

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)	
PHILADELPHIA ELECTRIC COMPANY <u>et al.</u>)	Docket Nos. 50-277
(Peach Bottom Atomic Power Station,)	50-278
Units 2 and 3))	
METROPOLITAN EDISON COMPANY <u>et al.</u>)	Docket No. 50-320
(Three Mile Island Nuclear Station,)	
Unit 2))	
PUBLIC SERVICE ELECTRIC AND GAS CO.)	Docket Nos. 50-354
(Hope Creek Generating Station,)	50-355
Units 1 and 2))	

STAFF RESPONSE TO MOTION BY PHILADELPHIA ELECTRIC COMPANY
AND PUBLIC SERVICE ELECTRIC AND GAS COMPANY TO STRIKE
"SUPPLEMENTAL AFFIDAVIT OF DR. CHAUNCEY KEPFORD CONCERNING
HIS QUALIFICATIONS TO APPEAR AS AN EXPERT WITNESS"

Edwin J. Reis
Assistant Chief Hearing
Counsel

February 14, 1983

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STATEMENT

The Petition for Review filed by certain of the Intervenors in this proceeding seeks Commission review of ALAB-701 (November 19, 1982), determining that the incremental health effects of radon emissions in the uranium fuel cycle are negligible and that they could not affect the environmental cost-benefits balances in the subject proceedings. Slip op. at 21, 24-26. One of the bases upon which Commission review was sought was the Appeal Boards' rejection of affidavits of Dr. Chauncey Kepford submitted by the Intervenors below on the subject of the incremental health effects of radon emissions in the uranium fuel cycle. The Appeal Boards rejected the affidavits on the ground that Dr. Kepford lacked expertise "in medicine, health physics or any other discipline

having a perceivable relationship to the ascertainment of the health significance of radioactive emissions." Id at 12-14. In connection with the Petition for Review, a "Supplemental Affidavit of Dr. Chauncey Kepford Concerning His Qualifications to Appear As An Expert Witness," was transmitted to the Commission on January 10, 1983. The Philadelphia Electric Co. and the Public Service Electric and Gas Co. filed a motion on January 24, 1983 to strike this supplemental affidavit.

DISCUSSION

In Philadelphia Electric Co. (Peach Bottom Atomic Power Station), ALAB-654, 14 NRC 632, 635 (1981), the Appeal Boards stated that in order to require further hearings on the health effects of radon emissions from the uranium fuel cycle it would require "a concrete threshold showing that there is a difference in competent expert opinion on the health effects issue . . ." To that end, as a predicate to order a further hearing on this issue, the Appeal Boards stated that they "will not be satisfied by anything short of the documented opinion of one or more qualified authorities to the effect that the incremental fuel cycle-related radon emissions will have a significant effect in terms of human health." Id.

Dr. Kepford submitted an affidavit to the Appeal Boards on the health effects of the radon emissions in the uranium fuel cycle. In ALAB-701 the Appeal Boards discussed Dr. Kepford's qualifications to give expert opinion on health effects matters, found he was not qualified, and concluded that it could give little or no weight to his opinions on the health effects of incremental radiation from the uranium fuel cycle. ALAB-701, slip op. 12-14.

In the subject supplemental affidavit Dr. Kepford seeks to highlight his education and work in radiation chemistry and his study as a basis for taking part in this proceeding. These were matters considered by the Appeal Boards. Id. Although the Staff does not object to the Commission,^{1/} in its discretion, choosing to accept and review this affidavit, the affidavit does not evidence any relevant facts not considered by the Appeal Boards or indicate that their conclusion concerning Dr. Kepford's qualification was in error.

CONCLUSION

For the above stated reasons, the NRC staff does not join in the motion to strike Dr. Kepford's supplemental affidavit.

Respectfully submitted,



Edwin J. Reis
Assistant Chief Hearing Counsel

Dated at Bethesda, Maryland
this 14th day of February, 1983

^{1/} As pointed out in the Applicants' motion, one generally may not supplement or enlarge a record upon appeal by presenting new material not presented below. See e.g., Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1 & 2), ALAB-430, 6 NRC 457, 458 (1977). However, further proof of factual matters has been solicited by the Commission's appellate bodies where they felt it necessary to clarify the record upon appeal. See, e.g., Tennessee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, & 2B), ALAB-463, 7 NRC 341, 371 (1978), upon reconsideration, ALAB-467, 7 NRC 459, 461 (1978); Cleveland Electric Co. (Perry Nuclear Plant, Units 1 & 2), ALAB-443, 6 NRC 741, 757 (1977).

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SERVICE LIST

I hereby certify that copies of "STAFF RESPONSE TO MOTION BY PHILADELPHIA ELECTRIC COMPANY AND PUBLIC SERVICE ELECTRIC AND GAS COMPANY TO STRIKE 'SUPPLEMENTAL AFFIDAVIT OF DR. CHAUNCEY KEPFORD CONCERNING HIS QUALIFICATIONS TO APPEAR AS AN EXPERT WITNESS'" 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 14th day of February, 1983:

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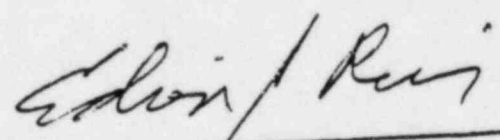
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