

July 2, 1985

ANTHONY/FOE BRIEF IN SUPPORT OF OUR APPEAL OF 6/7/85 FROM ASLB MEM. & ORDER OF 6/4/85

APPEAL In a Memorandum and Order of 6/4/85 ASLB denied our petition of 4/30/85 To Reopen the Record on the Basis of New Information in PECO's Effluent Release Report, Feb. 1985. We filed an appeal of this order with ASAB 6/7/85. ^{DOCKETED} _{USNRC} This brief reinforces our appeal and petitions again that LB's order be reversed and that the record be reopened and hearings be held via a Board remand ⁸⁵ _{JUNE 8} order to LB. _{P4-43}

1. CRITERIA FOR NEW CONTENTIONS. In its Memorandum and Order, 6/4/85 (LB6/4-p.11) LB admits that we considered the five criteria in our filing of 5/14. (1) Good Cause. Although radioactive releases from routine operations were included in FSAR and ODCM, we had no way of knowing the actual effects or extent of radioactivity until PECO's first semi-annual report was issued. As we stated on 4/30, we had to request Attachment D, and received it only on 4/2, still not complete. We have, up to now, not received the "attached pages" for Att. D.

We assert that there was good cause to file our contention 4/30/85 and our request to reopen the record. We did not have the basis for filing before then. We ask the Board to find that this factor weighs in our favor.

(2) Availability of other Means (LB-p.11) LB conceded that we prevail on this.

(3) Development of Record (LB-p.12) LB admits (6/4-p.4) that only releases under emergency conditions were litigated before it and included in its decision, LBP-84-31. NRC Staff, also, in their response of 5/28/85 (p.7, note 5) said there had been no contentions on routine releases, and there was no litigation. It is apparent, thus, that the record is lacking in this essential aspect of protecting the public safety.

We informed LB, 5/14, that we had secured the services of an expert who could make a valuable contribution in augmenting the record on routine releases. Our expert is Dr. Bruce Moholt, a geneticist and microbiologist. Since LB did not afford us an opportunity to present him as a witness in a hearing, we are submitting here as Attachment 1. an Affidavit by Dr. Moholt, and Professional Qualifications. We believe that the Board will find that this is a valuable addition to the record and that it is essential to have Dr. Moholt's further testimony in a hearing.

We ask the Board to find that we have prevailed on this factor.

(4) (LB-p.12) LB granted that our interest is not otherwise represented and that "this factor weighs in favor of the petitioner" (Anthony/FOE).

(5) Broadening of the Issues. Reopening the record on effluent releases does not broaden the issues, as we point out under (3) above; it fills in a vital aspect, rather, in protecting the public's health and safety through this addition to the record.

We maintain that any delay cannot weigh against the assurance of public safety which

must be counted as a priority consideration. Furthermore, a full power license will not be held up at this time by our appeal since ^{Ginterford} emergency contentions

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are only coming to a hearing, starting 7/15. In addition the current water shortage is limiting PECO's ability to proceed with testing and power increases. We estimate that our appeal ^{not cause delay} may ^{not} be beyond the extent of these other factors.

STANDARDS FOR REOPENING We trust that the Board will find that we have satisfied the five factors above and that we prevail on all five. We have thereby satisfied the first requirement for reopening the record. In respect to standard (2), we assert that the effluent releases from routine operation is a vital safety issue which has not been considered in the licensing process and that the Affidavit of Dr. Molholt points up some of the essential missing factors. His testimony in a hearing will further reinforce these issues. We further assert that we are subject to immediate personal danger since R. Anthony has on several occasions walked along the railroad right-of-way to observe the Limerick plant. This means that he and others who walk there can be exposed to gaseous effluent at about 900 feet from the plant's stacks.

By basing its effluent set points on radiation levels at the site boundary circumference at 2,300 feet, PECO has failed to provide for my safety at 900 feet ^{for that} and of any who traverse the railroad right-of-way. PECO, thereby has violated 10 CFR 20.106 (b) by raising the limits of radiation exposure without receiving NRC approval. At the same time PECO has violated 10 CFR 20.106 (c) (1)(2)(3) and (4). PECO is also in violation of the provisions of 10 CFR 50.36 (c) (1) and (B)(1)(A) in not providing set points to assure "barriers which guard against the uncontrolled release of radioactivity".

By adjusting its set points to 2,300 feet instead of 900, PECO is also in violation of 10 CFR 50.36a (a) (2) in ^{under-}recording "the principal radionuclides released to unrestricted areas.."

On the basis of the above we ask the Board to find that our contention on effluent releases satisfies standard (2) since it constitutes a basic safety issue.

With respect to standard (3) we assert that the isolation set points will have to be based on lower levels when the dosages are calculated at 900 feet and modifications will have to be made in plant procedures and equipment if PECO is to come into compliance with the regulations cited above, i.e. 10 CFR 20.106, 50.36, and 50.36a. We ask the Board to find that standard (3) has been satisfied.

We, therefore, ask the Board to find that we have met all the criteria and standards for reopening the record, and thus order LE to reopen the record.

FAULTS IN PLANT AND OPERATION Further reinforcement for reopening the record comes from the record of faulty equipment and operation at Limerick which appear to assure the continuing inadvertent release of radioactivity at dangerous levels until corrective steps have been drawn up and carried out. . . Examples come from Region 1 Inspection Report 85-21, dated 5/2/85, (p.4) "open" item 84-66-11 involving in-field radioiodine sampling, collection techniques, and training for in-

field analysis. In the same inspection (p. 5) is "unresolved item" 85-21-01 on an unacceptable method of calibrating a neutron survey instrument. Another inspection report, 85-23, dated 5/20/85 (p.3,4) sets forth inadequacies in "calculations of dose contributions from plant radioactive effluents to unrestricted areas", an open item 85-23-01.

In addition to the samples above from inspection reports, some appreciation of the scope of faults and failures at Limerick can be learned from the record of Licensee Event Reports, a total of 54 reported from 1/1/85 to 5/17/85. Almost half of these potential accidents were caused by personnel error. At higher levels of operation (the plant was limited to 5% during the period) there would undoubtedly be inadvertent releases of radioactivity as a result of these "events" (LERs). The way in which they relate to effluents can be assumed from the repetition of a series of "events", (out of the total of 54), 9 involving the Reactor Water Clean Up System, 5 involving the Reactor Containment ventilating system (HVAC), and 4 involved with Control Room HVAC. These "events" give an indication of the faults in operation and equipment as they relate to the potential for liquid or gaseous radioactive releases at Limerick.

The need for changes in "PECo's management oversight of (the) radiological activities" is documented in a letter T.E. Murley, NRC, to V. Boyer, PECO, 5/30/85 (EA 85-42) page 1. "A. Notice of Proposed Imposition of Civil Penalties/Peach Bottom.." and B, a similar notice for Limerick. These violations at both plants were rated at Severity Level III (p.3) The two incidents at Peach Bottom involve deficiencies in oversight of radiological activities (p.1.), but the report (p.2.) concludes that these deficiencies pervade PECO's management and, therefore, could be expected in a related form ^{we believe} at Limerick in relation to contractors and employees, i.e. "inadequate oversight and control of contractor activities is not limited to the particular facility management, but also involves corporate management."

SUMMARY With the evidence of inadequate oversight of radiological activities on the part of PECO's management and the record of open items and LERs in PECO's operation at Limerick to date, the potential for radioactive releases to the public in the unrestricted area is immediate and continuing. It is essential, therefore, that our contention on radiological effluents from routine operation of the plant be heard and measures undertaken to protect the public. Since we have satisfied the criteria for reopening the record, we ask for this, and a remand to the Licensing Board for hearings.

cc: NRC:LB, Staff Counsel, Docketing, PECO
Others on Serv. List

Respectfully submitted,
Robert L. Anthony