

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 FOR RECONSIDERATION
OF COLEMANS' CONTENTION NO. THIRTEEN

On August 2, 1979, Mr. and Mrs. Alfred C. Coleman, Jr., intervenors in the captioned proceeding, moved to reopen consideration of their Contention 13 which had previously been dismissed by the Atomic Safety and Licensing Board as a result of a motion for summary disposition filed by the Licensee. In the instant motion, the Colemans attempted to tie a number of different and seemingly unconnected matters to this contention in an attempt to have these matters heard by the Licensing Board. As discussed below, the motion is without merit and should be denied.

Initially, the Intervenor have given no justification for filing their request for reconsideration at this late stage. Contention 13 was dismissed four months ago.^{1/} The

^{1/} Order dated April 30, 1979 at 12-19.

request for reconsideration of the dismissed contention is based upon the Intervenor's legal viewpoint regarding the Commission's "as low as reasonably achievable" standard. Their argument as to their legal position and the scope of their contention should have been articulated in response to the Licensee's summary disposition motion. This motion is clearly inexcusably late.

To briefly deal with the legal issue raised, it is clear that Appendix I to 10 C.F.R. Part 50 specifically controls the releases of radioactive material from light water nuclear power plants licensed pursuant to 10 C.F.R. Part 50, Appendix I. This Appendix, arrived at after an extensive rulemaking proceeding, is the Commission's expression of numerical guides for design objectives and limiting conditions of operation to meet the "as low as reasonably achievable" criterion. In fact, in Section I, thereof, the Commission states that "[d]esign objectives and limiting conditions of operation conforming to the guidelines of this Appendix shall be deemed a conclusive showing of compliance with the "as low as is reasonably achievable" requirements of 10 C.F.R. 50.34a and 50.36a [footnote omitted]." It is clear that contention 13 relates entirely to an asserted increase in the public's exposure to radiation from the increase in storage capacity for spent nuclear fuel. Thus, the Board was entirely correct in dismissing Contention 13.

Now, seemingly for the first time and despite its clear language, the Coleman's seek to transform this contention into one which relates to consideration of alternatives and occupational exposure. These matters are clearly not within the purview of Contention 13.^{2/}

In the remainder of the brief, the Colemans argue inconsistently that PSE&G must "evaluate whether use of re-racked Unit Two exclusively maintains radiation exposures as low as is reasonably achievable,"^{3/} that the procedure adopted by the Board to permit the Staff to supply information requested by it is some type of "ex parte" manner,^{4/} and that the record should remain as is.

The Licensee submits that these arguments are premature.^{5/} The Licensee agrees, however, that the information

^{2/} The intervenors argue that the Licensees must, without reference to any other factors, select the alternative that produces the lowest occupational exposure. There is no basis for this shown under NEPA, the NRC's implementing rules and regulations or 10 C.F.R. §20.1 which defines the "as low as reasonably achievable" standard.

^{3/} The first footnote of the Statement in Support of Motion on p. 5. It is paradoxical that intervenors would push to compare occupational doses associated with changing the racks in a contaminated environment with shipment of spent fuel to Salem Unit 2. But for these proceedings, the changeover to the new racks would have been done in an uncontaminated state with no exposure involved.

^{4/} Statement in Support of Motion at 6-7.

^{5/} We also would take exception to a number of characterizations of the testimony of witnesses and statements of counsel made on the record of the proceedings by counsel for the Colemans. Several have been taken out of context or unwarranted inferences have been made. For example, the Colemans' counsel proclaims that the Board "was in substantial agreement with the Colemans' interpretations of the licensee's obligation under 10 C.F.R. Appendix I and 10 C.F.R. 20.1." Surely counsel must recognize that one cannot divine any position of the Board based upon questions asked during the course of a proceeding.

requested by the Board should be made part of the record of this proceeding. To facilitate this, the affidavit of Robert Douglas which presents information on which certain of the Staff's information is based is attached for incorporation into the record. With this information, we believe that it is clear that transshipping to Unit 2 has substantially higher occupational doses associated with it than does reracking at Unit 1. Since this information is being submitted based upon a request by the Board, we submit that any additional examination be permitted only if a showing in writing is made that establishes a substantial challenge to the methodology and conclusions contained therein. We submit, in that these questions originated with the Board, the Board would be well within its discretion to require such a showing.

As a final matter, the Colemans complain that they had insufficient time to explore the effect of capacity factor on fuel discharge. Initially, as far as the asserted effect of capacity factor on discharge, that could have and should have been explored first during the discovery phase of this proceeding and then during their turn for cross-examination of the witnesses addressing Lower Alloways Creek Township Contention 1.^{6/} The data which the Colemans seek to utilize (or information very similar to it) was available

^{6/} In fact, the relationship between capacity factor and the number of fuel elements discharged was explored on the record (Tr. 1110-1).

well before the evidentiary hearing in this matter. No good cause has been shown to permit further examination. Counsel for the Colemans was given full opportunity to cross-examine regarding the data concerning the estimate of the number of fuel elements discharged. Licensee would again note that the Colemans have no contention in this area and even dismissed Contention 13 bears absolutely no relationship to this data.

Conclusion

For the above stated reasons, the Colemans' motion should be denied.

Respectfully submitted,

CONNER, MOORE & CORBER



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August 31, 1979