UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF ILLINOIS POWER COMPANY, SOYLAND POWER COOPERATIVE, INC. and WESTERN ILLINOIS POWER COOPERATIVE, INC. (Operating License for Clinton Power Station, Unit 1)	)))))))))	Docket No. 50-461 OL

RESPONSE OF APPLICANTS TO PRAIRIE ALLIANCE
RESUBMITTAL OF PROPOSED SUPPLEMENTAL CONTENTION NO. 7

Illinois Power Company ("Illinois Power"), Soyland Power Cooperative, Inc., and Western Illinois Power Cooperative, Inc. ("Applicants"), pursuant to Section 2.730(c) of the Rules of Practice of the Nuclear Regulatory Commission ("NRC"), hereby respond to Prairie Alliance Resubmittal of Proposed Supplemental Contention No. 7 ("Resubmittal") and object to the admission of Proposed Supplemental Contention No. 7 as follows:

I. Procedural History

Prairie Alliance originally submitted Proposed Supplemental Contention No. 7, concerning the psychological stress and trauma which allegedly may be caused by operation of the Clinton Power Station, on March 26, 1982. Prairie Alliance Proposed Supplemental Contentions, p. 3. In doing so, Prairie Alliance misconstrued the January 7, 1982 Order

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issued by the Court of Appeals for the District of Columbia in People Against Nuclear Energy v. Nuclear Regulatory Commission, et al. (No. 81-1131) as allowing the admission of a contention regarding psychological stress in the restart proceedings for Three Mile Island Unit 1. Prairie Alliance Proposed Supplemental Contentions, p. 8. Upon being informed that the January 7, 1982 order had not allowed the admission of contentions dealing with pyschological stress, Prairie Alliance admitted its mistake and withdrew Proposed Supplemental Contention No. 7 from consideration by the Atomic Safety and Licensing Board (the "Board"). Prairie Alliance Brief in Support of Supplemental Contentions, April 12, 1982, p. 7. Now, based upon its reading of the opinion filed by the D.C. Circuit Court of Appeals in People Against Nuclear Energy v. Nuclear Regulatory Commission, et al., ____ F.2d ____, (No. 81-1131, May 14, 1982) (hereafter referred to as "P.A.N.E."), Prairie Alliance has resubmitted Proposed Supplemental Contention No. 7.

II. Lack of Requisite Specificity

Prairie Alliance has acknowledged that Proposed Supplemental Contention No. 7 was offered because of recent external factors which could have an impact on these proceedings. Prairie Alliance Brief in Support of Proposed Supplemental Contentions, April 12, 1982, p. 5. Consequently, Prairie Alliance Proposed Supplemental Contention

No. 7 is a late-filed contention and the Board must apply the five factors of 10 C.F.R. § 2.714(a)(1) in determining whether to admit this contention. However, even if Proposed Supplemental Contention No. 7 was not late-filed, it would fail to meet the basis and specificity requirements of 10 C.F.R. § 2.714(b).

Proposed Supplemental Contention No. 7 simply restates Proposed Contentions 9(f) and 9(g) which Prairie Alliance submitted in March 1981 and which this Board rejected as lacking the requisite specificity in its Memorandum and Order of May 29, 1981. Illinois Power Co., et al. (Clinton Power Station, Units 1 and 2), LBP-81-5, 13 NRC 708, 714 (1981). Proposed Supplemental Contention No. 7, as written, is so vague that it fails to provide both Applicants and the NRC Staff with "a fair opportunity to know what the issues are, exactly what proof, evidence or testimony is required to meet that issue and exactly what support Intervenor intends to adduce for its allegations." Gulf States Utilities Co. (River Bend Station, Units 1 & 2) ALAB-444, 6 NRC 760, 771 (1977). Neither Applicants nor the Staff could even attempt to litigate Proposed Supplemental Contention No. 7 as it is presently written. Consequently, for the same lack of specificity that caused the Board to deny Proposed Contentions 9(f) and 9(g), the Board, without even the necessity of applying the lateness factors

of 10 C.F.R. § 2.714(a)(1), should deny Proposed Supplemental Contention No. 7.

III. Failure to Meet the Requirements For Late-Filed Contentions

Good Cause For Failure to File on Time. Prairie Alliance bases its resubmission of Proposed Supplemental Contention No. 7 on the P.A.N.E. decision. Prairie Alliance believes that the P.A.N.E. decision provides good cause for this late-filed contention. Resubmittal, p. 4. Admittedly, court decisions may provide good cause for the admission of a late-filed contention. However, a proper reading of the P.A.N.E. decision indicates that instead of providing a basis for the admission of Proposed Supplemental Contention No. 7, the decision in P.A.N.E. clearly indicates that Proposed Supplemental Contention No. 7 should be denied.

Prairie Alliance has, as it did with respect to the January order, misread the P.A.N.E. decision. Admittedly, as Prairie Alliance points out, the Court held that health in the context of the National Environmental Policy Act ("NEPA") may include pyschological health. Resubmittal, p. 3. This fact alone does not mean that a contention on psychological stress should be admitted in the licensing proceedings for the Clinton Power Station. Prairie Alliance fails to indicate in its Resubmittal that the purpose of the suit brought by People Against Nuclear Energy was to overturn the NRC's rejection of two psychological

stress contentions in the restart proceedings for Three Mile Island Unit 1. Instead of ordering the consideration of the two psychological stress contentions, the Court merely ordered the NRC to determine whether the March 1979 accident at Three Mile Island Unit 2 was a sufficient new circumstance to warrant the filing of a Supplemental Environmental Impact Statement ("EIS"). P.A.N.E. at 25-26, 28. Consequently, P.A.N.E. does not, as Prairie Alliance asserts, stand for the proposition that contentions dealing with psychological stress should be admitted. Therefore, P.A.N.E. has not reversed the Commission's decision in Metropolitan Edison Company, et al. (Three Mile Island Nuclear Station, Unit 1), CLI-80-39, 12 NRC 607 (1980), that there is no authorization for a Board to admit psychological contentions. This is especially true with respect to Clinton Power Station proceedings since the P.A.N.E. Court went to great lengths to limit its holding to the particular facts surrounding the restart of Three Mile Island Unit 1. P.A.N.E., at 2, 11-12, 28.

Unlike the situation in P.A.N.E., in which there was the possible psychological effect of the Three Mile Island accident on the surrounding population,[1] Prairie

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[1] The court alludes to numerous studies which have been conducted concerning the psychological effect of the accident at Three Mile Island Unit 2 on the surrounding population. P.A.N.E., at 11.

Alliance has advanced no new information or changed circumstances, which might justify the preparation of a Supplemental EIS, to say nothing of the admission of a psychological stress contention. The only new information or changed circumstances advanced by Prairie Alliance is the issuance of the P.A.N.E. opinion. This alone is insufficient.

For a court decision to provide sufficient good cause for the admission of a late-filed contention, the Intervenor bears the burden of demonstrating how the facts and holding in a particular case justify the admission of a late-filed contention. Prairie Alliance has failed to do this. If anything, the P.A.N.E. decision indicates that psychological stress contentions are inappropriate for consideration. This failure contributes heavily to the impermissible vagueness of Prairie Alliance Proposed Supplemental Contention No. 7.

Availability of Other Means By Which Petitioner's Interest Will Be Protected.[2] As noted in Applicant's Response to Prairie Alliance's Proposed Supplemental Contentions of April 12, 1982 ("Response"), Prairie Alliance had the opportunity to raise environmental issues, such

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[2] The arguments presented in this section and the following two sections on factors affecting late-filed contentions essentially repeat the arguments on these three factors found on pages 2-4 of the Response of Applicants to Prairie Alliance's Proposed Supplemental Contentions of April 12, 1982. They are repeated here for the convenience of the Board.

as psychological stress, by commenting on the Draft Environmental Statement ("DES"). Prairie Alliance failed to take advantage of this opportunity.

Development of A Sound Record. Prairie Alliance has failed to indicate how it will contribute to the development of a sound record on the issues raised in Proposed Supplemental Contention No. 7. Prairie Alliance has to date identified no experts or in any other way indicated what expertise it has or what contribution it will make on the issue of psychological stress. A party is unable to present its own witnesses or effectively cross examine the witness of other parties unless it has a demonstrated expertise in the matters under consideration. This failure contributes to the impermissible vagueness of Proposed Supplemental Contention No. 7.

Unnecessary Delay. Admission of Proposed Supplemental Contention No. 7 would unnecessarily delay the proceedings. Proposed Supplemental Contention No. 7 is a restatement of Proposed Contentions 9(f) and 9(g) which this Board rejected. For the same lack of specificity that irreparably flawed the original Proposed Contentions, Proposed Supplemental Contention No. 7 is unacceptable and should be rejected. Any attempt to litigate an ill-defined contention such as Proposed Supplemental Contention No. 7 would be pointless and only lead to unnecessary delay.

IV. Failure to Meet the Test of P.A.N.E

Even if Proposed Supplemental Contention No. 7 was not deficient for lack of requisite specificity and even if it was not deficient because of its failure to meet the requirements for late-filed contentions, Proposed Supplemental Contention No. 7 must be denied because it does not meet the tests under P.A.N.E. for consideration by a Licensing Board of psychological stress issues.

As already pointed out, the Commission ruled in Three Mile Island, supra, that psychological stress contentions were inadmissible. On review the Court of Appeals for the District of Columbia remanded the record to the Commission. That remand does not require admission of psychological contentions under NEPA in all NRC proceedings, nor does it require consideration of such issues in an EIS or a supplement thereto, nor does it even require such considerations in the Three Mile Island restart proceeding, the specific proceeding before the Court. Rather, the P.A.N.E. Court instructed the NRC to consider psychological stress in making its threshold determination under NEPA (the determination in P.A.N.E. being whether a supplement to the EIS even needs to be prepared). A casual reading of the opinion, and certainly a careful analysis, shows not only how limited the opinion is, but also how far removed

from even the threshold requirement, Proposed Supplemental Contention No. 7 is.

The initial question of concern to the Court was the cognizability under NEPA of psychological health. Obviously, if an issue is not cognizable under NEPA, the addressing of that issue in an EIS or the consideration of that issue at a NEPA hearing is inappropriate. Issues for consideration under NEPA must have some notion of feasibility, and intervenors must "structure their participation so that it is meaningful, so that it alerts the agency to the intervenor's position and contention." Vermont Yankee Nuclear Corp. v. NRDC, 435 U.S. 519, 554 (1978). Proposed Supplemental Contention No. 7 fails to meet the test of Vermont Yankee and the specific tests for psychological effects under P.A.N.E.

In P.A.N.E. the intervenors alleged, among other things, that the accident at Three Mile Island Unit 2 "created intense anxiety, tension, and fear, accompanied by physical disorders," that "(p)ost-traumatic neurosis...can be diagnosed with reasonable medical certainty on the basis of standardized quantitative tests." P.A.N.E., at 10, (emphasis added).

The Commission took the position that psychological effects are never cognizable under NEPA, Id., at 11. This must still be considered the Commission's position with respect to Proposed Supplemental Contention No. 7. The

question here thus is focused on whether Proposed Supplemental Contention No. 7 meets the tests set forth in P.A.N.E. so as to make Commission's position inapplicable.

The Court of Appeals found that health, in the context of NEPA, encompasses psychological health but the first specific issue the Court addressed was the "cognizability of post-traumatic psychological health effects under NEPA," Id., at 13 (emphasis added). The Court emphasized that even the intervenors were "not seeking to extend NEPA to 'mere "anxieties."'" Id., at 14. After analyzing the arguments advanced, the Court stated that "not all psychological effects rise to the level of psychological health effects" under NEPA. Rather, the Court found that NEPA:

> does apply to post-traumatic anxieties, accompanied by physical effects and caused by fears of recurring catastrophe. Therefore, the severity of a psychological effect is not only relevant to whether an EIS is required under NEPA...but also to the cognizability "of the impact under the statute.". Id., at 15-16 (emphasis added).

The traumatic event involved in P.A.N.E. was the accident at Three Mile Island Unit 2.

Although this proceeding does not directly concern an EIS question, it does concern the cognizability under NEPA of alleged psychological effects. Moreover, the P.A.N.E. Court's finding was clearly directed at the question of NEPA cognizability. Several requirements for cognizability are set forth: (1) Post-traumatic anxiety and therefore,

an actual traumatic event; (2) Physical effects resulting from the post-traumatic anxieties; (3) The anxiety must also result in a fear of a recurrence of the traumatic event; (4) Finally the Court found severity a relevant consideration to both the issue of cognizability and, assuming cognizability, the method of addressing the substantive issue.

An examination of Proposed Supplemental Contention No. 7 shows no allegation of any traumatic event, only allegations of an ordinary and obvious event, "operation of the Clinton Station," and allegations of mere possibilities. Certainly none of the actual events alleged can possibly be equated with the "unique and traumatic nuclear accident," the traumatic event alleged in P.A.N.E., Id., at 16. Furthermore, given that the degree of severity is important for cognizability, the actual events alleged here are not even remotely related in severity to the "unique and traumatic accident" alleged in P.A.N.E. Even if credulity could be stretched so as to characterize the actual events alleged in Proposed Supplemental Contention No. 7 as traumatic (clearly the speculative events are irrelevant), the Proposed Supplemental Contention is deficient for failure to even allege the remaining necessary elements: post-traumatic anxieties or quantifiable or measurable physical effects resulting from those anxieties. Of course there

is also no allegation of fears of recurrence. Because there is no severe, actual traumatic event alleged, it follows, a priori, that it is impossible to allege any fear of recurrence.

Thus Proposed Supplemental Contention No. 7 fails to allege the necessarily severe actual event, as well as the necessary results of that event under P.A.N.E., to be cognizable under NEPA. While this is sufficient to dispose of the Proposed Supplemental Contention, the discussion in the opinion of the Commission's responsibilities under NEPA is instructive, demonstrating that the Proposed Supplemental Contention here is so different from the issue in P.A.N.E. as to be not merely a difference in degree but a difference in kind.

The Court notes that the intervenors in P.A.N.E. contended that "the accident at Three Mile Island, Unit 2 in March 1979 was a 'significant new circumstance' that dramatically altered the environmental effects." Id., at 24. The intervenors alleged post-traumatic psychological effects with quantifiable physical manifestations and fears of recurrence.

Nonetheless, although the Court found the accident was unique and traumatic, it still refused, on the basis of that actual event and the alleged results, to order a supplemental EIS. The Court declined to find sufficient

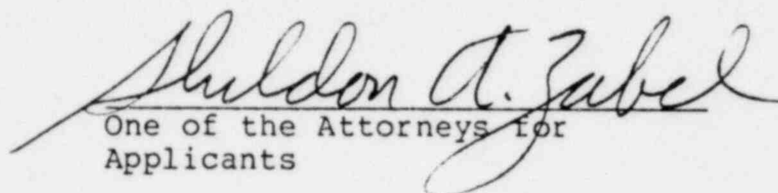
"significant new circumstances or information" to justify such an order. Even in that setting all the Court would order was a NEPA threshold determination.

Here, even if Proposed Supplemental Contention No. 7 could overcome its utter failure to meet the necessary requirements for cognizability under NEPA, no significant new circumstances or information are alleged to raise Proposed Supplemental Contention No. 7 to the level necessitating a threshold NEPA determination.

Thus, the Proposed Supplemental Contention, disregarding its total infirmity under the Commission's requirements as to specificity and as to late-filed contentions, fails to meet the test of cognizability under NEPA as articulated in P.A.N.E. Even if Proposed Supplemental Contention No. 7 met the test for cognizability, it fails the test for even the threshold NEPA consideration under P.A.N.E. Finally, contrasting the specific event alleged in P.A.N.E. and the accompanying allegations of the results of that event and, thereby, the questions to be considered in a NEPA proceeding, with the vague and amorphous allegation here, Proposed Supplemental Contention No. 7 clearly fails the requirement for meaningful participation under Vermont Yankee.

WHEREFORE, for the reasons set forth above, Applicants request that the Board deny Prairie Alliance Proposed Supplemental Contention No. 7.

Respectfully submitted,



One of the Attorneys for Applicants

Sheldon A. Zabel
William Van Susteren
Charles D. Fox IV
SCHIFF HARDIN & WAITE
7200 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
(312) 876-1000

Dated: July 1, 1982

CERTIFICATE OF SERVICE

I hereby certify that an original and two conformed copies of the foregoing document were served upon the following:

Secretary of the Commission
United States Nuclear Regulatory Commission
Washington, D.C. 20555
Attention: Docketing and Service Branch

and that one copy of the foregoing document was served upon each of the following:

Hugh K. Clark, Esq., Chairman
P.O. Box 127A
Kennedyville, Maryland 21645

Dr. George A. Ferguson
School of Engineering
Howard University
2300 Sixth Street, N.W.
Washington, D.C.

Dr. Oscar H. Paris
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Executive Legal Director
United States Nuclear Regulatory Commission
Washington, D.C. 20555

Philip L. Willman
Assistant Attorney General
Environmental Control Division
188 West Randolph Street
Suite 2315
Chicago, Illinois 60610

Jan L. Kodner
Tutt and Kodner
173 W. Madison Street
Suite 1004
Chicago, Illinois 60602

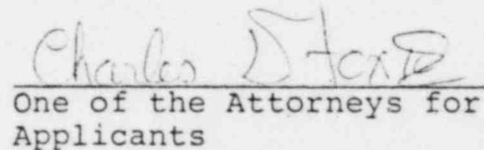
Prairie Alliance
Box 2424
Station A
Champaign, Illinois 61820

Herbert H. Livermore
U.S. Nuclear Regulatory Commission
RR 3, Box 229A
Clinton, Illinois 61727

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

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

in each case by deposit in the United States Mail, postage prepaid on July 1, 1982.



One of the Attorneys for Applicants

Sheldon A. Zabel
William Van Susteren
Charles D. Fox IV
SCHIFF HARDIN & WAITE
7200 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
(312) 876-1000