

10/01/82

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF RESPONSE TO DELAWARE'S MOTION TO STRIKE  
TESTIMONY OF JOHN LEHR AND MOTION TO STRIKE  
TESTIMONY OF DR. MICHAEL T. MASNIK

I. INTRODUCTION

On September 27, 1982, pursuant to the Board's August 23, 1982 Memorandum and Order (Providing for Filings Relating to Testimony On Supplementary Cooling Water System Contentions), Intervenor Del-Aware delivered to the Staff its motions to strike the testimony of Staff witnesses John Lehr and Dr. Michael T. Masnik. As set forth below, the NRC Staff opposes these motions.

II. DISCUSSION

Del-Aware argues that the testimony of Mr. Lehr and Dr. Masnik should be stricken since it is "misleading," "unqualified," and "inappropriate." The Staff does not believe these characterizations to be either accurate or supported by the pre-filed testimony.

DESIGNATED ORIGINAL

Certified By

*[Handwritten Signature]*  
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The NRC Rules of Practice state the following with regard to the admissibility of evidence:

Only relevant, material, and reliable evidence which is not unduly repetitious will be admitted. Immaterial or irrelevant parts of an admissible document will be segregated and excluded so far as is practicable. 10 C.F.R. § 2.743(c).

The prepared testimony of Mr. Lehr and Dr. Masnik is relevant, material and reliable with regard to the issues to be heard at the hearing to begin on October 4, 1982. Mr. Lehr and Dr. Masnik are being presented to this Board as experts with respect to the issues involving the Point Pleasant Diversion. Although the Commission's Rules of Practice do not expressly provide the standard for judging whether a prospective witness is qualified as an expert, the Appeal Board recently addressed the question<sup>1/</sup> and concluded that the standard incorporated in Federal Rule 702 is a suitable test for determining whether a particular witness may be qualified as an expert. Under this standard a witness is qualified as an expert by "knowledge, skill, training, experience or education" to testify "[i]f scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue."<sup>2/</sup> Under these standards, Mr. Lehr and Dr. Masnik's professional qualifications, appended to their testimony, demonstrate that each qualifies as an expert witness. Their testimony is unquestionably directed and relevant to the issues in this proceeding. It is

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<sup>1/</sup> Duke Power Company (William B. McGuire Nuclear Station, Units 1 and 2) ALAB-669, 15 NRC 453 (March 1982).

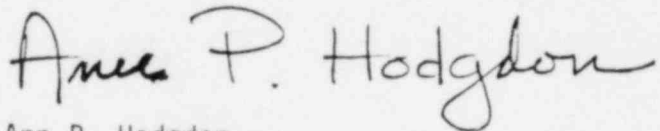
<sup>2/</sup> Id. at 475.

not repetitious and will assist the Board in reaching determinations on the pending issues. Thus, at most, Del-Aware's concern is over the weight to be accorded to this testimony, rather than to the fundamental requirements for its receipt.

III. CONCLUSION

Accordingly, the Board should deny Del-Aware's motion to strike.

Respectfully submitted,

A handwritten signature in cursive script that reads "Ann P. Hodgdon". The signature is written in dark ink and is positioned above the typed name and title.

Ann P. Hodgdon  
Counsel for NRC Staff

Dated in Bethesda, Maryland  
this 1st day of October 1982

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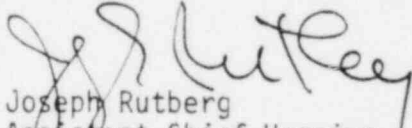
In the Matter of	)	
PHILADELPHIA ELECTRIC COMPANY	)	Docket Nos. 50-352
(Limerick Generating Station,	)	50-353
Units 1 and 2)	)	

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.713(a), the following information is provided:

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Respectfully submitted,

  
Joseph Rutberg  
Assistant Chief Hearing  
Counsel/Antitrust Counsel

Dated in Bethesda, Maryland  
this 1st day of October 1982

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO DELAWARE'S MOTION TO STRIKE TESTIMONY OF JOHN LEHR AND MOTION TO STRIKE TESTIMONY OF DR. MICHAEL T. MASNIK" and "NOTICE OF APPEARANCE" in the above captioned proceeding have been served this date in-hand on the persons identified below by an asterisk. Service will be made upon the remaining persons by deposit in the United States mail, first class, or as indicated by double asterisk through deposit in the Nuclear Regulatory Commission's internal mail system this 1st day of October 1982:

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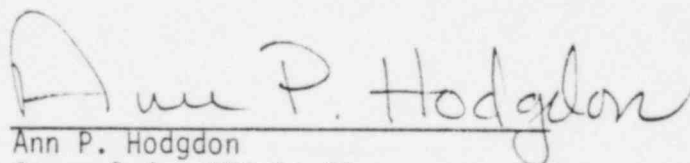
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Atomic Safety & Licensing Appeal  
Panel\*\*  
U.S. Nuclear Regulatory Commission  
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