

A circular stamp from the Nuclear Regulatory Commission. The outer ring contains the words "RECEIVED" at the top and "NRC" at the bottom. The center of the stamp contains the date "NOV 10 1981" and the text "U.S. NUCLEAR REGULATORY COMMISSION".

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Docket No. 50-155
(Spent Fuel Pool Modification)

NRC STAFF RESPONSE TO
INTERVENORS' MOTION FOR DEFERRAL

I. INTRODUCTION

The NRC Staff hereby responds to the motion for deferral of responses to motions for summary disposition. This motion for deferral was filed by Intervenor Christa-Maria, et al. (Intervenors) on October 21, 1981. The Staff opposes Intervenor's motion on the ground that Intervenor has failed to demonstrate good cause for deferral of these responses.

II. BACKGROUND

Pursuant to the schedule negotiated by the parties and adopted by the Licensing Board in its Order Following Special Prehearing Conference, all motions for summary disposition were required to be filed by October 5, 1981. Consumers Power Co. (Big Rock Point Nuclear

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Plant), LBP-80-4, 11 NRC 117, 134 (1980).^{1/} Such motions were filed by the Staff and Licensee on the appropriate date. Under the same schedule responses to all motions for summary disposition were due on October 26, 1981.

Instead of filing a response to the pending motions, on October 20, 1981 Intervenors requested that they be granted an extension of time until November 20, 1981 to file their responses. By Order dated October 26, 1981, the Board ruled that the time for all parties to file responses to the pending motions for summary disposition should be extended until November 20, 1981.

In that same motion Intervenors also requested that the necessity for their responses be deferred until 20 days after the Board has ruled on outstanding discovery requests and the requests have been answered.^{2/}

^{1/} In the prehearing schedule motions for summary disposition were to be filed 74 days after issuance of the SER and EIA. The SER was issued in May of 1981. By Order dated June 16, 1981, the Board, at the request of Intervenors, ordered that the prehearing schedule commence as of July 22, 1981.

^{2/} On August 9, 1981, Intervenors filed some 61 interrogatories on Licensee. On August 31, 1981, Licensee objected to answering any of these interrogatories. On September 18, 1981, Intervenors filed a motion to compel Licensee's responses. This motion to compel is still pending before the Licensing Board. Intervenors also filed some 64 interrogatories on the NRC Staff. These interrogatories were not filed with the Licensing Board as required by the Commission's regulations and the Staff did not respond to them. On September 11, 1981 Intervenors moved to require that two of these interrogatories be answered. By Order dated October 28, 1981 Intervenors' motion was denied.

Intervenors argue that such a deferral is necessary since some of the disputed interrogatories relate to contentions which are the subject of the pending motions for summary disposition. This argument is without merit.

III. DISCUSSION

A. Intervenors Have Failed to Establish Good Cause for Deferral.

The moving party has the burden of proving that its motion should be granted. Consolidated Edison Co. of New York, Inc. (Indian Point Station, Units 1, 2, and 3), CLI-77-2, 5 NRC 13 (1977). To do this a moving party would at least have to provide information tending to show that the allegations in support of its motion were true. Id. Intervenors have made the allegation that certain interrogatories are related to contentions now the subject of summary disposition. "Motion to Defer Intervenor's Response to Motions for Summary Disposition Until After Licensee Answers Outstanding Interrogatories -and- Motion for Extension of Time to November 13, 1981 to File Response," Affidavit of Herbert Semmel at 2-3 (October 20, 1981). They also allege that this deferral is necessary to aid them in obtaining information which might be necessary for responses to the motions for summary disposition. Id. at 3. They do not, however, provide any information tending to show that the allegations in support of their motion are true. Therefore, they fail to carry their burden with regard to this motion and the deferral should be denied.

- B. Intervenors Have Failed to Establish That the Interrogatories in Question Relate to Contentions Which are the Subject of Motions for Summary Disposition and Have Failed to Establish that the Information Requested is Necessary for Response to Such Motions.

Intervenors first argue that their Interrogatories 6 and 9 relate to Christa-Maria Contention No. 8 and O'Neill Contention No. II.E.2. Interrogatory 6 requests information as to what steps would be taken to cool fuel in the event of accidents such as a breach, core melt, explosion, or inadequate cooling of core fuel. Christa-Maria Contention No. 8 relates to the question of whether the Licensee will be able to maintain the spent fuel pool in a safe condition if ingress to containment is precluded for an extended period of time. Intervenors' interrogatory does not mention the question of ingress into containment. It does mention certain vague accident scenarios which would have to be further defined and clarified before responses could even be provided to this interrogatory. Intervenors have also failed to show why information of this nature would be necessary before they could answer the motions for summary disposition filed with respect to Christa-Maria Contention No. 8 and O'Neill Contention No. II.E.2. For example, they have failed to establish a relationship between this interrogatory and any of the material facts set forth by either the Staff or Licensee.

Intervenors also claim that Interrogatory 9 relates to Christa-Maria Contention No. 8 and O'Neill Contention No. II.E.2. Interrogatory 9 asks for identification of the level of radioactivity from the spent fuel pool reaching the environment and during normal

plant operation, a safe shutdown earthquake, and a meltdown. This interrogatory bears no relationship to the question of Licensee's ability to maintain the spent fuel pool in a safe condition if access to containment is precluded for an extended period of time. In addition, Intervenor's have failed to establish why information concerning radioactive releases during normal and certain specific accident conditions would be necessary for their response to Licensee and Staff's motions for summary disposition.

Intervenor's claim that Interrogatories 5, 6, 7, 8, and 12 relate to O'Neill Contention No. II.C. Intervenor's have not provided any information tending to support this claim. O'Neill Contention No. II.C claims that Licensee's plan for expansion of the spent fuel pool is deficient because it fails to consider the environmental impacts of leaks of water from the spent fuel pool of up to 200 gpm. Intervenor's Interrogatory 5 questions whether a safe shutdown earthquake or design basis earthquake would result in a breach of the spent fuel pool. This question seeks no information concerning the environmental effects of leaks from the spent fuel pool of up to 200 gpm. In addition, even if this interrogatory was found to relate to O'Neill Contention No. II.C, Intervenor's have not explained why the information requested in this interrogatory is necessary for their response to the pending motions for summary disposition. As mentioned above Interrogatory 6 relates to vague accident scenarios and not to leaks from the spent fuel pool. Interrogatory 7 questions the effect of a safe shutdown earthquake on the spent fuel pool walls located above grade. Once again this interrogatory does not mention the environmental effects of water

leakage from the pool. Interrogatory 8 concerns the effect of the increased density of fuel stored in the pool on Licensee's ability to cool fuel in the event of a safe shutdown earthquake, a breach, or loss of offsite power. This interrogatory again mentions some vague accident scenarios but does not deal with environmental effects of leaks of water from the spent fuel pool. Interrogatory 12 requests information as to the frequency and velocity of sound waves generated by blasting in the Medusa and Penn Dixie Cement Companies. This interrogatory makes no mention of water leakage from the pool. In addition Intervenor's have failed to support their allegation that such information is necessary for their responses to the pending motions for summary disposition. It should also be noted specifically with regard to Interrogatory 8 that in its motion to compel Licensee's to answer these interrogatories Intervenor's had stated that this interrogatory related to a proposed contention. "Motion to Compel Answers to Interrogatories and Response to Licensee's Motion for a Protective Order" at 2 (September 18, 1981) (hereinafter Motion to Compel). Due to this inconsistency Interrogatory 8 should not be considered a basis for deferral of responses to pending motions concerning O'Neill Contention No. II.C.

Intervenor's' next claim is that Interrogatory 6 relates to O'Neill Contention No. II.D. O'Neill Contention No. II.D concerns whether Licensee has adequately protected the plant in view of this expansion against the crash of a B-52 bomber. Interrogatory 6 makes no mention of such a crash. Intervenor's also fail to provide any information tending to support their allegation that an answer to Interrogatory 6 is necessary for their response to motions for summary disposition with respect to O'Neill Contention No. II.D.

Intervenors argue that Interrogatory 34 relates to O'Neill Contention No. II.E.3. O'Neill Contention No. II.E.3 concerns the adequacy of the criticality analysis performed by the Licensee for this proposed spent fuel pool expansion. Interrogatory 34 requests information as to the effect of tornado missiles on the containment at Big Rock and the control room. This interrogatory makes no reference to the effect of such missiles on criticality in the spent fuel pool. Therefore, Intervenors have failed to establish that this interrogatory is related to O'Neill Contention No. II.E.3. In addition Intervenors have failed to establish why information with regard to the effect of tornado missiles on containment or the control room would be necessary for their response to the pending motions for summary disposition with regard to this contention.

Interrogatories 12 and 22 are alleged by Intervenors to relate to O'Neill Contention No. II.F. Interrogatory 12, as mentioned above, relates to the frequency and velocity of sound waves from the Medusa and Penn Dixie Cement Companies. Interrogatory 22 relates to the types and sampling methods of radioactive effluents released from the Big Rock Plant. In O'Neill Contention No. II.F Intervenor O'Neill contends that due to the expansion of the spent fuel pool Appendix I to 10 C.F.R. Part 50 will be violated in that the required calculations do not estimate bio-accumulation factors in a manner appropriate to this site. Intervenors have failed to establish that the frequency and velocity of sound waves from the Medusa and Penn Dixie Cement Companies have anything to do with a violation of Appendix I. While Interrogatory 22 requests information concerning the contents of effluents released from the Big Rock facility, it makes no mention of the relationship between these effluents and the question of whether bio-accumulation factors

were appropriately considered. Intervenor's have failed to show why such information as requested in either Interrogatory 12 or 22 is necessary for their response to either Licensee or Staff's motions for summary disposition with regard to O'Neill Contention No. II.F.

Finally, Intervenor's claim that Interrogatories 3, 6, 8, 19, 20, 28, and 44 all relate to Board Question No. 1. It should be noted that they made no such claim in their motion to compel Licensee to answer these interrogatories. Additional Board Question No. 1 asks whether the proper operation of several valves has been relied upon to mitigate the results of an accident in the spent fuel pool. Interrogatory 3 requests information as to whether certain components of the spent fuel pool could withstand the safe shutdown earthquake. Interrogatory 6 seeks information as to how fuel will be cooled in the event of certain vague accident scenarios. Interrogatory 8 concerns the effects of events such as safe shutdown earthquake or meltdown. Interrogatory 19 was withdrawn by Intervenor's in their motion to compel Licensee to answer their interrogatories dated September 18, 1981 and should, therefore, not be considered as a basis for deferral of Intervenor's responses to Staff and Licensee's treatment of Additional Board Question No. 1. Interrogatory 20 is a request for a survey by Licensee of all reportable occurrences at the Big Rock Point Plant involving the spent fuel pool, backup generators, cooling system, and isolation components. This interrogatory does not concern whether certain enumerated valves have been relied upon to mitigate the consequences of accidents. Interrogatory 28 discusses whether there has been an unplanned drainage of the spent fuel pool. With respect to Interrogatory 44 Intervenor's have previously asserted that this

interrogatory relates to an additional contention. Motion to Compel at 2. Due to this inconsistency Interrogatory 44 should not be used as a basis for deferral of Intervenor's responses to Additional Board Question No. 1. Intervenor's have made no attempt to demonstrate how any of the above-mentioned interrogatories relate to whether or not certain enumerated valves have been relied upon to mitigate the consequences of accidents at the Big Rock Point Plant. With regard to these interrogatories as with all the others previously discussed, Intervenor's have failed to present any information at all in support of their allegations. Therefore, they have failed to meet their burden with respect to this motion for deferral.

IV. CONCLUSION

For the reasons set forth above, Intervenor's request for deferral of their obligation to respond to the pending motions for summary disposition until after their interrogatories have been answered should be denied, and Intervenor's responses should be required by November 20, 1981.

Respectfully submitted,



Janice E. Moore
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 9th day of November, 1981.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

CONSUMERS POWER COMPANY

(Big Rock Point plant)

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Docket No. 50-155

(Spent Fuel Pool Modification)

CERTIFICATE OF SERVICE

I hereby certify that copies of NRC STAFF RESPONSE TO INTERVENORS' MOTION FOR DEFERRAL 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 9th day of November, 1981.

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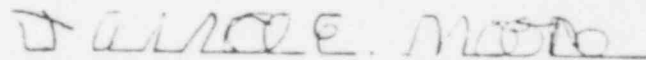
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