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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
PUBLIC SERVICE ELECTRIC & GAS	)	Docket No. 50-272
COMPANY, et al.	)	(Proposed Issuance of
	)	Amendment to Facility
(Salem Nuclear Generating	)	Operating License
Station, Unit 1)	)	No. DPR-70)

LICENSEE'S RESPONSE TO MOTION TO REOPEN  
COLEMAN'S CONTENTIONS TWO AND SIX  
FOR RECEIPT OF NEWLY DISCOVERED EVIDENCE

Introduction

By Motion dated August 1, 1979, Mr. and Mrs. Alfred C. Coleman, Jr., intervenors in the captioned proceeding, asked that consideration of their Contentions 2 and 6 be reopened to include in the record of this proceeding an inspection report relating to certain spent fuel racks at the Monticello Nuclear Generating Station. As discussed below, Licensee, Public Service Electric & Gas Company, et al., opposes this request.

Discussion

The Colemans characterize their request as "reopening consideration of their Contentions Numbers Two and Six. . . ." <sup>1/</sup>  
The Nuclear Regulatory Commission has established stringent

1/ Motion at 1.

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showings by a movant who seeks reopening the record of a proceeding. The Atomic Safety and Licensing Appeal Board ("Appeal Board") discussed these criteria in the Wolf Creek proceeding.<sup>2/</sup>

As is well settled, the proponent of a motion to reopen the record has a heavy burden. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-359, 4 NRC 619, 620 (1976). The motion must be both timely presented and addressed to a significant safety or environmental issue. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973); id., ALAB-167, 6 AEC 1151-52 (1973); Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Units 1 and 2), ALAB-291, 2 NRC 404, 409 (1975). Beyond that, it must be established that 'a different result would have been reached initially had [the material submitted in support of the motion] been considered.' Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-227, 8 AEC 416, 418 (1974).

While technically the record in this proceeding is not closed, consideration of the Colemans' Contentions 2 and 6 has been completed. Therefore the standards for reopening should be applied. In any event, the Colemans have not justified receipt of the inspection document into the record at this time.

The Colemans have entirely failed to meet their burden with regard to the present motion. There is no indication

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<sup>2/</sup> Kansas Gas & Electric Company (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320, 339 (1978). See also Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 2), ALAB-486, 8 NRC 9213 where the Appeal Board gave further exposition to these criteria.

as to when the subject inspection report came into their possession or any reason given as to why they could not have attempted to obtain copies of such information at an earlier time either by discovery or otherwise. The date of the transmittal letter predates the first evidentiary session in this proceeding. The intervenors have entirely failed to show what significance this report has in this proceeding. As demonstrated below, it has no relevance, let alone significance.

The Colemans assert that "[c]onsiderable time and attention in these proceedings has [sic] been devoted to the high density spent fuel racks recently installed at the Monticello Nuclear Generating Station . . . ." <sup>3/</sup> Yet in their supporting statement, the Colemans have only supplied two references to any discussion of the racks at the Monticello facility. <sup>4/</sup> It is clear that, far from being a central matter in this proceeding, the performance of the racks at the Monticello facility is peripheral to the issues before this Board and only limited attention was given to the matter. <sup>5/</sup> The experience at the Monticello facility was raised almost entirely during cross-examination by the various intervenors.

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3/ Statement in Support of Motion at 1.

4/ Id. The second reference appears to be to Tr. 608 instead of Tr. 708.

5/ The Monticello racks were not designed or manufactured by Exxon Nuclear, the supplier of the Salem racks.

The Colemans have failed to show the relevance of the inspection report, Attachment A to their pleading. Initially, the only possible relevant section is Item 8 of Report No. 50-263/79-02 appearing on pp. 5-7. Even this section deals with procedures which, as the record of this proceeding demonstrates, are unrelated to the racks supplied for the Salem Unit 1 spent fuel pool.<sup>6/</sup>

The Monticello report speaks to reuse of cells which have evidently experienced some type of swelling. Each of the affected storage locations was re-sized "by vacuum and mechanical means."<sup>7/</sup> At Salem, were an empty cell to swell, the cell would be considered unavailable for use.<sup>8/</sup>

There are no plans to return such a cell to service. If a fuel cell at Salem which had a fuel assembly stored in it developed a leak, a completely different situation would arise. With a fuel cell stored inside, a fuel storage cell would not bulge beyond its elastic limit and would thus return to its original shape when pressure was removed by venting.<sup>9/</sup> No resizing "by vacuum and mechanical means" would be necessary.

As a final matter, it must be reiterated that there are substantial design differences between the spent fuel racks

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<sup>6/</sup> While the Statement in Support of Motion at 1 states that there are "numerous similarities between the new racks at Monticello and those proposed for use at Salem," no specifics are given.

<sup>7/</sup> Inspection Report 50-263/79-02 at 6.

<sup>8/</sup> Tr. 580, 605, 609.

<sup>9/</sup> Tr. 606.

at Salem and Monticello.<sup>10/</sup> One substantial difference is that extreme care has been taken to assure that the Salem spent fuel storage cells are completely sealed while the Monticello cells were not designed to be leak-tight.<sup>11/</sup>

Thus, there has been no showing of relevance upon which to base introduction of this document into the record. Nor has any showing been made as to the purported significance to the issues before this Board.

Even accepting the fact that 8 of the 676 fuel storage locations at Monticello (i.e., 1.18%) are not usable, there has been no showing that this has any significance to the present proceeding.<sup>12/</sup> The Colemans have failed to provide any basis for their statement that there has been a "substantial loss in cell availability" at Monticello or connected it in any way to show that there is any potential for such a "substantial loss" at Salem. Again, since the Licensee has not proposed to utilize empty cells which have

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<sup>10/</sup> The design differences were elicited during examination by counsel for the Colemans. See, for example, Tr. 457-9.

<sup>11/</sup> Tr. 437, 443, 626.

<sup>12/</sup> We are again constrained to point out that counsel for the Colemans has, at the least, used some sloppy draftsmanship in characterizing the testimony of Licensee's witness Eckhart regarding the use of vented cells to store fuel. The Colemans state that it was an "incorrect assertion" of Mr. Eckhart that vented cells at Monticello have subsequently been used to store spent fuel. Statement in Support of Motion at 2. Initially, Mr. Eckhart stated that it was his belief that vented cells had been used. Tr. 608. Secondly, the inspection report reveals that at least some of the cells which had bulged were available for use.

swollen, this is not an "unknown factor undercutting the confidence with which it can be concluded that reracking Salem One's spent fuel pool is the most prudent course of action . . . ." <sup>13/</sup> To the contrary, the record is clear that the proposed course of action is completely acceptable.

Conclusion

For the reasons discussed above, the motion should be denied and the requested document should not be admitted into the record.

Respectfully submitted,

CONNER, MOORE & CORBER



Mark J. Wetterhahn  
Counsel for the Licensee

August 31, 1979

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<sup>13/</sup> Statement in Support of Motion at 2. The Colemans also seemingly admit that the loss of serviceability of vented cells is not a safety concern.