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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION '84 MAY 14 A10:20

Before the Atomic Safety and Licensing Board

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

LEA REPLY TO APPLICANT'S MOTION TO COMPELL ANSWERS
TO ITS FIRST SET OF INTERROGATORIES
AND REQUEST FOR PRODUCTION OF DOCUMENTS
ON SEVERE ACCIDENT CONTENTIONS

By telephone conference on May 7, 1984, counsel for Applicant and LEA discussed LEA's responses to Applicant's discovery, and through clarification of the discovery requests, reached agreement regarding a supplementation of LEA's Answers. That Supplement was mailed by Express Mail to the Applicant's counsel on May 9, 1984, and by regular mail to NRC Staff and the Board. Indeed, LEA believes that its Supplement goes beyond the applicable regulatory requirement for supplementation of discovery responses. See 10 CFR §2.740(e).

From Applicant's Motion, it is apparent that the only remaining discovery dispute between Applicant and LEA relates to Interrogatories 1,2,3,7,22-23.

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Applicant's essential complaint seems to be that LEA's response does not address events in futuro, but is limited to LEA's present intention.

Answers to Interrogatories must be complete and, of course, true. LEA's Answers to Interrogatories 1, 2,3,7 and 22-23 were complete and true.

Interrogatories 1, 2, 3 are specifically aimed at LEA's "intention". LEA's intention has been fully and completely disclosed.

With respect to Interrogatories 22-23, LEA's Answer mentioned that it had no intention of presenting a direct case on the City's contentions. This observation was not required by the Interrogatories, was superfluous, and offered for Applicant's information and assistance. LEA does not understand how information not even sought by the interrogatory can now be deemed "incomplete", and the basis of a Motion to Compell.

In reality, Applicant does not seek full and complete answers to its "discovery" requests. Instead, it seeks some sort of commitment from LEA not to present any witness on these contentions - even any whom LEA has not identified, nor intends to present.

This is not what the interrogatories ask, nor is it the proper function of discovery.^{1/}

Applicant confuses its right to discovery with a right to control opposing counsel's case preparation. Simply because Applicant files discovery requests does not mean that LEA's case preparation must come to an end - if a witness is identified post discovery, but prior to the deadline for testimony, LEA may file testimony and present its witness - subject only to LEA's obligation to supplement its discovery pursuant to 10 CFR §2.740(e). If documents come into LEA's possession post discovery, (for example, through NRC Staff production of additional documents), LEA may use those documents in cross-examination. To hold otherwise would permit counsel to effectively terminate another party's case preparation by the timing of its discovery requests.

In addition, the relief sought by Applicant's Motion:

The Board should further order that neither the City nor LEA may present evidence in its case in chief nor cross examine as to any information or document not previously furnished to Applicant by one week prior to the commencement of the hearing (i.e., May 15, 1984). (Motion, p.5).

is overbroad, without legal basis, and if granted would fundamentally violate the due process rights of both City and LEA.

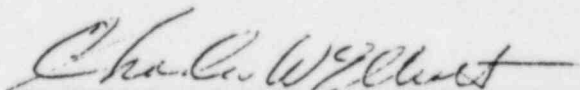
^{1/} "Discovery" is exactly what the name implies - to "dis" "cover" information known to another party. What is not known cannot be "discovered".

The only conceivable basis for such relief would be a default in discovery obligations so severe as to warrant sanctions. But even if the Board were to conclude (and LEA believes that no such conclusion is warranted) that there has been some default with respect to its Answers to Interrogatories (or supplement thereto), Applicant's discovery was quite limited, and never requested "all information or documents" relevant to LEA's contentions. It only sought "information and documents relevant to the specific interrogatories". (Interrogatory No. 7).

Thus, to be entitled to the relief it seeks, Applicant would have to show that its discovery called for all information relating to every conceivable aspect of each contention, and that a serious default occurred with respect to each such aspect.

LEA respectfully submits that no such showing is possible.

For all the above reasons, Applicant's Motion should be dismissed with respect to LEA.



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Dated: May 10, 1984