01/08/79

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
HOUSTON LIGHTING AND POWER	)	Docket Nos. 50-498
COMPANY, ET AL.	)	50-499
	)	
(South Texas Project, Units 1 and 2)	)	

NRC STAFF RESPONSE TO THE AMENDED PETITION TO INTERVENE FILED BY DAVID MARKE

On December 26, 1978, David Marke filed an amendment to his petition for leave to intervene entitled "Supplementary Petition By David Marke and Listing of Contentions" ("Amendment"). This amendment supplements the petition to intervene by asserting additional information to support intervention as a matter of right and as a matter of discretion. Further in this amendment, petitioner sets out twenty-one contentions.

Below the Staff addresses each of the five factors of 10 CFR § 2.714 regarding late filed petitions. In addition the Staff responds to the asserted interest of Petitioner and the organization he now asserts to represent, followed by a discussion of certain legal principles which the Staff believes should govern consideration of the contentions and the Staff's position on each of the contentions.

TIMELINESS

As we noted in the "NRC Staff Response to David Marke Petition for Intervenor Status," based on the absence of proof of service and the September 5, 1978 post mark (at pp. 1 and 2), the petition was apparently filed four days after the September 1, 1978 deadline set forth in the Federal Register notice. In the present amendment, Mr. Marke addresses each of the factors which the Staff indicated must be addressed and considered by this Board pursuant to 10 CFR § 2.714 in ruling on his petition for intervention (at p. 2).

The Staff has reviewed the responses to the five factors of 10 CFR § 2.714 and believes that the petition should not be denied on the basis of untimeliness.

Regarding the first factor (good cause) it appears that petitioner asserts that the petition was mailed on or by September 1, 1978 but was simply not post-marked until September 5 (see Amendment at p. 2). This is certainly possible and if true, establishes good cause for the apparent late filing.

The second factor (availability of other means whereby the petitioner's interest will be protected) also weighs in favor of the petitioner. The only other means for the petitioner to protect his interest would be to file a limited appearance under 10 CFR § 2.714. But such an appearance would not be an adequate substitute for participation as a party with a party's attendant procedural rights. See Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 276 (1975).

To what extent the petitioner "may reasonably be expected to assist in developing a sound record" (the third factor) is difficult to assess. However, we do have petitioner's assertions of expertise which on their face appear to weigh in favor of petitioner. Petitioner's asserted qualifications include studies in nuclear chemistry, publications concerning radioisotope disposition and containment, and presentation of testimony before the state of Texas and various state commissions, councils and committees on topics related to waste disposal and energy generating technologies (Amendment, at pp. 14-16).[1/]

The fourth factor (extent to which petitioner's interest will be represented by existing parties) cannot be analyzed at this time, since parties other than the Staff and Applicants have not yet been identified.

The final factor specified in 10 CFR § 2.714 (the extent to which the petitioner's participation will broaden the issues or delay the proceedings) also appears to weigh in favor of the petitioner. While we cannot at this juncture determine whether petitioner's participation will broaden the issues since none have been identified for adjudication, it is clear that the four-day delay will not in any way disrupt this proceeding. See West Valley, supra, at 276.

1/ This matter is more fully discussed, infra, relative to the petitioner's participation in this proceeding as a matter of the Board's discretion.

INTEREST

In the Staff's response to the petition we noted (at p. 4) that the sole allegation of interest was stated by David Marke to be " . . . my interest is personal and professional in an academic request." We responded that the Commission[2/] has found that "abstract concerns" or a "mere academic interest" absent some real impact on the person asserting the concern will not confer standing (NRC Response, at 4). In addition we noted that the Commission has indicated[3/] that the harm asserted must have some particular effect on the petitioner rather than be a concern which is shared by all or a large class of citizens (Response, at p. 4).

In the supplement to the petition, David Marke asserts that he will suffer mental anguish and possible loss of his mental health (Amendment, at p. 7). He alleges that this harm will result because fuel and waste components will pass by his residence and his place of business (Amendment, at p. 7). He alleges that his residence is less than 150 yards from the major north-south rail line and his business is less than 500 yards of a major surface route leading to the area of the plant." The Staff considers this asserted harm to lack necessary specificity and be too remote and speculative to support

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2/ Portland General Electric, et al (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613 (1976); Transnuclear Inc. et al. (Ten Applications for Low-Enriched Uranium Exports to EUROTOM Member Nations) CLI-77-24, 6 NRC 525, 531 (1977).

3/ Transnuclear, Ibid.

standing. While petitioner has not specified the basis for the asserted harm (mental anguish) the Staff assumes that what petitioner fears is the possibility of a transportation accident. However, it is pure speculation to assume that nuclear fuels and waste from the South Texas Project will pass by petitioner's residence and place of business and that an accident might occur in the area proximate to such residence or place of business. (See Exxon Nuclear Company, Inc. (Nuclear Fuel Recovery and Recycling Center), LBP-77-59, 6 NRC 518, 519-20 (1977) where the Board denied a petition based on similar allegations finding that such allegations were "entirely speculative in nature").

Petitioner further alleges that he is regularly involved in recreational pursuits "along the Southern Gulf Coast specifically involved in off shore and on shore fishing in the area south of Galveston and Port Aransas." (Amendment, at p. 8). This assertion lacks the requisite specificity to satisfy standing. The area described (Port Aransas to Galveston) covers approximately 175 miles. There is no indication how frequently petitioner fishes in this area let alone the frequency he fishes anywhere near the facility. Most lacking, however, is an adequate particularization of how operation of the facility will affect his recreational activities. He states that the harm will result from "ultimate drainage of any waterborne residues which m. y escape the plant, or its cooling lake by any means, including drainage into the acquifier systems." However, there is no indication how the "residues" will escape. Further the

Staff believes that the assumption that releases from the facility will affect petitioner's recreational activ[illegible]s to be too speculative to support the requisite 10 CFR § 2.714 "interest". (Amendment, at pp. 8 and 9).[4/]

Petitioner's reliance, if any, on the rights he may have pursuant to Federal Power Commission regulations and interpreting case law is completely misplaced. (Amendment, at p. 9). The Nuclear Regulatory Commission (NRC) is a federal agency entirely separate from the Federal Power Commission, created by completely separate legislation, the Atomic Energy Act. Pursuant to this Act, the NRC has promulgated its own "Rules of Practice" which establish the rights of individuals to participate in NRC proceedings and file appeals.[5/] Specifically, the NRC has promulgated 10 CFR § 2.714 which spells out the requirements that individuals must satisfy before they can participate in NRC proceedings as full parties. Similarly, petitioner's argument of standing as an "interested consumer" under the Federal Power Commission Act must fail (Amendment, at p. 10).

4/ Recreational use has been considered by the Commission in determining whether or nor an organization has the requisite interest to intervene. Philadelphia Electric Company, et al. (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-73-10, 6 AEC 173, 174 (1973). However, the recreational activity referred to by the Commission in that case was on the very pond (Conowingo Pond) which members of the petitioner's organization lived in close proxim[illegible]y to (5 miles). More important, the Peach Bottom units are sited on the west bank of this pond using its water for receipt of their thermal discharge (Final Environmental Statement related to operation of Peach Bottom, Units 2 and 3, pp. 1-1 and 1-2 and 3 (1973)).

5/ See Duke Power Co. (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-433, 6 NRC 469 (1977), indicating that the right to appeal is limited to the parties to the proceeding. The only non-party with the right to appeal an adjudicatory board's initial decision is a State participating under the "interested State" provision of 10 CFR § 2.715(c) Metropolitan Edison Co., et al. (Three Mile Island Nuclear Generating Station, Unit 2), ALAB-454, 7 NRC 39 (1978).

Petitioner also must fail to the extent he is basing standing on his residence in Austin and his argument that therefore he is effectively a stockholder of a public utility. This is equivalent to the argument that an individual has standing due to his status as a ratepayer. The Appeal Board has held that this alone is not sufficient to support standing. Kansas Gas and Electric Co., et al. (Wolf Creek Generating Station, Unit 1), ALAB-424, 6 NRC 122, 128 (1977); and Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), ALAB-333, 3 NRC 804 (1976).

Finally, with respect to Petitioner's assertions of standing as an individual, his statement that further explanation is not necessary due to the fact that the burden of proof "rests with the Commission, Staff and the Applicant" (Amendment, at p. 10) is simply not correct. Who has the ultimate burden of proof in a case[6/] has nothing to do with satisfaction of the specific requirements of 10 CFR § 2.714 for intervention in NRC proceedings. The relevant requirements of section 2.714 are that the petitioner "set forth with particularity the interest of the petitioner in the matter, the manner in which that interest may be affected by the proceeding, and the reasons why the petitioner should be permitted to intervene with particular reference to the petitioner's right to be made a party under the Atomic Energy Act." This, the Staff believes, the petitioner has failed to do with respect to standing as an individual.

6/ 10 CFR § 2.732 provides that the Applicants have the ultimate burden of proof.

In addition to assertions of interest as an individual, petitioner also asserts standing based on the interest of the Austin Citizens for Economical Energy (ACEE) and the vote of that organization's steering committee that petitioner represent them (Amendment, at p. 10). The requirement of 10 CFR § 2.714 that interest be set forth with particularity applies with equal force to an organization seeking intervention. Nuclear Engineering Co. Inc. (Sheffield Site), ALAB-473, 7 NRC 737, 741 (1978); Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422-23 (1976).

The amended petition does not set forth any specific harm to ACEE as an organization but states only that operation of the plant jeopardizes some ACEE members' physical health, mental health and real property (Amendment, at p. 12).[7/] Even though there is no allegation of injury to itself, an organization can predicate intervention on the basis of the interests of its members, if there is "particularization of how the interests of one of more members . . .

7/ It appears that some of the ACEE members may only be interested as ratepayers. The petitioner states that ACEE, "due to its diversity of interests and membership, represents a great number of citizens/ratepayer." (p. 12) The economic interest of a ratepayer is not sufficient to support standing since the concern about rates is not within the scope of interests sought to be protected by the Atomic Energy Act. Kansas Gas and Electric Co., et al. (Wolf Creek Generating Station, Unit 1), ALAB-424, 6 NRC 122, 128 (1977). Furthermore, such interest is not in the zone of interests protected by the National Environmental Policy Act. Portland Gneral Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), ALAB-333, 3 NRC 804 (1976). For the same reasons to the extent the statement on page 13 concerning the combined potential economic loss of the citizens and ratepayers is meant to support standing of ACEE or its members it must fail.

might be adversely affected," Barnwell, supra at 422. This the Staff believes has not been done by the Petitioner.

The only fact which lends support to standing of this organization is the asserted residence of two of the members of the ACEE steering committee, Mr. and Mrs. Robert Cook, who petitioner states live 8 miles from the reactor (Amendment, at p. 11).

The Staff does not believe this statement alone satisfies the "particularization" required by 10 CFR § 2.714. To satisfy this requirement of § 2.714, petitioner must supply an affidavit from Mr. and Mrs. Robert Cook particularizing their interest and how such interest will be affected by operation of the facility as well as stating that they wish to be represented in this proceeding by the petitioner. (See, Barnwell, at 423 where the Appeal Board found an affidavit of a member stating that he lived 30 miles from the plant insufficient to support standing.)[8/] Thus, the Staff believes that the petition in its present form is deficient and does not support intervention of Mr. Marke as an individual or of ACEE the organization that the petitioner alleges to represent.

8/ See the comment in the preceding footnote regarding the interests of the parties. Mr. and Mrs. Robert Cook's interest in this proceeding may be based entirely on their concerns as ratepayers and therefore not within the requisite "zone of interests". Furthermore, it is not clear that they wish petitioner to represent their interest (whatever that interest may be), since petitioner's asserted authorization by the steering committee of ACEE was based on a vote of that committee. See Amendment, at p. 10.

INTERVENTION AS A MATTER OF DISCRETION

As we indicated in our response to the Petition to Intervene (at p. 5), even though petitioner may not be entitled to intervene as a matter of right, the Board could grant his petition for intervention as a matter of discretion based on its consideration of factors set forth in 10 CFR § 2.714(a) and (d). Pebble Springs, supra, at 616. We further indicated that the foremost factor among these factors is whether petitioner will make a valuable contribution on a significant issue appropriate for consideration at the operating license stage. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418 (1977).

In our response we indicated that petitioner had not indicated any relevant knowledge or experience which would support a finding that he has a substantial contribution to make on the issues he is asserting (Response, at 6).

The Staff believes that the amendment does contain allegations of petitioner's experience and education which could support a finding that petitioner could make a substantial contribution with regard to one of the issues he asserts, should the Board find this issue acceptable for adjudication. Mr. Marke alleges exclusive and extensive education in the field of nuclear chemistry and that he has been widely published in the field of radioisotope disposition and containment (Amendment p. 14). This education and

experience is certainly relevant to Contention 4, regarding radioactive releases. If this contention were admitted, it is possible that a substantial contribution could be made by petitioner either as a witness or through his cross-examination of other party's direct cases.

The Staff has reviewed the other factors set forth in § 2.714 (noted in Pebble Springs, supra, at 616) and finds that none of these factors operate to disuade the Staff from its belief that petitioner's participation could be of value with regard to Contenton 4, should it be admitted (also see the discussion of some of these factors, supra, under Timeliness).[9/] However, as noted below, the Staff finds that none of the contentions satisfy the requirements of 10 CFR § 2.714 and therefore believes that this Board has no basis for exercising its authority to grant intervention on a discretionary basis.

CONTENTIONS

As a general precept, contentions must fall within the scope of the issues set forth in the Federal Register Notice of Hearing (Notice of Hearing) in this proceeding (43 F.R. 33968)[10/] and be set forth with basis and specificity per the requirements of 10 CFR § 2.714(b) and applicable Commission case law. See,

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9/ We note that the Commission has specifically noted that Licensing Boards may limit participation of intervenors allowed on discretion to those issues "of particular concern to them [intervenors]" compared with the full participation on all issues allowed intervenors in proceedings as a matter of right "Pebble Springs, supra, at 617."

10/ These issues include those arising under the Atomic Energy Act (specifically, those specified in 10 CFR § 50.35 of the Commission's regulations promulgated thereunder) and the National Environmental Policy Act (specifically, those specified in 10 CFR Part 51 of the Commission's regulations promulgated thereunder) as relevant to operating license application.

e.g., Duquesne Light Company (Beaver Valley, Unit No. 1), ALAB-109, 6 AEC 243, 245 (1973); Northern States Power Company (Prairie Island, Unit Nos. 1 and 2), ALAB-107, 6 AEC 188, 194 (1973), aff'd., BPI v. Atomic Energy Commission, 502 F.2d 424, 429 (D.C. Cir. 1974).

In addition, the Appeal Board has twice indicated that special care should be taken at the operating license stage, when a hearing is not mandatory, to assure that an asserted contention raises an issue clearly open to adjudication. Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-183, 7 AEC 222, 226 (1974) and Cincinnati Gas and Electric Company (William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 12 (1976).

STATEMENT OF POSITION

Contention 1

This contention asserts that the Board is obligated to (1) table the above proceeding for 18 months to compensate for construction delay and (2) "at the very least, no action whatever should be taken towards licensing [sic] Unit 2 until it reaches a commensurate level" (Amendment, at p. 18). The basis of this contention is petitioner's mistaken belief that this Board must find that construction of the facility is 100% completed. The appropriate Commission regulation, 10 CFR § 50.57(a)(1) requires that this Board only find:

> (1) Construction of the facility has been substantially completed, in conformity with the construction permit . . .

To ask more of this Board would amount to an impermissible challenge to this regulation which is barred as a matter of law. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 2), ALAB-456, 7 NRC 63, 65 (1978). Under 10 CFR § 2.758, the Commission has withheld jurisdiction from licensing boards to entertain attacks on the validity of Commission regulations in individual licensing proceedings except in "special circumstances". Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 88-89 (1974). Petitioner has not alleged any particularized "special circumstances" with respect to the South Texas Project that identify why the "substantial completion" finding would not serve the purpose for which it was adopted by the Commission. This contention should, therefore, be rejected.

Contention 2

Petitioner contends that one of the mandates of this Board should be "to apply enthusiastically stringent and continuous inspection to this project." Further, petitioner contends that the Board should not "consider" until all past QA reporting has been "verified" and compliance assured, and that a redoubling of efforts must be implemented on all future inspections. The Staff believes that this contention is not written with sufficient specificity to satisfy 10 CFR § 2.714. This contention does not raise an issue but rather makes a number of requests. Furthermore, these requests are not appropriate for this Board

since the Commission has maintained its inspection responsibility. Section 50.70 provides:

> Inspections.
>
> Each licensee and each holder of a construction permit shall permit inspection, by duly authorized representatives of the Commission, of his records, premises, activities, and of licensed materials in possession or use, related to the license or construction permit as may be necessary to effectuate the purposes of the act, including section 105 of the act.

Further, the Commission's Division of Inspection and Enforcement and ultimately the Commission itself has the responsibility of appro al of remedial action in the case of construction deficiencies (See 10 CFR § 50.55(e)). Therefore, the Staff urges that this contention be rejected.

Contention 3

Petitoner contends that the operating license cannot be granted until the ECCS systems is "demonstrated effective with any great probability on four reactors of this size." The Commission's regulation, 10 CFR § 50.46, and Appendix K to 10 CFR Part 50 establish the acceptance criteria for ECCS systems for the South Texas units. This regulation does not require that the ECCS system be demonstrated. Therefore, the Staff views this contention as an impermissible attack on the validity of a Commission regulation, which is prohibited as a matter of law. Three Mile Island, supra. Further, petitioner has not alleged any particularized "special circumstances" that identify why the Commission's ECCS criteria would not serve the purpose for which the criteria

were adopted with respect to the South Texas Project. This contention should, therefore, be rejected.

Contention 4

This contention is inadmissible in this proceeding because it lacks the requisite basis and specificity. The thrust of the contention is that "Radioisotope and Radionuclides pollution cannot be contained". However, petitioner does not indicate any reason or identify any deficiency in the plant's design which would cause the release that raises the asserted concern.

If the petitioner is asserting by this contention that injury will result to ACEE and the public as a result of operation of the South Texas units while in full compliance with Appendix I to 10 CFR Part 50 (the Commission's numerical guides for design objectives and limiting conditions of operation with respect to gaseous and liquid effluents produced during normal operation of light-water-reactors), the Staff believes it would be an impermissible challenge to a commission regulation. Three Mile Island, supra. Further, there has been no particularization of the requisite § 2.758 special circumstances. See, Douglas Point, supra. For the above reasons, this contention should be rejected.

Contention 5

This contention is inadmissible because it lacks the necessary specificity and basis. The thrust of this contention is that the South Texas Project should not operate until resolution of pressure vessel excursion transient which occurred

at several Westinghouse PWR reactors. The Commission has held that the probability of a rupture of the pressure vessel is considered so low that it becomes an appropriate area of inquiry by a licensing board only upon a showing by a party of "special circumstances." Consolidated Edison Co. of New York (Indian Point Unit No. 2) CLI-72-29, 5 AEC 20, 21. See also Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-123, 6 AEC 331, 336-337. It was further noted that more than a mere allegation is required. Ibid. See also Wisconsin Electric Power Company (Point Beach Nuclear Plant, Unit 2), ALAB-137, 6 AEC 491, 503 (1973). Petitioner has made no effort to show why there will be any problem with the South Texas units' pressure vessels. He has merely alleged that there will be a problem.

Contention 6

This contention is not admissible because it lacks the necessary specificity and is too speculative. The contention states that "at least some of the partner licensees are not financially capable of building satisfactorily and or operating such a reactor". First, the financial qualifications of the Applicants to construct the South Texas Project is beyond the scope of inquiry at the operating license stage. (See 10 CFR § 50.57 which sets forth the appropriate finding for financial qualifications of Applicants for operating licenses.) Further, the contention fails to identify the "cost overruns" which petitioner asserts as basis for the asserted lack of financial qualifications of the Applicants. In addition, the Staff believes that the reasons that are asserted for Applicants' lack of financial qualifications (the City of Austin's January 20 referrendum, saleability of bonds for next progress payment, and petitioner's concern about the other Applicant's ability to "take up the slack") are entirely speculative.

Contention 7

The Staff believes that this contention is not admissible because it lacks adequate particularization of basis. In essence, the contention is that the South Texas Project is not needed. However, the basis for this assertion only addresses the short term situation. It is alleged that Austin does not plan to receive power from the project for a decade. The license, if granted, will cover a period of thirty years. Further, this period of operation would not commence until a license were granted. The asserted lack of need by San Antonio and Corpus Christi are also in terms of the present. To satisfy the particularization requirements of 10 CFR § 2.714, petitioner must specify why the power from South Texas will not be needed during the period scheduled for its operation or serve as substitution for other existing capacity.

Contention 8

This contention asserts that transportation of nuclear fuel should be risk free. There is no regulatory requirement that transportation of nuclear fuel be risk free. In fact, the Commission recognizes that there is a risk, has evaluated that risk (see "Environmental Survey of Transportation of Radioactive Materials to and From Nuclear Power Plants," WASH-1238, December 1972 and Supp. I, NUREG-75/038, April 1975), and established, by regulation, the environmental impact values for that risk. (See 10 CFR § 51.20(g)(1) and Table S-4).

Thus, the Staff views this contention as an impermissible challenge to a Commission regulation barred as a matter of law. Three Mile Island, supra. The contention does not allege any of the requisite § 2.758 "special circumstances". See, Douglas Point, supra.

This contentions further alleges a concern about § 20.304 and the effect the proposed rule making, which concerns that section, may have on Applicants' plans. The Staff finds this aspect of the contention so lacking in specificity that response is difficult. If petitioner is asserting that Table S-4 does not include values for impacts that may result from adoption of the proposed rule, the Staff believes that such an issue is premature. For the above reasons, the above contention should be rejected.

Contention 9

This contention is inadmissible for lack of the requisite particularization of basis. Petitioner, simply asserts that insufficient consideration has been given to alternative energy sources and conservation. Petitioner has made no effort to identify any specific inadequacies in Applicants' Environmental Report supporting the application for the South Texas plant operating license or the Staff's environmental analysis and the Licensing Board's determination at the construction permit stage (see FES, Chapter 9 and the Construction Permit Initial Decision LBP-75-46, 2 NRC 271, 296 (1975)). The Staff further believes that, even if adequate bases were stated, this concern is more appropriate at the construction permit stage.

Contention 10

This contention is inadmissible for lack of the requisite specificity and basis. Discussion and analysis of the South Texas Project water use appears in the Staff's FES for the construction permit (FES, Section 3.4) and Applicants' operating license stage Environmental Report (Vol. 1, Section 3.3). Petitioner has not indicated the deficiencies in either of these anslyses. Petitioner merely speculates that operation of the South Texas units may cause a water use deficiency.

Contention 11

This contention is inadmissible for lack of the requisite specificity and basis. Petitoner contends that the "cooling lake" will become contaminated "without presuming an accident". The contention does not specify how the "cooling lake" will become contaminated. Since the contention is only concerned with normal operation, it appears to challenge Appendix I to 10 CFR Part 50. (See § 2.758, Three Mile Island, supra, and Douglas Point, supra.) Further, the Staff does not know of any plans of the Applicants to allow public access to the cooling pond.

Contention 12

This question and statement do not satisfy the basis and specificity requirements of § 2.714 and therefore do not raise an admissible contention. Even if construed as a contention, it appears to challenge Appendix I to 10 CFR Part 50. (See, response to Contention 11). Accordingly, Contention 12 should be denied.

Contention 13

The thrust of this contention is that the Price Anderson Act has not been tested and, therefore, the Applicants should develop plans to compensate for damage caused by a major accident at a nuclear facility. In essence, petitioner is attacking the extent of liability Congress set forth the Price Anderson Act. Therefore the Staff believes that Congress and not the Board is the appropriate forum for this contention. Accordingly, the Staff believes this contention should be rejected.

Contention 14

This contention is inadmissible for lack of the requisite specificity and basis. Petitioner contends that the Applicants have not made available to the public "adequate evacuation or environmental palns." This is not true. The Applicants have provided both an Environmental Report (ER) and a Final Safety Analysis Report (FSAR) to support its application for an operating license. The ER contains discussions relevant to the South Texas Project environmental impacts and the FSAR contains discussions relevant to the safety aspects of the South Texas Project including a separate volume discussing emergency plans. Petitioner has failed to identify any deficiencies in these documents. Accordingly, this contention must be rejected. In addition, petitioner raises several questions. Petitioner questions Applicants' ability to handle repair in the event of a minor accident or breakdown and questions availability of workers. These questions do not raise issues appropriate for consideration by this

Board. Most apparent is their complete lack of basis. No reasons are given by petitioner indicating why the Applicants will not be able to handle the referenced repairs or hire necessary workers. For the same reasons (lack of basis) other questions raised in this contention must not be treated as admissible contentions. Furthermore, the questions raising concerns about Applicants' ability to pay for improvements required by future regulations are speculative.

Contention 15

This contention is inadmissible for lack of the requisite basis and specificity. This is not a contention but a question. To the extent petitioner is asserting that the present location of the fuel tanks (on an upper floor of the building containing the diesel engines) is unsafe, the contention must be rejected. There is no indication why this design is unsafe. To satisfy the basis and specificity requirements, petitioner should make specific reference to the Applicants' analysis on this matter and indicate the basis for any deficiencies (See FSAR, Vol. 12, Chapter 9.5.4).

Contention 16

Petitioner here simply makes a statement and does not raise a contention that satisfies the requisite basis and specificity requirements of § 2.714. As to the stated concern regarding the adequacy of Applicants' spent fuel storage area. The Staff believes that this concern is based entirely on speculation

In Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, it was held that neither the Staff nor the Licensing Board need concern itself with the matter of the ultimate disposal of spent fuel in light of the Commission's implicit finding (42 Fed. Reg. 34391) that there was reasonable assurance that methods of safe permanent disposal of high-level wastes can be available when they are needed. Accordingly, Contention 16 should be rejected.

With regard to the question concerning Applicants' plan for storage of low level wastes, the Staff suggests that the FSAR addresses this matter in Chapter 11.4.

Contention 17

Petitioner merely raises questions and does not set forth a contention with the requisite basis and specificity required by 10 CFR § 2.714. Accordingly, the Staff believes Contention 17 should be rejected.

Contention 18

Petitioner contends that a stop work order should be issued until all previous QA and QC reports have been verified. Issuance of "stop work orders" are not matters for this Licensing Board. Impositions of actions by orders are matters for the Commission. (See generally 10 CFR § 2.200). Accordingly, Contention 18 is beyond the scope of this Board's jurisdiction and should therefore be rejected.

Contention 19

This contention asserts that the public was not given sufficient notice of this hearing. This is a clear challenge to the Commission's regulation governing such notice. The Commission's regulation governing notice (10 CFR § 2.105) states that with respect to an application for an operating license, a notice of opportunity for hearing should be issued and the notice of the proposed action must set forth:

(1) The nature of the action proposed (10 CFR § 2.105(b)(1));

(2) The manner in which a copy of the safety analysis and of the ACRS report, if any, may be obtained or examined (10 CFR § 2.105(b)(2)),

(3) The Applicant may file a request for a hearing (10 CFR § 2.105(d)(1)), and

(4) Any person whose interest may be affected by the proceeding may file a petition for leave to intervene (10 CFR § 2.105(d)(2)).

On August 2, 1978 the Commission issued a notice of "Opportunity for Hearing" in the Federal Register (43 F.R. 33968) which met all of these requirements. Petitioner was not indicating that these requirements were not met. Petitioner asserts they were insufficient. Absent the requisite showing of "special circumstances" of § 2.758, this is an inadmissible challenge to a Commission

regulation. See Three Mile Island, supra; Douglas Point, supra. Accordingly, this contention should be rejected. The Staff further notes that display ads advising that opportunity for hearing had been issued, appeared in the Houston Chronicle on August 5, 1978 and in the Bay City Tribune on August 4, 1978.

Contention 20

Petitioner contends that Applicants must show in "sufficient" detail their current plans, both mechanical and fiscal to deal with decommissioning both at the expected end of operation and also should it be required at an earlier time due to an accident or reactor incapacity. With regard to the environmental issues this contention raises, the Staff believes that it is not set forth with the requisite specificity and basis. Petitioner has not indicated the deficiencies, if any, in the adequacy of the Applicants' discussion of decommissioning. Further, petitioner has not indicated any basis for the assumptions that early decommissioning may be required. With regard to the safety aspects of this contention, the Staff believes petitioner is challenging a Commission regulation in that he is requesting the Applicant to provide more than is required by the Commission's regulation. Appendix C, paragraph B to 10 CFR Part 50, provides that an Applicant only need show that it "posses or has reasonable assurance of obtaining the funds necessary to pay the estimated costs of operation for the period of the license or for five years, which ever is greater, plus the estimated costs of permanently shutting down the facility and maintaining it in a safe condition." To require more,

absent a showing of the requisite § 2.758 "special circumstances" is an impermissible challenge to a Commission regulation.

For the above reasons, this contention should be rejected.

Contention 21

The thrust of this contention is that the public health and safety is endangered due to the use by the Applicants of "illegal aliens" and "unskilled labor." The Staff believes that this contention is inadmissible for lack of specificity and basis. Particularly absent is the identification of how the use of such aliens or unskilled labor raises a safety concern. The only basis noted for this concern is an unconfirmed report of a request for a congressional investigation of the use of aliens and unskilled labor at the South Texas Project.

CONCLUSION

For the reasons noted above, the Staff believes that the petition as supplemented is inadequate to support intervention of David Marke or ACEE.

Respectfully submitted,

Henry J. McGurren
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 8th day of January, 1979