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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

Docket Nos. 50-352 OL
50-353 OL

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NRC STAFF RESPONSE TO AWPP (ROMANO)
NEW CONTENTION RE EVACUATION

I. INTRODUCTION

Air and Water Pollution Patrol (AWPP), through its representative Frank R. Romano, filed "AWPP (Romano) New Contention Re Evacuation" dated August 8, 1984. (New Contention). The NRC staff (Staff) opposes admission of the new contention for the reasons stated below.

II. BACKGROUND

During the week of March 5, 1984, the Atomic Safety and Licensing Board (Licensing Board or Board) held a special prehearing conference on the admissibility of offsite emergency planning contentions. AWPP did not proffer any offsite emergency planning contentions for consideration at that time. However, AWPP now seeks to have admitted a late-filed offsite emergency planning contention which it alleges is based on the recent emergency planning exercise which took place on July 25, 1984.

AWPP asserts:

[The] Applicant must be made to provide a truly realistic plan, and must be required to test its required capability* before receiving a license to operate or risk the public.

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. . . AWPP contends the Applicant and Staff, singly or together, must provide a plan that passes the Limerick Test of Evacuation capability. That test . . . is to prove via a complete, live evacuation exercise,*** that the Applicant has devised a plan which would guarantee all people and livestock within ten miles, or more if necessary, can be moved without injury or death under the highly probable, non-controllable factor of 'worst weather' condition.

*That capability having such inherent guarantees of safety that people in authority at schools, townships and boroughs will embrace the plan. (New Contention p. 1).

III. DISCUSSION

10 C.F.R. § 2.714 of the Commission's rules and regulations provide standards for determining the admissibility of proposed contentions. In addition, when a proposed contention is late-filed, all of the factors in § 2.714(a)(1)^{1/} should be applied by a licensing board in determining the admissibility of such contentions.^{2/} While Mr. Romano has attempted to address the § 2.714(a)(1) criteria in his filing, he fails to demonstrate that a balancing of § 2.714(a)(1) factors favor admission of this contention. AWPP contends that a new emergency plan that provides for the evacuation of all persons in the ten-mile Emergency Planning Zone (EPZ) during

1/ Those standards are:

- (i) good cause, if any, for failure to file on time;
- (ii) availability of other means to protect the petitioner's interest;
- (iii) the extent to which the petitioner's participation may contribute to the development of a sound record;
- (iv) the extent to which petitioner's interest will be represented by other parties;
- (v) the extent to which petitioner's participation will delay the proceeding.

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

"worst weather" conditions including a "raging night blizzard" "with power lines down and with roads drifted shut" should be substituted for the present plan and that this new emergency plan should be the basis of a "complete, live evacuation exercise". AWPP further asserts that the current emergency plan does not represent approximately twenty-five percent of the persons within the EPZ and that the emergency response capability was not tested because there was no element of surprise present.

A. Criteria Governing Admissibility of Late-Filed Contentions

AWPP asserts that its contention is timely filed because it results from the "recent observed shortcomings" of the emergency planning exercise.

The first criterion governing admissibility of late-filed contentions is good cause for failure to file on time. AWPP's first allegation is that a new emergency plan should be prepared that provides for the evacuation of all persons in the ten-mile EPZ during a "worst weather" scenario. 10 C.F.R. § 50.47(b)(10) provides for protective responses within the plume exposure pathway EPZ and the ingestion exposure pathway EPZ. The Commission has also provided guidance in NUREG-0654, II, J(8) that provides: "Each licensee's plan shall contain time estimates for evacuation within the plume exposure EPZ. These shall be in accordance with Appendix 4." NUREG-0654, Appendix 4 provides that evacuation time estimates are required for simultaneous evacuation of the entire plume exposure pathway.

The Applicant has, in fact, provided the required evacuation time estimates study in its emergency plan.^{3/} AWPP's contention does not challenge

^{3/} See Applicant's "Evacuation Time Estimates for the Limerick Generating Station Plume Exposure Emergency Planning Zone" (Final Draft), dated May, 1984. ("Evacuation Time Estimates Study").

the adequacy of the existing plan in terms of the evacuation time estimates provided in the cited study, but on more broad grounds that the Applicant had not demonstrated the capability for such evacuation in its emergency plan. AWPP has not, in support of its contention, shown that the time estimates reflected in the study are not capable of being implemented, based on the recent exercise. Thus, AWPP has not established good cause for alleging at this time that the Applicant has not provided for the evacuation of the plume exposure pathway EPZ.

AWPP further alleges that any evacuation plan must address a "worst weather" scenario involving downed power lines, impassable roads and a "raging night blizzard." However, this assertion is equally untenable. NUREG-0654, Appendix 4 at pages 4-6 provides:

Two conditions -- normal and adverse -- are considered in the analyses. 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.

NUREG-0654 does not require emergency planners to consider the worst case scenario without regard to probability of occurrence.^{4/} The Applicant provides an explanation of the meteorological assumptions used in its study^{5/} and AWPP has not attempted to address these meteorological conditions. In sum, this alleged shortcoming does not provide good cause

^{4/} Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), LBP-84-2, 19 NRC 36, 261-262 (1984); Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), LBP-81-59, 14 NRC 1211, 15 81 (1981).

^{5/} Evacuation Time Estimates Study at p. 2-3.

for the late-filed contention. Assumptions regarding weather conditions were set forth in the emergency plan and could have been raised by AWPP at the same time that the other intervenors proffered their contentions. Observation of the July 25th exercise was not necessary to disclose these assumptions.

Another prong of AWPP's contention is that once an emergency evacuation plan has been developed, an exercise involving an actual evacuation of all persons and livestock within the ten-mile EPZ should be conducted. There is no regulatory basis for such an assertion. Contentions in other proceedings seeking required public participation in emergency planning exercises have been rejected.^{6/} The written emergency plan disclosed that evacuation of the ten-mile EPZ would not be undertaken as part of the exercise. Therefore, AWPP cannot argue that this information was not available until after conduct of the exercise.

AWPP's next alleged "shortcoming" is that the plan does not represent twenty five percent of the population because "many Townships . . . refused to take part" in the exercise (New Contention, page 3); in AWPP's view, it is required that local governments "embrace the plan". (Footnote "**") This assertion is similar to the type of concerns raised in LEA Contentions 1 through 4. Consideration of those contentions was deferred by

^{6/} Louisiana Power and Light Company (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1108 (1983). See also, 10 C.F.R. Part 50, Appendix E, IV, F-1.

the Licensing Board^{7/}. They generally concerned the interrelationship of particular county plans to other county plans, and the success of those plans was allegedly premised on their adoption and acceptance by respective local governments. At a later date FEMA will issue a report on the July 25th exercise. It is expected that the significance of the lack of participation by particular townships and any resulting effect on the exercise as a whole will be addressed by FEMA. Inasmuch as LEA proffered similar contentions in January 1984, it is clear that the recent exercise does not constitute good cause for AWPP raising such a concern at this time.

As to AWPP's allegation that the emergency response capability was not tested because the element of surprise was eliminated, LEA propounded a very similar contention in January 1984.^{8/} The fact that LEA was able to formulate a contention on this alleged inadequacy in the emergency plan approximately eight months ago demonstrates that AWPP is without grounds for claiming this is a new matter resulting from the recent exercise.

None of the bases cited by AWPP in support of its contention are founded on new information resulting from the July 25th exercise. Therefore, this criterion weighs against AWPP.

^{7/} Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP-84-18, 19 NRC ____, Slip op. at 29-35 (April 20, 1984).

^{8/} LEA withdrew the contention designated "LEA Drills (VIII-38)" at the Prehearing Conference because 44 C.F.R. § 350.10 provides LEA and all other interested parties an opportunity to comment on the drills and exercises. The Licensing Board noted that the FEMA public meeting required under 44 C.F.R. § 350.10 was the more appropriate forum to raise concerns about the conduct of the exercises. See, LBP-84-18 at 6.

The second and fourth criteria will be considered jointly. The second criterion is the availability of other means to protect the petitioner's interest, and the fourth criterion is the extent to which other parties will represent the petitioner's interest. As stated above, LEA has proposed contentions similar to AWPP's contention pertaining to the less than complete approval of the emergency response plans by governmental authorities within the ten-mile emergency planning zone, the admissibility of which it before the Board. LEA and FOE have also proposed contentions regarding the Applicant's evacuation time estimate study.^{9/} LEA-23 cites "inadequate consideration of adverse weather" in the evacuation time estimate study. The Licensing Board deferred ruling on this particular contention because LEA did not have the opportunity to assess the updated Evacuation Time Estimate Study in formulating its contention. Clearly, any concerns AWPP has about weather assumptions used in evacuation studies could be represented by LEA. LEA, having been designated lead intervenor for the emergency planning issues, would have the responsibility of examining witnesses and presenting testimony. To the extent that AWPP's proposed contention overlaps with LEA's contentions, AWPP could certainly resolve its concerns through LEA as its representative.^{10/} Thus, AWPP's interests are adequately protected.

^{9/} LBP-84-18, at pp. 72-80.

^{10/} The Commission has held that where consolidation of intervenors has taken place, "those functions should not be performed by other intervenors except upon a showing of prejudice to such other intervenors' interest or upon a showing to the satisfaction of the board that the record would otherwise be incomplete." "Statement of Policy On Conduct of Licensing Proceeding", CLI-81-8, 13 NRC 452, 455 (1981).

As to the "element of surprise" and weather conditions aspects of AWPP's contention, AWPP has available to it a more appropriate forum under 44 C.F.R. § 350.10. AWPP can express its concerns to FEMA at the FEMA public meeting regarding the conduct of the exercise, as LEA apparently intends to do.

Therefore, the second and fourth criteria weigh against AWPP.

The third criterion is the extent to which the petitioner's participation may contribute to the sound development of a record. AWPP apparently plans to draw on its experience as an observer of the exercise in contributing to the record. (New Contention at page 3). However, AWPP's broad assertion that the present emergency plan is not realistic and that it plans to provide its own emergency plan to "accomplish the AWPP full Limerick Test of Evacuation Capability" (New Contention, at pages 3-4) is not responsive to this criterion. AWPP's duty is to set out with particularity the precise issues it plans to cover, identify its potential witnesses and summarize any expected testimony.^{11/} AWPP's assertion that it will submit its own emergency plan for the entire EPZ is not an appropriate response to this requirement. Therefore, this factor weighs against AWPP.

The fifth and final criterion is whether the issues will be broadened or the proceeding delayed by admission of the contention. AWPP's concern about the applicability of the emergency plans to all of the population is at least in part subsumed by the contentions advanced by LEA. Therefore, to the extent that AWPP is proposing something additional in

^{11/} Mississippi Power and Light Company, et al. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982).

pursuing such a contention, there would necessarily be a delay in the proceeding. This factor weighs against AWPP.

AWPP has failed to demonstrate that a balance of the §2.714(a)(1) factors favor admission of its contention. First, AWPP has not demonstrated good cause for the untimely filing of this offsite emergency planning contention. Second, LEA will be representing the interests of all the intervenors on offsite emergency planning issues. Third, AWPP has not demonstrated how it will contribute to the development of a sound record. Finally, to admit AWPP's new contentions at this time would unnecessarily delay the proceeding.

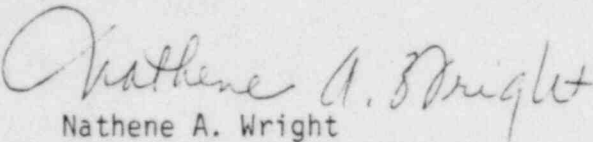
B. Basis and Specificity Requirement

AWPP's contention in addition to being unacceptably tardy, does not meet the § 2.714(b) standard that contentions should be submitted with the bases for each contention set forth with reasonable specificity. AWPP makes only a vague assertion that the present emergency plan is not "realistic" because the worst weather conditions were not presumed in conducting the exercise; the plan does not represent at least twenty-five percent of the population; the element of surprise was lacking in the exercise; and the plan does not provide for evacuation of all persons in the EPZ. Further, the Staff has discussed the bases of AWPP's proposed contention in Section III.A. (supra) in connection with its discussion of the criteria to be applied to late-filed contentions. In view of the above, the Staff concludes that the contention lacks sufficient specificity and basis.

IV. CONCLUSION

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

Respectfully submitted,



Nathene A. Wright
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 28th day of August, 1984

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NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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Units 1 and 2))

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO AWPP (ROMANO) NEW CONTENTION RE EVACUATION" 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 28th day of August, 1984:

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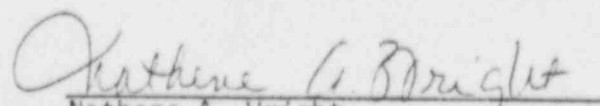
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