

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

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THE SECRETARY
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C.

SERVED FEB 15 1983

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

Docket Nos. 50-352-0L
50-353-0L

February 10, 1983

MEMORANDUM AND ORDER CONTINUING INFORMAL DISCOVERY,
PROVIDING FOR FURTHER SPECIFICATION OF CONDITIONALLY
ADMITTED CONTENTIONS AND NOTING DISMISSAL OF ECNP

Informal Discovery

Pursuant to the joint requests of the parties, the present period of informal discovery will be continued. The Board will reassess the status of discovery, with the advance advice of the parties, at a second special prehearing conference. It is expected that this prehearing conference will be held in May, 1983, possibly the week of May 9, 1983. The Board commends the parties for their apparent efforts in using informal discovery, as outlined in the Special Prehearing Conference Order (SPCO), 15 NRC 1423, 1520 (June 1, 1982), as an effective procedure. It is our expectation that informal discovery will be vigorously pursued so that there will be almost no need for formal

discovery requests for documents, and little need for formal interrogatories.

The parties are reminded that informal discovery does not preclude parties from documenting information exchanged informally e.g., by exchanges of letters. Parties may also take depositions by mutual agreement, as stated in the SPCO. Depositions will also be allowed upon formal notice by the requesting party after the next prehearing conference, since the parties' reports indicate it may be premature to take many of the depositions before then.

The Applicant, NRC Staff and Limerick Ecology Action (LEA) shall jointly file a written report on the status of informal discovery and proposals for the form and schedule of further discovery. Any disagreements on the proposals may be noted in the report. The report shall be received by the Board by April 29, 1983. Other intervenors who seek to have their views on discovery included shall assure that such views are received by LEA by April 15, 1983.

Conditionally Admitted Contentions

The Board, in an order dated October 20, 1982, had requested the parties to "jointly identify portions of the application for which information had not been fully provided by the Applicant prior to the special prehearing conference for which essentially complete information is available at the time the joint report is filed". The Applicant has

filed a listing of contentions, or parts thereof, as Appendix A to Applicant's letter report of January 24, 1983, for which it believes it has filed essentially complete information. The Board has examined this list, and found it to be of some use. However, we believe it will be of greater benefit to have an identification, by FSAR, ER (or other document) section and revision number, and date of revision, of the information which Applicant has filed, categorized by contentions which have been conditionally admitted.¹ This is consistent with our request at pp. 7-8 of our July 14, 1982 order on objections to the SPCO. The Applicant should also include in the numerical listing of conditionally admitted contentions, those conditionally admitted contentions for which information is still pending, a very brief description of the scope of the pending information, and the date when Applicant estimates it will be filed. This listing shall be served by March 1, 1983.

Applicant is requested to update the above listing of information filed on conditionally admitted contentions as the application documents are updated. It appears to the Board, from the listing filed as Appendix A to the Applicant's January 24, 1983 letter report, that

¹ Certain contentions, included in Applicant's listing, are either no longer pending due to failure of a condition (I-40 and V-8), or were fully admitted (I-39, I-62, V-3a and 3b, and V-4). These contentions will be discussed below, separately from the category of conditionally admitted contentions.

updates to the application documents are pending for the series VIII emergency planning contentions and the following conditionally admitted contentions:

<u>Contention</u>	<u>Party</u>	<u>Description</u>
I-33 A-I, K and L (except for part of E)	(LEA)	TMI-NUREG-0737 items
I-34 } I-36 } I-37 } I-38 }	(LEA)	Accident Monitoring
I-42	(LEA)	Environmental Qualification
I-45	(LEA)	ATWS
I-55	(LEA, Lewis)	BWR Scram System Piping
I-61	(LEA)	Fire Protection

The Board expects to hear arguments in support of either fully admitting or rejecting conditionally admitted contentions, with the exception of emergency planning contentions, at the second special prehearing conference. See Duke Power Co. (Catawba, Units 1 and 2), ALAB-687, 16 NRC ____ (August 19, 1982). The intervenors shall particularize all conditionally admitted contentions, with the exception of emergency planning contentions, to the fullest extent practicable in light of the information supplied since the special prehearing conference. In judging the particularity of such contentions, and bases supplied in support of the particularized contentions, the Board will

take into account the level of information presently available on Applicant's plans as they apply to a contention. Accordingly, intervenors should explain why they believe missing information prevents a contention from being particularized beyond what is set forth in the upcoming refiling of the contentions. However, intervenors should make every effort to specify better all conditionally admitted contentions, even those for which information from the Applicant is still pending.

The Board believes the following to be the pending, non-emergency planning, conditionally admitted contentions:

<u>Contention</u>	<u>Party</u>	<u>Description</u>
PRA Contentions	(LEA, Keystone)	General contention found conditionally admissible; individual contentions were not ruled on <u>seriatim</u> , SPCO, 15 NRC at 1494.
I-33 A-I, K and L	(LEA)	TMI-NUREG-0737 items
I-34 through I-38	(LEA)	Accident Monitoring
I-41	(LEA)	Systems Interactions and Control System Failures
I-42	(LEA)	Environmental Qualifications
I-43	(LEA)	Mark II Containment Loads
I-44	(LEA)	Containment Sump Blockage
I-45	(LEA)	ATWS
I-46	(LEA)	Nozzle Cracking U.S.I.
I-55	(LEA, Lewis)	BWR Scram System Piping

<u>Contention</u>	<u>Party</u>	<u>Description</u>
I-58 and I-60	(CEPA, Keystone and LEA)	Site-Related Compensating Engineered Safeguards
I-59	(LEA)	Methodology for Establishing D.B.A.
I-61	(LEA)	Fire Protection
VI-1	(AWPP, Lewis)	Quality Assurance

Any errors in the above list of still pending conditionally admitted contentions should promptly be brought to the Board's attention.

The specifications, and bases supporting the specifications, of the above-listed conditionally admitted contentions shall be filed by the lead intervenor so that they are received by April 13, 1983, by the Applicant, NRC Staff and the Board. (LEA is the lead intervenor on all the listed contentions except VI-1. The Air and Water Pollution Patrol (AWPP) is the lead intervenor on Contention VI-1.) The Applicant shall file its response to the admissibility of the specified contentions so that it is received by April 27, 1983, by lead intervenors, the NRC Staff and the Board. The NRC Staff's response shall be received by May 4, 1983, by lead intervenors, the Applicant and the Board. As always, all filings shall also be served on the remainder of the service list by regular mail.

The parties are directed to meet and discuss the possible agreement on or narrowing and specification of contentions prior to the formal

filing dates set forth above. The Board, in establishing the above schedule, is relying on the NRC Staff's schedule of March 11, 1983 for the issuance of its PRA review. If LEA and the Applicant do not receive copies of this review (at least in final typed form, if printing is delayed) within a few days of the March 11, 1983 date, this could have a serious impact on the contemplated schedule for the special prehearing conference.

Dismissed Contentions
(and Resultant Dismissal of ECNP as a Party)

Two of the contentions included in Applicant's Appendix A listing are no longer pending due to the failure of the sponsoring intervenors to take actions required by the SPCO.

Contention I-40, proposed by LEA, alleged that the FSAR should contain a comprehensive, non-evasive documentation of deviations from NRC Staff Regulatory Guides or other Staff guidance documents. The Board conditionally admitted this contention with the requirement that LEA file contentions alleging specific unacceptable deviations from regulatory guidance documents, with supporting bases, within 30 days from the service of the June 1, 1982 SPCO, 15 NRC 1423, 1497. LEA did not make such a filing. Accordingly, this contention is no longer pending due to LEA's election not to file a further contention.

The Applicant's list also includes Contention V-8, which sought to address the environmental and health consequences of radon emissions related to the nuclear fuel cycle. The actual numbered contention was proposed by Dr. Lochstet. It was denied because Dr. Lochstet lacked standing. SPCO, 15 NRC 1423, 1516. However, the Environmental Coalition on Nuclear Power (ECNP) also had proposed a contention alleging that there is no accepted assessment of the total health effects resulting from radon gas emitted as a result of producing uranium fuel for Limerick. In the SPCO, the Board noted the past and then-pending consolidated Appeal Board proceedings on radon, in which ECNP was involved, to determine the health effects associated with radon. We therefore deferred ruling on ECNP's radon contention. However, we required that within 30 days of service of the then-pending Appeal Board "health effects" decision, ECNP would have to provide the documented opinion of a qualified authority that the incremental health effects of fuel cycle-related radon emissions will be greater for Limerick than those determined in the pending Appeal Board decision. SPCO, 15 NRC 1423, 1454.

On November 19, 1982, the Appeal Board issued its decision in the consolidated proceeding on the health effects of radon released from the mining and milling of uranium for reactor fuel for each of the operating reactors involved in the proceeding before it. Philadelphia Electric Co. (Peach Bottom, Units 2 and 3), ALAB-701, 16 NRC ____ (November 19, 1982). The Appeal Board held that the environmental (i.e., health) effects of such radon releases are negligible and are of insufficient

magnitude to alter NEPA cost-benefit balances (such as those for the nuclear facilities at bar before the Appeal Board) that otherwise justify the licensing of facility operation. Slip op. at 2 and 21.

ECNP did not submit the required further filing seeking to advance a contention within 30 days of the service of ALAB-701. Accordingly, the conditional possibility of the admission of an ECNP radon contention no longer exists.

The radon contention was the only contention advanced by ECNP remaining for possible admission in the SPCO.² Accordingly, now that it is no longer pending, ECNP is dismissed as a petitioner seeking to intervene in this proceeding. See SPCO, 15 NRC 1423, 1452-55. It therefore appears to the Board that ECNP may have a right to appeal the denial of all its proposed contentions in the SPCO and this order, pursuant to 10 C.F.R. § 2.714a, as orders wholly denying its intervention.

If ECNP seeks to appeal the denial of its intervention, it shall file a motion of appeal and supporting brief before the Atomic Safety

² The Board is aware that ECNP has co-sponsored, along with LEA, a late-filed contention grounded on new information relating to the Table S-3 fuel-cycle rule. The Board had deferred ruling on the admissibility of this contention at the request of the Applicant, pending anticipated guidance from the Commission. As is being set forth in a separate order, the Board is not admitting the proposed S-3 contention on the basis of the Commission's ruling.

and Licensing Appeal Board within ten days of service of this Order. It is within the purview of the Appeal Board to decide whether an appeal by ECNP pursuant to 10 C.F.R. § 2.714a is proper at this time.

Admitted Contentions

In the SPCO, we stated:

It should be noted that as the time for hearing approaches, Intervenors will be required to consider expressly whether contentions should be better focused or rephrased in light of circumstances and information available at that time. However, a decision not to modify a fully admitted contention will not result in its automatic dismissal, unlike a conditionally admitted contention.

15 NRC 1423, 1489.

At this time, the Board is not establishing a schedule for the parties to consider whether (and explain why or why not) fully admitted contentions should be better focused or rephrased. This is in contrast to the schedule established above for conditionally admitted contentions. However, the parties are encouraged to begin vigorous discussions on this subject, and are welcome to delete, specify or rephrase contentions in light of current information on the same schedule as the filing being required for conditionally admitted contentions. This would permit discussion at the next special prehearing conference of those fully admitted contentions which have been affected by new information by that time. Any refinement of fully

admitted contentions should be segregated from the required specifications of conditionally admitted contentions to avoid confusion.

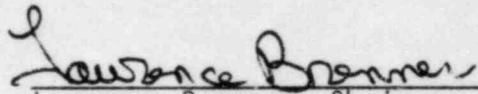
As we stated in note 1 above, the Applicant did include some fully admitted contentions in its list of contentions for which essentially complete information has now been included in the application documents. It may be useful for the process of further refining all contentions, a process which will continue after the next special prehearing conference, for the parties to exchange, discuss and update a listing of fully admitted contentions with reference to the documents such as we are requiring in the listing of conditionally admitted contentions. However, at this time such a listing need not be filed with the Board.

Emergency Planning

The status of onsite and offsite emergency planning, including any necessary actions by FEMA, the Commonwealth and local government agencies, and an appropriate schedule for the filing of emergency planning contentions, will be discussed at the special prehearing conference. Accordingly, counsel for the lead intervenors, the Commonwealth, the Applicant and NRC Staff should discuss this among

themselves and file a joint report on the status of and estimated schedule for emergency planning so that it is received by the Board by April 29, 1983.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD


Lawrence Brenner, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland
February 10, 1983