

05/07/81

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of)
SOUTH CAROLINA ELECTRIC & GAS)
Virgil C. Summer Nuclear Station,)
Unit 1)

Docket No. 50-395

NRC STAFF MOTION FOR SUMMARY DISPOSITION

I. INTRODUCTION

The NRC Staff hereby moves for summary disposition of Contentions 2,^{1/}
3^{2/} and 4(b)^{3/} pursuant to 10 C.F.R. § 2.749. The Staff submits that the
attached Staff affidavits, together with its Safety Evaluation Report (SER)
in this matter, issued February 1981 and Supplement No. 1 to the SER (SSER),

1/ Contention 2 states:

(a) The Applicant lacks the financial qualifications
necessary to safely operate and decommission the Summer station
in compliance with NRC rules and regulations;

(b) The sum allocated by the Applicant for decommissioning
of the Summer Plant (less than \$10 million) is grossly inadequate
and does not conform to the requirements of 10 C.F.R. § 50.33(f).

2/ Contention 3 states:

The Applicant has not met the requirements of the NRC Staff
to assure that the probability of occurrence of an anticipated
transient without scram (ATWS) event is acceptably small.

3/ Contention 4(b), as amended, states:

The plans for monitoring site seismicity are inadequate in that
they do not consider the seismic effect of filling the reservoir.
Site seismicity monitoring conducted after the filling of the
reservoir should be continued through 1983.

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issued April 1981, demonstrate that there are no factual issues requiring adjudication and that dismissal of these contentions is warranted as a matter of law. A discussion of the operative legal principles underlying summary disposition follows.

II. SUMMARY DISPOSITION PROCEDURES

The Commission's regulations provide that summary disposition of a matter at issue can be obtained on the pleadings if the moving papers demonstrate that there is no genuine issue of material fact and that the movant is entitled to a favorable decision as a matter of law. 10 C.F.R. § 2.749(d).

The summary disposition procedures set forth in 10 C.F.R. § 2.749 are analogous to the summary judgment procedures contained in Rule 56 of the Federal Rules of Civil Procedure. Alabama Power Company (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 AEC 210, 217 (1974). The use of summary disposition has been encouraged by the Commission and the Appeal Board to eliminate litigation over contentions for which an intervenor has failed to establish the existence of a genuine issue. See, e.g., Northern State Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), CLI-73-12, 6 AEC 241 (1973) aff'd sub nom BPI v. Atomic Energy Commission, 502 F.2d 424 (D.C. Cir. 1974); Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 550-51 (1980). Although the burden of showing the absence of any genuine issue of fact is upon the moving party, and the record will be viewed in the light most favorable to the

party opposing the motion,^{4/} "a party opposing the motion...must set forth specific facts showing that there is a genuine issue of fact." 10 C.F.R. § 2.749(b); Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-584, 11 NRC 451, 453 (1980). "Here allegations or denials" will not suffice. Id. Perry, supra, n. 2, 6 NRC at 754; Gulf States Utilities Co. (River Bend Station, Units 1 and 2), LBP-75-10, 1 NRC 246, 248 (1975). Any statement of material fact(s) required by 10 C.F.R. § 2.749(a) which is uncontroverted is deemed to be admitted. 10 C.F.R. § 2.749(a); Pacific Gas and Electric Co. (Stanislaus Nuclear Project, Unit No. 1), LBP-77-45, 6 NRC 159, 163 (1977).

Finally, to draw on federal practice, the Supreme Court has pointed out that Rule 56 of the Federal Rules of Civil Procedure does not permit plaintiffs to get to a jury on the basis of the allegations in the complaints coupled with the hope that something can be developed at trial in the way of evidence to support the allegations. First National Bank of Arizona v. Cities Service Co., 391 U.S. 253, 389-90 (1968). Similarly, a plaintiff may not defeat a motion for summary judgment on the hope that on cross-examination the defendants will contradict their respective affidavits. To permit trial on such a basis would nullify the salutary purpose of Rule 56 which permits the elimination of unnecessary and costly litigation where no genuine issue exists. See Orvis v. Brickman, 95 F. Supp, 605, 607 (1951), aff'd, 196 F.2d 762 (D.C. Cir. 1952), cited approvingly in River Bend, supra, 1 NRC at 248.

^{4/} Cleveland Electric Illuminating Co., et al. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 753-54 (1977).

In light of these principles, and for the reasons set forth below, the Staff urges the Board to grant summary disposition of Contention 2, 3 and 4. If the Board is unable to grant summary disposition of each of these Contentions in their entirety, summary disposition should be granted on any portions as to which there is no genuine issue of material fact.^{5/}

III. DISCUSSION

A. Contention 2

1. Legal Requirements for Consideration of Financial Qualifications

Section 50.33(f) of the Commission's regulations provides that an application for an operating license must contain information sufficient to demonstrate that the applicant "possesses the funds necessary to cover estimated operating expenses or that the applicant has reasonable assurance of obtaining the necessary funds, or a combination of the two." Specifically, such information shall show that the applicant "possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the license or for 5 years, whichever is greater, plus the estimated costs of permanently shutting the facility down and maintaining it in a safe condition." 10 C.F.R. §50.33(f).

^{5/} Section 2.749(a) authorizes a "decision by the presiding officer in that party's [movant's] favor as to all or any part of the matters involved in the proceeding. See Public Service Company of Oklahoma, et al. (Black Fox Station, Units 1 and 2), LBP-77-46, 7 NRC 167 (1977); Toledo Edison Company (Davis-Besse Nuclear Power Station), LBP-73-30, 6 AEC 691, 699 (1973).

Appendix C to 10 C.F.R. Part 50, which is "intended to apprise applicants of the general kinds of financial data and other related information" that demonstrate the applicant is financially qualified, states that the Commission will require "the minimum amount of information necessary" to determine an applicant's financial qualifications. "No special forms are prescribed for submitting the information. In many cases, the financial information usually contained in current annual financial reports, including summary data of prior years, will be sufficient for the Commission's needs." Id. An applicant can ordinarily satisfy the financial qualifications requirement for the period of the license if, at the time the application is filed there is "availability of resources to cover the estimated operating costs for each of the first 5 years of operation plus the estimated costs of permanent shutdown and maintenance of the facility in safe condition." Appendix C(I)(B).

The most definitive statement by the Commission on the meaning of the "reasonable assurance" requirement of §50.33(f) is in Public Service Co. of New Hampshire (Seabrook Station Units 1 and 2), CLI-78-1. 7 NRC 1 (1978). There the Commission upheld the Staff's view that "reasonable assurance of obtaining funds" meant the applicant must have a reasonable financing plan in light of relevant circumstances. As the Commission noted:

The "reasonable assurance" requirement of 10 C.F.R. §50.33 does ... contemplate actual inquiry into the applicant's financial qualifications. It is not enough that the applicant is a regulated public utility. On the other hand given the history of the present rule and the relatively modest implementing requirements in Appendix C, a "reasonable assurance" does not mean a demonstration of near certainty that an applicant will never be pressed for

funds It does mean that the applicant must have a reasonable financing plan in the light of relevant circumstances.

Id. at 18 (footnote omitted). The Commission did not specifically list what it considered to be "relevant circumstances;" however, it agreed that the Licensing Board and Appeal Board had correctly found the applicants financially qualified based upon the prospect of future rate increases, future interest rates, bond ratings and applicant's fund-raising history. Id. at 20.

While the Commission relied on the factual record of a construction permit case to determine that these were relevant considerations, these factors would also be important in determining whether an applicant was financially qualified at the operating license stage. The fund-raising history of the Applicant, however, would be de-emphasized and more importance placed on the ability of the utility to generate revenues through the sale of electricity. As one Licensing Board reasoned:

The question is whether an operating facility will pay its own way with the electricity it sells. It is to be noted that local state agencies or the Federal Energy Regulatory Commission (FERC), not the Nuclear Regulatory Commission, are the primary source of evaluation of rates necessary for a utility to operate in an efficient manner and receive an adequate return on its investment.

Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), LBP-79-13, 9 NRC 522, 525 (1979).

Boards have repeatedly noted that state and federal public service commissions, which under law must grant utilities a fair rate of return, allow utilities to recover operating and maintenance costs, including decommissioning and other capital costs through rates charged electric customers. See e.g., Public Service Co. of New Hampshire (Seabrook Station,

Units 1 and 2), ALAB-422, 6 NRC 33, 77-78 (1977); Virginia Electric Power Co. (North Anna Nuclear Power Station, Units 1 and 2), LBP-77-78, 6 NRC 1127, 1162 (1979); McGuire, 9 NRC at 525. Accordingly, there is a general assumption in the financial review of a public utility about future conditions: that rational regulatory policies with respect to setting rates will enable the company to cover its operating costs. See e.g., North Anna, 6 NRC at 1162; Duke Power Co. (Cherokee Nuclear Station, Units 1, 2 and 3), LBP-77-74, 6 NRC 1314, 1330 (1977).

The McGuire decision sheds light on the circumstances relevant to an operating license review. The Board found that the applicant was financially qualified to operate and decommission the plant based upon the financial strength of the company (e.g., its credit and securities ratings), the changes made to improve the company's financial capabilities, the prospect of future rate increases, the increase in the company's revenues over a 5 year period, and the ability of the applicant to pay decommissioning costs using its revenues. McGuire, 9 NRC at 522-29.

The Commission has also stated, "anticipated difficulties in raising funds is relevant to a reasonable assurance determination [at the construction permit stage], but a showing of some potential difficulty would not necessarily preclude that determination, all other factors taken into account." Seabrook, 7 NRC at 21. The Commission monitors the financial health of licensees by maintaining copies of their annual reports throughout the term of the license. 10 C.F.R. §50.71(b).

An example of a factor that is not conclusive is the ability of an applicant to pay for a steam generator replacement. In a decision that pre-dates Seabrook, a Licensing Board found that the Commission's

regulations do not require an applicant for an operating license to show that "it has the ability to raise money for capital expenditures," such as potential steam generator replacement. North Anna, 6 NRC at 1163. The Board did note, however, that the utility had been able to raise enough funds to construct the facility at a considerable cost. Id.

(a) Decommissioning and Financial Qualifications

At present, the Commission's regulations do not impose lengthy requirements regarding decommissioning. See 10 CFR §§ 50.33(f), 50.82. The safety requirements in 10 C.F.R. §50.82 "only come into effect when a licensee seeks to dismantle or decommission a facility." Pennsylvania Power & Light Co. (Susquehanna Steam Electric Station, Units, 1 & 2), LBP-79-6, 9 NRC 291, 313 (1979). Neither does the Commission dictate any particular method of decommissioning or even require that one method be identified. Id. at 313-314.^{6/} The only requirement is that there is reasonable assurance that the applicant can pay the costs of decommissioning. 10 CFR §50.33(f).^{7/}

^{6/} Because NRC regulations do not require an applicant to specify a decommissioning plan at the operating license stage, no definite plan has been developed. At the end of the plant's useful life, the applicant will submit a decommissioning plan for the Commission's approval under the regulations then in effect. Presently, there are three major decommissioning alternatives: mothballing, entombment, or dismantling. Regulatory Guide 1.86. NUREG-0436, Revision 1, Supplement 2, dated March 1981, contains new terminology for these alternatives.

^{7/} As the Appeal Board noted in Seabrook regarding the reasonable assurance requirement, "the Commission long ago recognized that its 'regulations obviously do not require an applicant to have cash on hand to cover all possible contingencies of costs higher and revenues lower than estimates.'" 6 NRC at 79, citing, Power Reactor Development Co., 1 AEC 128, 153 (1959).

An applicant's decommissioning estimates may be based on a particular method of decommissioning, using cost estimates from recent studies or detailed costs of actual decommissionings. See McGuire, 9 NRC at 527. Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit No. 1), LBP-77-3, 5 NRC 301, 340 (1977). When ratemaking statutes allow recovery of decommissioning costs, and the estimated cost is not prohibitive, Licensing Boards have concluded that an applicant is financially able to decommission a facility. McGuire, 9 NRC at 527; North Anna, 6 NRC at 1162-63. For example, the Licensing Board in North Anna found that the initial cost of shutdown and dismantling, which could be recovered through operating revenues, was only 2-½% of the company's operating revenues in a year. Id. at 1162.

The regulations governing financial qualifications may change. Decommissioning alternatives are being reevaluated and rulemaking on decommissioning is expected to be completed by September 1982. "Plan for Reevaluation of NRC Policy on Decommissioning of Nuclear Facilities, NUREG-0436, Rev. 1, Supp. 2, (March 1981). The Commission is also considering a proposal for rulemaking that would reduce the evidence necessary for a financial qualifications determination. SECY-81-168, dated March 16, 1981.

2. Staff Findings on Financial Qualifications

Contention 2 alleges (a) that the Applicant is not financially qualified to operate and decommission the Summer facility in compliance with NRC regulations and (b) that the Applicant has not allocated enough money for decommissioning (under \$10 million). The Staff has reviewed the financial submittals of South Carolina Electric & Gas Company (the

Company) and South Carolina Public Service Authority (the Authority) and conclude that they have a reasonable financing plan in light of relevant circumstances and, thus, are financially qualified to operate and safely decommission the V.C. Summer Station. SSER, §20.

As discussed in the preceding section, the Commission's regulations and applicable case law provide that an applicant is financially qualified for an operating license if there is reasonable assurance of obtaining funds. An applicant must have a reasonable financing plan in light of relevant circumstances. The Staff has considered the Company's and the Authority's bond ratings, the nature of their business as public utilities, their ability to generate net income during the previous 5 years, the allowance of capital costs in their rate bases under South Carolina law, the overall financial strength of the Applicants, and the reasonable prospect that the facility's costs could be recovered through revenues.

The Staff also concluded that the Applicants had reasonable financing plans to cover decommissioning costs of the facility. SSER, §20.7. The Applicants have estimated a cost of \$1 million plus annual maintenance charge of \$100,000 for low level decommissioning (safe storage) to \$70 million for complete dismantlement at the end of the plant's 40 year life. SSER, §20.4. Based upon a recent Battelle Laboratory estimate of a total cost of \$39 million for the dismantlement method, the Staff found the Applicants' estimate to be conservative and would require an annual payment of \$1.75 million. SSER, §§20.4 and 20.7. Therefore, contrary to Contention 2(b) the Applicants' have estimated a sum for decommissioning in excess of \$10 million.

There is reasonable assurance that the Applicants can finance the estimated decommissioning costs because the annual funds are less than

0.2 percent of 1980 revenues for the Company and 0.3 percent for the Authority. SSER at 20-7. Their internal cash generation, the external capital market and their demonstrated ability to raise \$1.2 billion each over the past 13 years supports this conclusion. Id. Thus contrary to Contention 2, the Applicants' have demonstrated reasonable assurance of obtaining funds for operating and decommissioning costs under 10 C.F.R. §50.33(f).

B. Contention 3

1. Legal Requirements for Consideration of Unresolved Safety Issues.

ATWS is an unresolved generic safety issue. The Appeal Board has outlined requirements for Staff review of unresolved generic safety issues that will allow an Applicant to commence construction or operation of a facility pending final resolution of the issue by the Commission. The Appeal Board in Gulf States Utilities Co (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 744-45 (1977), explains that the primary consideration regarding unresolved generic safety issues is whether the Staff review thereof is adequate. The Safety Evaluation Report (SER) is the principal Staff review document and each SER should contain a summary description of unresolved generic safety issues that affect the facility. Specifically, the discussion should describe (1) the investigation program and its projected completion date, (2) what, if any, interim measures have been taken, and (3) alternatives if the program fails to resolve the problem. At the construction permit stage, pursuant to 10 C.F.R. § 50.35(a), the Board needed "reasonable assurance" that there would be a "satisfactory resolution of outstanding safety questions prior to operation of the facility"

and that operation would not "present undue risk to the public health and safety." Id. at 778.

The Appeal Board in Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-491, 8 NRC 245 (1978), further elaborated on the treatment of unresolved generic safety issues. The Appeal Board asked the Staff to provide in affidavit form, a "full and detailed" explanation of why the plant should be permitted to operate, including: (1) the present status of generic studies and (2) all measures used at the plant while the topic is under study. The Staff's review of the ATWS issue has been completed in accordance with the criteria set forth in the River Bend and North Anna decisions. See SER, §15.3.5. and Appendix C; SSER, Appendix C.

2. Legal Precedent Regarding ATWS.

Because it is an unresolved safety issue, ATWS has rarely been litigated. However, there is precedent for disposing of ATWS based in part upon fulfillment of the Staff's interim requirements. The Appeal Board in Northern States Power Company (Monticello, Unit 1), ALAB-611, 12 NRC 301, 304 (1980), upheld the Licensing Board's substantive findings therein that the facility could continue to operate safely even though ATWS was an unresolved safety issue. The Appeal Board was satisfied with the Staff's affidavit which recounted the conclusions of pertinent Staff reports, recommendations for remedial measures, and the projected completion schedule for resolution of the issues. 12 NRC at 307. The Appeal Board quoted approvingly from the portion of the Staff affidavit that outlined interim measures for Monticello and the conclusion that the facility can operate without "undue risk to the

health and safety of the public" while the matter was under Commission review. Id. at 307-08. The propriety of the Licensing Board's conclusion about the ability of the plant to operate safely was further bolstered by the Applicants' affidavit which stated it had implemented the Staff approved design changes, and almost all the recommended emergency operating procedures, and operator training outlined in the Staff's interim requirements. Id. at 308.

3. Conformance to Staff Interim Requirements.

Contention three states that the Applicant "has not met the requirements of the NRC Staff to assure that the probability of an [ATWS] event is acceptably small." To the contrary, the SER, SSER and supporting affidavit demonstrate that the Applicant's emergency operator training program and procedures are in accordance with Staff requirements to reduce the risk from an ATWS event while the Commission resolves this generic issue.

ATWS has been the subject of numerous Staff reports including the "Technical Report on Anticipated Transients Without Scram for Water-Cooled Power Reactors" (WASH-1270), dated September 1973 and Volumes 1 through 4 of "Anticipated Transients Without Scram for Light Water Reactors" (NUREG-0460), dated April 1978 (Volumes 1 and 2), December 1978 and March 1980 respectively. In Volume 3 of NUREG-0460, the Staff reaffirmed its earlier position that the "likelihood of severe consequences arising from an ATWS event is acceptably small and presently there is no undue risk to the public from ATWS." 3 NUREG-0460 at 42-43. This conclusion is based

on engineering judgment that considers: (a) the estimated arrival rate of anticipated transients with potentially severe consequences in the event of scram failure; (b) the favorable operating experience with current scram systems; and (c) the limited number of operating reactors. Id. at 43. The Staff also concluded that Westinghouse-designed reactors have greater inherent ATWS mitigation capability than other light water reactor designs. Id. at D-5. Nonetheless, to prevent the potential for severe ATWS events from increasing in the future, the Staff Report concluded that corrective measures were needed. 3 NUREG-0460 at 43. Volume 4 of NUREG-0460 contains the Staff's final recommendations regarding necessary design changes for ATWS mitigation and ATWS prevention.

With technical resolution for ATWS completed, a proposal for rulemaking has been submitted to the Commission in SECY-80-409, dated September 4, 1980. After the Commission reaches a final decision on the ATWS issue, appropriate plant design modifications will be made throughout the industry according to the Commission's schedule.

The Staff's interim requirements prior to completion of Commission-directed plant modifications, are twofold. Applicants must (1) develop emergency operating procedures to recognize and handle an ATWS event and (2) train operators to take such actions to respond to an ATWS event. SER, §15.3.5. These two requirements have been completed to the Staff's satisfaction as of this stage of the review. The Applicant's emergency operating procedures to recognize and handle an ATWS event have been reviewed and the Staff concludes that they are acceptable. Id. The Applicant is also training operators to implement the procedures to

recognize ATWS events and to take actions to mitigate ATWS events.

See letter from T. Nichols to H. Denton, dated March 27, 1981.

The Commission's regulations generally require all applicants to train operators in the use of all procedures for normal and abnormal operations, including procedures to recognize and handle ATWS events.^{8/} To become licensed operators, candidates must pass a written exam and operating test. 10 C.F.R. §50.54. In order to get their licenses renewed, licensed operators must show their continued competence every two years by reexamination or by satisfactory completion of an approved requalification program. 10 C.F.R. §55.33. While training is an ongoing process and need not be fully completed until the issuance of the operating license, the Staff has concluded that the Applicant has met, at this stage of the review, the applicable requirements for a training program and there is reasonable assurance that qualified individuals will be available for safe operation of the facility. SER, §13.2.

Based upon the interim fulfillment of the interim staff requirements regarding ATWS, the Staff maintains that the plant can operate safely without undue risk to the public pending completion of whatever plant modifications the Commission deems necessary.

C. Contention 4(b)

Contention 4(b), as amended,^{9/} claims that seismic monitoring being conducted since impoundment of the Monticello Reservoir should be

^{8/} 10 C.F.R. §§55.10(a)(6), 55.12, 55.33(a)(4); 10 C.F.R. §55, Appendix A, Requalification Programs for Licensed Operators of Production and Utilization Facilities 3.b.

^{9/} See transcript of April 7, 1981 prehearing conference at 388.

continued through 1983. The NRC Staff recognized a concern over reservoir-induced seismicity at the construction permit stage and required the Applicant to monitor possible microseismic activity in the vicinity of the reservoir before, during, and after impoundment. See Staff affidavit of William F. Kane on Contention 4(b) (Kane affidavit); SER, §2.5.3. The Staff, and its consultants,^{10/} and the Advisory Committee on Reactor Safeguards (ACRS), and its consultants,^{11/} found the information generated as a result of this process adequate to arrive at an independent judgment concerning reservoir-induced seismicity.

The Applicant has committed to continue monitoring until the end of 1982 at which time an evaluation will be made to determine if it should be continued. See SER, §2.5.3, pp. 2-31, 32. In its March 18, 1980 letter report, the ACRS requested the NRC Staff to assure that this program is not halted prematurely. The Staff will assure that this recommendation is met by imposing a condition to the operating license that the Applicant's seismic monitoring program will not be terminated without written approval from the Staff. Kane affidavit. The Staff does not believe that there is any present justification to impose an absolute requirement that seismic monitoring be continued through 1983. Id.

V. CONCLUSION

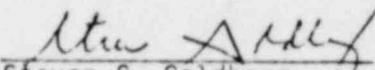
Under the present record, no evidence exists which establishes a genuine issue as to the statement of material facts accompanying the

^{10/} Id., SER, Appendices D and E.

^{11/} See March 18, 1981 ACRS letter report.

present motion. Based upon these facts, and the foregoing discussion, the Staff is entitled to summary disposition as a matter of law. Therefore, the Board should grant summary disposition and dismiss Contentions 2, 3 and 4 from this proceeding.

Respectfully submitted,


Steven C. Goldberg
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 7th day of May, 1981.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
SOUTH CAROLINA ELECTRIC &) Docket No. 50-395
GAS COMPANY)
(Virgil C. Summer Nuclear)
Station, Unit 1))

STATEMENT OF MATERIAL FACTS AS TO WHICH
THERE IS NO GENUINE ISSUE TO BE HEARD

MATERIAL FACTS

Contention 2:

1. South Carolina Electric and Gas Company (the Company) and South Carolina Public Service Authority (the Authority) are regulated electric utilities that operate exclusively in their service area.

2. The Public Service Commission of South Carolina regulates the Company and under law can allow it to recover operating, maintenance and capital costs through increases in its rate base. The Authority has sole jurisdiction over its rates and must establish rates and charges which can provide funds to pay its debts and costs of operation and maintenance. Thus, the Company and the Authority can recover, to the extent of their interest in the facility, the costs of operation and decommissioning through their revenues.

3. The financial strength of the Applicants is good as evidenced by their bond ratings, their net income over the past 5 years, and their ability to raise sizeable funds over the past 13 years to finance construction.

4. The regulations do not require an operating license to identify or select a method of decommissioning, nor do they specify an amount to be allocated for decommissioning. The Applicants have conservatively estimated decommissioning costs at an upper limit of \$70 million and there is reasonable assurance of obtaining the necessary funds to meet such costs through revenues. The Applicants have additional resources in the form of internal cash generation or the external capital market if such costs exceed those estimated. SSER, §20.7.

5. There is reasonable assurance pursuant to 10 C.F.R. §50.33(f) that funds sufficient to cover estimated operating costs for each of the first 5 years plus the estimated costs of permanent shutdown and maintenance of the facility in a safe condition. The Applicants have demonstrated they have a reasonable financing plan in light of relevant circumstances and hence, satisfy NRC regulations regarding financial qualifications.

Contention 3:

6. ATWS is regarded as an unresolved generic safety issue. There are no Commission regulations regarding ATWS at the present time. However, the Staff has identified the type of plant modifications which would reduce the ATWS risk and their final recommendations regarding design changes are contained in Volume 4 of NUREG-0460. These recommendations are incorporated in a proposal for rulemaking pending before the Commission.

7. The V.C. Summer facility uses a Westinghouse pressurized water reactor, which has a greater inherent ATWS mitigation capability than

other light water reactors. NUREG-0460, Vol. 3; SECY-80-409 at 5. This reactor can operate pending completion of the Commission decision on ATWS because the risk from ATWS events is acceptably small. Safety Evaluation Report (SER), §15.3.5.

8. To further reduce the risk from ATWS events prior to completion of any Commission-directed modifications, the Staff has required that certain interim measures be taken at the V.C. Summer plant. An applicant must develop emergency procedures to train operators to recognize an ATWS event and train operators to take corrective action during an ATWS event. Id.

9. The Applicant has committed to complete these interim NRC Staff requirements to further reduce the risk from an ATWS event. On January 28, 1981, the Applicant submitted emergency operating procedures for postulated ATWS events that are consistent with currently acceptable Westinghouse guidelines. The Staff has reviewed these emergency operating procedures for training operators to recognize and handle an ATWS event, and concludes that they are acceptable. SER §§15.3.5 and 22.3, item I.C.8. The Applicant is also training operators to recognize and handle ATWS events. The applicable requirements for a training program have been met and there is reasonable assurance that qualified individuals will be available for safe operation of the facility. SER, §13.2. Thus, the facility may operate during the interim period before completion of whatever plant modifications the Commission determines to be necessary.

Contention 4(b):

10. Site seismicity has been monitored by both the Applicant and the USGS prior to, during, and continuously since filling of the Monticelio Reservoir.

11. The Applicant has committed to monitor the site seismicity until the end of 1982 at which time an evaluation will be made to determine if its monitoring program should be continued.

12. The Staff will impose a condition to the operating license that the Applicant's seismic monitoring program will not be terminated without written approval from the Staff.

13. There is no present justification to impose an absolute requirement to continue monitoring through 1983.