

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

THE ATOMIC SAFETY AND LICENSING BOARD

Marshall E. Miller, Esquire, Chairman
Dr. Kenneth A. McCollom, Member
Dr. Hugh C. Paxton, Member



In the Matter of

PORTLAND GENERAL ELECTRIC COMPANY, et al.

(Trojan Nuclear Plant)

Docket No. 50-344SP

(Control Building
Proceeding)

ORDER REGARDING MOTION BY STATE
OF OREGON FOR RECONSIDERATION
OF INITIAL DECISION

(September 4, 1980)

By motion dated July 23, 1980, the State of Oregon sought reconsideration of the Initial Decision in this proceeding entered July 11, 1980. The reconsideration concerns Oregon's request for certain accelerated reporting requirements, as contained in its proposed findings of fact and conclusions of law filed May 19, 1980. The Appeal Board by its Order entered July 28, 1980, authorized the Licensing Board to act on the merits on Oregon's motion, notwithstanding the pendency on appeal of that party's exceptions to the Initial Decision.

The Licensee was authorized by Condition (1) to proceed with its control building modification program in accordance with the plans admitted into evidence (PGE-1020, as revised).

The Order further provided that any "deviations or changes from the foregoing documents shall be accomplished in accordance with the provisions of 10 CFR Part 50.59." Section 50.59 provides in pertinent part that deviations and changes in the procedures as described in the safety analysis report, may be made by a licensee unless the proposed change involves an unreviewed safety question. Reports on design changes or deviations showing no unreviewed safety questions would be submitted annually to NRC by the licensee, or at such shorter intervals as might be specified in the license.

In its proposed findings, Oregon proposed for the first time that the Licensee be required to comply with the reporting requirements of Section 50.59 on an accelerated basis. It proposed license conditions which would mandate submission of reports prior to the implementation of such changes, or in some instances within 14 days of the decision to make such changes, rather than annually as otherwise provided.^{1/}

As the Staff noted in its response to Oregon's motion for reconsideration, there is no evidence of record in this proceeding which demonstrates in any way that accelerated reporting of minor changes or deviations undertaken pursuant to Section 50.59 is

^{1/} State of Oregon's Proposed Findings of Fact and Conclusions of Law Concerning Design Modifications for the Trojan Control Building, dated May 19, 1980, pp. 2-5.

necessary. In fact, what slight evidence there is on this matter indicates that accelerated reporting is not necessary.^{2/} The Licensee has also pointed out that the imposition of such a condition would be unnecessarily burdensome, especially in view of the large number of existing general and special reporting requirements. There is nothing unique in the present situation which requires other than the periodic annual review by NRC to assure that no unreviewed safety questions are involved.^{3/}

The Licensing Board in its Initial Decision did not impose Oregon's proposed license condition and did not explicitly set forth the reasons for rejecting it. The Conclusions of Law did state that the Board "also considered all of the proposed findings of fact and conclusions of law submitted by the parties. Those proposed findings not adopted in this Initial Decision are hereby rejected" (Slip opinion, p. 54).

In view of the fact that Oregon had never presented an issue or suggestion of a contention as to accelerated reporting during extensive evidentiary hearings on both Phase I and

^{2/} NRC Staff's Response to Oregon's Motion for Reconsideration Of The Initial Decision (August 15, 1980), p.4. Tr. 4621-23 wherein Staff's witness Kenneth S. Herring expressed the view that minor deviations or changes from the proposed work sequence could be undertaken without the need for prior reporting or NRC review.

^{3/} Licensee's Response To The Proposed Findings of Fact and Conclusions Of Law Filed By The NRC Staff And The State Of Oregon (May 29, 1980), pp. 7-9.

Phase II proceedings, it is questionable whether an after-thought proposal for a license condition is covered by 10 CFR 2.760(c)(1). That section provides that the initial decision will include:

"(1) Findings, conclusions and rulings, with the reasons or basis for them, on all material issues of fact, law, or discretion presented on the record."

"Material issues" are not to be equated with issues never raised or discussed in many days of trial, nor revealed to the Board or parties until the final submission of proposed findings after the record has been closed.

Section 2.760(c) also provides that an initial decision "will be based on the whole record and supported by reliable, probative, and substantial evidence." Here there was no evidence offered as to the necessity or reasonableness of accelerated reporting, although Oregon tendered written direct testimony and participated actively in cross-examination of witnesses. Argumentative and conclusory proposed findings are no substitute for reliable and substantial evidence. The Board therefore rejects Oregon's proposed license condition regarding accelerated reporting.

It is not clear whether Oregon is raising a second issue in its motion for reconsideration. In its proposed findings dated May 19, 1980, it also sought the following license condition:

"(2) Add the following statements to Licensee's proposed license condition (1)(q) after the sentence 'Any changes to piping systems necessary to ensure that the condition is met shall be performed before the structural modifications are made.':


'The evaluations to determine whether such changes are required shall be submitted to the NRC Office of Nuclear Reactor Regulation for information prior to implementation.'"

The Staff does not even discuss this second issue in its response to Oregon's motion for reconsideration. The motion appears only to refer to accelerated reporting of design changes. In any event, as the Licensee pointed out in its response, by the time the evidentiary hearing was held the Licensee had already performed the evaluations to identify the piping systems, equipment and components which had to be changed prior to the structural modifications in order to maintain their seismic qualification. There has been no showing by Oregon of any reason now to submit such evaluations for work already done to the NRC Staff (Licensee's Response, pp. 9-11).

For the foregoing reasons, the Licensing Board adheres to its rejection of Oregon's proposed license conditions.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Marshall E. Miller, Chairman

Dated at Bethesda, Maryland
this 4th day of September 1980.