

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

11/21/79

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
COMMONWEALTH EDISON COMPANY, et al.	)	Docket Nos. S50-599
(Carroll County Site)	)	S50-600



NRC STAFF STATEMENT OF POSITION ON  
CONTENTIONS AND MOTION TO CONSOLIDATE

On October 10, 1979, the Board issued a Memorandum of Special Prehearing Conference and Order in the above-captioned proceeding. In its Memorandum and Order, the Board granted the intervention petitions of the State of Illinois, the Iowa Public Interest Research Group (PIRG), the Iowa Socialist Party (ISP), the Jo Daviess County Ad Hoc Committee on Nuclear Information (Jo Daviess), and the Citizens Against Nuclear Power (CANP),<sup>1/</sup> admitted the State of Iowa as an interested state, and identified the contentions admitted as matters in controversy. It offered the parties until November 9, 1979 to submit any statement of position they desired with respect to the Board's ruling on contentions. (The Licensing Board subsequently granted a two-week extension to all parties.) The Staff position on that ruling follows.

In addition, the Staff hereby moves, pursuant to 10 CFR §2.715a, to consolidate the prosecution of the following contentions under a representative of the Intervenor's selection on the grounds that their interest in these matters is indistinguishable and that these contentions raise substantially the same question for adjudication:

- (1) Plum River Fault. Illinois Contention 5, PIRG Contention 1, Jo Daviess Contention II(a), (b), ISP Contention 1(a)(ii);

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<sup>1/</sup> The intervention petition of Edward Gogel was denied for lack of standing. The petition of James Runyon was consolidated with CANP.

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- (2) Terrestrial & Aquatic Ecology. Illinois Contention 6, PIRG Contention 10, Jo Daviess Contention III;
- (3) Stransky Airport. Illinois Contention 7, Jo Daviess Contention IV(c);
- (4) Savannah Army Depot. Illinois Contention 8, Jo Daviess Contention IV(b); and
- (5) Socioeconomics. Illinois Contention 15, PIRG Contention 3(b)(g), TSP Contention 1(b), (c), (d)(i), Jo Daviess Contentions IV(a), (d), (e) and V(a)(4), (b).

#### DISCUSSION

As a general precept, contentions must fall within the scope of the issues designated for consideration in the Federal Register Notice of Hearing (Notice (44 F.R. 26229)<sup>2/</sup> and be set forth with basis and specificity per the requirements of 10 C.F.R. §2.714(b) and applicable case law. See, e.g., BPI v. Atomic Energy Commission, 502 F.2d 424, 429 (D. C. Cir. 1974). It is well established that Licensing Boards are empowered to hear only those matters which the Commission has designated them to decide in the applicable notice of hearing. Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2) ALAB-316, 3 NRC 167, 170 (1976); See 10 C.F.R. §2.104(a); 2.717(a). In the instant matter, these issues are derived from the Applicant's specification of issues of site suitability for which early evidentiary consideration is sought. See 10 C.F.R. §2.717(a). A major reason for requiring the articulation of specificity and basis is to help assure that

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<sup>2/</sup> The issues designated therein are:

whether, from both an environmental and safety standpoint, the Carroll County site is suitable with respect to: geology, hydrology, meteorology, terrestrial and aquatic ecology, water use, regional demography, community characteristics, economy, historical and national landmarks, land use, noise considerations and aesthetics.

other parties are put on sufficient notice of what they will have to defend against<sup>3/</sup> and to ensure that the hearing process is invoked solely for the resolution of concrete issues.<sup>4/</sup>

The Board rejected a number of the proposed contentions on the grounds that they concerned matters beyond the scope of the proceeding at this stage. The Staff concurs in these determinations. At the same time, the Staff believes that certain of the admitted contentions similarly lie outside the scope of the early site review phase and are more properly dealt with at the full-blown construction permit phase of the proceeding. 10 C.F.R. §2.604(c). The Staff does not take exception to contentions admitted by the Board except as specified herein.

#### STATEMENT OF POSITION

Citizens Against Nuclear Power. The Board rejected fourteen of the fifteen contentions proposed by CANP. The Staff believes that the Board properly found that these were beyond the scope of the proceeding at the early site review stage. The Board reserved judgment on the admissibility of proposed Contention 15 (evacuation plans) pending publication of the "Three Mile Island-NRC report [presumably, this is a reference to the Rogovin Committee] or further Commission action". Memorandum and Order at 12.

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3/ Philadelphia Electric Company (Peach Bottom, Units 2 and 3) ALAB-216, 8 AEC 13, 20 (1974).

4/ Philadelphia Electric Company (Peach Bottom, Units 2 and 3), CLI-73-10 6 AEC 173, 174 (1973).

Proposed Contention 15 states:

Illinois has no federally approved plan for evacuating populations in the event of catastrophic accident. No such plans exist for the Carroll County area, and it is likely that no suitable evacuation plan will be found.

The matter of emergency planning is not designated for consideration in the Commission Notice of Hearing. The subject will be extensively reviewed by the Staff at the later construction permit stage of the proceeding as is appropriate.

This proposed contention is distinguishable from proposed Contention 7 of the Iowa PIRG. The latter proposed contention raises certain site-specific characteristics which would allegedly hamper an evacuation at the proposed site in the event of an accident. As such, this proposed contention is potentially acceptable in that the feasibility of evacuation is a relevant siting criteria under the Commission's regulations respecting establishment of an exclusion area and low population zone for a proposed station. 10 C.F.R. §100.3.

Proposed Contention 15 does not question the suitability of the site from the standpoint of emergency evacuation. Rather, it evinces an apparent concern over the off-site emergency plans for the proposed station themselves. This is a subject that may properly be explored at the construction permit stage of the proceeding. Accordingly, the Staff opposes the admission of this contention.

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Iowa Socialist Party

In its Order, the Board admitted ISP Contentions 1(a)(ii), 1(b), 1(c) and 1(d)(i). The Board reserved ruling on the admissibility of Contention 1(a)(i). Contention 1 states:

In their Site Safety Report, the applicants have not demonstrated all the safety and environmental aspects of the site have been adequately met under the requirements of 10 CFR and the National Environmental Policy Act, in that:

- a. adverse effects on land use patterns in the area have not all been fully considered and detailed, such as,
  - (i) lack of safe and adequate roads in the site area for transportation to and from the site and for evacuation in the event of an on-site accident.
  - (ii) failure to adequately consider geological characteristics of the area such as the Plum River Fault.
- b. the economy of the area would be negatively impacted to a greater degree than described by the applicants, for example,
  - (i) greater loss in property values than described.
  - (ii) greater loss in productive capacity of the land than described.
  - (iii) greater impact on the local housing market than described.
- c. the siting of the plant would increase the likelihood of adverse effects on community characteristics of the area, for example,
  - (i) an increase in the likelihood of disease from low-level radiation effects would increase migration from the area.
  - (ii) people would move from the area in fear of an accident.

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- d. adverse effects on crops, livestock, and other vegetation have not all been fully considered and detailed, such as,
  - (i) loss of productive capacity from low-level radiation.
  - (ii) risk of contamination in case of an accident.

Contention 1(a)(i) is relevant to the determination of the exclusion area and low-population zone for the proposed station under 10 CFR §§100.3 and 100.11 and, if supplied with the necessary basis and specificity, would be admissible at this stage of the process. Contention 1(a)(ii) raises an appropriate issue for consideration at this stage but lacks the necessary basis and specificity. Contention 1(b) presents an acceptable issue for consideration at this stage but lacks the requisite basis and specificity. Contention 1(c) lacks the requisite basis and is unduly speculative and not susceptible to a reasonable degree of proof. Contention 1(d) lacks basis. Accordingly, the Staff opposes the admission of proposed Contentions 1(a), (b), (c), and 1(d)(i) in their present form.

#### State of Illinois

The Board rejected, in their entirety, ten of the eighteen contentions proposed by Illinois, as well as portions of the eight remaining contentions. The Staff believes that the Board properly found that the disallowed contentions were not appropriate for litigation at this stage of the proceeding. The Staff further opposes admission of Proposed Contentions 8, 9 and 15(b).

Proposed Contentions 8 and 9 state:

- 8. In determining public health and safety, applicants have failed to adequately consider or take into account the effect on the proposed reactor of explosions which could occur at the Savanna Army Depot, which is 13.2 miles from the proposed site and is used for the storage

of artillery ammunition, bombs and their components, grenades, rockets, mine and engineering explosives, riot control agents, fuses, primers, pyrotechnics, and missile warheads (CCS-SS-SSR §2.2.2.2).

9. In determining public health and safety, applicants have failed to adequately consider or take into account the effects on the proposed reactors of explosions which could occur during the transportation of such ammunitions as mentioned above on either the Burlington Northern Railway or on Illinois Route 84.

The Staff opposes the admission of these two contentions as lacking a factual basis and specificity. Absent from each contention is a particularization of the inadequacies alleged, leaving the Staff and Applicant to guess at what further information or effects must be considered.<sup>5/</sup>

Proposed Contention 15(b) states:

- (b) The Galena Territory and Apple Canyon situated north of the proposed station are "second home communities". Residents have been attracted to the area because of its aesthetic and historical attributes. There has been no consideration of the effect of the Carroll County Station on real estate values of communities which are dependent on preservation of the aesthetic quality of the region.

The Staff contends that the above contention is vague and lacking in specificity and not susceptible to a reasonable degree of proof. Further, to the extent that any "effect" can be imagined, it would be speculative to attempt to gauge the ensuing impacts. Accordingly, the Staff opposes the admission of this contention.

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<sup>5/</sup> In the interest of consistency, the Staff notes that similar infirmities exist in other Illinois' contentions which were admitted by the Board, e.g., Contentions 4, 5, and 6. However, the relationship of the issues raised therein to other admitted contentions of other intervenors allows the Staff to deal with all aspects of their subject matter in a single evidentiary presentation, and the relief of dismissal is not sought.

Jo Daviess County Ad-Hoc Committee on Nuclear Energy Information

The Board rejected all or part of five of the six contentions proposed by Jo Daviess. The Staff believes that the Board properly found the rejected contentions to be beyond the scope of this proceeding, with the exception of proposed Contention III(a). The Staff supports the admission of proposed Contention III(a), and opposes the admission of proposed Contention III(c), unless modified in accordance with the discussion below.

Proposed Contention III(a) states:

[Applicant has not adequately analyzed] the effect upon aquatic and avian (including bald eagles, peregrine falcons, and red-shouldered hawks) spawning, nesting, and wintering habits of keeping Pool 13 of the River open in the wintertime.

The Staff notes that the Board accepted this contention at the Special Pre-hearing Conference (Tr. 73) but subsequently has deleted this contention from its recitation of admitted contentions in its Memorandum and Order (p. 7).

The Staff would support admission of this contention as appropriate for consideration at the early site review stage of this proceeding.

Proposed Contention III(c) states:

[Applicant has not adequately analyzed] the effect of displacement by construction, maintenance, and operation of a nuclear power plant at this site upon the habitats of beaver and marsh hawks known to be in the area.

The phrase "in the area" in the last line of the above contention is, in the Staff's opinion, too vague and lacking in specificity to be litigable.

However, the Staff would not oppose the admissibility of the contention if the phrase were changed to read "in the exclusion area", a modification to which Intervenor agrees.

Iowa PIRG

The Board rejected, in their entirety, five of the ten contentions proposed by Iowa PIRG, as well as a portion of one other, and reserved decision on one contention. The Staff believes that the Board properly found that each of the disallowed contentions was not appropriate for litigation at this stage of the proceeding. The Staff further opposes admission of proposed Contentions 2 and 3.

Proposed Contention 2 states:

Applicants' proposed finding #109 cannot be made as requested, insofar as WASH-1238 and its update, NUREG-75/038, are currently outdated. The information in Summary Table S-4 in 10 CFR Part 5 is in need of revision, and no finding based on it can be made as requested. Further, this is not a matter of law beyond the scope of the Atomic Safety and Licensing Board, but is a substantive consideration bearing upon proposed findings of fact.

The above contention is a direct challenge to the Commission's regulations, and cannot be entertained in an individual licensing proceeding absent a showing of special circumstances. 10 C.F.R. §2.758. Moreover, such issue, even if raised in accordance with §2.758, would more properly be reserved for the full construction permit stage of the proceeding.

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Proposed Contention 3 states:

The range of socioeconomic impacts of station construction and operation have not been adequately identified, in that:

- (b) the losses of farm land and agricultural productivity referred to above will be greater than identified in the Applicants' Environmental Report;
- (c) since Carroll County has an economy based primarily upon agriculture, effects on the agricultural economy from both construction and operation of the plant, ripple through a much larger segment of the local economy than those directly affected, and this ripple effect is neither mentioned nor identified;
- (d) no attempt was made by the Applicant to quantify the effects of increased costs and inflation in the local housing market upon elderly and low-income renters;
- (e) it is not apparent from the information provided, that the necessary labor force can be secured for construction without a negative impact upon other construction priorities in the area during the same period, and no such impact has been identified or quantified;
- (f) displacements in the local housing market have been underestimated;
- (g) no attempt has been made to determine the extent to which construction and operation of the Carroll County Station will have an adverse impact upon the decisions of residents of the immediate vicinity to remain in the area, and the potential impact of their decisions on the local labor market, housing market, social atmosphere, schools and economy. This failing is particularly crucial in view of the large and growing percentage of the population throughout the United States who harbor serious doubts about the safety of nuclear generating stations, and would not choose to remain in a community chosen as the site for such a facility.

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The Staff submits that the above contention, and each of its six subparts, lacks a factual basis and is unduly speculative. Accordingly, the Staff opposes its admission.

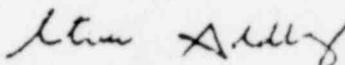
CONCLUSION

On the basis of the above, the Staff opposes the Board's admission of CANP Contention 15; ISP Contentions 1(a)(ii), 1(b), 1(c), and 1(d)(i); State of Illinois Contention 8, 9, 15(b); and Iowa PIRG Contention 3 and supports the admission of Jo Daviess Contention III(a). Additionally, the Staff moves for consolidation of prosecution of the admitted contentions specified at the outset of this pleading.

Respectfully submitted,



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Dated at Bethesda, Maryland  
this 21st day of November, 1979.

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