

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)	§	

ACORN'S STATEMENT OF POSITION ON CONTENTIONS

ACORN initially offered forty (40) contentions for litigation in this proceeding. Four (4) of those contentions have been voluntarily deleted and several others have been grouped to form the thirty-one (31) contentions discussed herein. ^{1/} Reasonable specificity for each of the contentions has been provided so that the statutory requirements of 10 CFR Section 2.74(b) are met.

Specificity is to be determined not by whether the contention cites a chapter and verse from the final Safety Analysis Report (which the Staff seems to want from ACORN,

^{1/} For reasons stated in a pleading dated February 11, 1980, ACORN has not signed stipulations on contentions proposed by the Staff, however, the wording of contentions discussed herein is consistent with the wording arrived at through negotiations with the Staff and Applicant on wording.

although the Commission has never so required), but by the plain language that appears in the contention and its basis. In 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 (February 26, 1979) an Intervenor offered a contention based on the assertion that public safety officials had not adequately considered the prospects of traffic accidents for carriers of nuclear fuel, and the Staff objected to admissibility based on the reasoning that the contention was devoid of basis. The Board in admitting the contention noted:

"Rejecting this contention for lack of specificity flies in the face of its plain language. Moreover, doing so ignores the fact that ever since the adoption of the 1972 Amendments to the Rules of Practice and the accompanying statement of consideration upon which the Staff relies, contentions of similar specificity have regularly been accepted. True, Davidson did not go on to establish that its assertion is well founded in fact, but as we have had occasion to emphasize through the years, whether a particular concern is justified must be left for consideration when the merits of a controversy are reached." See e.g. Mississippi Power and Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6AEC423, 426 (1973); See also, Virginia Electric Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9NRC54, 57 (January 26, 1979).

In considering ACORN's contentions in this proceeding three points of importance should be drawn from the Board's language in the Duke Power Co. case. First, assertions are appropriate in the formulation of contentions at the early stages of a proceeding. Second, to require more specificity than the plain language of the assertion would be to require an evidentiary showing, whereas case law rejects the necessity of evidence at this stage. Philadelphia Electric Co., et al (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216,8AEC 13, 2021(1974); Mississippi Power and Light Co., supra. Third judgments as to whether a concern or assertion is justified must be left to a stage of the proceeding which addresses the merits of the controversy.

The Staff has taken the position that virtually all of ACORN's contentions should be denied for lack of basis.^{2/}

^{2/} ACORN had no concept of the Staff's views of the substance of the contentions offered by ACORN beyond the phrase "lack of basis" until the receipt of written comments on March 31, 1980. Remarks concerning the Staff's views of ACORN's contentions in this pleading refer to those written comments which ACORN assumes will form the foundation of the Staff's statement of position.

While the Staff cites case law which declares that evidence is unnecessary for acceptance of contentions, the functional reality of the Staff's position would be to require evidentiary showing from ACORN. The Staff's references to "bald conclusion" and "bald assertions" of ACORN should not turn the Board's focus away from the reality that the parties are still at the "assertion" stage of the proceeding. Attention should not be shifted from the fact that the plain and specific language of ACORN's contentions meets the requirements imposed by statute and case law.

A number of ACORN's contentions relate significant unresolved safety issues to the Comanche Peak (hereinafter referred to as "CPSES") design. Those contentions are specific in their language and put the other parties on notice as to what inquiry is warranted, yet the Staff attempts to discredit those contentions with a reference to the River Bend case. In River Bend the party in question attached a copy of a technical Safety Activities Report with circles drawn around those items which the party wanted to litigate. A number of the circled items did not relate to the proceeding in question. Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6NRC 293(1976). Unlike the party

in River Bend, ACORN has done much more than present a "checklist" of items from Task Action Plans. ACORN's contentions relate specifically to CPSES and significant safety issues inadequately addressed by the Applicant and/or the Staff.

It appears that the Staff is asking for rejection of ACORN's contentions, not for a lack of nexus between the unresolved safety issues and CPSES design, but for a lack of statement of nexus. The Staff maintains a rather coy position with ACORN by recognizing that the Staff has an obligation to address the unresolved issues raised by ACORN at some future date (when the SER is published), but that in the meantime Intervenors should have no input on unresolved issues. Furthermore, the Staff's position is contrary to the ruling in a recent Pennsylvania Power and Light Co. proceeding. In that case the Intervening party generally alluded in its pleading to unresolved safety issues and singled out several such issues specifically. The Board not only admitted the unresolved safety issues which had been singled out, but it also stated that the party should have an opportunity to supplement its contentions upon publication of the SER. The Board noted:

"Because SER treating such issues has not yet been issued, we believe that [the Intervenors] should be given an opportunity after such issuance to specify (with reasons) which issues it believes have not been adequately resolved. This is particularly so in view of the review which the operating license board must in any case give to such issues, as specified in North Anna, supra." Pennsylvania Power and Light Co. et al (Susquehanna Steam Electric Station, Units 1 and 2), LBP-79-6, 9NRC 291, 312 (1979).

The Staff in this proceeding has acknowledged that it must deal with the unresolved safety issues in the SER. If that acknowledgement does not provide the "nexus" between the unresolved issues and CPSES design, then the actual publication of the SER must provide that "nexus". The Staff may be unhappy with the detail provided in Acorn's contentions and bases but ACORN is disadvantaged and precluded from providing further information in that the information on the unresolved safety matter is under the control of the Staff. Pennsylvania Power and Light Co., supra, Page 311. ACORN's contentions provide at least as great a degree of specificity as those commonly accepted in other proceedings. An Intervenor recently obtained acceptance of a contention which asserted that an unresolved design defect on over-pressurization found to exist in other PWR's would affect the plant in question. The Board found that until the Staff

issues its report, the Intervenor "need be held to no greater specificity". Houston Lighting and Power Co. (South Texas Project Units 1 and 2), LBP-79-10, 9NRC 439, 450 (1979).

STATEMENT OF CONTENTION ONE

The CPSES 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 One]. (Agreement on wording exists between Applicant, Staff, and ACORN).

ACORN'S POSITION

A pipe break in certain locations between the vessel and the shield wall would cause instantaneous extreme pressure differentials, causing forces which could tip the vessel, shearing the pipes and preventing cooling. In addition, these forces could damage the fuel spacer grids and distort the fuel geometry. Thus this contention has safety significance to the CPSES design. The fact that the contention relates the CPSES design to a Category A unresolved safety issue further emphasizes the contention's impact on safety, as well as emphasizing the need for further inquiry on the matter.

The language of the contention is specific and the area of concern is precisely defined. It is not incumbent upon ACORN to allege more than that CPSES design does not adequately account for the problem and its effects. Duke Power Co., supra. ACORN shoulders no burden to indicate "why" the CPSES design fails to account for the problem which ACORN sets forth. ACORN's contention is admissible. Pennsylvania Power and Light Co., supra.

STATEMENT OF CONTENTION TWO

NRC Staff review is inadequate to identify and correct modes of interaction between reactor systems in the CPSES design which can adversely affect the redundancy or independence of safety systems.
[Formerly "Safety" Contention Two].
(No agreement exists between the parties as to wording).

ACORN'S POSITION

As part of its explanation of this contention ACORN cited examples from the Zion Plant and Three Mile Island Unit 2 (TMI-2) to narrow the focus on the problem addressed in the contention. At the TMI-2 accident, poorly understood interaction between non-safety and safety systems led or contributed to the releases of radioactive water from the containment to the auxiliary building, from which it reached the public. The TMI-2 Lessons Learned Task Force

Final Report echoes the position of ACORN on this contention.

The report noted:

"The TMI-2 accident brought into focus, however, the fact that the Staff Safety Reviews may be too prescriptive in nature and do not promote awareness or incentive to pursue on a broader basis new areas of potential safety concern. The technical reviewers are required to spend too much time verifying that Safety Analysis Reports have addressed all required aspects of the design rather than concentrating and collecting their efforts to challenge the adequacy of the overall design, particularly across systems interfaces and the man-machine interface. This is not to say that component level reviews are never appropriate, but that the emphasis should be on system level reviews." Lessons Learned Final Report, Page 4-5.

Thomas H. Pigford of the President's Commission on the Accident at Three Mile Island likewise expressed the concern which ACORN addressed in its contention. He stated that the "lack of a comprehensive system approach to the whole plant" was a major problem with the NRC's approach to reactor safety. His supplemental views to the Kemeny Commission Report note:

"A large percentage of the NRC Staff are specialists focusing upon narrow topics. There are relatively few systems engineers within the NRC who can integrate individual safety features into an overall concept and who can place issues into perspective." Report of the President's Commission on the Accident at Three Mile Island, Page 96.

The inadequacy of the NRC review had been identified as a "Potential High-Risk Item" prior to the TMI-2 accident. The present for Staff review divides responsibility among Staff units organized by plant systems, such as electrical systems, mechanical systems, etc. There is no systematic method for review of the unintentional interaction between such systems, and that lack of review and the harm that could occur with system interaction had been identified as Category A unresolved safety items. ACORN's contention is specific in its language and relates the concerns of the unresolved safety issue and the problems with systems interaction to the CPSES design.

The Staff has challenged the specificity of ACORN's contention for failure to define "safety systems", which ACORN contends is a term of art employed throughout the NRC. ACORN should be permitted to use the common language employed by the NRC in its contentions without challenges to specificity. "Safety systems" from its common meaning and its usage within ACORN's contention and original explanation refers to systems containing safety-related items designed to prevent or mitigate the consequences of postulated accidents that could cause undue risk to the

health and safety of the public. ACORN's reference to Category A unresolved safety issues and the safety systems at CPSES establishes both the significance of the contention to CPSES and the need for further inquiry. ACORN's contentions meet the requirements for admissibility.. Pennsylvania Power and Light Co., supra.

STATEMENT OF CONTENTION THREE

Neither the Applicants nor the Staff has a reliable method for evaluating or insuring that Class IE safety-related equipment is designed to accomodate the affects 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 Three]. (Agreement exists between Applicant, Staff, and ACORN as to wording, and agreement exists between Staff and ACORN as to substance).

ACORN'S POSITION

This contention relates the CPSES design to a Class A unresolved safety issue and Potential High-Risk Item, and in so doing establishes the significance of the concerned and the contention to this proceeding. The language of the contention is specific and gives the parties to this proceeding adequate notice of ACORN's concern.

ACORN's original explanation stated that the extent to which TUGCO has committed itself to all of the standards in conformance to IEEE-323-1974, particularly with respect to aging is unclear. Furthermore, even if TUGCO did commit to meet all of the IEEE-323-1974 standards, neither the nuclear industry nor the Staff has yet established methods in many areas to demonstrate equipment qualification. The heart of ACORN's contention is the lack of reliable methods for insuring safety at CPSES. ACORN's original explanation gave examples of areas where there has been a failure to demonstrate equipment qualification. ACORN's contention meets the requirements for admissibility. Pennsylvania Power and Light Co., supra.

STATEMENT OF CONTENTION FOUR

Neither the Applicants nor the Staff has reliable methods for evaluating and insuring that structures, systems and components important to safety are designed to withstand the affects 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 Four]. (Agreement exists between Applicant, Staff, and ACORN with regard to wording).

ACORN'S POSITION

ACORN's contention is that CPSES plant design is not adequately conservative and that General Design Criterion 2

cannot be met for a failure to insure that the safety-related items are designed to withstand a safe shutdown earthquake. As in the preceding contention, the lack of reliable methodology has safety significance for CPSES. ACORN's contention relates an unresolved Category A safety problem and a Potential High-Risk Item as classified in NUREG-0510 to the CPSES design. ACORN illustrated the safety significance to CPSES by citing the NRC Order which required the shutdown of five operating plants because of gross error in seismic load calculations. Those errors in seismic load calculations illuminate the lack of methodology for verifying the adequacy of seismic design, and that lack of methodology extends to CPSES. ACORN's contention meets the requirements for admissibility. Pennsylvania Power and Light Co., supra.

STATEMENT OF CONTENTION FIVE

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 Five].

(Agreement as to wording exists between Applicant, Staff and ACORN).

ACORN'S POSITION

To require greater specificity in the wording and basis of this contention would be to require an evidentiary showing. Yet the Staff has indicated to ACORN that it must explain "why" it believes the CPSES measures are inadequate and proceed beyond "generalized descriptions". ACORN indicated that the Regulatory Guide 1.75 is inadequate (which is not an attack on statutory requirements) to satisfy General Design Criterion 3. That is an open issue in that the Union of Concerned Scientists Petition For Emergency And Remedial Action, CLI-78-6, 7NRC 400(1978) has been accepted for reconsideration and is still pending. ACORN has presented a litigable issue and it is inappropriate at this point in the proceeding to quibble with the Staff on the merits of the problem addressed in ACORN's contention. ACORN believes that the specific language of the contention and the generalizations which support it constitute an admissible contention. Duke Power Co., supra; Electric Power Co. et al, supra.

STATEMENT OF CONTENTION SIX

The D. P. Power System for the CPSES plant fails to meet the single failure criterion as defined in 10 CFR Part 50, Appendix A.
 [Formerly "Safety" Contention Six,]
 (No agreement exists between the parties).

ACORN'S POSITION

ACORN's contention is both specific and easy to understand. Single failure criterion is defined in the statute, and the meaning of D. C. Power System, if not commonly known, is defined in the CPSES/FSAR. The definition within the CPSES/FSAR matches ACORN's explanation for the significance of the concern over the D. C. Power System - that is, it supplies power for control and actuation of safety-related systems. (See generally, Part 8.3.2 of the CPSES/FSAR which is labeled D. C. Power Systems, and specifically Parts 8.3-57 and 8.3-64).

Under the single failure criterion one is allowed to assume a failure and all additional failures caused to other parts or components as a result to the initial failure. After the consequences of the initial failure are considered one is permitted to assume an additional component failure. (On Page 93 of the Kemeny Commission Report, Thomas Pigford notes, "Although confusingly called a 'single-failure' criterion, it is clear that this criterion requires the assumption of at least three failures.") ACORN contends that the D. C. Power System at CPSES cannot meet the single failure criterion without destroying redundancy within that system

which is crucial to safety.

The concern raised by ACORN's contention is addressed as a Category A unresolved safety issue. The contention should be admitted. Duke Power Co., supra; Pennsylvania Power and Light Co., supra.

STATEMENT OF CONTENTION SEVEN

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 CFR Part 50. [Formerly "Safety" Contention Seven]. (Agreement as to wording exists between Applicant, Staff, and ACORN).

ACORN'S POSITION

ACORN's contention relates an unresolved Category A safety item to the CPSES design, and the contention should be admitted. Pennsylvania Power and Light Co., supra.

The original explanation of ACORN noted that the accident at TMI-2 demonstrated graphically the inadequacy of post-accident monitoring, in terms of the parameters monitored, the range and accuracy of the instrumentation, and the qualification of the instrumentation for the accident and post-accident environment. As an example,

ACORN pointed out that there is no way to directly measure the water level or temperature in the core after an accident. The instrumentation which was available at TMI-2 was not always reliable. The events which occurred at TMI-2 provide safety significance to the concerns which ACORN's contention raises for CPSES. That concern is further justified in that the Kemeny Commission recommended:

"Equipment should be reviewed from the point of view of providing information to operators to help them prevent accidents and to cope with accidents when they occur. Included might be instruments that can provide proper warning and diagnostic information; for example, the measurement of the full range of temperatures within the reactor vessel under normal and abnormal conditions, and indication of the actual position of valves." Report of the President's Commission on the Accident at Three Mile Island, Page 72.

Standing alone, ACORN's contention meets the requirements of 10 CFR Section 2.714(b) and should be admitted, but if more information were necessary, justification for admission would be provided through the admissions of the Applicant. In November of 1979 Applicant's Design Review Team formed to investigate the TMI-2 accident and its implications on the design, construction and operation of CPSES made an interim response to Lessons Learned which

accepted the need to "describe measures and provide supporting analyses that will yield more direct indication of low reactor coolant level and inadequate core cooling such as reactor vessel water level instrumentation." Comanche Peak Design Review Team, Report and Recommendations, Texas Utilities Company, Pages C16, C17, C18 (November, 1979).

STATEMENT OF CONTENTION EIGHT

The CPSES design does not adequately account for failure of passive components in fluid systems important to safety.

[Formerly "Safety" Contention Eight].
(No agreement exists between the parties).

ACORN'S POSITION

The introduction to 10 CFR Part 50, Appendix A, provides in part:

"...some of the specific design requirements for structures, systems and components important to safety have not as yet been suitably defined. Their omission does not relieve any Applicant from considering these matters in the design of a specific facility and satisfying the necessary safety requirements. These matters include:
(1) consideration of the need to design against single failures of passive components in fluid systems important to safety."

The passive components in fluid systems important to safety will usually be valves which are supposed to be open during normal and emergency situations. As originally

explained by ACORN in its supplemental petition, the fact that CPSES design does not adequately account for failure of those passive components is attributable in part to the lack of a method for applying single failure criterion to passive components and in part to misclassification of certain components as passive. Certain components are classified as passive even though they are capable of mechanical motion.

The Applicant's response to the TMI-2 accident notes that Applicant is relying upon Electric Power Research Institute to provide qualification for relief and safety valves. The Applicant's report states:

"Relief and safety valve downstream piping and supports will be reviewed and, if necessary, modified to accommodate the loadings expected for the design basis transients and accidents that result to two-phase slug flow and sub-cooled liquid flow. Completion of the work is necessarily dependent upon completion of the valve qualification program". Comanche Peak Design Review Team, supra, Page C14.

Compliance with 10 CFR Part 50, Appendix A, is likewise dependent upon the completion of the valve qualification program. ACORN has provided a specific contention which tracks statutory language and which necessarily involves concern for the safe operation of CPSES.

STATEMENT OF CONTENTION NINE

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 Nine].
(Agreement as to wording exists between Applicant, Staff, and ACORN).

ACORN'S POSITION

General Design Criterion 19 of Appendix A requires that equipment be provided outside the control room, such that if an accident cause the operators to evacuate the control room, the plant could be brought to safe shutdown from the outside. ACORN contends that CPSES design does not adequately comply with Criterion 19. The language of ACORN's contention is specific and the contention has clear safety implications. ACORN does not have to offer evidence in support of this contention at this point in the proceeding. The concern is litigable and the contention should be admitted for further inquiry. Duke Power Co., supra.

STATEMENT OF CONTENTION TEN

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 Ten].
(Agreement as to wording exists between Applicant, Staff, and ACORN).

ACORN'S POSITION

It is logical to assume that parts and equipment age and must occasionally be replaced. It should be possible to study the relationship between aging and the ability of a safety-related item to survive. In analyzing the ability of equipment to survive, insufficient account is taken of the affect of aging and cumulative radiation. In order to comply with General Design Criterion 4 it should be demonstrated that safety-related equipment is qualified to withstand natural forces such as earthquakes and accident environments in spite of weakened conditions due to aging and cumulative radiation.

ACORN's contention is specific and its meaning is clear. To ask for further support and bases would be to call for an evidentiary showing. The contention meets the requirements of 10 CFR Section 2.714(b) and should be admitted. Duke Power Co., supra.

STATEMENT OF CONTENTION ELEVEN

The CPSES design fails to address the possibility of a Class 9 accident.
[Formerly "Safety" Contention Eleven].
(Agreement as to wording exists between Applicant, Staff, and ACORN).

ACORN'S POSITION

The TMI-2 accident demonstrated that something is fundamentally wrong with the way the Staff classifies accidents. TMI-2 had core damage well beyond present design bases accident projections. In light of the fact that the Commission's investigations and recommendations regarding TMI-2 acknowledged the inadequacy of previous design bases calculations, it is incumbent upon the Staff to come up with a new methodology.

On March 20, 1980, the Council on Environmental Quality reported to the chairman of the NRC that the possibility of Class 9 accidents should be considered on a site specific basis. The NRC Staff has prepared a response to that report. ACORN has not had an opportunity to review that response, however, ACORN believes that the Staff has now moved off the traditional Staff view which was given in response to ACORN's contention.

The events at TMI-2 constitute a prima facie demonstration of the probability of an accident which exceeds present design bases considerations. Pennsylvania Power and Light Co. et al, (Susquehanna Steam Electric Station, Units 1 and 2) LBP-79-29, 10 NRC 586, 592 (1979).

While the accident at TMI-2 has not to date provided the basis for a general consideration of land-based reactors, it has provided a different focus for viewing what the NRC had previously articulated regarding accident consequences. Cincinnati Gas and Electric Co. et al., (William H. Zimmer Nuclear Station), LBP-79-22, 10 NRC 213 (1979). The "different focus" mandated by TMI-2 when coupled with the Council on Environmental Quality's recommendation should persuade the Board to accept the specific contention proposed by ACORN.

STATEMENT OF CONTENTION TWELVE

Applicants lack the ability to detect and size flaws within (1) the reactor vessel and (2) pipes within the containment.

[Formerly "Safety" Contention Thirteen].

(Agreement as to wording exists between Applicant, Staff and ACORN).

ACORN'S POSITION

Without the ability to detect and adequately size flaws, Applicant cannot guarantee that reactor coolant pressure can remain within safe bounds, and thus cannot guarantee the safe operation of CPSES. ACORN's contention links the lack of adequate methodology at CPSES to a

Category A unresolved safety problem, and the specific nature and wording of the contention requires admission. Pennsylvania Power and Light Co. et al., 9NRC 291 (1979).

STATEMENT OF CONTENTION THIRTEEN

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 Fourteen]
(Agreement as to wording exists between Applicant, Staff, and ACORN).

ACORN'S POSITION

ACORN has provided reasonable specificity for its contention, yet the Staff has decided to quarrel with ACORN on the merits of the contention. The Staff has suggested to ACORN that the contention should have particularized ACORN's concerns in light of a certain amendment which was submitted to the FSAR after ACORN initially prepared its contention. ACORN believes that such particularization is inappropriate for this stage of the proceeding and entirely unjustified in light of the statutes requirement of reasonable specificity. The statute does not require documentation.

STATEMENT OF CONTENTION FOURTEEN

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 Sixteen, Seventeen, Eighteen, Nineteen and Twenty-nine]. (Though this wording was proposed by the Board and is accepted by ACORN, no agreement as to wording exists between the parties).

ACORN'S POSITION

The specific examples originally set forth by ACORN demonstrate generic problems in the overall effectiveness of the QA/QC program. ACORN maintains that the above wording is specific and meets the requirements of 10 CFR Section 2.714(b) in light of the number and the substantive significance of the problems which have been identified by Intervenors, it would be a violation of public interest to limit the QA/QC contention with more restrictive wording than appears above.

The Staff's position that the above wording is vague and lacking in basis flies in the face of the plain meaning of the language and in the face of the Board's ruling in South Carolina Electric and Gas Co. et al. The contention proposed for that proceeding was:

"Petitioner contends that the Quality Control of the Summer plant is substantially below NRC standards. Petitioner stands ready to provide direct testimony of consistently substandard workmanship in several aspects of the construction of the Summer plant."

South Carolina Electric and Gas Co., et al.,
(Virgil C. Summer Nuclear Station Unit 1),
LBP 78-6, 7NRC 209, 211 (1978).

The Board in that proceeding admitted the contention and held:

"The contention...is sufficiently specific and the particulars may more appropriately be developed during the discovery phases of an evidentiary hearing." South Carolina Electric and Gas Co. et al., supra.

The Staff's effort to limit the QA/QC contention constitutes a request for summary judgment while avoiding the necessity of having to swear to facts. ACORN is convinced that the most appropriate language for a QA/QC contention at this point in time is that which appears above.

STATEMENT OF CONTENTION FIFTEEN

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 Twenty].
(Agreement exists as to wording between Applicant, Staff, and ACORN).

ACORN'S POSITION

ACORN originally supported its contention with a relationship between the CPSES design and a Category A unresolved safety item involving degradation to the integrity of steam generating tubes due to corrosion induced wastage and vibration induced cracking. ACORN noted that the

Westinghouse Pressurized Water Reactor which is found at CPSES is particularly plagued by a chemical reaction involving acids, chlorine and salt which causes a corrosive buildup between pipes and metal fittings which leads to a buildup of pressure and a leakage of radioactive water. ACORN addressed the safety significance of the concern articulated in Contention Fifteen with the fact that loss of water through the steam generator not only causes a loss of ability to cool the core, but it also releases radiation to the secondary system, imposes a health hazard to workers and possibly to the environment outside the plant.

The Staff has recently indicated to ACORN that the contention should have particularized its concerns by reference to certain sections of the FSAR. Not only is such reference unnecessary, such references would lose their significance in light of the fact that the NRC reported shortly before the original preparation of this contention that the concern addressed by ACORN caused extensive pipe damage in at least five nuclear plants and moderate damage in at least ten other plants. The unresolved safety issue in reports of

problems in fifteen plants after the submission of the FSAR justify ACORN's concern and the admissibility of this contention. Pennsylvania Power and Light Co., et al., supra.

STATEMENT OF CONTENTION SIXTEEN

The CPSES design is inadequate to prevent a water hammer problem which could affect a number of critical safety components.
[Formerly "Safety" Contention Twenty-One].
(Agreement exists between Applicant, Staff, and ACORN as to wording).

ACORN'S POSITION

ACORN relates the CPSES design to an unresolved safety item to which the Staff has previously given high priority status in that water hammer problem affects critical safety components in all pressurized water reactors. The safety significance of the problem (obvious from the Category A classification of the unresolved safety issue) and the fact that CPSES is a pressurized water reactor require admission of the contention. Pennsylvania Power and Light Co., et al., supra.

STATEMENT OF CONTENTION SEVENTEEN

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 Twenty-Three].

(Agreement exists as to wording between Applicant, Staff, and ACORN).

ACORN'S POSITION

Existing main steam line break analyses, both inside and outside containment are seriously inadequate as recognized by the NRC and addressed as high priority unresolved safety problems in Tasks A-21 and A-22 of NUREG-0410. This unresolved safety problem affects all pressurized water reactors of the CPSES type. Steam line breaks, as discussed with regard to Contention Fifteen above, can impair the ability to cool the core and could possibly result in radioactive releases.

ACORN's wording is specific and the concern addressed within the contention is specific to CPSES. The contention should be admitted. Pennsylvania Power and Light Co., et al., supra.

STATEMENT OF CONTENTION EIGHTEEN

The CPSES design does not adequately insure the reliable operation of on-site emergency power. [Formerly "Safety" Contention Twenty-Four]. (Agreement as to wording exists between Applicant, Staff, and ACORN).

ACORN'S POSITION

ACORN has related the CPSES design to an unresolved safety problem arising from the unreliability of emergency on-site power at pressurized water reactors of the CPSES type as discussed in Tasks B-56 and A-25 of NUREG-0410. The contention is admissible pursuant to Pennsylvania Power and Light Co., supra.

STATEMENT OF CONTENTION NINETEEN

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 Twenty-Five]. (Agreement exists as to wording between Applicant, Staff, and ACORN).

ACORN'S POSITION

ACORN relates a high priority Category A unresolved safety problem to the design of CPSES. The contention meets the requirement of 10 CFR Section 2.714(b) and should be admitted. Pennsylvania Power and Light Co., et al., supra.

STATEMENT OF CONTENTION TWENTY

The CPSES design does not adequately insure that safety-related water supplies will be available for plant operation in the event of ice buildup at the service water intake structure.

[Formerly "Safety" Contention Twenty-Six].
(Agreement exists as to wording between Applicant, Staff, and ACORN).

ACORN'S POSITION

The contention is extremely specific and should be admitted pursuant to Duke Power Co., supra. The concern of the contention is that ice storms have been known to strike in the area where CPSES is located. In light of TUGCO's inability to deal with freezing water resources at lignite plants during prior ice storms, particular attention should be paid to the design at CPSES to insure that a freezing water supply at the service water intake structure will not affect the safe operation of the plant cooling system.

STATEMENT OF CONTENTION TWENTY-ONE

The CPSES design has not given due consideration to the need to withstand an act of sabotage.

[Formerly "Safety" Contention Twenty-Seven].
(Agreement exists between Staff and ACORN as to wording).

ACORN'S POSITION

At the time of the construction permit for the CPSES facility, reduction of the vulnerability of the plant to industrial or terrorist sabotage was treated as a plant physical security function, and not as a plant design requirement. Section 13.6 of the FSAR discusses means for minimizing acts of sabotage, but nowhere does it discuss how the plant has been designed to withstand the consequences of an act of sabotage. The Staff's demand that ACORN indicate "why" the design of the plant is deficient puts the parties at the merits rather than at the admissibility of the contention. The contention is specific and finds support in a Category A unresolved safety issue, and the contention should be admitted pursuant to Duke Power Co., supra and Pennsylvania Power and Light Co., supra. It is regrettable that the Staff has seen fit to construct a "straw man" and accuse ACORN of attacking the regulations with this contention. No where does this contention imply an attack on 10 CFR Section 73.55. ACORN's concern is with something beyond that which was contemplated for regulation through 10 CFR Section 73.55.

STATEMENT OF CONTENTION TWENTY-TWO

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 Twenty-Eight].
(Agreement exists as to wording between Applicant, Staff and ACORN).

ACORN'S POSITION

There is no assurance that the CPSES design is adequate to protect the spent fuel from movement of heavy loads within the vicinity of the spent fuel. Heavy loads dropped on the spent fuel could have adverse health and safety consequences for plant workers and the general public. The concern raised in this contention relates the CPSES design to an unresolved Category A safety problem in NUREC-0410. The contention should be admitted. Pennsylvania Power and Light Co., et al., supra.

STATEMENT OF CONTENTION TWENTY-THREE

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 Thirty]
(Agreement as to wording exists between Applicant, Staff, and ACORN).

ACORN'S POSITION

Industry experience indicates that Westinghouse turbines like the one which CPSES will employ are prone to falling apart at a rate which exceeds the industry average. One flew apart in Massachusetts little more than a month ago. As indicated in a memorandum to all Boards from Steven A. Varga in January of 1980, "the probability values previously used by Westinghouse to evaluate the effects of turbine generated missiles may have been too low and may be revised upward".

ACORN's concern extends beyond the Westinghouse turbine and relates the CPSES design to an unresolved safety item which was given high priority by the Staff in Tasks A-32 and A-37 of NUREG-0410. The contention should be admitted. Pennsylvania Power and Light Co., et al., supra.

STATEMENT OF CONTENTION TWENTY-FOUR

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/Fort Worth metroplex.

[Formerly "Safety" Contention Thirty-One].

(Agreement exists as to wording between Applicant, Staff, and ACORN, and additionally, the Staff and ACORN agree as to substance).

ACORN'S POSITION

The accident at the Three Mile Island facility demonstrated the inadequacy of communications, emergency planning, and evacuation procedures. The Applicant has recognized the concern for appropriate emergency planning which stems from the TMI-2 incident.

"During the accident at TMI-2, there was an obvious lack of coordination and communication among utility, federal, and state officials. Conflicting information which was released to the public, caused undue alarm. There was a major shortcoming in emergency planning and preparedness by all three entities: federal, state, and utility." Comanche Peak Design Review Team, Report and Recommendations, Texas Utility Company, Page III.C1(November, 1979).

This specific contention is appropriate for litigation in this proceeding in light of the changes in the philosophy of the NRC and the utility which have occurred since the TMI-2 accident.

STATEMENT OF CONTENTION TWENTY-FIVE

Neither the Applicants nor the Staff has adequately considered the health effects of low-level radiation on the population surrounding CPSES.
[Formerly "Safety" Contentions Thirty-Two and Thirty-Three] (ACORN believes this is an admissible contention, but the Staff and Applicant wish to defer ruling upon admission of this contention pending resolution of a question which was certified to the Appeal Board in Public Service Company of Oklahoma).

ACORN'S POSITION

ACORN maintains that the specific wording of this contention and its bases make it admissible at this point. There is no need to defer the contention. Either the Applicant or the Staff can move for summary judgment if the results of the Appeal Board's decision in Public Service Company of Oklahoma indicate that it is inappropriate to consider the effects of low-level radiation on the population surrounding CPSES within this proceeding. Additionally, in the question certified out of the Oklahoma proceeding, it was assumed that radioactive emissions would be kept "as low as is reasonably achievable". ACORN's contention makes no such assumption. ACORN's contention implies that the CPSES design does not insure that emissions are "as low as is reasonably achievable". In fact, ACORN's Original Contentions Thirty-Two and Thirty-Three specifically articulated that position. Rather than attacking the present regulatory standards, ACORN is contending that the Staff and Applicant have not adequately insured that CPSES meets the present regulatory standards.

STATEMENT OF CONTENTION TWENTY-SIX

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 One]. (Agreement as to wording exists between Applicant, Staff, and ACORN).

ACORN'S POSITION

At the time of the filing of its request for a construction permit, the Texas Utilities Company System projected that its reserve margin in 1980 would be 18.8%, yet the present reserve margin for the Texas Utilities Company System exceeds 50%. The Applicants Environmental Report in no way demonstrates a need for the energy which will be generated by CPSES, and actual demand figures are far less than what the Environmental Report estimated for the 1980's. ACORN contends that the information from the Environmental Report and new information on reserve margin calculations constitutes "significant new information developed after the construction permit review" as called for in Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9NRC 73 (1979). In a recent case in Pennsylvania, an Intervenor took a position similar to that which is advocated by ACORN in this proceeding, namely

that there was no need for power from the plant in question in light of reserve margin calculations and the lack of focus on conservation. The opposition to that contention was that the Environmental Report provided no basis and did not constitute significant new information. However, the Board found the need for power contention to be admissible at the operating license stage in that the Environmental Report presented substantially different information than was available at the construction stage. Pennsylvania Power and Light Co., et al., (Susquehanna Steam Electric Station, Units 1 and 2), LBP-79-6, 9NRC 291, 304 (1979).

ACORN contends that there is more justification for a need for power contention in this proceeding than there would be at the operating license stage of a proceeding in Pennsylvania. Texas has its own grid system and exists as an island unto itself. The Texas Public Utility Commission has prohibited utilities in the State of Texas from selling power interstate. Thus, ACORN contends that not only is the power to be generated by CPSES unneeded, but it is also going to be unsalable and uneconomically priced. Operation of the Comanche Peak facility would be counter-productive

to national environmental concerns for conservation of resources and efficient utilization of energy.

STATEMENT OF CONTENTION TWENTY-SEVEN

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 Two].
(Agreement as to wording exists between Applicant, Staff, and ACORN).

ACORN'S POSITION

ACORN contends that with appropriate consideration to actual reserve margins, the levelling of demand for electricity, and conservation the power to be generated with CPSES may not be needed over the next forty years. ACORN does not mean to imply with this contention that the need for power is limited to the short-term situation. The year 1985 is placed in the contention only because that is the extent to which the Applicant has made projections. In light of the Applicant's Environmental Report, ACORN should be entitled to a contention that the Applicants have failed to demonstrate a need for power.

The Environmental Report submitted by the Applicant recognizes the gross exaggerations of demand and reserve margins that justified the construction permit for CPSES. The factor used to continue construction and operation of Comanche Peak is avoidance of reliance on foreign oil. Applicant has never relied upon foreign oil and the requirements of 10 CFR Section 51.20(b) cannot be met.

Applicant overestimated its demand and need for power and underestimated its reserve margins in applying for a construction permit. Actual demands and reserve margins within the Texas Utilities Company System constitute significant change in circumstances requiring a re-evaluation of the cost-benefit analysis for CPSES, and justify the admission of the need for power contention which ACORN has proposed. Pennsylvania Power and Light Co., et al., supra, Page 304. In light of actual demand, actual reserve margins, actual need for power, actual cost of construction, and the existence and ready availability of fossil-fuel alternatives to nuclear power, the operation of the CPSES facility would unjustifiably and unreasonably waste resources, damage the environment, impose serious danger to the health and safety of individuals in the surrounding area.

STATEMENT OF CONTENTION TWENTY-EIGHT

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 Four].
(Agreement exists between Applicant, Staff, and ACORN as to wording).

ACORN'S POSITION

The cost-benefit analysis called for in 10 CFR Section 51.20(b) requires the Applicant to quantify the various factors involved in the analysis "to the fullest extent practicable". Applicant has not given adequate consideration within its cost-benefit analysis to the possibility of "mini-decommissionings" or the replacement of major pieces of equipment. An example of ACORN's concern is that a Westinghouse steam generator or turbine could have to be replaced during the life of the CPSES facility. Such events have occurred at other pressurized water reactors, and the CPSES cost-benefit analysis should be required to give consideration to that possibility. The contention is specific and meets the requirements for admissibility.

STATEMENT OF CONTENTION TWENTY-NINE

Applicants have not considered the environmental affects of storage and ultimate disposal of nuclear waste in their cost-benefit balance.
[Formerly "Environmental" Contention Five].
(Agreement as to wording exists between Applicant, Staff, and ACORN).

ACORN'S POSITION

The summary of the cost-benefit analysis which appears in Section 11 of the Applicants Environment Report gives no consideration to the incremental burden which nuclear waste places on the environment. ACORN contends that the failure to consider the storage of nuclear waste in the cost-benefit balance violates 10 CFR Section 51.20(b). While the NRC may not presently require the Applicant to adequately deal with all of the problems associated with the disposal of nuclear waste, the statute does mandate that Applicants meet a cost-benefit analysis test.

Subsequent to the original preparation of this contention and its explanation, the NRC initiated a rule making 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 waste 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). ACORN would not have the Licensing Board consider those issues which are being considered within the rule making. However, the contention proposed by ACORN is appropriate for litigation within this proceeding because "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" in spite of the generic rule making being pursued by the NRC. Fed. Reg. supra, Page 61373.

STATEMENT OF CONTENTION THIRTY

The Applicants have failed to postulate the possibilities, the effect on the environment, and the cost of "clean-ups" which necessarily follow a nuclear accident such that a favorable cost-benefit balance cannot be struck.
[Formerly "Environmental" Contention Six]
(Agreement as to wording exists between Applicant, Staff, and ACORN).

ACORN'S POSITION

Certainly the Staff and Applicant cannot contend that accidents such as the one which occurred at TMI-2 are incredible,

and certainly everyone must realize that such accidents have costs. While it may not be possible to devise meaningful plans for clean-up of an accident until the accident occurs, there should be some consideration of the cost associated with the clean-up of accidents capable of postulation with the cost-benefit analysis undertaken by the Applicant. The Applicant has failed to incorporate such considerations in its cost-benefit analysis. Events which occurred at TMI-2 should provide a sufficiently different focus for cost-benefit considerations so as to justify the inclusion of ACORN's specific contention in this proceeding. Cincinnati Gas and Electric Company, et al., supra.

STATEMENT OF CONTENTION THIRTY-ONE

The Applicants have not considered the costs of safely decommissioning the facility after its useful life in the cost-benefit balance.

[Formerly "Environmental" Contention Seven].

(Agreement exists as to wording between Applicant, Staff, and ACORN).

ACORN'S POSITION

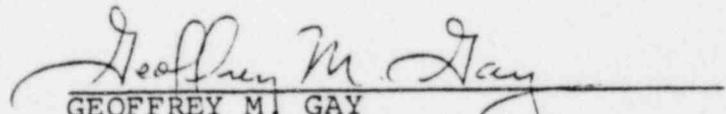
The fact that the Applicant has placed a dollar amount in 1978 dollars within its Environmental Report for decommissioning the CPSES facility does not diminish

ACORN's concern that the Applicants have not fully considered total decommissioning costs within the cost-benefit analysis required by 10 CFR Sections 51.20(b) and 51.21. The Applicants have not considered within their Environmental Report the cost of adequate methods for protecting the environment and preventing sabotage after the useful life of the plant. It is incumbent upon Applicants within the cost-benefit analysis to consider occupational radiation exposure and to insure that radiation emissions remain as low as reasonably achievable for many years beyond the point at which the plant is no longer operating.

CONCLUSION

The most important requirement for admissibility of contentions is that the contentions provide reasonable specificity. The language in each of ACORN's contentions is specific and relates either a safety or cost-benefit concern "specifically" to CPSES. All of ACORN's contentions put the parties on notice as to what further inquiry is warranted. The Staff's attacks on the bases of ACORN's contentions constitute demands for evidence or debates over the merits, neither of which are appropriate at the stage of the process. Considerations on the admissibility of contentions should not become an opportunity for summary judgment on issues without the requisite swearing to facts. ACORN's contentions meet the requirements of the statute and the case law and they should be admitted in that they raise concerns which are in the public interest to litigate.

Respectfully submitted,


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