

October 12, 1984
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCK AND SERVICE
BUILDING

In the Matter of)
)
PHILADELPHIA ELECTRIC COMPANY)
)
(Limerick Generating Station,)
Units 1 and 2))

Docket Nos. 50-352 OL
50-353 OL

RESPONSE OF NRC STAFF TO RESPECIFIED OFFSITE
EMERGENCY PLANNING CONTENTIONS OF LIMERICK ECOLOGY ACTION

I. INTRODUCTION

On October 1, 1984, Limerick Ecology Action (LEA), pursuant to the orders of the Atomic Safety and Licensing Board (Licensing Board) filed five respecified offsite emergency planning contentions. These contentions were respecified by LEA after its examination of the Federal Emergency Management Agency's (FEMA) Interim Report on the July 25, 1984 Limerick Emergency Planning Exercise. The NRC staff (Staff) hereby responds to LEA's respecified offsite emergency planning contentions.

II. BACKGROUND

On January 31, 1984, LEA submitted its offsite emergency planning contentions in response to the Atomic Safety and Licensing Board (Licensing Board or Board) Memoranda and Orders of May 16, 1983, November 22, 1983 and January 20, 1984. During the week of March 5, 1984, the Licensing Board held a special prehearing conference on the admissibility of

those offsite emergency planning contentions. In its April 20, 1984 Special Prehearing Conference Order Ruling On Admissibility of Offsite Emergency Planning Contentions, the Board deferred ruling on seven of LEA's contentions because of uncertainties surrounding the emergency plans. In the meantime, the Applicant has conducted an offsite emergency planning exercise and FEMA has issued a report assessing the effectiveness of the exercise. Further, the emergency plans have undergone additional changes. Thus, the Licensing Board ruled on August 15, 1984 that LEA should respecify those deferred contentions in light of the currently available information.

III. DISCUSSION

A. Standards for Admissibility of Contentions

The standards for admission of late-filed contentions can be found in 10 C.F.R. § 2.714. The Staff will first examine the late-filed con-

tentions against the 10 C.F.R. § 2.714(a)(1) ^{1/} standards governing admissibility of late-filed contentions and then against the 10 C.F.R. § 2.714(b) standard requiring that the bases for each contention be set forth with reasonable specificity.

LEA has the responsibility of addressing each of the standards § 2.714(a)(1) governing the acceptability of late-filed contentions and demonstrating that, on balance, those factors favor admission of the untimely contentions. LEA has addressed the five factors set forth in 10 C.F.R. § 2.714(a)(1) that are to be balanced by the Licensing Board in ruling on these late-filed contentions and concluded that each weighs in its favor. The Staff agrees that the contentions are timely filed.

The first factor is good cause for failure to file on time. LEA is now respecifying contentions that it had raised in January 1984 which were deferred. LEA has maintained that it needed additional information from FEMA and the Commonwealth in order to make specific the concerns

^{1/} In considering the admissibility of late-filed contentions, the five factors set forth in 10 C.F.R. § 2.714(a)(1) should be considered. Cincinnati Gas and Electric Company (William H. Zimmer Nuclear Station), LBP-179-22, 10 C.F.R. 213, 213 (1979).

- (i) good cause, if any, for failure to file on time;
- (ii) the availability of other means to protect petitioner's interests;
- (iii) the extent to which petitioner's participation might be expected to assist in developing a sound record;
- (iv) the extent to which existing parties will represent the petitioner's interest; and
- (v) the extent to which petitioner's participation will broaden the issues or delay the proceeding.

raised in the contentions and some of that information is now available in the FEMA report on the July 25, 1984 emergency planning exercise and in the updated emergency plans. This respecification of contentions is pursuant to the Licensing Board's August 15, 1984 Order, thus, the good cause factor weighs in LEA's favor.

The second factor is the availability of other means to protect LEA's interests. Clearly, the Licensing Board is the proper forum in which these types of offsite emergency planning issues should be raised. This factor weighs in favor of LEA.

The third factor is the extent to which LEA's participation might be expected to reasonably assist in developing a sound record. The Appeal Board in Mississippi Power and Light Company, et al. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982) stated that "when a petitioner addresses this criterion it should set out with as much particularity as possible the precise issues it plans to cover, its prospective witnesses, and summarize their proposed testimony." Since LEA has not provided the names of any prospective witnesses or provided any proposed testimony, this factor would not ordinarily weigh in LEA's favor. However, because LEA has the lead role with respect to offsite emergency planning, this factor appears to weigh in LEA's favor.

The fourth factor is the extent to which existing parties will represent the petitioner's interest. This factor weighs in LEA's favor because LEA has been designated lead intervenor for the emergency planning issues, thus no other party could represent its interest.

The fifth factor is the extent to which LEA's interests will broaden the issues or delay the proceeding. LEA seeks to have additional offsite

emergency planning issues which will probably require additional discovery and additional hearings. However, since the hearings on the admitted contentions have not yet begun and the substance of these contentions has been known to be parties for quite sometime, the delay involved would be minimal and the issues would not be broadened.

On balance, the § 2.714(a)(1) do not weigh against admission of LEA's late-filed contentions.

B. Consideration of LEA's Respecified Contentions

The Staff will now examine the LEA contentions against the 10 C.F.R. § 2.714(b) requirement that the basis for a contention be set forth with reasonable specificity.

LEA-1

The Staff does not object to the admission of this contention with the exception of LEA's allegations concerning the need for a specific number of buses and ambulances. In this contention LEA maintains:

The Risk Counties, Municipalities, School Districts, and Institutions haven't promulated or adopted final radiological emergency response plans, nor have they approved and adopted plans drawn up for them by Energy Consultants, Inc. There is no reasonable assurance that the plans are capable of being implemented.

Thus, it is alleged that there is no reasonable assurance that protective measures can and will be taken in the event of a radiological emergency as required by 10 C.F.R. § 50.47(b)(1) and NUREG-0654 II.A. The Staff does not object to this aspect of LEA-1.

However, LEA in part 1(a) and (b) of this contention states that there is no assurance that PEMA can provide 134 buses and 17 ambulances for unmet needs in Chester County; 12 coach buses and 82 ambulances for

unmet needs in Montgomery County. There is no basis provided by LEA for this statement and the allegation is not specific enough to determine how LEA arrived at its determination. Therefore, the Staff objects to this aspect of LEA-1 and opposes its admission because of the lack of basis and specificity.

LEA-2

The Staff does not object to the admission of LEA-2 with the exception of LEA's suggestions that a survey be conducted by volunteer personnel to determine their availability in the event of an emergency. In this contention LEA asserts:

The unadopted RERP's fail to provide reasonable assurance that each principal response organization has sufficient staff to respond to and to augment its initial response on a 24 hour continual basis or that the assigned staff can respond in a prompt manner.

The Staff believes that this aspect of LEA's allegation is a valid contention.

However, LEA continues with LEA-2 and asserts that:

A survey of volunteer personnel assigned to emergency response roles inside the Plume Exposure EPZ should be made to determine:

1. the availability of such personnel by time of day;
2. the existence of family commitments of such personnel which could interfere with their ability or willingness to respond in a radiological emergency;
3. the willingness of such personnel to respond in a radiological emergency within the Plume EPZ.

There is no foundation or basis for this statement in LEA's filing and the Staff objects to its admission because of its complete lack of basis and specificity. Furthermore, the Appeal Board in connection with the

Diablo Canyon proceeding affirmed the Licensing Board's finding that surveys of potential emergency workers are not necessary to assure their availability during a radiological emergency. ^{2/}

LEA-3

The Staff does not oppose LEA-3. In contention LEA-3 it is alleged that:

The Montgomery County RERP fails to provide reasonable assurance that the public will be adequately protected because the Bucks County Support Plan, which is essential to the workability of the MontCo RERP, may not be approved. The present Bucks County Board of Commissioners have little knowledge of the contents and implications of the Support Plan and there is no assurance that the County will assume the responsibilities assigned to it in the Support Plan, instead of using County resources to help Bucks County residents first. Therefore, without the approval of Bucks County Support Plan, the Montgomery County RERP is unworkable.

In Staff's view, LEA-3 has the requisite basis and specificity and is a valid contention.

LEA-5

The Staff does not object to the admission of this contention in part. LEA contends that there is a failure to fully document the existence of appropriate letters of agreement with support organizations and agencies. The absence of such agreements, LEA asserts, establishes that there is no reasonable assurance that the emergency plans can be implemented. To the extent that LEA is limiting this contention to the six specific examples cited the Staff does not object. However, with respect to the rest of the proposed contention dealing with the availability of

^{2/} Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-781, _____ NRC _____, Slip op. at pp. 21-30 (September 6, 1984). See also LBP-82-70, 16 NRC 756, 768 (1982).

employees to perform emergency functions, LEA has not submitted an adequate basis to support its position. Accordingly, the Staff objects to that part of the contention due to lack of basis.

LEA-23

The Staff objects in part to LEA-23. The Staff does not object to LEA's contention that there is no basis for the assumptions used in the Applicant's "HMM Evacuation Time Estimate Study" and that the evacuation time estimates used are in fact not reliable. LEA cites the Owen J. Roberts School District as an example that actual evacuation times may take longer (than predicted by the Applicant). The Staff does not object to admission of that part of LEA-23 that alleges that the evacuation time estimates do not include an estimate of evacuation times for earthquake conditions and that the population numbers used in the evacuation time study is at variance with U.S. Census Bureau numbers that were used in earlier draft plans. The Commission has determined that "its regulations do not require specific consideration of the effects of earthquakes on emergency planning," absent the allegation of special circumstances.^{3/} LEA has not alleged any special circumstances, thus this portion of the contention should not be admitted.

IV. CONCLUSION

For the reasons set forth above, the Staff submits that LEA's respecified contentions should be admitted or rejected as indicated above.

^{3/} Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-84-13; Slip op. at 14 ___ NRC ___ (August 10, 1984).

Respectfully submitted,

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Dated in Bethesda, Maryland
this 12th day of October 1984

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CERTIFICATE OF SERVICE

I hereby certify that copies of "RESPONSE OF NRC STAFF TO RESPECIFIED OFFSITE EMERGENCY PLANNING CONTENTIONS OF LIMERICK ECOLOGY ACTION" 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 12th day of October, 1984:

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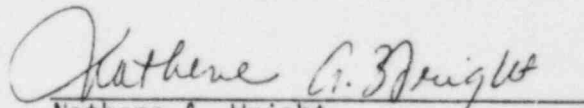
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