

LAW OFFICES

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August 1, 1984

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CABLE ADDRESS: ATOMLAW

Miss Maureen Mulligan  
Limerick Ecology Action  
P.O. Box 761  
762 Queen Street  
Pottstown, PA 19464HAND DELIVERYIn the Matter of  
Philadelphia Electric Company  
(Limerick Generating Station, Units 1 and 2)  
Docket Nos. 50-352 and 50-353 OL

Dear Miss Mulligan:

This letter will confirm the points we discussed in our telephone conversation on Friday, July 27, 1984, the agreements reached, and the matters in dispute regarding LEA's answers to Applicant's first set of interrogatories and request for production of documents. I would have called sooner, except that your answers, postmarked July 19, did not reach me until July 23, 1984. When I spoke to you on July 24, you stated you would be unavailable on July 25 to discuss the answers. As described below, I am including a copy of the Callaway decision I discussed, relating to interrogatories requiring an intervenor to provide answers as to how alleged emergency planning deficiencies should be resolved. I will discuss each interrogatory in order and then our request for production of documents.

General Interrogatories

1-2. These interrogatories requested you to provide information regarding any expert and fact witnesses. LEA's answer that it has not yet determined which contentions will be litigated is nonresponsive and unacceptable. The possibility exists in every case that any particular contention will not be litigated. This is irrelevant. I noted that Applicant is entitled to information regarding witnesses whom LEA has presently lined up, even though others will be sought. You nonetheless declined to answer the interrogatories in view of your position that contentions might be dropped.

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3. I noted that LEA's answer stated that it "has relied" upon certain unspecified "RERP related documents and correspondence." You agreed to provide me a specific list of documents upon which LEA will rely.

#### Specific Interrogatories

1. In response to subpart (g), you agreed to provide me with all alleged deficiencies in the plans and implementing procedures, not just ones in your answers which you deem to be "representative."

4, 5 and 21. This interrogatory asks for information regarding the unwillingness of any school teacher or staff to perform his responsibilities in the event of a radiological emergency. LEA's answer states that it "has not conducted such a survey." I noted that the interrogatory did not request you to conduct a survey, but only sought whatever information LEA has. You stated that you wished to consult with Mr. Elliott, but declined at that time to provide the information or agree to do so. I note that with regard to Interrogatory 20, by contrast, you agreed to check with LEA members and provide such information.

6. Regarding the level of nonperformance by teachers and staff required to supervise students in the event of a radiological emergency, your answer cites a figure of 75% as stated by Dr. Claypool. Clarifying your answer, you stated that LEA does not itself have any other figure independent of Mr. Claypool's statement.

8. This interrogatory sought the basis for LEA's allegations that teachers and staff will abandon their assigned duties in the event of a radiological emergency. LEA's answer states that "LEA's present concerns are based on general conversations with teachers and other school staff." You advised me that further information is being accumulated, but declined to provide me with information presently on hand.

9, 17, 25, 27, 39 and 43. Each of these interrogatories requests LEA to specify any change in the plans and/or implementing procedures which it asserts to be necessary in order to assure that there is adequate planning for the particular aspect in question. As I noted during our conversation, the Licensing Board in Callaway required answers to the same interrogatories. See Union Electric Company (Callaway Plant, Unit 1), Docket No. STN-50-483 OL, "Memorandum and Order (Applicant's Motion to Compel)"

(December 9, 1982) (copy attached). In that case, the Board held at page 3:

In another series of interrogatories, numbered 33, 41, 45, 58, 59, 60, 66, 77 and 90, the Applicant sought to uncover the grounds for a number of Intervenor's contentions. The questions were objected to on the basis that they call for conclusions or possible resolutions to problems that are not the responsibility of the Intervenor. In the Intervenor's view, he has only to prove the validity of a contention and not provide answers as to how emergency planning deficiencies should be resolved. The discovery process would be meaningless if it did not permit parties to probe the foundation or basis of a litigant's claim. One acceptable method for such probing is to solicit positive solutions from the litigant for deficiencies alleged to exist. This is what the Applicant has attempted to do here and the interrogatories are appropriate, as a means of determining the strengths and weaknesses of an opponent's case.

Obviously, if LEA regards the plans and procedures as deficient, it necessarily holds an opinion as to how they must be amended in order to assure adequate planning. Such matters clearly go to the heart of the contentions and are entirely relevant to their disposition.

I also note that LEA did not object to Interrogatories 11, 15 and 41, which seek the same kind of information. Your answers to those interrogatories state that LEA will provide such information, or you agreed to provide this information during our conversation. Nonetheless, you declined to provide these answers without first reviewing the Callaway decision.

12. You agreed to provide me with the testimony to which this answer refers.

14. LEA's answer does not refer to any particular dosimetry. You stated to me that any dosimetry customarily used for emergency planning would be acceptable. You agreed to provide me a more specific answer if LEA contends that

the dosimetry which PEMA contemplates for use is unacceptable.

15. With regard to LEA's contention regarding adequate dosimetry and KI supplies, you agreed to define "predistribution" as used in your answer.

16. This interrogatory asked LEA to specify all elements of training which it contends the planners must provide to school bus drivers, teachers and other school staff. Your answer that "[t]raining has not progressed to the point that LEA can answer this question" is nonresponsive. LEA can take a position on what training must be provided regardless of the status of the training program. Nonetheless, you declined to provide this information.

18. This interrogatory seeks information regarding alleged defects in the plans, implementing procedures or training provisions as regards "the assignment of school bus drivers to transport students." Your answer asserts that LEA cannot answer this question until buses have been assigned to individual schools. As I stated during our conversation, I see not way in which the adequacy of assigning school bus drivers is dependent upon the assignment of particular buses to particular schools. You declined to provide this information.

19. Clarifying your answer, you indicated that the sources of IEA's information were the letter to the Licensing Board from Dr. Claypool and Attachment 3 to your answers.

20. You stated that you would check with LEA members to determine whether they could recall their conversations with particular individuals. You agreed to supply any such information.

22. Regarding the level of nonperformance by school bus drivers in the event of a radiological emergency, LEA stated in its answer that it cannot respond until "the additional unmet needs indicated in the present RERP's have been assigned and arrangements have been completed." As I stated during our conversation, this particular interrogatory is not dependent upon the status of the plans; it seeks LEA's position as to how many or what percentage of school bus drivers will abandon their duties. This is not based on any "unmet needs."



23. LEA's answer regarding the level of nonperformance by school bus drivers which would render the plans incapable of implementation refers to Dr. Claypool's figure of 25% as to school teachers. In our conversation, you adopted this as LEA's position for bus drivers and agreed to provide me with any other information taking a different position.

28. This interrogatory sought information regarding LEA's and FOE's assertions that traffic congestion in parks and other areas will affect evacuation of the EPZ. Your answer states that LEA and FOE are conducting an investigation and that the requested information will be provided at a later date. You stated that you are checking on this with Mr. Anthony. In response to your comment about a "survey," I stated that the Applicant was not asking either LEA or FOE to conduct any survey, but only sought available information. You declined to provide me with any commitment as to the date upon which this "investigation" would be completed or when the information would be provided.

29. You stated that LEA forwarded the Evacuation Time Estimates report to Mr. Steven Sholly about one or two weeks after receipt by LEA. You agreed to check on the status of his review to determine when the answer to this interrogatory would be available, but declined to make any commitment as to the date.

30. You took the same position here as to the previous interrogatory, stating that you also intended to contact certain park personnel. You declined to make any commitment regarding the time within which any further information would be submitted.

31-33. You stated that Mr. Anthony was obtaining "the PENNDOT traffic analysis" cited in LEA's answer, which you agreed to furnish me once obtained. You stated that you would provide me with the title and date of the study if you did not obtain a copy.

34. You clarified LEA's answer regarding responses "attached" as being Attachments 4-7. You stated that the "telephone inquiries" to which the answer refers were those listed in response to Interrogatory 35. I also asked what was meant by the last portion of the answer, which states: "as well as their familiarity with the fact that they were listed in the RERP's." You stated that you were unable to explain what this means and agreed to delete it from your answer unless you otherwise advised me.

35. At the end of this answer, LEA states: "Similar responses were received from other municipalities." You declined to provide me with statements of conversations between LEA members and fire department personnel constituting these other "responses." You took the position that the ones given were "representative." I stated that Applicant was entitled to all relevant information, not merely that which was "representative" in LEA's view. Nonetheless, you declined to provide this information.

36. In response to my suggestion that LEA's answer was nonresponsive because this interrogatory only asked for an analysis of the written plans, you agreed to provide an answer.

38. This contention seeks LEA's position as to specific deficiencies in planning for the identified facilities. I noted that your answer makes general references to "concerns" but did not specify deficiencies. You stated that the plans have not identified or included transportation needs. While this provided some specificity, it still does not identify the specific resources which LEA asserts to be necessary to evacuate those facilities. I ask that you provide a more specific answer.

42. With regard to towing, gasoline and snow removal resources for non-State roads, you stated that LEA is still looking at the plans, examining provisions as to parks, reviewing the PennDot study, and checking other items. You stated that LEA may conduct a random survey of gas stations and towing services. You agreed to furnish this information when compiled, but made no commitment as to the date of completion.

As to each of the interrogatories in which LEA stated, either in its answer or during our conversation, that further information is being compiled or review of the plans is incomplete, you agreed to supplement your answers. Given the number of contentions and areas of dispute, preparation of Applicant's case requires that such updates be received as soon as possible. Accordingly, I request that you furnish me with any supplements to your answers no later than August 31, 1984. A full month should be ample time for LEA to complete whatever surveys or investigations it has undertaken. In this regard, you also agreed to furnish me with supplements to each of your answers based upon LEA's observations and evaluations in connection with the July 25, 1984 planning exercise.

Document Production

As I stated during our conversation, I was surprised to receive only eight short documents attached to your answers in response to our request for production of documents, only two of which were generated by LEA itself. Given the number of LEA members involved and the range of issues and concerns it has raised, it is incredible that a far greater number of documents was not produced. Apparently, LEA did not follow the instructions in Applicant's interrogatories and requests for production of documents. Accordingly, I request that you undertake immediately to provide Applicant with all requested documents, including internal LEA memoranda, notes, or documents of whatever kind. As a practical matter, Applicant's discovery requests are broad enough to encompass any documents related to LEA's contentions. Therefore, any document in LEA's possession that relates to emergency planning should be produced.

Apart from LEA's evident failure to produce requested documents, I was also surprised by your statement that there were "documents" from which LEA's answers were drafted, but which were thrown out once the answers were drafted. I advised you in response that such action was not permissible when discovery requests had been filed. I suggested that you immediately contact Mr. Elliott and discuss the matter with him. As the former LEA representative, Mrs. Zitzer should also be contacted to see what she knows about any destroyed or otherwise undisclosed documents.

Given the standing order of the Board that motions to compel must be filed within ten days of service of incomplete answers, Applicant is required to seek relief regarding incomplete answers to its interrogatories and incomplete document production at this time. As a related matter, Applicant will ask the Licensing Board for the following relief concerning the protection of relevant documents:

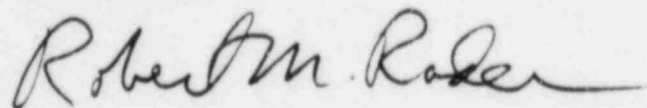
1. All such "documents" as requested by Applicant in connection with its various interrogatories and document request shall be compiled and furnished to Applicant or produced for inspection and copying within ten days.
2. LEA shall conduct a survey of each of its members or former members with knowledge of these matters, including any representative (e.g., Mrs. Zitzer or Mr. Elliott) or consultant, to determine whether "documents" as so defined have been destroyed,

undisclosed or otherwise not produced. The survey shall state the name of each member surveyed, a description of the form and content of any such document which was destroyed or which the member knows to have been destroyed, and the date (approximate) the document was destroyed.

3. LEA shall file an affidavit which attests to the results of the survey, including a statement that (a) a good faith effort has been made to recover and produce copies of all available documents requested by Applicant, and (b) a good faith effort has been made to specify to the fullest extent possible the content of any documents which have been destroyed.
4. Under no circumstances shall any "document" as defined in Applicant's interrogatories be destroyed (meaning physically obliterated, discarded or rendered unavailable for any other reason).

I look forward to hearing from you on these matters.

Sincerely,

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

Robert M. Lader  
Counsel for the Applicant

RMR/dlf  
cc: Service List