

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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USNRC

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

Docket Nos. 50-352 OL  
50-353 OL

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NRC STAFF BRIEF IN RESPONSE TO LEA'S AND  
FOE'S APPEAL OF THE THIRD PARTIAL INITIAL DECISION

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NRC STAFF BRIEF IN RESPONSE TO LEA'S AND  
FOE'S APPEAL OF THE THIRD PARTIAL INITIAL DECISION

I. STATEMENT OF THE CASE

A. Introduction

On May 2, 1985, the Licensing Board issued its Third Partial Initial Decision <sup>1/</sup> ("PID") for the Limerick Generating Station, Units 1 and 2 on off-site emergency planning. That decision disposed of all issues in favor of the Applicant (Philadelphia Electric Company) except for any issues that might arise from the inmates of the State Correctional Institution at Graterford. In the Matter of Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-85-14, 21 NRC 1219 (May 2, 1985). Limerick Ecology Action ("LEA") and Friends of the Earth in the Delaware Valley ("FOE") (represented by Mr. Robert L. Anthony) filed briefs in support of their appeals of that decision.

Pursuant to 10 C.F.R. § 2.762(c) and the Appeal Board's order of June 27, 1985, the NRC staff hereby files its brief in response to LEA's and FOE's appeal. For the reasons set forth below, the NRC staff opposes both appeals.

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<sup>1/</sup> The decision was served on May 7, 1985.



B. Background and Reference to Rulings

On March 17, 1981, the Applicant filed an application with the Nuclear Regulatory Commission ("NRC" or "Commission") for operating licenses for Limerick Generating Station, Units 1 and 2, which is located in Limerick Township, Montgomery County, Pennsylvania. The application was docketed by the Commission and a notice of opportunity for hearing on the application was published in the Federal Register on August 21, 1981. <sup>2/</sup> Pursuant to the notice of opportunity for hearing published in the Federal Register, LEA and FOE petitioned to intervene, proposed contentions and were admitted as parties to this proceeding. <sup>3/</sup> Since the radiological emergency response plans for jurisdictions within the Limerick plume exposure emergency planning zone ("EPZ") were not available, the Licensing Board deferred consideration of the offsite emergency planning contentions until the emergency plans were made available. <sup>4/</sup> As soon as the the draft emergency plans became available for review by FEMA, intervenors proffering offsite emergency planning contentions were required to refile and respecify their proposed contentions. <sup>5/</sup>

In its Special Prehearing Conference Order of April 20, 1984, the Licensing Board ruled on the admissibility of the proposed offsite emergency planning contentions. <sup>6/</sup> A number of LEA contentions were admitted and several

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<sup>2/</sup> 46 Fed. Reg. 42557 (August 21, 1981).

<sup>3/</sup> Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1439-40, 1519 (1982).

<sup>4/</sup> Id. at 1519.

<sup>5/</sup> Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), Memorandum And Order Confirming Schedules Established During Prehearing Conference, (Unpublished) (slip op. at 4-5) (May 16, 1983).

<sup>6/</sup> Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP-84-18, 19 NRC 1020 (1984).

were deferred. <sup>7/</sup> A contention was admitted on behalf of FOE and consolidated with a related LEA contention. LEA was designated lead intervenor for this contention. <sup>8/</sup> The proposed contentions of other intervenors were either rejected or withdrawn. <sup>9/</sup> After a period of discovery, the Licensing Board ruled on the final respecification of the originally admitted and deferred offsite emergency planning contentions. <sup>10/</sup>

Following thirty-seven days of evidentiary hearings on the contentions, which were held in Philadelphia, Pennsylvania between November 19, 1984 and January 29, 1985, the Licensing Board issued its Third Partial Initial Decision concerning offsite emergency planning on May 2, 1985. That decision resolved all remaining offsite emergency planning issues in favor of the Applicant except for any issue which might arise from the inmates of the State Correctional Institution at Graterford. <sup>11/</sup>

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<sup>7/</sup> Id. at 1041-1073.

<sup>8/</sup> Id. at 1069.

<sup>9/</sup> See generally Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2). LBP-84-18, 19 NRC 1020 (1984). A contention admitted on behalf of the Commonwealth concerning the adequacy of dosimetry for emergency workers, was subsequently withdrawn upon agreement by Applicant to purchase the necessary dosimetry. See Applicant's Exhibit E-104. On January 25, 1985, the City of Philadelphia withdrew its two admitted contentions on the protection of the City's public water supplies based on an agreement reached with the Applicant. Tr. 20,350-52.

<sup>10/</sup> Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), Memorandum And Order Ruling On Reworded And Respecified Offsite Emergency Planning Contentions (unpublished), slip op., (September 24, 1984); Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), Memorandum And Order On LEA's Deferred And Respecified Offsite Emergency Planning Contentions (Unpublished), slip op., (October 26, 1984).

<sup>11/</sup> Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP-85-14, slip op., 21 NRC 1219 (May 2, 1985).

On May 10, 1985, the Air and Water Pollution Patrol (AWPP) filed its notice of appeal. FOE and LEA filed their notices of appeal on May 13 and 15, 1985, respectively. In accordance with 10 C.F.R. § 2.762, FOE and LEA filed briefs in support of their appeals of the Board's Third Partial Initial Decision on June 6 and 13, 1985, respectively. <sup>12/</sup>

We address LEA's arguments essentially in the order in which they were presented in LEA's brief in support of appeal. We address FOE's appeal in the context of addressing the similar or related arguments raised by LEA.

## II. STATEMENT OF ISSUES

- A. Whether The Record Supports A Prediction That There Is Reasonable Assurance That The Bucks County Support RERP Can And Will Be Implemented In The Event Of A Radiological Emergency At Limerick
- B. Whether The Licensing Board Properly Relied On The Needs Survey Data Collected By The Counties In Determining The Number Of Transportation Dependent Individuals
- C. Whether the Licensing Board Correctly Concluded that the Evidence of Record in This Proceeding Supports That There Will Be Adequate Buses and Drivers
- D. Whether the Licensing Board Properly Resolved Contentions LEA-23 and LEA-24/FOE-1 Regarding Applicant's Evacuation Time Estimates Study
- E. Whether the Licensing Board Properly Considered Traffic and Traffic Control
- F. Whether the Board Correctly Delegated Verification of Traffic Control in the King of Prussia Area to the Staff

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<sup>12/</sup> "Anthony/FOE Brief In Support Of An Appeal From The ASLB Third Partial Initial Decision, LBP-85-14" (June 6, 1985) ("FOE Brief"); "Brief In Support Of Appeal Of Third Partial Initial Decision (LBP-85-14) Of Limerick Ecology Action, Inc." (June 13, 1985) ("LEA Brief"). On June 27, 1985, the Appeal Board, based on good cause shown, issued an order (1) granting the NRC staff's request to extend the time to file its responsive brief to August 16, 1985 and (2) setting August 6, 1985 as the date for filing all other responsive briefs. On August 6, 1985, the Applicant filed its responsive brief. On August 8, 1985, the Commonwealth filed its responsive brief in accordance with an extension granted by the Appeal Board on August 5, 1985.

- G. Whether the Board Correctly Found That There has Been no Affirmative Showing That the Marsh Creek State Park/ Exton Area or the Valley Forge State Park/King of Prussia Area Should Be Included in the EPZ
- H. Whether There Is A Need For Hearings On Drills And License Conditions For A Full And True Disclosure Of The Facts
- I. Whether The Licensing Board Properly Interpreted LEA-26
- J. Whether There Is Reasonable Assurance That The Present State Of Planning Is Predictive Of Final Approval Or Implementability Of The RERPs
- K. Whether There Is Evidence In This Record Which Supports A Reasonable Assurance Finding That There Is Sufficient Municipal Staffing As Required In 10 C.F.R. § 50.47(B)(1) For Continuous Operation

### III. DISCUSSION

- A. The Record Supports A Prediction That There Is Reasonable Assurance That The Bucks County Support RERP Can And Will Be Implemented In The Event Of A Radiological Emergency At Limerick

With respect to Contention LEA-3, LEA argues generally that the Licensing Board improperly concluded that there is reasonable assurance that the Bucks County Support RERP can and will be implemented in the event of an emergency at Limerick. LEA Brief at 2-15.

1. For Board Finding 668, LEA asserts that the Board erred when it determined that the situation involving Bucks County's ability to assume the responsibility for 15,000 persons evacuating TMI area during the 1979 nuclear incident is indicative of Bucks County's ability to respond during an emergency at Limerick. LEA Brief, at 2. In support, LEA cites the Bucks County Commissioners' "deep concerns that Bucks residents would evacuate also in case of an emergency at Limerick" as reflected in Mr. Reiser's testimony and thus, Bucks County would not be able to provide support services to Montgomery County. Id.

However, LEA has failed to accurately reflect what is in the record. Mr. Reiser, who is the Chief Clerk and County Administrator of Bucks

County, actually stated that the general nature of discussions with the Bucks County Commissioners involved the County's decision not to participate in the July 25, 1984 evacuation drill. The Commissioners felt that while Bucks County supported helping its neighbors in Montgomery County, the emergency plan made it difficult to provide service to people evacuating Montgomery County when Bucks County residents might also choose to evacuate.

Tr. 18,274-275. However, the record shows "[i]t is likely that any residents of Bucks County who choose to evacuate . . . would relocate to areas more distant from Limerick than any portion of Bucks County." Board Finding 673. LEA has provided no record basis to dispute this determination.

Furthermore, Mr. Reiser is not the Bucks County official most involved with the emergency planning process. Reiser, Tr. 18,286. Mr. McGill, who joined Bucks County Civil Defense in 1962 and from that time forward has been responsible for emergency planning, is the Director of Emergency Services for Bucks County and has held that position for the past eight years.

Tr. 20364-365. Mr. McGill testified that Bucks County has had an emergency plan for general security and safety for approximately fifteen years.

Tr. 20,365. Bucks County has annexed a radiological emergency plan to its basic Bucks County emergency plan. Id. During the TMI-incident, Mr. McGill and his assistants developed a plan to receive and temporarily care for 15,000 people in Bucks County within the course of twenty-four hours. Tr. 20,365-367. Accordingly, there is thus ample evidence to support the Licensing Board's conclusion that Bucks County has maintained an emergency plan for at least 15 years and that it provides for radiological emergencies. Board Finding 668.

2. With respect to Board Finding 669, LEA raised a concern as to whether the utilization of the current Bucks County Fixed Nuclear Facility

Incidents Support Plan (Applicant's Exh. E-4) would accommodate evacuees from Montgomery County. LEA Brief at 3. When Mr. McGill was asked whether it was his personal opinion that the current draft of the Bucks County plan (Applicant's Exh. E-4) was capable of implementation, he responded in part that "[t]he plan simply tells us how many people to expect and how they will be entering the county. And it is up to us from that point on to take care of the people as they come into the county. I feel very confident that we could do a very credible job." Tr. 20,368. Mr. McGill made it clear that if there were an actual emergency at Limerick that required evacuation, the present Bucks County Plan dated October 1984 (Applicant's Exh. E-4), would be used. Tr. 20,368-369, 20,401-402. Board Finding 669. Thus, LEA's concern is without merit.

LEA contends that inaccuracies exist in the list of mass care facilities in the Bucks County Plan. LEA Brief at 3. They note that Morrisville High School listed in the Bucks County Plan as a Mass Care Center in Appendix 5, Attachment E, entitled "Decontamination Monitoring Assignments", does not appear in the "Reception And Mass Care Center Listing" provided in Attachment C to Appendix 4. Mr. McGill testified, as LEA acknowledges (LEA Brief at 2), that he is aware of two errors involving the inclusion of Wilson and Delhaus High Schools in the list of Bucks County mass care centers and that these errors do not pose problems for the Bucks County emergency planners. Tr. 20,387-388, 20,393. However, there is no evidence in the record that would support an assertion that the inclusion of Morrisville High School is, in fact, an error. Further, the Bucks County Plan is not a final plan and certain information will be modified based on updates from the appropriate authorities. McGill, Tr. 20,369-370.

With respect to LEA's concern that there are no letters of agreement with schools that comprise the mass care centers, Mr. McGill explained that the county has not attempted to obtain letters of agreement with school districts and/or the intermediate units of the county. <sup>13/</sup> Tr. 20,394-396. The county's working relationship with the school districts has been excellent. McGill, Tr. 20,395-396. The school districts have not indicated that they would deny the county the use of school district buildings, nor have the school districts indicated that formal agreements are necessary. Id. The Bucks County Commissioners place a great deal of trust in Mr. McGill's judgment and are aware of his position regarding the lack of need for letters of agreement with school districts. Id. Moreover, the Staff also notes that nothing in the Commission's emergency planning guidance, NUREG-0654, requires the execution of letters of agreement for mass care centers.

Consequently, the Licensing Board's determination that the current Bucks County plan would be utilized in the event of a radiological emergency is adequately supported by the record. <sup>14/</sup> Board Finding 669.

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<sup>13/</sup> The Centennial School District requested that it be contacted directly by Bucks County in the event that its assistance would be required. (McGill, Tr. 20,396).

<sup>14/</sup> LEA postulates a scenario in which the one-lift principle for evacuation fails, persons become contaminated en route to mass care center, and the Bucks County plan fails to provide for decontamination and monitoring of such individuals. This scenario is pure speculation and was not admitted as an issue for litigation. See, LEA Brief at 2. Accordingly, the record appropriately does not address this LEA concern.

Similarly, LEA asserts that the listing of mass care facilities in the Bucks County Plan "is insufficient to demonstrate the existence of a plan. ([citing] Guard v. U.S. NRC 753 F.2d 1144 (D.C. Cir. 1985)), " is without merit. LEA has misinterpreted the applicability of the Guard decision, which involved the NRC's requirements for arrangements for medical services for contaminated injured individuals under 10 C.F.R. § 50.47(b)(12) and does not address mass care centers.

3. For Board Finding 670, LEA claims that the record does not support the Board's determination that the November 20, 1984 emergency planning exercise indicates that Bucks County has the capability to adequately implement its support plan. LEA Brief at 4. Contrary to LEA's claim, the record does support the Board's determination. The Director of Emergency Services for Bucks County testified that

[t]he exercise did indicate that [Bucks County has] the capability of doing a very good job. The exercise was a very limited exercise in which [Bucks County] used key people. The thing that is not visible to anyone who is not really familiar with the workings of emergency service is the cooperation, the assistance and the willingness to serve that exists amongst the various responding agencies . . . the police departments, the fire companies, the ambulance squads, the fire police, the school and so forth. You have to live and work at my job over a number of years to know what type of cooperation is available to you. I have no doubt that if we had to go into a full-blown exercise that we could manage it.

McGill, Tr. 20,386-387. Further, the FEMA Exercise Evaluation Report on the November 20, 1984 exercise, dated December 7, 1984, indicates that based on the activation of the emergency operations center, the reception center and the mass care center Bucks County has adequately displayed its ability to implement its support plan. FEMA Exh. E-5 at 27-28; See also, Kinard and Asher, Tr. 20,168-169, 20,293-294. FEMA found no Category A deficiencies for Bucks County that would cause a finding that offsite emergency preparedness was not adequate to provide reasonable assurance that appropriate protective measures can be taken to protect the health and safety of the public living in the vicinity of the Limerick Generating Station in the event of a radiological emergency. See, FEMA Exh. E-5 at 9.

In addition, Mr. McGill stated that the "test exercise brought out a number of things that [Bucks County] should plan for that we had not thought about, incidental things like how to control people, how to separate people,



how to take care of automobiles . . ." Tr. 20,387. This need for additional planning was reflected in FEMA's Category B deficiency # 13 that "[p]rocedures should be incorporated into the plan for monitoring and decontamination of vehicles." FEMA Exh. E-5 at pp. 28 and 35. While such a deficiency requires corrective actions, there are other factors that indicate that in the event of an actual radiological emergency, appropriate measures can be taken to protect the health and safety of the public. FEMA Exh. E-5 at 9.

Finally, LEA claims that there are insufficient numbers of police and fire company personnel for various support functions. LEA Brief at 4-5. However, Mr. McGill dispelled those concerns during LEA's cross-examination when he stated that he believed that there were sufficient fire personnel to implement the decontamination procedures in the emergency plan, that there will be sufficient police to implement the traffic control points called for in the plan, and that the thirty-seven police cars required for traffic control points are available within Bucks County. Tr. 20,388-389. Accordingly, the record supports the Board's conclusions that the November 20, 1984 exercise indicates that Bucks County has the capability of implementing its support plan. Board Finding 670.

4. LEA also argues that the Bucks County emergency plan is unreliable as an interim plan for responding to an immediate incident at Limerick. LEA Brief at 6-7. However, the Licensing Board was justified in concluding that the unadopted plan is a reliable basis for responding to an emergency at Limerick. First, Mr. McGill testified that if an accident were to occur at Limerick tomorrow, Bucks County would have no choice but to follow the present plan (Applicant's Exh. E-4) in order for it to function in a cooperative manner with Montgomery County and the other counties involved. Tr. 20,368-369, 20,401-402. Second, while the present plan may not have been accepted by the

County Commissioners, Mr. McGill testified that the present plan is not final but "certainly would be an integral part of any future plan." McGill, Tr. 20,369-370. Moreover, he was "perfectly satisfied to live with what [Bucks County has] until [it has] further information that would cause [him] to say we must modify this plan." McGill, Tr. 20,400-402. <sup>15/</sup> Therefore, there is more than adequate support for the Board's determination that Bucks County emergency planning officials would rely upon the unadopted plan as a basis for responding to a radiological emergency at Limerick. Board Finding 671.

5. With regard to Board Finding 672, LEA contends that the record does not establish that it is impossible for Bucks County residents to be exposed to radiation in the event of a radiological accident at Limerick. LEA Brief at 7-8. Bucks County is at least 13 miles from the Limerick plant. Board Finding 672. On that basis, no evacuation plan for Bucks County was developed. 10 C.F.R. § 50.47(c)(2). This is consistent with 10 C.F.R. § 50.47(c)(2) which provides that the plume exposure pathway EPZ shall consist of an area about ten miles in radius. NUREG-0654, D. <sup>16/</sup> provides that the size of the ten-mile EPZ was based primarily on the conclusion that doses beyond ten miles would not exceed protective action guide levels nor even for the worst core melt sequences would there be immediate life threatening doses.

Furthermore, Mr. McGill testified that "[o]n the basis on which this plan was developed the safety and the welfare of the people in Bucks County in my estimation are not at risk." Tr. 20,385. Thus, there is no record basis or regulatory requirement that evacuation planning for Bucks County

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<sup>15/</sup> See also the Licensing Board's explanation of the nature of predictive findings on offsite emergency plans PID at 1228-1231.

<sup>16/</sup> "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants," NUREG-0654, FEMA-REP-1, Rev. 1, at 12-15 (November 1980).

residents take place. Consequently, the Licensing Board did not err. <sup>17/</sup> Board Finding 672.

6. For Board Finding 675, LEA claims that the record is not sufficient to support the conclusion that the historical record of behavioral response to emergencies such as floods, windstorms and fires is predictive of behavioral response to a radiological emergency. LEA Brief at 9. Based on the opinion of emergency planning professionals, the Board found "there would not be any massive, spontaneous evacuation of Bucks County residents . . ."

Board Finding 675. LEA examined Robert Bradshaw, Project Manager for Energy Consultants in the Emergency Management Services Department, as to his professional opinion on the potential for the occurrence of a spontaneous evacuation of Bucks County, and he stated that much of his opinion was based upon the historical record. Tr. 17,234-236. He also testified that he had spoken with the Director of Emergency Services for Bucks County, Mr. McGill, about the potential for spontaneous evacuation and that Mr. McGill shared his opinion that this was unlikely. Id. Therefore, the record supports the Board's conclusion that while spontaneous evacuations by Bucks County residents are unlikely, if one occurred there is no reason to believe that it would have any affect on Bucks County's ability to implement its support plan. Board Finding 675.

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<sup>17/</sup> LEA also seeks to have addressed the needs of persons spontaneously evacuating Bucks County in the event of a radiological emergency at Limerick. LEA Brief at 8. As the Staff stated above, there is no regulatory requirement that radiological emergency response plans include evacuation plans for areas more than approximately ten miles from a nuclear plant. 10 C.F.R. § 50.47(c)(2); See generally, NUREG-0654, D. at pp. 5-15. This assertion of error is without merit. If LEA is suggesting that the regulations are inadequate, this is an impermissible attack on the regulation and would have to be dealt with in a manner consistent with 10 C.F.R. § 2.758.

7. Concerning Board Finding 676, LEA argues generally that there is no basis for PEMA's belief that Bucks County would cooperate in the event of a radiological emergency. LEA Brief at 9. However, PEMA's belief is directly supported by the testimony of the Director of Emergency Services for Bucks County who stated that the present Bucks County support plan would be followed in the event of a radiological emergency at Limerick. McGill, Tr. 20,368-369, 20,401-402; Board Finding 671. Accordingly, the Board did not err in relying upon PEMA's assessment that Bucks County will cooperate in the event of a radiological emergency. <sup>18/</sup> Board Finding 676.

8. With respect to Board Finding 677, LEA argues that the Board erred in concluding that meeting the criteria of the draft Memorandum of Understanding (MOU) between PEMA and Bucks County (LEA Exh. E-61) is not a prerequisite to Bucks County adopting its emergency plan. LEA Brief at 10. Specifically, LEA asserts that the draft MOU contains conditions that must be reflected in the Bucks County emergency plan to meet the satisfaction of Bucks County Commissioners. LEA Brief at 11. There is nothing in the record that shows that the Bucks County Commissioners required the MOU conditions to be reflected in the Bucks County plan prior to its adoption. Moreover, the

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<sup>18/</sup> 10 C.F.R. § 2.762(d)(1) requires an appellant clearly identify the errors of fact or law that are the subject of an appeal and to identify the precise portion of the record relied upon in support of the assertion of error. LEA also asserts that PEMA "incorrectly assumes that the existing draft is an actual plan and not a series of unverified lists." LEA Brief at 9. This assertion is unfounded and should be rejected.

LEA asserts that there should be provision for aid to those who do not seek mass care in Bucks County but who prefer to leave Bucks County and that there be provision for vehicle contamination screening. LEA Brief at 9. This assertion is without merit and should be rejected; nothing in the Bucks County Support plan prevents any person desiring to leave Bucks County, which is outside the ten-mile EPZ, from doing so.

terms of the draft MOU do not require that its conditions be incorporated into the plan. LEA Exh. E-61. As the Licensing Board properly noted, the MOU between PEMA and Bucks County (LEA Exh. E-61) is a useful frame of reference. Board Finding 677. The concerns raised by the Commissioners in the Memorandum are generally that the Bucks County plan be viable and adequate and that it will provide for the receipt into Bucks County of 24,400 Montgomery County evacuees in the event of a natural or man-made disaster and that this plan will not adversely affect those persons already in Bucks County. LEA Exh. E-61 at 1. Consequently, the Board did not err in its determination that execution of the draft MOU between PEMA and Bucks County is not a prerequisite to adopting the plan. Board Finding 677.

9. With respect to Board Finding 679, LEA claims that the Board erred in precluding an examination of Mr. William Reiser concerning an earlier draft of the Bucks County Support Plan that had not been admitted into evidence. LEA Brief at 12-13. LEA contends that Mr. Reiser was familiar with Draft 4 of the Bucks County Support Plan, dated October 1983, which was "essentially the same" as the October 1984 version of the plan admitted into evidence. Id.

During the course of Mr. Reiser's testimony it was discovered that he possessed and was familiar with Draft 4 of the Bucks County Support Plan. Tr. 18,266-270. However, Draft 4 of the Bucks County Support Plan was not in evidence. Thus, the probative value of any testimony on that document would have been limited. Consequently, LEA has not shown that the Board's ruling resulted in any prejudice to LEA's case. Furthermore, while he and his associates were familiar with Draft 4 of the Bucks County plan, Mr. McGill testified that prior to giving his testimony they reviewed and compared Applicant's Exh. E-4 with Draft 4 and found very limited changes. Tr. 20,373. Thus,

Mr. McGill could provide material and reliable testimony based on his familiarity with the current version of the plan in evidence. Accordingly, any potential harm caused by the Licensing Board's refusal to allow Mr. Reiser to testify based upon an out-of-date draft of the Bucks County Plan was harmless since Mr. McGill and not Mr. Reiser is the county official with the actual responsibility for emergency planning. Board Finding 680.

10. Based on the above, LEA has failed to demonstrate that the Licensing Board has committed fundamental error in concluding that the Bucks County Support Plant could be implemented in the event of a radiological emergency at Limerick. NRC case law establishes that under the Commission's emergency planning regulations offsite RERPs need not be finally approved or adopted as a prerequisite to finding that there is reasonable assurance that the plans are adequate and capable of being implemented. See, Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-717, 17 NRC 346, 380 n. 57 (1983); Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1103-4 (1983); Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-730, 17 NRC 1057, 1066 (1983). The Board had more than ample evidentiary support for its finding that Bucks County would implement its RERP and perform its support function of Montgomery County. Board Finding 683.

B. The Licensing Board Did Not Err In Relying On The Needs Survey Data Collected By The Counties In Determining The Number Of Transportation Dependent Individuals

1. With respect to the Board's findings on the transportation needs survey, LEA argues that the Licensing Board committed fundamental error in relying on the results of the survey conducted by the counties in the ten-mile EPZ to determine the number of transportation dependent individuals,

rather than using data from the 1980 U.S. Census. <sup>19/</sup> LEA Brief at 16-18. They assert that because the U.S. Census data reflects a higher number of transportation dependent individuals in urban areas than the special needs survey conducted by the counties, that the Census data is more appropriate. Id. However, the Licensing Board has already found, "[t]here is no testimony to substantiate exactly what the census data represent or the purpose for which they were collected or how they were extended to the EPZ population." Board Finding 41. LEA has presented no record basis that either contradicts or disputes this finding. Moreover, the Licensing Board stated that the "inclusion of all census data would result in double counting individuals who will be evacuated from other institutions for which planning exists, e.g., schools, nursing homes and hospitals." Board Finding 42. Furthermore, the Board properly addressed the difference between the transportation statistics in the U.S. Census and the transportation needs determined by the county surveys. Board Finding 40. The Applicant's witness testified that the U.S. Census transportation statistics reflect households without transportation (See LEA Ex. E-40 at I-2-1), while the statistics compiled by the county surveys reflect whether the household has "private transportation available." Board Finding 40; see LEA Ex. E-44. The Board found that the largest differences in the county survey data "were in urban areas where more friends, neighbors or relatives would live in close proximity." Board Finding 40.

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<sup>19/</sup> LEA also asserts that the evacuation population estimates used in the Applicant's Evacuation Time Estimate Study are in error because they were based on the counties' survey data. LEA Brief at 16. However, the reliability of the evacuation time estimate study is unrelated to the issue of identification of mobility-impaired individuals. LEA apparently recognized this distinction inasmuch as it addresses this issue in its Brief at 29-35. Thus, the Staff will address the reliability of the evacuation time estimate study Section III.D., infra.

The Licensing Board is not, as LEA asserts, attempting to "negate" any similarity in survey and U.S. Census figures for rural areas. Indeed, the Board has stated that in less populated areas, "the survey results and Census estimates are comparable." Id.

With respect to mobility-impaired individuals, the Board stated that "Estimates for mobility-impaired individuals were obtained through a United States Department of Health and Human Services document, entitled Prevalence of Selected Impairments." Bradshaw testimony, ff. Tr. 17,191 at 18. Board Finding 37. Finally, the Board concluded that "An applicant's witness testified (emphasis added) that previous estimates for mobility impaired individuals, based upon the federal estimate, closely approximate actual survey results, supporting the comprehensiveness of the survey." Board Finding 38. The record fully supports the proposition that supports the Board's reliance on transportation needs survey conducted by the counties was proper.

(a) LEA also claims that the transportation needs survey conducted by the counties did not adequately identify the day care facilities that may not have available transportation in the event an evacuation was required of the Limerick EPZ. LEA Brief at 18-22. The Licensing Board found that the Commonwealth's Department of Education and Department of Public Welfare has identified all licensed day care facilities within the EPZ, and the three risk county emergency planning agencies and the Applicant's Consultant, Energy Consultants, have identified unlicensed facilities through telephone directory listings, surveying area churches and youth services and other informal contacts. Board Finding 379. The Board also found that the counties' survey also prompted a response from day care operators and parents. Board Finding 381.



Once the day care facilities were identified they were forwarded copies of the model day care RERP. Board Finding 382. Under the model day care plan, day care facility operators are responsible for arranging transportation. Board Finding 383. The Board concluded that, "If a facility operator cannot provide or arrange transportation, he or she has been advised to contact the municipal emergency management coordinator to fulfill that need." Board Finding 385. LEA asserts that as a result of inadequate identification of day care facility within the EPZ, "[t]here are an estimated 2,000 children in the EPZ" who should be included as transportation dependent. LEA Brief at 19. A review of the evidentiary record reveals that there were problems associated with identifying unlicensed day care facilities. Campbell Tr. 19,999, Bigelow Tr. 14,134; see also Board Finding 382. However, the record reflects that there is an ongoing process for identifying day care facilities within the EPZ and the emergency plans will be updated as appropriate. Board Finding 380. Thus, there is no record basis, and LEA provides none, for an assertion that 2,000 children are not included in the planning process.

(b) LEA also argues asserts that the county's survey reflect a smaller population that needs public transportation than the U.S. Census data. LEA suggests that the U.S. Census data is the approach recommended by NUREG-0654, App. 4, p. 4-2, A. LEA Brief at 20-22. They assert that some of the witnesses believed a door-to-door survey would have been more appropriate to estimate the number of transportation dependent individuals. LEA Brief at 20.

NUREG-0654, Appendix 4, II.A (page 4-2) provides under the section entitled "Demand Estimation" that "the number of permanent residents shall be estimated using the U.S. Census data or other reliable data, adjusted as

necessary, for growth (emphasis added)." The Board has committed no error in relying upon the survey data collected by the counties which it found reliable based on the evidentiary record. See Board Findings 35-45. LEA has presented no record basis for asserting that the U.S. Census data is more reliable than the counties' survey. Board Finding 41. Nor are LEA's assertions persuasive that a door-to-door survey would be more accurate since those witnesses asserting a need for door-to-door surveys have no demonstrated expertise in survey methods. As FEMA has stated, there is no planning standard in NUREG-0654 that requires general public needs surveys by emergency planners. Board Finding 388.

(c) Consequently, the record demonstrates that adequate provisions have been made for providing transportation to identifiable day care facilities within the EPZ. See Board Findings 379-416.

C. The Licensing Board Correctly Concluded That The Evidence Of Record In This Proceeding Supports The Finding That There Will Be Adequate Buses And Drivers

The Licensing Board concluded with regard to bus and bus drivers:

(1) that there is reasonable assurance that adequate provisions are being made to assure availability of bus drivers; (2) that there will be a sufficient number of bus drivers willing to participate in response to an emergency at Limerick; and (3) that there is reasonable assurance that there will be enough buses to evacuate both public and private schools in Chester County. Board Findings 216, 363.

1. LEA argues that the Board's determinations with regard to buses and bus drivers is based as the same type of generalized "history of emergency response" argument that the Board refused to allow LEA to litigate in its LEA-Contention 8 citing ASLB Order 4/20/84, pp. 42-43 & 55. Thus, LEA be-

believes that it was improper to allow the Applicant to argue the human response issue in precisely the same general form that the Board relied upon in rejecting LEA-8." LEA Brief at 23.

In LBP-84-18, the Licensing Board explained in detail its reasons for denying LEA-8 and admitting LEA-15. In denying LEA-8, the Board stated that, "because of its lack of specificity the contention is so general that we cannot imagine how litigation of it would be fruitful." 19 NRC 1048. The Board noted that LEA intended to litigate "the general issue of human response to radiation danger" and opined that only abstract arguments from Intervenors and Applicant would follow. However, the Board believed that the same infirmity did not apply to LEA-12 and LEA-15 because "they focus on specific groups of people with specific responsibilities under the Limerick plans." 19 NRC at 1048.

In its discussion of LEA-12 and LEA-15 the Board explained further its basis for rejecting LEA-8 and accepting LEA 12 and LEA-15 and stated that:

We think that the abstractness and inconclusiveness which would affect any litigation of LEA-8 could be avoided under these two more specific contentions for they deal not with the response of some everyman in some every situation, but with specific personnel assigned specific tasks. 19 NRC at 1055.

Thus, in reaching its conclusion with respect to LEA-15, the Board was not following a standard that it had previously rejected, but was properly applying the specificity standard in determining whether the contentions as proffered were susceptible adjudication.

2. LEA also argues that the weight of the evidence "clearly contradicts" the Licensing Board conclusion that "the evidence in the record of this proceeding supports the historic record that drivers will perform assigned functions." LEA Brief at 23; Board Finding 342. The record in this

proceeding overwhelmingly supports the conclusion that drivers will carry out their responsibilities to assist with an evacuation of the EPZ. To support its conclusion the Licensing Board referenced its prior Findings 139, 141, 143 through 145, and 240 through 244 with respect to the demonstrated history of human response in an emergency. Board Finding 363. The record shows that considering both the demonstrated history of human response and past demonstrations of bus driver response at schools located in the EPZ, bus drivers will perform assigned functions: Asher and Kinard, ff. Tr. 20,150 at 7, 8, 10 and 12; Bigelow, Tr. 14,293 and 14,366-67; Bradshaw and Cunnington, ff. Tr. 12,764 at 13, Tr. 12,977-78; 12,982-84; 12,986-88; 13,053-54; 13,070-72; 13,074-75; 13,078; 13,095; 13,102; 13,647-49; 13,716; 13,723-24 and 13,738; Campbell Tr. 20,048; Feich Tr. 14,978-79; Kinard Tr. 20,295-96; Price Tr. 15,443 and Welliver Tr. 15,539. Other than its reference to the testimony of Roger Tauss, discussed, infra., LEA has failed to provide the precise portion of the record that would support its position that the weight of the evidence in this proceeding "clearly contradicts the notion that 'historical record' of emergency response can be used to predict availability of bus drivers." LEA Brief at 23. <sup>20/</sup> Thus, LEA's argument is unpersuasive.

In support of its claim that the weight of the testimony in this proceeding clearly contradicts the notion that the "historical record" of

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<sup>20/</sup> LEA also states that, "As in Cincinnati Gas and Electric Co. (Zimmer Unit 1), ALAB-727, 17 NRC 760, 772-3 (1983), the only evidence in the record raises serious concerns as to whether volunteers would be willing to respond in an emergency." LEA Brief at 23. The Licensing Board (see Board Finding 361) contrasts the factual posture of Zimmer, with that situation in Limerick. We agree with the Licensing Board that the facts of Zimmer where the concern was that because of the limited number of buses all of the students may not be efficiently removed from the EPZ are unlike those of Limerick where the record supports the conclusion that there are sufficient buses

emergency response can be used to predict availability of bus drivers, LEA cites the testimony of Roger Tauss, President of Local 234, Transport Workers Union, AFL-CIO. LEA Brief at 23. The Board addressed in detail the testimony of Mr. Tauss in Board Findings 356-360. Mr. Tauss testified that he was opposed to CEPTA drivers participating in the evacuation of the EPZ in the event of an emergency at Limerick. As discussed by the Board, Mr. Tauss stated that he believed that his drivers would not go into an area of a nuclear emergency, that he would instruct them not to do so, that he would distrust official information that it was safe for drivers to enter the EPZ because "everybody is for sale these days." Board Findings 356-360. The Board held that Mr. Tauss' position was against the weight of the historic record and the record in this proceeding regarding the actions of bus drivers in other emergencies and how bus drivers had behaved in connection with other emergencies within the EPZ. Board Finding 360.

LEA has not supported its claim that the testimony of Roger Tauss should be given greater weight than other testimony in the record that supports the Board's conclusion. As the Board pointed out, Mr. Tauss has little knowledge of emergency planning concepts pertaining to radiological accidents and Mr. Tauss' opinion is affected by personal views concerning his distrust of planning for radiological emergencies. Board Finding 358.

3. LEA discusses at length the testimony of Dr. Bruce Kowalski, Superintendent of the Wissahickon School District. It is difficult to discern the relevance of most of this discussion to LEA's concern about the

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to conduct an efficient evacuation. See, Cincinnati Gas and Electric Company (Wm. H. Zimmer Nuclear Power Station, Unit No. 1), ALAB-727, 17 NRC 760, 772 (1983).

response of bus drivers. <sup>21/</sup> While LEA correctly states that Dr. Kowalski had not discussed evacuation with his bus drivers (Kowalski, Tr. 16,176), it ignores testimony from Dr. Kowalski, much more relevant to LEA 's concern, that not a single bus driver has refused to drive a bus during emergency circumstances notwithstanding the fact that drivers often face very hazardous conditions while driving in inclement weather. Kowalski, Tr. 16,206-07.

4. LEA argues that the Board's citation of Tr. 16,208 in Board Finding 212 does not support the Licensing Board's generalization that the great majority of drivers employed by providers outside the EPZ themselves reside outside the EPZ. LEA Brief at 28.

At Tr. 16,208 it is established that for the Wissahickon School District "at least a few" of the 60 drivers live within the EPZ. Board Finding 212 cites Dr. Kowalski Tr. 16,208 in support of its statement that the great majority of drivers employed by providers outside the EPZ themselves reside outside the EPZ. However, LEA has failed to indicate what significance, if any, these facts have in relation to the Board's findings and where in the record there is evidence to indicate that the Board's finding is not correct.

5. LEA states that the Board has ignored the concerns of a FEMA witness who indicated that in his professional opinion, letters of agreement committing to provide buses in an emergency should mention the specific number of buses to be provided. LEA Brief at 28. The Board specifically addressed this testimony. Board Finding 135. The FEMA panel testified that the letters of agreement utilized by Montgomery and Chester Counties satis-

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<sup>21/</sup> For example, LEA sets out a lengthy discussion of uncertainty on the part of the School Board as to whether they could force a bus driver to enter an area of nuclear hazard. LEA Brief at 25.

ed the planning standards of NUREG-0654. The Board acknowledged that Mr. Asher personally felt that the number of buses should be specified in letters of agreement but also noted that FEMA concluded that the absence of such numbers in letters of agreement would not preclude it from making a finding that the emergency planning standard had been adequately addressed. Asher, Tr. 20,296-97. Thus, the Board's finding is consistent with the requirements of 10 C.F.R. § 50.47(b) and the guidance provided in NUREG-0654. The fact that the FEMA witness had a personal belief that it might be better to indicate the numbers of buses to be provided does not preclude the favorable finding made by the Board.

6. LEA argues that although the training that is being offered should, according to the Board, address any misconceptions held by drivers as to the nature of their emergency responsibilities or risks (Board Finding 340), "many non-EPZ bus drivers are not likely to be informed of their role and responsibility to drive a bus prior to a radiological emergency at the Limerick Generating Station." LEA Brief at 28. LEA does not cite a "precise portion" of the record to support its argument as required by the Commission's regulations (10 C.F.R. § 2.762(d)) but cites ten paragraphs of its own findings which do not support the argument that the non-EPZ drivers "are not likely" to be informed of their role and responsibilities.

The Board considered specifically the training that was being offered and determined that the basic responsibilities and procedures regarding bus driver assignments in a radiological emergency are described in the bus driver training program. Board Finding 340. Furthermore, FEMA found that the lesson plans utilized by Energy Consultants for bus drivers are comprehensive in nature and adequately cover the various aspects of a nuclear power

plant emergency response. Asher and Kinard (Update), ff. Tr. 20,150, at 1; Board Finding 319.

The record establishes that County representatives discussed the need for buses in an emergency with bus providers, and told the bus providers that the training program would be offered to address any driver's concerns. This information was also in the letter sent to bus providers seeking updated information. It was also made clear that this training will be offered to bus drivers and will continue to be offered on an ongoing basis. Board Findings 308, 315 and 332; Bigelow, Tr. 14,141, 14,189-90; App. Exhs. E-76, E-99. LEA does not challenge these findings.

Furthermore, the Board has concluded that it had reasonable assurance that evacuation of the affected school districts can take place in one lift. Board Finding 336. With this assurance, the risk to bus drivers is minimal. A. Lindley Bigelow, Coordinator, Office of Emergency Preparedness, Montgomery County, testified that the bus drivers are simply being asked to participate in a one-lift operation. Tr. 14,189. Even if some buses were required to re-enter the EPZ, Chester and Montgomery Counties will retain a supply of dosimetry and KI at transportation staging areas. Bradshaw, ff. Tr. 12,764 at 18. Those drivers could easily be instructed within a few minutes as to the proper use of their dosimetry. Id. at 19. Accordingly, the Appeal Board should reject LEA's argument as unpersuasive.

7. LEA asserts that the Board failed to consider: (1) that many of the buses considered as resources would be available only if commandeered by the Governor; (2) the refusal of Tredyffrin/Easttown School District to enter into an agreement with Chester County for buses; (3) the inability of the Great Valley School District to provide buses; and (4) the willingness of the



Gross Bus Company to enter into an agreement with Chester County. LEA Brief at 26, 27.

The record fully supports the Board's conclusion that there will be enough buses to evacuate public and private schools in Chester County. Board Finding 216. It was initially determined that there was an unmet need of 134 buses for Chester County. Board Finding 176. In order to meet all of its bus needs Chester County has identified 545 buses that would be available in an emergency. Id. <sup>22/</sup> At the time of the hearing Chester County had entered into agreements with bus providers for approximately 100 buses and was continuing in its efforts to obtain written agreements with the balance of bus providers located within or serving Chester County. Board Finding 177. Furthermore, Chester County has engaged in discussions with the Southeastern Pennsylvania Transportation Authority (SEPTA) to provide buses in the event of an emergency. Board Finding 178. The record reflects that SEPTA has approximately 1,500 buses and 4,000 employees who are drivers or licensed to drive buses. Board Finding 179. While the record establishes that there is no written agreement with Chester County, SEPTA's Board of Director authorized the SEPTA General Manager to enter into an agreement with Chester County to provide buses to the extent available. Board Finding 180. Finally, SEPTA's Deputy General Manager testified that while SEPTA could not commit to furnish a specific number of buses, it is highly improbable that it could not furnish some buses and that he would expect Chester County to request about 100 buses in an actual emergency. Board Finding 183.

Accordingly, notwithstanding the assertions made by LEA about the uncertainly of the availability of some buses in Chester County, the record

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<sup>22/</sup> The Chester County plan indicates that there is a need for 217 buses. Chester County/Commonwealth Exh. 1 at 9-1-1.

fully supports the Board's conclusion that there is reasonable assurance that there will be enough buses to evacuate public and private schools in Chester County. Board Finding 216.

D. The Licensing Board's Disposition Of Contentions LEA-23 And LEA-24/FOE-1 Regarding Applicant's Evacuation Time Estimates Study Was Correct And Reasonable

With regard to LEA-23, <sup>23/</sup> the Board ruled that only two aspects of the asserted contention were acceptable for litigation; aspect number one which questions the bases for the assumption in the Applicant's evacuation time estimates study that "up to one hour may be required to assemble buses, transport vehicles, and to load students onto buses" and aspect number six which deals with an asserted discrepancy between Energy Consultants Inc. (ECI) survey figures concerning the transit dependent population and census figures. Licensing Board Order dated October 26, 1984 at 7. The Licensing Board concluded that based on the evidence in the record, the public survey conducted by the counties and used to identify transport-dependent individuals in the Limerick EPZ is accurate and is not inconsistent with the data from the U. S. Census. Board Finding 45. The Board further concluded that the bases for the assumption in the ETE study of a one-hour period for mobilization of school buses, during the period 30-90 minutes following notice to evacuate, are reasonable. Board Finding 54.

With regard to LEA-24/FOE-1, <sup>24/</sup> the Board ruled in its April 20, 1984 Order that the contentions be admitted "to the extent they call for planning

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<sup>23/</sup> LEA-23 provides: The draft county plans are deficient because they do not contain reliable evacuation time estimates.

<sup>24/</sup> LEA-24/FOE-1 provides:

against the effect traffic congestion in the areas outside the EPZ they name could have on evacuation of the plume exposure pathway EPZ." 19 NRC at 1066. The specific areas of traffic congestion the Board limited litigation to are the Marsh Creek State Park, Exton Area, and the Valley Forge National Historic Park, King of Prussia Area. 19 NRC at 1067. The Board noted that the central issue joined by the two contentions is "whether emergency plans provide reasonable assurance that traffic congestion in the four named areas will not significantly impede evacuation of the EPZ." 19 NRC 1067. FEMA testified that NUREG-0654, Planning Standard J, Elements J(10)(i) and J(10)(1), calling for "projected traffic capacities of evacuation routes under emergency conditions" and "time estimates for evacuation of various sectors and distances based on a dynamic analysis and for the plume exposure pathway emergency planning zone" were the standards applicable to LEA 23, 24/FOE-1. Board Finding 120.

The Board found that there was no merit to LEA-24 and FOE-1 and that there is reasonable assurance that the Applicant's evacuation time estimate study is consistent with the assumptions and methodologies of NUREG-0654 and meets the appropriate elements of Planning Standards J(10)(i) and J(10)(1). Board Finding 120. The Board further concluded that there is "reasonable

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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.

assurance that the evacuation of the ten mile radius of the EPZ will not be impeded by traffic congestion in the Marsh Creek State Park/Exton Area or the Valley Forge National Park Area and that the level of traffic control used in the Applicant's ETE Study for these evacuation corridors, both inside and outside the EPZ boundary, is sufficient for implementation of evacuation within the time estimated for the EPZ and the ETE Study." Id. Furthermore, the Board found that "there is no impediment to identifying and staffing traffic control points outside the EPZ in the King of Prussia area to assure that evacuation along the Route 363-to-Pennsylvania Turnpike corridor can be accomplished within the time estimated in the ETE study." Id. Finally, based on a concern about the capacities of Route 202, the Schuylkill Expressway segment of I-76, and the Pennsylvania Turnpike (I-76 and I-276) without traffic control beyond that identified in the Montgomery County Plan, the Board ruled that:

[p]rior to operation above 5 percent of rated power, the Director, Office of Nuclear Reactor Regulation, shall receive verification of plans to implement a level of traffic control in the King of Prussia area sufficient to assure that all the traffic evacuating along the Route 363-to-Pennsylvania Turnpike corridor can continue to move upon reaching the EPZ boundary, as implicitly assumed in NUREG-0654 Planning Standard J(10)(1). Id. <sup>25/</sup>

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25/ Verification satisfying this license condition has in fact been received. In a FEMA memorandum from Richard Krimm to Edward L. Jordan dated May 30, 1985, FEMA noting resolution of the condition, states:

FEMA has received verification that traffic control points and access control points will be established and manned to ensure that evacuating traffic could continue moving upon reaching the EPZ boundary. This information will be incorporated into the Montgomery and Chester County plans.

This FEMA memorandum was forwarded to the Board and the parties by the NRC staff on June 5, 1985.

1. The Licensing Board determined that a survey conducted by the counties and used to identify transport-dependent individuals in the Limerick EPZ is accurate and not inconsistent with data from the U.S. Census. Board Finding 45. <sup>26/</sup> LEA argues that the U.S. Census data is "more credible than a one time survey" and contradicts the Licensing Board's specific conclusion in Finding 38. LEA Brief at 30, 31. The basis for LEA's assertion is a cryptic argument that there is a "detailed breakdown" of the U.S. Census data for Chester County (citing LEA Exh. E-40) and Pottstown (citing LEA Exh. E-42). However, neither the asserted "breakdown" or the referenced exhibits refute the finding of the Licensing Board that it is not clear what the U.S. Census data represent. As noted above, "[t]here is no testimony in the record to substantiate exactly what the census data represent or the purpose for which they were collected or how they were extended to the EPZ population. Board Finding 41.

Moreover, as the Board noted, the public survey was not simply a "one time survey." See LEA Brief at 31; Board Findings 35, 36. The survey was conducted by the three counties utilizing a two-part form. As the record indicates "[a] cover letter was provided to explain the survey and a pre-addressed/pre-posted envelope was enclosed for a response." Bradshaw, ff. Tr. 17,191, at 17; see Board Finding 35. Individuals were instructed to return the form if they or any member of their household had a special need; and if there were any questions individuals were advised to contact the county office of emergency management. Id.

Furthermore, as set forth in Board Finding 36, survey materials were distributed by mail to addresses in the EPZ. County social services

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<sup>26/</sup> See also, III.B., supra, Staff's response to LEA's argument concerning the application of the survey.

agencies and municipal offices also made the survey available. Board Finding 36. The news media provided information about the survey. Id. Responses were then compiled and needs were listed for each municipality. Id. Names, addresses, telephone numbers and the indicated special needs were catalogued. Id. The lists were filed in the respective municipal emergency operations centers for use at the time of any emergency. Id. Many of the municipalities reviewed their lists and verified their accuracy by telephone calls during the July 25 and November 20, 1984 Limerick exercises. Bradshaw, ff. Tr. 17,191, at 18; see Board Finding 36. Accordingly, the Licensing Board was correct in relying on the results of the public survey in concluding that this aspect of LEA-23 is without merit.

2. LEA asserts that the Board erred in concluding that the unit mobilization time for bus providers in the Montgomery County plan does not contradict the one-hour estimate used in the ETE study for bus mobilization. LEA Brief at 32, 33. LEA argues that the ETE "up to one hour" mobilization time assumption is "unrealistically brief" and should be additive with respect to the bus providers Unit Mobilization times. Id. Further, LEA argues that the Board erred in Finding 50 where it concluded that the likely scenario is that buses will be notified and positioned prior to an order to evacuate, because the Board improperly assumed prepositioning of buses (citing Cincinnati Gas and Electric Co. (Wm. H. Zimmer Nuclear Power Station, Unit No. 1), ALAB-727, 17 NRC 760, 772-33 (1983)). Id. Finally, LEA argues that the Board erred in Finding 52 where it stated that buses are not critical in determining evacuation time estimates for the entire EPZ since it ignored the buses needed for the transport dependent. Id.

With regard to the "up to one hour" mobilization time frame, Mr. Klimm testified that ". . . the time frame presented in the evacuation

time estimate study was developed based upon discussions of county emergency preparedness officials and was reviewed with them and concurred with them and also with PEMA", that the time frame "is a representative time frame for what is considered to be a most likely realistic scenario and it includes the time that is involved in driving the buses to the school facility and loading the students onto the buses." Klimm, Tr. 17,260; see Board Finding 48. He also stated:

The time frames associated with mobilizing the drivers themselves may or may not be included in that time frame. As a worst case scenario, they would not but for purposes of the evacuation time estimate study we didn't want to look at a worst case scenario. We wanted to develop times associated with a realistic scenario and so we used the up to one hour time frame for that condition.

Klimm, Tr. 17,260.

Furthermore, he added that the "up to one hour" mobilization was a "site specific" time frame assumption. Id. The bus provider's unit mobilization time ". . . is a time specific to the individual bus providers having his units available to mobilize." Cunnington, Tr. 17,258, see also Tr. 12,955. Accordingly, the Board's Finding 49 is correct in that ". . . the unit mobilization information in the plan does not contradict the one-hour estimate used in the ETE study for bus mobilization." Moreover, that some bus providers estimate a period for mobilizing their units of up to two hours does not then mean that the site specific time assumption is invalid. See Board Finding 51.

The Board states that "the most likely scenario, which the ETE study accurately depicts, is that bus providers have been notified and buses are positioned at their assigned locations prior to an order to evacuate". Board Finding 50. The ETE study states:

It was assumed that special facilities (i.e., schools, hospitals, nursing homes, jails) within the EPZ would also receive initial notification promptly.

Appl. Exh. E-67, p. 5-5. Such an assumption, contrary to the assertion of LEA, is not prohibited by the Zimmer decision. LEA Brief at 32. The Zimmer decision stands for the proposition that ". . . without reasonable assurance of the availability of an adequate number of buses and drivers to accomplish such evacuation, that time estimate is of little value for dose saving decisional purposes." Zimmer, supra, ALAB-727, 17 NRC at 773. Furthermore, student evacuation for Zimmer was not based on a one-lift principle. Id. at 772; see Board Findings 122-125, 336.

With regard to mobilization times for the transport dependent other than school students, an argument raised for the first time on appeal, 27/ LEA mistakenly assumes that such times are the same as those mobilization times for the evacuating schools. 28/ This assumption is incorrect. The ETE study provides:

Evacuation of hospitals, nursing home facilities and incarceration facilities would require additional time associated with preparation and transport of vehicles to the respective facilities. Based upon discussions with County emergency preparedness officials, it was assumed that these facilities would begin to evacuate between

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27/ The Appeal Board has stated it will not ordinarily entertain an issue raised for the first time on appeal. See Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B, and 2B), ALAB-463, 7 NRC 341, 348 (1978).

28/ LEA also asserts that the Licensing Board committed error by assuming that early notification is likely to exist in the event of a radiological emergency. Board Finding 53; LEA Brief at 35. LEA cites NUREG-0654 for the proposition that such an assumption is not proper. However, contrary to LEA's assertion, NUREG-0654 does not prohibit such an assumption. Rather NUREG-0654 recognizes that there is a wide range of times from the initiating event to start of atmospheric release (0.5 hours to one day) and recognizes that there is the need for establishing prompt notification capabilities. NUREG-0654, Table 2 at 17 and see NUREG-0654 at 13 and 14. Thus, the Board was consistent with NUREG-0654 in making its assumptions.



one and two hours following the 15-minute notification period. Therefore, vehicles (i.e., ambulances, vans, etc.) serving these special facilities would begin to evacuate between 75 and 135 minutes following the evacuation decision.

Appl. Exh. E-67, p. 5-5.

3. LEA asserts that the Board committed error in stating that Dr. Urbanik's testimony provided a basis for concluding that even with an error range of 10-20 percent the ETE study would provide a useful basis for protective action. Board Finding 7; LEA Brief at 34. Although LEA does make reference to the transcript, particularly the testimony of Dr. Urbanik, LEA is taking what Dr. Urbanik stated out of context. LEA has selectively cited Dr. Urbanik's testimony in a manner that distorts its meaning. That portion of Dr. Urbanik's testimony cited by LEA was explicitly related to his testimony of the previous day. See Tr. 19,248-49. The Staff submits that the Board was correct in concluding that Dr. Urbanik did not testify that the ETE Study "could have an error of 10 to 20 percent." Board Finding 7. Dr. Urbanik, in fact, testified that the ETE Study would still provide a useful basis for protective action recommendations even if the time estimates err in the range of 10 to 20 percent. Tr. 19,211-13. In referring to his previous testimony, Dr. Urbanik noted that the question was framed in terms of "should there be an error of 20 percent" not is there an error of 20 percent. See Tr. 19,249. It is clear that what Dr. Urbanik had in mind was a hypothetical situation. Accordingly the Board committed no error. <sup>29/</sup>

4. Both LEA and FOE assert that the Board committed error in limiting examination and cross-examination. LEA Brief at 41; FOE Brief at 2, 5. These assertions of error were the results of time constraints on exami-

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<sup>29/</sup> Accordingly, there is no support for LEA's concern about the "overall usefulness" of the ETE. See LEA Brief at 34.

nation and cross-examination of witnesses imposed by the Board. Id. This matter was specifically addressed in the Board's Third Partial Initial Decision. PID at 1233-36. As the Licensing Board there notes, FOE's only admitted contention in the area of offsite emergency planning covered the same allegations raised by LEA with respect to the Valley Forge National Park/King of Prussia area. In light of this, the Board admitted and consolidated both LEA and FOE contentions (LEA-24 and FOE-1) and designated LEA as lead intervenor. FOE was directed to coordinate its litigation with regard to this combined contention with LEA. Id. at 1233. This approach was clearly consistent with Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 455 (1981). See also Portland General Electric Co.(Trojan Nuclear Plant), ALAB-496, 8 NRC 308, 310 (1978). As the Licensing Board explained, the Board would have been justified in insisting LEA conduct all examination of witnesses on behalf of the consolidated intervenors with regard to their joint contention. PID at 1234, n. 31. Nonetheless, the Board permitted the FOE representative, Mr. Anthony, to cross-examine, separately, those witnesses with testimony relevant to LEA-24/FOE-1. Id. The apportionment of the cross-examination time permitted intervenors between FOE and LEA was a matter for their representatives to decide between themselves. Id. However, FOE and LEA were either unable or unwilling to follow the Board's orders and Mr. Anthony insisted upon additional time. Id. The Board furthermore notes, that initially the Board did not impose such restrictions and that the need for such restrictions only became apparent when LEA's cross-examination of Applicant's witness panel consumed five days of hearing. Id. at 1233. Only after 14 hearing days did the Board finally impose limitations, and even then such time limitations were based on the parties' representatives estimates as to the time actually needed to fully and fairly examine witnesses. Id.

at 1234. We submit the Licensing Board correctly applied such limitations; the Licensing Board cites the following language from the Catawba decision:

Such authority is recognized in the federal district Courts. See MCI Communications Corp. v. AT&T 85 F.R.D. 28 (N.D. Ill. 1979), aff'd, 708 F.2d 1081, 1170-73 (7th Cir. 1983). We believe that time limit authority for Licensing Boards is fairly inferable from the federal cases, the NRC Rules of Practice (which included authority to "prevent . . . repetitious, or cumulative cross-examination" (10 C.F.R. § 2.757(c) and to "[r]egulate the course of the hearing" (10 C.F.R. § 2.718(e)), and from the Commission's Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452 (1981). The whole thrust of that Statement is toward fair but timely hearings, and Boards are explicitly directed to "set and adhere to reasonable schedules." Id. at 454. A Licensing Board can hardly be expected to adhere to a "reasonable schedule" if the time for cross-examination, the most time-consuming part of the process is beyond its control.

Id. at 1235-36. <sup>30/</sup> We submit that the time limits imposed by the Board were proper and reasonable.

5. FOE argues that the Board committed error in ignoring the requirement of 44 C.F.R. 350.7(b) in not satisfying the language of that section which states that "the exact size and configuration of the EPZ surrounding a particular nuclear power facility shall be determined by State and local governments in consultation with FEMA and NRC . . . ." FOE Brief at 1 (emphasis provided by FOE). In essence, FOE is arguing that FEMA did not consult with local governments regarding the size and configuration of the Limerick EPZ. Regardless of whether or not the Licensing Board is required to assure compliance with a 44 C.F.R. 350, it is clear from the language cited by Mr. Anthony (which language appears at page Tr. 20,234) that in fact, there has been consultation by FEMA with local governments regarding

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<sup>30/</sup> See, Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-84-24, 19 NRC 1418, 1428 (1984).

the configuration of the EPZ. See also, Tr. 20,233-34; 20,242-243; 20,246; 20,287; 20,293-294.

With regard to the legal aspects of FOE's assertion of error, as indicated in the Licensing Board's PID, Section II entitled "Basic Principles of Emergency Planning" at pages 1227-30, the rules governing emergency planning for the NRC are contained in 10 C.F.R. § 50.47 and 10 C.F.R. 50, Appendix E. Generally, the guidance and criteria for judging the adequacy of onsite and offsite emergency response plans are contained in NUREG-0654 which is cited in 10 C.F.R. § 50.47(b) as appropriate guidance. <sup>31/</sup> Unlike the regulations of the Federal Emergency Management Agency cited by FOE, the regulations of the NRC regarding the establishment of the Emergency Planning Zone (EPZ) do not contain the express requirement for consultation with FEMA. See, e.g., 10 C.F.R. §§ 50.33(g), 50.47(c)(2), Part 50, Appendix E. However, under the Commission's regulations (10 C.F.R. § 50.33(g)), the Applicant for a nuclear power reactor must "shall submit radiological emergency response plans of State and local governmental entities . . . that are wholly or partially within the plume exposure pathway Emergency Planning Zone (EPZ) . . . ." The regulation further states that [g]enerally, the plume exposure pathway EPZ for nuclear power reactors shall consist of an area about ten miles (16 km) in radius [but that] [t]he exact size and configuration of the EPZs surrounding a particular nuclear power reactor shall be determined in relation to the local emergency response needs and capabilities . . . ." Id. Upon receipt

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<sup>31/</sup> Contrary to FOE's argument that the Board improperly relied upon NUREG-0654 due to deletion of a footnote reference to NUREG-0654 from 10 C.F.R. § 50.47, the Commission has stated that such deletion "will not affect its use as a guidance document for emergency planning" and that NUREG-0654 will continue to be used by reviewers in evaluating the adequacy of emergency preparedness at nuclear power reactor sites." 49 Fed. Reg. 27733, 27734 (July 6, 1984).

of the offsite emergency plans, the Memorandum of Understanding entered into between the NRC and FEMA provides that the plans will then be reviewed by FEMA for their adequacy. 45 Fed. Reg. 82713 (1980); 50 Fed. Reg. 15485 (1985).

In the present proceeding, FEMA has testified that as part of this review, FEMA's Regional Assistance Committee has reviewed the EPZ developed for the Limerick facility and has no reason to believe that it is not appropriately drawn. See, Tr. 20,233-234; 20,242-243; 20,246; 20,287; 20,293-294. Thus, the cooperative effort sought by FOE has in fact occurred, and FOE's concern that FEMA has not fully performed its responsibilities regarding the establishment of the EPZ is without merit.

E. The Licensing Board Gave Adequate Consideration To Traffic And Traffic Control

1. LEA argues that the Board committed error by assuming "zero base flow" of traffic at the time evacuation begins. <sup>32/</sup> Board Finding 56, LEA Brief at 35. LEA asserts that there should be consideration of peak hour flows of regular commuter traffic citing Dr. Urbanik. Id. To the contrary Dr. Urbanik testified with regard to peak traffic:

[Y]ou can't count people twice. They are someplace. And they are either evacuating or doing other things. So we can't just superimpose peak hour traffic on top of an evacuation. Urbanik, Tr. 19,215.

The ETE Study considered all vehicles within the EPZ by simulating their respective points of origin. Board Finding 55. Furthermore, the ETE Study accounted for traffic entering the EPZ upon notification of an evacua-

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<sup>32/</sup> LEA relies, in part, upon LEA Exh. 56 (a document entitled "Upper Merion Township - Wide Traffic Study") for its argument. See LEA Brief at 35. However, this document was properly not admitted. See, n. 34; infra. Accordingly, it can not serve as the basis for LEA's argument. See Hartsville, supra., ALAB-463, 7 NRC at 352.

tion. Board Findings 58 and 59. Thus, the Licensing Board did not err in concluding that normal traffic volume and direction was not relevant to the zero base flow assumption used in developing the evacuation time estimate. <sup>33/</sup> See Board Finding 56.

3. LEA, citing testimony of Mr. Wagenmann that up to 200,000 workers and shoppers could be in the Valley Forge and King of Prussia area, asserts that there is nothing in the record which would indicate that these workers and shoppers would not leave the region on the "main highways." LEA Brief at 37; see also FOE Brief at 4. The Board noted that control of access would be required and could easily be put in place to restrict access or to eliminate the possibilities of vehicles entering the major evacuation corridor through the area of Valley Forge National Park and King of Prussia Industrial Park and King of Prussia Shopping Mall. Board Findings 105, 106. See Klimm, Tr. 13,885-86, 13,939. Furthermore, Dr. Urbanik testified that traffic control beyond the EPZ is "manageable" and "can be done". Tr. 19,228. The Board did not ignore traffic control or traffic congestion with regard to areas outside the EPZ which traffic evacuates towards the Turnpike in the area of King of Prussia. See LEA Brief at 38, 39. <sup>34/</sup> The Board concluded

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<sup>33/</sup> LEA also asserts it was error for the Board to consider completion of the Schuylkill Expressway Extension in connection with the ETE. LEA argues that the Schuylkill Expressway Extension cannot be used by traffic previously assigned to Old Route 422. LEA Brief at 36, 37. However their argument lacks any reference to the transcript to support their position and the Staff can find no support for such an assertion in the record. Accordingly this assertion of error is without any record support and must be rejected.

<sup>34/</sup> LEA asserts "procedural errors" regarding the Boards exclusion of a document entitled "Traffic Engineering Master Plan Study" (LEA Exh. E-46), prepared for Uwchlan Township and a document entitled "Upper Merion Township - Wide Traffic Study" (LEA Exh. E-56). LEA Brief at 38. See Tr. 19,067 and 19,190. However, LEA has not cited

that with adequate traffic control in place, traffic congestion outside the EPZ along the Route 363/Countyline Expressway/Pennsylvania Turnpike Evacuation corridor, which passes the eastern boundary of Valley Forge National Park will not impede evacuation of the EPZ. Board Finding 104. Furthermore, the Board noted that to control access to evacuation corridors in the Valley Forge National Park/King of Prussia area only a small number of access control points would have to be manned. Board Finding 106. Additionally, the Board calls for verification of plans to implement a level of traffic control in the King of Prussia area sufficient to assure that all the traffic evacuating along Route 363-to-Pennsylvania Turnpike corridor can continue to move upon reaching the EPZ boundary. <sup>35/</sup> Board Finding 120.

4. LEA asserts that the Board committed error in adopting Applicant's Consultant Klimm's position that the more urban areas to the south and east of the EPZ would not significantly affect the EPZ evacuation. <sup>36/</sup> LEA Brief at 37. LEA states that this was contradicted by testimony of Dr. Urbanik (at Tr. 19,277) which in essence states that measures should be taken to assure that people that reach the EPZ can in fact go beyond the EPZ. However, Dr. Urbanik's testimony does not establish that areas outside the EPZ will not affect evacuation but states that the ETE estimates that were devel-

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(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

any grounds why they believe the exclusion of these studies was improper. Furthermore, subpoenaed witnesses Frank A. Zabawski (see Tr. 19,021-22) and Andreas Heinrich (see Tr. 19,171) were not able to support the underlying data or conclusions in the two studies as they relate to the admitted contentions (see Tr. 19,026-67; 19,171-90). See Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-669, 15 NRC 453, 477 (1982).

<sup>35/</sup> See, n. 25, *supra*.

<sup>36/</sup> No specific reference to a Board finding or transcript page with regard to Mr. Klimm is given by LEA.

oped are in fact reasonable and soundly based evacuation time estimates, with the qualification that there is a need for traffic control outside the EPZ. Urbanik, Tr. 19,277. However, as noted above, Dr. Urbanik testified that establishing such traffic control "can be done" and he believes that such traffic control is manageable. Tr. 19,228. Furthermore, the Board has required verification of plans to implement a level of traffic control in the King of Prussia area sufficient to assure that all traffic evacuating along Route 363-to-Pennsylvania Turnpike corridor can continue to move upon reaching the EPZ boundary, "as implicitly assumed in NUREG-0654 planning standard J(10)(1)." <sup>37/</sup> Board Finding 120.

5. LEA asserts that traffic control is needed at Downington Interchange of the Pennsylvania Turnpike to keep cars from entering the turnpike going east and interfering with Turnpike capacity in the King of Prussia Valley Forge Area. LEA Brief at 37. Therefore LEA argues that the Board's determination that the use of Downington Interchange would not impact the evacuation time estimate, is not based on evidence with respect to such traffic control. Board Finding 85. LEA cites Dr. Urbanik's testimony at Tr. 19,234-37 in support of its argument. Dr. Urbanik testified that consideration needs to be given to traffic control at Downington with regard to traffic that might head east on the Pennsylvania Turnpike. Tr. 19,237. The Licensing Board does not ignore the possibility that evacuating automobiles might use the Downingtown interchange heading east on the Pennsylvania Turnpike as an alternative. As the Board states, "[t]he ETE study assumed that some vehicles evacuating south on Route 100 might utilize the Pennsylvania turnpike as an alternative at the Downingtown interchange." The Board added

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<sup>37/</sup> See, n. 25, supra.



that this would not have any impact on the EPZ evacuation time estimate. Board Finding 85. Accordingly, the Licensing Board's conclusion is based on the record and LEA's argument is without merit.

6. LEA asserts that a portion of Route 363 County Line Expressway traffic going to Route 202 West is not simulated in the evacuation estimate as to its effect on Route 202 west traffic. LEA Brief at 40, 43, 44. The ETE Study expressly recognizes that evacuating traffic might utilize Route 202 west either by choice or as directed by traffic controllers. See Applicant E-67, pages 6-1, 6-3, see Board Finding 107. The Study states that Route 202 westbound could be used to handle excess vehicle demand. App. Exh. E-67 at 6-3. Accordingly, the impact of Route 202 was considered in the evacuation time estimate.

7. LEA, without any references to the transcript, argues that the Board's finding that traffic control measures would be in place at the time an evacuation would commence is in error. Board Finding 68; LEA Brief at 41, 42. The record is clear that vehicles do not begin to evacuate until a half-hour after notification and that this half-hour period allows enough time to mobilize and station traffic control as required along the evacuation corridor. Klimm, Tr. 13,941; see Board Finding 68. Moreover, as stated above, Dr. Urbanik testified that traffic control is manageable. Furthermore, nothing that Dr. Urbanik stated on the record or that witness Vutz stated at Tr. 14,511 supports the assertion by LEA that the Licensing Board was in error in its statement that historically evacuees ordinarily obey traffic officers and that it would be "useless to make any other planning assumption." Board Finding 69, LEA Brief at 42. Dr. Urbanik testified that evacuating individuals ordinarily obey traffic control officers at traffic control points as well as at traffic access control points and that it would

not be useful in any way to prepare evacuation estimates based upon persons not obeying such traffic control. Urbanik, Tr. 19,225. Nothing that Dr. Vutz stated contradicts this testimony. In fact, Dr. Vutz's testimony stands for the proposition that traffic control tends to make an orderly flow of traffic. Vutz, Tr. 14,511. Accordingly, the Licensing Board's Findings 68 and 69 are supported by the record.

F. The Board Correctly Delegated To The Staff Verification Of Traffic Control In The King Of Prussia Area

LEA asserts that the Board improperly delegated its responsibility to the NRC staff with regard to the verification of traffic control in the King of Prussia area. Board Finding 120; LEA Brief at 50-53. <sup>38/</sup> There is no doubt that delegation to the Staff of post hearing verification of certain emergency planning measures is proper. In Louisiana Power Light Company (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1103 (1983), the Appeal Board, citing one of the cases relied upon on by LEA, <sup>39/</sup> noted the distinction between the type of post hearing verification allowed in emergency planning cases versus other cases. The Appeal Board stated (at 1103):

The Commission, in fact, has long held that, "[a]s a general proposition, issues should be dealt with in the hearings and not left over for later (and possibly more informal) resolu-

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<sup>38/</sup> The delegation challenged by LEA provides:

Prior to operation above 5 percent of rated power, the Director, Office of Nuclear Reactor Regulation, shall receive verification of plans to implement a level of traffic control in the King of Prussia area sufficient to assure that all the traffic evacuating along the Route 363-to-Pennsylvania Turnpike corridor can continue to move upon reaching the EPZ boundary, as implicitly assumed in NUREG-0654 Planning Standard J(10)(1).

<sup>39/</sup> LEA relies on Consolidated Edison Co. of New York (Indian Point Station, Unit No. 2), CLI-74-23, AEC 947 (1974). LEA Brief at 51.

tion." Consolidated Edison of New York (Indian Point Station, Unit No. 2), CLI-74-23, 7 AEC 947, 951 (1974). "[T]he 'post-hearing' approach should be employed sparingly and only in clear cases" - for example, where "minor procedural deficiencies" are involved. Id. at 952, 951 n.8. Accord, Marble Hill, supra, 7 NRC at 318; Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-298, 2 NRC 730, 736-37 (1975); Washington Public Power Supply System (Hanford No. 2 Nuclear Power Plant), ALAB-113, 6 AEC 251, 252 (1973).

With respect to emergency planning, however, the Commission takes a slightly different course. At one time, the agency's regulations required a finding that "the state of onsite and offsite emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency." 10 CFR § 50.47(a)(1) (1982) (emphasis added). In July 1982, the Commission amended this provision by clarifying that "the findings on emergency planning required prior to license issuance are predictive in nature" and by eliminating the reference to the "state" of emergency preparedness. 47 Fed. Reg. 30232, 30235 (July 13, 1982), petition for review pending sub nom. Union of Concerned Scientists v. Nuclear Regulatory Commission, No. 82-2053 (D.C. Cir. filed Sept. 10, 1982).

As with the installation and testing of siren warning systems and installation of Communication Systems (see Waterford, 17 NRC at 1104-06). identification of traffic control points is the type of matter the Staff can oversee. As the Licensing Board states "[t]here is no problem in establishing additional traffic control points for any areas beyond the EPZ for which they may be necessary". Board Finding 70. Furthermore, the Board added that it "sees no difficulty in establishing additional control points beyond the EPZ" given the "greater number of access control points already identified in the ETE study and county plans, for which adequate arrangement have already been made." Id.

LEA also relied upon language from the initial decision in Southern California Edison Company (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-82-39, 15 NRC 1163 for the proposition that matters that can be left to the Staff are typically "of a minor nature and/or are such that on-

the-record procedures, including cross-examination, would be unlikely to affect the result." LEA Brief at 51. However, the Board goes on to state with regard to the adequacy of arrangements for medical services for the public in the plume EPZ a matter which it determined required further hearing:

Questions of adequacy on a subject of this complexity involve large elements of judgment and expertise.

San Onofre, 15 NRC at 1217.

As discussed above, such complexity does not exist with regard to the additional traffic control called for by the Board in Finding 120. <sup>40/</sup> See also Board Finding 70.

G. The Board Correctly Found That There Has Been No Affirmative Showing That The Marsh Creek State Park/ Exton Area Or The Valley Forge State Park/King Of Prussia Area Should Be Included In The EPZ

LEA argues that the Board erred in ruling that there was no reason shown in the record for including Valley Forge Park and Marsh Creek State Park in the plume exposure pathway emergency planning zone. Board Finding 120, LEA Brief at 54. LEA's bases for this assertion are that (1) a significant portion of Valley Forge Park is within the Schuylkill Township, which Township is within the EPZ; (2) North Gulf Road (Route 363) is a two-lane road which is the main access road to Valley Forge Park; and (3) that key intersections of the King of Prussia evacuation corridor are within the park and park rangers are given responsibility of traffic control. Id. LEA also asserts that there are topographical and demographic reasons why Valley Forge National Park should be included in the EPZ. Id. However, LEA has failed to indicate what those reasons are. See 10 C.F.R. § 2.762(d)(1).

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<sup>40/</sup> See, n. 25, supra. indicating that this licensing condition has been resolved.

Aside from LEA's failure to support its assertions with transcript cites, LEA has also failed to indicate how the present EPZ configuration is inconsistent with 10 C.F.R. § 50.47(c)(2) or why the above factors should provide support for inclusion of these two parks in the EPZ. This regulation provides that "[t]he exact size and configuration of the EPZ's surrounding a particular nuclear reactor shall be determined in relation to local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries." As the Board correctly notes there has been no affirmative showing that either Marsh Creek State Park or Valley Forge State Park should be included in the emergency planning zone. Board Finding 120. With the exception of a small portion north of the Schuylkill River, Valley Forge National Park lies outside the plume exposure pathway EPZ. Board Finding 92. The only part of the Park north of the Schuylkill River is that containing a small parking lot and trailhead. Id. This section of the Valley Forge Park is only used on an occasional basis. Fewless, Tr. 14,659. Furthermore, the National Park Service did not ask PEMA to incorporate any portion of the Park in the EPZ. Board Finding 92.

With regard to LEA's concern about Route 363 the Board notes that control of access to evacuation routes near the Valley Forge Park would be required and could easily be put in place and that only a small number of access control points would have to be manned. Board Finding 105, 106. With regard to LEA's concern about key intersections in the Valley Forge National Park, the Board found that the capability to establish such control has been demonstrated, that it is easy to control or restrict access of vehicles from the park onto evacuation routes and that visitors notified at the alert stage would leave prior to notice of evacuation of the EPZ. Board Findings 97, 98.

Finally, the Schuylkill River serves as a natural boundary for the EPZ. See Board Figure 2 at 1264. Thus, there is no reason to include either of these parks in the plume exposure pathway EPZ.

H. There Is No Need For Hearings On Drills And License Conditions For A Full And True Disclosure Of The Facts

1. LEA argues that additional hearings are necessary to (1) determine compliance with the license conditions imposed by the Board in the PID and (2) evaluate the status of the implementability and adoptability of municipal RERP's where either problems were identified in testimony which would preclude workability of those plans or where a lack of sufficient knowledge or readiness resulted in uncertainty whether the RERP could be implemented. LEA Brief at 56. LEA cites as support for this proposition the testimony of Mr. Richard T. Brown, Chairman, Board of Supervisors, Lower Providence Township and Mr. Henry J. Miller, Fire Chief, Lower Providence Volunteer Fire Company, concerning communication problems. Id.

2. With regard to LEA's claim that further hearings are necessary to determine compliance with the license conditions imposed by the Board, the Staff submits that this claim is without merit. LEA has not provided any support for this proposition since they have failed to cite any portion of the record or any authority. For the first license condition, which concerns the Director of Nuclear Reactor Regulation receiving verification of plans to implement traffic control in the King of Prussia area (PID at 304-305), the Licensing Board found no difficulty in establishing additional control points beyond the EPZ. Board Finding 70. This was based on (1) undisputed evidence that there are no problems in establishing such additional traffic control points in that area and (2) the fact that adequate arrangements had already been made for the far greater number of

traffic control points identified in the Evacuation Time Estimate study and county plans. Id. Thus, the record demonstrates that this license condition involves the post-hearing verification by the Staff of an emergency planning measure that does not require the resolution by the Staff of any material issue of fact.

The second license condition concerns FEMA receiving verification of the satisfaction of unmet municipal staffing needs for the capability of continuous 24-hour operation during a radiological emergency. PID at 1407-08. Based on the testimony of FEMA, the Licensing Board found that FEMA's judgment that there is not reasonable assurance of risk municipalities having a 24-hour staffing capability (Category A deficiency) would be satisfactorily resolved by the involved jurisdictions verifying the current EOC staffing of the jurisdictions that is reflected in the testimony of Applicant's consultant. Board Findings 509, 523. Furthermore, the record reflects that outstanding vacancies existed for only a few municipalities and positions throughout the EPZ. Board Finding 511. Consequently, the record shows that the post-hearing verification of this license condition can be readily resolved without the Staff making judgments to resolve material issues of fact.

Accordingly, the Staff submits that, based on the record in this proceeding, the Licensing Board's delegation to the Staff of the post-hearing verification of the emergency measures underlying these license conditions was proper and is consistent with both the approach for making predictive findings in the offsite emergency planning area and for delegating to the NRC staff the post-hearing resolution of emergency planning measures. See Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3),

ALAB-732, 17 NRC 1076, 1103-07 (1983) and the Staff's earlier argument at Section III.F, supra. <sup>41/</sup>

3. LEA argues that additional hearings are necessary to evaluate the status and adoptability of municipal RERP's where problems were identified in testimony which would preclude workability of those plans based on the communications problems identified by Mr. Brown and a concern about staffing the assignments shown in the plan that was raised by Mr. Miller. LEA Brief at 56. The Staff submits that LEA's argument is not well founded. With respect to the staffing concern raised by Mr. Miller (Tr. 18,142), the record shows, as the Board found, that the Lower Providence Township EOC was adequately staffed and demonstrated an adequate capability to respond during the November 20, 1984 exercise. Board Finding 602. Further, LEA fails to note that Mr. Miller testified that, although he did not know why it was not reflected in the draft emergency plan on which he was being examined, some of the assignments have been tentatively made and exercised in the drills. Miller, Tr. 18,143. Moreover, based on discussions about implementing the draft plan with Mr. Thomas P. Rogers, Chief of Police, Lower Providence Township, who is the Emergency Coordinator, Mr. Brown testified that the Emergency Coordinator is confident that he can carry out most of the procedures with the number of persons who are currently available. Tr. 18,144; Brown, Tr. 18,152.

With regard to the emergency communications problem referenced by LEA, Mr. Brown expressed a concern that communications might be a problem because part of the Township is served by a switching system based on old

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<sup>41/</sup> The Staff would note that the license conditions imposed by the Board have been resolved. See, Limerick, ALAB-808, slip op. at 5-6; Memorandum to E. J. Jordan from R. W. Krimm (May 30, 1985) (attached to letter to Licensing Board from D. F. Hassell (June 5, 1985)).



technology that might result in overloading those local switching centers having that system. Brown, Tr. 18,151-152. However, LEA fails to note that Mr. Brown stated, as the Licensing Board observed, that the Township intends to resolve this concern by the introduction of a private switch network. Board Finding 612. Further, once that is resolved Mr. Brown, the Chairman of the Board of Supervisors intends to recommend supporting the adoption of the draft plan. Id. In addition, as the Licensing Board explained, not all EOC staff and support organizations staff need to be reached immediately, nor must they be contacted by telephone during an actual emergency. Id. Consequently, the records establishes that additional hearings are not necessary to further evaluate the status and adoptability of the Lower Providence Township RERP because of the concerns raised by Mr. Brown and Mr. Miller.

4. LEA contends that the Licensing Board committed reversible error relating to the admissibility of its contention on drills and exercises 42/.

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42/ LEA's contention states:

The state, county, municipal, institutional, and school district RERP's are deficient in that the conduct of and planning for drills and exercises is not sufficiently detailed in the plans. There is no assurance that such exercises and drills provide a sufficiently realistic test of emergency plans and response capabilities. Indeed, to the extent that participants in such drills and exercises have prior knowledge of the dates, times, and other details about such drill and exercises, such drills and exercises do no test preparedness, but rather provide only a minimal test of the ability of the involved organizations to follow procedures. See Ches Co. RERP Annex S S01 S-2 S-3 See Montco RERP Annex R, Annex S

Basis: 10 CFR 50.47(b)(14)  
NUREG 0654 Evaluation Criteria (0) 2

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They argue that LEA agreed to withdraw this contention based on incorrect information provided by Judge Brenner, the Commonwealth and the NRC staff on LEA's right to comment at a public meeting prior to FEMA's issuance of its final report. LEA Brief at 56-57. LEA argues that it has become apparent that no public meeting is scheduled prior to FEMA's issuance of its final report since FEMA has issued its "reasonable assurance" finding based in part on the series of completed exercises. Id. Consequently, based on 10 C.F.R. § 50.47(a)(2) and Union of Concerned Scientists v. U.S. Nuclear Regulatory Commission, 735 F.2d 1437 (D.C. Cir. 1984), LEA seeks such a meeting or the equivalent opportunity for comment prior to the issuance of a final report. Id. at 57. Alternatively, LEA seeks to have litigated its withdrawn contention on drills and exercises.

For several reasons, the Staff submits that LEA's claim that the Licensing Board committed reversible error in dealing with the withdrawal of LEA's contention on drills and exercises is without merit. On September 28, 1983, FEMA published its final rule (44 C.F.R. Part 350) that established policy and procedures for formal FEMA review and approval of State and local emergency plans and preparedness. 48 Fed. Reg. 44332. The process established under the final rule requires several steps. It is initiated by a request from a State to the FEMA Regional Director, which includes the submission of a completed State plan that includes local plans for jurisdictions wholly or partially within the plume exposure pathway Emergency Planning Zone (EPZ), for formal FEMA review. See 44 C.F.R. § 350.7 at 48 Fed. Reg. 44338.

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"VIII Off-site Emergency Planning Contentions" at 42 (January 31, 1984) (attached to January 31, 1984 Letter from LEA to the Licensing Board).

Before the FEMA Regional Director can forward the State and local plans to FEMA headquarters for formal review and approval after the Regional Director's review, a full participation exercise and a public meeting in the vicinity of the nuclear facility must be held. See 44 C.F.R. § 350.8-350.11 at 48 Fed. Reg. 44338-340. The provisions of 44 C.F.R. Part 350 make the holding of such a public meeting a condition precedent to formal FEMA approval. See 44 C.F.R. §§ 350.8(f) and 350.10. As a consequence of this process, FEMA issues final findings and determinations resulting in FEMA's final administrative approval or disapproval of State and local plans and preparedness. See 44 C.F.R. §§ 350.11(a) and 350.12 at 48 Fed. Reg. 44340. The record clearly demonstrates that the Commonwealth, through PEMA, has not yet invoked the 44 C.F.R. Part 350 process for seeking a formal FEMA review and approval of the offsite radiological response plans for the Limerick Generating Station. Hippert Testimony, ff. Tr. 19,498 at 3-4; Hippert, Tr. 19,511-513, 19,571-572; Asher/Kinard Testimony On Admitted Portions Of Deferred Contentions Of Limerick Ecology Action, ff. Tr. 20,150 at 1-2. Consequently, the record in this proceeding and the provisions of 44 C.F.R. Part 350 clearly establish that LEA will have an opportunity to provide comments or questions at the public meeting mandated under 44 C.F.R. Part 350 prior to FEMA issuing its final formal approval assessing offsite plans and preparedness. This is entirely consistent with the information provided by the Licensing Board and parties that LEA relied upon in withdrawing its contention on drills and exercises.

5. LEA's reliance on Union of Concerned Scientists v. NRC, 735 F.2d 1437 (D.C. Cir. 1984) for the proposition that LEA is entitled to litigate its withdrawn contention is misplaced since that decision involved the issue of whether an opportunity has been provided to litigate the material issues

raised in full scale exercise evaluation reports during the operating license proceeding. Union of Concerned Scientists v. NRC, 735 F. 2d 1437, 1444-45, 1448-49 (1984). On September 25, 1984, subsequent to the filing of LEA's contentions, FEMA issued its evaluation report dated September 19, 1984 concerning the July 25, 1984 full scale exercise of the offsite emergency response plans for the Limerick Generating Station. See FEMA Exh. E-4. Thus LEA had an opportunity to raise issues concerning FEMA's evaluation of the full scale exercise as early as about two months prior to the start of the offsite emergency planning evidentiary hearing in the operating license proceeding. LEA failed to avail itself of that opportunity. Moreover, assuming arguendo that the Union of Concerned Scientists case does apply, the significant deficiencies found by FEMA as reflected in the exercise evaluation report that were material to the operating license proceeding were in fact litigated. The FEMA exercise evaluation report for the July 25, 1984 exercise was admitted in evidence as well as the FEMA evaluation report for the supplemental emergency planning exercise conducted on November 20, 1984. See FEMA Exh. E-4 and E-5. FEMA provided testimony concerning the significant material issues raised in both of these evaluation reports. Asher/Kinard Testimony, ff. Tr. 20,150. Moreover, LEA, as well as other parties, did in fact conduct cross-examination of the FEMA witness panel on the significant issues raised in these exercise evaluation reports. See, e.g., Tr. 20,159-165; 20,168-169; 20,175-176; 20,213-218; 20,253-258; 20,260-261; 20,265-268; 20,294; 20,297. Thus the Staff submits that the significant issues raised in these exercise evaluation reports that are material to this operating license proceeding have been litigated in this instance. Based on the foregoing, LEA's claim that it is now entitled to litigate their withdrawn contention based on the

Union of Concerned Scientists case is without merit. Moreover, the Licensing Board did not commit reversible error.

Accordingly, the Staff submits that the Appeal Board should reject LEA's argument that additional hearings are necessary as being without merit.

I. The Licensing Board Did Not Commit Fundamental Error In Interpreting LEA-26 In A Manner Prejudicial to LEA

1. At the outset, the Staff submits that the Appeal Board should reject LEA's argument since this issue was not presented by LEA in its proposed findings of fact and conclusions of law.<sup>43/</sup> As noted earlier, the Appeal Board has established the fundamental principle of appellate practice that it will not ordinarily entertain arguments raised for the first time on appeal. See Detroit Edison Company, et al. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-709, 17 NRC 17, 22 (1983) and cases there cited. For this reason alone, the Appeal Board should reject the argument presented by LEA in its appeal brief under Section III.I (LEA Brief at 58). Nonetheless, should the Appeal Board decide to entertain this argument, the argument should be rejected as being without merit based on the reasons set forth below.

2. LEA asserts that the Licensing Board committed fundamental error in interpreting LEA-26 by failing to make the distinction between "implementing an evacuation alert" and merely sounding the sirens. LEA Brief at 58. The Staff submits that LEA's assertion of error is without merit since the Licensing Board, based on the record, correctly disposed of the admitted contention and its bases. LEA does not show with appropriate references

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<sup>43/</sup> See LEA Proposed Finding 593, Limerick Ecology Action Proposed Findings Of Fact and Conclusions Of Law In The Form Of A Partial Initial Decision Relating To Offsite Emergency Planning Contentions (March 7, 1985).

to the record how or why the Board's alleged failure to make such a distinction resulted in any error.

In support of its assertion, LEA argues that there is "clear indication that in order to implement an evacuation significant levels of personnel must be in place." Id. The only record support that LEA offers is that some traffic control personnel must be in place, in part, to direct access to evacuation corridors citing specifically the King of Prussia area mentioned in Mr. Klimm's testimony. Id. However, Mr. Klimm's testimony does not indicate that having traffic control personnel in place in the King of Prussia area presents a problem. He testified that no vehicles really begin to evacuate until a half hour after notification and that that half-hour period is certainly enough time to mobilize and station traffic control as required along the corridor involving the King of Prussia area. Klimm, Tr. 13,940-941. Further, Mr. Klimm made clear that only under worst conditions would you want to provide traffic control along this corridor throughout the course of the evacuation. Klimm, Tr. 13,941-942. Consequently, Mr. Klimm's testimony does not support the notion that notification of traffic control personnel for the King of Prussia area will "delay the ability to call for an evacuation".

Furthermore, LEA argues that the failure of the Licensing Board to distinguish between implementing an evacuation alert and merely sounding the sirens prejudiced the Board's evaluation and admission of evidence. LEA Brief at 58. However, LEA fails to provide any record basis that shows how the Board's alleged failure to make such a distinction prejudiced the Board's evaluation and admission of evidence in any particular instance. Moreover, the language of the admitted contention at issue by its own terms focuses on

the notification of emergency workers required to be in place prior to implementing an evacuation alert. LEA-26 states:

The Draft County and Municipal RERP's are deficient in that they do not comply with 10 CFR § 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. (emphasis supplied).

PID at 1351. Furthermore, as the Licensing Board correctly observed, only two of LEA proffered bases for LEA-26 were accepted for litigation. <sup>44/</sup> Board Finding 461; Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), Memorandum And Order Ruling On Reworded And Respecified Off-site Emergency Planning Contentions (unpublished), slip op. at 15-17 (September 24, 1984). As the Licensing Board stated, the first admitted basis "is basically that the notification system of emergency response organizations, prior to public notification, by the county EOCs must not delay siren activation." Board Finding 461. The Board's construction of the first admitted basis is entirely consistent with the admitted basis as proffered by LEA in September, 1984. <sup>45/</sup> Thus, the Board properly understood that the primary

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<sup>44/</sup> The second admitted basis concerning sufficient resources available for route alerting is not at issue.

<sup>45/</sup> See Limerick, Memorandum And Order Ruling On Reworded And Respecified Offsite Emergency Planning Contentions, slip op. at 15-17; See also "Limerick Ecology Action's Respecification of Off-site Emergency Planning Contentions Admitted by the Board's Order of April 20, 1984," LEA-26 Item 2 at 16-17 (attached to September 6, 1984 Letter from LEA to the Licensing Board) wherein it states:

2. The phone notification system of emergency response organizations by the County EOC, prior to public notification, is a complex process involving the use of an automatic dialer (RECALL system) subject to verification and manual notification as sufficient county EOC Staff

focus of the admitted contention and its basis, which are at issue on appeal, involved the system for notifying emergency workers, prior to public notification, not delaying activation of the sirens to alert the public. The Licensing Board fully addressed this issue in Board Findings 460-470, including the "RECALL system" referenced in LEA's proffered basis. Moreover, the Board found that a 24-hour communications capability exists to notify fire, police and ambulance services by pager even if the RECALL system were not working. Board Finding 467. What LEA fails to point out is that the Licensing Board found, based on the record, that there is no requirement under NUREG-0654 or 10 C.F.R. § 50.47 that all emergency workers be in place before protective action are implemented. Board Finding 465. More importantly, the Board found that the record shows that it is not necessary for the jurisdictions' Emergency Operations Centers to be fully manned and mobilized prior to activating the public alert and notification (siren) system. Board Finding 463. Further, it found that the sirens can be activated from county communications centers, which are manned 24-hours a day. Id. Consequently, the Board found, based on the record, that the sirens could be activated almost instantaneously by on-duty personnel upon authorization of county coordinators. Id.

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arrive to man the phones. (Chester County RERP, Draft #8, Appendix C-2, page C-1-4).

LEA contends that that notification times for emergency workers and organizations must be rapid and certain to enable the public notification system to be activated in the time required, as specified by NUREG-0654, Appendix 3, page 3-3. Whatever combination of automatic dialers and sequential phone calls for notification and verification is to be used, the notification of essen-

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3. Accordingly, the Staff submits that the Licensing Board correctly interpreted the matters at issue in LEA-26, properly resolved them based on the evidence of record and had an adequate evidentiary bases for its findings underlying its conclusion (Board Finding 470) for Contention LEA-26. Furthermore, LEA has not identified "persuasive municipal evidence" supporting this contention since the only specific evidence it cites is the communications concern regarding the telephone switching system identified by Mr. Brown, Chairman, Lower Providence Board of Supervisor, which was adequately resolved by the Board on the record (Board Finding 612) as we argued above (See Section III.H., supra).

J. There Is Reasonable Assurance That The Present State Of Planning Is Predictive Of Final Approval Or Implementability Of The RERPs

1. LEA argues that the Licensing Board improperly made a predictive finding of reasonable assurance based on good intentions to comply with a general state emergency planning law (P. L. 1332 <sup>46/</sup>). LEA Brief at 59. They argue that it is particularly significant that even now only a few of the 43 municipalities within the Limerick EPZ have adopted a radiological emergency response plan. Id. LEA specifically cites the testimony of a PEMA witness indicating that the municipal plans are in draft and have not been approved. LEA Brief at 60.

The Staff submits that LEA's claims are unpersuasive. What LEA fails to point out is that the record clearly shows, as the Licensing Board

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tial organizations and staff must not delay siren activation.

<sup>46/</sup> Emergency Management Services Act of 1978, Act of November 26, 1978, P. L. 1332, No. 323 ("P. L. 1332"). See Board Finding 536.

found, that P. L. 1332 imposes mandatory, not discretionary obligations upon local governments to have in place a workable emergency plan, an emergency response organization, and an emergency operations center and related resources to respond to any disaster emergency, including a radiological emergency. See Board Finding 539. Moreover, as the Board stated in its decision, "each county and municipal official testified that it was the intention of his Board of Commissioners or Board of Supervisors to comply with the requirements of P. L. 1332 . . . by working toward the adoption of a workable plan." Id. In addition, the school superintendents unanimously stated the intent of their respective school districts to work toward the development and adoption of a workable plan. Board Finding 563. As the Licensing Board correctly explained based on NRC precedent, <sup>47/</sup> the Commission's emergency planning regulations do not require that offsite emergency plans be finally approved or adopted by the respective State and local governments prior to concluding the adjudicatory process. PID at 1230-31. Consequently, contrary to LEA's claim, the Staff submits that it is not material that only some of the municipalities have adopted a radiological emergency response plan. Furthermore, since the Board's reasonable assurance finding may be a predictive one rather than a reflection of the actual state of emergency preparedness, <sup>48/</sup> the Board properly relied on evidence that (1) demonstrates a mandatory legal obligation to have in place a workable plan and resources, and (2) shows a willingness to comply with those obligations. Consequently,

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<sup>47/</sup> See Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1103-04 (1983); Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-730, 17 NRC 1057, 1066 (1983).

<sup>48/</sup> See Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-717, 17 NRC 346, 380 n. 57 (1983).

the Board's reliance on P. L. 1332, among other things, was entirely consistent with the predictive finding approach of the Commission's emergency planning requirements.

2. LEA argues that participation in the July 25, 1984 and November 20, 1984 exercises "is not predictive that municipalities or school districts will achieve 'a reasonable assurance' standard of emergency preparedness for radiological emergencies" LEA Brief at 61. They assert that no legal connection can be drawn between drill participation and the endorsement, approval and workability of a proposed RERP in a real emergency. Id. LEA has not made any showing that the Licensing Board principally relied on the participation of any jurisdiction in either the July 25, 1984 exercise or November 20, 1984 exercise as support for its finding of reasonable assurance in resolving LEA-1. The Licensing Board reviewed the entire record dealing with the 14 jurisdictions at issue regarding the adoptability of their plans in terms of being predictive of final approval. PID at 1369-1407. Participation in those exercises was not principally relied on by the Board in reaching its overall conclusion for any of the jurisdictions involved. Id. The Board referred to participation in the exercises for only five of the jurisdictions. PID at 1383-85; 1392-93; 1394-95; 1401-06. For those five jurisdictions, the Board's reference to participation in the exercises was not the principal basis for its overall finding. Id. Nevertheless, the Staff submits that, to the extent evidence of participation in the exercises was relied on by the Board, the Board's reliance on such evidence was entirely proper since the Commission's emergency planning requirements and guidance require participation in exercises as a basis for making a reasonable assurance finding. See 10 C.F.R. § 50.47(b)(14); Section F, Appendix E, 10 C.F.R. Part 50; NUREG-0654, II.N. Consequently, LEA's arguments amounts to a challenge to the Commissions rules

and as such LEA must make the "special circumstances" showing required under 10 C.F.R. § 2.758, which LEA has failed to do. For the reasons, the Appeal Board should reject LEA's argument.

3. LEA's concern regarding the Borough of Phoenixville's participation during the July 25, 1984 exercise is without merit. LEA Brief at 61. LEA's citations to the record do not support its assertion that "The Borough of Phoenixville (14,000 pop.) did not participate in any drills conducted to be observed by FEMA." Also, LEA fails to point out, as the Board noted, that Mrs. August, Phoenixville Borough Council President, (August, Tr. 18,870), acknowledged that the Phoenixville coordinator and all EOC volunteers are dedicated individuals and gave an excellent performance during the July 25, 1984 exercise. Board Finding 654. Furthermore, Mrs. August testified that it is her intention that the Borough Council adopt the most workable plan possible for the protection of Phoenixville residents. See Board Finding 655.

4. Based on some selected portions of the testimony of Mr. Bartle, Chairman of the Montgomery Board of Commissioners, LEA asserts that "there is no basis to make a predictive finding that the Montgomery County RERP can and will be implemented". LEA Brief at 63. Mr. Bartle's earlier statement regarding the effectiveness of an evacuation plan during a late night evacuation during snowy weather was adequately addressed by the Board in its decision. See Board Findings 566, 568. In its argument, LEA ignores Mr. Bartle's testimony that the Montgomery County Commissioners intend to continue working toward the development of a workable plan, addressing particular concerns as they arise. See Board Finding 569. Furthermore, he testified that if there were a radiological emergency prior to formal adoption of a plan, Montgomery County would implement the latest draft plan available. Id. Consequently, the Board had an adequate record on which to base its predictive finding

regarding Montgomery County. Thus, the specific concerns raised by LEA regarding the implementability of the Montgomery RERP are without merit based on the record in this proceeding. See Board Findings 539-540; 566-575.

5. Finally, the Staff would observe that, as the Board found, the record is devoid of any evidence that local coordinators have advised their respective counties or municipalities of any serious deficiency in the plans or obstacle to their ultimate adoption. Accordingly, for the above reasons, the Appeal Board should reject LEA's arguments concerning the Licensing Board's decision on LEA-1 as being without merit.

K. There Is Evidence In This Record To Support A Reasonable Assurance Finding That There Is Sufficient Municipal Staffing As Required In 10 C.F.R. § 50.47(B)(1) For Continuous Operation

1. Once again, LEA has chosen to raise arguments for the first time on appeal that were not raised below in its proposed findings of fact and conclusions of law. LEA argues that "the 'predictive finding' rule cannot be used to depart completely from the present state of implementability of the municipal or school district RERP's." LEA Brief at 66. Further, they argue that the results of the July 25, 1984 exercise "cannot be held to be predictive of the present let alone the future state of adequacy of municipal plans." Id. In addition, they argue that the Licensing Board should have given more weight to the significance of the identified municipal staffing deficiencies. LEA Brief at 67. These arguments are unpersuasive and lack merit. Moreover, none of these arguments were raised below by LEA in their proposed findings of fact and conclusions of law. <sup>49/</sup> Accordingly, for the reason we argued earlier (see Section III.I., supra), the Appeal Board should

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<sup>49/</sup> See LEA Proposed Findings 618-620, Limerick Ecology Action Proposed Findings Of Fact And Conclusions Of Law In The Form Of A Partial Initial Decision Relating To Offsite Emergency Planning Contentions (March 7, 1985).

reject these arguments that have been raised by LEA for the first time on appeal.

2. In arguing that there is no evidence in this record to support a reasonable assurance finding that there is sufficient municipal staffing for continuous operation, LEA cites FEMA policy that it will not evaluate updated municipal staffing changes as reflected in FEMA Exh. E-3 unless it is transmitted through proper channels. LEA Brief at 64-65. LEA fails to make any showing that the updated staffing changes have not or will not be transmitted by other than through the prescribed channels. FEMA Exh. E-3 represents pages from 19 different municipal RERP's that show updates in staffing, which occurred during November and December of 1984 and January, 1985. See Bradshaw, Tr. 20,337-338; FEMA Exh. E-3. These updated municipal staffing figures were admitted in evidence (Tr. 20,334) and relied upon by the Board in its findings on staffing of municipal operation centers. See Board Finding 511. Further, the record contains a summary of the current municipal staffing status for the 43 municipalities within the EPZ (Bradshaw, ff. Tr. 17,191 at 3, 5-7), which was relied on by the Board in its findings. See Board Findings 510-511. Moreover, LEA cites nothing in the record that suggests that there are significant numbers of persons who are still needed for municipal staffing. In fact the record demonstrates the opposite conclusion. The Licensing Board found, based on current municipal staffing figures, that there are outstanding vacancies for only a few municipalities and positions throughout the EPZ. See Board Finding 511. In addition, the Board found that all but one (possibly two) of the 43 municipalities now have a complete first shift and most have a complete second shift. Board Finding 510. These Board findings were adequately based on the evidence of record and LEA has not shown otherwise.

3. LEA raises a concern about the evidence of municipal staffing as it relates to the involvement of Philadelphia Electric Company (PECO) employees. LEA Brief at 65-66. LEA argues that "Applicant's witness from Energy Consultants, Mr. Bradshaw, testified that only about 50 positions are now manned by PECO volunteers, out of 400 positions needed in the municipal plans." Id. at 65. However, LEA observes that the NRC staff proposed finding of fact references information supplied by Energy Consultants dated August 27, 1984 (LEA Exh. E-37) which indicates that the staffing needs of most municipal EOC's had been dealt with through the assistance of PECO personnel. Id. This concern raised by LEA is without merit. First, LEA Exh. E-37, dated August 27, 1984, was prepared to demonstrate the number of PECO employees who had volunteered. Bradshaw, Tr. 17,293. It does not necessarily mean that those persons will end up in the municipal plans. Id. Of the 226 PECO employees shown on LEA Exh. E-37, there are only about 50 who staff the 400 or so EOC municipal staffing positions, which the Board recognized. Bradshaw, Tr. 17,293-294; Board Finding 514. The municipalities simply chose in many cases to utilize residents other than PECO employees. Bradshaw, Tr. 17,293-294; Board Finding 514. Moreover, PECO employees with either onsite or off-site Limerick responsibilities, were excluded. See Board Finding 514. Further, as noted above, more accurate and current municipal staffing figures were developed subsequent to August of 1984 as the Board recognized. See Board Findings 510-511. Consequently, it was appropriate for the Licensing Board not to adopt that portion of the NRC staff proposed finding in question since the finding did not reflect the most accurate and current municipal staffing assignments contained in the record. See Board Findings 510-511, 515.

LEA also argues that the results of the July 25, 1984 exercise "cannot be held to be predictive of the present let alone the future state of

adequacy of municipal plans" since whatever PECO employee response organization was involved has not been maintained. LEA Brief at 66. Further, they argue the Board should have given more weight to the identified municipal staffing deficiencies since the license condition in this area only partly recognizes that PECO volunteers are not now included in the municipal plans. LEA Brief at 67. Therefore, they argue that "a FEMA evaluation on the sufficiency of municipal staffing based on the July 25, 1984 exercise may be hopelessly outdated." Id. These LEA claims are simply unfounded and without merit.

First, there is no FEMA evaluation showing the sufficiency of municipal staffing based on the July 25, 1984 exercise as suggested by LEA. LEA provides no support for such a proposition. Secondly, LEA has made no showing that the Licensing Board relied upon the staffing levels demonstrated during the July 25, 1984 exercise as evidence of reasonable assurance on Contention LEA-2. In fact, as noted by the Board, FEMA's evaluation of the July 25, 1984 exercise confirmed staffing deficiencies in 16 municipalities that resulted in FEMA submitting testimony concluding that there is not reasonable assurance that all risk municipalities have a 24-hour staffing capability. See Board Finding 509. The record demonstrates that the Licensing Board correctly relied upon municipal staffing figures that were current and accurate in reaching its decision regarding municipal staffing figures. See Board Findings 510-511, 514-515. Thus, the Appeal Board should reject, as without merit, LEA's arguments regarding the Board's findings on municipal staffing levels.

4. LEA's argument that the Board ignored FEMA's testimony "that the names of response personnel would have to be officially recorded in the plans before FEMA would regard the situation as being resolved" (LEA Brief at 67) is equally unavailing. First, the Licensing Board conditioned the issuance of



the operating license on FEMA's receiving verification of the satisfaction of the unmet municipal staffing needs as they relate to a capability of continuous 24-hour operation during a radiological emergency. PID at 1407-08. Through this action the Board clearly reflected the significance that it attached to the municipal staffing deficiencies previously found by FEMA. Furthermore, this condition assures that FEMA is in a posture to assure that its concerns regarding transmission of staffing information through prescribed channels and reflection of the staffing information in the municipal plans are appropriately addressed and resolved. <sup>50/</sup> Second, the license condition was consistent with the evidence of record since the same FEMA witness testified, that he would accept Mr. Bradshaw's testimony regarding current staffing of the various jurisdictions subject to verification by the jurisdiction involved as "a satisfactory method" of resolving FEMA's concerns regarding the deficiencies in municipal staffing. See Kinard, Tr. 20,253-257; Board Finding 523. Thus, the FEMA witness made clear that there was more than one way to properly resolve the deficiencies regard municipal staffing. Consequently, the Appeal Board should reject LEA's argument since the record demonstrates it is without merit.

5. Given the evidence in this record regarding the current municipal staffing and the license condition imposed by the Board regarding verification of municipal staffing, the Staff submits the Board did not improperly make a

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<sup>50/</sup> The Staff would note that subsequent to the Board's decision this matter has been resolved because FEMA determined that "adequate staffing now exists in all risk municipalities to respond to a radiological emergency over an extended period of time." See Memorandum to E. L. Jordan from R. W. Krimm (May 21, 1985) at 2-3 (attached to letter to Licensing Board from D. F. Hassell (May 22, 1985)). For South Coventry, the deficiency was corrected based, among other things, on the "submission of a new staffing plan." Id. at 2.

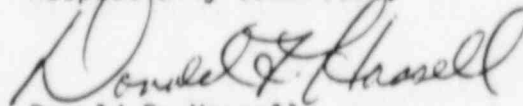
predictive finding of reasonable assurance on Contention LEA-2 as suggested by LEA (See LEA Brief at 66).

6. Finally, LEA generally complains about alleged procedural errors by the Board, including the imposition of time limits on cross-examination. LEA Brief at 68. The Licensing Board has fully explained, with citations to the record and authority, the time constraints it imposed on examination and cross-examination of witnesses. PID at 1233-36. LEA has failed to make any showing that this aspect of the Board's decision was incorrect. Moreover, LEA has not shown how the various procedural restrictions it complains of have resulted in any actual prejudice to its case. Accordingly, the Appeal Board should reject LEA's claims of procedures error as without merit.

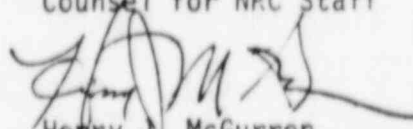
#### IV. CONCLUSION

Based on the foregoing reasons, the Staff submits that the Licensing Board correctly resolved and decided the admitted contentions in its decision. Accordingly, the Appeal Board should reject the arguments raised by the appellants and affirm the results reached by the Licensing Board in its Third Partial Initial Decision of May 2, 1985.

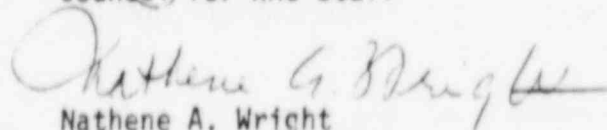
Respectfully submitted,



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Dated at Bethesda, Maryland  
this 16th day of August, 1985

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF BRIEF IN RESPONSE TO LEA'S AND FOE'S APPEAL OF THE THIRD PARTIAL INITIAL DECISION" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, this 16th day of August, 1985:

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U.S. Nuclear Regulatory Commission  
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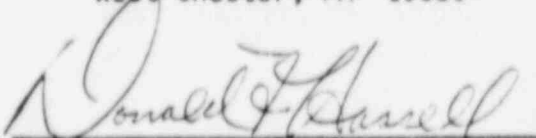
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Washington, D.C. 20555\*

Atomic Safety and Licensing Appeal  
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