

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD 23 P2:34

In the Matter of

COMMONWEALTH EDISON COMPANY

(Braidwood Station, Units 1 and 2)

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Docket Nos. 50-456
50-457

AFFIDAVIT OF EDWARD M. PODOLAK, JR.

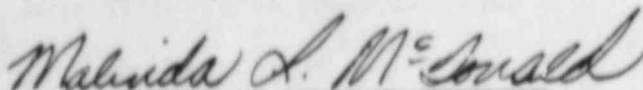
I, Edward M. Podolak, Jr. being duly sworn, state as follows:

1. I am a Senior Emergency Preparedness Specialist in the Emergency Planning Branch, Division of Emergency Preparedness and Engineering Response, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission (NRC).
2. I have provided my professional qualifications as an attachment to this affidavit.
3. I have reviewed the Federal Emergency Management Agency (FEMA) Policy Statement on Respiratory Protection, dated November 15, 1985, and find that it is consistent with current NRC policy and guidance as expressed in NUREG-0654/FEMA-REP-1, Rev. 1.

8512260153 851219
PDR ADOCK 05000456
G PDR


Edward M. Podolak, Jr.

Subscribed and sworn to before me
this 12th day of December, 1985


Notary Public

My Commission expires: 7/1/86

Professional Qualifications

Edward M. Podolak Jr.

I am employed as a Senior Emergency Preparedness Specialist, Emergency Preparedness Licensing Branch, Division of Emergency Preparedness and Engineering Response, U.S. Nuclear Regulatory Commission, Washington, D. C.

I attended Manhattan College, Bronx, N.Y. and received a B.S. degree in Physics in 1968.

I assumed my present position in February 1985. My duties include the review and recommendation of various policies regarding emergency preparedness at nuclear facilities. Between 1982 and 1985 I served as Chief, Program Planning and Control Branch, Office of Nuclear Regulatory Research.

Between 1981 and 1982 I served as Technical Assistant to the Director, Division of Health, Siting and Waste Management, Office of Nuclear Regulatory Research, NRC, where I assisted the Director in planning and evaluating research and standards programs for radiological health, environmental protection, earth sciences and nuclear waste management.

Between 1975 and 1981 I served in the Health Effects Branch, Office of Standards Development, NRC, attaining the level of Senior Health Physicist where I developed regulations and policies governing the way physicians use radioactive materials.

Between 1970 and 1975 I served with the Food and Drug Administration (FDA) and the Environmental Protection Agency (EPA) at a laboratory in Winchester, Massachusetts where I tested radiopharmaceuticals for FDA and was in charge of calibration and standards for radioactivity standards for EPA.

Between 1968 and 1970 I served as a Reliability/Maintainability Engineer for Vitro Laboratories in Silver Spring, Maryland.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
LSNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'85 DEC 23 P2:34

In the Matter of)
COMMONWEALTH EDISON COMPANY)
(Braidwood Station, Units 1 and 2)

Docket Nos. 50-456
50-457

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

REPLY OF NRC STAFF AND FEMA TO MOTION FOR
RECONSIDERATION IN THE FORM OF AN OFFER OF PROOF

I. Introduction

In response to the October 29, 1985 Atomic Safety and Licensing Board ("Board") order (Tr. 422-23) the NRC Staff opposes the Intervenor's Bridget Little Rorem, et al. ("Rorem") October 25, 1985 motion for reconsideration in the form of an offer of proof ("Offer"). Intervenor's Offer contravenes the Board's October 18, 1985 Memorandum and Order ^{1/} which granted Applicant's Commonwealth Edison Co. ("Applicant") motion to particularize Rorem Contention 1(a) and permitted Rorem an opportunity to include the emergency planning program for notification of the public at the time of an accident provided Rorem submitted evidence in the form of an offer of proof of alleged deficiencies raising significant issues. Memorandum and Order. Applicant objected to the Offer of Proof in its December 4, 1985 "Reply to Motion for Reconsideration in the Form of an Offer of Proof." Applicant expressed procedural

^{1/} Memorandum and Order (October 18, 1985).

objections to Intervenor's Motion and addressed the substance of Rorem's Offer of Proof.

The NRC Staff ^{2/} and FEMA oppose the admission of the contentions contained in Bridget Little Rorem's "Offer of Proof" for three principal reasons:

1. FEMA renews the objection made by the Applicant and supported by the Staff and FEMA at the October 29, 1985 hearing on Contention 1(A). Tr. 383-423. The substance of the objection was that the issues raised by the "Offer of Proof" did not amount to a clarification or elaboration of the contentions already admitted; rather they raised new contentions. FEMA supports the procedural arguments currently advanced by the Applicant that Rorem's Offer of Proof did not meet the substance of the opportunity provided by the ASLB to bring forward evidence of deficiencies and that Issue 8 is beyond the scope of the original Contention 1(A) and (B).

2. The Order permitting the Intervenor to file an Offer of Proof directed Rorem to identify factual issues which required an additional hearing. This was consistent with the evident desire of the Atomic Safety Licensing Board (ASLB) to ensure that the Intervenor had every opportunity to clarify the issues and present evidence on the admitted public information contention. Rather than identify facts to support Rorem's original contention, the Intervenor has proposed additional

^{2/} The Staff concurs with FEMA's position that the issues identified in Rorem's Offer of Proof do not meet the requirements to be admitted as contentions, and if admitted as contentions should be summarily dismissed.

contentions. Rorem's "Issues" are conclusionary statements, not evidentiary facts which might provide the basis for the finding or conclusion sought by Rorem.

3. If the proposed contentions implicit in the Offer of Proof are admitted, the responses of both Applicant and FEMA would provide adequate basis for the Board to dispose of the contentions summarily and obviate the need for a hearing on these matters. FEMA has offered the Affidavit of Gordon Wenger, the witness who testified on Rorem Contention 1(A). In each case he concludes that the Illinois Plan for Radiological Accidents (IPRA) adequately addresses each of the concerns raised by the "Offer of Proof." Such findings raise a rebuttable presumption of adequacy. 10 C.F.R. § 50.47(a)(2). Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-776, 19 NRC 1373, 1378-1379 (1984). In addition, when these issues have been litigated in the past, similar plans have been found adequate.

Discussion

A. Legal Principles Governing the Statement and Admission of Contentions:

Contentions may only be admitted in a Commission licensing proceeding if they fall within the scope of issues set forth in the Federal Register notice of opportunity for hearing and applicable Commission case law. See e.g., Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974); Duquesne Light Co. (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243, 245 (1973); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 194 (1973),

affirmed sub nom., BPI v. Atomic Energy Commission, 502 F.2d 424, 429 (D.C. Cir. 1974).

Pursuant to 10 C.F.R. § 2.714(b), petitioners are required to file "a list of contentions which petitioner seeks to have litigated in the matter, and the bases for each contention set forth with reasonable specificity." A petitioner who fails to file at least one contention which satisfies the requirements of § 2.714(b) will not be permitted to participate as a party. A contention must be rejected where:

- (1) it constitutes an attack on applicable statutory requirements;
- (2) it challenges the basic structure of the Commission's regulatory process or is an attack on the regulations;
- (3) it is nothing more than a generalization regarding the Intervenor's view of what applicable policies ought to be;
- (4) it seeks to raise an issue which is not proper for adjudication in the proceeding or does not apply to the facility in question; or
- (5) it seeks to raise an issue which is not concrete or litigable.

Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974). The purpose of the basis requirement of 10 C.F.R. § 2.714(b) is: (a) to assure that the matter sought to be put into question does not suffer from any of the infirmities set forth in Peach Bottom, supra, at 20-21; (b) to establish sufficient foundation to warrant further inquiry into the subject matter; and (c) to put the other parties sufficiently on notice "so that they will know at least generally what they will have to defend against or oppose." Peach Bottom, supra, at 20.

At the early stages of a proceeding, petitioners need identify only the reasons for each contention. See, Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 548 (1980). The basis stated for each contention need not "detail the evidence which will be offered in support of each contention."

Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-139, 6 AEC 423, 426 (1973). Accordingly, in examining contentions and the bases therefore, a licensing board may not reach the merits of contentions. Id.; Peach Bottom, supra, at 20. Nevertheless, the basis for contentions must be sufficiently detailed and specific: (a) to demonstrate that the issues raised are admissible and further inquiry into the matter is warranted; and (b) to put the parties on notice as to what they will have to defend against or oppose. This is particularly important at the operating license stage, where a hearing is not mandatory, in order to assure that an asserted contention raises an issue which clearly is open to adjudication. Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 768-69 (1977); Cincinnati Gas & Electric Co. (William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 12 (1976); River Bend, ALAB-183, 7 AEC 222, 226 (1974).

In addition, a board is not authorized "to admit conditionally for any reason, a contention that falls short of meeting the specificity requirements." Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 466 (1982). The NRC's Rules of Practice do not permit "the filing of a vague, unparticularized contention, followed by

an endeavor to flesh it out through discovery against the applicant or Staff." Id. at 468.

The Issues stated in the "Offer of Proof" do not meet the requirements of § 2.714(b) because they are nothing more than a generalization regarding the Intervenor's view of what applicable policies ought to be and they seek to raise issues which are not concrete and litigable. The controversy raised by the issues is simply over whether the emergency response plan meets Intervenor's concept of what it should be like, not whether it meets a legal standard. For example, Issues 2 and 3 begin, "Applicant must develop and demonstrate. . . ." Issues 4 through 7 allege that the emergency response plan is deficient in certain ways. Issue 8 proposes that the public information program does not adequately describe the means of notification. In none of the Issues is there a reference to a standard in the regulations or NRC guidance which is allegedly not met. Nowhere has Rorem pointed out that X is required but X is not provided.

B. Standards for Summary Disposition:

Should these issues be admitted as contentions, it is not necessary to hold a hearing on the merits. Summary disposition is appropriate pursuant to the Commission's regulations if, based on a motion, the attached statements of the parties in affidavits, and other filings in the proceeding, it is shown that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. 10 C.F.R. § 2.749(d). The Commission's rules governing summary disposition are analogous to Rule 56 of the Federal Rules of Civil Procedure.

Alabama Power Company (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 AEC 210, 217 (1974); Dairyland Power Cooperative (LaCrosse Boiling Water Reactor), LBP-82-58, 16 NRC 512, 520 (1982). Therefore, decisions concerning the interpretation of Rule 56 may be used by the Commission's adjudicatory Boards as guidance in applying the provisions of 10 C.F.R. § 2.749. Id.

A hearing on the questions raised by an intervenor is not inevitable. See, Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-654, 14 NRC 632, 635 (1981). The purpose of summary disposition is to avoid hearings, unnecessary testimony and cross-examination in areas where there are not material issues to be tried. The Supreme Court has very clearly stated that there is no right to a trial except so far as there are issues of fact in dispute to be determined. Ex parte Peterson, 253 U.S. 300, 310 (1920). Under the Federal Rules the motion is designed to pierce the general allegations in the pleadings, separating the substantial from the insubstantial, depositions, interrogatories or other material of evidentiary value. 6 J. Moore, Moore's Federal Practice ¶ 56.04[1] (2d ed. 1976). Mere allegations in the pleadings will not create an issue as against a motion for summary disposition supported by affidavits. 10 C.F.R. § 2.749(b); Fed. R. Civ. P. 56(c).

A party seeking summary disposition has the burden of demonstrating the absence of any genuine issue of material fact. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 753 (1977). In determining whether a motion for summary disposition should be granted, the record must be viewed in the light

most favorable to the opponent of such a motion. Poller v. Columbia Broadcasting System, Inc., 368 U.S. 464, 473 (1962); Dairyland Power Cooperative (LaCrosse Boiling Water Reactor), LBP-82-58, 16 NRC 512, 519 (1982).

To draw on federal practice, the Supreme Court has pointed out that Rule 56 of the Federal Rules of Civil Procedure does not permit plaintiffs to get to a trial on the basis of the allegations in the complaints coupled with the hope that something can be developed at trial in the way of evidence to support the allegations. First National Bank of Arizona v. Cities Service Co., 391 U.S. 253, 289-90 (1968), rehearing den., 393 U.S. 901 (1968). Similarly, a plaintiff may not defeat a motion for summary judgment on the hope that on cross-examination the defendants will contradict their respective affidavits. To permit trial on such a basis would nullify the purpose of Rule 56 which permits the elimination of unnecessary and costly litigation where no genuine issues of material fact exist. See Orvis v. Brickman, 95 F. Supp 605, 607 (1951), aff'd 196 F.2d 762 (D.C. Cir. 1952), cited with approval in Gulf States Utilities Co. (River Bend Station, Units 1 and 2), LBP-75-10, 1 NRC 246, 248 (1975).

To defeat summary disposition an opposing party must present material, substantial facts to show that an issue exists. Conclusions alone will not suffice. River Bend, LBP-75-10, supra, at 248; Perry, ALAB-443, supra at 754.

The federal courts have clearly held that a party proposing a motion for summary judgment is not entitled to hold back evidence, if any, until the time of trial. Lipschutz v. Gordon Jewelry Corp., 367 F. Supp. 1086, 1095 (SD Texas 1973); the opponent must come forth with evidentiary facts

to show that there is an outstanding unresolved material issue to be tried., Stansifer v. Chrysler Motors Corp., 487 F.2d 59, 63 (9th Cir. 1973); and Franks v. Thompson, 59 FRD 142, 145 (M.D. Alabama 1973). Summary disposition cannot be defeated by the possibility that Intervenor might think of something new to say at hearing O'Brien v. McDonald's Corp., 48 FRD 370, 374 (N.D. Ill. 1979); nor can the Applicants' motion be defeated on the hope that Intervenor could possibly uncover something at hearing. Hurley v. Northwest Publication, Inc., 273 F. Supp. 967, 974 (Minn. 1967). Now is the time for Intervenor to come forth with material of evidentiary value to contravene the Applicant's and Staff's affidavits and to show the existence of a material fact to be resolved at an evidentiary hearing.

The Commission's regulations permit responses both in support of and in opposition to motions for summary disposition. 10 C.F.R. § 2.749(a). Such responses may be filed with or without supporting affidavits. Id. However, if the motion is properly supported, the opponent of such a motion may not rest simply on allegations or denials of the contents of the motion. Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-584, 11 NRC 451, 453 (1980). In addition, any facts not controverted by the opponent of a motion are deemed to be admitted. 10 C.F.R. § 2.749(b). The Appeal Board noted recently that a hearing on each issue raised "is not inevitable," but "wholly depends upon the ability of the intervenors to demonstrate the existence of a genuine issue of material fact" Peach Bottom, supra, at 632, 635.

Both the Appeal Board and the Commission have encouraged the use of the Commission's summary disposition procedure. Statement of Policy on

Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 457 (1981). See, Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-73-12, 6 AEC 241 (1973), aff'd sub nom BPI v. Atomic Energy Commission, 502 F.2d 424. (D.C. Cir. 1974); Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 550-51 (1980); Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 424-25 (1973); Duquesne Light Co. (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243, 245 (1973). The Commission has stated that:

Boards should encourage the parties to invoke the summary disposition procedures on the issues of material fact so that evidentiary hearing time is not unnecessarily devoted to such issues.

CLI-81-8, supra, 13 NRC 452, 457. The Commission's summary disposition procedures "provide ... an efficacious means of avoiding unnecessary and possibly time-consuming hearings on demonstrably insubstantial issues." Allens Creek, supra, 11 NRC at 550. As demonstrated in the Applicant's filing (Reply To Motion For Reconsideration In the Form Of An Offer Of Proof (December 4, 1985) at 6-32) and the discussion below, there are no significant or genuine issues requiring hearing as to any material fact raised by Rorem's Offer of Proof and, accordingly, it should be rejected.

C. The Merits of Rorem Issues 2 Through 8

Issue 2:

Offer of Proof Issue 2 states:

Applicant must develop and demonstrate its capability to provide through scripts and/or other media

information, substantive emergency information to adequately inform the public of emergency information in the event of an accident at the Braidwood Station through all radio, TV or EBS stations in the ingestion pathway zone, so as to enable the public to effectively evacuate in the event of an emergency and to effectively re-enter the affected zone in the event of an emergency.

The Intervenor has challenged the existence and the adequacy of the scripts to be used to inform the public at the time of an emergency. Rorem asserts that it should provide enough information to allow the public within the EPZ effectively to take shelter or evacuate, implying that the scripts do not do that. FEMA has read the Applicant's Reply to Motion for Reconsideration in the Form of an Offer of Proof and the supporting affidavit of Ms. Jana S. Fairow and agrees that the material facts are as stated. The Affidavit of Gordon Wenger identifies the specific locations in the IPRA where the subject scripts appear. Wenger Affidavit, ¶¶ 6-9. Ms. Rorem first point is quite unfounded. The scripts are included in the IPRA and do exist. The adequacy of the scripts is a matter for the judgment of the board. FEMA would point out that Gordon Wenger has advanced the finding that they are adequate. Wenger Affidavit, ¶ 10. We submit that a reading of the scripts will amply bear out Mr. Wenger's judgment.

We further submit that the scripts more than adequately inform the public of the actions they are to take to remain safe. There are scripts to be used only in the event that sheltering is ordered, and those scripts provide specific information as to where and how this is to be done. These scripts also provide telephone numbers for further information. There are other scripts to be used only in the event of an evacua-

tion. There are different scripts for each sector within the EPZ. Each script identifies evacuation routes and centers where sheltering and other forms of health care are available outside of the EPZ. There are specific announcements for those who require special transportation or other arrangements. They provide telephone numbers for additional information. Id., ¶¶ 6-9.

The scripts go as far as possible to address every aspect of an emergency as possible without becoming so detailed as to be confusing. See, Metropolitan Edison Co. (Three Mile Island Station, Unit 1), LBP-81-59, 14 NRC 1211, 1521 (1981) (Finding 1526).

ISSUE 3:

Offer of Proof Issue 3 states:

Applicant must develop and demonstrate its capability to adequately inform residential and transient populations within the EPZ in the event of an emergency so as to enable the populations to effectively evacuate or shelter including development of the specific means and content of such communications to specific populations.

The thrust of Rorem's Issue 3 is that the public information effort at the time of an accident must provide enough accurate information to permit effective sheltering or evacuation of the public within the EPZ. FEMA has read the Applicant's Reply to Motion for Reconsideration in the Form of an Offer of Proof and the supporting affidavit of Ms. Jana S. Fairow and agrees that the material facts are as stated. Issue 3 is similar in scope to Rorem Issue 2. The dissemination of information at the time of an emergency has been discussed above under Issue 2; however, the public information effort is not confined to the time of the

emergency. A major part of the public information program is implemented beforehand. Wenger Affidavit, ¶ 14. Indeed, it would not be effective if this were not the case. The interrelation of pre-emergency and emergency announcements is discussed by the Licensing Board in Three Mile Island, supra, at 1520-1529. The pre-emergency program is the subject of Rorem Contentions 1(A) and (B) and need not be developed further at this time. The announcements at the time of an emergency have been discussed above under Issue 2. FEMA submits that the combination of the two elements of the public information program is effective to provide enough information to the public to take adequate safety precautions.

ISSUE 4:

Offer of Proof Issue 4 states:

The program for notification of the public at the time of an accident is deficient in that it provides no means of informing employers in the EPZ as to what actions they should take with respect to facility shutdown, sheltering, or the release of employee personnel in the event that evacuation is required.

Rorem's Issue 4 expresses a concern that employers within the EPZ will not have enough time or accurate information to enable them to to shut down their operations, release their employees, or provide shelter, as the situation demands. FEMA has read the Applicant's Reply to Motion for Reconsideration in the Form of an Offer of Proof and the supporting affidavit of Ms. Jana S. Fairow and agrees that the material facts are as stated. A similar issue was litigated in the case of Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), LBP-84-2, 19 NRC 36 (1984). In that case, the contention was that the

evacuation time study had overestimated preparation times. The study assumed an average preparation time of 15 minutes. The intervenor postulated that there were some employment centers where plant shutdown, which was included in the preparation time estimates, would exceed 15 minutes. In that case, the Board found that the individual variations did not jeopardize the adequacy of the evacuation plans since other preparation times would, of course, be shorter; and it also found that the plan was adequate, subject to verification that the presumably longer preparation times for larger employment centers was included in the preparation time averages. Id., at 277. The Board in Byron took specific note of the fact that major employers in the EPZ had been identified. Id., at 257.

The case before this Board concerns the same utility company, and the identical State of Illinois Plan for Radiological Accidents as the Byron Station. Major employers have been identified. Wenger Affidavit, ¶¶ 19, 20. As Gordon Wenger has pointed out, there are specific provisions to telephone major employers in the event of an emergency. This information is in addition to that which would already be available to employers as a result of the siren signals and EBS broadcasts. Id., ¶ 20. FEMA submits that the concern raised by Issue 4 has been adequately addressed by the IPRA.

ISSUE 5:

Offer of Proof Issue 5 states:

Applicant's arrangements for provision and exchange of emergency information to news media during an emergency is deficient in that it fails to designate

a spokesperson in each principal organization who should have access to all necessary information and it fails to provide for the timely and accurate exchange of such information.

Issue 5 questions whether spokespersons for the various political subdivisions have been identified and whether the plan for sharing and dissemination of information at the time of an emergency is adequate. FEMA has read the Applicant's Reply to Motion for Reconsideration in the Form of an Offer of Proof and the supporting affidavit of Ms. Jana S. Fairow and agrees that the material facts are as stated. Gordon Wenger's Affidavit describes the system in place for the sharing and dissemination of information at the time of an emergency. Id., ¶¶ 24-27. The plan is similar to the one considered in the Three Mile Island litigation and found to be adequate. TMI, supra, at 1551-53. FEMA submits that this portion of the plan complies with NUREG-0654/FEMA-REP 1, Rev. 1, Criterion G.4, and is adequate.

ISSUE 6:

Offer of Proof Issue 6 states:

Applicant's public information program is deficient in that it fails to set out the means by which the public will be informed during an emergency of re-entry protective measures to be followed by the public in an emergency and the content of such means with respect to information concerning decontamination and interdiction of foodstuffs, water supplies, dairy and livestock, and field and garden crops.

Issue 6 concerns the dissemination of information to the public about the safe treatment of food, water, and so on at the time of re-entering the EPZ. FEMA has read the Applicant's Reply to Motion for Reconsideration in the Form of an Offer of Proof and the supporting

affidavit of Ms. Jana S. Fairow and agrees that the material facts are as stated. Gordon Wenger's Affidavit points out the sections of the IPRA where preparations for safe re-entry are treated. Wenger Affidavit, ¶¶ 30-31. FEMA submits that sufficient detail has been provided to support a finding of adequacy.

This was the subject of litigation in the case of Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-82-39, 15 NRC 1163 (1982). In that case, the Licensing Board said, "Unlike evacuation, re-entry should not (at least in most cases) be constrained by time. Those things that will have to be done before the return of people to their homes will depend on on the radiological conditions that exist in the area evacuated. In this sense, plans must - and should - be ad hoc." Id., at 1207. The Board further found that general plans for re-entry met the governing legal standard set forth in NUREG 0654/FEMA-REP 1, Rev. 1, Planning Standard M, Criterion 1. Id., at 1282, 83.

ISSUE 7:

Offer of Proof Issue 7 states:

Applicant's public information program is deficient in that it fails to set out the means by which those segments of the population which lack mobility will be informed as to sheltering procedures and available means of transport in the event of an emergency.

In Rorem Issue 7, the question is whether adequate information will be broadcast to the public, including transients, to let them know that transportation and other forms of assistance are available to those who need them. FEMA has read the Applicant's Reply to Motion for Reconsid-

eration in the Form of an Offer of Proof and the supporting affidavit of Ms. Jana S. Fairow and agrees that the material facts are as stated. Gordon Wenger's Affidavit at ¶ 37 tells of the EBS messages to that effect. Here again, the important factor is that the announcements at the time of an emergency do not represent the total public information effort. See, Three Mile Island, supra, at 1529. There is a system in place for the gathering and maintenance of information on the identity and locations of mobility impaired individuals. Wenger Affidavit at ¶ 38. There is also a system to extend assistance to those who did not or could not respond before the emergency. Id., at ¶¶ 36-39. This combination of pre-emergency survey and emergency broadcast has been litigated before and has found approval in the cases of Cincinnati Gas & Electric Co. (Wm. H. Zimmer Nuclear Power Station, Unit 1), LBP-82-48, 15 NRC 1549, 1572-73 (1982); and Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit 1), LBP-84-26, 20 NRC 53, 102 (1984). See also, Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-85-14, 21 NRC 1219, 1393 (1985). Adequate provisions have been made not only to provide transportation to those in need of it, but also to let them know of its availability. Wenger Affidavit, ¶ 40.

ISSUE 8:

Offer of Proof Issue 8 states:

Applicant's public information program does not adequately describe means by which cities and responsible officials located outside the EPZ will be notified of an emergency and given adequate information concerning the emergency so as to enable them to respond as host communities and to provide

emergency assistance to responsible organizations within the EPZ.

Issue 8 questions whether adequate notice will be given to communities outside the EPZ to let them know of the demands which will be placed upon them in the case of an emergency within the EPZ. FEMA has read the Applicant's Reply to Motion for Reconsideration in the Form of an Offer of Proof and the supporting affidavit of Ms. Jana S. Fairrow and agrees that the material facts are as stated. Presumably, the issue refers to the host communities and the need for shelter and medical care. It could also refer to the extra traffic generated by an evacuation. In any case, the IPRA makes specific provision for alerting such communities. Id., at ¶ 45. FEMA submits that this aspect of the plan is also adequate on its face.

CONCLUSIONS

Rorem's "Offer of Proof" fails to identify hard facts which support its position that the public information program for the Braidwood Station is deficient. It also fails to cite any authority for that position. Instead, it raises additional contentions suggesting new areas where the IPRA might be deficient, that is if we do not examine the facts which are already available. Even though the burden is on Intervenor to produce information to show that there are significant or genuine issues to be heard as to material facts, Rorem has not done so. On the other hand, the Applicant and now FEMA have provided evidence in the form of affidavits and references to the IPRA to show that the program is not at all deficient in the ways Rorem would suggest.

The facts of this matter are clear. There is no need for a hearing to develop them further. If the Board chooses to treat the Issues identified in the "Offer of Proof" as proposed and admitted contentions, then it should dismiss them summarily. FEMA submits that it is unnecessary to go to those lengths. The "Offer of Proof" should be rejected in the first place. The facts offered to date simply do not support the inference that the public information program is deficient.

Respectfully submitted,

Elaine D. Chan

H. Joseph Flynn *for*
Assistant General Counsel,
Federal Emergency Management Agency

Dated at Bethesda, Maryland
this 19th day of December, 1985