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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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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) )

APPLICANT'S REPLY FINDINGS OF FACT AND  
CONCLUSIONS OF LAW RELATING TO CONTENTION I-42

Philadelphia Electric Company, Applicant in the captioned proceeding, in accordance with 10 C.F.R. §2.754, hereby submits reply findings on Contentions I-42 in response to "Limerick Ecology Action's Proposed Findings of Fact and Conclusions of Law in the Form of a Partial Initial Decision Relating to LEA Contention I-42," ("LEA's Proposed Findings") dated June 21, 1984. The reply findings are in the form of insertions to "Applicant's Proposed Findings of Fact and Conclusions of Law in the Form of a Partial Initial Decision Relating to LEA Contention I-42," dated June 8, 1984 ("Applicant's Proposed Findings").<sup>1/</sup>

Many of LEA's Proposed Findings were anticipated in Applicant's Proposed Findings and, as to those findings, no

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<sup>1/</sup> After reviewing the NRC Staff's Findings of Fact and Conclusions of Law in the Form of a Partial Initial Decision, the Applicant has concluded that no reply is necessary.

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further reply is necessary. It is also noted that a number of LEA's Proposed Findings are immaterial to the issues before this Board and many others are unsupported by the record. Thus, the Board should adopt Applicant's Proposed Findings, as amended herein, and reject those of LEA as unsupported by the record evidence or as immaterial to its decision.

The following changes and additions should be made to Applicant's Proposed Findings:

1. On page 13 of the Applicant's Proposed Findings, add Paragraphs 25A, 25B, 25C, 25D, 25E, 25F, 25G, 25H, 25I, 25J, 25K, 25L, and 25M following Paragraph 25:

25A. LEA asserts that it was only Mr. Stanley's "belief" that the Quadrex program encompassed the scope of 10 C.F.R. §50.49.<sup>2/</sup> This finding does not correctly characterize the record evidence. Mr. Stanley, who was directly responsible for the Quadrex CCP and, therefore, in a position to be fully aware of the scope of that program, both in his prefiled testimony and on cross examination stated unequivocally that the Quadrex classification rules were compared against 10 C.F.R. §50.49 and found to fully encompass the requirements of that section. W. Boyer, et al., ff. Tr. 9529, at 23-24; Tr. 9550, 9571-73 (Stanley). There is no evidence to the contrary.

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<sup>2/</sup> LEA Finding 13 at 7.

25B. LEA also claims that the Quadrex program did not include important safety equipment other than accident monitoring equipment.<sup>3/</sup> This assertion has no basis in the record. Applicant's evidence clearly indicates that the Quadrex CCP code "4F" corresponds to 10 C.F.R. §50.49(b)(2). W. Boyer, et al., ff. Tr. 9529, at 24. Code 4 is defined as:

Important to Safety; such as certain portions of Regulatory Guide 1.97 and non-safety-related components whose failure could degrade safety system performance. (Emphasis supplied.) W. Boyer, et al., ff. Tr. 9529, at 18.

The underscored language of this definition corresponds to the definition contained in the Q\*5 CCP:

Also included are those components those [whose?] postulated failure could either impair the required performance of safety systems or could initiate a need for safety system action." Tr. 9573 (Thompson).

In answer to a direct question by LEA, it was again specifically explained that Category 4F covers more than monitoring equipment Tr. 9573-74 (Thompson). The Board does not accord any significance to the fact that the examples listed in the Q\*5 CCP under this category only relate to post-accident monitoring instrumentation inasmuch as the cited document consists of the program rules by which the evaluation was performed and does not purport to be a list

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<sup>3/</sup> LEA Finding 14 at 7.

of equipment. Tr. 9573-74 (Thompson). LEA's failure to point to even a single component that Applicant failed to correctly classify or qualify, either at the hearing or in its findings, weighs heavily in favor of a finding of the validity of Applicant's program.

25C. LEA asserts that because the equipment qualification of a number of items remains uncompleted, this Board either cannot decide the contention before it or must find against Applicant.<sup>4/</sup> The Board does not agree with LEA's position. Initially, LEA's conception of the scope of its contention is incorrect. The thrust of the contention is that Applicant has not established a program for qualifying all electrical equipment covered by 10 C.F.R. §50.49 nor performed an analysis to ensure that the plant can be safely operated pending completion of equipment qualification as required by 10 C.F.R. §50.49(i). The Board's role is not that of an overseer of the Staff's activities in the area of equipment qualification. As discussed herein, the overwhelming evidence is that Applicant has established a program for identifying those components which must be qualified. Moreover, the Staff has taken sufficient steps to assure that Applicant's program has accomplished its goals to allow us to decide the contention in Applicant's favor.

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<sup>4/</sup> LEA Findings 36 and 37 at 14.

25D. For example, LEA asserts that a number of equipment qualification records need to be completed.<sup>5/</sup> These records merely document completion of the actual equipment testing, a matter which is not in controversy. The fact that these records may not be completed until fuel loading does not affect the adequacy of Applicant's program, particularly as it relates to the determination of the components which must be qualified. Similarly, while Applicant has stated it would not rely on the submission of justifications for interim operation, Tr. 9561, 9617-18 (Boyer), LEA would have us withhold our decision on the chance that Applicant's decision might be changed at some future time.<sup>6/</sup> We see no reason to do so. The Commission's procedures are adequate to deal with that contingency.

25E. Finally, contrary to LEA's position, the NRC Staff's review is at a sufficiently advanced stage that under the Commission's precedents we may make necessary findings and conclusions. It has been recognized in the past that "[a]s a general proposition, issues should be dealt with in the hearing and not left over for later . . . . In some instances, however, the unresolved matter is such that Boards are nevertheless able to make the findings

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<sup>5/</sup> LEA Finding 15 at 8.

<sup>6/</sup> LEA Finding 16 at 8 and Findings 34 and 36 at 13 and 14, respectively.

requisite to issuance of the license." Consolidated Edison Company of New York (Indian Point Station, Unit No. 2), CLI-74-23, 7 AEC 947, 951 (1974). The prerequisite to the issuance of a decision in a case such as this where the Staff's review is not yet complete, is a "basis in the present record on which to reach an informed conclusion." Cincinnati Gas and Electric Company (Wm. H. Zimmer Nuclear Power Station, Unit 1), LBP-82-68, 16 NRC 741, 748 (1982). Such a basis exists on the record at hand.

25F. Moreover, there exists specific precedent for this action in the area of equipment qualification. In the Shoreham proceeding, the Atomic Safety and Licensing Board found that in the area of environmental qualification "the deficiencies in the review are 'minor.' the [sic] deficiencies will be resolved by the Staff subsequent to this Board order, but prior to issuance of a license." Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), LBP-83-57, 18 NRC 445, 544 (1983). The Board added that the "documentation deficiencies are not so great as to prevent us from concluding that, subject to completion of the documentation, the [Applicant's] program is adequate." Id. Such findings were based upon a similar contention and a record which was incomplete because of the then recent issuance of the equipment qualification regulation (10 C.F.R. §50.49). Id. at 536, 538. Nevertheless that Board was able to permit post-hearing resolution of this matter. Id. at 636. In this case, the Staff has stated that its



Safety Evaluation Report will not be closed out until full compliance with the new rule has been demonstrated. Tr. 9698 (Masciantonio). As discussed below, the Board believes the record is sufficiently complete to allow such findings to be made and to conclude that post-hearing resolution of the minor outstanding matters by the Staff is possible within the scope of the contention.

25G. LEA included in its Proposed Findings a copy of a June 17, 1982 letter from the NRC Staff to Applicant. This letter is not part of the evidentiary record nor was it the subject of examination by LEA or any other party. Accordingly, the Board attributes no significance to this letter which the parties could have explained on the record if asked.

25H. LEA additionally points to a number of items which it alleges are still unresolved.<sup>7/</sup> The first relates to how surveillance will be performed on equipment outside of containment to account for unanticipated age-related degradation. The Board considers this matter to be beyond the scope of the contention. In any event, the evidence is clear that acceptable state-of-the-art surveillance methods have been proposed by Applicant and accepted by the Staff. Tr. 9714-15 (Masciantonio). The matter is certainly amenable to post-hearing resolution.

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<sup>7/</sup> LEA Finding 22 at 11.

25I. The second item relates to verification that all equipment has indeed been qualified.<sup>8/</sup> While outside the scope of the contention, the Board considers this to be merely follow-up. The Staff has concluded on the basis of its audit that Applicant is knowledgeable in the conduct of qualification tests and establishment of equipment qualification. Tr. 9716-17 (Masciantonio). There is no evidence that Applicant will not carry out its commitments and complete the remaining 5% of its program.

25J. The third and forth items, "containment profile approval" and "approval of temperature profile," appear to be merely a single matter.<sup>9/</sup> They are related to the conditions for which equipment inside the containment must be qualified, and not the determination of which components must be qualified. Such equipment has already been qualified against the submitted profile. Tr. 9711-12 (Masciantonio). The Board finds that this matter is not a bar to the issuance of its decision.

25K. The last item enumerated by LEA is the response to Information Notice 79-22.<sup>10/</sup> The Staff has adequately explained on the record the process by which it confirms the adequacy of Applicant's determination of the items which may

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8/ Id.

9/ Id.

10/ Id.



fall within Category (b)(2) of 10 C.F.R. §50.49. Tr. 9668-75 (Masciantonio). Information Notice 79-22 deals with the potential failure of non-safety-related equipment which could jeopardize safety-related systems due to high energy line breaks. Tr. 9683 (Masciantonio). The Staff has already determined that the design philosophy of plants of Limerick's vintage precludes equipment in the (b)(2) category, so this is merely a confirmatory matter. Tr. 9684-85 (LaGrange). The review of this matter has been completed on several plants and the Staff has concluded that there is no reason to believe that it would be a problem for Limerick. Tr. 9710 (LaGrange). The Board agrees that the outstanding issues are well defined and that there exists sufficiently defined criteria by which the acceptability of each outstanding item will be judged. Tr. 9699 (Masciantonio).

25L. An important consideration in the Board's conclusion is the fact that LEA has failed to identify a single component which was improperly qualified. Even if the Staff's review were to identify items which need qualification, this eventuality could be handled routinely. There is absolutely no evidence of any programmatic deficiency. Therefore, the Board sees no reason to withhold its decision on this matter.

25M. This is equally true concerning other matters raised by LEA. For example, it is inconsistent for LEA to have dropped an admitted contention on systems interaction

(I-41) and then state that the Board's decision on equipment qualification should be withheld on the basis of that same issue. Tr. 7769-70; see Order Confirming Miscellaneous Oral Record Rulings (March 15, 1984) (slip op. at 3). LEA has failed to indicate how this issue, as applied to the Limerick facility, would demonstrate an inadequacy of Applicant's program as contained in the record. There is no merit to LEA's position that ongoing reviews might incidentally reveal equipment requiring qualification. Certainly, LEA has not shown that this is a likely or even reasonably possible outcome of any ongoing review.

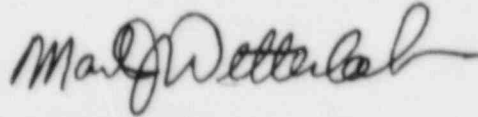
2. On page 27 of Applicant's Proposed Findings, Conclusion of Law 8 following Conclusion of Law 7.

(8) With regard to matters within the scope of this contention, the findings requisite to the issuance of a license for Limerick can be made upon the present record inasmuch as the steps necessary to complete the environmental qualification of electrical equipment have been well defined and adequately set forth and the criteria

for acceptance of the program are similarly defined. The NRC Staff may oversee the completion of this program.

Respectfully submitted,

CONNER & WETTERHAHN, P.C.

A handwritten signature in dark ink, appearing to read "Mark J. Wetterhahn". The signature is fluid and cursive, with a long horizontal stroke at the end.

Troy B. Conner, Jr.  
Mark J. Wetterhahn  
Nils N. Nichols

Counsel for the Applicant

July 9, 1984