

LAW OFFICES  
CONNER & WETTERHAHN, P.C.  
1747 PENNSYLVANIA AVENUE, N. W.  
WASHINGTON, D. C. 20006

TROY B. CONNER, JR.  
MARK J. WETTERHAHN  
ROBERT M. RADER  
DOUGLAS K. OLSON  
JESSICA H. LAVERTY  
NILS N. NICHOLS  
ARCH A. MOORE, JR.\*  
ROBERT H. PURL  
BERNHARD G. BECHHOEFER  
OF COUNSEL  
\*NOT ADMITTED IN D. C.

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(202) 833-3500

CABLE ADDRESS: ATOMLAW

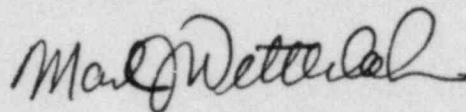
Mr. Harold R. Denton  
Director  
Office of Nuclear  
Reactor Regulation  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

In the Matter of  
Philadelphia Electric Company  
(Limerick Generating Station, Units 1 and 2)  
Docket Nos. 50-352 and 50-353

Dear Mr. Denton:

In response to the petition submitted to you by Robert L. Anthony for himself and on behalf of Friends of the Earth (collectively "FOE"), dated December 23, 1984, requesting relief pursuant to 10 C.F.R. §2.206, I am hereby submitting comments of Philadelphia Electric Company. For the reasons stated therein, the matters raised by petitioners do not warrant the relief requested. Accordingly, the relief requested by FOE should be denied.

Sincerely,



Mark J. Wetterhahn  
Counsel for the Licensee

MJW:sdd  
Enclosure  
cc: Eugene J. Bradley, Esq.  
Robert L. Anthony

8502110408 850206  
PDR ADOCK 05000352  
G PDR

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COMMENTS OF PHILADELPHIA ELECTRIC COMPANY  
ON FOE'S REQUEST UNDER 10 C.F.R. §2.206

On December 23, 1984, Mr. R.L. Anthony, for himself and as representing Friends of the Earth in the Delaware Valley (collectively "FOE" or "petitioner"), submitted a petition to the Director, Office of Inspection and Enforcement, to institute proceedings to revoke the operating license for Unit 1 and to issue an order to show cause why this license should not be revoked.<sup>1/</sup> Petitioner claims that "PECO is in violation of NRC regulations and is subjecting us and the public to the risk of extensive unauthorized health and safety dangers by starting the nuclear reactor without the required safety provisions."<sup>2/</sup> Petitioner also claims that Philadelphia Electric Company ("PECO") has "willfully violated our health, safety and interests and those of the public" and "is not qualified to operate this reactor safely."<sup>3/</sup> As basis for these charges, petitioner cites portions of publicly available documents prepared by either

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1/ "Petition by Intervenor, R.L. Anthony/Friends of the Earth, to the Director, Off. of Inspection and Enforcement to Institute Proceedings to Revoke License NPF-27, Issued to PECO; and to Issue an Order to Show Cause Why This License Should Not be Revoked" (December 23, 1984) ("Petition").

2/ Petition at 1.

3/ Id.

PECO or the NRC Staff. Certain of these documents were made available directly to the representative of petitioner because of his participation in the Limerick operating license proceeding. As discussed in detail below, none of the matters raised by petitioner, either examined alone or taken collectively, supports the requested relief. FOE has failed to demonstrate that a proceeding should be instituted pursuant to §2.206 of the Commission's Rules of Practice.

The Director, upon receipt of a request to initiate a proceeding pursuant to 10 C.F.R. §2.206, is required to make an inquiry appropriate to the facts which have been asserted. He is free to rely on a variety of sources of information including Staff analyses of generic issues, documents issued by other agencies and the comments of the Licensee on the factual allegations in deciding whether further action is required. See Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), CLI-78-7, 7 NRC 429, 432, 433 (1978) citing Consolidated Edison Company of New York (Indian Point, Units 1, 2 and 3), CLI-75-8, 2 NRC 173, 175 (1975). In reaching his determination, the Director need not accord presumptive validity to each assertion of fact, irrespective of the degree of substantiation, or to convene an adjudicatory proceeding in order to determine whether an adjudicatory proceeding is warranted. Id.

FOE makes a number of accusations regarding actions of Philadelphia Electric Company and the NRC. For example, it asserts that "PECO is in violation of NRC regulations,"

"PECO has willfully violated our health safety and interests and interests and those of the public," "PECO is not qualified to operate this reactor safely," and there exists a "deliberate, willful neglect of public safety."<sup>4/</sup> These assertions are unfounded and entirely without basis. The entire request is conclusory and without factual or legal foundation. It merely notes various publically available reports and filings with the NRC made by PECO and various NRC reports and evaluations. In each instance, petitioner concludes without more that the evaluations in each document are inadequate. When such documents discuss why the public health and safety is not affected, FOE merely takes the conclusions of such documents which are based upon lengthy evaluation and discussion and simply states that they are unfounded. Petitioner then, without basis, merely states the negative of the conclusions which had been substantiated in Licensee's presentation. This is insufficient as discussed above to require the institution of a proceeding pursuant to §2.206.

Initially, FOE claims that PECO's applications for exemptions from the requirements of 10 C.F.R. Part 50 "constitute willful sacrifice of public safety."<sup>5/</sup> FOE fails to state any reason why it waited until now to raise

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<sup>4/</sup> Petition at 1, 2.

<sup>5/</sup> Id. at 1.

these matters. The latest of these exemption requests was requested in October. FOE fails to appreciate that matters discussed in the first exemption request it discusses related to modifications to the Remote Shutdown System, and others filed by the Company, address the legal standard contained in the NRC's own regulations, in particular 10 C.F.R. §50.12. Such standards have recently been endorsed and ratified by the Commission.<sup>6/</sup> Section 50.12 requires that a request for exemption must not endanger life or property or the common defense and security and be otherwise in the public interest.<sup>7/</sup>

The FOE petition cites various phrases from this exemption request and baldly concludes without anything further that this shows "a casual attitude toward the loss of the control room and ability to shut down the plant in case of accident." Id. Reference to the October 25, 1984 request demonstrates that this accusation is entirely

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<sup>6/</sup> Mississippi Power & Light Company (Grand Gulf Nuclear Station, Unit 1), CLI-84-9, 20 NRC \_\_\_\_ (slip op. at 7, n.7) (October 25, 1984).

<sup>7/</sup> FOE mischaracterizes portions of Mr. Kemper's letter of October 25, 1984. FOE attempts to argue that the Company is minimizing public health and safety. The portion of the letter quoted at n.1, Petition at 2, states that only the potential impact on public health and safety is at issue. It was contrasting this to the previous sentence which concluded that the common defense and security was not affected and therefore need not be discussed in the exemption request. It is certainly not any degradation of the importance of public health and safety.

without basis. After discussing the ability of the control room to provide safe shutdown capabilities and the capabilities of the existing Remote Shutdown Panel room, it is explained that procedures will be available to provide redundant remote shutdown capability using equipment presently installed in the plant in conjunction with temporary jumpers. It further explains that these procedures will be reviewed, approved and in place prior to exceeding five percent power. It also explains that prior to exceeding five percent power, only minimal decay heat requiring removal will exist. As a result, substantial time is available to take mitigative actions. The NRC has already reviewed this matter and determined that this exemption, as well as all others, was warranted. In NUREG-0991, Supplement No. 3, Safety Evaluation Report Related to the Operation of the Limerick Generating Station, Units 1 and 2, Section 7.4.2.3 and Sections 7.1.4.4 and 7.4.2.3 of NUREG-0991, the NRC Staff found that these actions were acceptable. Thus, FOE has failed to demonstrate that this matter provides any basis for the convening of a hearing.

Similarly, the other examples of exemptions requested and granted by the NRC do not give rise to anything which would require the institution of proceedings pursuant to §2.206. Initially, as with the previous example, FOE fails to recognize the necessity for discussing the criteria of §50.12 in exemption requests. Secondly, it would impose a criteria that would require a "guarantee" of the public

health and safety.<sup>8/</sup> This is simply not the licensing standard which is required for utilization facilities.<sup>9/</sup> Moreover, as noted above, the exemption requests cited by FOE are even earlier than the October 25 example discussed above. There is absolutely no reason why FOE has waited this long to raise these matters. Finally, aside from general assertions where it states the negative of all matters discussed by Licensee in detail, it presents no reason at all why a hearing must be convened. Pursuant to §2.206 it had the opportunity to submit affidavits or other technical material supportive of its request for relief, but did not choose to do so. It has produced absolutely nothing which would call into question the analyses presented by Applicant or the Staff in approving each of the exemptions.<sup>10/</sup> In summary, the institution of a proceeding is not warranted based upon the material presented.

The next section of the petition discusses Licensee Event Reports that have been submitted by Philadelphia

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<sup>8/</sup> Petition at 3.

<sup>9/</sup> Power Reactor Development Co. v. International Union of Electrical, Radio and Machine Workers, 367 U.S. 396, 414 (1961); Carstens v. NRC, 742 F.2d 1546, 1557 (D.C. Cir. 1984).

<sup>10/</sup> The citations to the portions of the Safety Analysis Report in which the NRC Staff has reviewed and approved each of the exemption requests granted are contained in Section D of Facility Operating License, NPF-27, issued October 26, 1984.

Electric Company to the Commission concerning the Limerick Generating Station, Unit 1 pursuant to the requirements of 10 C.F.R. §50.73.<sup>11/</sup> While it is alleged that "practically all of [the cited LER's] could have endangered the public with a serious accident affecting safety systems at the plant, and consequent involvement of the reactor and the threat of radioactivity to the environment," petitioner fails to discuss any instance wherein the public health and safety was affected or even where it was even remotely threatened. It fails to show any any significance or pattern associated with these reports. Some, such as LER 84-002, show that a scram occurred and thus that the safety systems were functional during the time. See also LER 84-005.

FOE also cites two inspection reports regarding a fuel bundle hitting the spent fuel pool wall while it was being positioned for placement into the spent fuel pool.<sup>12/</sup> While FOE claims there was "willful deceptiveness" involved, it points to no specific deficiency. The discussion of this matter in NRC Inspection Report 84-43 at 27 clearly discusses the reasonable steps that were taken to determine if any damage resulted from this matter. FOE fails to raise any matter requiring further review. In sum, none of the

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<sup>11/</sup> Petition at 4-5.

<sup>12/</sup> Id. at 5.



Licensee Event Reports or the other matters raised in this section warrant the institution of a proceeding.

In its next section, FOE lists a number of open items from NRC inspection reports and a number of pieces of correspondence between the NRC Staff and Applicant.<sup>13/</sup> It does not analyze these matters in any detail whatsoever, merely concluding that the license should be revoked based upon a listing of these matters.

Open items are matters which have been found not to be a violation of the NRC requirements but which an inspector may wish to follow up.<sup>14/</sup> Thus, while unresolved items may exist, it does not mean that the Applicant has not fulfilled all requirements. In any event many of the items noted by Mr. Anthony have already been closed. FOE does not recognize this even though open items from previous inspection reports were closed in inspection reports which FOE cites, e.g., unresolved Item 84-24-01 referenced on p. 5 of the FOE Petition was closed in Inspection Report 84-60, also referenced by FOE on the same page.

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<sup>13/</sup> Id. at 5-6.

<sup>14/</sup> 03.06 Open Item. Matters that require further review and evaluation by the inspectors. Open items are used to document, track, and ensure adequate followup on matters of concern to the inspector. Inspection and Enforcement Manual, Chapter 0610-03 "Inspection Reports," Definitions. Issue Date: 1/27/84.

FOE points to a number of other letters and gives their general subject matter, but fails to discuss how NRC requirements have not been met. FOE has failed to demonstrate that anything in these letters rises to a matter which warrants the institution of a proceeding for the revocation of the operating license.

The last paragraph of this section discusses the potential for damage to the ultimate heat sink from tornado missiles.<sup>15/</sup> FOE complains that the Licensee's letter does not include a discussion of the threat to safe shutdown from the design railroad explosion which could simultaneously collapse the cooling towers and disable the water intake structure at the river." There are several problems with this argument. Initially, this matter of the design railroad explosion was the subject of a contention filed by FOE. It was rejected by the Licensing Board.<sup>16/</sup> FOE did not appeal such denial.<sup>17/</sup> The §2.206 process may not be used as a vehicle for reconsideration of issues previously decided. Consolidated Edison of New York, Inc. (Indian

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<sup>15/</sup> Id. at 6.

<sup>16/</sup> "Order (Concerning Proposed FOE Contentions on Hazards from Industrial Activities)," (November 22, 1982) (unpublished).

<sup>17/</sup> See R.L. Anthony/FOE Brief in Support of Appeal to Appeal Board of 10/23/84 from Second Partial Initial Decision, LBP-84-31, on Contentions V 3a and V 3b (November 23, 1984).

Point, Unit Nos. 1, 2 and 3), CLI-75-8, 2 NRC 173, 177 (1975); Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-6, 13 NRC 443, 446 (1981). See also Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2), DD-83-11, 18 NRC 293, 295 (1983). Second, FOE is factually incorrect in its assertion. Assuming arguendo that the design railway explosion collapsed the cooling towers and disabled the water intake structure on the Schuylkill, the ultimate heat sink which is independent of these two could shut down both reactors and keep them in a safe condition. This is contemplated by the design bases of the ultimate heat sink and fully discussed in the application.<sup>18/</sup>

FOE next claims it has never been given a final report of the Torrey Pines corporation. By letter dated December 12, 1984 to Philadelphia Electric Company from Torrey Pines Technology, the "Independent Design Review of Limerick Generating Station, Unit 1, No. 1 Spray System" was transmitted. Mr. Anthony is indicated as having been sent a copy of this document with its enclosure. FOE has shown nothing which would require the institution of a proceeding to consider the independent design verification program.

In conclusion, nothing in the petition, taken individually or collectively, warrants the institution of a

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<sup>18/</sup> FSAR §9.2.6.1.

proceeding pursuant to 10 C.F.R. §2.206 for the revocation of the operating license for Limerick, Unit 1. Therefore, the relief requested by FOE should be denied.