

3/15/83

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
PHILADELPHIA ELECTRIC COMPANY	)	Docket Nos. 50-352
(Limerick Generating Station,	)	50-353
Units 1 and 2)	)	

STAFF RESPONSE TO AIR AND WATER POLLUTION PATROL'S  
PETITION FOR ADDITIONAL INTERVENTION CONTENTION

I. INTRODUCTION

Frank R. Romano, as representative of Intervenor Air and Water Pollution Patrol (AWPP), has filed a petition proposing an additional contention for litigation in this proceeding.<sup>1/</sup> AWPP's proposed contention states that the inability of the "nuclear establishment [including Philadelphia Electric Company (Applicant)] to solve the life-threatening, generic nuclear reactor problem" (emphasis in original) in the four years following the Three Mile Island [TMI] accident "must be considered in all future licensing procedures as it affects the safety of the public." AWPP further contends that no "unlicensed reactor in Pennsylvania (or the U.S.) [should be] granted an operating license" until "the nuclear establishment (which includes the Applicant)... pass[es] the TMI Test of Capability,

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<sup>1/</sup> Petition for Additional Intervention Contention (Petition), Frank R. Romano for Air and Water Pollution Patrol. The petition itself is undated but the envelope was cancelled on February 24, 1983.

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namely, to safely and completely clean up the crippled TMI 2 reactor." AWPP asserts that the Applicant is incapable of passing this test.

AWPP alleges that the granting of a license for Limerick without the assurance inherent in the TMI Test of Capability will risk the lives and health of AWPP's members and create the psychological stress suffered by people of the TMI area and beyond including AWPP's members and the general public.

For the reasons set forth below, the NRC Staff opposes the admission of the proposed contention.

## II. DISCUSSION

### A. AWPP's Contention Lacks Adequate Specificity and Basis and Should Be Denied

In order for a proposed contention, timely filed, to be found admissible, it must fall within the scope of the issues set forth in the Notice of Hearing initiating the proceeding<sup>2/</sup> and comply with the requirements of 10 CFR § 2.714(b). Section 2.714(b) directs a party proposing a contention to be litigated to set forth the basis of the contention with reasonable specificity. One of the purposes of this requirement concerning basis and specificity is to assure that the contention in question raises a matter appropriate for litigation in a particular proceeding.<sup>3/</sup> In addition, a late filed contention must also be judged by balancing the five factors listed in 10 C.F.R. § 2.714(a)(1).

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<sup>2/</sup> Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2) LBP-80-30, 12 NRC 683, 687-89 (1980).

<sup>3/</sup> Illinois Power Co. (Clinton Power Station, Unit 1). LBP-81-61, 14 NRC 1735, 1737 (1981); Florida Power & Light Co. (Turkey Point Nuclear Generating, Units 3 and 4). LBP-81-14, 13 NRC 677, 686-87 (1981).

1. AWPP's Allegation of a Generic Nuclear Reactor Problem Lacks Specificity and Basis

Part of the new contention proposed by AWPP makes generic allegations against the entire nuclear industry concerning "the most glaring safety problems brought to light via nuclear reactor operation" (Petition at 1). The proposed contention is so general that it is impossible to discern what particular safety problem the intervenor wishes to litigate or its specific applicability to the operation of the Limerick Generating Station. The Intervenor fails to set forth a basis for his TMI Test of Capability - either its origin or its application - with reasonable specificity. The Staff opposes the admission of this portion of the contention as lacking basis and specificity.

2. AWPP's Allegation Concerning Psychological Stress Lacks Basis

AWPP further alleges that its members will suffer from psychological stress if the Limerick Generating Station is licensed to operate. In its June 1, 1982 Special Prehearing Conference Order, the Licensing Board rejected for lack of basis a similar issue of psychological stress raised by Friends of the Earth (FOE).<sup>4/</sup> FOE subsequently filed a Contention Based on New Matter, that was predicated on the May 14, 1982 decision by the United States Court of Appeals for the District of Columbia Circuit concerning NRC consideration of psychological health effects of the renewed operation of TMI-1. People Against Nuclear Energy v. United States Nuclear Regulatory Commission, 678 F.2d 222 (D.C. Cir. 1982), cert. granted Metropolitan Edison Co. v. People Against Nuclear Energy, 74 L.Ed 2d 276, 103 S.Ct. 292 (1982).

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<sup>4/</sup> 15 NRC 1512-13.

In a Memorandum and Order of September 2, 1982, the Board denied FOE's request to admit this contention. Citing as authority the Commission's Policy Statement on Consideration of Psychological Stress Issue, 47 Fed. Reg. 31762 (July 22, 1982), and the conditions articulated therein, the Board rejected FOE's contention. In its Order,<sup>5/</sup> the Board set out the conditions required by the Commission to admit a psychological stress contention into a license proceeding. As stated by the Commission those conditions are:

First, the impacts must consist of "post-traumatic anxieties," as distinguished from mere dissatisfaction with agency proposals or policies. Second, the impacts must be accompanied by physical effects. Third, the "post-traumatic anxieties," must have been caused by "fears of recurring catastrophe". This third element means that some kind of nuclear accident must already have occurred at the site in question.... Moreover, the majority clearly had only serious accidents in mind.... In the Commission's view, the only nuclear plant accident that has occurred to date that is sufficiently serious to trigger consideration of psychological stress under NEPA is the Three Mile Island Unit 2 accident. Accordingly, only this accident can currently serve as a basis for raising NEPA psychological stress issues.

The Board should reject AWPP's newly proposed contention for the same reason it rejected FOE's proposed contention concerning psychological stress: it fails to satisfy the conditions established in the Commission's Policy Statement for contentions based on psychological stress.

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<sup>5/</sup> Memorandum and Order, (Denying Request of FOE to Admit Contention V-1 Based on "New Matter") September 2, 1982. Slip op. at 3.

B. AWPP's Contention Must Be Rejected For Lateness

In addition to the foregoing grounds for rejection of AWPP's contention, it is properly rejected on other grounds as well. Since AWPP's petition is late, a balancing of the five factors set forth in 10 C.F.R. § 2.714(a)(1) is required. The five factors that govern the grant or denial of untimely intervention petitions are:

- (i) Good cause, if any, for failure to file on time.
- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.
- (v) The extent to which the petition's participation<sup>6/</sup> will broaden the issues or delay the proceeding.<sup>6/</sup>

The proponent of a late contention must affirmatively address these five factors and demonstrate that, on balance, the late-filed contentions should be admitted as matters in controversy in the proceeding.<sup>7/</sup>

Although AWPP asserts that the proposed contention "has developed over time" (Petition at 1), it fails to provide any support in the form of documents or a statement of circumstances which indicate that the contention is based on new information not available fifteen days prior to the special prehearing conference.<sup>8/</sup> In fact, AWPP undermines the

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<sup>6/</sup> Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-5, 13 NRC 361, 362 (1981); Houston Lighting and Power (Allens Creek Nuclear Generating Station, Unit 1), ALAB-671, 15 NRC 508 (1982).

<sup>7/</sup> Duke Power Co. (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-615, 12 NRC 330, 352 (1980).

<sup>8/</sup> Duke Power Company, et al. (Catawba Nuclear Station, Units 1 and 2), ALAB 687, 16 NRC \_\_\_\_\_ (August 19, 1982).

possibility that the proposed contention is based on any recent development by repeatedly referring to "four years of make-shift effort" and "four years of lack of capability of the nuclear establishment. . ." (Petition at 1). AWPP fails to address any of the four remaining factors set forth in 10 C.F.R. § 2.714(a). Since AWPP has not shown good cause for the late-filing of this petition and has not addressed the other four factors, the petition must be denied.

III. CONCLUSION

For the reasons discussed above, the NRC Staff believes that AWPP's non-timely contention should be rejected.

Respectfully submitted,

*Elaine I. Chan*  
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by APH



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CERTIFICATE OF SERVICE

I hereby certify that copies of "STAFF RESPONSE TO AIR AND WATER POLLUTION PATROL'S PETITION FOR ADDITIONAL INTERVENTION CONTENTION" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, this 15th day of March 1983:

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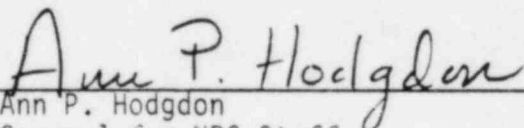
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