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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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In the Matter of)

PHILADELPHIA ELECTRIC COMPANY)

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

Docket Nos. 50-352 OL
50-353 OL

OFFICE OF SECRETARY
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BRANCH

COMMONWEALTH OF PENNSYLVANIA'S
RESPONSE TO THE APPEALS OF
PENNSYLVANIA'S FRIENDS OF THE EARTH
IN THE DELAWARE VALLEY AND LIMERICK ECOLOGY ACTION
RELATING TO THE THIRD PARTIAL INITIAL DECISION OF MAY 2 1985

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Dated: August 8, 1985

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I. INTRODUCTION

This matter is before the Atomic Safety and Licensing Appeal Board (Appeal Board) on the separate appeals of Limerick Ecology Action (LEA) and Friends of the Earth in the Delaware Valley (FOE) from the Atomic Safety and Licensing Board's (Licensing Board) Third Partial Initial Decision, LBP-85-14, 21 NRC _____ (May 2, 1985).

The Commonwealth of Pennsylvania (Commonwealth) is an interested governmental participant in this proceeding pursuant to 10 C.F.R. 2.715. In accordance with that role, the Commonwealth responds herein to certain issues raised in the pending appeals for the purpose of providing the Appeal Board with additional information for its review in the interest of a clear and complete record.

II. STATEMENT OF THE CASE

On May 2, 1985, the Licensing Board issued a Third Partial Initial Decision, deciding that the Limerick offsite emergency plans, subject to conditions set forth in its Order, meet the requirements of 10 C.F.R. 50.47 and Appendix E to 10 C.F.R. Part 50, as well as the criteria of NUREG-0654, and provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. The Licensing Board ordered that, prior to operation above 5% of rated power, the Director, Office of Nuclear Reactor Regulation shall (a) receive verification of plans to implement a level of traffic control in the King of Prussia area sufficient to assure that all the traffic evacuating along the Route 363-to-Pennsylvania Turnpike can continue to move upon reaching the EPZ boundary, as implicitly assumed in NUREG-0654 Planning Standard J(10)(1); and (b) FEMA shall receive verification of the satisfaction of the unmet municipal staffing needs as they relate to a capability of continuous 24-hour operation during a radiological emergency, prior to operation above 5% rated power. FEMA has since verified for the NRC that these license conditions have been satisfied. See Memoranda of May 21 and May 30, 1985 from Richard W. Krimm, Office of Natural and Technological Hazards Programs, FEMA to Edward L. Jordan, Office of Inspection and Enforcement, NRC.

Intervenor Limerick Ecology Action (LEA) has appealed from the Licensing Board's conclusion that the record provides reasonable

assurance that the emergency plans are adequate and capable of being implemented. Friends of the Earth in the Delaware Valley and Robert L. Anthony, a joint party and a pro se intervenor, referred to as "FOE," has appealed from the Licensing Board's findings regarding the adequacy of Applicant's Evacuation Time Estimate Study and the subsidiary issue of whether the Limerick Generating Station plume exposure pathway emergency planning zone (plume EPZ) should be expanded to include certain geographical areas, including Valley Forge National Park.

III. STATEMENT OF THE ISSUES
ON APPEAL THAT THE
COMMONWEALTH WILL ADDRESS

A. Whether the Licensing Board erred in concluding that Valley Forge National Park need not be included within the Limerick plume EPZ, absent any affirmative showing that it should be included.

B. Whether the Licensing Board erred in finding reasonable assurance that the present emergency plans can and will be implemented by the appropriate political jurisdictions in light of Pennsylvania state law on emergency planning.

C. Whether applicable law or guidance necessitates the holding of a public meeting pursuant to the provisions of 44 C.F.R. Part 350 before FEMA may, pursuant to its Memorandum of

Understanding with the NRC, provide the NRC with a finding of reasonable assurance that offsite emergency plans are adequate and capable of being implemented.

IV. ARGUMENT

A. The Licensing Board Correctly Concluded That Valley Forge National Park Area Need Not Be Included In the Limerick Generating Station Plume Exposure Pathway Emergency Planning Zone.

1. Background

In its April 20, 1984 Special Prehearing Conference Order, the Licensing Board admitted contention LEA-24/FOE-1. That contention states:

There is no assurance that plans for evacuation of the ten mile radius will not be impeded by traffic congestion in the vicinity of Marsh Creek State Park, Exton area (involving Route 100) and Valley Forge Park, King of Prussia area.

These areas should either be included in the Emergency Planning Zone or adequate plans for traffic control and direction should be made to avoid adverse effects on EPZ evacuation.

The central issue in the admitted contention was whether emergency plans provide reasonable assurance that traffic congestion in the named areas will not significantly impede evacuation of the EPZ. LBP-84-18, 19 NRC 1020, 1067 (1984).

In Section A.3. of LBP-85-14, the Licensing Board made findings of fact on the matter of Valley Forge National Park and its impact on evacuation of the Limerick EPZ. Board Findings 92-120. The Board concluded that, "in the absence of any affirmative showing that . . . the Valley Forge State Park/King of Prussia area should be included within the Emergency Planning Zone, there is no reason to so include them." Board Finding 120.

2. LEA Argument

In LEA's view, the record in this proceeding demonstrates that a "de facto" evacuation plan exists for Valley Forge. LEA argues that the Park therefore should be made a part of the Limerick EPZ, citing 10 C.F.R. 50.47 (c)(2) in support. LEA asks the Appeal Board to consider (LEA Brief at 54) whether NRC guidance or regulation "mandates inclusion or some procedure to verify that there are not some non-emergency planning or non-safety reason why Valley Forge National Park has not been included in the EPZ." LEA argues that the NRC is obligated to determine "whether there are significant emergency planning or legal procedural reasons why inclusion should be done."

3. FOE Argument

On brief FOE challenges FEMA's involvement in the establishment of the Limerick plume EPZ. FOE cites the provisions of 44 C.F.R. Part 350 and claims that FEMA "ignored" the requirement set forth there that it "consult" on the size and configuration

of the EPZ. FOE alleges further that the Commonwealth, through the Pennsylvania Emergency Management Agency (PEMA) "disregarded" regulatory requirements with respect to the establishment of the EPZ, and asserts that, "by its silence," PEMA does not contest the inclusion of Valley Forge Park in the Limerick plume EPZ.

4. Commonwealth Response

With respect to the configuration of the plume EPZ, 10 C.F.R. 50.47 (c)(2) provides in pertinent part:

(2) Generally, the plume exposure pathway EPZ for nuclear power plants shall consist of an area about 10 miles (16 km) in radius and the ingestion pathway EPZ shall consist of an area about 50 miles (80 k) in radius. The exact size and configuration of the EPZs surrounding a particular nuclear power reactor shall be determined in relation to local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries.

(Emphasis added). The regulation does not mandate any particular formula for the plume EPZ, but indicates only that local factors are to be considered. In this case, Commonwealth, local and park officials have had several meetings to discuss notification procedures for the Park in the event of an emergency at Limerick, as well as the responsibility of the National Park Service in facilitating traffic flow through the park as it leaves the EPZ. Board Finding 93. Testimony by a National Park Service Ranger

indicated that the Park Service has not seen the need to adopt a formal plan to evacuate park visitors (Board Finding 96), nor has the Park Service asked PEMA to incorporate any portion of the park within the EPZ. Board Finding 92. In the event of an emergency at Limerick, the National Park Service will be notified at the "alert" stage of the incident by Chester County. The Park Service will then inform park visitors of the events at Limerick using public address systems and patrol vehicles so that visitors will have the opportunity to depart the park. Board Finding 94. In the opinion of the Park Service, most park visitors would leave the park rapidly and of their own volition to forestall any possible traffic congestion. Board Findings 96, 97. Adequate provision therefore exists to prevent park traffic from interfering with an evacuation of the Limerick plume EPZ.

FEMA has not "ignored" its responsibility to provide input with respect to the size of the Limerick EPZ. FEMA witness Kinard testified that the U.S. Department of Transportation Representative to the FEMA Regional Assistance Committee reviewed the configuration of the Limerick plume EPZ, and did not recommend including Valley Forge Park. Kinard, Tr. 20,234, 20,242-43, 20,246. Based on that expert's evaluation, FEMA does not support inclusion of Valley Forge Park in the Limerick EPZ, and testified that the Limerick Plume EPZ accords with the provisions of 10 C.F.R. 50.47(c)(2). Kinard, Tr. 20,246, 20,293.

FOE misinterprets PEMA's "silence" on the matter of Valley Forge Park. As set forth in the Commonwealth's Proposed Findings (at 49-50), LEA-24/FOE-1 concerns the adequacy of Applicant's Evacuation Time Estimate Study (Appl. Ex. E-67). The central issue to this contention is the adequacy of Applicant's consideration of traffic in the area of Valley Forge Park, not the size of the EPZ. The Applicant thus was the appropriate party to testify. Further, the Licensing Board in admitting LEA-24/FOE-1 said the issue to be litigated was "not necessarily whether the plume exposure EPZ should be expanded to include the four named areas" Limerick, LBP-84-18,19 NRC at 1067. Only if it could be shown that traffic in areas outside the EPZ, such as Valley Forge Park, would hinder an evacuation of the EPZ should the Licensing Board have considered alteration of the EPZ to include these areas. See id. Based on the evidence presented, and on the projected fulfillment of the license condition on this issue, the Board found no such traffic problems. See Board Findings 94-95, 98-108,120.

B. The Licensing Board Reasonably Concluded That Current Drafts, Of Local Government Emergency Plans Will Be Implemented

1. Background

In Section D.1. of LBP-85-14, the Licensing Board concluded that, based on the entire record, the county, municipal and school district emergency plans in contention have been sufficiently

developed so as to provide reasonable assurance "that the present state of planning is predictive of final approval." The Board in addition found reasonable assurance these plans can and will be implemented by the appropriate jurisdiction (e.g., the municipality or the appropriate county).

Intervenor Limerick Ecology Action contests the Board's finding of reasonable assurance that the current plans can and will be implemented. LEA's argument is based in part on the assertion that only a few of the respective jurisdictions (specifically, the municipalities) have actually adopted their plans. LEA concedes however (LEA Brief at 59) that the NRC need not find that all the Limerick offsite plans have been "adopted" before making a finding pursuant to 10 C.F.R. 50.47 of reasonable assurance that the plans are capable of being implemented. LEA argues further that the "good intentions" of municipal and school district witnesses with respect to compliance with State law on emergency planning ("P.L. 1332") are not a basis for predicting that the plans will in fact be implemented in the event of a radiological emergency at Limerick.

2. Emergency Planning Requirements in the Commonwealth of Pennsylvania.

The Licensing Board's Third Party Initial Decision sets forth a comprehensive discussion of emergency planning requirements in the Commonwealth of Pennsylvania. LBP-85-14,21 NRC at _____ (slip opinion at 241-46). The Board correctly

finds that the Pennsylvania Emergency Management Services Act ("P.L. 1332") imposes a mandatory, not discretionary, obligation on local governments in Pennsylvania to develop a workable emergency plan and related resources to respond to any disaster emergency, including a radiological emergency at a fixed nuclear power facility. Board Finding 539. The record demonstrates that responsible county and municipal authorities intend to comply with the requirements of P.L. 1332 by working toward the adoption of an emergency plan to deal with a radiological emergency at Limerick. Board Finding 539.

The Licensing Board cites the concern expressed by several municipal officials that more work needed to be done to identify and fulfill "unmet needs" for resources necessary to the implementation of emergency plans. LBP-85-14, 21 NRC at _____ (slip opinion at 245). In the Board's opinion, this concern with filling unmet needs was simply the "logical culmination of the dynamic planning process under P.L. 1332." Id. PEMA Deputy Director of Plans and Preparedness Hippert testified that the planning process envisioned under P.L. 1332 "requires municipalities to report any unmet needs at the local level to their respective counties and on to PEMA, if necessary." Id. The existence of unmet needs at any one level of government is not by itself a reason to find plans cannot be implemented. P.L. 1332 contemplates a mechanism for addressing those needs.

3. Current Plans Would Be Implemented If An Emergency At Limerick Would Occur Tomorrow

The emergency plans in evidence in this proceeding have been under development by Commonwealth, county and local officials since 1981. The Commonwealth (through PEMA) reviewed drafts of these plans in the fall of 1983 and provided written comments to the risk counties regarding the draft plans. Board Finding 545; Hippert, fol. Tr. 19,498 at 1. PEMA has recently completed the process of reviewing current drafts of these plans and has advised the counties of corrections or additions that need to be made. See Commonwealth Exs. E-10, E-13. If the most recent drafts of the county, municipal and school district plans reflect the changes, corrections and additions recommended in PEMA's fall 1983 and spring 1985 comments and in FEMA's interim findings, the plans should be adequate and capable of being implemented. Board Finding 560.

In the opinion of Commonwealth emergency planning officials, the current emergency plans would in a practical sense, be the basis for the respective political jurisdictions to respond to a radiological emergency at Limerick if an accident occurred prior to formal adoption of the plans. Board Finding 560. The Commonwealth would rely upon "Annex E", the state's disaster operations plan for fixed nuclear facility incidents (Commonwealth Ex. E-1), plus any available site-specific information in responding to such an accident. Id.

Chester and Berks risk county officials also testified that they would rely upon current plans if an incident were to occur at Limerick tomorrow. Campbell, Tr. 19,957-58; Thompson, Tr. 18,861; Reber, Tr. 19,771, 19,792.

The Commonwealth is concerned that local jurisdictions eventually accept their radiological emergency response plans. The Commonwealth will not make a statement evaluating the adequacy and implementability of the Limerick offsite RERPs, or submit them to FEMA for Part 350 formal review and approval until, inter alia, finalized risk municipal and school district plans are reviewed by the respective counties to ensure consonance with county plans, and submitted by the counties to PEMA together with the county plans, including a promulgation page indicating whether the respective jurisdictions have accepted the plans. Hippert, fol. Tr. 19,498 at 4. The record in this proceeding, however, supports the conclusion that, in a practical sense, plans currently being developed would be implemented in the event of an incident at Limerick.

C. There Is No Regulatory Requirement That FEMA Hold A Public Meeting Prior To Its Finding Under The FEMA/NRC Memorandum Of Understanding That There Is Reasonable Assurance That Emergency Plans Are Adequate and Capable of Being Implemented.

1. Background

LEA originally proposed to litigate a contention with respect to the drills and exercises. The contention claimed that the emergency plans are not sufficiently detailed on the conduct of exercises and drills, that there is no assurance the exercises

and drills are realistic enough, and that participants should not have prior knowledge of details such as dates and times of the tests. Limerick, LBP-84-18, 19 NRC at 1062. LEA withdrew this contention at the prehearing conference held during the week of March 5, 1984. Tr. 8086-87; Limerick, LBP-84-18, 19 NRC at 1062.

LEA now seeks to have a public meeting "or equivalent opportunity for comment and questions 'before the reviewing agencies issue a final report.'" In the alternative, LEA seeks to reinstate its previously withdrawn contention. LEA Brief at 56-57.

2. 44 CFR Part 350

44 CFR Part 350 addresses the process by which FEMA undertakes a formal review and approval of the State and local emergency plans for a particular nuclear facility. This process is wholly separate from the FEMA findings and determinations provided on request to the NRC regarding the current state of emergency preparedness around a particular facility. As the Licensing Board explained in LBP-85-14, 21 NRC at _____ (slip opinion at 5-6)
(citations omitted):

The role of FEMA in NRC licensing is set forth in the "Memorandum of Understanding Between NRC and FEMA Relating to Radiological Emergency Planning and Preparedness (executed on November 3-4, 1980) ("MOU"). Under the MOU, FEMA is required, in addition to any responsibilities under 44 CFR Part 350 for final, formal approval of State and local emergency plans, to provide "findings and determinations on the current status of emergency preparedness around particular (nuclear power plant) sites . . . for use as needed in the NRC

final findings under 44 CFR Part 350, such determinations are typically referred to as "FEMA interim findings."

LEA's reference on brief to the FEMA "final report" appears to be to the submission by FEMA to the NRC of findings and determinations with respect to FEMA's obligations under the MOU to provide such periodic findings. The Part 350 FEMA review on the other hand is triggered by the State's application (in the form of a letter from the Governor) to FEMA which requests such review. 44 C.F.R. 350.7 (a). The application shall include a certification by the state that the plans are "adequate to protect the public health and safety . . . by providing reasonable assurance that State and local governments intend to effect appropriate protective measures offsite in the event of a radiological emergency." 44 C.F.R. 350.7(d). The state and local government plans are submitted with the application to the FEMA Regional Director, who will review and forward the plans to the FEMA Associate Director. Before the plans may be forwarded, a joint exercise of the state plan must be undertaken (44 C.F.R. 350.9). In addition, during the FEMA Regional office review and "prior to the submission by the Regional Director of the evaluation and exercise to the Associate Director," the Regional Director shall assure that there is at least one public meeting conducted in the vicinity of the nuclear power facility." 44 C.F.R. 350.10. Section 350.10 sets forth four purposes for such a meeting

(1) Acquaint the members of the public in the vicinity of each facility with the content of the state and related local plans, and with the conduct of the joint exercise which tested the plans;

(2) answer any questions about FEMA review of the plan and the exercise;

(3) receive suggestions from the public concerning improvements or changes that may be necessary; and

(4) describe to the public the way in which the plan is expected to function in the event of an actual emergency. The regulation specifies the meeting should be held after the first joint exercise at a time mutually agreeable to utility and government authorities.

As Commonwealth witness Hippert testified, the Commonwealth has not provided the certification required by Section 350.7(d) that the plans are "adequate to protect the public health and safety" Hippert, fol. Tr. 19, 498 at 3-4. The Part 350 review process for the Limerick plans has thus not yet been triggered. As Mr. Hippert testified, the Commonwealth through PEMA will ensure that the public meeting required under Section 350.10 takes place before the local and state emergency offsite emergency plans for Limerick are submitted to FEMA for formal review and approval. Id. The Licensing Board in its Special Prehearing Conference Order aptly characterized the issue here:

LEA's principal aim in filing the contention was to secure an opportunity to comment on the drills and exercises. Tr. 8080. Since filing the contention, LEA has learned that under 44 C.F.R. 350.10 (1983) there will be at least one public meeting in the vicinity of the Limerick plant between the first joint (utility, State and local governments) exercise of the plans and FEMA approval of them. LEA is confident that under Section 350.10 it will have ample opportunity to

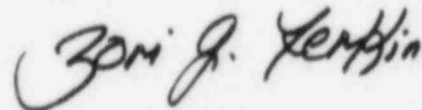
ours. Tr. 8086-87. We agree. The adequacy of the exercises and drills is best determined after they are held, at which time LEA may make its views known in the forum provided by FEMA.

LEA therefore has the opportunity guaranteed it and other members of the public by regulation to provide comments and pose questions regarding the plans and the exercises. No purpose would be served in allowing LEA to press once again its previously withdrawn contention on this issue.

CONCLUSION

The Commonwealth requests this Appeal Board consider the foregoing discussion in its review of Intervenor's appeals.

Respectfully submitted,

A handwritten signature in cursive script, reading "Zori G. Ferkin".

Zori G. Ferkin
Counsel for the Commonwealth
of Pennsylvania

Dated: August 8, 1985

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Docket Nos. 50-352
50-353

I hereby certify that I have this 8th day of August 1985 served copies of "Commonwealth of Pennsylvania's Response to the Appeals of Friends of the Earth and Limerick Ecology Action Relating to the Third Partial Initial Decision of May 2, 1985" in the above-captioned matter upon the following by deposit in the United States mail, postage paid:

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