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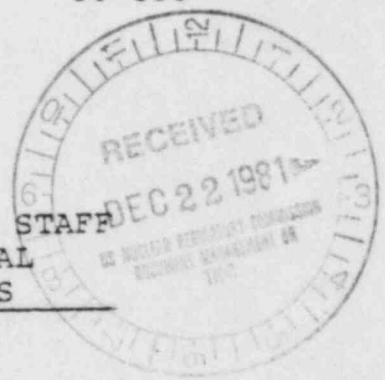
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

LIMERICK ECOLOGY ACTION'S REPLY TO NRC STAFF
AND APPLICANT ANSWERS TO SUPPLEMENTAL
PETITION OF COORDINATED INTERVENORS



I. PREMATURETY

A major objection by the Applicant to many of Limerick Ecology Action's (LEA's) proposed contentions is that undeveloped portions of the operating license application cannot be the subject of contentions. (NRC staff, on the other hand, have taken the position that it is appropriate at this stage in the proceedings for petitioners to plead the absence or inadequacy of portions of the application.) As an example, the Applicant argues that LEA emergency planning contentions numbered VIII-1,-2,-5,-6,-7,-12,-13,-14,-17,-18,-19,-20,-21,-23,-24,-25,-26,-27,-28,-29,-30, and -31 are "premature" because the present deficiencies in the Emergency Plans set forth in those contentions will be cured by information to be submitted "during the course of the operating license review."

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Such objections to the "prematurity" of contentions, premised upon a promise to cure a present deficiency at a later time, have no basis in the regulations.

The Applicant has submitted the Plans as part of its application for an operating license for the Limerick facility, as required by 10 CFR §50.33(g). While it is common practice for incomplete applications to be accepted for docketing by the Commission, LEA is required to file its contentions now, and therefore must take the application and supporting documentation as filed.

When faced with similar objections to the prematurity of emergency planning contentions, the ASLB for the Perry Nuclear Power Plants recently rejected the applicant's arguments. In Cleveland Electric Illuminating Company, et al., (Perry Nuclear Power Plant, Units 1 and 2) LBP-81-24, 14 NRC 175 (1981), the applicant urged the Board to reject the emergency planning contention as premature, arguing that it "is confident that agreements will be reached with localities concerning emergency planning and that the incompleteness of current plans will be remedied," and contending that "it was inappropriate to admit contentions about deficiencies which are likely to be cured." *Id.* at 188.

The Board admitted the contention over the applicant's objections, and concluded:

We ... reject Applicant's plea to delay ruling on this contention.... Intervenors have given reasons for concern about the adequacy of the local plan which will be filed. Furthermore, they are required to file contentions now. If they find a current deficiency, it seems appropriate to admit the contention subject to dismissal through summary judgement if the deficiency is cured. Id. at 190.

Applicant offers no reason why its incomplete plans should be specially treated.

Applicant makes the same "prematurity" argument with respect to many of LEA's technical safety contentions. It is Applicant's position that "a petitioner must make a showing, with specificity, that there is some inherent problem with the design, construction or implementation of procedures for the Limerick Station that would prevent it from meeting NRC requirements." (Emphasis added.)

It is LEA's position that a proper area of inquiry is whether or not the Commission's rules and regulations will be met, and not only whether they can be met.

By submitting its technical safety and emergency planning contentions now, LEA has put the Board, NRC staff and the Applicant on notice as to which areas of the application (for which substantial additional information will later be filed by Applicant) LEA is most interested in pursuing. Given the large number of "holes" in the Limerick application, LEA's failure to make known its major interests would have put the Board and parties at a distinct disadvantage for planning purposes.

Furthermore, it is likely that LEA, upon challenging the sufficiency of, for example, new emergency planning information that will be forthcoming, would have been accused of a failure to raise issues in a timely fashion.

Applicant's position that "these matters (undeveloped portions of the application) cannot constitute the basis for an admissible contention, nor can petitioners assert an absolute right to raise these matters at some later time," is an untenable one -- undeveloped portions of the application are subject to scrutiny by intervenors at such time as new information is available.

In addition to the emergency planning contentions listed previously, Applicant's objections to contentions I-1, -19, -30, -33 to 39, -41 to 46, -55, and -61 are based on its "prematurity" argument and should be disregarded by the Board.

II. OBJECTIONS OF THE MERITS

To the extent that numerous Applicant objections to LEA's contentions raise questions of fact concerning the merits of the contentions, such objections are improper.

A purpose of the basis-for-contention requirement in Section 2.714 is to help assure at the pleading stage that the hearing process is not improperly invoked....Another purpose is to help assure that other parties are sufficiently put on notice so that they will know at least generally what they will have to defend against or oppose. Still another purpose is to assure that the proposed issues are proper for adjudication in the particular proceeding. Philadelphia

Electric Company (Peach Bottom Atomic Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974).

It is clear that a contention need not plead evidence to prove the basis for an allegation, and that the merits of an issue are not to be considered at the pleading stage. Commonwealth Edison Company, (Byron Nuclear Power Station, Units 1 and 2) LBP-80-30, 12 NRC 683 (1980). (Emphasis added.) See Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423 (1973).

Applicant objections to LEA contentions I-7 to 10, -23 to 26, and -30, and VIII-6 are attacks on the merits of those contentions and should be disregarded by the Board at this stage of the proceedings.

III. STATUS OF THE PRA

The Applicant asserts that the probabilistic risk assessment (PRA) is not part of the operating license application, goes beyond the requirements of the regulations, and cannot be the subject of litigation in this proceeding.

It must be stated at the outset that Applicant's detailed argument concerning the NRC's discretionary hearing on the Indian Point risk assessment, granted pursuant to a petition filed after the Indian Point licenses were granted and the plants had begun operating, is irrelevant in the setting of this licensing proceeding.

In light of the accident at TMI, the Applicant was directed to conduct and submit a PRA for Limerick. The purpose was to determine whether Limerick risk represented a disproportionately high segment of the total societal risk from postulated

nuclear reactor accidents, based on the high population density area in which it is located and its proposed power level. Given Harold Denton's statement in Congressional hearings in May of 1980 that were PECO to apply for a construction permit for Limerick today, it would be denied, and the NRC's direction to PECO to conduct a PRA, one must assume that the NRC intends to rely on the PRA to some degree in asserting its ultimate position on the licensing of Limerick. No doubt the Applicant intends to do the same.

Furthermore, as the Applicant states in its Response to Question 100.2 of the NRC Acceptance Review, the PRA "contains information required by the NRC's Interim Position on Accident Considerations Under NEPA (45 FR 40101)," and therefore was incorporated in its entirety into the EROL by the Applicant. Its present assertion that the PRA is not part of the application is a semantic argument without substance.

Whether or not the PRA is "part" of the application in fact matters little -- if it is going to be relied upon in the licensing process, then it must be the subject of scrutiny by parties to that process. PECO has the option of asserting its apparent position that it prepared the PRA voluntarily and not because it was required to, by withdrawing the document from the application.

IV. MISCELLANEOUS OBJECTIONS

I-3. (NRC)

In response to NRC staff's objection to this contention, LEA asks how the staff will be able to determine whether Limerick represents a disproportionate portion of the risk from nuclear reactors, if it does not know what the actual total risk is?

I-15. (NRC, PECO)

While LEA recognizes that it has "grasped a slender reed" in asserting this contention, as the NRC staff states, it is LEA's experience after spending substantial time and effort reviewing the application that nuances in wording have often been used by the Applicant in order to hedge without misrepresenting facts. In the case of the word "identify," one will not find what one does not look for. LEA may well be in error in questioning the wording of the PRA in this particular instance -- a simple discovery question as to the extent and methodology of the search would quickly resolve the matter.

I-18. (NRC, PECO)

In response to the request for clarification of this contention, LEA refers the NRC and Applicant to those variabilities at page 1-24 of the PRA which are not incorporated into the component level failure probability quantification. It is LEA's position that failure to include

qualification requirement variability, particularly for environmental qualification, improperly decreases calculated risk.

Environmental qualification of equipment and systems has been the subject of considerable research and discussion within the NRC, particularly recently. Disagreement persists as to what equipment should be classified as safety-related and therefore required to qualify as such under the regulations. LEA contends that variability in components due to differences in qualification requirements contributes significantly to accident risk, and should be factored into the risk analysis.

I-21. (PECO)

While LEA would be most pleased if 10 CFR §50.34(b)(5)(vii) required an absolute showing that interaction between an operating reactor and one under construction will not occur, as alleged by the Applicant, LEA does not interpret the regulation cited to contain such a requirement. Rather, it requires an analysis to estimate the potential hazards from such construction. (In light of the Browns Ferry fire, one may conclude either that no such absolute requirement exists, or that the Browns Ferry operating license was improperly issued.)

I-38. (NRC)

NRC staff object to this contention on the ground that it represents a challenge in GDC 64, which requires sampling capability for radioactivity released during normal operations and postulated accidents. Staff interpret "postulated

accidents" to be limited to DBA LOCA's, even though GDC 50, to which staff refers, requires containment accommodation to any LOCA. The LOCA at Three Mile Island was designated a "class 9" accident, and was therefore clearly not a DBA LOCA.

Given the Commission's position on consideration of beyond-design-basis accidents since TMI (related to NEPA analysis and emergency planning, for instance), it makes little sense to LEA for the staff to interpret "postulated accidents" as DBA LOCA's only, and not beyond-design-basis LOCA's. It should also be pointed out that Regulatory Guide 1.3, to which staff refers, states in the introduction that the DBA-LOCA is one of the postulated accidents used to evaluate the adequacy of nuclear reactor structures, systems and components. It then goes on to spell out the assumptions to be used in evaluating the consequences of this accident. LEA sees no reason to infer from the Reg. Guide 1.3 a sampling capability limitation based on DBA-LOCA.

I-59. (NRC, PECO)

In response to NRC staff's objection to this contention as phrased, LEA contends that the design of Limerick does not provide protection against many so-called "class 9" accidents which have been designated as incredible without adequate justification. The NRC's method for determining what accidents fall within the "credible" category and which do not, for Limerick as well as for other reactors, is faulty, as evidenced by NRC Staff Testimony of Jack Rosenthal and Paul S. Check Relative to UCS

Contention 13, Docket No. 50-289 (Restart). The accident at TMI, which has been classified as a "class 9" event, must now be considered a credible accident scenario, in spite of its not having been designated as such by the NRC in its setting of the design basis.

Because of the lack of justification for DBA at Limerick, there is no reasonable assurance that Limerick as presently designed can be operated without undue risk to the health and safety of the public.

Applicant alleges that this contention was admitted and litigated at the CP stage. It is LEA's position that the contention 16 as set forth in Applicant's answer is not the contention now proposed by LEA. The CP contention 16 did not address the methodology for setting the DBA, but rather simply asserted that the DBA's in the FSAR were not the "worst" accidents (credible or otherwise), and questioned assumptions regarding consequences of and protection against DBA's.

I-60. (PECO)

LEA is concerned about the health effects of radioactive releases as a result of both "normal reactor operation, including anticipated operational occurrences," as well as accidents, given the unique characteristic of the huge population situated directly downwind of Limerick. Additional compensating engineering safeguards against air and water releases will protect the population under both normal and accident conditions, and their requirement is authorized by

those regulations cited in LEA's contention.

I-63. (PECO)

The fact that the source of cooling water for Limerick is not yet established is common knowledge. LEA points to Del-AWARE's contentions and the information contained therein. On the Point Pleasant Diversion controversy, ongoing litigation regarding the diversion, and the recent denial of construction permits by Plumstead Township for the Delaware River pumping station.

VIII-1. (NRC)

It is clear from the NRC staff objection to this contention that it has been misread -- or the Applicant's Emergency Plan has been misread. LEA is not challenging the Commission's regulations, but rather is seeking compliance with them. As Applicant has pointed out, the Emergency Plan was prepared prior to promulgation of now-applicable regulations, and section 4.2 of the Plan clearly states that it is designed to respond to design basis accidents only. NRC staff are correct that the Commission's emergency planning regulations give consideration to core melt accidents. Applicant's emergency Plan does not.

VIII-5. (NRC)

While conceding that this contention is admissible to the extent that it "raises issues with respect to the selection of the exact size of the plume exposure EPZ," the staff nevertheless argues that it is inadmissible to the extent that it seeks to expand the EPZ "significantly" beyond 10 miles. The applicable regulation, 10 CFR §50.47(c)(2),

provides that:

Generally, the plume exposure pathway EPZ for nuclear power plants shall consist of an area about 10 miles ... in radius and the ingestion pathway EPZ shall consist of an area about 50 miles ... 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.)

Four points are of note:

(1) Insofar as the rule proposes general guidelines for defining EPZ, the rule specifically requires a site-specific examination of local conditions in determining its size and configuration;

(2) the statement that local factors are significant to an assessment of emergency response needs is a recognition that site-specific factors may influence accident consequences, and therefore emergency response needs;

(3) the conditions to be considered are exemplified by, but not limited to, those conditions itemized in the rule;

(4) the contention specifically limits itself to a site-specific examination of the kinds of local conditions required to be considered in determining the EPZ.

As the Board in Cincinnati Gas and Electric Company (William H. Zimmer Nuclear Station), LBP 80-14, 11 NRC 570, 574 (1980), stated, and repeated in a later opinion, LBP 80-19, 12 NRC 67, 73 (1980), the 10-mile EPZ is a prima facie

starting point. "An applicant [is] free to seek smaller zones, and any party [can] seek to justify larger zones, in appropriate circumstances." Id.

One cannot conclude that the expansion of the plume exposure EPZ to include Philadelphia is impermissible until one has adequately examined the demographic factors, the topographic factors (including prevailing winds and atmospheric dispersion factors), and other relevant factors, and then, (and only then) based upon this site-specific review, concluding that such expansion is not necessary for local emergency response needs and capabilities.

In effect, the NRC staff are prejudging the outcome of such a review.

Both the rule itself, and the guidance of NUREG-0396, Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light Water Nuclear Power Plants, preclude any interpretation that the regulations contemplate an inflexible precision to the generic 10-mile EPZ. NUREG-0396 itself cautions on the size of the 10-mile EPZ. "Judgment should be use in adjusting this distance based upon considerations of local conditions such as demography, topography, land characteristics, access routes, and local jurisdictional boundaries." NUREG-0396, p. 17, Table 1.

No such site-specific examination of these factors has yet been done. No local emergency plans have yet been filed. Therefore, any objection to the extent of expansion of the EPZ beyond a 10-mile circular radius at this point is premature, and would frustrate the purpose of the emergency planning regulation.

VIII-6. (PECO)

The Applicant argues that the time study as submitted is "responsive to the format requested by the NRC." The contention does not take issue with the format - it takes issue only with specific substantive aspects of the time estimates. While Applicant vaguely argues that "[t]he purpose of such a study is to assist planners in their decision making under a number of circumstances," LEA contends that the purpose of the evacuation time estimate study is exactly what the title implies, and that the study purports itself to be: an "estimate of the time required to evacuate a 10-mile radius from the Limerick plant." Study, p. 1-1.

NUREG-0654 recites that "... the evacuation time estimates will be used by these emergency response personnel charged with recommending and deciding on protective actions during an emergency..." NUREG-0654, p. 4-1. The discussion of the requirements for the evacuation time estimates demonstrates clearly that the estimates are expected to be accurate, and the assumptions and methodology sufficiently explicit to permit verification. See NUREG-0654, Appendix 4.

The remainder of the Applicant's objections to this contention go to the merits of the contention. See section II.

VIII-19. (PECO)

The Applicant's objection is that no requirement exists for transmission of meteorological information to the Commonwealth of Pennsylvania for independent analysis. Applicant's statement is incorrect. NUREG-0654, incorporated by reference

into 10 CFR Part 50, and acknowledged by the Applicant as "describ[ing] the require[sic] planning basis for radiological emergencies" (Answer, p. 101), specifically states at p. 57:

The licensee shall make available to the State suitable meteorological data processing interconnections which will permit independent analysis by the State, of facility generated data in those States with the resources to effectively use this information.

Inasmuch as this portion of the contention specifically identifies the Applicant's failure to comply with this requirement, it should be admitted.

VIII-22. (PECO)

This contention is not intended by LEA to be an attack on the regulations, as alleged by the Applicant. LEA fails to see why an allegation that a regulation cannot be met in a particular instance should be interpreted as an attack on that regulation.

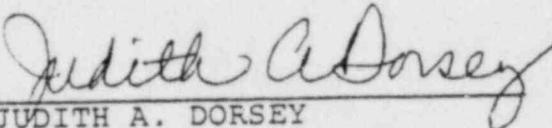
VIII-26(d). (NRC)

Implementing procedures for the Emergency Plan are required by emergency planning regulations. LEA has alleged a lack of such procedures elsewhere in its emergency planning contentions [see VIII-29(e), (f)], and has reserved the right to review procedures when available and to submit additional contentions if appropriate. LEA fails to see the distinction NRC staff have apparently drawn between these contentions. While the wording is slightly different, the intent is the same.

V. CONCLUSION

For the reasons enumerated above, LEA believes all of its contentions to be admissible in this proceeding.

Respectfully submitted,


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I hereby certify that copies of the foregoing Limerick Ecology Action's Reply to NRC Staff and Applicant Answers to Supplemental Petition of Coordinated Intervenors have been served, by deposit in the United States mail, first class postage prepaid, upon the following on December 19, 1981:

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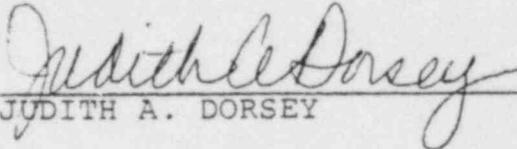
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