7/6/81

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al.	)	Docket Nos. 50-440 50-441
	)	
(Perry Nuclear Power Plant Units 1 and 2)	)	

NRC STAFF COMMENTS ON CONTENTIONS
PROPOSED AT SPECIAL PREHEARING CONFERENCE

I. BACKGROUND

The Licensing Board issued an order on April 9, 1981 setting a special prehearing conference and directing petitioners for leave to intervene to file contentions with particularity on or before May 8, 1981 (see also 10 C.F.R. § 2.714(b)). Ohio Citizens for Responsible Energy (OCRE) filed on April 30, 1981, a supplemental petition with 13 contentions. Sunflower Alliance, et al., (Sunflower) filed on May 8, 1981, an amended petition with 14 contentions as additions to the 13 contentions in its original petition. Tod J. Kenney filed nothing, nor did his original petition contain any contentions. In addition, the Lake County Board of Commissioners and Lake County Disaster Services Agency have requested status as an interested county and/or agency thereof pursuant to 10 C.F.R. § 2.715. In its March 27, 1981 filing, the Staff opposed the OCRE and Sunflower contentions for failure to conform to 10 C.F.R. § 2.714(b), as the basis for each contention was not set forth with reasonable specificity.

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At the special prehearing conference the Licensing Board directed the petitioners to make presentations replying to the responses to their contentions filed by Applicants and Staff. (Tr. 140.) The Licensing Board also stated that in their direct presentations petitioners could suggest ways in which their contentions could be clarified, simplified or amended. (Tr. 140-41.) The Licensing Board proffered Mr. Kenney an opportunity to adopt contentions of other petitioners. (Tr. 60.)

At the special prehearing conference, Mr. Kenney availed himself of the Board's proffer by stating that he would adopt as his own contentions OCRE contention 3, radiation blocking agent, and Sunflower contention 3, need for power. (Tr. 595.) Mr. Kenney also orally submitted 14 new contentions on emergency planning based on an article in Science magazine dated for May 22, 1981. (Tr. 595-603.)

The Licensing Board required the petitioners to respond to the discussion of contentions as they were revised or clarified at the prehearing conference. Sunflower's response added specifics and new contentions and Mr. Kenney presented 14 new contentions. The Board further provided the Applicants and Staff the opportunity (Tr. 295) to respond in writing to the new matters raised at the prehearing conference. This filing responds to the Sunflower and Mr. Kenney new contentions and specifics.

OCRE added nothing to their contentions at the prehearing conference although many of the OCRE contentions were considered with the Sunflower contentions. While the Staff continues its May 27, 1981 objections to the intervention petitions and believes the argument at the prehearing conference demonstrates the lack of basis and specificity for most of the

contentions put forward in this proceeding, the Staff will address the major revisions and/or clarifications put forward at the conference as well as OCRE's post-special prehearing conference brief dated June 12, 1981 insofar as it differs from OCRE's previous filings.

II. LATE CONTENTIONS SHOULD NOT BE ADMITTED ABSENT GOOD CAUSE

The revised contentions which were orally presented at the prehearing conference are late and must be evaluated in accordance with the criteria set forth in 10 C.F.R. § 2.714. The time for filing of contentions may be extended only after a balancing of the factors set forth in 10 C.F.R. § 2.714(a)(1).[1/] The first factor is "good cause." The parties were explicitly informed by the Licensing Board's order of April 9, 1981 and 10 C.F.R. § 2.714 that they would have to present contentions with particularity and provide specific basis for them by May 8, 1981, prior to the prehearing conference. The Notice of Hearing indicated that the application and environmental report were in the Perry library and thus locally available. There was no

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1/ The factors set forth in 10 C.F.R. § 2.714(a)(1) are as follows:

"(i) Good cause, if any, for failure to file on time.
(ii) The availability of other means whereby the petitioner's interest will be protected.
(iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
(iv) The extent to which the petitioner's interest will be represented by existing parties.
(v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding."

"lack" of available information nor did new information become available to them after they filed their contentions. The information relied upon by the parties to allege "specificity and basis" was known prior to May 8, 1981. Failure to make a good cause argument for late contentions is a sufficient reason for not admitting the contentions. However, all of the five factors governing late-filed contentions in 10 C.F.R. 2.714(a)(1)(i-v) should be considered. Duke Power Company (Perkins Nuclear Station, Units 1, 2, and 3), ALAB-431, 6 NRC 460 (1972).

The second and fourth factors relate to the availability of other means to protect petitioner's interests and whether other parties will do so. 10 C.F.R. § 2.714(a)(1)(ii) and (iv). While this is an early stage of this operating license proceeding, it is apparent that the intervening parties have articulated a few good contentions where it is apparent their interests are affected. However, since they have not addressed the late filing requirements for the new contentions they seek to litigate it is impossible for the Staff to address these factors in the most meaningful way. These factors weigh against new contentions since they have not been addressed by petitioners and the Board should not speculate what a party's interest is in order to evaluate whether a late-filed contention should be admitted.

The third factor relates to the extent to which a party's participation may reasonably be expected to assist in developing a sound record. 10 C.F.R. § 2.714(a)(1)(iii). The fifth factor concerns the extent to which a party's participation would broaden the issue or delay the proceeding. 10 C.F.R. § 2.714(a)(1)(v). The filings and arguments of the parties at the prehearing conference clearly show (1) that they

are very unlikely to make any positive contribution to the Perry operating license proceeding and (2) that their participation would broaden and, therefore, delay the proceeding.

The intervention petitions and prehearing argument disclose no expertise in emergency planning techniques, finance, need for power, or spent fuel pool design and function which could assist the development of a sound record. The petitioners did not identify nor is it apparent from the written filings that there is a likelihood of experts being produced who would significantly contribute to the building of a sound record. Petitioners have not demonstrated an ability to contribute to the record on their late-filed contentions.

The Staff does not lightly interpose these objections. The Commission restructured its rules of procedure in 1972 to permit greater public participation in the licensing process. In the statement of considerations accompanying the revised 10 C.F.R. Part 2, the Commission stated:

> "...certain new responsibilities are placed on those permitted to intervene in connection with making and supporting allegations on matters they seek to place in controversy for hearing consideration. The opening up of the process, as described above, implies that intervenors should have correlative responsibilities to help define and substantiate the matters that they seek to put in issue after they have had an opportunity to avail themselves of the information that would then be open to them. Definition of the matters in controversy is widely recognized as the keystone to the efficient progress of a contested proceeding. In order to put a matter in issue, it will not be sufficient merely to make an unsupported allegation." 37 Fed. Reg. 6380 (Marcy 29, 1972).

The Supreme Court stated in Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553, 554 (1978):

> "...it is still incumbent upon intervenors who wish to participate to structure their participation so that it is meaningful, so that

it alerts the agency to the intervenors' position and contentions." Id. at 553.

"The Commission explicitly stated:

> 'We do not equate this burden [Intervenors' threshold test] with the civil litigation concept of a prima facie case, an unduly heavy burden in this setting. But the showing should be sufficient to require reasonable minds to inquire further.' App. 344 n. 27.

We think this sort of agency procedure well within the agency's discretion..." Id. at 554.

Here, in many instances, the petitioners have failed to define and substantiate the matter they wish to have put in controversy. They have identified no defect which would cause reasonable minds to inquire further. In general, this is the major objection the Staff has to most of the contentions proferred by all of the petitioners. The petitioners have failed to conform to the Commission's standards set forth in the statement of considerations cited above, and have failed to conform to the court approved Vermont Yankee standards cited above.

The Staff will address the specific contentions raised by the petitioners in this proceeding to date. Where a contention is identified as being late filed the arguments of § 2.714 regarding the showing for late contentions will not be further addressed except to note the Staff objection on that ground.

III. RESPONSE TO SUNFLOWER ALLIANCE, ET AL., CONTENTIONS

A. Contention 1

Sunflower's original contention 1 was :

> [T]he emergency and evacuation plans for the subject facilities are fatally defective in numerous respects including but not limited to inadequacy of notification plans; deficiencies

> in radiation exposure measurement techniques, insufficient practical workability; no agreement with local response organizations as to cost and implimentation [sic] of plans and inadequate notification of an information to media and residents within the ten (10) and fifty (50) mile radii.

Contention 1 as clarified by Sunflower is that the emergency plans are defective in that there are 150 school buses in Lake County which is an inadequate number for evacuation (Tr. 176); there are no agreements with local agencies to implement evacuation (Tr. 182); the counties will not pay to finance the necessary planning (Tr. 198); and that the emergency plans are inadequate to evacuate Northeast Ohio General Hospital, Lake Erie College, Lake County Memorial East, and the Lake County Jail. (Tr. 199). This does have more particularity then Sunflower's original petition. However, nowhere in the transcript is there provided a "basis for [the] contention set forth with reasonable specificity" as required by 10 C.F.R. §2.714(b). It is strongly emphasized that the Staff is not objecting to an inadequate basis or an inartfully stated basis. The Staff objects to the contention because there is no basis at all set forth to support it except for the self-serving ipse dixit conclusionary statement of Sunflower's counsel. The issue of basis has been before the Appeal Board which has very clearly required something more than conclusionary statements of counsel as fulfilling the basis requirement of 10 C.F.R. §2.714. See Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 592 (1980), where the petitioner alleged as basis a government publication which gave on its face factual credibility to the contention. Here, petitioners have provided only counsel's statement

which is insufficient to provide the basis required by the Commission's regulations.

Sunflower apparently is willing to contend that the emergency plans are defective because the county will not agree to pay for planning and implementation (Tr. 198, 199). At the prehearing conference Robert E. Martin, president of the Board of Lake County Commissioners addressed the Board and stated "the development, capitalization, implementation and maintenance of a workable and adequate emergency response plan is beyond the financial capabilities of Lake County" (Tr. 145). This contention does fulfill the particularity and basis requirements of 10 C.F.R. §2.714. This is a reasonable clarification of the original contention filed by Sunflower and the Staff does not object to its admission.

As to the additions to the contention dealing with the number of vehicles available to evacuate the LPZ, the Staff objects on the additional ground that this is not fairly within the original contention and should be treated as late filed.

B. Contention 2

With regard to Contention 2, Sunflower had financial statements of all co-applicants prior to the prehearing conference, yet they never pointed to any financial problem that would detract from Applicants' financial ability to operate Perry for five years and to decommission the facility. At the suggestion of the Board changes in the cost of construction and changes in the financial position of Applicants was discussed. (Tr. 254, 255, 258, and 285-289). No basis was set forth to support this contention. There is only the unsupported statement of Sunflower's counsel that "changes in cost projections" (Tr. 277) and

changes in the financial conditions of the Applicants (Tr. 236) impair the ability of Applicants to operate the facility. As noted previously, Allens Creek requires some basis beyond counsel's representations even though the factual underpinnings need not be tested. 10 C.F.R. §50.33(f) and 10 C.F.R. Part 50 Appendix C provide that an applicant for an operating license shall demonstrate reasonable assurance of obtaining the funds to operate the facility for five years plus the estimated costs of permanent shutdown and maintenance of the facility in a safe condition. 10 C.F.R. Part 50, Appendix C(I)(B) concludes "in most cases the applicant's annual financial statement contained in its published annual reports will enable the Commission to evaluate the Applicant's financial capability to satisfy this requirement." Appendices L and M of the Application for Operating Licenses filed by the Applicants contain their 1979 annual reports, recent prospecti and trust indentures. This information has been on file in the local public document room since February 13, 1981 when the Notice of Receipt of Application was published in the Federal Register. Sunflower has had four months to review this information and to formulate a contention which would particularize a financial problem, if any there is, with ability to operate the facility and to set forth the basis of such contention with specificity. They failed to do so in their March 5, 1981 filing and failed to do so at the prehearing conference.

Petitioners are not required to demonstrate the factual validity of their contentions at this time. However, they must identify a particular problem relating to the plant, site, and/or Applicants with which they are concerned so that it can be addressed and litigated. They must also

provide a basis for their assertions which goes beyond a statement of counsel. In Allens Creek, supra, for instance, the contention was supported by reference to a goverment article on biomass. Both of these elements are missing here. There only is the bare statement of counsel that the construction costs were underestimated and that the Applicants' financial condition has been degraded. The Applicants (Tr. 255, 256) and Staff (Tr. 290) at the prehearing conference strongly emphasized the petitioners' obligation to identify with particularity an alleged defect and to provide a specific basis in support of the allegation.

C. Contentions 3, 4, and 5

As far as the need for power is concerned (Contentions 3, 4, and 5), no expertise in energy forecasting was disclosed by Sunflower, et al., which could assist in developing a sound record. Indeed, Sunflower's own arguments proved a need for Perry about two years later than the now scheduled on-line time.

Contentions 3, 4 and 5 allege that demand for peak load and energy has not grown as fast as forecast at the construction permit proceeding and the petitioners will be injured due to this reduced growth rate in demand for the electricity. These contentions were discussed on pages 301, 302 and 462-577 of the transcript.

The Chairman noted that there has been a change in energy demand since the mid-1970's (Tr. 483). This is common knowledge and on this all parties and the Board are in agreement. Sunflower's counsel stated that the 1980 Ohio Deptment of Energy forecast 3.3% annual compound growth rate for energy demand for 1979-1989 (Tr. 520). Applicants' counsel stated that at the construction permit (C.P.) hearings the forecast

growth was 6%. (Tr. 517). Sunflower stated that a GAO study forecast a 2.5% growth rate (Tr. 463). The Chairman asked how many years would the facility be delayed using the recent lower growth rates. (Tr. 516). Unit 1 is now scheduled to come on line in May 1983. Using the 3.3% growth rate rather than the C.P. 6% growth rate, the unit would come on line in September 1985 - a delay of 2.3 years. Using the GAO growth rate of 2.5% the unit would come on line in May 1987, a delay of 4 years. Sunflower has not alleged any particular environmental harm, with a specific basis, which could cause the cost-benefit balance to be significantly changed due to that 2.3 year delay period. Accepting Sunflower's factual representations at the prehearing conference as being true, the Perry facility is needed perhaps some 2.3 to 4 years later than now scheduled. How this relates to any matters on which the Board should make findings is not specified. Consequently, there is no issue in dispute which could be the subject of an evidentiary hearing.

The Appeal Board and Commission have reviewed this situation upon a number of occasions. See Carolina Power and Light Company (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4) CLI-79-5, 9 NRC 607 (1979) and Duke Power Company (Catawba Nuclear Station, Units 1 and 2) ALAB-355, 4 NRC 397, 405-411 (1976). In Catawba the Appeal Board noted that inherent in any forecast of future electric power demands is a substantial margin of uncertainty. As the Appeal Board stated:

> "To be sure, if demand does turn out to be less than predicted it can be argued (as intervenor does) that the cost of the unneeded generating capacity may turn up in the customers' electric bills....But should the opposite occur and demand outstrip capacity, the consequences are far more serious." Id. at 410.

The Commission noted that the phenomenon of reduced growth rates raises only an issue of when the power will be needed, not whether it will be needed. Shearon Harris, supra, at 609. Here both Sunflower and OCRE are only suggesting that Perry may not be needed for 2.3 to 4 years after its scheduled on-line date. They have identified no possible health and safety or environmental harm which could result from such a delay. For the foregoing reasons as well as those set forth in our prior briefs and as argued on pages 512-525 of the transcript, the need for power contentions should not be admitted.

D. Contention 6

With a wealth of information available about the spent fuel pool in the FSAR located in the Perry library, Sunflower could point to no specific defect to support litigation of contention 6. The best Sunflower could do was question whether boil off and flooding could happen at the spent fuel pool. (Tr. 304-312.) No effort to argue the credibility of such events was made. Such a general claim makes no positive contribution to this licensing proceeding. It is clear that Sunflower, et al., knew very little about the Perry site or design and could make little or no positive contribution to the licensing of Perry.

Contention 6 alleges that there could be a major radiation release accident in the spent fuel storage pool. This contention was addressed on pages 304-316 of the transcript. The Chairman asked the petitioners "what is the deficiency you're alleging." (Tr. 304.) This question - the gravaman of a possible contention - was never answered. Petitioners stated:

> "There are several problems that come to mind. One is the adequacy of preparations to continue the cooling process, the circulation of coolant in the pond in the event of a major on site radiation release." Tr. 305.

This simply is not a contention, i.e., it is not an issue in dispute, the resolution of which is appropriate for an evidentiary hearing; it is only a generalized concern. The petitioners have not postulated a credible scenario which could lead to a major on-site release of radioactive material. They have not shown an event which would adversely affect the spent fuel pool and result in a major release of radioactive material in the pool. Of course, there is no specific basis given to support any scenario. Furthermore, the petitioners' statement is neither site nor reactor specific to the Perry facility. The petitioners then further stated:

> "Another concern is the availability of energy to circulate coolant in the event of a major off-site power outage or an on-site power outage or some combination of the two which might retard the operation of the coolant circulation process." Tr. 306.

This, of course, is unrelated to their previous contention and is therefore late. Further, there is a plethora of information in the FSAR on the spent fuel pool none of which is referenced by the petitioners. In regard to the contention as filed, the issue of a major radiation release at the spent fuel pool due to loss of water, has been discussed in at least two fuel pool capacity expansion proceedings. Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), LBP-80-27, 12 NRC 435, 451 (1980) and Commonwealth Edison Co. (Zion Station, Units 1 and 2), LBP-80-7, 11 NRC 245, 260 (1980). Neither Staff, Applicants, intervenors nor Licensing Boards in those proceedings could identify any credible mechanisms by which this postulated event

could occur. Sunflower has not identified any such mechanism. The contention as filed completely lacks basis. The two additions at the prehearing conference - on-site radiation release and station blackout - (1) do not identify the mechanisms at Perry by which the postulated events could occur; (2) completely lack any specific basis to support the non-identified accident sequences; and (3) no scenario is set forth by Sunflower in which either an on-site radiation release or a station blackout could cause water to disappear from the spent fuel pool and further could thereby cause a major release of radiation from the spent fuel pool. No issue in controversy is set forth in either the filed contention of Sunflower or the modifications thereof made at the prehearing conference which could be the subject of a contested evidentiary hearing and no additional basis for the assertions were delineated. Therefore, the contention should be denied.

E. Contention 9

The general allegation in the introduction to Contention 9 was modified by Sunflower to read that Applicants cannot construct the facility in accordance with NRC's quality assurance requirements (Tr. 337-349 and 613-627) as evidenced by an I&E stop work order issued February 8, 1978 and subsequent unidentified I&E reports. Neither the Applicants (Tr. 616) nor the Board (Tr. 624) construed the general introduction to contention 9 as comprising a contention on QA. Therefore, this refinement should be treated as a late-filed contention. Sunflower further alleged that the deficiencies noted in the February 8, 1978 Region III stop work order were corrected by Applicants (Tr. 340). Sunflower is correct and NRC's Region III I&E office issued reports

numbers 50-440/79-05 and 50-441/79-05 on June 16, 1979 which confirmed Applicants' implementation of corrective actions. Thus Sunflower has alleged a QA problem in 1978 which Sunflower states was corrected. This does not provide a basis to assert that the Applicants cannot now comply with NRC's QA requirements. Sunflower identified no other QA deficiency nor did it provide any other specific basis to substantiate the general allegation that the Applicants cannot now construct the facility in accord with NRC's QA requirements. For these reasons, no basis for the modified contention 9(1) exists. Therefore, modified contention 9(1) should not be admitted.

Contention 9(2-5) were rejected at the prehearing conference as lacking sufficient basis. (Tr. 351, 363, 364, 365.) The 10th contention on decommissioning was dropped. (Tr. 365.) The 11th contention was apparently rejected and OCRE contention 13 was admitted in place of Sunflower's 12th. (Tr. 391.) The 13th (Tr. 391), 14th (Tr. 409), 15th (Tr. 418), 16th (Tr. 418), 17th (Tr. 419), 18th (Tr. 430), 19th (Tr. 430), 22nd (Tr. 443), and 23rd (Tr. 443) grounds for contentions and intervention by Sunflower were rejected, withdrawn, or rejected subject to supplying further basis. Based upon a review of the record, the Staff did not identify any other modifications by Sunflower of its contentions which were filed prior to the prehearing conference.

IV. RESPONSE TO OCRE CONTENTIONS

At the prehearing conference OCRE added no specifics to their contentions which were filed on April 30, 1981 and provided no further basis than that set forth in their filing. Without authority of the

Licensing Board, or the regulations, OCRE on June 10, 1981, filed a Post-Special Prehearing Conference Brief. As discussed earlier, this is a late-filed amendment to OCRE's contention and should comply with the provisions of 10 C.F.R. § 2.714. OCRE added as "basis" for its Contention Number 1 about clam biofouling an ORNL Publication 1285 which alleges that corbicula clams have invaded major drainage basins in the U.S. This, on its face, provided no basis to support the allegation that there is a "50 percent chance that Lake Erie is a suitable environment for corbicula" (Tr. 538-39) or that Perry's safety could be adversely affected by such clams. The Staff's prior response is dispositive. The environmental monitoring program at the C.P. stage disclosed no corbicula at the Perry intake structure area. The petitioner has not set forth how such clams, if present, could lead to a LOCA at the Perry GE cooling tower site. No specific basis for OCRE's Contention Number 1 has been proffered and the contention should be denied.

V. RESPONSE TO TOD J. KENNEY - STANDING AND CONTENTIONS

In response to the Notice of Opportunity for Hearing published in the Federal Register on February 13, 1981, Tod J. Kenney filed a petition to intervene on March 16, 1981. The Staff opposes the petition. Mr. Kenney lives some 30 miles from the facility and this may provide him with standing. See Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979). However, in addition to physical proximity to the facility, the Commission and the Appeal Board have very clearly held that the

petitioner must identify with reasonable specificity what aspect of the operation of the Perry facility will, or could, adversely affect him and provide a basis for such assertion. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-29, 4 NRC 610 (1976) and Houston Lighting and Power Company (Allens Creek Nuclear Power Generating Station, Unit 1) ALAB-535, 9 NRC 377, 393 (1979). These requirements are not met in Mr. Kenney's petition to intervene nor were they fulfilled by Mr. Kenney at the special prehearing conference. Mr. Kenney's petition of March 16, 1981 contained no contentions.

On April 9, 1981 the Licensing Board issued an order directing Mr. Kenney to file contentions by May 8, 1981, which would be addressed at the special prehearing conference scheduled to commence on June 2, 1981. Mr. Kenney filed no contentions. At the prehearing conference, Mr. Kenney moved to extend his time to file contentions to August 2, 1981, some 86 days after the Board ordered deadline and some 76 days after the deadline set by the Commission's regulations in 10 C.F.R. § 2.714, on the basis that he was unaware that the FSAR and ER were available in the Perry Public Library, Perry, Ohio (Tr. 49). The Notice in the Federal Register on February 13, 1981 specifically stated that those applicant documents were in the Perry Library. Applicants (Tr. 49ff) and Staff (Tr. 53ff) opposed the motion as lacking good cause and as altering the basic structure of intervention as designed by the Commission and as set forth in 10 C.F.R. § 2.714. The Licensing Board suggested to Mr. Kenney that he adopt someone else's contentions at the conclusion of the prehearing conference as his own additional contentions. (Tr. 52 and 62). Mr. Kenney did accept the Licensing

Board's proposal and stated he adopted OCRE Contention 3, that potassium iodine should be distributed to every household within ten miles of the Perry facility, and Sunflower Contention 3, that licensing at this time is not proper because current forecasts of future demand are lower than those forecasts made at the construction permit proceeding. (Tr. 594.) The good cause showing on the other four factors is required when a person seeks to take over the contentions of another person. Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 796 (1977). Mr. Kenney also read into the record 14 new contentions - the basis, as alleged by Mr. Kenney, for the new contentions being new information appearing for the first time in:

> "a report by Dr. Edward Radford that was in the May 22, 1981 issue of the Journal of Science in which he says that they have miscalculated the dangers of exposure to radiation of a degree to perhaps four times if not greater...a lot of the calculation that is the applicant's would have to be changed...and since they do not take this into consideration at this point in time then they are therefore deficient."

(Tr. 597.) The Chairman directed Mr. Kenney to file in writing these same 14 contentions which he read into the transcript within three days. (Tr. 606.) Mr. Kenney filed "Intervenor's Amended Contention" on June 8, 1981[2/] which made a number of changes and/or additions to the new

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2/ This document was not served on the Staff which received its copy from Docketing and Service on June 16, 1981.

contentions made at the prehearing conference and appearing on transcript pages 599-603. Mr. Kenney's June 8, 1981 filing states that all parties agreed to Mr. Kenney adopting other persons' contentions and submitting 14 new contentions. However, the Staff objects to this procedure. (Tr. 609).

The new contentions submitted by Mr. Kenney are filed late and as discussed earlier must be evaluated according to the criteria set forth in 10 C.F.R. § 2.714(a)(1)(i-v).

Mr. Kenney alleges "good cause" for filing late due to new information consisting of a report by Dr. Radford appearing in Science, 22 May 1981 (Tr. 597 lines 1-14), attached as Exhibit 2. The article in Science is a comment on (1) quantity and type of radiation released, and received, at Hiroshima and Nagasaki and (2) the dispute between Edward Radford and Harold Rossi as to proper extrapolation from the health effects of high radiation dose to probable health effects of low radiation dose. New and significant information not previously available could constitute good cause. The recalculations of radiation doses delivered by the Hiroshima and Nagasaki bombs were performed by W. E. Loewe and E. Mendelsohn of Lawrence Livermore Laboratory in September 1980. The recalculation of the composition of radiation emitted by the atomic bomb explosions over Hiroshima and Nagasaki is unrelated to the composition of radiation which could be emitted by a release of radiation at a nuclear power plant. Therefore, the Science article provides no basis for Mr. Kenney's contentions and, certainly, the information reported by Loewe-Mendelsohn was available prior to May 8, 1981 - the date by which Mr. Kenney was ordered to file contentions by the Licensing Board. The Radford-Rossi aspect of the Science article does not provide

a basis for Mr. Kenney's late filing. The Radford-Rossi matter is a disagreement as to whether linear or quadratic extrapolation from health effects of high dose to probable effects of low dose best represents a proper method of determining the probable health effects of low dose. This is not a "new matter". The issue of linear versus some sort of quadratic extrapolation from high to low dose has been going on for decades. In regard to Radford-Rossi, it surfaced in the National Academy of Sciences in 1977 and is detailed in The Effects on Populations of Exposure to Low Levels of Ionizing Radiation 1980, National Academy Press, Washington, D.C. 1980 (BEIR III) on pages iii-iv and 227-264 where Drs. Radford and Rossi each set forth their views, a copy of which is attached as exhibit 1. Resolution of linear, quadratic, or some other method as being the proper extrapolation of high to low dose health effects will not affect definitions 2, 10, 14, 15, 36 or 42 in the FSAR Appendix 13A which Mr. Kenney challenges or the definition of the emergency planning zone as the plume exposure pathway in section 2.3 of Appendix 13A to the FSAR. It should be noted, this last matter, contention 7, which challenges the definition of emergency planning zone is an impermissible challenge to the Commission's regulations - 10 C.F.R. §50.33(g) which defines the emergency planning zone as the plume exposure pathway. We need not address that challenge to the regulations as the Radford-Rossi matter is (1) irrelevant to the Perry emergency plan as set forth in FSAR Appendix 13A and thus does not provide a basis in support of Mr. Kenney's contentions; and (2) is not new information which would establish good cause for the late filing of Mr. Kenney's contentions.

The remainder of the factors in 10 C.F.R. §2.714(a)(1) do not favor Mr. Kenney as is evident from the earlier discussion on parties' late filed contentions.

In summary, it is the Staff's view that the sixteen new contentions which were proffered by Mr. Kenney at the prehearing conference at the request of the Licensing Board are late and lack a showing of good cause. The factors set forth in 10 C.F.R. §2.714(a)(1) weigh against admitting Mr. Kenney's contentions as matters in controversy to be litigated in this proceeding.

VI. CONCLUSION

For the foregoing reasons, the Staff believes that the new and refined contentions proffered by the petitioners at the special prehearing conference should be rejected except for Sunflower's contention number 1 which states that the emergency plan is deficient in that Lake County cannot pay to plan and implement an emergency plan. The

Staff's position on the prefiled contentions is as stated in its March 27, 1981 response. The Staff does not oppose the admission of Sunflowers revised contention number 1.

Respectfully submitted,

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Counsel for NRC Staff

Janice E. Moore
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 6th day of July, 1981.