

June 26, 1984

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'S MOTION IN SUPPORT OF APPLICANT'S MOTION
TO STRIKE THE FILING OF R. L. ANTHONY/FOE IN REBUTTAL
OF APPLICANT'S REPLY FINDINGS ON CONTENTION V-3a AND V-3b

I. INTRODUCTION

On June 6, 1984, R. L. Anthony/FOE (FOE) filed before this Board a pleading entitled "R. L. Anthony/FOE Rebuttal of Applicant's Reply Findings, 5/18/84, On Contentions V-3a and V-3b." On June 18, 1984, the Applicant filed a "Motion to Strike FOE's Rebuttal to Applicant's Reply Findings on Contentions V-3a and V-3b." The NRC staff (Staff) hereby supports the Applicant's Motion.

II. BACKGROUND

In accordance with 10 C.F.R. Section 2.754^{1/} and this Board's Order^{2/} the Applicant, Staff, Commonwealth of Pennsylvania and FOE filed their

1/ 10 C.F.R. § 2.754 provides that the party who has the burden of proof (in this case the Applicant) may reply to the findings of other parties, but no further pleadings are authorized.

2/ Memorandum and Order Establishing Format of Proposed Findings of Fact and Conclusions of Law, December 9, 1983.

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PDR ADOCK 05000352
PDR

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Certified By

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proposed findings of fact and conclusions of law. The pleadings were timely filed pursuant to the dates set forth by the Board on March 23, 1984 at Tr. 7276-A. Only the Applicant was authorized to file reply findings and no provision was made by the Board for the filing of rebuttal findings. On June 6, 1984, FOE filed its rebuttal to Applicant's reply findings noting therein, that although it was not responding to the NRC staff's individual findings its responses to Applicant's Reply applied equally to the Staff's findings. On June 18, 1984, the Applicant filed its Motion to Strike FOE's Rebuttal filing.

III. DISCUSSION

The filing of rebuttal findings is not authorized under the Commission's Rules of Practice and was clearly not provided for by the Board when it set forth the schedule for the filing of findings and conclusions by the parties.^{3/} Only the Applicant was permitted to reply to the findings of the other parties.^{4/} Thus, FOE's June 6, 1984 rebuttal to Applicant's reply findings and Staff's findings is an unauthorized pleading and should be stricken.

IV. CONCLUSION

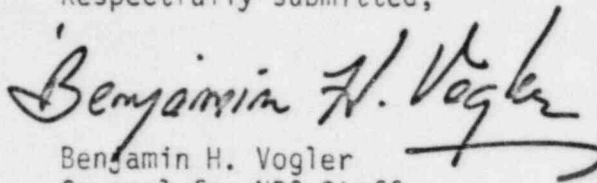
In view of the foregoing, the Staff submits that FOE's rebuttal pleading should be stricken by the Board in accordance with the Applicant's motion.

^{3/} See, Fn. 1 supra, and Tr. 7276-A.

^{4/} Tr. 7276-A.

In the event the Board determines to receive FOE's pleading, then the Staff requests leave to respond to it on the merits.

Respectfully submitted,

A handwritten signature in cursive script that reads "Benjamin H. Vogler". The signature is written in dark ink and is positioned above the typed name and title.

Benjamin H. Vogler
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 26th day of June, 1984

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S MOTION IN SUPPORT OF APPLICANT'S MOTION TO STRIKE THE FILING OF R. L. ANTHONY/FOE IN REBUTTAL OF APPLICANT'S REPLY FINDINGS ON CONTENTION V-3a AND V-3b " 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 26th day of June, 1984:

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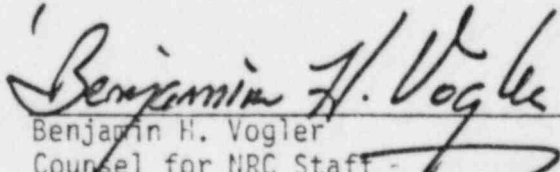
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