480.

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

SERVED JUN 5 1984

In the Matter of	Docket Nos. 50-352-OL 50-353-OL
PHILADELPHIA ELECTRIC COMPANY	
(Limerick Generating Station, Units 1 and 2)	June 4, 1984

MEMORANDUM AND ORDER ON THE COMMONWEALTH'S REQUEST FOR RECONSIDERATION OF RULING ON THE ADMISSIBILITY OF COMMONWEALTH-1

In our April 20, 1984 "Special Prehearing Conference Order Ruling on Admissibility of Offsite Emergency Planning Contentions . . . " (Order), we denied that part of the Commonwealth's first contention which alleged that under NRC regulations and guidance, permanent record (thermoluminescent) dosimeters are required for emergency workers. LBP-84-18, 19 NRC ___, slip op. at 21-23. On April 30, 1984, the Commonwealth filed "Objections and Request for Reconsideration . . . " (Request) of our denial. On May 4, 1984, we ordered the Applicant and the Staff to answer the Request, and stated that Limerick Ecology Action and the City of Philadelphia could file answers if they wished. Both the Applicant and the Staff filed answers opposing the Request on May 18, 1984. We affirm our earlier ruling.

DS02

In our April 20, 1984 Order, we found that we were compelled by an Appeal Board decision to rule that permanent record dosimeters were not required for emergency workers. In Metropolitan Edison Co. (Three Mile Island, Unit 1), ALAB-698, 16 NRC 1290 (1982), the Appeal Board ruled that, given the provisions for the use of self-reading dosimeters in the Commonwealth's Disaster Operations Plan, permanent record dosimeters were not necessary to provide reasonable assurance that emergency workers would be protected. Id. at 1294-1301. We were bound by this appellate decision, in part, because the Commonwealth's current plans for the use of self-reading dosimeters are not materially different from the plans which were before the Appeal Board in Three Mile Island. Order, at 22. The Commonwealth grants that the current provisions are, indeed, not materially new.[1/] Request, at 3-4.

1/ The Appeal Board recognized that in one situation, self-reading dosimeters would not be sufficient: where emergency workers would receive unexpected exposures beyond the 200 roentgen range of the self-reading dosimeters. But the Appeal Board argued that not only did such doses appear unlikely, more important, the Commonwealth's emergency plan instructed emergency workers to report for radiological assessment and possible decontamination and treatment whenever their dosimeters indicated an exposure of 25 R or more. Three Mile Island, 16 NRC at 1300-1301. The current Commonwealth plan no longer keys assessment and decontamination to a dose of 25 R or more. However, the plan now requires workers not to exceed doses of 25 R (Annex E, App. 16, Sec. IV.F., at E-16-5), except when the worker is engaged in a life-saving mission, at which time the worker is not to exceed a dose of 75 R (Annex E., App. 16, Attachment B, Sec. IV.B.4., at E-16-B-6). More important, every emergency worker must report for assessment and decontamination at the end of his or her mission, or when ordered to do so by a supervisor. Annex E, App. 16, Attachment A, Sec. I.D.I., at E-16-A-2.

The Commonwealth now puts forward two arguments that Three Mile Island does not control here. Both have to do with the record before the Appeal Board in Three Mile Island. The first is that since dosimetry was not the subject of a contention in that proceeding, nor, therefore, of discovery, nor, to any detailed extent, of pre-filed testimony (Three Mile Island, 16 NRC at 1300 n.22), the record in that proceeding was not as full as it should have been. Request, at 5. The other argument is that, in one respect, the record was full enough to permit the facts concerning dosimetry in Three Mile Island to be distinguished from the facts concerning dosimetry here: In Three Mile Island, all the parties agreed that adequate supplies of self-reading dosimeters were not only available but had, in fact, already been distributed to local emergency response organizations. Three Mile Island, at 1295 n.9. Here, however, the Commonwealth argues, not only is there no record that adequate supplies of self-reading dosimeters are on hand, we have admitted a contention that such supplies must be assured. Request, at 4-5, 7. The Commonwealth argues that the effect of our failure to comprehend the state of the record in Three Mile Island has led us, in effect, to relieve the Applicant of its burden "to establish adequate means for protecting emergency workers" (id. at 5), and to apply to Commonwealth-1 "a standard that is more akin to summary disposition" than to the admissibility of contentions. Id. at 2.

We do not find these arguments persuasive. For one thing, although we have no record here that adequate supplies of self-reading dosimeters

are assured, it will be precisely the point of litigation of that part of Commonwealth-1 which we have admitted to determine either that those supplies are on hand, or that a mechanism which assures that they will be on hand is in place. Thus, in relation to the assurance of adequate supplies, the difference between Three Mile Island and this proceeding is immaterial.

However, more important, we see no reason to think that the record on dosimetry in Three Mile Island is deficient, or that the record here might be significantly better than the record that was before the Appeal Board. That Board, by reporting that there had been no discovery and little pre-filed testimony on dosimetry (16 NRC at 1300 n.22), does not appear to have been indicating anything other than fact. Nowhere does that Board suggest that the force of its decision is at all limited by any deficiencies in the record. On the contrary, that Board's discussion of the virtues of permanent record dosimeters is quite full. Every one of the virtues set out by the Commonwealth in its Request (at 6-7), is to be found somewhere in the Appeal Board's discussion. See Three Mile Island, 16 NRC at 1294, 1295, 1298, 1300 n.21. In its Request, the Commonwealth gives no indication of what it might add to the Appeal Board's discussion.

In sum, we have not engaged in summary disposition against Commonwealth-1. We have simply applied precedent established by an

appellate body to find that this part of the contention lacks the basis required to admit it as an issue in controversy.[2/]

Last, we note the Commonwealth's objection (Request, at 7-8) to our remark (Order, at 21) that "in effect, . . . the Commonwealth is contending that the emergency plans must record the results of the discussions it and the Applicant are having" about who will buy the dosimeters. The Commonwealth says that it "did not raise dosimetry as an issue of concern in this proceeding merely to have the Board determine who will pay for these devices, as the Board apparently believes." Request, at 7. We need no convincing that the aim of Commonwealth-1 is the health and safety of emergency workers. We have said nothing to the contrary. Nonetheless, we note that the

---

2/ Neither do we regard the issue of permanent record dosimeters as res judicata. The Commonwealth says that, by noting its participation in Three Mile Island (Order, at 21), we "seem to imply" that res judicata applies here. Request at 8 n.1. In opposition, the Commonwealth asserts that res judicata "necessitates identity of parties as well as identity of issues between two proceedings." Id. As we have just stated, our ruling on Commonwealth-1 is based only on recognition of the authority of Three Mile Island, authority which the Commonwealth is free to think is not sound, but which we are obliged to follow. Nonetheless, it is not clear that we couldn't have based the ruling on the rather flexible doctrine of collateral estoppel. An analogy with the situation before us may be found in Parklane Hosiery Company, Inc., v. Shore, 439 U.S. 322 (1979). There, one party was estopped from relitigating an issue decided against it in an earlier proceeding involving a different opposing party. Also, we note the relative unimportance of the identity of the Applicant in the situation before us: The issue the Commonwealth raises about permanent record dosimeters concerns its own emergency plan, not some act, or omission, by the Applicant.

Commonwealth is free to purchase the permanent record dosimeters it thinks are necessary to assure the health and safety of emergency workers. Cf. Three Mile Island, 16 NRC at 1295 (presumably a requirement for permanent record dosimeters would put pressure on the licensee or Federal government to pay for them).

For the reasons stated, on reconsideration we adhere to our denial of that part of Commonwealth-1 which alleges that permanent record dosimeters are required for emergency workers.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

Lawrence Brenner

Lawrence Brenner, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland
June 4, 1984

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

In the Matter of PHILADELPHIA ELECTRIC COMPANY (Limerick Generating Station, Units 1 and 2)	Docket Nos. 50-352-OL 50-353-OL June 4, 1984

COURTESY NOTIFICATION

As circumstances warrant from time to time, the Board will mail copies of its memoranda and orders directly to each party, petitioner or other interested participant. This is intended solely as a courtesy and convenience to those served to provide extra time. Official service will be separate from the courtesy notification and will continue to be made by the Office of the Secretary of the Commission. Unless otherwise stated, time periods will be computed from the official service.

I hereby certify that I have today mailed copies of the Board's "Memorandum and Order on the Commonwealth's Request for Reconsideration of Ruling on the Admissibility of Commonwealth-1" to the persons designated on the attached Courtesy Notification List.

Valarie M. Lane
Valarie M. Lane
Secretary to Judge Brenner
Atomic Safety and Licensing
Board Panel

Bethesda, Maryland

Attachment

Troy B. Conner, Jr., Esq.
Mark J. Wetterhahn, Esq.
Conner and Wetterhahn
1747 Pennsylvania Avenue, N.W.
Suite 1050
Washington, DC 20006

Ann P. Hodgdon, Esq.
Benjamin H. Vogler, Esq.
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Zori G. Ferkin, Esq.
Assistant Counsel
Commonwealth of Pennsylvania
Governor's Energy Council
P.O. Box 8010
1625 N. Front Street
Harrisburg, PA 17105

Martha W. Bush, Esq.
City of Philadelphia
Municipal Services Bldg.
15th and JFK Blvd. - Room 1530
Philadelphia, PA 19107