

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

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

APPLICANT'S ANSWER TO "PETITION FOR
ADDITIONAL INTERVENTION CONTENTION"
FILED BY AIR AND WATER POLLUTION PATROL

Preliminary Statement

On February 28, 1983, Philadelphia Electric Company ("Applicant") received an undated petition filed by the Air and Water Pollution Patrol ("AWPP") requesting that the Atomic Safety and Licensing Board ("Licensing Board" or "Board") admit into this proceeding a late-filed contention concerning what AWPP calls the "Three Mile Island Test of Capability." The matters set forth in the AWPP petition are not in the nature of a contention, but seek instead the adoption of a new standard applicable to the entire nuclear industry and therefore constitute a prohibited challenge to the regulations of the Nuclear Regulatory Commission ("NRC" or "Commission"). Moreover, the "contention" is totally lacking in the specificity and factual basis required by the Commission's regulations and is inexcusably late. The

petition to admit this "contention" should therefore be denied.

Argument

It is well settled that in order to be admitted into a licensing proceeding, a contention must set forth the matters to be litigated with reasonable specificity and must provide a factual basis for the contention.^{1/} It is also well established that general concerns about the nuclear industry or mere recitations of generic safety issues are not sufficiently specific to meet these criteria.^{2/} Broad challenges which merely question the sufficiency of an applicant's program as stated in the application lack the requisite specificity.^{3/}

1/ See 10 C.F.R. §2.714; Offshore Power Systems (Manufacturing License for Floating Nuclear Power Plants), LBP-77-48, 6 NRC 249, 250 (1977); Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1 and 2), LBP-76-10, 3 NRC 209, 211 (1976); Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 & 2), Docket Nos. 50-440 OL, 50-441 OL, "Special Prehearing Conference Memorandum and Order" (July 28, 1981) (slip op. at 11-14); Pennsylvania Power & Light Company (Susquehanna Steam Electric Station, Units 1 and 2), Docket Nos. 50-387, 50-388, "Memorandum and Order on Pending Motions and Requests" (July 7, 1981) (slip op. at 4).

2/ Browns Ferry, LBP-76-10, supra, 3 NRC at 212; Illinois Power Company (Clinton Power Station, Units 1 and 2), Docket Nos. 50-461 and 50-462-OL, "Memorandum and Order" (May 29, 1981 (slip op. at 6, 11-14).

3/ Public Service Company of Oklahoma et al. (Black Fox Station, Units 1 and 2), Dockets STN 50-556 CP and 50-557 CP, "Memorandum and Order (Rejecting Intervenor's Proposed Hydrogen Control Contention)" (January 11, 1982) (slip op. at 3).

The proposed contention suffers from these very defects. The matters which AWPP proposes to litigate pursuant to its "contention" are not clearly set forth in its petition and lack the requisite specificity, in violation of 10 C.F.R. §2.714(b). AWPP merely asserts that its contention "concerns" a proposed "Three Mile Island Test of Capability." No factual basis for this contention is provided. The petition simply contains a number of unsubstantiated comments concerning the Three Mile Island facility which are irrelevant to the instant proceeding. It attempts to explain AWPP's "Three Mile Island Test of Capability" by asserting that "having failed to remove the life-threatening situation, the nuclear establishment (which includes the Applicant) must be first required to pass the TMI Test of Capability, namely, to safely and completely clean up the crippled TMI-2 reactor... before any yet unlicensed reactor in Pennsylvania (or the U.S.) is granted an operating license."^{4/}

Essentially, then, the relief sought by AWPP is the adoption of a new legal standard which would require the licensing process to be held in abeyance pending the "complete and safe" cleanup at Three Mile Island, and the application of this new standard to Limerick. Whatever the merits of such a petition, however, the Limerick proceeding

^{4/} AWPP Petition at 1.

is simply not the proper forum for its disposition. As AWPP states, its concern relates to "a generic nuclear reactor problem".^{5/} The relief sought is therefore available only by rulemaking and clearly beyond the authority of this Licensing Board. For these reasons, the petition constitutes an impermissible attack on the Commission's regulations. See Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 2), ALAB-456, 7 NRC 63, 67 n.3 (1978); Northern States Power Company (Tyrone Energy Park, Unit 1), ALAB-464, 7 NRC 372, 375 (1978); Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 89 (1974).

The "concerns" of AWPP relating to Three Mile Island are in any event irrelevant to the Limerick proceeding. The proposed contention fails to "specify the particular features" of any requirements at issue and to "show the nexus of these features" as they relate to Limerick.^{6/} To the extent that the proposed contention seeks to litigate "psychological stress," such contentions have routinely been denied. E.g., Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 & 2), Docket Nos. 50-440 OL, 50-441 OL, "Memorandum and Order" (August 30, 1982).

^{5/} Id.

^{6/} Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), Docket No. 50-322 OL, "Memorandum and Order" (July 7, 1982) (slip op. at 6).

The proposed contention must also be denied as inexcusably late. The proponent of a late-filed contention has an extremely heavy burden of proof in showing that the contention should be admitted pursuant to the criteria set forth in 10 C.F.R. §2.714(a).^{7/} AWPP has not even addressed these factors. Moreover, AWPP itself emphasizes that the situation at Three Mile Island which it addresses in its pleading has existed for the past four years. AWPP has presented no reason why this contention could not have been filed on a timely basis for consideration by the Licensing Board at the initial prehearing conference in January 1982. AWPP has thus not shown good cause for its failure to file this contention in a timely manner.

Further, AWPP has failed to show that it can assist the Board in developing the record as to such an amorphous contention. AWPP has not shown how it intends to litigate this late contention as is required by the Appeal Board in the Grand Gulf proceeding.^{8/} In short, AWPP has the burden

^{7/} Mississippi Power & Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC ____ (December 8, 1982) (slip op. at 9); South Carolina Electric and Gas Company (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 885 (1981), aff'd sub. nom, Fairfield United Action v. Nuclear Regulatory Commission, 679 F.2d 261 (D.C. Cir. 1981).

^{8/} ALAB-704, supra, slip op. at 9-10.

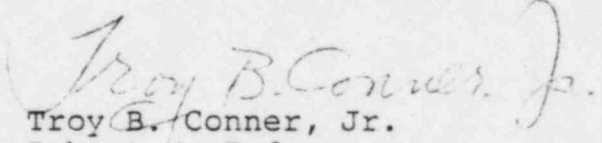
of proof in seeking admission of a late-filed contention and has not even addressed the issue.

Conclusion

For the reasons discussed above, the late-filed contention proposed by AWPP should be denied.

Respectfully submitted,

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Counsel for the Applicant

March 11, 1983

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Answer to 'Petition for Additional Intervention Contention' filed by Air and Water Pollution Patrol" dated March 11, 1983, in the captioned matter have been served upon the following by deposit in the United States mail this 11th day of March, 1983:

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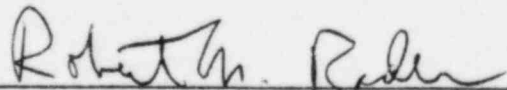
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