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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges
Sheldon J. Wolfe, Chairman
Dr. Richard F. Cole
Dr. George A. Ferguson

In the Matter of PHILADELPHIA ELECTRIC COMPANY (Limerick Generating Station, Unit 1)	Docket No. 50-352-OLA (TS Iodine) (ASLBP No. 87-550-03-LA) May 5, 1988

MEMORANDUM AND ORDER
(Granting Licensee's Motion For Summary Disposition)

MEMORANDUM

I. Background

On September 27, 1985, the Nuclear Regulatory Commission ("Commission" or "NRC") Staff issued Generic Letter 85-19 regarding the requirements for reporting iodine spikes[1] during normal plant operation.

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1 An iodine spike is an increase and subsequent decrease in iodine dose equivalent in the primary reactor coolant following a change in reactor power or pressure. In the proposed amendment, Licensee defines iodine spike as an increase in iodine dose equivalent to a level greater than 0.2 microcurie per gram. (Aff. of John S. Wiley submitted in response to Board Order of March 17, 1988 requesting clarifying information.)

(Footnote Continued)

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That letter requested licensees to file a request for amendment to their operating licenses to incorporate the NRC model Technical Specifications relating to iodine spikes. On August 19, 1986, in response to that request, Licensee filed an application for an amendment with the NRC requesting changes to the Technical Specifications contained in Appendix A of Facility Operating License NPF-39 for Limerick Generating Station, Unit 1. The NRC Staff published in the Federal Register a notice of the proposed issuance of the requested amendment and opportunity for a hearing and made a proposed determination that the requested amendment involved a no significant hazards consideration. 52 Fed. Reg. 7675 (March 12, 1987).

Ultimately, after a special prehearing conference had been held on September 29, 1987, in a Memorandum and Order dated October 9, 1987

(Footnote Continued)

The definition of iodine spiking as it appears in NRC's annual reports on nuclear fuel performance is as follows:

> Iodine spiking (i.e., a temporary increase in coolant iodine concentration) is frequently observed at reactors where leaking fuel rods are present. These temporary increases in iodine concentrations have been observed to occur following shutdowns, start-ups, rapid power changes, and coolant depressurizations. An iodine spike is characterized by a rapid increase in the iodine concentration in the coolant by as much as three orders of magnitude, followed by a return to prespike concentration. The latter characteristic distinguishes the spiking phenomenon from a step-wise permanent (i.e., until the failed fuel is removed from the core) increase in coolant activity level caused by the sudden failure of one or more fuel rods. (NUREG/CR-3602, Section 4.2.3. (1986).)

(unpublished), the Board admitted as parties Mr. Robert Anthony, pro se, and Air and Water Pollution Control (AWPP), represented by Mr. Frank Romano. The Board found that the submissions of and the oral presentations by Mr. Anthony and AWPP were unfocused. For that reason among others, we concluded that, except for two somewhat similar contentions asserted by the intervening parties, none of the proposed contentions were admissible. These somewhat similar contentions were consolidated and, as reworded, the following contention was admitted as an issue in controversy:

> Consolidated Contention. The proposed amendment to the Licensee's technical specifications would downgrade reporting requirements for iodine spikes which would have an adverse effect on public health and safety.
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> Bases. The change in the reporting requirements would eliminate or decrease Special Reports and Licensee Event Reports on iodine spiking, and thus would decrease the regulatory control exercised by the NRC, would permit a situation where Licensee could release radioactive iodine in excess of the one-time release limits, and, in not requiring the reporting of such releases, except on an annual basis, would endanger the health and safety of the uninformed public.

On November 23, 1987, the Licensee filed a motion for summary disposition. After extensions of time had been granted, on February 9, 1988, the two intervenors submitted responses opposing the motion for

summary disposition. On February 18, 1988, the NRC Staff filed its response in support of the Licensee's motion for summary disposition. In an Order of March 17, 1988 (unpublished), the Licensee and/or the Staff were requested to respond in affidavit form to certain questions presented by the Board. On March 31 and April 4, the Licensee and the Staff respectively submitted responses. On April 25, Mr. Anthony submitted a response.

II. Discussion

A. Regulations and Case Law

10 C.F.R. §2.749(a) provides that once a motion for summary disposition has been filed, the opposing party, with or without affidavits, may file an answer. Paragraph (a) further provides in pertinent part that:

> ...There shall be annexed to any answer opposing the motion a separate, short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be heard. All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted unless controverted by the statement required to be served by the opposing party.
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> * * *

10 C.F.R. §2.749(b) provides in pertinent part that:

> Affidavits shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein. ...When a motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of his answer; his answer by affidavits or as otherwise provided in this section must set forth specific facts showing that there is a genuine issue of fact. If no such

answer is filed, the decision sought, if appropriate, shall be rendered.

10 C.F.R. §2.749(d) provides in pertinent part that:

> The presiding officer shall render the decision sought if the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law....

* * *

The summary disposition procedure should be utilized on issues where there is no genuine issue of material fact to be heard so that evidentiary hearing time is not unnecessarily devoted to such issues. Statement of Policy On Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 457 (1981); Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 1), ALAB-696, 16 NRC 1245, 1263 (1982); Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 550 (1980). It is the movant, not the opposing party, which has the burden of showing the absence of a genuine issue as to any material fact. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 753 (1977). However, if the motion for summary disposition is properly supported, the opposition may not rest upon "mere allegations or denials;" rather, the answer must set forth specific facts showing that there is a genuine issue of fact. Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-584, 11 NRC 451, 453 (1980).

B. The Licensee's Motion for Summary Disposition and The Staff's Support Thereof

Licensee moves that the consolidated contention be dismissed and that, since only a single contention was admitted, the proceeding also be dismissed. In support of its Motion for Summary Disposition, the Licensee appended the Joint affidavit of John Doering and John S. Wiley. Mr. Doering, an employee of Philadelphia Electric Company, is responsible for management and oversight of plant operations, engineering and chemistry support at the Limerick Generating Station. Dr. John S. Wiley, also an employee of Licensee, is Director of the Nuclear Plant Chemistry Section and is responsible for the technical direction of chemistry programs at Licensee's nuclear facilities. The Licensing Board is satisfied that Mr. Doering and Dr. Wiley are qualified to attest to the matters in their joint affidavit.

The following material facts as to which Licensee asserts there is no genuine issue to be heard are based on the Doering/Wiley affidavit (Licensee's Jt. Aff.), Licensee's Statement Of Material Facts As To Which There Is No Genuine Issue To Be Heard (Statement), and the Wiley affidavit (Wiley Aff.) submitted on March 31, 1988 in response to the Board's March 17, 1988 Order requesting clarifying information .

1. The amendment proposes no modification to the Limerick Generating Station radioactive release limits. (Licensee's Jt. Aff., ¶¶ 8, 11 and Attachments 3, 4, and 5; Statement, ¶ 1.)

2. The amendment proposes no modification to the Station reporting requirements related to plant radioactive effluents. (Licensee's Jt. Aff., ¶¶ 8, 10 and 11; Statement, ¶ 2.)

3. High levels of iodine in the reactor coolant encountered by reactors operating in the early 1970's resulted from moisture trapped inside the fuel rod, pellet-clad interactions, and crud-induced corrosion. (Licensee's Jt. Aff., ¶ 12; Statement, ¶ 3.)

4. Improvements in the design of the nuclear fuel, improved fuel management practices, and the replacement of the older fuel assemblies gradually eliminated the failed fuel and the resulting higher levels of iodine in operating reactors. (Licensee's Jt. Aff., ¶ 12; Statement, ¶ 4.)

5. Since startup, for the first operating cycle, Limerick has averaged only 8×10^{-5} microcurie per gram of iodine in the coolant. (Licensee's Jt. Aff., ¶ 13; Statement, ¶ 5).

6. The average measured value of iodine in the coolant at Limerick is 0.04% of the threshold value of 0.2 microcurie per gram contained in the Technical Specifications. (Licensee's Jt. Aff., ¶ 13; Statement, ¶ 6.)

7. The peak value for iodine concentration in the primary reactor coolant for the first cycle of operation was 1.2×10^{-4} microcurie per gram. As of March 29, 1988, the peak value for the second

(present) fuel cycle is 2.2×10^{-4} microcurie per gram, which occurred on March 25, 1988.[2] (Wiley Aff., p. 4)

8. The boiling water reactor 1986 median value for iodine coolant activity was 1.5×10^{-3} microcurie per gram. (Licensee's Jt. Aff., ¶ 13; Statement, ¶ 8.)

9. Sampling for iodine cooling activity is conducted at the Station in accordance with Technical Specification 4.4.5. (Licensee's Jt. Aff., ¶ 14; Statement, ¶ 9.)

10. During operation at Limerick, the frequency of iodine sampling is daily. (Licensee's Jt Aff., ¶ 14; Statement, ¶ 10.)

11. The Station has established an administrative limit of 0.002 microcurie per gram which is 1% of the Technical Specification limit. (Licensee's Jt. Aff., ¶ 14; Statement, ¶ 11.)

12. If the administrative limit for iodine levels in the reactor coolant were exceeded, this information would be discussed at the

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2 In a letter of April 8, 1988, Licensee's counsel notified the Board and the parties that an iodine concentration value of 1.26×10^{-2} microcurie per gram occurred on April 1, 1988. He noted that this value was less by a factor of 16 than the 0.2 microcurie per gram value contained in Technical Specification 3/4.4.5 (a copy of which was attached to the Wiley affidavit) and that, as of April 8, the iodine concentration was 3.9×10^{-3} microcurie per gram. As Licensee's counsel points out, the iodine concentrations measured on April 1 and April 8, 1988 were well below the triggering concentrations for plant shutdown. The Board notes that these two concentrations exceed the Limerick Station administrative limit of 2×10^{-3} microcurie per gram, and thus required discussion at the daily chemistry meeting held at the Station, notification of management, and consideration of courses of action. (Licensee's Jt. Aff. ¶ 14; Statement ¶ 12.)

daily chemistry meeting held at the Station, management notified, and available courses of action considered. (Licensee's Jt. Aff. ¶ 14; Statement, ¶ 12.)

13. The Director, Nuclear Plant Chemistry, reviews reactor coolant iodine monitoring data monthly for trends. (Licensee's Jt. Aff., ¶ 14; Statement, ¶ 13.)

14. The NRC has assigned Resident Inspectors to monitor operation of Limerick Unit 1. (Licensee's Jt. Aff., ¶ 15; Statement, ¶ 14.)

15. Periodic inspection reports by the Resident Inspectors and by Regional Specialists which include consideration of reactor chemistry are forwarded to Region I and headquarters and are made public. (Licensee's Jt. Aff., ¶ 15; Statement, ¶ 15.)

16. 10 C.F.R. §50.73(a)(2)(i) requires that a Licensee Event Report ("LER") be filed should the iodine coolant activity exceed four microcuries per gram, or 0.2 microcurie per gram for 48 hours. (Licensee's Jt. Aff., ¶ 16; Statement, ¶ 16.)

17. 10 C.F.R. §50.73(b) requires that any LER submitted must include the details surrounding the event, its cause and corrective actions and provide a reference to previous similar events. (Licensee's Jt. Aff., ¶ 16; Statement, ¶ 17.)

18. LER's related to Limerick Generating Station are placed in the Public Document Room in Washington, D. C. and the Local Public Document Room in Pottstown, Pennsylvania. (Licensee's Jt. Aff., ¶ 16; Statement, ¶ 18.)

19. 10 C.F.R. §50.72(b)(1)(i) requires a one hour notification of the NRC Operations Center via dedicated telephone should the iodine coolant activity exceed four microcuries per gram or 0.2 microcurie per gram for 48 hours. (Licensee's Jt. Aff., ¶ 17; Statement, ¶ 19.)

20. The Station Emergency Plan requires the declaration of an Unusual Event if the level of iodine in the reactor coolant exceeds 0.2 microcurie per gram. (Licensee's Jt. Aff., ¶ 18; Statement, ¶ 20.)

21. The declaration of an Unusual Event would require State and local officials to be notified within 15 minutes and the NRC Operations Center to be notified immediately thereafter. (Licensee's Jt. Aff., ¶¶ 18, 22; Statement, ¶ 21.)

22. The amendment request does not seek to eliminate any Licensee Event Reports required by 10 C.F.R. §50.73. (Licensee's Jt. Aff., ¶ 20; Statement, ¶ 22.)

23. The amendment does not seek any change to Technical Specifications limits related to offsite release limits or the requirements for monitoring, sampling, or reporting of radioactive effluents. (Licensee's Jt. Aff., ¶ 21; Statement, ¶ 23.)

24. Any radiological release above regulatory or Technical Specifications limits would require the implementation of the Station Emergency Plan. (Licensee's Jt. Aff., ¶ 16; Statement, ¶ 24.)

25. The dose calculations for the design basis accident which is controlled by the iodine level in the coolant, the main steamline break accident, are unaffected by the proposed change to the Technical Specifications. (Licensee's Jt. Aff., ¶ 23; Statement, ¶ 25.)

26. As of March 29, 1988 there have not been any iodine spiking events at the Limerick Plant. (Wiley Aff., p. 3.)

The NRC Staff's response supporting the Licensee's motion relies upon the affidavit of Richard J. Clark, an employee of the Office of Nuclear Reactor Regulation (NRR) of the Nuclear Regulatory Commission. Staff also responded to the Board Order of March 17 with an affidavit by Mr. Clark (Clark Supp.). Mr. Clark, a graduate engineer with post-graduate training in chemical and nuclear engineering has over thirty years experience in the nuclear power field and currently serves as NRC Licensing Project Manager for the Limerick Generating Station. The Board finds Mr. Clark qualified to comment on the Licensee's motion and the consolidated contention in issue.

The NRC Staff maintains that the consolidated contention is factually incorrect and consequently its allegations, bases, and conclusions are erroneous. Therefore, it supports the Licensee's Motion for Summary Disposition as filed and, because the consolidated contention is the only admitted issue, supports dismissal of the proceeding as well. The following briefly summarizes the Staff's presentation of material facts as to which there is no genuine issue to be heard which augments the Licensee's motion for summary disposition:

1. The bases for model Technical Specifications in Generic Letter 85-19 was the significant improvement in the design of BWR fuel over the past decade that greatly reduced the potential for stress corrosion cracking of the fuel cladding and thus, the release of iodine in the coolant. (Clark Aff., ¶ 6.)

2. Improved fuel management by Licensees such as restrictions on power changes and preconditioning has also significantly reduced the stresses that could cause a crack in the cladding with the resultant release of iodine into the coolant. (Id.)

3. Staff Generic Letter 85-19 stated that because the quality of nuclear fuel has greatly improved over the past decade, with the result that normal coolant iodine activity is well below the spiking limit, some of the current TS on reporting requirements for iodine activity limits in the reactor coolant could be eliminated. (Id. ¶¶ 6, 8; Attachment 3 to Licensee's Motion.)

4. The proposed amendment would not change the reporting requirements on iodine spiking in any manner that would reduce the timeliness of information available to the NRC and the public. (Clark Aff., ¶ 8.)

5. The only reporting requirements that would be changed by the proposed amendment are the requirement to submit special 30 and 90-day reports if the coolant iodine activity exceeds the TS limit of 0.2 microcurie per gram or if it exceeds the limit for 500 hours in any consecutive six month period. In generic letter 85-19, the NRC Staff recommended that these special reports on iodine activity

be deleted from TSs since they serve no useful purpose and were duplicative of other reports -- specifically, the reporting requirements of 10 C.F.R. §§50.72 and 50.73. With the current reporting requirements of 10 C.F.R. §50.72 and 10 C.F.R. §50.73, the NRC determined that it would serve no useful purpose either to the Licensee or the NRC to also require a separate, special report. (Id.)

6. The proposed amendment would not change any offsite release limits or any reports related to offsite releases. Reports related to offsite releases and the release limits are governed by other TS requirements and NRC regulations which are totally unaffected by the requested changes. (Id., ¶ 9.)

7. There have been no reportable incidents of iodine spiking in any BWR in 1986 or 1987, and there have been no reportable events at the Limerick plant. (Clark Supp. Aff, pp. 4, 5.)

The NRC Staff's filing in support of Licensee's motion concludes that the proposed amendment would not downgrade reporting requirements for iodine spikes, nor would it in any way affect the regulatory control exercised by NRC, and also concludes that the bases for the consolidated contention rest on erroneous assumptions that are fundamentally flawed and provide no support for the contention. (Clark Aff., ¶¶ 8, 9, 13.)

C. The Intervenors' Opposing Responses

1. AWPP

Contrary to the requirements of 10 C.F.R. §2.749 for responses to motions for summary disposition, AWPP does not dispute or even address

the specific material facts presented by Licensee. Instead, AWPP chose to discuss other matters such as discovery disputes, newspaper articles, boric acid corrosion (PWR related), other power plants, welding infractions, etc., all of which are not germane to the instant motion.[3] AWPP would have been better served had it addressed the issue before it.

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3 AWPP refers to certain Licensee Event Reports, NRC Information Notices, and Inspection Reports. The Board has reviewed these documents and finds that none contradict any of the information contained in the Licensee or NRC Staff affidavits supporting the motion for summary disposition. NRC Information Notice 86-108 (AWPP Opposing Response, p. 4) pertains to degradation of the reactor coolant system pressure boundary resulting from boric acid corrosion. This notice was addressed to pressurized water reactor licensees and simply does not apply to Limerick, a boiling water reactor station. Similarly, NRC Information Notice 88-02 (Id.) pertained to fatigue cracks in steam generator tubes and was directed to Westinghouse PWR owners. Limerick has no steam generator tubes. NRC Inspection Report 50-352/86-02 (Id., p. 5) clearly states that no violations were identified. The minor and unexpected release of gaseous effluent were compared with the appropriate criteria and... "The technical specification limits for the release were not exceeded." NRC Inspection Report 50-352 (86-02, p. 4). The release limits for gaseous effluents will be unaffected by the proposed amendment. (Licensee's Jt. Aff., ¶ 21.) In its response at p. 5, AWPP refers to LER 87-017, stating that it indicates Licensee does not have monitors under control thereby making iodine control more important. A reading of LER 87-017 indicates that the system operated in the prescribed manner upon receiving a momentary high radiation signal. There were no adverse consequences as a result of the event. No radiation was released. While no definite cause of the spurious signal was identified, it was suspected that maintenance work on a nearby panel generated a momentary electrical signal spike which simulated a high radiation signal to the nuclear steam supply shutoff system and resulted in the system isolation. (LER 87-017, pp. 2, 3.) In any event, Licensee reports of this type which describe the functions of safety systems are not and will not be affected by the Technical Specification changes proposed. (Licensee's Jt. Aff., ¶ 8; Clark Aff., ¶ 8.)

However, AWPP does allege that Generic Letter 85-19 lacked a statistically researched basis. According to the NRC Staff, its basis is contained in the annual reports designated as NUREG/CR-3950, which discuss all aspects of fuel performance including iodine spiking. Reports similar to these have been published since 1979. A review of all volumes of NUREG/CR-3950 (four volumes, one volume for each of the years 1983, 1984, 1985 and 1986, respectively) establishes that there has been only one incident of iodine spiking in a BWR in the four year period covered by NUREG/CR-3950. That incident occurred at Big Rock Point. (Clark Aff., ¶ 12.)

2. Mr. Anthony

In the "rebuttal" section of his two page opposing response, Mr. Anthony has grouped into six categories the material facts in "Licensee's Statement Of Material Facts As To Which There Is No Genuine Issue To Be Heard" and proceeded to write a one sentence comment on each group. We discuss each group below:

Group 1. With respect to the Licensee's Statement of Material Facts 1 and 2, supra, Mr. Anthony asserts that "Limerick release limits do not protect the public properly because they are based on boundaries beyond the railroad, so limits and effluent reports are skewed." (See also ¶ 1 of his April 25 response) Clearly, Mr. Anthony's assertion relates to releases of radioactive effluents from the Limerick Station which are not relevant to the subject matter of the consolidated contention -- viz. whether the proposed amendment to the technical specifications would downgrade reporting requirements for iodine spikes

which would have an adverse effect on public health and safety. Thus, Mr. Anthony has not set forth facts showing that there is a genuine issue of fact. Moreover, such an argument is precluded by the doctrine of res adjudicata. In ALAB-828, 23 NRC 13 (1986), the Appeal Board affirmed the Licensing Board's refusal to reopen the record to hear Mr. Anthony's complaint about the supposedly improper use of the plant site boundaries by PECo in determining the public's exposure to gaseous and liquid effluent releases during routine plant operation. Mr. Anthony contended then, as now, that the dosages should be calculated at the closest, publicly accessible approaches to the plant (a railroad right-of-way and the Schuylkill River), rather than at the more distant site boundaries. The Appeal Board found no basis for overturning the Licensing Board's conclusion that nothing in Mr. Anthony's presentation raised a genuinely significant safety issue.

Group 2. With respect to the Licensee's Statement of Material Facts 3 and 4, Mr. Anthony asserts that "We have seen no evidence from NRC to back up these assertions." However, the Staff's Mr. Clark attested in paragraph 12 of his affidavit that the NRC publishes fuel performance annual reports (NUREG/ER 3950) containing the statistical basis of generic letter 85-19 which states, inter alia, that "[T]he quality of nuclear fuel has been greatly improved over the past decade with the result that normal coolant iodine activity (i.e., in the absence of iodine spiking) is well below the [acceptable] limit." Since [illegible] tests that these reports are available for copying at the [illegible] document room and are also available for sale from the NRC,

Mr. Anthony's mere assertion that he has not seen such evidence does not serve to show there is a genuine issue of material fact to be heard.

Group 3. With respect to the Licensee's Statement of Material Facts 5 through 8, Mr. Anthony asserts that "We have seen no figures from PECo or NRC to support these figures, but in any event they do not respond to the issue, which is iodine spikes, not averages." Mr. Anthony's mere assertion in effect that he has not seen the documentation does not not serve to show there is an outstanding, unresolved genuine issue of material fact since we are unaware that he made any effort to seek production of these operating license documents from the Licensee and/or the Staff and was informed by them that there was no such documentation. Further, while many of the values addressed in the Licensee's joint affidavit at paragraph 13 are averages, the Licensee's affiants assert that there was a maximum value of only 1.2×10^{-4} microcurie per gram during the first cycle of operation and a peak value for the second (present) fuel cycle of 2.2×10^{-4} microcurie per gram as of March 29, 1988. The Staff's affiant, Mr. Clark, at paragraph 12 of his affidavit avers that since 1982 there has been only one incident of iodine spiking in a BWR.

Group 4. With respect to the Licensee's Statement of Material Facts 10 through 15, Mr. Anthony asserts that "We do not necessarily dispute these items but they are also not relevant to the hazards to the public from iodine spikes which might cause surges of releases of radioactivity to the public without staff action or immediate registration or alarm due to inadequate monitoring or limits based on

erroneous site boundaries." Here the Intervenor first alleges that iodine spikes might be undetected due to inadequate monitoring, but this allegation is not relevant to the issue presented in the consolidated contention -- viz. in short, whether the proposed amendment would downgrade reporting requirements.[4] Second, he repeats the complaint advanced in Group 1, supra, about dosages being improperly determined at the site boundary, which cannot be heard because of res adjudicata.

Group 5. With respect to the Licensee's Statement of Material Facts 16 through 21, Mr. Anthony asserts that "We do not question that the reporting procedures exist but they are based on criteria which do not provide an immediate response, presumably plant shutdown, to levels of radioactive iodine which could cause severe damage to children walking along the railroad right of way or workers there." Once again, as he attempted to do in Groups 1 and 4, supra, Mr. Anthony resurrects his allegation about dosages being improperly calculated at the site boundaries rather than at the railroad right-of-way. Such an allegation is barred by res adjudicata.

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4 Mr. Anthony attached two documents to his response, stating that one "casts doubt on PECo's ability to properly measure or calculate radiation doses from Limerick routine releases of radioactive effluents," and that "the other document questions the ability of nuclear power plants, including Limerick, to monitor or react to radioactive releases either inside or outside the plant." Even assuming these documents reflect that which he alleges they reflect, these documents like his allegations are not relevant to the issue raised in the consolidated contention. (See also ¶¶ 3, 4 and 5 of his response of April 25, where, in questioning the

(Footnote Continued)

Group 6. With respect to the Licensee's Statement of Material Facts 22 through 25, Mr. Anthony asserts that "It may be true that the design basis for iodine levels in the coolant would be effective in shutting the plant in case of a steam line break and implementation of the emergency plan, but we assert that monitoring of releases should be continuous and should not only be tied to stack release levels but should alarm the station staff via continuous monitor registration of on-site and off-site instruments which could alert the operators to dangerous levels of radioactivity from an accident like Chernobyl or TMI, or a nuclear bomb accident, to which Limerick could add a lethal leverage." Once again, as he attempted to do with respect to Group 4, Mr. Anthony resurrects the allegation that the monitoring of releases is inadequate or ineffective. The allegation is simply not relevant to the issue raised in the consolidated contention.

At page 3 of his affidavit (Wiley aff.), Mr. Wiley deposed that, pursuant to the present Technical Specifications which would not be changed by the proposed amendment, the plant would be required to shutdown if the primary coolant iodine activity exceeds four microcuries per gram or if the iodine activity exceeds 0.2 microcuries per gram for 48 hours. At paragraph six of his April 25 response, Mr. Anthony is concerned that, while the Technical Specifications require a shutdown

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(Footnote Continued)
licensee's ability to operate the plant safely, Mr. Anthony raises an issue irrelevant to the issue in the consolidation contention.)

if the iodine activity exceeds four microcuries per gram, they do not specify how soon thereafter a shutdown is mandated. However, his concern is misplaced because §3.4.5 of both the current and proposed Limerick plant Technical Specifications require the plant to be in "at least hot shutdown with the main steam isolation valves closed within 12 hours." (See pp. 3, 4 of the Clark Supp. Aff., and Attachment B thereto.) Mr. Anthony's other comments in paragraph six of his response express his dissatisfaction with the continued operation of the plant for up to 48 hours prior to shutdown initiation when the iodine concentration in the coolant is in the range of 0.2 to four microcuries per gram. However, the fact of the matter is that this requirement was in the original Technical Specifications, it was not contested in the consolidated contention, and remains unchanged in the proposed amendment.

III. Conclusion

We conclude that the Licensee, as supported by the Staff, has sustained its burden of showing that there is no genuine issue as to any material fact, that the Intervenors have failed to show that there is a genuine issue of material fact which requires a hearing, and that the Licensee is entitled to a decision as a matter of law. The only reporting requirements eliminated by the proposed amendment are the requirements for 30-day and 90-day Special Reports which are already duplicative. No Licensing Event Reports are eliminated. The elimination of the Special Reports would not decrease the regulatory control exercised by the NRC because whatever information that would be

sent to NRC via the Special Reports would be contained in one or more other reports submitted to NRC, i.e., the iodine concentrations that would trigger the 30-day and 90-day Special Report requirement would also require plant shutdown and the preparation of a Licensing Event Report. The proposed amendment would not change any release limits or the reporting requirements for releases. The proposed amendment does not involve current limits for radioactive gaseous releases and the allegation that the amendment would permit excessive one-time releases is without merit.

ORDER

1. The Licensee's motion for summary disposition, as supported by the Staff, is granted. Accordingly, the Joint Contention is dismissed, the Intervenors are dismissed as parties, and this proceeding is terminated.

2. The Director of the Office of Nuclear Reactor Regulation is authorized to issue the requested amendment.

3. Our action is final for appellate purposes. Accordingly, pursuant to 10 C.F.R. §2.762, any party may take an appeal from this Memorandum and Order by filing a Notice of Appeal within ten (10) days after service of this Memorandum and Order. A brief in support of such appeal shall be filed within thirty (30) days after the filing of the Notice of Appeal (forty (40) days if the appellant is the Staff). Within thirty (30) days after the period has expired for the filing and service of the briefs of all appellants (forty (40) days in the case of

the Staff), any party who is not an appellant may file a brief in support of, or in opposition to, any such appeal(s). A responding party shall file a single responsive brief, regardless of the number of appellants' briefs filed.

THE ATOMIC SAFETY AND LICENSING BOARD

Sheldon J. Wolfe, Chairman
ADMINISTRATIVE JUDGE

Dr. George A. Ferguson
ADMINISTRATIVE JUDGE

Dr. Richard F. Cole
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 5th day of May, 1988.