

189

DOCKETED  
USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION '84 JUL 11 A10:52

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 NEW PROPOSED CONTENTION  
BY AIR & WATER POLLUTION PATROL RELATING  
TO "GROSS ALPHA"

Preliminary Statement

On June 29, 1984, Philadelphia Electric Company ("Ap-  
plicant") received a proposed contention from Air & Water  
Pollution Patrol (Romano) asserting that "neither Applicant  
nor Staff have adequately studied whether or not routine  
turbine stack, or other releases of radioactive nuclides  
will result in exceeding the EPA Maximum Contaminant Levels  
("MCL") for gross alpha, radium 226, and radium 228." The  
proposed contention also asserts that "[r]ecent findings of  
gross alpha approaching the MCL of 5 pico curies indicate  
contribution from the reactor could result in closing many  
wells, particularly municipal wells in those areas within  
ten to fifteen miles from the Limerick reactor."<sup>1/</sup>

---

<sup>1/</sup> 40 C.F.R. §141.15 actually states:

(Footnote Continued)

Applicant opposes admission of the proposed contention. No basis is given for this vague contention, which is wholly lacking in any technical basis. Nor has Mr. Romano even addressed, much less satisfied, the criteria under 10 C.F.R. §2.714(a)(1) for admitting late contentions. Accordingly, the contention should be denied.

Argument

I. Intervenor Romano has not Satisfied  
the Requirements for Admitting a  
Late Contention.

The late contention proposed by Mr. Romano 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).<sup>2/</sup> The very failure of Mr. Romano even to address

---

(Footnote Continued)

The following are the maximum  
contaminant levels for radium-226,  
radium-228, and gross alpha particle  
radioactivity:

(a) Combined radium-226 and radium-228  
- 5pCi/l.

(b) Gross alpha particle activity  
(including radium-226 but excluding  
radon and uranium) - 15pCi/l.

<sup>2/</sup> Preliminarily, intervenor has not even met the threshold requirement of actually stating a proposed contention. The request should be denied on that basis alone. It is certainly not the function of this Board  
(Footnote Continued)

these criteria, other than to baldly assert that the proposed contention "can be litigated without significant expansion of hearing or delay," warrants denial of the contention.<sup>3/</sup> It is too late in the proceeding for Mr. Romano to argue that he was unaware of the requirements to address Section 2.714 criteria for the filing of a late contention. The Board has discussed this requirement on a number of occasions, including several earlier orders specifically denying proposed late contentions sought by Mr. Romano.<sup>4/</sup>

In any event, the motion fails to meet intervenor's burden to "affirmatively demonstrate" that he has met the criteria for lateness.<sup>5/</sup> Initially, Mr. Romano fails to indicate when this matter came to his attention or by what document or series of events the information became known to him. Thus, there is absolutely no showing of "good cause"

---

(Footnote Continued)

to assimilate an intervenor's vague allegations into a litigable contention, especially at this late stage of the proceeding.

3/ 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).

4/ 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).

5/ Id.

for lateness, which is the paramount consideration. Just as the Appeal Board noted in Midland, the petitioner here has "offered no coherent or plausible excuse for the delay."<sup>6/</sup> The surfacing of this contention at this advanced stage of the proceeding, when the Board and parties have completed hearings on the Limerick operating license applications, with the sole exception of offsite emergency planning, renders intervenor's tardiness even more significant.<sup>7/</sup>

When an intervenor is late without cause, he must make an especially "compelling showing" on the remaining four factors.<sup>8/</sup> This, Mr. Romano 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. Romano. If intervenor was aware of this alleged condition for some time, or if the underlying information were available to him, it could have been brought to the attention of the NRC

---

<sup>6/</sup> 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).

<sup>7/</sup> See Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 NRC \_\_\_\_\_ (November 15, 1983) (slip op. at 8).

<sup>8/</sup> Mississippi Power & Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982).

Staff, e.g., during the period for public comments on the Draft Environmental Statement, which was issued in this proceeding in July 1983. 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, standing alone, justify admission of a late contention even if they weigh in favor of the intervenor.<sup>9/</sup>

On the third criterion, Mr. Romano 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."<sup>10/</sup> No expertise in the area Mr. Romano seeks to litigate has been alleged. Moreover, based upon previous performance, intervenor has shown himself incapable of assisting the Board.

---

<sup>9/</sup> South Carolina Electric & Gas Company (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 895 (1981).

<sup>10/</sup> 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).

The fifth criterion for admitting late contentions likewise weighs against intervenor. Contrary to Mr. Romano's naked assertion, admitting the contention will inarguably broaden the issues and delay the proceeding. Mr. Romano would certainly request an extended discovery schedule and lengthy preparation time for hearings. Given the already short schedule for issuing a Partial Initial Decision in a timely manner, admission of a new contention at the eleventh hour, more than three years after contentions were initially submitted, would unavoidably cause serious delay prejudicial to the Applicant.<sup>11/</sup> Accordingly, Mr. Romano has failed to satisfy the requirements for admission of his proposed late contention.

II. The Proposed Contention Lacks Basis and Specificity.

Even assuming that the proposed late contention could be otherwise allowed, it should be denied as lacking the basis and specificity required by 10 C.F.R. §2.714(b).<sup>12/</sup>

---

<sup>11/</sup> 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). Moreover, admission of a late contention at this juncture could very well impinge upon the commencement of operation of Limerick, Unit 1.

<sup>12/</sup> See e.g., Commonwealth Edison Company (Dresden Nuclear Power Station, Unit No. 1), LBP-82-52, 16 NRC 183, 193 (Footnote Continued)



No technical basis whatsoever is given for the unsupported allegation that "routine turbine stack, or other unidentified releases of radioactive nuclides will result in exceeding the EPA Maximum Contaminant Levels" either alone or in some combination with nuclides already allegedly occurring in certain water supplies or that "contribution from the reactor could result in closing many wells." There is no identification of the wells in question. Furthermore, there is no assertion that Radium-226 and Radium-228 are even released from the Station. <sup>13/</sup> Further, the proposed contention is unsupported by any evaluation or analysis which demonstrates that releases producing gross alpha activity approaching any limit will occur or how such releases could possibly infiltrate water wells within a 15-mile radius of Limerick. In short, Applicant is at a loss to understand how the discharge into the environment from the operation of Limerick will possibly cause the alleged impact.

---

(Footnote Continued)

(1982); Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), LBP-81-18, 14 NRC 71, 75 (1981); Offshore Power Systems (Manufacturing License for Floating Nuclear Power Plants), LBP-77-48, 6 NRC 249 (1977).

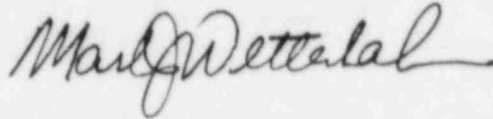
<sup>13/</sup> To the contrary, Table 11.3-1 of the FSAR indicates that no releases from these sources are expected. The stated basis for this table is NUREG-0016, Calculation of Releases of Radioactive Materials in Gaseous and Liquid Effluents from Boiling Water Reactors (BWR-GALE Code), which is based upon actual experience at operating nuclear plants.

Conclusion

For the reasons discussed above, AWPP's proposed late contention should be denied.

Respectfully submitted,

CONNER & WETTERHAHN, P.C.

A handwritten signature in dark ink, appearing to read "Mark J. Wetterhahn". The signature is fluid and cursive, with a long horizontal stroke at the end.

Troy B. Conner, Jr.  
Mark J. Wetterhahn  
Nils N. Nichols

Counsel for the Applicant

July 10, 1984



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED

'84 JUL 11 A10:54

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

Docket Nos. 50-352  
50-353

OFFICE OF THE SECRETARY  
NRC  
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Answer to New Proposed Contention by Air & Water Pollution Patrol Relating to 'Gross Alpha,'" "Applicant's Answer to Motion by Citizen Action in the Northeast for Certification to the Commission of its Financial Qualifications Contention," "Applicant's Objections to LEA's First and Second Sets of Interrogatories on Offsite Emergency Planning Contentions," Applicant's Answer to Limerick Ecology Action's First Set of Interrogatories and Request for Production of Documents to the Philadelphia Electric Company on Limerick Ecology Action's Admitted 'Off-Site' Emergency Planning Contentions," and "Letter to Maureen Mulligan from Mark J. Wetterhahn" all dated July 10, 1984 in the captioned matter have been served upon the following by deposit in the United States mail this 10th day of July, 1984:

Lawrence Brenner, Esq. (2)  
Atomic Safety and Licensing  
Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

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

Dr. Richard F. Cole  
Atomic Safety and  
Licensing Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Docketing and Service Section  
Office of the Secretary  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Dr. Peter A. Morris  
Atomic Safety and  
Licensing Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Ann P. Hodgdon, Esq.  
Counsel for NRC Staff Office  
of the Executive  
Legal Director  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

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

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

Ms. Maureen Mulligan  
Limerick Ecology Action  
P.O. Box 761  
762 Queen Street  
Pottstown, PA 19464

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

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

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

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

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

  
Mark J. Wetterhahn