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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
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Before Administrative Judges:

SERVED SEP 14 1982

Peter B. Bloch, Chairman
Dr. Oscar H. Paris
Mr. Frederick J. Shon

In the Matter of
CONSUMERS POWER COMPANY
(Big Rock Point Plant)

Docket No. 50-155
(Spent Fuel Pool Amendment)

September 14, 1982

INITIAL DECISION

(Covering Administrative Controls on Handling Fuel Casks and
the Following Emergency Planning Issues:
Education of Public Officials,
Evacuation Assistance for People Without Vehicles, and
Keeping Current a List of Invalids)

This is the second of a series of decisions. The first decision, which introduced the series, was LBP-82-60, 15 NRC _____ (August 6, 1982). In this decision we address three of the emergency planning subissues and an issue concerning the adequacy of administrative controls on handling fuel casks.

We find that applicant has failed to carry the burden of proof on several aspects of the emergency plan, and we have therefore retained jurisdiction to permit applicant to show that these deficiencies will be satisfactorily resolved. A reason that the burden of proof was not carried is that applicant appears to have believed, erroneously, that it need not demonstrate the adequacy of portions of the emergency plan for which state and local governments have the primary responsibility. See, e.g., Applicant's Reply (August 19, 1982) at 7-9.

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Applicant has persuaded us that its administrative controls on handling fuel casks are adequate. Consequently, Christa-Maria's contention on this issue is found to be without merit.

I Education of Public Officials

The relevant portion of Christa-Maria Contention 9(2) states:

[T]he public, local officials, and school officials should be more completely educated in problems of radiation exposure.

This contention must, of course, be interpreted in light of the applicable regulatory materials, particularly 10 CFR § 50.47(b)(15), which adopted guidance previously found only in NUREG-0654 at 75:

Radiological emergency response training is provided to those who may be called on to assist in an emergency.

See 45 Fed. Reg. 55402 (August 19, 1980)(statement of consideration for the emergency planning rule, stating that the standards in the rule are a restatement of NUREG-0654). This text is amplified by a set of "evaluation criteria" that require the licensee, state and local governments to fulfill the following requirements (among others):

Each offsite response organization shall participate in and receive training. Where mutual aid agreements exist between local agencies such as fire, police and ambulance/rescue, the training shall also be offered to the other departments who are members of the mutual aid district.

Each organization shall establish a training program for instructing and qualifying personnel who will implement radiological emergency response plans. */ The specialized initial training and periodic retraining programs (including the scope, nature and frequency) shall be provided in the following categories: a. Directors or coordinators of the response organizations; b. Personnel responsible for accident assessment; c. Radiological monitoring teams and radiological analysis personnel; d. Police, security and fire fighting personnel;

*/ If State and local governments lack the capability and resources to accomplish this training, they may look to the licensee and the Federal government (FEMA) for assistance in this training.

e. Repair and damage control/correctional action teams (onsite); f. First aid and rescue personnel; g. Local support services personnel including Civil Defense/Emergency Service personnel; h. Medical support personnel; i. Licensee's headquarters support personnel; and j. Personnel responsible for transmission of emergency information and instructions. [Furthermore,] Each organization shall provide for the initial and annual retraining of personnel with emergency response responsibilities.

NUREG-0654 at 75-77; see also 10 CFR Part 50, App. E, §IV.F.

To be sure, the requirements of NUREG-0654 are extensive and demanding. However, no party has given us any reason to deviate from its requirements, which we must therefore apply. Although the regulations permit a division of responsibility among applicant and State and local governmental units, they also require that the NRC determine that the state of emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken. 10 CFR §50.47 and 50.54(s)(2) (ii). In this proceeding, applicant must carry the burden of proof on this issue, without regard to which entity has the principal responsibility. 10 CFR §2.732. See letters to Consolidated Edison Company of New York, Inc. and Power Authority of the State of New York from Ronald C. Haynes, Regional Administrator, NRC Region I, dated August 3, 1982, invoking provisions of 10 CFR §50.54(s)(2)(ii) with respect to Indian Point Nuclear Power Station, Units 2 and 3.

Applicant contends that the State of Michigan Emergency Plan provides a "comprehensive framework" for training local officials in emergency duties. Consumers Power Company's Proposed Opinion, etc., July 30, 1982 at 2 (Applicant's Proposed Opinion). However, the testimony of Mr. Charles Axtell, to which applicant directs us, never claims that the framework is comprehensive. Axtell at 4, after Tr. 1047. What Mr. Axtell has done is to cite portions of the State plan assigning responsibilities to various governmental agencies for nuclear emergency training programs. What he has

not done is to provide any evidence that these responsibilities have been fulfilled by devising a training program that systematically considers who must be trained, what they must learn and how they will be trained. He is persuasive in informing us that a variety of groups have been trained, with substantial effort and care, by applicants, but he provides us with no basis for determining which personnel require training or what percentage of the requirement has been met. Tr. 1079-1094 (generally showing lack of information as to the number of individuals requiring training or the percent of the training need that has been met). Nor does he address the frequency with which retraining must be provided, as required by evaluation criteria 0.4 and 0.5 of NUREG 0654. See, e.g., Tr. 1082.

The testimony of Mr. Danny B. Bement of the Federal Emergency Management Agency fails to fill this gap in our evidentiary record. Although Mr. Bement testifies that "local officials and school officials are trained," he does not specify how many require training and what percentage have been trained. Bement at 4, after Tr. 833. Hence, we have no testimony about who must be trained, and applicant has not shown that the emergency plan, by whomever implemented, meets the evaluation criteria of NUREG-0654.

We conclude that applicant has failed to meet the burden of proof concerning the adequacy of the radiological training program for local officials and school officials. (Although we have attempted to read the emergency plan to ascertain this information, nothing in that plan has been brought to our attention by applicant's or staff's Findings and we have not found anything that fills the gap we have identified. We note that Mr. Axtell testified that applicant knows the number of school officials in the Emmett and Charlevoix County School Districts that it has trained, but the information does not appear to be in our record. Tr. 1079.)

(Christa-Maria has not demonstrated the need for us to require that the emergency operations center acquire and publicize a single emergency telephone number.)

II ASSISTING PERSONS WITHOUT VEHICLES

This subcontention states:

Applicant should be required to assist persons without vehicles to leave the area during an emergency evacuation.

Although applicant and staff have cited general regulatory principles, the parties have provided us with little guidance on how to apply the applicable regulatory materials to the facts before us. Consequently, we shall forge our own path through the wilderness of the applicable regulations.

The following text from 10 CFR §50.47 is controlling:

The . . . offsite emergency response plans for nuclear power reactors must meet the following standards:

* * *

(8) Adequate emergency facilities and equipment to support the emergency response are provided and maintained.

This sparse text derives amplification from the following guideline contained in NUREG-0654, at 61-62:

[Each State and local] . . . organization's plans to implement protective measures for the plume exposure pathway shall include:

* * *

g. Means of relocation.

These passages do not deal explicitly with the question of whether local organizations or applicant must provide transportation to those who lack their own. However, Appendix 4 to NUREG-0654 requires that special attention be paid to households that lack an automobile and are therefore dependent on public transportation. Id. at 4-3. NUREG-0654 also requires that "The initial notification system will assure direct coverage of essentially 100% of the population within 5 miles of the site." NUREG-0654 at 3-3. We construe the "means of relocation" requirement in relation to the 100% notification requirement. There is no point in requiring notification of people who lack vehicles unless the regulations contemplate that, after notifying them, there will be some way for them to be relocated, if that is

appropriate. Consequently, the evacuation plan should be interpreted to require both notification and relocation of individuals.

This does not, of course, make applicant responsible for the means of relocation. However, applicant must show that the plan meets this criterion. If the responsibility is not met, then the Commission has recognized the possibility that applicant might need to make up the deficiency, out of its own pocket if no other way can be found. 45 Fed. Reg. 55402 at § IX. Funding (August 19, 1980). Of course, it is expected that in most instances local resources will be sufficient for the implementation of the evacuation plan.

It is our conclusion that applicant has demonstrated that means are available for informing persons who lack vehicles how they may obtain transportation. The information pamphlet and the included "special needs" form will help to inform people lacking personal vehicles to obtain a ride with others or to listen to radio and television. It also will help to register residents (but not transient tour groups arriving by bus and lacking transportation while they are in the area). See Consumers Power Exhibit 5 at 8.

An important gap in our record is that there is no indication that anyone has estimated the need for emergency transportation. Although Mr. Bement asserted that "adequate planning has taken place to assist persons without vehicles" (Bement at 5, after Tr. 833), we disagree with his characterization of the planning as adequate. While we accept Mr. Bement as an honest and truthful witness, we are not persuaded when Mr. Bement offers overall assessments not accompanied by an explanation of his reasons. See, e.g., Mr. Bement's judgment concerning notices that are "conspicuously displayed" because they are in the inside back cover of a telephone directory, Tr. 1011-1020, especially Tr. 1020; see also Tr. 951-955, 977 concerning Mr. Bement's knowledge of the availability of equipment for transporting people, and Tr. 925-27 concerning Mr. Bement's lack of

knowledge of the total population of the Emergency Planning Zone. In reaching this conclusion, we note that FEMA has not yet made a formal finding concerning the adequacy of the Big Rock evacuation plan. Tr. 993-994. All we have is testimony of one FEMA witness, which we do not believe is entitled to a presumption of correctness. However, even were it entitled to such a presumption, we would reject it for the reasons we have discussed.

We have some information about available transportation, developed with respect to the subcontention about invalids. There appear to be 24 buses, 2 vans and 3 small buses available but only five drivers trained in emergency procedures. Tr. 1481. It is not clear whether any are trained or able to handle invalids lacking personal vehicles. Tr. 1501.

According to hearsay evidence, the business manager of the Charlevoix School District believes it would take no longer than three hours for the buses to fulfill their primary obligation, to move schoolchildren, if school were in session. Tr. 949, 960. However, we are unable to accept this opinion as correct, both because we have not been provided with the analytical and empirical basis for the conclusion and because the testimony is not that of an expert on emergency planning or of an engineer qualified to analyze traffic congestion problems.

There is no indication that there are enough buses to transport ambulatory hospital patients. See Tr. 965, which establishes that buses could accomplish the task but does not establish that enough buses would be available. There are no prearranged bus routes; thus each bus driver who arrives at the emergency operations center must be given an individual route that has never been driven before. Tr. 1489, 1491-93. The record does not show how these routes will be devised or communicated. There has not been any analysis of the amount of congestion that would occur near the emergency operations center during an evacuation. Furthermore, the record does not contain any information on whether it will be feasible to alert bus drivers

who are not on duty and therefore cannot be reached via the citizen band radios they have in their buses. We are not assured by Mr. Bement's rejoinder that anyone can drive a bus in an emergency. Tr. 954.

An appropriate expert should analyze: traffic congestion in emergencies, the capacity of the school buses, the number of children requiring transportation (including children not ordinarily requiring school bus transportation), the number of trips required, the willingness of bus drivers to make multiple trips into areas that may be radioactive (and the availability of back-up drivers) and the time the buses will need to do the job properly. Parents must then be fully informed about the plans for evacuating their children. If necessary, alternate means of transportation may need to be arranged for schoolchildren and for others whom the plan requires to wait for the conclusion of the school evacuation. Adequate provision must be made for schoolchildren, both because of the importance that the community places on them and because dissatisfied parents may make multiple trips to schools, impeding an evacuation.

In light of our findings concerning transportation for individuals without vehicles, including transportation of invalids and schoolchildren, we retain jurisdiction over this issue. Applicants have one month from the date of issuance of this decision to file evidence demonstrating that effective steps have been or are being taken to estimate the need for transportation of residents and transients who lack personal transportation and to provide reasonable means for emergency relocation of those individuals. In the alternative, applicant may demonstrate that the deficiencies are not serious or that adequate interim compensating actions will be taken. 10 CFR §50.54 (s)(2)(ii).

III LIST OF INVALIDS

Christa-Maria contends that:

A current list of invalids should be kept so that they can be assisted in time of emergency.

Applicant concedes that "Obviously, the whereabouts of such persons should be known so that they can be assisted and provided transportation should evacuation be necessary." Applicant's Proposed Opinion at 7; NUREG-0654, Evaluation Criterion 10.d and g. at 61, 63.

A list of invalids is being kept by the Charlevoix County Sheriff. Bement at 6-7, after Tr. 833; Tr. 962-64 and 1478-79. Currently, the list of invalids consists of 40 residents of Charlevoix County who responded to two newspaper articles, a year apart, and to the original emergency planning pamphlet. Id. The new emergency planning pamphlet, to be distributed soon, will contain a renewed appeal for the names of invalids. Consumers Power Exhibit 5 at 10, 23 (special needs form).

However, there was no testimony from which we can evaluate the success of these methods of enrolling invalids. One obvious difficulty, not adequately addressed in our record, is that invalids with short-term problems are unlikely to enroll. It may be that analysis will demonstrate that a continuous program of enrolling them is not justifiable from a cost/benefit standpoint. However, it may be feasible either to alert them to their potential problem or to enroll a substantial portion of them by posting notices or distributing literature in selected locations, such as hospital-discharge desks and emergency wards. Some telephoning of social service and religious organizations also might quickly determine how comprehensive the list of long-term invalids may be and may succeed in adding some names to the list. It is not appropriate to rely on vague feelings about the likely success of the means of distribution of information when it is feasible to obtain direct information about the adequacy of the list of invalids through a few telephone calls to knowledgeable individuals. It is not appropriate to rely on hunches or for this Board to accept hearsay testimony that a single

individual, the extent of whose knowledge has not been explored, believes in the adequacy of the list of invalids within Emmet County. Tr. 964.

We conclude that applicant must cure the deficiency in our record by demonstrating that there is a satisfactory list of invalids being maintained or that appropriate interim measures are being taken.

IV COORDINATION AND RELIANCE ON PEOPLE WHO EXIST

Intervenors contend that:

Applicant's emergency plan should be revised so that it relies only on people who exist and have been properly identified and so that there will be adequate coordination among responsible personnel.

However, intervenors have not filed any findings of fact on this issue and we do not know of any reliance on nonexistent individuals. We accept the testimony of Mr. Charles Axtell that applicant's site emergency plan and its implementing procedures, which are together the subject of this contention, rely only on individuals who exist and provide for adequate coordination, now that a direct telephone link has been established between the plant and the Emergency Operations Center. Axtell at 11-14, following Tr. 1047. We do not interpret the contention to raise an issue about the adequacy of plans for back-up personnel, and this question is not sufficiently important to merit sua sponte treatment as the responsible officials already know of the problem. See Bement at 8, after Tr. 833.

Consequently, we find that this contention lacks merit.

V ADMINISTRATIVE CONTROLS TO PREVENT A CASK DROP

John O'Neill contends that:

Administrative controls proposed to prevent a cask drop over the pool are inadequate. These are mentioned on pages 4-9 of the application. Administrative controls have proved inadequate in the past in preventing incidents and are frequently violated at the plant.

The portion of the application to which Mr. O'Neill apparently refers in his contention is found on p. 2-18 (previously numbered p. 4-9) and states:

Administrative controls will be established for casks other than the fuel transfer cask to ensure that: (1) no cask is moved over stored spent fuel, (2) all cask handling operations are limited to the southwest corner of the spent fuel pool, and (3) no spent fuel is stored in the two existing "A" racks adjacent to the cask handling area during cask handling operations. These controls will preclude the dropping or tipping of a cask onto a fuel rack with stored fuel.

As staff points out, 10 CFR §50.57(a)(3)(i) requires reasonable assurance that all licensed activities can be conducted without endangering the public health and safety. Thus, adequate administrative controls that are not violated frequently are required.

Applicant's witness, Mr. Edmund W. Raciborski, testified that there has been a total of 23 administrative control violations in 19 years of plant operation. Raciborski at 10, after Tr. 2579. All but one have been satisfactorily resolved and the other is also about to be resolved. Id. at 10-11; Donnelly at 8-12, after Tr. 2579 (updated at Tr. 2577).

In evaluating the adequacy of the administrative controls, we were influenced by testimony of Mr. David Blanchard, a Technical Engineer at the Big Rock Point Plant. Mr. Blanchard testified extensively before us on several issues and persuaded the Board that he is intelligent, extremely well informed about technical issues concerning his plant, and complete and thoughtful in his testimony. We accept Mr. Blanchard's testimony that he personally participated in developing the administrative controls, which are adequate for the existing spent fuel pool. We also are convinced that the controls, as modified to prevent casks from being placed in the pool unless the two racks in the vicinity of the cask handling area are verified to be empty, are adequate for the protection of the fuel-pool configuration anticipated by the application for a license amendment. (We note that

intervenors have not filed findings of fact on this issue, possibly because of the time demands placed on Mr. O'Neill by the influx of customers to his restaurant during the summer season.)

Consequently, we find that this contention is without merit.

O R D E R

For all the foregoing reasons and based on consideration of the entire record in this matter, it is this 14th day of September 1982

ORDERED:

(1) Consumers Power Company (applicant) may demonstrate, within one month of the issuance of this order, that the deficiencies discussed in the accompanying memorandum have been remedied, are not serious, or are being remedied through adequate interim compensating actions.

(2) The deficiencies referenced in paragraph (1) of this order include:

(a) failure to show the extent of the need for radiological training of local officials or school officials or to show that the need is being met in a satisfactory fashion by the combined efforts of applicant and state and local governments;

(b) failure to show the extent of the need for transportation of persons who lack personal vehicles or to demonstrate that the need is being met in a satisfactory fashion by the combined efforts of applicant and state and local governments;

- (c) failure to show that there is a satisfactory method of alerting school bus drivers who are not on duty or that such bus drivers have agreed to perform emergency transportation duties at a time when they are not on duty;
- (d) failure to show that if an emergency is declared while school is in session that there will be adequate transportation available for schoolchildren, including schoolchildren who do not ordinarily rely on school buses for transportation;
- (e) failure to show that an adequate list of invalids is being kept in order to facilitate their evacuation during an emergency; and
- (f) failure to show the method by which emergency bus routes will be established or that it will be feasible for bus drivers who have never before seen the routes to drive them in an acceptable manner.

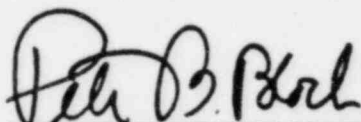
(3) Within 20 days of the filing of applicant's response to paragraph (1) of this Order, other parties may comment on the adequacy of applicant's response and may suggest the need for further hearings on these matters or appropriate remedies to cure the deficiencies.

(4) John O'Neill's contention concerning administrative controls to prevent a cask drop over the spent fuel pool is dismissed for lack of merit.

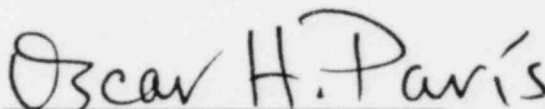
(5) Christa-Maria, et al.'s contention concerning the reliance of the emergency plan on people who do not exist is dismissed for lack of merit.

(6) Within ten (10) days after service of this decision, a party may appeal by the filing of exceptions to the decision or any part thereof, pursuant to the provisions of 10 CFR §2.762, which imposes requirements of conciseness and particularity and provides for the subsequent filing of appeal briefs.

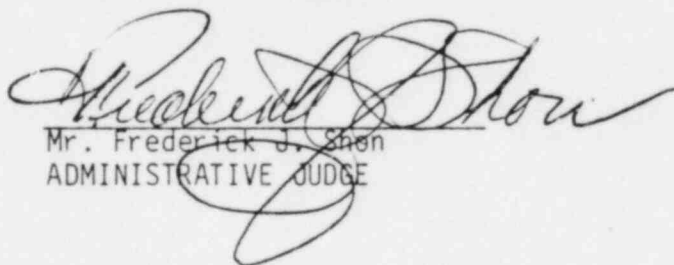
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