Dated: August 28, 1981

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
GENERAL ELECTRIC COMPANY,	)	Docket No. 70-1308
	)	72-1
Consideration of Renewal of Material License No. SNM-1265 Issued to G. E. Morris Operation Spent Fuel Storage Installation	)	

GENERAL ELECTRIC COMPANY'S MOTION FOR SUMMARY DISPOSITION AND MEMORANDUM IN SUPPORT THEREOF

Applicant, General Electric Company ("General Electric") hereby moves, pursuant to 10 C.F.R. § 2.749,1/ for a decision by this Board in General Electric's favor as to all of the matters in controversy in this proceeding.

The issues in this proceeding, on which General Electric seeks summary disposition, are set forth in the Board's "Order Ruling on Contentions" dated June 4, 1980, and "Order Ruling on Additional Contentions Requested by the State of Illinois and Rorem, et al." dated March 16, 1981. Each contention should be resolved in General Electric's favor by summary disposition, because there are no genuine issues of fact to be heard with respect to any contention. General Electric's Statement of Material Facts as to Which There is

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ADD:
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1/ 10 C.F.R. § 2.749 is set out in full in Appendix A to this motion.

no Genuine Issue to be Heard, purusant to § 2.749(a), has been filed concurrently with tis motion, as has General Electric's Answer to Board Question One. The latter demonstrates that no triable issue of fact exists regarding that question.

This motion first describes the legal standard for summary disposition under § 2.749, and then turns to analysis of each individual contention. Finally, it is demonstrated that Board Question One is also appropriately ruled on by summary disposition.

Legal Standard Governing Summary Disposition

Section 2.749(d) provides:

> "The presiding officer shall render the decision sought if the filings in the proceeding, depositions, answer to interrogatories, and admissions on file, together with the statement of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law."

It has been frequently held by Atomic Safety and Licensing Boards and Appeal Boards that the standard found in 10 C.F.R. § 2.749 is analogous to the rule governing summary judgment under Rule 56 of the Federal Rules of Civil Procedure. E.g., Alabama Power Co., (Joseph M. Farley Nuclear Plant, Units 1 & 2) ALAB-182, 7 A.E.C. 210 (1974); Gulf States Utilities Co., (River Bend Station, Units 1 & 2) LBP-75-10, 1 N.R.C. 246 (1975). Furthermore, the principles of federal practice under Rule 56 "are appropriate for determining

motions for summary disposition under 10 C.F.R. § 2.749." Public Service Co. of New Hampshire, (Seabrook Station, Units 1 & 2) LBP-74-36, 7 A.E.C. 877, 878 (1974).

Under federal practice, as under 10 C.F.R. § 2.749(b), mere allegations or contentions are insufficient to resist a properly supported motion for summary judgment; only by setting forth "specific facts" showing a genuine issue of material fact can the motion be defeated. Rule 56(e), Fed. R. Civ. P.; 10 C.F.R. § 2.749(b). A federal appellate court has described a "genuine issue" as follows:

> "The rule . . . that summary judgment may not be rendered when there is the 'slightest doubt' as to the facts no longer is good law. [Citations omitted.] When the movant comes forward with facts showing that his adversary's case is baseless, the opponent cannot rest on the allegations of the complaint but must adduce factual material which raises a a substantial question o. the veracity or completeness of the movant's showing or presents countervailing facts." Beal v. Lindsay, 468 F.2d 287, 291 (2d Cir. 1972).

A material fact is one that may affect the outcome of the litigation. Mut. Fund Investors, Inc. v. Putnam Mgt. Co., 553 F.2d 620 (9th Cir. 1977).

Thus, an Atomic Safety and Licensing Board has explained the application of these principles under 10 C.F.R. § 2.749 as follows:

> "Summary disposition is only authorized where the moving party is entitled to judgment as a matter of law, where it is quite clear what the facts are, and where no genuine issue remains for trial. In determining such a motion, the record will be viewed in the light most favorable to the party opposing the motion. The opposing party need not show that he would prevail on the factual issues, but only that there are

such issues to be tried." [Footnotes omitted.] Pacific Gas & Electric Co., (Stanilaus Nuclear Project, Unit No. 1), LBP 77-45, 6 N.R.C. 159, 163 (1977).

See also Public Service Co. of New Hampshire, et al., (Seabrook Station, Units 1 & 2), LBP 74-36, 7 A.E.C. 877 (1974).

Recently, most contentions in Public Service Co. of Oklahoma, et al., (Black Fox Station, Units 1 & 2), LBP-78-30, 8 N.R.C. 327 (1978) (hereinafter cited as "Black Fox Station"), a construction permit application, were disposed of under the standards set forth in section 2.749. Much of the analysis in Black Fox Station is useful for purposes of the instant case. For example, in that case, the intervenor contended that the applicants "[had] not adequately assessed" flow-induced vibration effects on certain plant components because, among other reasons, the components lacked the benefit of previous plant experience or tests. The board observed that "[t]here is surely no requirement that all features of a proposed plant have the 'benefit of previous plant experience'" or "have been tested by the time a construction permit is issued." The board further observed that the intervenor had not denied that the applicant had complied with applicable regulations, and concluded as to this point, "we see no triable issue of fact here." The Black Fox Station case contains other similar valuable analysis of the summary disposition standard and will be referred to in discussion of the instant contentions.

Gulf States Utilities Co., (River Bend Station, Units 1 & 2) LBP-75-10, 1 N.R.C. 246 (1975), is of similar import. There the intervenor contended that the applicant's consideration of salt-dome siting for its reactor had been inadequate. The board found that the applicable statute, the National Environmental Policy Act, 42 U.S.C. § 4321 (1979), "was never intended to require an agency to extend environmental consideration to alternatives" such as those proposed by the intervenor, and summarily disposed of the contention. Because the fallacy rejected in Gulf States - expanding statutes and regulations beyond their reasonable intention - is so common in the instant contentions, Gulf States will also be referred to in the discussion of the various contentions which follows.

Finally, another important precedent is Florida Power & Light Co., (Turkey Point Nuclear Steam Generating Station, Units 3 and 4) LBP-_____, ____ N.R.C. ____, Docket Nos. 50-250-SP and 50-251-SP (May 29, 1981). There, the licensing board disposed of all the intervenor's contentions by summary disposition. The Board concluded, "[t]here are therefore no cognizable contentions that remain to be heard, and hence there is no necessity to hold an evidentiary hearing." The board relied upon Virginia Electric and Power Co., (North Anna Nuclear Power Station, Units 1 and 2), ALAB-584, 11 N.R.C. 451 (1980), and Houston Lighting and Power Co., (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 N.R.C. 542, 550 (1980). This latter case is also applic-

able to the instant facts in that there, the appeals board referred to § 2.749 as "an efficacious means of avoiding unnecessary and possibly time-consuming hearings on demonstrable insubstantial issues."

In the instant case, General Electric seeks nothing more than to continue an activity already licensed and conducted safely for almost ten years. For almost two and a half years, Illinois has protracted and confounded this simple issue with the kind of costly and pointless nuisance litigation which has brought the regulatory procedure into disrepute.

Finally, at the second Prehearing Conference held in this matter on August 14, 1981, Illinois admitted that it had produced all the evidence it has to support its contentions. (8/14/81 Tr. P. 170). All of that previously presented evidence is addressed in this motion. The only conclusion that can be drawn from it is that Illinois has no material evidence to raise a genuine issue of fact regarding any contention. Illinois has already stipulated that there is nothing further to be considered:

> "Obviously we cannot present anything that we have not provided in discovery.
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> * * *
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> [General Electric] could move to strike anything that Illinois submits in its response to [General Electric's] Motion for Summary Judgment on the ground that it was not provided in discovery." (Id. at 171, 182.)

It is time to apply the rules to bring about an efficient end to this litigation by finding that there is no genuine issue of fact and by dismissing all the contentions.

Contentions

Previously admitted contention 1(b)(v) through (ix) and contention 6 were proposed by Intervenor Rorem, et al., who was dismissed from this proceeding by the Board's Order of June 17, 1981. These Rorem contentions have also been dismissed from the proceeding. See Board Order of August ___, 1981. They are, accordingly, not addressed in this motion.

Contention 1 reads:

> Contention 1 The Consolidated Safety Analysis Report (CSAR)2/ does not adequately describe the following:
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> (a) The consequences of simultaneous accidental radioactive releases from the Dresden Nuclear Power Station and the Morris Spent Fuel Storage Facility;
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> (b) The risks and consequences of the release of radioactive elements in excess of Part 20 regulations as a result of any of the following accidental occurrences at the Morris facility: (i) the consequences of an accident caused by a tornado impelled missile; (ii) a loss of coolant accident, alone and in conjunction with an accident which has caused a rift in the building structure; (iii) earthquake related accidents; (iv) sabotage related accidents not analyzed in NEDM-20682.

2/ The "Consolidated Safety Analysis Report for Morris Operation," NEDO 21326C, Volumes 1 and 2, January, 1979, as most recently revised, is referred to herein as the "CSAR." Where applicable, Attachment G to General Electric's amended application for license renewal under 10 C.F.R. Part 72, dated 1/12/81, and supplements, ("Att. G") contains information superceding that in the CSAR.

Contention 1(a): Dresden/Morris Simultaneous Accidents

As to contention 1(a), no statute or regulation requires (or, to General Electric's knowledge, even recommends) that the CSAR describe simultaneous accidents at two unrelated facilities.3/ There has never been an accident at either Dresden or Morris which has had any detectable effect on the other facility. Simultaneous accidents have been considered by Morris management, but, because of the passive nature of the Morris fuel-storage operation, such events appear not to be significantly more serious than the single events described in detail in the CSAR.4/ Indeed, if the proximity of the Dresden and Morris facilities has any identifiable impact on a postulated accident at either facility, it would be to reduce any accident's potential seriousness because of the ready availability of duplicate safety equipment and services, such as radiation protection and monitoring gear, communication equipment, huge volumes of makeup water, and the expertise and experience of trained personnel at each facility, to name but a few items.5/

The sole factual basis advanced by Illinois for contention 1(a) is given in Illinois' Answer to General Electric's Interrogatories, which refers only to the so-called MHB

3/ See Deposition of Eugene E. Voiland taken September 4, 1980 (hereinafter "Voiland Deposition") at 18-20.

4/ Voiland Deposition, 89 et seq.

5/ See Affidavit of Eugene E. Voiland (hereinafter referred to as "Voiland Affidavit"), ¶2, 3. The Voiland Affidavit is Appendix B to this motion.

Report;6/ of the page numbers specified in Illinois' Supplemental Response to General Electric Company's First Set of Interrogatories, the only section even remotely related to contention 1(a) is § 4.2.1, a section which deals with no specific accident, but only with "Event Diagrams." Neither simultaneous accidents nor any accident or event at the Dresden power plant is mentioned anywhere in that section, or, for that matter, in the entire report. In these circumstances, where absolutely no factual basis has been advanced in support of the contention, and particularly where the contention merely alleges the existence of conditions not contrary to any regulation, and complains of a part of the CSAR which is in full compliance with pertinent regulations, the controlling precedents are Black Fox Station and Gulf States Utilities Co., supra, and summary disposition is appropriate.

Contention 1(b)

A similar situation exists with reference to a contention 1(b) This is a contention that "risks and consequences" of four specified events have not been described in the CSAR. They are: (i) tornado-impelled missiles (ii) loss of coolant with or without binding rift, (iii) earthquake, and (iv) sabotage not described in the sabotage analysis. Illinois has declined to define "risks and consequences" or

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6/ "Technical Review of Risk Due to Expansion of the Morris Operation Spent Nuclear Fuel Storage" prepared by MHB Technical Associates of Palo Alto, California, and dated February, 1979 was produced by Illinois in its document production to General Electric. It is referred to herein as the "MHB Report." A copy of that report is Appendix C to this motion.

the manner in which the CSAR's description of them is deficient, but merely refers to the MHB Report.7/

1. Tornado-impelled Missiles

On the issue of tornado-impelled missiles, the MHB Report (Illinois' only asserted basis for this contention) is practically silent. Section 4.1.4 of the MHB Report, the only section which gives more than merely passing consideration to tornados, is concerned with a tornado reducing the level of pool water in combination with tornado-impelled missiles. That section, however, contains no analysis, but merely suggests that evaluation of the combined effects of such an event on the missile analysis should be undertaken.

The analysis provided by General Electric considers the effect of tornado-generated missiles passing through the protective layer of water before striking the fuel. It concludes that it is doubtful that even the missile with the greatest energy would cause fuel damage sufficent to jeopardize safe containment.8/ However, the CSAR analysis is based on the conservative assumption that all fuel rods in six boiling water reactor fuel bundles or four pressurized water reactor fuel bundles are ruptured. Whole body dose rates for a person at the site boundary would be no greater than 0.8 mRem, or less than .016% of the design basis accident dose limit specified in 10 C.F.R. 72.68(b).9/ The NRC tornado

7/ See Illinois' Answers to General Electric's Interrogatories No. 6 through 8.

8/ CSAR at § 8.8.1

9/ Id. at § 8.8.3.

analysis takes no credit for protective water over the fuel and finds a whole body dose for the nearest resident of 5.7 mRem, which is less than 0.12% of the design basis accident dose limit, and 4.2% of the dose from naturally occurring sources.10/ Illinois has made no showing that partial water removal would significantly alter either the missile analysis performed by NRC staff or that contained in the CSAR.

In the Black Fox Station case, the Board summarily disposed of an Intervenor's contention regarding, among other things, "tornadic phenomena related to: (a) missile penetration of the containment" finding no triable issue of noncompliance regarding Part 50 regulations. The same result is appropriate here.

2. Loss of Coolant

Illinois' next contention, involving coolant loss, is apparently based entirely on a single paragraph of the MHB Report,11/ the last paragraph of section 4.1.4. The gist of that paragraph is:

10/ "Environmental Impact Appraisal Related to the Renewal of Materials License SNM-1265 for the Receipt, Storage and Transfer of Spent Fuel," NUREG-0695, June, 1980, at § 8.1.1.

11/ See Illinois' Answer to General Electric's Interrogatory No. 7. Section 4.1.4 of the MHB Report is the only section which even mentions coolant loss; § 4.1.10 deals exclusively with adequacy of the cooling system.

"Some experts feel that spent fuel discharged more than 3 months and stored in conventional racks might not melt even if provided only with air cooling."

That is, radiation hazard would still be containable in the extremely unlikely event of loss of all 680,000 gallons of basin water. The MHB Report never suggests that under any credible coolant-loss circumstances: (1) there would be any danger of warning system failure; (2) there would be any shortage of makeup water; or (3) there would be any resultant radiation exposure of any person. All of these charges are, in any event, thoroughly refuted in General Electric's evidentiary submissions that accompany this motion.12/

3. Earthquake

Illinois' next contention involves earthquakes, which are mentioned at no point in the MHB Report, except to note that earthquakes are unlikely in the Morris Operation area. See MHB Report, pp. 3-3, 3-4. Illinois has asserted, therefore, no basis whatsoever for this contention which flies in the face of the detailed, conservative geological and seismic analysis in the CSAR.13/

4. Sabotage

Illinois' final contention under contention 1 involves sabotage, and so will be treated together with contention 2, which addresses sabotage exclusively.

Contention 2 reads:

12/ See Voiland Affidavit, ¶3.

13/ CSAR at § 4.2.4 et seq.

Contention 2 The Physical Security Plan does not meet the requirements of 10 C.F.R. Part 73. Further, the CSAR does not provide an adequate assessment of credible risks of sabotage related events inasmuch that the advances in the technology of explosives, which could make sabotage a more probable event, have not been adequately addressed.

Illinois has abandoned the first sentence of contention 2 and has denied contending that sabotage related events are a threat.14/ Consequently, contention 2, like contention 1(b)(iv), assets nothing more than that the CSAR does not adequately address "advances in the technology of explosives," because this is the only sabotage event not addressed in the Sabotage Analysis identified by Illinois. General Electric is at a loss to understand the relevance of this point in light of Illinois' disavowal of any contention that such explosives pose a threat to the Morris Operation.

First, it is the inert nature of the spent fuel and the protective barriers against release provided by the storage pool water, storage hardware and facility structures - not any inherent parameter of available explosives or sabotage techniques - that makes the Morris Operation virtually invulnerable to any off-site consequence of sabotage. Consequently, the CSAR's extensive analysis of every possible storage mishap is equally valid for sabotage-caused events and naturally caused ones.15/ The spent fuel bundles at

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14/ See Illinois' Answers to General Electric Interrogatories No. 9 and 10.

15/ See CSAR, chapter 8.

Morris are stored in steel containers latched into a storage matrix under 14 feet of water. The fuel grapples and basket yokes are so designed as to be incapable of raising the fuel -- whether inadvertantly or by design -- so as to expose the fuel even to the air in the basin structure let alone convey it beyond the site boundary.16/ Explosives -- of whatever potency -- are incapable of pulverizing the fuel to disperse it beyond the site boundary. In addition, placing an explosive close enough to the fuel to affect it at all, or manipulating the fuel for any sabotage purpose, could expose the saboteur to the fuel's radioactivity.17/ This alone would deter most saboteurs from undertaking such activity. These features are unaffected by recent developments in explosive technology which have potential for only fractional increase in a saboteur's ability to disperse radioactive materials from the fuel matrix into the air or groundwater.18/

Second, General Electric has prepared an extensive sabotage analysis which includes consideration of practical quantities and types of explosives,19/ including high-

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16/ Id.

17/ Voiland Deposition at 26.

18/ Voiland Affidavit, ¶4.

19/ Voiland Deposition at 95. General Electric's sabotage analysis is contained in its "Sabotage Analysis for Fuel Storage at Morris," NEDM-20682, November 1, 1974.

powered military C-4 explosive.20/ Illinois, when asked, has suggested no specific "advances in the technology of explosives" contemplated by its contention,21/ and has offered as its regulatory basis only §73.50,22/ with which the Morris Operation is in full compliance, and which does not mention explosions or explosives at all. Even § 73.55, applicable to power reactor licenses, refers to explosives under the rubric of "hand-carried equipment" of hypothetical saboteurs, demonstrating a regulatory intent to deal only with realistic quantities and types of sabotage devices. Nor is Illinois able to identify any particular in which General Electric's Physical Security Plan fails to meet or exceed all regulatory requirements.

Third, Illinois totally ignores that an analysis such as that contemplated by the second sentence of contention 2 is not required by the regulations and is not a license condition.23/ Thus, Illinois seeks to penalize General

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20/ Deposition of David M. Dawson taken September 12, 1980 (hereinafter "Dawson Deposition") at 23 et seq.

21/ Illinois' Answer to General Electric's Interrogatory No. 12.

22/ Illinois Answer to General Electric's Interrogatory No. 13.

23/ General Electric's sabotage analysis was prepared and submitted to the NRC in an effort to exclude the storage basin area at Morris from being considered a vital area under 10 C.F.R. § 73.50. The NRC Staff, however, concluded that the analysis, standing alone, was not sufficient to modify the protection requirements for the Morris facility. Accordingly, the fuel storage basin area is a vital area within 10 C.F.R. § 73.50. Dawson Deposition at 72-74.

Electric for the preparation of a useful Sabotage Analysis neither required by the regulations nor established as a license condition.

Once again, the Black Fox Station case is analogous. The intervenor there contended that plant design did not adequately protect the public from consequences of sabotage. The board reviewed the same regulations that govern physical security plans in the instant case and found both that they were inapplicable to construction permit applicants, and that the utility met or exceeded all the regulatory requirements anyway. Both of those findings parallel the fact in the instant case that General Electric is not required to do a high-explosive analysis, but has done a satisfactory one anyway. The board in Black Fox Station then granted summary disposition on the contention except for a question not analogous to any pending in this proceeding. The same result is appropriate here.

Contention 3 reads:

> Contention 3 The CSAR underestimates or does not state fully the projected effects on the health of personnel, and their families from occupational exposure to radiation inasmuch as:
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> (a) The CSAR does not state total whole body exposure to occupational personnel for the proposed licensed life of the Morris facility;
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> (b) The CSAR does not project expected genetic effects on personnel or to the general population caused by such whole body occupation exposures;
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> (c) The CSAR includes only irradiated fuel and contaminated basin water as radiation sources. Other tanks and pipes should be included as sources of occupational exposures;

(d) The CSAR does not account for additional radiation exposure to occupational personnel from all anticipated activities at the facility (i.e., fuel disassembly, dry storage or compaction all of which are projected for the near future at Morris);

(e) The CSAR does not address the absence of effective radiation monitoring of the air within the facility resulting from:

(i) No devices to measure radioactive materials in the air;

(ii) No routine procedure to measure Kr 85.

Illinois has abandoned so much of this contention as refers to "families,"24/ so all that remains is an attack on the CSAR's treatment of occupational exposure. This attack is said to be based upon the MHB Report and a document Illinois refers to as "Status of Existing Licensing."25/ General Electric has reviewed the MHB Report and determined that it contains no discussion of the information requested in subcontentions (a), (b), (d) and (e). Moreover, that Report (see specifically §§ 3.2.5, 4.1.8. 4.1.9) contains no discussion of the alleged consequences of any alleged radiation exposure related to the subject matter of contention (c) and no discussion of the alleged effects of any such alleged

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24/ Illinois' Answer to General Electric's Interrogatory No. 14.

25/ Illinois' Answer to General Electric's Interrogatory No. 16. General Electric assumes the document referred to in that answer is the 8-page "Status of Existing License" prepared by General Electric and dated 2/21/79. That document, which related to Part 72 as proposed, and consequently became obsolete upon implementation of that regulation, is Appendix D to this motion.

Report (see specifically §§ 3.2.5, 4.1.8, 4.1.9) contains no discussion of the alleged consequences of any alleged radiation exposure related to the subject matter of contention (c) and no discussion of the alleged effects of any such alleged exposure. The other document relied upon by Illinois mentions only contentions (c) and (e)(i) and (ii), and mentions them only in passing.

Contentions 3(a) and 3(b):
Whole-Body Exposure and Genetic Effects

Again, contentions 3(a) and 3(b) are governed by the Black Fox Station precedent because they are entirely without regulatory basis.26/ The whole-body exposure of occupational personnel has been determined in accordance with 10 C.F.R., Part 20 and is within the limitations contained in that part. See CSAR, § 7.5. To the extent that these contentions allege that those standards are inadequate they constitute an impermissible attack upon existing regulations and, accordingly, should be summarily disposed of pursuant to 10 C.F.R. § 2.758. In fact, after extended discussion at the first Prehearing Conference,27/ Illinois finally admitted

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26/ Illinois' Answer to General Electric's Interrogatory No. 14, which requests the regulatory basis for this Contention, refers to 10 C.F.R. Part 20, with which the Morris operation is in full compliance.

27/ A Prehearing Conference was held on February 29, 1980 at Morris, Illinois. The referenced discussion begins at page 63 of the transcript, hereinafter referred to as "2/29/80 Tr. p.__."

that these contentions go beyond any existing regulatory requirement and are not limited to compliance with 10 C.F.R. Part 20:

> "MS. SEKULER: . . . And, we would like to have the CSAR give us information not required by any rule now of the Commission.
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> * * *
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> "MS. SEKULER: Part 20 applies, but it is not extensive enough, and we would like to have more information." (2/29/80 Tr. pp. 69, 71) [Emphasis added.]

In support of its challenge to the adequacy of 10 C.F.R. Part 20, Illinois asserted that the NRC's recognition "that there is a need for a new regulation covering the requirements for extended spent fuel storage (43 Fed. Reg. 46309 (Oct. 6, 1978)) extends to the question of radiation dosage to occupational workers." (2/29/80 Tr. p. 70). This erroneous assertion, which in any event is beyond the scope of this proceeding, is put to rest by a review of new Part 72, which expressly refers to and incorporates only the radiation limitations set forth in 10 C.F.R. Part 20. See e.g., 10 C.F.R. §§ 72.15(a)(12) and 72.33(d).

Contention 3(c): Radiation Sources

Quite apart from lacking a regulatory basis, contention 3(c) is inaccurate on its face because documentation submitted supporting the license renewal contains an analysis of the total radiation exposure to employees irrespective of

the source.28/ The only bases stated for this allegation, which is quite blatantly contrary to fact, are some vague statements in § 4.1.9 of the MHB Report that an unspecified cask-venting mishap might result in personnel exposure. The MHB Report section on cask handling charges that increased exposure could result from errors, but then refers to seven such errors, none at the Morris Operation, without citing a single overexposure. Moreover, as with each part of contention 3, this one should be dismissed because all radiation exposure levels at Morris are well within the limits established by 10 C.F.R. Part 20.

Contention 3(d): Dry Storage, etc.

Contention (d) likewise requires no prolonged consideration. It also is premised, on its face, on a factual inaccuracy, which also makes it quite irrelevant to this proceeding. As against the contention's assertion that disassembly, dry storage and compaction are all "projected for the near future at Morris," for which the Illinois offers not a whisper of evidentiary basis, General Electric's current license, renewal application, and uncontradicted

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28/ See "Operating Experience -- Irradiated Fuel Storage at Morris Operation," NEDO-20969 B2/B3, § 4 (January, 1979) (hereinafter referred to as "Operating Experience Report."); CSAR, Chapter 7; Voiland Deposition at 30.

testimony 29/ all confirm that none of those activities is permitted within the existing license or the requested renewal.

Contention 3(e): Air Monitoring and Kr 85

Contention 3(e)(i) is based on similar fantasizing by Illinois. As a matter of fact (and again Illinois has offered not a shred of evidence to the contrary), the Morris facility maintains three independent capacities to monitor the presence of airborne radioactive materials. First, fixed air monitors constantly sample and measure airborne radioactive material, and are equipped to alarm when certain threshhold concentrations are exceeded.30/ Second, material collected in the ventilation system filters is periodically subjected to radiometric analysis in the laboratory.31/ Finally, portable air samplers are regularly used to make spot checks of concentrations of airborne nuclear material.32/ In light of these multiple methods of constant air monitoring, contention 3(e)(i) cannot be sustained. The claim that "there are no devices to measure radioactive materials

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29/ Voiland Deposition at 37 et seq.; see also General Electric's response to Board Question 1, and pages 40-1 infra.

30/ CSAR § 7.4 et seq.

31/ Id.

32/ Voiland Deposition at 31 et seq.

in the air" is incorrect at best.33/

With respect to contention 3(e)(ii), while the Morris facility does not routinely measure Kr85, appropriate calculations and analyses have established that Kr85 releases are well within applicable limits, a fact which is fully documented in the CSAR.34/ CSAR § 7.5.3. No support is provided for any allegation that this discussion or existing procedures in this regard are inadequate. Again, Black Fox Station and § 2.758 control.

33/ In addition to these measurements of radioactive materials in the air, the Morris facility continuously measures and records the ventilation exhaust air flow rates (stack air flow). See CSAR Table 5-2. Also, consistently with 10 C.F.R. 72.74(c)(1), the flow of environmental diluting air is measured on a continuing basis at the Dresden Meteorological Tower and reported to Morris on a monthly basis or upon request. This practice was in effect long before implementation of the controlling regulation. See Operating Experience Report, Ch. 5 and Appendices A/B2. Finally, personnel exposure to radiation from all sources is regularly checked with personal film badges and other dosimeters.

34/ The Generic Environmental Impact Statement On Handling and Storage of Spent Light Water Power Reactor Fuel reached a similar conclusion:

> "[The Nuclear Fuel Services] experience [at its spent fuel storage pool] indicates that even the rupture of a number of fuel elements in the storage pool would not cause a release of 85 Kr in sufficient quartities to be measurable off-site." NUREG-0575, Vol. 1, § 4.2.2.2 at pp. 4-15 (August, 1979).

See also Voiland Deposition at 92 et seq., 96 et seq.

Contention 4 reads:

Contention 4 The Decommissioning Plan proposed in the CSAR is inadequate for the following reasons:

(a) There is insufficient determination of ultimate decontamination and decommissioning costs. Costs have not been adjusted for inflation for the projected time of decontamination. CSAR pp. A7-13, A7-14. Without an accurate cost assessment GE cannot make a valid commitment to meet decommissioning costs;

(b) There is insufficient assurance that the applicant will be financially capable to meet decontamination and decommissioning costs. Other than a general statement regarding GE's present relative solvency there is no verifiable financial statement to show GE can meet future costs as is required by 10 C.F.R. § 70.22(a). A bond or other assurance of financial capability should be required to provide a guarantee that decontamination and decommissioning costs will be fully covered;

(c) There is no contingency plan to provide decommissioning of the Morris facility should an emergency, accident or other unforeseen event necessitate immediate and/or permanent abandonment of the Morris site;

(d) There is no consideration of possible perpetual care and maintenance due to incomplete decontamination or decommissioning including:

(i) inability to dispose of LAW vault material;

(ii) residual contamination of waste vaults or other stationary parts of the facility;

(iii) ground water contamination which would require maintenance to prevent leaching offsite;

(iv) unavailability of offsite low-level disposal facilities for the dismantled facility and wastes.

(e) The CSAR does not provide a description of the necessary financial arrangements to provide reasonable assurance that decontamination and decommissioning will be carried out as required by 10 CFR §§ 72.14(e)(3) and 72.18 in that the applicant's projected costs do not take into account the costs of complete removal of all radioactive materials nor of complete restoration of the facility to unrestricted use. 35/

Five of General Electric's Interrogatories sought a detailed explanation of the basis of this contention; Illinois had a three-word answer to all five Interrogatories: "See MHB Report." The five pages of the MHB Report devoted to decommissioning contain no financial analysis whatsoever, no suggestion of any event that could possibly require "immediate and/or permanent abandonment" of the Morris Operation, and no mention whatever of the possibility of "perpetual care." In fact, the MHB Report contains the following statements:

> "In general, the cost and effort required for LAW vault disposal are large but not insolvable." § 6.1
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> "The location of the evaporator in the canyon will be an aid in decommissioning the device." § 6.2
>
> "The old grids from basin 1 and 2 were cut up and shipped to a waste burial site. The same plan could be implemented for disposal of grids and liner plate in the future." § 6.4
>
> "Most structures of this size [pipes, pumps, filters, etc.] are small enough or can be cut up into small enough pieces to be drummed and hauled to a waste burial site for disposition." § 6.5

35/ Contention 4(e), previously designated State Additional Contention 1, was added to this proceeding by the Board's Order Ruling on Additional Contentions dated March 16, 1981.

"It was estimated that complete dismantlement [of the Barnwell Reprocessing Plant] would take approximately $58 million. Assuming that estimate is accurate, MO mismantlement would probably be somewhat less than that. . . ." § 6.6

There is quite clearly no factual basis for contention 4, as the MHB Report itself suggests.

At the time contention 4 was advanced, there was no regulatory basis for it either.36/ Since that time the NRC promulgated Part 72, which requires in § 72.18 that license applications for spent fuel storage facilities (and, ostensibly, renewal applications as well) contain technical and financial decommissioning information.37/ General Electric has fully complied with § 72.18 by supplemental filings dated January 12 and 13, 1981.

36/ Illinois grossly mischaracterizes the requirements of 10 C.F.R. § 70.22(a) which only provides:

> "Note: where the nature of the proposed activities is such as to require consideration of the applicant's financial qualifications to engage in the proposed activities in accordance with the regulations in this chapter, the Commission may request the applicant to submit information with respect to his financial qualifications." [Emphasis added.]

Indeed, the requirements of the new controlling regulations, §§ 72.14 and 72.18, are not substantially different from §70.22(a), as discussed in the text, but Illinois seeks to transform an informational request into a mandatory bond requirement without any basis in statute or regulation.

37/ Section 72.18 is Appendix E to this motion.

Contention 4(a): Inflation

Contention 4(a) is fanciful even under present regulatory standards. The only alleged inadequacy specified by Illinois is that the cost is calculated in terms of 1978 dollars. (The plan is dated December 1, 1978 and the calculations January, 1979.) Of course, the cost of decommissioning under the decommissioning plan can be projected to any future date by use of standard escalation factors in a simple mathemacical operation. Section 72.18, however, does not require any such assessment and consequently Black Fox Station and § 2.758 require dismissal of the contention.

No support for any allegation that General Electric's assessment of decommissioning costs is inaccurate is provided by I'linois. Neither does Illinois supply any basis for the underlying assumption that inflation will place the cost of decommissioning out of General Electric's reach. General Electric has fully satisfied every regulatory requirement with its decommissioning cost calculations and financial assurances (discussed below). Illinois may not add to the regulations by compounding financial and technical speculation.

Contention 4(b): Financial Assurance

As to contention 4(b), there is no basis for the contention that General Electric is not financially capable of decommissioning the Morris facility. The Morris Operation was licensed in accordance with 10 C.F.R., Parts 30, 40 and

70 and is still in compliance with those parts. No bond is required under Part 72 either, and General Electric's decommissioning plan has been brought into full compliance with those regulations, specifically §§ 72.14 and 72.18.

Indeed, it seems clear that these sections could not require a bond under present authorizing legislation. The NRC has statutory authority to require of any license applicant "such information as the Commission . . . may determine to be necessary to decide . . . financial qualifications of the applicant. . . ." 42 U.S.C. § 2232(a) (1979). [Emphasis added.] This statutory authority was intended to reach only "information."38/ This is clear from a recent amendment to the NRC's general authority adding authority to require bonds and other financial commitments in certain

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38/ The Senate Report on the Atomic Energy Act, S. Rep. No. 1699, 83rd Cong., 2nd Sess., states:

> "[Present 42 U.S.C. § 2232] sets forth the information that the Commission may require in any application for a license so as to assure the Commission of adequate information on which to fulfill its obligations to protect the common defense and to protect the health and safety of the public."

The same language appears in H.R. Rep. No. 2181, 83rd Cong., 2nd Sess. Further, the word "information" is used interchangeably with "data" in the Act. See chapter 12 of the Atomic Energy Act, 42 U.S.C. § 2161, et seq.

limited circumstances.39/ Obviously, if general implied authority existed to require bonds or if authority existed to require bonds with license applications under 42 U.S.C. § 2232, the new provision would be surplusage. The clear implication is that there is no such authority. An intervenor in a relicensing proceeding cannot do by indirection what is not allowed by the Atomic Energy Act.

Finally, General Electric's financial assurances are overwhelmingly persuasive that decommissioning costs will be manageable even based on Illinois' exorbitant estimates of such costs. In fact, Illinois' asserted documentary basis for Contention 4, the MHB Report, estimates decommissioning costs at an amount ("somewhat under" $58,000,000) which is less than one percent of General Electric's $6,307,600,000 retained earnings account.40/ General Electric has committed itself to carry out the decommissioning of the Morris Operation in accordance with then applicable federal laws and regulations

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39/ The Uranium Mill Tailings Radiation Control Act of 1978, P.L. 95-604, added a new subsection (x) to 42 U.S.C. § 2201, the general powers of the Commission. The new subsection empowers the Commission to require "an adequate bond, surety, or other financial arrangement" as a precondition to termination of a byproduct material license covering mill tailings. The House Report on this provision, H.R. Rep. No. 1480 Part 2, 95th Cong., 2nd Sess., states at p. 44 that a plenary rulemaking proceeding will be necessary to implement the provision.

40/ As of 1979 per Moody's Industrial Service. General Electric's total capital surplus was closer to $7 billion according to that source and is larger now. Furthermore, General Electric has estimated the cost of decommissioning the Morris Operation to be about one-tenth of the estimate in the MHB Report. CSAR Appendix 7.

(see CSAR Appendix 7); in light of this assurance, and General Electric's resources and proven earning performance, there is no basis to contend that Morris Operation will not be safely decommissioned.

Contention 4(c): Emergency Abandonment

Contention (c) is vague and incomprehensible in that the phrase "emergency, accident or other unforeseen event necessitate immediate and/or permanent abandonment" is undefined, and has no common sense meaning. Neither Illinois nor the MHB Report identifies any such emergency or other event, and neither establishes a basis for considering the CSAR inadequate. Moreover, there is no regulatory requirement that the CSAR contain contingency planning for emergency decommissioning.41/

Contention 4(d): Perpetual Care

Contention 4(d) goes far beyond the scope of this proceeding and parts (i) through (iv) are factually incorrect and should be dismissed for want of basis. Regarding each part, it is sufficient to point out the following: (i) material from the LAW vault can be disposed of under current regulations and procedures at existing licensed facilities, for example, Beatty, Nevada and Hanford, Washington; (ii) currently available techniques, including detergent scrubbing and acid etching, exist to decontaminate

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41/ Since subcontentions 5(a) and (b) are very similar to subcontention 4(c), the Illinois' speculations about emptying the pool are dealt with in greater detail there. See pages 33-35 infra.

the vaults (see CSAR, Appendix A.7);42/ (iii) ground water or perched water contamination has been demonstrated not to occur (see CSAR, Appendices B.10 and B.12; §§ 8.3.1.1 and 8.3.1.2; see also "Operating Experience Report" NEDO-20969 B3, supra, § 5.3); and (iv) in view of the decision by the NRC to address the question of long-term or permanent storage and disposal of nuclear waste in a generic proceeding, this subsection should not be considered by this Board.43/

At the first Prehearing Conference, Illinois sought to avoid the guidelines established by the NRC in its pending rulemaking proceeding concerning "Storage and Disposal of Nuclear Waste," 44 Fed. Reg. 61372 (Oct. 25, 1979). To that end, Illinois asserted:

> "MS. SEKULER: The rule making is going to address the question of whether by the year 2007, 2009, there will be adequate permanent storage facilities for high level waste disposal.
>
> "Our concern here is not to determine whether those facilities will be available, but to determine whether GE has -- its exactly as related to (c). Is there any contingency plan for a situation where decommissioning has been decided upon, but there isn't any place to put the kinds of waste that will occur because of decommissioning." (2/29/80 Tr. p. 85.)

Consideration of that issue in this proceeding, however, is expressly precluded by the pending rulemaking. One purpose

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42/ These two points are confirmed by the MHB Report at § 6.1.

43/ Regarding these two points, Illinois has stated nothing to the contrary.

of the rulemaking is to reassess the NRC's earlier, and still controlling, finding that there exists "reasonable assurance that methods of safe permanent disposal of high-level waste would be available when they were needed." 44 Fed. Reg. 61273. In commencing this rulemaking, the NRC declared that issues covered by that proceeding should not be considered in individual licensing actions. One such issue is "whether radioactive wastes can be safely stored on-site past the expiration of existing facility licenses until off-site disposal or storage is available." Id. Finally, should the NRC conclude that consideration of on-site storage after license expiration is appropriate, "it will issue a proposed rule providing how that question will be addressed." Id.

Contention 4(e): Complete Removal

In addition to ignoring the legal and factual limits on its financial assurance contentions, as discussed above in relation to nearly identical contention 4(b), Illinois' contention 4(e) distorts the very regulations upon which it is purportedly based. Those regulatory provisions, 72 C.F.R. §§ 72.14(e)(3) and 72.18, do not require General Electric to take into account "the costs of complete removal of all radioactive materials" or "of complete restoration of the facility to unrestricted use," as the wording of the contention suggests. Accordingly, this contention is an attack on existing regulations and should be summarily

disposed of, pursuant to 10 C.F.R. § 2.758.

Moreover, Illinois' responses to General Electric's discovery requests with respect to contention 4(e) do nothing more than restate the contention. See Illinois' Answers to General Electric Company's Second Set of Interrogatories, Nos. 3(a), 4 and 5.44/ Even if General Electric were required to remove completely all licensed radioactive materials related to fuel storage at the Morris Operation, there is no doubt that this could be accomplished; however, this is not required by the regulations.45/ The conclusion is inescapable that the contention lacks any basis in fact or in law.

The regulations as promulgated require a showing of reasonable assurance that funds will be available to cover estimated shutdown and decommissioning costs, and that the decommissioning plan will provide adequate protection to the health and safety of the public. This contention does not in any way suggest that General Electric has not complied with those regulations, nor is there any basis for Illinois

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44/ General Electric filed its Motion for Leave for Additional Discovery together with Second Notice to Produce Documents and Second Set of Interrogatories directed to the State of Illinois on March 19, 1981. On March 24, 1981 General Electric withdrew parts of those discovery requests to conform to the Board's Order of March 16, 1981 rejecting Illinois' Proposed Additional Contention 2. The Board granted General Electric's Motion for Leave for Additional Discovery as so limited on April 21, 1981 and ordered Illinois to respond by May 5, 1981. On July 2, 1981, Illinois finally answered General Electric's Second Set of Interrogatories.

45/ Voiland Affidavit, ¶5.

so to contend. Again, the Black Fox Station rule requires dismissal.

Contention 5 reads:

Contention 5 The Emergency Plan in the CSAR is inadequate in that:

(a) The plan does not specify which emergency procedures will be utilized to unload the spent fuel pool and to transport and/or store irradiated fuel in the event that an emergency should necessitate transfer of the spent fuel from the Morris spent fuel pool.

(b) The CSAR should be supplemented to explain GE's plans for emergency transportation of irradiated fuel.

(c) There is no reference to tests or other means by which it can be determined that the existing emergency plans are adequate. Adequate test programs of both communications systems and procedures should be documented prior to licensing.

Illinois' position regarding this contention is curious in that not only is the MHB Report its only factual basis, but also when asked for the regulatory basis, Illinois replied that the MHB Report provided that authority as well.46/ Of course, there is no regulatory basis for the contention, and the MHB Report provides no factual basis either.

Contention 5(a): Unloading

Contention 5(a) is substantially similar to contention 4(c), and suffers from the same fatal defect: the

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46/ Illinois' Answer to General Electric's Interrogatory No. 23.

record contains no suggestion of any credible reason anyone might want to unload and transport all of the Morris pool's contents. Illinois candidly admitted that there was no regulatory basis for this contention,47/ and offered this as a factual basis in response to the Board's question:

> "Well, in a situation where, for instance, we had a LOCA which involves loss of cooling from the pool, and it could not be adequately made up in a period of time which would allow for some melting of the fuel, that fuel would have to be removed from the pool." (Tr. 2/29/80 at 93)

Illinois ignores the facts that its own MHB Report strongly suggests that no melting would occur even if all the coolant were lost,48/ and that the only evidentiary statements on the subject indicate that the chance of loss of more than a small fraction of the coolant is infinitesimally small, and that abundant sources of makeup water are readily available.49/ There is no triable issue here.

47/ At the first Prehearing Conference Illinois told the Board that there was no existing requirement, but that Part 72 might require such a plan. (Tr. 2/29/80 at 90-91). Part 72 as promulgated contains no such requirement.

48/ As noted above, the MHB Report states at page 49:

> "Some experts feel that spent fuel discharged more than three months and stored in conventional racks might not melt even if provided only with air cooling."

49/ See text at footnote 12/ supra.

Contention 5(b): Transport

Contention 5(b) concerns the same imagined problems as 5(a) and is similarly without basis. This contention is only in contention 5 because Illinois misunderstood Figure 9-4 in the CSAR to mean that some emergency fuel transportation plan is, or should be, in place. In fact, as Illinois now knows,50/ that figure refers to the Morris Operation's possible assistance in the event of a transportation emergency involving either nuclear material being shipped to Morris for storage or otherwise in transit anywhere near the facility, and has nothing to do with fuel already in storage at Morris. Finally, there being no regulatory requirement of an emergency transportation plan, contention 5(b) is another impermissible attack by Illinois on the applicable regulations; again, summary disposition is required by 10 C.F.R. § 2.758.

Contention 5(c) Testing

Contention 5(c) stands on no better footing. Illinois does not attempt to identify the "tests or other means" not currently employed to determine the adequacy of the emergency plans.51/ Contrary to Illinois' assertion,

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50/ Transcript 2/29/80 at 89-91.

51/ The existing procedures, in the NRC Staff's view, satisfies Illinois' concerns:

> "MS. ROTHSCHILD: I think we do what Ms. Sekuler says she wants done, which is in fact first to see if there are documents, and secondly to see what the documents say will be done, such as a drill, is actually being done. And we are concerned, and we inspect to see whether this is the case." (2/29/80 Tr. pp. 95-96)

provisions for testing are set forth in section 8.1 of General Electric's "Radiological Emergency Plan for Morris Operation" (NEDE-21894, June 1978). Illinois has not identified any deficiencies in that program. The communications system, which was of concern to Illinois, is tested three times a day.52/ Emergency procedures in general are tested on a quarterly basis.53/

In conclusion, the existing procedures are in complete compliance with applicable regulations. Accordingly, this contention should be summarily disposed of under the Black Fox Station rule.

Contention 7 reads:

> Contention 7 The Nuclear Regulatory Commission has an obligation under the National Environmental Policy Act (NEPA) 42 U.S.C. 4332 (1969) to issue an environmental impact statement which will account for environmental impact of normal operation of the Morris facility.

The ubiquitous MHB Report appears once again as the purported basis of this contention. As usual, however, that overworked document contains no reference to environmental impact issues, and even states in an appendix that those issues are not addressed.54/ Illinois references four other documents (namely, the Environmental Impact Appraisal NUREG-0695, the Generic Environmental Impact Statement NUREG-0571, "Spent Fuel Receipt and Sabotage [sic] the Morris Operation"

52/ Voiland Deposition at 47.

53/ Dawson Deposition at 21; Voiland Deposition at 46.

54/ MHB Report A-1.

NEDG-21889, and "Commentary on Spent Fuel Storage at Morris Operation" NUREG/CR-0956) as basis for this contention as well,55/ but none of those provide any basis either. Significantly, Illinois has specified no particular environmental impact or impacts which require issuance of an Environmental Impact Statement ("EIS").

The regulatory basis for this contention is similarly lacking. Illinois points to no legal requirement of an EIS, which the contention asserts; they rely on NEPA, 40 CFR §1500 et seq. and Part 51. A license renewal application does not necessarily require that the NRC prepare an EIS. 10 C.F.R. §51.5. Whether an EIS is required depends on the particular circumstances. Id. It is not the discretion of the NRC, guided by 40 C.F.R. §1500.6, and based upon the

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55/ Illinois' Answer to General Electric's Interrogatory No. 31. The Environmental Impact Appraisal and Generic EIS form the basis of the NRC's decision not to issue an EIS; Illinois offers no reason why they also support Illinois' attack on that decision. There is no such document as "Spent Fuel Receipt and Sabotage at the Morris Operation;" the document to which Illinois refers, correctly entitled "Spent Fuel Receipt and Storage at the Morris Operation," addresses no environmental issues, and is totally irrelevant to the EIS question. "Commentary on Spent Fuel Storage at Morris Operation" supports the decision not to issue an EIS (p. 5):

> "This routine receiving and handling operation has been conducted intermittently throughout the seven year period without any measurable effect on the environs, and without any over-exposure of personnel."

findings of an environmental impact evaluation prepared by the NRC Staff to determine whether an EIS should be prepared. That Staff evaluation for this proceeding concluded that a negative declaration supported by an Environmental Impact Appraisal 56/ was more appropriate than preparation of an EIS.

The recent decision in Consumers Power Company (Big Rock Point Nuclear Plant) ALAB-636, 13 N.R.C. ___ (1981) is controlling precedent on this point. In that case the appeal board considered the question whether NEPA required issuance of an EIS for expansion of a power reactor spent fuel pool. The licensing board had reasoned that although expansion of the spent fuel pool in itself would have no environmental impact, it would permit continued operation of the reactors which would have been impossible if the pool capacity were not enlarged. Since the Big Rock Point plant had been licensed prior to enactment of NEPA, operation of the plant had never been environmentally reviewed under that Act. The licensing board concluded that NEPA required an EIS for the project. After extensive and careful review of the legal authorities on NEPA, the appeal board reversed the licensing board, holding:

56/ "Environmental Impact Appraisal Related to the Renewal of Materials License SNM-1265 for the Receipt, Storage and Transfer of Spent Fuel," NUREG-0695, June, 1980.

> "Indeed, the whole purpose in considering primary or secondary impacts of an action is to determine if they have a cause-and-effect relationship with any environmental changes. [Footnote omitted.] Where, as here, there is no change in the environmental status quo, that purpose need not be served." [Emphasis in original.]

It is difficult to imagine an authority more closely in point for the instant proceeding. General Electric is seeking this license renewal only to continue without any change whatever the environmentally inconsequential function it has carried on at Morris for almost ten years. If anything, the Morris Operation presents a stronger case against the need for an EIS than the Big Rock Point plant did, since Morris was licensed after NEPA, and has already been subjected to environmental review under that law. This contention, like all that proceed it, should be dismissed from this proceeding.

Contention 8 reads:

> "The CSAR does not provide the safe control of the facility under off-normal or accident conditions as required by 10 CFR §72.72(j) in that it does not provide for adequate access to and from the control room during and after release of radiation in excess of 10 CFR Part 20 within the facility."

Contention 8, a newly admitted contention, is another example of Illinois' taking a position which is totally devoid of regulatory and factual basis. In the first place, 10 CFR §72.72(j) does not require "access to and from the control room" under accident conditions; that regulation requires only that "control areas" shall be designed so as "to provide safe control of the ISFSI under off-normal or accident conditions." Of course the Morris Operation is in

full compliance with the regulation as written: by its very nature the Morris Operation can be safely controlled even without intervention of the systems operated from the control room.57/ Consequently, local monitoring, control, and maintenance is always viable at Morris.

There is a second layer of implausibility to contention 8; ample alternate accessibility routes to and from the control room at Morris exist to provide ready accessibility under most probable accident conditions.58/

In addition to these defects on the face of contention 8, Illinois has provided no meaingful discovery with respect to this (or any other) newly admitted contention.59/ Clearly it has no basis, and dismissal under the Black Fox Station precedent is called for.

Contention 9 reads:

> "Applicant's operator training and certification program is inadequate to insure safety as required by 10 CFR Part 72, Subpart I in that Applicant's program fails to:
>
> (a) Establish any minimum academic requirement; and
>
> (b) Establish any criteria or numerical standards for passage or failure of testing and verification requirements."

57/ Voiland Deposition at 90 et seq.

58/ Voiland Affidavit at ¶6. General Electric's evidentiary submission completely refutes the inaccurate statement in Illinois' Answer to General Electric Company's Second Set of Interrogatories, No. 1(b), that "access routes are not discernable."

59/ See footnote 44/, supra.

In this contention, Illinois attacks 10 C.F.R. §72.91-§72.93. Those regulations require only that operators of equipment identified as important to safety and their supervisors shall be trained and certified. At the Morris Operation, such operators and supervisors are trained, tested, certified and regularly retrained and recertified.60/

The regulations do not set or require a minimum academic requirement or testing criteria. Illinois nevertheless contends that by failing to set such requirements, or criteria, the Morris Operation has somehow failed to comply with the regulations. Illinois' Answers to General Electric's Second Set of Interrogatories supply no basis for this contention; rather, they simply repeat its baseless allegations. See Illinois' Answers to General Electric Company's Second Set of Interrogatories, Nos. 3(c) and 10. Illinois merely contends that General Electric has violated some imaginary regulatory requirement without challenging any procedures at Morris. Illinois has offered no reason to suppose that any operator at Morris is inadequately trained or has been improvidently certified. This transparent attack on Subpart I should be summarily disposed of pursuant to 10 C.F.R. § 2.758.

60/ See letter of D. M. Dawson to R. E. Cunningham dated May 15 1981 in response to A. T. Clark's inquiry of May 8, 1981. This letter is Appendix F to this motion. See also Voiland Affidavit, ¶7.

Contention 10 reads:

> "Applicant's Technical Specifications do not comply with 10 CFR §§ 72.16 and 72.33 in that nothing therein precludes applicant from receiving, handling and storing damaged spent fuel and nowhere has Applicant identified, analyzed or evaluated such receipt, handling or storage of damaged spent fuel in accordance with any section of 10 CFR Part 72."

Consistent with the pattern established by virtually all of Illinois' contentions, this final one, which Illinois has provided with no factual basis whatever,61/ is predicated on a gross distortion of the governing regulations. Not only do §§ 72.16 and 72.33 not require ISFSI's to refrain from receiving damaged fuel, but paragraph 7 of the Preamble to Part 72 clearly expresses a reluctance to limit unduly the definition of spent fuel for ISFSI purposes. Rejecting comments on Part 72 that suggested that ISFSI-suitable "spent fuel" should be defined in terms of burn-up, specific activity, etc., paragraph 7 indicates that in practice the one-year decay requirement provides adequate protection from significant radionuclides present in used power reactor fuel.62/

Illinois, ignoring this clearly-expressed regulatory intent, as well as the language of §§ 72.16 and 72.33, seeks to redefine ISFSI-suitable "spent fuel" in terms of "damage," a totally unintelligible standard.

61/ See Illinois' Answers to General Electric Company's Second Set of Interrogatories, Nos. 3(d), 11 and 12, which simply repeat the contention, and object to answering one interrogatory.

62/ See 45 Fed. Reg. 74694.

Again, Illinois has provided no meaningful discovery on this contention,63/ and the only information available on the matter suggests that storage of damaged fuel is not, and will not become, a significant factor at the Morris pool.64/

The only credible evidence on this point demonstrates that damaged spent fuel can be safely stored at Morris without any adverse impact on the public health or safety or to the health or safety of occupational personnel.65/ This baseless attack on the regulations should be dismissed with all the others.

Board Question No. 1

General Electric also submits that it is entitled to summary disposition on the issues raised in Board Question No. 1. The relevant portions 66/ of that question are as follows:

> "(a) The Applicant is requested to identify the specific activities which the Applicant is requesting to continue or undertake within the proposed license renewal.
>
> * * *
>
> "(c) Both Applicant and Staff are directed to specify the criteria that will be used to determine whether possible future activities can be performed under the license in effect at that time, in contrast to requiring a license amendment."

63/ See footnote 61/, supra.

64/ Voiland Deposition at 87.

65/ Voiland Affidavit, ¶8.

66/ Question No. 1(b) is directed to the NRC staff and, accordingly, requires no response by General Electric.

Regarding subpart 1(a), as indicated by General Electric's Answer to Board Question No. 1, filed concurrently with this motion, the only activities which will be conducted under the renewed license, if it is granted, are those that are presently performed at the Morris Operation. These activities are related to the storage of spent fuel under water in the original fuel assemblies. No dry storage, fuel disassembling, or compaction is allowed under the license as presently issued or as it would be renewed.67/

Regarding subpart 1(c), General Electric believes that the Board's legitimate inquiry, as expressed in this question, has been answered by the recent promulgation of 10 C.F.R. § 72.35.68/ That section, entitled "Changes, Tests and Experiments," defines the criteria under which certain future activities can be performed under a license without requiring a license amendment. General Electric does now and will continue to comply with § 72.35. Since the regulation adequately defines the criteria for changes, tests and experiments, no further explanation of possible future activities at the Morris Operation is necessary or, in fact, possible, at this time.

67/ See footnote 29/ supra.

68/ Section 72.35 is Appendix G to this motion.

For these reasons, General Electric requests the Board to dispose summarily of all the issues in this proceeding in General Electric's favor and renew the license for the Morris Operation without a hearing.

Respectfully submitted,

GENERAL ELECTRIC COMPANY

By: Matthew A Rooney

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
GENERAL ELECTRIC COMPANY	)	Docket No. 70-1308
	)	72-1
Consideration of Renewal of	)	
Materials License No. SNM-1265	)	
Issued to GE Morris Operation	)	
Fuel Storage Installation	)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the above and foregoing GENERAL ELECTRIC COMPANY's MOTION FOR SUMMARY DISPOSITION AND MEMORANDUM IN SUPPORT THEREOF, together with Appendices A through J thereto, STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE TO BE HEARD, and RESPONSE OF GENERAL ELECTRIC COMPANY TO BOARD QUESTION 1, in the above-captioned proceeding on the following persons by causing copies thereof to be deposited in the United States mail at 231 South LaSalle Street, Chicago, Illinois, in plainly addressed and sealed envelopes with proper first class postage attached before 5:00 P.M. on August 28, 1981:

Andrew C. Goodhope, Esq., Chairman
Atomic Safety and Licensing Board
3320 Estelle Terrace
Wheaton, Maryland 20906

Dr. Linda W. Little
Atomic Safety and Licensing Board
5000 Hermitage Drive
Raleigh, North Carolina 27612

Dr. Forrest J. Remick
Atomic Safety and Licensing Board
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U.S. Nuclear Regulatory Commission
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Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
(2 copies)

Dennis A. McMahon

APPENDIX A

SUMMARY DISPOSITION ON PLEADINGS

§ 2.749 Authority of presiding officer to dispose of certain issues on the pleadings.

(a) Any party to a proceeding may, at least forty-five (45) days before the time fixed for the hearing, move, with or without supporting affidavits, for a decision by the presiding officer in that party's favor as to all or any part of the matters involved in the proceeding. There shall be annexed to the motion a separate, short and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard. Any other party may serve an answer opposing the motion, with or without affidavits, within twenty (20) days after service of the motion. There shall be annexed to such answer a separate, short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be heard. All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted unless controverted by the statement required to be served by the opposing party.

(b) Affidavits shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The presiding officer may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories or further affidavits. When a motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of his answer; his answer by affidavits or as otherwise provided in this section must set forth specific facts showing that there is a genuine issue of fact. If no such answer is filed, the decision sought, if appropriate, shall be rendered.

(c) Should it appear from the affidavits of a party opposing the motion that he cannot, for reasons stated, present by affidavit facts essential to justify his opposition, the presiding officer may refuse the application for summary decision or may order a continuance to permit affidavits to be obtained or make such other order as is appropriate and a determination to that effect shall be made a matter of record.

(d) The presiding officer shall render the decision sought if the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law. However, in any proceeding involving a construction permit for a production or utilization facility, the procedure described in this section may be used only for the determination of specific subordinate issues and may not be used to determine the ultimate issue as to whether the permit shall be issued.