

785

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)
)
PHILADELPHIA ELECTRIC COMPANY)
)
(Limerick Generating Station,)
Units 1 and 2))

Docket Nos. 50-352 ~~OL~~
50-353

DOCKETED
USNRC

'85 JUL 12 AM 11:52

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

NRC STAFF RESPONSE TO APPLICANT'S MOTION FOR AN
EXEMPTION FROM 10 C.F.R. PART 50, APPENDIX E, SECTION IV.F.1

Stephen H. Lewis
Deputy Assistant Chief
Hearing Counsel

July 11, 1985

8507150239 850711
PDR ADOCK 05000352
G PDR

D507

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)

PHILADELPHIA ELECTRIC COMPANY)

(Limerick Generating Station,)
Units 1 and 2))

Docket Nos. 50-352
50-353

DOCKETED
USNRC

*85 JUL 12 A11:52

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

NRC STAFF RESPONSE TO APPLICANT'S MOTION FOR AN
EXEMPTION FROM 10 C.F.R. PART 50, APPENDIX E, SECTION IV.F.1

Stephen H. Lewis
Deputy Assistant Chief
Hearing Counsel

July 11, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)	
)	
PHILADELPHIA ELECTRIC COMPANY)	Docket Nos. 50-352
)	50-353
(Limerick Generating Station,)	
Units 1 and 2))	

NRC STAFF RESPONSE TO APPLICANT'S MOTION FOR AN
EXEMPTION FROM 10 C.F.R. PART 50, APPENDIX E, SECTION IV.F.1

I. INTRODUCTION

On June 24, 1985 the Philadelphia Electric Company ("Applicant") filed "Applicant's Motion for an Exemption from the Requirement of 10 C.F.R. Part 50, Appendix E, Section IV.F.1 for the Conduct of a Full Participation Exercise Within One Year Before the Issuance of a Full-power Operating License." As discussed below, the motion does not raise any matter which is an issue in controversy before the Atomic Safety and Licensing Board and, therefore, should not be treated as an adjudicatory matter. In the Discussion section below and in the attached affidavit, the Staff sets out the basis for its belief that, subject to the performance of an environmental assessment, ^{1/} the exemption should be granted.

II. BACKGROUND

With the exception of two offsite emergency planning contentions involving the radiological emergency response plan for the State Correctional

^{1/} Pursuant to 10 C.F.R. § 51.21, the grant of an exemption from a Commission regulation requires preparation of an environmental assessment.

Institution at Graterford ("SCIG") pending before the Licensing Board, all contentions in this proceeding have been resolved in the Applicant's favor. ^{2/} These pending contentions, which have been raised by the inmates of the SCIG, relate to (1) whether commitments have been made to provide the necessary training of bus and ambulance drivers who would be called upon in the event of the need to evacuate the SCIG as a result of a radiological emergency at Limerick and (2) adequacy of the methodology used to arrive at evacuation time estimates for the SCIG. ^{3/}

The Applicant has filed the instant motion based upon the fact that it does not appear that the Commission will be in a position to authorize, and the NRC staff to issue, a full-power operating license for Limerick, Unit 1, on or before July 25, 1985 (one year after the July 25, 1984 full participation emergency preparedness exercise conducted in accordance with 10 C.F.R.

^{2/} In LBP-84-31, 20 NRC 446 (1984) (the Second Partial Initial Decision) the Licensing Board resolved contentions relating to onsite emergency planning. In LBP-85-14, 21 NRC ____ (May 2, 1985) (the Third Partial Initial Decision) the Licensing Board resolved all offsite emergency planning contentions with the exception of contentions of the inmates of the State Correctional Institution at Graterford which might be admitted. The two offsite emergency planning conditions imposed in the Third Partial Initial Decision have been resolved. See, Memoranda from Richard W. Krimm, Assistant Associate Director, Office of Natural and Technological Hazards Programs, FEMA to Edward L. Jordan, Director, Division of Emergency Preparedness and Engineering Response, Office of Inspection and Enforcement, NRC (dated May 21 and May 30, 1985), transmitted to the Licensing Board and parties by letters dated May 22 and June 5, 1985 (respectively) from Donald F. Hassell, Counsel for the NRC Staff. Motions to stay these decisions were denied in, respectively, ALAB-789, 20 NRC 1443 (1984) and ALAB-808, 21 NRC ____ (June 11, 1985). Appeals from both the Second and Third Partial Initial Decisions are pending before the Appeal Board.

^{3/} Order Admitting Certain Revised Contentions of the Graterford Inmates and Denying Others (June 12, 1985), at 5-6, 8-10.

Part 50, Appendix E, Section IV.F.1). ^{4/} Motion, at 5. In its motion, the Applicant asserts that it is Commission practice to refer exemption requests in contested cases to the presiding licensing boards, but that the Commission should act on this motion itself since the time required for a referral to the Licensing Board, a ruling by the Licensing Board and review by the Appeal Board "would make any attempt to expedite licensing in this case meaningless." Id. at 6.

III. DISCUSSION

- A. The motion does not raise an adjudicatory matter and should be decided by the Commission or the Director, Office of Nuclear Reactor Regulation (NRR), on referral from the Commission, as an administrative matter.

In its motion the Applicant focuses on the question of whether the exemption should be considered by the Licensing Board or the Commission. Motion, at 6. The Applicant does not distinguish between exemption requests that raise, and those that do not raise, issues which are in controversy in the Limerick proceeding. Under 10 C.F.R. § 2.760a, the licensing board in a contested operating license proceeding (such as Limerick) only has before it for determination those "matters put into controversy by the parties and [those] matters which have been determined to be issues in the proceeding by the Commission or the presiding officer." ^{5/} Administrative action on matters which are not

^{4/} Section IV.F.1 states, in relevant part:

A full participation [footnote omitted] . . . exercise shall be conducted within 1 year before the issuance of the first operating license for full power and prior to operation above 5% of rated power of the first reactor
. . . .

^{5/} Section 2.760a permits Licensing Boards to raise issues on their own initiative, but this is limited to issues where the Board determines that "a serious safety, environmental, or common defense and security matter exists." For reasons set forth below, this motion does not raise such matters.

issues in controversy in an adjudicatory proceeding are within the jurisdiction of the appropriate NRC office Director, in this case the Director of NRR. ^{6/} Of course, the Commission, in its supervisory capacity over administrative matters, may choose to decide such matters (including this exemption request) itself.

The two admitted contentions of the inmates do not put into controversy the subject matter of the exemption motion. Those contentions relate to specific asserted deficiencies in radiological emergency response planning for the SCIG. The first contention asserts that the non-governmental personnel who would be required to assist in the evacuation of the SCIG should receive the same training offered to bus drivers who would evacuate children from area schools in the event of a radiological emergency at Limerick. ^{7/} The second contention relates to the adequacy of the methodology used by the Pennsylvania Department of Corrections in arriving at its range of estimates for the time required to evacuate the SCIG. ^{8/}

The emergency response exercises required by the Commission's regulations to be conducted periodically have as their purpose the demonstration of adequate emergency response capabilities. 10 C.F.R. § 50.47(b)(14). As indicated in the attached affidavit of Falk Kantor, which the Staff incorporates by reference into this response, the Federal Emergency Management Agency (FEMA)

^{6/} See 10 C.F.R. 2.717(b) which reads, in relevant part:
The Director of Nuclear Reactor Regulation ... may issue an order and take any otherwise proper administrative action with respect to a licensee who is a party to a pending proceeding. Any order related to the subject matter of the pending proceeding may be modified by the presiding officer as appropriate for the purposes of the proceeding.

^{7/} Order Admitting Certain Revised Contentions of the Graterford Inmates and Denying Others (June 12, 1985), Appendix: Basis C-Training.

^{8/} Id., Appendix: Basis E - Estimated Time of Evacuation

has determined that a remedial exercise conducted on March 7, 1985 adequately demonstrated that emergency response personnel have an understanding of the emergency response procedures for the SCIG and the ability to implement those procedures. Kantor affidavit, at 3. The inmates in their statements of basis for their admitted contentions have not contested the validity of this finding. ^{9/} Furthermore, the deficiencies that the inmates assert in their admitted contentions can be addressed by testimony regarding (1) the training that will be offered to bus drivers and rescue personnel as part of the SCIG plan and (2) the methodology that was used in developing the range of evacuation time estimates for the SCIG. Neither the sufficiency of commitments to provide training nor the adequacy of methods for deriving evacuation time estimates represent issues of the type that are evaluated during an exercise. Should the litigation of the two admitted contentions result in a finding of deficiency in SCIG emergency planning, the correction of that deficiency would not require demonstration through the conduct of a full-participation exercise.

The Staff has also considered the fact that the record in this proceeding demonstrates that the plans for response to an emergency at the Limerick facility meet the requirements of 10 C.F.R. § 50.47 and Appendix E to 10 C.F.R. Part 50 and provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at Limerick. ^{10/}

^{9/} Id., Appendix.

^{10/} See, Third Partial Initial Decision, LBP-85-14, Slip op. at 304. The Staff has considered whether the exemption motion raises a matter which is materially related to the contentions which were decided in the Third Partial Initial Decision. Some of these matters are also the subject of pending appeals to the Appeal Board. Although the conduct of a further pre-licensing full-participation exercise was not a basis for the Board's determinations in the Third Partial Initial Decision, the Board suggested that "some form of capability demonstra-

Additionally, the various exercises of the emergency plans have demonstrated that all Category A preparedness deficiencies identified by FEMA during the exercises have been remedied. Kantor affidavit, at 3.

On the basis of these considerations, the exemption motion does not raise a matter that is related to any issue in controversy in this proceeding in such a way that it should be treated as an adjudicatory matter requiring the development of an evidentiary record by the Commission or the Licensing Board. ^{11/}

B. The exemption motion meets the requirements of 10 C.F.R. §§ 50.12(a) and 50.47(c)(1)

The Staff has considered the exemption motion in terms of the general standards of 10 C.F.R. § 50.12(a) and concluded that the motion demonstrates that the exemption should be granted. ^{12/}

(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

tion should be conducted" to address a Category A deficiency concerning evacuation of school children by bus. Third Partial Initial Decision, LBP-85-14, slip op. at 135. That Category A deficiency was resolved to FEMA's satisfaction during the April 10, 1985 remedial exercise. Letter to Board from D. F. Hassell, dated May 28, 1985 with attachments.

^{11/} In cases where the Commission has delegated exemption requests to a licensing board for determination, the exemption requests raised matters that were already before the licensing board and for which the development of an evidentiary record was considered necessary. See, Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), CLI-48-8, 19 NRC 1154 (1984); Washington Public Power Supply System (WPPSS Nuclear Project Nos. 3 and 5), CLI-77-11, 5 NRC 719, at 720, 722 (1977).

^{12/} Section 50.12(a) reads, in relevant part:

The Commission may, upon application by any interested person or upon its own initiative grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest

The attached affidavit of Falk Kantor sets forth the Staff's assessment of whether, considering the grant of the exemption, there is adequate protection of the health and safety of the public. ^{13/} Mr. Kantor concludes that:

the overall state of onsite and offsite emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the Limerick Generating Station.

Kantor affidavit, at 4. Based upon the four factors set forth at pages 6-7 of his affidavit, ^{14/} Mr. Kantor further concludes that the Staff's reasonable assurance finding with respect to emergency preparedness applies to the issuance of an operating license for Limerick, Unit 1 at any time up to April 1986 when the next full-participation exercise is scheduled to be held. Id., at 7.

^{13/} In a recently proposed amendment to § 50.12(a) the Commission expressed its belief that

. . . the "not endanger" language in the current rule was never intended to embody any special standards for exemptions that differed from the statutory standards that licensing must provide adequate protection to the health and safety of the public

50 Fed. Reg. 16506, at 16508 (April 26, 1985).

^{14/} These four factors relate to:

1. the conduct of the July 1984 full-participation exercise and the supplemental and remedial exercises leading to FEMA's favorable finding on offsite preparedness;
2. the Commonwealth of Pennsylvania's recent full or partial participation in, or scheduled future participation in, exercises at other nuclear power plants;
3. the participation of local response organizations in the July 1984 full-participation exercise or subsequent supplemental and remedial exercise, and the involvement of these organizations in an ongoing training and development program; and
4. the conduct of an onsite emergency preparedness exercise at Limerick in April 1985 and the scheduling of

Mr. Kantor also notes that revision of the exercise schedule for nuclear plants in the Commonwealth to accelerate the date of the next full-participation exercise at Limerick would be extremely difficult due to the Commonwealth's established schedule and the large number of local response organizations involved. Id., at 4. These scheduling difficulties should be recognized and accommodated by the Commission, as a matter of comity to the Commonwealth and local response organizations.

As noted above, the exemption request does not raise an adjudicatory matter. Therefore, consistent with applicable law it may be addressed by the Commission or the Director, NRR as an administrative matter.

Accordingly, the exemption motion and the Staff's affidavit demonstrate that the standards of § 50.12(a) are met and that the exemption should be granted. Moreover, the Applicant's motion and the Staff's affidavit demonstrate that the failure to have conducted a full-participation exercise within one year of the date when Limerick receives a full-power license does not constitute a "significant deficiency" in the emergency plans for the Limerick facility. See, 10 C.F.R. § 50.47(c)(1).

C. The response of Anthony/FOE to the exemption motion does not establish a basis for denial of the exemption.

The Staff has received only one pleading filed by another party to the proceeding in response to the exemption motion. That response was filed by R. L. Anthony/Friends of the Earth ("Anthony/FOE") on July 3, 1985 and opposes the grant of the exemption. Based on its review of the Anthony/FOE response, the Staff believes the response asserts two points:

(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

drills to test elements of the Limerick emergency plan, some of which will involve offsite response agencies.

1. that "[a] new full participation exercise must be conducted after all deficiencies have been corrected and before a full power license is issued" because "Graterford has never been included in a full scale exercise," and
2. that "PECo is abusing privilege in applying to the Commission rather than LB."

The Staff has previously addressed a point similar to Anthony/FOE's first point. See, "NRC Staff Response to the Proposed Revised Contentions of the Graterford Inmates with Regard to the Radiological Emergency Response Plan" (June 3, 1985), at 20-23. As more fully developed in that pleading, the manner in which the SCIG plan was exercised is consistent with Commission regulations. ^{15/} Contrary to Anthony/FOE's assertion, the SCIG has been included in a full scale exercise. It was as a result of the July 1984 full-participation exercise that FEMA found, as part of a Category A deficiency, that the SCIG had not demonstrated the means for dealing with mobility impaired/transit dependent individuals. See, FEMA Exhibit E-4, Exercise Evaluation Report for the July 25, 1984 Exercise (September 25, 1984), at 1, 136. However, FEMA, the agency charged with responsibility for determining the adequacy of offsite emergency planning and preparedness, has determined that the March 7, 1985 remedial exercise adequately demonstrated that the SCIG authorities had an understanding of the emergency response procedures and the ability to implement them. Kantor affidavit, at 3.

^{15/} Section 50.47(b)(14) requires the conduct of periodic exercises "to evaluate major portions of emergency response capabilities." (emphasis supplied). Section IV.F.4 of Appendix E to Part 50 provides that "participation in remedial exercises must be sufficient to show that appropriate corrective measures have been taken regarding the elements of the plan not properly tested in the previous exercises."

Anthony/FOE appear to base their first point on the assumption that if significant deficiencies in the emergency planning for the SCIG are demonstrated in the upcoming hearing, a full-participation exercise will be necessary to determine whether these deficiencies have been corrected. As stated above, should deficiencies be identified as a result of litigating the admitted contentions of the inmates, their correction would not require demonstration through another pre-licensing full-participation exercise.

Accordingly, point one of the Anthony/FOE response does not demonstrate that the exemption should be denied.

Anthony/FOE's second point is that the Applicant "is abusing privilege" by bringing its motion before the Commission rather than the Licensing Board. As stated above, the Staff does not accept the premise that the exemption request raises an adjudicatory matter requiring development of a hearing record, whether before the Licensing Board or the Commission. Furthermore, the Commission clearly has the authority to consider requests for exemption in the first instance. Accordingly, the Staff does not believe that Anthony/FOE's second point provides any basis for the denial of the exemption.

IV. CONCLUSION

For the reasons set forth above, the exemption request should be treated as an administrative matter and decided as such either by the Commission or by the Director, NRR, on a referral from the Commission. The exemption motion and the Staff's assessment thereof demonstrate that the standards of §§ 50.12(a) and 50.47(c)(1) are met and that the exemption should be granted.

Respectfully submitted,

Stephen H. Lewis

Stephen H. Lewis
Deputy Assistant Chief Hearing Counsel

Dated at Bethesda, Maryland
this 11th day of July, 1985