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RELATED CORRESPONDENCE

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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USNRC

'84 APR 23 P3:02

Before the Atomic Safety and Licensing Board

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

SECRETARY  
OF THE BOARD  
& SERVICE  
BRANCH

APPLICANT'S MOTION TO STRIKE AWPP'S AND A PORTION  
OF THE NRC STAFF'S TESTIMONY ON CONTENTION VI-1

On April 16, 1984, Mr. Frank Romano filed his testimony on behalf of the Air and Water Pollution Patrol ("AWPP") on Contention VI-1.<sup>1/</sup> In accordance with the Atomic Safety and Licensing Board's "Order Confirming Miscellaneous Oral Record Rulings" (March 15, 1984), Applicant hereby moves that this document be stricken on the grounds that it is not competent, material, or relevant evidence, that AWPP has failed to demonstrate that Mr. Romano is qualified to be an expert witness such that he may give the opinion testimony contained herein and that he has otherwise failed to comply with the Board's requirements regarding submission of testimony. As discussed below, Applicant moves that one portion of the Staff's testimony which is beyond the scope of the contention be stricken as well.

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<sup>1/</sup> Testimony of Air and Water Pollution Patrol (Romano) Concerning Contention VI-1 (Infractions Related to Welding) ("Testimony").

No Qualifications to Give Opinion Evidence

The Commission's Rules of Practice do not expressly state the standard for judging whether a prospective witness qualifies as an expert. The Appeal Board, however, has held that the standard incorporated in Federal Rule 702 is suitable for determining a claim of expert status.<sup>2/</sup> That rule allows a witness qualified as an expert by "knowledge, skill, experience, training, or education" to testify "[i]f scientific, technical, or other specialized knowledge will assist the trial of fact to understand the evidence or to determine a fact in issue."<sup>3/</sup> The "possession of the required qualifications by a particular person offered as a witness, must be expressly shown by the party offering him."

2 Wigmore, Evidence § 560, at pp. 640-41 (Ed. 1940) (emphasis in original), quoted in Pacific Gas Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-410, 5 NRC 1398, 1405 (1977).

AWPP has failed to even include the professional qualifications of Mr. Romano, let alone make the requisite showing regarding those qualifications to allow him to present testimony before this Board. Mr. Romano had, however, previously filed his professional qualifications

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<sup>2/</sup> Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-669, 15 NRC 453, 475 (1982).

<sup>3/</sup> Id.

before this Board with respect to another issue. See ff. Tr. 6725. Those qualifications state only that Mr. Romano has received unspecified "Bachelor and Master degrees in Science at Penn State," the pursuit of which "included courses in both chemistry and physics." He does not list or describe the content of these courses. Mr. Romano also states that he has "over twenty-five years experience in scientific studies and laboratory work since leaving Penn State -- with experience in water analysis and various aerial studies. Finally, he stated that he has been "Director of Ambler Laboratories for over 25 years doing science analyses in chemistry and development of tests involving atmosphere pressure, elevation above sea level, as it relates to sample volumes in precise work." These qualifications clearly do not indicate any expertise regarding welding or welding quality assurance and therefore his testimony should be struck in its entirety.

AWPP also stated that Dr. Gudmond Iverson, Professor of Statistics, Swathmore College, will be "a witness for AWPP as it related to the auditing methods used by the Applicant and audits performed as their scientific ability as it related to Quality Assurance."<sup>4/</sup> Dr. Iverson has filed neither testimony nor professional qualifications. Nor is Dr. Iverson attempting to sponsor the testimony filed by Mr.

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<sup>4/</sup> Testimony at J.

Romano. Finally, no indication is given that Dr. Iverson is qualified to give testimony on the subject for which he is being proffered. Having failed to submit the testimony required under 10 C.F.R. §2.743(b) and the Board's requirements regarding submission of testimony, Dr. Iverson should not be permitted to testify in this proceeding.

AWPP also apparently attempts to introduce testimony relating to its assertion that welders at Limerick have been fraudulently qualified.<sup>5/</sup> The Board rejected this issue for lack of basis and specificity in its "Memorandum and Order Confirming Rulings Made at Prehearing Conference" (October 28, 1983). The Board at that time requested that Applicant and Staff file reports supplying information as to how they ensure that welding and welder qualifications meet the design criteria and welding codes and how it is assured that non-qualified welders are not qualified by fraud. Applicant and Staff complied with this order on January 6, 1984 and January 23, 1984, respectively. Nothing in either of these documents constitutes good cause for the filing of this matter.

The Staff also included in the final paragraph (page 23) of its submission testimony relating to welder qualifications and an attachment indicating the results of an NRC inspection into this subject. For the reasons

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<sup>5/</sup> Testimony at I.

detailed above, this testimony and the described attachment should be struck as well.

Finally, AWPP attempts to add a number of alleged "welding infractions" to the list of specifications set forth for hearing.<sup>6/</sup> These additional listings should be denied. In its October 28, 1983 Order, the Board directed AWPP to file a list of the specifications it relied upon in support of its case by a given date, which was subsequently set as March 6, 1984. It stated that absent a substantial showing of good cause, AWPP's case would be limited to the instances set forth in the required listing.<sup>7/</sup> AWPP states in its testimony that its substantial good cause "is the enabling of a more complete record for the safety of the public."<sup>8/</sup> No reason is advanced as to why these specifications could not have been filed by March 6, 1984 as required by the Board. Discovery had been open on this contention since it was admitted to this proceeding on October 28, 1983. There is no good reason why these

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<sup>6/</sup> Testimony at E, F and G.

<sup>7/</sup> See "Memorandum and Order Confirming Rulings Made at Hearing" (January 20, 1984) (slip op. at 3); "Memorandum and Order Denying AWPP's Motions for Extension of Discovery Time and Appointment of Private Detective" (February 28, 1984) (slip op. at 2); and "Memorandum and Order Ruling on Applicant's Motion to Strike Specific Instances Advanced by AWPP in Support of Contention VI-1" (April 2, 1984) (slip op. at 1-2).

<sup>8/</sup> Testimony at E.

additional matters could not have been included in the required March 6, 1984 filing. The inspection reports AWPP relies upon were made available at the outset of the discovery period. Consequently, these additional matters should not be admitted in support of Contention VI-1.

For the reasons set forth above, the testimony of AWPP should be struck in its entirety; the testimony of the Staff should be struck as it relates to welder qualification; and Dr. Iverson should not be permitted to testify in this proceeding.

Respectfully submitted,

CONNER & WETTERHAHN, P.C.

*Mark J. Wetterhahn / nnn*

Mark J. Wetterhahn

*Nils N. Nichols*

Nils N. Nichols  
Counsel for the Applicant

April 20, 1984

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Motion to Strike AWPP's and a Portion of the NRC Staff's Testimony on Contention VI-1" dated April 20, 1984 in the captioned matter have been served upon the following by deposit in the United States mail this 20th day of April, 1984:

- |   |   |
|---|---|
| * Lawrence Brenner, Esq. (2)<br>Atomic Safety and Licensing<br>Board<br>U.S. Nuclear Regulatory<br>Commission<br>Washington, D.C. 20555 | Atomic Safety and Licensing<br>Appeal Panel<br>U.S. Nuclear Regulatory<br>Commission<br>Washington, D.C. 20555  |
| * Dr. Richard F. Cole<br>Atomic Safety and<br>Licensing Board<br>U.S. Nuclear Regulatory<br>Commission<br>Washington, D.C. 20555        | Docketing and Service Section<br>Office of the Secretary<br>U.S. Nuclear Regulatory<br>Commission<br>Washington, D.C. 20555                                     |
| * Dr. Peter A. Morris<br>Atomic Safety and<br>Licensing Board<br>U.S. Nuclear Regulatory<br>Commission<br>Washington, D.C. 20555        | * Ann P. Hodgdon, Esq.<br>Counsel for NRC Staff Office<br>of the Executive<br>Legal Director<br>U.S. Nuclear Regulatory<br>Commission<br>Washington, D.C. 20555 |

\* Hand Delivery on April 23, 1984

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. Frank R. Romano  
61 Forest Avenue  
Amler, Pennsylvania 19002

Mr. Robert L. Anthony  
Friends of the Earth of  
the Delaware Valley  
106 Vernon Lane, Box 186  
Moylan, Pennsylvania 19065

Mr. Marvin I. Lewis  
6504 Bradford Terrace  
Philadelphia, PA 19149

Phyllis Zitzer, Esq.  
Limerick Ecology Action  
P.O. Box 761  
762 Queen Street  
Pottstown, PA 19464

Charles W. Elliott, Esq.  
Brose and Postwistilo  
1101 Building  
11th & Northampton Streets  
Easton, PA 18042

Zori G. Ferkin, Esq.  
Assistant Counsel  
Commonwealth of Pennsylvania  
Governor's Energy Council 1625  
N. Front Street Harrisburg, PA  
17102

Steven P. Hershey, Esq.  
Community Legal  
Services, Inc.  
Law Center West North  
5219 Chestnut Street  
Philadelphia, PA 19139

Argus Love, Esq.  
107 East Main Street  
Norristown, PA 19401

Mr. Joseph H. White, III  
15 Ardmore Avenue  
Ardmore, PA 19003

Robert J. Sugarman, Esq.  
Sugarman, Denworth &  
Hellegers  
16th Floor, Center Plaza  
101 North Broad Street  
Philadelphia, PA 19107

Director, Pennsylvania  
Emergency Management Agency  
Basement, Transportation  
and Safety Building  
Harrisburg, PA 17120

Martha W. Bush, Esq.  
Kathryn S. Lewis, Esq.  
City of Philadelphia  
Municipal Services Bldg.  
15th and JFK Blvd.  
Philadelphia, PA 19107

Spence W. Perry, Esq.  
Associate General Counsel  
Federal Emergency  
Management Agency  
500 C Street, S.W., Rm. 840  
Washington, DC 20472

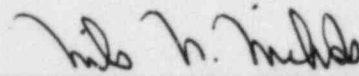
Thomas Gerusky, Director  
Bureau of Radiation  
Protection  
Department of Environmental  
Resources  
5th Floor, Fulton Bank Bldg.  
Third and Locust Streets  
Harrisburg, PA 17120

\*\* Federal Express

Jay M. Gutierrez, Esq.  
U.S. Nuclear Regulatory  
Commission  
Region I  
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

Timothy R.S. Campbell  
Director  
Department of Emergency  
Services  
14 East Biddle Street  
West Chester, PA 19380



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Nils N. Nichols