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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

In the Matter of PHILADELPHIA ELECTRIC COMPANY (Limerick Generating Station, Units 1 and 2)	Docket Nos. 50-352-OL 50-353-OL September 24, 1984

MEMORANDUM AND ORDER RULING ON REWORDED AND RESPECIFIED OFFSITE EMERGENCY PLANNING CONTENTIONS

Introduction

In Philadelphia Electric Co. (Limerick Units 1 and 2), LBP-84-18, 19 NRC 1020 (1984), we admitted several offsite emergency planning contentions. Because the contentions as admitted often differed significantly from the contentions as first put forward, and because there were good reasons to expect that during the discovery period some of the contentions would become narrowed, focused, or settled, we gave notice to the intervenors when we admitted the contentions that soon after discovery a date would be set for filing reworded and, we hoped, more focused contentions. Id. at 1074. That date was set in our "Order Establishing Schedule for Offsite Emergency Planning Issues," slip op.

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at 3 (August 15, 1984). We did not expect there to be objections to legitimate narrowing and focusing, especially since we were requiring the parties to negotiate before the reworded and focused contentions were filed. Id. at 3n*. Nonetheless, we also set a date for the receipt of objections. Id.

Limerick Ecology Action (LEA) made a timely filing on September 6, 1984 of its reworded and, what it called, "narrowed and focused" contentions. However, it could hardly have been expected that this particular filing from LEA would not meet objections. The Applicant filed an answer on September 13, 1984. */ Its objections were aimed not at LEA's rewordings, which were brief and, for the most part, accurate reflections of the contentions as admitted, but at the lists of issues which accompanied the reworded contentions. Each list was less a narrowing and focusing than it was a specification of the issues and assertions LEA apparently thought would fit under the more general language of the particular contention the list accompanied. In at least one instance, LEA vigorously raised anew an issue without acknowledging that we had clearly ruled that issue out in our order admitting the contentions. See our discussion below of LEA-26.

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*/ The Staff filed no answer.

To LEA's not altogether helpful approach to narrowing and focusing, the Applicant has predictably objected, charging that a great many items in the lists amount to late-filed contentions. Then, misconstruing both the order in which we set the date for filing the reworded and focused contentions, and in consequence misapplying a case in which a different licensing board sanctioned certain intervenors for procedural violations (Long Island Lighting Co. (Shoreham, Unit 1), LBP-82-115, 16 NRC 1923 (1982)), the Applicant argues that we had required LEA to narrow its contentions (Applicant's Answer at 1), and that therefore we "should dismiss any contentions for which LEA does not proffer direct, written testimony." Id. at 21. Thus, despite months of discovery and negotiation, nothing, or little (see our discussion of LEA-26), has been settled, and LEA's attempts at narrowing have generated new disputes about each admitted contention.

We decline to require that LEA submit written testimony on each contention. LEA has not, as had the intervenors in Shoreham, willfully and totally refused to comply with any procedural order. See Shoreham, 16 NRC at 1928. We did not order LEA to narrow and focus its admitted contentions. We did require LEA to reword its contentions to accurately reflect both our construction of them and any clarifying information gathered in discovery (see Limerick, 19 NRC at 1074), but in setting a date for filing the reworded contentions, we called the narrowing and focusing "voluntary" (August 15, 1984 Order at 3), and thereby contrasted that narrowing with what we called the "mandatory"

specification of the contentions on which we had deferred ruling. Id. at 4. We spoke of narrowing and focusing at all, not because we thought that the contentions as admitted were too vague to be litigated, but simply because we naturally expected negotiation and discovery to reorient some of the contentions. In the Introduction to our lengthy order on the admissibility of these contentions, we commented on the disorder and confusion among the contentions as originally filed. Limerick, 19 NRC at 1028. But we also said there that we found the prehearing conference useful -- and LEA's contribution to it particularly so -- in clarifying the contentions. Id. at 1028-29. Given the efforts of all the parties at that conference, and our own lengthy analysis in Limerick, 19 NRC 1020, of each contention, we find wholly unpersuasive the Applicant's claim that without written testimony from LEA, the Applicant and other participants in the evidentiary hearings on offsite emergency planning will not have had fair and adequate notice of what they must be prepared to address, and can "only offer general testimony as to the basic elements of the plans . . . ." See Applicant's Answer at 22.

Moreover, we think LEA has in fact, to some extent, focused its contentions. Each of the large majority of the issues and assertions LEA lists after each reworded contention is either basis for the contention; or an issue which is foreseeable and logically raised by the contention as admitted; or a proposed remedy which, given the incomplete development in the offsite emergency planning phase of this proceeding

of both the record and legal argument, we are not obliged to rule on now. We shall give examples below of each of the last two of these kinds of issues or assertions. As for the listed items which do exceed the scope of an original contention, LEA's voluntary "narrowing" has afforded us the opportunity to eliminate them now, so that they do not take up time during the evidentiary hearing.

We now consider the reworded and respecified contentions in detail, discussing analogous contentions together. For each contention, we first set out the reworded text and any caveats concerning its interpretation, and then we rule on the accompanying list of issues and assertions. We concentrate our discussion on those issues and assertions which we rule are beyond the scope of any contention.

LEA-11

As the Board would now reword and admit LEA-11, it reads:

> The draft Chester and Montgomery County and School District RERP's are deficient in that there is insufficient information available to reasonably assure that there will be enough buses to evacuate the schools, both public and private, in one lift.

This text differs in two respects from the rewording LEA submitted on September 6, 1984. First, LEA proposed the following as the last clause: "or that they will be able to reach the schools during an emergency." We rule the clause out, for, although in essence it was

part of the original contention (see LEA's January 31, 1984 filing at 26), LEA proffered no basis for it and did not pursue it at the prehearing conference. Moreover, we did not include it as part of the admitted contention (see Limerick, 19 NRC at 1053), and LEA took no exception to our ruling.

Second, in place of our "there will be enough buses to evacuate the schools, both public and private, in one lift," LEA had, "the numbers of buses to meet the needs of any of the schools are available." LEA's words here neglected two important parts of the contention as admitted, namely, the "one lift" standard (see id.) and the inclusion of the private schools. Id. at 1061. Also, LEA's words here were vague enough to leave room for much that was not in the contention as admitted, and which we discuss now.

LEA appends ten specifications to LEA-1. We rule as being beyond the scope of the admitted contention item 3, on provisions for transportation from host schools to mass care centers; the mentions in items 4 and 7 of "required mobilization time"; item 8, on an assumption in the Evacuation Time Estimate Study concerning the time it would take to assemble and load buses; and item 10, which, reflecting the last clause of LEA's rewording of the contention, calls for traffic control measures at the schools. LEA raised none of these issues in either the original contention or at the prehearing conference. Instead LEA was then content to measure the availability of buses not by time or traffic

congestion, but by the facts LEA had gathered on bus assignments and numbers of needed but as yet unacquired buses. We construed the contention to allege that the plans should show either that there were enough buses, or that a mechanism adequate for acquiring them existed. Id. at 1053.

The Applicant would rule out also, among other items, item 2, which alleges deficiencies in certain letters of agreement. In not ruling out item 2, we construe it not to be saying that such letters must conform to the standard LEA proposes before we could rule in the Applicant's favor on this contention, but only that such conformity would support such a ruling. See our similar treatment of the similar issue in LEA-12 and 15, Limerick, 19 NRC at 1055, and below.

For other items which may fall within the scope of LEA-11, see our discussion below of LEA-15.

LEA-12 and LEA-15

LEA proposes, and we accept, though not without a caveat, the following rewordings of these two contentions:

LEA-12:

> The draft Montgomery, Chester, and Berks County RERP's and the School District RERP's are not capable of being implemented because there is not reasonable assurance

that there will be sufficient numbers of teachers and staff required to stay at school during a radiological emergency if sheltering is recommended as a protective measure, or that there will be sufficient numbers of school staff available to evacuate with children in the event of a radiological emergency. Therefore, children are not adequately protected by the draft RERP's.

LEA-15:

The Chester and Montgomery County RERP's and the School District RERP's are not capable of being implemented because the provisions made to provide bus drivers who are committed to being available during a radiological emergency, or even during preliminary stages of alert are inadequate.

These rewordings accurately reflect the contentions as admitted, but not very precisely. What they do not say is that these two contentions are "solely about human response [of school staff and bus drivers] in a radiological emergency." Limerick, 19 NRC at 1055. Thus, much which LEA raises in its two lists for these two contentions must be ruled out: under LEA-12, item 1, on "parental/child behavior" and "family decision making patterns," except as they have a bearing on whether staff and drivers would suffer conflicts between their public and their private duties, and what sort of conflicts; and that part of item 6 which raises the issue of "minimum staffing requirements to cope with the psychological trauma that children will undergo during a radiological emergency." Under LEA-15, we rule out item 1, on communications with bus drivers; that part of item 4 which raises the issue of mobilization time; that part of item 7 which is concerned about whether some drivers are being assigned to evacuate both the school

population and the general public; and item 8, on transportation for private school students. Both item 8 and that part of item 7 we rule out arguably fall within the scope of LEA-11.

The Applicant would have us rule out also, among other items, item 3 under LEA-12, on the determination of the degree of sheltering provided by the school buildings; and item 2 under LEA-15, on letters of agreement between bus companies and school districts. The Applicant inaccurately asserts that "[i]n admitting [LEA-15], the Board expressly declined to include any aspect relating to letters of agreement for bus drivers. Special Prehearing Conference Order at 55 (April 20, 1984)." Applicant's Answer at 13 n.32. We did say that "[a]ll parties agree, as do we, that letters with individuals are not required" (Limerick, 19 NRC at 1054), but we also expressly made room for consideration of letters of agreement:

> As we understand LEA-12 and LEA-15, they are not about letters of agreement per se as ends in themselves, but regard such letters only as one way to contribute to reasonable assurance that in an emergency there will be enough school personnel to implement the school plans.

Id. at 1055.

The Applicant also inaccurately asserts that the licensing Board in Carolina Power and Light Co. (Shearon Harris, Units 1 and 2), "Further Rulings on Admissibility of Emergency Planning Contention," (slip op. at 16-18) (June 14, 1984) "expressly rejected a contention asserting that

the adequacy of buildings for sheltering must be evaluated." Applicant's Answer at 8 n.15. In fact, though, although the board did deny a contention which required such analysis in the county plans, the Shearon Harris board, on the pages the Applicant cites, also admitted a contention which called for inclusion in the State plan of expected local sheltering protection, and admitted a contention which called for the best "Protection Factors" (as the plans called them) in each hospital and nursing home to be determined before the emergency preparedness exercises.

Among other items to which the Applicant objects are items 4 and 5 under LEA-12, which are good examples of what, in effect, are proposed remedies: that post-training surveying of staff is necessary, and that there must be unannounced evacuation and sheltering drills. LEA is free to propose such remedies now, but only if the record were complete, and the legal issues briefed, would we be able, or obliged, to rule on such remedies. It does not seem to us impossible that while neither regulations nor guidance explicitly call for these, and similar remedies proposed under other contentions, there may be facts peculiar to this case which would necessitate a finding that the often general language of the regulations, when applied to such facts, would require the proposed remedies.

LEA-13 and LEA-27

With one caveat, we have accepted most of LEA's rewording of LEA-13, and all of its rewording of LEA-27:

LEA-13:

> There must be specific and adequate plans for children in day care, nursery and pre-school programs in order to provide reasonable assurance that this particularly sensitive segment of the population is adequately protected.

LEA-27:

> There must be specific and adequate plans to protect Camp Hill Village Special School, Inc. in East Nantmeal Twp., Chester County and for Camp Hill Village School in West Vincent Twp., Chester County.

The caveat concerns the word "specific" in each of these rewordings. As we said twice in admitting these contentions, "LEA is not contending that the institutions listed in these two contentions be covered by specialized plans, but only that the planning for them be adequate. Tr. 7791-92, 8131-32." Limerick, 19 NRC at 1058. See also id. at 1056-57. Thus, "specific" is used in these rewordings not to call necessarily for institution-specific plans, but only to assert that, to be adequate, whatever planning is done for these institutions must be specific.

LEA's rewording of LEA-13 also mentioned day and overnight camps. These do not fall within the scope of the contention, which was focused

on routine care facilities for, as LEA puts it, "particularly sensitive," young, children. Limerick, 19 NRC at 1056.

Item 1 under LEA-13 merely asserts that procedures that the institutions use to contact parents and guardians must be adequate, but the item does not address the notification procedures detailed in the Commonwealth's model plan for these institutions, which, according to the Applicant, was made available to LEA in early July. Applicant's Answer at 9 n.20. Thus, though what item 1 says is clearly true, it joins no issue and therefore is ruled out.

The Applicant would have us rule out also, among others under LEA-13, item 2, which alleges that "the general transportation survey sent out to the public is not sufficient to determine the needs" of these pre-school institutions. The Applicant claims that the Commonwealth's model plan for these institutions instructs them to determine whether they can meet their transportation needs on their own, and that the general survey then instructs these institutions to report unmet needs to the appropriate local governmental planners. Applicant's Answer at 10. However, the cited section of the model plan, Section IV.F., says only that transportation of the students is the responsibility of the institution. The section gives no hint that unmet needs might be filled from outside the institution. Nor is it clear to us that the general survey covered these institutions. Therefore, we do not rule out item 2 under LEA-13.

We rule out the hint of the human response issue in item 2 under LEA-27. The issue was not raised in either the original contention or its admitted form. We also rule out item 3's mention of "telecommunications," which lacks bases and specificity; and item 5's concern that the plans might not be adopted, a concern which is squarely within the scope of deferred contention LEA-1.

LEA-14 and LEA-22

We had fully expected these two contentions to be settled. See Limerick, 19 NRC at 1060-61. We accept the whole of LEA's rewordings:

LEA-14:

(a) The School District RERP's and the Chester, Berks, and Montgomery County RERP's are deficient because there are inadequate provisions of units of dosimetry-KI for school bus drivers, teachers, or school staff who may be required to remain in the EPZ for prolonged periods of time or who may be required to make multiple trips into the EPZ in the event of a radiological emergency due to shortages of equipment and personnel.

(b) The Chester, Berks, and Montgomery County School District RERP's fail to provide reasonable assurance that school bus drivers, teachers or other school staff are properly trained for radiological emergencies.

LEA-22:

The State, County, and Municipal RERP's are inadequate because farmers who may be designated as emergency workers in order to tend to livestock in the event of a radiological emergency have not been provided adequate training and dosimetry.

We also accept all the items listed under these two contentions. The Applicant argues in relation to item 1 under LEA-14(b) that school staff and drivers need not be trained to deal with contaminated persons and equipment. We, however, do not find at this prehearing stage that such elementary knowledge could not be useful to these potential emergency workers.

The Applicant also want us to rule out, under LEA-22, item 2, which calls for the county plans to clearly define "livestock" and "farmer" more inclusively; and item 3, which calls for informational brochures of a certain content to be distributed to farmers. However, LEA's concern for definitions is a necessary consequence of its concern that all farmers be adequately trained and equipped, and its remarks on brochures are to be construed as indicating what it thinks is one of the ways farmers should receive their training. See also item 4 under LEA-22.

LEA-24 FOE-1

LEA's rewording is accurate, and precise:

> There is no assurance that plans for evacuation of the ten mile radius will not be impeded by traffic congestion in the vicinity of Marsh Creek State Park, Exton area (involving Route 100) and Valley Forge Park, King of Prussia area.
>
> These areas should either be included in the Emergency Planning Zone or adequate plans for traffic control and direction should be made to avoid adverse effects on EPZ evacuation.

We accept all of the items in the list accompanying the contention. The Applicant objects to, among other things, LEA's questioning certain of the Evacuation Time Estimates Study's assumptions related to the areas the contention lists. While LEA is not exactly crystal clear in alleging deficiencies in the Study, we do not rule out this item, for if we are to consider what impact traffic in the areas the contention lists would have on evacuation, we necessarily will consider traffic patterns, capacities, and rates, both in the plume EPZ and in the named areas. Thus, we cannot but inquire into whether the Study has properly analyzed these named areas.

LEA-26

In its original form, LEA-26 was the most disordered of LEA's contentions, and, in spite of our labor in Limerick, 19 NRC at 1070-73, apparently the disorder cannot be wholly expunged. LEA's latest rewording of this contention is the least accurate of all the rewordings. We accept the following portion of it:

> The Draft County and Municipal RERP's are deficient in that they do not comply with 10 C.F.R. § 50.47(b)(5) because there is no assurance of prompt notification of emergency workers who must be in place before an evacuation alert can be implemented, and there is no assurance of adequate capability to conduct route alerting.

LEA's rewording also included the claim that "there is no prompt alerting system operative and in place." The lengthy first item in the appended list is devoted to specifying this assertion, as is also an appended three-page essay on the probability of a loss of offsite power. It appears that LEA did not read our ruling on LEA-26. There we said that under NRC case law, oversight of installation and testing of the siren system is to be solely the Staff's responsibility, unless deficiencies in either the design or Staff oversight are specifically alleged. Limerick, 19 NRC at 1071. LEA still has specifically alleged no such deficiencies. Thus, we rule out both the clause in the rewording which refers to the sirens, and all the specifying material related to that clause, namely, item 1, and the three pages on loss of offsite power.

LEA's rewording of this contention closed with, "within the time required by NUREG-0654, Appendix 3, Criteria 2.a and 2.c." In Limerick, we also rejected any issue about the effectiveness, and by implication, timeliness, of route-alerting. Id. at 1072. We also rule out the second sentence of item 3, and all of item 4. Both seek to expand the contention to include the issue of human response to a radiological emergency. However, LEA raised no such issue in the original contention, or during the prehearing conference. Nor did LEA take exception to our listing LEA-8, 12 and 15 as the only human response contentions. See id. at 1048-49.

Last, we note that, although LEA has not explicitly said so, it has apparently dropped the part of LEA-26 which was concerned with arrangements for securing 24-hour-a-day broadcast capability for the EBS.

LEA-28

We accept both LEA's rewording and all the items in the list accompanying the rewording.

(a) There is no assurance in the County or Municipal RERP's that the National Guard will have time to mobilize to carry out its responsibilities with regard to towing and providing emergency fuel supplies along state roads.

(b) There is no assurance provided in the Municipal, or County RERP's that there are sufficient resources available to provide towing, gasoline, and snow removal along non-state roads. According to PEMA, the National Guard has neither the resources for snow removal nor the responsibilities for it, according to the Commonwealth's Disaster Operations Plan.

In conclusion, for the reasons give above, we accept certain of LEA's rewordings and respecifications, but rule out others as being beyond the scope of the contentions as admitted.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

Lawrence Brenner, Chairman
ADMINISTRATIVE JUDGE

Dr. Richard F. Cole
ADMINISTRATIVE JUDGE

Dr. Peter A. Morris
ADMINISTRATIVE JUDGE

Bethesda, Maryland
September 24, 1984

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NUCLEAR REGULATORY COMMISSION

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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 Ruling on Reworded and Respecified Offsite Emergency Planning Contentions" to the persons designated on the attached Courtesy Notification List.

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

Bethesda, Maryland

Attachment

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