

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

IN THE MATTER OF:)

ILLINOIS POWER COMPANY, et al)

Clinton Power Station, Unit 1)

Docket No. 50-461 OL

PRAIRIE ALLIANCE RESUBMITTAL OF
PROPOSED SUPPLEMENTAL CONTENTION NO. 7

INTRODUCTION

On March 26, 1982, PRAIRIE ALLIANCE submitted eight proposed supplemental contentions (PSC) to this Board, including:

"7. PSYCHOLOGICAL STRESS

The Applicant and the NRC Staff fail to adequately consider the psychological stress and trauma, and mitigation thereto, which will be experienced by persons residing in DeWitt and surrounding counties caused by: (a) the operation of the Clinton Plant; (b) emissions of radioactivity, accidental and planned, by the plant; (c) transportation of spent nuclear fuel from the plant through said communities; (d) on site storage of spent nuclear fuel; (e) possibility of future accidents involving occurrences, design basis accidents and beyond design basis accidents, including, but not limited to, events such as the 1979 TMI near meltdown; and (f) emergency and/or evacuation planning."

In its brief in Support of Supplemental Contentions filed April 12, 1982, PRAIRIE ALLIANCE withdrew PSC No. 7 "without waiving its right to resubmit the contention subsequent to a final 1st¹ Circuit decision in the People Against Nuclear Energy case". The Appellate Court has now rendered a final decision therein, holding that potential harms to psychological health

¹ Should be D.C. Circuit.

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and community well being are indeed environmental impacts which are cognizable under the National Environmental Policy Act (NEPA), 42 U.S.C., Section 4321 et seq. (1976). People Against Nuclear Energy vs U.S. Nuclear Regulatory Commission, et al, _____ F 2d _____ (D.C. Cir., 1982) (No. 81-1131) (Opinions filed May 14, 1982). PRAIRIE ALLIANCE accordingly now resubmits PSC No. 7 for this Board's consideration.

ARGUMENT

A. Applicability of People Against Nuclear Energy Decision

In People Against Nuclear Energy, the Court considered two contentions filed by the above-mentioned intervenors in the TMI-1 proposed restart proceedings.

"Thus PANE'S first contention deals with individual (psychological) health; its second addresses the social and economic impacts that perceived nuclear hazards might create in the communities in the vicinity of Three Mile Island. Both contentions allege environmental effects within the meaning of NEPA". Opinion at Page 10.

The Court then examined the scope of NEPA and the responsibilities of federal agencies relative thereto:

"In the National Environmental Policy Act, Congress accorded prominence to the effects of government actions on health and safety. NEPA was designed to 'promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man'. 42 U.S.C., Section 4321 (1976). The Act declared a national environmental policy of 'encourag(ing) productive and enjoyable harmony between man and his environment,' id., and explicitly recognized that each person 'should enjoy a healthful environment,' id., Section 4331(c). In its regulations implementing NEPA'S

procedural requirements, the Council on Environmental Quality required agencies to consider 'the degree to which the proposed action affects public health and safety' as a factor in deciding whether a federal action 'significantly affected the human environment'. 40 C.F.R., Section 1508, 27(b)(2) (1981). In short, 'no subject to be covered by an EIS can be more important than the potential effects of a federal program upon the health of human beings.' (Citation omitted)

We conclude that, in the context of NEPA, health encompasses psychological health."

Id., pages 12-13. (emphasis supplied). The Court repeated this conclusion again at page 16 ("In our view, Congress intended to include psychological health within the meaning of "health" for purposes of NEPA"). The Court remanded the case to the Commission to determine whether to prepare a supplemental EIS.

It cannot be said that the Court intended its holding to be limited to the TMI-1 restart proceedings. This is indicated by the above broad language of the meaning of health under NEPA, and elsewhere: "We need not attempt to draw a bright line in this case". Id., page 17.

Psychological stress should have been, but was not, considered in the environmental reports and studies of Applicant and Staff. PRAIRIE ALLIANCE'S PSC No. 7 therefore states a good contention, and should be admitted.

B. Admissibility of PSC No. 7

PRAIRIE ALLIANCE offered all PSCs on the basis of newly discovered information or the contents of the Staff's SER and DES. The admissibility of all PSCs under 10 C.F.R., Section

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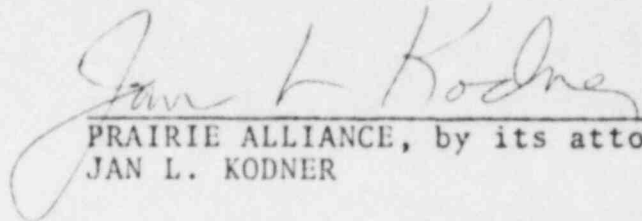
2.714(a)(1) has been discussed at length in the March 26, 1982, and April 12, 1982, memorandum and brief of PRAIRIE ALLIANCE, and need not be repeated here.

As was noted in the earlier filing, recent judicial decisions may provide good cause for late or subsequently filed contentions. Philadelphia Electric Co. (Peach Bottom), ALAB-389 (1977). This Board did deny a differently worded contention on the same subject in its May 29, 1981, Order; however, because of the Commission's December 5, 1980, announcement, the Board was not permitted to entertain such a contention regardless of its specificity. CL1-80-39, 12 NRC 607 (1980). This situation is closely akin to one where a court is presented with jurisdictional and substantive questions. In such a case, the court must first examine the jurisdictional matter. Whether a complaint states a cause of action must be decided after and not before the court has assumed jurisdiction. Bell vs Hood, 327 U.S. 678, 682 (1946). This a priori requirement of finding jurisdiction before rendering a final decree on the merits is one of the high commands of our jurisprudential system. Opelika Nursing Home vs Richardson, 448 F. 2d 658, 667 (5th Cir., 1971). Any order, except dismissal, entered in the cause is improper. Id. EK Carey Drilling Co. vs Murphy, 113 F. Supp. 226 (1953). In the instant case, the NRC'S directive on psychological stress contentions effectively deprived this Board of the power or jurisdiction to consider same. Therefore, the question of the specificity of PRAIRIE ALLIANCE'S differently worded contention on psychological stress should not have been considered by this Board, and should not prejudice PRAIRIE ALLIANCE'S submittal of PSC No. 7

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CONCLUSION

For reason above stated, PRAIRIE ALLIANCE respectfully resubmits PSC No. 7 to this Board and requests that it be admitted to these proceedings.


PRAIRIE ALLIANCE, by its attorney,
JAN L. KODNER

DATED: June 16, 1982

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(Clinton Power Station, Unit 1))

NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on this date, June 16, 1982,
I am filing on behalf of PRAIRIE ALLIANCE, INC., an original and
two copies of PRAIRIE ALLIANCE RESUBMITTAL OF PROPOSED
SUPPLEMENTAL CONTENTION NO. 7
with the Secretary of the United States of America Nuclear Regu-
latory Commission, a copy of which is attached hereto and is
herewith served upon you.

JAN L. KODNER, Attorney for
PRAIRIE ALLIANCE, INC.

STATE OF ILLINOIS)
COUNTY OF COOK) SS.

PROOF OF SERVICE

The undersigned certifies that he caused a copy of _____
PRAIRIE ALLIANCE RESUBMITTAL OF PROPOSED SUPPLEMENTAL
CONTENTION NO. 7

filed on behalf of PRAIRIE ALLIANCE, INC., to be served upon:

SEE ATTACHED SERVICE LIST

by depositing in the U.S. Mail at 173 West Madison Street,
Chicago, Illinois, with proper postage prepaid, on _____
June 16, _____, 1982.

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Subscribed and Sworn to before me
this 16th day of June, 1982.

Notary Public

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