

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))

APPLICANT'S OBJECTION TO CERTAIN OF
INTERVENORS' SECOND SET OF INTERROGATORIES
AND REQUESTS FOR DOCUMENTS AND CALCULATIONS

On July 14, 1983, intervenors Robert L. Anthony and Friends of the Earth in the Delaware Valley ("Intervenors") served 47 interrogatories and requests for documents and calculations to Applicant purporting to relate to the subject matter in Contentions V-3a and V-3b. Intervenors' Interrogatories 42-47 all relate to a postulated fire caused by a railroad propane tank car accident. Contentions V-3a and V-3b are limited by their terms to the syphoning of the ARCO pipeline and deflagration of gas and petroleum due to a pipeline rupture.

The scope of discovery in Nuclear Regulatory Commission ("NRC") proceedings is limited "to those matters in controversy which have been identified by the Commission or the presiding officer in the prehearing order entered at the conclusion of that prehearing conference." 10 C.F.R. §2.740(b)(1). Contentions are used to frame issues under



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NRC practice, which is similar to the use of pleadings in judicial proceedings. Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-81-25, 14 NRC 241, 243 (1981). Interrogatories are objectionable when they do not relate to matters in controversy which have been raised in admitted contentions. Commonwealth Edison Company (Byron Station, Units 1 and 2) Docket Nos. 50-454-OL and 50-455-OL, "Protective Order" (February 22, 1982). This point was emphasized in the Susquehanna proceeding where the Appeal Board noted that discovery is limited to those matters alleged in the pleadings or which is reasonably calculated to reveal such matters. Pennsylvania Power and Light Company (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 331 (1980).

Interrogatories 42-47 exceed the scope of the admitted contentions. Interrogatories concerning a fire from a propane tank car accident cannot be said to be reasonably calculated to lead to admissible evidence concerning the rupture of the ARCO pipeline or deflagration of gas and petroleum due to a pipeline rupture. Thus, Interrogatories 42 through 47 are objectionable and no response should be required.

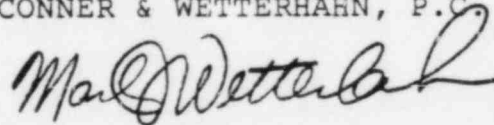
The Licensing Board's Memorandum and Order Confirming Schedules Established During Prehearing Conference (May 16, 1983) requires that the parties must include in objections to discovery a statement that a discussion with the moving

party had taken place and the specific reasons why it was impossible for the parties to reach a fair accommodation as a practical matter even where they hold divergent legal views. Undersigned counsel for Applicant attempted to telephone Mr. Anthony, who is appearing pro se and representing the Friends of the Earth in the Delaware Valley. After leaving a message at the telephone number provided by the secretary to the Licensing Board and receiving no reply, a letter, a copy of which is attached, was sent to Mr. Anthony.

In discussing another matter with counsel for Limerick Ecology Action, I was informed that Mr. Anthony was in Maine and presumably could not be reached until he returns on approximately August 20, 1983, which is beyond the date permitted for objections. Therefore, counsel is making this statement in lieu of the required certification.

Respectfully submitted,

CONNER & WETTERHAHN, P.C.

A handwritten signature in dark ink, appearing to read "Mark J. Wetterhahn", written in a cursive style.

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

Counsel for the Applicant

July 25, 1983

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July 20, 1983

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CABLE ADDRESS: ATOMLAW

Mr. Robert L. Anthony
Friends of the Earth in
the Delaware Valley
P.O. Box 186
Moylan, Pennsylvania 19065

In the Matter of
Philadelphia Electric Company
(Limerick Generating Station, Units 1 and 2)
Docket Nos. 50-352 and 50-353

Dear Mr. Anthony:

On July 14, 1983 you served upon me a copy of Robert L. Anthony's and FOE in the Delaware Valley's Interrogatories and Requests for Documents and Calculations from Phila Electric Co. On July 18, 1983 I attempted to telephone you at the number given to me by the Atomic Safety and Licensing Board's secretary. The individual answering the phone stated you were not there, but he would leave a message to return my call.

Inasmuch as you have not returned my call as of 9:30 a.m. as of the date of this letter, I am writing to you with regard to your most recent discovery request of the Applicant. The Licensing Board's Memorandum and Order Confirming Schedules Established During Prehearing Conference dated May 16, 1983 (slip op. at 3), requires that "parties discuss their problems with discovery with each other and try to resolve them before filing either objections or a motion to compel discovery." I am therefore writing to inform you of our preliminary objections to certain of your second set of interrogatories and request for documents and calculations.

Numbers 42 through 47 of such discovery request deal with fires resulting from a propane tank car accident. See for example, Interrogatory 42. However, Contention V-3a deals with rupture of the ARCO pipeline and similarly Contention V-3b discusses deflagration of gas and petroleum due to pipeline rupture. It is Applicant's view that interrogatories 42 through 47 which deal with explosions of propane tank cars are beyond the scope of these two

Robert L. Anthony, Esq.
July 20, 1983
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contentions and clearly not designed to lead to admissible evidence. Therefore, it is Applicant's preliminary position that these interrogatories are objectionable.

I would appreciate hearing from you as to your views regarding this matter. Please be advised that any objections that are filed must be served by July 29, 1983.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mark J. Wetterhahn". The signature is fluid and cursive, with the first name "Mark" being more prominent.

Mark J. Wetterhahn
Counsel for the Applicant

MJW/dlf