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limerick ecology action

BOX 761

POTTSTOWN, PA. 19464

(215) 326-9122

DOCKET
SEP 14 1984
'84 SEP 14 P5:44

Lawrence Brenner, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

Dr. Peter A. Morris
Administrative Judge
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

SEP 14 1984
BRANCH
September 11, 1984

In the Matter of
Philadelphia Electric Company
Docket No. 50-352, 353 04

Re: LEA's Response to the Board's Sept. 6, 1984 Order regarding
FEMA's release of the draft regional report on the July 25, 1984
Limerick Emergency Planning Exercise

ANSWER OF LIMERICK ECOLOGY ACTION
TO THE NRC STAFF'S MOTION FOR RECONSIDERATION
(8/23/84) AND FEMA'S LETTER OF SEPT. 5, 1984

Gentlemen,

Limerick Ecology Action hereby responds to the arguments advanced in this proceeding by the NRC Staff and FEMA's General Counsel. LEA has been designated by the Board as lead intervenor on emergency planning issues. Several contentions dealing with the adequacy of "off-site" emergency planning that have been advanced by LEA have been admitted for litigation, starting the week of Nov. 5, 1984. According to the schedule established by the Board's Order of August 15, 1984, testimony on admitted contentions is due by October 16, 1984. Other deferred contentions must be respecified by Sept. 25, 1984.

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It is in the interests of all parties to this proceeding to avoid unnecessary litigation. Although LEA understands the informal draft nature of the regional report, LEA does not believe that the Sept. 5 FEMA letter constitutes a proper claim of privilege.

The reasons set forth by FEMA's General Counsel (9/5/84) to withhold the draft regional report are wholly unsupported. The letter relies upon the following:

- (1) a lack of "official status" of the draft regional report, and
- (2) some generalized (and unsubstantiated) concerns about the "integrity" of the review process should the report be released to the litigation parties.

With respect to (1), while arguably for purposes of the rebuttable presumption of 10 CFR 50.47 (a)(2), only the "fully cleared" report may constitute the FEMA "finding", the draft report nonetheless, contains information relevant to this proceeding, and LEA's admitted contentions, and may set forth information of the type ordinarily discoverable by parties to agency litigation.

The September 5 FEMA letter does not assert any recognized judicial privilege. We also note that no such privilege has been properly invoked. See Long Island Lighting Company (Shoreham)
18 NRC 1221 (1983)

With respect to (2), a specific factual basis for the General Counsel's "integrity" concerns are notably (and utterly) absent from the Sept. 5, 1984 letter.

FEMA's argument rests upon a syllogism which merits immediate repudiation: that the candor of public decision making is "adversely" affected by the light of public access, that this is acceptable, and that public access should be denied.

The state of public affairs ought to be quite the contrary: a policy of full public access and review should encourage candor and the true integrity of the process, because erroneous assumptions, ill conceived decision-making or attempted "white washing" will see the light of day.

CERTIFICATE OF SERVICE

'84 SEP 14 P5:45

I, Maureen Mulligan, hereby certify that Limerick Ecology Action's Answer to the NRC Staff's Motion for Reconsideration and FEMA's letter of Sept. 5, 1984 was served upon the following parties this 11th. day of September 1984 by deposit in U.S. mail, first class prepaid, except for those marked (*), which were sent Express Mail.

- (*) Lawrence Brenner, Chairman (2)
Administrative Judge
U.S. Nuclear Regulatory
Commission
Washington, DC 20555
- (*) Dr. Richard F. Cole
Administrative Judge
U.S. Nuclear Regulatory
Commission
Washington, DC 20555
- (*) Dr. Peter A. Morris
Administrative Judge
U.S. Nuclear Regulatory
Commission
Washington, DC 20555
- Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory
Commission
Washington, DC 20555
- Atomic Safety and
Licensing Board Panel
U.S. Nuclear Regulatory
Commission
Washington, DC 20555
- Atomic Safety and
Licensing Appeal Panel
U.S. Nuclear Regulatory
Commission
Washington, DC 20555
- Ann P. Hodgdon, Esq.
Office of the Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, DC 20555
- Benjamin Vogler, Esq.
Office of the Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, DC 20555
- Troy B. Conner, Jr., Esq.
Conner and Wetterhahn
1747 Pennsylvania Ave., NW
Washington, DC 20006
- Philadelphia Electric Company
Attn: Edward G. Bauer, Jr.
VP and General Counsel
2301 Market St.
Phila., PA 19101
- Thomas Gerusky, Director
Bureau of Radiation Protection, DER
5th fl, Fulton Bank Bldg.
Third and Locust Sts.
Harrisburg, PA 17120
- Spence W. Perry, Esq.
Associate General Counsel
FEMA
Room 840
500 C St., SW
Washington, DC 20472
- Zori Ferkin, Esq.
Governor's Energy Council
P.O. Box 8010
1625 Front St.
Harrisburg, PA 17105