

DOCKETED
USNRC

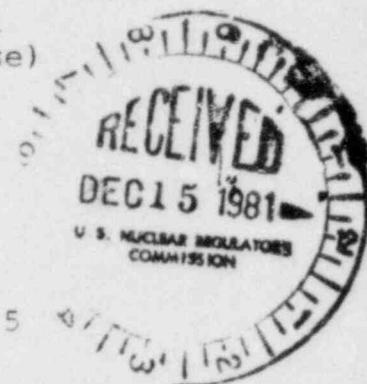
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'81 DEC 14 P4:24

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
THE DETROIT EDISON COMPANY,)
 et al.)
(Enrico Fermi Atomic Power)
 Plant, Unit No. 2))

Docket No. 50-341
(Operating License)



APPLICANTS' RESPONSE IN SUPPORT OF STAFF
MOTION FOR SUMMARY DISPOSITION OF CONTENTION 5

Pursuant to § 2.749(a) of the Nuclear Regulatory Commission's Rules of Practice, the applicants for the operating license for the Enrico Fermi Atomic Power Plant, Unit No. 2 ("Fermi 2"), The Detroit Edison Company, Northern Michigan Electric Cooperative, Inc., and Wolverine Electric Cooperative, Inc. (collectively "Applicants"), hereby respond in support of the NRC Staff Motion for Summary Disposition of Contention 5 ("Staff Motion"), which was filed November 16, 1981. Contention 5 has been advanced by the sole intervenor in this proceeding, Citizens for Employment and Energy ("CEE"). In support of the Staff Motion, Applicants will show by affidavit and discussion that summary disposition should be granted as a matter of law.

8112170047 811211
PDR ADOCK 05000341
G PDR

DS03
50/1

I.

Summary of Position

Contention 5, which is set out in the Staff Motion at 6, essentially alleges that remotely read radiation monitors at the Fermi 2 site boundary and on Lake Erie are required to provide compliance with Part 20 and Part 50, Appendix I, of the Commission's regulations concerning radiological monitoring. However, as the Staff Motion makes clear, these regulations simply do not require remotely read radiation monitors either at the site boundary or offsite. Nor, as the expert affidavits of the Staff and Applicants show, is a remote-reading monitor system either needed or any more effective in determining radiation levels offsite than the existing system. Moreover, based upon CEE's responses to Applicants' interrogatories, it is beyond doubt that the contention is merely the unsupported opinion of CEE and does not rest on any issue of fact.

II.

Legal Standard for Summary Disposition

It is not necessary to repeat the Staff's statement of the well-established standards for summary disposition. However, it should be noted that summary disposition of demonstrably insubstantial contentions is not only permissible, 10 C.F.R. § 2.749, but the preferred and efficacious means of handling such issues. Houston Lighting

and Power Co. (Allen's Creek Nuclear Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 550 (1980). Indeed, as the Staff Motion points out, in a recent Statement of Policy the Commission encouraged licensing boards and parties to licensing proceedings to invoke the summary disposition procedure on matters where there is no issue of material fact. Statement of Policy on Conduct of Licensing Proceedings, 46 Fed. Reg. 28533, 28535 (May 27, 1981).

In this proceeding, even when viewed in the most favorable light, CEE has utterly failed to show that any genuine issue exists as to Contention 5. It would be useless, unfair to the other parties, and contrary to the public interest to devote additional resources to hearing on a contention that is so clearly a speculative opinion and contrary to all the evidence. Accordingly, the Board should summarily dispose of Contention 5 on the pleadings.

Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-654 (Sept. 11, 1981).

III.

Lack of Genuine Issues of Material Fact

Applicants concur with the Statement of Material Facts as to which No Genuine Issue Exists submitted with the Staff Motion. Moreover, it has repeatedly been made clear that CEE does not have any evidence with which to controvert these facts or otherwise support its conclusory opinion.

On March 27, 1979 Applicants served CEE with a set of interrogatories pursuant to 10 C.F.R. § 2.740b and the March 21, 1979 Order of this Board. Interrogatory 5 of that set requested the following:

With respect to Contention 5, identify each

(a) specific provision of 10 C.F.R. Part 20 and 10 C.F.R. Part 50 to which CEE contends the radiation monitoring system will not conform during plant operation; and

(b) specific provision of Applicants' emergency plan which CEE contends Applicants could not implement as a result of the deficiencies alleged.

CEE's response to this interrogatory on July 6, 1979 suggested that its contention was nothing more than unsupported opinion:

10 C.F.R. part 20 and 10 C.F.R. Part 50 set general criteria for radiation monitoring systems. CEE contends that the lack of provision for continuous monitoring that can be read remotely does not conform with the general criteria. CEE needs to review applicant's site emergency plan to respond to (b).

Following this response, Applicants moved on July 19, 1979 to compel further response from CEE because in an earlier stage of the proceeding CEE had suggested it possessed "more information" on Contention 5. Transcript at 173. In response to the motion to compel, CEE in effect confirmed its lack of any genuine issues relating to the Commission's radiation monitoring requirements:

We reiterate our previous response in that 10 C.F.R. Part 20 and 10 C.F.R. Part 50 set general criteria for monitoring systems. We feel that the lack of a continuous monitoring system on the lake and at the site boundary does not meet the requirements of these two regulations. Specifically, the presence of a water intake for

the city of Monroe very close to the plant, makes it critical that Applicant know at all times whether there are unacceptable radiation levels on or in the lake so that city authorities can be notified immediately. Secondly, as we have pointed out in another contention, Applicants' site evacuation plan will force certain residents fleeing from an accident at the plant to come closer to the site boundary in order to escape.

CEE's Response to Applicants' Motion to Compel Discovery (August 2, 1979), at 2. (emphasis in original).

CEE failed to identify how, as contended, Applicants' radiation surveillance and monitoring plan violated Commission regulations. Although CEE expressed concern with the Monroe municipal water intake and an evacuation route, CEE has never attempted to show that the many monitoring and sampling stations and systems in the plant and offsite are insufficient to give adequate information about normal or accidental emissions. Although Applicants have made their emergency plan and all revisions thereto available to CEE, CEE has never given any further response to Applicants' interrogatories. See 10 C.F.R. § 2.740(e). Nor has CEE even hinted at how stationary remotely read monitors would meet its concerns or what additional benefits would be achieved with such monitors. To the contrary, the expert opinion of Dr. Wayne Meinke submitted with the Staff Motion, as well as the conclusions of Applicants' own consultant discussed below, show that Applicants' comprehensive monitoring system is adequate and that little, if any, additional benefit could be expected from a costly, remotely read monitoring system.

IV.

Relative Merits of Monitoring Systems

Dr. Wayne Meinke, the Staff affiant whose responsibility it is to review Fermi 2 radiological monitoring systems, shows that the system installed at the Fermi 2 site and surrounding area is sufficient to determine normal and accidental radiation levels offsite and to comply with the Commission's regulations in Part 20 and Part 50.

The attached affidavit of Gerald R. Davidson, a physicist employed by Sargent & Lundy and retained by Applicants, reinforces Dr. Meinke's conclusions. Dr. Davidson points out that there are no major advantages to remote monitoring with regard to projection of dose rates at distant locations. Furthermore, there are serious deficiencies with continuous, remotely readable monitors that have been widely recognized by both government and industry panels. He shows that both the Federal Interagency Task Force on Offsite Emergency Instrumentation for Nuclear Incidents and the National Environmental Studies Project of the Atomic Industrial Forum do not recommend stationary, remotely read monitoring systems. Finally, Dr. Davidson's affidavit confirms that such difficulties and unreliability would exist for both land and lake-based remote monitoring devices.

The weight of this authority, and the utter lack of any evidence to the contrary from CEE, demonstrates that

Applicants' radiological environmental monitoring systems comply with Commission's regulations, and that remotely read monitors are costly, unreliable and would add little, if any, benefit to Applicants' ability to monitor or respond to radiation releases.

Conclusion

For the foregoing reasons, Applicants submit that the Staff Motion for summary disposition of Contention 5 should be granted as a matter of law.

Respectfully submitted,

LeBOEUF, LAMB, LEIBY & MacRAE

By Harry H. Voigt
Harry H. Voigt

Of Counsel:

L. Charles Landgraf

Peter A. Marquardt
Bruce R. Maters
2000 Second Avenue
Detroit, Michigan

1333 New Hampshire Avenue, N.W.
Suite 1100
Washington, D.C. 20036
(202) 457-7500

Attorneys for Applicants

December 11, 1981