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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

ATOMIC SAFETY AND LICENSING BOARD

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BEFORE ADMINISTRATIVE JUDGES:

Helen F. Hoyt, Chairperson
Dr. Richard F. Cole
Dr. Jerry Harbour

OFFICE OF SECRETARY
DOCKETING & SERVICE
SERVED OCT 29 1984

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

Docket Nos. 50-352-0L
50-353-0L
(ASLBP No. 81-465-07-0L)

October 26, 1984

MEMORANDUM AND ORDER ON LEA'S DEFERRED AND
RESPECIFIED OFFSITE EMERGENCY PLANNING CONTENTIONS

1. In its April 20, 1984 Special Prehearing Conference Order, this Board deferred ruling on seven of LEA's offsite emergency planning contentions. Portions of the emergency plans were undeveloped in April, and there seemed to be no grounds for the Board ruling on the contentions addressing those undeveloped portions of the plans when later development of the plans would serve to eliminate those contentions. Thus, fairness and efficiency dictated that the Board defer ruling on admissibility of these contentions. See Philadelphia Electric Co. (Limerick, Units 1 & 2), LBP-84-18, 19 N.R.C. 1020, 1028, 1043-44, 1046, 1065 (1984).

2. In an August 15, 1984 Memorandum and Order, this Board established a schedule for resubmission and reconsideration of the

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deferred contentions. The date for resubmission was later modified in an oral ruling. On October 1, 1984, LEA resubmitted and respecified five of the seven deferred contentions and indicated that LEA-4 and LEA-6 had been withdrawn. The Applicant and the Commonwealth of Pennsylvania filed responses on October 9, and the Staff filed a response on October 12.

3. For the reasons set out below, the Board finds that each of LEA's deferred and respecified contentions is acceptable at least in part. As with the offsite emergency planning contentions already accepted for litigation, guidance on the scope of these deferred contentions is to be found in the April 20, 1984 Special Prehearing Conference Order, 19 N.R.C. 1020. A compilation of the texts of these contentions is attached to this order.

LEA-1

4.a. LEA-1 contends that there is no reasonable assurance that local governments and institutions will adopt nuclear emergency response plans, and that therefore, contrary to 10 C.F.R. § 50.47(b)(1), many primary responsibilities for emergency response have not been assigned. Of LEA's four specifications of the contention, the first and the fourth are not accepted by this Board. The first basis contends that there is no reasonable assurance that PEMA can provide for the unmet needs LEA alleges exist in Chester and Montgomery Counties for buses and ambulances. LEA argues that without these resources, it cannot be assumed that local officials will accept the responsibilities assigned to them. Alleged unmet needs for school buses are the subject of

admitted contention LEA-11. But more important, as the Staff points out, LEA puts forward no basis either for the numbers in its allegation of unmet needs for buses and ambulances, or for its assertion that PEMA cannot reasonably be expected to find ways to meet whatever needs may exist.

4.b. The fourth specification alleges that there is no reasonable assurance that the planning approaches some local jurisdictions are considering as alternatives to the approaches proposed by the Applicant's consultant, Energy Consultants, Inc., will conform to NUREG-0654. LEA alleges no specific deficiencies in any of these alternative approaches. Moreover, the Commonwealth of Pennsylvania reports that under 35 Pa. C.S.A. § 7503, local government emergency plans must be in harmony with the State's plan. The State's plan, in turn, must conform to NUREG-0654 and other federal regulations and guidance.

4.c. The Applicant urges the Board to reject the second and third specifications of this contention. On the second specification, dealing with the degree of participation in the July 25, 1984 emergency preparedness exercise, the Applicant argues that the lack of 100% participation in such an exercise is not a reason for invalidating the basic plans. The Applicant cites Pacific Gas and Electric Co. (Diablo Canyon, Units 1 & 2), LBP-82-70, 16 N.R.C. 756, 790 (1982). However, in that case, the lack of full participation appears to have been due to merely incomplete planning at the municipal level, not to opposition at

that level to whatever plans existed. See Id. The latter is the case here, at least in part.

4.d. In order to decide the issues raised by the accepted portions of LEA-1, the Board directs that competent evidence be placed in the record demonstrating the current status on adoption and implementability by local bodies of their various plans for Limerick.

LEA-2

5.a. LEA-2 contends that unmet staffing needs preclude a reasonable assurance that the requirement in 10 C.F.R § 50.47(b)(1), i.e., that each principal response organization has sufficient staff for initial and continuous response, will be met. LEA appends to the contention detailed lists of unmet staffing needs at the municipal level. This part of LEA-2 is acceptable. The Applicant notes that the figures in LEA's lists come from April 1984 drafts of the municipal emergency plans, but except for the Commonwealth's report that State police will meet the listed needs for staff for the traffic and access control points in Chester County (see the Commonwealth's Response at 5), there is no reliable indication that LEA's figures are significantly dated.

5.b. However, the remainder of the specifications for LEA-2 is not accepted by the Board. The remainder calls for a survey of volunteer emergency workers to determine, principally, which workers are willing to respond in a radiological emergency in the plume EPZ, and which workers have family commitments which could interfere with their ability or willingness to respond in a radiological emergency. The Board rejects consideration of a survey during the litigation of LEA-2 because

considerations of human response in a radiological emergency were no part of LEA-2 as presented at the special prehearing conference in March 1984 (see Limerick, 19 N.R.C. at 1041), and because LEA-2 raises the issue of human response in precisely that general form which this Board said it would not consider. See id. at 1048-49.

LEA-3

6. LEA-3 alleges that there is no reasonable assurance that Bucks County will perform its indispensable role as support county for Montgomery County. Appended to the contention is a July 17, 1984 letter from the Bucks County Commissioners to PEMA setting out the county's reservations about its role in the emergency plans, and its decision to take no further part in the emergency planning for Limerick. The Applicant asserts that this contention seeks to litigate "operational details." The Commonwealth reports that, in compliance with Pennsylvania Senate Bill 987 (July 10, 1984), which require counties to participate in emergency evacuation planning, the Bucks County Commissioners have decided "to continue the participation of the county in the evacuation planning process for . . . Limerick . . ." However, in the light of the county's serious reservations about the planning, it is not clear that the county's compliance with Senate Bill 987 provides reasonable assurance that the county ultimately will adopt the relevant plans. This Board therefore admits LEA-3 for litigation.

LEA-5

7.a. LEA-5 contends that the various emergency plans have not fully documented "the existence of appropriate letters of agreement with

support organizations and agencies." LEA claims there must be commitments from all the principal and supporting response organizations, including police, fire personnel, and school officials. LEA also lists six support organizations for which, according to LEA, letters are lacking.

7.b. The parts of LEA-5 which call, or appear to call, for letters of agreement with individuals, or with organizations whose response functions are covered by laws, regulations or executive orders, are not acceptable. At the March 1984 special prehearing conference on offsite emergency planning contentions, LEA agreed that letters of agreement with individuals were not required. Limerick 19 N.R.C. at 1045 (citing Tr. 7682). Thus, LEA's call, in item (b) of the specification of this contention, for letters of agreement with Radio Amateur Civil Emergency Service and Amateur Radio Emergency System communications personnel is not acceptable, unless the letters are to be with organizations of these personnel. Similarly for item (d), on towing and snow removal services. Moreover, as this Board noted in Limerick, 19 N.R.C. at 1046, under evaluation criterion II.A.3 of NUREG-0654, letters of agreement with organizations of police, fire personnel, school officials or other workers LEA mentions whom regulation, statute, or executive order binds to perform in an emergency, are not necessary.

7.c. The Applicant claims that LEA has overlooked many letters of agreement either in the plans or incorporated there by reference. Even if LEA has overlooked these letters, the contention is acceptable, for it still remains to be determined whether the letters still to be drawn

up constitute an obstacle to a finding that there is reasonable assurance that the plans can and will be implemented.

LEA-23

8.a. LEA-23 alleges that there are deficiencies in the Evacuation Time Estimates (ETEs) study prepared for the Applicant by HMM Associates, Inc. LEA sets out six specifications for this contention. Only the first and sixth of these specifications are accepted for litigation. The second specification states only that "it is not clear" that the ETEs meet the criterion in Appendix 4 of NUREG-0654 for a description of the methodology used in the Estimates. See NUREG-0654 at p. 4-2. This specification has no basis, for it does not address the description of the Study's methodology in Section 2 of the Study, the "Final Draft" of which was distributed to the Board and the parties on June 6, 1984.

8.b. The third specification is that the ETEs do not include an estimate of evacuation times under earthquake conditions. In Southern California Edison Co. (San Onofre, Units 2 & 3), CLI-81-33, 14 N.R.C. 1091 (1981), the Commission ruled that the regulations do not require consideration of earthquakes in emergency planning. The Commission is now considering whether the regulations should be amended to include such consideration. See Pacific Gas & Electric Co. (Diablo Canyon, Units 1 & 2), CLI-84-12, 20 N.R.C. ____ (August 10, 1984). Thus, unless special circumstances are successfully alleged under the provisions of 10 C.F.R. § 2.758, earthquakes cannot be considered in litigation on

emergency planning. Such special circumstances were unsuccessfully alleged in Diablo Canyon, id.

8.c. The fourth specification of LEA-23 asks "how realistic" the ETEs' assumptions are about the reductions in effective roadway capacity caused by snowstorms or sudden rainstorms. A mere doubt about the realism of these assumptions is no basis for accepting a contention.

8.d. The fifth specification says that no time estimates have been made for evacuation scenarios in which the siren system fails and the initial notification must therefore be by route-alerting. LEA claims, without citation, that regulations require that route-alerting be completed in 45 minutes. The Applicant is correct in noting that this Board has rejected the issue of the timeliness of route-alerting. See the Board's September 24, 1984 Memorandum and Order at 16. But LEA is not simply ignoring the Board's previous ruling. That ruling was based on the Board's opinion that neither regulations nor guidance set time limits for route-alerting used as the primary notification system if the siren system should fail. LEA counters that opinion with the claim that regulations set a 45 minute limit on route-alerting used this way. The claim is apparently based on the following guidance in Appendix 3 of NUREG-0654: "Special arrangements will be made to assure 100% coverage within 45 minutes of the population who may not have received the initial notification within the entire plume exposure EPZ." Id. at p. 3-3. But this "regulation" sets a 45 minute limit on route-alerting--a "special arrangement"--only when it is used after initial notification, not when it is used in place of a failed siren

system. Thus, the Board reaffirms rejection of this time-of-route-alerting issue.

8.e. The Board notes that, in an effort to emphasize the importance of route-alerting, LEA incorrectly claims, again without citation, that "43% of the serious accident possibilities involve blackout conditions" which could render the siren system inoperative. The Board has not been able to determine how LEA arrived at 43%, but however it did, loss of offsite power in such calculations means loss of offsite power to the plant. This is not the same as loss of power to the siren system.

8.f. The Applicant would deny all the specifications of LEA-23 on the grounds that the ETEs have been available since June 6, 1984. The Board does not reject this contention on ground of untimeliness because on August 15, 1984, this Board established the schedule for resubmission and reconsideration of the deferred contentions.

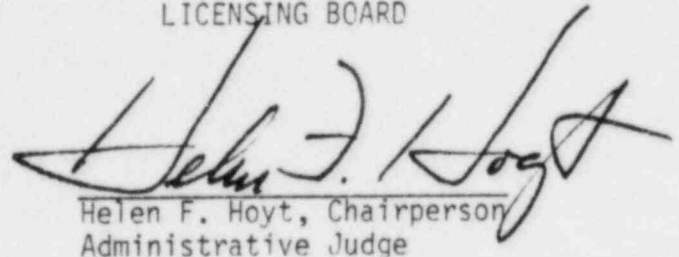
Schedule for Pre-Filed Testimony

9. In its August 15, 1984 Memorandum and Order, the Board indicated that the parties could expect to have to file written testimony on these contentions by mid-November. Id. at 4. Given the ample discovery which has already taken place on the emergency planning issues, and the scheduling of evidentiary hearings on the earlier, previously accepted emergency planning contentions for the latter half

of November, the Board directs that all written testimony on LEA-1, 2, 3, 5 and 23 is due in the Board's hands by close of business on November 19, 1984.

It is so Ordered.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

A handwritten signature in cursive script, appearing to read "Helen F. Hoyt".

Helen F. Hoyt, Chairperson
Administrative Judge

Dated at Bethesda, Maryland
this 26th day of October, 1984.

TEXTS OF ADMITTED DEFERRED AND
RESPECIFIED OFFSITE EMERGENCY PLANNING CONTENTIONS

LEA-1

The Risk Counties, Municipalities, School Districts, and Institutions haven't promulgated or adopted final radiological emergency response plans, nor have they approved and adopted plans drawn up for them by Energy Consultants, Inc., a Harrisburg firm hired by Philadelphia Electric Company. There is no reasonable assurance that the present state of planning is predictive of final approval, or that the plans are capable of being implemented.

LEA-2

The unadopted RERP's fail to provide reasonable assurance that each principal response organization has sufficient staff to respond to and to augment its initial response on a 24-hour continual basis, or that the assigned staff can respond in a prompt manner in case of a radiological emergency at Limerick.

LEA-3

The Montgomery County RERP fails to provide reasonable assurance that the public will be adequately protected in that the Bucks County Support Plan, which is essential to the workability of the MontCo RERP, may not be approved. The present Board of Commissioners have [sic] little knowledge of the contents and implications of the Bucks County Support Plan. There is no assurance that the County will assume the responsibilities assigned to it in the Support Plan, rather than use County resources to help Bucks County people first. The Montgomery County Plan relies on the Support Plan in at least these ways:

1. facilities for relocation and mass care of evacuees
2. augmentation of emergency workers, including use of county resources, on a continuous 24-hour basis
3. See attachment "Excerpts and comments on the Bucks County Draft Evacuation Plan" for additional areas of support and interface.

It is contended that without the approval of Bucks County Support Plan, the MontCo RERP is unworkable as it now stands.

LEA-5

The Emergency Response Organizations (including federal, state, and local governments and support organizations) have failed to fully document the existence of appropriate letters of agreement with support organizations and agencies. Thus, there is no reasonable assurance that the emergency plans can be implemented.

LEA-23

The draft county plans are deficient because they do not contain reliable evacuation time estimates.