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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

APPLICANT'S RESPONSE TO FRIENDS OF THE
EARTH'S MOTION TO SET ASIDE THE PARTIAL
INITIAL DECISION AND REOPEN THE RECORD

Introduction

On September 1, 1984, Friends of the Earth in the Delaware Valley ("FOE") moved the Atomic Safety and Licensing Board ("Licensing Board" or "Board") to set aside its Second Partial Initial Decision, issued August 29, 1984, and to reopen the record on FOE Contentions V-3a and V-3b concerning the effects of a natural gas or gasoline explosion on the Limerick Generating Station ("Limerick").^{1/} The Applicant, Philadelphia Electric Company, opposes FOE's motion.

The basis for FOE's motion is a Nuclear Regulatory Commission ("NRC" or "Commission") memorandum and Board Notification (No. 84-142) concerning allegations relative to

^{1/} Although dated September 1, 1984, FOE's pleading was not postmarked until September 3, 1984.

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the effect on a Limerick reactor enclosure vent stack of blast loads from a railroad explosion. The memorandum, dated August 20, 1984, from the NRC's Division of Licensing to the Limerick Licensing Board, provided the Board with a July 31, 1984 NRC memorandum discussing "an alleged inadequate design of the reactor enclosure vent stack." The August 20, 1984 memorandum additionally noted that "[i]t appears that this stack may have no or limited safety significance. The staff is investigating and will inform the Board when the investigation is completed."

The July 31, 1984 memorandum stated that "representatives of Region I, IE and NRR [had] interviewed a confidential allegor regarding his concerns relative to the response of the reactor enclosure vent stacks to blast loads following a railroad accident." After stating that "Region I intend[ed] to conduct further investigation of this allegation," it "stress[ed] that nothing Region I has reviewed to date meets the Board Notification standard of relevant, new information on an issue in controversy."

On September 7, 1984, the Board issued its Order Regarding FOE Motion to Set Aside Partial Initial Decision and Motion to Reopen Record which found no basis to support a stay of its Partial Initial Decision. It further required the NRC Staff's and Applicant's answer to FOE's motion to reopen to submit affidavits of appropriate officials to update the information contained in the Board Notification.

Argument

I. FOE has Failed to Satisfy the Requirements for Reopening the Record.

FOE has failed to satisfy the Commission's requirements for reopening a closed evidentiary record, FOE's conclusory assertions to the contrary notwithstanding. With respect to the three criteria for reopening the record, FOE has failed to show (1) that its motion has been "timely presented;" (2) that it is "addressed to a significant safety or environmental issue;" and (3) that "a different result would have been reached initially had [the newly submitted evidence] been considered."^{2/}

As to the first factor, the memorandum informing the Board of the Staff investigation was provided to the parties on August 20, 1984. If measured from that date, FOE's motion would not be considered untimely. Applicant submits, however, that the design of the vent stack could have been

^{2/} Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), Memorandum and Order Rejecting Late-Filed Contentions from FOE and AWPP, Denying AWP's Second Request for Reconsideration of Asbestos Contention, Denying AWPP's Motion to Add a PVC Contention and Commenting on an Invalid Inference in Del-Aware's May 17, 1984 Filing (August 24, 1984) (footnote at 3). Kansas Gas and Electric Company (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320, 338 (1978), quoting Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), ALAB-227, 8 AEC 416, 418 (1974). The Wolf Creek test was approved by the Commission in Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-5, 13 NRC 361, 363 (1981).

raised and explored much earlier. FOE had the opportunity to litigate the potential for failure of the vent stack and the implications of such a failure, if any, at the time it litigated the rest of its concerns embodied in Contentions V-3a and V-3b. It had the opportunity for extensive discovery during the course of the hearing. FOE cross-examined the Applicant's and Staff's witnesses extensively concerning, inter alia, the failure of louvers and blow-out panels in the reactor building, as well as the potential for failure of the reactor building itself. When viewed in that light, the fact that an unidentified alleger has come forth and expressed concerns regarding the reactor building vent stack does not amount to timely presentation of new information.

As to the second and third factors for reopening, FOE has wholly failed to allege or demonstrate that its latest arguments have any safety implications, let alone a significant safety implication, or that the result of the hearing would have changed in any way. The information in the Board Notification indicates that the vent stack has no or limited safety significance. FOE has made no attempt to counter this or to show its failure would impact the ability to bring the plant to a safe shutdown. The Board Notification states that NRC Region I had concluded that nothing it had reviewed meets the standard for board notification, i.e., relevant new information. Thus, it could not support the more stringent finding necessary for reopening.

II. Subsequent Developments Do Not Support Reopening of the Record.

The affidavit of John W. Benkert of the Bechtel Power Corporation is attached in response to the Board's September 7, 1984 Order. It presents information as to the Applicant's knowledge of the events underlying the Board Notification and updates those facts. The affidavit demonstrates that Applicant discovered the calculational problem as part of its routine review, analyzed and dispositioned it promptly, and later confirmed that the ability to safely shut down the facility was not affected. This affidavit provides further support for a denial of the motion.

Conclusion

For the reasons set forth above, FOE has failed to meet the Commission's requirements for reopening a closed record. Accordingly, the Board should deny its motion.

Respectfully submitted,

CONNER & WETTERHAHN, P.C.



Mark J. Wetterhahn
Nils N. Nichols

Counsel for the Applicant

September 17, 1984

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Response to Friends of the Earth's Motion to Set Aside the Partial Initial Decision and Reopen the Record," dated September 17, 1984 in the captioned matter have been served upon the following by deposit in the United States mail this 17th day of September, 1984:

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