

May 29, 1984
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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'84 MAY 30 P3:56

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF REPLY TO "AWPP'S FINDINGS
AND CONCLUSIONS RE CONTENTION VI-1"

I. INTRODUCTION

On May 22, 1984, pursuant to an order of the Atomic Safety and Licensing Board ("Board") read from the bench^{1/} on May 10, 1984, Air and Water Pollution Patrol ("AWPP") filed its proposed "Findings and Conclusions Re Contention VI-1." Contention VI-1 as admitted by the Board reads as follows:

Applicant has failed to control performance of welding and inspection thereto in accordance with quality control and quality assurance procedures and requirements, and has failed to take proper and effective corrective action and preventive action when improper welding has been discovered.

Pursuant to the Board's direction,^{2/} the NRC staff files its reply to AWPP's proposed findings.

1/ Tr. 11,051. See also, Tr. 11,047-58.

2/ Tr. 11,052.

II. BACKGROUND

In its order read from the bench on May 10, 1984, the Board indicated that its tentative judgment was that the conclusions in the testimony of the Applicant and the Staff were fully supported by the testimony. In view of this judgment, the Board indicated that it saw no reason to follow the normal findings schedule, but instead would provide an opportunity for AWPP to file proposed findings and conclusions setting forth anything in the record that might support in any way, in AWPP's view, a Licensing Board finding that AWPP's Contention VI-1 was meritorious.^{3/}

AWPP's proposed findings for the most part concern procedural matters and other matters not brought into controversy by Contention VI-1 which, by the Board's Order of October 28, 1983, was limited to items set forth in AWPP's required filing of March 6, 1984.

There is nothing in AWPP's findings which should lead the Board to change its judgment that the testimony of the Applicant and the Staff support the conclusion that Contention VI-1 lacks merit, that the testimony was not contradicted in any way on cross-examination or questions from the Board^{4/} and that the Staff's testimony was fully supportive of all important material conclusions of the Applicant's testimony.^{5/}

^{3/} Tr. 11,048-49.

^{4/} Tr. 11,047.

^{5/} Id.

Even though AWPP's findings are for the most part not directed to issues of material fact, the Staff has attempted to provide a reply to each of them.

III. DISCUSSION (REPLY FINDINGS)^{6/}

1. Contrary to AWPP's assertion, by stipulating to the admission into evidence of Applicant's references, AWPP did not waive its right to prove lack of credibility.

2. Contrary to AWPP's assertion, the Board's requirement of coordination of contentions was within its authority to control the proceeding. 10 C.F.R. § 2.718. The withdrawal of counsel for LEA, who has performed as coordinator of contentions at the request of the Board, did not provide an occasion for AWPP to complain to this Board of prejudice to it because of lack of counsel. As regards AWPP's assertion that it should have been given court-appointed counsel, there is nothing in the Commission's regulations which would provide a basis for such funding of intervenors.

3. AWPP's representative's feelings of being pressured are purely subjective and do not relate to the merits of AWPP's Contention VI-1. The record is replete with examples of the Licensing Board's efforts to aid Mr. Romano in his cross-examination of the witnesses.

^{6/} AWPP's findings are not numbered, even though 10 C.F.R. § 2.754(c) requires that proposed findings be set forth in numbered paragraphs. The Staff has numbered AWPP's paragraphs consecutively and has attached to this pleading a copy of AWPP's findings as numbered by the Staff.

4. AWPP suggests that the Licensing Board told its representative, Mr. Romano, that there was really no need to submit findings and conclusions. The record is to the contrary: the Licensing Board explained in detail its reasons for following the instant procedure and encouraged Mr. Romano to think carefully before deciding not to file. Tr. 11,050.

5. AWPP characterizes the statement of Applicant's witness, Mr. Corcoran, that sampling was done on a qualitative basis and not on a random statistical basis as an "admission." However, contrary to AWPP's characterization, Mr. Corcoran conclusively demonstrated that qualitative sampling is an appropriate means of assuring quality welding, particularly in view of the qualitative sampling program's being an integral part of a larger program that includes 100 per cent inspection. Tr. 10,468 (Corcoran). The approach adopted for Limerick is entirely consistent with NRC regulations in Appendix B to 10 C.F.R. Part 50. Tr. 10,469-70 (Coyle).

6. Contrary to AWPP's allegation that Mr. Corcoran's answers were evasive, Mr. Corcoran's description of the Applicant's program for assuring quality welding at Limerick was responsive to AWPP's questions. The witnesses' efforts to give responsive answers was particularly commendable in view of the fact that many of AWPP's questions were difficult to understand. See Board's comments at Tr. 10,510, 10,512; see also Tr. 10,513 (Clohecy).

7. AWPP's proposed finding 7 seems to contain a typographical error in that statements attributed to Mr. Coyle at Tr. 10,365 are not to be found on that page. Further, nowhere in the transcript can there be found an admission by Mr. Coyle that he inspected welds without having the proper training and experience. Therefore, AWPP is simply mistaken

in attributing to Mr. Coyle such an admission. Further, contrary to the statement made in AWPP's proposed finding 7, Mr. Coyle did not indicate that he did not understand pipe stress and there is nothing in the transcript page cited by AWPP to so indicate. Tr. 10,375 (Coyle).

8. Contrary to AWPP's representation, Tr. 10,378 does not corroborate that quality assurance inspectors at Limerick do not "appreciate" statistical sampling.

No transcript citation is given to support AWPP's claim that it was denied Professor Iversen's assistance in cross-examination. The record does not support such a claim; rather it is clear that the Licensing Board suggested to AWPP's representative that he might avail himself of Professor Iversen's assistance in examining the Applicant's and the Staff's witnesses. (Tr. 10,434).

9. In AWPP's proposed finding 9, Tr. 10, 384 is cited to support the finding that Applicant's witness, Mr. Clohecy, is not qualified to inspect welds. Contrary to AWPP's characterization, the testimony of Mr. Clohecy found at Tr. 10,384 states that he is not qualified as a welder under the American Welding Society codes, not that he lacks the requisite qualifications to inspect welds. Tr. 10,384 (Clohecy).

10. AWPP's proposed finding 10 does not relate to the record; the Staff does not respond to it.

11 & 12. AWPP's proposed finding 11 relates to its effort to have the Licensing Board accept Professor Iversen's late-filed testimony, and not to evidence received in the hearing. In its proposed finding 11, AWPP seems to be asserting that the late-filed testimony of Professor Iversen should have been received notwithstanding its lateness because it would

assist the record. AWPP was given the opportunity to convince the Licensing Board of the correctness of its position. The record amply supports the ruling of the Licensing Board denying AWPP's request. Tr. 10,414-10,430. At the time AWPP offered Professor Iversen's testimony, the Board had already issued an order striking AWPP's prefiled testimony and denying its request to offer Professor Iversen as a witness. Memorandum and Order Ruling on Pretrial Motions Regarding Testimony on Contention VI-1, May 2, 1984. Subsequently, when Professor Iversen's written testimony was offered after the hearing had already begun, the Board rejected the testimony for a number of reasons, any one of which would have been adequate grounds to support the rejection. See Tr. 10,428-36. The Board's rejection of Professor Iversen's testimony was based on its being late without good cause and on its lack of probative value. The total record adduced on the contention supports the latter basis: statistical sampling techniques were shown not to be applicable to quality assurance of welding.

13. AWPP's complaint regarding the limitations placed on the scope of matters brought into controversy under its Contention VI-1 by the Licensing Board's Order of October 28, 1983 is more than six months late. By the Commission's rules, such an objection should have been filed within five days of the service of that order. 10 C.F.R. § 2.751a(d). AWPP should not now be heard to complain of the Licensing Board's limitation.

14. In proposed finding 14, AWPP complains of lack of legal representation. Such a complaint is not properly addressed to this Licensing Board. AWPP's determination to proceed without counsel was its own decision.

15. AWPP's proposed finding 15 is simply not comprehensible and the Staff does not respond to it.

16. Contrary to AWPP's representations, the record reveals that the Licensing Board presented AWPP with every opportunity to introduce into the record "material . . . crucial to the safety of the public." Contrary to its assertions, AWPP was the beneficiary of a considerable relaxation of the "complex . . . procedures" of which it complains. Despite the efforts of the Board in providing AWPP with procedural assistance (in recognition of AWPP's status as a party not represented by counsel), AWPP was unable to point to anything which would lead to the conclusion that something was amiss in the area of welding and welding quality assurance at Limerick.

17. & 18. AWPP's proposed findings 17 and 18 regarding the pressure under which its cross-examination was presented and the limitation placed on its contention by the Board's order of October 28, 1983, do not appear to relate to any fact in dispute.

19. Contrary to AWPP's proposed finding 19, Mr. Corcoran's response to Mr. Romano's question regarding procedures was responsive. Tr. 10,467-68.

20. There is nothing in the record to support AWPP's proposed finding 20 that Mr. Corcoran created the impression that he supervised welding. It is clear from the totality of the record and in particular from Mr. Corcoran's professional qualifications that he did not represent himself to be a supervisor of welding. Corcoran, Professional Qualifications ff. Tr. 10,313.

21. Tr. 10,471 and Tr. 10,472 are cited as support for AWPP's proposed finding 21 that Mr. Corcoran "does not appreciate proper statistical procedure

and terminology." However, these transcript pages do not report testimony relating to statistical procedure; rather they address inspection and state repeatedly that 100 per cent of welds are inspected. Tr. 10,471-72 (Corcoran).

22. AWPP repeatedly proposes findings suggesting evasiveness on the part of the Applicant's witnesses. The transcript citations in proposed finding 22 do not support this characterization. Further, the Board noted that it concluded that the witnesses were straightforward and truthful and candid in fully disclosing the information supporting the written testimony. Tr. 11,048.

23. In proposed finding 23, AWPP offers an opinion totally unsupported by a record citation. Nothing providing a basis for a response is offered; therefore, the Staff does not respond.

24. Contrary to AWPP's representations, it failed to make a timely request of the Staff to make Mr. Toth available as a witness and failed to give timely notice that it considered Mr. Toth's testimony as crucial to its case. Further, AWPP failed to avail itself of the procedures set out in 10 C.F.R. § 2.720(h)(2)(i) regarding the testimony of named NRC personnel. However, the witnesses presented by the Staff, Messrs. Durr and Reynolds, indicated that they had spoken with Mr. Toth concerning their testimony. Tr. 10,982; Tr. 10,985 (Durr, Reynolds). The regulations are clear that Mr. Toth, as a duly authorized representative of the Commission, had a right to inspect at the facility and that any attempt by the Applicant to prevent such inspection would have provided an independent basis for enforcement. 10 C.F.R. § 50.70. Therefore, AWPP provides no basis for the Board to adopt its proposed finding 24. Further, Mr. Wetterhahn did not, contrary to proposed finding 24, object on the basis that common sense

was beyond the competence of the witness. His objection was that the question to which the objection was made sought a legal opinion. Tr. 10,609.

25. Proposed finding 25 treats a matter not related to a factual issue.

26. Proposed finding 26 is totally subjective, in that Mr. Corocan's answer to AWPP's question cited in that finding was fully responsive. Tr. 10,611 (Corcoran).

27. The transcript page cited, Tr. 10,616, does not provide a basis for AWPP's proposed finding that Mr. Corcoran tried to cover up the absence of the inspector's initials on the subject welds.

28. Proposed finding 28 purports to be a conclusion of "no confidence" in Limerick welding. AWPP's findings do not provide support for such a conclusion.

29. AWPP's proposed finding 29 states that Mr. Corcoran denied at page 10,845, line 19 to 21, that the NRC cautioned Applicant on delays in weld inspections. However, the question and answer referenced read as follows:

By Mr. Romano:

Q: But the NRC has made the statement that many times your closing situations do increase the difficulty of access for personnel to identify and correct nonconformance of work. Do you know, Mr. Corcoran, that that is so?

A: (Witness Corcoran) No[t], I don't, and I would request that you refer to where the NRC made such a statement.

AWPP's proposed finding mischaracterizes the exchange. Further, as the Board indicated, the question involved an item not related to any of the items specified by AWPP. Tr. 10,847. By the terms of the Board's ruling in its

order of October 28, 1983, AWPP's case was to be limited to items specified in its required filing, which was filed on March 6, 1984.

30. AWPP's proposed finding 30 does not relate to any issue in controversy as it does not relate to welding.

31, 32 & 33. AWPP's proposed findings 31, 32 and 33 relate to IE Report 76-06-01. As regards AWPP's implication that Mr. Boyer's statement of September 1983 -- that all welds originally inspected by the subject inspector had been reinspected -- is inconsistent with a subsequent examination of certain of those welds conducted by Dr. Fisher in 1984, there is simply no inconsistency shown between the two statements. Boyer, et al., ff. Tr. 10,321, pp. 36-45; Tr. 10,932 (Fisher). Contrary to AWPP's statement in proposed finding 33, the matter raised in Inspection Report 76-06-01 would seem to be resolved. Tr. 10,989 (Durr).

34. In proposed finding 34, AWPP states that the Applicant's witnesses were weak and evasive. However, the Board's determination was to the contrary: See ¶ 22, supra.

35 & 36. In paragraphs 35 and 36, AWPP quarrels with the procedures established by the Board for post-hearing filings. Contrary to AWPP's claim, it is not prejudiced by the procedures adopted by the Board and in this case, where AWPP's case was limited to cross-examination of the Applicant's and Staff's witnesses and where AWPP was not able to develop on cross-examination that the testimony was not true and correct, the usual procedures set out in 10 C.F.R. § 2.754 would seem to be unnecessary and unproductive. Tr. 11.048.

37. In paragraph 37, AWPP mistakenly asserts that its "contention must continue until [welding infractions since the March 6 listing deadline] are

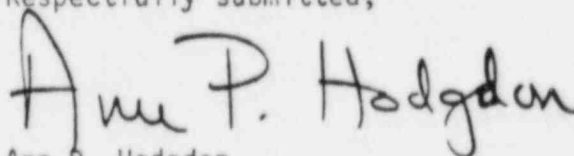
investigated." The Commission regulations are to the contrary. Licensing Boards sitting in operating licensing proceedings must decide the issues raised by contentions. Other findings required by 10 C.F.R. § 50.57 are made by the Director of Nuclear Reactor Regulation. Having decided the issues raised by AWPP's Contention VI-1, this Licensing Board has no continuing responsibility regarding those matters.

38 & 39. In paragraphs 38 and 39 AWPP proposed that the Board conclude that IE Report 76-06-01 "paints a picture of an accident waiting to happen." AWPP would also have the Board draw conclusions of "wholesale carelessness" in the construction of Limerick. Nothing in the record supports such conclusions and the evidence in the record is to the contrary. See Tr. 11,048.

IV. CONCLUSION

As discussed above, the Board should reject AWPP's Proposed Findings and Conclusions and should find that the Applicant has met its burden of proof with regard to the adequacy of its welding quality assurance program.

Respectfully submitted,



Ann P. Hodgdon
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 29th day of May, 1984