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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

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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
SUBSTITUTE CERTAIN ONSITE EMERGENCY
PLAN IMPLEMENTING PROCEDURES IN
APPLICANT EXHIBIT 33"

SUMMARY

LEA objects to "Applicant's Motion to Substitute Certain Onsite Emergency Plan Implementing Procedures in Applicant Exhibit 33" ("Motion") because it improperly seeks to reopen a record now-closed on LEA's on-site emergency planning contentions, it seeks to substantively change procedures relevant to LEA's contentions (and thus change Applicant's testimony in the proceeding), and seeks to destroy LEA's right of cross-examination.

ARGUMENT

The record on LEA's contentions on on-site emergency planning is now closed. Tr. 10,274. Plainly, in order to

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"substitute" the "revised" emergency plan implementing procedures, they must be received into evidence. For them to be received into evidence, the record must be reopened. Thus, the relief sought by the Motion, to "substitute" exhibits already admitted into evidence, is highly irregular and improper. The Applicant's Motion should be denied on this basis alone.

However, even treating the Motion as a Motion to Reopen the Record, the Motion must be dismissed. It is fundamental that to reopen an evidentiary record, a party must establish inter alia, the existence of newly discovered evidence having a material bearing upon the proper result in the proceeding. Kansas Gas & Electric Co. (Wolf Creek Generating Station) ALAB-462, 7 NRC 320, 338 (1978).

The facts asserted on the face of Applicant's Motion, and the face of the revised procedures Applicant seeks to "substitute", are fatal to Applicant's Motion.

First, the "evidence" in the form of the procedures is plainly not "newly discovered" -- it was in existence and prepared by Applicant weeks prior to the hearing in this matter. Applicant's counsel's oversight does not excuse it.^{1/}

^{1/} Indeed, it is not merely a question of oversight by counsel. Representations by counsel on the record were made regarding the authenticity of the procedures, which were accepted by LEA's counsel (Tr. 9764). In addition, Applicant's witness Ms. Kankus testified under oath that the testimony and exhibits were true and correct, and adopted them as her testimony. (Tr. 9769)

Second, if Applicant's Motion is to be believed, the changes in the procedures "do not affect the function or mission of the individuals or groups responsible for carrying out the procedures or the manner in which their activities under the procedures are performed", (Motion, p. 2), and each witness, and counsel "has determined that none of the revisions would require a change in his or her testimony before the Board".

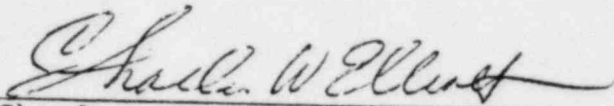
Thus, if Applicant's Motion is correct, the revisions could not possibly have a "material bearing upon the proper result in the proceeding", and Applicant has failed to make the necessary showing to reopen the record.

Applicant's Motion was unsupported by affidavit or any other document. LEA's review of the procedures sought to be "substituted" show material, substantive changes, directly relevant to LEA's contentions.

This revised testimony is impermissibly late (plainly, as it comes after the hearing). It is offered without any sponsorship, or indicia of reliability.

However, more darkly, Applicant's "substitution" procedure would utterly deprive LEA of its fundamental right of cross examination on those procedures upon which Applicant expects the Board to rely.

For all of these reasons, LEA respectfully requests
the Board to deny Applicant's Motion in all respects.



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Dated: May 9, 1984