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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
TEXAS UTILITIES GENERATING COMPANY, ET AL.	)	Docket Nos. 50-445 50-446
	)	
(Comanche Peak Steam Electric Station, Units 1 and 2)	)	

NRC STAFF'S REPORT ON ITS POSITION
CONCERNING THE ADMISSIBILITY OF INTERVENORS' CONTENTIONS

BACKGROUND AND INTRODUCTION

By Order dated March 19, 1980, the Atomic Safety and Licensing Board (the "Licensing Board") scheduled a prehearing conference for April 30, 1980, to take place at the U.S. Federal Courthouse in Fort Worth, Texas. The purpose of the conference, as described by the Licensing Board, is to hear the positions of the parties "on those contentions that have not yet been ruled on by the Board."[1/] The Licensing Board ordered each party to the proceeding to submit, "not later than twenty (20) days prior to the prehearing conference a complete report on [its] position on each contention -- identifying those on which agreement was or was not reached." This report is submitted by the NRC Staff (the "Staff") pursuant to the Order of the Licensing Board.

1/ A further purpose of the conference, as described by the Licensing Board, is to hear oral argument as to "whether it is appropriate to refine the language of the quality assurance contention admitted by the Board."

As the Licensing Board recognized in its Order of March 19, 1980, the parties to this proceeding have been meeting and have had numerous telephone conference calls concerning each of the various contentions asserted by the three Intervenors herein.[2/] In the course of these meetings and discussions, the Applicants, Staff and CFUR reached a stipulation concerning the contentions CFUR now advances for admission in this proceeding. As a result of these negotiations, the Applicants, Staff and ACORN have reached an oral agreement that the contentions proposed by ACORN are as set forth in section III, infra. Applicants, Staff and CASE have not reached any stipulation or agreement as to CASE's contentions. Therefore, CASE's contentions are as set forth in CASE's "Supplement to Petition for Leave to Intervene and Contentions," dated May 7, 1979. As a consequence of these efforts and the parties' partial agreement upon a stipulation of contentions, the Licensing Board now has before it the tasks of (a) approving the stipulation between Applicants, CFUR and the Staff, and (b) ruling on the admissibility of 11 contentions advanced by Intervenor CFUR, 19 contentions filed by Intervenor CASE, and 31 modified contentions advanced by Intervenor ACORN. The Staff has consolidated in one paper its responses to each of these

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2/ In its Order Relative to Standing of Petitioners to Intervene, dated June 27, 1979, the Licensing Board (then comprised of Chairman Elizabeth S. Bowers, and members Richard F. Cole and Lester Kornblith), granted leave to intervene pursuant to 10 CFR § 2.714(d), to petitioners Citizens Association for Sound Energy (CASE), Citizens for Fair Utility Regulation (CFUR), and Texas Association of Community Organizations for Reform Now (ACORN). The Licensing Board further granted the petition filed by the State of Texas for leave to participate as an interested State, pursuant to 10 CFR § 2.715(c), and denied the petitions for leave to intervene filed by all other persons. See Texas Utilities Generating Company, et al. (Commance Peak Steam Electric Station, Units 1 and 2), LBP-79-18, 9 NRC 728 (1979).

contentions, and herein treats the contentions proposed by Intervenors CFUR, CASE and ACORN seriatim.[3/]

As a general matter, for the contentions proposed to be admissible, they must fall within the scope of the issues set forth in the Federal Register Notice of Hearing (Notice of Hearing) in this proceeding, 44 Fed. Reg. 47999 (August 16, 1979),[4/] and comply with the requirements of 10 CFR § 2.714(b) and applicable Commission case law. See, e.g., Northern States Power Co. (Prairie Island, Unit Nos. 1 and 2), ALAB-197, 6 AEC 188, 194 (1973), aff'd, BPI v. Atomic Energy Commission, 502 F.2d 424, 429 (D.C. Cir. 1974); Duquesne Light Co. (Beaver Valley, Unit No. 1), ALAB-109, 6 AEC 242, 245 (1973).

10 CFR § 2.714(b) requires that a list of contentions which intervenors seek to have litigated be filed along with the bases for those contentions set forth with reasonable specificity. A contention must be rejected where:

(a) it constitutes an attack on applicable statutory requirements;

(b) it challenges the basic structure of the Commission's regulatory process or is an attack on the regulations;

(c) it is nothing more than a generalization regarding the intervenor's views of what applicable policies ought to be;

(d) it seeks to raise an issue which is not proper for adjudication in the proceeding or does not apply to the facility in question; or

(e) it seeks to raise an issue which is not concrete or litigable.

3/ For the convenience of the Licensing Board, the Staff notes that it discusses the contentions filed by CFUR commencing at page 5, those of CASE commencing at page 26, and those of ACORN commencing at page 59 herein.

4/ See also, 44 Fed. Reg. 6995 (Feb. 5, 1979), "Availability of Applicant's Environmental Report, Consideration of Issuance of Facility Operating Licenses, and Opportunity for Hearing."

Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2&3), ALAB-216, 8 AEC 13, 20-21 (1974).

The purpose of the basis requirement of 10 CFR § 2.714 is to assure that the contention in question does not suffer from any of the infirmities listed above, to establish sufficient foundation for the contention to warrant further inquiry of the subject matter in the proceeding, and to put the other parties sufficiently on notice "so that they will know at least generally what they will have to defend against or oppose." Peach Bottom, supra at 20. From the standpoint of basis, it is unnecessary for the petition "to detail the evidence which will be offered in support of each contention". Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1&2), ALAB-130, 6 AEC 423, 426 (1973). Furthermore, in examining the contentions and the bases therefor, a licensing board is not to reach the merits of the contentions. Duke Power Co. (Amendment to Materials License SNM-1773 - Transportation of Spent Fuel From Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-528, 9 NRC 146, 151 (1979); Peach Bottom, supra at 20; Grand Gulf, supra at 426.

Nonetheless, it is incumbent upon the Intervenors to set forth contentions which are sufficiently detailed and specific to demonstrate that the issues raised are admissible and that further inquiry is warranted, and to put the other parties on notice as to what they will have to defend against or oppose. This is particularly true at the operating license stage, as here, where a hearing is not mandatory, in order to assure that an asserted contention

raises an issue clearly open to adjudication. Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 12 (1976); Gulf States Utilities Co. (River Bend Station, Units 1&2), ALAB-183, 7 AEC 222, 226 (1974).

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CONTENTIONS FILED BY CFUR

On May 7, 1979, Citizens for Fair Utility Regulation ("CFUR") filed its "Supplement to Petition for Leave to Intervene", in which it set out its contentions and the purported bases therefor, pursuant to 10 CFR § 2.714(b) (hereinafter referred to as CFUR's Original Contentions). Thereafter, at the first pre-hearing conference on May 22, 1979, CFUR presented its "First Corrections to Supplement to Petition for Leave to Intervene", and on May 29, 1979, CFUR filed its "Motion for Leave to Amend Supplement to Petition for Leave to Intervene" (hereinafter referred to as CFUR's Amended Contentions).5/ The Licensing Board, in its "Order Relative to Standing of Petitioners to Intervene", supra, appears to have granted CFUR's Motion to Amend, noting that the Board "has discretion to grant the motion." The Licensing Board held that certain of CFUR's contentions, as amended, were sufficient to meet the standing requirements of 10 CFR § 2.714(b), and granted CFUR intervenor status.

5/ The first pre-hearing conference in this proceeding took place on May 22, 1979, pursuant to the Licensing Board's Order of April 9, 1979. CFUR's Motion for Leave to Amend, filed on May 29, 1979, "supercedes CFUR's Motion [to Amend] served on May 22, 1979" at the pre-hearing conference. Id. at 1 n. 1.

It was the Licensing Board's expectation, as stated in its unpublished Order Relative to Motion For Continuance, dated May 9, 1979, that if CASE, CFUR and ACORN were admitted as Intervenors in this proceeding, the Applicants and Staff would meet with the Intervenors and "try to reach a stipulation on one or more other contentions." Order, p. 3. Accordingly, on July 17, 1979, counsel for NRC Staff (and other NRC staff members) and counsel for Applicants and other representatives of Applicants met with CFUR's representatives in Arlington, Texas to discuss the contentions proposed by CFUR in this proceeding. (Consistent with the Commission's views as stated in the Statement of Consideration accompanying the May 26, 1978 amendment to certain sections of 10 CFR § 2.714, 43 Fed. Reg. 17798, April 26, 1978, the parties had previously met, on April 19, 1979, to discuss the contentions to be submitted by CFUR.) The parties' July 17, 1979 discussions covered the proposed contentions contained in CFUR's Original Contentions, supra and Motion to Amend, supra. As a result of these discussions, the language of some of CFUR's contentions was modified. The parties also agreed that since certain of CFUR's contentions raised issues relating to the accident at the Three Mile Island, Unit 2 (TMI-2) nuclear power plant (Contentions II.B. and III.B., as set forth in CFUR's Original Contentions, supra, and Motion to Amend, supra), and since certain reports analyzing that accident had not yet been issued, the parties would defer consideration of those particular contentions pending issuance of the reports. At the meeting, the parties also agreed to conduct further negotiations by correspondence and telephone conference. In addition, the Staff offered, in response to inquiries by CFUR about the availability of certain documents, to consider on an informal

basis, requests for particular documents or information related to the specific issues raised by CFUR in this proceeding.

By letter dated August 21, 1979, the NRC Staff transmitted to CFUR a copy of CFUR's proposed contentions, which reflected the changes made at the meetings held by the parties in July and the positions taken by the parties at that meeting. In this letter, the Staff stated that the position taken at those meetings were not final and are subject to change. This letter also stated that a conference call to further discuss these contentions was scheduled for August 30 or 31. The purpose of these letters and attached statements of contentions (which set forth the position of the parties with respect to each contention) was to assist the parties in considering the language agreed to and positions taken at the meetings in July and to serve as a basis for the further negotiations contemplated by the parties. Subsequently, by telephone conference, the Staff and Applicants further discussed with CFUR the contentions proposed by CFUR.

By letter dated October 4, 1979, the NRC Staff transmitted a draft stipulation to CFUR's representative covering CFUR's contentions. On October 31, 1979, CFUR filed a "Motion to Add Contention." In the "NRC Staff's Answer to CFUR's Motion to Add Contention," dated November 20, 1979, the Staff, noting that the parties were then engaged in efforts to arrive at stipulations regarding the admission of various contentions, proposed that the parties consider the new contention "in the framework of the totality of contentions, rather than isolated." Staff Answer, p. 1. Accordingly, the

Staff suggested that a ruling on CFUR's motion should be deferred by the Licensing Board until the parties have filed their stipulation or respective statements of position on contentions. Id., p. 2.

The Staff allowed a period of several months for the parties to consider the draft stipulation and statement of contentions. The Staff received substantive comments from Applicants' counsel and CFUR relating to the draft stipulation and proposed contentions.

By letter dated January 25, 1980, the Staff forwarded to CFUR a stipulation and attachment (statement of revised contentions) which had been executed by counsel for Staff and counsel for Applicants. The letter stated that the executed stipulation and attachment differed in some respects from the draft stipulation and statement of contentions previously forwarded to CFUR. To assist CFUR in recognizing those changes, the letter described every change of substance, based on the Staff's records, which reflected the various discussions among all the parties during their negotiations, telephone conference and correspondence.

At CFUR's request the parties subsequently engaged in further negotiations by telephone conference on March 17, 1980, concerning the stipulation and statement of contentions. As a result of these further negotiations, a revised stipulation and statement of contentions (as revised or as originally proposed) was sent to CFUR by cover letter dated March 28, 1980, for its consideration. The Staff's March 28, 1980, letter to CFUR also transmitted

a statement of the Staff's views as to the admissibility of those contentions. On April 8, 1980, CFUR's representative orally advised the Staff that he had signed the stipulation and would send it to Staff Counsel for execution by Staff Counsel and Counsel for Applicants.

Accordingly, in the following discussion, the Staff sets forth its position with respect to the contentions covered by the stipulation. These contentions differ in some respects from CFUR's Amended Contentions.[6/] The numbers in brackets following each contention indicate the contentions in CFUR's contentions from which these contentions are derived. The bases are as set forth in CFUR's Original Contentions, supra.

In accordance with the general principles enunciated supra at 2-4, and as explained below, the Staff believes that CFUR contentions 1., 4.B., and 5. meet the requirements of 10 CFR § 2.714 and should be admitted as issues in controversy in this proceeding. Contentions 2.A., 2.B., 3.A., 3.B., 6., 7., 8. and 9. should be denied. The Staff stipulates to the language of contentions 2.A., 2.B., 3.A. (Alternative 1), 3.B., 6., 7. and 9, as set forth below, and agrees that this language should be adopted by the Licensing Board in the event that the Licensing Board determines that these contentions are admissible. Although the Staff believes that the subject matter

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6/ CFUR purportedly filed its Amended Contentions "for the sole purpose of clarification" of its Original Contentions, "with the understanding that the Supplement [the Original Contentions and the bases therefor] in all its parts serves as a basis for CFUR's issues." Each of the Amended Contentions "can be directly correlated by number with the detailed bases" found in CFUR's Original Contentions dated May 7, 1979. Motion for Leave to Amend, at 1.

of contention 4.A. is proper for consideration in this proceeding, the Staff believes that this contention, as presently worded, does not meet the specificity and basis requirements of 10 CFR § 2.714.7/

Statement of CFUR Contention (1).

Applicants have not demonstrated technical qualifications to operate CPSES in accordance with 10 CFR § 50.57(a)(4) in that they have relied upon Westinghouse to prepare a portion of the Final Safety Analysis Report (FSAR). [FORMERLY Contention I.]

Staff Position

The Staff supports admission of this contention as an issue in controversy in this proceeding on the grounds that it satisfies the specificity and basis requirements of 10 CFR § 2.714 and raises an issue which is appropriate for consideration in this proceeding.

Statement of CFUR Contention (2.A.)

One or more of the reports used in the construction of computer codes for the CPSES/FSAR have not been suitably verified and formally accepted; thus conclusions based upon these computer codes are invalid. [FORMERLY Contention II.A.]

Staff Position

The Staff opposes admission of this contention on the grounds that it lacks adequate basis.

7/ A copy of the stipulation among CFUR, the Staff and the Applicants to which is attached a "Statement of CFUR Contentions" wherein each of CFUR's contentions as stipulated is set out along with the positions of Applicants and the Staff as to the admissibility of those contentions will be provided to the Licensing Board as soon as the parties complete execution of it.

As an asserted basis for this contention, CFUR lists sixteen Westinghouse Electric Corporation topical reports which it states have not been "formally accepted for use in determining the consequences of accident sequences."[8/] CFUR is mistaken in its characterization of these reports. Copies of letters sent to CFUR relating to these reports indicate that certain of these reports have been evaluated by the Staff and determined to be acceptable for reference in license applications.[9/] In particular, a letter dated April 19, 1978, states that the report listed in Item 4. (WCAP-7956, "THINC-IV, An Improved Program for Thermal-Hydraulic Analysis of Rod Bundle Cores"), is acceptable for reference in license applications. Items 5., 6., 7., 8., 9., 11., 12., 13. and 15. in CFUR's Original Contentions consist of certain Westinghouse topical reports defining the Emergency Core Cooling System (ECCS) evaluation model, which the Staff has reviewed and determined may be referenced in license applications as accepted for use in ECCS analyses.[10/]

With respect to all topical reports referenced in any license application, including that for CPSES, the Staff, as part of its review of the application, assures that the material presented is applicable to the specific plant involved. CFUR presents no basis for concluding that the Staff will

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8/ CFUR's Original Contentions, at 2.

9/ See letter from Counsel for NRC Staff to Richard L. Fouke, dated August 1, 1979, enclosing copies of three NRC letters (one dated April 19, 1978, and the other two dated May 30, 1975). The enclosures relate to NRC Staff review of certain Westinghouse Electric Corporation topical reports. Copies of the transmittal letter were sent to the CPSES service list.

10/ See letters of May 30, 1975, referred to supra at n. 9.

fail to perform such a review as regards the topical reports and computer codes referenced in the CPSES license application. Likewise lacking in basis is CFUR's conclusion that any conclusions based on these computer codes are invalid.

In view of the foregoing, this contention must be rejected.

Statement of CFUR Contention (2.B.)

CFUR contends that the computer codes used in CPSES/FSAR must be tested and, if necessary, modified to accept the parameters reflecting the sequence of events at Three Mile Island and then to realistically predict the behavior observed at Three Mile Island in consideration of those parameters. [FORMERLY Contention II.B.]

Staff Position

The Staff opposes admission of this contention on the grounds that no basis is provided to justify admission of the contention as an issue in controversy in the proceeding.

CFUR offers no basis to conclude that a particular computer code referenced in the CPSES Final Safety Analysis Report (FSAR) must reflect the sequence of events that occurred during the accident at Three Mile Island - Unit 2 (TMI-2). TMI-2 contains a Babcock and Wilcox nuclear steam supply system (NSSS) whereas CPSES has a Westinghouse NSSS. Intervenor provides no indication as to the nexus between the sequence of events at Three Mile Island - Unit 2 and use of certain computer codes in the CPSES FSAR for predicting behavior at CPSES. Intervenor's contention rests on the mistaken assumption

that the computer codes referenced in this particular license application must duplicate the sequence of events at TMI-2. According to CFUR, certain codes referenced in the CPSES do not contain the capability for determining the amount of hydrogen generated during the TMI-2 accident. In this regard, the Staff notes that the purpose of various commuter codes contained in the CPSES FSAR is to analyze accidents which reasonably may be postulated to occur at CPSES given the specific components and systems at that facility. As noted above, TMI is a facility containing a NSSS by a different vendor, B&W, and has different components and systems than CPSES, which contains a NSSS by Westinghouse. CFUR has provided no grounds or basis for its concern that commuter codes designed to consider accidents in the Westinghouse CPSES need to consider an accident which occurred in the B&W TMI-2 facility.

Absent an adequate basis to support CFUR's assertion that the CPSES computer codes must duplicate the sequence of events at TMI-2, this contention must be rejected.

Statement of CFUR Contention (3.A.)

[Alternative 1]

Some accident sequences heretofore considered to have probabilities so low as to be considered incredible, based upon the findings of WASH-1400, are in tact more probable in light of additional findings of the Lewis Committee and should be evaluated as credible accidents for CPSES. In order to insure conservatism, the probabilities associated with such accident sequences should be the highest probabilities within the specified confidence band. [FORMERLY Contention III.A.]

Staff Position

The Staff opposes admission of this contention on the grounds that it lacks adequate basis.

This contention does not describe the particular accident sequences which allegedly should be considered as credible accidents for CPSES. In CFUR's Supplement, these accident sequences are described as "the postulated Class 9 accidents." (Original Contentions, at 4) The crux of this contention and CFUR's asserted basis is that because the Commission has withdrawn its endorsement from some of the conclusions of WASH-1400, the consequences of Class 9 accidents[11/] generally must be considered in the CPSES FSAR. The Staff rejects this as a basis for admitting this contention. The Commission has, since long before WASH-1400, taken the position that the consequences of such accidents need not be discussed because of the low probability of their occurrence, and this policy has been upheld by the courts. See e.g., Offshore Power Systems (Floating Nuclear Plants) ALAB-489, 8 NRC 194 (1978); Offshore Power Systems (Floating Nuclear Plants), CLI-79-9, 10 NRC 257 (1979); and Pennsylvania Power & Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), LBP-79-29, 10 NRC 586 (1979) and cases there noted. This policy in no manner was premised on the results of WASH-1400. Susquehanna, supra.

11/ In terms of determining which types of accidents must be discussed as part of the environmental review conducted for reactor licensing, Class 9 accidents involve sequences of postulated successive failures more severe than those postulated for the design basis of protective systems and engineered safety features. 36 Fed. Reg. 22851-52 (December 1, 1971).

In the absence of a showing that, with respect to the reactor in question, there is a reasonable possibility of the occurence of a particular type of accident as being regarded in Class 9, there is no requirement of discussion of that type of accident. Long Island Lighting Co. (Shoreham Nuclear Power Station), ALAB-156, 6 AEC 831 (1973). CFUR has made no such showing with respect to CPSES.

In view of the foregoing, this contention should be rejected as lacking the requisite basis.

Statement of CFUR Contention (3.B.)

CFUR contends that a hydrogen explosion accident sequence needs to be added to the list of possible accident sequences for which consequences will be determined for CPSES.
[FORMERLY Contention III.B.]

Staff Position

The Staff opposes admission of this contention on the grounds that it lacks adequate basis.

As a basis for this contention, CFUR merely makes conclusory statements regarding the alleged consequences of a hydrogen explosion, which it claims is more probable in view of the Three Mile Island Accident. According to CFUR's Supplement, the hydrogen explosion sequence should be considered as a Class 9 accident for which consequences will be determined for CPSES. However, there is no basis to support such a contention. The Appeal Board has held that a party seeking to have the consequences of a particular type

of Class 9 accident explored first has the obligation of establishing the likelihood of occurrence of such an accident. Shoreham, supra, 6 AEC at 836. In the absence of a showing that, with respect to the reactor in question, there is a reasonable possibility of the occurrence of a particular type of accident regarded as being in Class 9, there is no requirement of discussion of that type of accident. Id. CFUR has failed here to make the requisite showing. CFUR merely asserts that, based on the TMI-2 accident, "the possibility of sufficient accumulation of hydrogen in either the reactor and/or containment for an explosion to occur is greater than previously imagined." There is lacking is any showing that, with respect to CPSES, the occurrence of this type of accident is a reasonable possibility. Further, CFUR makes no showing that there are special circumstances warranting consideration of a hydrogen explosion accident as a Class 9 accident with respect to CPSES. Accordingly, this contention should be rejected.

Statement of CFUR Contention (4.A.)

The Applicants have failed to establish and execute a quality assurance/quality control program which adheres to the criteria in 10 CFR Part 50, Appendix B.
[FORMERLY Contention IV.]

Staff Position

Although the Staff believes that the subject matter covered by contention 4.A., quality assurance/quality control, is proper for consideration in this proceeding, the Staff believes that the specific contention set forth above, which is acceptable to CFUR,[12/] does not meet the specificity and basis requirements

12/ CFUR's contention is identical to the contention which the Licensing Board determined "encompasses all of the quality assurance/quality control conditions." See Licensing Board's "Order Relative to Standing of Petitioners to Intervene," Texas Utilities Generating Company, et al. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-79-18, 9 NRC 728, 733 (1979).

of 10 CFR § 2.714. CFUR has set forth adequate basis to support a contention that quality assurance/quality control regarding certain construction practices is inadequate.[13/] However, the above contention is so broadly framed that, as currently worded, it is unbounded and not litigable because it does not alert the other parties as to the specific aspects of the QA/QC program which are of concern to the Intervenors. Accordingly, this overly broad statement of the quality assurance/quality control contention should be replaced with the contention set out in footnote 13.

Statement of CFUR Contention (4.B.)

Applicants have failed to demonstrate sufficient managerial and administrative controls to assure safe operation as required in 10 CFR Part 50, Appendix B. Therefore, special operating conditions should be required. [FORMERLY Contention IV.]

Statement of Position

The Staff supports admission of this contention on the grounds that it satisfies the specificity and basis requirements of 10 CFR § 2.714, and raises an issue which is appropriate for consideration in this proceeding.

13/ As stated in the "NRC Staff Memorandum Regarding Contentions and Further Answer to ACORN/WTLS Petition for Leave to Intervene," dated May 17, 1979, the Staff believes that the following is an acceptable contention encompassing all of the quality assurance/quality control concerns expressed:

> "The applicant's failure to adhere to the quality assurance/quality control provisions required by the construction permits for Comanche Peak, Units 1 & 2, and the requirements of Appendix B of 10 CFR Part 50, and the construction practices employed, specifically in regard to concrete work, welding, inspection, materials used and craft labor qualifications, have raised substantial questions as to the adequacy of the construction of the facility. As a result, the Commission cannot make the findings required by 10 CFR 50.57(a) necessary for issuance of an operating license for Comanche Peak."

Statement of CFUR Contention (5.)

There is no assurance that the Spent Fuel Pool area can withstand the effects of tornadoes, as required by 10 CFR Part 50, Appendix A, Criterion 2 because:

a. The analyses upon which the Design Basis Tornado (DBT) is based are perfunctory, outdated and unreliable;

b. The loading analyses based on the Design Basis Tornado (DBT) are inappropriate because they fail to consider the potential loading combination of the DBT and a tornado-generated missile.

c. The assignment of a loading factor of 1.0 for load combination equations incorporating tornado loadings in combination with "normal and accident conditions" is unacceptable.

d. The DBT parameters used in FSAR Section 3.3.2.1 are less conservative than the parameters found in NRC Regulatory Guide 1.76 c.2.

[FORMERLY Contention V.]

Staff Position

The Staff supports admission of this contention on the grounds that it satisfies the specificity and basis requirements of 10 CFR § 2.714 and raises an issue which is appropriate for consideration in this proceeding.

Statement of CFUR Contention (6.)

Applicants have failed to adequately evaluate whether the rock "overbreak" and subsequent fissure repair using concrete grout have impaired the ability of Category I structures to withstand seismic disturbances.
[FORMERLY Contention VI.]

Staff Position

The Staff opposes admission of this contention on the grounds that it lacks adequate basis.

The relevant licensing criteria require that a particular facility's Category I structures be designed to withstand particular seismic events, the "safe-shutdown" earthquake and the "operating-basis" earthquake. CFUR fails to state the grounds for its concern that the rock "overbreak" and subsequent repair have resulted in the inability of CPSES Category I structures to withstand these seismic events. Merely asserting that the overbreak and subsequent repair has impaired the ability of these structures to withstand seismic events, in general, does not raise an issue capable of litigation in this proceeding (i.e., the ability of these structures to withstand the safe shutdown earthquake and the operating basis earthquake). CFUR also mistakenly assumes that the question of the rock overbreak and sufficiency of the subsequent repair was not evaluated. Inspection Report 76-05, IV.A. (May 27, 1976) indicates that such an evaluation was made and that the repair was determined to be sufficient. Absent an adequate basis to raise a concern that the evaluation and repair were deficient, this contention must be rejected as lacking the requisite basis.

Statement of CFUR Contention (7.)

Applicants have failed to adequately evaluate the impacts of the drawdown of the groundwater under CPSES during and as a result of plant operation. [FORMERLY Contention IV.D.]

Staff Position

The Staff opposes admission of this contention on the grounds that it lacks adequate basis.

As a basis for this contention, CFUR cites an alleged instance of drawdown of water by Applicants during construction at a rate in excess of that permitted in the construction permit. CFUR also requests that an evaluation of the impacts resulting from withdrawal of groundwater during CPSES construction be initiated. However, there are no grounds supplied by CFUR to support its contention that Applicants have not adequately evaluated the impacts of withdrawal of groundwater during plant operation. In this regard, the Staff notes that the Applicants' Environmental Report - Operating License Stage, discusses "Plant Water Use" in section 3.3. Use of groundwater is discussed in section 3.3.2. This document provides sufficient discussion of withdrawal of groundwater during plant operation to allow CFUR to particularize its concerns regarding impacts of withdrawal of groundwater during plant operation. However, CFUR completely fails to specify why this evaluation of such impacts is inadequate. CFUR merely assumes that plant operation will involve withdrawal of groundwater at the same rate as occurred with the withdrawal of groundwater during construction. However, CFUR does not provide the basis for its assumption that CPSES operation, as opposed to construction, will involve the same rate of withdrawal of groundwater. For example, it is clear that construction of CPSES has involved withdrawal of groundwater as a result of excavation, but there is nothing to suggest that operation of CPSES will involve a comparable activity resulting in similar impacts on groundwater. Since there is no basis presented for a contention relating to the alleged deficiencies in Applicants' discussion of the impacts on groundwater as a result of plant operation, this contention must be rejected.

Statement of CFUR Contention (8.)

Applicants have failed to make any effort to determine the effect of radioactive releases on the general public other than at the exclusion boundary. Various transport mechanisms may cause, in certain cases, the bulk of the health effects to occur some distance from the exclusion boundary. [FORMERLY Contention IX.]

Staff Position

The Staff opposes admission of this contention on the grounds that it lacks specificity and basis and constitutes an impermissible challenge to the Commission's regulatory requirements and regulations.

This contention was filed by CFUR in a "Motion to Add Contention," dated October 31, 1979. According to CFUR's motion, the contention is based on information of which it had just become aware. As the "Staff's Answer to CFUR's Motion to Add Contention," dated November 20, 1979, indicates, the Staff proposed to consider this contention, along with CFUR's other contentions, in the negotiations on CFUR's contentions which were then in progress. On this basis, the Staff suggested that the Licensing Board defer ruling upon CFUR's motion. Consideration of this contention by the parties during their negotiations has not resulted in the parties reaching agreement as to either the language or admissibility of this contention. Accordingly, the Staff is now setting forth its position regarding the admissibility of this contention.

As a basis for this contention, CFUR cites a draft report "Some Long Term Consequences of Hypothetical Major Releases of Radioactivity to the Atmos-

phere from Three Mile Island," which CFUR states had just come to its attention. According to CFUR, this report concludes that in "certain cases," "the bulk of health effects" from offsite releases of radioactivity would occur at "some distances" from the plant site. CFUR concludes that any hypothetical release of radioactivity from CPSES would therefore occur some distance from the plant. The only support provided by CFUR for this conclusion, other than the cited report, is CFUR's statement that local weather reports show that predominant movement of storm cloud formations in the Dallas-Fort Worth Metroplex differs from the wind rose pattern utilized by Applicants to evaluate offsite releases.

The basis for this contention is purely speculative. It rests upon a draft report on hypothetical releases of radioactivity from TMI-2. CFUR offers nothing to show why calculations regarding a hypothetical release at a site such as TMI-2 mandate that Applicants be required to expand the scope of their evaluation of postulated off-site releases with respect to CPSES. CFUR's statements about "local weather reports" likewise does not provide sufficient basis for a contention such as that proffered by CFUR.

The contention is so vague in such terms as "various transport mechanisms," "certain cases" and "bulk of health effects" that the parties cannot determine what aspects of the subject matter must be addressed. CFUR fails to specify what these mechanisms are or identify those cases in which they allegedly operate. There is likewise lacking any indication as to the meaning of "bulk of health effects."

A further grounds for rejection of this contention is that it appears to constitute an attack on the Commission's regulatory requirements and regulations. The regulatory requirement with regard to exposure to radiation is that exposure to radiation be kept as "low as reasonably achievable." To the extent that this contention alleges that Part 20 standards are inappropriate, the contention constitutes an impermissible challenge to the Commission's regulations, which is barred by 10 CFR § 2.758, absent special circumstances that specify how these radiation standards would not serve the purposes for which they were adopted with respect to CPSES. CFUR has offered nothing more than speculation as a basis for contending that these standards for radiation protection are inadequate for members of the general public who live long distances from the CPSES.

Consideration of the admissibility of this contention must take into account that it was filed approximately five months after the filing of CFUR's Supplement and the holding of the initial prehearing conference. A petition for leave to intervene may be amended without the prior approval of the presiding officer at any time up to 15 days prior to the special prehearing conference. 10 CFR § 2.714(b)(3). After that time, a petition for leave to intervene may be amended only with the approval of the presiding officer, based upon by balancing the five factors set forth in 10 CFR §2.714(a)(1), CFUR fails to address these five factors other than to state that the information upon which this contention is based had just come to its attention.[14/]

14/ According to the Staff's copy of the draft report cited by CFUR, the report was issued on September 7, 1979.

Although an argument could be made that this contention is untimely, based on the factors in 10 CFR § 2.714(a)(1), the Staff believes that the admissibility of this contention should be determined on substantive as opposed to procedural grounds. It does not appear that this late-filed contention will delay or disrupt the proceeding, since only one issue has been identified by the Licensing Board for adjudication. The parties were still engaged in negotiations concerning contentions when this contention was filed. In addition, there are a number of other proposed contentions pending before the Licensing Board for a determination with respect to admissibility.

For the reasons stated above, the Staff believes that this contention should be rejected.

Statement of CFUR Contention (9.)

The Applicants should be bound to any hardware modifications required to mitigate the consequences of Anticipated Transients Without Scram concerning Westinghouse reactors of the CPSES category even if the Commission grants an exemption to Applicants based upon some specific time frame. [FORMERLY Contention VII.A.]

Response

The Staff opposes admission of this contention on the grounds that it lacks adequate basis.

In support of this contention, CFUR concludes that the Applicants' Preliminary Safety Analysis Report (PSAR) statement that "no hardware modifications are required to mitigate the consequences of ATWS (Anticipated Transients

Without Scram)", is based on "two outdated studies."[15/] The Staff's "Supplement to Safety Evaluation of the Comanche Peak Steam Electric Station, Units 1 and 2), November 1974, states in Section 7-2 (p.9) "Reactor Trip System":

> "We stated in the Safety Evaluation Report that the applicant agreed to submit, by October 1, 1974, a report of its analysis of the ATWS matter.
>
> In its letter dated September 23, 1974, the applicant has documented the information required by WASH-1270 by referencing Westinghouse topical reports WCAP-8330, "Westinghouse ATWS Analysis," and WCAP-7706, "An Evaluation of Solid State Logic Reactor Protection in Anticipated Transients." The applicant states that no hardware modifications are required to mitigate the consequences of ATWS.
>
> We are reviewing this Westinghouse information on a generic basis. When the results of our generic review are available, we will evaluate their applicability to the Comanche Peak facility."

The NRC Staff has issued a report "Anticipated Transients Without Scram" NUREG-0460, Vols. 2 and 3 (April 1978), which contains an evaluation of the Westinghouse ATWS Analyses (Appendix XVII) Vol. 2. However, there has been no resolution yet concerning the measures, if any, to be required of Applicants to mitigate the affects of ATWS. CFUR has presented no basis for its contention other than its own conclusions as to what it believes should be required of Applicants. In this regard, it should be noted that "Anticipated Transients Without Scram" is a generic "unresolved safety isssue" (Task A-9, NUREG-0510, "Identification of Unresolved Safety Issues Relative to Nuclear Power Plants"). Mere identification of such an issue, as CFUR

15/ In this regard, the Staff notes that the Applicants' Final Safety Analysis Report (FSAR), Section 15.8, "Anticipated Transients Without Scram" states that a discussion of ATWS is presented in "Westinghouse Anticipated Transients Without Trip Analysis," WCAP-8330, August 1974.

has done, does not fulfill the requirement in 10 CFR § 2.714 of defining "concrete issues which are appropriate for adjudication in a particular proceeding." Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760 (1976). What is required is a demonstration of the nexus between the "unresolved safety issue" and particular deficiencies in the facility license application. As the Appeal Board stated in ALAB-444, supra:

> "The mere identification of a generic technical matter which is under further study by the staff (such as a TSAR item or Task Action Plan) does not fulfill this obligation, even if the matter has some patent relationship to the category of reactor under review. For as we have seen, the generic study may have little bearing on safety - e.g., where it concerns the methodology of the staff's review. To establish the requisite nexus between the permit or license application and a TSAR item (or Task Action Plan), it must generally appear both (1) that the undertaken or contemplated project has safety significance insofar as the reactor under review is concerned; and (2) that the fashion in which the application deals with the matter in question is unsatisfactory, that because of the failure to consider a particular item there has been an insufficient assessment of a specified type of risk for the reactor, or that the short-term solution offered in application to problem under staff study is inadequate." [footnote omitted] (emphasis added). 6 NRC at 773.

In the Staff's view, CFUR has not satisfied the basis requirement in 10 CFR § 2.714, as interpreted in ALAB-444. Accordingly, this contention should be rejected.

II

CONTENTIONS FILED BY CASE

On February 28, 1979, Citizens Association for Sound Energy ("CASE") filed its "Petition for Leave to Intervene", which was later supplemented upon the

filing by CASE of its "Supplement to Petition for Leave to Intervene and Contentions," dated May 7, 1979 (hereinafter referred to as CASE's contentions) pursuant to 10 CFR § 2.714(b). (In addition, at the pre-hearing conference held on May 22, 1979, CASE corrected page 21 of its contentions.) The Licensing Board, in its "Order Relative to Standing of Petitioners To Intervene", supra, granted CASE's petition for leave to intervene, finding that CASE satisfied the "interest" requirement for its membership and that CASE's Contention 19 met the requirements of 10 CFR § 2.714(b) "as supported by other statements in the petition". Order, supra, 9 NRC at 731.16/

Consistent with the Licensing Board's expectation, as stated in its unpublished Order of May 9, 1979, supra, the Staff and Applicants met with CASE to "try to reach a stipulation on one or more other contentions." Order, p. 3. At this meeting, on July 18, 1979, counsel for NRC Staff (and other NRC staff members) and counsel for Applicants and other representatives of Applicants met with CASE's representatives in Dallas, Texas to discuss the contentions proposed by CASE in this proceeding. (Consistent with the Commission's views as stated in 43 Fed. Reg. 17798 supra, the parties had previously met, on April 18, 1979, to discuss the contentions to be submitted by CASE.) The parties' July 18, 1979 discussions covered the proposed contentions contained in CASE's contentions, supra. As a result of these discussions, the language of CASE's contentions was modified. At the

16/ CASE's Contention 19 generally concerned the issue of quality assurance/quality control. As discussed infra, at 58, the Licensing Board has reformulated the QA/QC contentions of CASE and the other two intervenors herein, in an attempt to encompass all those contentions in one statement (Order Relative to Standing of Petitioners to Intervene, supra, 9 NRC at 733).

meeting, the parties also agreed to conduct further negotiations by correspondence and telephone conference. In addition, the Staff offered, in response to inquiries by CASE about the availability of certain documents, to consider on an informal basis, requests for particular documents or information related to the specific issues raised by CASE in this proceeding.

By letter dated August 21, 1979, the NRC Staff transmitted to CASE a copy CASE's proposed contentions, which reflected the changes made at the meetings held by the parties in July and the positions taken by the parties at that meeting. In this letter, the Staff stated that the position taken at those meetings were not final and are subject to change. This letter also stated that a conference call to further discuss these contentions was scheduled for August 30 or 31. The purpose of this letter and attached statement of contentions (which set forth the position of the parties with respect to each contention) was to assist the parties in considering the language agreed to and positions taken at the meetings in July and to serve as a basis for the further negotiations contemplated by the parties. Subsequently, by telephone conference, the Staff and Applicants further discussed with CASE the contentions proposed by CASE. By letter dated October 4, 1979, the NRC Staff transmitted a draft stipulation to CASE's representative covering CASE's contentions.

The Staff allowed a period of several months for the parties to consider the draft stipulation and statement of contentions. The Staff received substantive comments from Applicants' counsel and CASE relating to the draft stipulation and statement of contentions.

By letter dated January 25, 1980, the Staff forwarded to CASE a stipulation and attachment (statement of revised contentions) which had been executed by counsel for Staff and counsel for Applicants. The letter stated that the executed stipulation and attachment differed in some respects from the draft stipulation and statement of contentions previously forwarded to CASE. To assist CASE in recognizing those changes, the letter described every change of substance, based on the Staff's records, which reflected the various discussions among all the parties during their negotiations, telephone conference and correspondence.

At CASE's request the parties subsequently engaged in further negotiations, by telephone conference on March 19, 1980, concerning the stipulation and attachment of revised contentions. To assist CASE's representative in gaining a better understanding of the Staff's position on the admissibility of CASE's contentions (as revised), on March 28, 1980, the Staff transmitted to CASE a statement of the Staff's views on the admissibility of these contentions. Notwithstanding these further negotiations and correspondence, the parties have not reached a stipulation with CASE concerning the CASE's proposed contentions. Accordingly, the Staff has advised CASE that the Staff's statement of position to be filed with the Licensing Board will be based on CASE's contentions as originally proposed.

In accordance with these principles and as explained below, the Staff supports admission of CASE contentions 12, 13, 14, 15 and 18 as issues in controversy

in this proceeding. The Staff suggests, however, consolidation of contentions 12, 13, 14 and 15 into the single contention set forth, infra. Contentions 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 16 and 17 should be denied. However, the Staff agrees that the modified language of contentions 5, 6, 7 and 11, set forth infra, is acceptable and should be adopted by the Licensing Board in the event that the Board determines that these contentions are admissible. Although the Staff believes that the subject matter of contention 19 is proper for consideration in this proceeding, the Staff believes that the contention as presently worded is overly broad and therefore the Staff suggests adoption of the language set forth infra. The Staff believes that the Licensing Board should defer ruling on the admissibility of contention 9 for the reasons stated below.

Statement of CASE Contention 1

The applicant cannot be depended upon to adequately protect, either in the normal or the emergency operation of the Comanche Peak Nuclear Power Plant (CPSES), the health and safety of the public and the individuals represented by CASE, and should therefore not be allowed to operate the plant.

Staff Position

The Staff opposes the admission of this contention as an issue in this proceeding, on the grounds that it fails to satisfy the basis and specificity requirements of 10 CFR § 2.714 and is so overbroad as to be incapable of being litigated, in that it fails to alert the other parties as to what concerns CASE seeks to have addressed; in fact, the contention touches upon virtually every conceivable aspect of nuclear power plant operation which relates to the protection of the health and safety of the public.

In support of this contention, CASE discusses various instances in which Applicants have been cited by regulatory authorities for failing to comply with applicable air and water pollution standards (Contentions at 2-5).

At best, these references would support a more narrow contention - that Applicants have demonstrated a lack of commitment to comply with applicable regulations established to protect the health and safety of the public, sufficient to assure that they will adequately comply with the environmental and safety regulations associated with the operation of a nuclear facility. The Staff is of the view that a reformulation of this contention in this manner would alleviate the Staff's concerns over the vagueness of the contention as presently worded. Finally, the Staff is of the view that the other matters referred to by CASE in support of this contention (Contentions at 5-9) are totally irrelevant and altogether fail to support this contention. Accordingly, the contention should be rejected.

Statement of CASE Contention 2

Because of new information available since the preparation of the final environmental impact statement, prepared in connection with the construction permit which has been inadequately dealt with in the Environmental Report - Operating License Stage (ER) submitted by the applicant, applicant must amend that report before the NRC can consider its request for an operating license, and when the new information is taken into account, a weighing of the costs and benefits of licensing the plant (cost/benefit analysis) to operate and the availability of alternatives necessitate the denial of the operating license.

Staff Position

The Staff opposes admission of this contention as lacking in basis and specificity. While CASE refers in its contention to "new information", no

such information is provided or alluded to by CASE. Furthermore, in support of this contention, CASE merely alleges that the "criteria" specified in 10 CFR § 50.20(a)-(c) "have not been satisfied" in Applicant's Environmental Report (ER)-Operating License Stage (Contentions at 11), but CASE fails to indicate in what manner Applicant's ER is deficient. CASE appears to rely on its other contentions to provide support for this particular contention; however, by merely referring to unidentified "contentions which follow" (Contentions at 11), CASE has failed to meet its burden of providing the requisite basis and specificity. For these reasons, the Staff opposes admission of this contention.

Statement of CASE Contention 3

The requirements of the National Environmental Policy Act and 10 CFR Part 51 have not been met in that the forecast of the need for power which the plant will supply, as contained in the Applicant's Environmental Report (ER), is inaccurate. (See also Contention No. 4).

Staff Position

The Staff opposes admission of this contention as lacking in basis. While CASE claims that the Applicant's Environmental Report contains an inaccurate forecast for the need for power, CASE nowhere provides any concrete reason for believing that such inaccuracy exists. Rather, CASE merely alleges, without any support, that various figures are "incorrect" and that one figure is "obviously too high" (Contentions at 13). Also, CASE alleges that the substitution of a "known" figure for 1978 demand in place of the estimated figure which is utilized in the ER will result in a reduction of the Applicant's long-term forecast; however, CASE fails to specify the "known"

figure or to show that it varies significantly from the figure utilized in the ER.

CASE further asserts that the Applicant has failed to consider various factors and costs in its projection of power demands, and asserts that the inclusion of such factors and costs in a revised ER would "probably" result in a reduced projection of future demand -- yet CASE provides no support for its assertion that these factors have not been considered by Applicant (Contentions at 13-14). Furthermore, this entire discussion by CASE of what might occur or "probably" will occur in the future as to the demand for power is nothing more than unfounded speculation. However, even assuming that CASE is correct, the Staff submits that such considerations are inappropriate at this stage of the Comanche Peak proceeding. Such considerations, while proper at the construction permit stage, should not be taken into account at the operating license stage unless supported by "significant new information which had developed after the construction permit review." Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73, 86 (1979). The question of need for power was considered and addressed by the Licensing Board at the construction permit stage, at which time the need for power was established. See Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-74-75, 8 AEC 673 (1974), at 689.

In the Staff's view, CASE has made no showing that, with respect to need for power, there exists a significant issue not adequately considered at the

construction permit stage. At most, the discussion by CASE of the alleged deficiencies in Applicants' ER with respect to need for power does no more than suggest that the Applicants' figures are not precise. The Appeal Board has repeatedly observed that "inherent in any forecast of future electric power demands is a substantial margin of uncertainty." Niagara Mohawk Power Corp. (Nine Mile Point, Unit 2), ALAB-264, 1 NRC 347, 365 (1975). The Appeal Board has also held that the most that can be required is that "[a] forecast be a reasonable one in the light of what is ascertainable at the time made." Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 328 (1978), aff'd per curiam, Mid-America Coalition for Energy Alternatives v. NRC, 590 F.2d 356 (D.C. Cir 1979). Moreover, in fulfilling its responsibilities to provide adequate and reliable service to all its customers at all times, it is not unexpected, nor is it unreasonable, for a utility to be conservative and possibly err on the high side in predicting demand growth. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 410-11 (1976). This does not render invalid a need for power analysis. For the reasons set forth above, this contention should be rejected.

Statement of CASE Contention 4

The Environmental Report (ER) prepared by the applicant clearly indicates that there is not a legitimate need for the operation of the Comanche Peak nuclear power plant (CPSES).

Staff Position

The Staff opposes admission of this contention on the grounds that it fails to satisfy the basis and specificity requirements of 10 CFR § 2.714. In essence, CASE asserts that the energy reserve margins without the operation of CPSES are sufficient to guarantee the available supply of electricity. However, CASE merely discusses the reserve margins predicted through 1985, and altogether fails to discuss energy needs for the years that follow (Contentions at 15-16). The Staff notes that an operating license for CPSES, if granted, would be for a term of forty years, which period of time extends far beyond the five-year period discussed by CASE. Furthermore, the very figures relied upon by CASE to support this contention reveal a steadily decreasing level of reserve margins over the course of time. Finally, the Staff notes that the plant will not commence operation until the license is granted, and that demand for electricity will, as reflected in the figures relied upon by CASE, continue to rise while the license application is pending. For these reasons, this contention should be rejected.

Statement of CASE Contention 5

The ER fails to adequately discuss and consider new information concerning alternatives available to the applicant to the operation of CPSES.

Staff Position

The Staff opposes admission of this contention on the ground that it lacks adequate basis and specificity. With regard to specificity, the contention asserts generally that alternatives have not been adequately discussed, without stating what alternatives CASE considers to be applicable. As

presently worded, the contention is unbounded, overly broad, and not capable of being litigated, in that it fails to alert the parties as to the issues which must be addressed. During the negotiations among the parties, the following language was proposed as an alternative to the contention as presently worded:

> The ER fails to adequately discuss and consider new information concerning alternatives to the operation of CPSES available to Applicants (specifically, gas, coal, lignite and coal gasification).

If the language of this contention were to be modified as suggested, the Staff's concerns as to vagueness would be alleviated.

Nonetheless, even if the language of the contention is revised as we have proposed, the Staff opposes the admission of this contention. As with Contention 3, the issue of alternatives to CPSES, as raised by this contention, is more appropriate for consideration at the construction permit stage; and in fact this issue was considered and resolved at that time. Comanche Peak Steam Electric Station, LBP-74-75, supra. As the Licensing Board there noted:

> "The Applicant and the Staff have each considered alternatives to using nuclear energy for providing the needed power, alternative sites for the station and plant design alternatives." 8 AEC at 689.

Upon granting the construction permit, the Licensing Board specifically found that none of the other fuels considered is an appropriate alternative to CPSES. 8 AEC at 690.

In order for such alternatives to be considered at the operating license stage, an Intervenor must demonstrate the existence of significant new information. As stated recently:

> [T]he assessment of alternatives is more properly performed at the construction permit stage of review. At the very least we would require a strong showing - not present here - that there exists a significant issue which had not previously been adequately considered or significant new information which had developed after the construction permit review. Cf. 10 CFR § 51.21.

Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73, 86 (1979) (emphasis added).

CASE has made no showing that the issue of alternatives to CPSES was inadequately considered at the construction permit stage or that there exists any significant information to warrant consideration of this issue at the operating license stage. CASE gives no reason why it would be preferable from an environmental, cost, or other basis, to operate another facility instead of CPSES. Although CASE identifies alleged new developments which would indicate a greater availability of natural gas, lignite and coal for use in generators than was known at the time CPSES was planned (Contentions at 17-19), it fails to indicate how the consideration of such developments would significantly alter a decision to commence operation of CPSES. Accordingly, this contention should be rejected.

Statement of CASE Contention 6

Neither the applicant nor the staff have adequately considered certain cost elements which should be included in any cost/benefit analysis of the operation of CPSES, included in the required Environmental Report.

Staff Position

The Staff opposes the admission of this contention, as presently worded, on the grounds that it fails to satisfy the basis and specificity requirements of 10 CFR § 2.714. The contention asserts generally that certain "cost elements" have not been adequately considered, without indicating in particular which cost elements are of concern to CASE. As presently worded, the contention is unbounded, overly broad, and not capable of being litigated, in that it fails to alert the parties as to the issues which must be addressed. During the negotiations among the parties, the following language was proposed as an alternative to the contention as presently worded:

> A cost-benefit balance favorable to operation of CPSES cannot be struck because of the following costs, which have not been adequately considered:
>
> a. Decommissioning;
>
> b. The costs to insure that the reactor vessel for Unit #2 will fit correctly;
>
> c. Fuel over the life of the plant;
>
> d. Long-term waste storage and/or disposal.

If the language of this contention were to be modified as suggested, the Staff's concerns as to vagueness would be alleviated. In that event, the Staff would support the admission of those portions of this contention which

relate to the costs of decommissioning and of assuring that the reactor vessel for Unit No. 2 will fit correctly. Nonetheless, the Staff would oppose the admission of those portions of the contention which relate to the costs associated with long-term waste storage and/or disposal and of acquiring fuel over the life of the plant (beyond the term of the operating license sought in this proceeding) as being beyond the scope of this proceeding. Similarly, the Staff opposes admission of that portion of the contention which relates to Westinghouse's "financial commitment and ability" as being beyond the scope of this proceeding.

In its basis for this contention, CASE discusses studies not mentioned by Applicant relating to the costs of decommissioning, which result in figures that differ significantly from those projected by Applicant (Contentions at 21-22). The Staff believes that CASE has provided adequate basis for its contention that the figures for decommissioning utilized by Applicant need to be re-examined. Similarly, as to CASE's contention that Applicant has failed to update its construction costs to include the cost of modifications required to properly align the reactor vessel for Unit No. 2 (Contentions at 23), the Staff believes that CASE has provided adequate basis for this contention.

As to CASE's contention that Applicant has failed to take into account the long-term costs of uranium fuel and the long-term costs of storage and/or disposal of nuclear wastes, the Staff believes that such considerations fall

outside the scope of this proceeding. The CPSES operating license application seeks a license for a specified period only. To the extent that this contention seeks to raise the issue of operational costs beyond the period specified in the pending application, it must be rejected.[17/]

Furthermore, the Staff believes that the issue of long-term (beyond the requested term of the license) storage and/or permanent disposal of nuclear waste at CPSES may not be considered in this proceeding, because the Commission has initiated a rulemaking proceeding to "reassess its degree of confidence that radioactive wastes produced by nuclear facilities will be safely disposed of, to determine when any such disposal will be available, and whether such wastes can be safely stored until they are safely disposed of." "Storage and Disposal of Nuclear Waste," 44 Fed. Reg. 61372 (October 25, 1979). In this notice, the Commission expressly stated that:

> "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 most appropriately addressed in a generic proceeding of the character here envisaged." 44 Fed. Reg. 61373 (emphasis added).

It is thus clear that any consideration of storage of spent fuel beyond the term of the license is not permissible in this proceeding.

17/ The Staff also opposes that part of CASE's contention which relates to the fuel costs estimated by Applicant in its ER (Contentions at 25-26), since CASE provides no factual bases for its contention that "the Applicant has failed to indicate an adequate basis for the fuel costs estimated . . ."

Finally, the Staff opposes the admission of that part of the contention which concerns the "financial ability and commitment" of Westinghouse towards the purchasers of its reactors and fuel, as being wholly beyond the scope of this proceeding (See Contentions at 23-25).

Statement of CASE Contention 7

Neither the applicant nor the staff have adequately considered the costs in terms of health as well as the economic costs of a possible accident in the on-site storage of spent fuel.

Staff Position

The Staff opposes admission of this contention as an issue in controversy in this proceeding on the grounds that it lacks adequate basis and specificity.

With regard to specificity, the contention asserts generally that the health and economic costs "of a possible accident" have not been considered adequately, without stating what potential accidents are of concern to CASE. As presently worded, the contention is unbounded, overly broad, and not capable of being litigated, in that it fails to alert the parties as to the issues which must be addressed. During the negotiations among the parties, the following language was proposed as an alternative to the present wording of the contention:

> Neither the Applicants nor the Staff has adequately considered the health or economic costs of a possible accident involving spent fuel stored onsite, as discussed in Report No. 290 (NRC Translation #161, "Studies Comparing the Greatest Possible Failure Sequences In a Processing Installation and In A Nuclear Power Plant"). SAND-77-1371, "Spent Fuel Heatup Following Loss of Water During Storage," the studies and testimony of Richard E. Webb, and the effects of a reactor accident on that spent fuel.

If the language of this contention were to be modified as suggested, the Staff's concerns as to lack of specificity would be alleviated.

Nevertheless, in the Staff's view, even as modified, the asserted bases set forth by CASE (Contentions at 28-30) are not adequate to support the contention. In its Contentions, CASE mentions a "possible accident involving a meltdown of spent fuel." Id. at 28. According to CASE, a West German report indicates that "[t]he potential effects of an accident in an on-site storage of spent fuel are much more serious than previously thought." The report in question, "Studies on Comparing the Greatest Possible Failure Sequences in a Reprocessing Installation and in a Nuclear Power Plant (AB-290)," analyzes the consequences of an accident in which all of the water in a spent fuel pool could be lost (leading to a spent fuel pool meltdown), by some means which are not specified.[18/] However, the premise of this report has since been repudiated. In November 1977, the West German Society for Reactor Safety, as successor to the IRS, published its "Critical Comments on Work Report AB-290", which constituted "a reworking and detailed explanation of the report whereby the latest state of art and application data are used as the basis." (Id., at 1). This second report totally revised the earlier report (AB-290), and concluded that "a meltdown accident is out of the question for the fuel element pool . . . ." (Id., at 2).[19/] In sum, the

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18/ This report was prepared in August, 1976 for the West German government as a preliminary working paper by the West German Institute for Reactor Safety (IRS). As a preliminary paper, it was treated as confidential by West Germany and through international agreement was transmitted to the NRC for internal use only.

19/ The NRC received permission from the German Ministry of the Interior to release these reports on March 1, 1979. In response to a request from CASE, the Staff provided a copy of the second report to CASE.

conclusions of Report AB-290 no longer represent the views of the agency which prepared it, and to the extent that CASE's contention rests on that report, the contention is lacking in basis.

Further, CASE neither alleges nor explains how such an accident could occur at CPSES, but merely raises the spectre of such an event without ever showing that there is any possibility that such an event could occur. In view of the fact that the second report indicates that a meltdown in the fuel pool is out of the question, such an explanation by CASE would appear to be crucial. Thus, while CASE concludes that the "mechanisms of sabotage, tornadoes and earthquakes" could cause a spent fuel pool meltdown and that there is "an alarming possibility of a reactor meltdown precipitating a fuel pool meltdown" (Contentions at 29), CASE fails to provide any basis for these conclusions. Such speculation cannot support the admissibility of a contention.

In addition, to the extent that CASE is alleging in this contention that a class 9 accident (such as a reactor meltdown) might precipitate a spent fuel pool meltdown, the contention must be rejected. In Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), LBP-80-___, ___ NRC ___ (March 10, 1980) (slip op. at 1-3), the Licensing Board admitted the substance of certain contentions alleging that "the Final Environmental Statement (FES) is inadequate in failing to consider the possibility of and the consequences of a serious spent fuel pool accident caused by human or mechanical error, or by earthquakes or tornadoes." (Id. at 2). However, the Licensing Board stated:

> "We specifically reject as being an inadmissible portion of this admitted Contention 1, the allegation that, according to the West German Report 290, a reactor meltdown or any other postulated Class 9 accident might precipitate a spent fuel pool meltdown. In Offshore Power Systems (Floating Nuclear Power Plants), CLI-79-9, 10 NRC 257 (September 14, 1979), in deciding that the Licensing Board should proceed to consider the environmental consequences of a Class 9 accident at floating nuclear plants, the Commission stated that it was not expressing any views on the question of environmental consideration of Class 9 accidents at land-based plants and that it intended to complete the rulemaking begun in 1971 and to re-examine Commission policy in this area. Since the existing policy not to consider Class 9 accidents at land-based reactors was not set aside by the Commission, this portion of the contention is inadmissible. Moreover, the Board cannot admit contentions which are (or are about to become) the subject of general rulemaking by the Commission. Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85 (1974)." Id. at 2-3.

CASE's reference to SAND-77-1371, "Spent Fuel Heatup Following Loss of Water During Storage",[20/] provides no further basis for this contention (Contentions at 29). The report in question assumes the loss of all cooling water covering the spent fuel elements in the pool and then goes on to deal with the time periods and mitigation techniques which are involved in coping with such an occurrence. However, as the report itself indicates, "accident initiation mechanisms, the probability of occurrence, the magnitude of radioactive release, or the public consequences are not addressed." (p.11). Therefore, the report provides no basis to believe that there is a reasonable possibility of a loss of all makeup water in the spent fuel pool, and CASE has not independently supplied that basis in its pleading. Insofar as this contention rests upon SAND-77-1371, the contention should be rejected by the Board.

20/ This report has been published as NUREG/CR-0649 (March 1979).

Similarly, CASE presents no basis for its assertion that the use of high density racks to store spent fuel constitutes a "hazard", which the Applicant has failed to deal with adequately. Likewise, CASE offers no basis for its assertion that the Applicant's ER should have considered spent fuel accidents other than those involving the handling of fuel and, accordingly, these portions of Contention 7 should be rejected.

Statement of CASE Contention 8

The ER fails to analyze the probability of and potential costs in terms of health and dollars of a Class 9 accident defined in the ER as follows:

> "These events involve sequences of postulated successive failures more severe than those postulated for providing design bases for protective systems and engineered safety features. Although their consequences could be severe, the probability of their occurrence is very low, and therefore the probability of this event is low."

Clearly, this statement is inadequate. No basis whatsoever is given for such a statement, and there is no indication as to how the applicant arrived at such a conclusion. Applicant should indicate the factual basis on which this statement is based.

> Recent events and reports indicate that the possibilities of such an accident are not nearly as low as had been previously thought and they are deserving of serious consideration both in terms of the costs and health hazards and as they relate to the cost/benefit analysis.

Staff Position

The Staff opposes admission of this contention on the grounds that it is vague and lacks adequate basis. In essence, the contention seeks to litigate in this

proceeding the probability and effects of a Class 9 accident. However, as has been clearly stated by the Commission, such contentions may not be litigated in individual licensing proceedings absent a showing of special circumstances which increase the probability that such an event will occur. Offshore Power Systems (Floating Nuclear Plants), CLI-79-9, 10 NRC 257 (1979).

The crux of this contention, as presented in CASE's "explanation," is that Applicants' Environmental Report fails to provide the basis for Applicants' description of Class 9 accidents and that to the extent Applicants' failure to evaluate Class 9 accidents is based upon WASH-1400, such basis is no longer valid. CASE cites the occurrence of the accidents at Three Mile Island, Unit 2 (TMI-2) and Brown's Ferry as further bases for its contention.

The description of Class 9 accidents which CASE quotes in its supplement is contained in the Applicants' Environmental Report (ER) Operating License Stage Section 7.0 "Environmental Effects of Accidents," subsection 7.1.9, "Postulated Successive Failure (Class 9)." As noted by the decision of the Nuclear Regulatory Commission in Offshore Power Systems (Floating Nuclear Plants), CLI-79-9, supra:

> "The term 'Class 9 accidents' stems from a 1971 AEC proposal to place nuclear power plant accidents in nine categories to take account of such accidents in preparing environmental impact statements. That proposal was put forward for comment in a proposed 'Annex' to the Commission's regulations implementing NEPA. 36 Fed. Reg. 22851-52 (December 1, 1971). The nine categories in that 'Annex' were listed in increasing order of severity. 'Class 9' accidents involve sequences of postulated

> successive failure more severe than those postulated for the design basis of protective systems and engineered safety features. The Annex concluded that, although the consequences of Class 9 accidents might be severe, the likelihood of such an accident was so small that nuclear power plants need not be designed to mitigate their consequences, and, as a result, discussion of such accidents in applicants' Environmental Reports or in Staff's environmental impact statements was not required." Id., at 258.

Thus, the basis for the description of Class 9 accidents in Applicants' ER is the Annex described above.

CASE also asserts that to the extent that the policy of not considering Class 9 accidents is based on WASH-1400, that policy is no longer valid. CASE cites the January 9, 1979, NRC statement on the findings of the Lewis Committee as the basis for its conclusion regarding consideration of Class 9 accidents. However, it has been held that mere citation to the Commission's withdrawal of endorsement of some of the conclusions in WASH-1400 does not provide an adequate basis for a contention that the consequences of Class 9 accidents must be considered in a particular proceeding. Pennsylvania Power & Light Co. (Susquehanna steam Electric Station, Units 1 and 2), LBP-79-6, 9 NRC 291 (March 10, 1979). As noted by the Licensing Board there:

> ". . . the Commission has, since long before WASH-1400, taken the position that the consequences of such accidents need not be discussed because of the lowe probability of their occurrence, and this position has been upheld by the courts. Porter County Chapter v. AEC, 533 F.2d 1011, 1017-18 (7th Cir.), cert. denied, 429 U.S. 945 (1976); Carolina Environmental Study Group v. AEC, 510 F.2d 796 (D.C. Cir. 1975); Ecology Action v. AEC, 492 F.2d 998 (2nd Cir. 1974); see also Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194 (1978); Long Island Lighting Company (Shoreham Nuclear Power Station), ALAB-156, 6 AEC 831 (1973). The policy in no manner was premised upon the results of WASH-1400. Moreover, unless and until repudicated by the Commission, the policy is binding upon us." Id. (emphasis added).

The Staff believes that the rulings in the Offshore Power Systems case preclude consideration of CASE contention 6. In Offshore Power Systems (Floating Nuclear Plant), ALAB-489, 8 NRC 194 (1978), the Appeal Board ruled that the Commission has adopted a policy against evaluating the consequences of Class 9 accidents in environmental impact statements on individual license applications for land-based nuclear power plants absent a showing of special circumstances that increase the probability of such an event. Id., at 212-14. Also see 10 CFR § 2.758. CASE has made no such showing of special circumstances here. In its Memorandum and Order of September 14, 1979, in Offshore Power Systems, CLI-79-9, supra, the Commission did not set aside existing policy regarding the question of environmental consideration of Class 9 accidents at land-based reactors. Also see Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), CLI-80-8, ___ NRC ___ (March 21, 1980). Thus, the Appeal Board's ruling on that question in ALAB-489 continues to be controlling. However, the Commission, stating that it is concerned about that question, announced its intent to complete the rulemaking begun by proposed Annex A to Appendix D, 10 CFR Part 50 and to reexamine Commission policy in the area. Offshore Power Systems, CLI-79-9, supra.

CASE would have the rulings in Offshore Power Systems abrogated as a result of the accident at TMI-2. (CASE also cites the Brown's Ferry accident.) However, in a recent decision, the Licensing Board held that general consideration of the consequences of Class 9 accidents at land-based reactors, merely on the basis of the occurrence of the TMI-2 accident, is inconsistent with the Commission policy as expressed in the proposed Annex and in numerous

Appeal Board decisions. Pennsylvania Power & Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), LBP-79-29, 10 NRC 586 (1979). In that case, the Board rejected, as a basis for such a contention, the claim there asserted that TMI-2 was a Class 9 accident and that the Board and the NRC can no longer state that the probability of such an accident occurring is so low or remote as to preclude discussion.21/ The Board denied the contention, to the extent that the contention sought a general exploration of the consequences of Class 9 accidents. Id. at 10.

It is readily apparent that the contention proferred by CASE and the asserted basis resting on the occurrence of the TMI-2 accident is very similar to the contention rejected in Susquehanna. The Staff believes that application of the guidance in Susquehanna mandates rejection of CASE contention 6.22/ Since CASE contention 6 seeks a general exploration of the consequences of Class 9 accidents, the Staff believes that, based on the foregoing, this contention must be rejected.

21/ The Intervenor further argued that: TMI effectively destroys all of the "elaborate probability studies." As a result the Intervenor sought to have admitted a contention "which would serve to litigate the effects of a Class 9 accident and its effect on the cost benefit analysis of the plant." Id., at 589.

22/ It should be noted that in Susquehanna, the Licensing Board admitted a specific contention that the Susquehanna ER and FSAR are inadequate in that they do not discuss an accident such as actually occurred at TMI-2. However, an examination of CASE contention 6 indicates that the CASE contention is far more general than the contention admitted in Susquehanna. CASE asserts that the CPSES ER is inadequate because it fails to analyze the probability and consequences of a Class 9 accident. Although CASE cites the accidents at Brown's Ferry and TMI-2 as a basis for its contention, there is no particular Class 9 accident specified by CASE in contention 6.

Statement of CASE Contention 9

Neither the applicant nor the staff have adequately considered the effects of low-level radiation on the population surrounding CPSES in the cost/benefit analysis required in the ER.

Staff Position

The Staff believes that the Licensing Board should defer ruling on the admissibility of this contention pending resolution by the Commission of the following question certified to it by the Appeal Board in Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 790 (December 7, 1979):

> "Where routine radioactive emissions from a nuclear power plant will be kept 'as low as is reasonably achievable' in accordance with Appendix I, is litigation of the health effects of those emissions in an adjudicatory proceeding involving initial licensing barred by 10 CFR § 2.758 as an impermissible attack on Commission regulations?"

It does not appear that either this contention or the basis asserted in support of the contention allege that the CPSES design fails to meet the Commission's regulations (10 CFR § 50.34a and Appendix I to 10 CFR Part 50) applicable to routine releases of radioactive effluents.[23/] Rather, CASE's

23/ The regulations cited above require that light-water-cooled nuclear power reactors like CPSES be designed and built so that during normal operation the release of radioactive effluents is "as low as reasonably achievable." 10 CFR § 50.34a. That standard is explained and quantified in Commission guidelines published as Appendix I to 10 CFR Part 50. Applications to construct a plant of this type must describe the equipment to be installed to control radioactive effluents and identify the design objectives and the means to be employed to meet the standards. In addition, Section I of Appendix I provides that nuclear power reactor "[d]esign objectives and limiting conditions for operation conforming to the guidelines of this Appendix shall be deemed a conclusive showing of compliance with the 'as low as reasonably achievable' requirements of 10 CFR § 50.34a * * *." Where it applies, Appendix I is a binding Commission regulation notwithstanding its denomination as an appendix. Rulemaking Hearing (Docket No. RM-502), CLI-75-5, 1 NRC 277, 328 (1975).

concern appears to be that in light of a number of studies cited by CASE, "the effects of low-level radiation on the population surrounding CPSES should be reevaluated in the cost benefit analysis." (Contentions at 37) Since CASE's contention appears to raise the issue certified to the Commission in Black Fox, supra, the Staff believes that consideration of the admissibility of this contention should be deferred pending resolution by the Commission of this issue.

Statement of CASE Contention 10

Neither the applicant nor the staff have adequately considered the economic effects of accidents occurring in light water reactors located elsewhere in the United States which are similar in design to those of CPSES.

Staff Position

The Staff opposes admission of this contention on the grounds that it lacks adequate basis.

In support of this contention, CASE cites the accident at TMI-2 for the proposition that the "possibility and probability" of an accident in any reactor built by Westinghouse "or pursuant to the same or similar design criteria" and the economic consequences upon other reactors such as CPSES must be taken into account (Contentions at 38). The Staff notes that the reactor at TMI-2 was built by Babcock and Wilcox, and not by Westinghouse as CASE appears to believe. Furthermore, CASE has failed to identify what it means by the phrase "the same or similar design criteria". No nexus is shown between accidents in reactors such as TMI-2, and potential consequences

in Westinghouse reactors such as CPSES. Absent such a nexus, this contention must be rejected.

In addition, the contention is speculative, because it assumes that the costs and consequences of accidents at Westinghouse reactors would be the same as those resulting from an accident at a Babcock and Wilcox reactor such as TMI-2 or would be passed on in some form to other Westinghouse reactors such as CPSES. For this reason, the contention should be rejected.

Statement of CASE Contention 11

The applicant has projected a useful life of CPSES as being 30 to 40 years for purposes of the cost/benefit analysis, while in reality new factors indicate that CPSES will have a much shorter life.

Staff Position

The Staff opposes admission of this contention on the grounds that it lacks basis and is overly vague. With regard to vagueness, the contention merely asserts generally that "new factors" indicate a sorter life expectancy for the CPSES facility, without indicating in particular the factors to which CASE refers. As presently worded, the contention is unbounded, overly broad, and not capable of being litigated, in that it fails to alert the parties as to the issues which must be addressed. During the negotiations among the parties, the following language was proposed as an alternative to the contention as presently worded:

> The cost-benefit analysis is inaccurate in that Applicants' projection of a 30-40 year useful life for CPSES is unrealistic because of:

a. effects of cumulative radiation on the plant, and

b. economic incentives to discontinue plant operation at some shorter time.

If the language of this contention were to be modified as suggested, the Staff's concerns as to vagueness would be alleviated.

Nonetheless, even if the language were to be modified, the Staff opposes the admission of this contention as lacking in basis. In support of this contention, CASE asserts that Applicant should have considered "the effects of cumulative radiation on the plant and the likelihood that its effects will seriously shorten the operating life of CPSES" (Contentions at 39). CASE further asserts that unidentified personnel affiliated with Applicant have speculated that with the availability of alternative energy sources, "it is unlikely that CPSES will be required for longer than 20 years." Id.

The Staff believes that CASE has failed to provide any factual basis whatsoever in support of this contention. CASE does not indicate any reason to believe that the effects of long-term radiation upon CPSES have any consequence whatever on the life of the facility, or that Applicant has failed adequately to consider those effects. Also, the brief reference to unidentified persons and the speculations made by such persons does not provide a reasonable basis in support of this contention. Furthermore, CASE does not identify any reasons independent of such statement which would indicate what alternative energy sources may become available or that they would, in fact, be "cheaper and less dangerous" than the operation of CPSES (Id.). Accordingly, this contention should be rejected.

Statement of CASE Contentions 12, 13, 14 and 15

CASE Contention 12. In connection with the issuance of an operating license for CPSES, regulations of the NRC require the following with respect to emergency plans:

> 10 CFR Appendix E to Part 50 requires that each applicant for an operating license include in its final safety analysis report (FSAR) plans for coping with emergencies, which report must contain the following: contacts and arrangements made or to be made with local, state and federal government agencies with responsibility for coping with emergencies including identification of the principal agencies; measures to be taken in the event of an accident within and outside of the site boundary to protect health and safety and prevent damage to property and expected response in the event of emergency of offsite agencies; training program for employees and other persons not employees of the licensee whose services may be required in coping with an emergency.
>
> The final safety analysis report (FSAR) must contain sufficient description to demonstrate that the plants provide reasonable assurance and that appropriate measures can and will be taken in the event of an emergency to protect public health and safety and prevent damage to property. This has not been done.

CASE Contention 13. Neither the applicant nor the staff have adequately considered the need and the possibilities for evacuation of the Dallas/Fort Worth area in the event of a major accident at CPSES.

CASE Contention 14. Neither the applicant nor the staff have adequately considered the problem of emergency treatment and transportation which would be necessary in the event of a major accident affecting the area immediately surrounding the plant.

CASE Contention 15. Adequate plans for testing by periodic drills of emergency plans and provisions for participation in the drills by persons whose assistance may be needed other than the employees of the applicant have not been formulated.

Staff Position

The Staff supports the admission of these contentions on the grounds that they statisfy the basis and as meeting the specificity requirements of 10 CFR § 2.714, in that they each allege non-compliance by Applicant with

the provisions of 10 CFR Part 50, Appendix E (Contentions at 40-42). However, the Staff recommends that these contentions, all of which concern the same limited subject matter, be consolidated by the Licensing Board into one contention in order to assist the parties in simplifying the conduct of discovery and the trial of the issues. During the course of negotiations among the parties, the following language was proposed for the purpose of achieving this objective:

> Applicants have failed to comply with 10 CFR Part 50, Appendix E, regarding emeregency planning, for the following reasons:
>
> a. The FSAR does not identify state or regional authorities responsible for emergency planning or who have special qualifications for dealing with emergencies.
>
> b. No agreements have been reached with local and state officials and agencies for the early warning and evacuation of the public, including the identification of the principal officials by titles and agencies.
>
> c. There is no description of the arrangements for services of physicians and other medical personnel qualified to handle radiation emergencies and arrangements for the transportation of injured or contaminated individuals beyond the site boundary.
>
> d. There are no adequate plans for testing by periodic drills of emergency plans and provisions for participation in the drills by persons whose assistance may be needed, other than employees of the Applicant.
>
> e. There is no provision for medical facilities in the immediate vicinity of the site, which includes Glen Rose; and
>
> f. There is no provision for emergency planning for Glen Rose or the Dallas/Ft. Worth metroplex.

Such a consolidation of these contentions, in the Staff's view, would greatly assist the parties in litigation.

Statement of CASE Contention 16

The requirements of the Atomic Energy Act, as amended, have not been met in that the applicant is not financially qualified to construct the proposed facility.

Staff Position

The Staff opposes admission of this contention as presently worded, in that it raises an issue as to Applicants' financial ability to construct the CPSES facility, and as such raises a contention which is not appropriate for consideration in this proceeding. In fact, this issue was determined previously, at the construction permit stage. See Comanche Peak Steam Electric Station, LBP-74-75, supra. On the other hand, if this contention were to be reformulated to raise only the issue of Applicants' financial qualifications to operate the CPSES facility, the Staff would support the admission of this contention, on the grounds that it meets the specificity requirements of 10 CFR § 2.714 and raises an issue appropriate for consideration in this proceeding.

Statement of CASE Contention 17

Applicant has not shown that the operation of Comanche Peak nuclear plant would not be inimical to the common defense and security and to the health and safety of the public, as required by 10 CFR 50.57(a)(6).

Staff Position

The Staff opposes admission of this contention on the grounds that it lacks basis and specificity, and is clearly so unbounded as to be not capable of being litigated. In support of this contention, CASE asserts merely that a "base-line study" must be made as to the present health characteristics of the "surrounding population" in order then to be able to demonstrate the health effects resulting from the operation of CPSES. The Staff is of the opinion that CASE has failed to demonstrate why such a study is necessary, or in what manner Applicants are remiss. To the extent that CASE asserts that a "base-line study" must be made by Applicants, the contention must be rejected as representing no more than CASE's belief as to what applicable regulatory requirements ought to be. Peach Bottom, ALAB-216, supra. The Staff notes that 10 CFR § 50.57(a)(6) requires only that the Licensing Board determine that "[t]he issuance of the license will not be inimical to the common defense and security or to the health and safety of the public." No particular requirement is imposed upon an applicant in this regard, other than to demonstrate, upon all the evidence, that the plant's operation "will not be inimical to the common defense and security or to the health and safety of the public". Accordingly, the Staff opposes admission of this contention.

Statement of CASE Contention 18

Applicant has failed to adequately assess the cost of the Westinghouse uranium settlement on CPSES in its ER as to how it affects the cost/benefit analysis.

Staff Position

The Staff supports admission of this contention as satisfying the specificity requirements of 10 CFR § 2.714 and as raising an issue appropriate for consideration in this proceeding. In its basis for this contention, CASE asserts that Applicant should be required to include in its cost/benefit analysis the effects of its settlement with Westinghouse Electric Corp. in terms of the resulting fuel costs which will be experienced (Contentions at 48). CASE points to statements made by Applicant which indicate that "it is not possible to predict the ultimate availability or cost" of additional fuel and related services". (Contentions at 26 and 48) The Staff believes that the basis supplied by CASE is sufficient to warrant admission of the contention in this proceeding.

Statement of CASE Contention 19 (Licensing Board Formulation)

The Applicants have failed to establish and execute a quality assurance/ quality control program which adheres to the criteria in 10 CFR 50, Appendix B.

Staff Position

The Staff notes that the above formulation of CASE Contention 19 was proposed by the Licensing Board in its "Order Relative to Standing of Petitioners to Intervene", dated June 27, 1979 (p.11), and that the Board admitted the contention, as revised, as an issue in this proceeding (pp. 7-8). As we discussed, supra, with regard to CFUR's QA/QC contention, the Staff is of the view that the present wording of the QA/QC contention is overly broad and not capable of being litigated. The Staff recommends that

the wording of the QA/QC contention be revised to some extent, pursuant to the Licensing Board's "Order Scheduling Prehearing Conference," dated March 19, 1980 (p. 1). During the negotiations among the parties, the following language was proposed as an alternative to the QA/QC contention as formulated by the Licensing Board:

> The Applicants' failure to adhere to the quality assurance/ quality control provisions required by the construction permits for Comanche Peak, Units 1&2, and the requirements of Appendix B of 10 CFR Part 50, and the construction practices employed, specifically in regard to concrete work, welding, inspection, materials used and craft labor qualifications, have raised substantial questions as to compliance with 10 CFR § 50.57(a)(1).

In the Staff's view, the substitution of this formulation in place of that proposed by the Licensing Board will serve to provide sufficient specificty to this contention such that it will comply with the requirements of 10 CFR § 2.714.

III

CONTENTIONS FILED BY ACORN

On March 3, 1979, the Texas Association of Community Organizations for Reform Now ("ACORN") filed its "Petition for Leave to Intervene and Request for Hearing", which was followed on March 29, 1979 by the filing of ACORN's "First Amended Petition for Leave to Intervene and Request for Hearing."[24/]

24/ The original petition was filed jointly with West Texas Legal Services; the First Amended Petition was joined in by petitioners Mary and Clyde Bishop, and Oda and William Wood. The Licensing Board subsequently denied the petitions of these other parties for leave to intervene. Order Relative to Standing of Petitioners to Intervene (June 27, 1979), supra, 9 NRC at 733.

On May 7, 1979, ACORN filed its "Supplemental Petition and Contentions of Intervenors, ACORN, Mary and Clyde Bishop and Oda and William Wood" (hereinafter referred to as ACORN's Contentions), pursuant to 10 CFR § 2.714. The Licensing Board subsequently granted ACORN's petition for leave to intervene, finding that ACORN satisfied the "interest" requirements of 10 CFR § 2.714 and that ACORN's Contentions 16, 17, 18 and 19 met the requirements of 10 CFR § 2.714(b).[25/]

Consistent with the Licensing Board's expectation, as stated in its unpublished Order, supra, the Applicants and Staff met with ACORN's counsel to "try to reach a stipulation on one or more other contentions." Order, p.3. At this meeting, which was held on July 19, 1979, counsel for NRC Staff (and other NRC staff members) and counsel for Applicants and other representatives of Applicants met with ACORN's counsel in Ft. Worth, Texas to discuss the contentions proposed by ACORN in this proceeding. (Consistent with the Commission's views as stated in 43 Fed. Reg., supra, the parties had previously met, on April 19, 1979, to discuss the contentions to be submitted by ACORN.) The parties' July 19, 1979 discussions covered the thirty-three proposed "safety" contentions and the seven "environmental" contentions contained in ACORN's contentions, supra. As a result of these discussions, the language of a number of ACORN's contentions was modified and certain contentions were deleted.

25/ Order Relative to Standing of Petitioners to Intervene (June 27, 1979), 9 NRC supra, at 733.

By letter dated August 21, 1979, the NRC Staff transmitted to ACORN's counsel a copy of ACORN's proposed contentions, which reflected the changes made at the meetings held by the parties in July and the positions taken by the parties at that meeting. In this letter, the Staff stated that the position taken at those meetings were not final and are subject to change. This letter also stated that a conference call to further discuss these contentions was scheduled for August 30 or 31. The purpose of these letters and attached statements of contentions (which set forth the position of the parties with respect to each contention) was to assist the parties in considering the language agreed to and positions taken at the meetings in July and to serve as a basis for the further negotiations contemplated by the parties. Subsequently, by telephone conference, the Staff and Applicants further discussed with ACORN the contentions proposed by ACORN.

By letter dated October 4, 1979, the NRC Staff transmitted a draft stipulation to ACORN's counsel covering ACORN's proposed contentions. The Staff allowed a period of several months for the parties to consider the draft stipulations and statements of contentions. During that period, the Staff did not receive any comments from ACORN's counsel relating to the draft stipulation and proposed contentions.

By letter dated January 25, 1980, the Staff forwarded to ACORN's counsel a stipulation and attachment (statement of revised contentions) which had been executed by counsel for Staff and counsel for Applicants. The letter stated that the executed stipulation and attachment differed in some respects from

the draft stipulation and statement of contentions previously forwarded to ACORN's counsel. To assist ACORN's counsel in recognizing those changes, the letter described every change of substance, based on the Staff's records, which reflected the various discussions among all the parties during their negotiations, telephone conference and correspondence.

At the request of ACORN's counsel, the parties subsequently engaged in further negotiations by telephone conference on March 19, 1980, concerning the stipulation and statement of contentions. To assist ACORN's counsel in gaining a better understanding of the Staff's views as to the admissibility of ACORN's contentions, on March 27, 1980, the Staff transmitted to ACORN's counsel a statement of the NRC Staff's position on the admissibility of ACORN's contentions as set forth in the attachment to the stipulation. Notwithstanding these further negotiations and correspondence, ACORN has orally advised the Staff that it does not intend to sign the stipulation, but that it does intend to advance only the contentions set forth in the attachment. As ACORN is aware, the rewording and renumbering of the contentions contained in the attachment supersedes that set forth in ACORN's contentions, supra. Accordingly, the Staff's statement of position, set forth below is based upon that statement of ACORN's contentions. (The numbers in brackets following each contention indicate the contentions in ACORN's contentions, supra, from which these contentions are derived.)

Before proceeding to discuss ACORN's contentions on an individual basis, the Staff wishes to note generally that by and large ACORN has done no more than merely list various alleged "safety problems" which ACORN asserts render the CPSES facility and/or design inadequate, and which therefore allegedly preclude the findings required to be made under 10 CFR s50.57(a)(2), (a)(3) and (a)(6).[26/]

For the most part, ACORN has merely noted that the particular safety problem is discussed in the "Black Fox Testimony"[27/] or as a particular "task" in NUREG-0410 or NUREG-0510. In the Staff's view, however, ACORN has failed to demonstrate any nexus between the alleged safety problems and CPSES, and accordingly has failed to present contentions which are admissible in this proceeding.

The mere listing by an intervenor of unresolved safety questions fails to provide concrete issues which are proper for adjudication in the particular proceeding, pursuant to the basis and specificity requirements of 10 CFR § 2.714. This rule has been stated in crystal-clear fashion in Gulf States Utilities Co. (River Bend Station, Units 1 and 2), LBP-76-32, 4 NRC 293 (1976), aff'd, ALAB-444, 6 NRC 760 (1977). There, an interested State presented a list of safety problems contained in the Technical Safety Activities

26/ ACORN's Contentions list 33 "Safety Contentions" and seven "Environmental Contentions."

27/ Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), Docket Nos. STN-50-556 and STN 50-557

Report ("TSAR"),[28] as the basis for contentions that the applicant had failed to comply with 10 CFR § 50.34(a) and § 50.35(a). The Licensing Board, however, ruled that the mere notation of TSAR items did not constitute a sufficient basis, in that they failed to provide:

> "a fair opportunity to other parties to know precisely what the limited issues [are], exactly what proof, evidence or testimony is required to meet the issue and exactly what support the State intends to adduce for its allegations. 4 NRC at 298.

Accordingly, the Licensing Board held that the State had the obligation to come forward with further allegations that the TSAR items bore a relationship to the application pending in the proceeding. 4 NRC at 312-13.

On appeal from the Licensing Board's decision in River Bend, the Appeal Board sustained the Licensing Board's requirement that a nexus must be demonstrated between the TSAR items and the pending application. According to the Appeal Board, "a party ... must do more than present what amounts to a check list of items contained in the TSAR or in regulatory guides." 6 NRC at 772. As the Appeal Board noted:

> Given the generalized nature of the studies in the TSAR . . . it was not erroneous for the Licensing Board to have imposed its nexus requirement. . . . [T]here is no necessary connection between the safety of a facility and any particular TSAR item. . . . Some connecting link must therefore by supplied.
>
> The mere identification of a generic technical matter which is under further study by the staff (such as a TSAR item or Task Action Plan) does not fulfill this obligation, even if the matter has some patent relationship to the category of reactor

[28] The TSAR has since been superseded by the Task Action Plans discussed in NUREG-0410 and NUREG-0510, which are relied upon by ACORN in the present proceeding.

> under review. For as we have seen, the generic study may have little bearing on safety - e.g., where it concerns the methodology of the staff's review. To establish the requisite nexus between the permit or license application and a TSAR item (or Task Action Plan), it must generally appear both (1) that the undertaken or contemplated project has safety significance insofar as the reactor under review is concerned; and (2) that the fashion in which the application deals with the matter in question is unsatisfactory, that because of the failure to consider a particular item there has been an insufficient assessment of a specified type of risk for the reactor, or that the short-term solution offered in application to a problem under staff study is inadequate. [footnote omitted] (emphasis added). Id. at 773.

The Appeal Board concluded:

> The failure of the State to have asserted the requisite nexus between, on the one hand, the River Bend facility and, on the other, the TSAR items . . . in question is thus despositive of the complaint respecting the Licensing Board's treatment of the attempt to raise issues on the basis of those items . . . . Id. at 774.

Application of the teachings of ALAB-444 mandates rejection of ACORN contentions 1, 2, 4, 6, 7, 8, 12, 13, 15, 16, 17, 18, 19, 21, 22 and 23. With respect to these contentions, ACORN has completely failed to assert the requisite nexus between CPSES and the unresolved safety issues or Task Action in question. Similarly lacking is any indication by ACORN that the fashion in which the CPSES application deals with the matter in question is unsatisfactory. Merely stating, as does ACORN, that the item was discussed in "Black Fox testimony,"[29/] or that the problem is listed as an unresolved

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29/ In this regard, the Staff notes that since Black Fox is a Boiling Water Reactor (BWR), and CPSES is a Pressurized Water Reactor (PWR) the significance of a particular unresolved safety issue for Black Fox may be substantially different than for CPSES.

safety issue, does not supply the requisite nexus. Accordingly, the ACORN contentions mentioned above must be rejected.[30/]

For the reasons stated above and as explained below, the NRC Staff believes that all of ACORN's contentions, except for contentions 3, 14[31/] and 24, should be rejected. However, the Staff believes that the language of contentions 1, 4, 5, 7, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23,[32/] 26, 27, 28, 29, 30, and 31 as set forth below is acceptable and believes that this language should be adopted by the Licensing Board in the event that the Licensing Board finds any of these contentions to be admissible.

Statement of ACORN Contention (1)

The CPSES[33/] design fails to adequately account for the effect of asymmetric loading resulting from a pipe break in the area between the reactor vessel and the shield wall.
[FORMERLY "Safety" Contention 1.]

30/ The Staff is mindful that this conclusion regarding the admissibility of certain of ACORN's contentions does not affect the Staff's independent obligation, in the Safety Evaluation Report, to discuss those generic problems under continuing review which have both relevance to the facilities of the type under review and potentially significant public safety implications. River Bend, supra.

31/ In the Staff's view, the subject matter of contention 14 is appropriate for this proceeding, but the Staff does not believe that the wording of this contention is acceptable.

32/ As explained later, the Staff believes that the Licensing Board should defer ruling upon the admissibility of contention 25.

33/ "CPSES" has been substituted for "Comanche Peak" in all of the contentions.

Staff Position

The Staff opposes this contention on the grounds that it lacks basis.

In its "explanation" of this contention, ACORN merely offers bald assertions as to what it believes would be the consequences of a pipe break. According to ACORN, a detailed description of the problem may be found in "Appendix A, Task A-2" of the Staff testimony offered in Black Fox and NUREG-0410 and 0510. However, ACORN does not indicate why the CPSES design fails to account for the problem it sets forth in this contention. In addition, there is no statement of the nexus between this license application and "Task A-2." River Bend, ALAB-444, supra.

For these reasons, this contention must be rejected.

Statement of ACORN Contention (2)

NRC Staff review is inadequate to identify and correct modes of interaction between reactor systems in the CPSES design which can adversely affect the redundance or independence of safety systems.
[FORMERLY "Safety" Contention 2.]

Statement of Position

The Staff opposes this contention on the grounds that it is vague and lacks basis.

In support of this contention, ACORN cites a discussion of "Task A-17 of the Black Fox testimony", an incident at the Zion Plant and the accident at Three Mile Island Unit 2. However, nowhere does ACORN state the necessary

nexus between this particular facility and the problem it alludes to in this contention. ACORN also fails to provide any indication of the meaning of "interaction between reactor systems," other than to mention "electrical systems, mechanical systems, etc." Likewise lacking is the meaning of "safety systems." These vague and general terms simply do not identify the specific concerns of ACORN or allow the other parties to prepare an adequate response. Accordingly, this contention should be rejected.

Statement of ACORN Contention (3)

Neither the Applicants nor the Staff has a reliable method for evaluating or ensuring that Class IE safety-related equipment is designed to accommodate the effects of and to be compatible with the environmental conditions associated with the most severe postulated accident; thus, General Design Criterion 4 has not been satisfied.
[FORMERLY "Safety" Contention 3.]

Staff Position

The Staff believes that this contention minimally satisfies the requirements of 10 CFR § 2.714, raises an issue appropriate for consideration in this proceeding and thus constitutes an admissible contention.

Statement of ACORN Contention (4)

Neither the Applicants nor the Staff has reliable methods for evaluating and ensuring that structures, systems and components important to safety are designed to withstand the effects of the safe shutdown earthquake without losing the capability to perform their safety functions; thus, General Design Criterion 2 has not been satisfied.
[FORMERLY "Safety" Contention 4.]

Staff Position

The Staff opposes admission of this contention on the grounds that it lacks basis.

As with contentions 1 and 2 set forth above, ACORN alludes to the Black Fox testimony and NUREG-0510 ("Task A-40"). ACORN also cites the "recent NRC order requiring the shutdown of five operating plants." However, nowhere is there any indication as to the significance of the Black Fox testimony, "Task A-40," or the shutdown order, as regards CPSES. Similarly lacking is any statement that the fashion in which the CPSES application deals with this problem is unsatisfactory. River Bend, supra.

Based on the foregoing, this contention must be rejected.

Statement of ACORN Contention (5)

Present fire protection measures proposed by Applicants are not adequate to minimize the probability and effect of a fire from disabling the electrical cables for all redundant safety systems; thus General Design Criterion 3 has not been satisfied.
[FORMERLY "Safety" Contention 5.]

Staff Position

The Staff opposes this contention on the grounds that it lacks basis.

In support of this contention, ACORN cites "the fire at the Browns Ferry plant in Alabama", and concludes that Regulatory Guide 1.75 is inadequate. ACORN also states as a fact "that present regulatory practice does not

provide the protection against fires for safety systems required by GDC 3."[34/] Nowhere, however, does ACORN provide any support for its contention that present fire protection measures proposed by Applicants are inadequate, or specify why these measures are inadequate. Mere generalized descriptions of what ACORN believes occurred at Browns Ferry and the results of the tests on fire retardants does not, in the Staff's view provide adequate basis for ACORN's contention regarding the allegedly inadequate fire protection measures proposed by Applicants.

Statement of ACORN Contention (6)

The D.C. power system for the CPSES plant fails to meet the single failure criterion as defined in 10 C.F.R. Part 50 Appendix A.
[FORMERLY "Safety" Contention 6.]

Staff Position

The Staff opposes this contention on the grounds that it is vague and lacks basis.

In support of this contention, ACORN offers no more than bald assertions as to what it believes are the consequences of "failure of one D.C. division of

34/ In this regard, the Staff notes that in a Commission Order issued April 13, 1978, denying a November 4, 1977, "Petition for Emergency and Remedial Action" filed by the Union of Concern Scientists (UCS), the Commission stated that in normal licensing reviews, fire protection reviews are conducted to assure compliance with General Design Criterion 3 and that fire protection test results do not demonstrate a violation of this criterion. Also, according to the Commission, as a result of the Browns Ferry review, the Staff has made the assumption that exposure to fires may propagate beyond the distances set forth in Regulatory Guide 1.75 and has since required additional fire protection measures for nuclear power plants. Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 400, at 420, 427 (1978).

a two-division redundant system." ACORN does not provide any indication as to the meaning of "D.C. Power system" or specify why the Comanche Peak plant fails to meet the single failure criterion. Rather, ACORN merely states that this is an "unresolved safety problem which is discussed in the Black Fox testimony and NUREG-0410." However, this is an inadequate basis to support admission of this contention. River Bend, supra. Accordingly, this contention should be rejected.

Statement of ACORN Contention (7)

The CPSES design does not provide adequate, reliable instrumentation to monitor variables and systems affecting the integrity of the reactor core, the pressure boundary or the containment after an accident, in violation of general Design Criterion 13 of Appendix A of 10 C.F.R. Part 50. [FORMERLY "Safety" Contention 7.]

Staff Position

The Staff opposes this contention on the grounds that it lacks basis.

As an asserted basis for this contention, ACORN cites the TMI-2 accident and the Black Fox testimony. Once again, however, ACORN has failed to indicate the nexus between the events at TMI-2 and CPSES. Merely stating, as does ACORN, that the problem was cited in NUREG-0410 and 0510, does not provide adequate basis or specificity for a contention such as that proferred by ACORN. River Bend, supra.

For these reasons, this contention should be rejected.

Statement of ACORN Contention (8)

The CPSES design does not adequately account for failure of passive components in fluid systems important to safety.
[FORMERLY "Safety" Contention 8.]

Staff Position

The Staff opposes admission of this contention on the grounds that it is vague and lacks basis.

ACORN fails to specify the "passive components in fluid systems important to safety" which the CPSES design allegedly fails to account for. Similarly lacking is any indication why the CSPSES design does not adequately account for such failures. In support of the contention, ACORN offers a description of the "single failure criterion" and a bald conclusion that "the Staff has not yet devised a way to apply the single failure criterion to passive components and that this is "an open issue in RESAR-3, the design for this plant." Such generalized descriptions and conclusory statements do not provide an adequate basis to support this contention. The contention is so vague and lacking in basis that in the Staff's view, it is not possible to determine whether further inquiry is warranted or what, in fact, must be addressed. Accordingly, the contention must be rejected.

Statement of ACORN Contention (9)

The CPSES design does not provide adequate equipment outside of the control room to promptly put the reactor in hot shutdown and so maintain it until

attaining cold shutdown, also from outside the control room, as required by General Design Criterion 19 of Appendix A to 10 CFR Part 50.
[FORMERLY "Safety" Contention 9.]

Staff Position

The Staff opposes this contention on the grounds that it lacks basis.

To support this contention, ACORN offers a bald assertion that "in designing and evaluating the plant, both the Applicant and Staff have used the unreasonable assumption that whatever caused evacuation from the control room did not damage any of the equipment in the control room." However, there is nothing offered to support this assertion or ACORN's conclusion that "if the event, such as a fire for example, did damage equipment in the control room, the plant could lose shutdown capability." These unsupported assertions do not, in the Staff's view, provide adequate basis for this contention. Accordingly, the contention must be rejected.

Statement of ACORN Contention (10)

Neither the Applicants nor the Staff has adequately considered the effects of aging and cumulative radiation on safety-related equipment which must be seismically and environmentally qualified, thus, General Design Criterion 4 has not been satisfied.
[FORMERLY "Safety" Contention 10.]

Staff Position

The Staff opposes this contention on the grounds that it lacks basis.

As bases for this contention, ACORN offers nothing more than unsupported conclusions. ACORN does not state in what ways the Applicants and Staff have failed to adequately consider the effects of aging and cumulative radiation on safety-related equipment. Rather, ACORN simply concludes "insufficient account is taken of the effects of aging." Such an unsupported conclusion does not provide any basis for this contention. Accordingly, the contention must be rejected.

Statement of ACORN Contention (11)

The CPSES design fails to address the possibility of a Class 9 Accident. [FORMERLY "Safety" Contention 11.]

Staff Position

The Staff opposes this contention on the grounds that it is completely lacking in basis. ACORN does no more than cite the accident at the Three Mile Island, Unit 2 (TMI-2) nuclear power plant as demonstrating the possibility of danger to public health and safety with the occurrence of a Class 9 accident.

With respect to the term "Class 9 accidents," the Staff notes that this term stems from a 1971 AEC proposal to place nuclear power plant accidents in nine categories to take account of such accidents in preparing environmental impact statements. The proposal was put forward for comment in a proposed 'Annex' to the Commission's regulations implementing NEPA. 36 Fed. Reg. 22851-52 (December 1, 1971). The nine categories in that 'Annex' were listed in increasing order of severity. 'Class 9' accidents involve

sequences of postulated successive failure more severe than those postulated for the design basis of protective systems and engineered safety features. 36 Fed. Reg. 22852. The Annex concluded that, although the consequences of Class 9 accidents might be severe, the likelihood of such accidents was so small that nuclear power plants need not be designed to mitigate their consequences, and, as a result, discussion of such accidents in applicants' Environmental Reports or in Staff's environmental impact statements was not required. Id.

While the Annex has never been formally adopted by the Commission and is therefore not binding upon it - its guidance has of course been followed by the Commission's adjudicatory boards,[35/] and it has withstood challenge in the courts.[36/]

The most recent expression of the Commission's policy regarding consideration of Class 9 accidents is found in Offshore Power Systems, Inc. (Floating Nuclear Power Plants), ALAB-489, supra; Offshore Power Systems (Floating Nuclear Plants) CLI-79-9, 10 NRC 257 (1979), and Public Service Co. of Oklahoma, (Black Fox Station, Units 1 and 2), CLI-80-8, ___ NRC ___ (March 21, 1980)

35/ See the decisions cited in Offshore Power Systems (Floating Nuclear Plants), ALAB-489, 8 NRC 194 (1978), at 210 fn. 52.

36/ See, e.g., Hodder v. NRC, 589 F.2d 1115 (D.C. Cir. 1978), cert. denied, ___ U.S. ___, 100 S.Ct. 55 (1979); Porter County Chapter of the Izaak Walton League v. AEC, 533 F.21 1011 (7th Cir.), cert. denied 429 U.S. 858 (1976); Carolina Environmental Study Group v. United States, 510 F.2d 796 (D.C. Cir. 1976).

(slip opinion). In ALAB-489, supra, the Appeal Board interpreted the proposed Annex A to Appendix D to 10 CFR Part 50 as setting forth the Commission's policy on Class 9 accidents.37/ Id. at 210. It was noted that, though Appendix D had been deleted on the adoption of Part 51, the Annex had not been changed and, in fact, the Commission at that time stated that Part 51 did not affect the Annex. Id. The Appeal Board also noted that the Annex was not an absolute bar to the discussion of Class 9 accidents. It pointed to the previous decisions where rulings had been made that the discussion of Class 9 accidents would be permitted if an intervenor could show that, with respect to the reactor in question, there was a reasonable possibility of the occurrence of a particular type of accident generically regarded as being in Class 9. Long Island Lighting Co. (Shoreham Nuclear Power Station), ALAB-156, 6 AEC 831, 836 (1973). The Appeal Board interpreted the proposed Annex to mean that neither Staff, applicants, nor adjudicatory boards could voluntarily consider Class 9 accidents absent the showing of a reasonable possibility of occurrence of a particular Class 9 accident at a particular plant. Id. ACORN has failed here to make the requisite showing. ACORN merely cites the accident that occurred at the Three Mile Island, Unit 2 facility but makes no showing that a particular Class 9 accident at CPSES is a reasonable possibility.

37/ The decision of the Commission in Offshore Systems, CLI-79-9, supra and Public Service Co. of Oklahoma, et al, CLI-80-8, supra, confirmed that the Commission's policy on Class 9 accidents has not been set aside, but that the Commission is nonetheless rethinking the policy.

In a recent decision, a Licensing Board held that general consideration of the consequences of Class 9 accidents at land-based reactors, merely on the asserted basis of the occurrence of the TMI-2 accident, is inconsistent with the Commission policy as expressed in the proposed Annex and in numerous Appeal Board decisions. Pennsylvania Power & Light Co., (Susquehanna Steam Electric Station, Units 1 and 2), LBP-79-29, 10 NRC 586 (1979).

Based upon the above guidance, ACORN contention 11. must be rejected to the extent that it seeks an exploration in this proceeding of the consequences of Class 9 accidents generally.38/

Statement of ACORN Contention (12)

Applicants lack the ability to detect and size flaws within (1) the reactor vessel and (2) pipes within the containment.
[FORMERLY "Safety" Contention 13.]

Staff Position

The Staff opposes this contention on the grounds that it lacks basis.

In support of this contention, ACORN merely concludes that the matter covered by this contention is important and states that this "generic problem is discussed in Task A-14 of NUREG-0410." However, ACORN provides nothing which suggests that this matter is of safety significance with respect to CPSES or

38/ In Offshore Power Systems, CLI-79-9, supra, the Commission announced its intent to complete the rulemaking begun by proposed Annex A to Appendix D, 10 CFR Part 50 and to reexamine Commission policy in the area.

that the CPSES license application deals with the matter unsatisfactorily. River Bend, supra. As presently constituted this contention is too lacking in basis to satisfy the requirements of 10 CFR § 2.714. Accordingly, this contention should be rejected.

Statement of ACORN Contention (13)

Applicants' FSAR fails to present a means for dealing with pressure transients produced by component failure, personnel error, or spurious valve actuation which exceed the pressure/temperature limits of the reactor vessel. [FORMERLY "Safety" Contention 14.]

Staff Position

The Staff opposes admission of this contention on the grounds that it lacks adequate basis.

In support of this contention, ACORN cites Task A-26 of NUREG-0410 and "The Black Fox testimony." Concerning Task A-26, "Reactor Vessel Pressure Transient," NUREG-0510 (the 1979 update of NUREG-0410) states that Task A-26 was completed in September 1978 with the issuance of the final report, NUREG-0224, "Reactor Vessel Pressure Transient Protection for Pressurized Water Reactors." Id., at p. A-15. In addition, contrary to the implication in ACORN's contention that the FSAR fails to discuss this issue, the FSAR does discuss the issue, with particular reference to the NRC Staff analysis of Task A-26 presented in NUREG-0224. See FSAR, Amendment 6 (May 31, 1979) and FSAR sections there cited. In the Staff's view, these documents provide sufficient discussion and evaluation of reactor vessel pressure transients to allow ACORN to particularize its concerns about pressure transients in the

CPSES reactor vessels. Despite this, ACORN merely states that this problem is identified as Task A-26 and cites a statement by the NRC Staff Black Fox testimony.

For the reasons stated above, this contention should be rejected.

Statement of ACORN Contention (14) (Licensing Board Formulation)

The Applicants have failed to establish and execute a quality assurance/ quality control program which adheres to the criteria in 10 CFR Part 50, Appendix B.
[FORMERLY "Safety" Contentions 16, 17, 18 and 19.]

Staff Position

Although the Staff believes that the subject matter covered by contention 14., quality assurance/quality control, is proper for consideration in this proceeding, the Staff does not believe that this statement of the contention meets the specificity and basis requirements of 10 CFR §2.714. ACORN has set forth adequate basis to support a contention that quality assurance/ quality control regarding certain construction practices is inadequate.39/

39/ As stated above and in the "NRC Staff Memorandum Regarding Contentions and Further Answer to ACRON/WTLS Petition for Leave to Intervene," dated May 17, 1979, the Staff believes that the following is an acceptable contention encompassing all of the quality assurance/quality control concerns expressed:

> "The applicant's failure to adhere to the quality assurance/quality control provisions required by the construction permits for Comanche Peak, Units 1 & 2, and the requirements of Appendix B of 10 CFR Part 50, and the construction practices employed, specifically in regard to concrete work, welding, inspection, materials used and craft labor qualifications, have raised substantial questions as to the adequacy of the construction of the facility. As a result, the Commission cannot make the findings required by 10 CFR 50.57(a) necessary for issuance of an operating license for Comanche Peak."

However, the contention as set forth above, is so broadly framed that, as currently worded, it is vague and lacking in basis. Accordingly, this statement of the contention should be replaced with the contention set forth in footnote 39.

Statement of ACORN Contention (15)

The CPSES design fails to protect against corrosion within the steam generators which causes cracking of pipes and leakage of radioactive water. [FORMERLY "Safety" Contention 20.]

Staff Position

The Staff opposes this contention on the grounds that it lacks adequate basis. In an attempt to provide basis for this contention, ACORN offers a conclusory statement that the Westinghouse pressurized water reactor is particularly plagued by "... a corrosive buildup between pipes and metal fittings which leads to a buildup of pressure and radioactive water," cites statements by certain NRC Staff witnesses regarding pipe damage in other plants and Task A-3 of NUREG-0410.

It is correct that "PWR Steam Generator Tube Integrity" is identified as an "Unresolved Safety Issue" (Tasks A-3, A-4 and A-5 in NUREG-0410 "NRC Program for the Resolution of Generic Issues Related to NRC Power Plants" and NUREG-0510 "Identification of Unresolved Safety Issues Relating to Nuclear Power Plants"). However, as stated in River Bend, ALAB-444, supra, in order to raise a contention concerning an unresolved safety issue or "task" there must be a demonstration of a nexus between the issue or task and the particular license application. Id. To establish the requisite nexus between the

permit or license application and task, it must generally appear both 1) that the undertaken or contemplated project has safety significance in so far as the reactor under review is concerned, and 2) that the fashion in which the application deals with the matter in question is unsatisfactory, that because of the failure to consider a particular item there has been an insufficient assessment of a specified type of risk for the reactor, or that the short-term solution offered in application to a problem under staff study is inadequate. Id. ACORN has made no such demonstration of nexus between the "unresolved safety issue" which is the subject of this contention and the CPSES operating license application. In this regard, it should be noted that the Final Safety Analysis Report (FSAR), contains a discussion in section 5.4.2 of the CPSES "Steam Generator" and in section 5.4.3 of "Reactor Coolant Piping." (pp. 5.4-14 to 5.4-41). These sections of the FSAR provide sufficient discussion and evaluation of the CPSES steam generators and steam generator tube integrity (pp. 5.4.16-17) to allow ACORN to particularize its concerns about integrity of the CPSES steam generators. Despite this, ACORN has failed to provide anything more than generalized assertions about the unresolved safety issue of steam generator tube integrity.

For the reasons stated above, this contention must be rejected.

Statement of ACORN Contention (16)

The CPSES design is inadequate to prevent a water hammer problem which could affect a number of critical safety components.
[FORMERLY "Safety" Contention 21.]

Staff Position

The Staff opposes this contention on the grounds that it lacks basis.

ACORN has offered, in support of this contention, nothing more than its conclusion that "there exists a serious water hammer problem affecting all pressurized water reactors" and cites Task A-1 of NUREG-0410 and "Black Fox testimony." Such a conclusion and citation of Task A-1 do not, in the Staff's view satisfy the requirements in River Bend, that a nexus must be established between the permit or license application and a particular task. Accordingly, the contention must be rejected.

Statement of ACORN Contention (17)

The CPSES design does not adequately address the possibility of a steam line break inside containment, nor does it insure the ability of equipment within containment to survive such an event so as to assure safe shutdown of the plant.
[FORMERLY "Safety" Contention 23.]

Staff Position

The Staff opposes this contention on the grounds that it lacks basis. In support of this contention, ACORN merely concludes that existing main steam line break analyses are seriously inadequate and cites Task A-21 and A-22 of NUREG-1040 [sic]. ACORN does not, however, state the safety significance of these tasks as regards CPSES or that the manner in which the CPSES license application deals with the question is unsatisfactory. Rather than basis, there are only ACORN's unsupported conclusions. Accordingly, the contention must be rejected.

Statement of ACORN Contention (18)

The CPSES design does not adequately insure the reliable operation of on-site emergency power.
[FORMERLY "Safety" Contention 24.]

Staff Position

In the Staff's view, ACORN's citation to Task B-56 and A-25 of NUREG-0410 does not provide adequate basis for a contention concerning CPSES. Absent particularization as to why the CPSES design does not adequately insure the reliable operation of on-site emergency power, this contention must be rejected.

Statement of ACORN Contention (19)

The CPSES design has not adequately resolved a generic safety problem for pressurized water reactors wherein the steam generator and reactor coolant pump support materials are subject to lamellar tearing and low fracture toughness.
[FORMERLY "Safety" Contention 25.]

Staff Position

Merely stating, as does ACORN, that "this matter was identified as a high priority problem applicable to reactors of the Comanche Peak type ... in Task A-12 of NUREG-0410," completely fails to satisfy the requirements of 10 CFR § 2.714 concerning basis, as interpreted in River Bend, supra. Accordingly, this contention must be rejected.

Statement of ACORN Contention (20)

The CPSES design does not adequately insure that safety-related water supplies will be available for plant operation in the event of ice build-up at the service water intake structure.
[FORMERLY "Safety" Contention 26.]

Staff Position

The Staff opposes this contention on the grounds that it lacks basis. In support of this contention ACORN merely states that ice storms have been known to occur in the Dallas/Ft. Worth area and that an ice storm incapacitated lignite plants. However, there is no indication as to why the experience at the lignite plants would have any bearing on Comanche Peak. ACORN does not provide any basis for the assertion that the CPSES design does not adequately insure that safety-related water supplies will be available in the event of an ice buildup. Accordingly, this contention must be rejected.

Statement of ACORN Contention (21)

The CPSES design has not given due consideration to the need to withstand an act of sabotage.
[FORMERLY "Safety" Contention 27.]

Staff Position

The Staff opposes this contention on the grounds that it lacks adequate basis.

In the Staff's view, none of the statements made by ACORN support a contention such as that proffered by ACORN. ACORN states that at the time the construction permit for CPSES was granted, reduction of vulnerability of the plant to industrial or terrorist sabotage was treated as a plant physical security function, not as a plant design requirement. However, in the Staff's view, neither this statement nor ACORN's statement that "the NRC Staff has categorized sabotage as an unresolved safety problem in Task A-29

of NUREG-0410", indicates why the CPSES design is deficient as regards vulnerability to sabotage. In this regard, the Staff notes that in NUREG-0510 ("Identification of Unresolved Safety Issues Relating to Nuclear Power Plants," Report to Congress, January 1979) "Generic Task A-29 Design Features to Control Sabotage" is described as follows:

> The objective of this task is to identify and evaluate possible plant design variations which could improve the inherent sabotage resistance of nuclear power plants. Should this program identify promising design alternatives, appropriate changes in the NRC's regulations will be developed for future plants.
>
> For current plants high assurance of protection against industrial sabotage is achieved by the physical security measures required by 10 CFR 73.55. Although Task A-29 may identify design concepts that could provide alternate or more effective means of protection against sabotage, the implementation of such design improvements is not necessary to provide a high level of protection of nuclear power plants. This task, therefore, does not involve an "Unresolved Safety Issue." (emphasis added). NUREG-0510.

Although ACORN alleges that "Texas Courts have recognized a very real possibility of sabotage and have permitted sabotage to be a consideration in Texas Utilities condemnation of land around the Comanche Peak facility," the Staff notes that for purposes of this proceeding, adequacy of protection against sabotage at CPSES will be determined on the basis of NRC regulations in 10 CFR § 73.55.

To the extent that this contention alleges that the physical security regulations in 10 CFR § 73.55 are invalid or inadequate, this contention is barred by 10 CFR § 2.758. Under § 2.758, the Commission has withheld jurisdiction

from a licensing board 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). 10 CFR § 2.758 sets out those special circumstances which an intervenor must show to be applicable before a contention attacking the regulations will be admissible. ACORN has not made any showing of special circumstances.

For the reasons set forth above, this contention must be rejected.

Statement of ACORN Contention (22)

The CPSES design fails to protect against accidents involving the movement and handling of heavy loads in the vicinity of spent fuel at the facility. [FORMERLY "Safety" Contention 28.]

Staff Position

The Staff opposes this contention on the grounds that it lacks adequate basis.

Merely stating, as does ACORN, that this is a "generic unresolved high priority safety issue ... in Task A-36 of NUREG-0410," does not satisfy the requirements in River Bend for reliance on an "unresolved safety issue" as the basis for a contention. Accordingly, this contention must be rejected.

Statement of ACORN Contention (23)

The CPSES design does not adequately protect against potential damage from turbine missiles to systems essential to the cooling and safe shutdown of the plant.
[FORMERLY "Safety" Contention 30.]

Staff Position

The Staff opposes this contention on the grounds that it lacks adequate basis.

In support of this contention, ACORN does no more than state that this is a "generic and unresolved serious safety problem ... in Task A-32 and A-37 of NUREG-0410." For the reasons stated in the Introduction and with respect to other ACORN contentions, this is not an adequate basis for a contention such as that proffered by ACORN. Accordingly, this contention must be rejected.

Statement of ACORN Contention (24)

Applicants have failed to comply with 10 CFR Part 50, Appendix E, regarding emergency planning, because there is no provision for emergency planning for Glen Rose or the Dallas/Ft. Worth metroplex.
[FORMERLY "Safety" Contention 31.]

Staff Position

The Staff supports admission of this contention on the grounds that it satisfies the requirements of 10 CFR § 2.714 and raises an issue which is appropriate for consideration in this proceeding.

Statement of ACORN Contention (25)

Neither the Applicants nor the Staff has adequately considered the health effects of low-level radiation on the population surrounding CPSES.
[FORMERLY "Safety" Contention 32.]

Staff Position

The Staff believes that the Licensing Board should defer ruling on the admissibility of this contention pending resolution by the Commission of the

following question certified to it by the Appeal Board in Public Service Co. of Oklanoma (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 790 (Dec. 7, 1979):

> "Where routine radioactive emissions from a nuclear power plant will be kept 'as low as is reasonably achievable' in accordance with Appendix I, is litigation of the health effects of those emissions in an adjudicatory proceeding involving initial licensing barred by 10 CFR § 2.758 as an impermissible attack on Commission regulations?"

In the Staff's view, neither this contention nor the basis asserted in support thereof allege that CPSES will not meet the Commission's regulations in 10 CFR § 50.34a and Appendix I to 10 CFR Part 50 applicable to routine releases of radioactive effluents.40/ Rather, ACORN's concern appears to be that, apart from Appendix I, Applicants "should be required to incorporate design criteria which will adequately protect the public from the effects of low-level radiation."

Since ACORN's contention appears to raise the issue certified to the Commission in Black Fox, supra, the Staff believes that consideration of the admissibility

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40/ These regulations require that light-water-cooled nuclear power reactors like CPSES must be designed and built so that during normal operation the release of radioactive effluents is "as low as is reasonably achievable." 10 CFR § 50.34a. That standard is explained and quantified in Commission guidelines published as Appendix I to 10 CFR Part 50. Applications to construct a plant of this type must describe the equipment to be installed to control radioactive effluents and identify the design objectives and the means to be employed to meet the standards. Ibid. In addition, Section I of Appendix I provides that nuclear power reactor "[d]esign objectives and limiting conditions for operation conforming to the guidelines of this Appendix shall be deemed a conclusive showing of compliance with the 'as low as is reasonably achievable' requirements of 10 CFR § 50.34a * * *." Where it applies, Appendix I is a binding Commission regulation notwithstanding its denomination as an appendix. Rulemaking Hearing (Docket No. RM-502), CLI-75-5, 1 NRC 277, 328 (1975).

of this contention should be deferred pending resolution by the Commission of this issue. In this regard, the Staff notes that another licensing board deferred a contention similar to ACORN's Contention 25, for the reasons set forth above. See Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), LBP-80-___, ___ NRC ___ (March 10, 1980) (slip op. at 74).

Statement of ACORN Contention (26)

The energy to be generated by CPSES is unneeded, unsalable and uneconomically priced in view of the order of the Texas Public Utility Commission in Docket No. 14, and thus a favorable cost-benefit balance cannot be struck. [FORMERLY "Environmental" Contention 1.]

Staff Position

The Staff opposes admission of this contention because it lacks adequate basis. In essence, the contention is that CPSES is not needed. However, the basis for this contention addresses, in part, just the short-term situation. In support of its contention, ACORN concludes that the "Texas Utilities operating companies (TESCO, DP&L and TP&L) have reserve margins which approximate 50 per cent . . . well past 1981." However, the Staff notes that the license, if granted, will cover a period of forty years. Further, this period of operation will not commence until the license is granted. ACORN has failed to specify the basis for its claim, other than citing a proceeding before the Texas Public Utility Commission. Citing this proceeding does not, in the Staff's view, indicate why the energy to be generated by CPSES is "unneeded, unsalable and uneconomically priced."

As a further basis for the contention, ACORN states that the Applicants' calculations reveal high reserve margins. ACORN concludes that the actual margins are understated and "should be higher based upon exaggerations of growth and weather conditions." However, ACORN provides no basis for this conclusion. Such unsupported speculation does not, in the Staff's view, constitute adequate basis to raise a question as to need for power at the operating license stage. The issue raise by this contention is more appropriately dealt with at the construction permit stage of review. It is the type of issue which, in order to be considered in an operating license proceeding, must be supported by "significant new information developed after the construction permit review." Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73, 86 (1979). The question of need for power was considered and addressed by the Licensing Board at the construction permit stage. Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-74-75, 8 AEC 673, 689 (1974). In the Staff's view, ACORN has made no showing that, with respect to need for power, there exists a significant issue not adequately considered at the construction permit stage. None of the information provided by ACORN in support of this contention can be considered significant in terms of giving an adequate basis for admitting a contention on need for power at the operating license stage. At most, the discussion by ACORN of the alleged deficiencies in Applicants' ER with respect to need for power does no more than suggest that the Applicants figures are not precise. The Appeal Board has repeatedly observed that "inherent in any forecast of future electric power demands is a substantial margin of uncertainty."

Niagara Mohawk Power Corp. (Nine Mile Point, Unit 2), ALAB-264, 1 NRC 347 (1975). The Appeal Board has also held that the most that can be required is that a forecast be a reasonable one in light of what is ascertainable at the time made. Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1, ALAB-462, 7 NRC 320, 327-28 (1978), aff'd per curiam, Mid-America Coalition for Energy Alternatives v. NRC, 590 F.2d 356 (D.C. Cir. 1979). Moreover, in fulfilling its responsibilities to provide adequate and reliable service to all its customers at all times, it is not unexpected, nor is it unreasonable, for a utility to be conservative and possibly err on the high side in predicting demand growth. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 410-11 (1976). This does not render the need for power analysis invalid, nor, of itself raise new matters with regard to need for power which would warrant a reconsideration of that issue in an operating license proceeding.

For the reasons set forth above, this contention should be rejected.

Statement of ACORN Contention (27)

Applicants have failed to demonstrate a need for the power to be generated by CPSES because:

a. The reserve margins presented in the ER reflect adequate margins through 1985 without CPSES.

b. The figures for the Applicants' capabilities, demands and reserves set forth in the ER are inaccurate, incomplete and out of date.

[FORMERLY "Environmental" Contention 2.]

Staff Position

The Staff opposes this contention on the grounds that it lacks adequate basis.

In support of this contention, ACORN offers conclusory statements, such as "The Environmental Report submitted by the Applicant recognizes gross exaggerations of demand and reserve margins that justified the construction permit for Comanche Peak." ACORN also concludes that "actual demands and reserve margins within the Texas Utilities system constitute a significant change in circumstances." However, in the Staff's view, such generalized conclusions do not constitute "significant new information developed after the construction permit review." Enrico Fermi, supra. These statements thus do not provide an adequate basis for raising a contention on need for power at the operating license stage.

Even if the ER reflects adequate reserve margins through 1985 without CPSES, as ACORN alleges in subpart a., it should be noted that the license, if granted, will cover a period of forty years. This period of operation will not commence until the license is granted. The question of need for power is not limited, as ACORN implies, to the short term situation.

In the Staff's view, ACORN has made no showing that, with respect to need for power, there exists a significant issue not adequately considered at the construction permit stage. Accordingly, this contention must be rejected.

Statement of ACORN Contention (28)

The Applicants have not considered the costs of replacement of major pieces of equipment and their disposal in their cost-benefit balance. [FORMERLY "Environmental" Contention 4.]

Staff Position

The Staff opposes this contention on the grounds that it lacks adequate basis.

In support of this contention, ACORN merely offers the conclusion that "Applicant must consider within its cost-benefit analysis the possibility of replacing contaminated pipes and large pieces of machinery and the long-term storage of those items." However, ACORN provides no basis for this conclusion. Accordingly, this contention must be rejected.

Statement of ACORN Contention (29)

Applicants have not considered the environmental effects of storage and ultimate disposal of nuclear waste in their cost-benefit balance. [FORMERLY "Environmental" Contention 5.]

Staff Position

The Staff opposes this contention on the grounds that it lacks adequate basis and seeks to raise an issue which is beyond the scope of this proceeding.

In an attempt to provide basis for this contention, ACORN has set forth no more than generalized conclusionary statements regarding allegedly harmful effects from storage and disposal of nuclear waste. However, such generalizations do not, in the Staff's view, constitute adequate basis for a contention such as that proffered by ACORN.

In addition, the Staff notes the CPSES operating license application seeks only a license for the specified period of forty years. Accordingly, the cost-benefit analysis need only consider those costs and benefits associated with the proposed action, operation of the facility for a specified period. To the extent that this contention seeks to raise the issue of costs associated with operation of CPSES beyond the anticipated duration of the license, it must be rejected.

To the extent that this contention attempts to raise the issue of storage of spent fuel at CPSES beyond the anticipated duration of the license, it is seeking to raise a matter beyond the scope of this proceeding and must be rejected.

The Staff believes that an issue concerning possible long-term storage (beyond the requested term of the license) and/or permanent disposal of nuclear waste at CPSES may not be considered in this proceeding, because the Commission has initiated a rulemaking proceeding to "reassess its degree of confidence that radioactive wastes produced by nuclear facilities will be safety disposed of, to determine when any such disposal will be available, and whether such wastes can be safely stored until they are safely disposed of." See Federal Register notice, "Storage and Disposal of Nuclear Waste," 44 Fed. Reg. 61372 (October 25, 1979). In this notice, the Commission stated that:

> "During this proceeding the safety implications and environmental impact 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 most appropriately addressed in a generic proceeding of the character here envisaged." 44 Fed. Reg. 61373.

It is thus clear that any consideration of storage of spent fuel beyond the term of the license is not permissible.

Statement of ACORN Contention (30)

The Applicants have failed to postulate the possibilities, the effect on the environment, and the cost of "cleanups" which necessarily follow a nuclear accident such that a favorable cost-benefit balance cannot be struck. ["FORMERLY Environmental" Contention 6.]

Staff Position

The Staff opposes this contention on the grounds that it lacks adequate basis.

In support of this contention, ACORN cites the accident at TMI-2 and concludes that the Applicants must incorporate in the cost-benefit balance "the cost associated with recovering from certain accidents and the environmental implications that might be associated with such recovery." The Staff does not believe that merely citing the accident at TMI-2 provides adequate basis for contending that the cost-benefit balance for CPSES must include the costs (as yet undetermined) for recovery from "certain accidents." Other than the accident at TMI-2, ACORN does not specify the "certain accidents"

which the CPSES cost-benefit balance must allegedly consider. In addition, ACORN provides no nexus between the TMI-2 accident and CPSES.

For the reasons set forth above, this contention must be rejected.

Statement of ACORN Contention (31)

The Applicants have not considered the costs of safely decommissioning the facility after its useful life in the cost-benefit balance. [FORMERLY "Environmental" Contention 7.]

Staff Position

As an asserted basis for this contention, ACORN merely concludes that "total decommissioning costs in dollars and the incremental burden upon the environment should both be considered in the cost-benefit analysis."

However, ACORN provides nothing in support of this conclusion. The Staff notes that the Applicants' Environmental Report (ER), Operating License Stage, contains a discussion of "Decommissioning Costs" in Chapter 11.0, "Summary Benefit-Cost Analysis", Section 11.2.1.3. This discussion states the estimated cost of decommissioning in dollars. Further details pertaining to decommissioning and related costs are presented in Section 5.8, "Decommissioning and Dismantling" and in Section 8.2.1.3. "Decommissioning Costs." These sections of the ER provide ample discussion and evaluation of decommissioning costs to allow ACORN to particularize whatever concerns it has, if any, relating to decommissioning. Despite this, ACORN has failed to provide anything more than vague assertions without basis. Accordingly, this contention must be rejected.

IV

CONCLUSION

For the reasons stated above, the Staff urges that the Licensing Board rule on the language and admissibility of the proposed contentions of CFUR, CASE and ACORN consistent with the Staff's position in this document.

Respectfully submitted,

Marjorie Ulman Rothschild
Counsel for NRC Staff

Sherwin E. Turk
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 10th day of April, 1980.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
TEXAS UTILITIES GENERATING COMPANY, ET AL.	)	Docket Nos. 50-445
	)	50-446
(Comanche Peak Steam Electric Station, Units 1 and 2)	)	

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the captioned matter. In accordance with §2.713(a), 10 CFR Part 2, the following information is provided:

Name	-	Stuart A. Treby
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Telephone Number	-	Area Code 301 - 492-8661
Admission	-	Supreme Court of the United States Court of Appeals for the State of New York
Name of Party	-	NRC Staff U. S. Nuclear Regulatory Commission Washington, D. C. 20555

Stuart A. Treby
Assistant Chief Hearing Counsel
for NRC Staff

Dated at Bethesda, Maryland
this 10th day of April, 1980

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(Comanche Peak Steam Electric Station, Units 1 and 2)	)	

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the captioned matter. In accordance with §2.713(a), 10 CFR Part 2, the following information is provided:

Name	-	Sherwin E. Turk
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Name of Party	-	NRC Staff U.S. Nuclear Regulatory Commission Washington, DC 20555

Sherwin E. Turk
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 10th day of April, 1980

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NUCLEAR REGULATORY COMMISSION

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	)	
(Comanche Peak Steam Electric Station, Units 1 and 2)	)	

NOTICE OF WITHDRAWAL OF APPEARANCE

Notice is hereby given that effective this date I withdraw my appearance in the above-captioned proceeding. All mail and service lists should be amended to delete my name after this date.

Respectfully submitted,

Lawrence J. Chandler
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 10th day of April, 1980

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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(Comanche Peak Steam Electric Station, Units 1 and 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF REPORT ON ITS POSITION CONCERNING THE ADMISSIBILITY OF INTERVENOR'S CONTENTIONS," NOTICE OF APPEARANCE" for Stuart A. Treby, "NOTICE OF APPEARANCE" for Sherwin E. Turk and "NOTICE OF WITHDRAWAL OF APPEARANCE" for Lawrence J. Chandler in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class (priority), or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 10th day of April 1980:

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Marjorie Ulman Rothschild
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