

DOCKETED  
USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'86 FEB 27 12:55

Before the Atomic Safety and Licensing Board

In the Matter of )  
Philadelphia Electric Company ) Docket No. 50-352-OLA  
(Limerick Generating Station, )  
Unit 1) )

OFFICE OF SECRETARY  
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LICENSEE'S MOTION TO DEFER ANSWERS TO PETITIONER'S  
PROPOSED CONTENTIONS UNTIL A RULING UPON HIS  
MOTION FOR LEAVE TO INTERVENE

The Chairman of the Atomic Safety and Licensing Board Panel entered an Order on February 12, 1986 in this proceeding, establishing an Atomic Safety and Licensing Board ("Licensing Board" or "Board") to rule upon petitions for leave to intervene and/or requests for hearing, and to preside over the proceeding if a hearing is ordered, with respect to the grant of Amendment No. 1 to the operating license of Limerick Generation Station, Unit 1 ("Limerick").

In response to notice in the Federal Register published December 26, 1985,<sup>1/</sup> only Mr. Anthony's late petition for intervention and request for hearing was filed.<sup>2/</sup>

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<sup>1/</sup> 50 Fed. Reg. 52874 (December 26, 1985).

<sup>2/</sup> Mr. Anthony's submittal dated January 30, 1986 was summarily rejected by the Secretary as not in compliance with the rules. Mr. Anthony filed an amendment to his petition on February 5, 1986, which  
(Footnote Continued)

In accordance with 10 C.F.R. §2.714(c), Licensee Philadelphia Electric Company ("Licensee") filed an answer opposing Mr. Anthony's late-filed petition. Licensee noted that the petition was untimely and that Mr. Anthony had failed to address the five factors for admitting late-filed petitions under 10 C.F.R. §2.714(a)(1)(i)-(v). Licensee also argued that Mr. Anthony had not satisfied the requirements of 10 C.F.R. §2.714(a)(2) and (d) for intervention and that he lacked standing to intervene under NRC precedents.<sup>3/</sup> Accordingly, Licensee urged the Board to deny Mr. Anthony's petition for leave to intervene and request for a hearing. Under NRC precedents, a request for a hearing demands special scrutiny where no hearing is mandatory by statute<sup>4/</sup> and where the instant petition is the only one which potentially triggers a hearing.<sup>5/</sup>

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(Footnote Continued)

the Secretary referred to the Licensing Board Panel. No other petition has been received.

3/ Licensee's Answer in Opposition to Late-Filed Petition for Leave to Intervene and Request for Hearing by Robert L. Anthony (February 19, 1986).

4/ Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-37, 8 NRC 575, 582 (1978); Cincinnati Gas & Electric Company (Wm. H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 9 (1976).

5/ Houston Lighting and Power Company (South Texas Project, Units 1 and 2), ALAB-549, 9 NRC 644, 651 (1979); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1422 (1977). These principles require particular attention to objections on the grounds of standing and timeliness

(Footnote Continued)

On the same day Licensee filed its answer, its counsel received yet another amendment to Mr. Anthony's petition dated February 15, 1986.<sup>6/</sup> This document contained eleven numbered paragraphs designated "contentions" which Mr. Anthony seeks to litigate in the proceeding. Under the Rules of Practice, a petitioner who has sought intervention may amend his petition without leave at any time up to 15 days prior to the special prehearing conference or first prehearing conference in the proceeding.<sup>7/</sup>

The filing of proposed contentions prior to a determination that Mr. Anthony qualifies for intervention, while technically permissible, is not the normal practice in licensing proceedings. Customarily, boards rule upon any objection to a petition to intervene prior to receipt of proposed contentions in advance of the prehearing conference at which the admissibility of particular contentions will be decided. For this reason, the rules specify that a petitioner must supplement his petition for intervention with specific contentions not later than 15 days prior to the

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(Footnote Continued)

because "boards should be cautious about triggering such hearings at the behest of those without a statutory right to intervene." South Texas, supra, ALAB-549, 9 NRC at 649.

6/ It is noted that this amendment also supplemented Mr. Anthony's stay request to the Commission dated February 12, 1986. Licensee has responded to that request for relief in a concurrently filed Answer.

7/ 10 C.F.R. §2.714(a)(3).

special prehearing conference or first prehearing conference in the proceeding.<sup>8/</sup>

Accordingly, Licensee requests the Licensing Board to defer answers to Mr. Anthony's proposed contentions until after it decides Licensee's objections to Mr. Anthony's intervention or the time expires for Mr. Anthony to supplement his petition, whichever is later. Deferral of answers will eliminate the need for the Staff and the Licensee to file any answers at all if the Board finds that Mr. Anthony has not met the requirements for intervention. Even if the Board should grant Mr. Anthony intervenor status, it is pointless to answer Mr. Anthony's contentions until the time for supplementing his petition has expired. Should it become necessary, any delay in answering the proposed contentions would be minimal. Especially considering that Mr. Anthony is the only petitioner and that the proceeding is not otherwise required, a brief deferral is well justified.

For the reasons discussed above, the Board should defer filing answers to Mr. Anthony's proposed contentions until after it has decided whether Mr. Anthony should be admitted

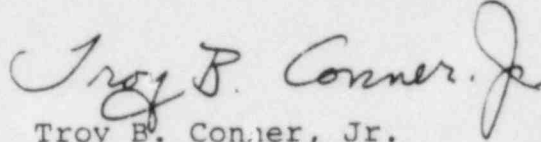
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<sup>8/</sup> 10 C.F.R. §2.714(b).

as an intervenor to this proceeding or until the time for supplementing his petition has expired, whichever is later.

Respectfully submitted,

CONNER & WETTERHAHN, P.C.

A handwritten signature in cursive script that reads "Troy B. Conner, Jr." with a large, stylized flourish at the end.

Troy B. Conner, Jr.  
Robert M. Rader

Counsel for the Licensee

February 25, 1986

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

'86 FEB 27 P12:55

In the Matter of )  
Philadelphia Electric Company ) Docket No. 50-352-OLA  
(Limerick Generating Station, )  
Unit 1) )

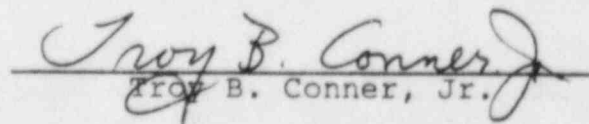
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NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance on behalf of the Licensee in the captioned matter. In accordance with §2.713, 10 C.F.R. Part 2, the following information is provided:

Name - Troy B. Conner, Jr.  
Address - Conner & Wetterhahn, P.C.  
Suite 1050  
1747 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006  
Telephone Number - 202/833-3500  
Admission - United States Court of Appeals  
District of Columbia Circuit  
Supreme Court of the United  
States  
Name of Party - Philadelphia Electric Company

Notice is further given pursuant to §2.708, 10 C.F.R. Part 2, that service upon the Licensee should be made upon the undersigned.

  
Troy B. Conner, Jr.

Dated at Washington, D.C.,  
this \_\_\_\_\_ day of February, 1986.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Answer in Opposition to Request by Robert L. Anthony for a Stay," "Licensee's Motion to Defer Answers to Petitioner's Proposed Contentions Until a Ruling Upon His Motion for Leave to Intervene" and "Notice of Appearance of Troy B. Conner, Jr.," dated February 25, 1986 in the captioned matter have been served upon the following by deposit in the United States mail this 25th day of February, 1986:

Mr. Ivan W. Smith, Chairman  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Atomic Safety and  
Licensing Appeal Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Dr. Richard F. Cole  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Docketing and Service  
Section  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Mr. Gustave A. Linenberger, Jr.  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
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Washington, D.C. 20555

Ann P. Hodgdon, Esq.  
Counsel for NRC Staff  
Office of the Executive  
Legal Director  
U.S. Nuclear Regulatory  
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Board Panel  
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James Wiggins  
Senior Resident Inspector  
U.S. Nuclear Regulatory  
Commission  
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Philadelphia Electric Company  
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General Counsel  
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Mr. Robert L. Anthony  
Friends of the Earth in  
the Delaware Valley  
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Jay M. Gutierrez, Esq.  
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Commission  
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King of Prussia, PA 19406

  
Troy B. Conner, Jr.