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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION JUL 11 A10:52

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))	

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APPLICANT'S ANSWER TO MOTION BY CITIZEN ACTION IN
THE NORTHEAST FOR CERTIFICATION TO THE COMMISSION
OF ITS FINANCIAL QUALIFICATIONS CONTENTION

In an unauthorized reply brief filed June 25, 1984, petitioner Citizen Action in the Northeast ("CANE") criticizes the Commission's recently issued Policy Statement on the handling of financial qualifications contentions by licensing boards,^{1/} asks that this Licensing Board ignore the Commission's instructions to disallow such contentions and, alternatively, seeks certification of its contention to the Commission.

Applicant opposes CANE's request for certification and, more generally, CANE's position on its contention as entirely lacking in merit. For the reasons more fully stated in Applicant's previously filed answer to CANE's petition for

^{1/} See 49 Fed. Reg. 24111 (June 12, 1984).

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admission to the proceeding,^{2/} this Licensing Board has no authority to admit a contention contrary to the express direction of the Commission, notwithstanding CANE's disagreement with the Commission's position.

Moreover, CANE has failed to address, much less satisfy, the requirements for certification of its contention to the Commission. The Appeal Board has consistently stressed and reiterated "that interlocutory appellate review of licensing board orders is disfavored and will be undertaken as a discretionary matter only in the most compelling circumstances."^{3/} Rulings on the admissibility of contentions are particularly unsuited for interlocutory review.^{4/} Rather, petitioner should, if it wishes, utilize routinely available appellate procedures.

2/ See Applicant's Answer to Petition by CANE for Late Intervention and Admission of its Financial Qualifications Contention (May 29, 1984).


3/ Arizona Public Service Company (Palo Verde Nuclear Generating Station, Units 2 and 3), ALAB-742, 18 NRC 380, 383 (1983) (footnotes omitted). Specifically, interlocutory review will be entertained "only upon a clear and convincing showing that the Licensing Board ruling under attack either (1) threaten[s] the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated by a later appeal or (2) affect[s] the basic structure of the proceeding in a pervasive or unusual manner. Id., quoting Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-405, 5 NRC 1190, 1192 (1977) (brackets in original).

4/ Virginia Electric and Power Company (North Anna Power
(Footnote Continued)

Accordingly, for the reasons discussed more fully above, CANE's request for relief should be denied.

Respectfully submitted,

CONNER & WETTERHAHN, P.C.

A handwritten signature in dark ink, appearing to read "Ma Wetterhahn" with a stylized flourish at the end.

Robert M. Rader
Counsel for the Applicant

July 10, 1984

(Footnote Continued)

Station, Units 1 and 2), ALAB-741, 18 NRC 371 (1983).
See also Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 and 2), ALAB-736, 18 NRC 165 (1983) (denying certification as to licensing board rulings granting motion for summary disposition).