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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

IN THE MATTER OF GENERAL)	
ELECTRIC COMPANY)	
)	
Considerations of Renewal)	Docket No. 70-1308
of Materials License No. SNM-1265)	
Issued to G.E. Morris Operation)	
Fuel Storage Installation)	

PEOPLE OF THE STATE OF ILLINOIS' SECOND SET OF
AMENDED CONTENTIONS

The PEOPLE OF THE STATE OF ILLINOIS, by their attorney, WILLIAM J. SCOTT, hereby amend their previously filed contentions in accord with the February 29, 1980 order of the Atomic Safety and Licensing Board. The Amended Contentions of the People of the State of Illinois remain as filed on February 14, 1980 except as noted below.

CONTENTION 1.

Paragraph 1 line 4: delete "40, 50 and 70" and substitute "30, 40 and 70".

Subparagraph (a) line 1: change "the effects of" to "the effects on".

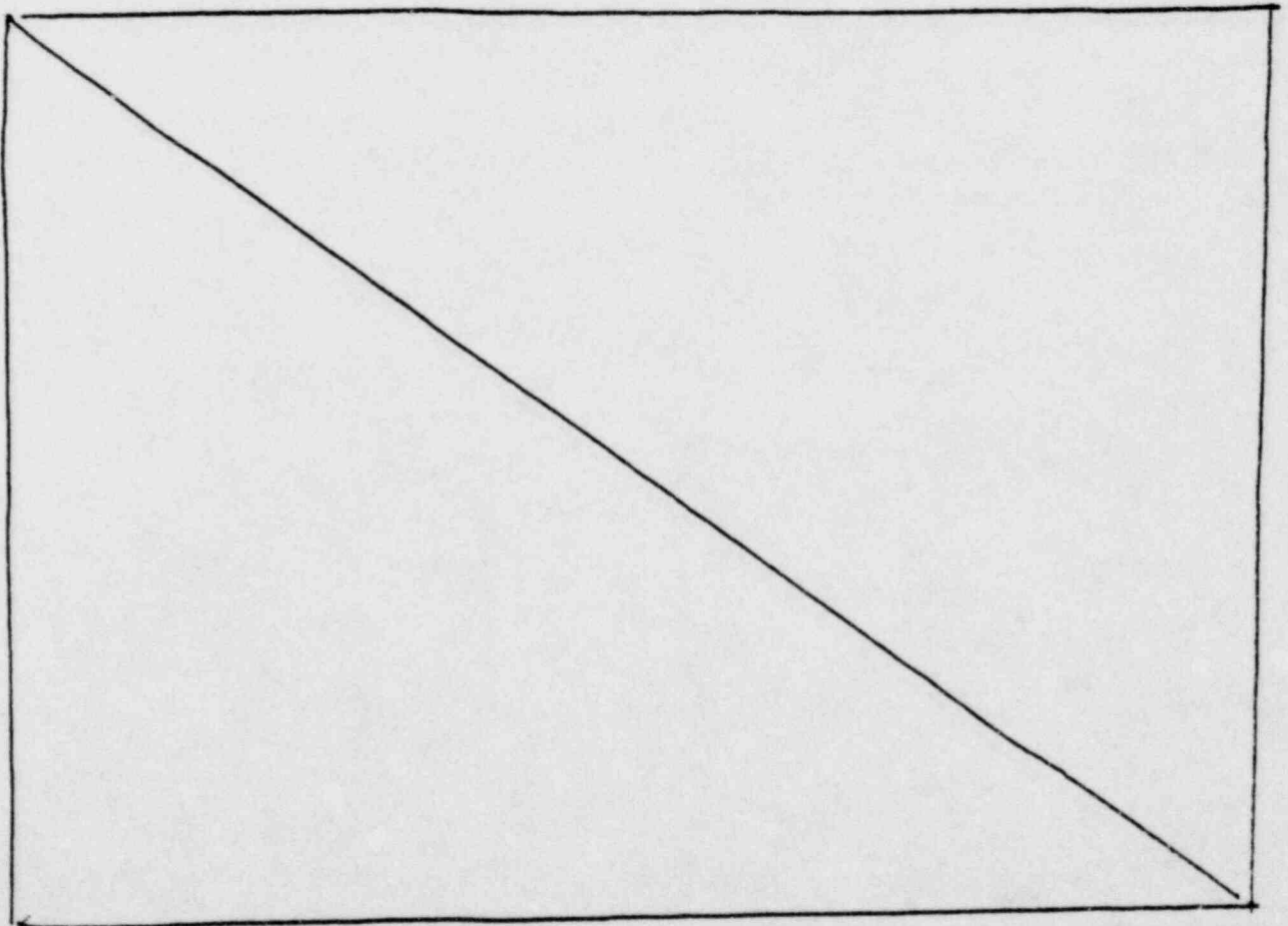
Subparagraph (c): delete and substitute the following paragraph:

"The risks and consequences of the release of radioactive elements in excess of Part 20 regulations as a result of any of the following accidental occurrences at the Morris facility: a a tornado-related incident, including the consequences of an accident caused by a tornado impelled

missile; a loss of coolant accident, alone and in conjunction with an accident which has caused a rift in the building structure; earthquake related accidents; and sabotage related accidents not analyzed in NEDM-20682.

CONTENTION 2.

Add: The "Sabotage Analysis for Fuel Storage at Morris", NEDM-20682, November 1, 1974, is limited in that it does not prove statistically the "unlikeliness" of sabotage events nor has it been updated to accomodate advances in the technology of explosives which could make sabotage a more likely event.



CONTENTION 6.

Amend contention 6(c) to read:

There is no contingency plan to provide decommissioning of the Morris facility should an emergency, accident or other unforeseen event necessitate immediate and permanent abandonment of the Morris site. CSAR §A.7.2.1.

Note: Contention 6 (d)(iv) does not address the issue of whether offsite disposal facilities will be or should be available when decommissioning occurs. The intent behind Contention 6 (d)(iv) is to litigate the issue of General Electric's contingency planning if it is found to be the case that no offsite facilities are available when needed. See Transcript of Prehearing Conference held February 29, 1980, at 84-88.

CONTENTION 7.

For clarification of the term "emergency procedures" and the intent of this contention reword as follows:

7. The Emergency Plan in the CSAR is inadequate in that:
 - (a) it does not specify which emergency procedures will be utilized to unload the spent fuel pool and to transport and/or store irradiated fuel in the event that an emergency should necessitate transfer of the spent fuel from the Morris spent fuel pool.
 - (b) Figure 9-4 "Emergency Plan Relationships for Morris Operation", NEDO-21326C, January 1979

supplement to the CSAR includes "emergency transportation of irradiated fuel" as a concept, but nowhere is this concept developed. The CSAR should be supplemented to explain GE's plans for emergency transportation.

(c) There is no reference to tests or other means by which it can be determined that the existing emergency plans are adequate. Adequate test programs of both communications systems and procedures should be documented prior to licensing.

For further clarification See Prehearing Conference Transcript at 087-095.

CONTENTION 10.

Contention 10, line 2: change "0.29" to "0.2_g".

Intervenor further requests the Board to fully review the proceedings of the Prehearing Conference held on this matter in Morris, Illinois on February 29, 1980.

STANDARDS FOR REVIEW OF CONTENTIONS

In making its determinations on the admissibility of the amended contentions submitted in this proceeding by the State of Illinois, the Board is bound by the Regulations of the Nuclear Regulatory Commission to consider only the requirements of 10 CFR §2.714 and not the merits of any of the issues raised by the contentions.

A Petitioner's burden regarding contentions at the special pre-hearing conference stage is merely to present valid issues open to factual dispute. Although a licensing board may under certain circumstances reject contentions on legal grounds on the pleadings alone, it is not permitted to make determinations concerning the merits of contentions otherwise admissible. Northern States Power Company (Prairie Island 1 and 2), ALAB 107, 6 AEC 188 (1973); Duquesne Light Co. (Beaver Valley, Unit 1) ALAB 109, 6 AEC 244 (1973). Where contentions involve mixed questions of law and fact they are not appropriate for determination as a matter of law on the pleadings alone. Tennessee Valley Authority (Clinch River Breeder Plant), LBP 76-14, 6 NRC 430 (1976).

In making its pre-hearing determinations as to the admissibility of contentions a licensing board bears no affirmative obligation to create contentions for a petitioner or to transform

patently bad contentions into acceptable contentions. Commonwealth Edison Co. (Zion Station), ALAB 226, 8 AEC 381 (1974). "However, where an issue, clearly open to factual adjudication, can be discerned somewhere within the four corners of submitted pleadings, a licensing board is not free to disregard it." Tennessee Valley Authority (Brown's Ferry Nuclear Plant, Units 1 and 2) LBP 76-10, 6 NRC 209 (1976).

At this point in the proceeding any facts alleged must be taken as true; the merits of the contentions are not at issue nor is the determination of adequacy of contentions at a special pre-hearing conference a substitute for consideration of motions for summary disposition as provided by 10 C.F.R. §2.749. Nowhere in the regulations is it stated that Intervenors bear the burden of proving the truth or sufficiency of facts alleged in contentions. In fact, the Licensing Appeal Board has held:

...it is not the function of a licensing Board to reach the merits of any contention contained... (in an intervention petition)... Moreover, Section 2.714 does not require the petition to detail the evidence which will be offered in support of each contention...Needless to say, it will be open to both the applicant and the regulatory staff to move, pursuant to Section 2.749 for summary disposition...The existence of this summary disposition procedure -- which was adopted at the same time as the contentions provision of the present Section 2.714 -- is a further indication of the error in the view of the applicant and the regulatory staff that an intervenor must provide

the evidentiary foundation for its contention (i.e., demonstrate that it has merit) before it is admitted into the proceeding. Mississippi Power and Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973).

Accordingly, the Staff and Applicant should not be allowed to use the special pre-hearing conference as a means of circumventing the summary disposition process by having Intervenor's contentions removed from the intervention petition by the asseccion of unsworn, untested and unverified statements.

The State of Illinois prays the Board to consider these general precepts when ruling on the admissibility of the contentions.

The State of Illinois recognizes that several of its contentions assert that the application is deficient because certain required information is lacking. This deficiency makes it impossible for the State and the N.R.C. to properly assess whether the citizens of Illinois will be placed in jeopardy as a result of the proposed license renewal. It is the purpose of these contentions to alert the Board and the Staff to Applicant's obligations to supply all pertinent information prior to being granted a license. This intent should also be considered when ruling on contentions.

RECONSIDERATION OF MOTION TO STAY PROCEEDINGS

The State of Illinois moves this Board to vacate its ruling of February 29, 1980 denying Illinois' Motion to Stay these proceedings and to reconsider the motion.

Several contentions of each of the intervenors have indicated to the Board the necessity to postpone this licensing hearing until adequate regulations for away from reactor storage may be promulgated. The lack of these regulations has been dismissed by the Staff in its assertions that they are unnecessary as a basis for licensing. Yet this same lack of regulation is utilized by the Staff in its response to Illinois Contention 10, to assert that the contention which raises the adequacy of seismic design is "beyond the scope" of this hearing because there is no regulation available against which to measure the design.

It is obvious to the Intervenors that the absence of these regulations is being used by those who would avoid a hearing on pertinent and relevant issues as a justification to deny contentions. It is also obvious that the Board's rulings on the issues are going to be limited to those few rules that can be analogized by the Staff to pertain to this licensing and that it is therefore very likely that many issues will not be properly aired at this time. As a result a future hearing on this same licensing will become necessary.

To avoid duplication of effort and to assure a proper consideration of this license renewal, the State of Illinois requests this Board to vacate the ruling of February 29, 1980 and to reconsider the State of Illinois Motion to Stay These Proceedings.

Respectfully submitted,

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DATED: March 20, 1980

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "PEOPLE OF THE STATE OF ILLINOIS' SECOND SET OF AMENDED CONTENTIONS" dated March 20, 1980 in the above-captioned matter have been served upon the following by deposit in the United States Mail this 20th day of March, 1980.

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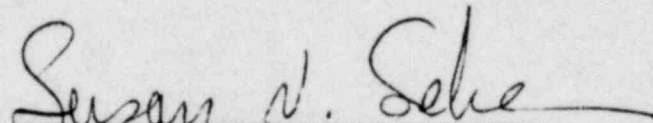
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