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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'84 JUL -2 P4:13

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 AIR AND WATER POLLUTION
PATROL'S MOTION TO REOPEN RECONSIDERATION ON AWPP VI-1 1/

I. INTRODUCTION

On June 8, 1984, Air and Water Pollution Patrol (AWPP) filed a motion to reopen the record on its Contention VI-1. For the reasons discussed below, the NRC staff opposes AWPP's motion.

1/ Subsequent to filing its Motion to Reopen Reconsideration on AWPP VI-1, AWPP filed a motion dated June 11, 1984, titled "Motion to Withhold Final Decision Re AWPP Contention VI-1." Since the subject matter of the second motion is closely related to that of the first, the Staff is addressing both motions in this response. In its motion of June 11, 1984, AWPP asserts that a letter from the NRC to the Applicant announcing an intention to conduct independent verification inspection beginning on July 9, 1984, creates a doubt regarding previous inspections and that, therefore, the Board should withhold its decision on Contention VI-1 pending the outcome of that effort. However, contrary to AWPP's allegation, the letter on which AWPP relies as a basis for withholding decision announces a routine inspection unrelated to previous inspection efforts. As regards AWPP's plea that this Board consider the Byron decision, the Board indicated to AWPP at oral argument on May 31, 1984, that it was familiar with the Byron decisions and that they simply were not applicable to the situation with which the Limerick Board was faced in the litigation of Contention VI-1. Tr. 11,983.

The Board should deny AWPP's motion to withhold decision as totally lacking in basis.

DESIGNATED ORIGINAL

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II. BACKGROUND

By its Order of October 28, 1983, the Licensing Board admitted AWPP's Contention VI-1, which states:

Applicant has failed to control performance of welding and inspection thereof in accordance with quality control and quality assurance procedures and requirements, and has failed to take proper and effective corrective action and prevention action when improper welding has been discovered.

In the same Order, the Board also directed AWPP to file a document providing instances set forth in IE inspection reports that AWPP believed related to examples of the Applicant's failure to take proper action with regard to welding and quality assurance of welding at Limerick. AWPP's case was to be limited to the instances set forth in this document. On March 6, 1984, AWPP filed a document specifying the instances on which it would rely. The Applicant and the Staff objected to certain of the instances as being beyond the scope of the contention, which as admitted was limited to welding and welding QA. On April 2, 1984, the Board ruled on the objections, definitively establishing by that Order the scope of AWPP's case regarding welding and welding quality assurance. On April 16, 1984, the Applicant, the Staff and AWPP filed testimony; the proffered testimony of AWPP's representative, Frank Romano, was stricken for the reasons set forth in the Applicant's and the Staff's motions to strike.^{2/} The Board also declined, for a number of reasons, to receive the late-filed testimony of Professor Iversen, offered by AWPP at the hearing in support of its position. Tr. 10,428.

^{2/} Memorandum and Order on Pretrial Motions Regarding Testimony on Contention VI-1, May 2, 1984.

AWPP failed in a full week of hearing to establish by its cross-examination of the Staff's and Applicant's witnesses that Applicant's welding and welding quality assurance were not proper. The Board set a schedule for findings, requiring AWPP to file first in support of its position that the Board had ignored or misread the record in reaching a tentative judgment that the testimony of the Applicant and the Staff concluding that welding and welding QA at Limerick were entirely proper was uncontroverted by AWPP's cross-examination. Tr. 11,049. AWPP filed its findings on May 21, 1984. The Applicant and Staff filed reply findings on May 29, 1984. Oral argument was held at the request of AWPP on May 31, 1984. At the conclusion of the argument, the Board stated its judgment that AWPP had failed to show by its cross-examination, its findings or its argument that there was any merit whatsoever in its Contention VI-1 alleging welding and welding QA improprieties at Limerick. See Tr. 11,983-90.

III. DISCUSSION

The evidence on which AWPP would have the Board reopen the record consists of a letter from the NRC to the Applicant concerning an IE inspection report and the Applicant's response to that report. AWPP asserts that the response is "absolute proof" that the Applicant's QA personnel and program are "abysmally incompetent;" however, the excerpts offered by AWPP do not relate to welding quality assurance. Further, IE Inspection Reports 352/83-19 and 83-07 were offered by AWPP in its March 6 filing and were stricken by the Board's Order of April 2, 1984.

In its Order striking, among other "instances," AWPP's 260A, which was based on IE Reports 352/83-19 and 83-07, the Board stated:

This item relates to inadequate design and installation of pipe support hangers and the inspection and reporting thereof. It involves the location of structures forming part of the supports. This item has nothing to do with the quality of the welding of these supports or the quality assurance of those welds.

It is well established that motions to reopen a record to consider new evidence involve the consideration of three factors:

1. whether the motion was timely filed;
2. whether the evidence to be considered raises an important safety or environmental concern;
3. whether the outcome would have been different if the evidence now offered had been considered. 3/

With respect to the first two factors it is clear that in this proceeding the evidence offered by AWPP in support of its motion was considered initially by the Board and rejected. With respect to the third criterion, the information that AWPP relies on if considered by the Board would not change the outcome of any decision that the Board may reach in connection with this issue, since the Board has considered the information and determined that it is not relevant to the contention.

AWPP states in its motion that it "feels" that there exists a legitimate uncertainty regarding improperly dispositioned construction defects. AWPP had every opportunity to establish through cross-examination that its feelings regarding this matter had some basis in fact. However, it was unable to do so.

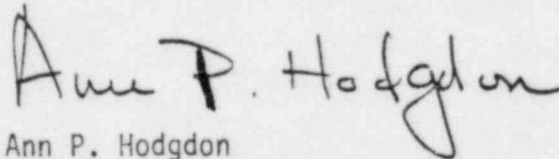
3/ Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-598, 11 NRC 876, 879 (1980).

Regarding AWPP's position that at this time the only "absolute test as to whether a weld is 100% inspected as to its quality" is through destructive testing, the Staff agrees with AWPP that it would be impractical to do that kind of testing now. In any case, in making such arguments, AWPP is merely revisiting matters that have already been raised and rejected.

IV. CONCLUSION

In view of the above, the Staff believes that the Board should deny AWPP's motions.

Respectfully submitted,

A handwritten signature in black ink that reads "Ann P. Hodgdon". The signature is written in a cursive style with a large, prominent "P" and "H".

Ann P. Hodgdon
Counsel for NRC Staff

Dated in Bethesda, Maryland
this 27th day of June 1984

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO AIR AND WATER POLLUTION PATROL'S MOTION TO REOPEN RECONSIDERATION ON AWPP V1-1" 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 27th day of June, 1984:

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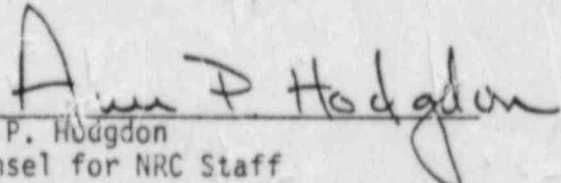
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