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

Dear Board Members:

Since the filing of our brief on August 6, 1985, the decision by the Appeal Board in Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-813, 22 NRC (July 26, 1985) (served July 29, 1985) has come to the attention of the undersigned counsel. Although I am sure that the Board is aware of this decision, I wish to make certain points for the record, on behalf of the Licensee, Philadelphia Electric Company, following the practice in the federal courts under FRAP 28(j):

1. At pages 32-33 of ALAB-813, the Appeal Board stated that the issuance of final findings by the Federal Emergency Management Agency ("FEMA") is not a prerequisite to authorization of a full-power operating license and that interim reviews and findings are sufficient to support NRC licensing actions. This supports the Licensing Board's finding that the incompleteness of the FEMA review for Limerick at the time of the hearing does not impede the Board's ability to

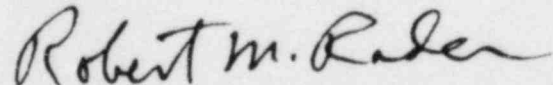
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make the necessary predictive findings (Licensee's Brief at 82-83).

2. At page 28 of ALAB-813, the Appeal Board ruled that alleged error in the curtailing of cross-examination is insufficient to warrant appellate relief and that the complaining party must demonstrate actual prejudice, i.e., that the ruling had a substantial effect on the outcome of the proceeding. The Appeal Board in ALAB-813 stated at page 29 that to demonstrate prejudice an intervenor must explicitly allege which witnesses were not allowed to testify, the reasons assigned by the Licensing Board and the substance of the precluded testimony. This supports the Licensee's argument that appellant LEA has failed to point out any area of inquiry it was precluded from pursuing with regard to particular witnesses and has thereby failed to specify any actual prejudice (Licensee's Brief at 85). The Licensee further submits that its argument on this point is supported by the Appeal Board's finding at pages 24-25 and 43 of ALAB-813 that similar procedural rulings, e.g., discovery and scheduling orders, will be overturned only when they deprive a party of procedural due process.
3. Throughout the Licensee's brief, e.g., pages 14-19 with respect to the special needs surveys, Licensee argues that LEA has not clarified the specific error assigned or the reasons for finding factual or legal error. At page 46, note 128, the Appeal Board ruled in ALAB-813 that "it is incumbent upon the appellant to confront directly the reasons assigned for the challenged ruling and to identify with particularity the infirmities purportedly inherent in those reasons."

Sincerely,



Robert M. Rader
Counsel for the Licensee

RMR/dlf
cc: Service List