489

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Nunzio J. Palladino, Chairman
Thomas M. Roberts
James K. Asselstine
Frederick M. Bernthal
Lando W. Zech, Jr.

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

ORDER

CLI-86-05

Limerick Ecology Action ("LEA"), Robert Anthony/Friends of the Earth ("FOE") and Philadelphia Electric Company ("PECO") petitioned the Commission to review various aspects of ALAB-819, 22 N.R.C. 681 (October 23, 1985). Although the Commission has determined that review of ALAB-819 is unwarranted, a few comments are appropriate.

10 C.F.R. § 2.786(b)(2)(iii) provides that a petition for review shall contain a "concise statement why in the petitioner's view the decision or action is erroneous." The petitions for review filed by LEA and Anthony/FOE fail to satisfy this requirement because neither attempted to explain why the Appeal Board's reasoning is erroneous. Moreover, Anthony/FOE failed to file their petition for review within the time limits prescribed by 10 C.F.R. § 2.786(b)(1). Parties to NRC proceedings are expected to comply with the time limits specified in the regulations. If parties cannot act within the specified time period extensions are to be sought.

D502

Two substantive issues addressed by the Appeal Board in ALAB-819 also warrant comment. The Appeal Board in rejecting LEA's claim (Contention DES-5) that the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. § 4321, and pertinent Commission regulations require consideration of additional design alternatives for the mitigation of severe accidents at Limerick, explained that the Commission's "Policy Statement on Severe Reactor Accidents Regarding Future Designs and Existing Plants," 50 Fed. Reg. 32138 (August 8, 1985) barred litigation in case-related safety hearings of accident mitigation measures beyond those found in Commission regulations. In footnote 10, 22 N.R.C. at 696, the Appeal Board noted that LEA had argued that the Policy Statement does not apply to its contention because the Commission in that Policy Statement referred to "safety hearings" and LEA's contention raised environmental -- not safety -- issues. The Appeal Board rejected that line of argument stating that LEA read the Commission's statement too narrowly and that "it is unreasonable to believe the Commission intended to preclude litigation of severe accident mitigation measures under the rubric of safety issues, while permitting the litigation of the same matter as an environmental issue." Id.

The Commission affirms the Appeal Board's holding on this issue. The Commission's August 8, 1985 Policy Statement was intended to address both NEPA and Atomic Energy Act reviews. Insofar as is relevant to disposition of LEA's contention, that policy statement states that once a plant has been found to comply with NRC safety regulations and provide adequate protection to public health and safety, the need for design alternatives to further mitigate severe accidents is not to be addressed in case-specific reviews and hearings. Insofar as this type of accident mitigation is concerned,

NEPA and the Atomic Energy Act reviews are both directed at cost-effective measures to reduce the risk from accidental discharges of radioactive materials, and it would make no sense for the Commission to implement different review policies under the two statutes. If, as a result of generic or plant-specific research, the Commission determines that changes in the designs of existing plants may be warranted to prevent undue risk, changes will be imposed through rulemaking or plant specific backfits.

The other issue warranting comment is the Appeal Board's determination that PECO had not made adequate arrangements for the treatment of certain onsite personnel who are radiologically contaminated as well as traumatically injured. The Board in effect found that the Hospital of the University of Pennsylvania ("HUP") is too distant from the Limerick site to serve as an adequate backup hospital. 22 N.R.C. at 713. The Appeal Board remanded the matter to the Licensing Board for further proceedings, finding that the Licensing Board's reasons for declining to require a closer backup hospital do not withstand scrutiny. As a result of the Appeal Board's remand, PECO has entered into formal backup arrangements with Montgomery Hospital, which is closer to the Limerick facility than HUP.

The Licensee argues that the Appeal Board has in effect established a new generic rule regarding the proximity of the backup hospital by imposing requirements beyond those found in 10 C.F.R. § 50.47 and Part 50, Appendix E. The NRC staff disagrees, arguing that the Appeal Board's

findings were based on lack of record support for the Licensing Board's rationale. We agree with the NRC staff.

The large number of hospitals within 20 miles of the facility makes the situation at Limerick somewhat unique. The reasonableness of emergency plans must be determined in each case in light of the specific facts. Here, establishment of formal arrangements with a backup hospital outside of the emergency planning zone, but closer than HUP, appears to be a prudent course of action under 10 C.F.R. 50.47. But this is not to say that a similar result would be required in other cases.

Commissioner Asselstine approved this Order in part, disapproved it in part, and provided separate views.

It is so ORDERED.

For the Commission,

SAMUEL J. CHILK
Secretary of the Commission

Dated at Washington, D.C.
this 20th day of March, 1986.

SEPARATE VIEWS OF COMMISSIONER ASSELSTINE

I agree with that portion of the Commission's order dealing with the backup hospital. However, I do not agree with that portion of the order which deals with the consideration of additional design alternatives for th mitigation of severe accidents at Limerick.

In its Severe Accident Policy Statement the Commission concluded that the severe accident risk presented by existing designs for nuclear power plants is acceptable. The Commission decided, therefore, to bar participants in individual licensing proceedings from litigating the necessity of design alternatives, not now required by Commission regulations, to control or to mitigate the effects of severe accidents. 50 Fed. Reg. 32138. In this order, the Commission extends that decision to exclude issues raised, not just under the Atomic Energy Act, but also to issues raised under the National Environmental Policy Act.

I did not agree with the Commission's conclusion in the Severe Accident Policy Statement that the risk presented by existing plants is acceptable for the life of the plants. See, "Dissenting Views of Commissioner Asselstine," 50 Fed. Reg. 32145. The Commission recently told the Congress that, based upon existing accident risk assessments, there is about a 50-50 chance of a severe core melt accident, an accident at least as severe as the TMI-2 accident, within the next twenty years. I do not believe that a 50-50 chance within the next

twenty years is an acceptable level of risk. Further, I believe that particularly at high population sites, such as Limerick and Indian Point, consideration should be given to additional accident prevention and mitigation measures because of the uncertainties associated with estimating risk and because of the high cost to society should a serious accident occur at such a site. See, "Dissenting Opinion of Commissioner Asselstine," Consolidated Edison Company of New York (Indian Point, Unit No. 2), CLI-85-6, 21 NRC 1043, 1092 (1985). The Commission's Severe Accident Policy Statement and its decision in Indian Point (21 NRC 1043) effectively preclude such consideration. I believe that is a mistake, and the Commission's order today merely exacerbates that mistake.