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RELATED CORRESPONDENCE

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION '84 NOV 13 A11:24

Before the Atomic Safety and Licensing Board

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

APPLICANT'S MOTION TO STRIKE CERTAIN TESTIMONY  
BY LIMERICK ECOLOGY ACTION ON OFFSITE  
EMERGENCY PLANNING CONTENTIONS

Preliminary Statement

On November 2, 1984, intervenor Limerick Ecology Action ("LEA") filed a number of documents constituting its proffered testimony on offsite emergency planning contentions for the hearing scheduled to commence on November 19, 1984.

Applicant moves to strike portions of LEA's proffer. Some of the testimony appears on its face to be no more than statements of concern by certain individuals. Lacking the customary indicia of testimony, these documents, which are more in the nature of limited appearance statements, should be stricken. Other portions of the testimony are beyond the scope of the admitted contentions and therefore irrelevant.

Argument

1. LEA submits as testimony a letter dated November 1, 1984 from Donald Morabito to Chairperson Hoyt. Nothing in the letter states that Mr. Morabito is providing any

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"testimony," or that he is addressing any issue within the context of LEA's contentions or the hearing in general. His letter is indistinguishable from any number of letters which licensing boards commonly receive from concerned individuals regarding the licensing of a nuclear facility, which communications are customarily treated as limited appearance statements.

Second, Mr. Morabito purports to provide hearsay evidence on a matter of expert testimony, i.e., the legal opinion of the general counsel of the Pennsylvania State Education Association on the subject of collective bargaining and unfair labor practices under Commonwealth labor law. As a lay individual, Mr. Morabito is not competent to provide such evidence by hearsay.<sup>1/</sup>

2. LEA also proffers the testimony of Andrew Dill, the faculty chairman of Kimberton Farms School. Insofar as his testimony relates to the time required for an evacuation, the existence of a host facility and alternative administrative office outside the EPZ, and financial liability issues, the testimony exceeds the scope of the admitted contentions related to schools and should be stricken.

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<sup>1/</sup> It is well established that a statement by an unknown expert to a non-expert witness, which such witness proffers as substantive evidence, is unreliable and, therefore, inadmissible. Tennessee Valley Authority  
(Footnote Continued)

3. LEA submits as testimony a letter dated October 31, 1984 from Sandra M. Hurst, the Director of the Upattinas School Open Community Corporation. While expressing certain concerns, the letter does not purport to be "testimony" and makes no reference to LEA's contentions or the hearing. Like the letter from Mr. Morabito, it should be treated as a limited appearance statement.

4. Other letters and various survey forms are submitted which relate to the adequacy of planning for day care centers. In a letter dated October 31, 1984, Ilona Seidel and Marie Crocker, writing on behalf of the Day Care Association of Montgomery County, Inc./Pottstown Center, state that they "want to share our concerns with the Atomic Safety and Licensing Board during the hearings scheduled to begin on November 19, 1984." Such language belies any intent that the letter itself was intended to constitute "testimony." As noted, this contravenes the express provisions of the regulations and the Board's previous orders requiring the submission of written testimony in advance.

5. On behalf of Congregation B'nai Jacob, Rabbi Kreiger states concerns relating to classes at the synogogue on Wednesday from 4 to 6 p.m. and on Sundays from 9 a.m. to 12 noon. On its face, this testimony is irrelevant because

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(Footnote Continued)

(Hartsville Nuclear Plant, Units 1A, 2A, 1B, 2B),  
ALAB-367, 5 NRC 92, 121 (1977).

religious instruction classes are not encompassed within contentions relating to schools or day care centers. Church and synogogue congregations are not treated as special populations requiring special planning under Annex E or NUREG-0654.<sup>2/</sup>

6. Another letter from Linda J. Mathias "to whom it may concern" is even more vague. Miss Mathias simply states that she previously filled out a day care survey form, which states the current needs of her facility. There is no indication that any of this is intended by her to constitute "testimony" in a hearing.

7. Likewise, in a letter dated November 2, 1984 from Elizabeth Stonorov, the Director of the Charlestown Play House, Inc., a number of concerns are expressed, but nothing indicates an intention to furnish "testimony" to this Board. This letter should also be treated as a limited appearance statement.

8. While it appears that a statement dated November 1, 1984 from Elaine T. Troisi, Director, The Little People's Pre-School of the Pughtown Baptist Church, was prepared to be filed as testimony, those portions related to time necessary for evacuation, designation of host facilities, and financial liability exceed the scope of the admitted

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<sup>2/</sup> See Annex E, Basic Plan, at E-31 (hospitals and nursing homes).

contention and should be stricken. Also, Miss Troisi has attached comments purporting to come from other school directors and personnel. While hearsay is not automatically inadmissible, Miss Troisi is obviously not competent to testify as to any alleged unmet needs of other facilities. Since the proponents of the attached statements have not been offered as witnesses, those statements should be stricken from Miss Troisi's testimony.

9. With regard to LEA-24, LEA has submitted the "statement" of John Lukacs, dated November 1, 1984. For the reasons discussed above, this "statement" does not purport to be testimony and does not relate to the hearing.<sup>3/</sup>

10. LEA's next two documents relate to LEA-27. The first is a statement dated November 1, 1984 from Helen Zipperlen, Administrator, Camphill Village Kimberton Hills, Inc. While stating her general concerns and opposition to Limerick, Miss Zipperlen does not state that she is providing "testimony," or refer in any way to the hearing.<sup>4/</sup>

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<sup>3/</sup> Applicant again notes that a reference to "Testimony" before the Board and "Contention LEA-24" at the top of the page appears in a different type than that contained in the text of the Statement. There is no showing that Mr. Lukacs knew that his "statement" was being submitted as testimony, or so authorized. Applicant also notes that the attachments to his statement are illegible.

<sup>4/</sup> At the very top of the first page, even above the logo, someone has typed the words "\*TESTIMONY of HELEN ZIPPERLEN\*" and written "LEA-27." This type is clearly  
(Footnote Continued)

Further, it now appears that LEA's representations in obtaining admission of this contention were, by lack of knowledge or otherwise, inaccurate. Miss Zipperlen states that "Camphill Village Kimberton Hills is a farm community of about 120 people, of whom about 28 are children, and about 50 are mentally retarded adults. Camphill Village Kimberton Hills is not a licensed facility for the mentally retarded, nor is it a school." (Emphasis added). As described by Miss Zipperlen, Camphill Village Kimberton Hills is simply a farm commune.<sup>5/</sup>

In its original submission of LEA-27, LEA sought to include the "Camp Hill Village School,"<sup>6/</sup> and, in admitting the contention, the Board relied upon LEA's representation that "both Camp Hill Village and Camp Hill Special School are residential schools for the mentally retarded, both in Chester County."<sup>7/</sup> It is now clear, however, that Camphill Village Kimberton Hills is a farming commune, only some of whose residents (less than half) are mentally retarded

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(Footnote Continued)

different from the type used in the text and it is far from clear that it was done at the direction or with the knowledge of Miss Zipperlen.

<sup>5/</sup> In particular, Miss Zipperlen states that there are "no employees except a part-time bookkeeper and one resident gardener. Local contractors and maintenance persons are employed as needed."

<sup>6/</sup> See LEA Off-Site Emergency Planning Contentions at 52 (January 31, 1984).

<sup>7/</sup> Limerick, supra, LBP-84-18, 19 NRC 1020, 1056 (1984).

adults. Whether or not a valid contention regarding this community could have been formulated at the time,<sup>8/</sup> this community is clearly not what it was represented to be. Accordingly, this particular community should be stricken from the admitted contention.

11. The other subject of LEA-27 is the Camphill Special Schools, Inc. In a letter "to whom it may concern" dated November 1, 1984, its Director, Bernard Wolf, states that he has reviewed and confirmed a previous statement written July 10, 1984. Nothing in the November 1 or July 10 statements, however, gives any indication of "testimony," or suggests that those statements were prepared for submission in a hearing. These documents should therefore be regarded as limited appearance statements.

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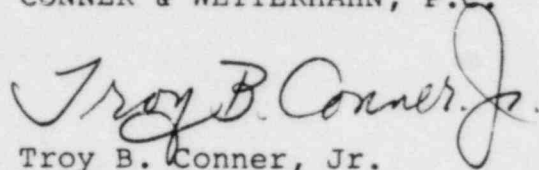
<sup>8/</sup> As noted, Annex E and NUREG-0654 require planning for "special facilities" such as schools, hospitals and nursing homes. Presumably, it was based upon its represented status as a "school" that the Board included Camphill Village Kimberton Hills in the admitted contention. Indeed, Miss Zipperlen states in her testimony that the children of Camphill Village attend the nearby Kimberton Farms School, for which LEA has proffered separate testimony.

Conclusion

For the reasons discussed above, designated portions of  
LEA's written testimony should be stricken.

Respectfully submitted,

CONNER & WETTERHAHN, P.C.



Troy B. Conner, Jr.

Robert M. Rader

Counsel for the Applicant

November 8, 1984



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OFFICE OF THE SECRETARY  
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Motion to Strike Certain Testimony by Limerick Ecology Action on Offsite Emergency Planning Contentions," dated November 8, 1984 in the captioned matter have been served upon the following by deposit in the United States mail this 8th day of November, 1984:

- |                                                                                                                                                              |                                                                                                                                                                            |
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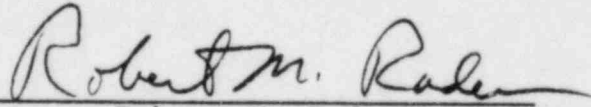
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