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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

BEFORE ADMINISTRATIVE JUDGES:

Helen F. Hoyt, Chairperson

Dr. Richard F. Cole

Jerry Harbour

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

SERVED FEB 20 1985

In the Matter of

PHILADELPHIA ELECTRIC COMPANY

(Limerick Generating Station,
Units 1 and 2)

Docket Nos. 50-352-OL
50-353-OL

ASLBP No. 81-465-07 OL

February 19, 1985

MEMORANDUM AND ORDER

(Ruling on Air and Water Pollution Patrol Pleading
Entitled "As It Relates to Sheltering, Air and
Water Pollution Patrol (Romano) Contends
that Applicant and Staff Neither Conscientiously [sic]
Concerned Themselves, Nor Made Public Plans For,
Nor Tested the Adequacy of Such Plans, or Otherwise
Insured Against Health Effects from Massive Ionizing
Radiation Releases as Gases or Particulate Entities,
in Case of a Serious Accident at Limerick Under
Conditions Which Would Prevent Evacuation")

1. On January 27, 1985, the Air and Water Pollution Patrol (AWPP) through its representative Frank R. Romano filed a covering letter and two pages of text as titled above and purporting to be a petition for leave to intervene under "Section 2.714(a)(1)(i)."¹ On February 11, 1985, Applicant's Response to Air and Water Pollution Patrol Motion With Regard to Admission of Late Filed Contention Relating to Sheltering was

¹ The Board has considered this to mean 10 C.F.R. § 2.714(a)(1).

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filed asserting that AWPP had not set forth a litigable contention with bases and specificity and had failed to meet the criteria of 10 C.F.R. § 2.714(a)(1) for admission of a late-filed contention. On February 12, 1985, NRC Staff Response to AWPP (Romano) New Contention Concerning Sheltering was filed, also opposing and urging the Board to deny the admission of AWPP's new contention. The Board has considered each of the above pleadings in reaching its decision.

2. The Board views AWPP's January 27, 1985 paper as only a thinly disguised delaying tactic. The information on sheltering, as the NRC Staff notes in its response,² was made available to AWPP's representative in December 1981 by the Commonwealth of Pennsylvania. Nearly a year after arguments on the admissibility of offsite emergency planning contentions were heard in March 1984, and in which AWPP did not participate or file a contention, AWPP waited until two days before these hearings were completed on January 29, 1985 to revive its previous and rejected late-filed contention of August 8, 1984. That contention was denied by this Board in an order of September 14, 1984. When tested against the criteria for admission of late-filed contentions, AWPP fails again.

² NRC Response at p. 6, footnote 11.

3. Late-filed contentions may be admitted only if the Board finds that on balance the five factors enumerated in 10 C.F.R. § 2.714(a)(1)³ weigh in an intervenor's favor. The Board applies the tests to AWPP's "contention" as follows:

- (i) Good cause - This Commission's emergency planning requirements and guidance specifically contemplate sheltering as a protective action during a radiological emergency. The information contained in the Commonwealth's emergency plan for incidents at nuclear power facilities that sheltering was contemplated as a protective action under certain circumstances was available to AWPP since December 1981. This

³ 10 C.F.R. § 2.714(a)(1) provides that nontimely petitions to intervene or requests for hearing will not be entertained absent a determination by the Licensing Board that the petition or request should be granted based upon a balancing of the following factors:

- (i) good cause, if any, for failure to file on time;
- (ii) the availability of other means to protect petitioner's interest;
- (iii) the extent to which petitioner's participation may reasonably be expected to assist in developing a sound record;
- (iv) the extent to which existing parties will represent the petitioner's interest; and
- (v) the extent to which petitioner's participation will broaden the issues or delay the proceeding.

information is also repeated in the February 1984 changes in the Commonwealth's emergency plan listing the three risk counties within the Limerick EPZ. It was not the January 15, 1985 evidentiary hearing that triggered this group to action. They need only have taken their heads out of the sand to see the available information necessary to frame contentions when other intervenors were acting. The Board rejects AWPP's argument. AWPP has not established good cause for its untimely filing of a contention regarding sheltering and this factor weighs against admission of the contention.

- (ii) Availability of Other Means - Avenues open to this group to pursue their interests include the Federal Emergency Management Agency (FEMA), Pennsylvania Emergency Management Agency and other responsible emergency planners at both Federal and State level. This factor weighs against admission of the contention.
- (iii) Assist in Development of a Sound Record - After nearly two and a half months of evidentiary hearing on the Limerick emergency planning, it would indeed be difficult to find an area on Limerick emergency planning not already developed. AWPP has certainly not submitted any startling or new information that requires a reopening of these hearings. AWPP has not demonstrated any particular

knowledge and the promise of testimony of undesignated experts with unspecified qualifications does not generate any hope that AWPP would do more than submit more unfocused and vague assertions. Mississippi Power & Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982). See also Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1177 (1983); Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387, 399 (1983). AWPP has not met its burden through failure to (1) particularize the precise issues it plans to cover, (2) identifying its prospective witnesses and (3) demonstrate that it has any special expertise. This factor weights against admission of the contention.

- (iv) Representation by Existing Parties - This Board must consider to what extent, if any, other parties will represent AWPP's interest. Both the Staff and Applicant name Limerick Ecology Action (LEA) as having at least in part, an interest in sheltering although the Staff finds that there is no party who directly represents AWPP at this point. Applicant, however, notes that the interests of AWPP are not substantially different from those of intervenors LEA or Friends of the Earth who actively litigated the various contentions related to emergency

planning many of which bear upon both evacuation planning and sheltering capabilities. The testimony cited by AWPP on January 15, 1985 was only one of many instances in which sheltering was the subject testimony in this proceeding. For example, PEMA witness Margaret A. Reilly in her prefiled testimony on LEA Contention 12 stated "The purpose of this testimony is to discuss the adequacy of buildings for sheltering in a radiological emergency." (ff. Tr. 19,381) LEA representative's cross-examination of Witness Reilly dealt in depth with the subject of sheltering (Tr. 19,382) in a thorough and searching examination of the witness thus demonstrating that LEA had sheltering as a focus in its litigation. This factor weighs against admission of the contention.

- (v) Delay and Broadening of the Issues - The history of this proceeding teaches well that the addition of the proposed issue would delay this proceeding by substantial amount of time. The mere mechanics of bringing to a hearing a contention uses large amounts of time. There would be significant broadening of the issues since all previously admitted contentions have been heard and this proceeding completed on January 29, 1985. This factor weighs against admission of the contention.

4. For the reasons stated above, AWPP's proposed late-filed contention and/or reconsideration of its previously denied August 8, 1984 late-filed contention is DENIED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD



Helen F. Hoyt, Chairperson
Administrative Judge

Dated at Bethesda, Maryland
this 19th day of February, 1985.