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September 21, 1984 11:10
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

Docket Nos. 50-352 *OL*
50-353 *OL*

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

I. INTRODUCTION

On September 1, 1984, Friends of the Earth in the Delaware Valley (FOE) filed a motion requesting the Atomic Safety and Licensing Board (Board) to set aside its Second Partial Initial Decision, issued August 29, 1984, and to reopen the record on FOE Contention V-3a and V-3b concerning the effect on safety-related structures at the Limerick Generating Station of a natural gas or gasoline explosion.^{1/}

On September 7, 1984, the Board issued an "Order Regarding FOE Motion To Set Aside Partial Initial Decision and Motion to Reopen Record," in which the Board, among other things, directed that answers to FOE's motion to reopen should update by affidavits of appropriate officials the information contained in Board Notification 84-142.

This constitutes the NRC staff response to FOE's motion. For the reasons discussed below, the NRC staff opposes the motion.

^{1/} Although dated September 1, 1984, FOE's motion was postmarked September 3, 1984.

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II. BACKGROUND

The basis for FOE's motion is Board Notification No. 84-142, dated August 20, 1984, concerning allegations regarding the effect of blast loads from a railroad explosion on a Limerick reactor enclosure vent stack. Board Notification 84-142 forwarded an internal memorandum, dated July 31, 1984, from R.W. Starostecki, Director, Division of Project and Resident Programs, Region I, to D.G. Eisenhut, Director, Division of Licensing, NRR. The internal memorandum concerned an alleged inadequacy in the design of the reactor enclosure vent stack. The memorandum stated that representatives of Region I, IE and NRR had interviewed an alleged regarding his concerns relating to the response of the reactor enclosure vent stack to blast loads following a railroad accident and that Region I intended to conduct further investigation of this allegation.

III. DISCUSSION

The standards applicable to a motion to reopen the record are: (1) that the motion be timely; (2) that the movant demonstrate that the new evidence on which reopening is sought relates to a significant safety or environmental question and (3) that the movant show that the new evidence might materially affect the outcome.^{2/}

As regards the first standard, timeliness, if FOE's motion were wholly dependent on Board Notification 84-142, it would satisfy that standard. However, the Board need not determine whether FOE's motion wholly depends

^{2/} Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 800 n. 66 (1983); Kansas Gas and Electric Company (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 338 (1978).

on the board notification or whether information regarding the ability of the reactor enclosure vent stack to withstand blast pressures was available earlier, as it is clear that FOE's motion satisfies neither the second nor the third standard and that, therefore, FOE has not established a need to reopen the record.

As regards the second standard, the raising of a significant safety question, the attached affidavit of Robert M. Gallo, Chief, Projects Section 2A, Branch No. 2, Division of Project and Resident Programs, establishes that the NRC staff has evaluated the allegation and has found it to be based on a mistaken premise, namely "that the stack is safety-related and that it should have been designed to withstand the blast load," where in actuality the stack is not safety-related and need not have been designed to withstand blast loads. Therefore, FOE's motion is not based on a significant safety issue.

As regards the third standard, likely material effect on the outcome, Dr. P. T. Kuo and Norman Romney, who testified on behalf of the NRC staff on FOE's Contentions V-3a and V-3b, have prepared affidavits attesting that their testimony would not be affected by the facts attested to by Mr. Gallo in his Affidavit. (Affidavits attached). Therefore, consideration of the "new information" would not be likely to lead to an outcome different from that reached by the Board in its Second Partial Initial Decision.

In sum, even if the Board were to accept as satisfactory FOE's showing on timeliness, FOE has not satisfied the second and third standards of the Diablo Canyon/Wolf Creek test and has not, therefore, established a need to reopen the record.

IV. CONCLUSION

As discussed above, the Board should deny FOE's motion to reopen the record.

Respectfully submitted,

Ann P. Hodgdon / *BHV.*

Ann P. Hodgdon
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 21st day of September, 1984