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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

BEFORE ADMINISTRATIVE JUDGES
Lawrence Brenner, Chairman
Dr. Richard F. Cole
Dr. Peter A. Morris

OFFICE OF SECRETARY
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In the Matter of
PHILADELPHIA ELECTRIC COMPANY
(Limerick Generating Station,
Units 1 and 2)

Docket Nos. 50-352
50-353

September 2, 1982

MEMORANDUM AND ORDER

(DENYING REQUEST OF FOE TO ADMIT CONTENTION V-1 BASED ON "NEW MATTER")

In its Special Prehearing Conference Order (SPCO) of June 1, 1982, LBP-82-43A, 15 NRC ____, the Licensing Board ordered that proposed Contention V-1 not be admitted for litigation in this proceeding. Contention V-1 states:

The environmental reports for the Limerick nuclear plant do not comply with the requirements under the National Historic Preservation Act and NEPA for the protection of historic sites such as Hopewell Village, Valley Forge National Park, and the Schuylkill River Canal.

As part of the basis for the proposed contention, its sponsor FOE states that visibility of the cooling tower plume would be a deterrent to visitors to Hopewell Village and Valley Forge. In rejecting this

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contention, the Board found that "no basis is given for the proposition that viewing the plume will cause people to become alarmed about possible radiation exposure." SPCO at 145.

On July 7, 1982, FOE filed a "Submission of a Contention Based on New Matter" by which FOE seeks to resubmit Contention V-1.^{*/} The "new matter" on which this resubmission is based is the decision in People Against Nuclear Energy (PANE) v. NRC, 678 F. 2d 222 (D.C. Cir. 1982) petition for cert. filed, 51 U.S.L.W. 3006 (U.S. July 1, 1982) (No. 81-2399), which required the Commission to consider the psychological health effects of restarting Unit 1 at Three Mile Island in deciding whether NEPA required issuance of a supplemental environmental impact statement concerning the action. Id. at 233-34.

There are several reasons why the Board is not admitting this contention. The Commission interprets the PANE decision to require consideration of psychological stress impacts under NEPA only under the following conditions:

First, the impacts must consist of "post-traumatic anxieties," as distinguished from mere dissatisfaction with agency proposals or policies. Second, the impacts must be accompanied by physical effects. Third, the

^{*/} FOE refers in its filing to Contention V-3, but from the context of the resubmission it is apparent that it intended to resubmit Contention V-1.

"post-traumatic anxieties" must have been caused by "fears of recurring catastrophe". This third element means that some kind of nuclear accident must already have occurred at the site in question.... Moreover, the majority clearly had only serious accidents in mind.... In the Commission's view, the only nuclear plant accident that has occurred to date that is sufficiently serious to trigger consideration of psychological stress under NEPA is the Three Mile Island Unit 2 accident. Accordingly, only this accident can currently serve as a basis for raising NEPA psychological stress issues.

NRC Policy Statement on Consideration of Psychological Stress Issues, 47 Fed. Reg. 31762 (July 22, 1982).

The Commission has authorized Licensing Boards to admit NEPA contentions alleging psychological stress caused by activities licensed by the NRC only if all the above conditions are satisfied. Id. Since the only accident sufficiently serious in the Commission's view to trigger consideration of psychological stress did not occur at the Limerick site, and since the Commission requires that a serious nuclear accident must have occurred at the site in question before a NEPA contention relating to psychological stress may be admitted, this Board is not authorized by the Commission to admit Contention V-1.

Even if the Commission's criteria for admitting a psychological stress contention for the Limerick site had been satisfied however, the requirement for a sufficient basis for the contention would remain. Id. It was precisely because Contention V-1 lacked a sufficient basis that the Board rejected it in the first place. SPCO at 144-45. No further

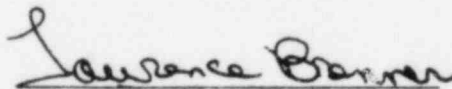
basis is provided in the new submission. Therefore, the contention continues to be inadequate because it lacks a basis.

In addition, the filing by FOE is not timely. It appears that FOE is, in effect, asking the Board to reconsider its ruling in the SPCO. Requests for reconsideration were due within 10 days of service of the SPCO. SPCO at 159. (The Board had allowed five days more than were called for by NRC rules in light of the length of the SPCO.) FOE's filing was served three weeks after that time. The Court's decision in PANE was issued on January 7, 1982, and the supporting opinions were issued on May 14, 1982. Thus, FOE could have called them to the Board's attention before the SPCO was filed on June 1, 1982 and certainly within the period for reconsideration. The Board was, in fact, cognizant of the PANE decision and subsequent supporting opinions at the time it issued the SPCO.

For all the above reasons, FOE's request that Contention V-1 be admitted is denied.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD


Lawrence Brenner, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland
September 2, 1982