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RELATED CORRESPONDENCE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

Before the Atomic Safety and Licensing Board '84 NOV 29 11:40

In the Matter of)
)
Philadelphia Electric Company)
)
(Limerick Generating Station,)
Units 1 and 2))

OFFICE OF SECRETARY
DOCKETING & SERVICE
Docket Nos. 50-352 OL
50-353 OL

APPLICANT'S RESPONSE TO CITY OF PHILADELPHIA MOTION
TO STRIKE CERTAIN PORTIONS OF TESTIMONY RELATED
TO CONTENTIONS CITY-18 AND CITY-19

Preliminary Statement

On November 14, 1984, the City of Philadelphia ("City") submitted a motion to strike certain portions of Philadelphia Electric Company's ("Applicant") testimony relating to Contentions City-18 and City-19. The portions of the testimony which the City moves to strike are related to the probability of occurrence and the risks of certain low probability accidents which may affect the City's water supply as they relate to the necessity for and the type of emergency response to be implemented. The City asserts that such information is irrelevant and immaterial to emergency planning.^{1/} Applicant opposes the motion.

1/ "City of Philadelphia's Motion to Strike" (November 14, 1984) (hereinafter "City Motion") at 2.

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On November 1, 1984, Applicant submitted the "Testimony of V.S. Boyer, M.I. Goldman, G.D. Kaiser, E.R. Schmidt and R. Waller Relating to the City of Philadelphia Contentions City-18 and City-19." That testimony discusses the reasons why no detailed planning for providing alternative sources of water or methods of decontamination of water by the City is necessary even in the unlikely event that the City of Philadelphia's water supplies might be affected as a result of the accidental release of radioactive material from the Limerick Generating Station. The testimony discusses the fact that given the types of occurrences and risk involved, effective counter-measures can be taken at the time using the resources which would be readily available and procedures which are routine and within the capabilities of the City of Philadelphia Water Department.

Argument

The City mischaracterizes both the scope and intent of the testimony which it would strike when it states that "[e]mergency planning in the 50-mile ingestion pathway zone and in the 10 mile exposure pathway is not a function of, or relevant to, the plant owner's view of the level of risk to the public"^{2/} and when it further states that "[e]mergency planning is required for these areas."^{3/} The City

^{2/} Id.

^{3/} Id. at 2-3.

apparently would characterize Applicant's testimony as challenging the necessity for emergency planning in the ingestion pathway EPZ. The two contentions do not relate to the necessity of general emergency planning by the Commonwealth of Pennsylvania regarding the ingestion pathway, but relate only to detailed planning for providing alternative sources of water or methods of decontamination for the City of Philadelphia. While Applicant does not dispute here the necessity for emergency planning in the plume ingestion pathway by the Commonwealth, the question is whether detailed preplanning is necessary with regard to the limited matters outlined in the contentions, alternative sources and treatment options. Applicant submits that with regard to these limited issues, the knowledge of associated risk and the probability of occurrence of events which might affect the City's water supply is relevant and material to requirements for preplanning.

The Nuclear Regulatory Commission ("Commission") has held that the probability of occurrence is a relevant factor in emergency planning considerations. The Commission in Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-81-33, 14 NRC 1091, 1092 (1981), specifically found that certain events appear "sufficiently unlikely that consideration in individual licensing proceedings pending generic consideration of the matter is not warranted." The Commission was referring to the consideration of the impacts on emergency planning of

earthquakes which cause or occur during an accidental radiological release.^{4/} Thus, the Commission has itself introduced the issue of whether certain events are sufficiently low in probability such that they need not be considered in emergency planning. With regard to Contentions City-18 and City-19, the portions of Applicant's testimony challenged by the City are probative of the probability of occurrence of initiating accidents and resulting scenarios.

Applicant is somewhat surprised at the position taken by the City with regard to the relevance of the probabilities of occurrence of various events to emergency planning. The City's own testimony recognizes the importance of the risk and associated probability of occurrence on the necessity for and type of emergency planning. In the "Testimony of Bruce Aptowicz, Charles Zitomer and Richard Weiss Discussing Several Additional Considerations That Need to be Developed in Greater Detail as Part of an Implementable Water Supply Emergency Plan for the City of Philadelphia" (hereinafter "City Statement 3"), in response to Question 2, the witnesses respond that "[k]nowledge of the associated probabilities of the various accident types also would be

^{4/} It must be recognized that a portion of the risk for Limerick is related to the occurrence of earthquakes larger than the Safe Shutdown Earthquake for which the facility must be designed.

useful for planning." Further, on page 3 of the same document in Answer 3, the City witness represents that "there are many potential types of accidents with varying quantities and qualities of release contaminants" and that "[t]hese types of accidents have projected frequencies of occurrence." In its final paragraph of this response, the City recognizes that "[a]ll of these variables would affect the precise nature of the emergency plan that would need to be developed" (Id.) (Emphasis supplied). Therefore, the City itself has recognized the issue as to the occurrence frequency and consequences, i.e., the risk, of the various events in the necessity for and shaping of an emergency plan and made it part of the litigation of its two contentions.^{5/} Thus, the City should not be heard to complain that information contained in the testimony of Applicant's witnesses concerning frequency of occurrence and risk is not related to the two contentions.

On page 3 of its motion, the City complains about the inclusion of testimony describing "the calculated level of risk associated with the plant's siting" Again, the City misapprehends the thrust of Applicant's testimony. The

^{5/} See also City Statement 3 where, in response to Question 30 at 32, the City witnesses state that as part of the process to develop an implementable water supply emergency plan "[f]irstly, PECO must develop various accident probabilities, risks and impacts as an input into the planning process" (emphasis supplied).

Applicant, of course, recognizes that the siting of the facility is not at issue. However, the question of risk associated with ingestion of water at any specific level of contamination, e.g., the Commonwealth of Pennsylvania's Protective Action Guide levels or other drinking water standard, is certainly relevant to the emergency planning actions which must be considered, including the provision of alternative water supplies or further treatment of the water. Thus, the testimony is relevant and material to the issues which are the subject of the contentions.

The City claims that Applicant "attempts to relitigate the Board's finding of environmental impact."^{6/} This is not the case. The information concerning prior testimony was provided for the convenience of the Licensing Board inasmuch as two of the members are newly appointed. Furthermore, Applicant does not intend and has no reason to relitigate an issue on which it had previously prevailed and which has not been appealed. Additionally, new information which is relevant to a pending issue before the Board certainly may be introduced into evidence. As stated in Applicant's testimony at 14, the new information is a result of "[r]ecent experimental results from the Power Burst Facility in Idaho Falls" The City has provided no authority to the contrary.

^{6/} Id. at 3.

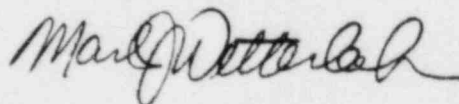
In the very next paragraph of its motion, the City takes the position that the Licensing Board "made it explicitly clear that any of its findings in the environmental impact area that were in the nature of emergency plans, were not intended to be conclusive" ^{7/} Accepting arguendo, the correctness of this characterization by the City of the Board's findings, then Applicant's testimony cannot possibly be an attempt to relitigate any matters finally determined by the Board and the City's motion must fail.

Therefore, the testimony challenged by the City is relevant, material and reliable and should be admitted. Challenges to the technical approaches of the Applicant are properly the subject of cross-examination and not the subject of a request for exclusionary rulings.

Conclusion

For the foregoing reasons, the City's motion to strike certain portions of Applicant's testimony should be denied.

Respectfully submitted,
CONNER & WETTERHAHN, P.C.



Mark J. Wetterhahn
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November 27, 1984

^{7/} Id. at 4.