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UNITED STATES OF AMERICA<sup>86</sup> MAR 19 P3:01  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
PHILADELPHIA ELECTRIC COMPANY ) Docket Nos. 50-352 ~~OLC~~  
 ) (Check Valves) OLA/OLA-2  
(Limerick Generating Station, )  
Unit 1) )

RESPONSE OF NRC STAFF TO  
R. L. ANTHONY PROPOSED CONTENTIONS ON  
LICENSEE'S AMENDMENT REQUEST NUMBER ONE

I. INTRODUCTION

On February 15, 1986, R. L. Anthony <sup>1/</sup> filed eleven contentions in connection with the captioned matter. The NRC staff (Staff) hereby responds to Mr. Anthony's contentions and for the reasons set forth below the Staff urges that all of the contentions be denied.

II. BACKGROUND

On December 18, 1985, the Licensee, in a letter to the NRC, requested an amendment to its Limerick Unit 1 operating license. The Licensee requested approval, on a one-time-only basis, for temporarily extending certain surveillance requirements in the Technical Specifications, which

1/ On March 13, 1986, the Atomic Safety and Licensing Board ruled that despite the fact that Mr. Anthony referred to "FOE" in some of his pleadings, the Petition should be viewed as an individual effort by Mr. Anthony. Memorandum and Order of March 13, 1986, at 3 fn.1.

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must be performed nominally every 18 months and which can only be done when the plant is shut down. The change would extend the 18 month surveillance interval by fourteen weeks beyond the maximum 25 percent extension allowed by the Technical Specifications. This would permit the Licensee to delay performing this testing until a maintenance and surveillance outage which is scheduled to begin on or before May 26, 1986.

The NRC staff after a review of the Licensee's request determined that the condition of the valves in question would not change significantly during the short extension period.

The safety related aspects of extending this surveillance interval on a one time basis for about three months are insignificant for the following reasons. (1) Flow through the valves or from the lines in which they are located will be limited by the small line size and the provision of flow restricting orifices to further reduce potential flow rates, (2) Any leakage from these lines outside of primary containment would be contained in the secondary containment and processed by the standby gas treatment system. The analysis of such an event has already been performed and is included in the Final Safety Analysis Report in Section 15.6.2. As indicated in the FSAR there would likely be a variety of indicators to the operator of a failed instrument line thus alerting plant staff to the need to isolate the line by use of other manual valves in the line. The staff has previously reached the conclusion in section 15.6 of the SER that the Limerick instrument line design is acceptable. (3) The licensee has examined the records of the initial flow testing performed on these valves and found that all valves were tested successfully. The licensee further states that, based on available data, the valves are believed to be highly reliable in performing their function of checking flow. The staff concludes that the condition of the valves is not expected to change significantly during the short extension period.

Based on the above, the NRC staff concludes that extension of the interval for the surveillance testing by 14 weeks on a one-time only basis is acceptable because the increased surveillance interval does not significantly increase the possibility that a undetected failure will occur in the instrumentation line excess flow check valves covered by this Technical Specification. Safety Evaluation, Support Amendment No. 1, Facility Operating License No. NPF-39, Philadelphia Electric

Company, (Limerick Generating Station, Unit No. 1), at 2, (February 6, 1986.)

The NRC staff concluded:

[B]ased on the considerations discussed above, that: (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, and (2) such activities will be conducted in compliance with the Commission's regulations and the issuance of this amendment will not be inimical to the common defense and security nor to the health and safety of the public. Id. at 3.

On February 15, 1986, Mr. Anthony filed a document containing, inter alia, eleven numbered contentions concerning amendment number one to the Limerick license. On February 25, 1986, the Licensee filed a motion seeking to defer answers to the eleven contentions until the Licensing Board ruled on the petition to intervene. On March 4, 1986, the Staff filed its motion in support of the Licensee's request to defer answering the contentions. In a Memorandum and Order, dated March 6, 1986, the Licensing Board directed the Licensee and the Staff to be prepared to have in the hands of the Board no later than 12:00 noon, Monday, March 17, 1986, their respective responses to Mr. Anthony's contentions in the event the petition to intervene was granted.<sup>2/</sup> On March 13, the Licensing Board advised the Staff that Mr. Anthony's petition to intervene had been granted and that Staff's response to his contentions was due as previously directed.

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<sup>2/</sup> Philadelphia Electric Company (Limerick Generating Station, Unit 1), Docket No. 50-352-OLA, slip op. at 2, March 6, 1986.

### III. DISCUSSION

A review of the Commission's current rules and regulations on the admissibility of proposed contentions will provide a proper context in which to consider Mr. Anthony's proposed contentions. The Commission's Rules of Practice require that "bases for each contention [be] set forth with reasonable specificity," 10 C.F.R. § 2.714(b). This regulation has been read to require "a reasonably specific articulation of its rationale -- e.g., why the Applicant's plans fall short of certain safety requirements, or will have a particular detrimental effect on the environment." <sup>3/</sup> The Commission in CLI-83-19 determined that intervenors are expected to raise issues as early as possible. <sup>4/</sup>

Under 10 C.F.R. § 2.714(b) and applicable Commission case law <sup>5/</sup> a petitioner for intervention in a Commission proceeding must file a supplement to its petition:

. . . [w]hich must include a list of the contentions which petitioner seeks to have litigated in the matter, and basis for each contention set forth with reasonable specificity.

The purpose of the basis requirements of 10 C.F.R. § 2.714 are (1) to assure that the contention in question raises a matter appropriate for liti-

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<sup>3/</sup> Duke Power Company (Catawba Nuclear Station, Units 1 and 2), LBP-82-50, 15 NRC 566 at 570 (1982).

<sup>4/</sup> Duke Power Company, (Catawba Nuclear Station, Units 1 and 2) CLI-83-19, 17 NRC 1041 (1983).

<sup>5/</sup> Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2), ALAB-107, 6 AEC 188, 194 (1973), aff'd.

gation in a particular proceeding, <sup>6/</sup> (2) to establish a sufficient foundation for the contention to warrant further inquiry into the subject matter addressed by the assertion and, (3) to put the other parties sufficiently on notice ". . . so that they will know at least generally what they will have to defend against or oppose." Peach Bottom, supra, at 20. From the standpoint of basis, it is unnecessary for the petition to detail the evidence which will be offered in support of each contention. <sup>7/</sup>

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(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

BPI v. Atomic Energy Commission, 502 F.2d 424, 429 (D.C. Cir. 1974); Duquesne Light Co. (Beaver Valley Power Station, Unit No. 1), ALAB-109, 6 AEC 242, 245 (1973).

<sup>6/</sup> A contention must be rejected where:

- (a) it constitutes an attack on applicable statutory requirements;
- (b) it challenges the basic structure of the Commission's regulatory process or is an attack on the regulations;
- (c) it is nothing more than a generalization regarding the intervenor's views of what applicable policies ought to be;
- (d) it seeks to raise an issue which is not proper for adjudication in the proceeding or does not apply to the facility in question; or
- (e) it seeks to raise an issue which is not concrete or litigable.

Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974).

<sup>7/</sup> Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973).

Furthermore, in examining the contentions and the bases therefor, a licensing board should not reach the merits of the contentions.<sup>8/</sup> As the Appeal Board instructed in Farley<sup>9/</sup>, in assessing the acceptability of a contention as a basis for granting intervention:

[T]he intervention board's task is to determine, from a scrutiny of what appears within the four corners of the contention as stated, whether (1) the requisite specificity exists; (2) there has been an adequate delineation of the basis for the contention; and (3) the issue sought to be raised is cognizable in an individual licensing proceeding. (Footnotes omitted).

If a contention meets these criteria, the contention provides a foundation for admission "irrespective of whether resort to extrinsic evidence might establish the contention to be insubstantial." Farley, supra, at 217.<sup>10/</sup> The question of the contention's substance is for later resolution - either by way of § 2.749 summary disposition prior to the evidentiary hearing . . . or in the initial decision following the conclusion of a such a hearing." Id. Thus, it is incumbent upon Intervenors to set forth contentions and bases therefor which are sufficiently detailed and specific to demonstrate that the issues they seek to raise are admissible.

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8/ Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 548, 1980); Duke Power Co. (Amendment to Materials License SNM-1773 - Transportation of Spent Fuel From Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-528, 9 NRC 146, 151 (1979); Peach Bottom, supra, at 20; Grand Gulf, supra, at 426.

9/ Alabama Power Company (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 AEC 210, 216-217 (1974).

10/ However, the proposed contention should refer to and address relevant documentation, available in the public domain, which is relevant

A. Mr. Anthony's Contentions

Contention 1

In this contention, Mr. Anthony maintains that the one time schedular amendment violates 10 C.F.R. § 51.22(c)(9) in that it subjects him and the public to significant increases in the types of effluents released offsite and significant increases in cumulative occupational radiation exposures. Mr. Anthony has made no effort to state a basis for the contention, i.e., to explain or elaborate on how the Licensee's one time only schedular amendment request will result in these alleged increases. All that Mr. Anthony has done in this regard is to quote the language contained in 10 C.F.R. § 51.22(c)(9) as authority for its contention.

Mr. Anthony also fails to set forth any basis for disagreeing with the Staff's finding set forth on pages 2-3, supra, that the granting of the amendment would not endanger the health and safety of the public. This contention is vague, is without basis, and lacks the requisite specificity, and, should therefore be denied.

Contention 2

Contention 2 is basically a continuation of Contention 1 as support for Mr. Anthony's conclusion that 10 C.F.R. § 51.22(b) of the Commission's rules has been violated. Once again, Mr. Anthony does not state any basis for the contention, but merely relies on the bare language of the

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(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

to the plant which has filed an application. See, Cleveland Electric Illuminating Company, et al. (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-24, 14 NRC 175, 181-184 (1981).



section as support. In fact, the section in question states that except in special circumstances an environmental impact statement or an environmental assessment is not required where the amendment in question falls within the category of actions listed as categorical exclusions. Mr. Anthony has not alleged the existence of any special circumstances in this matter. Accordingly, Mr. Anthony's contention is without basis, is lacking in specificity, and should be denied.

### Contention 3

In this contention, Mr. Anthony asserts that the requested amendment violates the maximum time limit set by the technical specifications for safe operation of the Limerick plant and there can be no assurance during the added fourteen weeks of safe plant operation and protection of the public from failure of the valves and releases of radioactivity. Mr. Anthony's argument ignores the Commission's Regulations, which specifically authorize the Commission to amend a license under appropriate circumstances. 10 C.F.R. § 50.90 et seq. The Licensee and the Staff followed the procedures set forth in 10 C.F.R. § 50.90 et seq. in processing the amendment request. The Staff determined that there was no significant hazards consideration associated with the amendment and as indicated above, issued the amendment on February 6, 1986. Mr. Anthony's proposed contention states no basis for his assertion that there is no assurance of the protection of the public from operation of the facility under the amendment. As such, the Staff submits that Contention 3 is without basis and specificity and should be denied.



Contention 4

This contention alleges that because of the extended start up schedule, there has been more deterioration of the valves without power operation than with power operation. Mr. Anthony's basis is that changes in cooling water pressure and starts and stops of the reactor exert more strain than continuous power operation. In his efforts to show the consequences from the granting of this one time schedular amendment, Mr. Anthony provides no support for its conclusion that there could be more deterioration of the valves without power operation than with it. Thus, Mr. Anthony's remarks about starts and stops and changes in cooling water pressures is without any foundation and his Contention 4 is without adequate basis and should be denied.

Contention 5

In Contention 5, Mr. Anthony takes a statement from the Staff's Safety Evaluation at page 2, that sets forth the reasons why the valves cannot be tested during normal power operations and uses it to support its allegations of the extreme danger that exists from malfunction of the valves. This distorts the Staff's position, which simply is that due to hazards to personnel working in the plant, as well as other problems that could occur, the plant should be in a shutdown condition before the valves are tested. See, Application for Amendment, at 1-2, and Staff's Safety Evaluation at 2. The Staff, on the same page cited by Mr. Anthony, concludes the increased extension of the interval for testing the valves on a one-time only basis will not significantly increase the possibility that an undetected failure will occur. Other than its misplaced reliance on the Staff's Safety Evaluation, Mr. Anthony has failed to state any basis for the contention. In view thereof, Contention 5 is without basis and should be denied.

Contention 6

At the outset, Staff must point out that Mr. Anthony's remarks that the amendment fails to specify the number of valves involved is incorrect. The valves in question are identified by Technical Specification 4.6.3.4 as those listed in Table 3.6.3.-1 of the Technical Specifications. Mr. Anthony's conclusions about the failure of one or more of the valves resulting in catastrophe are made without any basis. This is an insufficiently specific statement of basis for Contention 6 and it should therefore be denied. In addition, Mr. Anthony's bare statement about radioactive releases is vague and lacks the requisite specificity. Contention 6 should be dismissed for this reason as well.

Contention 7

Contention 7 is basically a continuation of Contention 5 in that Mr. Anthony takes the second part of the statement from the Staff's Safety Evaluation (page 2) that sets forth the reasons why the valves in question cannot be tested during normal power operations and uses it to support its bare allegations of dire consequences should this one time schedular amendment be granted. Mr. Anthony sets forth no other basis for the proposed contention. Since, as with proposed Contention 5, his asserted basis for the contention is misplaced, Mr. Anthony has failed to set forth adequately a basis for the contention. Contention 7 should therefore be rejected for the same reasons set forth in Contention 5 above.

Contention 8

In this contention, Mr. Anthony refers to PRA studies dealing with, among other things, the risks associated with interfacing systems and concludes that valves play an important part in the safety of the plant.

(Petition at 2). Staff notes that the valves of concern in the PRA studies are primary isolation valves in lines which connect to both the high pressure primary system and the low pressure systems and are not the instrumentation line excess flow check valves that are the subject of this amendment. No effort is made by Mr. Anthony to distinguish these facts or to provide a nexus between the requested amendment and the studies on which he relies. In addition, Millstone 3 and the Seabrook nuclear plant, referred to in one of the PRA studies and relied upon by Mr. Anthony, are Westinghouse pressurized water reactors while Limerick is a General Electric designed boiling water reactor. Again, no effort is made by Mr. Anthony to distinguish this fact or to relate it to the requested amendment. Thus, the cited studies do not constitute any basis for Contention 8. The contention should therefore be denied.

#### Contention 9

In Contention 9, Mr. Anthony again refers to a Independent Design Verification Program (IDVP) study conducted by Torrey Pines Technology in 1984 for Limerick. As the Licensing Board knows, Mr. Anthony used this study as support for its petition to intervene in this matter. The Staff, in response to Mr. Anthony's petition, pointed out to the Licensing Board that the issue raised in the Torrey Pines study was the subject of the Staff's review and was found to be resolved as stated in Supplement No. 4 to the Limerick Safety Evaluation Report, at Section 3.6.2. (May 1985). There simply is no nexus between the Torrey Pines study and Mr. Anthony's allegations regarding the amendment. Contention 9 lacks basis and should be denied. See, Memorandum and Order Ruling on

Robert L. Anthony's Petition for Leave to Intervene, slip op. at 9 (March 13, 1986).

Contention 10

Contention 10 is essentially a summary argument based upon Mr. Anthony's other proposed contentions. Mr. Anthony alleges that to extend the time for testing is not in keeping with the requirements of the Atomic Energy Act or the intention of the Commission's regulations, which were designed to assure that plants operate so as not to endanger the health and safety of the public. This contention is similar to Contention 3, wherein Mr. Anthony takes the position that once a technical specification is written, it cannot be changed for good cause. Under this interpretation a licensee would never be able to amend its license regardless of the basis for the amendment. This interpretation is clearly contrary to the Commission's regulations. See, 10 C.F.R. § 50.90 et. seq. The proposed contention also lacks a statement of basis for any assertion that grant of the amendment is in conflict with the Atomic Energy Act and the Commission's regulations. Therefore, Contention 10 should be denied because it lacks specificity and basis.

Contention 11

In Contention 11, Mr. Anthony maintains that the Licensee's amendment request is a self serving move that is financially motivated. There is no support for this allegation and the contention should be denied for lack of basis. Furthermore, the proposed contention does not state any issue related to the subject matter of the amendment request.

IV. CONCLUSION

In view of the foregoing, the Licensing Board should reject all of the contentions submitted by Mr. Anthony.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "B. H. Vogler".

Benjamin H. Vogler  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 17th day of March, 1986

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD <sup>86 MAR 19</sup> P3:10

In the Matter of )

PHILADELPHIA ELECTRIC COMPANY )

(Limerick Generating Station,  
Unit 1) )

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

Docket No. 50-352 OLA-1  
(Check Valves)

CERTIFICATE OF SERVICE

I hereby certify that copies of "RESPONSE OF NRC STAFF TO R. L. ANTHONY PROPOSED CONTENTIONS ON LICENSEE'S AMENDMENT REQUEST NUMBER ONE" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, or as indicated by a double asterisk by hand-delivery, this 17th day of March, 1986:

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