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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board AGO 23 11:43

In the Matter of)	
)	
Philadelphia Electric Company)	Docket Nos. 50-352
)	50-353 /oc
(Limerick Generating Station,)	
Units 1 and 2))	

APPLICANT'S ANSWER TO LATE-FILED "AWPP
(ROMANO) NEW CONTENTION RE EVACUATION"

Preliminary Statement

On August 8, 1984, intervenor Air and Water Pollution Patrol ("AWPP") filed a new, late-filed contention to litigate the adequacy of plans to evacuate the plume exposure pathway emergency planning zone ("EPZ") for the Limerick Generating Station in the event of a serious radiological emergency.

This contention is proposed more than seven months after the deadline for filing all offsite emergency planning contentions.^{1/} The special prehearing conference at which such contentions were considered was held during the week of March 5, 1984. On April 20, 1984, the presiding Atomic Safety Atomic Safety and Licensing Board ("Licensing Board"

1/ Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), Docket Nos. 50-352-OL and 50-353-OL, "Memorandum and Order Confirming Rulings Made at Hearing" (January 20, 1984) (slip op. at 1).

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or "Board") issued an order ruling on the admissibility of proposed contentions.^{2/} Although given an opportunity, AWPP did not propose any offsite emergency planning contentions. AWPP's representative, Mr. Romano, did not participate in the prehearing conference with respect to any emergency planning contention.^{3/}

Applicant opposes AWPP's proposed, late-filed contention because it does not satisfy the Commission's requirements for admitting untimely contentions. Further, it lacks basis and specificity. In fact, AWPP never actually states the content of its contention, but merely discusses what it perceives as the "worst case" scenarios supporting it. The contention therefore reflects a misapprehension of the factors responsible governmental officials would consider in deciding whether the entire EPZ or a particular segment would be evacuated. AWPP ignores the fact that other protective measures such as sheltering could obviously, and in all likelihood would, be chosen for the hypothetical scenarios it has postulated. Accordingly, the proposed contention is late without good cause, lacks specificity and basis, and should be denied.

^{2/} Limerick, supra, LBP-84-18, 19 NRC ____ (April 20, 1984).

^{3/} Mr. Romano appeared before the Board at that time only in regard to Contention VI-1 (welding) and a proposed late-filed contention on asbestos.

Argument

I. AWPP's Contention Lacks Good Cause for Lateness and Fails to Satisfy Other Requirements for Admission of Late-Filed Contentions.

More than a dozen late-filed contentions have been proposed in this proceeding. The Board has ruled on the legal requirements for late contentions orally and in written orders several times. Accordingly, there is no excuse at this late stage of the proceeding for even a lay intervenor's failure to comprehend his obligations under the rules, in particular, to address the criteria for late-filed contentions in 10 C.F.R. §2.714(a)(1)(i)-(v). Although some of the statements in AWPP's motion could inferentially apply to those criteria, AWPP has failed to address them squarely as it should. This defect is serious enough by itself to justify denial of the contention.^{4/}

In any event, the Licensing Board may admit a proposed late-filed contention only if it finds that, on balance, the five factors enumerated in 10 C.F.R. §2.714(a)(1) weigh in intervenor's favor. Duke Power Company (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041 (1983).

^{4/} Duke Power Company (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-615, 12 NRC 350, 352-53 (1980). See also Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), CLI-83-25, 18 NRC 327, 331 (1983).

1. AWPP lacks good cause for lateness. Although AWPP never actually states a proposed contention, the gist of its motion is that emergency plans must provide for "worst case" meteorology during a hypothetical evacuation of the plume exposure pathway EPZ. Notwithstanding AWPP's characterization of the July 25, 1984 Joint Exercise, (wholly unsupported by any official finding, other documentation or any other basis), nothing in its proposed contention in fact relates to the exercise or any recent event which would give rise to new information. Indeed, an actual evacuation of the populace has never been a required part of such exercises under Section IV.F.1 of Appendix E to 10 C.F.R. Part 50 and was not a part of the Limerick exercise.^{5/} Thus, the conduct of the Joint Exercise itself provides neither "good cause" for lateness nor any basis for AWPP's contention.

Rather, the contention merely hypothesizes severe meteorological and other adverse conditions in an attempt to establish the extraordinary measures for evacuation that would have to be taken by emergency planners. Specifically,

^{5/} Contentions seeking to require public participation in exercises have been rejected. See, e.g., Louisiana Power and Light Company (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1108 (1983); Duke Power Company (Catawba Nuclear Station, Units 1 and 2), Docket Nos. 50-413-OL and 50-414-OL "Memorandum and Order (Ruling on Remaining Emergency Planning Contentions)" (September 29, 1983) (slip op. at 7).

AWPP postulates "a raging night blizzard,"^{6/} "conditions with power lines down and with roads drifted shut,"^{7/} and floods which would render escape routes impassable.^{8/} Clearly, the mere postulation of such extreme weather conditions does not constitute anything new in addition to the earlier "publicly available documentary material"^{9/} to support any finding of good cause for lateness.

2. Other means exist to protect AWPP's interests. Even without admission of a contention, AWPP can protect its interests by communicating its concerns to the responsible officials of the Federal Emergency Management Agency ("FEMA"), Pennsylvania Emergency Management Agency ("PEMA") and local county and municipal emergency planners. Inasmuch as it is these officials rather than the NRC who will prepare contingency plans for evacuation, these contacts, in reality, provide the best, practical means for AWPP to assure that its concerns are fully considered.

3. AWPP has not shown that it can assist the Board in developing a sound record on emergency planning issues. The "contention" proposed by AWPP is totally lacking in focus,

^{6/} AWPP (Romano) New Contention re Evacuation at 1 (August 8, 1984).

^{7/} Id. at 2.

^{8/} Id.

^{9/} Catawba, supra, CLI-83-19, 17 NRC at 1048.

specificity and any basis under the NRC's emergency planning regulations. As discussed below, it demonstrates a complete misunderstanding of how the decision-making process would operate in the event of an actual radiological emergency. As such, AWPP has not demonstrated any particular knowledge or expertise which would assist the Licensing Board. Moreover, AWPP has not complied with the requirement of Grand Gulf that "[w]hen a petitioner addresses this criterion it should set out with as much particularity as possible the precise issues it plans to cover, identify its prospective witnesses, and summarize their proposed testimony."^{10/}

4. AWPP's interest will be represented by existing parties. Intervenors Limerick Ecology Action and Friends of the Earth are litigating various contentions relating to emergency planning (not counting deferred contentions), many of which bear upon evacuation planning and capabilities. These contentions are sufficiently broad to encompass the more general concerns expressed by AWPP.

Moreover, the Commission's regulations provide in 10 C.F.R. §50.47(a)(1) that "no operating license for a nuclear power reactor will be issued unless a finding is made by NRC

^{10/} Mississippi Power & Light Company (Grand Gulf Nuclear Station, Units 1 & 2), ALAB-704, 16 NRC 1725, 1730 (1982). See also Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1177 (1983); Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387, 399 (1983).

that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency." Accordingly, aside from the Board's litigation of contentions, the NRC Staff will ensure that adequate planning for evacuation exists.

Additionally, two other agency participants will further protect AWPP's interests. PEMA is the agency of the intervenor Commonwealth chiefly responsible for its emergency planning. FEMA will provide testimony to the Licensing Board and a final report to the NRC on which the NRC will base its own findings.^{11/} These two participants will therefore effectively represent any interest held by AWPP's members.

5. AWPP's proposed contention will delay the proceeding. Particularly given its breadth and generality, any new contention admitted for AWPP will broaden the issues and delay the outcome of the proceeding. A prehearing conference would be required just to define the terms of the new contention. Discovery, which was closed on all contentions other than those of the City of Philadelphia on June 25, 1984, would have to be reopened. Additional witnesses and hearing time would be required. All of this would undoubtedly impede the conclusion of hearings on offsite emergency

^{11/} 10 C.F.R. §50.47(a)(2).

planning contentions,^{12/} which now alone must be litigated in order to complete this proceeding.

II. AWPP's Proposed Contention is Entirely Lacking in any Specificity or Basis.

Pursuant to the Commission's regulations under 10 C.F.R. §2.714(b), contentions may not be admitted unless they contain "the bases for each contention set forth with reasonable specificity." This requirement, which obligates intervenors to make a threshold showing prior to admission of their contentions, fully applies to emergency planning issues.^{13/} The specificity which is "reasonable" necessarily depends upon the nature of the contention and the stage of the proceeding at which it is offered. In this instance, a high degree of specificity may reasonably be expected.

Detailed emergency plans for each of the three risk counties and 42 municipalities within the plume exposure pathway EPZ have been developed. Implementing procedures for the plans have also been written. Further, specific evacuation time estimates have been prepared and reported. All of this documentation has been available to the intervenors, including AWPP, for the past several months.

^{12/} See generally Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760, 1765-66 (1982); Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), LBP-83-30, 17 NRC 1132, 1146 (1983).

^{13/} Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), LBP-82-75, 16 NRC 986, 993 (1982).

Notwithstanding the availability of these public documents, AWPP's proposed contention is extremely vague and only philosophical in content.

Particularly at this late juncture, less than two months away from the date proposed by the parties (except LEA) for submission of testimony, much more must be expected. A vague contention such as this, filled with the hope that it will be recast by the Board in acceptable form, is clearly impermissible. The contention does not contain supportive facts with references to specific sources and documents upon which AWPP will rely. This contention, like that rejected in the Offshore Power proceeding, is "conclusional . . . barren and unfocused."^{14/} It contains only "oblique reference[s]," which fail "to satisfy even [the] minimal obligation" of an intervenor to bring sufficient attention to an issue to stimulate its consideration.^{15/} As stated by the Board in Shoreham, "it is [intervenors'] obligation to put [alleged defects in plans] forward for litigation, not hold back."^{16/}

^{14/} Offshore Power Systems (Manufacturing License for Floating Nuclear Power Plants), LBP-77-48, 6 NRC 249, 250-51 (1977).

^{15/} Illinois Power Company (Clinton Power Station, Unit Nos. 1 and 2), ALAB-340, 4 NRC 27, 51 (1976).

^{16/} Shoreham, supra, LBP-82-75, 16 NRC at 994.

AWPP's proposed contention also lacks any regulatory basis. Under the Commission's regulations, a range of protective actions must be considered for the EPZ. The requirements under 10 C.F.R. §50.47(b)(10) are as follows:

A range of protective actions have been developed for the plume exposure EPZ for emergency workers and the public. Guidelines for the choice of protective actions during an emergency, consistent with Federal guidance are developed and in place, and protective actions for the ingestion exposure pathway EPZ appropriate to the local have been developed. . . .

The regulatory standard is further described by a specific criterion in NUREG-0654, which states at page 63 that protective measures for the EPZ shall include "[t]ime estimates for evacuation of various sectors and distances based on a dynamic analysis (time-motion study under various conditions) for the plume exposure pathway emergency planning zone." NUREG-0654, Appendix 4, gives "an example of what shall be included in an evacuation times assessment study and how it might be presented."

As explained by the Appeal Board in Zimmer, "the Commission's emergency planning requirements do not prescribe specific time limits governing the evacuation of plume EPZs. The matter of the time within which evacuation can be accomplished is left to be determined on a

case-by-case basis upon consideration of all relevant conditions prevailing in the specific locality."^{17/}

Under these standards, emergency planners are not required to develop a capacity to evacuate the entire populace of the EPZ under the worst meteorological and other conditions imaginable. To the contrary, the standards require only that the range of protective actions be developed for implementation under a variety of alternative assumptions contained in the evacuation time estimates. As to bad weather in particular, NUREG-0654 states at pages 4-6 and 4-7:

Two [weather] conditions - normal and adverse - are considered in the analysis. Adverse conditions would depend on the characteristics of a specific site and could include flooding, snow, ice, fog or rain. The adverse weather frequency used in this analysis shall be identified and shall be severe enough to define the sensitivity of the analysis to the selected events. These conditions will affect both travel times and capacity. More than one adverse condition may need to be considered. That is, a northern site with a high summer tourist population should consider rain, flooding, or fog as the adverse condition as well as snow with winter population estimates.^{18/}

^{17/} The Cincinnati Gas & Electric Company (Wm. H. Zimmer Nuclear Power Station, Unit No. 1), ALAB-727, 17 NRC 760, 770 (1983).

^{18/} Appendix 4 of NUREG-0654 identifies other alternative assumptions: (1) day versus night, (2) workday versus weekend, (3) peak transient versus off-peak transient, and (4) evacuation of adjacent sections versus nonevacuation.

AWPP's proposed contention is therefore defective because it wrongly presupposes that the appropriate protective measure which could be taken by the responsible governmental authorities in the event of an emergency can only be to evacuate, rather than shelter, the populace within the EPZ, regardless of adverse weather or other difficulties. As the Appeal Board stated in Zimmer, "emergency planning must provide for a variety of protective measures including sheltering, evacuation and the possible use of blocking agents such as potassium iodide - the overall objective being the avoidance of as much radiation exposure as possible. . . . The basic goal of emergency planning is, after all, the achievement of maximum dose savings in a radiological emergency."^{19/}

For the severely adverse weather conditions hypothesized by AWPP, the feasibility of evacuation at all would have to be carefully considered. Under the alternative assumptions made by planners in advance, including the evacuation time estimates, protective measures other than evacuation, including sheltering, would be implemented if evacuation would not result in greater dose savings.

For this reason, evacuation time estimates ordinarily consider adverse weather conditions which represent the upper limit at which roads are not in good condition but

^{19/} Zimmer, supra, ALAB-727, 17 NRC at 765, 770.

still passable. Most recently, the Licensing Board in Byron found estimates based on such assumptions to be reasonable.^{20/} Faced with allegations similar to those of AWPP, the Licensing Board in the Three Mile Island proceeding held:

Intervenors further allege that the Licensee's evacuation time estimate is inadequate because there was no sensitivity study to determine the most adverse weather conditions, citing Staff consultant Urbanik's speculation that rain with a normal daytime population might possibly result in longer evacuation times than the snow scenario used for the average weather condition in the Licensee's study. . . . The adverse weather condition to be used in evacuation time estimates analyses is not the total worst case scenario. It would be possible to postulate combinations of conditions that would make evacuation impossible for extended periods of time although the likelihood of such events may be remote. However, the objective is to postulate and analyze an adverse weather scenario that has some reasonable possibility of occurrence. There is no evidence which would indicate that the snow condition chosen for the TMI area is not the proper adverse weather condition to use. The Commonwealth concurs in the choice of the snow condition as the appropriate adverse weather scenario. Accordingly, we reject intervenors' assertions of inadequacies in the Licensee's evacuation time estimates in this regard.^{21/}

^{20/} Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), LBP-84-2, 19 NRC 36, 262 (1984).

^{21/} Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), LBP-81-59, 14 NRC 1211, 1581
(Footnote Continued)

Accordingly, there is no regulatory basis for the contention proposed by AWPP that emergency planners must plan to evacuate the entire populace of the EPZ under the worst-case conditions, exclusive of any other protective action.

Conclusion

For the reasons discussed more fully above, AWPP lacks good cause for its proposed, late-filed contention and has failed to satisfy any of the other requirements for admission of its proposed contention. Moreover, the contention is extremely vague and unfocused. No explicit contention has even been proposed. Finally, the contention attempts to establish regulatory requirements for protective actions in the plume exposure pathway EPZ which are inconsistent with the planning standards and criteria of 10 C.F.R. §50.47 and

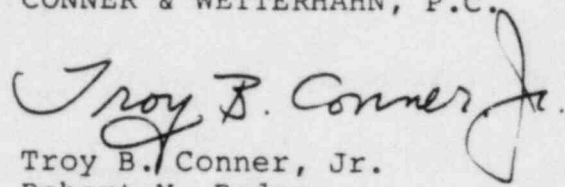
(Footnote Continued)

(1981) (emphasis added) (transcript references deleted), aff'd, ALAB-697, 16 NRC 1265 (1982) and ALAB-698, 16 NRC 1290 (1982). It is significant that AWPP wishes to litigate a matter even beyond that which the Byron and Three Mile Island boards held impermissible, i.e., not only to assume extremely improbable adverse meteorology for evacuation time estimates but also to require evacuation during such extreme conditions.

NUREG-0654. The proposed contention should therefore be denied.

Sincerely,

CONNER & WETTERHAHN, P.C.



Troy B. Conner, Jr.
Robert M. Rader

Counsel for the Applicant

August 21, 1984

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Answer to Late-Filed 'AWPP (Romano) New Contention re Evacuation,'" dated August 21, 1984 in the captioned matter have been served upon the following by deposit in the United States mail this 21st day of August, 1984:

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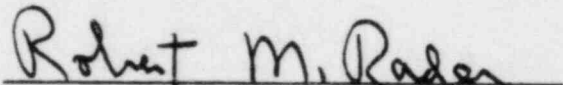
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