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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'86 FEB -7 P2:58

ATOMIC SAFETY AND LICENSING APPEAL BOARD

OFFICE OF
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BRANCH

Administrative Judges:

Christine N. Kohl, Chairman
Gary J. Edles
Dr. Reginald L. Gotchy

February 7, 1986
(ALAB-830)

SERVED FEB -7 1986

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

MEMORANDUM AND ORDER

In ALAB-819, 22 NRC 681, 711-16 (1985), we reversed and remanded a limited part of the Licensing Board's second partial initial decision insofar as it concerned intervenor Limerick Ecology Action's (LEA) contention VIII-12(a). Specifically, we found that there were not adequate backup medical arrangements for the treatment of individuals contaminated and injured onsite. Under the auspices of the Licensing Board, the involved parties (applicant Philadelphia Electric Company (PECo), LEA, the Commonwealth of Pennsylvania, and the NRC staff) acted in accordance with our remand and reached an agreement on the resolution of this issue. This agreement is embodied in a stipulation, signed by all four parties, permitting the Licensing Board to "enter an appropriate order dismissing LEA's contention [VIII-12(a)] for lack of controversy." See Stipulation at 3, attached to letter to Licensing Board from A. P. Hodgdon (January 17, 1986).

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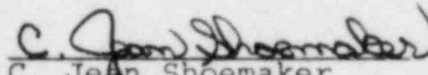
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The Licensing Board, however, has issued a "partial initial decision" with findings of fact and conclusions of law on this matter. See LBP-86-3, 23 NRC __ (February 4, 1986). But under the Commission's regulations, a board in an operating license proceeding is not authorized to "decide" matters not in controversy. 10 C.F.R. § 2.760a.¹ Thus, the Board should have simply entered an order dismissing the contention, as all the parties stipulated. See Portland General Electric Co. (Trojan Nuclear Plant), ALAB-796, 21 NRC 4, 5 (1985).

Accordingly, LEA contention VIII-12(a) is dismissed per the stipulation of the parties, and LBP-86-3 is vacated.

It is so ORDERED.

FOR THE APPEAL BOARD


C. Jean Shoemaker
Secretary to the
Appeal Board

Mr. Edles did not participate in this memorandum and order.

¹ Section 2.760a does authorize boards to raise sua sponte significant safety, environmental, and security issues, but that provision is not invoked in the circumstances here.