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July 31, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD AGO -6 P3:53

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

Docket Nos. 50-352
50-353 /oc

OFFICE OF SECRETARY
DOCKETING & SERVICE
DIVISION

NRC RESPONSE TO CEPA'S SAFETY CONTENTIONS

I. INTRODUCTION

On July 16, 1984, the Staff received "CEPA's Safety Contentions."^{1/}
By these "Contentions," CEPA proposes to raise questions concerning the Philadelphia Electric Company's (Applicant) ability to complete and safely test Limerick, Unit 1. For the reasons stated below, Staff objects to the admission of CEPA's "safety" contentions.

II. BACKGROUND

The Atomic Safety and Licensing Board Panel (Licensing Board or Board) determined in its Special Prehearing Conference Order of June 1, 1982, that Consumers Education and Protective Association (CEPA) had established standing to intervene in the Limerick Generating Station (LGS) licensing proceeding.^{2/} CEPA was thereafter provided an oppor-

^{1/} The certificate of service attached to "CEPA's Safety Contentions" received by the Staff is not dated, nor is there a postmark on the envelope containing the filing.
^{2/} Philadelphia Electric Company (Limerick, Generating Station, Units 1 and 2), LBP-82-34A, 15 NRC 1423, 1441-42 (1982).

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tunity to advance contentions. Although CEPA did propose a number of contentions none were admitted, however, the Licensing Board deferred ruling on all emergency planning contentions, including CEPA's, until the Applicant made available its emergency plan. The Licensing Board thereafter provided CEPA an opportunity to resubmit offsite emergency planning contentions. In a subsequent Special Prehearing Conference Order dealing with the admissibility of offsite emergency planning contentions the Licensing Board ruled that CEPA's absence from the Special Prehearing Conference and its corresponding failure to file emergency planning contentions warranted dismissal of CEPA's petition to intervene.^{3/} No appeals were taken from that Order. Therefore, CEPA is no longer involved in these proceedings.

In effect, CEPA seeks reinstatement of its petition to intervene and to be admitted as a party by having its contention admitted for litigation. Although CEPA has failed to address the requirements for intervention set forth in 10 C.F.R. § 2.714, CEPA has previously met the standing and interest requirement of 10 C.F.R. § 2.714(a)(2), and the Staff, for the purpose of addressing this contention, presumes that CEPA is capable of once again establishing standing and interest. However, it is the Staff's view that CEPA has not met the remaining requirements of 10 C.F.R. § 2.714(a)(1) with respect to its late-filed contention based on recent information.

^{3/} Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP-84-18, ___ NRC ___, Slip op. at pp. 1-2 (April 20, 1984).

III. DISCUSSION

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 contention against the 10 C.F.R. § 2.714(a)(1)^{4/} standards. CEPA basically alleges that because the Applicant has requested certain rate relief from the Pennsylvania Public Utility Commission (PUC) concerning treatment of costs associated with startup of Unit 1 that it is unable to conduct full and safe testing of Unit 1 of the Limerick Generating Station (LGS), Unit 1.

CEPA has the responsibility of addressing each of the standards in § 2.714(a)(1) governing acceptability of late-filed contentions and demonstrating that, on balance, they favor admission of the untimely

^{4/} 10 C.F.R. § 2.714(a)(1) provides that non-timely petitions to intervene or requests for hearing will not be entertained absent a determination by the Licensing Board that the petition or request should be granted based upon a balancing of the following factors:

- (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.

contention.^{5/} While CEPA has briefly 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 this late-filed contention^{6/} and concluded that each weighs in its favor. However, the Staff submits that when such balancing, is done, the balance weighs against admission of the late-filed contention as shown below.

The first factor is good cause for failure to file on time. CEPA alleges that it has promptly filed this contention based on the new information provided in the Applicant's June 15, 1984 "Petition for Declaratory Order" (Exhibit A, attached to "CEPA's Safety Contentions") filed with the Pennsylvania PUC. Admittedly, CEPA acted promptly in filing this contention with regard to the timing of the Applicant's request with the PUC. However, CEPA fails to show the nexus between the Applicant's request for a Declaratory Order from the Pennsylvania PUC and the Applicant's ability to safely test Unit 1. Nowhere in the Applicant's request with the PUC is there a statement that if the PUC denies the Applicant's request that there will be any effect on its ability to test the facility. The Applicant clearly states its purposes

^{5/} Duke Power Company, et al., (Perkins Nuclear Station, Units 1 and 2), ALAB-615, 12 NRC 350, 352 (1980).

^{6/} See, Duke Power Company, et al., (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041 (1983).

in filing the request on page 7 of the CEPA's Exhibit A, where it is stated:

It should be noted that the foregoing merely seeks (i) accounting (not rate making) recognition of the costs associated with Limerick 1 if, and only if, it goes into commercial operation before the end of the future test year employed in the Limerick 1 rate proceeding, and (ii) the Commission's agreement that it will adjudicate the justness and reasonableness of these deferred costs in an appropriate proceeding and will not reject such recovery as retroactive.

Without such a demonstration of nexus between this recent filing by the Applicant and the Applicant's ability to safely test Unit 1, there is no good cause for filing this late contention. Thus, this factor weighs against CEPA.

The second factor is the availability of other means to protect CEPA's interests. Clearly, the Licensing Board is the proper forum in which health and safety issues involving testing at LGS, Unit 1 should be heard. However, no health and safety issue has been raised, therefore, this factor weighs against CEPA.

The third factor is the extent to which CEPA's participation might be expected to reasonably assist in developing a sound record. CEPA asserts that it is prepared to assist in developing a sound record, but does not explain how it will do so. CEPA does not provide any delineation of the issues it plans to cover if this contention is admitted, nor does it identify prospective witness and summarize proposed testimony, as suggested by the Appeal Board in Mississippi Power and Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704 16 NRC 1725, 1730 (1982). This factor weighs against CEPA.

The fourth factor is the extent to which CEPA's interests will be protected by existing parties. Since no other party is raising this issue, this factor may weigh in favor of CEPA.

The fifth factor is the extent to which CEPA's interest will broaden the issues or delay the proceeding. The only issues remaining to be heard are offsite emergency planning issues. Therefore, the admission of health and safety issues could affect the issuance of a license for loading fuel and authorizing low-power testing. This factor weighs against CEPA.

On balance, the § 2.714(a)(1) factors weigh heavily against admitting CEPA's late-filed contention. The Staff now examines the CEPA contention against the 10 C.F.R. § 2.714(b) requirement that the bases for a contention be set forth with reasonable specificity. The basis for CEPA's contention is the Applicant's Petition for Declaratory Order dated June 15, 1984, filed with the Pennsylvania PUC and a statement on page 10 therein that CEPA construes as an admission by the Applicant that its ability to safely test Unit 1 rests on the Pennsylvania PUC granting the relief requested. The Staff does not interpret the Applicant's request for declaratory relief in the same light. The Applicant is seeking relief of an accounting and a financial nature from the Pennsylvania PUC so that it can coordinate the commercial operation of the Limerick Unit 1 with the conclusion of a PUC rate making proceeding.^{7/} This relief is independent of the testing

^{7/} The Staff notes that if CEPA is attempting through this contention to question the Applicant's financial qualification, this contention is clearly not admissible in this proceeding. The Commission's Statement of Policy on Financial Qualifications, (49 FR 24111) provides that the Commission's March 31, 1982 rule, 10 C.F.R. § 50.40(b), excepting electric utilities from financial qualifications review remains in effect. However, the Commission has held that its "concern with the financial problems of a licensee is limited to the relation which these problems may have to the protection of health and safety." Maine Yankee Atomic Power Company, (Maine Yankee Atomic Power Station), CLI-83-21, 18 NRC 157 (1983); see also, Gulf State Utilities Company, et al., (River Bend Station, Units 1 and 2), LBP-83-52A, 18 NRC 265 (1983).

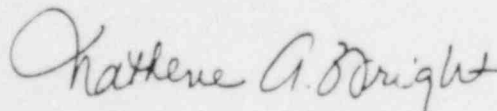
conducted at Limerick Unit 1. As stated earlier, the document, by its terms, does not tie denial of relief by the PUC to the Applicant's inability to test the facility in a safe manner. CEPA's interpretation of the Applicant's request that it affects or involves the safe testing of LGS, Unit 1 is erroneous. This document does not provide a basis for CEPA's contention.

Similarly, CEPA fails to set forth with any specificity the relationship between Applicant's relief before the PUC and its ability to safely test LGS, Unit 1. Absent such specificity, there is no way to determine CEPA's concern. The failure to set forth an adequate basis and to set forth with specificity its concerns are fatal to CEPA's efforts to have this contention admitted.

IV. CONCLUSION

For the reasons stated above, CEPA's contention should not be admitted.

Respectfully submitted,



Kathene A. Wright
Counsel for NRC Staff

Dated in Bethesda, Maryland
this 31st day of July, 1984

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DOCKETING & SERVICE
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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC RESPONSE TO CEPA'S SAFETY CONTENTIONS" 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 31st day of July 1984:

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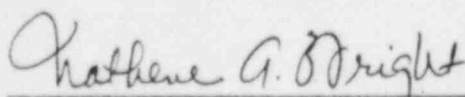
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