

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Docket Nos. STN 50-556
STN 50-557

DESIGNATED ORIGINAL
Certified By J. The

II. BACKGROUND

A. Motions to Reopen

A party who moves to reopen a closed evidentiary record before an initial decision has been rendered bears a heavy burden. Several standards must be met before such a motion is granted:

1. the basis for a motion to reopen must be newly discovered information or information whose significance could not earlier have been anticipated;^{3/}

2. the matters addressed by this information must be of major significance to the licensing of the plant;^{4/} and

3. the newly discovered information must be such that it might affect the outcome of the proceeding where no initial decision has been rendered,^{5/} or that it would change the outcome where such a decision has been rendered or where a previously uncontested Staff conclusion has already been made.^{6/}

^{3/} Vermont Yankee Nuclear Power Corp. (Vermont Yankee), ALAB-124, 6 AEC 358, 364-365 (1973); subsequent opinions in ALAB-126, 6 AEC 394; ALAB-138, 6 AEC 520, 523; and ALAB-167, 6 AEC 1151 (1973). In this proceeding, this standard of "new information" would require that the information relied upon must have come to light subsequent to the close of the record on February 28, 1979.

^{4/} Vermont Yankee, Id., at 364.

^{5/} E.g., Public Service Co. of Oklahoma (Black Fox, Units 1 and 2), ALAB-573, 10 NRC 775, 804 (1979).

^{6/} Kansas Gas and Electric Co. (Wolf Creek, Unit 1), ALAB-462, 7 NRC 320, 338 (1978).

To support a motion to reopen, a party either must reference new information which on its face raises a serious issue or must set forth by affidavit of a competent expert how the new material raises such a serious concern.^{7/} Bare allegations or the simple submission of new contentions is not sufficient.^{8/}

III. DISCUSSION

1. Intergranular Stress Corrosion Cracking (IGSCC); Board Question 15-1

Applicants contend that their intended use of 316-K stainless steel, having greater resistance to the IGSCC phenomena than 304 stainless which it replaces in the recirculating system piping, is new information meeting the standards for reopening a closed record. Staff believes reopening is not required because the information proffered does not directly address Board Question 15-1 sought to be reopened, and thus does not affect the outcome of that question.^{9/} However, Staff has no objection to a limited reopening of the record to receive information on this change in piping, because the information is significant to the concern which underlies the Board's question.

7/ Vermont Yankee, ALAB-124, supra, at 364.

8/ Pacific Gas and Electric Co. (Diablo Canyon, Units 1 and 2), CLI-81-5, 13 NRC 361, 363 (1981). An affidavit would not be required if a party could point to admissions and statements from Applicant or the NRC Staff found in official NRC documents or elsewhere. Id.

9/ Black Fox, ALAB-573, supra, at 804.

During the previous hearing in this proceeding, the parties addressed the following question of the Licensing Board:

Will General Electric be committed to remedial measures in parts of the Black Fox system where very recent (or future) experience indicates IGSCC may occur, as well as in parts of the system where such cracking has occurred in the past 10-15 years? (Board Question 15-1)

Applicants in proposed findings felt that the evidence offered in the previous hearing indicated,

"that the question of GE's commitment is a secondary consideration; and that the Applicants, under the watchful eye of the NRC Staff, have demonstrated a strong present and future commitment to remedy any concern associated with IGSCC." 10/

The NRC Staff's proposed findings were in essential agreement with Applicants' conclusion. 11/

Intervenors took issue with the practical value of Applicants' commitment, in their view because of an inadequate involvement by General Electric in the remedial process and the inadequacy of the Staff's identification of piping potentially subject to the IGSCC phenomenon. 12/

10/ Applicants' Proposed Findings Of Fact, Conclusions Of Law, And Proposed Order In The Form Of A Partial Initial Decision Concerning Radiological Health And Safety Matters, dated March 26, 1979, at 37.

11/ NRC Staff Proposed Findings Of Fact And Conclusions Of Law In The Form Of An Initial Decision On Radiological Health And Safety Matters, dated April 13, 1979, at 99-100.

12/ Intervenors' Proposed Findings Of Fact, Conclusions Of Law, And Proposed Order In The Form Of A Partial Initial Decision Concerning Radiological Health And Safety Matters, dated April 12, 1979, at paras. 6-13.

The record in the previous hearing indicates that the use of 316-K stainless steel in Black Fox plant was under consideration at the time the record closed and that the material, in the Applicants' judgment, possessed desirable properties to mitigate the IGSCC problem.^{13/} The record also shows that the consideration of 316-K stainless steel did not in any way subtract from the commitment of Applicant Public Service Company of Oklahoma to remedy IGSCC should it ever create a safety problem at Black Fox.^{14/}

2. Load Combination Methodology

Staff agrees with the Applicants that Revision 1 to NUREG-0484^{15/} is a change in the Staff's position on the correct methodology for analyzing dynamic load combinations. The proper design of the plant to withstand dynamic loads is an important safety issue. The methodology for analyzing the effects of dynamic load combinations is used to determine whether a given plant design is consistent with the health and safety of the public. The Staff's position on what methodology is acceptable for this purpose has materially changed from that reflected in the prior record.^{16/} Therefore, the record should be reopened for the limited purpose of considering changes in the Staff's position that are

^{13/} Written Supplemental testimony of Dr. John B. West, pp. 1-2, following Tr. 8582. See Tr. 8583, et. seq.

^{14/} Testimony of West, Tr. 8588.

^{15/} NUREG-0484, Rev. 1, "Methodology for Combining Dynamic Responses," May 1980.

^{16/} See NRC Staff Proposed Findings of Fact, supra, at 38-40.

relevant to the suitable methodology for combining two or more dynamic loads for the Black Fox plant.

3. Post Accident Monitoring

Staff agrees with Applicants that their change in position on the applicability of Reg. Guide 1.97 warrants reopening the record on Board Question 13-1.^{17/} The record should be reopened for the limited purpose of receiving into evidence a statement of Applicants' commitment to be bound by the requirements of Reg. Guide 1.97, Rev. 2.

Both NUREG-0718, Rev. 1,^{18/} and the proposed rule, 50.34(e)(2)(xix),^{19/} address the safety significance of post-accident

17/ Board Question 13-1:

"What revision, if any, of Reg. Guide 1.97 applies to BFS? If no revision applies, what evaluation of the post-accident monitoring plan has been made and against what standard was it judged?"

18/ "Licensing Requirements for Pending Applications for Construction Permits and Manufacturing License."

19/ (e)(2) To satisfy the following requirement, the application shall provide sufficient information to demonstrate that the required actions will be satisfactorily completed by the operating license stage. This information is of the type customarily required to satisfy 10 CFR 50.35(a)(2) or to address unresolved generic safety issues.

...
(xix) Provide instrumentation adequate for monitoring plant conditions following an accident that includes core damage.

monitoring. The fact that Applicants have changed the nature of their commitment on post-accident monitoring is material to Board Question 13-1. Thus the record should be reopened for the limited purposes of receiving into evidence Applicants' commitment.

4. Quality Assurance

Applicants contend that the record should be reopened on Board Question 10-3^{20/} because of a significant change in their staffing level for quality assurance personnel.^{21/} Because this new information is material to the outcome of the Board Question, the Staff believes that Applicants have made the showing required for reopening the record on this issue.

IV. CONCLUSION

Applicants' motion to reopen the record should be granted, with the scope of the hearing limited to the precise issue addressed by the new information.

Respectfully submitted,

James H. Thessin

James H. Thessin
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 20th day of November, 1981

20/ Board Question 10-3:

"What experience in the nuclear quality assurance area do the members of Applicants' Q/A staff have?"

21/ PSAR Amendment 17, Addendum II, at pp. 244-270.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

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

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CERTIFICATE OF SERVICE

I hereby certify that copies of "RESPONSE OF NRC STAFF TO INTERVENORS' MOTION TO REOPEN THE RADIOLOGICAL AND SAFETY HEARINGS AND TO INTERVENORS' PROPOSED CONTENTIONS FOR THE REOPENED HEARINGS" and "RESPONSE OF NRC STAFF TO APPLICANTS' MOTION TO REOPEN THE RECORD" 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 by deposit in the Nuclear Regulatory Commission internal mail system, this 20th day of November, 1981:

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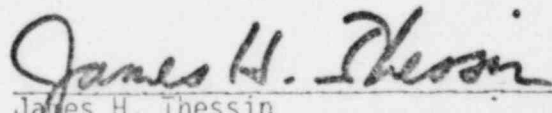
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