

AUG 27 1984

NOTE TO: D. G. Eisenhut, Director  
Division of Licensing  
Office of Nuclear Reactor Regulation

THROUGH: T. M. Novak, Assistant Director  
for Licensing  
Division of Licensing

FROM: A. Schwencer, Chief  
Licensing Branch No. 2  
Division of Licensing

SUBJECT: R. SUGARMAN COMPLAINT ABOUT STAFF TELECON WITH  
PHILADELPHIA ELECTRIC COMPANY ON APRIL 17, 1984

An intervenor in the Limerick proceedings, Mr. R. Sugarman, has recently taken the position in a letter to Chairman Palladino dated July 26, a letter to the ASLB dated July 13, and a motion before the ASLB dated August 3 that the NRC staff had engaged in an "improper contact with PECO, concealed from intervenors and the public, and contrary to the staff's public representations, and to 10 CFR 27.80."

The contact referred to was an April 17, 1984 telephone conversation between A. Schwencer, J. Lehr, M.J. Campagnone of the NRC staff and T. Robb, and H. Dickenson of PECO. The purpose of the call was to gain information on the status of construction of the Point Pleasant Diversion System, the Supplementary Cooling Water System (SCWS) approved to divert water from the Delaware River, through a reservoir and pipelines and down the Perkiomen Creek to the plant for operation of the main cooling towers. This diversion would be needed during warm weather months when temperature/flow limitations preclude taking such water from the Schuylkill River adjacent to the plant.

A portion of Mr. Sugarman's July 13, 1984 letter to the ASLB, stated that the PECO telecon notes "intimated that the Commission might not grant license to PECO if it does not have off-site water and cannot run the plant in the absence thereof." This is contrary to what the notes actually indicate. As reflected in the notes, I indicated that we did not have specific information on PECO's plans for doing startup operations in the event such operations were conducted at a time of non-availability of either the Schuylkill River adjacent to the plant or the SCWS. Our notes (taken by John Lehr) indicated that the applicant said that in this event all low power (up to 5%) testing could take place using the inventory in the cooling tower basins. The telecon notes support that the staff entertained putting the above on the record, but the applicant preferred that this not be done.

There is nothing of substance in the notes which indicates that the staff has treated the issues in any manner varying from publicly stated positions.

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With respect to Mr. Sugarman's concern that the contact was "informal" it had the same degree of formality that all telephonic conversations between the staff and the applicant have. There is nothing to mislead the public in this issue since any decision by the NRC would be based on information available to all parties.

With respect to Mr. Sugarman's concern on the circulation of notices of meeting, the notes make no mention of a meeting, nor was a meeting even discussed. .

Also, with respect to this informal "contact" being contrary to practice and regulation, enclosed are two responses, one issued by the Applicant on August 2, 1984, to Mr. Chilk and one, in draft, to be issued by the NRC staff to the Appeal Board on August 27, 1984, in response to Mr. Sugarman's above mentioned motion. In both of these responses, it's pointed out that Section 2.102(a) for Rules of Practice expressly states that the staff may request any one party to the proceeding to confer with the staff informally.

In summary, I believe Mr. Sugarman's arguments regarding the telecon notes present a very distorted and inaccurate image of the nature, content and propriety of the communication which took place.

A. Schwencer, Chief  
Licensing Branch No. 2  
Division of Licensing

Enclosures:

1. NRC staff notes
2. Applicant 8/2/84 letter
3. Draft NRC staff response

~~DL:LB#2/PM~~  
~~RMartin.bdm~~  
~~8/1/84~~

AE:EHES

J. LEHR

08/12/84

DL:LB#2/BC  
ASchwencer  
8/27/84

DL:AD/E  
TMNovak  
8/27/84

Distribution:

Docket File  
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P. Shuttleworth  
R. Martin  
AD/L. P. Obrien DL#646

NRC Staff Notes

~~There would be one like vessel present.~~

1/17/84 Telecon Ted Roff B. Scherer  
J. Lehr Harris Didenon M.J. Conpage

PECO can load fuel and do all low power testing w/o reliance to any water other than what is already in cooling tower basins. They would use unit 1 towers only. This program would involve

38 days testing

20 days low power testing

6 hrs of best rejection to condensers.

Status of Water Related Issues (PT. Pleasant)

1. PUC ruling allowing only DMEB thru pipeline & Lake E. Br. Res. Cr.:

Judge ruled adverse to PECO. Appealed by PECO in 1/84. Appealed by Del-Aware also (they wanted no pumping). PUC staff have reviewed appeals. PUC rulings have been delayed. PUC will study this further. No date for ruling set.

PECO has asked for a finding of necessity for Bradshaw & pipeline. PUC will wait to see what happens to Pt. Pleasant purchase, etc. (because of new members of NWRA, adverse to project) before it rules on Bradshaw.

The PUC only allowed 1 pump to be installed @ Bradshaw purchase 2 units @ Liverick need 4 pumps for full power. 1 pump is not

sufficient for full power operation of 1 unit @ Limerick NOK is  
it sufficient to maintain the DRBC mandated augmentation plan  
in the E. Br. Perchman C.

2. Stop Work order issued by NWRA for PT. Pleasant pump house  
& hillside work (March 20th):

Canal closed contractor to continue the (a) in-river work  
and (b) the installation of the 72" pipe under the Penna. canal  
as a result of urging by PaDER and Pa Fish Comm. (So that the  
work would be finished, the equip removed so as not to interfere  
with the Amer. Shad run and the recreational activities along  
the canal.)

Work continued in river thruout March. Essentially all  
work in river is finished. Some problems encountered in removing  
equipment from the river due to high water in early April. Still  
working on canal crossing. Expect to finish by end of April.  
Canal restoration/maintenance work accomplished by Pa during  
the shut-down.

3. Some property or easements yet to be acquired for combined transmission  
main between hillside and Bradshaw Res. inter.

Trans. 80-85% of needed land has been acquired. But new  
leads of NWRA have not been anything re-acquiring the last 3 or 4  
properties. There will be a separate contract for the pipeline  
installation in the land portion of the trip to Bradshaw. The contract  
has not been set. NWRA is at the point of condemning the land  
to the remaining pieces for pipeline ROW.



Bradshaw has construction:

PCE ownership & construction. Equip has been ordered and ordered for fabrication. Field work awaiting PUC ruling. Normally, structures such as pump house @ Bradshaw would get approval from PUC under a finding of necessity (usually involves more than one local jurisdiction so PUC approval normally sought to save time). But PUC said no - get a bldg permit. Permit has not yet been granted.

Construction Schedule:

Bradshaw: accelerated work schedule. Can complete it, with pipeline to E. M. and outlet structure < 10 months.

Merchandise: expected to be ready w/ pump house and pipeline to hill top by 10/1/84.

Combined Transmission Main... couple of months work to complete.

4. Del. H. Anne. Dec. wanted relaxation of Schuykill R. WQ stds. to provide need for PT Pleasant.

4 Flow and Temp. criteria that trigger use of PT Pleasant are DRBC/DER. Del. Anne wanted relaxation of temp criterion & asked DER to re-examine (Temp criterion not now as important as it was because of improvements to downstream waste treatment facilities). DER found that the flow requirement would make PT Pleasant necessary anyway, so both criteria were kept intact.

4 Blue Marsh - early in project, DRBC & DER said any application for water use by PCE from Blue Marsh would be based on other water use allocations made for steel water. These needs have not all come to pass as of today. But the amount of water remaining available would not be sufficient for even one unit @ Limerick. This would also preclude

other water use.

Status of Perkinsian-to-Limerick Pipeline:

Perkinsian Creek intake structure and 7 mile pipeline:

essentially complete

pipeline complete and has been hydrostatically tested.

pumping station complete

wedge wire screen intake installed in creek

Startup testing to begin in early May

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## CONNER &amp; WETTERHAHN, P.C.

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OF COUNSEL

NOT ADMITTED IN D.C.

(202) 633-3500

CABLE ADDRESS: ATOMLAW

August 2, 1984

Mr. Samuel J. Chilk  
Secretary  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

*Vogler* <sup>II</sup> *Hodgdon*  
*Wright* *Lewis*  
*Rutberg*  
*FF*

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

Dear Mr. Chilk:

This letter is on behalf of Applicant Philadelphia Electric Company in response to the letter to Chairman Palladino from Robert J. Sugarman, Esq., dated July 13, 1984. Mr. Sugarman stated that his letter supplements "our letter of May 23, 1984." Initially, we did not know whether Mr. Sugarman was referring to his letter to Miss Hodgdon of the Office of Executive Legal Director or to Mr. Denton, Office of Nuclear Reactor Regulation, both dated May 23, 1984. Later, when furnished a copy by the Staff, we realized that Mr. Sugarman was referring to a letter to the Commissioners. We had not received a copy from Mr. Sugarman.

In the same regard, Mr. Sugarman states at the outset that he is enclosing "correspondence directed to the Licensing Board and the Appeal Board," which was not attached to the copy of the letter mailed to us. Therefore, we have no idea what particular correspondence Mr. Sugarman has now furnished the Commission (or the Boards), or whether the Applicant has ever received it. It is difficult to understand why Mr. Sugarman persists in failing to serve the parties and their counsel with documents furnished to the Commission in view of the admonition by the Deputy General Counsel by letter dated July 5, 1984 to do so. The Deputy

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General Counsel reminded Mr. Sugarman at that time that the NRC Docketing and Service Branch had already advised him that the failure to serve all parties with such materials constitutes a prohibited ex parte communication.

Mr. Sugarman states that the NRC Staff "has had a secret contact with PECO" regarding supplemental cooling water for Limerick. It is claimed that this informal "contact" is "contrary to practice and regulations." As you are aware, the Commission's rules against ex parte communications under 10 C.F.R. §2.780 do not apply to contacts between the NRC Staff and an applicant. The Commission's boards have consistently ruled that the NRC Staff may confer off the record with any party to a proceeding. See, e.g., Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-493, 8 NRC 253, 269 (1978); Northeast Nuclear Energy Company (Montague Nuclear Power Station, Units 1 and 2), LBP-75-19, 1 NRC 436, 437 (1975). Indeed, Section 2.102(a) of the Commission's Rules of Practice expressly states: "The staff may request any one party to the proceeding to confer with the staff informally."

Finally, Mr. Sugarman refers to a decision rendered by the Pennsylvania Environmental Hearing Board on June 18, 1984 regarding compliance with the Clean Water Act in the diversion of water from the Delaware River to the East Branch Perkiomen Creek. This is also the subject of a letter from Mr. Sugarman to Mr. Denton dated July 13 concerning his previous letter dated May 23, 1984. Mr. Denton responded to the May 23, 1984 letter, rejecting Mr. Sugarman's position. Mr. Sugarman's July 13, 1984 letter requests that both his recent and previous letters now be treated nunc pro tunc as a "proper application under Section 2.206." In our view, which we shall communicate to the Staff, this attempted procedure is not authorized by Part 2. A contrary interpretation would permit anyone making an allegation to the Staff to invoke the formidable processes of §2.206 in any instance in which the Staff found his allegations to be unwarranted.

Nonetheless, in view of Mr. Sugarman's pending petition for relief before the Director, we shall respond to the Director accordingly.

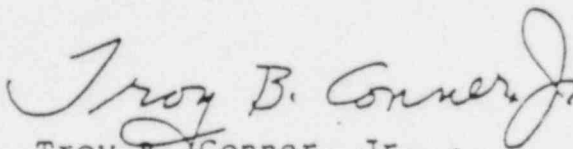
In any event, Applicant notes that Mr. Sugarman's stated "understanding" regarding the need to treat diverted water in order to comply with water quality standards is unsupported by any finding or ruling by any cognizable



agency, including the Environmental Hearing Board. Rather, this conclusion is evidently based upon the opinion of certain engineers employed by Bucks County, which is presently in litigation against Applicant with regard to completion of the Point Pleasant project.

Accordingly, the matters raised by Mr. Sugarman are without merit and will, in any event, be addressed more formally by the Director in his decision pursuant to Section 2.206.

Sincerely,

A handwritten signature in cursive script that reads "Troy B. Conner, Jr." The signature is written in dark ink and is positioned above the typed name.

Troy B. Conner, Jr.  
Counsel for Philadelphia  
Electric Company

TBC/dlf  
cc: Service List