

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of                                    )  
                                                          )  
GENERAL ELECTRIC COMPANY                      )     Docket No. 70-1308  
                                                          )  
                                                          )  
(GE Morris Operation Spent                    )     (Renewal of SNM-1265)  
Fuel Storage Facility)                            )  
                                                          )

MEMORANDUM OF GENERAL ELECTRIC COMPANY  
IN OPPOSITION TO THE MOTION FOR  
RECONSIDERATION OF THE PEOPLE  
OF THE STATE OF ILLINOIS  
\_\_\_\_\_

On June 20, 1980, the People of the State of Illinois ("Illinois") filed, and served by mail, a Motion To Reconsider this Board's Order of June 4, 1980, insofar as that Order ruled that Contentions 1(a), 9 and 11(a-h) of the Second Set of Amended Contentions of Illinois, dated March 20, 1980, were inadmissible to this proceeding. Pursuant to the provisions of 10 C.F.R. §§2.710 and 2.730(c), General Electric submits this answer to that Motion. For the reasons discussed below, General Electric respectfully submits that this Board should adhere to its initial decision and deny the pending motion for reconsideration.

1. Illinois Contention 1(a) Should Be Rejected As the Board's Prior Ruling was Proper and Is Not Affected By the Subsequent NRC Policy Statement; and In Any Event, Contention 1(a) Remains Beyond The Scope Of This Proceeding.

In its June 4, 1980 decision, this Board ruled that Illinois Contention 1(a) was not a proper subject of this proceeding, stating, inter alia, that "Class 9 accidents are beyond the scope of this proceeding."

Subsequent to that Order, the Nuclear Regulatory Commission ("NRC") issued on June 9, 1980, a Statement of Interim Policy concerning Nuclear Power Plant Considerations under the National Environmental Policy Act of 1969. Illinois now contends that this new interim policy statement gives the Board jurisdiction to review Class 9 accidents and their environmental and safety impacts in licensing proceedings. Illinois' argument fails for two reasons. First, the interim policy statement does not apply to General Electric's application now before the Board. Second, Contention 1(a), in any event, still only relates to a possible Class 9 accident at another site, not at Morris.

A. The Interim Policy Statement Is Inapplicable.

The interim policy statement states:

It is the intent of the [NRC] in issuing this Statement of Interim Policy that the staff will initiate treatments of accident considerations in accordance with the foregoing guidance, in its ongoing NEPA reviews, i.e., for any proceeding at a licensing stage where a Final Environmental Impact Statement has not been issued. (Emphasis added.)

On June 5, 1980, NRC staff issued its Environmental Impact Appraisal for this license renewal application, concluding that an Environmental Impact Statement was not required and stating:

On the basis of this Environmental Impact Appraisal, the staff concludes that the proposed licensing action will not significantly affect the quality of the human environment and there will be no significant environmental impact from the proposed action. Therefore, the staff has found that an environmental impact statement need not be prepared, and that pursuant to 10 C.F.R. § 51.5(c), the issuance of a negative declaration to this effect is appropriate. (P. 76.)

As of June 5, 1980, the NRC staff had fulfilled all its obligations, under the then existing regulations, to consider the environmental impacts of General Electric's license renewal application. The staff's action was in accordance with 10 C.F.R. § 51.5(c):

"If it is determined that an environmental impact statement need not be prepared . . . a negative declaration and environmental impact appraisal, will, unless otherwise determined by the Commission, be prepared in accordance with §§ 51.7 and 51.50."

The staff, therefore, has issued a final report on the environmental impact of this license renewal application. The Interim Statement of Policy relied on by Illinois in its motion for reconsideration is, accordingly, inapplicable to the instant proceeding and should not be used as a basis for granting Illinois' motion.

B. A Class 9 Accident At Dresden Should Not In Any Event Be Considered In This Proceeding Which Relates Only To The Morris Operation.

Moreover, even if the Board were to consider the interim policy statement applicable, the Board has already recognized that a Class 9 accident at a totally different facility, a reactor adjacent to the Morris Operation, is beyond the scope of this proceeding.

General Electric continues to rely upon the reasons it presented in its previous response in opposition to this contention. Contention 1(a), even after issuance of the interim policy statement, lacks specificity, fails to identify the postulated accident, and shows no inter-relationship, aside from proximity which is insufficient, between the Dresden and Morris facilities. Contention 1(a) still should not be admitted to the proceeding.

2. Current NRC Generic Rulemaking Proceedings Address The Subject Matter Of Contention 9 And Contention 9, Therefore, Cannot Properly Be Admitted In This Proceeding.

Illinois Contention 9 asserts that the applicant has failed to analyze safety and health issues from the perspective of long-term storage (beyond the renewal period of the license) of spent fuel at the Morris Operation. This issue may not be considered in this proceeding. The NRC has specifically addressed this question, by convening a rulemaking proceeding to deal with it. See "Storage and Disposal of Nuclear Waste," 44 Fed. Reg. 61372 (Oct. 25, 1979). In that notice, the NRC stated that:

During this proceeding the safety implications and environmental impacts of radioactive 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. Id. at 61373 (emphasis added).

As the Board, in its prior ruling on Contention 9, correctly noted, the subject matter of Contention 9 is at the heart of the generic rulemaking proceeding and is not, therefore, a proper subject for this Board's consideration.

Illinois now contends that this generic rulemaking proceeding only covers long-term storage commencing in the year 2007. This argument is without basis and contrary to the NRC's statements. The rulemaking proceeding was initiated

"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." Id. at 61372-61373.

Nowhere in this statement of policy does the NRC state that the period for its analysis begins in 2007.

Illinois, apparently, mistakenly believes that the NRC's analysis will begin in 2007 because of dicta in the decision in State of Minnesota v. NRC, 602 F.2d 412 (D.C. Cir. 1979). In that case, the court of appeals remanded to the NRC the specific problem of whether there would be reasonable assurance that by the year 2007--the expiration date of the litigant's



license--there would be an off-site storage facility available. At the same time, the court stated that in considering this problem, the NRC "may proceed in these matters by generic determination." Id. at 419.

The State of Minnesota case did not, despite Illinois' assertions to the contrary, mandate any change in the licensing proceedings used by the NRC. Indeed, as the NRC itself has stated:

"[T]he court in the State of Minnesota case by remanding this matter to the [NRC] but not vacating or revoking the facility licenses involved, has supported the [NRC's] conclusions that licensing practices need not be altered during this proceeding." 44 Fed. Reg. at 61373. \*/

Thus, this Board in this license proceeding can only consider environmental and safety issues for the duration of the license period. As Contention 9 asks for analysis beyond the license period, it is not a proper subject for the Board's consideration and must be rejected.

3. The Environmental Impact Appraisal Statement Issued By The NRC Staff On June 5, 1980 Is In Full Compliance With Relevant NRC Regulations And Policy And Subparagraphs (a) Through (h) Of Contention 11 Were Properly Excluded From This Proceeding.

Illinois contends that subparagraphs (a) through (h) of Contention 11 should be admitted to this proceeding as a result of the issuance by the NRC of its Statement on Interim Policy of June 9, 1980. As pointed out above, the Statement of Interim Policy is limited to those proceedings where a final environmental

---

\*/ That the decision in State of Minnesota did not mandate a change in NRC licensing proceedings has also been observed by the court in Lower Alloways Creek v. NRC, 481 F. Supp. 443, 448 (D.N.J. 1979).

statement has not been issued. Here, on June 5, 1980, the NRC staff issued its final environmental statement. In so doing, the NRC staff fulfilled its obligations to consider and analyze the environmental impacts of the proposed license renewal for the Morris facility. Thus, the Statement of Interim Policy is inapplicable to the present proceeding.

Of course, the questions, whether an Environmental Impact Statement need be issued and whether the Environmental Impact Appraisal and negative declaration already issued by the NRC staff suffice, are already before this Board.

The Board correctly ruled that subparagraphs (a) through (h) are "so vague or speculative" that they do not present litigable issues. Illinois suggests nothing that changes that fact. General Electric continues to believe, as it stated in its previous response to this contention that subsections (a) and (b) have already been adequately addressed in the CSAR to the extent that these subparagraphs relate to the pending license application and that the remaining subparagraphs contain issues totally beyond this proceeding.

The subparagraphs of Contention 11 were correctly excluded from this proceeding.

#### RESPONSE TO REQUEST FOR CLARIFICATION

A. In response to this request, General Electric believes that Illinois' confusion as to discovery regarding environmental impact is not well founded. General Electric submits that Illinois should simply be directed to the applicable regulation





UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
 )  
GENERAL ELECTRIC COMPANY )  
 ) Docket No. 70-1308  
Consideration of Renewal of )  
Materials License No. SNW-1265 )  
Issued to GE Morris Operation )  
Fuel Storage Installation )

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of the MEMORANDUM OF GENERAL ELECTRIC COMPANY IN OPPOSITION TO THE MOTION FOR RECONSIDERATION OF THE PEOPLE OF THE STATE OF ILLINOIS, in the above-captioned proceeding on the following persons by causing the said copies to be deposited in the United States mail at 231 South LaSalle Street, Chicago, Illinois, in plainly addressed and sealed envelopes with proper first class postage attached before 5:00 P.M. on July 7, 1980:

Andrew C. Goodhope, Esq., Chairman  
Atomic Safety and Licensing Board  
3320 Estelle Terrace  
Wheaton, Maryland 20906

Dr. Linda W. Little  
Atomic Safety and Licensing Board  
5000 Hermitage Drive  
Raleigh, North Carolina 27612

Dr. Forrest J. Remick  
Atomic Safety and Licensing Board  
305 East Hamilton Avenue  
State College, Pennsylvania 16801

Atomic Safety and Licensing Appeal  
Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Bridget L. Rorem  
Essex, Illinois 60935

Everett J. Quigley  
R.R. 1, Box 378  
Kankakee, Illinois 60901

Susan N. Sekuler, Esq.  
George William Wolff, Esq.  
Office of the Attorney General  
188 West Randolph Street  
Suite 2315  
Chicago, Illinois 60601

Marjorie Ulman Rothschild, Esq.  
United States Nuclear  
Regulatory Commission  
Washington, D.C. 20555

Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Docketing and Service Section  
Office of the Secretary  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

---

Matthew A. Rooney