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USNRCUNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'84 APR 18 A10:32

Before the Atomic Safety and Licensing Board OF SECRETARY
OF ENERGY
REGULATING & SERVICE
BRANCH

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

APPLICANT'S ANSWER TO MOTION BY LIMERICK ECOLOGY
ACTION TO STRIKE SELECTED PORTIONS OF APPLICANT'S
TESTIMONY ON ONSITE EMERGENCY PLANNING

Pursuant to the Order dated March 15, 1984 issued by the presiding Atomic Safety and Licensing Board ("Licensing Board" or "Board"), ^{1/} intervenor Limerick Ecology Action ("LEA") filed a motion to strike certain portions of the written testimony filed by Philadelphia Electric Company ("Applicant") on April 2, 1984. Applicant opposes LEA's motion to strike on the ground that the objections it has raised would, at most, bear upon the weight to be accorded the testimony sought to be stricken.

The sole objection raised by LEA in its motion to strike relates to certain portions of the testimony which LEA characterizes as hearsay. Nonetheless, LEA acknowledges

1/ Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), Docket Nos. 50-352-OL and 50-353-OL, "Order Confirming Miscellaneous Oral Record Rulings" (March 15, 1984) (slip op. at 5).

that hearsay evidence is admissible in administrative proceedings such as this, and correctly states that, under 10 C.F.R. §2.743(c), the governing consideration is whether the evidence is "reliable."

The Appeal Board has long since ruled that even evidence which is "entirely hearsay . . . is generally admissible in administrative proceedings," including NRC licensing cases.^{2/} The Appeal Board more recently reiterated this holding in Catawba, where it added: "Thus, whether certain evidence falls within an exception to the hearsay rule is beside the point."^{3/} And in San Onofre, the Appeal Board held: "Whether evidence is or is not hearsay is significant only insofar as it bears upon the question of its reliability."^{4/}

Accordingly, LEA's objections to alleged hearsay are without legal merit because they do not relate to the admissibility of the testimony, but rather to the weight it should be accorded. This Licensing Board has so ruled in a similar context, denying an earlier motion to strike because the objections "go to the weight to be accorded to the

^{2/} Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 412 (1976).

^{3/} Duke Power Company (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-669, 15 NRC 453, 477 (1982).

^{4/} Southern California Edison Company (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-717, 17 NRC 346, 366 (1983).

evidence, but do not establish that the evidence is so unreliable that it can be determined at this time to be entitled to zero weight."^{5/} LEA's objections as to hearsay are therefore argumentative rather than evidentiary.

Applicant's officials responsible for coordinating the availability of offsite fire department equipment and personnel are certainly knowledgeable with regard to the procedures applicable to their dispatch by Montgomery County (paragraph 40) as well as their availability for Limerick (paragraph 54). Those individuals (including representatives of Applicant's consultant, RMC) who have negotiated and discussed the agreement with Pottstown Memorial Medical Center likewise have sufficient personal involvement and knowledge to testify as to the arrangements which have been agreed upon with the hospital (paragraphs 43 and 56).^{6/} Finally, Applicant's emergency planners have obviously had

^{5/} Limerick, supra, "Memorandum and Order Ruling on Motions to Strike Testimony" (December 1, 1983) (slip op. at 8). The Board in the Pebble Springs proceeding ruled similarly that "the evidence adduced need not be accepted in its entirety, and likewise, need be given only the weight that the [Licensing Board] concludes is persuasive." Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), Docket Nos. 50-514 and 50-515, "Order Denying Intervenor's Motion to Strike Certain Testimony of Gordon T.C. Taylor" (November 4, 1976) (slip op. at 5).

^{6/} While LEA has characterized its objection as one relating to the witness's "qualifications," it is clear that its objection is directed to the witnesses' knowledge rather than their qualifications.

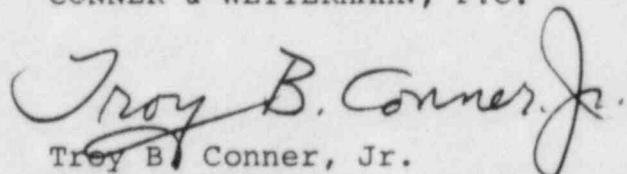
enough contact with the United States Department of Energy and the Pennsylvania Bureau of Radiation Protection to testify as to the responses which are planned by those organizations (paragraph 60). Such testimony concerning discussions with representatives of offsite organizations upon which Applicant has based its Emergency Plan provisions and procedures is inherently reliable.

Conclusion

For the reasons discussed above LEA's motion to strike raises no valid evidentiary objection, but merely argues the weight to be accorded the evidence. Its particular concerns as to reliability are properly addressed to cross-examination of the witnesses.

Respectfully submitted,

CONNER & WETTERHAHN, P.C.

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

Troy B. Conner, Jr.
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Robert M. Rader

Counsel for the Applicant

April 16, 1984

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Philadelphia Electric Company)

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OFFICE OF SECRETARY
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Docket Nos. 50-352
50-353

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Answer to Motion by Limerick Ecology Action to Strike Selected Portions of Applicant's Testimony on Oniste Emergency Planning," dated April 16, 1984 in the captioned matter have been served upon the following by deposit in the United States mail this 16th day of April, 1984:

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