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Office of the Secretary
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

INTERVENOR TOWNSHIP OF LOWER ALLOWAYS CREEK
RESPONSE TO NRC STAFF OBJECTION TO BOARD QUESTION

FACTS

On or about June 1 , 1979, the NRC Staff filed an Objection to the Board question #3 propounded by Order of the Atomic Safety and Licensing Board dated April 18, 1979.

Question #3 provides in part:

> "If an explosion or 'meltdown' occurred at Salem, to what extent would that affect the spent fuel pool?"

Apparently , the NRC Staff objection is to the above part of Question #3 in that it is conceived that an explosion or meltdown encompasses a Class 9 accident.

The objection of the NRC Staff is that the Commission's case law and policy prohibit the consideration of Class 9 accidents by the applicant , the staff, or an adjudicatory board.

LEGAL ARGUMENT

I. THE NRC STAFF'S OBJECTION TO THE BOARD QUESTION IS A PROCEDURE NOT AUTHORIZED BY PART 2 OF THE RULES OF PRACTICE

The Rules provide no interlocutory appeals may be taken from Orders of the presiding Officer. Rule 2.730 (10 CFR, Part 2).

The Board has the power to propound questions pursuant to an Order under the authority of Rule 2.718 (10 CFR, Part 2).

The NRC Staff in filing an objection to the Question propounded by the Board pursuant to an Order of the Board is in effect attempting to obtain a reconsideration of the Board's Order.

If the objection filed by the NRC Staff is to be treated as a Motion pursuant to Rule 2.730 (10 CFR, Part 2), then the procedure has not been properly followed in that no Affidavits or evidence has been submited in support of the Motion. It appears that the Board has made Question #3 an issue in this contested proceeding. This is clearly authorized under Rule 2.760a (10 CFR, Part 2). If the NRC Staff considers Question #3 to be improper, then the appropriate procedure would be a motion for reconsideration of the Board's Order so that an Order might be entered removing Question #3 as an issue in the contested proceeding in the event the NRC Staff was successful in its application. The filing of an "Objection" does not appear to be in conformity with the Rules unless the "Objection" is to be treated as a motion. In the event it is treated as a motion, no Affidavits or evidence has been filed in support of the motion.

II. QUESTION #3 IS A PROPER QUESTION IN A CONTESTED PROCEEDING

In the Matter of Offshore Power Systems, Inc. (Floating Nuclear Power Plants, ALAB-489, 8 NRC 194, 1978) it was clearly established that a Class 9 accident may be considered by an adjudicatory board in a contested proceeding. The language in that case which is particularly appropriate is as follows:

> "From this the staff reasons that floating nuclear power plants pose environmental risks of a character not previously considered - risks 'outside the parameters' (sic) of the original analysis which was the underpinning of the Proposed Annex - and presumably not covered by the policies there announced . . . we find this staff argument a cogent one . . . we agree with the staff that the Annex should not be read as extending to floating nuclear plants - a concept unknown when the Annex was put out as interim guidance . . . "

In this context it is clear that the events at Three Mile Island and the concept of dense storage or reracking represent new events that were not in any way considered in the original licensing proceeding for Salem 1. It is therefore entirely within the Atomic Safety and Licensing Board discretion to propound Question #3 and accept evidence on this question.

CONCLUSION

The NRC Staff's Objection to Board Question #3 should be over ruled.

Respectfully submitted,

CARL VALORE, JR., Special Nuclear Counsel for the Intervenor, Township of Lower Alloways Creek

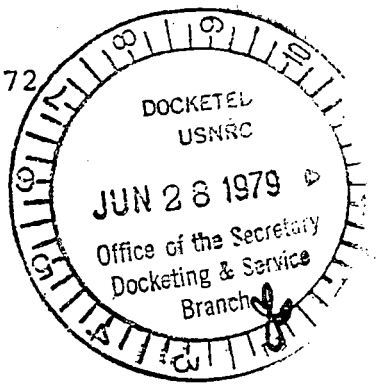
June 25, 1979

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	:	
PUBLIC SERVICE ELECTRIC & GAS CO. (Salem Generating Station Unit #1)	:	DOCKET NO. 50-272
	:	



CERTIFICATE OF SERVICE

I hereby certify that copies of Intervenor's Township of Lower Alloways Creek Response to NRC Objection to Board Question #3 in the above captioned matter have been served upon the attached list by deposit in the United States mail at the post office in Northfield, N.J., with proper postage thereon, this 25th day of June, 1979.

CARL VALORE, JR., Special Nuclear Counsel for the Intervenor, the Township of Lower Alloways Creek

Dated: June 25, 1979

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