

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED  
USNRC

'83 SEP 29 P3:41

Before Administrative Judges:  
James L. Kelley, Chairman  
Dr. Richard F. Foster  
Dr. A. Dixon Callihan

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In the Matter of  
DUKE POWER COMPANY, ET AL.  
(Catawba Nuclear Station, Units  
1 and 2)

Docket Nos. 50-413  
50-414  
ASLBP No. 81-463-01 0L  
September 29, 1983

MEMORANDUM AND ORDER  
(Ruling on Remaining Emergency Planning Contentions)

At the prehearing conference of August 8, 1983, we deferred rulings on four proposed emergency planning contentions pending further consideration and receipt of additional data. We now rule on those four contentions.

Contention 11 alleges that emergency planning should be required for the City of Charlotte "with the full range of protective actions considered including evacuation of the City's population." As factors supporting that conclusion, the contention points to the proximity of the city limits to the plume exposure pathway emergency planning zone ("plume EPZ"), unfavorable meteorological conditions, and congestion in evacuation routes through the city.

The Applicants and the Staff oppose this contention on various grounds. In order to assess the contention and the arguments against it, we asked the Applicants to provide us with certain information,

including a map depicting the northeast boundary of the plume EPZ, the city limits of Charlotte, and recent data on population densities in the area. By letter dated August 25, 1983, the Applicants supplied this information to the Board and parties, indicating that the submission was agreed to by all parties. The Board appreciates the Applicants' submission and has relied on it in several respects in ruling on this contention.

Both the Applicants and the Staff argue that this contention is an impermissible attack on the pertinent NRC rule. That rule provides in pertinent part as follows:

Generally, the plume exposure pathway EPZ for nuclear power plants shall consist of an area about 10 miles (16 km) in radius ... . The exact size and configuration of the EPZs surrounding a particular nuclear power reactor shall be determined in relation to local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries. 10 CFR 50.47(c)(2)

In the context of the NRC's emergency planning scheme, a contention that full emergency planning, including evacuation, should be developed for an area means that that area should be included in the plume EPZ. According to the map now before us, a plume EPZ that would include all of Charlotte would have to extend some twenty-five miles from the facility. Although the guideline in the rule -- "about 10 miles" -- is purposefully imprecise, it cannot be stretched as far as 25 miles. We conclude that this contention as drafted is an impermissible attack on the rules and reject it on that basis.

It does not follow, however, that the concept of including some portion of Charlotte in the plume EPZ should be excluded altogether from

this proceeding. Although the Intervenors cast their contention in terms of the entire city, perhaps in anticipation of our ruling they also expressed interest in including part of the city in the plume EPZ (Tr. 990). Beyond that, the contention does refer to several factors which are equally relevant to extending the plume EPZ to a part or all of Charlotte, including demography, access routes, and meteorology. Two of these factors are explicitly referred to in the rule. The relevance of the third, meteorology, is somewhat debatable.

Both the Applicants and the Staff argue that meteorological conditions are not a permissible consideration in determining the boundary for the plume EPZ. The Staff states that "adverse meteorological conditions ... have been factored into the planning basis assumptions and analyses which led to the Commission adoption of the 'about 10-mile' standard." Thus, the Staff tells us "it would be contrary to the regulatory scheme to consider the winds in the Catawba region as a basis for adjusting the '10-mile EPZ'." There is some merit in this argument because the history of the "about 10-miles" standard does include some consideration of meteorological conditions. See NUREG-0396, pp. 16-17, I-26 to I-34 (1978). A difficulty with this argument is that it rests entirely on inferences from Staff documents. Neither in the rule nor in associated Commission documents has the Commission itself ever said or indicated that meteorological conditions are irrelevant under the rule. The language of the rule itself points to the opposite conclusion.

Meteorology is not explicitly referred to in the rule as a relevant "condition." It is clear, however, that the list of "conditions" is not intended to be exclusive. Presumably any relevant local condition can be considered. Meteorology certainly qualifies under that standard.

There is no clear answer to this legal question. We will resolve the doubt for now in favor of allowing consideration of meteorological conditions under the revised contention we are admitting as set forth below, at least for discovery purposes. If the Applicants or Staff can show at the summary disposition stage that the NUREG-0396 study of meteorological conditions included appropriate consideration of the most unfavorable conditions that might reasonably be anticipated at Catawba -- i.e., that the study "envelopes" Catawba conditions -- such a showing presumably would preclude any further consideration of meteorological conditions under this contention.

In accordance with the foregoing discussion, the Board is admitting the following revised version of Contention 11:

The size and configuration of the northeast quadrant of the plume exposure pathway emergency planning zone (Plume EPZ) surrounding the Catawba facility has not been properly determined by State and local officials in relation to local emergency response needs and capabilities, as required by 10 CFR 50.47(c)(2). The boundary of that zone reaches but does not extend past the Charlotte city limit. There is a substantial resident population in the southwest part of Charlotte near the present plume EPZ boundary. Local meteorological conditions are such that a serious accident at the Catawba facility would endanger the residents of that area and make their evacuation prudent. The likely flow of evacuees from the present plume EPZ through Charlotte access routes also indicates the need for evacuation planning for southwest Charlotte. There appear to be suitable plume EPZ boundary lines inside the city limits, for example, highways 74 and 16 in southwest Charlotte. The boundary of the northeast quadrant of the plume EPZ should be reconsidered and extended to take account of these demographic, meteorological and access route conditions.

In revising and admitting this contention, we stress that we are not now making any factual findings with reference to its various theses. We merely determine that the Intervenors are entitled to an opportunity to prove those theses. The proof may eventually show that the present plume EPZ boundary was appropriately determined by State and local officials. That determination cannot be made with scientific precision, given the nature of the factors listed in the rule. Rather, it necessarily involves large elements of judgment. See Southern California Edison Co. (San Onofre Station), 15 NRC 1163, 1180-1182 (1982). This means that the scope of our review on this issue should be relatively narrow.

Discovery on Contention 11 and on revised Contention 7, discussed below, is now open and will close on February 1, 1983, along with discovery on the other emergency planning contentions.

The remaining emergency planning contentions are numbers 16, 17 and the last paragraph of 19. We reject these contentions as impermissible attacks on Commission rules.

Contention 5 challenges the adequacy of off-site emergency arrangements for medical services. The Applicants and Staff argue that this contention is an impermissible attack on the pertinent emergency planning rule, 10 CFR 50.47(b)(12), as interpreted by the Commission. We agree. The Commission's recent decision in Southern California Edison Co. (San Onofre Station), CLI-83-10, 17 NRC \_\_\_ (April 4, 1983), sets forth an exclusive list of things that must be done to satisfy the rule. The matters alleged in this contention go beyond the rule, as it has been interpreted by the Commission.

Contention 17 states that radioprotective drugs, especially potassium iodide (KI), should be placed in each residence in the plume EPZ. The parties initially focused on the part of the emergency planning regulation concerning "protective actions" -- subsection (10) of section 50.47(b) -- which normally connotes evacuation or sheltering. The Applicants argued that broad provision of radioprotective drugs was beyond the scope of the regulation. The Staff did not oppose admission of this contention. The Board thereafter invited the parties' attention to the San Onofre decision, cited above, and to a later Licensing Board decision in the same case rendered on August 12, 1983, concerning subsection (12) of the rule. Comments were subsequently received from the Applicants and the Intervenors. As noted above, we read the Commission's decision as setting forth an exclusive set of requirements for provision of medical services. We also conclude that "medical services" should be read to include all aspects of such services (including medicine) and therefore that provision of radioprotective drugs for the general public in the plume EPZ is not required. We note also that the issue raised by this contention is generic; we could learn nothing new by exploring it in the Catawba setting compared to any other reactor.

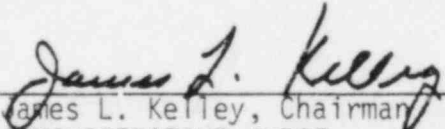
Contention 19 (last paragraph) questions whether the paper plans can be implemented in practice. Parts of at least two other contentions (No. 14, ¶9, No. 15, ¶6) raised a similar theme in somewhat different words. The Intervenors expressed their desire to put forward for Board ruling one contention raising the issue whether the off-site emergency plans should include an exercise in which the general public in the

plume EPZ would participate and be evacuated. The Applicants and Staff had anticipated such a contention and expressed their views on it. The question was discussed at the prehearing conference and it was agreed by the Board and parties that the second paragraph of Contention 19 would serve that purpose. See Tr. 1078-1082, 1096-1097, 1101. We rule, however, that a contention requiring public participation in an evacuation drill cannot be admitted. Under 10 CFR Part 50, Appendix E, Part IV F, the required exercises are to be conducted "without mandatory public participation."

Clarification of Contention 7. At the prehearing conference on emergency planning, the Board stated that it would admit a revised version of Contention 7. That revised version is as follows:

The Applicants' emergency plans and public brochure and the plans of relevant State and local authorities do not adequately address the preparations that should be made to achieve effective sheltering, nor the actions that people should take when advised to seek shelter. Hence, the plans and brochure fail to provide a reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency as required by 10 CFR 50.47(a)(1).

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

  
James L. Kelley, Chairman  
ADMINISTRATIVE JUDGE

Bethesda, Maryland

September 29, 1983