applications for temporary restraining orders be denied.

By the Court
Isaac S. Ca