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 Nuclear Power Plant)	)	

BRIEF OF CONSUMERS POWER COMPANY
ON NEED FOR POWER ISSUE

I. INTRODUCTION

In its ORDER FOLLOWING SPECIAL PREHEARING CONFERENCE dated January 17, 1980 ("Order") this Atomic Safety and Licensing Board ("Licensing Board") asked Consumers Power Company ("Licensee") and the other parties to brief t' following question:

> Where the facility has never been subjected to National Environmental Policy Act of 1969 (NEPA) review because it was licensed before NEPA, does a license amendment which would permit the continued operation of the facility either require or permit considering a cost-benefit analysis or the need for power in the license amendment proceeding, notwithstanding that the Staff may issue a negative declaration?

The question was prompted by a contention asserted by Intervenor John O'Neill and b the decision of another Atomic Safety

and Licensing Board in Dairyland Power Cooperative (LaCrosse Boiling Water Reactor), LBP 80-2, (January 10, 1980).[1/]

The Dairyland Board concluded it had the authority to consider benefits from continued plant operation or, stated another way, the alternatives to the proposed expansion of the spent fuel pool (particularly the alternative of "doing nothing"). In its view, this inquiry was both permissive under the regulations of the Nuclear Regulatory Commission ("NRC" or "Commission") and NRC precedent[2/] and mandated by the National Environmental Policy Act of 1969 ("NEPA").[3/] The Dairyland Board presented five bases for its decision.

First, environmental cost/benefit balancing in license amendment cases (including the benefit of reactor shutdown) was said to be authorized, or at least not precluded where the question had not previously been explored in an operating license proceeding, by a footnote in the Appeal Board's decision in Northern States Power (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 46 n.4 (1978), remanded on other grounds sub nomine Minnesota v. NRC, 602 F.2d 412 (D.C. Cir. 1979).[4/]

1/ See Order, pages 32-35.

2/ See slip opinion at 51 and 54-55.

3/ Id. at 52.

4/ Id. at 51.

Second, consideration of alternatives, including the alternative of "doing nothing", was said to be required by Section 102(2)(E) of NEPA, 42 U.S.C. § 4332(2)(E), even for proposals not involving "major federal action significantly affecting the quality of the human environment," and therefore not requiring the preparation of an environmental impact statement pursuant to section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C).[5/]

Third, the Dairyland Board felt that since the NRC Staff had discussed alternatives, including plant shutdown, in its Environmental Impact Appraisal ("EIA"), and had introduced that EIA into evidence, without objection, in the proceeding, it had jurisdiction to explore the same issue.[6/]

Fourth, the Dairyland Board suggested in passing that its jurisdiction to consider need for power and alternatives in a spent fuel expansion could be founded on various Federal court cases holding that subsequent federal involvement in projects authorized prior to the enactment of NEPA could trigger the need for environmental review.[7/]

Finally, the fact that the Dairyland facility was undergoing a complete NEPA review in the context of converting

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5/ Id. at 51-53a.

6/ Id. at 54-55.

7/ Id. at 55-56.

a provisional operating license to a full-term operating license (no previous NEPA review having been conducted) apparently was a significant factor in the Board's decision.[8/]

The Dairyland Board acknowledged that its decision involved a close question of law and referred the matter to the Atomic Safety and Licensing Appeal Boar' ("Appeal Board") for review pursuant to 10 C.F.R. §§ 2.730(f) and 2.785(b)(1). It is not clear, however, whether the A peal Board will accept the referral because of its belief that the Dairyland proceeding "involves a unique set of facts, with the consequence that the issue underlying the referred ruling is unlikely to recur with frequency (and perhaps not at all)."[9/]

The facts in this case are different in several important respects from the facts in Dairyland. As in Dairyland, no environmental impact statement has ever been prepared for the Big Rock Point plant. But unlike Dairyland, no such evaluation is pending. This is because a full-term operating license was issued for the Big Rock Point plant in 1962, some seven years before the enactment of NEPA. Therefore considering the environmental costs and benefits of continued reactor operation at Big Rock Point is more clearly an impermissible retroactive application of NEPA than it was in Dairyland.

8/ Id. at 56-57.

9/ See the Appeal Board's Order of January 30, 1980 in the Dairyland proceeding.

Another difference is that although Licensee has submitted its environmental evaluation[10/] to the NRC Staff, the Staff has not yet prepared an environmental impact appraisal pursuant to 10 C.F.R. § 51.5(c). We assume that EIA will not contain a discussion of the "alternative" of plant shutdown, similar to that seized upon by the Licensing Board in Dairyland, since no such discussion is required by the Commission's regulations.[11/]

Still another difference is that in Dairyland the Licensing Board was apparently strongly influenced by the fact that the operations of Dairyland, an agricultural

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10/ See "Consumers Power Company Big Rock Point Plant Spent Fuel Rack Addition Environmental Impact Evaluation," dated April 1979. That document, prepared before Dairyland, includes a brief discussion of alternatives, including the costs of plant shutdown. Licensee does not intend to introduce that portion of its environmental evaluation into evidence in this proceeding.

11/ The environmental weighing of benefits such as need for power, and consideration of alternatives to a proposed action are not required under 10 C.F.R. § 51.7(b). Furthe:, as the Appeal Board has recognized recently in Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 216-18 (1978), the scope of such NEPA regulations is not flexible enough to allow any departure by the NRC Staff.

We note that the Council on Environmental Quality's ("CEQ") NEPA regulations require that "environmental assessments" (as environmental impact appraisals have been re-designated by CEQ) include discussions of the need for a proposal and alternatives. 40 C.F.R. § 1508.9. However, the Commission has not yet decided whether to amend current NRC regulations to conform to the CEQ regulations.

cooperative, are not subject to the oversight of the Wisconsin Public Service Commission. The Board was apparently persuaded by the arguments of some who made limited appearance statements that the NRC was the only agency which could look at the need for power from the LaCrosse Boiling Water Reactor.[12/] In contrast, Licensee is subject to the jurisdiction of the Michigan Public Service Commission which offers a more appropriate forum for questions concerning economic aspects of continued operation of the Big Rock Point Plant. See Consumers Power Company (Midland Plant, Units 1 and 2) ALAB-458, 7 NRC 155, 161-3 (1978).

Finally, the Dairyland Board conceded only that the environmental impacts of the proposal before it were not great enough to require the preparation of an environmental impact statement.[13/] But Licensee expects the NRC Staff and the Licensing Board to conclude before these proceedings are over that the environmental impacts of the proposed spent fuel pool expansion are indeed negligible and involve the commitment of available resources respecting which there are no unresolved conflicts, as they were found to be in Portland General Electric Co., et al. (Trojan Nuclear

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12/ Slip opinion at 38-39, 45 and 58-59.

13/ Slip opinion at 50.

Plant) ALAB-531, 9 NRC 263, 266 (1979) (hereinafter referred to as "Trojan") and at least 39 other such spent fuel pool expansion requests.[14/]

II. The Licensing Board Is Barred From Conducting Cost/Benefit And Need For Power Analyses In This Proceeding By Controlling NRC Precedent

The Appeal Board in the Trojan case expressly held that a licensing board is not required by NEPA to explore possible alternatives to a proposed action which itself will not either harm the environment or seriously raise any conflict involving the commitment of available resources. In affirming the Trojan licensing board's[15/] conclusion that alternatives need not be considered when the environmental impacts of the proposed action (increasing the capacity of the spent fuel pool) are insignificant, the Appeal Board stated:

> "[T]he evidence establishes without contradiction that the process of installing the new racks in [the Trojan spent fuel] pool and the operation of the pool with its expanded capacity will neither (1) entail more than negligible environmental impacts; nor (2) involve the commitment of available resources respecting which there are unresolved conflicts. As we read it, the NEPA mandate that alternatives to the proposed licensing action be explored and evaluated does not come

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14/ "Final Generic Environmental Impact Statement on Handling and Storage of Spent Light Water Power Reactor Fuel," NUREG-0575, Vol. 1, (August 1979) at ES-5.

15/ Trojan, LBP-78-32, 8 NRC 413, 454 (1978).

> into play in such circumstances -- in short, there is no obligation to search out possible alternatives to a course which itself will not either harm the environment or bring into serious question the manner in which this country's resources are being expended.[16/]

This clear manifestation of the law is binding on the Licensing Board. It may not deviate from the Trojan decision's proscription even though the Licensing Board might have a different view of the case law interpreting NEPA.

The Dairyland Board sought to escape the application of this precedent by stressing that Trojan was one of a number of cases[17/] involving amendments to operating licenses which had originally been issued only after a complete NEPA review had been conducted by the NRC. According to the Dairyland Board, the Appeal Board's decisions in those cases are "founded wholly" on the lack of any requirement in NEPA to replow ground already covered, i.e., to reconsider the benefits from or alternatives to further operation of the reactors in question.[18/]

But the Trojan decision can not be distinguished, as the Dairyland Board apparently suggests, by the mere application of res judicata or collateral estoppel principles.

16/ Trojan at 266 (footnotes omitted).

17/ See e.g., Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41 (1978), remanded on other grounds sub nomine Minnesota v. NRC, 602 F.2d 412 (D.C. Cir. 1979); Duquesne Light Co. (Beaver Valley Power Station, Unit No. 1) LBP-78-16, 7 NRC 811 (1978).

18/ Slip opinion at 47, 49.

What the Appeal Board was discussing in Trojan was the proper scope of the spent fuel pool expansion proposal. As the Supreme Court emphasized in Aberdeen & Rockfish R.Co. v. SCRAP, 422 U.S. 289, 322 (1975), "In order to decide what kind of an environmental impact statement need be prepared, it is necessary first to describe accurately the 'federal action' being taken."[19/] For this reason it is necessary to understand why a proposed license amendment requesting expansion of the spent fuel pool capacity is not equivalent to a request for Federal approval of continued operation. It is true that if the requested increased capacity is denied and if away-from-reactor storage does not become available until some future time, a nuclear power plant might be required to shutdown until a solution could be found. But many license amendment actions, for example emergency plan or security program upgrades, for one reason or another can be causally connected in a similar way to continued operation. This "happenstance," as the Appeal Board described it, Trojan, supra. 9 NRC 263, 266 n.6, has never been thought to

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19/ In that case the Supreme Court held that an environmental impact statement relating to a nonfinal across-the-board percentage freight rate increase did not have to take into account environmental issues relating to the underlying rate structure, when such matters were being considered by the ICC in other proceedings. See also Kleppe v. Sierra Club, 427 U.S. 390 (1976); Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2) CLI-77-8, 5 NRC 503, 541-2 (1977).

bring the advisability of continued operation within the scope of such proceedings.[20/]

A careful reading of Trojan confirms that the Appeal Board's primary concern was defining the proper scope of a spent fuel proceeding. It first noted that "[Intervenor's] theory that NEPA-imposed obligations went unfulfilled necessarily rests upon [the] premise that expansion of the capacity of the Trojan spent fuel pool cannot be viewed in isolation . . . ." 9 NRC at 265. The Appeal Board went on to quote its earlier decision in Prairie Island:

> Because the practical effect of not now increasing the capacity of the . . . spent fuel pool would be that that facility would have to cease operation, the [appellant] appears to believe that what is being licensed is in reality plant operation. Therefore, according to [appellant] the license amendment could not issue without a prior exploration of the environmental impact of continued operation and the consideration of the alternatives to that operation (e.g., energy conservation). We do not agree.

9 NRC 263, at 266 n.6 (emphasis added).

20/ Indeed, even the Dairyland Board acknowledged at one point that:

> All that an adverse decision on this [spent fuel pool] proceeding could or should do is to prevent [Dairyland] from undertaking the [spent fuel pool] modification. If [Dairyland] found an alternate method of disposing of its spent fuel, an adverse decision in this proceeding could not prevent it from continuing to operate.

(Slip Opinion at 65-6).

Since the Appeal Board's decision in Trojar is primarily based on its perception of the proper scope of a spent fuel pool proceeding the Appeal Board would have reached the same result even had there been no previous environmental review at the operating license stage. The existence of such an environmental review merely provided a ready means for defining the limits of the proceeding. In other words, the Appeal Board referred to the environmental review which had already taken place at the operating license proceeding only as a means of illustrating (by exclusion) the proper scope of a spent fuel expansion proposal.[21/] This is not the same thing as applying res judicata or collateral estoppel principles to exclude relitigation of issues otherwise within the scope of the proceeding. Indeed, any rule which held that environmental reviews of continued plant operation in license amendment cases are limited only by the uncertain application of res judicata and collateral estoppel, rather than by the inherent scope of the proposed amendment under consideration, would be contrary to law and administratively unworkable.

Two other considerations bar this Board from conducting cost/benefit balancing and need for power analyses in respect of continued operation of the Big Rock Point plant.

21/ In the same way, by analogy, that a driver confronted with oncoming headlights at night will stay on the road by looking at the side of the road.

In Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 155, 162-3 (1978), the Appeal Board made it clear that in the absence of environmentally preferable alternatives, the economic aspects of nuclear power should be left to "the business judgment of the utility companies and to the wisdom of the state regulatory agencies. . . ."[22/] Thus, the Dairyland Board misconstrued the Appeal Board's statement in the Prairie Island footnote (7 NRC at 46-47, n.4) as saying that cost/benefit balancing is sanctioned in all license amendment cases. Such balancing is only permitted when the proposed amendment involves more than negligible environmental costs and unresolved conflicts over the commitment of available resources. Where the environmental impacts of spent fuel expansion are negligible and no unresolved conflicts exist over the commitment of available resources, weighing the economic advantages and disadvantages of continued plant operation would unlawfully extend the application of NEPA and intrude upon the jurisdiction of the Michigan Public Service Commission and the business judgment of Licensee.[23/]

22/ In Dairyland, of course, the Licensing Board was strongly influenced by the lack of any state regulatory agency having jurisdiction over Dairyland Power Cooperative (Slip Opinion at 38-39, 45, 58-59). Its attempt to explore areas beyond the normal scope of environmental review in spent fuel pool expansion proceedings is partially attributable to this circumstance, which does not exist at Big Rock Point.

23/ Trojan, LBP-78-32, 8 NRC 413, 454 (1978), aff'd, ALAB-531, 9 NRC 263 (1979).

Another factor which precludes this Licensing Board from embarking on a cost/benefit analysis of continued plant operation or considering the alternative of shutting down the plant is the clear mandate that NEPA is not to be retroactively applied.[24/] The effective date of NEPA was January 1, 1970. A full-term operating license was issued for the Big Rock Point plant in 1962, more than seven years prior to that date. The environmental impacts and commitment of resources have long since occurred. They can not be exhumed and reexamined in this proceeding.

24/ See, e.g., San Francisco Tomorrow v. Romney, 472 F.2d 1021, 1024 (9th Cir. 1973). The Dairyland Board's reliance on Minnesota PIRG v. Butz, 498 F.2d 1314 (8th Cir. 1974), Hart v. Denver Urban Renewal Authority, 551 F.2d 1178 (10th Cir. 1977), and Wisconsin v. Callaway, 371 F.Supp. 807 (W.D. Wis. 1974), is misplaced. (Slip Opinion at 55.) In each of these cases the federal actions taken after the effective date of NEPA which served to trigger environmental review of projects begun before NEPA involved, even when viewed in isolation, further significant environmental impacts (e.g., timber harvesting in the Boundary Waters Canoe Area, sale for renovation of a Denver building listed in the National Register of Historic Places, and deposit in Wisconsin of more than 700,000 tons of spoil material from annual dredging of the Mississippi River). Similarly, the "continuing project" doctrine is inapplicable because all Federal approvals necessary for the operation of Big Rock Point plant were granted by the time of the issuance of the operating license to Consumers Power Company in 1962. NEPA should not be extended under the pretext of "liberal construction" to the actions or "continuing projects" of private parties. Public Service Company of New Hampshire, et al., (Seabrook Station, Units 1 and 2) CLI-77-8, 5 NRC 503, 542 (1977).

IV. The Dairyland Board Erred In Interpreting Section 102(2)(E) of NEPA.

The Dairyland Board placed primary reliance on Section 102(2)(E) of NEPA in determining that it had authority to examine need for power from the LaCrosse Boiling Water Reactor and the alternative of "doing nothing". Section 102(2)(E) requires all federal agencies to:

> Study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.

42 U.S.C. § 4332(2)(E). According to the Dairyland Board "Section 102(2)(E) comes into play irrespective of the magnitude of environmental impacts in question and irrespective of whether an impact statement must be prepared."25/ In other words, the Dairyland Board said, "All there need be is 'differing impacts on the environment' whether or not they be significant." (Slip Opinion at 52, quoting Trinity Episcopal School Corp. v. Romney, 524 F.2d 88, 93 (2d Cir. 1975)).

The legislative history does not support the idea that Section 102(2)(E) has no environmental threshhold. Nor does it support the Dairyland Board's determined effort to shoe-horn a spent fuel pool expansion proposal into an ill-fitting statutory provision.

25/ Slip Opinion at 53.

In the floor debate in Congress, Senator Jackson, one of the bill's sponsors, explained the provision:

> The controversy over the construction of dams in the Grand Canyon, for example, could have been resolved at a much earlier date if the Department of the Interior had been required to present Congress with alternative proposals where, as in that case, there were unresolved major environmental conflicts. Section 102(d) of S.1075 would go far toward resolving such problems by requiring the development and presentation of alternatives in all future legislative reports on measures involving major unresolved environmental conflicts.

115 Cong. Rec. (Part 21) 29055 (1969) (emphasis added).[26/] This statement clearly contradicts the notion that Section 102(2)(E) was meant to require alternatives to be developed for proposals regardless of the magnitude of any environmental impact.

The Grand Canyon example also seems to support the common-sense view that alternatives need to be developed and considered prior to the completion of construction projects. It seems clear that this is what Congress had in mind when it conditioned applicability of Section 102(2)(E) on the existence of "unresolved conflicts". Any conflicts over the construction and operation of the Big Rock Point plant were resolved with the issuance of a full-term operating license in 1962, seven years before the enactment of NEPA.

26/ Section 102(d) of S.1075 became Section 102(2)(D) of NEPA, which was redesignated Section 102(2)(E) in 1975 by P.L. 94-83, 89 Stat. 424. The language remains the same as that in Section 102(d) of S.1075 which Senator Jackson was discussing.

In view of this legislative history, it is difficult to conclude that a spent fuel expansion proposal which itself has negligible environmental effects nevertheless presents an "unresolved conflict concerning alternative uses of available resources." In a somewhat analogous context, the Supreme Court has admonished against statutory constructions which "trivialize NEPA". Andrus v. Sierra Club, ___ U.S. ___, 47 U.S.L.W. 4676 (June 11, 1979). This is precisely the result reached in the Dairyland decision.

Nothing in the case law cited by the Dairyland decision compels the unreasonably broad construction of Section 102(2)(E) adopted by that Board. The Board placed primary reliance on Trinity Episcopal School Corp. v. Romney, 523 F.2d 88 (2d Cir. 1975), which involved a federally financed urban renewal project covering a twenty block area on Manhattan's Upper West Side and its more than 35,000 current and former residents. While the Court of Appeals agreed with the District Court that the Department of Housing and Urban Development was not required to prepare a full-scale environmental impact statement under Section 102(2)(C) of NEPA, it held that HUD had not complied with the mandate of Section 102(2)(E), which requires an agency to "study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involved unresolved conflicts concerning alternative uses of available resources."

The Second Circuit noted that:

> Although this language might conceivably encompass an almost limitless range, we need not define its outer limits, since we are satisfied that where (as here) the objective of a major Federal Project can be achieved in one of two or more ways that will have differing impacts on the environment, the responsible agent is required to study, develop and describe each alternative for appropriate consideration. Cf. Hanly v. Kleindienst, 471 F.2d 823, at 835 (2d Cir. 1977).

523 F.2d at 93 (emphasis added).[27/]

The Dairyland opinion, undeterred by the Second Circuit's expressed reservations concerning the outer limits of Section 102(2)(E), seizes too eagerly on the phrase "differing impacts" as implying that there is no environmental threshold in that provision. The facts the Second Circuit had before it involved a "major federal project", 523 F.2d at 93, involving 20 metropolitan blocks and 35,000 people. See Trinity Episcopal School Corp. v. Romney, 387 F.Supp. 1044, 1047 (S.D.N.Y. 1974). It is simply inappropriate to take these words out of that context and apply them to a spent fuel pool expansion proposal having negligible

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27/ On remand, HUD prepared a "Special Environmental Clearance" describing alternative sites, but approving the original plan for low income housing, in part because it found that developing an alternative site would involve unacceptable delay. On appeal, the Second Circuit remanded again, holding that such delay could not be an "overriding factor." 590 F.2d 39, 44 (2d Cir. 1978). On January 7, 1980 the United States Supreme Court summarily reversed. Strycker's Bay Neighborhood Council, Inc. v. Karlen, et al., ___ U.S. ___, 48 U.S.L.W. 3433. In a per curium opinion (Marshall, J., dissenting) the Court rebuked the Second Circuit for attempting to substitute its judgment for that of HUD.

environmental impacts. Similarly none of the other cases cited in the Dairyland opinion support the Licensing Board's conclusion that Section 102(2)(E) applies to proposals irrespective of the magnitude of any environmental impacts.[28/]

The language about "differing impacts" taken from Trinity Episcopal School, supra, was taken out of context for another, equally important reason. Trinity Episcopal School, and all the other cases described in footnote 28, below, involved federal, or federal-state projects. In contrast, the Nuclear Regulatory Commission has observed, based

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28/ Environmental Defense Fund, Inc. v. Corps of Engineers 492 F.2d 1123 (5th Cir. 1974) (Tennessee-Tombigbee navigation project); Monroe County Conservation Council Inc. v. Volpe, 472 F.2d 693, 697-8 (2d Cir. 1972) (expressway through public park); Natural Resources Defense Council v. Callaway, 524 F.2d 79, 93 (2d Cir. 1975) (dumping of highly polluted dredged spoil); Environmental Defense Fund, Inc. v. Corps of Engineers, 470 F.2d 289 (8th Cir. 1972) (flood control project); and Environmental Defense Fund, Inc. v. Callaway, 497 F.2d 1340 (8th Cir. 1974) (dam and reservoir project) all involved projects having significant environmental impacts for which environmental impact statements were in fact prepared. Monarch Chemical Works v. Exon, 466 F.Supp. 639 (D. Neb. 1979) involved the construction of a prison in Omaha. The District Court declined to order an environmental impact statement be prepared because it found no significant impact, but following Trinity Episcopal School Dist., supra nevertheless held that Section 102(2)(E) required consideration of alternatives. However, construction of the prison clearly had more than negligible environmental effects and therefore the decision does not support the claim that Section 102(2)(E) has no environmental threshold.

on the Supreme Court's decision in Kleppe v. Sierra Club, 427 U.S. 402 (1976), that the scope of a NEPA analysis, including the range of alternatives considered, in NRC licensing proceedings is different from that which is appropriate where there is primary Federal activity. According to the Commission:

> [O]ur NEPA analysis must and should be more limited and should focus on "the proposal submitted by private parties" rather than on some broader but ill-defined concept extrapolated from that proposal. The broader issues are relevant but only insofar as they affect our decision on the . . . application. They do not define the perimeters within which we must evaluate that application.

Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 541-2 (1977).

In an NRC license amendment proceeding, the proper scope for environmental review is defined by the licensee's proposal. Where there are appreciable environmental impacts caused by the licensee's proposed license amendment, the benefits attributable to the proposal should be weighed, including alternatives to the proposed license amendment action. But where the environmental effects of the proposed action are truly negligible, no cost/benefit balancing or inquiry into alternatives is required or permitted. Licensing Boards may not undertake independent reviews of such subjects where they are clearly not within the perimeters of the proposal before them.

IV. Conclusion

For the foregoing reasons, the Licensing Board is neither required nor permitted to consider a cost/benefit analysis or the need for power (including alternatives) in this proceeding if it finds that the environmental impacts of the proposed license amendment are negligible and no unresolved conflicts exist over the commitment of available resources.

Respectfully submitted,

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March 3, 1980

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
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CONSUMERS POWER COMPANY	)	Docket No. 50-155
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CERTIFICATE OF SERVICE

I hereby certify that copies of the following: BRIEF OF CONSUMERS POWER COMPANY ON NEED FOR POWER ISSUE in the above-captioned proceeding was served upon the following persons by depositing copies thereof in the United States mail, first class postage prepaid, this 3rd day of March, 1980.

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