

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

Before the Atomic Safety and Licensing Board ^{85 FEB 13} :04

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

OFFICE OF SECRETARY
DOCKETING & SERVICE

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

APPLICANT'S RESPONSE TO AIR AND WATER POLLUTION
PATROL MOTION WITH REGARD TO ADMISSION OF LATE-FILED
CONTENTION RELATING TO SHELTERING

Introduction

On January 27, 1985, Air and Water Pollution Patrol ("AWPP"), a party to this proceeding which had no admitted contentions related to offsite emergency planning, moved to admit a late-filed contention relating to the protective action of sheltering. The motion does not contain a statement of the contention which AWPP wishes to litigate.^{1/} Applicant, Philadelphia Electric Company ("PECO"), opposes

1/ The closest that AWPP comes to such a statement is the title of its pleading, "As It Relates To Sheltering, Air And Water Pollution Patrol (Romano) Contends That Applicant And Staff Neither Concentiously (sic) Concerned Themselves, Nor Made Public Plans For, Nor Tested The Adequacy Of Such Plans, Or Otherwise Insured Against Health Effects From Massive Ionizing Radiation Releases As Gases Or Particulate Entities, In Case Of A Serious Accident At Limerick Under Conditions Which Would Prevent Evacuation."

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the admission of this contention. AWPP has not set forth a litigable contention with bases and specificity and has failed to meet the criteria of 10 C.F.R. §2.714(a)(1) for admission of a late-filed contention. The contention should be denied.

Discussion

AWPP Has Failed To Set Forth
A Litigable Contention.

It is entirely unclear what aspect of sheltering LEA wishes to litigate. AWPP alleges without foundation that "sheltering may be required for a week or more."^{2/} It also states "that the time during which no contact can be permitted with the outside atmosphere can go into months or longer in severe accidents."^{3/} The contention completely lacks foundation and basis. No specific citation to the extensive record of the proceeding or other authoritative source is presented. It is entirely unclear what AWPP believes necessary prior to utilization of sheltering as a protective action.

NUREG-0654 (Rev. 1), "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants," recognizes that sheltering in residential units or other structures in

^{2/} AWPP Motion at 2.

^{3/} Id.

the plume exposure EPZ is one of the protective actions that is to be considered. Evaluation Criterion 10 of "Planning Standards and Evaluation Criteria" J, "Protective Response," of NUREG-0654 states:

m. The bases for the choice of recommended protective actions from the plume exposure pathway during emergency conditions. This shall include expected local protection afforded in residential units or other shelter for direct and inhalation exposure, as well as evacuation time estimates. (footnote omitted.)

In the Zimmer proceeding, the Appeal Board recognized that emergency planning must provide for a variety of protective actions, including evacuation and sheltering, and the basic goal of such planning is the achievement of maximum dose savings in a radiological emergency.^{4/} In the Three Mile Island proceeding, the licensing board recognized that there are situations that can be postulated that would prevent evacuation:

The adverse weather condition to be used in evacuation time estimates analyses is not the total worst case scenario. It would be possible to postulate combinations of conditions that would make evacuation impossible for extended periods of time although the likelihood of such events may be remote. ^{5/}

^{4/} Cincinnati Gas & Electric Company (Wm. H. Zimmer Nuclear Power Station, Unit No. 1), AIAB-727, 17 NRC 760, 765, 770 (1983).

^{5/} Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), LBP-81-59, 14 NRC 1211, 1581 (Footnote Continued)

The Pennsylvania Disaster Operations Plan, Annex E, describes how sheltering will be taken into account as a protective action for this facility. This plan has been available for AWPP's review for a considerable period of time and, in any event, prior to December 31, 1983, the date set by the Board for submission of emergency planning contentions. Appendix 9 "Protective Response" and Attachment L thereto specifically describe sheltering as a protective action and the protection afforded by buildings.^{6/} AWPP asserts no deficiency in such plans. The contention is without basis and specificity and should be denied.

AWPP's Contention Lacks Good Cause for
Lateness and Fails to Satisfy Other
Requirements for Admission of Late-Filed
Contentions.

The Licensing Board may admit the proposed late-filed contention only if it finds that on balance the five factors enumerated in 10 C.F.R. §2.714(a)(1) weigh in intervenor's favor.^{7/}

(Footnote Continued)

(1981) (transcript references deleted), aff'd, ALAB-697, 16 NRC 1265 (1982) and ALAB-698, 16 NRC 1290 (1982).

^{6/} Commonwealth Exhibit E-1 (received Tr. 19498).

^{7/} Memorandum and Order Rejecting AWPP's New Contention on Evacuation (September 14, 1984) (slip op. at 5-7); Memorandum and Order Rejecting Late-Filed Contentions from FOE and AWPP, Denying AWPP's Second Request for Reconsideration of Asbestos Contention, Denying AWPP's
(Footnote Continued)

1. AWPP lacks good cause for lateness. The good cause advanced for the lateness of this contention is apparently some discussion during the testimony of Mr. Paul Bartle, Chairman of the Board of Montgomery County Commissioners concerning the use of sheltering as a protective action for the people in the Limerick EPZ if evacuation were not possible. This can hardly be a revelation. As described above, sheltering is discussed in Annex E of the Pennsylvania Disaster Operations Plan. The Licensing Board itself, in denying an AWPP contention relating to evacuation, stated that "[n]o NRC or FEMA regulation requires that dose-saving evacuation be possible in any set of circumstances whatsoever."^{3/} It further stated that "[e]very emergency plan makes sheltering an option."^{9/} Thus, AWPP was aware or should have been aware well before Mr. Bartle testified that sheltering was an available protective action. AWPP has failed to demonstrate good cause for its late-filed contention.

(Footnote Continued)

Motion to Add a PVC Contention and Commenting on an Invalid Inference in Del-Aware's May 17, 1984 Filing (August 24, 1984) (slip op. at 2, 16-19); see also Duke Power Company (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041 (1983).

^{8/} Memorandum and Order Rejecting AWPP's New Contention on Evacuation (September 14, 1984) (slip op. at 4).

^{9/} Id.

2. Petitioner has other means to protect its interests. Even without admission of a contention, AWPP can protect its interest by communicating concerns to the responsible officials of the Federal Emergency Management Agency ("FEMA"), Pennsylvania Emergency Management Agency ("PEMA") and other responsible emergency planners. This provides a practical alternative for AWPP to assure that its concerns have been fully considered. This was the course suggested by the Board in rejecting an earlier AWPP late-filed contention.^{10/} This factor weighs against admission of the contention.

3. AWPP has not shown that it can assist the Board in developing a sound record on emergency planning issues. The contention proposed by AWPP is totally lacking in focus, specificity and basis. As such, AWPP has not demonstrated any particular knowledge or expertise which would assist the Board. The Board has previously made the finding that AWPP cannot reasonably be expected to contribute to a sound record in the area of emergency planning.^{11/} While AWPP avers that it will contribute by bringing in expert witnesses on a number of matters including "barrier requirements against massive and intensive gamma radiation," "on air transfer within average residences," and on "the

^{10/} Id. at 6.

^{11/} Id.

environment of houses that are too airtight for breathing by large numbers of people for extended times,"^{12/} it fails to identify such expert witnesses, their qualifications, or specifically discuss the thrust of the testimony. Thus, AWPP has not complied with the requirement of Grand Gulf that "[w]hen a petitioner addresses this criterion it should set out with as much particularity as possible the precise issues it plans to cover, identify its prospective witnesses, and summarize their proposed testimony."^{13/} This factor favors exclusion of the contention.

4. AWPP's interests will be represented by existing parties. Intervenors Limerick Ecology Action and Friends of the Earth have litigated various contentions related to emergency planning, many of which bear upon both evacuation planning and sheltering capabilities. AWPP has not shown that its interests differ from these two organizations. Moreover, PEMA, FEMA and the NRC Staff have been participants in these hearings. The matter of sheltering and the particular characteristics of structures to accommodate this protective action was the subject of

^{12/} AWPP Motion at 2.

^{13/} Mississippi Power & Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982). See also Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC 1167, 1177 (1983); Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387, 399 (1983).

hearing testimony.^{14/} This factor does not support admission of the contention.

5. AWPP's proposed contention will delay the proceeding. Given its breadth and generality, any new contention admitted by AWPP will delay the outcome of this proceeding. In September of 1984, the Board found that the admission of a late-filed emergency planning contention proposed by AWPP at that time would "considerably delay the proceeding."^{15/} A prehearing conference would be required to define the terms of any new contention, discovery would be required and additional witnesses and hearing time would be needed. This factor weighs against admission of the contention.^{16/}

Thus, all factors contained in 10 C.F.R. §2.714(b)(1) weigh against the admission of AWPP's late-filed contention.

Conclusion

For the reasons discussed above, AWPP lacks good cause for its proposed, late-filed contention and has failed to satisfy any of the other requirements for the admission of

^{14/} See, for example, Tr. 19398-99.

^{15/} Memorandum and Order Rejecting AWPP's New Contention on Evacuation (September 14, 1984) (slip op. at 7).

^{16/} See generally Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760, 1765-66 (1982); Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), LBP-83-30, 17 NRC 1132, 1146 (1983).

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Response to Air and Water Pollution Patrol Motion with Regard to Admission of Late-Filed Contention Relating to Sheltering," and letter to the Licensing Board from Mark J. Wetterhahn, Esq. both dated February 11, 1985 in the captioned matter have been served upon the following by deposit in the United States mail this 11th day of February, 1985:

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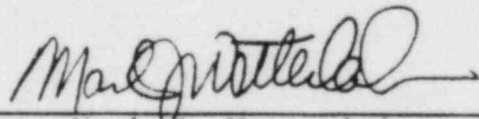
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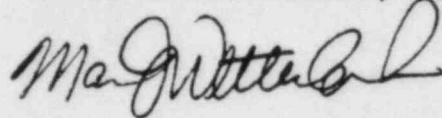


Mark C. Wetterhahn

its proposed contention. Moreover, the contention is extremely vague and unfocused. No explicit contention has ever been proposed. The proposed contention should therefore be denied. - - -

Respectfully submitted,

CONNER & WETTERHAHN, P.C.

A handwritten signature in black ink, appearing to read "Mark J. Wetterhahn". The signature is written in a cursive, somewhat stylized font.

Mark J. Wetterhahn
Counsel for Applicant

February 11, 1985