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May 23, 1984

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\*NOT ADMITTED IN PA.


Lawrence Brenner, Chairman  
Dr. Richard F. Cole  
Dr. Peter A. Morris  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Dear Judges:

Re: Application of Philadelphia Electric  
Company, 50-352

In view of your action of April, 1983, on Del-AWARE's Motion to Reopen, it is deemed contrary to your direction to submit any further pleadings. However, in the interest of keeping you fully informed, I am enclosing a copy of a letter which I addressed to the Commission Chairman on this date. It arises from the misinformation in the Commission's briefing of April 24, and the inconsistency between the policy expressed by the Commission and the actions taken by various portions of the staff on the Point Pleasant diversion.

Sincerely,



Robert J. Sugarman

/vc  
Enclosure

cc: Troy B. Conner, Jr., Esquire  
Ann Hodgdon, Esquire

IN THE COURT OF COMMON PLEAS  
OF BUCKS COUNTY, PENNSYLVANIA

DANIEL J. SULLIVAN,

Plaintiff,

and

PHILADELPHIA ELECTRIC COMPANY,  
et al.,

Plaintiff-Intervenors,

v.

COUNTY OF BUCKS, et al.,

Defendants

No. 83-8358-05-5

AFFIDAVIT OF VINCENT S. BOYER

1. I, VINCENT S. BOYER, am employed by Philadelphia Electric Company ("PECO"), as its Senior Vice President - Nuclear Energy. I am submitting this affidavit to supplement the allegations of PECO's Amended Complaint, by averring certain developments that have occurred since the filing of the Amended Complaint, which support PECO's present request for a preliminary injunction.

2. As the Amended Complaint sets forth, on February 9, 1984, the Board of Neshaminy Water Resources Authority ("NWRA") ordered an immediate halt to all construction at the Point Pleasant Project. As the ostensible reason for halting construction, NWRA cited its alleged concerns with the quality of work performed by Mergentime

Corporation ("Mergentime"), the prime contractor on the Project. NWRA based its stop-work order on section 13.10 of the General Conditions of the Mergentime contract, which authorizes NWRA to stop work if Mergentime's performance is defective. A copy of the General Conditions is attached hereto as Exhibit A.

3. On February 16, 1984, on application of Mergentime and after a hearing, the Court entered a preliminary injunction directing that certain river and canal work proceed despite NWRA's stop-work order. On March 2, 1984, following a hearing the previous day, the Court entered a further order clarifying the scope of the February 16 injunction.

4. At a special meeting on March 22, 1984, the NWRA Board passed a resolution, a copy of which is attached hereto as Exhibit B. In this resolution, the NWRA Board resolved that all further work on the Point Pleasant Project would be suspended for a period of ninety days, commencing upon completion of the work required by the Court's order of March 2, 1984. The suspension was expressly made under section 15.1 of the General Conditions, permitting suspension of work without cause, rather than under section 13.10. In the same resolution, the NWRA Board further resolved that during the period of suspension of work, NWRA would attempt to obtain a final judicial determination of whether NWRA's contracts with PECO, Montgomery County, and Mergentime are valid and enforceable.

5. At the same special meeting on March 22, 1984, the NWRA Board passed another resolution, a copy of which is attached hereto as Exhibit C. In this resolution, the NWRA Board resolved that during the suspension of work under NWRA's contract with Mergentime, NWRA would review the final report, which it expected to receive shortly from Hill International, Inc., concerning the quality of Mergentime's work under the contract. The NWRA Board further resolved that prior to the end of the period of suspension of work, NWRA would inform Mergentime of its tentative position with respect to Mergentime's contract, in the event of a final judicial determination compelling NWRA to complete the Point Pleasant Pumping Station and the Combined Transmission Main.

6. Subsequent to these resolutions, NWRA and Mergentime negotiated an agreement providing for the payment by NWRA to Mergentime of compensation for work performed thus far by Mergentime, and certain items of work yet to be completed. The agreement was set forth in a written Settlement Agreement dated April 26, 1984. A copy of the Settlement Agreement is attached hereto as Exhibit D.

7. The Settlement Agreement provides for the payment by NWRA to Mergentime of all progress payments for work performed by Mergentime under its contract with NWRA through April 1984, in the total amount of \$729,672.80. NWRA further agreed to pay to Mergentime the retainage for all work performed under the contract, in the amount of \$408,995.60.



NWRA also agreed to make payment to Mergentime under Change Order No. 7, covering damages and additional costs arising from flooding of the project site, in the amount of \$365,507.00. NWRA further agreed to make payment to Mergentime under Change Order No. 8, representing payment of various claims by Mergentime for extra work, delay damages, scope changes, and similar items, in the amount of \$953,283.00, representing 48% of the amounts claimed by Mergentime for such items.

8. In addition, it was agreed in the Settlement Agreement that Mergentime would use its best efforts to seek to complete by May 15, 1984, all work required to be completed under the Court's orders of February 16 and March 2, for which NWRA would pay Mergentime the sum of \$289,900.00. It was further agreed that upon the completion of such work, Mergentime would perform site cleaning and demobilization activities, for which NWRA would pay Mergentime the sum of \$115,690.00.

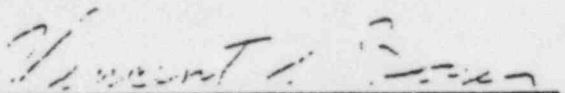
9. The Settlement Agreement further provides that if, within the ninety-day suspension imposed by NWRA, NWRA directs Mergentime to resume work under its contract, Mergentime will recommence all construction activity within thirty days of such notice.

10. PECO's Limerick Generating Station is currently scheduled to be ready for fuel loading in the fall of 1984. It is likely that beginning in May of 1985, the Schuylkill River will be unavailable to PECO because of government-imposed flow

and temperature restrictions, and PECO will therefore be unable to operate Limerick if the Point Pleasant water facilities are not completed and operating by that time. Indeed, the mere fact that the status of the Point Pleasant Project remains uncertain compromises PECO's ability to bring Limerick to the earliest possible commercial operation date. The task of bringing a complex project such as a nuclear generating station into operation, with the manifold regulatory approvals for the various components, is inevitably complicated and delayed by an interruption in the completion of any major component.

11. Accordingly, any further delay in the completion of the Point Pleasant Project threatens to cause PECO irreparable harm.

This statement is made subject to the penalties of 18 Pa. C. S. § 4904 relating to unsworn falsification to authorities.

  
VINCENT S. BOYER

Dated: May 7, 1984