

07/25/84

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'84 JUL 26 P2:34

In the Matter of)
Commonwealth Edison Company)
(Braidwood Nuclear Power Station,)
Units 1 and 2))

Docket Nos. 50-456
50-457 /oc

NRC STAFF RESPONSE TO BOB NEINER FARMS', INC.
STATUS OF CONTENTIONS - PROPOSED REVISIONS AND AMENDMENTS

I. INTRODUCTION

In its June 8, 1984 Order, the Atomic Safety and Licensing Board (Board) requested all parties to submit updated information regarding the status of contentions and to submit recommendations regarding a proposed schedule. On July 5, 1984 counsel for Bob Neiner Farms, Inc., et al. (Neiner Farms/Intervenor) responded to the Board Order (Response) stating that Intervenor had no amendments or revisions to its admitted contentions with the exception of Contention 3. Intervenor advised the Board of "new information" on Contention 4, a contention on which the Board had deferred its ruling as to admissibility. Lastly, Neiner Farms requested leave to file an additional contention. For the reasons set forth below, the NRC Staff opposes Intervenor's proposed revision to Contention 3 and its proffer of the material included in its response for Contention 4. The Staff opposes the request for leave to file an additional late-filed contention in 90 days on procedural grounds.

8407270141 840725
PDR ADOCK 05000456
PDR
e

DS07

II. DISCUSSION

A. Emergency Planning Zone (Contention 3)

The Neiner Farms Response simply states "the 20 mile radius is expanded to 25 miles^{1/} (Response at 1) without further reference to a specific subpart Contention 3. This contention deals with emergency plan distances in three contexts (a) education of the public on evacuation or other protective measures, (b) notification of residents and (c) evacuation of institutions.^{2/} Since each context relates to evacuation, the contention appears to raise issues regarding the plume exposure pathway.

Section 50.47(c)(2) of 10 C.F.R. provides in pertinent part:

Generally, the plume exposure pathway EPZ for nuclear power plants shall consist of an area about 10 miles (16 km) in radius and the ingestion pathway EPZ shall consist of an area about 50 miles (80 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.

By its proposed revision, Neiner Farms is seeking to litigate a plume exposure pathway EPZ expanded from the 10 mile radius called for in 10 C.F.R. § 50.47(c)(2) to 25 miles.^{3/} Intervenor's Response fails to provide

^{1/} Neiner Farms, Inc., et al., "Status of Contentions - Proposed Revisions and Amendments," July 5, 1984 at 1.

^{2/} Neiner Farms, Inc., et al., Petition to Intervene - Supplemental and Amended Contentions, August 7, 1979 at 2.

^{3/} When the Intervenor submitted its amended contentions on August 7, 1979, the Commission had not established any emergency planning requirements, however, on August 9, 1980 the Commission issued a final rule on Emergency Planning (10 C.F.R. Parts 50 and 70) which provides for a maximum planning distance of 10 miles for the plume exposure pathway EPZ. (45 Fed. Reg. 55402). This rule was effective as of November 3, 1980.

any justification for such a substantial modification in the plume exposure pathway EPZ such as a specific demographic or topographic feature which might call for a limited extension of the 10-mile radius. This proposed revision constitutes a challenge to the Commission's regulations and must be rejected for failure to make the proper showing called for in 10 C.F.R. § 2.758.^{4/}

B. Railway System (Contention 4)

Intervenor provided what it purports to be "new information about the expected use of the rail line that lies adjacent to the Braidwood facility." (Response at 1) This new information is apparently drawn from an excerpt of newspaper text which Intervenor has marked as Exhibit A and appended to its Response. Although the news material is taken out of context it appears to the Staff to represent speculation by an individual named Marsh who Intervenor contends is speaking for "the Army" (Response at 1) regarding options for use of the Joliet facility. This information provided by Intervenor is so poorly documented that it is impossible for the Staff to evaluate its significance or applicability. The Staff does not accept the Intervenor's proffer that this information would be useful to the Board and urges the Board to disregard this material and rule on the admissibility of Contention 4 based on information provided at the Special Prehearing conference and in the filings of Applicant and Staff.^{5/}

^{4/} The contention as originally admitted now constitutes a challenge to the provisions of 10 C.F.R. § 50.47(c)(2). This matter should be promptly addressed by the Intervenor.

^{5/} See Answer of Commonwealth Edison company to the Contentions of Bob Weiner Farms, dated August 22, 1979; Special Prehearing Conference at Tr. 32-37 (August 23, 1979); letter from Myron Karman to ASLB, dated September 12, 1979; Applicant's Supplemental Brief on Contention 4, dated September 13, 1979.

C. New Contention

Neiner Farms improperly requests "leave to file a contention related to Quality Control considerations ...within 90 days..." (Response at 2). The proper procedure for filing such a late-filed contention is set forth in 10 C.F.R. 2.714(a). The petition must set forth the proposed contention, address the five specified factors in 10 C.F.R. § 2.714(a) and "affirmatively demonstrate that on balance, they favor... tardy admission in the proceeding." Duke Power Co. (Perkins Nuclear Station, Units 1, 2, and 3), ALAB-615, 12 NRC 350, 352 (1980); see Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 275 (1975). These factors 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 petitioner's participation will broaden the issues or delay the proceeding.

The Commission has emphasized that licensing boards are expected to demand compliance with the lateness requirements of 10 C.F.R. § 2.714. See Pacific Gas & Electric Co. (Diablo Canyon, Units 1 and 2), CLI-81-5, 12 NRC 361, 364 (1981). The burden is on the petitioner to demonstrate that a balancing of these five factors is in its favor.

Neiner Farms' request for leave to file a new contention in 90 days without addressing the five factors considered for admissibility attempts to circumvent the Commission's Rules of Practice for late-filed

contentions, therefore the Staff urges the Board to deny Intervenor's request on procedural grounds.

D. Proposed Schedule

Neiner Farms' Response neglected to make any recommendations to the Board regarding a proposed schedule other than to request 90 days to file a new contention. Intervenors have had nearly five years since the filing of their amended contentions to update or perfect them. Intervenor's request for a lengthy extension at this juncture in the proceedings for the purpose stated in its Response is unreasonable and should be denied.

III. CONCLUSION

For the reasons discussed above, the Staff opposes Intervenor's proposed revision to Contention 3 as well as the proffer of information regarding Contention 4. The Staff opposes the Intervenors' request for leave to file a new contention in 90 days on procedural grounds.

Respectfully submitted,

Elaine I. Chan

Elaine I. Chan
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 25th day of July, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
COMMONWEALTH EDISON COMPANY)
)
(Braidwood Nuclear Power Station,)
Units 1 and 2))

Docket Nos. 50-456 JUL 26 P2:34
50-457

DOCKETED
USNRC

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO BOB NEINER FARMS' INC. STATUS OF CONTENTIONS - PROPOSED REVISIONS AND AMENDMENTS" 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 25th day of July, 1984:

Marshall E. Miller, Esq., Chairman*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Commonwealth Edison Company
ATTN: Cordell Reed
Assistant Vice President
P. O. Box 767
Chicago, IL 60690

Dr. A. Dixon Callihan
Administrative Judge
Union Carbide Corporation
P.O. Box Y
Oak Ridge, TN 37830

C. Allen Bock, Esq.
P.O. Box 342
Urbana, IL 61801

Dr. Richard F. Cole
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Thomas J. Gordon, Esq.
Waller, Evans & Gordon
2503 S. Neil
Champaign, IL 61820

Rebecca J. Lauer, Esq.
Isham, Lincoln & Beale
Three First National Plaza
Suite 5200
Chicago, IL 60602

Region III
U.S. Nuclear Regulatory Commission
Office of Inspection & Enforcement
799 Roosevelt Road
Glen Ellyn, IL 60137

Ms. Bridget Little Rorem
117 North Linden Street
Essex, IL 60935

Joseph Gallo, Esq.
Isham, Lincoln & Beale
Suite 840
1120 Connecticut Avenue, N.W.
Washington, DC 20036

Atomic Safety and Licensing Board
Panel*
U.S. Nuclear Regulatory Commission
Washington, DC 20555

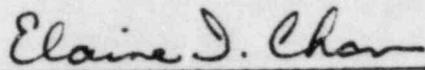
Docketing and Service Section*
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Lorraine Creek
Route 1, Box 182
Manteno, IL 60950

Atomic Safety and Licensing Appeal
Board Panel*
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Jane M. Whicher, Esq.
109 North Dearborn Street
Suite 1300
Chicago, IL 60602

Erie Jones, Director
Illinois Emergency Services
and Disaster Agency
110 East Adams
Springfield, IL 62705



Elaine I. Chan
Counsel for NRC Staff