

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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USNRC

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Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

In the Matter of	)	
	)	
Philadelphia Electric Company	)	Docket Nos. 50-352 06
	)	50-353 02
(Limerick Generating Station,	)	
Units 1 and 2)	)	

APPLICANT'S MOTION TO STRIKE AWPP PLEADING  
AND REPLY TO AWPP MOTION RELATING  
TO CONTENTION VI-1

On July 25, 1984, intervenor Air and Water Pollution Patrol filed "AWPP (Romano) Response to NRC Staff Response Regarding Gross Alpha Contention by AWPP."<sup>1/</sup> To the extent it purports to be a reply to Staff and Applicant's answers to "New AWPP (Romano) Contention Re Gross Alpha (June 26, 1984)," it is prohibited by 10 C.F.R. §2.730(c).<sup>2/</sup> As a prohibited pleading, it should be stricken.<sup>3/</sup>

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- 1/ While the cover letter purports to have served "the latest service list," presumably on the date of the letter July 25, 1984, Applicant only received a copy on July 30, 1984 which had been sent on July 27, 1984 via Express Mail.
- 2/ The Detroit Edison Company (Enrico Fermi Atomic Plant, Unit 2), ALAB-469, 7 NRC 470, 471 (1978).
- 3/ Id.

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On page 4 of its pleading, AWPP moves the Board to require the Applicant and Staff "be made to explain" an item in an attachment to an April 18, 1984 memorandum to the NRC Commissioners from Darrell Eisenhut, Director, Division of Licensing, Office of Nuclear Reactor Regulation. Applicant opposes the motion as being late and entirely without basis.<sup>4/</sup>

Initially, any request for the Board to consider any matter contained in Board Notification No. 84-049 is manifestly late inasmuch as this document was served on the parties in April. AWPP has failed to show good cause as to why it waited 3½ months before bringing this matter to the attention of the Licensing Board. In any event, the subject of Board Notification No. 84-049 is Limerick welder qualification. Item 4 on page 6 of Enclosure 3 to this memorandum is not addressed in this Board notification; it only incidently happened to be discussed on the same page of the inspection report as Item 5, involving welder testing and training, which was the subject of the memorandum. Item 4 was a matter discovered by Applicant's quality assurance organization and was made an unresolved item for the NRC inspector to review Applicant's evaluation and corrective action.

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<sup>4/</sup> The Appeal Board has held that no affirmative relief may be requested in a pleading unless the title  
(Footnote Continued)

The pages in question are from Inspection Report 352/83-08 and 353/83-05 which was dated June 29, 1983. Mr. Romano was given this inspection report as part of discovery on November 1, 1983 (Discovery 14). Thus, AWPP has had access to this document for over 8 months and faces an almost insurmountable task in showing why he did not raise this matter as one of the specific incidents supporting Contention VI-1.<sup>5/</sup> AWPP has not even addressed this point in its pleading.

If treated as a late-filed contention, AWPP has failed to address the criteria, let alone meet his burden to affirmatively demonstrate that he has met the criteria, contained in 10 C.F.R. §2.714 for acceptance of late-filed contentions. See Applicant's Answer to New Proposed Contention by Air & Water Pollution Patrol relating to "Gross Alpha" (July 10, 1984) at 2-6. There is absolutely no showing of good cause to justify the late filing. AWPP has shown no real ability to assist the Board in the litigation of this matter which, if accepted, would lead to significant delays in this proceeding.

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(Footnote Continued)

reflects such request. Duke Power Company (Cherokee Nuclear Station, Units 1, 2 and 3), ALAB-457, 7 NRC 70, 71 (1978).

5/ If AWPP's pleading is treated as a motion to reopen the record, it does not even address the criteria for granting such relief. See, e.g., Applicant's Answer to Request by Del-Aware Unlimited, Inc. to Set Aside the (Footnote Continued)

The matter concerning Inspection Report 352/76-09-03 dated October 15, 1976 is some 8 years old.<sup>6/</sup> It involves voids in the concrete surrounding the containment liner and welding performed on the drywell liner to effect inspection and bears no relationship to welding to the reactor vessel, the subject of Item 4 of Inspection Report 352/83-08. In any event, the Board has previously denied a contention relating to this matter.<sup>7/</sup> No reason to change the Board's previous ruling has been given.

For the above stated reasons, the pleading should be stricken and the motion concerning Contention VI-1 should be denied.

Respectfully submitted,

CONNER & WETTERHAHN, P.C.



Mark J. Wetterhahn  
Counsel for Applicant

August 7, 1984

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(Footnote Continued)

Partial Initial Decision on Supplementary Cooling Water System Contentions at 7-14 (May 30, 1984). Judged by these standards, the instant motion must fail.

<sup>6/</sup> AWPP pursued discovery concerning this matter as far back as September 3, 1982 (see Item 2 of letter from Frank Romano to Troy B. Conner, Jr. and April 6, 1983 letter from Mark J. Wetterhahn to Frank R. Romano (Discovery 6)).

<sup>7/</sup> See Tr. 4911-12 (October 18, 1983) and Memorandum and Order Confirming Rulings Made at Prehearing Conference (October 28, 1983) (slip op. at 6).

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Motion to Strike AWPP Pleading and Reply to AWPP Motion Relating to Contention VI-1" dated August 7, 1984 in the captioned matter have been served upon the following by deposit in the United States mail this 7th day of August, 1984:

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