

4/14/81



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
ILLINOIS POWER COMPANY, et al.)
(Clinton Power Station, Units)
1 and 2))

Docket Nos. 50-461 OL
50-462 OL

NRC STAFF ANSWER TO FINAL SUPPLEMENT TO
PETITION FOR LEAVE TO INTERVENE
(AMENDED CONTENTIONS) OF PRAIRIE ALLIANCE

INTRODUCTION

On November 18, 1980 the Staff answered a timely petition for leave to intervene filed by Prairie Alliance in the above-captioned proceeding. The Staff indicated a belief that this petitioner had demonstrated standing within the purview of 10 C.F.R. § 2.714 and agency decisions. The Staff also stated that this petitioner had identified a number of contentions which might not ultimately prove admissible at the prehearing conference to rule on contentions, but which the Staff believed sufficiently identified areas of intervenor interest to meet the aspect requirement of 10 C.F.R. § 2.714.

On January 14, 1981, the Prairie Alliance filed a document supplementing its petition for leave to intervene. At the Special Prehearing Conference in this proceeding, held January 30, 1981, the Board refrained from ruling on the contentions submitted by this petitioner to determine whether they were valid contentions for this operating license application and whether they were alleged with the

specificity required by 10 C.F.R. § 2.714 and agency decisions. Rather, the Licensing Board directed the NRC Staff to meet with representatives of Petitioner in an attempt to explain what the Staff had considered to be deficiencies in proposed contentions, and to ascertain the substance of Petitioners' concerns. Applicant declined to participate in such meetings. On March 30, 1981, Petitioner served its proposed contentions (as finally amended) on all parties.

APPLICABLE PRINCIPLES

The standard governing admissibility of a contention in a Commission licensing proceeding is that such proposed contention must fall within the scope of issues set forth in the Federal Register Notice of Hearing (Notice of Hearing) in that proceeding and comply with the requirements of 10 C.F.R. § 2.714(b) and applicable Commission case law. See, e.g., Northern States Power Co. (Prairie Island, Units Nos. 1 and 2), ALAB-197, 6 AEC 188, 194 (1973); aff'd BPI v. Atomic Energy Commission, 502 F.2d 424, 429 (D.C. Cir. 1974); Duquesne Light Co. (Beaver Valley, Unit No. 1), ALAB-109, 6 AEC 242, 245 (1973); Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974).

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

- (a) it constitutes an attack on applicable statutory requirements;
- (b) it challenges the basic structure of the Commission's regulatory process or is an attack on the regulations;
- (c) it is nothing more than a generalization regarding the intervenor's views of what applicable policies ought to be;
- (d) it seeks to raise an issue which is not proper for adjudication in the proceeding or does not apply to the facility in question; or
- (e) it seeks to raise an issue which is not concrete or litigable.

Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974).

The purpose of the basis requirement of 10 C.F.R. § 2.714 is to assure that the contention in question does not suffer from any of the infirmities listed above, to establish sufficient foundation for the contention to warrant further inquiry of the subject matter in the proceeding, and to put the other parties sufficiently on notice "so that they will know at least generally what they will have to defend against or oppose." Peach Bottom, supra at 20. From the standpoint of basis, it is necessary for the petition "to detail the evidence which will be offered in support of each contention." Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973). Furthermore, in examining the contentions and the bases therefor, a licensing board is not to reach the merits of the contentions. Duke Power Co. (Amendment to Materials License SNM-1773 - Transportation of Spent Fuel from Oconee Nuclear Station for Storage at

McGuire Nuclear Station), ALAB-528, 9 NRC 146, 151 (1979); Peach Bottom, supra at 20; Grand Gulf, supra at 426.

Nonetheless, it is incumbent upon the petitioners to set forth contentions which are sufficiently detailed and specific to demonstrate that the issues raised are admissible and that further inquiry is warranted, and to put the other parties on notice as to what they will have to defend against or oppose. This is particularly true at the operating license stage where, as here, a hearing is not mandatory, in order to assure that a proposed contention raises an issue clearly open to adjudication. Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 12 (1976); Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-183, 7 AEC 222, 226 (1974). ALAB-444, 6 NRC 760, 768-69 (1977). The Staff is aware of the recent decision of the Appeal Board in the Allens Creek case (ALAB-590, 11 NRC 542 (1980)) where a more liberal view is taken with respect to basis.

As previously indicated, the Staff believes that Petitioners have demonstrated their standing, within the purview of prior Commission decisions.

CONTENTIONS

Contention 1

The Staff does not oppose the admission of Proposed Contention 1, except for Subpart (g) thereof, which does not appear to fall within the purview of emergency planning requirements. Additionally, Subpart (g) is vague, and lacks the specificity required by 10 C.F.R. § 2.714.

Contention 2

The Staff does not oppose admission of Proposed Contention 2 in its entirety. However, it does oppose the inclusion of (c) decommissioning, as the technical feasibility of any proposed decommissioning plan cannot be evaluated at this time and, further, would be subject to another hearing at the time such plan might be proposed.

Contention 3

The Staff does not oppose the admission of Proposed Contention 3.

Contention 4

The Staff opposes the admission of Proposed Contention 4 as vague, and lacking in specificity and basis as required by 10 C.F.R. § 2.714.

Contention 5

The Staff opposes the admission of Proposed Contention 5 and each of its subparts.

As to consideration of Accidents Beyond Design Basis, often referred to as "Class 9 accidents," the cited Policy Statement imposes no obligation upon this Applicant as such (as its Environmental Report was filed with the Staff on December 1, 1979, prior to the Policy Statement effective date of July 1, 1980), but is directed to the Staff in its application of the principles underlying NEPA. The Staff, in its EIS, will address the environmental consequences of such accidents.

Subpart(a) would appear to deal with the issue of cooling a degraded reactor core, which is a generic topic and will be treated by Staff in its SER and EIS unless a rulemaking proceeding is ordered before then. See discussion under Contention 19, infra.

Subparts (b), (c), (g) and (h) are opposed as being vague, and lacking in specificity and any basis therefor, as required by 10 C.F.R. § 2.714.

Subparts (c), (d), (f), (g), (h), (i) and (j) contrary to the assertion of Petitioner, are not required of Applicant by either NRC Regulations or policy. The Staff will address the topic of (j) up to design basis of potential accidents.

Subpart (e) and its import are not clear to the Staff, and it is thus opposed. The Staff will address environmental consequences of accidents beyond design basis in its EIS. Part 100 sets acceptable limits for accidents within design basis, and 10 C.F.R. § 51.20, Table S-3, establishes the basis for quantifying releases attributable to normal reactor operation.

Contention 6

The Staff opposes the admission of Proposed Contention 6. ATWS is a generic item which is presently the subject of a rulemaking proceeding. See NUREG-0606, Vol. 3, no. 1, February 13, 1981, Task A-9. The discussion of generic items under Contention 19, infra, is equally applicable here. The Staff has imposed interim requirements on all Applicants to deal with ATWS pending the conclusion of rulemaking. Absent specific allegations of deficiencies in the interim resolution of ATWS issues by this Applicant, such a generic contention should be rejected.

Contention 7

The Staff does not oppose the admission of Proposed Contention 7 in its entirety. However, the Staff would oppose admission of such a

contention referencing 10 C.F.R. § 50.109, and would oppose Subpart (j) of the proposed contention. The Staff submits that Petitioner is inartfully using the term "backfitting" to refer to compliance with state-of-the-art developments as the Clinton Power Station is being constructed. It is the Staff's position that "backfitting," as used in the cited regulation, is intended to deal with requirements which the Staff might impose upon a licensee subsequent to issuance of a license, and that such decision to implement changes is solely the prerogative of the Staff, to be made outside of the hearing process. See 35 F.R. 5317, March 31, 1970.

Additionally, the Staff would oppose the admission of Subpart (f) of the proposed contention. Applicant will be required to comply with NRC requirements, and its asserted failure to demonstrate its willingness and ability to do so is not at issue.

Contention 8

The Staff opposes the admission of Proposed Contention 8 as being vague, and lacking the basis and specificity required by 10 C.F.R. § 2.714. Additionally, systems interaction is a generic item presently being considered by the NRC Staff. See NUREG-0606, Task A-17, and discussion at Contention 19, infra.

Contention 9

The Staff opposes the admission of Proposed Contention 9. Initially, it should be noted that Petitioners seek to examine the effects of station construction, among others. Most of the items set forth in this contention relate to the CP stage of the proceeding.

Moreover, each is so vague as to be substantially incapable of developing evidence thereon, if admitted to litigation.

As to Subparts (f) and (g), neither NEPA nor AEA requires the litigation of psychological stress and trauma effects in nuclear licensing proceedings. "The short answer is that Congress had already decided that the country is to have a nuclear program even if it makes some people uneasy." Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 1), CLI-80-39 (December 5, 1980) (separate views of Commissioner Hendrie, Slip Op. at 11).

Contention 10

The Staff does not oppose the admission of Subparts (a)(2), (c) and (d) of Proposed Contention 10.

Subparts (a)(1), (b), (e), (f) and (g) are opposed as being vague and lacking in specificity and basis.

Contention 11

The Staff opposes the admission of Proposed Contention 11 as being vague and lacking in specificity and basis. Petitioners in effect are requesting additional standards for radiation monitoring, but fail to identify the present need or desirability for such standards.

Contention 12

The Staff does not oppose the admission of a contention incorporating the substance of Proposed Contention 12. However, the "willingness" of Applicant to comply with NRC Regulations is not relevant to this issue.

Contention 13

The Staff does not oppose the admission of Subparts (c) and (d) of Proposed Contention 13.

The Staff opposes the admission of Subpart (a) as being a matter wholly unsuitable for litigation. Declared capability or willingness to comply with NRC regulations, as opposed to compliance itself, is not at issue.

The Staff opposes Subparts (b) and (e) as being vague, and lacking the requisite specificity and any showing of basis.

Contention 14

The Staff does not oppose the admission of Proposed Contention 14.

Contention 15

The Staff does not oppose the admission of Subparts (c) and (d) of Proposed Contention 15.

The Staff opposes the admission of Subpart (a). Contrary to Petitioners' assertion, the referenced policy statement does not require ER treatment of accidents beyond design basis, but imposes responsibilities upon the NRC Staff in this area.

The Staff opposes the admission of Subpart (b). Part 20, 10 C.F.R. sets acceptable limits on occupational dosage which workers will not be permitted to exceed.

The Staff opposes the admission of Subpart (e) as constituting an impermissible challenge to NRC Regulations. This subject is covered by 10 C.F.R. § 51.20, Table S-3, which prescribes factors for inclusion in the required NEPA cost-benefit balance.

Contention 16

The Staff opposes the admission of Proposed Contention 16 as vague and lacking in specificity, with the exception of Subpart (d), which it does not oppose.

Additionally, Subparts (a) and (b) would appear to pose an impermissible attack on NRC Regulations, 10 C.F.R. § 51.20, Table S-3 and S-4.

Subpart (c) would appear to anticipate a future increase in spent fuel storage capacity at Clinton Power Station. It is not susceptible of litigation at this time, and would require a separate application by Applicant if such an increase were in fact desired.

Contention 17

The Staff opposes the admission of Proposed Contention 17, while noting that Applicant will be providing the information discussed in Subparts (a) and (b), which has already been requested by the Staff.

Subparts (a), (b) and (f) appear to be lacking the requisite basis. There is no showing that any significant changes have occurred since the CP stage of this proceeding.

Subpart (c), the health effects of operation versus those of alternative energy sources, and subpart (e), comparing health costs of operation versus not operating the facility, are matters more appropriate for the CP stage of the proceeding. Absent a showing of significant impacts by the Intervenor, which were not contemplated at the time of issuance of the CP, these matters should not be thrown open to litigation at this time.

Subpart (d), costs of decommissioning, are not shown to have changed since the CP stage of the proceeding, where such costs were factored into the cost-benefit balance.

Contention 18

The Staff opposes the admission of Proposed Contention 18 for lack of basis and specificity. Petitioner has failed to identify any significant change of circumstances which would make the nuclear option inferior to other means of power generation, but merely attacks Applicant's analysis as inadequate and outdated. The Staff would point out that the use of coal as an alternative energy source was extensively litigated at the construction permit stage and, absent significant new information, should be foreclosed as an option here. See Illinois Power Company (Clinton Power Station, Units 1 and 2), LBP-75-59, 2 NRC 579, 594-601 (1975).

Contention 19

The Staff opposes the admission of Proposed Contention 19 as merely setting forth a "Laundry List" of generic items (task action plans) without even attempting to demonstrate any nexus between each such issue and the Clinton Power Station. The Appeal Board has held that, in order to plead a valid contention based on a Task Action Plan, the following is required:

To establish the requisite nexus between the permit or license application and a TSAR item (or Task Action Plan), it must generally appear both (1) that the undertaken or contemplated project has safety significance insofar as the reactor under review is concerned; and (2) that the fashion in which the application deals with the matter in question is unsatisfactory, that because of the failure to consider a particular item there has been an insufficient assessment of a specified type of risk for the reactor, or that the short-term solution

offered in application to a problem under staff study is inadequate.

Gulf States Utilities Company (River Bend Station, Units 1 and 2) ALAB-444, 6 NRC 760, 773 (1977).

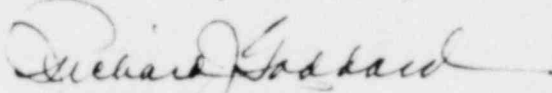
Petitioner herein has manifestly failed to meet this burden. Concededly, the generic items set forth may not be utterly disregarded; the NRC Staff must be satisfied by a resolution of each such issue to the degree that operation can proceed, embracing a reasonable assurance of public health and safety, despite the fact that an overall solution has not yet been found. Virginia Electric and Power Company, (North Anna Nuclear Power Station, Units 1 and 2), ALAB-491, 8 NRC 245 (1978). River Bend and North Anna both teach that explanations of each such item should appear in the Staff's Safety Evaluation Report for the facility in question (as they will in the instant proceeding). Those cases do not serve to inject each of these myriad issues into the administrative hearing process for a full airing of the Staff decision-making process underlying resolution. At such time that this Petitioner could demonstrate, with requisite specificity, why Clinton Power Station cannot be operated safely because of an inadequate resolution of any such issue, a contention dealing with such issue might be admitted. The present proposed contention does not approach this standard, and should be rejected.

CONCLUSION

The Staff does not oppose Proposed Contentions 1 (except Subpart g), 2 (except Subpart c), 3, 7 (except for backfitting references), 10(a)(2),

(c) and (d), 12, 13(c) and (d), 14, 15(c) and (d) and 16(d). For the reasons set forth above, the Staff opposes Proposed Contentions 1(g), 2(c), 4, 5, 6, 7 (would delete all references to backfitting), 8, 9, 10(a)(1), (b), (e), (f) and (g), 13(a), (b) and (e), 15(a), (b) and (e), 15(a), (b) and (c), 17, 18 and 19.

Respectfully submitted,



Richard J. Goddard
Counsel for NRC Staff

Richard J. Goddard
Dated at Bethesda, Maryland
this 14th day of April 1981.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of NRC STAFF ANSWER TO FINAL SUPPLEMENT TO PETITION FOR LEAVE TO INTERVENE (AMENDED CONTENTIONS) OF PRAIRIE ALLIANCE 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 17th day of April, 1981. Copies were hand-delivered to the parties at a prehearing conference on April 14, 1981.

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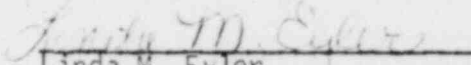
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