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April 12, 1985

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Mr. Harold R. Denton  
Director  
Office of Nuclear Reactor  
Regulation  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

In the Matter of  
Philadelphia Electric Company  
(Limerick Generating Station, Units 1 and 2)  
Docket Nos. 50-352 and 50-353

Dear Mr. Denton:

By letter dated February 6, 1985, Philadelphia Electric Company responded to the petition submitted to you on December 23, 1984 by Robert L. Anthony for himself and on behalf of Friends of the Earth (collectively "FOE"). That petition requested relief pursuant to 10 C.F.R. §2.206 and was treated accordingly by the NRC. 50 Fed. Reg. 7152 (February 20, 1985).

In response, your letter to Mr. Anthony of February 13, 1985, stated that "[n]one of [the matters cited by FOE in its request] requires immediate action sought by the petition regarding continued operation of the facility." FOE supplemented its request by letter dated February 25, 1985.

For the reasons stated in the attached comments of Philadelphia Electric Company, none of the other matters recently raised by FOE warrants the relief requested.

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Mr. Harold R. Denton  
April 12, 1985  
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Accordingly, the petition for relief under Section 2.206  
should be denied.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mark J. Wetterhahn". The signature is fluid and cursive, with the first name "Mark" being more prominent.

Mark J. Wetterhahn  
Counsel for the Licensee

MJW/dlf  
Enclosure  
cc: Eugene J. Bradley, Esq.  
Robert L. Anthony

SUPPLEMENTAL COMMENTS OF PHILADELPHIA ELECTRIC  
COMPANY ON FOE'S LETTER DATED FEBRUARY 25, 1985  
RELATING TO ITS REQUEST UNDER 10 C.F.R. §2.206

On February 6, 1985, Philadelphia Electric Company ("PECO") commented upon FOE's request under 10 C.F.R. §2.206, pointing out that no basis in fact or law had been shown for FOE's request that the NRC initiate proceedings to revoke the operating license for Unit 1 of the Limerick Generating Station ("Limerick") by issuing an order to show cause. In its letter dated February 25, 1985, FOE sets forth additional matters in support of its request for relief. As discussed below, the specific items set forth by FOE demonstrate a misunderstanding of the facts as well as the importance of the matters it seeks to raise.

The documents cited by FOE were generated by PECO and the NRC in their ongoing inspections and safety reviews and therefore do not constitute any new information. Moreover the items raised by FOE do not pose any threat to the public health and safety.

The various documents cited by FOE include a Systematic Assessment of Licensee Performance ("SALP") Report, NRC inspection reports, PECO's Licensee Event Reports ("LER's")

and related correspondence.<sup>1/</sup> In adjudicatory proceedings, the boards have rejected similar claims presented on the basis of such information already in the record. Before addressing the specific matters raised by FOE, PECO therefore will review some of those decisions.

#### Adjudicatory Decisions

Allegations like FOE's have typically been raised in licensing proceedings in the context of quality assurance issues. The Boards have ruled that the mere recitation of isolated deficiencies and violations does not raise any litigable issue and has no particular safety significance to the plant.

For example, in Callaway, the Appeal Board stated:

In any project even remotely approaching in magnitude and complexity the erection of a nuclear power plant, there inevitably will be some construction defects tied to quality assurance lapses. It would therefore be totally unreasonable to hinge the grant of an NRC operating license upon a demonstration of error-free construction. Nor is such a result mandated by either the Atomic Energy Act of 1954, as amended, or the Commission's implementing regulations. What they require is simply a finding of reasonable assurance that, as built, the facility can and will be operated without endangering the public health and safety. . . . Thus, in examining

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<sup>1/</sup> Inasmuch as all of the matters raised by FOE pertain to documents in the record, we assume that the Commission's Statement of Policy on handling late allegations is inapplicable. See 50 Fed. Reg. 11030 (March 19, 1985).

claims of quality assurance deficiencies, one must look to the implication of those deficiencies in terms of safe plant operation.<sup>2/</sup>

Reiterating this standard in Shoreham, the Appeal Board rejected intervenor's argument that "every deficiency, however minor, reflects an attitude or lack of discipline that undermines confidence that the QA program has been successful."<sup>3/</sup> The Board agreed that deficiencies or violations lack safety significance where found "to be minor, readily correctable, and posing no concern about the adequacy of [plant] design, construction or installation."<sup>4/</sup>

The Licensing Board in Shoreham disapproved an intervenor's use of the same approach taken by FOE in its Section 2.206 petition, which it characterized as "bean counting." It stated:

This Board is not about to become involved in a "numbers game" of counting beans of different colors in viewing the examples of QA failures relied on by [petitioner]. Rather, we have kept foremost in our minds the intent of the NRC requirements and the actual and practical measures taken to meet these requirements to assure no undue risk to the health and safety of the public. We seek a solid foundation for finding reasonable assurance of adequate protection of the health and safety of the

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<sup>2/</sup> Union Electric Company (Callaway Plant, Unit 1), ALAB-740, 18 NRC 343, 346 (1983).

<sup>3/</sup> Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), ALAB-788, 20 NRC 1102, 1141 (1984).

<sup>4/</sup> Id. at 1142.

public. We do not seek evidence of a sterile application of ritualistic methodology.5/

As the Licensing Board in Perry similarly stated:

The test of a QA program, however, lies not only in its ability to uncover discrepancies in QA but also in its ability to cope with them successfully so that they are remedied and that assurance of safe construction can ultimately be found.6/

In issuing its Partial Initial Decision on a quality assurance contention, the Board in Perry rejected far more sweeping claims than those alleged by FOE and held:

The construction of Perry is a massive task. We are not surprised that applicant's quality assurance program has detected thousands of nonconformances that have arisen during construction. . . . There is no indication that there are serious problems that have escaped detection or are not being carefully tracked and resolved.7/

Regarding the matter of corrective actions for nonconformance reports identified in notices of violation and SALP's, the Board in Perry further stated:

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5/ Shoreham, supra, LBP-83-57, 18 NRC 445, 579-60 (1983), aff'd, ALAB-788, 20 NRC 1102 (1984). The Board noted that the NRC Staff "has looked at many different ways of counting violations, and has found such 'bean' counting to be essentially meaningless." Id. at 604-05.

6/ Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 and 2), LBP-83-74, 18 NRC 1241, 1252 (1983).

7/ Perry, supra, LBP-83-77, 18 NRC 1365, 1367-68 (1983).



The intervenors have not raised any serious doubts about the adequacy of the closeout systems. The Board is entirely satisfied that applicant's system is closely tracking the status of NRs at Perry, and that nonconformances are being properly closed out in a manner consistent with their safety significance.

. . . .

. . . These matters must be examined in context. We would be concerned if it appeared that applicant was not adequately monitoring the safety significance and status of ARs [audit action reports]; however, the record indicates otherwise. Applicant's procedural system, and its use of this system to correct problems, in our view reflect a proper degree of involvement and control. Intervenors have not indicated any evidence that casts doubt on this conclusion.<sup>8/</sup>

Overall, the Board in Perry found that violations and deficiencies discussed in NRC investigative reports and SALP's "disclosed no serious inadequacies" and were generally "associated with the first phase of a major new work activity, where 'start-up' deficiencies may be more likely." The Board concluded that, considering the breadth of the Staff's investigation and inspections, there was not a "disproportionate number of noncompliances," which "were of a relatively low severity level."<sup>9/</sup>

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<sup>8/</sup> Id. at 1387, 1389.

<sup>9/</sup> Id. at 1393-94.

Other boards have similarly found that minor violations and deficiencies do not raise any substantial issues regarding the public health and safety. In Comanche Peak, the Licensing Board rejected a late contention relating to deficiencies in the applicant's hot functional testing where the petitioner simply recited, "without any analytical differentiation or sense of priority, dozens of specific omissions and problems."<sup>10/</sup> The Board stated:

We do not find these omissions or the discovery of problems to have been startling or disturbing. The staff states that the plant cannot load fuel until staff is satisfied that it is safe to go to power. The staff must be satisfied that it is safe to load fuel even though certain items have not received hot functional testing. It also must be sure that each of the problem areas has been resolved.

. . . .

. . . [The proposed contention] contains a very detailed description of omissions of equipment during hot functional testing, but it does not give a basis for believing that any of those omissions has safety significance. Similarly, it points out problems found by applicant during its own test, but it does not provide any basis for believing that the discovery of these problems indicates some safety deficiency in the construction of the plant.<sup>11/</sup>

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<sup>10/</sup> Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-83-75A, 18 NRC 1260, 1262 (1983).

<sup>11/</sup> Id. at 1262-63. As the Board added: "Individual problems found in the course of a testing program only indicate that the program is working. Unless there is  
(Footnote Continued)



In the Byron proceeding, the Licensing Board rejected requests to reopen the record based upon NRC inspection reports on preoperational testing, which noted minor noncompliances equivalent to those cited by FOE in its petition. The Board held that "the events reported in the inspection reports did not seem to rise to [the] level" of indicating any institutional incapacity in applicant's quality assurance program.<sup>12/</sup> Notably, the Staff testified in an affidavit opposing reopening that Severity Level IV violations are not a significant safety issue and that, due to the complexity and scope of the preoperational testing program at a nuclear power plant, including the large number of inspector hours, "the identification of many items of noncompliance is not unexpected."<sup>13/</sup>

During the hearing in Byron, the Staff reiterated its testimony that a higher number of deficiencies would be expected during inspection of preoperational testing activities, and that the safety significance of noncompliances must be analyzed "in the context of the SALP evaluations and other controlling factors . . . such as the civil penalties,

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(Footnote Continued)

additional basis, discovered problems are not in themselves grounds for admitting a contention." Id. at 1264 n.6.

<sup>12/</sup> Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), LBP-83-41, 18 NRC 104, 110 (1983).

<sup>13/</sup> Id. at 107.

the severity levels of the noncompliances, the amount of activity at a particular site, the phase of the activity (e.g., construction approaching fuel loading), the number of inspector-hours, the age of the plant, and the utility's response to the citations." <sup>14/</sup>

The Director of the Office of Inspection and Enforcement denied relief under Section 2.206 in Point Beach where the petitioner, like FOE, argued that Severity Level IV and V violations warranted the relief. After examining the SALP reports for Point Beach "to determine whether they illustrate a decline in performance that is significant enough to require issuance of an order to show cause why the license should not be modified, suspended, or revoked," the Staff "concluded that they do not" inasmuch as the overall performance of the licensee "was never considered unsatisfactory." <sup>15/</sup> As in Point Beach, the Staff should also conclude in this instance that the Severity Level IV and V violations cited by petitioner, which "had limited safety significance," do not justify "escalated enforcement action" such as issuance of an order to show cause. <sup>16/</sup>

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<sup>14/</sup> Byron, supra, LBP-84-2, 19 NRC 36, 119 (1984).

<sup>15/</sup> Wisconsin Electric Power Company (Point Beach Nuclear Plant, Units 1 and 2), DD-83-13, 18 NRC 721, 722-23 (1983).

<sup>16/</sup> Id. at 722.

Matters Alleged By FOE

With the approach of the adjudicatory boards and Staff in other proceedings as background, we now address the various categories of items raised by FOE. The first matter raised by FOE is an NRC SALP Report for Limerick dated January 14, 1985. FOE cites construction deficiency reports filed from December 1, 1983 through November 30, 1984 as listed in Table 1 of the SALP Report. The reporting of such deficiencies, however, is merely evidence that PECO's quality assurance program is working and does not indicate any hazard to the public health and safety in the operation of Limerick. Similarly, the mere recitation of Severity Level IV and V violations in Table 3, in a project of the magnitude of Limerick, does not indicate any problem in meeting regulatory standards or any hazard to the public health and safety.

The particular items upon which FOE has focused do not demonstrate any basis for instituting license revocation proceedings. As with any SALP Report, areas in which the NRC has found a need for improvement are discussed. The summary of the SALP Report, nevertheless, expressly states that "the quality of construction activities remained high" during the assessment period and that "[m]anagement involvement was evident."<sup>17/</sup> The SALP Report further states that

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<sup>17/</sup> SALP Report at 6 (January 14, 1985).

the "level of performance of preoperational testing activities improved over that shown in the previous assessment" and that "licensee management took adequate corrective actions to address [previously identified] weaknesses after they were identified by the NRC."<sup>18/</sup>

Further, the NRC found in the SALP Report that the contribution to the overall quality of the program made by the licensee's Test Review Board to be "noteworthy," and "amply demonstrated during NRC's programmatic reviews."<sup>19/</sup> In conclusion, the NRC determined that the "level of performance attained by the end of the preoperational phase appears to have carried over into the startup phase."<sup>20/</sup> Accordingly, the NRC rated PECO's performance in construction activities as Category I, consistent trend.<sup>21/</sup>

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<sup>18/</sup> Id.

<sup>19/</sup> Id.

<sup>20/</sup> Id. In the more detailed discussion of construction activities, the SALP Report states: "The licensee maintained good performance throughout this assessment period. Significant amounts of NRC inspection effort bore out the conclusion that the quality of construction was maintained at a high level." Id. at 9.

<sup>21/</sup> Id. at 11. A SALP Report designation of Category 1 means: "Reduced NRC attention may be appropriate. Licensee management attention and involvement are aggressive and oriented toward nuclear safety; licensee resources are ample and effectively used such that a high level of performance with respect to operational safety or construction is being achieved." Id. at 4.

Thereafter, FOE cites a number of NRC inspection reports and PECO LER's, whose results were incorporated within the SALP Report. FOE's discussion of these reports is wholly lacking in any analysis of demonstrated or potential safety significance. No basis exists to support the sweeping allegation that each of the events reported by PECO "had the potential to precipitate a nuclear accident."<sup>22/</sup> For example, the most recent report cited by FOE, Inspection Report No. 50-352/85-08 (February 1, 1985), contains a single Severity Level IV violation. Page four of the Report describes the short-term and long-term corrective actions proposed by the licensee to enhance operator familiarity with Technical Specification requirements and procedural guidance to operators. FOE also cites inspection reports not analyzed in the February 14, 1985 SALP Report. None of those reports, however, cites violations more serious than a Severity Level IV.<sup>23/</sup>

FOE asserts that it has "no indication that there was any summary or review of open inspection items, exceptions,

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<sup>22/</sup> Letter dated February 25, 1985 from Robert L. Anthony to Harold R. Denton, Director, NRC Office of Nuclear Reactor Regulation ("FOE letter of February 25, 1985") at 1.

<sup>23/</sup> See FOE letter dated February 25, 1985 at 3. Moreover, FOE has apparently misinterpreted certain reports, i.e., treating the discussion of open items in Inspection Report 50-352/84-72 and 50-352/84-66 as involving new items.



violations or deviations which were required to be resolved" prior to criticality for Unit 1.<sup>24/</sup> No reference is made to any specific item listed in the license.<sup>25/</sup> Inasmuch as the NRC need not accord "presumptive validity"<sup>26/</sup> to FOE's conjecture that certain requirements might not have been met, it is unnecessary for the NRC to institute a proceeding to establish affirmatively that those conditions have been met. Obviously, this is a matter of ongoing staff review and will necessarily be examined in the issuance of a full-power license.<sup>27/</sup>

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<sup>24/</sup> Id.

<sup>25/</sup> See License No. NPF-27 (Attachment 1, Item 4) (October 26, 1984).

<sup>26/</sup> Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), CLI-78-7, 7 NRC 429, 432 (1978). The Bailly standard was recently reiterated by the Licensing Board in Kerr-McGee Chemical Corporation (Kress Creek Decontamination), Docket No. 40-2061-SC, "Second Prehearing Conference Memorandum and Order" (February 7, 1985) (slip op. at 7).

<sup>27/</sup> See 10 C.F.R. §50.57(a). As the Appeal Board stated in Summer, it is the Staff which is obligated "to insure the existence of an adequate basis for each of the requisite Section 50.57 determinations" before the issuance of the operating license. South Carolina Electric & Gas Company (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 896 (1981). Subsequently in that case, the Licensing Board denied a motion to reopen on the ground that it "could do no more than order that [alleged deficiencies] be corrected and that the corrections be monitored by Staff - a procedure that is already in effect without Board intervention." Summer, supra, "Memorandum and Order" (April 28, 1982) (slip op. at 4).



In effect, FOE has disregarded the presumption that the Staff will perform its statutory and regulatory functions properly.<sup>28/</sup> As the Commission found in the WPPSS proceeding: "Past practice clearly indicates that . . . the agency has 'faithfully discharged' its responsibility to give full consideration to petitions seeking relief under section 2.206."<sup>29/</sup>

The next portion of FOE's supplemental request asserts the "inevitability" of an accident at Limerick due to the number of LER's from October 26, 1984 through January 31, 1985. A few particular LER's are briefly described, but there is no discussion of the significance of the reported event in terms of any specific relief alleged to be appropriate under Section 2.206. Contrary to FOE's implicit assertion, the Director has never held that the mere filing of an LER or a number of LER's provides a basis for relief under Section 2.206. The Commission's statements of consideration in adopting 10 C.F.R. §50.73 make it clear that an LER does not necessarily involve an incident of such safety significance as to justify the extraordinary relief sought

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<sup>28/</sup> E.g., Consumers Power Company (Midland Plant, Units 1 and 2), Docket Nos. 50-329-OL and 50-330-OL, "Special Prehearing Conference Order" (February 23, 1979) (slip op. at 2).

<sup>29/</sup> Washington Public Power Supply System (WPPSS Nuclear Project Nos. 1 & 2), CLI-82-29, 16 NRC 1221, 1229 (1982).

by FOE.<sup>30/</sup>

As the Board noted in Shearon Harris, the number of LER's depends greatly upon the age of the plant, the utility's relationship with the NRC Office of Inspection and Enforcement, and the licensee's attitude in reporting reportable occurrences. The Staff testified that a high number of LER's may be "due to the licensee's determination to report all possible reportable items," and the Board agreed that a licensee's reporting policy "may be an overriding factor" where a high number of LER's are reported.<sup>31/</sup> The Board further noted, significantly, that "a

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<sup>30/</sup> Thus, the Commission stated that "the LER will be a detailed narrative description of potentially significant safety events," which "will provide the basis for the careful study of events or conditions that might lead to serious accidents." 48 Fed. Reg. 33850, 33853 (July 26, 1983) (emphasis added). The Commission added: "If the NRC staff decides that the event was especially significant from the standpoint of safety, the staff may request that the licensee provide additional information and data associated with the event." Id. The Commission specifically stated that the LER rule requires that events be reported "regardless of the safety significance of the components, systems, or structures involved." Id. The Board in Perry granted summary disposition on a contention based on LER's because it was "unwilling to assume without more specific argument that issuance of LER's, which are expected to be generated from a quality assurance program, represent a breakdown in that program." Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 & 2), LBP-82-114, 16 NRC 1909, 1917 (1982).

<sup>31/</sup> Carolina Power and Light Company (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), LBP-79-19, 10 NRC 37, 72 n.16 (1979).

higher number of LER's naturally occur at the startup of a plant."<sup>32/</sup>

In any event, PECO has responded to the concerns expressed by the NRC regarding the number of LER's. As stated in recent correspondence to the NRC, the corrective action programs previously discussed with the NRC have been effective in reducing the number of reportable events.<sup>33/</sup> As noted in that correspondence, corrective action programs have been implemented to eliminate recurring design deficiencies, address personnel errors and make programmatic improvements. As further stated, positive results have been demonstrated.

FOE's assertions regarding the completion of surveillance tests required under License No. NPF-27 are very unclear. Contrary to its assertion that certain surveillance tests must be completed prior to initial criticality to meet the conditions in License No. NPF-27, Attachment 1,

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<sup>32/</sup> Id. at 72.

<sup>33/</sup> See Letter dated April 2, 1985 from M.J. Cooney, Manager, Nuclear Production, Electric Production Department, to Richard W. Starostecki, Director, Division of Projects and Resident Programs, Region I, NRC. As a threshold matter, the number of LER's reported by PECO is substantially attributable to conservative reporting techniques and actuation of emergency safeguard features, which merely provides confirmation that the systems perform as designed. Id. at 4. No event resulted in serious degradation of safety barriers or the ability to achieve or maintain safe shutdown. Id. at 5.

those provisions of the license deal with preoperational tests and other items, not surveillance tests. In any event, Inspection Report No. 84-71 states in Paragraph 3.4 at page 5: "The inspector reviewed the surveillance tests listed in Appendix B to verify they were conducted prior to entering Operational Condition 2." This led to the following finding at page 6:

The pre initial criticality activities were adequately accomplished. The surveillance tests reviewed were accomplished prior to entering Operational Condition 2. The licensee management was carefully monitoring those activities necessary to enter Operational Condition 2 and was observed to perform overview checks of alarm/annunciator status on at least two occasions.

The last items cited by FOE as a basis for its request are taken from the Independent Design Review of Limerick Generating Station, Unit No. 1, Core Spray System (November 1984) ("IDR"), prepared by Torrey Pines Technology. FOE states that it is not "persuaded" by the explanation at page 29 of the report which addresses ten items for which documents required by the General Electric design control program to demonstrate a design adequacy review were not available. No technical basis is cited by FOE for its disagreement with the conclusion by Torrey Pines that it is

satisfied with the resolution of the unavailable documentation.<sup>34/</sup>

FOE also cites IDR findings which "identified several errors and inconsistencies in the analysis that was used to show plant safe shutdown capability following postulated breaks in the core spray line."<sup>35/</sup> FOE overlooks the fact, however, that Torrey Pines also found that the corrective action adopted by PECO "adequately addresses the concerns raised by the Finding."<sup>36/</sup> This involves a thorough review and revision of "all safety evaluation calculations associated with jet impingement," including analysis of loss of individual devices with an individual worst single failure

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<sup>34/</sup> Specifically, Torrey Pines concluded that "GE's actions in response to the [finding], when successfully implemented, will adequately address all concerns which led to the Finding classification." Torrey Pines found that GE's re-creation of the design review and document release process "provided a high degree of assurance that all required reviews were performed and documented," and also noted that "GE will be performing a technical review of the 10 items identified with missing design review documents." All of this, concluded Torrey Pines, "will provide the action necessary to assure that no safety problem would be created as a result of missing design review documents." Torrey Pines IDR, Vol. 2, at 29.

<sup>35/</sup> Those errors related to the availability of certain safety systems when transmitters were lost as a result of jet impingement. The IDR concluded that determining the impact of those errors "would have required a knowledge of all plant systems and components that could not be gained in this TPT review of the core spray system." Torrey Pines IDR, Vol. 2, at 56.

<sup>36/</sup> Id. at 57.

and loss of all devices from a common cause with the worst common single failure.<sup>37/</sup> The NRC Staff performed an inspection on January 15, 1985 to verify implementation of this corrective action plan and determined the corrective actions to be acceptable.<sup>38/</sup>

Contrary to FOE's implication, the Torrey Pines IDR did not find that its analysis of postulated breaks in the core spray lines imputed problems to "all plant systems and components."<sup>39/</sup> Rather, Torrey Pines concluded that it could not evaluate the impact of errors it found without performing analyses based upon a knowledge of "all plant systems and components." This simply means that such analyses were beyond the scope of Torrey Pine's charter in preparing the IDR.

In conclusion, FOE has alleged nothing which would warrant the initiation of a proceeding pursuant to 10 C.F.R. §2.206 to revoke the operating license for Limerick, Unit 1. Accordingly, the relief requested by FOE should be denied.

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<sup>37/</sup> Id. at 56-57.

<sup>38/</sup> Summary of Meeting on Independent Design Verification Program Held January 10, 1985 (February 20, 1985).

<sup>39/</sup> Id. at 56. See FOE letter dated February 25, 1985 at 6.