

9033

DOCKETED  
USNRC

UNITED STATES OF AMERICA '89 AUG 11 P2:38  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	Docket Nos. 50-352-OL-2
	)	50-353-OL-2
Philadelphia Electric Company	)	
	)	
(Limerick Generating Station	)	(Severe Accident
Units 1 and 2)	)	Mitigation Design
	)	Alternatives)

MOTION BY LICENSEE PHILADELPHIA ELECTRIC  
COMPANY TO SET SCHEDULE FOR DISCOVERY  
AND HEARING AND REQUEST FOR EXPEDITED ANSWER  
TO THIS MOTION

By Memorandum and Order dated July 18, 1989, the Atomic Safety and Licensing Board ("Licensing Board" or "Board") in this proceeding ruled upon the kinds of severe accident mitigation design alternatives (SAMDAs) which intervenor Limerick Ecology Action, Inc. ("LEA") would be permitted to litigate pursuant to the Commission's Order of May 5, 1989. In that Order, the Commission directed that this remand proceeding "shall be . . . expedited to the extent consistent with fairness to the parties."<sup>1/</sup>

As directed by the Order of the Commission and in accord with those portions of the decision by the Atomic

---

1/ Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), Commission "Order" (May 5, 1989) (slip op. at 2).

DS03

Safety and Licensing Appeal Board ("Appeal Board") which the Commission cited,<sup>2/</sup> the Licensing Board determined that the SAMDAs to be considered would be a suppression pool heat removal system, drywell spray, rubble bed or dry crucible core debris control, anticipated transient without scram vent, and large containment vacuum breaker. The Board reached this conclusion from the Appeal Board's decision that these particular alternatives alone -- discussed in a status report on a study by R&D Associates ("RDA") -- were the only ones which satisfied the threshold basis and specificity requirements for admission of the contention.<sup>3/</sup>

Even before the Board's decision, however, Licensee Philadelphia Electric Company ("Licensee" or "PECO") and the NRC Staff had met with LEA's counsel and technical consultant. A tour of the Limerick facility was conducted. PECO responded to verbal and written requests for information by producing for LEA's review, on an informal request for discovery, various documents, photographs and other information bearing on the potential use of such SAMDAs at Limerick, including whether particular SAMDAs would be cost beneficial. PECO had taken the position, subsequently upheld by the Board, that only those SAMDAs identified in the RDA report were litigable. Accordingly,

---

<sup>2/</sup> Limerick, ALAB-819, 22 NRC 681, 693-4 (1985).

<sup>3/</sup> Memorandum and Order at 6 (July 18, 1989).

PECO has now furnished with information and documents fully responsive to each of its informal requests for discovery.<sup>4/</sup>

By letter dated May 23, 1989, the NRC requested PECO to provide additional information concerning SAMDAs for Limerick. The information was requested to facilitate preparation of the NRC Staff's position on SAMDAs. Because PECO took the position that consideration of SAMDAs was limited to those discussed in the RDA study, its June 23, 1989 response to the Staff corresponds to those SAMDAs which the Licensing Board has designated for consideration at hearing. Additionally, a public meeting at which the NRC Staff asked detailed questions concerning the results of the licensee's evaluation of SAMDAs for Limerick was held on July 27, 1989. A transcript of that meeting is publicly available. By letter dated August 2, 1989, Licensee answered follow-up questions to provide further information regarding the SAMDAs.

Accordingly, Licensee has already provided to the other parties detailed information on the merits of the particular SAMDAs designated by this Board for consideration at hearing. The material already provided by Licensee would constitute its evidence at hearing. The extensive informal

---

<sup>4/</sup> See letter dated June 23, 1989 from G. A. Hunger, Jr., PECO Nuclear Support Division to NRC (copies served on the Board and parties by PECO counsel on June 26, 1989); letters dated July 24, July 28 and August 10, 1989 from Mark J. Wetterhahn to Charles W. Elliott.



discovery already provided voluntarily has thereby reduced the amount of formal discovery needed by the parties to prepare for hearing.

Even under ordinary circumstances, it would now be appropriate for the Board to fix a time certain for completion of discovery and commencement of the hearing. The reasons for doing so here are even more compelling. As the Board is aware, the Commission authorized issuance of a low-power license for Limerick Unit 2 on July 7, 1989.<sup>5/</sup> The Commission found at that time that "a cost/benefit analysis for low power operation reveals that the benefits far outweigh the minimal environmental costs that may be involved and, in any event, establishes that low power operation will not foreclose the adoption of any of the SAMDAs at issue."<sup>6/</sup>

Subsequently, the Commission issued a Memorandum and Order on July 26, 1989, requesting the views of the NRC Staff and other parties as to the potential environmental impacts of permitting full-power operation before completion of the SAMDA proceeding. The Commission stated that it would consider the parties' responses in its immediate

---

5/ Limerick, CLI-89-10, 30 NRC \_\_\_\_ (July 7, 1989).

6/ Id. (slip op. at 2).

effectiveness review of the full-power license for Limerick Unit 2.<sup>7/</sup>

In their respective responses, both the NRC Staff and Licensee took the position that a full-power operating license for Limerick Unit 2 could now issue. On the other hand, LEA took the position that no license may issue for Unit 2 prior to completion of the SAMDA hearing.<sup>8/</sup> This divergence in the parties' positions emphasizes the need to complete the proceeding promptly. The Licensee is ready to proceed to hearing and, for its part, the NRC Staff has stated that its written evaluation on SAMDAs is scheduled for issuance by August 16, 1989.<sup>9/</sup>

Bearing these considerations in mind, Licensee suggests that a reasonably expedited schedule, consistent with the

---

<sup>7/</sup> Limerick, Commission "Memorandum and Order" (July 26, 1989) (slip op. at 5).

<sup>8/</sup> On this basis, LEA filed a motion with the Commission on July 14, 1989 seeking to stay, suspend or revoke its prior order authorizing issuance of a low-power operating license for Unit 2. LEA reiterated its position more recently in its August 2, 1989 response to the Commission's invitation for comments.

<sup>9/</sup> See NRC Staff Response to Commission Questions at 2 (August 2, 1989).

Commission's instructions, be fixed by the Licensing Board along the following lines:

Filing of formal discovery	Commence immediately <sup>10/</sup>
Deadline for filing written discovery requests	15 days thereafter <sup>11/</sup>
Completion of depositions and responses to written discovery requests	15 days thereafter
Concurrent submittal by the parties of prepared testimony	10 days thereafter
Commencement of hearing	7 days thereafter <sup>12/</sup>

In sum, PECO has already provided the NRC Staff and LEA with technical detail supporting its position that none of the proposed SAMDAs is cost beneficial for either Limerick Unit 1 or 2. The NRC Staff will shortly provide its written evaluation of potential SAMDAs. Hence, the time needed for hearing preparation has been reduced correspondingly. A

---

<sup>10/</sup> As stated below, Licensee is requesting expedited action on this motion. Assuming that this request is granted, Licensee assumes that the schedule can commence upon the Staff's issuance of its position paper on SAMDAs by August 16, 1989 which we understand will form the basis of its testimony at the hearing.

<sup>11/</sup> All dates are "in hand" delivery.

<sup>12/</sup> Any motion to strike or similar request for relief can be prepared and filed prior to the hearing or made by oral motion at the hearing. Licensee believes that the issues are sufficiently specific that there should be little or no dispute regarding the proper bounds of evidence on the particular SAMDAs to be considered.



firm schedule and near-term hearing date should be set. Because of the need for prompt action by the Board, and given the wholly procedural nature of its request, PECO moves that the Staff and LEA be ordered to respond to this motion by in hand delivery no later than August 16, 1989.

Respectfully submitted,

CONNER & WETTERHAHN, P.C.

Troy E. Conner, Jr.  
Mark J. Wetterhahn  
Counsel for Licensee

August 10, 1989

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

'89 AUG 11 P2:39

In the Matter of	)	Docket Nos. 50-352-OL-2
	)	OFFICE 50-353-OL-2
Philadelphia Electric Company	)	DOCKETING & SERVICE
	)	BRANCH
(Limerick Generating Station,	)	(Severe Accident
Units 1 and 2)	)	Mitigation Design
	)	Alternatives)

CERTIFICATE OF SERVICE

I hereby certify that copies of "Motion by Licensee Philadelphia Electric Company to Set Schedule for Discovery and Hearing and Request for Expedited Answer to this Motion" dated August 10, 1989 in the captioned matter have been served upon the following by deposit in the United States mail this 10th day of August, 1989:

- |  |  |
|--|--|
| * Morton B. Margulies, Esq.<br>Atomic Safety and<br>Licensing Board Panel<br>U.S. Nuclear Regulatory<br>Commission<br>Washington, D.C. 20555 | Atomic Safety and Licensing<br>Board Panel<br>U.S. Nuclear Regulatory<br>Commission<br>Washington, D.C. 20555  |
| * Dr. Jerry Harbour<br>Atomic Safety and<br>Licensing Board Panel<br>U.S. Nuclear Regulatory<br>Commission<br>Washington, D.C. 20555         | Atomic Safety and Licensing<br>Appeal Panel<br>U.S. Nuclear Regulatory<br>Commission<br>Washington, D.C. 20555   |
| * Frederick J. Shon<br>Atomic Safety and Licensing<br>Board Panel<br>U.S. Nuclear Regulatory<br>Commission<br>Washington, D.C. 20555         | * Joseph Rutberg, Esq.<br>Counsel for NRC Staff<br>Office of the General<br>Counsel<br>U.S. Nuclear Regulatory<br>Commission<br>Washington, D.C. 20555 |
|  | Edward J. Cullen, Esq.<br>Philadelphia Electric Company<br>2301 Market Street<br>Philadelphia, PA 19101  |

\* Federal Express



\* Charles W. Elliott, Esq.  
Poswistilo, Elliott & Elliott  
Suite 201  
1101 Northampton Street  
Easton, PA 18042

Mr. Ralph Hippert  
Pennsylvania Emergency  
Management Agency  
B151 - Transportation  
Safety Building  
Harrisburg, PA 17120

Michael B. Hirsch, Esq.  
Federal Emergency  
Management Agency  
500 C Street, S.W.  
Room 840  
Washington, D.C. 20472

Theodore G. Otto, Esq.  
Department of Corrections  
Office of Chief Counsel  
P. C. Box 598  
Camp Hill, PA 17011

Angus Love, Esq.  
107 East Main Street  
Norristown, PA 19401

Gregory E. Dunlap, Esq.  
Deputy General Counsel  
Commonwealth of  
Pennsylvania  
17th Floor Harrisburg II  
333 Market Street  
Harrisburg, PA 17101

Robert L. Anthony  
P. O. Box 186  
Moylan, PA 19065

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

Docketing and Service  
Section  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Adjudicatory File (2)  
Atomic Safety and Licensing  
Board Panel Docket  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

  
Mark J. Wetterhahn