



3/11/81

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
GENERAL ELECTRIC COMPANY))
(GE Morris Operation Spent Fuel))
Storage Facility))

Docket No. 70-1308
(Renewal of SNM-1265)

NRC STAFF STATEMENT OF POSITION
ON THE ADDITIONAL CONTENTIONS
OF INTERVENOR ROEM, ET AL.

On December 8, 1980, the Licensing Board issued an "Order Granting Stay of Proceeding" (Order). The Board's Order responded to the request of Intervenor the State of Illinois for a stay of further proceedings until 30 days after the effective date of new 10 CFR Part 72, "Licensing Requirements for the Storage of Spent Fuel in an Independent Spent Fuel Storage Installation".^{1/} In its Order, the Board stated that since Part 72 is now the controlling regulation in this license renewal proceeding, "it appears appropriate that additional time be granted for filing of amended contentions, replies thereto, and any further discovery which might be appropriate under the new Part 72". Order at 2. In its Order, the Board also adopted a schedule to control future proceedings, which was subsequently amended by the Board in "Order Ruling on Motion to Amend" (February 19,

^{1/} 10 CFR Part 72 became effective on December 12, 1980, 45 Fed. Reg. 78623 (November 26, 1980).

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1981). As amended, the schedule established February 26, 1981 as the date by which "any proposed amendments to contentions" are to be filed. Under the amended schedule, responses to amended contentions are to be filed by March 10, 1981.

In a document dated March 1, 1981, Intervenor Rorem, et al. (hereafter "Intervenor" or "Rorem, et al.") filed "Additional Contentions of Rorem, et al. (hereafter "Additional Contentions").^{2/} Rorem, et al. state that "they do not desire any modification or amendment of previously accepted contentions". Additional Contentions, at 1. The Staff herewith files its response to the Additional Contentions of Rorem, et al.

DISCUSSION

In the "NRC Staff's Statement of Position On The Contentions of Bridget Rorem, et al. (hereafter "Staff's Statement of Position"), November 20, 1979, the Staff included a discussion of certain legal principles which the Staff believes should govern consideration of contentions.^{3/} In

^{2/} The Board orally granted the request of Rorem, et al. for an extension of time until March 2, 1981, in which to file additional contentions. The additional contentions of Rorem, et al. were not received by Staff counsel until March 9, 1981. Accordingly, on March 9, 1981, Staff counsel orally requested an extension of time until March 13, 1981, in which to file the Staff's response to these additional contentions. Staff counsel stated, however, that the Staff would attempt to file its response prior to March 13, 1981. The Board orally granted the Staff's request for an extension of time, which the Staff has confirmed by letter to the Board dated March 10, 1981.

^{3/} See Staff's Statement of Position, supra, Section II, "General Principles Governing Admission of Contentions", at 3-5.

the Staff's view, these principles also apply to consideration of the additional contentions of Rorem, et al. With particular reference to the filing of proposed amended contentions (in view of the promulgation of new Part 72 of 10 CFR), the Staff has pointed out that "should the Intervenor seek to amend their contentions, they will have to file a motion requesting permission from the Board pursuant to 10 CFR § 2.714(a)(3), which requires that the factors in 10 CFR § 2.714(a)(1) be addressed". See "NRC Staff Answer to 1) Motion of The State of Illinois to Stay Proceedings and 2) Motions of General Electric Company For Sanctions Against Rorem, et al. and The State of Illinois For Failure to Comply With Discovery", October 29, 1980, at 5, fn.6. In this regard, the Staff notes that in the Additional Contentions, supra, Rorem, et al. does not address these factors. The failure of Rorem, et al to even address these factors, much less to persuasively show that a balancing of these factors favors admitting the proposed additional contentions, would be sufficient grounds to deny admission of the additional contentions of Rorem, et al. While not waiving this deficiency, the Staff has considered the proposed additional contentions to determine whether they meet the requirement in 10 CFR § 2.714(b) that the bases for each contention be set forth with reasonable specificity.

Based on the foregoing, and as set forth below, the Staff believes that all of the Additional Contentions (Additional Contentions A, B, C and D) fail to meet the requirements of 10 CFR § 2.714(b) and, accordingly, should not be admitted as issues in controversy in this proceeding. The Staff's position with respect to each of these contentions is set forth seriatim.

Additional Contention A

The CSAR fails to fully evaluate potential impact on the environment of spent fuel being transported into the area, such evaluation being required by 10 CFR 72.70.

Citizens of Illinois, or other states, who live along transportation routes for spent fuel, have a right to be protected from harm caused by a nuclear transportation accident. The Emergency Services and Disaster Agency (ESDA) of Illinois does not even pretend that it is now able to cope with a transportation accident: "It will probably be a couple of years before we get around to developing a specific plan for nuclear transportation accidents." (ESDA information officer Chuck Jones, as quoted by Star Newspapers, 9 October 1980.)

Staff Position

The Staff opposes the admission of this contention on the grounds that it is vague and lacks adequate basis and fails to alert the parties as to the matters sought to be litigated. 10 CFR § 72.70 requires that:

"The proposed ISFSI [Independent Spent Fuel Storage Installation] shall be evaluated with respect to the potential impact on the environment of spent fuel being transported into the area."

The Applicant has included in its amended application and in the revisions to the Consolidated Safety Analysis Report (CSAR) which were submitted after promulgation of 10 CFR Part 72 a discussion of the environmental impacts of the transportation of irradiated fuel.^{4/} Roem, et al. fails to allege or indicate in what manner the discussion of the transportation of irradiated fuel is deficient in this regard. Accordingly,

^{4/} See Applicant's Amendment Application, Attachment D, Section D7.2 (January 1981) and CSAR (NEDO-21326C), Revision C3, Section 3.8 (January 1981).

Additional Contention A lacks adequate basis and fails to alert the parties as to the matters sought to be litigated.

In addition, 10 CFR § 72.70, which is cited in the contention, does not appear to apply to GE Morris. 10 CFR § 72.70 is part of Subpart E (of 10 CFR Part 72), "Siting Evaluation Factors". Pursuant to 10 CFR § 72.31(c):

"For facilities that have been covered under previous licensing actions including the issuance of a Construction Permit under Part 50 of this chapter, a reevaluation of the site is not required except where new information is discovered which could alter the original site evaluation findings. In this case, the site evaluation factors involved will be reevaluated".

Since GE Morris has a license issued by the Commission pursuant to 10 CFR Parts 30, 40 and 70, GE Morris is "a facility that [has] been covered under previous license actions" within the meaning of 10 CFR § 72.31(c). Thus, application of 10 CFR § 72.70 (which is part of Subpart E of Part 72, "Siting Evaluation Factors") is not required, absent new information.^{5/} Rorem, et al. has alleged no such new information.

Based on the foregoing, the Staff opposes admission of Additional Contention A.

^{5/} In addition, the Supplementary Information accompanying the publication of 10 CFR Part 72 in the Federal Register, 45 Fed. Reg. 74693 (November 12, 1980) indicates that the transportation of spent fuel is to be considered only as part of the evaluation of site suitability. 45 Fed. Reg. 74697. In particular, it is stated that:

26. Transportation Considerations. A number of commenters considered that the transportation involved in spent fuel shipments to an ISFSI could be an important consideration in an evaluation of site suitability. This might be particularly true of a large installation. The Commission agrees and a new § 72.70 has been added to the rule to specifically address this point. Id.

Additional Contention B

The CSAR does not adequately describe decontamination and decommissioning procedures, as required by 10 CFR 72.18, so as to provide reasonable assurance for

- A. Health and safety of the public.
- B. Financial ability to carry out such procedures.

Staff Position

The Staff opposes the admission of this contention on the grounds that it is vague and lacks basis and fails to alert the parties as to the matters sought to be litigated. The Staff agrees that the application for a license pursuant to 10 CFR Part 72 must show that the Applicant will have the necessary funds available to carry out estimated shutdown and decommissioning costs, and the necessary financial arrangements to provide reasonable assurance prior to licensing that shutdown, decontamination and decommissioning will be carried out after the removal of spent fuel from storage. 10 CFR § 74.14(e)(3). In addition, the Applicant's plan must contain sufficient information to provide reasonable assurance that decommissioning and decontamination of GE Morris after the end of its useful life will provide adequate protection to the health and safety of the public. 10 CFR § 72.18.^{6/}

^{6/} The Staff has already obtained information from the Applicant in this regard and will continue to obtain information from Applicant concerning Applicant's decommissioning plan and Applicants' financial qualifications. The Staff's evaluation of Applicant's decommissioning plan is contained in the Environmental Impact Appraisal of this licensing action. See "Environmental Impact Appraisal Related To The Renewal of Materials License SNM-1265 for the Receipt, Storage and Transfer of Spent Materials License SNM-1265 for the Receipt, Storage and Transfer of Spent Fuel, Morris Operation, General Electric Company, Docket No. 70-1308," NUREG-0695, June 1980. The Staff's evaluation of Applicant's financial qualifications will be published in the Safety Evaluation Report.

Applicant's Decommissioning Plan is contained in Appendix A.7 to the CSAR. With respect to Applicant's financial qualifications, Attachment E of Applicant's amended application (January 1981) consists of a copy of the General Electric Company's Annual Report for 1979 (the most recent report). Financial arrangements related to decommissioning are discussed in Appendix A.7 to the CSAR (as revised, January 1981), Section A.7.5.3. Roem, et al. has failed to indicate in what manner the Applicant's Decommissioning Plan in the CSAR and related information does not "adequately describe decontamination and decommissioning procedures", and accordingly, Additional Contention B is vague, lacks adequate basis and fails to alert the parties as to the matters sought to be litigated. For these reasons, the Staff opposes the admission of Additional Contention B.

Additional Contention C

The CSAR does not adequately describe or evaluate such man-induced events as may be precipitated by the transportation and storage of damaged spent nuclear fuel.

Specifically, intervenors are concerned that licensing of the G.E. Morris Operation under 10 CFR 72 does not preclude the storage there of damaged nuclear fuel such as that in the core at Three Mile Island 2.

Staff Position

The Staff opposes admission of this contention on the grounds that it is vague, lacks adequate basis and fails to alert the parties as to the matters sought to be litigated.

The contention alleges, in essence, that the transportation and storage of spent fuel which has been damaged at another facility is a "significant man-induced event" affecting the facility's design, which, under 10 CFR § 72.63, the Consolidated Safety Analysis Report (CSAR) must "describe and evaluate". In this regard, it should first be noted that the CSAR specifically provides that shipment to the Morris Operation of spent fuel known to be defective and leaking is not permitted.^{7/} Rorem et al. has not provided any basis for contending that the Morris Operation will involve the transportation and storage of damaged spent fuel in general, or the "core at Three Mile Island 2", in particular. Further, Rorem, et al. fails to allege or indicate in what manner the CSAR discussion at p.7-5 is deficient in this regard. Accordingly, Additional Contention C lacks adequate basis and fails to alert the parties as to the matters sought to be litigated.

In addition, 10 CFR § 72.63,^{8/} which is the relevant regulation, does not appear to apply to GE Morris. 10 CFR § 72.63 provides (in pertinent part) that:

"the region shall be examined for both past and present man-made facilities and activities that might endanger the proposed ISFSI [Independent Spent Fuel Storage Installation]. The important potential man-induced events that affect the ISFSI design shall be identified". 10 CFR § 72.63(a).

^{7/} See "Consolidated Safety Analysis Report [CSAR] for Morris Operation, January 1979, at p.7-5. In the unlikely event that fuel not known to be defective is in fact received at the Morris Operation, the CSAR identifies the procedures which would be followed with regard to such fuel. Id.

^{8/} 10 CFR § 72.63 is part of Subpart E (of 10 CFR Part 72), "Siting Evaluation Factors".

Pursuant to 10 CFR § 72.31(c):

"For facilities that have been covered under previous licensing actions including the issuance of a Construction Permit under Part 50 of this chapter, a reevaluation of the site is not required except where new information is discovered which could alter the original site evaluation findings. In this case, the site evaluation factors involved will be reevaluated".

Since GE Morris has a license issued by the Commission pursuant to 10 CFR Parts 30, 40 and 70, GE Morris is "a facility that [has] been covered under previous license actions" within the meaning of 10 CFR § 72.31(c). Thus, application of 10 CFR § 72.63 (which is part of Subpart E of Part 72, "Siting Evaluation Factors") is not required, absent new information. Rorem, et al. has alleged no such new information.

Furthermore, by its terms, 10 CFR § 72.63 requires examination of the region for past and present man-made facilities and activities and not, as Additional Contention C asserts, that the CSAR "describe or evaluate such man-induced events as may be precipitated by the transportation and storage of damaged spent nuclear fuel".

Based on the foregoing, the Staff opposes admission of Additional Contention C.

Additional Contention D

License to receive, handle, store and transfer spent nuclear fuel should be granted to the G.E. Morris Operation only for such time as it operates with its present storage capacity.

Intervenors feel that if a license to expand is sought by General Electric, the whole facility should undergo a new licensing procedure, inasmuch as conditions presented in the CSAR will no longer be applicable.

Staff position

The Staff opposes admission of this contention on the grounds that it lacks adequate basis, is speculative and raises an issue which is beyond the scope of this proceeding. First of all, Rorem, et al. has not provided any basis for contending that in the application of General Electric Co. for renewal of the license to operate GE Morris, General Electric Co. is seeking to expand the present storage capacity of the Morris Operation. Further, the scope of this proceeding is limited to determining whether the license of the General Electric Co. to operate the GE Morris Operation, with its present storage capacity, should be renewed. An issue concerning whether a license may be sought to expand the storage capacity is beyond the scope of this proceeding. Any increase in the storage capacity of the facility would require an amendment to the facility license and would be the subject of a separate licensing action. Based on the foregoing, the contention must be rejected.

CONCLUSION

For the reasons stated above, the Staff opposes the additional contentions of Rorem, et al. and urges that the Licensing Board deny admission of these additional contentions.

Respectfully submitted,

Maïjorie Ulman Rothschild

Maïjorie Ulman Rothschild
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 11th day of March, 1981

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF STATEMENT OF POSITION ON THE ADDITIONAL CONTENTIONS OF INTERVENOR ROREM, ET AL. in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 11th day of March, 1981:

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