

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

IN THE MATTER OF)
)
CONSUMERS POWER COMPANY) Docket No. 50-155
)
(Big Rock Point Nuclear)
Plant))

LICENSEE'S RESPONSE TO
CONTENTIONS OF JOHN PATRICK O'NEILL II

Pursuant to the Licensing Board's Order of November 5, 1979, Consumers Power Company ("Licensee") hereby submits its response to the contentions filed by John Patrick O'Neill II on October 30, and November 20, 1979.

I. Standing

Although Mr. O'Neill lists his address as Route 2, Box 44, Maple City, Michigan 49664, he states that he is a permanent resident of Burdickville, Michigan, where he works in a restaurant owned by his family. Licensee assumes this seeming discrepancy will be resolved at the prehearing conference, and consequently it would appear that Mr. O'Neill has demonstrated the requisite interest in this proceeding.

II. Contentions

A. General Requirements for the Admission of Contentions

The relevant standards which this Licensing Board must apply in determining the legal admissibility of contentions

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are easily stated. First, an intervenor's contentions and the basis for each contention must be set forth with reasonable specificity. 10 C.F.R. § 2.714(b). The primary purpose for this requirement is to provide the Licensee and the Staff with a fair opportunity to know precisely what the issues are, exactly what proof, evidence or testimony is required to meet that issue and exactly what support the intervenor might intend to adduce for its allegations.

Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB 444, 6 NRC 760, 771-2 (1977). As the Commission itself stated in revising its regulations governing the hearing process, "definition of the matters in controversy is widely recognized as the keystone to the efficient progress of a contested proceeding. In order to put a matter in issue, it will not be sufficient merely to make an unsupported allegation." 37 Fed. Reg. 15127, 15128 (July 28, 1972).

See also Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-106, 6 AEC 188, 191, aff'd., CLI 73-12, 6 AEC 241 (1975), aff'd sub nom. BPI v. Atomic Energy Commission, 502 F.2d 424 (D.C. Cir. 1974).

A second requirement is that the contentions must be within the scope of the proceeding; stated another way, there must be a nexus between the licensing action proposed and the issues sought to be litigated. See, e.g., Kleppe v. Sierra Club, 427 U.S. 390 (1976); Portland General Electric Company, et al., (Trojan Nuclear Plant), ALAB-534, 9 NRC 287,

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289 n. 6 (1979); Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 541-2 (1977); and Gulf States Utility Company (River Bend Station, Units 1 and 2), 6 NRC 760, 773-4 (1977). This requirement has repeatedly been enforced in recent spent fuel pool modification cases. See, e.g., Commonwealth Edison Company (Zion Station, Units 1 and 2), Dkt. Nos. 50-295 and 50-304 (January 19, 1979) (Slip opinion at 8-9); Public Service Electric and Gas Company, et al. (Salem Nuclear Generating Station, Unit 1), Dkt. No. 50-272, Memorandum and Order (April 26, 1978) (Slip opinion at 7-8); Id., Order of the Atomic Safety and Licensing Board following Special Pre-hearing Conference (May 24, 1978) (Slip opinion at 5-8); and Wisconsin Public Service Corporation, et al. (Kewaunee Nuclear Power Plant) Dkt. No. 50-305, Order of the Atomic Safety and Licensing Board (October 11, 1978).

Further, issues considered and resolved in prior NRC operating license proceedings need not be reconsidered in subsequent spent fuel pool modification proceedings, absent some showing that the proposed modification changes the analysis. Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2) and Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Station), ALAB-455, 7 NRC 41, 46-7 n.4 (1978); and Public Service Electric and Gas Company, et al. (Salem Nuclear Generating Station, Unit 1) Memorandum and Order (April 26, 1978) supra, at 3-4, 8-9.

Finally, licensing proceedings, absent the requisite showing, are not appropriate fora in which to challenge the Commission's regulations, 10 C.F.R. § 2.758, or in which to address issues which are the subject of general rulemaking, Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 381, 406 (1974). Nor may intervenors use such occasions to litigate the appropriateness of NRC general policies. Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 21 and fn. 32 (1974), aff'd without discussion of this point, CLI-74-032, 8 AEC 217 (1974); and Northern States Power Company, supra, 7 NRC 41, 51.

Applying these rules to Mr. O'Neill's contentions, it is clear that all except contention II.B. are unacceptable because they lack specificity and basis or raise matters beyond the scope of this proceeding.^{1/}

Mr. O'Neill has been unable to meet with the Licensee to discuss and clarify his contentions, and as a consequence the Licensee has had to guess at their meaning in some instances. Nevertheless, the Licensee has endeavored to give a reasonable interpretation to the contentions wherever feasible.

^{1/} As discussed infra, Mr. O'Neill may be able to perfect contentions I.5., II.C., II.E.3. and II.G. at the prehearing conference.

Each of Mr. O'Neill's contentions as stated in his November 20, 1979 submission^{2/} are addressed in more detail below.

B. Licensee's Specific Responses to Contentions

Mr. O'Neill's contention I, with the exception of paragraph 5., raises issues which are the subject of a generic rulemaking announced by the NRC on October 25, 1979, 44 Fed. Reg. 61372. In this notice the Commission states:

During this proceeding the safety implications and environmental impacts of radioactive waste storage on-site for the duration of a license will continue to be subjects for adjudication in individual facility licensing proceedings. The Commission has decided, however, that during this proceeding the issues being considered in the rulemaking should not be addressed in individual licensing proceedings. These issues are more appropriately addressed in a generic proceeding of the character here envisaged.

44 Fed. Reg. 61372, 61373 (October 25, 1979) (emphasis added). Accordingly the Licensing Board is without jurisdiction to consider the matter further, and Mr. O'Neill's contention I (except paragraph 5.) must be rejected.

Paragraph 5. of contention I. presents a confused explanation of Mr. O'Neill's concern. We are puzzled by his references to the "stresses of expanded storage," "the integrity of the fuel tank" and "as greater lengths of time allow probability of accident," However, if these phrases are

^{2/} Although the restatement of contentions submitted by Mr. O'Neill on November 20, 1979 does not expressly so indicate, the Licensee assumes that he intended this document to supersede the statement of contentions filed on October 30, 1979.

disregarded and if paragraph 5. is read as a whole, it appears that Mr. O'Neill is concerned about the possible occurrence and effect of stress corrosion cracking on the stainless steel materials used in the spent fuel pool and attendant equipment. If our surmise is correct, the Licensee has no objection to paragraph 5. being construed as a contention that questions either the ability of the stainless steel materials in the spent fuel pool liner, the spent fuel pool cooling system and the spent fuel racks to resist stress corrosion cracking, or the protective measures that might be taken to mitigate any such effects. Of course, Licensee does not admit that the concern expressed in this contention or in others it finds acceptable in form are well-founded in fact. Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2) A AB-522, 9 NRC 54, 56 (1979).

If on the other hand, paragraph 5. means something else, then it is objectionable because it lacks the requisite specificity and basis required by 10 C.F.R. § 2.714.

Mr. O'Neill's contention II.A. states:

Routine releases of radioactivity may cause health and environmental hazards.

Releases include exposure of 27 one time rads to workers installing new racks, releases in evaporation, and through the walls and floor of the pool, especially the South wall. It must be kept in mind that the expansion allows

the routine releases during core offloading to continue, and the safety of these releases is the important issue.

1. Many top scientists and doctors assert with scientific studies that there is no safe level of radiation, no threshold below which a person is safe from carcinogenic and mutagenic effects of radiation.

Ernest J. Sternglass, Low-Level Radiation

Dr. Helen Caldicott, Nuclear Madness

Contention II.A. appears to state that no amount of radiation exposure to workers is acceptable in performing the proposed modifications to the Big Rock Point spent fuel pool and in subsequent refuelings at the Big Rock Point plant. As such it is a challenge to the occupational radiation exposure standard established in 10 C.F.R. §§ 20.101-103 for limiting radiation exposures to radiation workers. Such challenges may not be made except in accordance with the procedures set forth in 10 C.F.R. § 2.758, which are not met here. Contention II.A. is unacceptable and should be rejected.

Mr. O'Neill's contention II.B. appears to meet the requirements of 10 C.F.R. § 2.714 and it should be admitted.

Mr. O'Neill's contention II.C. states:

The environmental impact of a loss of coolant accident in the pool is not discussed. This is odd, for on p. 2-3 of the licensing request, a loss of pool water up to 200 gpm is considered possible enough to protect against, the effect of the release of all of this water is not considered.

Contention II.C. is difficult to understand.

Assuming Mr. O'Neill is suggesting that the environmental consequences of the release of up to 200 gallons per minute of water from the spent fuel pool cooling system caused by an earthquake (the accident sequence described on pages 2-2 to 2-3 of Licensee's Spent Fuel Rack Addition Description and Safety Analysis) are unacceptable, Licensee has no objection to the admission of this contention. If Mr. O'Neill has some other accident in mind, the contention fails for lack of specificity and basis.

In the interest of candor, it should be noted that the NRC Staff has recently asked the following question in the context of its Safety Evaluation Program^{3/} review for the Big Rock Point Nuclear Plant:

"Provide a description of the piping systems for the spent fuel pool and discuss the potential for draining the pool below the level of the top of the stored fuel from pipe failures that would allow water to be drained, pumped or siphoned out."^{4/}

^{3/} The NRC Staff is presently reviewing the Big Rock Point facility pursuant to its Systematic Evaluation Program ("SEP") which will determine and document compliance with present design criteria for the construction and operation of nuclear power reactors, and which will provide a basis for acceptance or remedial action in the event any significant departure from current criteria is identified. See United States Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Report on the Systematic Evaluation of Operating Facilities (November 25, 1977). This activity, of course, is beyond the jurisdiction of this Licensing Board.

^{4/} Question 1. of the attachment to Mr. D. L. Zeimann's (Chief, Operating Reactors Branch No. 2; November 27, 1979 letter to Mr. Bixel of Consumers Power Company, (copy attached).

Although the NRC Staff does not suggest the mechanism for the loss of spent fuel pool water, the Staff's question arguably could relate to Mr. O'Neill's concern. Perhaps the NRC Staff can provide a further explanation of their inquiry at the prehearing conference. We would emphasize, however, that the NRC Staff is conducting their inquiry under their Safety Evaluation Program rather than in the context of this proceeding.

Mr. O'Neill's contention II.D. states:

Cataclysmic breach of the containment and loss of coolant is not considered, nor is the impact on the environment mentioned.

1. Possible from impact of a B-52 bomber.
2. Sabotage from a political group or deranged employee.

-Sheldon Novick interviewing David Brower, The Electric War, p. 193.

This contention is inadmissible because no reasonable connection or nexus is shown between the subject matter of this license amendment application and a B-52 crash or sabotage. Nor can such a nexus be shown. Accident analyses and the consideration of sabotage scenarios are properly considered in the safety and environmental reviews conducted by the NRC Staff in other contexts, and are beyond the scope of proceedings which solely involve the question of whether the capacity of spent fuel pools should be increased.

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Paragraphs 1. and 2. of Mr. O'Neill's Contention

II.E. raises the specter of Class 9 accidents. For the reasons stated in Licensee's response to Contention 8. of Christa-Maria, a general inquiry into Class 9 accidents by this Licensing Board is barred by NRC and court precedent. (See pp. 6-8 of "Licensee's Response To Contentions of Christa-Maria, dated November 29, 1979). Neither is a limited inquiry into the TMI accident, as articulated by the Licensing Board in the Susquehanna proceeding, justified. For as explained in our response to Christa-Maria, such an inquiry is outside the scope of this proceeding. (See pp. 8-9 of Licensee's November 29 response to the Christa-Maria contentions.)

Paragraphs 1. and 2. do suggest an aspect different from Christa-Maria's Contention 8. which deserves further discussion. Mr. O'Neill suggests that a Class 9 accident could cause a severe loss of water accident in the spent fuel pool at the Big Rock Point Nuclear Plant. This aspect of paragraphs 1. and 2. lack basis and specificity (10 C.F.R. § 2.714) because no initiating event is identified which would account for the "severe loss of water accident." Again the NRC Staff has asked a question during the course of its Systematic Evaluation Program which arguably could have some relationship to Mr. O'Neill's concern. Question 4. of the attachment to Mr. Ziemann's November 27, 1979 letter to Mr. Bixel states:

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"Discuss the capability to detect loss of pool cooling and loss of water level in the event an accident occurred which would prevent entry into containment for an extended period of time. Discuss the capability to cool the pool water and provide makeup to the pool if equipment inside the containment failed and containment could not be entered."

Although the NRC Staff has not identified the accident scenario that prompts their inquiry, it clearly is not a Class 9 accident for by definition such accidents are excluded by the Staff from design basis consideration. The inquiry in this instance is a part of the NRC Staff's safety review under the Systematic Evaluation Program -- an activity outside the scope of the proceeding, and therefore the question should not relate to Mr. O'Neill's Class 9 accident concerns. Nevertheless it may be appropriate for the NRC Staff to clarify this matter at the prehearing conference.

Paragraph 3. of Mr. O'Neill's contention II.E.
states:

The possibility of fuel assemblies that are stored closer together reaching critical mass eventually even seems possible, Dr. Helen Caldicott, Nuclear Madness, p.58, and needs to be considered.

Mr. O'Neill's contention II.G. states:

No studies of the safety of increasing the density at which fuel assemblies are stored, the increased number of assemblies, and the greatly increased length of storage have been stated as evidence, neither scientific studies conducted by the NRC nor independent group; without adequate scientific evidence the expansion is unwise and should be denied.

Once again the issue attempted to be asserted by Mr. O'Neill is difficult to perceive in these contentions. The one common thread, however, seems to be a concern that the placement of the spent fuel assemblies in the pool will be such that a criticality-type accident might be generated. Licensee has analyzed this problem and addressed it on pages 4-1 to 4-9 of the "Spent Fuel Rack Addition Description and Safety Analysis" dated April 1979. This document supports the pending licensing amendment and it has been transmitted to the Licensing Board and all persons on the Service List.

Nevertheless, if the foregoing reflects Mr. O'Neill's concern, Licensee has no objection to the admissibility of a contention which specifically challenges some aspect of the analysis set forth on pages 4-1 to 4-9 of Licensee's safety analysis. If Contentions II.E.3. and II.G. mean something else they should be rejected as vague, non-specific and lacking in basis.

Paragraph 4. of Mr. O'Neill's contention II.E.
states:

The containment shell is inadequate protection from massive gamma ray radiation, ("NRC asks Consumers to study Big Rock's design" Charlevoix Courier, p.1, Wed., Nov. 7, 1979) which would result from a loss of water accident involving an increased storage capacity at Big Rock, and in light of the significant resulting danger (of deep concern to Big Rock's insurance company) the license request should be denied.

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This contention seems to suggest that the containment for the Big Rock Point Nuclear Plant requires additional shielding in order to protect against "massive gamma ray radiation" involving a loss of water accident due to an increase in the spent fuel storage capacity. It is our understanding that the newspaper article to which Mr. O'Neill refers was reporting an inquiry of the NRC Staff concerning the ability of the Big Rock Point containment to provide shielding from gamma radiation at the dose levels monitored inside containment at Three Mile Island, Unit 2. This inquiry, which can be confirmed by the NRC Staff at the prehearing conference, was made in the context of its TMI lessons-learned program for operating reactors, a generic program initiated by the NRC Staff in the wake of the Three Mile Accident. More importantly the inquiry did not pertain to or mention a loss of water accident involving a spent fuel pool. Thus, Contention II.E.4. lacks basis, or if it is referring to the NRC Staff's inquiry, it raises matters beyond the scope of this proceeding.

Mr. O'Neill's contention II.F. states:

Absolutely no consideration is given to the concentrating of fission products in the food-chain as the result of any release of radiation from the increased number of fuel assemblies stored.

This contention seems to suggest that fission products would be released into the food-chain as a result of the increased number of fuel assemblies that would be stored at Big Rock

Point if the proposed license amendment were authorized. Mr. O'Neill fails to identify the fission products and food chains of concern, and the pathways for the release of these fission products. Even assuming that this information was disclosed, there is no indication as to whether Mr. O'Neill believes the "fission products" of concern will violate exposure limits to the public in 10 C.F.R. Part 20, or the ALARA guidelines specified in Appendix I to 10 C.F.R. Part 50; or whether he believes that the release of radiation in any amount is unacceptable.^{5/} This analysis demonstrates that contention II.F. lacks basis and specificity and it must be rejected for failure to meet the requirement of 10 C.F.R. § 2.714.

Mr. O'Neill's contentions III.A., B. and C. state:

III. Social and Economic Impact.

A. Any accident resulting from increased storage of fuel rods would endanger my life and the life of my wife, Linda. The possible cause of such accidents elaborated through out this paper.

B. Any accident or significant public fear of accident or imagined danger would endanger our restaurant business, which depends upon the perception by tourists that the area is a safe place to vacation. This is true for many businesses in the area.

^{5/} If the thrust of the contention is to challenge the sufficiency of the NRC's regulations in 10 C.F.R. Part 20 or Appendix I to Part 50, the contention is objectionable for the additional reason that Mr. O'Neill has failed to offer the requisite showing as required by 10 C.F.R. § 2.758, to warrant a challenge to NRC regulations.

C. Like all businesses within 50 miles of Big Rock, ours is not covered by our insurance policy for loss due to an accident or damaging accidental radiation release from a spent fuel pool containing more fuel assemblies than it was originally designed to hold. (All insurance policies are exempt from damages from a nuclear accident- Why is the question one is tempted to ask.)

Licensee believes these paragraphs amount to statements of interest rather than presenting litigible contentions appropriate for resolution in this proceeding. If they are regarded as contentions, they are incomprehensible and necessarily lack specificity and bases.

Mr. O'Neill's contention IV states:

The racks have not been contracted out, nor have actual manufacturing specifications been presented, nor have similar designs been cited, along with their fabricators. For this reason, an adequate evaluation cannot be made of the proposed modification.

This contention fails to contain any litigible issue of material fact. It would be more appropriately submitted as a request for discovery.

Mr. O'Neill's contention V states:

Should an accident occur involving the increased storage capacity fuel pool, the plant cannot adequately compensate the residents of the area and myself, by the Price-Anderson Act. Since the modification shouldn't be licensed because the company cannot adequately reimburse me should I suffer damage or injury.

Contention V constitutes a challenge to the wisdom of the Price-Anderson Act. The constitutionality of the Price-Anderson Act has been upheld by the Supreme Court in

Duke Power Company v. Carolina Environmental Study Group, Inc.,
438 U.S. 59 (1978). The NRC has no power to repeal or amend
existing law, and accordingly contention V is inadmissible
in this proceeding.

Mr. O'Neill's contention VI states:

It is not clear in the licensing report
if the present pool meets all the present
requirements for spent fuel pool. Big
Rock is an old plant, and "grandfather"
exemptions may have been granted its stor-
age pool which could have affects upon
the safety of the expansion.

Contention VI lacks any specificity or basis and
it should be rejected. In addition as stated supra p. 8,
n. 3, the Big Rock Point Nuclear Plant is being subjected
to a comprehensive safety review under the Systematic Evalu-
ation Program. Thus, contention VI should be denied because
it refers to matters outside the scope of this proceeding.

Mr. O'Neill's contentions VII and VIII state:

VII. The licensing hearing should include a
review of general plant safety including all
aspects of power generation and plant and
employee management at Big Rock.

A. Review of general plant safety would
provide an indicator of how well the plant
structures have withstood nearly 20 years
of service, and would help an analysis of
how well analogous machinery, pipes, racks
and materials involved in the spent fuel
expansion will hold up for another 20
years. It will also give an indication of
the present condition of the equipment.

B. Review would provide a good measure of the quality of plant administrative procedures and management, which would have a direct effect on the safe or unsafe operation of the storage facility, and the competence with which modifications can be expected to be made.

This would not constitute a relicensing of the plant, but an investigation of the history of the facility and its monitors, in an attempt to responsibly determine the future safe operation of an increased spent fuel storage pool.

VIII. Granting of the license is the only way the plant can operate past the year 1981 as things stand now, and thus allow an extension of plant activity that would otherwise be halted. Hence, it is a tacit approval of such extended operation, and should include a review of general plant safety.

-The Kemeny Commission has recommended "periodic relicensing of existing atomic plants on the basis of hearings, inspections and performance criteria."

Contentions VII and VIII call for a general review of plant safety at Big Rock Point, a review which is quite clearly beyond the limited scope of this Board's jurisdiction.^{6/} Accordingly, contention IX is inadmissible in this proceeding.

The last paragraph of Mr. O'Neill's restatement of contentions appears to be an insight of Mr. O'Neill's societal view on energy matters rather than a contention and therefore, requires no response.

^{6/} See p. 8, n. 3 supra.

Conclusion

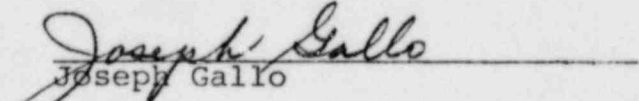
Licensee has no objection to contention II.B., and if Licensee's interpretations are correct, there is no objection to contentions I.5. and II.C. Furthermore, if Mr. O'Neill can provide additional specifics as explained in the discussion supra on contentions II.E.3 and II.B., there is no objection to these contentions. The remaining contentions should be rejected for the reasons stated.

Respectfully submitted,

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