

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of)
)
UNION ELECTRIC COMPANY)
)
(Callaway Plant, Units 1 and 2))

Docket Nos. STN 50-483
STN 50-486

NRC STAFF RESPONSE TO "JOINT INTERVENORS'
AMENDMENT TO CONTENTION TWO"

INTRODUCTION

On October 9, 1981, pursuant to opportunity provided by this Atomic Safety and Licensing Board (See Memorandum and Order on Prehearing Conference, dated October 29, 1981), Joint Intervenors have submitted a purported exposition of bases for Revised Contentions 2.D and 2.I in the captioned proceeding. For the reasons set forth herein, the Staff submits that, as to Contention 2.I, the basis and specificity requirements of 10 C.F.R. § 2.714 have not been met, and would oppose admission of this contention into litigation. The Staff does not oppose the admission of Contention 2.D.

CONTENTIONS REQUIREMENTS

As a general matter, for the contentions proposed to be admissible, they must fall within the scope of the issues set forth in the Federal Register Notice of Hearing (Notice of Hearing) in this proceeding, (Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 171 (1976) and comply with the requirements of 10 C.F.R. § 2.714(b) and applicable Commission case law.

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See, e.g., Duquesne Light Co. (Beaver Valley, Unit No. 1), ALAB-109, 6 AEC 243, 245 (1973); Northern States Power Co. (Prairie Island, Unit Nos. 1 and 2), ALAB-107, 6 AEC 188, 194 (1973), aff'd, BPI v. Atomic Energy Commission, 502 F.2d 424, 429 (D.C. Cir. 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 & 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 into 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 unnecessary for the petition "to detail the evidence which will be offered in support of each contention." Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 & 2), ALAB-130, 6 AEC 423, 426 (1973).

However, the degree of specificity with which the basis for a contention must be alleged involves the Board's judgment on a case by case basis. Peach Bottom, supra, at 20. Finally, in examining the contentions and the bases therefore, 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.

In a recent decision, Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542 (1980), the Appeal Board applied the principles described above governing the admissibility of contentions. The decision emphasized that in ruling on the admissibility of a contention, a licensing board is not to venture beyond the contention and its stated basis into the merits of the contention. Any question concerning the validity of the contention or of its basis must be left for consideration when the merits of the controversy are reached, i.e., through summary disposition or in the evidentiary hearing. Id. at 546-551.

In sum, at the petition stage, it is incumbent upon the Petitioner to: (1) set forth contentions which are sufficiently detailed and specific to demonstrate that the issues raised are admissible and relevant to the issuance of this operating license; (2) show that further inquiry is warranted; (3) put the other parties on notice as to what they will have to defend against or oppose; and (4) set forth a reasonable basis for each of the contentions, recognizing that the degree of specificity of basis needed will be judged on a case-by-case basis.

CONTENTIONS

Joint Intervenors' Contentions 2.D and 2.I read as follows:

2.D. The applicant has not adequately assessed and cannot accurately predict the amount or discharge rate of the radioactive pollutants to be released from Callaway Plant, Unit 1, into the atmosphere. Furthermore, due to meteorological considerations, U.E. is unable to predict accurately the dispersion of radioactive materials or their fallout rate.

2.I U.E.'s estimates of radiation dose from the Callaway Plant emissions do not adequately reflect new data on the health effects of low-level radiation, and of tritium in particular.

Contention 2.D was admitted for discovery only, subject to the provision that Joint Intervenors supply supplemental information which addresses the basis of the contention. Contention 2.I was not admitted due to lack of specificity. The Board stated that "[I]f Joint Intervenors specifically identify new data on health effects of low-level radiation prior to the next prehearing conference, the Board would consider a request at that time to amend Contention 2 to take account of such data." Special Prehearing Conference Order, April 21, 1981, at 17.

As to Contention 2.D, the cited interrogatory responses purport to delineate a basis for this contention. These responses identify a number of radioactive isotopes which Applicant has not indicated are present in the facility's expected releases. A review of Joint Intervenors' cited references indicates the potential inclusion of such isotopes in plant releases. As the merits of the contention are not at issue at this stage, and a purported basis for the contention is demonstrated, its admission is not opposed.

However, as to Contention 2.I, a different situation exists. As drafted, standing alone, the contention would clearly be inadmissible for lack of specificity. In their attempt to supply a basis for its admission, Joint Intervenors have only produced an extensive bibliography of studies dealing with tritium and low-level radiation, along with selected summaries of certain studies dealing with tritium and with low-level radiation health effects; however, they do not indicate the basis for any alleged discrepancy between Union Electric's dose estimates and those which could conceivably be derived from their cited materials. To the extent that matters contained therein may lead to a conclusion that the Applicants' estimates are deficient, Joint Intervenors must identify with particularity the source of such conclusion. There is no nexus drawn between the cited references and the contention which would allow the Staff or Applicant to discern the essential concern(s) sought to be expressed by Joint Intervenors, in order to prepare testimony to deal with those concerns in the forthcoming hearings. This alone should preclude admission of the proposed contention. More significant, however, is Joint Intervenors' total failure to amend Contention 2.I itself, as authorized by the Board, to reflect the import of the cited "new data." As Joint Intervenors have failed to submit such an amendment which would particularize the basis for this contention, the Staff submits that the Board's original ruling excluding this contention should remain in effect and become final.

CONCLUSION

For the reasons set forth above, the Staff does not oppose the admission of Contention 2.D, and opposes the admission of Contention 2.I into litigation in the instant proceeding.

Respectfully submitted,

Richard J. Goddard
Richard J. Goddard
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 24th day of November, 1981.

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CERTIFICATE OF SERVICE

I hereby certify that copies of NRC STAFF RESPONSE TO "JOINT INTERVENORS' AMENDMENT TO CONTENTION TWO" 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 24th day of November, 1981.

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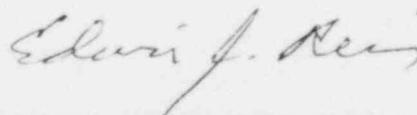
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