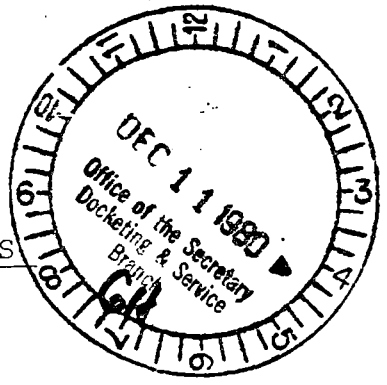

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY & LICENSING APPEAL BOARDS

IN THE MATTER OF	:	Docket No. 50-272 OLA (Spent Fuel Pool)
PUBLIC SERVICE ELECTRIC & GAS COMPANY, et al	:	INTERVENOR, TOWNSHIP OF LOWER ALLOWAYS CREEK'S BRIEF IN SUPPORT OF EXCEPTIONS (10 CFR 2.762)
(Salem Nuclear Generating Station, Unit 1)	:	

4 Dec 80

FACTS

This is an appeal from an Initial Decision granting the right to applicant, Public Service Electric & Gas Co, to increase storage capacity at the spent fuel pool at the site of its Salem Nuclear Generating Station, Unit #1.

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ARGUMENT

Exception #1:

DENIAL OF APPELLANT - TOWNSHIP OF LOWER ALLOWAYS CREEK (TOLAC) MOTION FOR ADDITIONAL ANALYSIS WAS ERROR

It is contended that the Atomic Safety & Licensing Board committed factual and legal error in rejecting the testimony of Dr. Alan S. Benjamin of Sandia Laboratories that further analysis could predict more precisely whether oxidation could propagate to older fuel and that calculations for such analysis could be performed. TOLAC made a motion that the additional analysis should be performed and the motion was denied by the Atomic Safety and Licensing Board. (TR.1493, line 4). (See Initial Decision, page 39, line 1:Tr.1483).

There is authority that additional evidentiary hearings should be ordered where there are unresolved issues. This occurred

in the matter of Northern States Power Co (Prairie Island Nuclear Generating Plant, Units 1 and 2) Docket Nos. 50-282 and 50-306, August 11, 1975, ALAB-284. In this case several unresolved issues including condensate demineralization, detectible leakage before tube failure, sufficiency of Eddy current surveillance, monitoring of secondary water chemistry and tube plugging criteria - were cause for reopening the record and ordering an additional evidentiary hearing.

Apparently, the Atomic Safety & Licensing Board reached the conclusion that even though Dr. Benjamin testified that further analysis could predict more precisely whether oxidation would propagate to older fuel, that such an analysis was not necessary in that the radioactive releases from older fuel would not be significant in comparison to radioactive releases from recently discharged fuel. While this may be true, Dr. Richard E. Webb's testimony on radioactive releases as well as the offered testimony of Dr. Frankhauser was excluded by the Atomic Safety & Licensing Board. More important, the critical question as to whether the radioactive releases in an enlarged pool would be greater than the radioactive releases in the pools originally designed remains unanswered.

The Atomic Licensing Appeals Board should remand the case to the Atomic Safety & Licensing Board and direct the record to be reopened and a further evidentiary hearing take place and order that the analysis indicated by Dr. Benjamin be performed. (See Initial Decision, page 39)

Exceptions #2,#3, and #4:

THE INITIAL DECISION WAS AGAINST THE WEIGHT OF THE EVIDENCE AND THE TESTIMONY OF DR. RICHARD E. WEBB AND DR. GEORGE LUCHAK:

The Initial Decision was in error and against the weight of the evidence and testimony in finding:

1) that the consequences of a gross loss of water accident in the spent fuel pool would not be greater in the proposed storage configuration as contrasted with the original design;

2) in finding that the proposed increase in spent fuel storage capacity at Salem Unit #1 would not significantly increase the impact on the human environment in the event of a loss of water accident, and

3) there was a reasonable assurance that the activities authorized by the requested amendments to the operating license could be conducted without endangering the health and safety of the public.

TOLAC submits that the testimony of Dr. Richard E. Webb and Dr. George Luchak were both persuasive that there would be significant consequences to the environment and safety and health of the public in event of an accident at the nuclear plant with it involving the potential additional consequences of an enlarged spent fuel pool as contrasted to the original design.

The testimony of Dr. George Luchak (Tr.918) and the testimony of Dr. Richard E. Webb (Tr. 1697) indicate that storage at an independent spent fuel storage installation (ISFSI) in a dry unpopulated climate was not adequately evaluated by the Licensee. In addition, questions of serious safety were raised. The Atomic Safety and Licensing Board rejects Dr. Webb's testimony in large part on the grounds that some of his statements are simply unsupported

assertions. However, the Atomic Safety & Licensing Board with paradoxical ardor embraces unsupported assertions that are made by the Staff. For instance, Mr. Pasedag testified that oxidation of older fuel assemblies would be limited (See Initial Decision, page 37 and page 38). This testimony is simply an assertion and entitled to no greater weight than the testimony of Dr. Webb in that Mr. Pasedag and Dr. Benjamin both stated that calculations that have not been done would be required in order to form an intelligent opinion.

Exception #5:

IT WAS ERROR TO HOLD THAT THE LICENSE AMENDMENT REQUESTED IS NOT A MAJOR COMMISSION ACTION SIGNIFICANTLY EFFECTING THE QUALITY OF THE HUMAN ENVIRONMENT.

It was legal error to find that the granting of the license would not be a major commission action and therefore there would be no requirement for an environmental impact statement under the National Environmental Policy Act (NEPA) of 1969, 42 USC,§4321, et seq. Reliance upon the Staff's Environmental Impact Appraisal and the Final Generic Environmental Statement on Handling and Storage of Spent Light Water Power Reactor Fuel, NUREG-0575 - August, 1979, was factual and legal error. The NRC and the Atomic Safety and Licensing Board in this case has ignored the requirements of NEPA, §102 (2)(c)(v), 42 USC,§4332 (2)(c)(v), in respect to permitting the expansion of spent fuel pools to permit long term storage of spent fuel at-reactor sites. This has been accomplished by the Nuclear Regulatory Commission doing an environmental analysis pursuant to 10 CFR, Part 51, 40 CFR, 1500.6 and 40 CFR, 42.801. This environmental analysis falls short

of the requirements of NEPA which would require an environmental impact statement and public participation.

The Final Generic Environmental Statement on Handling and Storage of Spent Light Water Power Reactor Fuel, NUREG-0575, is in no way compliance with NEPA in respect to discussing irreversible and irretrievable commitment of resources which should receive detailed analysis under NEPA. The pending proposed rulemaking (Waste Confidence Rulemaking PR-50,51- 44 FR61372) is merely indicative of the gap that has occurred in respect to the mandates of NEPA. The underlying assumption in the proposed rulemaking procedure is that there are no environmental impacts or problems associated with the storage of spent fuel at the reactor site during the licensing period of the reactor. The only question raised is whether the storage of the spent fuel beyond the licensing period of the reactor can be accomplished safely until disposal is available. Decisions to permit expansion of spent fuel pools which creates large amounts of nuclear waste which do require isolation from the environment are an irreversible and irretrievable commitment of resources which should receive detailed analysis under NEPA.

It is undisputed that questions involving storage and disposal of nuclear waste (spent fuel) pose serious concerns for health and the environment. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 538 - 39 (1978). Judge Bazelon of the Sixth Circuit stated in Natural Resources Defense Council, Inc. v. U.S. Nuclear Regulatory Commission, 547, F2d 633 (1976):

> "Decisions to license nuclear reactors which generate large amounts of toxic wastes requiring special isolation from the environment for several centuries are a paradigm of 'irreversible and irretrievable commitments of resources' which must receive 'detailed' analysis under §102(2)(c)(v) of NEPA, 42 USC §4332 (2)(c)(v). We therefore hold that absent generic proceedings to consider these issues they must be dealt with in individual licensing proceedings."

The above decision was not reversed on appeal, although other aspects of the decision were reversed.

TOLAC contends that NEPA requires a detailed analysis of the safety and health problems potentiated by reracking at Salem Unit #1 and #2. The original environmental impact statements for Salem Unit #1 and #2 at no time considered that reracking would take place. Rather, it was assumed that the spent fuel would be stored for a limited cooling period (150 days) and then transported to a reprocessing facility.

In the past the Nuclear Regulatory Commission has been fond of applying NEPA's "rule of reason" as to the possible consequences of actions that must be considered. The "rule of reason" was first enunciated in NRDC v. Morton, 148 U.S. App. D.C. 5, 458 F2d, 827 (1972) quoted with approval Vermont Yankee Nuclear Corp. v. NRDC, Supra,and Kleppe v. Sierra Club, 427 US 390 410n21 (1976). That rule requires a federal agency to direct its environmental inquiries as to events that are "reasonably probable" and not "theoretically possible". Using that rule, it has been justified that it is only theoretically possible that no site fuel repositories would be available for storage of spent fuel and that it is reasonably probable that such facilities will be available. The same rule

should also be applied to accident hazards. Since it has now admitted that Three Mile Island was a Class 9 Accident, we are no longer dealing with theoretically possibilities of serious accidents at nuclear plants - instead we are dealing with reasonably probable accidents that will occur in the future.

The NRC should face up to the legal responsibility of preparing a specific generic environmental impact statement which would deal with at-reactor storage of spent fuel which is taking place throughout the United States and will continue to take place for sometime into the future, or alternatively to prepare specific environmental impact statements in regard to each licensed reactor where expanded fuel storage is taking place.

Respectfully submitted,

CARL J. VALORE,
SPECIAL NUCLEAR COUNSEL FOR THE
TOWNSHIP OF LOWER ALLOWAYS CREEK

December 4, 1980

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

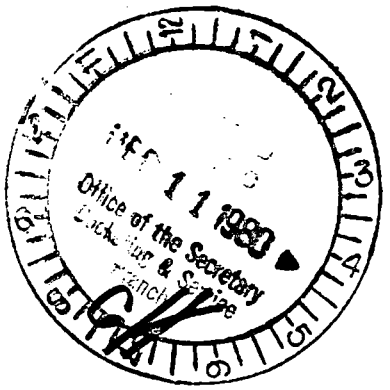
ATOMIC SAFETY & LICENSING APPEAL BOARDS

In the Matter of Public Service Electric & Gas Co., et al	:	Docket No. 50-272 OLA (Spent Fuel Pool)
(Salem Nuclear Generating Station, Unit #1)	:	CERTIFICATION OF MAILING

I hereby certify that the enclosed Township of Lower Alloways Creek's Brief in Support of Exceptions filed in the above captioned matter was mailed this 4th day of December, 1980 by deposit in the United States Mail, Northfield, N.J., Post Office, to those persons indicated on the attached mailing list.

CARL J. VALORE

December 4, 1980



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