

Licensing Board with their views on how the Commission's decision in Petition for Emergency and Remedial Action (Union of Concern Scientists (UCS)), CLI-80-21, 11 NRC 707 (May 27, 1980), will affect the further construction, completion and licensing of Comanche Peak Steam Electric Station (CPSES).

As stated below, the NRC Staff ("Staff") adheres to the views expressed in its Answer regarding the admissibility of ACORN's proposed contention 11 and urges that the Licensing Board deny ACORN's motion concerning briefing of UCS, CLI-80-21, supra.

DISCUSSION

I. Acorn's Proposed Contention 11 Was Improperly Admitted

In its pleading, ACORN disagrees with the Staff's position set forth in its Answer regarding the admissibility of ACORN Proposed contention 11.^{2/} In its Answer, the Staff responded to the Applicants' objection to the admission of this contention on the grounds that the Commission's decision in UCS, CLI-80-21, supra, resolved this issue by establishing the requirements for satisfying GDC-4. As stated by the Staff in its Answer, "the NRC Staff is of the view that Applicants' Motion presents a proper objection to the admission of this contention and that this contention should be rejected."

2/ Contention 11 reads as follows:

Contention 11. Neither the Applicants nor the Staff has a reliable method for evaluating or insuring that Class IE safety-related equipment is designed to accommodate the effects 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. (ACORN 3).

(Answer, at 13). The Staff further stated that to the extent that this contention asserts that there is no valid standard for determining whether GDC-4 has been satisfied, the Commission's decision in UCS, CLI-80-21, supra, removed the basis for this contention by establishing the requirements for satisfying GDC-4. The detailed reasoning underlying the Staff's position is stated on pp. 13-15 of its Answer and will not be repeated here.

The Staff also noted in its Answer that to the extent that ACORN wishes to modify its contention based upon the UCS decision, the Commission's Rules of Practice provide that it may file an amended contention pursuant to the provisions of 10 CFR §2.714. See Answer, at 15, fn. 20. Any request to amend a contention may not be granted absent a showing of good cause and a favorable balancing of the factors in 10 CFR §2.714(a)(1). In the Staff's view, the UCS decision would constitute good cause for any such amendment.^{3/} Of course, in proposing an amendment to contention 11, it would be incumbent upon ACORN to address the other factors in 10 CFR §2.714(a)(1) and demonstrate that the amendment should be permitted, based upon a balancing of the factors in 10 CFR §2.714(a)(1).

ACORN has not filed an amended contention based on the UCS decision. In addition, ACORN does not dispute that in UCS, CLI-80-21, supra, the Commission established the requirements for satisfying GDC-4. ACORN's Reply, at 2. Rather, in its pleading, ACORN argues that contention 11 encompasses the

^{3/} The Commission issued its decision in UCS substantially after the date of the prehearing conference, after all pleadings concerning contentions had been filed in this proceeding and just shortly before the Licensing Board issued its Order of June 16, 1980.

question as to whether Applicants will meet the standards established for satisfying GDC-4 and whether a "reliable method" will be selected and utilized in assuring compliance with the standards. However, that interpretation of contention 11 is contrary to the plain language of the contention, which asserts only that GDC-4 is not satisfied because there is no reliable method for evaluating or insuring that Class IE safety related equipment is designed to accommodate the effects of and be compatible with the environmental conditions associated with the most severe postulated accident. ACORN's argument is without merit and does not alter the Staff's views on the admissibility of contention 11, as stated in its Answer, pp. 13-15.

Similarly lacking merit is ACORN's argument that contention 11 remains valid in this proceeding because the Commission, in UCS, CLI-80-21, supra, requires that the Staff's judgment concerning environmental qualification be open for examination by the public. As the Staff noted in its Answer, in UCS, the Commission concluded that a rulemaking on environmental qualification of safety-related equipment is appropriate and that "the Guidelines^{4/} and NUREG-0588^{5/} will state the requirements of GDC-4 until the rulemaking has been completed." Answer at 14-15. The Commission further held that a written record of the Staff's qualification judgment should be kept for the

^{4/} Division of Operating Reactors, U.S. Nuclear Regulatory Commission, "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors." ("DOR Guidelines") (November 1979).

^{5/} Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment" (NUREG-0588) (December 1979).

interim period because the licensee and public should be able to examine the basis for the Staff's judgment concerning qualification. UCS, CLI-80-21, supra, at 712. Establishment by the Commission of such a requirement for a written record lends no support to ACORN's arguments regarding the validity of contention 11 as an issue in controversy in this proceeding.

II. Acorn's Motion For an Order Requiring The Staff to Brief The Board and Parties On CLI-80-21 Should Be Denied

In its pleading, ACORN requests that the Licensing Board order both the Applicants and Staff to provide all parties and the Board with their views on how the Commission's Order in UCS, CLI-80-21, supra, will affect the further construction, completion and licensing of CPSES. There is no basis for granting this motion. The Commission's decision in UCS is self-explanatory and no further discussion by the Staff of this decision, beyond the discussion contained in its Answer (pp. 13-15), is warranted. Accordingly, ACORN's motion should be denied.

CONCLUSION

For the foregoing reasons, the NRC Staff adheres to its position that proposed ACORN contention 11 was improperly admitted and urges that ACORN's motion seeking further Staff views on UCS be denied.

Respectfully submitted,

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