

240

DOCKETED
USNRC

'84 MAY 21 A11:33

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Before the Atomic Safety and Licensing Board

In the Matter of)

Philadelphia Electric Company)

(Limerick Generating Station,
Units 1 and 2))

Docket Nos. 50-352
50-353

OL
OL

APPLICANT'S ANSWER TO "OBJECTIONS AND REQUEST
FOR RECONSIDERATION BY THE COMMONWEALTH OF
PENNSYLVANIA REGARDING SPECIAL PREHEARING
CONFERENCE ORDER RULING ON ADMISSIBILITY OF
OFFSITE EMERGENCY PLANNING CONTENTIONS"

On April 30, 1984, the Commonwealth of Pennsylvania filed its objections to the Special Prehearing Conference Order issued by the presiding Atomic Safety and Licensing Board ("Licensing Board" or "Board") ruling on the admissibility of offsite emergency planning contentions.^{1/} The Commonwealth sought reconsideration of the Board's holding which denied the admission of Commonwealth-1 in part, ruling that "the Limerick emergency plans need not include arrangements for the procurement and distribution of permanent record dosimeters."^{2/}

^{1/} Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP-84-18, 19 NRC ____ (April 20, 1984).

^{2/} Id. (slip op. at 22).

7503

The Commonwealth raises essentially two points. First, it suggests, erroneously in Applicant's view, that the Board utilized principles of res judicata^{3/} in applying the findings in the Three Mile Island proceeding.^{4/} The Licensing Board, in fact, merely stated that the Commonwealth's plans for distribution and use of dosimetry during an emergency have not materially changed since that proceeding.^{5/} Thus, the Board did not find that the Commonwealth was collaterally estopped from relitigating the issue of predistribution of permanent record dosimetry ("TLD's").^{6/}

^{3/} Objections and Request for Reconsideration by the Commonwealth of Pennsylvania at 8 n.1 (April 30, 1984) ("Commonwealth Objections").

^{4/} Metropolitan Edison Company (Three Mile Island, Unit 1), ALAB-698, 16 NRC 1290 (1982).

^{5/} The Commonwealth acknowledges such in stating that "the thrust [of its Plan] regarding need for and proper use of each type of dosimeter is not materially different." Commonwealth Objections at 3-4.

^{6/} Even so, it is noted that other Boards have utilized collateral estoppel to deny relitigation of the same matters by parties not in privity with the parties to the first case. See, e.g., Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 & 2), LBP-81-24, 14 NRC 175, 199-201 (1981). The use of "offensive" collateral estoppel has particular merit where the party against which it is invoked, analogous to the Commonwealth here, has already had its day in court. See Parklane Hosiery Company, Inc. v. Shore, 439 U.S. 322 (1979). The Supreme Court has continued to expand the principle of collateral estoppel to effect equitable results. United States v. Stauffer Chemical Co., ____ U.S. ____, 104 S. Ct. 575 (January 10, 1984). In Applicant's view, therefore, the Board would have been justified in applying collateral estoppel to preclude relitigation of the TLD issue.

On the other hand, it was certainly proper for the Board to be guided by the existing Three Mile Island record and directly applicable rulings, involving the very same Plan and TLD issue, in determining whether the Commonwealth had demonstrated the requisite "basis" under 10 C.F.R. §2.714(b) for litigating that issue. The Licensing Board was not required to consider the use of TLD's in the abstract and effectively ignore the Appeal Board's previous rulings, which carefully analyzed the Commonwealth's concerns in the context of the same Plan applicable to Limerick.

The other argument raised by the Commonwealth is that the Appeal Board in the Three Mile Island proceeding did not have an adequate record on the need for predistribution of TLD's. To the contrary, the decision in ALAB-698 reflects a full record on the matters of concern to the Commonwealth and even some agreement by the Appeal Board with those concerns. Nonetheless, the Appeal Board held, as the Licensing Board has noted, that "there are no formal regulations regarding the number or type of dosimeters to be distributed, or when they should be distributed,"^{7/} and that the distribution of self-reading dosimetry "is sufficient to assure reasonable protection for emergency workers"

^{7/} ALAB-698, supra, 16 NRC 1294, 1296.

under the Commonwealth's emergency planning.^{8/} In particular, the Appeal Board held that self-reading dosimetry would be sufficient for emergency planning purposes except "where emergency workers receive unexpected or unplanned life-threatening radiation exposures beyond the 200 roentgen range of the self-reading dosimeters."^{9/} The Appeal Board further noted that, under the Commonwealth's planning, emergency workers would be deactivated whenever their dosimetry indicates an exposure of 25 rem or greater, such that TLD's would be unnecessary for the safety of emergency workers.^{10/}

Thus, despite the Commonwealth's assertion that the virtues of TLD's were "not fully explored on the record" of the Three Mile Island proceeding,^{11/} it has not advanced any factual "basis" for relitigating the issue here. The Appeal Board in Three Mile Island recognized, as the Commonwealth asserts, that TLD's "would facilitate more accurate permanent recordkeeping, as well as diagnosis in special cases," and recommended that provision for TLD's be made.^{12/}

^{8/} Id. at 1299.

^{9/} Id. at 1300.

^{10/} Id. at 1301.

^{11/} Commonwealth Objections at 5.

^{12/} ALAB-698, supra, 16 NRC at 1301. It should be noted that the Applicant and the Pennsylvania Emergency
(Footnote Continued)

Nonetheless, the Appeal Board determined, as a legal matter, that predistribution of TLD's could not be required for licensing where the use of self-reading dosimetry under the Commonwealth's emergency planning is sufficient to afford reasonable protection to emergency workers. The Licensing Board in the instant case correctly held that this decision compels the same result here.

Respectfully submitted,

CONNER & WETTERHAHN

Troy B. Conner, Jr. / NNN

Troy B. Conner, Jr.
Robert M. Rader

May 18, 1984

(Footnote Continued)

Management Agency are currently negotiating arrangements to provide self-reading dosimetry and TLD's for emergency workers but have not yet reached a final agreement on this matter.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Answer to 'Objections and Request for Reconsideration by the Commonwealth of Pennsylvania Regarding Special Prehearing Conference Order Ruling on Admissibility of Offsite Emergency Planning Contentions,'" in the captioned matter have been served upon the following by deposit in the United States mail this 18th day of May, 1984:

Lawrence Brenner, Esq. (2)
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Dr. Richard F. Cole
Atomic Safety and
Licensing Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Dr. Peter A. Morris
Atomic Safety and
Licensing Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Appeal Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Ann P. Hodgdon, Esq.
Counsel for NRC Staff Office
of the Executive
Legal Director
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

* Hand Delivery

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Philadelphia Electric Company
ATTN: Edward G. Bauer, Jr.
Vice President &
General Counsel
2301 Market Street
Philadelphia, PA 19101

Mr. Frank R. Romano
61 Forest Avenue
Ambler, Pennsylvania 19002

Mr. Robert L. Anthony
Friends of the Earth of
the Delaware Valley
106 Vernon Lane, Box 186
Moylan, Pennsylvania 19065

** Limerick Ecology Action
P.O. Box 761 762 Queen Street
Pottstown, PA 19464

** Charles W. Elliott, Esq.
Brose and Postwistilo
1101 Building
11th & Northampton Streets
Easton, PA 18042

** Zori G. Ferkin, Esq.
Assistant Counsel
Commonwealth of Pennsylvania
Governor's Energy Council
1625 N. Front Street
Harrisburg, PA 17102

Jay M. Gutierrez, Esq.
U.S. Nuclear Regulatory
Commission
P.O. Box 47
Sanatoga, PA 19464

Angus Love, Esq.
107 East Main Street
Norristown, PA 19401

Robert J. Sugarman, Esq.
Sugarman, Denworth &
Hellegers
16th Floor, Center Plaza
101 North Broad Street
Philadelphia, PA 19107

Director, Pennsylvania
Emergency Management Agency
Basement, Transportation
and Safety Building
Harrisburg, PA 17120

Martha W. Bush, Esq.
Kathryn S. Lewis, Esq.
City of Philadelphia
Municipal Services Bldg.
15th and JFK Blvd.
Philadelphia, PA 19107

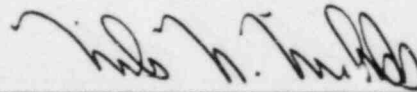
Spence W. Perry, Esq.
Associate General Counsel
Federal Emergency
Management Agency
500 C Street, S.W., Rm. 840
Washington, DC 20472

Thomas Gerusky, Director
Bureau of Radiation
Protection
Department of Environmental
Resources
5th Floor, Fulton Bank Bldg.
Third and Locust Streets
Harrisburg, PA 17120

** Federal Express

James Wiggins
Senior Resident Inspector
U.S. Nuclear Regulatory
Commission
P.O. Box 47
Sanatoga, PA 19464

Timothy R.S. Campbell
Director
Department of Emergency
Services
14 East Biddle Street
West Chester, PA 19380



Nils N. Nichols