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Docket Nos. 50-443 OL
50-444 OL

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On July 15, 1983, Attorney General Francis X. Bellotti filed a pleading entitled "Contention of Attorney General Francis X. Bellotti Relative to Applicants' Evacuation Time Estimates for Beach Areas."^{1/} On July 26, 1983, Applicants

1/ Applicants object to the fact that the pleading was not expressly denominated a "motion" for the admission of a late-filed contention. See Applicants' Answer to "Contention of Attorney General Francis X. Bellotti Relative to Applicants' Evacuation Time Estimates for Beach Areas," filed July 26, 1983 [hereinafter, "Applicants' Answer"], at 1-5. The Attorney General's pleading, however, clearly acknowledges on its face that it is a request for allowance of a late-filed contention. All other contentions filed in this proceeding have been so denominated in the intervenors' pleadings and Attorney General Bellotti simply followed the usual practice in titling this pleading.

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filed an Answer to that pleading. And the Staff filed its Answer on August 1, 1983. Both Answers opposed admission of the new contention. Attorney General Bellotti files this pleading to respond to the Applicants' and Staff's arguments in opposition to this contention.

It should be noted at the outset that the Board need rule on the admissibility of this contention only if it rules inadmissible the Attorney General's proffered testimony of Mr. Philip B. Herr relative to the adequacy of the Applicants' beach area evacuation time estimates. It is only if that testimony is rejected as outside the scope of the Board's redrafted Contentions NECNP III.12 and 13, a ruling which we submit would constitute error, that the Board need consider the admissibility of a contention designed to present that very testimony to the Board.

I. This New Contention Is Not An Attempt
To Relitigate the Adequacy of the Applicants'
Time Estimate Methodology Generally

The Applicants and the Staff have both mischaracterized the Attorney General's proffered contention as an attempt to challenge generally the assumptions and methodology underlying the Applicants' evacuation time study. Indeed, the opposition of both parties stems entirely from that erroneous factual premise. As becomes apparent from an in-depth review of the

entirety of Mr. Herr's testimony, to which the Attorney General points as the bases for his contention, this contention is limited to a challenge of the methodology and assumptions which Applicants use in arriving at their beach area evacuation time estimates. Thus, Mr. Herr does not discuss deficiencies in the Applicants' model generally, but addresses their methodology in estimating the size of the beach area transient population, in failing to account for the effect on evacuation times for beaches which are virtually on an island, having only four connections to the mainland, of traffic accidents or breakdowns on those connections, in using a "clear network" assumption "unrealistic for beach areas," and in failing to account for the time required to evacuate persons dependent on public transportation even though "[a]t the beaches this could be the constraining time estimate...". [Emphases added] See Testimony of Philip B. Herr, filed July 15, 1983, at A.07 - A.12. Given the Board's ruling limiting the scope of NECNP Contentions III.12 and 13, Mr. Herr's testimony (and the basis for this contention) has been limited to questions of methodology specific to the beach areas.

A decision that Mr. Herr's testimony is outside the scope of the redrafted Contentions NECNP III.12 and 13 would limit the submission of testimony on the adequacy of time estimates (namely, those accounting for simultaneous evacuation of the

beach areas) which had not been submitted to the Board or the parties at the time the original contentions on the Applicants' time study were filed or even by the time the motion for summary disposition on those contentions was filed and heard. The Applicants have just now filed these estimates with the Board in their direct testimony on NECNP III.12 and 13. To suggest that parties are now precluded from challenging the methodology of these new estimates, either by way of testimony under the existing contention or through a new contention, is to suggest that the Board has somehow already ruled on the methodology and assumptions underlying estimates which it has never before had in front of it.

Applicants' counsel attempts to support this argument with his own testimony on the possibility of modifying an evacuation time model to address problems or issues specific to particular areas, such as beach areas. See Applicants' Response, at 4, n.1. Needless to say, Applicants' counsel is not competent to testify on this matter. Moreover, his point is patently absurd. Not only can different assumptions be fed into a model to account for differing considerations in various areas, but entirely different models can be utilized for different areas. In any event, the incompetent testimony of Applicants' counsel in this regard is countered by the detailed, competent testimony of Mr. Herr to the effect that there are problems with the Applicants' methodology which are specific to the beach areas.

Applicants further mischaracterize the Attorney General's proffered contention, suggesting that it asserts first "the omission of the scenario estimates called for by the Board in its June 30th Order" [i.e., beach area estimates] and then "four" alleged deficiencies in Applicants' methodology. See Applicants' Answer, at 3. In fact, the contention does not claim that beach area estimates are nonexistent, since such estimates have finally been filed with the Board. Rather, the contention asserts five methodological deficiencies specific to those beach area estimates.

Finally, Applicants erroneously state, at page 4 of their Answer, that Attorney General Bellotti "concedes" that the deficiencies named in this contention are "identical to the challenges that [he] hoped to make to the entirety of the Applicants' estimates themselves...". The Attorney General has never so stated. The deficiencies in the Applicants' beach area estimates identified in the contention are identical to those which Mr. Herr has addressed in his pre-filed testimony, but they relate exclusively and specifically to beach area estimates and do not by any means include the Attorney General's objections to Applicants' methodology generally.

While it is perfectly clear from a reading of the bases for this contention (namely, Mr. Herr's testimony) that the contention is addressed solely to the Applicants' beach area evacuation time estimates, Attorney General Bellotti has

redrafted the contention itself to make that limited scope of the contention even clearer. The contention, as redrafted, reads as follows:

The Applicants' evacuation time estimates purporting to account for simultaneous evacuation of the beach areas lying NE to SSE of this site are inadequate beach area estimates and lack utility as beach area estimates for emergency planning and management because . . .

[Remainder to read as originally drafted]

II. Admission of This Contention is Warranted Under the §2.714(a)(1) Factors

As we stated in our original pleading, there is good cause for the late admission of this contention in the event that the Board rules Mr. Herr's testimony inadmissible under the existing evacuation time contentions. This contention could not have been submitted earlier, for the Applicants had not included their beach area estimates in the FSAR (or in any other filings with the Board). As we have said, these estimates were first submitted to the Board in Applicants' Direct Testimony on NECNP III.12 and 13. See Applicants' Direct Testimony No.1, filed July 15, 1983, at 19, n.2.

In filing contentions on the basis of Applicants' FSAR, therefore, intervenors could only (and did) challenge the total absence of estimates reflecting simultaneous beach evacuation. It is only now that the Applicants have formally submitted beach area estimates that intervenors can challenge their adequacy.

Where, as is the case here, a contention could not have been filed at an earlier time due to the absence of critical information in the FSAR, it is inappropriate for the Board even to consider whether issues will be broadened or the proceeding delayed by admission of the contention. If those considerations are deemed relevant in a situation such as this, then applicants will be free to omit required information from the FSAR, submit it on the eve of hearing, and thereby avoid litigation of the adequacy of the material finally submitted. If Attorney General Bellotti is not allowed to address the adequacy of the Applicants' just-submitted beach area time estimates, either through testimony under NECNP III.12 and 13 or under his new contention, the adequacy of these new estimates will entirely evade review solely because of the Applicants' tardiness in submitting them.

Moreover, this proceeding need not be delayed due to admission of this contention.^{2/} There remain for future litigation contentions relative to off-site emergency planning. This new contention could readily be litigated in the context of that hearing, with no resulting delay in licensure.

Addressing the other factors listed at 10 C.F.R. §2.714(a)(1), it is clear that there is no other means, aside

^{2/} Of course, the least delay will result if these matters are addressed under the previously admitted contentions NECNP III.12 and 13.

from litigation under the existing contentions or admission of the new one, whereby the Attorney General's interest in obtaining review of the adequacy of the Applicants' beach area estimates can be protected. Mr. Herr's pre-filed testimony (including his statement of qualifications), incorporated as the bases for the new contention, gives ample indication of the ability of this party to contribute to a sound record for decision-making on this issue. And, no other intervenor having submitted testimony on the Applicants' evacuation time estimates, it is clear that no other party is in a position to represent the Attorney General's interests in this regard.

The Staff is incorrect in its assertion that this contention is either a request for reconsideration of the Board's summary dismissal of portions of Contentions NECNP III.12 and 13 or necessitated by the Attorney General's failure to contest summary dismissal of those contentions, such that the factors outlined in §2.714(a) should be balanced against admission. In fact, the matters which are the subject of the contention could not have been raised at the time when summary dismissal of NECNP III.12 and 13 was under consideration, for the Applicants had at that time not supplied their beach area estimates to the Board or placed them in controversy. The need for late submission of the contention arises entirely from the Applicants' failure to submit these estimates, which they

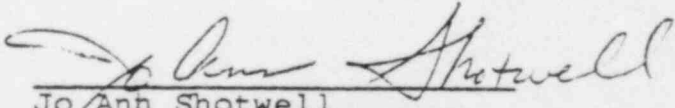
purport to have prepared at the time of the original time study (see Applicants' Direct Testimony No. 1, at 19, n.2), to the Board until well after the summary dismissal motion on NECNP III.12 and 13 was heard.

III. Conclusion

For the reasons discussed above, Attorney General Bellotti seeks admission of his contention relative to the Applicants' beach area evacuation time estimates, as redrafted herein. Again, such action is needed only in the event that Mr. Herr's testimony on the adequacy of the Applicants' now-submitted beach area estimates is found inadmissible under the redrafted Contentions NECNP III. 12 and 13.

Respectfully submitted,
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