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Technical Basis for Regulatory Guidance on the Alternate PTS Rule

Comment On: NRC-2014-0137-0001
Draft Guidance Regarding the Alternate Pressurized Thermal Shock Rule

Document: NRC-2014-0137-DRAFT-0015
Comment on FR Doc # 2015-05754

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3/13/2015
80 FR 13449
12

General Comment

Dear NRC,

Please see the attached file:

March 17, 2006: PETITIONERS NOTICE OF APPEAL FROM ASLB DENIAL OF HEARING, AND SUPPORTING BRIEF, submitted to the U.S. NRC ASLB, by attorney Terry Lodge, on behalf of Don't Waste Michigan and NIRS, in opposition to Palisades' 20-year license extension (Appeal of dismissal of Contention No. 1, The license renewal application is untimely and incomplete for failure to address the continuing crisis of embrittlement, specifically pages 3 to 9, as well as portions of the conclusion relevant to PTS risks/RPV embrittlement).

Please accept the numerous challenges and criticisms contained within this document, in the current context of Entergy Nuclear's July 2014 License Amendment Request for 10CFR50.61a regulatory relief, as public comments in your DG-1299 and NUREG-2163 proceeding. At the time, in 2005-2006, 10CFR50.61 was the ruling regulatory regime. The concerns raised by attorney Terry Lodge on behalf of intervening groups NIRS and Don't Waste MI at the time, are all the more poignant now, that an even less conservative alternate fracture toughness rule (10CFR50.61a) is the context for this proceeding on DG-1299 and NUREG-2163.

Thank you for considering our public comments.

SONSI Review Complete
Template = ADM-013

E-REDS = ADM-03
Add = To. Stevens (9.154)
M. Kirk (mtk)
S. Munton (5xb3)

Sincerely,

Kevin Kamps, Beyond Nuclear (and Don't Waste Michigan, board member representing the Kalamazoo Chapter)

Attachments

objections031706

**UNITED STATES OF AMERICA
BEFORE THE NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

_____)	
In the Matter of)	Docket No. 50-255-LR
NUCLEAR MANAGEMENT COMPANY)	
PALISADES NUCLEAR GENERATING)	ASLBP No. 05-842-03-LR
STATION)	
Regarding the Renewal of Facility Operating)	
License No. DPR-20 for a 20-Year Period)	March 17, 2006
_____)	

**PETITIONERS' NOTICE OF APPEAL FROM ASLB DENIAL
OF HEARING, AND SUPPORTING BRIEF**

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<i>Private Fuel Storage, L.L.C.</i> (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, <i>aff'd</i> , CLI-98-13, 48 NRC 26 (1998)	4
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NOTICE OF APPEAL

Now come the Nuclear Information and Resource Service, *et al.*, Petitioners-Intervenors herein (and hereinafter referred to as "Petitioners"), by and through counsel, and pursuant to 10 CFR § 2.311, give notice of their appeal from the March 7 "Memorandum and Order" (hereinafter "Order") issued by the Atomic Safety and Licensing Board panel in this matter, by which the ASLB denied Petitioners a hearing on their sundry contentions.

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BRIEF IN SUPPORT OF NOTICE OF APPEAL

I. INTRODUCTION

This proceeding involves the application of Nuclear Management Company, LLC ("NMC") to renew the operating license for its Palisades Nuclear Plant for an additional twenty-year period commencing in 2011. A number of groups and individuals jointly petitioned for standing as intervenors and submitted contentions challenging various safety and environmental aspects of the proposed license renewal.

There was no genuine controversy raised over the standing of the Petitioners, all of whom were granted status to intervene. The matter proceeded to a prehearing conference in November 2005, and in its March 7, 2006 "Memorandum and Order," the ASLB reviewed the

contentions and denied Petitioners a hearing on any of them, terminating the adjudication, "despite [Petitioners] having in some instances touched upon some serious topics." Order p. 2.

From the order ending the adjudication, Petitioners have timely taken this appeal, challenging the ASLB's rulings on Contentions.1, 3 and 5.

II. ARGUMENT

Status of Demetrios Basdekas as Petitioners' Expert on Embrittlement

After being presented extensive evidence of Demetrios' Basdekas involvement with Petitioners in the drafting of Contention 1 on reactor pressure vessel embrittlement, the ASLB denigrated the value of Basdekas' involvement by relegating him (Order p. 17) to the role of having "assisted Petitioners in drafting Contention 1, not that he would be relied upon or available to assist them at any hearing." Petitioners have proven that Basdekas framed his statement to the press, that he actively co-wrote Contention No. 1, and that in his press statement, he stated that the best indicators of embrittlement at Palisades were NMC's own records. Basdekas' assertions about embrittlement were not simply "obvious" or generic, but were made with specific reference to Palisades. Mr. Basdekas was Petitioners' expert at the time of submission of Contention No. 1 on August 8, 2005. He was not merely a co-drafter of the contention.

The ASLB has exalted form over substance, letting slavish adherence to rules work to bar the litigation on its merits of matters which the Board has itself termed "very serious." As the below discussion reveals, *infra*, Petitioners timely submitted their contentions in this intervention, and then followed up with a supplemental filing some five (5) weeks later which the Board has declined to consider, calling the supplemental filing untimely. This license extension proceeding has seen several major delays for accommodation of other parties or

incurred on the Board's own motion, which in the aggregate amount to more lost time from "delay" than the "delay" of the five weeks supposedly caused by Petitioners between contention submission and supplemental filing. However, the perceived damage to the relatively slow progress of the proceedings is laid only at the feet of the Petitioners.

Appeal of dismissal of Contention No. 1 (The license renewal application is untimely and incomplete for failure to address the continuing crisis of embrittlement)

Despite giving lip service (Order p. 23) to the adages that "technical perfection is not an essential element of contention pleading"¹ and that the "[s]ounder practice is to decide issues on their merits, not to avoid them on technicalities,"² the ASLB nonetheless contrived to deny admission of the embrittlement contention. The licensing panel notes (Order p. 34) that in "Petitioners' Combined Reply to NRC Staff and Nuclear Management Company Answers" filed on September 16, 2005 - 5 weeks after Petitioners' submission of their embrittlement contention - that Petitioners "provide[] additional support for the contention, of the sort that might have been included in the original basis for the contention."

The panel emphasized that embrittlement of the reactor pressure vessel is a "very serious topic, with regard to Palisades or indeed any nuclear plant," Order p. 35; that it was within the scope of license renewal, Order p. 36, and "warrants close attention." *Id.* But the ASLB proceeded to discard the contention for stating the "obvious" and presenting no specific issue which is Palisades-specific and susceptible to litigation. Order p. 37-38. The panel charitably noted that the rules of contention pleading might have "place[d] . . . petitioners in a difficult position," Order pp. 40-41, but denies the contention, with the ASLB limiting itself to the

¹*Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-3, 53 NRC 84, 99 (2001).

²*Houston Lighting*, ALAB-549, 9 NRC at 649.

information which accompanied the presentation of the timely-filed August 8, 2005 petition, not the supplementation filed on September 16, 2005.

By parsing the information available to it so constrictively, the ASLB carefully erected the very "fortress"³ which it had counseled should be avoided.⁴

The ASLB "fortress" is impervious to these inconvenient facts: The Palisades reactor vessel was built some 39 years ago of an alloy containing unknown percentages of copper and nickel. The blend has been lost to history, if it ever were written down in the first place. This fact, alone, creates tremendous difficulty in accurately predicting the degree of embrittlement present in the reactor pressure vessel at any point during Palisades' operating history.

Moreover, when the reactor pressure vessel was constructed, the utility elected not to install a thermal shield in the vessel, making it somewhat anomalous among similar reactors in the U.S. nuclear industry. When the vessel was completed, it was outfitted with so-called

³*Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 334 (1999):

This is not to say that our contention rule should be turned into a "fortress to deny intervention." [*Philadelphia Elec. Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 21 (1974)]. The Commission and its boards regularly continue to admit for litigation and hearing contentions that are material and supported by reasonably specific factual and legal allegations. See, e.g., [*North Atlantic Energy Services Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 219-21 (1999)]; [*Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, *aff'd*, CLI-98-13, 48 NRC 26 (1998)]

Id. at 335.

⁴Prehearing Tr.149-50 (ASLB chair questioning Staff Counsel):

. . . [t]here's also case law that says the contention rule should not be used [as] a fortress to deny intervention[,] that what you need is enough to indicate that further inquiry is appropriate. . . . Basically something to indicate that the petitioners are qualified, able to litigate the issue that they raise. So what we have here is [—] we have an allegation that the application is incomplete for failure to address the continuing crisis of embrittlement[,] supported by this factual allegation about early embrittlement and the identification of an expert who used to work with the NRC. So on the face of that it would seem that that provides something to indicate that further inquiry might be appropriate.

"surveillance coupons," pieces of metal deliberately left inside the vessel to be serially removed at refueling outages so they could be analyzed to predict the extent of embrittlement going on in the reactor vessel. Yet there was an insufficient number of coupons originally placed in the reactor, which ran out in the early 1990's, far before completion of the initial, 40-year, licensing period. See Exhibit 1-B in the "Appendix of Evidence" accompanying Petitioners' "Combined Reply."⁵

Calculations by NMC show that the Palisades vessel may have surpassed its Pressure Thermal Shock ("PTS") limits as early as 1995. Re-analyses of Palisades have produced an ever-widening range of resulting estimates for exceeding vessel embrittlement limits with a very broad range of uncertainty (as much as $\pm 25\%$) with many PTS values for the severely-embrittled reactor vessel. Palisades has neared the maximum-embrittlement boundaries time and again over the years,⁶ but each time those "goalposts" have been moved back with contemporaneous rejiggering of the assumptions and calculations. In 1995, for example, the NRC staff noted that the "Palisades RPV . . . is predicted to reach the PTS screening criteria by late 1999, before any other plant." NRC Generic Letter 92-01, Revision 1, Supplement 1: Reactor Vessel Structural Integrity (May 19, 1995) (Exhibit 1-J to "Combined Reply"). The most recent estimates project that the current PTS criteria will be exceeded in 2014⁷ - three (3) years into the proposed 20-year license extension period which would begin in 2011.

⁵ Palisades Thermal Shock, NRC Staff Presentation to the ACRS, Viewgraphs, December 09, 1994, p. 3.

⁶"For example that is sort of a summary of the regulatory framework that applies to annealing. With regard to Palisades, we completed an evaluation in April of 1995 in which we concluded that they would reach the screening criteria. At least they were okay until 1999. That evaluation was consistent with the 50.61, the Pressurized Thermal Shock Rule. The current license for Palisades expires in 2007 so they would fall somewhat short of the current operating license with regard to the life of the vessel." "Briefing on Annealing Demonstration Project," NRC Public Meeting, August 27, 1996.

⁷ Application, p. 4-15.

The Applicant claims that to address new technical issues relating to neutron irradiation embrittlement of the reactor pressure vessel, NMC proposes to use the third measure set forth in 10 CFR § 54.21(c)(1) to disposition the issue - *i.e.*, adequate management of the effects of neutron irradiation embrittlement - for the period of extended operation. But in its application, NMC merely demonstrates that it plans to make an election by 2011 - that the utility currently plans to have a plan at the beginning of the 20-year proposed extension period.

The Petitioners treat NMC's admission (Application p. 4-10) that the option of installing shield assemblies or flux suppression devices to achieve flux reduction would not be cost-effective as a sign that public safety concerns must be given center stage in the license renewal proceeding. NMC admits it cannot cost-effectively reduce an increasing safety-significant risk to the public through flux reduction, states that its current pressure/temperature analyses for the reactor vessel expire in 2014, and cannot adequately demonstrate in advance of the 20-year licensing period that the available alternatives can properly address and mitigate advancing embrittlement and the associated higher Pressure Thermal Shock values any better. The deep and disturbing history of embrittlement management and projection at Palisades compels the conclusion that 2006, not 2011 or 2014, must be the date at which NMC is required to provide a plan which conclusively demonstrates the ability of the company to sustain operations for the full 20 years of additional licensure. The adequacy of that plan would be the focus of an adjudication here, and it is that plan which the ASLB presently, and the NRC staff before it, have declined to require of NMC.

NMC currently relies on a complex re-analysis to assure safety margins in the physically-deteriorating reactor pressure vessel. The resulting labyrinth of smoke-and-mirrors computer models has been viewed skeptically by the NRC's own Advisory Committee on Reactor Safeguards. Petitioners suggest that it is unreasonable for the Applicant to forego

Flux Reduction programs for the extension period which might reasonably reduce the risk to public health and safety from a Pressure Thermal Shock accident potentially occurring during the same license extension period unless NMC can show, *now*, with high confidence that alternative approaches, *including* the option of annealing the vessel,⁸ can adequately preserve required public safety margins in the 20-year extension period. It is therefore unreasonable and unacceptable for the Applicant to foreclose options within its established management strategy for economic reasons without first being required to demonstrate with confidence that the proposed alternatives adequately provide for the public's protection from this significant ongoing and potentially worsening age-associated safety issue.

In its final remarks in denying the embrittlement contention for hearing, the ASLB scolds Petitioners for not requesting an extension to research and develop relevant technical and legal issues and arguments or to obtain access to experts or counsel competent in NRC practice. Order p. 41. It is easy, at this end of the adjudicatory process, to suggest that such requests from the public might have been greeted with compassion and sensitivity. But that is belied by the ASLB's record of time management in these proceedings.

The panel moved the originally-schedule prehearing conference dates back nearly three (3) weeks, from October 14 to November 3, 2005 to accommodate the religious requirements of the lead attorney for the Staff.⁹ Following the November 3-4 prehearing conference, the Board granted itself an indeterminate period of several weeks, into December 2005, by which time to issue its final ruling. On December 21, 2005, the ASLB ordered Petitioners to provide a brief immediately after the holidays on the status of their embrittlement

⁸There is no safe, proven annealing process.

⁹A request to which Petitioners had absolutely no objection.

expert, occasioned by an email to the Board by the NRC staff counsel. Following submission of Petitioners' filing on the expert controversy, the Staff and NMC were given a week to respond, pushing any decision on the overall merits deeper into January 2006. Then, at the end of February 2006, the Board again granted itself an indeterminate period of time into March 2006 to issue its "Memorandum and Order" which, of course, was ultimately issued on March 7.

Any damage from Petitioners' five-week delay (between the August 8 and September 16 filings) which is attributed to the belated completion of these proceedings or the fulfillment of the lockstep mandate of the Nuclear Regulatory Commission to complete milestones according to a strict calendar has been more than offset by the time delays caused by case events beyond the control of Petitioners. Yet the Board's whipping-children for delays remain the Petitioners, who produced relevant and detailed information "too late" - 5 weeks into the license extension case - to have it considered. The ASLB uses Petitioners' supposed delay to justify the exclusion of relevant and detailed information about the "very serious" topic of embrittlement. The ASLB has devoted a lot of time to building a fortress of compliance with process to the detriment of considering potentially inconvenient facts which happen not to have arrived at a technical, rule-prescribed interval.

Such is the method by which form not merely triumphs over, but supplants, substance before the Nuclear Regulatory Commission. Rather than compelling NMC to affirmatively prove the physical capability of Palisades to operate for a full 20 years beyond 2011 (a proposition which Petitioners submit is metallurgically and financially specious), the ASLB ascends the ramparts to stave off the question. Rather than having the NRC staff explain the agency's culpability in the methodological *legerdemain* which contrives never to see firm embrittlement mileposts, the ASLB instead flogs Petitioners for belatedly introducing relevant

detail the tragic flaw of which has nothing to do with its content and all to do with the timing of its introduction.

This result is unfair, unjust, disparages the public interest in safety, flies in the face of even the NRC's present draconian regulations, and should be reversed by the Commission. The embrittlement contention should be sent back to the ASLB for adjudication.

Appeal of Dismissal of Contention No. 3 (The Palisades reactor has no place to store its overflowing irradiated nuclear fuel inventory within NRC regulations)

The licensing board ruled Contention 3 inadmissible because it is outside the scope of a license renewal proceeding for not addressing an age-related component, and because 10 CFR § 2.206 supposedly affords Petitioners a remedy to complaint about two (2) concrete dry cask storage facilities which unaccountably do not meet NRC engineering specifications. Order, pp. 48-49.

Petitioners demonstrated using the expert calculations of Dr. Ross Landsman, formerly of the NRC staff, that Palisades' dry cask storage arrangements violate NRC regulations. Neither the old pad nor the more recently-constructed concrete pad for holding irradiated fuel casks at Palisades conform with longtime NRC requirements for earthquake stability standards. The Affidavit of Dr. Landsman demonstrates that both of the existing pads were built on compacted sand and other subsurface materials, but dozens of feet above bedrock, and well above the ground elevation of the nearby nuclear power plant. Dr. Landsman, who had direct oversight role in the inspection of dry cask storage at Palisades when he worked at NRC Region III during the critical 1993-2005 period of dry cask storage installation and operation, concluded from his personal knowledge of the subsoil conditions that the older pad (the one nearer the lake) violates NRC liquefaction regulations under 10 CFR § 72.212(b)

(2)(i)(B)¹⁰, while the newer pad (further inland) violates NRC amplification regulations under the same regulations. Neither the older nor newer cask storage pads at Palisades plant were designed in consideration of the factors contained in the cited regulation. See Landsman Affidavit, ¶ ¶ 3-13.¹¹

Either violation, then, comprises an ongoing violation of 10 CFR § 72.212(b)(3).¹² This means that the cask storage pads *have violated NRC regulations since they were constructed, and in the absence of enforcement will continue to violate NRC regulations during the contemplated 20-year license extension, and beyond.*

The NRC considers the older pad to be in compliance with regulations and allows NMC to store high-level radioactive waste there,¹³ while the NRC is supposedly still trying to resolve through ongoing inspection, investigation, and analysis the status of the newer pad. During this period of supposed ongoing investigation, and despite evidence of apparent structural insufficiency, the NRC is prepared to let NMC store waste on the new pad in the face of these

¹⁰[The general licensee shall perform written evaluations, prior to use, that establish that]: Cask storage pads and areas have been designed to adequately support the static and dynamic loads of the stored casks, considering potential amplification of earthquakes through soil-structure interaction, and soil liquefaction potential or other soil instability due to vibratory ground motion.

¹¹The Landsman Affidavit appears in hard copy at pp. App. 3-a through 3-d of the "Petitioners' Appendix of Evidence in Support of Contentions."

¹²[The general licensee shall]: Review the Safety Analysis Report (SAR) referenced in the Certificate of Compliance and the related NRC Safety Evaluation Report, prior to use of the general license, to determine whether or not the reactor site parameters, including analyses of earthquake intensity and tornado missiles, are enveloped by the cask design bases considered in these reports. The results of this review must be documented in the evaluation made in paragraph (b)(2) of this section.

¹³Including the unloading, unmovable cask #4 at Palisades, loaded in June 1994 and shortly thereafter admitted by Consumers Power to be defective, having faulty welds. Now, eleven years on, Consumers has yet to unload the defective cask, because it technically cannot do so safely. And the configuration of the 18 to 19 dry casks currently stored on the older pad nearer Lake Michigan is such that the casks furthest back cannot be moved or unloaded until all other casks in front of them have been moved out of the way first. This situation increases the risks, making it very difficult to address emergencies involving certain casks in the configuration in a timely manner.

documented, unresolved safety concerns. The simple reality is, there is high likelihood that NRC inaction will make the noncompliant cask storage facilities of 2006 the older, less-compliant storage facilities of 2011-2031.

In 1994, Dr. Landsman, then an NRC Region III safety engineer and dry cask storage inspector overseeing Palisades, warned then-Commission Chairman, Ivan Selin that:

[I]f you use NRC-approved casks under Subpart K [of 10 CFR Part 72], the regulations are silent about the foundation material or the pad. Actually, it's the consequences that might occur from an earthquake that I'm concerned about. *The casks can either fall into Lake Michigan or be buried in the loose sand because of liquefaction. . . .It is apparent to me that NMSS [sic] doesn't realize the catastrophic consequences of their continued reliance on their current ideology.* (Emphasis added)

It is impossible to disconnect the dry cask storage pad problems from the proposed license extension. If both dry cask storage pads are ever finally deemed to violate NRC safety regulations and are barred from use, then where, exactly, would NMC store its bulging inventory of irradiated nuclear fuel? And where would the dozens of dry casks already loaded and stored on those defective pads be moved? The pads constitute aging-related or aging-affected facilities, since they have been obsolescent literally from the date of construction. Petitioners' contention is integral to the 20-year license extension period, since high-level radioactive waste is an inevitable byproduct of electricity production at the Palisades nuclear reactor and there will be several refuelings during the renewal period which will increase the usage of the concrete storage pads.

Petitioners urge reversal and remand of this issue to the ASLB for adjudication. In the alternative, the Commission presently having been put on notice of a potential serious safety issue rife with facial violations of NRC regulations, should assume jurisdiction and set this matter separately for adjudication pursuant to 10 CFR § 2.202 and 2.206.

CONCLUSION

The NRC license extension adjudicatory process is, at turns, reminiscent of a 19th-century children's novel coupled with a post-industrial existential dystopia. Within Petitioners' intervention, it was possible to be on time, but too late, to be superficially complete, but conclusively unfulfilled, as though one were in a novel by Kafka. The obligation to have the entirety of one's case marshaled as if for trial on the first day of the case, poised for its comprehensive and visceral deconstruction, brings to mind Alice in Wonderland: Through the Looking Glass. Just as the inevitability of embrittlement is somehow "obvious" but not remediable for want of just the right wording, linked to the proper documentation and served lukewarm at precisely the optimum moment, it is equally "obvious" that the concept of substantive justice is secondary to perfunctory, bloodless conformance to ironic standards. The notion that one can raise a contention of "very serious" import, yet be denied the opportunity to litigate it on its merits because the NRC Staff deigns ignore it on behalf of the general public, is anathema to the notion of justice. Humpty Dumpty would be pleased.

Petitioners respectfully pray the Commission reverse the ASLB decisions as to their First and Third contentions, and remand the same for a hearing on their merits.

Respectfully submitted for the Petitioners,

/s/ Terry J. Lodge

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)		
)		
NUCLEAR MANAGEMENT)	Docket No.	50-255-LR
COMPANY, LLC)		
)		
(Palisades Nuclear Plant))	ASLBP No.	05-842-03-LR

CERTIFICATE OF SERVICE

I hereby certify that copies of the "PETITIONERS' NOTICE OF APPEAL FROM ASLB DENIAL OF HEARING, AND SUPPORTING BRIEF" in the above-captioned proceeding have been served on the following through deposit in the NRC's internal mail system, with copies by electronic mail, as indicated by an asterisk, by U.S. mail, first class, as indicated by double asterisk, with copies by electronic mail, or by U.S. mail, first class, as indicated by triple asterisk, were delivered all parties at the following mailing addresses; all on this 17th day of March, 2006:

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