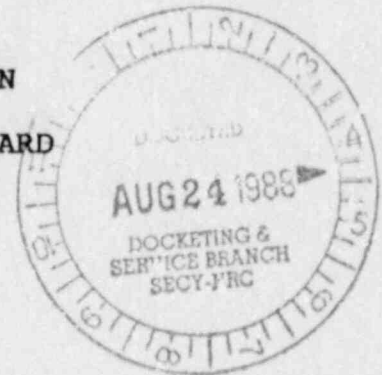


UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges  
John H. Frye, III, Chairman  
Glenn O. Bright  
Richard F. Cole



In the Matter of:

Philadelphia Electric Company : Docket Nos. 50-277-OLA  
: 50-278-OLA  
(Peach Bottom Atomic Power : ASLBP No. 88-569-06-OLA  
Station, Units 2 and 3) :

Supplement to Petition and  
Statement of Contentions of the  
Commonwealth of Pennsylvania

NOW COMES the Commonwealth of Pennsylvania and submits its Supplement to Petition and Statement of Contentions in this licensing proceeding. In support thereof, the Commonwealth states as follows:

I. SUPPLEMENT TO PETITION

1. On December 23, 1987 the Nuclear Regulatory Commission ("NRC") published a Notice of Opportunity for Hearing regarding its proposed issuance of amendments to licenses held by the Philadelphia Electric Company ("PECO") for operation of its Peach

Bottom Atomic Power Station ("Peach Bottom"). In addition, the NRC proposed a determination of no significant hazards consideration for the proposed license amendments.

2. On January 22, 1988 the Commonwealth filed a Petition to Intervene, Request for Hearing and Comments Opposing No Significant Hazards Consideration.

3. On February 8, 1988 PECO filed an Answer opposing the request for intervention and hearing.

4. On February 11, 1988 the NRC Staff responded to the Commonwealth's Petition and determined that the Commonwealth had identified at least one issue within the scope of the proposed license amendments and that the Commonwealth's Petition should be granted after the Commonwealth submitted a contention found to be admissible. The issue which the NRC Staff identified was the failure of the Technical Specifications to mention the function, responsibility or personnel qualifications of the Independent Safety Engineering Group ("ISEG").

5. On April 1, 1988 the NRC issued an order which referred the matter to the Chairman of the Atomic Safety and Licensing Board Panel for appointment of a Licensing Board to consider whether the Commonwealth's Petition to Intervene should be granted.

6. On April 6, 1988 an Atomic Safety and Licensing Board Panel was established to preside over the proceeding in response to the NRC's earlier order.

7. On April 8, 1988 PECO submitted a Revised Restart Plan, Sections I and II. According to the letter accompanying the Revised Restart Plan, the revisions were made after and as a result of the corporate management changes which were made at PECO.

8. After the Commonwealth filed its Petition which was critical of corporate management, PECO released a report from the Institute of Nuclear Power Operations ("INPO"). PECO received the INPO report on January 11, 1988. This report was also highly critical of corporate management. The corporate management changes which are reflected in the Revised Restart Plan were announced after a special meeting of the PECO Board of Directors on February 1, 1988 which was called to consider the INPO report.

9. In response to an request from the NRC, the Commonwealth held joint public meetings with the NRC to receive public comments on PECO's Revised Restart Plan on May 16 and 17, 1988.

10. On June 16, 1988 the Commonwealth provided written comments to the NRC and PECO on PECO's Revised Restart Plan. The comments on the plan address several of the issues raised by the license amendments.

11. On July 28, 1988 the NRC provide the Commonwealth with responses to certain of the Commonwealth's comments.

12. On June 22, 1988 the NRC reaffirmed its prior position and approved the license amendments which were proposed in the

December 23, 1987 Federal Register Notice. In approving the license amendments, the NRC also made a determination that the amendments involve no significant hazard consideration. Because the NRC made this final determination, the amendments became effective immediately and any hearing will be held after their issuance on June 22, 1988. As part of the evaluation to approve the license amendments, the Office of Nuclear Reactor Regulation ("NRC") prepared a Safety Evaluation.

The application for license amendments was originally submitted on November 19, 1987. The NRC has stated that it views the license amendments to be augmented by additional information which was developed after the November 19, 1987 date such as the Plan for Restart dated November 25, 1987, the Revised Plan for Restart submitted April 8, 1988 and any subsequent Plan submittals.

13. On July 22, 1988 PECO submitted its Response to Request for Additional Information on Plan for Restart of Peach Bottom Power Station, Revision 1.

14. On August 11, 1988 the NRC Staff proposes to fine PECO \$1,250,000 for its failure to properly manage Peach Bottom. The NRC Staff also proposed to fine 33 of the 36 present and former NRC licensed operators involved in the problems leading up to shutdown. It is surprising to note that the NRC took no action to suspend or revoke the licenses of current PECO operators who were involved.

15. On August 21, 1988 the Commonwealth filed a Petition for Review in the Court of Appeals for the Third Circuit to seek review of the NRC's final determination referred to in Paragraph 12 that the license amendments involved no significant hazards consideration. The Commonwealth requests that the decision granting the license amendment be reversed and that the license amendment be remanded to the NRC for hearing before the NRC issues any license amendment. See San Luis Obispo Mothers for Peace v. U.S. N.R.C., 799 F.2d 1268 (9th Cir. 1986).

## II. STATEMENT OF CONTENTIONS

### 1. THE COMMISSION CANNOT APPROVE PARTS OF PECO'S PLAN WITHOUT EVALUATING THE RESTART PLAN AS A WHOLE.

The NRC stated in its December 23, 1987 Notice at 52 F.R. 48593 that the license application was submitted as part PECO's response to the NRC's March 31, 1987 shutdown order. The NRC issued the order because it found that the "continued operations of the facility is an immediate threat to the public health and safety." The Restart Plan, as amended, and the license amendments are related parts of PECO's response to the NRC's shutdown order. The license amendments address the fourth root cause of the poor performance at Peach Bottom. In the latest Revision to the Restart Plan, the fourth root cause is described as "corporate management failed to recognize the developing severity of the problems a

PBAPS and thus, did not take sufficient corrective action."

Because the license amendments respond to the shutdown order and address the fourth root cause identified in the Revised Restart Plan, issues regarding the shutdown order and the fourth root cause need to be addressed by the NRC to enable the NRC to determine that the license amendments create a circumstance where plant operation under the amendments will comply with the act or the regulations and not present a threat to the public health and safety.

While the scope of the amendments is narrow, the issues which the license amendments address are a critical part of PECO's response to the shutdown order and Revised Plan for Restart. It is clear from this background discussion that the license amendments are not routine. It is equally clear that PECO's operation and management of Peach Bottom under the prior Technical Specifications created a condition which presented an immediate threat to the public health and safety. The Commonwealth does not believe that the NRC can or should approve, in a piecemeal fashion, parts of PECO's Revised Restart Plan which are reflected in the license amendments. The NRC should withhold judgement on any portion of PECO's Revised Restart Plan until it is able to complete its evaluation of the entire Plan. All parts of the Plan need to be evaluated together because there are interrelationships between the parts. The NRC has never stated that the issue of management integrity can be separated from a restart decision. In



the Matter of Metropolitan Edison Company, (Docket No. 50-289 SP), 21 NRC 282, 286, Memorandum and Order dated February 25, 1985, footnote 6.

In issuing a license amendment the NRC is guided by the considerations which govern the issuance of initial licenses, to the extent applicable and appropriate. 50 C.F.R. §50.92. The Commission may issue an operating license upon a finding that there is reasonable assurance that the activities authorized by the operating license can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with regulations. 50 C.F.R. §50.57(a)(3). Such a finding on reasonable assurances is lacking.

2. THE LICENSE AMENDMENTS FOR A NEW CORPORATE STRUCTURE AND A NEW PLANT STAFF ORGANIZATION STRUCTURE DO NOT DEMONSTRATE COMPLIANCE WITH THE REQUIREMENTS THAT THE LICENSEE BE TECHNICALLY QUALIFIED TO ENGAGE IN OPERATING A NUCLEAR POWER PLANT AND THAT THE LICENSEE CAN DO SO WITHOUT ENDANGERING THE HEALTH AND SAFETY OF THE PUBLIC.

In the Commission's Order suspending power operation of the Peach Bottom Atomic Power Station, the Executive Director for Operations found that the licensee, "knew and should have known of the unwillingness or inability of its operations staff to comply with Commission requirements and has been unable to implement corrective actions." Order at 5. Licensee has since submitted amendments for a corporate reorganization. There is insufficient basis for approval of the license amendments which would authorize the reorganized corporate structure. There is also insufficient

basis for approval of the license amendments which authorize a new plant staff organization structures. Without a complete basis for approval of these license amendments the NRC cannot determine whether license amendments would perpetuate the conditions where plant operations will continue to violate the act and the regulations. For example, the NRR, in its Safety Evaluation was unable to state that the license amendments would have the effect of improving management and operation at Peach Bottom. The staff merely "believes that the changes are directed at bringing about improvement that will provide further control of plant operations." The statement of belief is the basis of the determination that the license amendments involved no significant safety hazard. Safety Evaluation at page 7. There has been no NRC examination of the corporate reorganization, and therefore no factual basis to conclude that the reorganized corporation will comply with the act or the regulation. The NRC has indicated in its July 28, 1988 response to the comments on the Revised Plan on Restart that "the NRC's conclusion on the adequacy of the PECO analysis of root causes will be documented in a safety evaluation report which will form part of the basis for a restart decision when the NRC review of the PECO plan is completed." The NRC has not completed its review of the plan, and the NRC has not evaluated the adequacy of the root cause analysis asserted by PECO. Nevertheless, the NRC has approved the license amendments which are allegedly designed to remedy the root cause of the



problems at Peach Bottom. The Commonwealth contends that the NRC cannot approve license amendments which are allegedly designed to remedy a portion of the Restart Plan which has not yet been approved.

In issuing a license amendment the NRC is guided by the considerations which govern the issuance of initial licenses, to the extent applicable and appropriate. 50 C.F.R. §50.92. The Commission may issue an operating license upon a finding that there is reasonable assurance that the activities authorized by the operating license can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with regulations. 50 C.F.R. §50.57(a)(3). Such a finding on reasonable assurances is lacking.

**3. THE LICENSE AMENDMENTS DO NOT PROVIDE THAT THE ISEG GROUP FOR PEACH BOTTOM WILL BE LOCATED ON SITE.**

Figure 6.2.1 (entitled Nuclear Management Organization Chart) which is part of the license amendments indicates that the ISEG group for Peach Bottom will be located offsite. The Commonwealth asserts that ISEG group for Peach Bottom should be located onsite to insure proper functioning of this group. The offsite location of the ISEG group for Peach Bottom will severely impact the effectiveness of it. An effective ISEG group for Peach Bottom is necessary to avoid the long-term failure to address operational and management problems which compelled the NRC to shutdown Peach Bottom. An offsite ISEG group as depicted in the license

amendments will not be able to serve as an effective independent assessment organization. The Commonwealth contends that PECO has provided no basis for maintaining the ISEG group offsite.

4. **THE LICENSE AMENDMENTS DO NOT ADDRESSE THE COMMUNICATIONS PROBLEMS INHERENT IN INCREASING THE ONSITE MANAGEMENT STAFF SIZE.**

Figures 6.2-2 (entitled Organization for Conduct of Plant Operations) is part of the license amendments. This chart indicates that there will be an increase in the size of the plant management staff. The Revised Restart Plan indicates that Plant and Line Management staffs have been increased by 44 positions. The increases in the size of the onsite management staff that are reflected in the license amendments creates a situation which threatens intra-company communications. The Commonwealth contends that the NRC cannot approve the licensing amendments increasing the management staff size without addressing whether the increase will adversely affect communications within the corporation and at the plant, thereby creating the possibility of a new or different kind of accident from any accident previously evaluated.

The Commonwealth does not believe that the size of the management staff was identified previously as a problem at Peach Bottom. However, poor communications at Peach Bottom were been identified as a persistent and pervasive problem. Thus, a change to increase the size of the onsite management staff, which is proposed to be a "corrective" action, may have the opposite result

of adversely affecting already poor onsite communications and creating the possibility of new accidents unless additional steps are taken to avoid this situation. The license amendments and the Revised Restart Plan fail to recognize or address this issue.

Communication problems have been documented by the INPO Report (Jan. 11, 1988) (See especially Attachment A, page 8 of the Report). For example, on March 18-20, 1986, on April 20, 1977, and on April 26, 1987 there were three instances where miscommunication and a lack of discipline caused erroneous placement of fuel rods or control blades. These instances created the possibility of an unforeseen accident.

**5. THE LICENSE AMENDMENTS DO NOT ESTABLISH ADEQUATE REQUIREMENTS FOR THE NUMBER OF OPERATORS.**

In Figure 6.2.2, Sheet 2 of 2 (entitled Organization for Conduct of Plant Operations) of the license amendments, the Technical Specifications establish the requirement for the number of operators per shift. With respect to operators, the Technical Specifications specify that 5 operators are required for operations. In approving the license amendments, the NRC has reaffirmed its determination that the Technical Specifications requirement, with respect to operators, is adequate. The Commonwealth contends that the Technical Specifications, with respect to operators, is inadequate based upon the NRC identified problems which led to the NRC ordered shutdown. It should be noted that PECO was in compliance with its Technical Specification

requirement when shutdown occurred. In its July 28, 1988 response to the Commonwealth's comments, the NRC stated that the Technical Specifications were adequate at the time of the shutdown. Although the Technical Specifications requirement establishes the number of alert operators, increasing the number of available operators per shift would lessen the impact of an absent operator. In addition, the Technical Specifications do not address the increased administrative burden placed on the operators over the years since initial plant startup. Nor do the Technical Specifications address increased operator overtime due to a smaller than necessary overall operator staff.

6. ISEG SHOULD NOT BE A LINE POSITION.

In Figure 6.2-1 (entitled Nuclear Management Organization Chart) the Manager ISEG and LGS ISEG and FBAPS ISEG are described as a line function under the General Manager Nuclear Quality Assurance. The Commonwealth contends that the ISEG function cannot be truly independent unless it is not a line function. There are not adequate paths provided by the organizational structure for the identification of ISEG conclusions and concerns to PECO Corporate management. Furthermore, the NQA organization is typically one whose responsibilities include checking manuals and procedures, performing vendor audits and surveillance, training, procurement controls and oversight of certain other quality activities. Therefore, expanding the NQA organization's

role beyond those of classical quality assurance activities be included in the investigative responsibilities of the ISEG is not consistent with traditional guidance given (by the NRC) either for NQA or ISEG. The license amendment which places the ISEG function under the General Manager Nuclear Quality Assurance inhibits the effectiveness of the ISEG because it will not be truly independent. The ISEG function should not be a line function.

7. THE LICENSE AMENDMENTS DO NOT MENTION THE FUNCTION, RESPONSIBILITY OR PERSONAL QUALIFICATIONS OF THE ISEG.

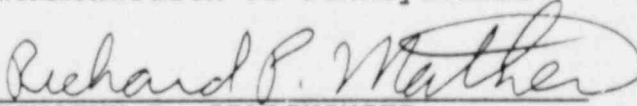
The license amendments place the ISEG function under the General Manager Nuclear Quality Assurance. In addition to the contentions previously raised, the license amendments do not mention, describe or otherwise detail the function, responsibility or personal qualifications of the ISEG. This failure to give direction and meaning to the ISEG function in the Technical Specifications will preclude meaningful ISEG evaluations. For example, the Technical Specifications establish a Plant Operations Review Committee which is to review, inter alia, all matters related to nuclear safety. The Technical Specifications concerning PORC do not require that PORC interact with ISEG. In addition, the ISEG function needs to be given a similar degree of authority and definition by mentioning the function, responsibility, and personal qualifications of the ISEG in the

Technical Specifications as is provided for PORC. Without such direction ISEG and PORC will not be able to coordinate their activities and responsibilities. Such coordination is necessary

WHEREFORE, the Commonwealth of Pennsylvania submits its Supplement to Petition and Statement of Contentions and requests that the Atomic Safety and Licensing Board grant the Petition to Intervene and Request for Hearing on the Contentions set forth herein. The Commonwealth has demonstrated that it is affected by the license amendments and the proceeding and is entitled to the relief requested.

Respectfully submitted,

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Commonwealth of Pennsylvania

  
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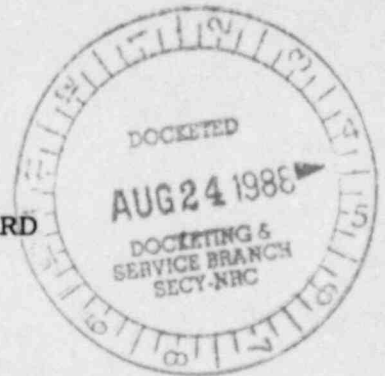
Date: August 24, 1988



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NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges  
John H. Frye, III, Chairman  
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In the Matter of : Docket Nos. 50-277-0LA  
:   
Philadelphia Electric Company :   
: ASLBP No. 88-569-06-0LA  
(Peach Bottom Atomic Power :   
Station, Units 2 and 3) :

Certificate of Service

I hereby certify that copies of the Commonwealth's "Supplement to Petition and Statement of Contentions" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, this 24th day of August, 1988:

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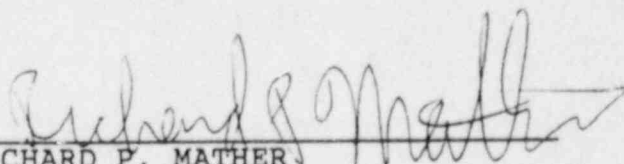
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