

United States of America
Nuclear Regulatory Commission
Before the Atomic Safety and Licensing Board

DOCKETED
USNRC

Philadelphia Electric Company
(Limerick Generating Station
Units 1 add 2)

'84 MAY 18 A10:47

Docket Nos 50- 352 and 353 OL

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

CITIZEN ACTION IN THE NORTHEAST CONTENTION I: FINANCIAL QUALIFICATION OF
PHILADELPHIA ELECTRIC COMPANY TO OPERATE AND DECOMMISSION THE LIMERICK GS.

Introduction to Citizen Action in the Northeast (CANE)

CANE is a citizen action group. CANE has been involved in many educational forums, providing services to senior and low income citizens such as filling out low income energy assistance forms, and providing non-partisan forums for political debates. CANE has also been active in many energy related activities such as home energy audits. The headquarters for CANE is at 1411 Princeton St. Philadelphia, PA, 19111, and the telephone number is 725 7825. However, CANE does not wish to be added to any mailing lists as the non-lawyer, legal representative of CANE is Marvin I. Lewis who is presently on the mailing and distribution lists for this hearing. A separate mailing for CANE is unnecessary and burdensome. The present mailings to Intervenor Lewis will more than suffice.

CANE has many lawyers, accountants, bookkeepers, and treasurers within its membership and Board. Because of CANE's familiarity with financial matters, CANE wishes to participate in this most timely and important financial qualification contention. CANE's legal representative at this time will be Marvin I. Lewis. Intervenor Lewis is presently a participant in this hearing and also the Energy Committee Chairman for CANE. CANE will not be participating in Intervenor Lewis' other contentions and reserves the right to replace Intervenor Lewis with other legal representation at a later date. CANE has a mailing list of 200 plus members. CANE regularly meets on the first Monday of the month at its headquarters for a Board meeting. Energy Committee meetings are usually held monthly. Also public forums are also held monthly. Other activities are held as needed. Please call ahead if you wish to attend any CANE activities as place and time may be changed due to scheduling conflicts.

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PDR ADOCK 05000352
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Introduction.

On March 24, 1982, the NRC amended its financial qualifications rule to exempt public utilities from the requirement that they demonstrate their financial qualifications to operate and decommission their plants as a condition of receiving an operating license. 47 Fed. Reg. 13750, Mar 31, 1982. Intervenor Lewis proceeded to contest, in a very limited way, the financial qualifications of Philadelphia Electric to operate LGS before the Pennsylvania Public Utility Commission. Both ALJ Klovekorn and Commissioner Taliaferro informed me that the PUC could not investigate the financial qualifications from the viewpoint of safety as that was the province of the NRC. (PA PUC Docket I-80100341.)

Nonetheless, the PA PUC ordered PECO to cancel or defer LGS#2 on the basis of lack of demonstrated need. (PA PUC I-80100341 Meeting and Order Dec 16, 1983.)

Although LGS #2 was deferred, no record delved into the question of safely operating LGS#1 or the utilities ability to decommission either Unit 1 or 2. Further the NRC rule precluded any litigation of financial qualifications before the NRC.

This was a real Catch 22. The US Court of Appeals for the DC recognized it as such and overturned March 24 NRC amendment. New England Coalition on Nuclear Pollution v. NRC, No. 82-1581 (February 7, 1984.) The Court's determination that the amendment was invalidly promulgated has the effect of reinstating the original financial qualifications rule. CANE therefore takes the opportunity, formerly denied by the illegal amendment, to file this challenge to PECO's financial qualifications to operate and decommission Limerick Generating Station Units 1 and 2.

Financial Qualifications Rule

Pursuant to 10CFR Para 2.104(c)(4), the scope of issues that can be raised in an OL hearing includes:

Whether the applicant is technically and financially qualified to engage in the activities to be authorized by the OL in accordance with the regulations in this chapter... See also 10 CFR PP 50.40(b), 50.57(a)(4). To obtain an OL, an Applicant must submit to the NRC "information sufficient to demonstrate to the Commission the financial qualifications of the applicant" to carry out the activities for which the license is sought. 10 CFR §50.33(f). This information includes a demonstration ... that the applicant possesses the funds necessary to cover estimated operating costs or that the applicant has reasonable assurance of obtaining the necessary funds, or a combination of the two.

Id. More specifically the OL applicant must show that it

... Possesses or has reasonable assurance of obtaining the funds necessary to cover the estimated costs of operation for the period of the license or for 5 years, whichever is greater, plus the estimated costs of permanently shutting the facility down and maintaining it in a safe condition.

The establishment of adequate financial qualifications by a utility is essential to a finding that a nuclear power plant can and will be operated safely during its life. As the Licensing Board recognized in Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2) LBP 81-24, 14NRC 175, 196 (1981):

...The current rule has an important purpose. It is possible for an applicant to scrape by financially during the construction stage. That is, due to unanticipated costs increases and backfit requirements, it might barely manage to complete construction. If it does just scrape by, then the company's financial straits could interfere with its sound judgment in safety matters. Safety measures that might be taken by a financially healthy company might not be taken.

Thus the financial health of a utility is integrally related to its ability to operate a plant safely.

Contention I.

Applicant has not demonstrated that it is financially qualified to operate and decommission the Limerick nuclear power plant in compliance with 10 CFR pp 50.33 (f), 50.40(b), 50.57(a)(4), and Appendix c to Part 50.

Basis

Philadelphia Electric Company is the utility which is building and planning to operate Limerick Generating Station Units 1 and 2. Many factors bring the financial qualifications of PECO into doubt:

Cost of Limerick GS Units 1 and 2 have ballooned from 400 million plus to 6.4 billion plus (14 X). Continuing and worsening regulatory backfits and requirements have delayed completion many years. Falling electric demand eliminated the need for more powerplants in the PECO service area.

A constantly worsening regulatory environment at the PA PUC which ordered the deferral of #2. Admission by PECO that it is seeking a loan rather than a bonds sale to protect its already weakened financial condition from additional stress (Inquirer "PE seeks loan for Limerick"). A national viewpoint which considers nuclear utilities poor financial risks (Inquirer @2-29-84 p11). Intervenor Lewis was a participant in the PA PUC I-80100941 Docket in which the PA PUC ordered the deferral or cancellation of Limerick #2. He asked questions of Messrs Paquette and Boyer of the PECO. They both told him to his face that their, on the record, estimates of the cost of LGS were solid. Subsequently PECO has raised the estimated cost of LGS hundreds of millions of dollars more than the PECO testimony at PA PUC. PECO has also had a 1.1 Billion dollar loan plan disapproved by the PA PUC.

Considering the severity of the public admissions by PECO about its weakening financial condition and its inaccurate testimony on the PA PUC record, there is no reason to assume that PECO can operate and decommission another nuclear plant with its attendant financial burden.

Need for consideration of contention.

The information and admissions of PECO demonstrates a utility perched upon the brink of financial disaster. The company's serious financial problems are likely to impinge on its ability to operate a plant in a safe condition.

Considering PECO's financial crisis, it cannot provide the Commission with the necessary assurance that it is financially qualified to operate the Limerick GS in compliance with NRC safety requirements. Therefore, the Licensing Board should admit this contention and establish a discovery period for this contention with expedience.

Satisfaction of Requirements for late filed contention.

- 1) I had participated and objected while the NRC was formulating its financial requirements rule change. I knew at the time that a financial requirements rule change would cause any such contention to be ruled out of order in the Limerick hearing and therefore saw no reason to file at that time and pursued what I could thru other litigation. (PA PUC I-80100341) The issue of safe operation in a financially troubled PECO is still unheard and the NECNPNRC decision in the US Court of Appeals in DC No 82-1581 gives me the opportunity to file in this hearing.
- 2.) There is no other place to be heard. This is the only place to hear a financial qualifications contention that goes to the heart of the matter of whether PECO can operate LGS safely considering its financial difficulties. I would be happy to go to other tribunals but they would just probably kick the case back here saying that this Board had jurisdiction.
- 3.) CANE and Intervenor Lewis can be expected to assist in developing a sound record. CANE has lawyers, accountants, corporate treasurers and bookkeepers in its membership. Also Intervenor Lewis represented CANE at the PA PUC at I-80100341 wherein many financial questions were raised and answered inaccurately by PECO representatives such as the final cost of Limerick.
- 4.) CANE's interest is not represented by any other party. However, if another party wishes to be lead intervenor on this issue, CANE is very open to suggestion as such an arrangement would conserve CANE and Intervenor Lewis' resources.
- 5.) CANE's intervention would not significantly broaden the scope of the hearings. Many contentions have not gotten to the evidentiary stage and even more have discovery to be scheduled. Unless the utilities financial condition worsens even more than at present, there is no reason to believe that this contention could not be handled expeditiously. Even if the utilities financial condition worsens seriously, then the worsening financial condition would be even more reason to hear this contention.

CANE believes that conditions for late filed contentions have been more than adequately met. However, barring CANE from litigation on this contention would be very unfair since CANE was originally precluded from filing this contention due to an illegal rule change on the part of the NRC.

From any reasonable standpoint CANE should be allowed to litigate this contention. Conversely, even from a prudent standpoint, CANE should be allowed to litigate this contention. A prudent Board would allow this contention on the basis that this contention could cause a license to be disallowed. There is much evidence existing on the record that PECO is not financially sound enough to operate LGS safely. (PA PUC I-80100341)

Respectfully submitted,

Marvin I. Lewis

Energy Chairman and legal representative for CANE
Please do not add CANE to mailing list.

One copy to Marvin I Lewis

6504 Bradford Ter

Philadelphia PA 19149

215 289 5964.

Marvin I Lewis 3/5/84.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

BEFORE ADMINISTRATIVE JUDGES:

Lawrence Brenner, Chairman
Dr. Richard F. Cole
Dr. Peter A. Morris

In the Matter of
PHILADELPHIA ELECTRIC COMPANY
(Limerick Generating Station,
Units 1 and 2)

Docket Nos. 50-352-OL
50-353-OL

April 27, 1984

ORDER SCHEDULING PROPOSED FINDINGS

Proposed findings of fact and conclusions of law ("proposed findings") on LEA Contention I-42 (environmental qualification) and on LEA's onsite emergency planning contentions shall be received by the Board and participating parties (and promptly thereafter by the remainder of the service list) on the following schedule:

- June 11 - Applicant's proposed findings.
- June 21 - Intervenor's (and governmental participants') proposed findings.
- July 2 - NRC Staff's proposed findings.
- July 9 - Applicant's proposed reply findings.

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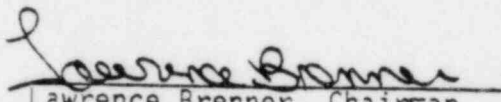
If the evidentiary hearing on AWPP Contention VI-1 (welding), which will begin on May 7, 1984, at 1:30 p.m., is concluded by May 11, proposed findings on Contention VI-1 also shall be received on the above schedule.

The page limitations (typed, double-spaced) are: For Contention I-42 - 30 pages for findings and 15 pages for the reply; for the onsite emergency planning contentions - 60 pages for findings and 30 pages for the reply. Tr. 10,288-90.

The parties are reminded of the standing order in this proceeding that, pursuant to 10 C.F.R. § 2.754(b), participating parties are required to file proposed findings, and the failure to do so may be deemed a default.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD


Lawrence Brenner, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland
April 27, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the Matter of
PHILADELPHIA ELECTRIC COMPANY
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April 27, 1984

COURTESY NOTIFICATION

As circumstances warrant from time to time, the Board will mail copies of its memoranda and orders directly to each party, petitioner or other interested participant. This is intended solely as a courtesy and convenience to those served to provide extra time. Official service will be separate from the courtesy notification and will continue to be made by the Office of the Secretary of the Commission. Unless otherwise stated, time periods will be computed from the official service.

I hereby certify that I have today mailed copies of the Board's "Order Scheduling Proposed Findings" and "Notice of Resumption of Evidentiary Hearing" to the persons designated on the attached Courtesy Notification List.

Valarie M. Lane
Valarie M. Lane
Secretary to Judge Brenner
Atomic Safety and Licensing
Board Panel

Bethesda, Maryland

Attachment

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for Mr. Rodney Johnson,
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Air and Water Pollution Patrol
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Ambler, PA 19002

Phyllis Zitzer
Limerick Ecology Action
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Pottstown, PA 19464

Mr. Marvin I. Lewis
6504 Bradford Terrace
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Angus Love, Esq.
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Mr. Robert L. Anthony
Friends of the Earth in
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Mr. Joseph H. White, III
15 Ardmore Avenue
Ardmore, PA 19003



Citizen Action in the NorthEast

1411 PRINCETON AVENUE, PHILADELPHIA, PA 19111

PHONE: 725-7825

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I am a member of CANE
I request the NLC hearing
Board to allow Marvin L. Lewis
to represent CANE at the
Limerick operating license
hearings.

Judy Spaser
CANE Treasurer

STATE - PENN
COUNTY - PHILA

SUBSCRIBED BEFORE ME THIS 10TH DAY OF
MAY, 1984

Abraham Rubin

Notary Public



Citizen Action in the NorthEast

1411 PRINCETON AVENUE, PHILADELPHIA, PA 19111

PHONE: 725-7825

I am a member of CANE,
I request the NRC
Hearing Board
to allow
Marvin I. Lewis
to represent CANE
at the Limerick Operating
License Hearing

Louis H. Weinstein

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CANE



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JUN 10

Citizen Action in the NorthEast

1411 PRINCETON AVENUE, PHILADELPHIA, PA 19111

PHONE: 725-7825

BRANCH

As a member of "CANE" I request
the NRC Hearing Board to allow
MARVIN I LEWIS to represent CANE
at the hearing for the Limerick
Operating License Hearings.

Rose Visdeman
2201 Remont St. - C112
Phila. Pa - 19115

State Penna
County - PHILA

SUBSCRIBED BEFORE ME THIS 10TH DAY OF MAY, 1984

Abraham Goldin

NOTARY PUBLIC



Citizen Action in the NorthEast

1411 PRINCETON AVENUE, PHILADELPHIA, PA 19111

PHONE: 725-7825

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I am a member of CANE
I request the NRC Hearing
Board to allow Marvin F. Levine
to represent CANE at the Linerick
operating License hearings.

John R. J. P. [Signature]
Pres., CANE

STATE - PENN
COUNTY - PHILA

SUBSCRIBED BEFORE ME THIS 10TH DAY OF MAY, 1988

Abraham G. [Signature]
NOTARY PUBLIC



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Citizen Action in the NorthEast

1411 PRINCETON AVENUE, PHILADELPHIA, PA 19111

PHONE: 725-7825

BRANCH

I am a member of CANE
I request the NRC Hearing
Board to allow Marvin Lewis
to represent CANE at the
Dimerick Operating License
Hearings.

Anne Rosenberg
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2201 Tremont St.
Phila. Pa. 19115

CR34633

State - Penn

County - Phila

SUBJECT: BUREAU OF THE

1017 MAY OF 1984

Abraham Gold -

voluntary public