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July 16, 1984

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of

PHILADELPHIA ELECTRIC COMPANY

(Limerick Generating Station,  
Units 1 and 2)

Docket Nos. 50-352 *OL*  
50-353 *OL*

NRC STAFF RESPONSE TO CANE'S/LEWIS'  
MOTION FOR CERTIFICATION OF THE FINANCIAL  
QUALIFICATIONS CONTENTION TO THE COMMISSION

I. INTRODUCTION

Citizen Action in the Northeast (CANE)<sup>1/</sup> and M. L. Lewis filed "Citizen Action in the Northeast Response to 'Financial Qualifications Statement of Policy' and Motion for Certification of the Financial Qualifications Contention to the Commission," dated June 25, 1984. The Staff opposes the motion for certification for the reasons stated below.

II. BACKGROUND

On June 5, 1984, the Atomic Safety and Licensing Board Panel (Licensing Board or Board) ruled that it would defer ruling on the

<sup>1/</sup> CANE has not been admitted as a party to this proceeding and, therefore, lacks standing to file this motion. Staff's Response is addressed to Mr. M. L. Lewis, who states that he is CANE's representative. Mr. Lewis was admitted as a party to this proceeding, but subsequently was dismissed by the Licensing Board after his contentions were variously withdrawn, disposed of or rejected. See, Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP-84-18, 20 NRC \_\_\_\_, Slip op. at p. 16-17, "Special Prehearing Conference Order Ruling On Admissibility Of Offsite Emergency Planning Contentions (And Dismissing CEPA, Lewis, And White As Parties)," (April 20, 1984).

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financial qualifications contention filed by CANE/Lewis on May 14, 1984 pending issuance of a Commission Statement of Policy on that subject.<sup>2/</sup> On June 14, 1984, the Staff forwarded to M. L. Lewis a copy of the Commission's "Financial Qualifications Statement of Policy," dated June 7, 1984. CANE/Lewis now moves the Licensing Board to admit this contention, or in the alternative to certify the question of the admission of this financial qualifications contention to the Commission.

### III. DISCUSSION

The Staff opposes the admission of this contention on the grounds that the Commission in its June 7, 1984 Statement of Policy has clearly stated that the March 31, 1982 rule, 10 C.F.R. § 50.57(a)(4)<sup>3/</sup> remains in effect. In its June 7, 1984 statement the Commission stated:

It would not appear reasonable to construe the Court's opinion as requiring that the Commission instruct its adjudicatory panels in these proceedings to begin the process of accepting and litigating financial qualifications contentions, a process which would delay the licensing of several plants which are at or near completion, only to be required to dismiss the contentions when the new rule takes effect in the near future.

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<sup>2/</sup> Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), "Order Deferring Ruling On Financial Qualifications Contention Proposed By CANE," Slip op., dated June 5, 1984 (Unpublished).

<sup>3/</sup> 10 C.F.R. § 50.57(a)(4) provides:  
(a) Pursuant to § 50.56, an operating license may be issued by the Commission, up to the term authorized by § 50.51, upon findings that:

(4) The Applicant is technically and financially qualified to engage in the activities authorized by the operating license in accordance with the regulation in this chapter. However, no finding of financial qualifications is necessary for an electric utility applicant for an operating license for a production or utilization facility of the type described in § 50.51 or § 50.22.

Accordingly, the March 31, 1982 rule will continue in effect until finalization of the Commission's response to the Court's remand. The Commission directs its Atomic Safety and Licensing Board Panel and Atomic Safety and Licensing Appeal Panel to proceed accordingly. (p. 4).

Therefore, this is not a proper contention for litigation.

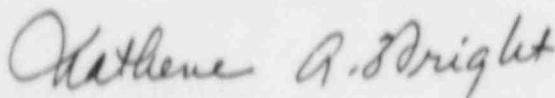
The Commission recently reiterated this policy in an unpublished Order for Union Electric Company (Calloway Plant, Unit 1), dated July 6, 1984, and the Staff attaches a copy for the convenience of the Board and parties.

CANE's/Lewis' motion in the alternative for certification of this matter should also be denied. 10 C.F.R. § 2.785(d) provides that the Atomic Safety and Licensing Appeal Board "may, either in its discretion or on direction of the Commission, certify to the Commission for its determination major or novel questions of policy, law or procedure." The CANE/Lewis financial qualifications contention raises no major or novel questions of policy, law or procedure; therefore, it does not meet the standard for certification.

#### IV. CONCLUSION

For the reasons stated above, CANE's/Lewis' motion for admission of the financial qualifications contention and the alternative motion for certification of this question should be denied.

Respectfully submitted,



Nathene A. Wright  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 16th day of July, 1984

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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COMMISSIONERS:

Nunzio J. Palladino, Chairman  
Thomas M. Roberts  
James K. Asselstine  
Frederick M. Bernthal  
Lando W. Zech, Jr.

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In the Matter of  
UNION ELECTRIC COMPANY  
(Callaway Plant, Unit 1)

Docket No. STN 50-483-CL

ORDER

On April 18, 1984, the Joint Intervenors in this proceeding filed a motion with the Commission for leave to file a supplemental contention on the financial qualifications of the applicant to operate the plant.<sup>1</sup> This late-filed contention is predicated on the recent invalidation of the Commission's financial qualification rule (10 C.F.R. §50.57(a)(4), 47 Fed. Reg. 13750 (March 31, 1982)) by the D.C. Circuit in New England Coalition on Nuclear Pollution v. NRC, 727 F.2d 1127 (D.C. Cir. 1984). The Court found that the rule was not adequately

<sup>1</sup>This motion was filed with the Commission because there is no ongoing adjudicatory proceeding before a licensing or appeal board. The Commission's time to review sua sponte the related Appeal Board decisions in this proceeding (ALAB-740, -750, -750A, and -754) expired on March 12, 1984. This action of the Commission electing not to review these decisions therefore completed and terminated the contested operating license adjudicatory proceeding. On June 11, 1984, an operating license restricted to 5% power was issued as authorized by the Licensing Board decisions (LBP-82-109 and LBP-83-71) which were affirmed by the above-noted Appeal Board decisions.

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supported by its accompanying statement of basis and purpose and remanded to the NRC, but did not explicitly vacate the rule.

In response to this decision, the Commission promptly initiated a new financial qualification rulemaking to clarify its position on financial qualification reviews for electric utilities (49 Fed. Reg. 13044 (1984)). The revised proposed rule would eliminate financial review at the operating license stage, but require a review for construction permit applicants.

In addition, the Commission issued a policy statement on June 7, 1984 (49 Fed. Reg. 24111 (June 12, 1984)), which further clarified its response to the Court's remand. That policy statement noted that the Commission was repromulgating its financial qualifications rule in a manner responsive to the Court's concern. It also indicated that it had reasonably interpreted the Court's opinion as not vacating the rule so as to require adjudication of financial qualifications issues for operating license applications pending completion of the rulemaking. Accordingly, the Commission stated that the March 31, 1982 rule would continue in effect until finalization of the Commission's response to the Court's remand.

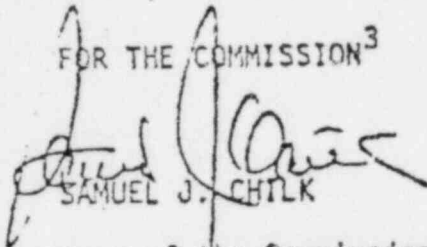
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Since we have determined that the financial qualifications review rule should remain in effect, and since that rule does not require a finding of financial qualifications for an operating license application submitted by an electric utility (see 10 C.F.R. 50.57(a)(4)), this motion is denied.<sup>2</sup>

Commissioner Asselstine disapproved and Commissioner Zech did not participate in this matter due to a lack of opportunity to familiarize himself with the issue.

IT IS SO ORDERED.



FOR THE COMMISSION<sup>3</sup>  
  
SAMUEL J. CHITLIK  
Secretary of the Commission

Dated at Washington, DC  
this 6<sup>th</sup> day of July, 1984

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<sup>2</sup>On June 13, 1984, the Joint Intervenors filed another motion with the Commission seeking to set aside or stay the 5% operating license on the grounds that it was improperly issued because the financial qualifications issue was not resolved. However, as indicated above this issue has been resolved by the Commission's policy statement and, therefore, this motion is also denied.

<sup>3</sup>Commissioner Bernthal was absent when this item was affirmed. If he had been present he would have approved it.

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NUCLEAR REGULATORY COMMISSION

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Docket Nos. 50-352  
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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO CANE/S/LEWIS' MOTION FOR CERTIFICATION OF THE FINANCIAL QUALIFICATIONS CONTENTION TO THE COMMISSION" 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 16th day of July, 1984:

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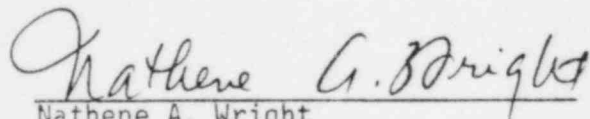
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