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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'81 NOV -9 A11:58

ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Before Administrative Judges
Sheldon J. Wolfe, Chairman
Dr. Paul W. Purdom
Frederick J. Shon

In the Matter of)
)
PUBLIC SERVICE COMPANY OF)
OKLAHOMA, ASSOCIATED)
ELECTRIC COOPERATIVE, INC.)
and)
WESTERN FARMERS ELECTRIC)
COOPERATIVE,)
)
(Black Fox Station,)
Units 1 and 2))

Docket Nos. STN 50-556CP
STN 50-557CP



INTERVENORS' MOTION TO
RE-OPEN THE RADIOLOGICAL
AND SAFETY HEARINGS

Intervenors, pursuant to Consumers Power Co., ALAB-235,
8 AEC 645, 646 (1974), respectfully move the Board to re-open
the record as to the following contentions:

1. Financial Qualifications (Intervenors' Original
Contention 18)
2. Containment (Intervenors' Original Contention 16)

In so moving the Board, Intervenors are mindful of the
showing mandated by Vermont-Yankee Nuclear Power Corp., ALAB-124,
6 AEC 358 (1973); however, it is submitted that the exhibits and
matters submitted herewith more than satisfy the test of Vermont

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Yankee. In particular, Intervenors recognize that:

[A] licensing board is required to reopen the record only when the matters raised are, in the board's opinion, of major significance to plant safety. Vermont Yankee at 365.

As will be shown, infra, the new evidence bearing on both issues will have the requisite impact on safety to justify this request.

A. Financial Qualifications

1. Pursuant to the Commission's regulations found in 10 CFR §50.33(f) and 10 CFR Part 50, Appendix C, applicants for a construction permit must file financial information to show they have funds, or have reasonable assurance of obtaining the funds, necessary to safely construct a nuclear power plant. In that regard, Public Service Company of Oklahoma, Associated Electric Cooperative, Inc. and Western Farmers Electric Cooperative submitted various financial information with their application for a construction permit.

In §20.1 of the Safety Evaluation Report ("SER") issued in June, 1977, the Commission specifically postponed reporting its decision as to the financial qualification issue until a supplemental SER could be issued, reasoning:

"To assure that we have the latest information to make a determination of the financial qualifications of an applicant, it is our current practice to review this information during the later stages of our review . . ." (Emphasis added)

Unfortunately, the information reviewed "at the later stages" is now clearly outdated, and if current financial information were reviewed, the Board would likely view the financial qualification question in an entirely different light.

The Staff's initial determination that the applicants were financially qualified, with accompanying analysis and rationale, can be found in §20.0 et seq., of Suppl. 1 to the SER dated September, 1978 (NUREG-0190, Suppl. No. 1); and the final, unconditioned decision can be found in Suppl. 2.

2. Following the Staff's conclusion that the applicants had met the requisite reasonable assurance standard and, therefore, satisfied the financial qualifications test, Intervenors filed, among other contentions, their Contention #18 stating that applicants had not demonstrated they were financially qualified to build Black Fox Units 1 and 2. Contention #18 was summarily disposed of by the Board as being too broad.

3. In an Order dated September 8, 1978, the Licensing Board narrowed original Intervenors' Contention #18 to the more specific Board question, #18-1, asking:

Has PSO provided different data on coverage rating for bonded debt to NRC and OCC, and if so, what is the reason for the difference?

This question was addressed at later hearings by the parties and to date no change has been made regarding the financial qualifications issue.

4. Using an estimated total cost of \$2,042,300,000 for the Black Fox Units 1 and 2, and estimated completion dates of

1983-1984 and 1985-1986 for the two units, the Staff accepted the Applicant's financial projections as reasonable and concluded that the reasonable assurance standard had been satisfied. (SER Suppl. 1)

Since the date of these projections and the Staff's determination, however, the economic and financial conditions affecting the nuclear industry overall and the Applicants, in particular, have changed dramatically. The projections used as the bases for the original determination are no longer viable (indeed, Intervenors believe they never were), and significant new evidence, found in the Touche Ross report, discussed infra, shows that the reasonable assurance standard can no longer be met by these Applicants for a Construction Permit for Black Fox Station.

5. The aforementioned Touche Ross report was prepared by Touche Ross & Co. for the Oklahoma Corporation Commission in connection with a pending rate case filed by PSO. A copy of this report has previously been supplied to the NRC as an enclosure to a letter dated September 8, 1981, from Joseph Gallo, one of the attorneys for PSO, to the Board (See Exhibit 1). Hired as an independent and unbiased economic consultant to assist the Commission in its rate-making decision regarding, inter alia, PSO's Black Fox Station, Touche Ross concluded in its report filed August 24, 1981, that based on cost and risk assessment, the Black Fox project should be cancelled and converted to a coal-fired facility. Ie, the overall economic viability of the project has been seriously jeopardized

by the effect of various factors including construction, financial, regulatory and political risks.

In considering this Motion To Reopen, the Board is urged to note, among other changed circumstances, that:

(a) The assumptions and projections contained in the Touche Ross report relate to a period encompassing the years 1981-2001 (cover letter to report dated August 24, 1981) whereas the now seriously outdated information used as a basis for the Board's initial SER conclusion was based on information provided in projections for 1978-1986.

(b) The SER decision was based on a total estimated cost for Units 1 and 2 of \$2,042,300,000. This estimate, which may have been "reasonable" in 1978, is no longer valid nor "reasonable" and the most recent estimated completion cost is from 8.177 billion to 10.120 billion.

(c) The SER conclusions were based upon an assessment that the financing projections constitute a reasonable and sound financing plan. (SER Supp. 1 at 20-4)

The Touche Ross report, however, updates and analyzes the present financial integrity of PSO in depth and concludes that "although PSO is currently rated AA, our review of the historical and prospective financial condition of the company indicate that significant difficulties exist with respect to the ability to meet certain minimum financial integrity parameters and to ensure continued capital market access at reasonable cost." Touche Ross Report at p. 113.

(emphasis supplied)

6. The financial qualifications of an applicant are directly related to safety. The Commission's position has been, from the outset of the civilian nuclear power program, that ". . . safety is the first, last, and permanent consideration" in its licensing activities. In re Power Reactor Dev. Co., 1 AEC 128,136 (1959). Statutory guidance found in 42 U.S.C. §2133 (b) provides:

The commission shall issue such licenses on a nonexclusive basis to persons applying therefor . . . (2) who are equipped to observe and who agree to observe such safety standards to protect health and to minimize danger to life or property as the commission may by rule establish. 42 U.S.C. §2133(b) (Emphasis added)

Just as the technical qualifications of an applicant are a necessary condition to ensure that it is equipped to observe the strict standards necessary to ensure public health and safety, so are financial qualifications. The construction and operation of a nuclear power plant, a highly complex and delicate technology, requires an organization with commensurate technical competence and financial stability to meet its obligation to conform with the strictest of safety standards. Cost-cutting in this sort of venture could have disastrous consequences.

In the published statement which accompanied the promulgation of 10 CFR Part 50, Appendix C, the Commission unequivocally stated that the purpose of the financial qualifications requirement is to ensure safety. This requirement operates in tandem with the various substantive technical regulations:

The Act and the Commission's regulations reflect that the fundamental purpose of the financial qualifications provision of [42 U.S.C. §2232] is the protection of the public health and safety and the common defense and security.

Although, the Commission's safety determinations required the issuance of facility licenses based upon extensive and detailed technical review, an applicant's financial qualifications can also contribute to his ability to meet his responsibilities in safety matters. 33 Fed. Reg. 9704 (July 4, 1968).

Thus, the NRC acknowledged that the Congressional intent behind the Act manifests an effort to erect a double line of defense for the protection of the public health and safety. The NRC has stressed previously that the financial qualifications issue arises under the Atomic Energy Act's safety provisions; unless a utility is equipped to observe the NRC's safety requirements, it may not be licensed. Duke Power Co. (Catawba, Units 1 and 2), ALAB-355, 4 NRC 397, 413-14 (1976)

The Commission's program to ensure safety could, unfortunately, be easily undermined by a company's financial instability:

We should not close our eyes to the likelihood that letting a financially strapped company go ahead with construction will inexorably result in decisions to do less testing, to use lower quality materials, to approve borderline workmanship, and the like. In insidious fashion, each such decision even though not consciously designed or believed to do so, increases the risk to the public from an eventual accident Public Service Co. of New Hampshire, et al (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, dissent at 109.

While not suggesting that PSO is currently "financially strapped," even a cursory reading of the recent Touche Ross report indicates that if PSO continues in its efforts to build Black Fox, it may, indeed, quickly approach the brink of financial disaster. The

temptation to cut costs could then present serious potential safety problems for the Black Fox facility.

For all the above reasons, Intervenors urge the Board to reopen its hearings regarding the financial qualifications and to admit evidence with regard to the foregoing matters.

B. CONTAINMENT

1. Intervenors original contention No. 16 was as follows:

Contention No. 16

Intervenors contend, generally, that the applicants for Black Fox, Units 1 & 2, have not established the integrity of the Mark III containment system in terms of its ability to withstand the hydrodynamic forces associated with a postulated design basis accident (LOCA). More specifically, in Contention 16 the intervenors contend that "the applicant has not established the integrity of the Mark III containment in that the following items have not yet been resolved:

- (1) Vent clearing
- (2) Vent/coolant interactions
- (3) Pool Swell
- (4) Pool stratification
- (5) Pressure loads and flow bypass."

However, subsequent to the close of the record on this issue, Applicant, pursuant to a letter from Mr. Gallo on July 18, 1979, identified a change to the containment design, to-wit: the construction of a concrete reinforcing wall outside the steel containment shell in the annulus between the shell and the containment building adjacent to the suppression pool. This design change was formally documented for the first time in Amendment No. 17 to the PSAR. Intervenors submit that the change

could have significant impact on safety and that Applicant has not provided sufficient preliminary design information to show how it will impact the following design factors:

- (a) Thermal transients in the suppression pool and lines during blow-down and LOCA events.
- (b) Heat transfer from the suppression pool.
- (c) Stress levels in the welds and joints of the lining and connected piping.
- (d) Connections with the base mat and shield wall.
- (e) Vibratory motion transmitted to other structural components.
- (f) Ability to perform in-service inspection and leak rate analysis of the suppression pool lines.

Without the foregoing analyses there is no assurance the present suppression pool and containment design is adequate to protect containment integrity during accidents and LOCA conditions.

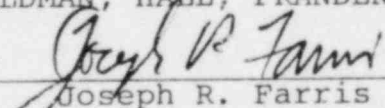
CONCLUSION

Intervenors respectfully submit, therefore, that the record should be reopened with respect to the foregoing safety issues.

Respectfully submitted,

FELDMAN, HALL, FRANDEN & WOODARD

By


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816 Enterprise Building
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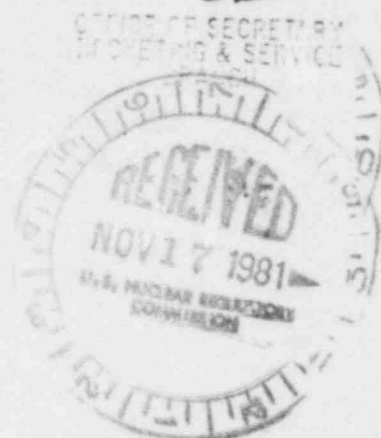
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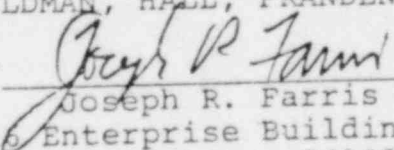
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