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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

DEPT. OF ENERGY
NUCLEAR SERVICE
BRANCH

In the Matter of)
)
Philadelphia Electric Company) Docket Nos. 50-352
) 50-353
(Limerick Generating Station,)
Units 1 and 2))

MOTION TO STRIKE FOE'S REBUTTAL TO APPLICANT'S
REPLY FINDINGS ON CONTENTIONS V-3a AND V-3b

On June 6, 1984, Friends of the Earth ("FOE") submitted a pleading purporting to rebut the Applicant's Reply Findings and, by implication, the NRC Staff's Proposed Findings on FOE Contentions V-3a and V-3b.^{1/} The Applicant, Philadelphia Electric Company, had submitted its Proposed Findings and Conclusions of Law on Contentions V-3a and V-3b on April 20, 1984. FOE filed its Proposed Findings on May 2, 1984 and the Staff filed its Proposed Findings on May 14, 1984. The Applicant subsequently filed its Reply Findings on May 18, 1984. Inasmuch as rebuttals to reply findings are not permitted under the NRC's Rules of Practice, the Atomic and Safety Licensing Board ("Board") should strike FOE's filing. In the event its motion is not

^{1/} R.L. Anthony/FOE Rebuttal of Applicant's Reply Findings, 5/18/84, on Contentions V-3a and V-3b" (June 6, 1984) (Rebuttal Findings).

granted, the Applicant should be given sufficient time to respond to this document.

The Commission Regulations, 10 C.F.R. §2.754, provide that all parties may file proposed findings of fact and conclusions of law within a designated time after the record is closed. This section further provides, however, that only the party with the burden of proof, the Applicant in this case, may file reply findings.^{2/} Indeed, this fact has been recognized by the Board in its orders scheduling the submission of findings on these contentions.^{3/} It is likewise well accepted that a motion to strike is proper when a party submits an unauthorized pleading, such as FOE has done in the instant case. Cincinnati Gas and Electric Company (W. H. Zimmer Nuclear Station), LBP-79-22, 10 NRC 213, 218 n.5 (1979); Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), Docket No. 50-466-CP "Memorandum and Order" (June 2, 1982) (slip op. at 6-7).

As noted by the Board in Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), Docket Nos.

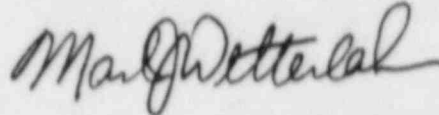
^{2/} See Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2), Docket Nos. 50-445 and 50-446 "Memorandum and Order (Quality Assurance for Design)" (December 28, 1983) (slip op. at 17 n.41).

^{3/} See, e.g., the Board's oral order of March 23, 1984, at Tr. 9276-A.

50-443-OL and 50-444-OL, "Memorandum and Order" (January 13, 1984) (slip op. at 3 n.4), the filing of "pleadings clearly not authorized under the Rules of Practice [forces the parties] to expend unnecessary efforts. . . ."; the proper remedy in such cases is to strike the unauthorized pleading.

Accordingly, the Board should strike FOE's pleading. In the event its relief is not granted, the Board should allow the Applicant sufficient time to respond to the matters raised in that submittal.

Respectfully submitted,
CONNER & WETTERHAHN, P.C.



Mark J. Wetterhahn
Counsel for the Applicant

June 18, 1984