UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of:	)	
	)	
BOSTON EDISON COMPANY, et al.	)	Docket No. 50-471
(Pilgrim Nuclear Generating Station, Unit 2)	)	
	)	

COMMONWEALTH'S ANSWER TO APPLICANTS' MOTION FOR A PROTECTIVE ORDER

On July 24, 1981, the Commonwealth filed a Motion to Compel Answers to its First Set of Interrogatories to Boston Edison Company Relative to Emergency Planning. On August 4, 1981, the Applicants filed an Answer to said Motion to Compel and a Motion for a Protective Order (despite lengthy protestations to the effect that they were under no obligation to file such a motion).

The Commonwealth finds the Applicants' arguments as set forth in their pleading of August 4 patently absurd and indicative of a lack of concern for public safety. Translated into plain English, the Applicants' arguments amount to the following: The Applicants' only obligation is to demonstrate that preliminary plans exist to evacuate the population within

DS03
s
1/1

ten miles of the plant. They have no obligation to assure that people will not die or contract cancer or to assure that people can be evacuated within any particular period of time or without being exposed to radiation. Thus, according to the Applicants, any evidence which they may have as to the numbers of people who will die or contract cancer in the event of a severe accident at Pilgrim II is irrelevant and will be withheld from the citizens of Massachusetts and from the Board. Certainly, no rule promulgated by the Nuclear Regulatory Commission pursuant to its mandate under the Atomic Energy Act to ensure the safe operation of nuclear power plants is susceptible to this interpretation.

The Commission's Final Regulations on Emergency Planning are not susceptible to this or any of the other interpretations proposed by the Applicants. The Regulations and Commission decisions require that the Board assess, during this construction permit proceeding, the feasibility of evacuating people or taking other protective action in the event of an accident at Pilgrim II. See 10 C.F.R. 50, App.E, Section II;[1/] Consumers Power Company (Midland Plant Units 1 and 2)

1/ The relevant language of the Rule is as follows:

> "The Preliminary Safety Analysis Report shall contain sufficient information to ensure the compatibility of proposed emergency plans for both on-site areas and the EPZs, with facility design features, site layout, and site location with respect to such considerations as access routes, surrounding population distributions, land use, and local jurisdictional boundaries for the EPZs . . ."

ALAB-123, 6 AEC 331, at 342 (1973); Southern California Edison Company, et al. (San Onofre Nuclear Generating Station Units 2 and 3), ALAB-248, 8 AEC 957, 961-63 (1974). Since evacuation, sheltering, and other emergency actions are planned as a means of protecting the public, any assessment of the feasibility of implementing such actions necessarily entails a decision as to whether the particular actions planned will adequately protect the public. And that judgment, in turn, cannot be made without reference to the accident consequences against which such protection must be afforded.2/

Accident consequences are also relevant to the determination which the Board must make, pursuant to 10 C.F.R. 50, App. E, as to the appropriate size and configuration of the Pilgrim II EPZ's.3/ Contrary to Applicants' assertions, the EPZ's for any given site are not "fixed" at areas of about 10 and 50 miles in radius. While "[g]enerally, the plume exposure

---

2/ Applicants grossly misrepresent this Board's ruling on Class 9 accident consequences in their attempt to eliminate all consideration of public safety from this emergency planning review. The Board has not "excluded consideration of Class 9 accidents generally in this construction permit proceeding," as Applicants claim, but has decided only that the Applicants need not prepare a Class 9 Environmental Impact Statement to satisfy the requirements of the National Environmental Policy Act.

3/ The Applicants repeatedly refer to their proposed EPZ's as if they have already been determined to be of the appropriate size and shape. Having thus misrepresented the authority of their proposed boundaries, they then refuse to respond to interrogatories which fail to accord their proposals this same status.

pathway EPZ for nuclear power plants . . . shall consist of an area about 10 miles (16 km) in radius and the ingestion pathway EPZ shall consist of an area about 50 miles (80 km) in radius," the size of the EPZs for any particular reactor "shall be determined in relation to local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries." 10 C.F.R. 50, App. E. Section II, n. 2. The Applicants try desperately to limit consideration of these site - specific factors to the means by which protective actions will be taken, saying that the only relevant inquiry is "how" protective actions will be implemented. That limitation, however, ignores the explicit statement in the Rule that these local factors are significant to an assessment of emergency response needs, as well as capabilities. By this reference the Rule recognizes that site-specific factors of the type enumerated may influence accident consequences and, hence, emergency response needs. Thus, accident consequences have not been abandoned by introudction of the EPZ concept.[4/]

The Applicant's arguments, then, reduce to the proposition that the safety of the citizens of Massachusetts is totally irrelevant to whether Applicants have demonstrated the

---

4/ It is certainly interesting to note that the Applicants have provided no citations in support of their thesis that replacement of the LPZ with the EPZ as the "touchstone" of emergency planning boundaries "represents an abandonment of a consequences based emergency planning rationale."

feasibility of evacuation or the adequacy of their emergency plans. Applicants, of course, go to great lengths to avoid making their argument in such plain terms, at one point even suggesting that they are entitled to provide an answer to an interrogatory which they admit is "virtually meaningless" because of some perceived defect in the question asked.[5/] The Commonwealth trusts that this Board will reject the Applicants' arguments and overrule their Motion for a Protective Order. Any other ruling would be contrary to the express terms of 10 C.F.R. 50, App. E and the Atomic Energy Act of 1954.

Respectfully submitted,

By: Jo Ann Shotwell

JO ANN SHOTWELL
Assistant Attorney General
Environmental Protection Division
Public Protection Bureau
Department of the Attorney General
One Ashburton Place, 19th Floor
Boston, Massachusetts 02108
(617) 727-2265

Dated:

5/ A defect which, in fact, does not exist. The Commonwealth specifically asked the Applicants to define their terms if they responded that "safe" evacuation was, in their judgment, possible.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
BOSTON EDISON COMPANY et al.	)	Docket No. 50-471
(Pilgrim Nuclear Generating Station, Unit 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that the within Answer has been served on the following by deposit of copies thereof in the United States Mail, first class mail, postage prepaid this 10th day of August, 1981:

Andrew C. Goodhope, Esq.
Chairman
Atomic Safety and
Licensing Board
3320 Estelle Terrace
Wheaton, Maryland 20906

Dr. A. Dixon Callihan
Union Carbide Corporation
P.O. Box Y
Oak Ridge, Tennessee 37830

Dr. Richard F. Cole
Atomic Safety and
Licensing Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Patrick J. Kenny, Esq.
Edward L. Selgrade, Esq.
Deputy Director
Mass. Office of Energy
Resources
73 Tremont Street
Boston, Massachusetts 02108

Henry Herrman, Esq.
Room 1045
50 Congress Street
Boston, Massachusetts 02109

Mr. & Mrs. Alan R. Cleeton
22 Mackintosh Street
Franklin, Massachusetts 02038

William S. Abbot, Esq.
Suite 925
50 Congress Street
Boston, Massachusetts 02109

Thomas G. Dignan, Jr., Esq.
Ropes & Gray
225 Franklin Street
Boston, Massachusetts 02110

Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Jack R. Goldberg
Office of the Executive
Legal Director
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Thomas S. Moore, Chairman
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Christine N. Kohl, Esquire
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Stephen H. Lewis
U.S. Nuclear Regulatory
Commission
Office of the Executive
Legal Director
Washington, D.C. 20555

Office of the Secretary
Docketing and Service Section
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Chief Librarian
Plymouth Public Library
North Street
Plymouth, Massachusetts 02360

William S. Stowe, Esquire
Boston Edison Company
800 Boylston Street
Boston, Massachusetts 02199

Francis S. Wright, Esquire
Berman & Lewenberg
211 Congress St.
Boston, Massachusetts 02110

Dr. John H. Buck
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

R. K. Gad III
Ropes & Gray
225 Franklin Street
Boston, Massachusetts 02110

Jo Ann Shotwell
Assistant Attorney General
Environmental Protection Division
Public Protection Bureau
Department of the Attorney General
One Ashburton Place, 19th Floor
Boston, Massachusetts 02108
(617) 727-2265