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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'86 MAR -5 P12:18

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)
)
PHILADELPHIA ELECTRIC COMPANY) Docket Nos. 50-352 *OLA*
)
(Limerick Generating Station,)
Unit 1))

RESPONSE OF NRC STAFF IN SUPPORT OF LICENSEE'S MOTION
TO DEFER ANSWERS TO PETITIONER'S PROPOSED CONTENTIONS
UNTIL A RULING UPON HIS MOTION FOR LEAVE TO INTERVENE

I. INTRODUCTION

On February 25, 1986, the Philadelphia Electric Company (Licensee) filed the above captioned motion in response to a document filed on February 15, 1986, by R. L. Anthony/Friends of the Earth in the Delaware Valley (collectively "FOE"). The FOE document contains eleven numbered "contentions" concerning amendment number one issued by the NRC staff (Staff) to the Licensee on February 6, 1986. For the reasons set forth below, the NRC staff supports Licensee's motion.

II. BACKGROUND

On December 18, 1985, the Licensee, in a letter to the NRC, requested an amendment to its Limerick Unit 1 operating license. The Licensee requested approval, on a one-time-only basis, for temporarily extending certain surveillance requirements in the Technical Specifications, which must be performed nominally every 18 months and which can only be done when the plant is shutdown. The change would extend the

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18 month surveillance interval by fourteen weeks beyond the maximum 25 percent extension allowed by the Technical Specifications. This would permit the Licensee to delay performing this testing until a maintenance and surveillance outage which is scheduled to begin on or before May 26, 1986. The NRC staff after a review of the Licensee's request determined that the condition of the valves in question would not change significantly during the short extension period.

On January 30, 1986, FOE filed a petition to intervene in this matter in connection with the Licensee's request for an amendment. On February 5, 1986, FOE filed an amended petition to intervene and request for a hearing. The NRC staff has opposed FOE's petition in a pleading filed before the Licensing Board on February 25, 1986. On February 12, 1986, FOE, after receiving notice of the issuance of Licensee's amendment number one, filed a one page request for a stay before the Commission incorporating by reference its two previous petitions to intervene in this matter. The NRC staff has opposed FOE's request for a stay in a pleading filed on February 27, 1986 before the Commission. On February 15, 1986, FOE filed its document containing eleven numbered "contentions" concerning amendment number one to the Limerick license. FOE notes on page one of this document that it proposes to litigate the eleven "contentions" in the hearing it expects to be held on the amendment. In addition, FOE incorporates all of its previous petitions in this matter and concludes with yet another request for a stay. As noted earlier, the Staff has opposed FOE's petitions to intervene and its requests for a stay.

On February 25, 1986, the Licensee filed its motion seeking to Defer answers to FOE's eleven "contentions" until the Licensing Board rules on

its petition to intervene. For the reasons that follow, the NRC staff supports the Licensee's motion.

III. DISCUSSION

Pursuant to 10 C.F.R. § 2.714(b) ^{1/} a petitioner may supplement his petition to intervene not later than fifteen days prior to the holding of the special prehearing conference or the first prehearing conference. Thus, the filing of proposed contentions at this juncture in this proceeding while not specifically prohibited by the Commission's rules is not the normal procedure that is followed in the NRC's licensing or amendment proceedings. Generally, Licensing Boards rule upon questions regarding the Petitioner's standing and the timeliness of the petition before reviewing proposed contentions. If the Intervenor is found to have standing and has otherwise complied with 10 C.F.R. § 2.714, then proposed contentions are received prior to the special prehearing

^{1/} 10 C.F.R. § 2.714(b) states:

(b) Not later than fifteen (15) days prior to the holding of the special prehearing conference pursuant to § 2.751a, or where no special prehearing conference is held, fifteen (15) days prior to the holding of the first prehearing conference, the petitioner shall file a supplement to his petition to intervene which must include a list of the contentions which petitioner seeks to have litigated in the matter, and the bases for each contention set forth with reasonable specificity. A petitioner who fails to file such a supplement which satisfies the requirements of this paragraph with respect to at least one contention will not be permitted to participate as a party. Additional time for filing the supplement may be granted based upon a balancing of the factors in paragraph (a)(1) of this section.

conference or the first prehearing conference at which time the admissibility of proposed contentions are determined. ^{2/}

Based upon the foregoing practices and procedures, the Licensee filed its motion to defer answers to FOE's "contentions" until after the Licensing Board rules upon FOE's petition to intervene. In setting forth its reasons in support of the motion, the Licensee states:

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. Licensee's Motion to Defer Answers to Petitioner's Proposed Contentions Until a Ruling Upon His Motion For Leave To Intervene, at 4 (February 25, 1986).

The NRC staff agrees with the Licensee's conclusions as expressed above.

As noted earlier herein, the NRC staff has opposed FOE's petitions to intervene and requests for a stay. ^{3/} Page 3, supra. The Staff's bases for such opposition is predicated on FOE's failure to demonstrate standing. In Staff's view FOE's petitions should be denied for this reason and, if the Licensing Board agrees with the Staff's position, there will be no need to respond to FOE's "contentions."

^{2/} Id.

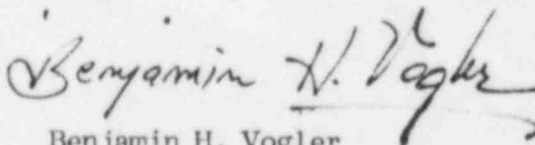
^{3/} The Licensee has also opposed FOE's petitions to intervene and stay requests.

In the event the Licensing Board determines that FOE's does have standing there should be ample time for Staff to respond to FOE's "contentions" as FOE will be the only intervenor. In Staff's view, until the Licensing Board determines the questions of FOE's standing and sets a prehearing conference schedule deferral of answers to FOE's proposed "contentions" is in the best interests of all the parties.

IV. CONCLUSION

In view of the foregoing, the NRC staff supports Licensee's motion to defer filing answers to Mr. Anthony's proposed contentions until after it has decided whether Mr. Anthony has standing to participate in this proceeding or until the time for supplementing his petition has expired, which ever is later.

Respectfully submitted,



Benjamin H. Vogler
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 4th day of March, 1986

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION '86 MAR -5 P12:19

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In the Matter of)
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(Limerick Generating Station,)
Unit 1))

CERTIFICATE OF SERVICE

I hereby certify that copies of "RESPONSE OF NRC STAFF IN SUPPORT OF LICENSEE'S MOTION TO DEFER ANSWERS TO PETITIONER'S PROPOSED CONTENTIONS UNTIL A RULING UPON HIS MOTION FOR LEAVE TO INTERVENE" 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 4th day of March, 1986:

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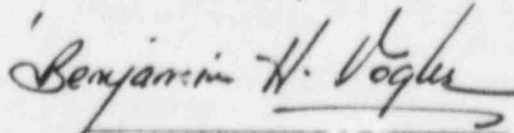
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Board Panel
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Atomic Safety and Licensing Appeal
Board Panel (5)
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