

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

8/15/80

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
COMMONWEALTH EDISON COMPANY)	Docket Nos. 50-237
(Dresden Station, Units 2 and 3))	50-249
		(Spent Fuel Pool Modification)

NRC STAFF ANSWER TO AMENDED STATEMENT OF CONTENTIONS
OF ATTORNEY GENERAL OF THE STATE OF ILLINOIS

On August 4, 1980, the Attorney General of the State of Illinois (Illinois) filed a statement of amended contentions in this proceeding.

INTRODUCTION

The Application of Commonwealth Edison Company (Applicant) for amendments to the Dresden 2 and 3 operating licenses was published in the Federal Register on August 11, 1978 (43 Fed. Reg. 35763). Illinois filed a timely petition for leave to intervene which the Staff agreed had demonstrated standing within the purview of 10 C.F.R. § 2.714 and Commission decisions. On August 4, 1980, Illinois submitted a statement of twelve amended contentions.

To be admissible as a contention in a Commission licensing proceeding, such contention must fall within the scope of issues set forth in the Federal Register Notice of Hearing in that proceeding and comply with the requirements of 10 C.F.R. § 2.714(b) 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, 20-21 (1974); Duquesne Light Co. (Beaver Valley

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Unit No. 1), ALAB-109, 6 AEC 243, 245 (1973); Northern States Power Co.
(Prairie Island, Units Nos. 1 and 2), ALAB-107, 6 AEC 188, 193 (1973).

10 C.F.R. § 2.714(b) requires that a list of contentions which intervenors seek to have litigated be filed along with the bases for those contentions set forth with reasonable specificity. A contention must be rejected where:

- (a) it constitutes an attack on applicable statutory requirements;
- (b) it challenges the basic structure of the Commission's regulatory process or is an attack on the regulations;
- (c) it is nothing more than a generalization regarding the intervenor's views of what applicable policies ought to be;
- (d) 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
- (e) it seeks to raise an issue which is not concrete or litigable.

Peach Bottom, supra, 8 AEC at 20-21.

The purpose of the basis requirements of 10 C.F.R. § 2.714 is to assure that the contention in question does not suffer from any of the infirmities listed above, to establish sufficient foundation for the contention to warrant further inquiry of the subject matter in the proceeding, and 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." Id.

From the standpoint of basis, it is unnecessary for the petition "to detail the evidence which will be offered in support of each contention." Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973). Furthermore, in examining the contentions and the bases therefor, a licensing board is not to reach the merits of the contentions. Duke Power Co. (Amendment to Materials License SNM-1773 - Transportation of Spent Fuel from Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-528, 9 NRC 146, 151 (1979); Peach Bottom, supra at 20; Grand Gulf, supra at 426.

Nonetheless, it is incumbent upon the Intervenor to set forth contentions which are sufficiently detailed and specific to demonstrate that the issues raised are admissible and that further inquiry is warranted, and to put the other parties on notice as to what they will have to defend against or oppose. This is particularly true in a proceeding involving a proposed license amendment where, as in the case of an operating license proceeding, a hearing is not mandatory, in order to assure that an asserted contention raises an issue clearly open to adjudication. Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 12 (1976); Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-183, 7 AEC 222, 226 n.10 (1974). It is to be noted that, where the Staff does not oppose the admission of a contention, it is not an indication of the merits of the contention, but merely that it may be susceptible of litigation within the limited scope of this license amendment proceeding.

CONTENTIONS

Contention A

- A. Applicant has not sufficiently demonstrated a need for the spent fuel pool storage expansion.
1. It has not been demonstrated that failure to grant the license amendment would compel shutdown of Dresden Units 2 and 3.
 2. There has been no demonstration that shutdown would adversely affect the community currently being served by Dresden Units 2 and 3. Applicant has not shown that its generating capacity cannot satisfy demand if Dresden Units 2 and 3 are shut down.
 3. No analysis has been performed of the costs of replacing Dresden 2 and 3 power output with power from existing fossil fuel plants.

The Staff opposes the admission of this contention. Unless the Intervenor can show that a significant environmental impact(s) will result from the proposed action, there is no obligation to prepare an environmental impact statement (EIS) under the National Environmental Policy Act. The Staff Environmental Impact Appraisal, evaluating the proposed action, concluded that no significant environmental effects will result from the modification and that an EIS need not issue. Therefore, the need to perform a cost-benefit analysis of the proposed action (which could encompass consideration of need for power), or to consider alternative means of power generation, is not present. See Portland General Electric Company (Trojan Nuclear Plant), ALAB-531, 9 NRC 263 (1979); Commonwealth Edison Company (Zion Station, Units 1 and 2) (Spent Fuel Pool Modification), LBP-80-7, 11 NRC 245 (1980).

Contention B

- B. Applicant has made no showing that it will be technically and financially capable of meeting the costs of eventual disposal of the waste resulting from the spent fuel that it intends to store in the proposed spent fuel racks.
1. Applicant should submit cost evaluations for handling, transportation, storage, disposal, and permanent surveillance of the spent fuel waste.
 2. Applicant should be required to provide a fund or security to cover the cost of waste disposal.

The Staff opposes the admission of this contention. Permanent waste disposal, including the transportation and storage away from the Dresden facility, and the costs thereof, is not within the limited scope of this proceeding. See Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2) (Proposed Amendment to Operating License NPF-4 to Permit Storage Pool Modification), ALAB-584, 11 NRC 451, 465 (1980).

Contention C

- C. The radioactive waste treatment system for the spent fuel pools has not been shown to be adequate for the proposed increase in spent fuel storage capacity.
1. The Application does not quantify the amounts of additional radioactivity to be expected from storage of the damaged and leaking fuel still in the Dresden Units 2 and 3 reactors.
 2. The Application gives no assurance that existing cleanup systems can handle additional radioactivity.

The Staff does not oppose the admission of this contention.

Contention D

- D. Since the Application and supporting documentation do not include anti-sabotage and security plans, there is not assurance that adequate protection exists for the additional fuel to be stored.

The Staff opposes the admission of this contention. The anti-sabotage and security plans for the facility are not dependent upon, nor affected by, the amount of spent fuel stored in the pool. See Commonwealth Edison Company (Zion Station, Units 1 and 2) (Proposed Amendment to Permit Storage Pool Modification) LBP-80-7, 11 NRC 245, 283-84 (1980).

Contention E

- E. The Application and the NRC Staff's Safety Evaluation Report and Environmental Impact Appraisal are inadequate in that they do not discuss an accident such as actually occurred at the Three Mile Island Unit 2 facility, as it applies to the reracked Dresden spent fuel pools, or other possible accidents hitherto called "Class 9" (See 45 F.R. 40101, June 13, 1980, withdrawing Proposed Annex to 10 C.F.R. Part 50, Appendix D); there is no analysis of the consequences of such an accident, of their effect on the cost-benefit balance for the facility, or of measures to prevent or mitigate the occurrence of effects of such an accident. See NUREG/CR-0722, ORNL/NUREG/TM-287/RI "Fission Product Release from Highly Irradiated LWR Fuel"; See also Webb, R., "An Analysis of the Accident Hazards of Storing Highly Radioactive Spent Fuel Rods in Spent Fuel Storage Pools at Nuclear Power Plants. . .", April 3, 1979; and Webb, R., "Accident Hazards of Spent Fuel Storage at the Salem Nuclear Power Plant", February 1979 and April 1980.

The Staff opposes the admission of this contention in its present form. As drafted, it is devoid of basis or specificity as to the particular accident(s) Intervenor seeks to have considered here. No nexus is shown between any serious reactor accident(s) which Intervenor believes might occur, including an occurrence similar to the Three Mile Island Unit 2 event, and the proposed action of reracking the Dresden spent fuel storage pools. Absent this requisite showing, the proposed contention is inadmissible.

Contention F

F. Applicant has not provided adequate monitoring equipment in the spent fuel pool water to detect abnormal releases of radioactive materials from the increased numbers of spent fuel bundles. Absence of such monitoring and alarms could result in undue exposure to workers in excess of ALARA.

1. There is no description of monitoring devices, e.g., dedicated sippers and, therefore, no assurance exists that workers in each pool areas will have adequate warning of possible hazardous conditions.
2. In light of the proposed compaction and long-term storage of spent fuel the Applicant should clarify the monitoring system that is used in each pool area and its range of sensitivity, the frequency of released emissions, and the amount of radioactive materials emitted.

The Staff opposes the admission of this contention, as Intervenor fails to specify the manner in which the present monitoring equipment is inadequate, even assuming that increased radioactive releases from the stored fuel may occur.

Contention G

G. There is no assurance that the health and safety of workers in the spent fuel pool areas will be adequately protected during rack removal and installation. The Application does not supply adequate information to assess the occupational radiation dosage to workers involved in removing and installing racks and rearranging spent fuel in the pools.

The Staff does not oppose the admission of this contention.

Contention H

H. Applicant has not analyzed the effects of increased quantities of defective 7 x 7 fuel bundles being discharged to the Dresden spent fuel pools. They have not analyzed the possible reductions of worker exposures by grouping the defective fuel in one area and providing special devices such as hoods to collect and control the escaping gaseous radioactive material.

The Staff does not oppose the admission of this contention.

Contention I

- I. The Application does not show that the quality control and quality assurance programs of Applicant and its contractors are adequate to assure that tube and rack construction and the boron-10 loading of the Boral in the tubes will meet specifications.

The Staff does not oppose the admission of this contention.

Contention J

- J. The Application does not demonstrate that rack and tube packaging, transportation, and receipt inspections are adequate to prevent and detect transportation damage.

The Staff does not oppose admission of this contention.

Contention K

- K. Corrosion. The Application does not adequately assess the possibility of general corrosion and galvanic corrosion in the racks.
 1. The life expectancy of the Boral tubes is unsubstantiated.
 2. Swelling of the Boral in the tubes and its effect on removal of fuel rods have not been analyzed.
 3. The corrosion surveillance program is inadequate, and there is no plan for steps to be taken should corrosion be discovered in the racks.

The Staff does not oppose the admission of Parts 1 and 2 of this contention.

The Staff assumes that the introductory sentence of this contention is merely a predicate to the 3 subparts which follow, and is not intended to present a litigable issue. In the event that this assumption is incorrect, the Staff

opposes the admission of this portion of the contention as being vague and lacking in specificity. Similarly, the Staff opposes the admission of Part 3, as the purported inadequacy of the corrosion surveillance program is not alleged with specificity, as required by the Commission's regulations.

Contention L

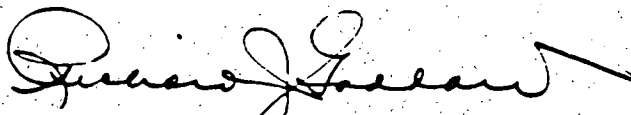
L. The Application should include analysis of residual stresses in the racks and development of minimum failure criteria for the racks.

The Staff does not oppose admission of this contention.

CONCLUSION

For the reasons set forth above the Staff opposes the admission of Illinois' Contentions A, B, D, E, F, and K(3). In the event that the initial sentence of Contention K is intended to present a litigable issue, standing alone, the Staff opposes its admission in this proceeding.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Richard J. Goddard", with a long horizontal flourish extending to the right.

Richard J. Goddard
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 15th day of August, 1980.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF ANSWER TO AMENDED STATEMENT OF CONTENTIONS OF ATTORNEY GENERAL OF THE STATE OF ILLINOIS" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 15th day of August, 1980:

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