

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

PHILADELPHIA ELECTRIC COMPANY :

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

Docket Nos. 50-352  
50-353

COMMONWEALTH OF PENNSYLVANIA'S RESPONSE TO  
APPLICANT'S SUGGESTION OF MOOTNESS



On April 19, 1982, the Applicant<sup>1</sup> filed a document entitled "Licensee's Suggestion of Mootness to Licensing Board Based Upon Probabalistic Risk Assessment." It is not clear whether PECO intended this document to be a formal motion, although the absence of formal language moving for particular relief suggests that it is not. In any event, the Commonwealth opposes PECO's "suggestions" for the reasons set forth below.

First, as Limerick Ecology Action correctly noted, the Applicant's filing is based entirely on a speech by a single member of the Commission in an unofficial setting. As such, the speech cannot represent even the official position of Chairman Palladino, much less the legally binding position of the full Commission on an adjudicative or administrative matter. As a matter of law, Chairman Palladino's comments bear absolutely no weight before this Board.

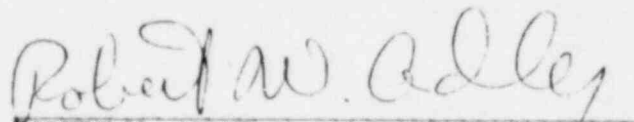
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1. The Commonwealth notes that Philadelphia Electric Company refers to itself as a "Licensee". Since no operating license has been granted for the Limerick facility, "Applicant" is a more appropriate term. Alternatively, "Permittee" would be appropriate since PECO has a valid construction permit for Limerick.

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Second, also as correctly noted by LEA, the Staff specifically directed that the PRA be used as part of its formal review of the Limerick operating license application. Utilization of the PRA in the licensing process without granting intervenors the right to challenge that process would be contrary to fundamental principles of due process and administrative law, as set forth in both the Atomic Energy Act, 42 U.S.C. §§2231, 2239, and the Administrative Procedure Act, 5 U.S.C. §§554, 556. More importantly, it is critical to the public interest that all issues relevant to the safe and environmentally sound operation of the Limerick facility be subject to an open public hearing. While not taking a position at this time on the merits of individual contentions, the Commonwealth does not believe that the PRA contentions should be dismissed as moot for the reasons stated in PECO's filing.

Finally, PECO's offhand reference to certification to the Commission is misplaced. Upon an action by the Board that is unfavorable to the Applicant, a formal motion for certification may be filed, pursuant to the procedures set forth in the NRC rules of practice, and judged according to applicable law.

Respectfully submitted,

  
ROBERT W. ADLER  
Assistant Counsel  
Commonwealth of Pennsylvania

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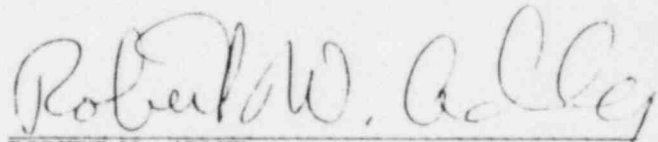
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CERTIFICATE OF SERVICE

This is to certify that the foregoing "Commonwealth of Pennsylvania's Response to Applicant's Suggestion of Mootness" was served to the persons on the attached service list this 4th day of May, 1982, by first class mail, postage prepaid.



ROBERT W. ADLER  
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