11/12/80

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
HOUSTON LIGHTING & POWER COMPANY	)	Docket No. 50-466
	)	
(Allens Creek Nuclear Generating Station, Unit 1)	)	

NRC STAFF RESPONSE TO DOHERTY'S
MOTION FOR ADMISSION OF CONTENTION 50

On October 15, 1980, Intervenor Doherty filed a motion seeking the admission of Contention No. 50 pertaining to the cracking of jet pumps in the reactor coolant circulation system.[1/] It is obvious that this contention is untimely filed and, pursuant to the Commission's Rules of Practice, his petition to intervene must be amended. A petition may be amended after the special pre-hearing conference has been held only with the approval of the presiding officer, based on a balancing of the five factors specified in 10 C.F.R. §2.714(a)(1). See 10 C.F.R. §2.714(a)(3). Those five factors are:

1. Good cause, if any, for failure to file on time.
2. The availability of other means whereby the petitioner's interest will be protected.
3. The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
4. The extent to which the petitioner's interest will be represented by existing parties.
5. The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

1/ Although the motion indicates that Staff was served by mail on October 15, 1980, for some inexplicable reason we did not receive a copy of the motion through this service. After learning of the existence of this motion through Applicant's "Answer to Doherty Motion to Present Direct Testimony on TexPIRG Contentions," dated October 24, 1980 (See, p. 7, fn. 7), we requested and received a copy of this motion from the Licensing Board on October 28, 1980.

The Intervenor has recognized these procedural burdens and has attempted to address these factors in his Motion. We will address the merits and relevancy of these arguments below.

1. Good Cause

Intervenor Doherty asserts that the problem of jet pump cracking was not discovered until his FOIA request filed on September 26, 1980, was made available from the NRC. His FOIA request was allegedly precipitated by being alerted to Inspection and Enforcement Bulletin No. 80-07 (April 4, 1980) which purportedly reports on "cracking in jet pump holders" at three operating BWRs.

There can be no doubt that good cause to amend a petition to add a contention exists when the basis for the contention is established after the filing date for the petition. At first blush that appears to be the case here where the NRC reported the jet pump cracking problem in April 1980, some nine months after petitions to intervene were due. However, mere reference to an NRC document to substantiate an alleged deficiency in the Allens Creek BWR design is not enough at this late juncture of the proceeding. The burden of establishing the requisite "good cause" and the weight to be accorded to the other factors set forth in 10 C.F.R. §2.714 with respect to the late filed contention rests with the petitioner. See 10 C.F.R. §2.732; 10 C.F.R. §2.714(a)(1); Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273 (1975).

The Commission stated in Florida Power & Light Co. (St. Lucie Plant, Unit No. 2), CLI-78-12, 7 NRC 939, 948 (1978):

> In considering untimely petitions, licensing boards are required to assess an additional factor--whether the petitioner has "made a substantial showing of good cause for failure to file on time." In doing so, Boards must necessarily consider the merits of claims going to that issue.

This standard appears applicable to untimely amendments to petitions to intervene, as well as untimely initial petitions to intervene. See 10 C.F.R. §2.714(a)(3). Under this standard, Mr. Doherty has not established the requisite good cause for failure to file on time because he has not demonstrated nor even asserted that the problems reported in the I&E Bulletin are applicable to the Allens Creek design. The problem alluded to in the I&E Bulletin has been identified as a problem only in BWR 3 and 4 designs. See attached copy of IE Bulletin No. 80-07. Allens Creek is a BWR 6 design reactor. Accordingly, Mr. Doherty has not demonstrated a nexus between the reported problem and the Allens Creek facility. He thus fails to show the requisite "good cause" necessary to allow an untimely contention to be accepted into a proceeding.

2. Other factors to be considered under 10 C.F.R. §2.714(a)(1)

Mr. Doherty has attempted to address the merits of the other factors to be weighed by the Licensing Board in the consideration of this motion to add an untimely contention. In general, he asserts that (a) since this issue is not

the subject of any Commission generic review or a contention in this proceeding, there re no other means to protect his interests, (b) he can reasonably assist in the development of a sound record because he has and will participate in this proceeding on similar issues, (c) no other party will represent his interest on this issue, and (d) the admission of this contention will not broaden the issues or delay the proceeding because this contention is similar to other admitted contentions and that public safety demands its consideration.

The NRC Staff submits that consideration of these other factors does not warrant the admission of this late-filed contention for the following reasons.

(a) Other means to protect interests. As indicated in IE Bulletin No. 80-07, the BWR jet pump assembly failure has apparently been the result of the failure of the hold-down beam assembly. Insitu ultrasonic examination of the hold-down beams revealed cracks in some of the beams at Dresden Unit 3, Quad Cities Unit 2, and Pilgrim Unit 1 (all BWR 3 reactors). To the extent that the hold-down beam failure is the result of intergranular stress corrosion cracking (IGSCC), it would come under the purview of TEXPIRG Contention 10 which pertains to IGSCC failure at BWR units. Thus, Mr. Doherty should be able to protect his interests with respect to IGSCC failures by cross-examining Applicant, Staff and other witnesses offering testimony on this issue and supplying TEXPIRG with any information it has on this issue. See Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), CLI-75-1, 1 NRC 1 (1975), affirming, ALAB-244, 8 AEC 857 (1974).

(b) Development of a sound record. Whether Mr. Doherty can assist in developing a sound record by reason of his considerable research on these issues is questionable at this point. Since Mr. Doherty can assist in the development of a sound record by cross-examining expert witnesses on the TEXPIRG IGSCC contention without obtaining the admission of the instant contention, we submit that this factor must be weighed against the admission of this untimely contention.

(c) Extent to which interest represented by existing parties. The Staff believes it would be fair to conclude that existing parties would not adequately represent Mr. Doherty's interests with respect to the jet pump assembly failure. Although Mr. Doherty can still cross-examine on IGSCC problems, he probably would not be able to explore the full range of "coolant circulation degradation" problems he is seeking through the admission of this contention. Accordingly, the overall consideration of this factor weighs to Mr. Doherty's benefit.

(d) Participation will broaden the issues or delay the proceeding. The Staff is of the opinion that the admission of this contention will broaden the issues and potentially delay this proceeding. As Mr. Doherty concedes, some aspects of this contention are new and, therefore, its admission will broaden the issues to be considered. In addition, if this contention is admitted at this late juncture, an additional discovery period would have to be allowed which ultimately may impact on the hearing schedule. Accordingly, this factor must be weighed heavily against the admission of this untimely contention.

Upon a weighing of the factors incorporated into 10 C.F.R. §2.714(a)(3), Intervenor Doherty's request to amend his petition to admit Contention No. 50 should be denied.

Respectfully submitted,

Edwin J. Reis, for

Richard L. Black
Counsel for NRC Staff

Dated at Bethesda, Maryland,
this 12th day of November, 1980.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO DOHERTY'S MOTION FOR ADMISSION OF CONTENTION 50" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk by deposit in the Nuclear Regulatory Commission internal mail system, this 12th day of November, 1980:

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF INSPECTION AND ENFORCEMENT
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April 4, 1980

IE Bulletin No. 80-07

BWR JET PUMP ASSEMBLY FAILURE

Description of Circumstances:

On February 2, 1980, Commonwealth Edison Company (CECo) reported that a jet pump failed in Dresden Unit 3 while operating at about 67 percent of full power in a coastdown mode to a refueling shutdown. Observed changes in plant parameters during the event indicated an individual jet pump failure had occurred. In accordance with T.S., an orderly plant shutdown was begun to bring the unit to cold shutdown within 24 hours.

The plant parameter changes reported by the licensee were (1) generator electrical output decreased from 539 to 51[illegible] MW electrical, (2) core thermal power decreased as indicated by decreased APRM readings and steam flow to the turbine, (3) indicated total core flow increased from 97.6 to 104.7 x 10^6 lb./hr., (4) core plate differential pressure decreased from 16.1 to 13.8 psid., and (5) B recirculation loop flow increased from 49 to 54 x 10^3 gpm while A recirculation loop flow remained at 49 x 10^3 gpm. These changes were readily observed by the operator in the control room and it was postulated that a jet pump had failed. Individual jet pump readings were taken, the jet pump operability surveillance was performed, and an apparent failure of jet pump No. 13 was determined.

Following vessel head removal and defueling, TV camera and visual inspections of the jet pumps and vessel annulus revealed the hold-down beam assembly of the suspect jet pump had broken across its ligament sections at the mean diameter of the bolt thread area. Failure of the beam assembly resulted in pump decoupling at the diffuser connection. Subsequent insitu ultrasonic examination of all other jet pump hold-down beams, using a special UT technique developed by General Electric revealed ultrasonic indications of cracking at the same location in 6 of the remaining 19 beams examined. Initial estimates of crack depth ranged from 6 to 20 mils. A sketch of the typical jet pump assembly is shown in figures 1 and 2.

On March 15-16, 1980, insitu ultrasonic examination was performed on all 20 jet pump hold-down beam assemblies at Quad Cities 2 (currently shutdown for refueling). One beam was found to contain a crack indication estimated to be [illegible] cation on the beam as found at

[illegible] that ultrasonic examination [illegible] d-down beam assemblies at Pilgrim

DUPLICATE DOCUMENT

Entire document previously entered into system under:

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