

528

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION



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

Docket Nos. 50-352
50-353

NRC STAFF ANSWER IN OPPOSITION
TO LICENSEE'S PETITION FOR REVIEW OF ALAB-836

Joseph Rutberg
Assistant Chief Hearing Counsel

Benjamin H. Vogler
Counsel for NRC Staff

June 11, 1986

8606130179 860611
PDR ADOCK 05000352
G PDR

DS07

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION



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

NRC STAFF ANSWER IN OPPOSITION
TO LICENSEE'S PETITION FOR REVIEW OF ALAB-836

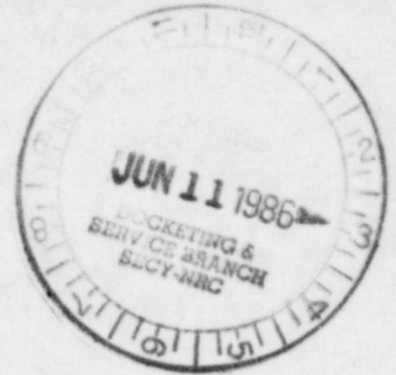
Joseph Rutberg
Assistant Chief Hearing Counsel

Benjamin H. Vogler
Counsel for NRC Staff

June 11, 1986

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION



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

NRC STAFF ANSWER IN OPPOSITION TO
LICENSEE'S PETITION FOR REVIEW OF ALAB-836

I. INTRODUCTION

On May 27, 1986, Philadelphia Electric Company (Licensee) filed "Licensee's Petition for Review of ALAB-836." ^{1/} In ALAB-836, the Appeal Board decided all appeals from the Atomic Safety and Licensing Board's Third Partial Initial Decision ^{2/} in favor of the Licensee except for an issue concerning the availability of an adequate number of bus drivers to evacuate students in two school districts in the event of an accident at the Limerick facility. ^{3/} It is with regard to the school bus driver availability issue that the Licensee seeks Commission review. For the

^{1/} Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), ALAB-836, 23 NRC ____ (May 7, 1986).

^{2/} Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP-85-14, 21 NRC 1219 (1985).

^{3/} In addition, the Appeal Board imposed a license condition requiring the Director of Nuclear Reactor Regulation to verify the establishment of additional traffic control measures in the area of Route 100 and the Downingtown interchange of the Pennsylvania Turnpike. The Licensee does not seek review of this matter.

reasons set forth below, the NRC staff opposes the Licensee's petition and urges that it be denied.

II. BACKGROUND

In ALAB-836, the Appeal Board addressed all litigated issues involving offsite emergency planning except for the matter involving the Graterford inmates. Limerick Ecology Action (LEA) litigated a number of contentions alleging various deficiencies in the offsite emergency plans. Two of LEA's contentions, LEA 11 and LEA 15, concern the "one lift" requirement of the Commonwealth of Pennsylvania. ALAB-836, slip op. at 57. In Contention 11 LEA contended that there was insufficient information available to provide reasonable assurance that there would be enough buses to evacuate the Chester and Montgomery County schools both public and private, in "one lift." In Contention 15, LEA alleged that provisions being made to provide school bus drivers are inadequate.

The Appeal Board, in ALAB-836, sustained the Licensing Board's finding of adequacy regarding bus availability, but held that the Licensing Board's finding of adequacy regarding the availability of bus drivers in two school districts would not withstand scrutiny. ALAB-836, slip op. at 62. The Appeal Board determined that it was error for the Licensing Board to rely on the "historic record" of volunteer response to emergency situations when there was some evidence to the contrary with respect to the two school districts. ALAB-836, slip op. at 62-63, 69. In addition, the Appeal Board held that the Licensing Board's finding of "reasonable assurance" regarding bus drivers in the two school districts was not based on record evidence but on an extrapolation of the evidence adduced

on other contentions concerning bus providers and teachers. ALAB-836, slip op. at 64. Because the Licensing Board did not articulate a basis for its assumption that bus drivers would respond in the same manner as bus providers, the Appeal Board held that the Licensing Board's finding of assurance of adequacy based upon bus provider response could not be allowed to stand. ALAB-836, slip op. at 64-65. Accordingly, the Appeal Board held that once evidence of bus driver surveys raised doubt that there was reasonable assurance that adequate protective measures could and would be taken in an emergency at these two school districts, the Licensee had the burden of producing affirmative evidence of an adequate number of drivers from some source. ALAB-836, slip op. at 67-68. The Appeal Board thus concluded that the Licensing Board's finding of reasonable assurance of a sufficient number of bus drivers willing to respond during an emergency at Limerick was not supported by the record insofar as the Spring-Ford and Owen J. Roberts School Districts were concerned. ALAB-836 at 72. The Appeal Board reversed the holding of the Licensing Board in this regard and remanded the case to the Licensing Board, but determined that because the planning deficiency is relatively limited and because the parties and the Licensing Board can address these issues promptly, plant operation may continue pending the outcome of the remand. ALAB-836, slip op. at 73.

III. DISCUSSION

Although the Commission has the discretion to review any decision of its subordinate boards, a petition for Commission review "will not ordinarily be granted" unless important environmental, safety, procedural,

common defense, antitrust, or public policy issues are involved. 10 C.F.R. 2.786(b)(4).

The Licensee asserts that the Appeal Board's decision regarding volunteer bus drivers for two school districts is erroneous and raises important questions of law and Commission policy. Petition at 1, 3 and 10. The thrust of Licensee's argument is that the Appeal Board, in remanding the issue of the availability of bus drivers for the Owen J. Roberts School District in Chester County and the Spring-Ford School District in Montgomery County, is overturning a principle established in NUREG-0654 that arrangements for offsite volunteer support personnel are satisfactory if agreement has been reached with the support organization. Petition at 2. Further, the Licensee suggests that the issue presented by this request for review involves a recurring question of whether volunteer surveys should be considered in licensing hearings. Petition at 3. For the reasons set forth below, the Staff does not believe that there is merit to these arguments or that the ruling of the Appeal Board presents an important question of law, fact or policy requiring Commission review.

The Licensee's suggestion that the Appeal Board has departed from the standard practice of accepting agreements from support organizations as providing sufficient basis to conclude that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency (Petition at 4), is incorrect. The decision does not depart from any precedent establishing the necessary prerequisites to making the "reasonable assurance" finding in 10 C.F.R. 50.47(a). In fact, as the petition acknowledges, the Appeal Board found that the record supported the findings of reasonable assurance of adequacy made

by the Licensing Board for thirteen school districts out of the fifteen at issue. ALAB-836, slip op. at 72. The Appeal Board found that with respect to the plans for all the school districts involved in the planning for an emergency at Limerick, except the two remanded for further proceedings, the arrangements that had been made were adequate to satisfy "the reasonable assurance" requirement of 10 C.F.R. 50.47(a). Id. Although there was testimony that surveys had been conducted at other school districts, the Appeal Board concluded that these surveys failed to raise substantial questions as to the availability of bus drivers during an emergency and found that the record reflected that there would be an adequate number of drivers available in these districts. ALAB-836 slip op. at 69 fn. 72.

Contrary to the Licensee's allegations, the decision to require additional assurances of bus driver availability in an emergency situation where the record that has been developed casts doubt on the availability of an adequate number of bus drivers to assist in an emergency is not new in NRC jurisprudence. ^{4/} In both the Shoreham and Zimmer proceedings the Appeal Board found that where questions are raised concerning the availability of a sufficient number of bus drivers to participate in an evacuation, it is appropriate to hold additional proceedings in

^{4/} See, e.g., Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), ALAB-832, 23 NRC 135,149-54 (1986); Cincinnati Gas and Electric Company (Wm. H. Zimmer Nuclear Power Station, Unit No. 1), ALAB-727, 17 NRC 760 (1983). See also, the Testimony of Asher and Kinnard, ff. Tr. 20150 at 25, cited in Petition at 4 fn. 5, where they state that, absent indications to the contrary, where bus providers agree to supply buses there is an assumption that bus drivers will be available.

order to address the question of the whether there is "reasonable assurance" that there will be adequate bus drivers in the event of an emergency. ^{5/} In this proceeding, while the historical record would support the Licensing Board's determination that bus drivers would perform their responsibilities in an emergency situation, ^{6/} the Appeal Board concluded that, in its view, there was sufficient doubt raised concerning the two school districts to preclude a "reasonable assurance" finding.

The Appeal Board is not, as the Licensee suggests, seeking to require pledges or assurances from individual members of an organization in order to assure that there will be an adequate number of bus drivers available in an emergency. Petition at 4. There is nothing in ALAB-836 to support that proposition. In fact, as indicated above, the Appeal Board sustained the Licensing Board's finding that the arrangements at the other school districts in the emergency planning zone were acceptable, even though there is nothing in the record pointing to the existence of individual agreements with bus drivers in these districts. However, the Appeal Board held that once the question of the adequacy of the number of bus drivers available for a school district in an emergency has

^{5/} While the Staff supported the Licensing Board's finding that there was reasonable assurance, it does not believe that the evidentiary rulings of the Appeal Board are incorrect for the reasons set forth above. Moreover, such rulings do not present significant issues of law or fact warranting Commission review.

^{6/} See Licensing Board Findings 139, 141, 143 through 145, 240 through 244 and 363. In addition, see for example Asher and Kinnard, ff. Tr. 20,150 at 7, 8, 10 and 12; Bigelow, Tr. 14,293 and 14,366-67; Bradshaw and Cunningham, 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.

been cast in doubt, the Licensee has the burden of producing affirmative evidence that there will be an adequate number of drivers from some source. ^{7/} ALAB-836, slip op. at 68. See, Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-123, 6 AEC 331, 345 (1973). The Appeal Board's decision is correct as a matter of law and does not present an important question of fact or policy which merits Commission review.

Moreover, Licensee's argument that the Commission should review the Appeal Board's reliance on volunteer surveys with respect to the two school districts similarly does not present an issue meriting Commission review. The Commission's regulations governing the admissibility of evidence, i.e., that it be "relevant, material, and reliable" and "not unduly repetitious," set forth sufficient standards for determining on a case by case basis the admissibility of volunteer surveys. 10 C.F.R. § 2.743(c); a generic ruling by the Commission as to the admissibility of such surveys into evidence is neither necessary nor appropriate.

^{7/} The Licensee asserts that the structure and methodology of planning for the Limerick EPZ contemplates that there will be an overall pool of buses and drivers from which specific assignments will be made. Petition at 9, fn. 13. However, this finding was made in connection with LEA-11, involving the availability of buses and not in connection with LEA-15, which dealt the response of bus drivers in an emergency. See, LBP-84-15, 21 NRC at 1326.

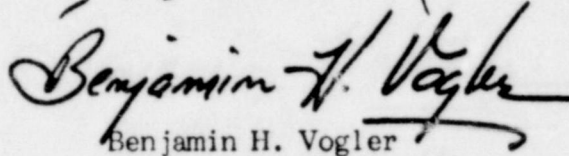
IV. CONCLUSION

For the reasons set forth above, the Licensee has failed to establish that ALAB-836 raises an important question of law or Commission policy. Accordingly, the Commission should deny the Licensee's petition for review.

Respectfully submitted,



Joseph Rutberg
Assistant Chief Hearing Counsel



Benjamin H. Vogler
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 11th day of June, 1986

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF ANSWER IN OPPOSITION TO LICENSEE'S PETITION FOR REVIEW OF ALAB-836" 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 11th day of June, 1986:

Samuel J. Chilk
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555*

William C. Parler
General Counsel
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555*

Helen F. Hoyt, Chairperson (2)
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555*

Mr. Edward G. Bauer, Jr.
Vice President & General Counsel
Philadelphia Electric Company
2301 Market Street
Philadelphia, PA 19101

Dr. Richard F. Cole
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555*

Troy B. Conner, Jr., Esq.
Mark J. Wetterhahn, Esq.
Conner and Wetterhahn
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Dr. Jerry Harbour
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555*

Ms. Phyllis Zitzer, President
Ms. Maureen Mulligan
Limerick Ecology Action
762 Queen Street
Pottstown, PA 19464

Mr. Frank R. Romano
Air and Water Pollution Patrol
61 Forest Avenue
Ambler, PA 19002

Thomas Gerusky, Director
Bureau of Radiation Protection
Dept. of Environmental Resources
5th Floor, Fulton Bank Building
Third and Locust Streets
Harrisburg, PA 17120

Director
Pennsylvania Emergency Management
Agency
Basement, Transportation & Safety
Building
Harrisburg, PA 17120

Robert L. Anthony
Friends of the Earth of the
Delaware Valley
103 Vernon Lane, Box 186
Moylan, PA 19065

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555*

David Wersan
Consumer Advocate
Office of Attorney General
1425 Strawberry Square
Harrisburg, PA 17120

Jay Gutierrez
Regional Counsel
USNRC, Region I
631 Park Avenue
King of Prussia, PA 19406

Kathryn S. Lewis, Esq.
1500 Municipal Services Bldg.
15th and JFK Blvd.
Philadelphia, PA 19107

Barry M. Hartman
Governor's Energy Council
P.O. Box 8010
300 N. 2nd Street
Harrisburg, PA 17105

Spence W. Perry, Esq.
Associate General Counsel
Federal Emergency Management Agency
Room 840
500 C Street, S.W.
Washington, D.C. 20472

Gene Kelly
Senior Resident Inspector
U.S. Nuclear Regulatory Commission
P.O. Box 47
Sanatoga, PA 19464

Timothy R. S. Campbell, Director
Department of Emergency Services
14 East Biddle Street
West Chester, PA 19380

Atomic Safety and Licensing
Appeal Board Panel (8)
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555*

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555*

Angus R. Love, Esq.
Montgomery County Legal Aid
107 East Main Street
Norristown, PA 19401


Joseph Rutberg
Assistant Chief Hearing Counsel