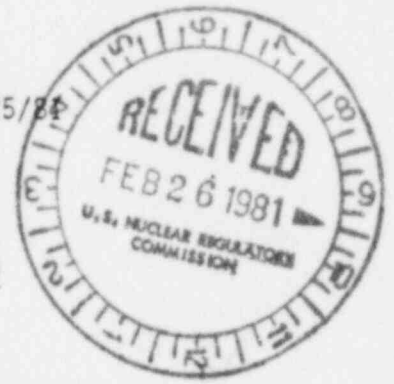
02/25/81



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
APPLICATION OF WESTINGHOUSE ELECTRIC	)	
CORPORATION FOR A SPECIAL NUCLEAR	)	Docket No. 70-2909
MATERIAL LICENSE FOR THE ALABAMA	)	
NUCLEAR FUEL FABRICATION PLANT (ANFFP)	)	
TO BE LOCATED NEAR PRATTVILLE, ALABAMA	)	

NRC STAFF'S RESPONSE TO CONTENTIONS
FILED BY PETITIONER SAFE ENERGY ALLIANCE
OF CENTRAL ALABAMA, INC.

Pursuant to the Memorandum and Order issued by the Atomic Safety and Licensing Board ("Licensing Board") on September 11, 1980, the NRC Staff ("Staff") hereby responds to the contested contentions filed by Petitioner Safe Energy Alliance of Central Alabama, Inc. ("SEACA"). Those contentions consist of (a) "Proposed Valid Contentions of Intervenor Safe Energy Alliance of Central Alabama, Inc." ("Initial Contentions"), dated August 5, 1980, and (b) "Second Set Proposed Valid Contentions of Intervenor Safe Energy Alliance of Central Alabama, Inc." ("Additional Contentions"), dated October 1, 1980, as those two sets of contentions have been modified, reworded and renumbered in Attachment B ("Unstipulated Contentions") to the Stipulation which has been submitted jointly to the Licensing Board by the Staff, Applicant Westinghouse Electric Corporation ("Applicant") and Petitioner SEACA by letter of February 23, 1981.[1/]

[1/] This Repsonse is submitted in accordance with the "Joint Motion for Extension of Time" ("Motion") dated February 20, 1981, filed by the
(FOOTNOTE CONTINUED ON NEXT PAGE)

BACKGROUND

By Order dated July 22, 1980, the Licensing Board scheduled a special prehearing conference for August 21, 1980 to take place at the United States Courthouse in Montgomery, Alabama. Petitioners for leave to intervene were directed to file a supplement to their petitions "not later than fifteen (15) days prior to the holding of the special prehearing conference ... which must include a list of the contentions which petitioner seeks to have litigated in the matter, and the bases for each contention set forth with reasonable specificity" (Order, at 2).

Pursuant to the Licensing Board's Order, on August 5, 1980, Petitioner SEACA filed its Initial Contentions in which it set forth 22 contentions it sought to litigate in this proceeding. Thereafter, on October 1, 1980, SEACA filed its Additional Contentions in which it set forth 59 further contentions it sought to litigate in this proceeding.[2/]

In accordance with the Licensing Board's authorization, issued in the course of the Special Prehearing Conference[3/] and in its Memorandum and

---

1/ (FOOTNOTE CONTINUED FROM PREVIOUS PAGE)
Staff, Applicant and Petitioner SEACA. The Stipulation was submitted in unexecuted form to the Licensing Board by letter of February 23, 1981, pursuant to representations made to the Licensing Board in that Motion (n.1, p.2). An identical copy of the Stipulation is presently being circulated among the parties thereto for execution and will be filed shortly.

2/ SEACA's Additional Contentions were timely filed pursuant to the Licensing Board's Memorandum and Order dated September 11, 1980, which, in pertinent part, granted SEACA's "Motion for an Extension of Time in Which to File Additional Valid Contentions", dated August 25, 1980.

3/ Special Prehearing Conference, Transcript ("Tr."), at 50.

Order of September 11, 1980 (p.5), the Staff, Applicant and Petitioner SEACA have been meeting and conferring by telephone in an effort to reach a stipulation as to the admissibility of contentions and to identify disagreements as to the admissibility of other contentions. Meetings were conducted in Montgomery, Alabama on October 7-8, 1980 and November 6-7, 1980, and numerous telephone conversations were held subsequent thereto.

In the course of these meetings and discussions, the Staff, Applicant and Petitioner SEACA have agreed upon a stipulation as to the admissibility of certain contentions and have identified their disagreements as to other contentions; various other contentions filed by SEACA have been dropped altogether or are being deferred until the relevant sections of the Application for License ("Application") have been filed by the Applicant. The stipulated contentions, as well as the contentions as to which no stipulation has been reached, have been reworded and renumbered and are set forth, respectively, in Attachments A and B to the "Stipulation". The contentions which are being deferred are set forth in Attachment C to the Stipulation.

As a consequence of these efforts and the parties' and petitioner's agreement upon a stipulation of contentions, the Licensing Board now has before it the tasks of (a) ruling on SEACA's "Amended Petition for Leave to Intervene and Request for A Hearing", dated June 12, 1980; (b) approving the Stipulation; and (c) ruling on the admissibility of the non-stipulated contentions advanced by Petitioner SEACA. In the balance of this Response, the Staff submits its position concerning the non-stipulated contentions as set forth in Attachment B to the Stipulation.

INTRODUCTION

As a general matter, for the contentions proposed to be admissible, they must fall within the scope of the issues set forth in the Federal Register Notice of Hearing in this proceeding,[4/] and comply with the requirements of 10 CFR § 2.714(b) and applicable Commission case law. See, e.g., Northern States Power Co. (Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2), ALAB-197, 6 AEC 188, 194 (1973), aff'd, BPI v. Atomic Energy Commission, 502 F.2d 424, 429 (D.C. Cir. 1974); Duquesne Light Co. (Beaver Valley Power Station, Unit No. 1), ALAB-109, 6 AEC 243, 245 (1973); 10 CFR § 2.714(h).

10 CFR § 2.714(b) requires that a list of contentions which petitioners seek to have litigated be filed along with the bases for those contentions set forth with reasonable specificity. A contention must be rejected where:

(a) it constitutes an attack on applicable statutory requirements;

4/ A Notice of Hearing has not yet been issued in this proceeding, since the Licensing Board has not yet ruled upon any request for hearing and/or petition for leave to intervene. See 10 CFR § 2.105(e). Notice of opportunity to request a hearing, which identifies to some extent the subject of the proceeding, has been published in the Federal Register. See "Availability of Environmental Report, and Intent to Prepare a Draft Environmental Impact Statement Concerning Issuance of a Special Nuclear Material License for the Alabama Nuclear Fuel Fabrication Plant (ANFFP), Westinghouse Electric Corp., To Be Located Near Prattville, Alabama", 45 Fed. Reg. 14724 (March 6, 1980); and "Alabama Nuclear Fuel Fabrication Plant (ANFFP), Westinghouse Electric Corp.; Issuance of Special Nuclear Material License; Extension of Opportunity to Request for Hearing", 45 Fed. Reg. 23553 (April 7, 1980).

(b) it challenges the basic structure of the Commission's regulatory process or is an attack on the regulations;

(c) it is nothing more than a generalization regarding the intervenor's views of what applicable policies ought to be;

(d) it seeks to raise an issue which is not proper for adjudication in the proceeding or does not apply to the facility in question; or

(e) it seeks to raise an issue which is not concrete or litigable.

Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2&3), ALAB-216, 8 AEC 13, 20-21 (1974); Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-128, 6 AEC 399, 401 (1973).

The purpose of the basis requirement of 10 CFR § 2.714 is to assure that the contention in question does not suffer from any of the infirmities listed above, to establish sufficient foundation for the contention to warrant further inquiry of the subject matter in the proceeding, and to put the other parties sufficiently on notice "so that they will know at least generally what they will have to defend against or oppose". Peach Bottom, supra at 20. From the standpoint of basis, it is unnecessary for the petition "to detail the evidence which will be offered in support of each contention". Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1&2), ALAB-130, 6 AEC 423, 426 (1973). Furthermore, in examining the contentions and the bases therefor, a licensing board is not to consider the merits of the contentions. 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, 151 (1979);

Peach Bottom, supra at 20; Grand Gulf, supra at 426. Rather, the requirements of 10 CFR § 2.714 are designed to frame "the issues which will be the subject of subsequent discovery and proof in an evidentiary hearing". Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), Docket Nos. 50-454/455, LBP-___ (Dec. 19, 1980) (p.2).

Nonetheless, it is incumbent upon the Intervenors to set forth contentions which are sufficiently detailed and specific to demonstrate that the issues raised are admissible and that further inquiry is warranted. This is particularly true where a hearing is not mandatory, as in the case of this proceeding on an application for a special nuclear material license, in order to assure that an asserted contention raises an issue clearly open to adjudication. Cf. Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 12 (1976); Gulf States Utilities Co. (River Bend Station, Units 1&2), ALAB-183, 7 AEC 222, 226 (1974).

The continuing validity of these principles recently was reaffirmed by the Atomic Safety and Licensing Appeal Board ("Appeal Board") in Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542 (1980). There, a petitioner alleged that a marine biomass farm was environmentally preferable to the licensing of the nuclear facility. The licensing board rejected that contention, apparently on the grounds that "the petitioner was required not merely to allege that the alternative would be environmentally preferable but also to explain why that is so". 11 NRC at 547. The Appeal Board overruled this determination as contrary to its Grand Gulf decision, in that it "erroneously imposed upon a petitioner for intervention an obligation that, in actuality, arises

only after the petitioner has become a party to the proceeding" (id., at 548). Rather, the Appeal Board held that sufficient basis had been shown by the petitioner (id. at 548-49):

> More specifically, all that was required of [the petitioner] on the petition level was to state his reasons (i.e., the basis) for his contention that the biomass alternative should receive additional consideration. That responsibility was sufficiently discharged by his references to Project Independence and his assertion respecting the environmental superiority of a marine biomass farm.

In reaching this conclusion, the Appeal Board emphasized that the merits of the contention are not to be addressed at this stage of the proceeding:

> [W]hether [the petitioner] will be able to prove the assertions underlying the contention is quite beside the point at this preliminary stage of the proceeding. All that is of present moment is that, under the Rules of Practice of this Commission, as they have been uniformly interpreted, he is entitled to party status to afford him the opportunity to attempt to do so.

(11 NRC at 549) (footnote omitted). Rather, petitioners need not "establish the existence of some factual support for the particular assertions which they have advanced as the basis for their contentions" until later in the proceeding (id. at 551):

> This demonstration need not be undertaken as a precondition to the acceptance of a contention for the limited purpose of determining whether to allow intervention under 10 CFR 2.714. Rather, the obligation arises solely (1) in response to a subsequent motion of another party seeking to dispose summarily of the contention under 10 CFR 2.749 for want of a genuine issue of material fact; or (2) in the absence of such a motion, at the evidentiary hearing itself (id.).

In the discussion which follows, the Staff sets forth its views with respect to each of SEACA's contentions as to which no stipulation has been

reached, in accordance with the principles set forth in Allens Creek and other decisions cited above.

DISCUSSION

The Staff believes that the contentions as which a stipulation has been reached among the Applicant, Petitioner and Staff (Contentions 2, 5(b), 6, 8(a), 10, 11, 15, 16, 23, 26, 30, 36, and 40) meet the requirements of 10 CFR § 2.714 and should be admitted as issues in controversy in this proceeding. In addition, for the reasons more fully set forth below, the Staff believes that one of the contentions as which no stipulation has been reached (Contention 22) similarly meets the requirements of 10 CFR § 2.714 and should be admitted as an issue in controversy in this proceeding. However, for the reasons more fully set forth below, the Staff believes that all other contentions asserted by SEACA at this time (not including the deferred contentions set forth in Attachment C to the Stipulation) fail to meet the requirements of 10 CFR § 2.714 and, accordingly, should not be admitted as issues in controversy in this proceeding (as to one of these, Contention 18, the Staff presently opposes the contention but recommends that it be deferred until later in the proceeding). The Staff's position with respect to each of the contentions as to which no stipulation was reached, is set forth seriatim.

1. WASTE SAFETY

SEACA Contention

> There's no assurance that the health and safety of the public will be protected in waste management because we don't

know what manufacturing process and equipment will be used and we don't know how radioactive the waste will be.

(a) WEC's proposed sodium silicate process for stabilization will not adequately contain the ionizing materials over the period necessary to be safe on a permanent basis because there will be a chemical breakdown of the binding matrix over a period of time which will release greater and harmful amounts of radioactive materials into the environment in excess of the levels permitted by NRC regulations.

(b) WEC's proposed process for treating liquid waste to form calcium fluoride is unsafe for the public because calcium fluoride itself is a very hazardous waste and there's no assurance it will remain buried. Moreover, this waste is contaminated with low-level radioactive materials, mostly uranium, in excess of the levels permitted by NRC regulations. [Initial SEACA Contention I(a)-(d).]

Staff Position

The Staff opposes the admission of this contention on the grounds that it seeks to raise an issue which is beyond the scope of this proceeding and accordingly is not a proper issue for adjudication in that it is directed to long-term waste-management and disposal, which will not occur on site.

In the course of the negotiation on contentions which took place among the Applicant, Petitioner SEACA and the NRC Staff, it was agreed that there would be no burial of low-level radioactive waste at the ANFFP site. The Applicant has agreed to accept a license condition in language to this effect:

> This license does not authorize burial on site of low level or high level radioactive wastes as defined by NRC.

Furthermore, the Staff notes that even without such a license condition, no burial of low level radioactive waste would be permitted at the ANFFP site, since such burial may take place only at sites licensed for such purpose by the Commission or by Agreement States. Since the ANFFP

site is not licensed for such purpose, no burial of radioactive wastes could be undertaken at the site. Any burial of such waste at a site other than the ANFFP facility is not a proper subject for adjudication in a proceeding; rather, that is an issue which properly may be raised in proceedings relating to such licensed low-level waste burial sites or in rulemaking proceedings relating to the Commission's regulations concerning the packaging and disposal of low level wastes. Finally, inasmuch as the contention seeks to consider the long-term or "permanent" safety of waste disposal methods, it raises an issue that goes beyond the scope of this proceeding, which is limited to an application for a five-year special nuclear material license. For these reasons, the Staff opposes the admission of SEACA Contention 1.

4. ACCIDENTS

SEACA Contention

(a) WEC has not adequately addressed the risk of accidents during transportation as required by the National Environmental Policy Act (NEPA).

(b) The WEC Report does not adequately explain the basis for rating accidents as "credible", "incredible" and "remotely possible", to the detriment of public health and safety.

(c) NEPA requires a consideration of the consequences of major accidents at a plant facility, and this includes a criticality event, an explosion in sintering furnace, a fire in the bank of HEPA filters, a UF_6 leak, and a UO_2 powder spill, all of which are listed as possible accidents in WEC's Environmental Report. [Initial SEACA Contention IV(a)-(c).]

Staff Position

The Staff opposes the admission of this contention on the grounds that it is vague and overly broad, and lacks adequate basis to put the other

parties to the proceeding sufficiently on notice to "know at least generally what they will have to defend against or oppose". Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2&3), ALAB-216, 8 AEC 20 (1974).

Although SEACA asserts that the Applicant "has not adequately addressed the risk" of transportation accidents (Contention 4(a)), the Staff notes that such accidents are explicitly discussed in the Applicant's Environmental Report[5/] (Environmental Report, § 5-5, "Transportation Accidents", pp.5-30 -5-37). Similarly, all of the other accidents which SEACA claims must be considered (Contention 4(c)) have been explicitly considered in the Applicant's Environmental Report (Environmental Report, §§ 5-4.1 - 5-4.9, pp.5-14 - 5-29).[6/] SEACA has failed to allege or to indicate in what manner the Applicant's Environmental Report has not adequately considered these accidents and, accordingly, the contention lacks adequate basis and fails to alert the parties as to the matters sought to be litigated.

While SEACA claims that the Applicant fails to "adequately explain the basis for rating the probability of accidents; no technical basis is provided

---

5/ Westinghouse Electric Corporation, Nuclear Fuel Division, "Alabama Nuclear Fuel Fabrication Plant Environmental Report" (December 1979).

6/ The Staff notes also that the Staff's Environmental Impact Statement which is presently being prepared will include an independent accident analysis, in accordance with the requirements of 10 CFR Part 51. The Staff's analysis will include consideration of both the likelihood of occurrence of various postulated accidents as well as an analysis of the environmental consequences of those accidents.

for rating accidents" (Contention 4(b)), the Staff notes that the Environmental Report identifies the Applicant's accident probability rating as follows: credible occurrences, $\rangle 0.025\ yr^{-1}$; remotely possible occurrences, $\backsim 0.025\ yr^{-1}$; incredible occurrences, $\ll 0.025\ yr^{-1}$ (Environmental Report, Table 5-5, p. 5-13). Accordingly, this portion of Contention 4 appears to be a request for information as to how that rating determination was made, rather than the assertion of a concrete issue capable of being litigated. Accordingly, SEACA's concern over the Applicant's probability rating methodology is immaterial and does not raise a concrete issue capable of being litigated. For these reasons, the Staff opposes the admission of SEACA Contention 4.

5. HEPA FILTERS

SEACA Contention

> (a) Harmful particulates of uranium less than 0.3 micrometers will pass through even 99.9% efficient HEPA filters as aerosols and will be extremely dangerous to the health of workers and other members of the public who breathe in these particulates, because said particulates could lead to cancer and other health hazards. [Initial SEACA Contention V(a).]

Staff Position

The Staff opposes the admission of this contention on the grounds that it is overly vague and constitutes an indirect challenge to the Commission's regulations. While SEACA is concerned over the escape of minute particles of uranium through the facility's HEPA filters, it is unclear whether SEACA contends that this will result in releases in excess of levels permitted by Commission regulations, or whether SEACA contends that those regulations

are inadequate to protect the health and safety of the public. The NRC Staff notes that regulations established by the Commission impose concrete standards as to the amount of radiation that may be released by the facility. Under the Commission's regulations, limits on the exposure of individuals in the ANFFP facility and in unrestricted areas generally are set forth in 10 CFR Part 20, "Standards for Protection Against Radiation". These regulations set forth dose limits for individuals in both restricted and unrestricted areas of the plant as well as other unrestricted areas (10 CFR §§ 20.101 and 0.105), as well as limits on concentrations of radioactive materials in the air in both restricted and unrestricted areas (10 CFR §§ 20.103, 20.106, and Appendix B, Tables I and II).[7/] (In addition, EPA regulations contained in 40 CFR Part 190 require that the Applicant restrict doses incurred by individual members of the public to certain specified levels.) Accordingly, to the extent that SEACA's contention seeks to challenge the adequacy of the Commission's regulations concerning radiation protection, it constitutes a challenge to a Commission regulation, which is impermissible, absent a showing of special circumstances which demonstrate that the regulation "would not serve the purpose for which ... [it] was adopted" (10 CFR § 2.758(b)). No such special circumstances have been alleged or demonstrated by SEACA.

[7/] 10 CFR Part 20 also requires that the Applicant "make every reasonable effort to maintain radiation exposures and releases of radioactive materials in effluents to unrestricted areas, as low as is reasonably achievable" (10 CFR § 20.1(c)), i.e., to limit radiation exposures and releases to levels less than those set as maximum levels by NRC regulation.

To the extent that SEACA's contention may be read to assert that the ANFFP facility will not comply with Commission regulations concerning radiation exposure limits, the Staff believes that the contention raises an issue which could be a proper subject for adjudication in this proceeding, if presented in an otherwise admissible contention. However, the contention as written by SEACA is too vague to permit the Staff and other parties to know what must be litigated. The contention does not explicitly allege that by permitting the escape of particles smaller than 0.3 micrometers, the facility will fail to comply with Commission regulations, nor does it provide any basis in support of such an assertion. Furthermore, the health effects of such releases are vaguely referred to as "cancer and other health hazards". In the Staff's view, the contention fails to identify a concrete issue capable of being litigated, and does not provide a basis set forth with reasonable specificity as is required by Commission regulations. For these reasons, the Staff opposes the admission of SEACA Contention 5(a).

8. NEED FOR PLANT

SEACA Contention

> (b) Given the closing of WEC's mixed oxide plutonium plant in Pennsylvania, the 5-year term of the license, the 40-year projected life of the plant, and the 30-year anticipated supply of uranium, WEC will eventually have to resort to use of plutonium, wh will be highly dangerous to the public. [Initial SEACA Contention X(a)-(b).]

Staff Position

The Staff opposes the admission of this contention on the grounds that it is totally speculative and lacks any basis whatsoever and seeks to raise an issue which is beyond the scope of this proceeding. The application for

license in this proceeding does not seek authority to possess plutonium, and is limited as to other special nuclear material to only a five-year period. There is no basis for contending that the Applicant seeks to "resort to use of plutonium" or that the facility will ultimately be used for plutonium fuel fabrication. Furthermore, any future request by the Applicant to use plutonium at the ANFFP facility would require the institution of a further licensing proceeding pursuant to 10 CFR Part 70, in which intervenors such as SEACA would be afforded an opportunity to participate. For these reasons, the Staff opposes the admission of SEACA Contention 8(b).

9. RADIATION-DOSE MODELS

SEACA Contention

> (a) WEC and NRC have understated the immediate and long-term harmful health effects to workers and neighboring citizens of dose levels associated with operation of the facility.
>
> (b) WEC's radiation dose models fail to address the radionuclides, radon gas, and certain daughter products of uranium, and the production of plutonium-239 by neutrons captured by uranium-238, all of which will be associated with the normal operation of this plant. [Initial SEACA Contention XII(a)-(b).]

Staff Position

The Staff opposes the admission of this contention on the grounds that it lacks basis and fails to put the other parties to the proceeding sufficiently on notice as to what it is that SEACA seeks to litigate. No indication is given as to how the Staff and the Applicant have "understated"

the health effects associated with operation of the ANFFP facility (Contention 9(a)) or even where such an "understatement" may be found.

As to SEACA's assertion that the Applicant's "dose models fail to address the radionuclides ... and certain daughter products of uranium" (Contention 9(b)), the Staff notes that the Environmental Report properly discusses various uranium isotopes and daughter products of uranium (Environmental Report, §§ 4-2.2.1 - 4-2.2.4, pp.4-6 - 4-22, and Appendix D). As to these elements, the contention fails to allege or to indicate in what way the dose models employed by Applicant are inadequate. Furthermore, as to SEACA's assertion that radon gas and Plutonium-239 produced by the capture of neutrons by Uranium-238 have not been addressed in the Applicant's dose models, SEACA has not provided any basis in support of a contention that such elements will be present at the ANFFP facility or that the Applicant's dose calculations are rendered invalid or inaccurate as a consequence. Accordingly, the Staff does not believe that the contention raises an issue appropriate for litigation in this proceeding.[8/] For these reasons, the Staff opposes the admission of SEACA Contention 9.

12. ALTERNATIVE SITES

SEACA Contention

(a) NRC cannot make the determination of 10 CFR 70.23(a)(7) because other sites in Pennsylvania, Ohio, Kentucky, Indiana, and Illinois are obviously superior.

8/ The Staff notes that its Environmental Impact Statement will include an independent evaluation of anticipated radiation doses resulting from operation of the ANFFP facility.

(b) The Prattville, Alabama site is too close to a major population area and therefore will not adequately protect the public against the risks associated with the plant. [Initial SEACA Contention XVI(a)-(b).]

Staff Position

The Staff opposes the admission of this contention on the grounds that it is vague, lacks basis, and fails to put the other parties to the proceeding sufficiently on notice as to what it is that SEACA seeks to litigate. Although SEACA broadly asserts that "other sites" in five states are "obviously superior" to the Prattville site, SEACA provides no basis whatsoever for this assertion and, in fact, no such other sites are identified by SEACA.

As to SEACA's allegation that the Prattville site "is too close to a major population area and therefore will not adequately protect the public against the risks associated with the plant", SEACA provides no basis in support of this assertion, nor does SEACA indicate what risks have been inadequately evaluated by Applicant or require evaluation by the Staff. Similarly, SEACA does not indicate in what way the impact upon the population in the plant vicinity has been inadequately assessed or that the Applicant will fail to comply with Commission regulations designed to protect the health and safety of the public. In sum, the contention lacks adequate basis and fails to sufficiently put the other parties to the proceeding on notice as to the issues sought to be raised by SEACA. For these reasons, the Staff opposes the admission of SEACA Contention 12.

14. PROTOTYPE CONSIDERATION

SEACA Contention

> Information concerning the two existing plants in Europe is needed by SEACA to adequately assess the hazardous or harmful health effects of the proposed Prattville plant to the populace of Central Alabama, and without such information the dangers of said plant to workers and the general public will be underestimated. [Initial SEACA Contention XXII.]

Staff Position

The Staff opposes the admission of this contention on the grounds that it fails to raise an issue that is concrete and capable of being litigated. The Staff agrees that aspects of the manufacturing process to be utilized at the ANFFP facility must be evaluated prior to granting the pending Application. The Staff has already requested information from the Applicant in this regard and will continue to obtain information from Applicant and other sources concerning the proposed process and the experience of other facilities in which the process is utilized. The Staff's evaluation of this information will be published in the Safety Evaluation Report and, if necessary, in a Supplement to the Environmental Impact Statement.

In the Staff's opinion, the present contention consists only of a request for information, and does not present a concrete issue which is capable of being litigated. After publication of the Staff's Safety Evaluation Report, SEACA may wish to frame a contention which is more

specifically addressed to an issue capable of being litigated;[9/] at this time, however, the contention is inadmissible. For these reasons, the Staff opposes the admission of SEACA Contention 14.

17. ALABAMA AS AN "AGREEMENT STATE"

SEACA Contention

> "Source Materials" and "By Product Materials" of the Plant are to be regulated by the State of Alabama as "an Agreement State" (See § 5-8, Application), meaning that the State of Alabama will assume all responsibility and obligation for said materials, yet the State is untrained and unprepared to handle the same and is assuming an enormous risk for its citizens in doing so. (Contrary to 10 CFR § 70.23(a)(3) and (4)). [Additional SEACA Contention VI.]

Staff Position

The Staff opposes the admission of this contention on the grounds that it constitutes an attack on applicable statutory requirements, challenges the basic structure of the Commission's regulatory process, seeks to raise an issue which is beyond the jurisdiction of the Licensing Board and is not proper for adjudication in this proceeding.

Pursuant to § 274(b) of the Atomic Energy Act of 1954, as amended (the "Act"), 42 USC § 2021, the Commission has entered into an Agreement with the State of Alabama whereby regulatory authority over byproduct and source

---

9/ In that event, of course, SEACA would be required to comply with the requirements of 10 CFR § 2.714(a)(1) concerning untimely filed contentions. One factor appropriate for consideration in connection with the filing of an untimely contention would be the prior unavailability of information concerning the subject matter of the contention.

materials has been assumed by the State.[10] Pursuant to § 274(d) of the Act, that Agreement was entered into by the Commission only after:

> [1] The Governor of the State of Alabama certified ... that the State ... has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and ...
>
> [2] The Commission found ... that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety ....[11]

Pursuant to § 274(j) of the Act, the Commission is authorized to "terminate or suspend all or part of its agreement with the State" and to reassert its own licensing and regulatory authority, "if the Commission finds that (1) such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements" of Section 274. In addition, as amended last year, § 274(j) now provides the Commission with emergency authority after notifying the

---

[10] "Agreement Between the U.S. Atomic Energy Commission and the State of Alabama for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, As Amended", dated July 25, 1966 ("Agreement"). 31 Fed. Reg. 10644 (Aug. 10, 1966).

[11] Section 274(d) of the Act also requires compliance with subsection (o), which, in pertinent part, mandates that Agreement States, in connection with the licensing and regulation of byproduct material, (a) shall require compliance with standards for the protection of the public health and safety and the environment which are at least as stringent as those adopted by the Commission for the same purpose; (b) shall adopt procedural rules providing for public notice and participation; and (c) shall require a written analysis of the environmental impact of any license which has a significant impact on the human environment.

Governor, to "temporarily suspend all or part of its agreement with the State without notice or hearing", when an emergency situation exists which requires immediate action to protect the health and safety of the public and the State has failed to act within a reasonable time after the danger creating the emergency arose. P.L. 96-295, 94 Stat. 787 (June 30, 1980).

In the Staff's view, the authority to terminate or suspend the Commission's Agreement with the State of Alabama has not been delegated by the Commission to the Licensing Boards. See 10 CFR §§ 2.718 and 2.721. Accordingly, SEACA's contention concerning the ability of the State of Alabama to perform its responsibilities under the Agreement does not raise an issue which is appropriate for litigation in this proceeding. Any such allegations must be addressed to the Commission for evaluation and action, if necessary. For these reasons, the Staff opposes the admission of SEACA Contention 17.

18. RESPONSIBILITY FOR OPERATIONS

SEACA Contention

> The Application (Section 4-1.2, page S-11) states that the responsibility for all phases of operations, including safety and health protection, shall follow the usual lines of organizational authority. WEC has not provided sufficient information as to the meaning of the terms "usual lines of organizational authority" for the NRC to determine whether organization of the proposed safety-related functions will be adequate. [Additional SEACA Contention VIII.]

Staff Position

The Staff presently opposes the admission of this contention and recommends that a ruling on its admissibility be deferred for the present time, on the grounds that it raises an issue which is more appropriate for

resolution, if at all, along with other safety-related issues later in the proceeding. As presently envisioned by the Licensing Board and the parties, separate hearings will be conducted in this proceeding on environmental and safety related issues.[12/] Inasmuch as the Staff's evaluation of the Applicant's organizational structure will be included in its Safety Evaluation Report, the Staff believes that litigation of this contention in connection with the environmental hearing would be premature and inappropriate. For these reasons, the Staff opposes the admission of SEACA Contention 18 at this time and recommends that a ruling on its admissibility be deferred until the commencement of safety-related proceedings herein.

19. "ALARA" AS INVALID STANDARD

SEACA Contention

> The "ALARA" or "As Low as Reasonably Achievable" standard used in the License Application is invalid, inaccurate, and much too subjective. [Additional SEACA Contention IX.]

Staff Position

The Staff opposes the admission of this contention on the grounds that it lacks basis, constitutes a direct attack upon the Commission's regulations and does not raise an issue appropriate for litigation in this proceeding in that the "ALARA" standard identified in the Application (p.S-64) is the ALARA standard established by Commission regulation. 10 CFR Part 20, which

---

12/ See, e.g., Special Prehearing Conference Transcript, at 182-83.

sets forth the Commission's "Standards For Protection Against Radiation", sets forth specific radiation exposure limits, and additionally requires licensees to "make every reasonable effort to maintain radiation exposures and releases of radioactive materials in effluents to unrestricted areas, as low as is reasonably achievable", within those limits. 10 CFR § 20.1(c). This requirement is made applicable to holders of special nuclear material licenses issued pursuant to 10 CFR Part 70. See 10 CFR § 20.2.

The Staff believes that SEACA may have misunderstood the "ALARA" standard as referred to in the Application for License. In any event, the contention constitutes an impermissible challenge to the Commission's regulations, which is barred by 10 CFR § 2.758(a), absent special circumstances which demonstrate that the regulation "would not serve the purposes for which ... [it] was adopted" (10 CFR § 2.758(b)). No such special circumstances have been alleged or demonstrated by SEACA. For these reasons, the Staff opposes the admission of SEACA Contention 19.

20. DRY PROCESS UNWORKABLE COMBINATION

SEACA Contention

> The Plant conversion process will include components that have never been used in the United States and said process needs to be carefully scrutinized, piece by piece, by both SEACA and the NRC to insure safety to workers and the general public of Central Alabama. [Additional SEACA Contention X.]

Staff Position

The Staff opposes the admission of this contention on the grounds that it lacks basis and fails to raise an issue that is concrete and capable of being litigated. The Staff agrees that the conversion process which will

be utilized in the ANFFP facility must be evaluated prior to granting the pending application for license. The Staff has already requested information from the Applicant in this regard and will continue to obtain information from the Applicant and other sources concerning the ANFFP process. The Staff's evaluation of this information will be published in the Safety Evaluation Report and, if necessary, in a Supplement to the Environmental Impact Statement.

The Staff believes that this contention consists essentially of a request for information and does not present an issue capable of being litigated. SEACA has provided no basis for the statement in the title of the contention that the process constitutes an "unworkable combination". Following publication of the Staff's Safety Evaluation Report, SEACA may wish to frame a contention which is capable of being litigated;[13/] at this time, however, the contention is inadmissible. For these reasons, the Staff opposes the admission of SEACA Contention 20.

21. NOTIFICATION AND TRACKING REQUIREMENTS

SEACA Contention

> WEC has made no showing that it will comply with the stringent new notification and tracking requirements for hazardous waste materials promulgated by the Environmental Protection Agency under the Resource Conservation and Recovery Act of 1976, and WEC needs to make such a showing, and in the absence of such showing, the populace of Central Alabama could be endangered. [Additional SEACA Contention XII.]

13/ See n.9, supra, and accompanying text.

Staff Position

The Staff opposes the admission of this contention on the grounds that it lacks basis and seeks to raise an issue which is not proper for adjudication in this proceeding. As SEACA itself appears to recognize, its concern focuses on whether the ANFFP facility will comply with regulations promulgated by the U.S. Environmental Protection Agency. Those regulations are not subject to enforcement by the Commission, nor is compliance with those regulations a matter which may be considered by the Licensing Board.[14/] In sum, there is no statutory authority which would permit the consideration of the contention in this proceeding. Furthermore, even if the subject matter of this contention were properly litigable in this proceeding, the contention lacks any basis whatsoever and fails to raise a concrete issue capable of being litigated. For these reasons, the Staff opposes the admission of SEACA Contention 21.

14/ The Staff notes that the Commission has entered into memoranda of understanding with the Environmental Protection Agency which delineate their respective responsibilities concerning general matters as well as matters covered by the Federal Water Pollution Control Act Amendments of 1972 and the Clean Air Act, as amended, where the two agencies have been assigned potentially conflicting or overlapping responsibilities by the Congress. No such memorandum of understanding has been entered into with respect to the Resource Conservation and Recovery Act of 1976, nor does one presently appear to be necessary, since responsibilities under the statute are assigned primarily to the Environmental Protection Agency and no responsibilities appear to be assigned to the Commission. See 42 USC 6901 et. seq.

22. SYNERGISTIC EFFECTS

SEACA Contention

The synergistic effect in the Alabama River of paper mill wastes from the Union Camp Corp. plant when added to the radioactive discharge from the Prattville plant will create a hazardous nuisance condition unsafe to the general populace of Alabama, and this has not been adequately addressed in the Environmental Report. [Additional SEACA Contention XIV.]

Staff Position

The Staff supports the admission of this contention on the grounds that it satisfies the basis and specificity requirements of 10 CFR § 2.714 and raises an issue which is appropriate for consideration in this proceeding.

25. EMERGENCY BULLETIN BOARD

SEACA Contention

The Application (4-3.4.3, page S-21) states that "Changes associated with the handling, processing, or storage of special nuclear material ... shall be communicated by the use of circulars, routing of revised procedures ..., work place meetings, and/or postings". In order to guarantee communication, there should be one central bulletin board containing all messages which employees are required to check and sign in on every day, and any changes should be posted in conspicuous wording and coloring, because under other procedures identified in the Application, it would be too easy for a key employee to miss an important message and thereby make a critical mistake. [Additional SEACA Contention XXII.]

Staff Position

The Staff opposes the admission of this contention on the grounds that it lacks basis, constitutes a direct attack upon the Commission's regulations, and does not raise an issue appropriate for litigation in this proceeding. 10 CFR Part 19, entitled "Notices, Instructions, and Reports

to Workers; Inspections", specifies the means of posting notices to workers at facilities operating pursuant to Commission licenses. 10 CFR § 19.11 specifies that notices (including notices concerning operating procedures) shall be posted "in a sufficient number of places to permit individuals engaged in licensed activities to observe them on the way to or from any particular licensed activity location to which the document applies ...." 10 CFR § 19.12 further specifies that individuals who work in or frequent any portion of a restricted area "shall be kept informed of the storage, transfer or use of radioactive materials or of radiation in such portions of the restricted area", of health protection problems, precautions and procedures, and of other matters. These requirements are made applicable to holders of special nuclear material licenses issued pursuant to 10 CFR Part 70. See 10 CFR § 19.2.

In the Staff's view, SEACA's contention constitutes an impermissible challenge to the Commission's regulations, which is barred by 10 CFR § 2.758(a) absent special circumstances which demonstrate that the regulation "would not serve the purposes for which ... [it] was adopted" (10 CFR § 2.758(b)); no such special circumstances have been alleged or demonstrated by SEACA.

Furthermore, to the extent that SEACA's contention may be read as seeking to impose one particular means of assuring compliance with the regulations and, thereby, as being consistent with the regulations, the Staff is of the view that SEACA has failed to provide any basis in support of its assertion that SEACA's proposed method of giving notice to workers is the only means by which there could be compliance with the Commission's

regulations. For these reasons, the Staff opposes the admission of SEACA Contention 25.

27. SOUTHERN BUILDING CODE

SEACA Contention

> The Southern Building Code does not impose stringent enough requirements for a building structure which would be needed to house special nuclear materials, and therefore such a building could be too weak to withstand a nuclear criticality explosion. [Additional SEACA Contention XXV.]

Staff Position

The Staff opposes the admission of this contention on the grounds that it lacks adequate basis, and is irrelevant and inappropriate for litigation in this proceeding. As the Staff has stated previously, in conducting its environmental impact analysis, the Staff takes a "deterministic approach", that is, the Staff assumes, theoretically, that there is a nuclear excursion and then examines the environmental consequences of that event.[15/] Under the Staff's environmental analysis, the strength of the building structure is immaterial.

Furthermore, SEACA has not provided any basis for its assertion that a nuclear criticality "explosion" is possible or that the building structure (the design for which has not been submitted to date) would be inadequate to withstand such an event. The Staff will evaluate the proposed building

---

15/ Special Prehearing Conference Transcript, at 183.

structure, as necessary, in its Safety Evaluation Report. After publication of that document, SEACA may wish to frame a contention which is more specifically addressed to an issue capable of being litigated;[16/] at this time, however, the contention is inadmissible. For these reasons, the Staff opposes the admission of SEACA Contention 27.

28. NEUTRON ISOLATION STRUCTURE

SEACA Contention

> Contrary to information in the License Application (1.2, page S-25), a neutron isolation structure will be unable to contain the neutrons spontaneously emitted by U-235, and this fact poses a danger of the special nuclear material going critical. [Additional SEACA Contention XXVII.]

Staff Position

The Staff opposes the admission of this contention on the grounds that it is overly broad, lacks adequate basis, and fails to raise an issue which is capable of being litigated. The portion of the Application to which SEACA refers simply states as follows (p. S-25):

> All storage racks and neutron isolation structures important to nuclear criticality safety shall be designed to retain their integrity against failure under credible loads, shocks, or collisions.

Nothing in the Application provides a basis in support of SEACA's contention or even a nexus thereto, and nowhere has SEACA provided any basis for its statement that "a neutron isolation structure will be unable to contain ... neutrons". SEACA apparently misunderstands what a neutron isolation

---

16/ See n.9, supra, and accompanying text.

structure is intended to accomplish; thus, it is not intended to "contain" neutrons, but only to limit the consequences of neutron emission. Rather than "pos[ing] a danger of the special nuclear material going critical", a neutron isolation structure serves to provide additional nuclear criticality safety.

In the Staff's view, SEACA's contention seeks to address the whole range of design utilized by various possible neutron isolation structures, rather than the design to be employed by the ANFFP facility; in fact, that design has not yet been made available for review and evaluation. The Staff intends to evaluate that design, as necessary, in its Safety Evaluation Report. After publication of that document, SEACA may wish to frame a contention which is more specifically addressed to an issue capable of being litigated;[17/] at this time, however, the contention is inadmissible. For these reasons, the Staff opposes the admission of SEACA Contention 28.

29. DEGRADATION OF SNM

SEACA Contention

> The Application (5-1.5.3, page S-28) does not specify the process for degrading uranium-235 as special nuclear material to uranium as source material and, given potential dangers in such a process, far more information is needed by the NRC and SEACA to evaluate the process. [Additional SEACA Contention XXX.]

17/ See n.9, supra, and accompanying text.

Staff Position

The Staff opposes the admission of this contention on the grounds that it fails to raise an issue which is concrete and capable of being litigated. In essence, SEACA's contention consists of a request for information concerning the process, if any, to be utilized in the ANFFP facility to degrade special nuclear material to source material. At this time, no such process has been proposed by the Applicant, nor has the Applicant stated that any such procedure will be utilized at the ANFFP facility. Rather, the Applicant has simply stated that "[p]rovision may be made for degrading uranium as special nuclear material to uranium as source material, as part of the waste treatment" (Application, p. S-28).

The Staff agrees with SEACA that any such process, if proposed by Applicant, will require proper evaluation. In the event that the Applicant does propose such a process, the Staff will consider it in the Safety Evaluation Report and in a Supplement to the Environmental Impact Statement, if necessary. After publication of the Safety Evaluation Report, SEACA may wish to frame a contention which is more specifically addressed to whatever degrading process may be proposed by the Applicant;[18/] at this time, however, the contention fails to set forth an issue capable of being litigated, and is inadmissible. For these reasons, the Staff opposes the admission of SEACA Contention 29.

18/ See n.9, supra, and accompanying text.

34. PERSONNEL DOSIMETRY

SEACA Contention

WEC should know in advance where personnel dosimeters are needed in the plant, rather than have to rely on information obtained from initial beta-gamma radiation surveys. [Additional SEACA Contention XXXVIII.]

Staff Position

The Staff opposes the admission of this contention on the grounds that it lacks basis, is nothing more than a statement of SEACA's opinion as to what the Applicant should be required to do, seeks to impose a requirement that is so illogical that, by its very terms, it is impossible to meet, and fails to raise an issue capable of being litigated. In essence, SEACA asserts that the Applicant "should know in advance" facts concerning radiation areas which can only be learned as a result of commencing plant operation and monitoring resultant radiation. No factual basis whatsoever is given in support of this improbable assertion.

The Staff notes that 10 CFR § 20.201 requires a licensee to "make or cause to be made such surveys as may be necessary for him to comply with the regulations" concerning radiation protection (10 CFR § 20.201(b)); surveys are defined as evaluations of the radiation hazards "incident to the production, use, release, disposal or presence of radioactive materials", including, when appropriate, "a physical survey of the location of materials and equipment, and measurements of levels of radiation or concentrations of radioactive material present" (10 CFR § 20.201(a)). 10 CFR § 20.202 provides further that personnel monitoring equipment shall be supplied to any employee who enters a high radiation area or who enters restricted

areas "under such circumstances that he receives or is likely to receive" certain specified radiation doses.

SEACA's contention does not appear to allege that the Applicant will fail to comply with these regulatory requirements, nor does the Staff perceive that any basis in support of the contention has been provided. Furthermore, the Staff does not believe that SEACA's proposal is capable of being implemented, nor does the Staff perceive how the contention is capable of being litigated. For these reasons, the Staff opposes the admission of SEACA Contention 34.

35. URANIUM CONCENTRATIONS IN AIR

SEACA Contention

> No exemptions from normal uranium concentration levels in the air should be given WEC at designated portions of the controlled area of the plant because said exemptions could endanger plant workers, because the cumulative effect of even low-level radiation will eventually cause cancer or chromosome damage to the body. [Additional SEACA Contention XXXX.]

Staff Position

The Staff opposes the admission of this contention on the grounds that it lacks basis, constitutes an indirect attack on the Commission's regulations, and seeks to raise an issue which is not proper for adjudication. In its original formulation of this contention,[19/] SEACA essentially was

19/ See SEACA's Additional Contentions, Contention XXXX, pp. 15-16.

concerned with the following statement contained in the Application (p. S-42):

> The frequency of measurement of uranium concentrations in air for a given plant area shall be determined by potential for exposure in the area, as follows, except that: ...
> (2) Designated portions of a controlled area may be permitted higher levels if a documented evaluation by the regulatory compliance component demonstrates that the protective measures for the area are such that personnel exposure criteria will not be exceeded.20/

In the Staff's view, SEACA appears to have misunderstood this statement as being a request by the Applicant for an exemption from NRC regulations governing permissible uranium concentrations in the air (10 CFR Part 20, Appendix B). The Staff does not perceive how such an interpretation of the Application may reasonably have been made by SEACA, or that SEACA has provided any basis in support of this contention. The Commission's regulations specify the maximum allowable uranium concentrations in air, and the Applicant will be required to comply with those regulations. The concentration levels proposed by the Applicant are within the levels specified by Commission regulations, and no request for an exemption from those regulations has been made by Applicant. Accordingly, any contention that the levels of uranium concentration in air at the ANFFP facility are inadequate to protect the health of plant workers, constitutes an attack on the Commission's regulations. Such a contention is barred by 10 CFR § 2.758(a) absent special circumstances which demonstrate that the regulation

---

20/ The normal frequency of measurement proposed by the Applicant is not recited herein, but may be found at pp. S-42-47 of the Application.

"would not serve the purposes for which ... [it] was adopted" (10 CFR § 2.758(b)). No such special circumstances have been alleged or demonstrated by SEACA and, accordingly, the contention constitutes an impermissible subject for litigation in this proceeding. For these reasons, the Staff opposes the admission of SEACA Contention 35.

37. AIR SAMPLES ANALYSIS

SEACA Contention

> WEC will do no continuous recording of radioactive airborne effluents to unrestricted areas so that an instantaneous high level spike could not be detected instantaneously and therefore Part 20 CFR cannot be met. [Additional SEACA Contention XXXXIV.]

Staff Position

The Staff opposes the admission of this contention on the grounds that it lacks basis and constitutes a challenge to the Commission's regulations. 10 CFR Part 20 provides that licensees shall not release radioactive material to unrestricted areas in excess of the limits set forth in Appendix B to Part 20; further, the regulation provides that "[f]or purposes of this section concentrations may be averaged over a period not greater than one year". 10 CFR § 20.106(a). SEACA's contention would require instantaneous measurements of air concentrations, and would require that the Part 20 standards be applied without regard to the "averaging" procedure specifically authorized by the Commission. The Staff believes that such a requirement constitutes a direct challenge to the Commission's regulations. Such a contention is barred by 10 CFR § 2.758(a) absent special circumstances

which demonstrate that the regulation "would not serve the purposes for which ... [it] was adopted" (10 CFR § 2.758(b)). No such special circumstances have been alleged or demonstrated by SEACA, and no basis has been provided which would support SEACA's assertion that "Part 20 CFR cannot be met". For these reasons, the Staff opposes the admission of SEACA Contention 37.

38. RADIOLOGICAL MONITORING OF SOLID WASTE MATERIAL

SEACA Contention

> The License Application does not distinguish between the various isotopes of uranium and given the fact that U-235 and U-234 are alpha emitters and given the fact that U-235 is more dangerous to the public, the Application does not adequately assess the harmful effects of the same to humans, animal and plant life. [Additional SEACA Contention XXXXVI.]

Staff Position

The Staff opposes the admission of this contention on the grounds that it lacks basis, constitutes a challenge to Commission regulations, and seeks to raise an issue which is not proper for adjudication in that it is outside the scope of this proceeding. SEACA has provided no basis in support of its statement that "the Application does not adequately assess the harmful effects" of U-235, nor has it provided any basis or explanation for its conclusion that U-235 "is more dangerous to the public" than U-234. The contention appears to be an attempt by SEACA to require the Applicant to monitor separately "the various isotopes of uranium" in solid waste material without having provided any basis which would support such a requirement.

While the title of SEACA's contention is directed to solid waste material monitoring, the portion of the Application upon which the contention is based deals with radiological monitoring of both solid waste and the environment in general (See SEACA's Additional Contentions, Contention XXX.VI; and Application, pp.50-53.) To the extent that SEACA's contention relates to the disposal of radioactive solid waste, which must occur by shipment to a licensed waste disposal or burial site, it raises an issue which is beyond the scope of the proceeding. See discussion, supra, at 9-10.

Furthermore, the Staff notes that Commission regulations establish maximum permissible concentration limits for isotopes of uranium, alone or in combination, in effluents from the facility (10 CFR §§ 20.106, 20.303). Since SEACA does not allege that the facility will fail to comply with these regulations, the contention appears to constitute an attack on the Commission's regulations to the extent that the contention relates to the discharge of radioactive materials in effluent streams. Such a challenge to the regulations is impermissible absent a showing of special circumstances that demonstrate the regulation "would not serve the purposes for which ... [it] was adopted" (10 CFR § 2.758(b)). No such special circumstances have been alleged by SEACA and no basis has been provided which would support a contention that concentrations of uranium isotopes discharged from the facility will exceed the Commission's regulations. For these reasons, the Staff opposes the admission of SEACA Contention 38.

39. BETA-GAMMA EXPOSURE LIMITS

SEACA Contention

The maximum exposure limits in the Application (5-3.2.1(1) + (2) for individuals entering a restricted area of the plant are too high and thus can lead to cancer and other hazardous health effects. [Additional SEACA Contention XXXXVII.]

Staff Position

The Staff opposes the admission of this contention on the grounds that it lacks basis and constitutes an impermissible challenge to Commission regulations. The "maximum exposure limits in the Application" referred to by SEACA are the dose levels proposed by the Applicant at which personnel dosimetry would be required (Application, § 5-3.2.1(1) and (2), p.S-53). The Staff notes that 10 CFR § 20.101(a) sets forth applicable maximum radiation doses for individuals in restricted areas, and 10 CFR § 20.202(a) sets forth the applicable doses likely to be received by an individual in a restricted area which would require the use of personnel dosimetry. Pursuant to those regulations, personnel dosimetry in restricted areas is required when an individual in a restricted area receives or is likely to receive a dose in any calendar quarter in excess of 312.5 millirems to the whole body (head and trunk, active blood-forming organs, lens of eyes, or gonads); 4687.5 millirems to the hands and forearms, feet and ankles; and 1875 millirems to the skin of the whole body (10 CFR §§ 20.101(a) and 20.202(a)(1)).

A simple comparison of these specified doses with the doses identified in the Application demonstrates that the Applicant's proposal of doses which would trigger the use of personnel dosimetry is in compliance with the Commission's regulations, and that these dose levels are approximately

24% less than the maximum permissible dose levels established in 10 CFR Part 20. Accordingly, SEACA's contention challenging those dose levels constitutes a challenge to the regulations, which is impermissible absent a showing of special circumstances which demonstrate that the regulation "would not serve the purposes for which ... [it] was adopted" (10 CFR § 2.758(b)). No such special circumstances have been alleged by SEACA, nor has any basis been provided which would support this contention. For these reasons, the Staff opposes the admission of SEACA Contention 39.

41. "AVERAGE" DOSE EQUIVALENT

SEACA Contention

> With respect to surveys, personnel dosimetry, and bioassays, the regulatory compliance component should prepare and maintain charts graphically displaying the average dose equivalent per radiation worker more often than on a quarterly basis, as is required by the License Application; in fact, statistics on high, low, and mean radiation doses for workers should be kept at least weekly. [Additional SEACA Contention CI.]

Staff Position

The Staff opposes the admission of this contention on the grounds that it lacks basis. 10 CFR § 20.401(a) specifically provides that "records showing the radiation exposures of all individuals for whom personnel monitoring is required" shall be maintained by licensees, and that the doses recorded "shall be for periods of time not exceeding one calendar quarter". Similarly, the Commission's radiation protection standards are, for the most part, expressed in terms of doses received over a calendar quarter (E.g., 10 CFR §§ 20.101, 20.102, 20.103, and 20.202). SEACA's contention would require that radiation doses be recorded on a weekly basis

rather than averaged over a longer period as proposed by the Applicant and permitted by the regulations.[21/] SEACA has not provided any basis in support of such a requirement nor has it alleged that the Applicant will fail to comply with the Commission's regulations. For these reasons, the Staff opposes the admission of SEACA Contention 41.

45. EXEMPTION-NOTIFICATION REQUIREMENT-RESPIRATORY EQUIPMENT
SEACA Contention

> Westinghouse should not be exempted from the 30-day notice requirement of 10 CFR 20.103 for use of respiratory equipment because the NRC needs to make timely examinations and inspections of the equipment in order to protect plant workers. [Additional SEACA Contention CV.]

Staff Position

The Staff opposes the admission of this contention on the grounds that it lacks basis, seeks to raise an issue which is beyond the jurisdiction of the Licensing Board and, accordingly, is not proper for adjudication in this proceeding. Pursuant to 10 CFR § 20.501, the authorization to grant

---

21/ The Staff notes that internal doses received by workers in restricted areas of the facility, as determined by analysis of concentrations in air, are calculated, in part, on the basis of a 40-hour week (10 CFR § 20.103, and n.4, Appendix B, 10 CFR Part 20).

exemptions from the requirements of 10 CFR Part 20 is reserved for the Commission:[22/]

> § 20.501 Applications for exemptions
> The Commission may, upon application by any licensee or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not result in undue hazard to life or property.

Such authorization has not been delegated to the Atomic Safety and Licensing Boards pursuant to 10 CFR §§ 2.718 or 2.721. Accordingly, the Licensing Board lacks the jurisdiction to determine whether or not exemptions from the regulations should be granted to the Applicant; such exemptions may be ruled upon only by the Commission or the appropriate Office of the Commission to which such authority may have been delegated.[23/] For these reasons, the Staff opposes the admission of SEACA Contention 45.

46. EXEMPTION-CAUTION SIGNS

SEACA Contention

> Westinghouse should not be exempted from the requirement of 10 CFR 20.203 requiring that all containers of licensed material bear a durable, clearly visible sign identifying radioactive contents because plant workers need to be constantly reminded of the dangerous qualities of the special nuclear materials they will be handling. [Additional SEACA Contention CVI.]

22/ A similar reservation of authority to grant exemptions from the regulations apply to regulations contained, inter alia, in 10 CFR Part 70. See 10 CFR § 70.14.

23/ Such authority has been delegated to the Director, Office of Nuclear Material Safety and Safeguards by "Delegation of Authority" dated June 16, 1976 (p.2, ¶8).

Staff Position

The Staff opposes the admission of SEACA Contention 46 for the reasons set forth in our response to SEACA Contention 45, supra.

47. EXEMPTION-WASTE DISPOSAL REQUIREMENT

SEACA Contention

> Westinghouse should be given no exemption from the requirement of 10 CFR 20.301 governing waste disposal since even the smallest amounts of radioactivity on records and paper can be dangerous to plant workers. [Additional SEACA Contention CVII.]

Staff Position

The Staff opposes the admission of SEACA Contention 47 for the reasons set forth in our response to SEACA Contention 45, supra.

48. EXEMPTION-CRITICALITY ACCIDENT REQUIREMENTS

SEACA Contention

> Westinghouse should be given no exemption from the requirements of 10 CFR 70.24 governing "Criticality Accident Requirements" and monitor alarms in certain areas since, no matter how remote an area may be from operations involving special nuclear materials, there is nonetheless a great risk to all individuals in the plant vicinity if there is a criticality accident. [Additional SEACA Contention CIX.]

Staff Position

The Staff opposes the admission of SEACA Contention 48 for the reasons set forth in our response to SEACA Contention 45, supra.

CONCLUSION

For the reasons stated above, the Staff urges that the Licensing Board (a) approve the Stipulation submitted by the Staff, Applicant and Petitioner SEACA; (b) admit SEACA Contention 22, as to which no stipulation was reached; (c) defer or deny admission of SEACA Contention 18; and (d) deny admission of all other contentions advanced by Petitioner SEACA at this time (not including the deferred contentions set forth in Attachment C to the Stipulation.

Respectfully submitted,

Sherwin E Turk

Sherwin E. Turk
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 25th day of February, 1981

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
APPLICATION OF WESTINGHOUSE ELECTRIC	)	
CORPORATION FOR A SPECIAL NUCLEAR	)	Docket No. 70-2909
MATERIAL LICENSE FOR THE ALABAMA	)	
NUCLEAR FUEL FABRICATION PLANT (ANFFP)	)	
TO BE LOCATED NEAR PRATTVILLE, ALABAMA	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO CONTENTIONS FILED BY PETITIONER SAFE ENERGY ALLIANCE OF CENTRAL ALABAMA, INC." 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, through deposit in the Nuclear Regulatory Commission's internal mail system, this 25th day of February, 1981:

John F. Wolf, Esq., Chairman*
Administrative Judge
Atomic Safety and Licensing Board
3409 Shepherd Street
Chevy Chase, MD 20015

Dr. Harry Foreman
Administrative Judge
Box 395, Mayo
University of Minnesota
Minneapolis, MN 55455

Dr. Martin J. Steindler
Administrative Judge
Argonne National Laboratory
9700 South Cass Avenue
Argonne, IL 60439

Barton Z. Cowan, Esq.
Eckert, Seamans, Cherin & Mellot
Forty-Second Floor
600 Grant Street
Pittsburgh, PA 15219

Donald R. Marcucci, Esq.
Law Department
Westinghouse Electric Corp.
P.O. Box 355
Pittsburgh, PA 15230

Julian L. McPhillips, Jr., Esq.
P.O. Box 64
516 South Perry Street
Montgomery, AL 36101

David L. Allred, Esq.
231 Oak Forest Drive
Montgomery, AL 36109

Dr. Ira L. Myers, M.D.
State Health Officer
State of Alabama
Department of Public Health
State Office Building
Montgomery, AL 36104

Ms. Cathalynn Donelson
855 Park Avenue
Montgomery, AL 36106

Atomic Safety and Licensing Board
Panel*
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Atomic Safety and Licensing Appeal
Panel (5)*
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Docketing and Service Section (7)*
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Sherwin E. Turk
Counsel for NRC Staff