394.

RELATED CORRESPONDENCE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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 RESPONSE TO APPLICANT'S "MOTION TO DISMISS PARTICULAR ON-SITE EMERGENCY PLANNING CONTENTIONS FOR WHICH DISCOVERY HAS NOT BEEN PROVIDED OR NO LITIGABLE BASIS SHOWN"

SUMMARY

Applicant's Motion is a wholly improper "end-run" around Commission regulations. Despite its characterization as a "Motion to Dismiss", in substance it is either a Motion for Sanctions, or a Motion for Summary Disposition. It fails to meet the Commission's requirements for entitlement to either form of relief.

ARGUMENT

On or about February 5, 1984, Applicant served upon LEA's counsel by mail a set of Interrogatories containing some 75 broad interrogatories, many of which begin "Explain why...".

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Over two-thirds of the Interrogatories referenced documents that LEA's counsel had no practical opportunity to review until February 11, 1984, (a week after the Interrogatories were served) as he was attached to trial in federal court in another city, and was out of the state until that date.

Nevertheless, LEA provided some fifty pages of answers to the Interrogatories. In some cases, it was unable to provide complete responses, because LEA had not yet completed its review of some of the information referenced by the Interrogatory.

Each interrogatory was answered; in the cases in which LEA's review was not complete, that fact was so stated, with an offer to supplement the response upon completion of the review.[1/]

1/ LEA believes that it answered the interrogatories "separately and fully" as required by 10 C.F.R. §2.740b(b). With respect to those interrogatories to which LEA believed that a complete answer depended upon independent research and analyses, it is fundamental that a party is not required by discovery requests to perform such research and analyses. Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station) ALAB 613, 12 NRC 317, 334 (1980). A fortiori, a party is not required to complete them within any particular time period.

There was a well established remedy for Applicant if it believed that LEA's responses to its Interrogatories did not meet the requirements of 10 C.F.R. §§2.740b(b): a motion to compell. Applicant did not avail itself of such a remedy within the required time period.

Instead, Applicant does not seek fuller answers, but to dismiss numerous on-site emergency planning contentions. Such a Motion, in substance, is either a motion for sanctions or a motion for summary disposition of fully admitted contentions.

If viewed as a Motion for Summary Disposition, the motion is plainly without merit. It does not even attempt to meet the applicable requirements of 10 C.F.R. §§2.749(a), is accompanied by no statement of material facts or affidavits of qualified persons, it has been filed "shortly before the hearing commences" and would require LEA "to devert substantial resources from the hearing in order to respond adequately to the motion." 10 C.F.R. §§2.749(a).

The substance of the motion is also misleading and meritless. Without addressing in detail each of the matters Applicant raises in its Motion, LEA wishes to demonstrate why this is so. For example, in the Motion (pp. 6-7), Applicant requests dismissal of Contention VIII-8(b). That contention states:

> The LNGSEP fails to demonstrate that adequate emergency facilities and equipment to support emergency response are provided and maintained as required by 10 CFR §50.47(b)(8), especially in that:
>
> (b) The Plan's descriptions of the Emergency Operations Facility (Plan §7.1.2), the Technical Support Center (Plan §7.1.4), and emergency equipment and supplies are all insufficient to meaningfully assess compliance with 10 CFR §50.47(b)(8) and to evaluate the facilities with respect to the criteria of NUREG-0654, Supplement 1 to NUREG-0737 (§8), and NUREG-0696. Intervenor contends the applicant has not demonstrated that the facilities proposed are adequate. Applicant's response to Q 810.30 states that the Plan will be expanded when final information is available on these facilities.

As the sole bases for this request, Applicant complains that LEA's response to Interrogatory 32 "simply cit[ed] three generally applicable NUREG documents", which "does not tell Applicant how LEA believes the plan fails to meet the regulatory provisions it had cited." (Motion, p. 7).[2/]

The Motion, however, utterly ignores LEA's response to the previous interrogatory which did call for an explanation of inadequacy, and which sets forth numerous criteria for

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2/ LEA believes that its response to Interrogatory No. 32 was complete. Interrogatory No. 32 did not seek an explanation of inadequacy, but rather a description of equipment, supplies and facilities not in the Plan which LEA contended to be necessary for compliance with NRC regulations. The documents referenced by LEA do in fact describe the equipment, supplies and facilities necessary to meet NRC regulations. Rather than reproducing those descriptions, it was surely appropriate to reference them.

emergency response facilities as to which Applicant has made no showing.

Similarly, Applicant seeks dismissal of Contentions VIII 16(b) and (c) which allege a failure to set forth advance procedures for permitting radiation exposures to on-site volunteers and a failure to demonstrate that sufficient information concerning radiation risks will be made available to emergency workers. The sole basis for this request for dismissal is that LEA's response to Interrogatory #61 recited that occupational exposures in excess of part 20 standards are licensee violations, subjecting the licensee to sanctions. Even if LEA were incorrect in applying part 20 standards to occupational emergency exposures, the entire question of legally permissible doses is scarcely even relevant to the contention, let alone a proper basis for dismissal of the entire contention. Other answers to other Interrogatories (e.g., 60, 62, 63) which are not referenced in the Motion more fully explain LEA's bases for Contention VIII-16.

Similarly, Applicant seeks dismissal of Contention VIII-12, which alleges an inadequacy in medical services for contaminated injured individuals on-site. (Motion, p. 8-10). Applicant bases this request on LEA's Answer to Interrogatory No. 38. That answer referenced the medical treatment LEA deemed to be necessary (depending on the exposure, "supportive" and "heroic" as described

in WASH-1400), and the likelihood that serious on-site exposures would occur (at least as often as off-site doses in excess of 200 rads to the bone marrow). The answer does not necessarily contemplate numbers of contaminated injured in excess of that contemplated in the San Onefre decision cited by Applicants. Indeed, San Onefre does not support Applicant's view that "there is no legal basis for litigating medical treatment for onsite personnel who are radiologically contaminated but not otherwise injured" (Motion, p. 9). The San Onefre decision specifically requires the identification of local and regional medical services capable of providing diagnosis and treatment to those with serious radiation exposure. See San Onefre, 17 NRC 528, 536 (1983). LEA's Answer to Interrogatory No. 38 set forth the types of services that must be identified as available for those requiring it (including "heroic" measures, including bone marrow transplants). Applicant's plan still does not meet this standard.

In sum, Applicant's facile references to only half of LEA's discovery responses and a misconstruction of the other half serve as no basis for dismissal of fully admitted contentions.

If the Motion is viewed as a motion for sanctions, demanding the sanction of dismissal of contentions, Applicant has shown absolutely no grounds for such extreme relief. The record of

this proceeding well demonstrates LEA's compliance with Board orders and time lines, and LEA does not believe that it has seriously defaulted in its discovery obligations.

The true thrust of Applicant's complaint is that because some of LEA's answers lack the precision Applicant would have preferred, it is at a disadvantage in preparation of its testimony.

Applicant knows its facilities and its plan presumably better than anyone else. Applicant is required to know the regulations and to comply with them. The law places the burden of proof of compliance upon Applicant. Its dilemma (if any) is largely the product of two factors, neither one of which is LEA's fault:

(1) Applicant filed general interrogatories, to which LEA's answers were responsive;

(2) Applicant waited until the day before the close of discovery to file its interrogatories, thus eleminating the possibility of a second round of discovery in which it could have sought clarification or additional information.

To now complain that is is "in the dark", and demand dismissal of contentions, or limit relevant cross-examination on the written testimony Applicant provides, is unwarranted.

Applicant's Motion, therefore, should be dismissed in its entirety.

Respectfully submitted,

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Dated: March 30, 1984

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "LEA Response to Applicant's "Motion to Dismiss Particular on-site Emergency Planning Contentions for Which Discovery has not Been Provided or no Litigable Basis Shown" dated March 30, 1984 in the captioned matter have been served upon the following by deposit in the United States mail this 2nd day of April, 1984:

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