UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

INTERVENOR TOWNSHIP OF LOWER ALLOWAYS CREEK'S ANSWER TO MOTION FOR SUMMARY DISPOSITION

Pursuant to 10 CFR, §2.749, the Intervenor, Township of Lower Alloways Creek (TOLAC) answers and denies Licensee's Motion for Summary Disposition.

1. TOLAC contends there are material facts as to which there exists genuine issues to be heard at an evidentiary hearing.

2. The Licensee in its Motion and Memorandum too strictly construes TOLAC's Contention #1. Consideration of alternatives to the proposed expansion of the spent fuel pool should be the responsibility of the Licensee. Those alternatives are not limited to storage at another reactor site or outside the United States or at Barnwell, South Carolinia. The suggested alternatives were not meant to be an exclusive list.

The Licensee should be required to demonstrate that it is unable to obtain a site and unable to construct a facility for storage of spent fuel to be generated by Salem #1 and Salem #2.

TOLAC contends that storage of spent fuel at-reactor-sites is potentially creating an unsafe condition and compromizing the safety and health of the public. The Licensee may be able to site and build a small storage pool facility in a dry unpopulated area of the United States, e.g., a desert. Such a site would be considerably more safe in that it would eliminate the possibility of:

a) An reactor accident of the Class 9 type that could involve the spent fuel pool, and

b) in the event of a spent fuel accident which would breach the containment, a dry climate would minimize the danger to the safety and health of the public from stronium 90 and other radioactive elements.

3. TOLAC's contention #3 is to focus on the problem of incremental decision making arising out of expendiency which often creates environmental problems which then must be dealt with in a crisis context - this is the very problem of the reracking application. To permit enlargement of the spent fuel storage capacity without considering the question of storage from other units perpetuates the cycle of incremental decision making of unsafe and unreasoned approaches which perpetuates rather than avoids environmental problems and dangers to the safety and health of the public.

Factual testimony would be taken at an evidentiary hearing on the existence of alternatives as well as the question that an alternate other than expansion may be a statutory regulatory responsibility pursuant to 42 U.S. Code §5877. The question of safety and health of the

public is paramount. The ramification of storing 2,340 fuel assembly cores at Salem 1 and Salem 2 in close proximity to the Salem 1 and Salem 2 reactors and the Hope Creek 1 and 2 reactors all within a 17 year period may be creating a serious and unsafe condition which has not been the subject of any environmental impact statement or detailed analysis. The Northern States Power Company (Prarie Island Nuclear Generating Station 1 and 2) ALAB 455 7 NRC 41 (1978) is not controlling. That case held that in the evaluation of a proposed expansion of the spent fuel pool neither the NRC Staff nor the Licensing Board need concern itself with the matter of the ultimate disposal of the spent fuel. The case did not go so far to say that reracking applications were to be approved regardless of potential environmental consequences - any other holding would be tantamount to saying that The Northern States Power Company means there can be no intervention or presentation of any contentions in any reracking case - such is not the law.

4. The mere fact the Licensee and the staff of the NRC have filed an environmental impact appraisal to the effect that expansion of the storage capacity of spent fuel would have a negligible environmental impact is not dispositive of whether alternatives have been evaluated from an environmental context as required under the National Environmental Policy Act, 42 U.S.C. §4321, et seq. The problem of nuclear spent fuel waste was first addressed by the Federal Courts in Natural Resources Defense Council, Inc. v. United States Nuclear Regulatory

Commission, et al, 547 F2d 633 (CADC 1976). The Court held:

> "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 U.S. C. §4332(2) (C) (v). We therefore hold that absent effective generic proceedings to consider these issues, they must be dealt with in individual licensing proceedings."

Even though the Supreme Court 98 S.Ct. 1197 - 1978 reversed the Natural Resources Defense Council, Inc. v. United States Nuclear Regulatory Commission, Supra. - the reversal did not apply to the above holding since the NRC conceded this point on Appeal. It is interesting to note parenthetically that the NRC's final environmental impact statement in Vermont Yankee was quoted as footnotes #15 and #16 in the Circuit Court of Appeals decision:

> "Moreover, the 'reason for being' of the agencies administering the Atomic Energy Act of 1954 has never been unlimited development of civilian nuclear power without regard to the costs or risks. The Congressionally declared purpose is only to 'encourage widespread participation in the development and utilization of atomic energy for peaceful purposes to the maximum extent consistent with . . . the health and safety of the public.' 42 U.S.C. §2013(d) (1970)
>
> No one suggests that the two sentence statement in the Vermont Yankee Final Environmental Impact Statement is adequate to satisfy §102(2)(c). It reads:
> 'Long-lived radioactive materials will be produced by fission of nuclear fuel in the core of the reactor

> and neutron activation of reactor parts near the core. The eventual disposal and storage of radioactive materials will require a certain amount of space probably in an area remote from the plant, for a very long period of time and could for all practical purposes be considered as an irreversible commitment of resources" (emphasis supplied)

One must be adroit to explain the incongruity in environmental thinking by the NRC wherein one final environmental impact statement opinions the storage of spent fuel in an area remote from the reactor and now we come to storage at the reactor site which is appraised as having no significant environmental effects.

5. There should be an evidentiary hearing on the issue as to how thoroughly the alternatives have been evaluated from a cost and environmental context.

6. An affidavit filed in support of this answer indicates amended contentions are being prepared for filing.

7. The Supreme Court has held it is the party seeking summary disposition and not the parties opposing it which has the burden of showing the absence of genuine issues as to any material fact. Adickes v. Kress & Co. 398 U.S. 144, 157 (1970).

A summary judgment procedure is neither a method of avoiding the necessity of proving one's case nor a clever procedural gambit whereby a burden can be vested to the

adversary. United States v. Dibble, 429 F2d 598, 609 (9th Cir. 1970).

The Licensee or the proponent of an Order has the burden of proof, 10 CFR §2.732.

INTERVENOR TOWNSHIP OF LOWER ALLOWAYS CREEK'S STATEMENT OF MATERIAL FACTS AS TO WHICH THERE ARE GENUINE ISSUES TO BE HEARD

1. Alternates to enlargement of the spent fuel racks by dense storage are a matter of dispute. Particularly, the failure of the NRC and the Licensee to perform adequate environmental impact assessments.

2. Transhipment or utilization of capacity at Salem 1 and Salem 2 spent fuel assemblies from other than those reactors is still a factual issues unless the Licensee is willing to have an Order entered precluding and prohibiting such transhipments and utilization.

Respectfully submitted,

THE TOWNSHIP OF LOWER ALLOWAYS CREEK

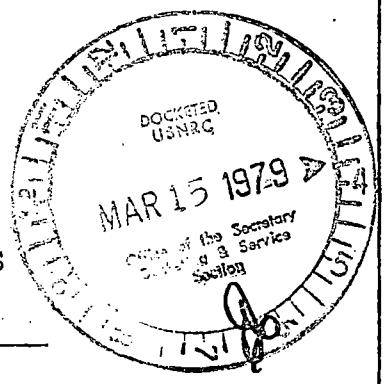
BY: _____
CARL VALORE, JR., Special Nuclear Counsel

March 12, 1979

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
) Docket No. 50-272
PUBLIC SERVICE ELECTRIC & GAS)
COMPANY,
(Salem Nuclear Generating)
Station, Unit 1)
)

RELATED CORRESPONDENCE



THE TOWNSHIP OF LOWER ALLOWAYS CREEK'S
AFFIDAVIT IN SUPPORT OF ITS ANSWER
TO MOTION FOR SUMMARY DISPOSITION

Samuel E. Donelson, of full age, upon his oath deposes and says:

1. I am the duly elected Mayor of the Township of Lower Alloways Creek.

2. On June 22, 1978, the Township of Lower Alloways Creek retained Carl Valore, Jr., as special nuclear counsel.

3. On March 9, 1979, drafts of amended contentions were submitted for the Township Committee's consideration and authority was given to Carl Valore, Jr. to prepare and file amended contentions.

SAMUEL E. DONELSON

Sworn to and subscribed
to before me this 9th day
of March, 1979.

Notary Public of New Jersey
Alloways Creek

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

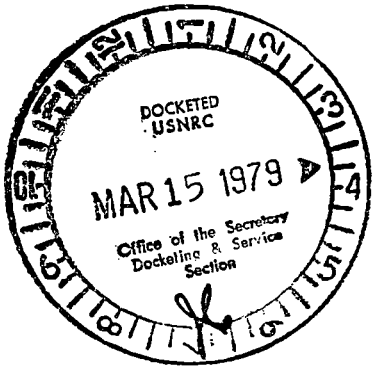
Before the Atomic Safety and Licensing Board

In The Matter of :

PUBLIC SERVICE ELECTRIC : DOCKET NO. STN-50-272

& GAS CO. :

(Salem Generating Station Unit #1) : RELATED CORRESPONDENCE



CERTIFICATE OF SERVICE

I hereby certify that copies of TOLAC's Answer to Licensee's Motion for Summary Disposition in the above captioned matter have been served upon the attached list by deposit in the United States mail this 12th day of March, 19 79

CARL VALORE, JR., Special Legal Coun
TOWNSHIP OF LOWER ALLOWAYS CREEK

Dated: March 12, 1979

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