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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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)	:	

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

On April 19, 1982, the Applicant[1] 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

ROBERT W. ADLER
Assistant Counsel
Commonwealth of Pennsylvania

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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

ROBERT W. ADLER
Assistant Counsel
Commonwealth of Pennsylvania

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SERVICE LIST

Administrative Judge Lawrence Brenner
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Administrative Judge Richard F. Cole
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Administrative Judge Peter A. Morris
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Docketing and Service Section
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety & Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Stephen H. Lewis
Office of the Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Frank R. Romano
Air and Water Pollution Patrol
61 Forest Avenue
Ambler, Pennsylvania 19002

Edward G. Bauer, Jr.
Vice-President & General Counsel
Philadelphia Electric Company
2301 Market Street
Philadelphia, Pennsylvania 19101

Troy B. Conner, Jr., Esquire
Conner and Wetterhahn
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Charles B. Taylor
24 West Tenth Avenue
Collegeville, Pennsylvania 19426

Marvin I. Lewis
6504 Bradford Terrace

John Shniper
Hy Mayerson, P.C.
Meeting House Law Building & Gallery
Mennonite Church Road, Schuylkill Road
Spring City, Pennsylvania 19475

Robert L. Anthony
Friends of the Earth of Delaware Valley
103 Vernon Lane, Box 186
Moylan, Pennsylvania 19065

Judith A. Dorsey, Esquire
Limerick Ecology Action
1315 Walnut Street, Suite 1632
Philadelphia, Pennsylvania 19107

Donald S. Bronstein, Esquire
The National Lawyers Guild
1425 Walnut Street, Third Floor
Philadelphia, Pennsylvania 19102

Joseph H. White, III
11 South Merion Avenue
Bryn Mawr, Pennsylvania 19010

Steven P. Hershey, Esquire
Community Legal Services, Inc.
Law Center North Central, Beury Bldg.
3701 North Broad Street
Philadelphia, Pennsylvania 19140

Alan J. Nogee
The Keystone Alliance
3700 Chestnut Street
Philadelphia, Pennsylvania 19104

Robert J. Sugarman, Esquire
Sugarman and Denworth
Suite 510, North American Building
121 South Broad Street
Philadelphia, Pennsylvania 19107

William A. Lochstet
119 East Aaron Drive
State College, Pennsylvania 16801

Steven Levin
11 Beard Circle
Phoenixville, Pennsylvania 19460

Philadelphia, Pennsylvania 19149

Dr. Judith H. Johnsrud, Co-Director
Environmental Coalition on Nuclear Power
433 Orlando Avenue
State College, Pennsylvania 16801

Samuel and Clarissa B. Cooper
P.O. Box 16
Colora, Maryland 21917

Walter W. Cohen
Consumer Advocate
Office of Attorney General
1425 Strawberry Square
Harrisburg, Pennsylvania 17120

Director, PEMA
Basement, Transportation & Safety Building
Harrisburg, Pennsylvania 17120

Thomas Gerusky, Director
Bureau of Radiation Protection, DER
P.O. Box 2357
Harrisburg, Pennsylvania 17120