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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
(Limerick Generating Station,
Units 1 and 2)

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Docket Nos. 50-352
50-353

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CEPA'S REPLY TO ANSWERS FILED BY
APPLICANT AND STAFF TO CEPA'S
SAFETY CONTENTIONS

On August 1, 1984, Applicant mailed to counsel for CEPA its Answer to CEPA's Safety Contentions. CEPA had not previously been served because, according to the applicant's counsel, CEPA had been removed from the service list. This Reply is thus timely under the Rules of this Commission at § 2.706.

I. THE NRC ALONE HAS JURISDICTION OVER THESE CONTENTIONS

Neither the Staff nor Applicant's Answers address the issue raised by CEPA. CEPA has not raised a rate-making issue which will be decided by the Pennsylvania Public Utility Commission. CEPA has not raised any issue which the Applicant requested the PA. PUC to decide in its Petition for Declaratory Order.

CEPA does raise the issue of the Applicant's ability to safely test the Limerick plant prior to commercial operation. The PUC has no jurisdiction over that issue. No rate-making issues are raised by these contentions.

CEPA relies on PECO's own statement connecting their ability to safely test the plant with an unprecedented request for relief from the PUC. That connection, made by PECO itself, points out the fragility of PECO's situation. If, by their own admission, their ability to safely test a plant located in a densely populated area rides on request for relief that would require an abandonment of normal regulatory practice, what then is the true situation?

Is PECO properly testing the plant? Will they be able to do so? What risks are imposed for public health and safety if PECO's situation is so unstable? Those are the issues raised by CEPA's Safety Contentions. Only this Commission has jurisdiction over these questions.

II. CEPA HAS STANDING

By order of this Commission, CEPA was deemed to have standing to litigate issues of off-site emergency-planning contentions. That standing was based on the direct impact that emergency planning contentions have on CEPA and its members. No less can be said of the safety issues raised by CEPA in the contentions now being discussed. CEPA stands in the same relationship to these contentions as to the earlier off-site emergency planning contentions.

PECO's claim that the dismissal of CEPA as a party because of failure to litigate emergency planning contentions or to appear at a related pre-hearing conference is much like the story of the French law which prohibits both rich and poor from sleeping under the bridges of Paris. Only the poor violate the law. In this case, CEPA did not have the resources to devote to such litigation. CEPA had planned to be in-

volved, but was unable to participate.

Such failure (which would have been avoided if CEPA had had the generous resources available to some other parties in this case) should not be the instrument used to prevent this Commission from determining whether serious safety problems exist at Limerick.

III. CEPA HAS SATISFIED THE REQUIREMENTS FOR LATE-FILED CONTENTIONS

10 C.F.R. § 2.714(a)(1) creates a balancing test involving five factors for late-filed contentions. Those factors are:

- (i) good cause, if any, for failure to file on time;
- (ii) the availability of other means to protect petitioner's interests;
- (iii) the extent to which petitioner's participation might be expected to assist in developing a sound record;
- (iv) the extent to which existing parties will represent the petitioner's interest; and
- (v) the extent to which petitioner's participation will broaden the issues or delay the proceeding.

CEPA has demonstrated that the balance weighs heavily in favor of admission of these contentions.

CEPA filed the contentions less than three weeks after obtaining the information which forms the basis for these contentions. Staff acknowledges that CEPA acted promptly in filing. NRC Response to CEPA's Safety Contentions at 4. The staff however, fails to find the nexus between CEPA's claims and PECO's Petition for a Declaratory Order, claiming that "nowhere in the Applicant's request with the PUC is there a statement that if the PUC denies the Applicant's request that there will be any effect on its ability to test the facility" Id.

Staff overlooks the clear meaning of the sentence quoted from PECO's petition. The declaratory order is requested to ensure "that Limerick 1 will be completed and safely tested on a timely basis..." Petition for Declaratory Order at 10, paragraph D [emphasis added].

The only reason such a statement would appear in such a petition would be to provide a reason why the PUC should grant the relief requested. The implication is clear - failure to grant the relief means that PECO may not be able to safely test Limerick 1. Since the PUC has refused such declaratory orders and stated that they will not become a part of standard regulatory treatment of plant investment (Petition of West Penn Power Company for Declaratory Order, Docket No. P-840507, Decision of July 6, 1984), it is obvious that PECO raises an issue which is neither remote nor academic. CEPA merely asks the NRC to investigate the problems which required PECO to make such an admission.

Since the PUC has no jurisdiction over the safe testing of Limerick 1, questions of nuclear safety being reserved to the NRC, CEPA has no other means available to protect its interests.

Staff claims that though this is the "proper forum in which health and safety issues involving testing at LGS, Unit 1 should be heard", no health and safety issue has been raised! CEPA believes that potential inability to safely test a large nuclear unit located in a densely populated area necessarily raises health and safety issues.

CEPA and its attorney have litigated PECO related issues since 1979 and expect to be able to assist in developing a sound record. One must assume, however, that when an issue raising such serious questions is

brought before this Commission it would not be rejected merely because a party is inexperienced in NRC litigation.

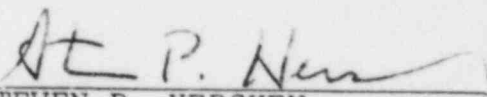
As to the fourth factor to be considered, CEPA would welcome any other party's participation in the litigation of these issues. No other party, however, has indicated any willingness to pursue the questions raised.

NRC review of these contentions may very well broaden the issues or delay the proceedings. Such is the function of this proceeding. Licensing hearings are not designed to rubber stamp requests to operate nuclear power plants. The hearings are designed to protect the health and safety of the public. When questions arise concerning testing of a unit like Limerick in an area like suburban Philadelphia, CEPA believes that this Licensing Board would be derelict in its duty if it did not broaden its inquiry and take the time to thoroughly investigate the issues.

For all of the foregoing reasons, CEPA requests that CEPA's contention be admitted.

Respectfully submitted,

AUGUST 9, 1984


STEVEN P. HERSHEY,
Attorney for CEPA

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CERTIFICATE OF SERVICE

I hereby certify that copies of the attached in the above-captioned proceeding have been serced on the following by deposit in th United States mail, first class, this 9th day of August 1984:

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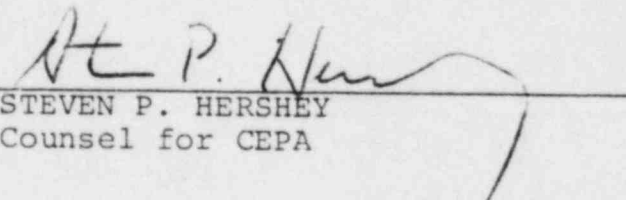
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