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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

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BEFORE ADMINISTRATIVE JUDGES:

Lawrence Brenner, Chairman
Dr. Richard F. Cole
Dr. Peter A. Morris

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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

September 14, 1984

MEMORANDUM AND ORDER REJECTING AWPP'S
NEW CONTENTION ON EVACUATION

On August 8, 1984, Air and Water Pollution Patrol (AWPP), represented by Mr. Frank R. Romano, filed yet another late contention, this one on emergency planning for evacuation of the plume EPZ. The Applicant and Staff replied on August 21 and 28, respectively. Arguments on the admissibility of offsite emergency planning contentions were heard at a special prehearing conference the week of March 5, 1984, and rulings on the admissibility of those contentions were issued in Philadelphia Electric Co. (Limerick, Units 1 & 2), LBP-84-18, 19 NRC (April 20, 1984). Discovery on these contentions ended on June 25, 1984.

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What prompts AWPP's late filing is the emergency preparedness exercise which took place on July 25, 1984. AWPP first alleges that, as a result of the exercise, "it is now known" that the plans for evacuation are not "realistic," for they cannot "insure complete capability" to evacuate the plume EPZ "without injury or death," under "'worst weather'" conditions, "namely, a raging night blizzard," "with power lines down and roads drifted shut." AWPP Contention at 1, 2. AWPP then goes on to contend that a "truly realistic plan" must be provided and must be required to pass what AWPP calls the "Limerick Test of Evacuation Capability [LTEC]," a "complete, live evacuation exercise." Id. at 1. AWPP does not say whether its "LTEC" is to be carried out in a "raging night blizzard" with the "roads drifted shut."

We reject the contention. As we show below, it wholly lacks the specificity and bases required by 10 C.F.R. § 2.714(b); its call for the "LTEC" is an ill-considered attack on the Commission's regulations on emergency preparedness exercises; and finally, it does not survive a balancing of the factors 10 C.F.R. § 2.714(a)(1) requires us to consider in ruling on the admissibility of late-filed contentions.

Bases and Specificity

AWPP neither says what defects the July 25 exercise allegedly reveals, nor what the precise requirements of its "LTEC" are. The

contention pronounces the exercise a "failure," and speaks of "gross inadequacies" revealed, "the recent observed shortcomings," and "eye-witness accounts of unbelievable blunders" (id. at 2, 3, 4, 5), but it reports no specific "failure," "inadequacy," "shortcoming," or "blunder." Moreover, AWPP does not even say whether the alleged blunders are to be attributed to poor planning, or simply to poor, but correctable, performance of an adequate plan.

AWPP does claim that the junction of two evacuation routes, US 422 and PA 29, was made impassable by floods one week before the exercise (id. at 2), but AWPP does not show how this impassability makes the evacuation plan unrealistic. AWPP apparently thinks it would be more realistic not to use US 422 and PA 29, two major roads. AWPP also claims that the refusal of some emergency response organizations to take part in the exercise shows that the plan is not adequate. Id. at 2. However, a contention which alleges that other people find defects in the plan, but alleges none itself, is hardly admissible.

As to AWPP's "LTEC," all we are told about it is that it is a "complete, live" evacuation. Id. at 1. By implication, from AWPP's claim that the July 25 exercise should not have been announced (id. at 4), we may conclude that its "LTEC" would not be. As noted above, we are not told that the "LTEC" would also have to be staged at night, in a raging blizzard, but neither are we told how anything less than that could demonstrate the "complete capability" AWPP, in its "realism,"

insists on. No NRC or FEMA regulation requires that dose-saving evacuation be possible in any set of circumstances whatsoever. No realism worthy of the name could so require. Thus, every emergency plan makes sheltering an option.

The Commission's Regulation on Public Participation
In Emergency Preparedness Exercises

Section IV.F.1 of Appendix E to 10 C.F.R. Part 50 states that full-scale exercises are to test as much of the emergency plans "as is reasonably achievable without mandatory public participation." Thus, AWPP's proposal for its "LTEC" amounts to an attack on the quoted regulation. No judicial panel can be expected to cavalierly set such a clear regulation aside. Under 10 C.F.R. § 2.758(b), it was AWPP's burden to have petitioned us that the application of the rule on public participation be waived in this case, and to have accompanied the petition with an affidavit setting forth "with particularity the special circumstances alleged to justify the waiver." Id. Of course, in such an important matter, other parties would have been permitted to respond to the petition. Id. Ultimately only the five Commissioners could have granted the waiver. 10 C.F.R. § 2.758(d).

Any petition AWPP would have filed would have had a tough road to hoe, for, "[t]he sole ground . . . for waiver . . . shall be that

special circumstances . . . are such that application of the . . . regulation . . . would not serve the purposes for which the . . . regulation was adopted." 10 C.F.R. § 2.758(b). But, clearly in this proceeding, the regulation continues to serve the purpose for which it was adopted, namely, to make it clear that no emergency preparedness exercise would include a compulsory unannounced winter night evacuation of an area of more than 300 square miles. The petition no doubt would have had to explain how the "realism" of AWPP's "LTEC" would not be significantly reduced by the refusal of large numbers of citizens to take part in this midnight drill, or by what legal authority or principle of practical wisdom those reluctant citizens would be compelled to take part.

The Criteria for Admission of
Late-Filed Contentions

Given the contention's defects discussed above, there is no need to dwell on these criteria. Section 2.714(a)(1)(i) requires that the late-filing party have good cause for filing late. AWPP would have us believe that only now, after the July 25 exercise, is it clear that new plans must be submitted and the Draconian LTEC required. Yet AWPP does not attempt to show us even one defect revealed by the exercise. For all the new contention says, AWPP months ago could have alleged deficiencies in the plans and proposed the LTEC. But AWPP did not participate in the prehearing conference on offsite emergency planning,

or in the lengthy earlier prehearing phase of this case on offsite emergency planning. Therefore, AWPP is not and has never been a party in the separate and pending part of this case devoted to offsite emergency planning issues.

AWPP has other means available for protecting its interests. See 10 C.F.R. § 2.714(a)(1)(ii). The contention repeatedly speaks of a failure by the Applicant and the Staff to submit a realistic evacuation plan. See, e.g., the Contention at 1, pars. 1 and 2. However, neither the Applicant nor the Staff make the plans for the evacuation of the plume EPZ. AWPP could go to State and local planners, and it could also attend the post-exercise meeting provided for under FEMA's regulation, 44 C.F.R. § 350.10.

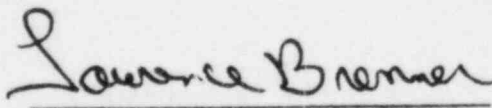
AWPP's past participation in this proceeding and its present poorly pleaded contention strongly suggest that AWPP's "verbalizing," as AWPP calls it (Contention at 3), cannot reasonably be expected to contribute to a sound record. See 10 C.F.R. § 2.714(a)(1)(iii). AWPP provides no basis to counter our view that it will not so contribute. The same facts also strongly suggest that AWPP's interest in sound emergency plans will be more adequately represented by LEA's coming participation in the evidentiary hearings on offsite planning than by AWPP's. See 10 C.F.R. § 2.714(a)(1)(iv).

Finally, in assessing the delay litigation of the contention would cause to the proceeding (see 10 C.F.R. § 2.714 (a)(1)(v)), AWPP exhibits its remarkable lack of understanding of due process: ". . . if the ASLB rules the Applicant must take the . . . [LTEC] . . . , the only delay AWPP can possibly cause is the time to deliver such order . . . one or two days at the most." Contention at 5. AWPP leaves room for no specification of the contention, no discovery, no testimony, and no research into the legal and practical possibility of imposing its novel "LTEC." Clearly, these matters will considerably delay the proceeding. AWPP apparently imagines that the tone of high purpose and certainty so evident in its new contention, and so out of proportion to any proof offered in the contention, should be enough to move three judges in one day's time to reject many hundreds of pages of plans, and to require, without even a first thought as to its authority to do so, that, for the sake of a drill, the population within the plume EPZ be evacuated in surprise some winter night.

For the reasons stated above, AWPP's late-filed offsite emergency planning contention is denied.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD


Lawrence Brenner, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland
September 14, 1984