

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

LICENSEE'S ANSWER TO
AMENDED "REQUEST FOR A FORMAL ADJUDICATORY HEARING
OR PETITION FOR LEAVE TO INTERVENE"
OF THE SUN PEOPLE

Counsel for Public Service Electric and Gas Company, Licensee in the captioned proceeding, has received an amended "Request for a Formal Adjudicatory Hearing or Petition for Leave to Intervene" by The Sun People ("Amended Petition"), which was dated April 3, 1978.^{1/} A request for an adjudicatory hearing relating to a request to increase fuel storage capacity for Salem Nuclear Generating Station, Unit 1, was submitted by Mrs. Ruth Fisher on behalf of The Sun People ("Petitioner") on March 9, 1978. On March 21, 1978, "Licensee's Answer to 'Request for a Formal Adjudicatory Hearing or Petition for Leave to Intervene' of the Sun People" ("Licensee's Answer") was filed in opposition

^{1/} This document, like the original, contains no certificate of service. It should be noted that the document while being dated April 3, 1978, was not notarized until the next day.

to the request, inasmuch as neither the interest nor contention requirements of 10 C.F.R. §2.714 had been met. The Sun People's Amended Petition still fails to meet the Nuclear Regulatory Commission's ("NRC" or "Commission") requirements for intervention and should be denied.^{2/} In order to avoid repetition in this answer, Licensee will incorporate its previous answer, by reference herein, and will reference sections of that document, as appropriate.

INTEREST

In its amended pleading, Petitioner seemingly admits that it has not established the requisite interest of an organization with respect to this particular issue.^{3/} With regard to establishing interests through its membership, Mrs. Fisher admits that "I do not live in the immediate vicinity of the plant ..."^{4/} While she states that "I have in fact been attracted and incensed by educational advertisements for the 'Second Sun' [a ferry boat once utilized

2/ In addition, we wish to preserve our position that the Amended Petition is not permitted under the Commission's rules and should be stricken. See "Licensee's Answer to 'Petition for Leave to Intervene by the Township of Lower Alloways Creek,'" dated March 21, 1978, in the captioned proceeding at pp. 8-9.

3/ Petitioner states that "if the goals and concerns of an organization with respect to a particular issue will not suffice to confer standing to participate as a party then the NRC Rules of Practice desperately need revision." See Amended Petition at 2. See Licensee's Answer at pp. 3-5 for a discussion of the requirements for a demonstration of an organization's interest in NRC proceedings.

4/ Amended petition at p. 2.

as an information center], " she makes no demonstration that her interest will be affected by this particular proceeding.^{5/} In fact, she states "the boat and signs may have been removed now that the plant is operating ... " and, therefore, even if there were some element of interest in the past, no present interest remains. While she states that she "may be affected by low-level radiation from the site," she provides no particularization as to how she, at a distance of over 40 miles, will be affected by an increase in the number of fuel elements stored.

Petitioner has not demonstrated in the Amended Petition an interest that will be affected by this limited proceeding and, therefore, the request for a hearing should be denied.

CONTENTIONS

Petitioner still has not met the "contention" requirement of 10 C.F.R. §2.714. In this regard, the Supreme Court recently stated in Vermont Yankee Nuclear Power Corp. v. NRDC, 46 L.W. 4301 (April 3, 1978), with regard to an NRC proceeding that "it is still incumbent upon intervenors who wish to participate to structure their participation so that it is meaningful, so that it alerts the agency to the intervenors' position and contentions. (46 L.W. 4309)" The

^{5/} A list of the members of "The Sun People," or specific authorization for intervention, still has not been provided.

Court added that "administrative proceedings should not be a game or a forum to engage in unjustified obstructionism by making cryptic and obscure reference to matters that 'ought to be' considered" Id.

As discussed in Licensee's Answer, the "contention" numbered 1 remains a totally unparticularized assertion, lacking in specificity. There is no nexus between this contention and the requested licensing action, an increase in the amount of spent fuel stored. The time to have considered low-level radiation from the operation of Unit 1, if at all, was prior to the issuance of an operating license for that unit. We further submit that this contention is a challenge to 10 C.F.R. Part 20 and 10 C.F.R. Part 50, Appendix I, and prohibited by 10 C.F.R. §2.758.

Contention 2 apparently still attempts to raise the question of long-term storage which, as discussed in Licensee's Answer at page 9, is outside the scope of possible issues in this proceeding. If intended as a challenge to the safety of the type of storage proposed, it completely lacks specificity.

Contention 3, which relates to sabotage, still lacks specificity as far as the limited issue before this Licensing Board. In Paragraph 3, the Petitioner alleges that

the issue of the consequences of sabotage have not been addressed, in its view. Petitioner does not show how an increase in the number of fuel elements stored affects the matter of industrial security.

Besides suffering from a lack of specificity, this contention misses the point. The question of the Licensee's compliance with the requirements of §73.55 relating to requirements for physical protection of nuclear power reactors against industrial sabotage is not at issue here. Conformance with that regulation is designed to provide sufficient security against the threat of sabotage to any part of the facility. Whether permission to store additional fuel in the pool is granted or not, the requirements with regard to preventing access to the fuel pool are the same. Because the NRC requirements regarding industrial security must and will be met, the consequences of sabotage need not be further considered. Therefore, Paragraph 3 does not represent a valid contention and its consideration would be tantamount to an attack on Commission regulations prohibited by 10 C.F.R. §2.758.

As discussed in Licensee's Answer at page 10, the question of the handling of storage or the reprocessing of radioactive waste, the subject matter of Paragraph 4, is not

at issue here and cannot be considered by the Licensing Board. To reiterate, Licensee's present request does not encompass permanent storage at this site.

For the foregoing reasons, no valid contention has been stated.

CONCLUSION

As discussed above, the petition of The Sun People, as amended, should be denied.

Respectfully submitted,

CONNER, MOORE & CORBER



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OF COUNSEL:

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Dated: April 14, 1978