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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
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BRANCH

In the Matter of)
)
Philadelphia Electric Company) Docket Nos. 50-352
) 50-353
(Limerick Generating Station,)
Units 1 and 2))

APPLICANT'S ANSWER TO "INTERVENOR LEWIS'
MOTIONS BASED ON NEWLY RECEIVED INFORMATION"

On December 27, 1983, Applicant received "Intervenor Lewis' Motions Based On Newly Received Information" in which Mr. Marvin Lewis moved for (1) reconsideration of the decision by the Atomic Safety and Licensing Board ("Licensing Board" or "Board") granting the motion by Philadelphia Electric Company ("Applicant") for summary disposition of Contention I-62, relating to pressurized thermal shock,^{1/} (2) admission of new (but unstated) contentions, (3) certification to the Commission of a question, (4) clarification to the Appeal Board that Contention I-62 is a "major part"

1/ Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), Docket Nos. 50-352-OL and 50-353-OL, "Memorandum and Order Granting Applicant's Motion for Summary Disposition of Contention I-62" (November 15, 1983). A previous motion to reconsider had been denied by the Licensing Board. Limerick, supra, "Memorandum and Order Denying Intervenor's Motion for Reconsideration of Memorandum and Order Granting Applicant's Motion for Summary Disposition of Contention I-62" (December 7, 1983).

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of this hearing, and (5) "[a]ny and all other contentions, motions and appeals that may properly preserve Intervenor's rights on this record."^{2/} On January 9, 1984, the Atomic Safety and Licensing Board requested an answer to this pleading (Tr. 5919).

As a basis for his various motions, Mr. Lewis relies upon two reports which were prepared by General Electric Company on behalf of the Applicant, and submitted to the NRC Staff in response to its requests.^{3/} Neither of these studies has any relationship to the analysis of pressurized thermal shock ("PTS"), nor does either provide a basis for the requested relief.

The purpose of the first report, Common Sensor Failure Evaluation Report (August 1983), as stated at page one was to assure that:

Chapter 15 [of the Limerick FSAR, entitled "Accident Analysis"] analyses bound any occurrence that could result from the failure of a common instrument line, defined as a line to which are attached sensors for more than one control system.

A failure of a common instrument line will not defeat the required separation between control and protection systems, nor the redundancy of any protection system.

^{2/} Intervenor Lewis' Motions Based on Newly Received Information at 1, 4 (undated) ("Lewis's Motions").

^{3/} By letter dated December 14, 1983 from Applicant to the NRC, the two reports were served on the Board and parties.

This report concluded at page one:

This report, which supplements existing Chapter 15 transient analyses, documents an evaluation of the Limerick Generating Station for common sensor failures. No new transients have been identified as a result of this study. All the analyzed consequences of common instrument failures are bounded by FSAR Chapter 15 analyses. In addition, this analysis has determined that neither the required redundancy of the protection systems nor the required separation between the control and protection systems could be defeated by a failed common instrument line.

The second report, Control Systems Failures Evaluation Report (September 1983), states at page one the following objectives:

Perform an analysis in response to the NRC concern that the failures of power sources which provide power or electrical signals to multiple control systems could result in consequences outside the bounds of the Limerick Final Safety Analysis Report (FSAR) Chapter 15 analyses and beyond the capability of operators or safety systems.

Provide a positive demonstration that adequate review and analysis has been performed to ensure that despite such failure the Limerick FSAR Chapter 15 analyses are bounding, and no consequence beyond the capability of operators or safety systems would result.

This report concluded at page one:

The information contained herein, supplemented by the existing FSAR Chapter 15 transient analysis, documents an evaluation of the Limerick Generating Station for system interaction by electrical means. The conclusion of this evaluation is that previously reported limits of minimum critical power ratio (MCPR), peak vessel and main

steamline pressures, and peak fuel cladding temperature for the expected operational occurrence category of events would not be exceeded as a result of common power source failures. Although transient category events have been postulated as a result of this study, the net effects have been positively determined to be less severe than those of the original, conservative, Chapter 15 events.

Thus, neither report constitutes new information inasmuch as each is unrelated to PTS and they merely confirm transient analyses contained in the Limerick Final Safety Analysis Report ("FSAR").

Mr. Lewis attempts to insinuate the issue of PTS, however, by criticizing these reports for not analyzing some undefined PTS events. His discussion of these two reports is oblique and extremely difficult to follow. He selectively intermixes portions of the reports with his own unsubstantiated assumptions and hypotheses to attempt to justify his position. Mr. Lewis fails to demonstrate, in any case, that the assumptions and methodology of the two reports are not appropriate for their purpose. Significantly, he fails to describe any specific mechanism for the occurrence of a PTS event more severe than already considered by the Board for the Limerick Generating Station even given a hypothetical failure of a control system or a common bus failure.^{4/}

^{4/} For example, Mr. Lewis fails to explain by what mechanism the primary system could "become solid" under conditions which could lead to PTS.

In his Example 1, Mr. Lewis asserts that the Board somehow erred in accepting a limiting case of a 12.5 psi pressure rise during a control rod drop accident. After reciting a number of seemingly unrelated items from the report and concluding without explanation that "the same situation can occur at Limerick that has occurred during the accident at TMI #2,"^{5/} Mr. Lewis claims he has demonstrated that the General Electric reports "provide several reasons to reject the staff's acceptance of a 12.5 psi pressure rise during a rod drop accident."^{6/} Mr. Lewis's "analysis" is completely lacking in specificity and bases and provides no support for his conclusion.^{7/}

His Example 2 is equally deficient. Mr. Lewis recites a statement from one report that a "break in this line [Instrument Lines 6 and 7] will cause an increase in feedwater flow."^{8/} As Mr. Lewis acknowledges, however, the report then states that even without operator intervention, this would lead to a high water level scram which would terminate reactor operation. Mr. Lewis fails to tie this fact to the occurrence of a PTS event or to any reason

^{5/} Lewis's Motions at 2.

^{6/} Id.

^{7/} For example, he provides no factual basis for his supposition that valves are "tied down" nor any credible series of events leading to PTS.

^{8/} Lewis's Motions at 3.

why the Staff's analysis regarding a rod drop accident should be discounted.

Mr. Lewis's Example 3 apparently involves some long term event which Mr. Lewis postulates would flood the entire containment. There is absolutely no mechanism discussed by Mr. Lewis for such "external flooding" of the entire primary system.^{9/}

It is similarly unclear how the IE Information Notice No. 83-82 supports the proposition that the primary system of a reactor such as Limerick could become filled with water so as to possibly create a situation where PTS could occur. While that Information Notice discussed drift in valve setpoints, the safety relief valves at the facility under discussion in the Information Notice ultimately did function. It should be noted that this Information Notice required no specific action or response by applicants or licensees. Mr. Lewis points to no design deficiency at the Limerick Generating Station related to safety relief valve operation. Thus, Mr. Lewis has failed to demonstrate that the Board was incorrect in its rulings on the PTS issue or that subsequent developments should cause the Board to reopen or reconsider its decision.

^{9/} Mr. Lewis has not even identified the system and the source of water to flood the vessel let alone discuss failures which must occur to cause such flooding.

Although Mr. Lewis has requested the Licensing Board to "reconsider" its decision granting Applicant's motion for summary disposition of Contention I-62, the request is clearly not one for reconsideration. A motion to reconsider "should be associated with requests for re-evaluation of an order in light of an elaboration upon, or refinement of, arguments previously advanced."^{10/} Moreover, as a request for reconsideration, Mr. Lewis's motion was filed too late. Inasmuch as Mr. Lewis requests the Licensing Board to consider new documents not previously within the record, his motion is actually one to reopen the record.^{11/}

Under the test for reopening enunciated in Kansas Gas and Electric Company (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320, 338 (1978), a party must satisfy three separate criteria: (1) that the motion be "timely presented"; (2) that it be "addressed to a significant safety or environmental issue"; (3) that it "be established that 'a different result would have been reached

^{10/} Central Electric Power Cooperative, Inc. (Virgil C. Summer Nuclear Station, Unit No. 1), CLI-81-26, 14 NRC 787, 790 (1981).

^{11/} See, e.g., Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-644, 13 NRC 903, 994-95 (1981).

initially had [the material submitted in support of the motion] been considered."^{12/}

Mr. Lewis has discussed none of these criteria, which weighs heavily against a finding in his favor.^{13/} Even so, it is apparent that, as previously discussed, the reports cited by Mr. Lewis are not "new information," are irrelevant to PTS and hence unrelated to any significant safety issue raised by Mr. Lewis, and therefore could not have affected the summary disposition of Contention I-62.

With regard to Mr. Lewis's assertion that "his discovery rights were abridged"^{14/} because the General Electric reports were not provided to him during discovery on Contention I-62, Applicant notes that Mr. Lewis never requested such reports, even liberally construing his discovery requests.^{15/} To summarize the discovery requests relating to Contention I-62, presumably on Mr. Lewis' behalf, Mr.

^{12/} The Wolf Creek test was approved by the Commission in Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-5, 13 NRC 361, 363 (1981), and was reiterated in Louisiana Power & Light Company (Waterford Steam Electric Station, Unit 3), ALAB-753, 18 NRC ____ (December 9, 1983).

^{13/} See Limerick, supra, "Memorandum and Order Denying Del-Aware's Motion to Reopen the Record" (June 1, 1983), slip op. at 7-8.

^{14/} Lewis's Motion at 1.

^{15/} The opportunity to request discovery terminated on August 1, 1983. Limerick, supra, "Memorandum and Order Confirming Schedules Established During Prehearing Conference" (slip op. at 2) (May 16, 1983).

Romano requested studies relating to neutron flux during informal discovery.^{16/} In addition, Mr. Lewis has propounded three sets of discovery requests,^{17/} none of which pertains to the General Electric reports confirming the Limerick FSAR transient analysis.

The remaining requests for relief by Mr. Lewis may be summarily denied. With regard to his suggestion that the Board allow new contentions based upon new material when it "surfaces," such an anticipatory ruling is clearly impermissible.^{18/} Mr. Lewis also requests certification of the Board's decision on I'S, but has failed to discuss the criteria for certification under 10 C.F.R. §2.718(i) and has, in any event, failed to show that the grant of summary

^{16/} Letter to T.B. Conner, Jr. from F. R. Romano, Enclosure 3 (September 3, 1982).

^{17/} Intervenor Lewis's First Set of Interrogatories on PTS Contention (May 19, 1983); Second Round of Interrogatories in the Limerick Operating Licensing Hearings (July 13, 1983); Intervenor Lewis's Third and Final Set of Interrogatories to the NRC Staff and Licensee (August 1, 1983).

^{18/} Moreover, this Board has no responsibility to assist intervenors in preparing valid contentions, even assuming that a relevant basis exists. See generally Carolina Power and Light Company (H.B. Robinson Steam Electric Plant, Unit 2), Docket No. 50-261-OLA, "Memorandum and Order (Report on Special Prehearing Conference Held Pursuant to 10 CFR 2.751a)" (April 12, 1983) (slip op. at 4); Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2), Docket Nos. 50-445 and 50-446 "Rulings on Objections to Board's Order of June 16, 1980 and on Miscellaneous Motions" (October 31, 1980) (slip op. at 7).

disposition threatens intervenor with "immediate and serious irreparable impact which, as a practical matter, could not be alleviated by a later appeal" or affects "the basic structure of the proceeding in a pervasive or unusual manner."^{19/} Interlocutory appeals are strongly disfavored^{20/} and interlocutory review of summary disposition orders is inappropriate in particular.^{21/} Moreover, as merely one of a great many safety contentions, summary disposition of Contention I-62 does not constitute completion of a major segment of the case.^{22/} Finally, the Licensing Board has no responsibility or general mandate to render an advisory opinion to intervenor as regards his procedural rights.

^{19/} Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-405, 5 NRC 1190, 1192 (1977).

^{20/} Arizona Public Service Company (Palo Verde Nuclear Generating Station, Units 2 and 3), ALAB-742, 18 NRC ____ (September 19, 1983) (slip op. at 5); Virginia Electric and Power Company (North Anna Power Station, Units 1 and 2), ALAB-741, 18 NRC ____ (September 15, 1983) (slip op. at 5).


^{21/} Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 and 2), ALAB-736, 18 NRC 165, 166 n.1 (August 24, 1983); Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-734, 18 NRC 11, 14-15 (1983). Cf. Pennsylvania Power & Light Company (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-641, 13 NRC 550 (1981) (certification denied for order denying partial summary disposition).

^{22/} See, e.g., Cleveland Electric Illuminating Company
(Footnote Continued)

For the foregoing reasons, intervenor Lewis's motions should be denied in each and every respect.

Respectfully submitted,

CONNER & WETTERHAHN, P.C.

A handwritten signature in dark ink, appearing to read "Mark J. Wetterhahn". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mark J. Wetterhahn
Counsel for the Applicant

January 20, 1984

(Footnote Continued)

(Perry Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-440-OL and 50-441-OL, "Memorandum and Order" (September 13, 1983).