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July 16, 1984

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

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)

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

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NRC STAFF RESPONSE TO NEW AWPP  
CONTENTION REGARDING GROSS ALPHA

I. INTRODUCTION \*

The Air and Water Pollution Patrol (AWPP), through its Chairman Frank Romano, has filed "New AWPP (Romano) Contention Re Gross Alpha" dated June 26, 1984. For the reasons stated below, the Staff opposes the motion.

II. DISCUSSION

AWPP contends that neither the Applicant nor the Staff have adequately studied whether or not routine turbine stack releases or other releases of radioactive nuclides will result in exceeding the EPA Maximum Contaminant Levels (MCL) for gross alpha, radium 226 and radium 228, thereby contributing to the contamination of municipal wells located within ten to fifteen miles from the Limerick Generating Station (LGS).

10 C.F.R. § 2.714 of the Commission's rules and regulations provides standards for determining the admissibility of proposed contentions. The

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Commission has held that all of the factors in § 2.714(a)(1)<sup>1/</sup> should be applied by a licensing board in determining the admissibility of late-filed contentions, such as the contention AWPP seeks to have admitted.<sup>2/</sup> AWPP has the responsibility of affirmatively addressing each of the standards set forth in 10 C.F.R. § 2.714(a) governing acceptability of late-filed contentions and showing that a balance of the standards favors admission of the untimely contention.<sup>3/</sup> Mr. Romano, has attempted to address some of the § 2.714(a)(1) criteria in his filing. However, Mr. Romano fails to demonstrate that a balance of the § 2.714(a)(1) factors favor admission of such an untimely contention.

The first criterion is good cause for failure to file on time. AWPP has not specifically cited the existence of any new information as a basis for this contention, but instead references "recent findings of gross alpha approaching the MCL of 5 pico-curies . . . [which] could

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<sup>1/</sup> Those standards are:

- (i) good cause, if any, for failure to file on time;
- (ii) availability of other means to protect the petitioner's interest;
- (iii) the extent to which the petitioner's participation may contribute to the development of a sound record;
- (iv) the extent to which petitioner's interest will be represented by other parties;
- (v) the extent to which petitioner's participation will delay the proceeding.

<sup>2/</sup> Duke Power Company, *et al.*, (Catawba Nuclear Station, Units 1 and 2) CLI-83-19, 17 NRC 1041 (1983).

<sup>3/</sup> Duke Power Company, *et al.*, (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-615, 12 NRC 350, 352-353 (1980).

result in closing . . . municipal wells." Neither the source nor nature of this information is identified. The Staff has no basis for concluding that these "recent findings" constitute new information that satisfies the good cause standard for a late-filed contention. Therefore, this factor does not weigh in favor of AWPP.

The second criterion is availability of other means of protecting AWPP's interest regarding protection of municipal wells from gross alpha contamination. This factor may weigh in favor of AWPP.

The third criteria is the extent to which AWPP's participation may be expected to assist in the development of a sound record. The Appeal Board in addressing the "development of a sound record" criterion has held that "when a petitioner addresses this criterion it should set out with as much particularity as possible the precise issues it plans to cover, identify its prospective witnesses and summarize their proposed testimony.<sup>4/</sup> There has been no such showing by AWPP, nor has there even been an assertion that it possesses any expertise in this area. Therefore, this factor does not weigh in favor of AWPP.

The fourth criterion is the extent to which AWPP's interest will be represented by existing parties. AWPP has correctly asserted that no other party has raised this issue, therefore, its interests in this matter will not be represented by an existing party. This factor weighs in favor of AWPP.

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<sup>4/</sup> Mississippi Power and Light Company, et al., (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982).

The fifth criterion is whether the issues will be broadened or the proceeding delayed by admission of the contention. Contrary to AWPP's assertion that "this contention can be litigated without significant expansion of hearing or delay," there will be a considerable delay in the hearing and broadening of the issues because the only remaining issues to be heard by the Licensing Board involve offsite emergency planning. The admission of a health and safety or environmental contention at this time would affect the Applicant's motion for an expedited partial initial decision and issuance of a low-power license. Therefore, this factor does not weigh in favor of AWPP.

AWPP has failed to demonstrate how a balance of the § 2.714(a)(1) factors favor admission of this contention. First, AWPP has not shown good cause for filing this untimely contention. Second, AWPP has failed to demonstrate how it will contribute to the development of a sound record. Finally, AWPP has failed to demonstrate how admission and litigation of this contention will not inevitably delay this proceeding.

Further, AWPP's late-filed contention does not meet the basis and specificity requirements of § 2.714(b). AWPP generally alleges that a study should be conducted to assure that releases of radioactive nuclides shall not exceed the EPA guidelines and contaminate municipal wells. AWPP has not posed any scenario or cited any document that demonstrates such releases are likely to occur and how such releases, if any, could contaminate municipal wells at undetermined locations near the Limerick plant. This contention lacks the requisite specificity.

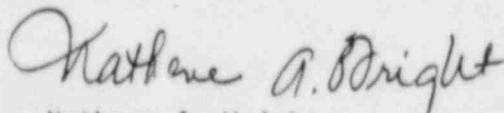
AWPP alleges as a basis for the new late-filed contention that it is necessary for a complete record to "know whether good water sources in

Montgomery County may be destroyed for safe use." This statement does not constitute a basis sufficient to warrant admission and litigation of any contention.

III. CONCLUSION

The Staff objects to the admission of this contention because AWPP has failed to meet the § 2.714(a) standards for admission of late-filed contentions, and AWPP's contention fails to meet the reasonable specificity and basis requirements of § 2.714(b).

Respectfully submitted,



Nathene A. Wright  
Counsel for NRC Staff

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

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I hereby certify that copies of "NRC STAFF RESPONSE TO NEW ALPHA CONTENTION REGARDING GROSS ALPHA" 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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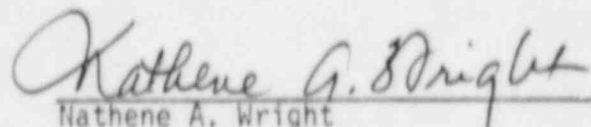
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