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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 OL
(Limerick Generating Station,) 50-353 OL
Units 1 and 2))

APPLICANT'S ANSWER TO LIMERICK ECOLOGY ACTION'S
"DEFERRED" OFFSITE EMERGENCY PLANNING CONTENTIONS

Preliminary Statement

In its Special Prehearing Conference Order, dated April 20, 1984, the presiding Atomic Safety and Licensing Board ("Licensing Board" or "Board") admitted, denied or deferred its ruling upon various contentions proposed by a number of parties, principally Limerick Ecology Action ("LEA"), relating to offsite emergency planning.^{1/} In particular, the Licensing Board deferred its ruling upon proposed Contentions LEA-1 through LEA-6 and LEA-23.^{2/}

Essentially, LEA-1 through LEA-4 alleged that the offsite plans were incomplete, while LEA-5 and LEA-6 alleged

1/ Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP-84-18, 19 NRC 1020 (1984).

2/ Proposed Contentions City-1 through City-12 were also deferred, but have been handled separately and do not pertain to the proposed contentions filed by LEA to which the instant answer responds.

that various letters of agreement had not yet been formally entered. The Board determined that the plans at that time were too incomplete to permit either denial or admission of LEA-1 through LEA-4.^{3/} As to LEA-5 and LEA-6, the Board ruled that it was unclear "whether the lack of mention of letters of agreement at certain places in the plans is significant,"^{4/} therefore deferring those contentions as well.

As to LEA-23, which challenged the adequacy of an outdated evacuation time estimates study, the Board noted that a new study would soon be available. It therefore directed LEA to address itself to the new study as soon as it became available.^{5/}

On each of the proposed contentions for which the Board deferred its ruling, it directed that the parties "shall exchange and discuss changes to the status quo and file appropriate proposals for further consideration by the Board, as it becomes appropriate to do so."^{6/} For the

3/ Limerick, supra, LBP-84-18, 19 NRC at 1043-44.

4/ Id. at 1046.

5/ Id. at 1065.

6/ Id. In a subsequent order dated August 15, 1984, the Board mandated "specification by LEA of its deferred contentions," including reports of any settlements, and required an answer by other parties to be filed by October 9, 1984. Limerick, supra, "Order Establishing Schedule for Offsite Emergency Planning Issues" at 4 (August 15, 1984).

reasons discussed more fully below, Applicant opposes the admission of the deferred contentions.

Argument

In its answer to the deferred contentions as originally proposed, Applicant took the position that none of the contentions constitutes a litigable matter. In Applicant's view, the principles enunciated in the Commission's emergency planning regulations, prescriptive guidance such as NUREG-0654 and NRC adjudication decisions do not require the boards to immerse themselves in the level of local planning detail or the formalization of letters of agreement which the contentions raised. In essence, Applicant noted that the Commission has determined that the very detailed information alleged by LEA to be missing from the plans need not be in existence so long as the basic plans themselves support a conclusion that the state of emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

Accordingly, Applicant took the position, and still asserts, that the mere recitation of particular "unmet needs" or letters of agreement not yet formalized fails to show any deficiencies in the basic plans. Thus, LEA-1 through LEA-6 remain inadmissible for the reasons previously stated. For the sake of brevity, Applicant hereby

incorporates that portion of its previous answer to these contentions.^{7/}

In addition to its basic legal objections previously stated, Applicant further objects to the admission of the respecified, deferred contentions as discussed below.

LEA-1. The first item of this contention is wholly lacking in basis. It does not even purport to discuss the assignment of county buses to meet overall needs as discussed in the county plans in Annex I. Moreover, this aspect of the contention clearly exceeds the scope of LEA-1 as originally filed, which contended that responsibilities outlined in the plans have not yet been assigned because plans have not yet been adopted.^{8/} Availability of transportation resources was not a part of this contention.^{9/}

The second item raises the lack of participation by certain municipalities in the June 25, 1984 joint exercise for Limerick. Although LEA fails to note that a supplemental exercise has been planned for non-participating municipalities, the mere fact that 100 percent participation

^{7/} See Applicant's Answer to Offsite Emergency Planning Contentions Proposed by Limerick Ecology Action, et al. at 3-19 (February 13, 1984).

^{8/} Limerick, supra, LBP-84-18, 19 NRC at 1041.

^{9/} The contention also interjects, for the first time, the Commonwealth's scheme of government. LEA gives no basis for its implicit challenge to the approach taken by the plans in fulfilling unmet needs by passing them onto the counties.

has not occurred in such an exercise has never been deemed by FEMA or the NRC as a reason for invalidating the basic plans. In Diablo Canyon, for example, the Licensing Board rejected a similar assertion.^{10/} Again, this item exceeds the scope of the original contention.

In the third item, LEA again asserts that the various governmental entities have not formally adopted their plans. The mere fact that these jurisdictions will not approve the plans until submitted and reviewed in final form, which has been known and understood by the planners and authorities all along, presents no obstacle to their acceptance. No litigable issue has been raised by this allegation.

^{10/} The Board held:

Section N of NUREG-0654 suggests that the scenario for emergency exercises should be changed from year to year such that all major elements of the plans and preparedness organizations are tested within a five-year period. We, therefore, do not take the lack of participation of several cities within the State BEPZ in the fire exercise to be a serious defect in the planning for that exercise. We have noted that some cities' SOP's were not complete at the time of the exercise but were expected to be completed within the following year. We think it advisable for cities in the State BEPZ to take part in exercises in future years; however, we conclude that this is within the jurisdiction of the State to direct. (Finding 312)

Pacific Gas and Electric Company (Diablo Canyon Nuclear
(Footnote Continued)

The fourth item of this contention alleges certain "alternative planning approaches" under consideration by certain jurisdictions. This particular item is entirely lacking in specificity and bases. Because LEA has not identified these "alternatives" allegedly under consideration, its contention remains problematical. Moreover, LEA has failed to join any litigable issue. It does not assert that any "alternatives" fail to meet planning standards under NUREG-0654, only that they "would not automatically provide reasonable assurance. This item is far too speculative for admission, particularly at this late date.

LEA-2 and LEA-3. LEA-2 as respecified is basically a compilation of unmet municipal staffing needs as of April 1984. LEA-3 is unchanged except for an updating letter. These contentions invalidly seek to litigate operational details of the plans and is not litigable for the reasons previously stated.

LEA-4 and LEA-6. These contentions have been withdrawn.

LEA-5. This contention is also unchanged, except that LEA has specified the various kinds of formalized agreements it asserts to be necessary from support organizations and personnel. The mere listing of support organization

(Footnote Continued)

Power Plant, Units 1 and 2), LBP-82-70, 16 NRC 756, 790 (1982), vacated in part on other grounds, ALAB-776, 19 NRC ____ (June 29, 1984).

personnel by LEA does not provide any further basis for admitting this contention. This contention is therefore improper for the reasons previously stated.

Moreover, the respecified contention fails to address the current plans, which incorporate a number of the agreements, either physically or by reference, which LEA lists as (a) through (f).^{11/} Moreover, LEA has not established that agreements for particular services are even appropriate.^{12/}

^{11/} Thus, as regards transportation providers, LEA fails to note the transportation agreements provided in the Berks County plan, Annex T, App. T-23 through T-27 and the Montgomery County plan, Annex T, pages T-1 and T-2. Chester County is in the process of reducing oral commitments to writing. Nor has LEA addressed the host school agreements contained in the Berks County plan, Annex T, App. T-28, T-29 and T-31. The Montgomery County plan states in Annex T, page T-3, that these agreements are on file in the Office of Emergency Preparedness.

Similarly, such agreements are on file in the offices of the school districts in Chester County. All of these agreements are substantially the same and commit the providers to furnish basically the same support upon request. AT the August 30 meeting with LEA on its contentions, LEA was advised that written agreements had been obtained for 17 of the 20 schools and school districts in the EPZ. As noted, several of these agreements were already in the planning documents previously provided to LEA.

^{12/} For example, NUREG-0654 does not require letters of agreement with individual radio operators (RACES and ARES personnel), and LEA has not alleged any basis for requiring formalized agreement with such individuals who have committed to providing their services. In particular, LEA alleges nothing in the recent FEMA Exercise Evaluation Report for the July 25, 1984 joint exercise at Limerick to show that municipal and county EOC's lacked adequate RACES and ARES personnel.

(Footnote Continued)

Agreements regarding decontamination centers and mass care centers involve only the provision of building space.^{13/} None of the "human response" concerns of LEA is applicable to such agreements since these facilities will be manned by emergency personnel.^{14/}

LEA-23. Unlike the other deferred contentions, which were based upon evolving plans, this contention was predicated upon a single document which was available to the Board and parties shortly after the Board's ruling on the deferral of this contention. Specifically, the respecified contention challenges the adequacy of the Evacuation Time

(Footnote Continued)

LEA has made no showing that the existing oral agreements with local radio stations for emergency broadcast coverage are inadequate. By their very nature and licensing commitments, radio stations are clearly committed to broadcast publicly needed information in an emergency.

As to towing services, the list of tow truck operators in the resource manuals of the three counties are so extensive that it has not been deemed necessary to enter into particular agreements. LEA has given no reason why the existing agreements for snow removal between municipalities and private contractors, along with the support which would be provided by PennDOT, would be inadequate. This responsibility is discussed in Section II.E.2.k(2) of the municipal plans.

^{13/} See, e.g., Berks County plan, Annex T, App. T-10 through T-20, and App. T-30.

^{14/} Indeed, the mass care centers would be manned by the Red Cross. The Board denied a contention specifically raising this organization's responsibilities at mass care centers. Limerick, supra, LBP-84-18, 19 NRC at 1046.

Estimates Study prepared for Applicant by HMM Associates, Inc., which was provided to the Board and parties in May 1984. It cannot be overemphasized that evacuation time estimates are not expected to be literally correct inasmuch as they serve only as guidance to authorities for protective action decision-making.^{15/}

In deferring its ruling upon this particular contention, the Board stated its expectation that the participating parties and Board would receive a copy of the new study "as soon as possible after it becomes available."^{16/} On that basis, therefore, LEA could reasonably have been expected to file a contention raising any new matters specific to the new Study at least within several weeks following its receipt. Instead, LEA has waited four months, just prior to the filing of testimony and the start of the hearing.

As the Commission reiterated in Catawba, a licensing board may not accept a proposed late contention unless it finds that, on balance, the five factors enumerated in 10 C.F.R. §2.714(a)(1)(i)-(v) weigh in intervenor's favor.^{17/}

^{15/} See NUREG-0654, Criteria J.10.1 and m.

^{16/} Limerick, supra, LBP-84-18, 19 NRC at 1065.

^{17/} Duke Power Company (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041 (1983). LEA-23 as respecified clearly differs in substance from the original submission, which challenged the adequacy of
(Footnote Continued)

LEA has clearly failed to show "good cause" for its lateness in proposing a new contention at this late juncture.^{18/}

The failure of LEA to establish good cause for its lateness^{19/} heavily outweighs any other showing that LEA

(Footnote Continued)

the prior PennDOT Study. Because it is a wholly new, proposed contention, and not merely a rewording of an old contention, it must satisfy the requirements for late-filed contentions.

^{18/} LEA's failure to timely submit a proposed contention on a document which Applicant furnished it for that very purpose is a patent violation of its "ironclad obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to enable it to uncover any information that could serve as the foundation for a specific contention." Catawba, supra, ALAB-687, 16 NRC 460, 468 (1982), rev'd on other grounds, CLI-83-19, 17 NRC 1041 (1983).

The Appeal Board has held that "the true importance of the tardiness will generally hinge upon the posture of the proceeding at the time the petition surfaces." Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1173 (1983). The Appeal Board found in that case that, in the less critical situation where the proceeding had just commenced, "even a four-month unjustified delay in seeking intervention is not to be ignored." Id. (emphasis in original).

^{19/} At the outset of its submission, LEA recites the procedural history of the case as it pertains to offsite emergency planning from its perspective. While purporting to discuss the criteria for late-filed contentions under the Catawba test, it fails to address LEA-23 (or any other contention) in particular. Certainly, LEA did not need to await receipt of the report by FEMA and its Regional Assistance Committee, Region III, on the Limerick July 25, 1984 exercise. As the Board is well aware, the Limerick exercise, like other exercises conducted for nuclear power plants, did not involve any actual evacuation of the emergency planning zone by the general populace.

could make on the remaining factors. Nevertheless, those factors nonetheless do not favor admission of the proposed contentions. As to the second and fourth factors, LEA can protect its interests by pursuing its concerns, as it has in the past, directly with responsible officials of PEMA and FEMA. In particular, FEMA regulations expressly provide for participation by the public in open meetings on the plans.^{20/}

On the third factor, LEA has not complied with the requirement of Grand Gulf that it identify its prospective witnesses and summarize their proposed testimony.^{21/} As to the fifth factor, admission of this late contention, which is in substance quite different from any of the other admitted or proposed, deferred contentions, will broaden issues and delay the proceeding.^{22/}

^{20/} See 40 C.F.R. §350.10. In any event, the second and fourth factors are entitled to less weight than the other three. South Carolina Electric and Gas Company (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 895 (1981).

^{21/} Mississippi Power & Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982).

^{22/} Applicant notes that under this criterion, the dispositive consideration is delay of the proceeding, not delay of the operation of the facility. See Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760, 1766, citing Fermi, supra, LBP-82-96, 16 NRC 1408, 1434 (1982); Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), LBP-83-30, 17 NRC 1132, 1146 (1983).

In addition to its failure to satisfy the late-filing criteria, LEA has failed to provide any basis for its six specified parts to LEA-23. In item 1, LEA shows no basis for challenging the Study's statement that up to one hour may be required to commence school evacuation. As explained at page 5-5 of the Study, such underlying assumptions were based upon discussions with knowledgeable PEMA and county personnel. Item 2 is a general challenge to the Study's methodology, which asserts without any basis that "[i]t is not clear" that the Study meets the methodology criterion of NUREG-0654. The mere recitation of the planning standard without any reference to the Study's explanation of its methodology and assumptions in Section 2 fails to join any issue.^{23/}

As to the third item, the Commission has determined that the effects of seismic events on emergency planning need not be considered.^{24/} As to the fourth item, challenging the Study's statement that roadway capacity will be reduced 20 percent by rain and 30 percent by snowstorms, LEA apparently confuses roadway capacity with actual usage of the roads. LEA has not shown any basis for litigating the

^{23/} As explained at pages 1-1 and 1-2 of the Study, the overall methodology utilized, including the NETVAC computer simulation model, was also used in preparing the Evacuation Time Estimates Study for Susquehanna.

^{24/} Diablo Canyon, supra, CLI-84-12, 20 NRC ____ (August 10, 1984).

validity of these factors of 20 and 30 percent, which were reviewed with PEMA and the counties to ensure their applicability to local conditions.

The fifth item, relating to the time required for route alerting, once again reasserts a previously rejected issue.^{25/} LEA cannot circumvent the exclusion of this issue by attempting to raise it in the context of this Study. In the sixth item, LEA asserts that unidentified 1980 census data^{26/} is more reliable than data obtained from a recent area survey by the counties to determine unmet transportation needs. LEA has shown no basis for asserting that the much more recent data is less reliable. Moreover, many households which did not report automobile ownership would not necessarily have an unmet transportation need because such persons might rely upon friends or neighbors in obtaining transportation if needed. In any event, LEA has failed to demonstrate any basis linking the time for evacuating the populace from the EPZ with the number of transportation-dependent individuals.

^{25/} Limerick, supra, "Memorandum and Order Ruling on Reworded and Respecified Offsite Emergency Planning Contentions" at 16 (September 24, 1984).

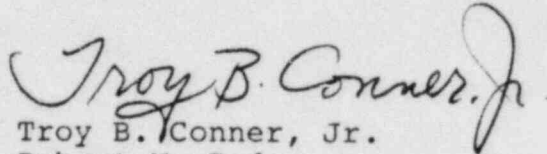
^{26/} LEA does not specify whether the data pertains nationwide or to the Limerick vicinity.

Conclusion

For the reasons discussed above and in Applicant's original answer to earlier versions of these contentions, LEA's respecified contentions should be denied.

Respectfully submitted,

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October 9, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
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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 Limerick Ecology Action's 'Deferred' Offsite Emergency Planning Contentions," dated October 9, 1984 in the captioned matter have been served upon the following by deposit in the United States mail this 9th day of October, 1984:

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