

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

02 APR 26 1982
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In the Matter of :
PHILADELPHIA ELECTRIC COMPANY : Docket Nos. 50-352
Limerick Generating Station, : 50-353
Units 1 and 2 :

RESPONSE OF LIMERICK ECOLOGY ACTION TO
LICENSEE'S SUGGESTION OF MOOTNESS



On April 19, 1982, without leave of the ASLB, Philadelphia Electric Company (PECO) filed a document entitled "Licensee's Suggestion of Mootness to Licensing Board Based Upon the Recent Statement of Commission Policy On Use of Probabilistic Risk Assessment." Petitioner Limerick Ecology Action (LEA) wishes to take this opportunity to respond to that filing.

It should be noted first that the entire premise of the licensee's filing is a 3 1/2 page speech by the NRC Chairman, Nunzio Palladino, delivered at a conference sponsored by a non-governmental body, the American Nuclear Society. Thus, while the title of PECO's filing refers to a "Recent Statement of Commission Policy," it is obvious that Chairman Palladino's informal remarks before the ANS do not constitute official Commission policy, and the ASLB may not lawfully take cognizance of them as such.

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In any event, Chairman Palladino's remarks do not support PECO's Contention that PRA "has no place in licensing proceedings". (Licensee, p.2)

Chairman Palladino, in his remarks, notes that pending promulgation of the final policy statement on safety goals for nuclear power plants (see 47 F.R. 7023), the Commission "has directed the NRC staff to prepare a step by step action plan on how to use the goals and numerical guidance, in conjunction with PRA, within the regulatory process". PECO, at p. 2 of its filing, distinguishes "licensing process" from "regulatory process" and supposes the Chairman to have intended to exclude the regulatory process from the licensing process.

LEA submits that this was not Chairman Palladino's intention; LEA further contends that to permit use of the PRA in the "regulatory process", (i.e., in the decision-making process on whether the plant complies with the NRC regulatory mandate) but not to permit review of the PRA, or issues to be raised thereon in the licensing process would deprive LEA of a meaningful hearing, and would be contrary to the Atomic Energy Act.

Chairman Palladino notes that "individual licensing decisions will continue to be based principally on compliance with [NRC] regulations", (emphasis added), indicating that PRA will play some role in the licensing decision, contrary to licensee's assertion.

In fact, Chairman Palladino states: "We on the Commission have directed that special attention be given by the staff to using these [PRA] techniques in a variety of applications, provided that the data base warrants such use. We believe it has a place in licensing reviews ..." (Emphasis added.) See page 2, Palladino's Remarks.

The staff has already stated that it will use the PRA in carrying out its obligations under the Commission's June 13, 1980 "Statement of Interim Policy: Nuclear Power Plant Accident Considerations Under NEPA of 1969," and in its determination of whether the Limerick facility can be operated without undue risk to the public health and safety. See Affidavit of Albert Schwencer and Ashok C. Thadani Regarding Schedule for Staff Review of PRA, paragraphs 3 and 6.

The ASLB is without power to restrict the Staff review of the Limerick plant: "The licensing board does not have the power under 10 CFR §2.718 or any other regulation to direct staff performance vel non, of its independent responsibilities." New England Power Co., et al., NEP, Units 1 and 2, Dockets STN-50-568, 569, LBP-78-009, 7 NRC 271 278 (1978), citing Public Service Co. of Indiana (Marble Hill), ALAB-316, 3 NRC 167, 170 (1976).

If the staff intends to use the PRA as part of its licensing review, LEA must have the opportunity to raise issues

regarding the adequacy of that document.

No Commission regulation or Statement of Policy precludes the use of the PRA, and the contentions regarding the Limerick probabilistic risk assessment must therefore be admitted.

Respectfully submitted,


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CERTIFICATE OF SERVICE

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I hereby certify that copies of the foregoing Response of Limerick Ecology Action to Licensee's Suggestion of Mootness were served, by deposit in the United States mail, first class, postage prepaid, on April 23, 1982, upon the following:

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