

June 26, 1979

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

LICENSEE'S ANSWER TO MOTION BY INTERVENORS, COLEMAN,
TO COMPEL SUPPLEMENTATION OF ANSWERS TO
INTERROGATORIES BY LICENSEE

On June 26, 1979, the Public Advocate of New Jersey, counsel for the intervenors, Mr. and Mrs. Alfred C. Coleman, Jr., in the captioned proceeding, moved the Atomic Safety and Licensing Board pursuant to 10 C.F.R. §2.740(c) to compel supplementation of responses to certain interrogatories previously promulgated to the Licensee, Public Service Electric and Gas Company, et al. As discussed below, such motion should be denied.

As identified by the Colemans, the interrogatories for which supplementation is requested are Nos. 1, 3 and 6, presumably of the Colemans' interrogatories dated November 21, 1978. These interrogatories read as follows:

Interrogatory 1

1. At p. 2 of the Safety Analysis, the licensee described the alternatives which were considered and "determined to be unsatisfactory" for a variety of reasons.

Please describe the changes, if any, which have taken place in the status of spent fuel reprocessing and the availability of the facilities of the General Electric Company and Nuclear Fuel Services available insofar as they relate to away from reactor ("AFR") alternatives. For example, have the facilities applied for expansion of spent fuel storage? Will these facilities be available for reprocessing or AFR storage? If so, when? If not, why not?

1(a). Please explain the basis for the statement (bottom of p. 2) that "storage in the existing racks is possible, but only for a short period of time." How long? What factors and assumptions underly the time of availability, (e.g., fuel burnup, capacity factor of the unit, transshipment, etc.)?

1(b). Has the licensee considered the alternative in the intervenors' contention 9(D), "ordering the generation of spent fuel to be stopped or restricted", (e.g., operation of the unit with existing racks until an offsite AFR alternative is available.) If so, please describe in full. If not, why not?

Interrogatory 3

Please provide a full update of the licensee's plans for discharge of spent fuel, the first batch of which is planned for discharge in January, 1979 (p. 3).

Interrogatory 6

What increase would occur in radiation levels in the storage water of the spent fuel pool in the event that the licensee's application is granted? (see p. 7)

6(a). What increase in radioactive materials and in radiation levels would occur in the coolant water filters? What increase would occur in the screens, traps, drains and pipes? Please provide all relevant calculations and the basis therefore.

6(b). Please explain the statement at p. 8 that "the amount of corrosion products released into the pool during any year would be the same regardless of the storage capacity of the pool," assuming increased compaction and several years of discharged fuel?

The Licensee's responses to these interrogatories were forwarded to the Public Advocate on December 11, 1978. A brief review of the interrogatories and answers reveals that there is no relationship between them and the damage to the grid straps noted in the letter dated June 25, 1979 to the Board and parties from counsel for the Licensee. To date, the Public Advocate has never claimed that Licensee's responses were, in any way, inadequate or nonresponsive to its interrogatories.

Section 2.740(e)(2) requires supplementation in the following circumstances: ^{1/}

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (i) he knows that the response was incorrect when made, or (ii) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

These circumstances clearly do not exist in this case. It can be seen that these interrogatories and the responses

^{1/} Section (1) which regards updating of the identity and location of persons having knowledge of discoverable matters and expert witnesses has no applicability here. Section (3) here is also not applicable inasmuch as no duty to supplement has been imposed by order of the Board or agreement by the parties.

have no relation to the grid strap problem. Aside from a general reference to §2.740(e), the Public Advocate fails to assert in what way a prior response was incorrect when made or that a knowing concealment exists. In an absence of such a showing and considering the information related to the Licensing Board and parties on June 25, 1979, it is clear that these interrogatories need not be supplemented.

Therefore, the Public Advocate's motion should be denied.

Respectfully submitted,

CONNER, MOORE & CORBER

A handwritten signature in cursive script, appearing to read "Mark J. Wetterhahn".

Mark J. Wetterhahn
Counsel for Licensee

July 6, 1979

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)
)
PUBLIC SERVICE ELECTRIC AND 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 ANSWER TO "INTERVENORS COLEMANS' MOTION
FOR RECONSIDERATION OF DISMISSAL OF COLEMANS'
[CONTENTION] NO. SEVEN"

On June 25, 1979, the Public Advocate of New Jersey, representing Mr. and Mrs. Alfred C. Coleman, Jr. in the captioned proceeding, moved for reconsideration of dismissal of the Colemans' Contention 7 by this Atomic Safety and Licensing Board ("Board"). ^{1/} As grounds for reconsideration, the Public Advocate cites a decision of the U. S. Court of Appeals for the District of Columbia Circuit, Minnesota v. NRC, Nos. 78-1269, 78-2032, (D.C. Cir. May 23, 1979). As discussed below, Licensee, Public Service Electric and Gas Company, et al., opposes the motion for reconsideration.

It is undisputed that the Court of Appeals for the District of Columbia Circuit has remanded the two cases pending before it to the Nuclear Regulatory Commission ("NRC" or "Commission") for further action regarding a

^{1/} The Board's May 24, 1978 Order Following Special Pre-hearing Conference denied the Colemans' proposed Contention 7.

determination whether offsite spent fuel storage would be reasonably assured in the future or, if not, whether there is reasonable assurance that the fuel can be stored safely at the reactor site.^{2/} Moreover, as the Public Advocate admits, the Commission has not instructed the various atomic safety and licensing boards whether or how they must implement the D. C. Circuit's mandate^{3/} nor has it taken any other action. It is also beyond dispute that the manner of exploration of this question was left to the discretion of the NRC.^{4/}

The Public Advocate would have this Board usurp the prerogatives of the Commission by immediately "allow[ing] the parties herein the opportunity to present evidence on the issue of the safety, environmental and health consequences of long-term nuclear waste storage on Artificial Island."^{5/} The Public Advocate's motion to permit such evidence to be taken should be denied. Until the Commission has instructed this Board to consider the remanded matters in this proceeding, the Board is without jurisdiction to

2/ Colemans' brief at 1. It is also true that in those proceedings the court did not set aside or stay the challenged license amendments.

3/ Id. at 2.

4/ Id.

5/ This statement of the matters remanded leaves out an essential element of the remand and is in direct conflict with the statement of the issue by the Court of Appeals found on p. 1 of the Colemans' brief.

consider any aspect of the remanded question on its own initiative. Because of the remand's generic nature, it may very well be that the Commission decides not to have this matter considered in individual adjudicatory proceedings and, instead, elects to have it considered in an ongoing or new generic proceeding. The decision of the D. C. Circuit clearly leaves such an alternative open to the Commission.^{6/} In such an event, no further consideration by this Board may be necessary.

With regard to the "manifest injustice"^{7/} alleged by the Public Advocate, such assertions are speculative at best. In any event, any claim of injury and request for redress must be directed to the Commission, not to this Licensing Board. To repeat, it is quite possible that intervenors will be required to pursue this matter through participation in a generic rulemaking proceeding, and not in the present proceeding.

^{6/} Minnesota v. NRC, slip op. at 11, 15. See also Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 535 n.13 (1978); Union of Concerned Scientists v. AEC, 499 F.2d 1069 (D.C. Cir. 1974); Nader v. Ray, 363 F.Supp. 946 (D.C.C. 1973).

^{7/} Colemans' brief at 3.

Under these circumstances, the motion for reconsideration should be denied.

Respectfully submitted;

CONNER, MOORE & CORBER

A handwritten signature in black ink, appearing to read "Mark J. Wetterhahn", with a long horizontal flourish extending to the right.

Mark J. Wetterhahn
Counsel for the Licensee

July 6, 1979

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)
)
PUBLIC SERVICE ELECTRIC AND 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)

CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Answer to 'Intervenors Colemans' Motion for Reconsideration of Dismissal of Colemans' [Contention] No. Seven" and "Licensee's Answer to Motion by Intervenors, Coleman, to Compel Supplementation of Answers to Interrogatories by Licensee," both dated July 6, 1979, in the captioned matter, have been served upon the following by deposit in the United States mail this 6th day of July, 1979:

Gary L. Milhollin, Esq.
Chairman, Atomic Safety
and Licensing Board
1815 Jefferson Street
Madison, Wisconsin 53711

Chairman, Atomic Safety and
Licensing Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Mr. Frederick J. Shon
Member, Atomic Safety and
Licensing Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Barry Smith, Esq.
Office of the Executive
Legal Director
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Dr. James C. Lamb, III
Member, Atomic Safety and
Licensing Board Panel
313 Woodhaven Road
Chapel Hill, N.C. 27514

Richard Hluchan, Esq.
Deputy Attorney General
Department of Law and
Public Safety
Environmental Protection
Section

Chairman, Atomic Safety and
Licensing Appeal Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

36 West State Street
Trenton, N.J. 08625

Richard Fryling, Jr., Esq.
Assistant General Solicitor
Public Service Electric
& Gas Company
80 Park Place
Newark, N. J. 07101

Keith Onsdorff, Esq.
Assistant Deputy Public Advocate
Department of the Public Advocate
Division of Public Interest
Advocacy
Post Office Box 141
Trenton, N. J. 08601

Sandra T. Ayres, Esq.
Department of the Public Advocate
520 East State Street
Trenton, N. J. 08625

Mr. Alfred C. Coleman, Jr.
Mrs. Eleanor G. Coleman
35 "K" Drive
Pennsville, New Jersey 08070

Carl Valore, Jr., Esq.
Valore, McAllister, Aron
& Westmoreland
Mainland Professional Plaza
P. O. Box 175
Northfield, N. J. 08225

Office of the Secretary
Docketing and Service Section
U.S. Nuclear Regulatory
Commission
Washington, D. C. 20555

June D. MacArtor, Esq.
Deputy Attorney General
Tatnall Building, P. O. Box 1401
Dover, Delaware 19901



Mark J. Wetterhahn