

1205

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'84 MAR 29 P2:53

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
DOCKETING & SERVICE
NRC

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

APPLICANT'S RESPONSE TO INTERVENOR LEWIS'
MOTION FOR NEW CONTENTION BASED ON
IE NOTICE NO. 84-17

Introduction

On March 14, 1984, Marvin Lewis, an intervenor in the captioned proceeding, moved the Atomic Safety and Licensing Board to admit a late-filed contention which asserts that the design of the Limerick Generating Station is deficient "because liquid nitrogen or other potentially very cold fluids can cool vital components of the plant below the NIL (sic) ductility temperature of the susceptible materials of which they are manufactured."^{1/} Applicant opposes the admission of this contention.

Intervenor Lewis has failed to address four out of five of the Commission's criteria for the consideration of

^{1/} Intervenor Lewis' Motion for New Contention Based on IE Notice No. 84-17 ("Motion") at 4.

8403300128 840328
PDR ADDCK 05000352
PDR

DS03

late-filed contentions contained in 10 C.F.R. §2.714(a)(1). He has attempted to address only one, the good cause requirement. On balance, these criteria do not support admission of the contention. Moreover, the contention lacks specificity and basis.

Argument

I. Intervenor Lewis Has Not Satisfied
the Requirements for Admitting A
Late Contention.

The late contention proposed by Mr. Lewis may not be admitted unless the presiding Atomic Safety and Licensing Board ("Licensing Board" or "Board") finds that, on balance, the five factors enumerated in 10 C.F.R. §2.714(a)(1)(i)-(v) weigh in intervenor's favor. Duke Power Company (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041 (1983). The very failure of Mr. Lewis even to address four of five of these criteria warrants denial of the contention.^{2/} It is too late in the proceeding for Mr. Lewis to argue that he was unaware of the requirements to address Section 2.714 criteria for the filing of a late

^{2/} Duke Power Company (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-615, 12 NRC 350, 352 (1980). See also Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), CLI-83-25, 18 NRC 327, 331 (1983).

contention. The Board has discussed this requirement on a number of occasions.^{3/}

In any event, the motion fails to meet intervenor's burden to affirmatively demonstrate that he has met the criteria for lateness. Even considering intervenor's argument, the issuance of IE Information Notice No. 84-17, Problems with Liquid Nitrogen Cooling Components Below the Nil Ductility Temperature, does not constitute good cause for failure to file on time.^{4/}

IE Information Notice 84-17, which was issued on March 5, 1984, discusses a problem with the cracking of a vent header in a BWR Mark I facility apparently caused by misoperation. That Notice did not require any specific action or response on the part of any utility. While Mr. Lewis recognizes that the plant involved has a Mark I containment, he argues that "Limerick is a Mark series containment which

^{3/} See, e.g., Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), Docket Nos. 50-352-OL and 50-353-OL, "Memorandum and Order (Denying Air and Water Pollution Patrol's Petition for Additional Intervention Contention)" (April 12, 1983) (slip op. at 3).

^{4/} Intervenor attempts to tie this new contention to a previously denied contention relating to pressurized thermal shock. Aside from some similar terminology, there is no direct relationship between this phenomenon and the cracking of the vent header. Even if there were any connection, this would not aid the admission of this new contention.

is similar to the Mark I containment in many respects."^{5/} However, Mr. Lewis fails to state any basis for this assertion. The only similarities he finds are "containment," "inerting" and "vent headers."^{6/} The first two are so general as to be meaningless. The third is simply incorrect and therefore without basis. Limerick, which utilizes a Mark II containment, does not have vent headers, a matter which is clear from the description of the containment system in the Final Safety Analysis Report.^{7/} Moreover, the system which Limerick utilizes for inerting is described in the FSAR.^{8/}

Mr. Lewis asserts that "[m]uch of the liquid nitrogen system is safety related,"^{9/} but gives no basis for this statement nor any reference to the application which would support it.^{10/} This is one of many conclusory and

^{5/} Motion at 1.

^{6/} Id.

^{7/} See, e.g., FSAR Figure 6.2-35.

^{8/} See FSAR Section 9.4.5.1 at pages 9.4-35 through 9.4-44 and Figure 9.4-5. The date on the most current revision for these pages demonstrates the existence of this information in the FSAR at least since November, 1982.

^{9/} Motion at 2.

^{10/} Contrary to Mr. Lewis' assertion, the liquid nitrogen supply portion of the containment atmospheric control system is not safety related, as shown on Figure 9.4-5 of the FSAR.

unsupported statements throughout the pleading.^{11/} Furthermore, Mr. Lewis affirmatively asserts that the "concern is very new and not included in . . . any other pertinent document in this instant proceeding."^{12/} As discussed in footnote 8, this statement is incorrect.

Just as the Appeal Board noted in Midland, the petitioner here has "offered no coherent or plausible excuse for the delay."^{13/} The self-serving declaration that this matter is very new is clearly insufficient to establish good cause. In no way does this assertion demonstrate that any new information not previously a part of the record has only now become available.^{14/} The surfacing of this contention

^{11/} For example, Mr. Lewis attempts to tie this matter to quality assurance by speculating that "there were many engineering change orders and field change orders that did not appear to have full followup." Motion at 3. There is no specific basis for this assertion. Neither does Mr. Lewis' attempt to graft financial qualifications considerations onto this contention, likewise recently denied by the Licensing Board, provide any basis for its acceptance.

^{12/} Motion at 4.

^{13/} Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-624, 12 NRC 680, 682 (1980). See also Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 2), ALAB-384, 5 NRC 612, 615 (1977); Duke Power Company (Cherokee Nuclear Station, Units 1, 2 and 3), ALAB-440, 6 NRC 642, 643 (1977); Duke Power Company (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-431, 6 NRC 460, 462 (1977).

^{14/} In Catawba, supra, the Commission held that it is a "basic principle that a person who invokes the right to participate in an NRC proceeding also voluntarily
(Footnote Continued)

at this advanced stage of the proceeding, wher the Board and parties are already faced with a full schedule of hearings, renders intervenor's tardiness even more significant.^{15/}

When an intervenor is late without cause, he must make an especially compelling showing on the remaining four factors.^{16/} Mr. Lewis has clearly failed to do so. As to the second and fourth criteria for admitting late contentions, no particular showing has been made by Mr. Lewis. At most, these two factors are neutral on the question of admitting the late contention. As the Appeal Board noted in the Summer proceeding, these two factors are to be given relatively lesser weight than the other factors and do not,

(Footnote Continued)

accepts the obligations attendant upon such participation," including "having accepted the obligation of uncovering information in publicly available documentary material." Catawba, supra, CLI-83-19, 17 NRC at 1048. As the Appeal Board likewise stated in Catawba, "an intervention petitioner has an ironclad obligation to examine the publicly available documentary material pertaining to the facility in question with sufficient care to enable it to uncover any information that could serve as the foundation for a specific contention." Catawba, supra, ALAB-687, 16 NRC 460, 468 (1982), rev'd on other grounds, CLI-83-19, 17 NRC 1041 (1983). In Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), CLI-83-23, 18 NRC 311, 312 (1983), the Commission reaffirmed the vitality of its holding in Catawba.

15/ See Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC ____ (November 15, 1983) (slip op. at 8).

16/ Mississippi Power & Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982).

standing alone, justify admission of a late contention even if they weigh in favor of the intervenor.^{17/}

On the third criterion, Mr. Lewis has also failed to demonstrate that he could assist the Board in establishing a sound record on this issue. In particular, he has failed to comply 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."^{18/} No expertise or even basic competence in the area Mr. Lewis seeks to litigate has been alleged.

The fifth criterion for admitting late contentions likewise weighs against intervenor. Admitting the contention will inarguably broaden the issues and delay the proceeding. Mr. Lewis would likely seek an extended discovery schedule and lengthy preparation time for hearings. Given the already crowded schedule of conferences and hearings set by the Board in order to dispose of admitted contentions in a timely manner, admission of a new

17/ South Carolina Electric & Gas Company (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 895 (1981).

18/ Grand Gulf, supra, ALAB-704, 16 NRC at 1730. See also WPPSS, supra, ALAB-747 (slip op. at 18); Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387, 399-400 (1983).

contention at the eleventh hour, more than three years after contentions were initially submitted, would unavoidably cause serious delay prejudicial to the Applicant.^{19/} Accordingly, Mr. Lewis has failed to satisfy the requirements for admission of his proposed late contention.

II. The Contention Lacks Specificity
and Basis.

The late contention fails to state any issue for litigation. It merely asserts the general matter of the Information Notice, but fails to show how the particular Limerick design is deficient. Inasmuch as the design is discussed in the FSAR, Mr. Lewis had an obligation to come forward with specific alleged deficiencies. Moreover, Mr. Lewis fails to state what further action he believes is required as a result of the Information Notice.

^{19/} It is noted that the Appeal Board in Fermi held that this factor is governed by delay of the proceeding, not delay of operation of the facility. 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).

Conclusion

For the foregoing reasons, the late-filed contention should be denied.

Respectfully submitted,

CONNER & WETTERHAHN

Mark J. Wetterhahn / NNN

Mark J. Wetterhahn
Counsel for the Applicant

March 28, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "Transmittal of References and Errata to Applicant's Testimony Relating to Contention I-42" (without enclosures) and "Applicant's Response to Intervenor Lewis' Motion for New Contention Based on IE Notice No. 84-17" both dated March 28, 1984 in the captioned matter have been served upon the following by deposit in the United States mail this 28th day of March, 1984:

- | | |
|---|---|
| <p>* Lawrence Brenner, Esq. (2)
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555</p> <p>* Dr. Richard F. Cole
Atomic Safety and
Licensing Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555</p> <p>* Dr. Peter A. Morris
Atomic Safety and
Licensing Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555</p> | <p>Atomic Safety and Licensing
Appeal Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555</p> <p>Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555</p> <p>* Ann P. Hodgdon, Esq.
Counsel for NRC Staff Office
of the Executive
Legal Director
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555</p> |
|---|---|

* Hand Delivery (with enclosures)

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Philadelphia Electric Company
ATTN: Edward G. Bauer, Jr.
Vice President &
General Counsel
2301 Market Street
Philadelphia, PA 19101

Mr. Frank R. Romano
61 Forest Avenue
Ambler, Pennsylvania 19002

Mr. Robert L. Anthony
Friends of the Earth of
the Delaware Valley
106 Vernon Lane, Box 186
Moylan, Pennsylvania 19065

Mr. Marvin I. Lewis
6504 Bradford Terrace
Philadelphia, PA 19149

Phyllis Zitzer, Esq.
Limerick Ecology Action
P.O. Box 761
762 Queen Street
Pottstown, PA 19464

Charles W. Elliott, Esq.
Brose and Postwistilo
1101 Building 11th &
Northampton Streets
Easton, PA 18042

Zori G. Ferkin, Esq.
Assistant Counsel
Commonwealth of Pennsylvania
Governor's Energy Council
1625 N. Front Street
Harrisburg, PA 17102

Steven P. Hershey, Esq.
Community Legal
Services, Inc.
Law Center West North
5219 Chestnut Street
Philadelphia, PA 19139

Angus Love, Esq.
107 East Main Street
Norristown, PA 19401

Mr. Joseph H. White, III
15 Ardmore Avenue
Ardmore, PA 19003

Robert J. Sugarman, Esq.
Sugarman, Denworth &
Hellegers
16th Floor, Center Plaza
101 North Broad Street
Philadelphia, PA 19107

Director, Pennsylvania
Emergency Management Agency
Basement, Transportation
and Safety Building
Harrisburg, PA 17120

Martha W. Bush, Esq.
Kathryn S. Lewis, Esq.
City of Philadelphia
Municipal Services Bldg.
15th and JFK Blvd.
Philadelphia, PA 19107

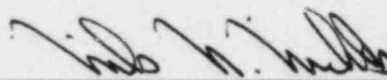
Spence W. Perry, Esq.
Associate General Counsel
Federal Emergency
Management Agency
500 C Street, S.W., Rm. 840
Washington, DC 20472

Thomas Gerusky, Director
Bureau of Radiation
Protection
Department of Environmental
Resources
5th Floor, Fulton Bank Bldg.
Third and Locust Streets
Harrisburg, PA 17120

Jay M. Gutierrez, Esq.
U.S. Nuclear Regulatory
Commission
Region I
631 Park Avenue
King of Prussia, PA 19406

James Wiggins
Senior Resident Inspector
U.S. Nuclear Regulatory
Commission
P.O. Box 47
Sanatoga, PA 19464

Timothy R.S. Campbell
Director
Department of Emergency
Services
14 East Biddle Street
West Chester, PA 19380



Nils N. Nichols