

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

John F. Wolf, Chairman
Dr. Robert L. Holton
Glenn O. Bright



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

MEMORANDUM AND ORDER
RE: CONTENTIONS

Following a Special Prehearing Conference on Wednesday, September 19, 1979, at the Nahman Diehl Auditorium in Mt. Carroll, Illinois, the Board issued a Memorandum and Order dated October 10, 1979. The contentions of the parties which had been tentatively accepted for litigation regarding early site suitability approval were set forth in that Order.

The Applicants, the NRC Staff and the Intervenors were given thirty days in which to submit briefs in support of any contentions which were previously filed and which had been rejected by the Board. Additionally, the Board agreed to weigh again the acceptability of any contentions which it had accepted but as to which a party wished to argue for rejection.

The parties have responded to the Board's Order and in the light of those responses the Board finds as follows:

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I. The State of Illinois Contentions

(a) The Board rejects as irrelevant to this early site suitability hearing (10 CFR Part 2, Subpart F) Illinois Contentions 1; 2; 3; 4(a); [6(a) thru 6(d)iv;]; 10; 11; 12; 13; 14; 17 and 18.

(b) The Board accepts the State of Illinois (Illinois) Contentions 4 and 4(b) as set forth in the list of accepted contentions which are at issue in the above indicated matter.

The Board accepts Illinois Contention 5, as modified in the listing below in this Order of consolidated contentions in Section VI "Consolidation of Contentions". It is identified therein as Consolidated Issue 1.

Illinois' Contention 6 (without subparagraphs 6(a) thru 6(d)) is accepted as a contention in the proceedings. The modified version is set forth below in this Order with other consolidated contentions in Section VI "Consolidation of contentions". It is identified as Consolidated Issue 2.

Illinois' Contention 7, as modified, is accepted an issue. The modified version is set forth below in this Order with other consolidated contentions in Section VI "Consolidation of Contentions". It is identified therein as Consolidated Issue 3.

Illinois' Contentions 8 and 9 are accepted.

Illinois' Contention 15, as modified, is accepted as an issue. The modified version is set forth below in this order with other consolidated contentions in Section VI "Consolidation of Contentions". It is identified as Consolidated Issue 4.

Illinois' Contention 16 is accepted as an issue.

(c) The following Illinois contentions have been accepted as issues in controversy in the early site suitability hearings: Illinois contentions 4; 4(b); 5; 6; 7; 8; 9; 15 and 16. (N. B. Contentions 4; 5; 6; 7 and 15 have been modified as stated in paragraph I(b) above.

(d) At the hearing at Mt. Carroll, Illinois, Wednesday, September 19, 1979, the State of Illinois filed what it denominated as a motion for reconsideration.

The procedure established by the Board at the hearing provided for reconsideration before a final determination as to the acceptability of the contention was made. Such a reconsideration has been carried out.

The State of Illinois' reliance on the abolition of the so-called "immediate effectiveness rule" under an initial decision directing that the issuance of an amendment of a construction permit, a construction authorization, or

an operating license should be effective immediately upon issuance, is misplaced. The early site suitability approval did not come within the purview of that procedure.

It's second request in the "motion" is that Contention 3 be reinstated so that cost benefit balancing be an issue in the early site suitability proceedings. The finding G.6 of the Report of The President's Commission on The Accident at Three Mile Island, relied upon by the State of Illinois, is also misplaced in an early site suitability proceeding since in such proceedings under 10 CFR § 2.606 no limited work authorizations may issue and no construction permit may be granted without completion of the full review required under Section 102(2) of the National Environmental Policy Act of 1969, as amended, and 10 CFR Part 51. In the Board's judgment there is no basis at this time on which to attempt cost benefit balancing. (Cf. In Matter of Potomac Electric Power Company (Douglas Point Units 1 and 2), 1 NRC 539 (1975).) The State of Illinois request to reinstate Contention 3 is denied.

The State of Illinois request to reinstate its Contentions 6 (d)(iv), 14(a) and (b), and 18 is denied since they raise issues which are not relevant at an early site suitability hearing. Such issues should be raised at construction permit and/or operating license hearings.

The question of permanent fuel disposal raised by Illinois' Contention 11 is not within the jurisdiction of this Board and therefore Illinois' request that the Board reinstate Contention 11 is denied.

The Board denies the request of the State of Illinois that Contention 12 be reinstated. It is not an issue for which the Applicant now seeks review. The Board granted Applicants permission to withdraw finding #B1 from their proposed findings. Accordingly, it is not a matter for review at the early site suitability hearing (10 CFR § 2.604).

The Board has reconsidered the acceptability of all of the State of Illinois' proposed contentions. The result of that reconsideration is set forth above.

II. Jo Daviess County Ad-Hoc Committee on Nuclear Energy
"Information" Contentions

1. In response to the Jo Daviess County Ad-Hoc Committee's (Jo Daviess County) motion to reconsider the order of October 10, 1979, this Board has reviewed all of Jo Daviess County's contentions and the Board finds as follows:

(a) Contention I is rejected in its entirety. The Board has concluded that contention 1(b), the acceptability of which was held in abeyance at the September 19, 1979 hearing, should not be put in controversy until the construction permit stage. It does not raise an issue as to which the Applicants requested approval at the site suitability hearing.

(b) The Board accepts the Jo Daviess Contention II as modified in the listing of consolidated contentions in Section VI, below. It is identified therein as Consolidated Issue I. Other issues raised in Jo Daviess Contention II should be raised at the construction and/or operating license hearings.

(c) The Board accepts Jo Daviess Contention III as modified in the listing below in this Order in Section VI "Consolidation of Contentions". It is identified therein as Consolidated Issue 2.

The Board accepts Contentions III(a); III(c), as modified by inserting the word exclusion before the last word in the Contention i.e area, III(d); III(e); III f as modified; III(i) as modified; and III(j) as modified. The Board reject the Jo Daviess Contention III(b); III(g); and III(h).

(d) The Board accepts Contentions IV(a); IV(d); IV(e); V(a)(4); and V(b), all as modified in the listing of consolidated contentions set out below in this Order in Section VI "Consolidation of Contentions". They are identified therein as consolidated issue 4, "Socio-economic Risks".

(e) The Board accepts Contention IV(c) as modified in the listing of consolidated contentions set out below in this Order in Section VI "Consolidation of Contentions". It is identified therein as consolidated issue 3, "Stransky Airport".

(f) Contention IV(b) previously accepted as an issue in controversy, is upon reconsideration rejected.

Contention IV(b) deals with overt military targets. Applicant has pointed out that "10 CFR § 50.13 expressly provides that an applicant for an operating license need not provide the design features or other measures for the purpose of protecting against the effects of attacks or acts of destruction by an enemy of the United States" whether a foreign government or other person. Matters covered by IV(b) are expressly excluded from the licensing process by 10 CFR § 50.13. IV(b) is dismissed as an impermissible challenge to the Commission's regulations (10 CFR 2.758).

(g) The Board accepts Contention V(a)(3); Contention V(a)(4) as modified in Section VI "Consolidation of Contentions", issue 4 therein.

The Board rejects Contentions V; V(a); V(a)(i); V(a)(2); V(a)(5).

The Board rejects the Jc Daviess Contention V(c) and substitute Contention V(a)(1)(2). (Transmission lines will be considered at the construction permit stage.)

(h) Contention VI is rejected. The Board also rejects the proposed substitute Contention VI and suggests that it might be considered at the construction permit stage.

(i) Jo Daviess County, on page 4 of its motion to reconsider in paragraph I, renews its oral motion to stay all proceedings "until the NRC Staff has completed its report." At the hearing on September 19, 1979, that oral motion to discontinue the site suitability hearings was overruled (Tr. 44, line 16). The Board, having the authority to regulate the course of the hearing, denies the Jo Daviess County motion to reconsider its motion to stay all proceedings until the NRC Staff has completed its "report" (10 CFR § 2.718(e)).

III. Iowa Socialist Party Contentions (ISP)

(a) Contention 1(a)(i) and Contention 1(a)(ii) both as modified in the listings of consolidated contentions below in this Order, i.e., Section VI "Consolidation of Contentions" are accepted as modified in Consolidated Issues 5 and 1 respectively; Contentions 1(b)(i), (ii) and (iii) as modified in the listing below in this Order of consolidated contentions in Section VI "Consolidation of Contentions", identified as Consolidated Issue 4; are accepted.

(b) Contention 1(c)(i) and Contention 1(c)(ii) are rejected at this preliminary hearing stage.

(c) Contention 1(d)(i) and Contention 1(d)(ii) are not acceptable at this early site suitability hearing stage.

(d) Contentions 2 and 3 are rejected as being beyond the scope of the site suitability review.

(e) All Iowa Socialist Party Contentions not specifically accepted are rejected.

IV. Iowa Public Interest Research Group, Inc. Contentions

(a) Iowa Public Interest Research Group's (Iowa PIRG) Contention 1 is acceptable as modified in the listing below in this Order of consolidated contentions in Section VI "Consolidation of Contentions". It is set forth there as Contention 1. "Plum River Fault".

(b) Contention 2 is rejected as a challenge to Commission regulations 10 CFR § 2.758.

(c) Contention 3, as modified, is accepted. It is the basis in part for the socio-economic contention set out in the listing below in Section VI "Consolidation of Contentions". It is the basis in part of Consolidated Issue 4.

(d) Contention 4 is rejected.

(e) Contention 5 is rejected.

(f) Contention 6 is rejected.

(g) Contention 7 is accepted. However, it is consolidated with Iowa Socialist Party Contention 1(a)(i) and is set forth as modified in Section VI "Consolidation of Contentions", below. (see Consolidated Contention 5.)

(h) Contention 8 is rejected.

(i) Contention 9 is rejected. This contention and any other contentions which are relevant may of course be raised at construction permit and operating licenses hearings.

(j) Contention 10 is accepted as modified in listing below in this Order of consolidated contentions in Section VI "Consolidation of Contentions". It is identified therein under the heading 2 "Terrestrial and Aquatic Ecology".

(k) In its brief dated October 22, 1979, Iowa PIRG moves the Board to issue "a prohibition against Applicants from proceeding to negotiate or sign any contracts for mining, milling or processing of uranium fuel, either prior to, or on the basis of, any findings of the licensing board during the early site review of the Carroll County Units." The Board denies said motion for lack of jurisdiction.

V. Contentions of Citizens Against Nuclear Power (CANP)

Contentions 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; and 15 are rejected as issues in the early site suitability hearing. Many, if not all, of these contentions will, if offered, be acceptable at later hearings in this matter.

CANP's petition to be allowed to file an additional contention is denied since it does not conform to the requirements of late filing.

With the rejection of all of CANP's James Runyan's joint contentions, the joint petition to intervene filed on their behalf must be denied. They cannot be considered parties at this time. However, CANP will be kept on the Service List in this Docket and will have, of course, the right to submit a petition to intervene at the later construction permit stage hearings.

VI. Consolidation of Contentions

The NRC Staff motion, pursuant to 10 CFR § 2.715(a), to consolidate the prosecution of the following contentions under a representative of the Intervenor's selection on the ground that their interest in these matters is indistinguishable and that the contentions listed below raise substantially the same question for adjudication, is granted.

The modified contentions as to which consolidation is granted follow. These overall contentions contain only those issues accepted by the Board, supra.

1. Plum River Fault

Applicants have failed to show by accepted geologic standards that the Plum River fault, which runs within 5.5 miles of the site is not a capable fault in determining site geologic suitability and that the safety measures

that will be necessary to insure that the continued working integrity of the proposed reactors will be adequate.

{ Illinois Contention #5; Iowa PIRG Contention #1;
{ Jo Daviess Contention #II; ISP Contention # 1(a)(ii).

2. Terrestrial and Aquatic Ecology

Applicants have failed to accurately evaluate the effect of the proposed reactors on the terrestrial and aquatic life in the proposed exclusion area; the site area generally and especially in the upper Mississippi River Fish and Wildlife Refuge. The requirements of the National Environmental Policy Act; 10 CFR Part 20; and 10 CFR Part 51 have not been met in Applicants' Early Site Review.

{ Illinois Contention #6; Iowa PIRG Contention #10;
{ Jo Daviess Contention #III.

3. Stransky Airport

There are unacceptable risks to the public health and safety due to the difficulties concerning approach and departure from Carroll County's Stransky Memorial Field which lies 2.3 miles from the proposed site for the nuclear power plant.

- (Illinois Contention #7;
- (Jo Daviess Contention #IV(c).

4. Socio-Economic Risks

There are unacceptable socio-economic losses for the inhabitants of the surrounding area which would result from using the proposed site to construct and operate a nuclear power plant.

- (Illinois Contention #15; Iowa PIRG
- (Contention #3 except 3(a) and reference
- (to transmission lines. ISP Contention #1(b).
- (Jo Daviess Contentions #IV(a); IV(d); IV(e);
- (V(a)(4) and V(b).

5. Roads At Site

There is a 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 onsite accident. There are very limited options for away from downwind evacuation in the event of an accident requiring such action.

- (ISP Contention #1(a)(i);
- (Iowa PIRG Contention #7.

IT IS SO ORDERED.

THE ATOMIC SAFETY AND
LICENSING BOARD

Robert L. Holton

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John F. Wolf

John F. Wolf
John F. Wolf, Chairman

Dated at Bethesda, Maryland
this 30th day of May 1980.