

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

DOCKETED
USNRC

'84 JUL 31 P2:56

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

Docket Nos. 50-352
50-353

106

APPLICANT'S ANSWER TO CEPA'S SAFETY CONTENTIONS

Preliminary Statement

On July 17, 1984, Applicant received a copy of a pleading filed by Consumers' Education and Protective Association ("CEPA") entitled "CEPA's Safety Contentions."^{1/} CEPA, which was previously dismissed by the Board,^{2/} now seeks admission of a new late contention which attempts to create a nexus between low power testing at Unit 1 of the Limerick Generating Station and a Petition for Declaratory Order filed by Applicant before the Pennsylvania Public Utility Commission ("PUC") regarding ratemaking.

The request for admission of this late-filed contention is clearly without merit because no such nexus exists and

^{1/} The pleading and the accompanying certificate of service were undated.

^{2/} Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP-84-18, 19 NRC ____ (April 20, 1984) (slip op. at 2).

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the jurisdiction of the Nuclear Regulatory Commission ("NRC" or "Commission") does not extend to ratemaking matters. Moreover, CEPA has failed to meet, and has barely addressed, the criteria for acceptance of a late-filed contention.^{3/} Accordingly, CEPA's request for a late-filed contention as well as its implicit request for re-admission to the proceeding should be denied.

Argument

As explained by the Licensing Board in its Special Prehearing Conference Order related to offsite emergency planning contentions issued April 20, 1984, CEPA's continued status as a party to this proceeding was conditioned upon its participation in offsite emergency planning contentions.^{4/} CEPA proposed no such contentions and did not attend the related prehearing conference. Accordingly, CEPA was dismissed.^{5/}

CEPA now seeks admission of a new late-filed contention which concerns a petition filed by Applicant before the PUC seeking to establish procedures which "will synchronize base rate recognition of Unit 1 . . . with its commercial

3/ Additionally, because CEPA has been dismissed from the proceeding, the organization itself would have to be re-admitted as a late intervenor. No such petition has been filed.

4/ Limerick, supra, LBP-84-18 (slip op. at 2).

5/ Id.

operation date."^{6/} The situation addressed by the petition before the PUC is stated as follows:

The inability to precisely forecast the commercial operation date of Limerick Unit 1 could be disastrous from a financial standpoint. If test operations are completed sooner than anticipated, the unit would begin commercial operations before the rate case was completed. On that date the income attributable to the investment in Limerick 1, which is currently being accrued as allowance for funds used during construction (AFUDC), would cease. In addition, PECO would begin to pay the costs of operating the unit and customers would receive the energy cost benefits of Limerick 1 under PECO's ECR Tariff. However, no revenues would be available from customers to recover the cost of Limerick 1. . . .

Alternatively, an extended period of test operations could delay commercial operation of the unit beyond the end of the future test year, and base rate recognition of the unit's cost of operation, including depreciation, expenses and a return on the investment could be challenged on that basis. If recovery were denied due to uncertainty about the in service date of Limerick 1, PECO could be required to file a second rate increase and the problem of synchronizing rates and service would be further exacerbated.^{7/}

As is plainly evident, the reference in the petition before the PUC to testing for Limerick relates only to its

^{6/} Petition of Philadelphia Electric Company for a Declaratory Order Before the Pennsylvania Public Utility Commission, Docket No. P-840514 at 1 (filed June 15, 1984).

^{7/} Id. at 3-4.

timing in predicting the approximate date of commercial operations for Unit 1. The problem of synchronizing commercial operation of Unit 1 with the conclusion of PUC ratemaking hearings exists whether tests are completed before or after the conclusion of the ratemaking proceeding before the PUC. Accordingly, there is no basis for CEPA's assertion that the relief requested before the PUC is in any way an admission that testing for Limerick Unit 1 or the safe operation of the plant will be affected.

In an unbroken line of authority, it has been held that such ratemaking matters are beyond the jurisdiction of the NRC.^{8/} CEPA would nonetheless have this Board litigate issues regarding Applicant's request before the PUC concerning its ratemaking procedures. Such matters are clearly beyond the authority of the NRC. Moreover, no nexus whatever between Applicant's request and the public health and safety has been demonstrated. As noted, Applicant's concerns relate to synchronization of commercial operation of Limerick Unit 1 with the conclusion of ratemaking

8/ E.g., Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 614 (1976); Houston Lighting & Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-582, 11 NRC 239, 243 n.8 (1980); Kansas Gas & Electric Company (Wolf Creek Generating Station, Unit 1), ALAB-424, 6 NRC 122, 128 n.7 (1977); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1420-21 (1977); Detroit Edison Company (Greenwood Energy Center, Units 2 and 3), ALAB-376, 5 NRC 426 (1977).

proceedings, regardless of whether commercial operation precedes or follows their conclusion.

Finally, CEPA has only barely addressed the requirements for late-filing petitioners and proposed late contentions under 10 C.F.R. §2.714(a)(i)-(v). On examination, it has not met any of the five criteria and certainly has not satisfied those standards on balance. CEPA has failed to show "good cause" for waiting a full month before filing its request. Its interests relate primarily to matters before the PUC and may be best addressed to that agency. By its previous performance in the proceeding and subsequent dismissal, CEPA has demonstrated little if any capacity to assist the Board in developing a sound record. Its interests regarding low power testing procedures will be adequately represented by the Staff. Admission of the proposed late contention will undoubtedly broaden the issues and potentially delay the issuance of either a low-power or full-power operating license for Limerick Unit 1.^{9/}

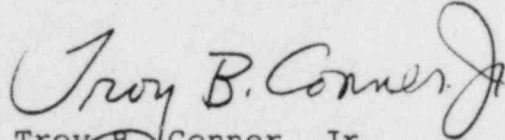
^{9/} For the sake of brevity, Applicant respectfully refers the Board to its discussion of the cases applying the five separate requirements for late-filed contentions under 10 C.F.R. §2.714(a)(1)(i)-(v) in Applicant's Answer to Motion by FOE for Admission of New, Late Contentions Related to Applicant's Motion for an Expedited PID and Issuance of a Low-Power License (June 1, 1984). In view of the insurmountable barriers to the admission of CEPA's proposed late-filed contention, the Licensing Board need not determine whether CEPA would also have to satisfy the requirements for reopening the record. See, e.g., Long Island Lighting
(Footnote Continued)

Conclusion

For the reasons discussed more fully above, CEPA has failed to show that it should be re-admitted to the proceeding or that it has met the Commission's requirements for admitting late-filed contentions. Its only proposed contention is wholly lacking in any basis and concerns ratemaking matters, which lie beyond the jurisdiction of the NRC. Accordingly, the proposed contention should be denied.

Respectfully submitted,

CONNER & WETTERHAHN, P.C.



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Counsel for the Applicant

July 27, 1984

(Footnote Continued)

Company (Shoreham Nuclear Power Station, Unit 1),
LBP-83-57, 18 NRC 445, 632 (1983).

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Answer to CEPA's Safety Contentions," dated July 27, 1984 in the captioned matter have been served upon the following by deposit in the United States mail this 27th day of July, 1984:

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