BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

CONSUMERS POWER COMPANY

(Big Rock Point Nuclear Power Station)

Licensing Board's Question Concerning the NEPA Requirement to Consider Need for Power in This Proceeding

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 of the need for power in the license amendment proceeding, notwithstanding that the staff may issue a negative declaration?

This is the question posed by the Board in its Order Following Special Prehearing Conference. Introductory facts shall be omitted here, because they are well known and are repeated in the three other briefs.

What follows is in two parts, both of which argue that theboard is indeed required, or at least permitted to examine the question in this instance, and that there are numerous factors that compel such a need for power and cost-benefit study.

The first part is a brief treating the legal questions at issue, particularly the National Environmental Policy Act, and precedent relating to the question. James Olson, Esq. prepared it.

The second section is a common sense argument written by myself. It shows that there are substantive questions here that compel these studies. It also contains legal issues that are more basic, such as equal protection under the law.

I feel sure that the board will be convinced by our strong arguments.

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There is no dispute that Section 102 (2) (C) is applicable to the licensing of nuclear power plants. The question here is whether or not Section 102 (2) (C) is applicable to a proceeding involving a license amendment. This involves two considerations. The first is whether or not the original license was issued before January 1, 1970 when NEPA became effective. The second is whether or not the nature of the license amendment proceeding is such that it constitutes a major federal action significantly affecting the environment irrespective of whether or not the original license predated NEPA.

NEPA applies to ongoing regulatroy action or critical actions which post-date the Act even though other action was taken prior to the Act's effective date. Calvert Cliffs' Coordinating Committee v. AEC, 449 F 2d 1109, 1120, n. 25 (D.C. Cir 1971). The critical question is whether or not the proposed action is critical in the sense that the opportunity for threshhold determinations under NEPA is irretrievably foreclosed. Once Section 102 (2) (C) is applicable, a cost-benefit analysis, including determinations of need and relation and comparison of alternatives, is triggered:

> Although the Act's effective date may not require instant compliance, it must at least require that NEPA procedures once established, be applied to consider prompt alternatives in the plans or operations of facilities approved without compliance. Calvert Cliffs, supra, 449 F 2d at 1121

There is no dispute that questions involving storage and disposal of nuclear waste pose serious concerns for the health and environment. Vermont Yankee Nuclear Power Corporation v. NRDC, 435 US 519, 538-539 (1978). Therefore, there should be no dispute that NEPA applies to a license amendment involving a substantial expansion of spent fuel storage capacity. The NRC must take into account the safety and environmental implications of maintaining the reactor site as a nuclear waste disposal site after the expiration of the license term. While the generic aspects of this question can be considered by a comprehensive proceeding, the specific factual issues which relate to particularized situations such as the instant case must be considered including cost-benefit analysis. This is particularly so where the original licensing of the plant escaped NEPA §102(2) (C) review. Moreover, the generic proceedings with respect to long-term on-site disposal beyond the expiration of the license does not relieve the NRC from its §102(2)(C) duties with respect to questions involving whether

Natural Resources Defense Council v. NRC, 562 F 2d 166 (1977).

action involves a major federal action significantly affecting the environment. Section 102 (2) (C) is applicable as to the specific facts unique to Big Rock, including the exploration of alternatives and the need for power question. Environmental Defense Fund v. Corps of Engineers, 492 F 2d 1123, 1135 (4th Cir 1974); Trinity Episcopal School Corp. v. Romney, 523 F 2d 88, 93 (2nd Cir 1975).

B. SECTION 102 (2) (E) (FORMERLY 102 (2) (D)) IMPOSES A DUTY TO DEVELOP AND EXPLORE ALTERNATIVES

Notwithstanding the EIS requirement imposed by Section 102(2) (C), an independent duty to develop, explore and consider alternatives is imposed by §102(2) (E) (Formerly §102(2)(D)). Trinity Episcopal School Corp v. Romney, supra; Dairyland Power Cooperative, Docket No. 50-409 (SSP License Amendment), attached to Order Following Special Prehearing Conference, in the instant spent fuel pool expansion proceeding, Docket No. 50-155; Ventling v. Berglund, F Supp, 13 ERC 1665 (D.C. S.D. 1979). There is a mandatory duty to develop and consider all reasonable alternatives. Environmental Defense Fund v. Armstrong, 352 F Supp 50, 57 (N.D. Cal 1972). The standard of review is one of reasonableness, Ventling, supra. Reasonableness requires sufficient information for a reasoned choice of alternatives. Robinson v. Knebel, 550 F 2d 422, 425 (8th Cir 1977); Vermont Yankee, supra; NRDC v. NRC, supra; Minnesota v. NRC, supra.

The range of alternatives includes "all reasonable alternatives". EDF v. Armstrong, supra, 352 F Supp at 57. This, obviously, includes the consideration of whether or not the plant should be shut down at such threshhold cost-benefit or power-need determination. The Board may not limit its considerations of all reasonable alternatives. Dairyland, supra, Slip Opinion at 52-54. The Board must determine whether the cost of shutting down Big Rock either permanently or temporarily outweighs the benefit of keeping it in operation. The instant

Even where there is a negative assessment the factual basis and sufficiency of evidence in support of a negative conclusion requires [illegible] for a reasoned choice of alternatives. [illegible] and a statement of reason in support of conclusion, including consideration of alternatives, is required. Minnesota v. AEC, 441 F 2d 1077, 1084 (D.C. Cir 1971); 827 (2nd Cir 1972). It is legally impossible for the staff in this case to issue a negative assessment and not consider during these proceedings all reasonable alternatives, including the shutdown alternative.

In Gulf Oil Corp. Inc. v. Morton, 12 ERC 2085 (1979), the Court issued an injunction pending Department of Interior's compliance with NEPA's negative declaration requirement or the preparation of an EIS. The Court specifically observed, "[I]n preparing its statement of reasons, the Department of Interior might find it helpful to refer to the five areas of environmental concern listed in 42 USC 4332(c)."

I hereby request this Board to require the staff to prepare the environmental impact statement, pursuant to NEPA §102 (2) (C), the Board is requested to order the staff and parties to determine in these proceedings, all reasonable alternatives, including cost-benefit analysis and the question of need-for-power within the context of such alternatives. Finally, intervenor requests this Board to require consideration of all reasonable alternatives supported by legally sufficient facts and a statement of reason as an inherent part of any negative declaration or assessment. On all three of these grounds, Contention VIII is required admissible in these proceedings.

Section Two

[illegible] ECONOMIC [illegible] ARGUMENT

> Dewitt said that . . . the potential costs of installing all the required modifications (at Big Rock) could not be justified unless the safety benefits of each of the modifications is thoroughly evaluated. "Continued operation of the plant may be rendered economically unfeasible."
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> -Charlevoix Courier, Wednesday, March 5, 1980

Russel B. Dewitt is Consumers Power Company's vice president for nuclear operations.

Consumers Power has itself requested a cost-benefit analysis! If cost-benefit can be invoked by the utility on so vital an issue as human health, can it be denied on a spent fuel pool expansion, which is integrally related to this same human health and environmental question? The power company cannot on the one hand request a cost benefit analysis when it is to its financial advantage, and then dispute the applicability of such a cost-benefit study in these proceedings. See New York Times, March 2, 1980, attached. They have admitted the need for a cost-benefit study. Given the company's financial stature and the ever-escalating costs of running this aged plant, I plan to demonstrate that just such an analysis will reveal the spent fuel pool modification to be folly.

Environmental Impact

While no need for an environmental impact study may be presumed to be necessary by the staff, this remains an issue of fact. Indeed, the board has itself admitted enviromental concerns: for example, the South wall contention, the evacuation question, and the concern over accumulation in the food chain of radionucleotides, etc. A cost-benefit is thus fitting because of significant environmental effects.

In any event, there is well established court precedent that requires this type of study even where ther is a negative declaration. See page 4 of this brief.

Cost-Benefit

There are convincing reasons why this study should be done in this proceeding.

First, the modification is the only way the plant can continue to operate, and this cannot responsibly be ignored. There are conflicts over commitment of resources, such as most use of coal power to enrich uranium vs. coal, wood, oil or natural gas.

Secondly, there is no generic or systematic review that will examine the particular and specific problems concurrently, with respect to Big Rock. "In his letter, (Dewitt) noted that Big Rock is unique with respect to plant design, size and location, ..." On alt. Other plants in such circumstances have not secured Environmental Impact Statements and/or cost-benefit analysis. This is the only proceeding at this threshold that is proper for the cost-benefit determination.

Thirdly, since this plant opened, the comparative cost of nuclear/fossil fuel/alternative power generation has altered drastically.

Lastly, the intervenors are seeking to create a full and not a selective record, and intend to raise this vital issue. Given my negligible resources, and the Concerned Citizens for the Charlevoix Area's debts, we cannot afford to raise the issue in another proceeding. The NRC has taken intervenors financial recources into consideration in the past. The NRC does pay indigent intervener's costs, and in this case, Christa-Maria was released from the 20 copy requirement.

The narrow limits of hearings serve to eliminate valid interventions, and to create an incomplete record. Dr. John Goffman, M.D., Doctor of Nuclear Chemistry, one of the nation's leading experts on low-level radiation, refuses to participate in NRC hearings for this very reason. The record, and full exposition of the facts suffer terribly; the citizens suffer in the long run. This constitutes on its face and as applied to the facts and circumstances, a denial of due processes and equal protection of the laws, as guaranteed by the U.S. Constitution, 5th Amendment.

Even if the continued plant operation is discounted as an issue, the cost-benefit problem should be examined. I have earlier discussed the environmental effects the pool alone will cause. Added to this is the cost of the expansion, which will precipitously

vulnerable or bankrupt company unable to afford to properly maintain it is frightening, especially to one who lives in the area.

Need for power and other costs

Were the amount of power contributed by the plant vast and critical, or were the cost of the operation negligible, the reasons for a cost benefit would be far less compelling. But in this hearing, I plan to argue the following points:

-Consumers has revealed that the power demand growth in 1979 was lower than growth projections. This can be expected to continue, because of rising energy prices and increased willingness to conserve.

-Big Rock produces 1-1.5% of Consumers' total output, hardly critical to a company with a 38% generating capacity above peak demands. This percentage is, I believe, the plant's potential contribution; last year the plant was on line 40% of the time, contributing in reality 0.60-0.44% of the power.

-The energy savings stated for nuclear power are deceptive. Vast quantities of electricity are used to enrich uranium. For the uranium used in reactors and weapons, more electricity was used last year than the entire continent of Australia! The price of this enrichment process will soon go up even further because the states of Kentucky and Tennessee have recently agreed to install costly scrubbers at the plants that burn most of the coal for this vast enrichment process. See "The fateful choice in uranium enrichment" as found in Time Bomb, A Nuclear Reader from The Progressive, The Progressive Foundation, Madison, Wisconsin, 1980.

-The costs of maintaining the plant in a safe condition are astounding. "Selby, (Consumers President,) told Big Rock employees Wednesday that NRC directive may be too expensive to warrant the continued operation of the 18-year-old plant." Petoskey News Review, Thursday, February 28, 1980. These safety regulations encompass the spent fuel pool, especially the expensive doom needed. A contention on this particular issue was admitted by the board.

-The price of plant management and maintainence increases disproportionately with the age of the plant.

-Insurance costs have likely increased since Three Mile Island II. Specifically, Big Rock's insurer is known to be con-

Alternatives Are Bountiful

-Economical use of conventional fuels or purchase of electricity.

-Simple Conservation. Dramatic savings can be achieved in industry with minimal capital investment. I suspect that the costs of the fuel pool modification alone, if invested in public education, could save at least 1.6% of Consumers Power's total demand, Big Rock's total, optimum contribution. It could also discourage or penalize the installation or use of machines that use electricity inefficiently.

-Alternative forms of electrical generation. Note that the Big Rock plant site on the lake is very breezy, and that NASA is experimenting with 100 and 200KW wind turbines.

Alternative sources of power used at the homesite, such as passive solar and wood heat. I know that wood heat is in fast growing use in the service area.

Conclusion

There is strong precedent for this board to examine the environmental impact and cost-benefit and need for power issues in this proposed modifications, even in the case of a negative Environmental Impact Evaluation statement, as the board has itself suggested by including the Dairyland brief in its order.

An extreemly strong case is made by the fact that the power company has itself requested a cost-benefit study for mandated NRC safety alterations. The safety question is integrally related to the spent fuel pool expansion.

Morecver, a cursory look at the cost-benefit issues reveals that there is a real issue here: the proposed modification may very well not be worth it. Consumers has admitted as much

[illegible] statements that threaten the closing of the plant, as reported in the Charlevoix Courier article attached.

Given the Intervenor's limited funds, the need to develop a full record, and the [illegible] [illegible] [illegible] [illegible] AND THE CONTINGENT, CONTINUED PLANT OPERATION AT BIG ROCK POINT.

I do not limit my argument to those in this brief.

The Indian Point plant 1 of my former utility, Consolidated [illegible] has closed [illegible] [illegible] York because of th high costs of meeting current safety standards. It is hard to im gine that an emergency core cooling system would be more expens e for that healthy utility to build than for the ailing Consumers Power Company to build a huge concrete dome to shelter the reactor and the spent fuel pool.

Big Rock Point Nuclear Power Station now faces the same prospect as Indian Point I, and I submit, regardless of of the board's ruling, will meet the same end. Stephen Howell, senior vice president for Consumers Power project engineering, said of the company's Midland project: "If we had known all the problems, the risks, the headaches, you can bet your life we wouldn't have proceeded." As quoted the day before, in the Traverse City Record-Eagle, Friday, March 7, 1980, attached.

John Selby, president of Consumers, "told Big Rock employees Wednesday, that NRC-directives may be too expensive to warrant the continued operation of the 13-year-old plant. . . This drive toward absolute safety has to be modified." Speaking the day before, quoted in the Petoskey News Review, Thursday, February 28, 1980.

They are willing to bet our lives on Big Rock, and the odds are long.

Respectfully submitted for a safe future,

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I certify that copies of this paper were mailed to all on the service list, March 10, 1980. John O'Neill II

Dated Monday, March 10, 1980