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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'86 MAR 28 A11:41

Before the Atomic Safety and Licensing Board

In the Matter of )  
Philadelphia Electric Company ) Docket No. 50-352-OLA  
(Limerick Generating Station, ) (Check Valve)  
Unit 1) Docket No. 50-352-OLA-2  
) (Containment Isolation)  
) March 26, 1986

OFFICE OF SECRETARY  
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LICENSEE'S ANSWER TO MARCH 19, 1986 SUPPLEMENT  
FILED BY INTERVENOR FRANK R. ROMANO

Preliminary Statement

This matter concerns the late-filed petition of Frank R. Romano<sup>1/</sup> in response to the notice of opportunity to request a hearing on proposed Amendment No. 1 of the operating license for the Limerick Generating Station, Unit 1 ("Limerick").<sup>2/</sup> The NRC Staff issued the requested amendment on February 6, 1986.

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1/ Mr. Romano purported to file on behalf of the Air and Water Pollution Patrol ("AWPP"), but did not identify AWPP's interest in the proceeding or state that he had been authorized by the organization to represent it and its members. Under these circumstances this Board has ruled that it would "[view] the petitioning as an individual effort." Philadelphia Electric Company (Limerick Generating Station, Unit 1) (Check Valve), "Memorandum and Order Ruling on Robert L. Anthony's Petition for Leave to Intervene" (March 13, 1986) (slip op. at 3 n.1).

2/ 50 Fed. Reg. 52874 (December 26, 1985).

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Although the notice in the Federal Register stated that a timely request for intervention must be filed by January 26, 1986, Mr. Romano did not file his petition until February 24, 1986. Both the Licensee and NRC Staff opposed his late admission for failure to satisfy or even discuss the lateness criteria and for lack of standing.<sup>3/</sup>

On March 13, 1986, the presiding Atomic Safety and Licensing Board ("Licensing Board" or "Board") issued a Memorandum and Order conditionally admitting another petitioner, Robert L. Anthony, as an intervenor in the proceeding regarding Amendment No. 1.<sup>4/</sup> The Board subsequently ordered the consolidation of the two proceedings on Amendment No. 1 and Amendment No. 2 and scheduled a prehearing conference for March 27, 1986.<sup>5/</sup>

The Board directed Mr. Romano "to file [his] contentions and any admitted contention and supplement to [his] petition (check-valve matter) by March 20, 1986 by express

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<sup>3/</sup> See "Licensee's Answer in Opposition to Late-Filed Petition for Leave to Intervene and Request for Hearing by Frank R. Romano" (March 11, 1986); "Response of NRC Staff in Opposition to Petition and Request for a Hearing by the Air and Water Pollution Patrol Regarding Licensee's Amendment Request No. 1" (March 17, 1986).

<sup>4/</sup> Limerick (Check Valve), supra, "Memorandum and Order Ruling on Robert L. Anthony's Petition for Leave to Intervene" (March 13, 1986).

<sup>5/</sup> Limerick (Check Valve) (Containment Isolation), supra, "Memorandum and Order Consolidating Proceedings and Setting Schedule for Identification of Issues" (March 14, 1986).

mail."<sup>6/</sup> The Board stated that the NRC Staff and the Licensee would be afforded an opportunity at the prehearing conference to address Mr. Romano's contentions and any amended petition or supplement to his petition.<sup>7/</sup> For the reasons discussed below, Licensee opposes the contentions proposed by Mr. Romano on the grounds that they lack the requisite specificity and bases, fail to state any litigable issue and exceed the scope of this proceeding.

Argument

In answer to the contentions proposed by Mr. Anthony in the proceeding on Amendment No. 1, Licensee made initial observations of general applicability regarding the admissibility of contentions. Specifically, Licensee noted that the scope of the proceeding is narrowly limited to questions relating to the validity of Amendment No. 1 and could not be a basis for litigating safety and environmental issues which were or could have been litigated in the operating license proceeding for Limerick; that the petitioner had had ample advance notice to prepare contentions, especially considering the brevity of the record; and that the proposed contentions were so completely lacking in technical specificity

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<sup>6/</sup> Id. at 5.

<sup>7/</sup> Id. at 6. We assume that the Board did not intend to preclude Licensee or the Staff from filing a written response on an expedited basis if either chose to do so.

that it was impossible to understand their substance or determine the regulation or other requirement with which Licensee allegedly had failed to comply.

As discussed below, the same points apply with equal force to Mr. Romano's request to participate in the proceeding and his proposed contentions. Licensee therefore respectively refers the Board to its earlier answer as if fully incorporated herein.<sup>8/</sup> With these basic principles as background, Licensee now addresses what Mr. Romano has submitted as proposed "contentions."

The first point which is obvious about Mr. Romano's pleading is that it does not, in fact, contain any proposed contentions. Instead, it is a rambling dissertation on welds, concrete placement and a variety of other subjects, which never once even mentions excess flow check valves or the extension until May 26, 1986 granted by the NRC for the testing of certain excess flow check valves on reactor instrumentation lines. Inasmuch as Mr. Romano has failed to propose any contention, his petition must be denied outright.

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<sup>8/</sup> "Licensee's Answer to Contentions Proposed by Intervenor Robert L. Anthony" at 2-10 (March 17, 1986). Licensee also concurs in the objections raised by the NRC Staff in opposing Mr. Anthony's contentions, which it filed on March 17, 1986, and which are likewise applicable here.

As stated in the incorporated precedents, this Board is not obliged to sort through this patently irrelevant material in order to formulate a contention on Mr. Romano's behalf, particularly given his past experience in intervention and his presumed familiarity with 10 C.F.R. §2.714(b). To do so would be an abuse of discretion.

In any event, nothing asserted by Mr. Romano provides the slightest basis for litigating the validity of Amendment No. 1 to the Limerick operating license. The thrust of Mr. Romano's discussion is to question the adequacy of certain welds as discussed in a 1976 inspection report. These matters were fully litigated and found to be without merit at the operating license stage.<sup>9/</sup> Clearly, Mr. Romano is attempting to exceed the scope of this proceeding and relitigate an issue on which he has already lost before the Licensing Board, the Appeal Board, and the Commissioners.

Similarly, Mr. Romano's desire to litigate alleged safety implications of IE Report 50-352/86-02 wholly fails to establish any basis for challenging the extension of time to test certain excess flow check valves. Moreover, this

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<sup>9/</sup> Limerick, supra, LBP-84-31, 20 NRC 446, 509-13 (1984), vacated in part on other grounds, ALAB-819, 22 NRC 681, 722-30 (1985). Mr. Romano did not appeal ALAB-819, and the Commission determined that it would not review the decision on the basis of requests by other parties. Limerick, supra, CLI-86-05, 23 NRC \_\_\_\_\_ (March 20, 1986). Mr. Romano's contention included the specific inspection report he now cites. See, e.g., Tr. 11966 (May 31, 1984) (copy attached).

was also part of Mr. Romano's earlier case. The Appeal Board affirmed the Licensing Board's exclusion of Mr. Romano's "poor concrete placement"<sup>10/</sup> issue as follows:

The only other articulated issue that AWPP repeatedly tried to raise (including here on appeal) concerns certain defects in concrete placement at the site. But as the Licensing Board noted, AWPP's representative had raised this identical issue several years earlier in a petition to the NRC's Director of Nuclear Reactor Regulation. The matter was thoroughly investigated, and the staff was ultimately satisfied with PECO's resolution of the problem. DD-79-16, 10 NRC 609, 610-11 (1979). When pressed by the Board, AWPP was unable to provide any new information concerning possible concrete defects; it simply expressed its belief that the matter had not been fully corrected. See Tr. 4883-94, 4911-12. In these circumstances, the Board's admission of a contention limited in scope to welding matters was fully justified. See Tr. 4610-14, 4912-19.<sup>11/</sup>

Mr. Romano's attempt to raise this issue anew is likewise improper, beyond the scope of this proceeding and without any basis.

Finally, Mr. Romano cites the number of Licensee Event Reports (LER's) filed by Licensee for Limerick. Here again, Mr. Romano fails to specify any particular concern raised by an LER which pertains to the amendment at issue. In any event, LER's are not in and of themselves indicative of any

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<sup>10/</sup> Romano Supplement at 2 (March 19, 1986).

<sup>11/</sup> Limerick, supra, ALAB-819, 22 NRC at 726.

particular safety problem which would form the basis of a proper contention. When Mr. Romano, along with Mr. Anthony, petitioned for relief under 10 C.F.R. §2.206 on the basis of LER's which had been submitted to the NRC, the Director of the Office of Nuclear Reactor Regulation found "that the number and types of LERs from Limerick do not justify the relief requested but rather are consistent with a new plant startup and of a conservative threshold by the Licensee for reporting."<sup>12/</sup> Like the other matters which Mr. Romano seeks to raise, this issue is totally lacking in basis or specificity, lies beyond the scope of the proceeding and is res judicata by virtue of an earlier decision.

#### Conclusion

For the reasons discussed above, the matters discussed by Mr. Romano do not even constitute a proposed contention, let alone provide requisite specificity and bases under 10 C.F.R. §2.714(b). Further, each of those matters exceeds the limited scope of this proceeding and attempts to raise issues barred by res judicata. In addition to the other

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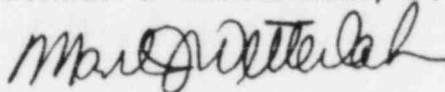
<sup>12/</sup> Limerick, supra, DD-85-11, 22 NRC 149, 167 (1985). The Commission decided on September 12, 1985 that it would not review this decision, thereby making it final agency action.



defects in his petition, inasmuch as Mr. Romano has failed to plead a single admissible contention, his petition should be dismissed.<sup>13/</sup>

Respectfully submitted,

CONNER & WETTERHAHN, P.C.



Troy B. Conner, Jr.  
Mark J. Wetterhahn  
Robert M. Rader

Counsel for Licensee

March 26, 1986

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<sup>13/</sup> See 10 C.F.R. §2.714(b); Duquesne Light Company (Beaver Valley Power Station, Unit 2), LBP-84-6, 19 NRC 393, 395, 430 (1984).



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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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In the matter of

PHILADELPHIA ELECTRIC COMPANY

(Limerick Generating Station,  
Units 1 & 2)

Docket No. 50-352  
50-353

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Location: Philadelphia, Pa.

Pages: 11,902-11,995

Date: Thursday, May 31, 1984

**TAYLOR ASSOCIATES**

Court Reporters  
5251 Street, N.W. Suite 1006  
Washington, D.C. 20006  
(202) 293-1990

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1 that through an affidavit, they had to come up with a  
2 letter admitting that they did not inspect all the welds,  
3 both accessible and inaccessible.

4 And on that basis, I see no reason why we should,  
5 in their effort to reconcile the whole situation, that  
6 we accept everything they state as credible and that there  
7 are no material gaps in what they say.

8 I feel there are -- as it relates to the 760601  
9 affair, there are extensive material gaps because  
10 Mr. Corcoran admitted that this Mr. Ferretti did not have  
11 his initials on this weld, on this weld which was  
12 discovered. Now how many other welds -- and this is a very  
13 important question that has to be answered -- how many other  
14 welds did Mr. Ferretti check off as being final verification  
15 of a proper weld that was never inspected?

16 For Mr. Corcoran to say that, "We know he has  
17 inspected other welds, and he is a good inspector," that  
18 in itself does not explain away why he did not -- he had  
19 procedures. He knew he had to initial his welds. He  
20 didn't do that. He stated that the welds were properly  
21 performed, and then found to be very deficient. I think this  
22 again is another example with those statements that we did  
23 all this, and then when the time came up to prove it, they  
24 couldn't prove it and had to admit they didn't. Here's a

this

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Unit 1) ) Docket No. 50-352-OLA-2  
) (Containment Isolation)  
) March 19, 1986

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Answer to Contention Supplements Proposed by Intervenor Robert L. Anthony on Amendment No. 1 and Contentions Proposed on Amendment No. 2" and "Licensee's Answer to Contentions Proposed by Intervenor Frank R. Romano," dated March 26, 1986 in the captioned matter have been served upon the following by deposit in the United States mail this 26th day of March, 1986:

- |  |   |
|--|---|
| * Mr. Ivan W. Smith, Chairman<br>Atomic Safety and Licensing<br>Board Panel<br>U.S. Nuclear Regulatory<br>Commission<br>Washington, D.C. 20555     | Atomic Safety and<br>Licensing Appeal Panel<br>U.S. Nuclear Regulatory<br>Commission<br>Washington, D.C. 20555  |
| * Dr. Richard F. Cole<br>Atomic Safety and Licensing<br>Board Panel<br>U.S. Nuclear Regulatory<br>Commission<br>Washington, D.C. 20555             | Docketing and Service<br>Section<br>U.S. Nuclear Regulatory<br>Commission<br>Washington, D.C. 20555   |
| * Mr. Gustave A. Linenberger, Jr.<br>Atomic Safety and Licensing<br>Board Panel<br>U.S. Nuclear Regulatory<br>Commission<br>Washington, D.C. 20555 | * Benjamin H. Vogler, Esq.<br>Counsel for NRC Staff<br>Office of the Executive<br>Legal Director<br>U.S. Nuclear Regulatory<br>Commission<br>Washington, D.C. 20555 |

\* Hand Delivery on March 26, 1986

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

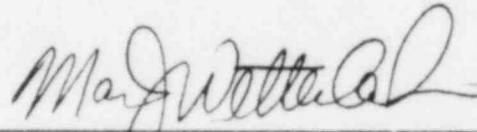
Philadelphia Electric Company  
ATTN: Edward G. Bauer, Jr.  
Vice President &  
General Counsel  
2301 Market Street  
Philadelphia, PA 19101

\*\* Mr. Robert L. Anthony  
Friends of the Earth in  
the Delaware Valley  
106 Vernon Lane, Box 186  
Moylan, PA 19065

Jay M. Gutierrez, Esq.  
U.S. Nuclear Regulatory  
Commission  
631 Park Avenue  
King of Prussia, PA 19406

James Wiggins  
Senior Resident Inspector  
U.S. Nuclear Regulatory  
Commission  
P.O. Box 47  
Sanatoga, PA 19464

\*\* Mr. Frank R. Romano  
61 Forest Avenue  
Ambler, PA 19002

  
\_\_\_\_\_  
Mark J. Wetterhahn

\*\* Hand Delivery on March 27, 1986