

ADJUDICATORY

May 13, 1980

SECY-A-80-66

COMMISSIONER ACTION

For: The Commissioners

From: Martin G. Malsch
Deputy General Counsel

Subject: REVIEW OF DIRECTOR'S DECISION ON 2.206
REQUEST (PUBLIC SERVICE ELECTRIC AND GAS CO.)
DD-80-19

Facility: Salem Nuclear Generating Station, Units 1 and 2

Purpose: To inform the Commission of a Director's
Denial of a request for enforcement action at
Salem which,

Review Time
Expires: May 27, 1980 (as extended).

Discussion: On April 29, 1980 the Director of the Office of Nuclear Reactor Regulation denied a request from Samuel E. Donelson, Mayor of Lower Alloways Creek, to (1) stay the issuance of the operating license for Salem Unit 2 until the current hearing on the amendment to allow expansion of the spent fuel pool at Unit 1 is completed; and (2) stay the issuance of Unit 2's operating license and Unit 1's operating license amendment pending the preparation of an environmental impact statement on spent fuel storage at Salem or completion of a generic impact statement on spent fuel storage.

In so far as the petition requests action on the Unit 1 spent fuel pool, the Director properly ruled that Mayor Donelson may raise issues relating to that subject in the current amendment proceeding to which he is a party. If not satisfied by the outcome of that proceeding, Mayor Donelson may seek Commission review of the decision at that time.

Information in this record was deleted
in accordance with the Freedom of Information
Act, exemptions 5

FOIA- 92-436

CONTACT:
Marian E. Moe, OGC
4-3224

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PDR FOIA
GILINSK92-436 PDR

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As the basis for his request, Mayor Donelson challenges the NRC's compliance with NEPA in so far as its assessment of the environmental impacts of the storage of spent fuel at Salem and nationwide is inadequate. In response, the Director relies upon the Environmental Impact Appraisal for the spent fuel pool modifications at both units issued on January 15, 1979, which found the impacts insignificant. ^{1/} In addition, the Commission issued a generic environmental impact statement (EIS) on spent fuel storage nationally in August, 1979, concluding that the planned expansion of spent fuel pools was environmentally acceptable. Finally, in its current Rulemaking Proceeding on the Storage and Disposal of Nuclear Waste, the Commission is evaluating the feasibility and safety of long-term storage of nuclear waste, including spent fuel pools. In its announcement of the rulemaking, the Commission ruled that licensing proceedings now underway would be subject to the outcome of the generic rulemaking. In response to the instant petition, the Director went one step further by ruling that the result of that rulemaking will apply to all reactor facilities, including those where no separate spent fuel proceeding has been held.

The petitioner also asserts that "it would be arbitrary, capricious and unreasonable" to issue the operating license for Salem Unit 2 prior to completion of the hearing on a spent fuel pool of the same design at Unit 1. In the Director's view, the Safety Evaluation Report prepared for the spent fuel pools at Units 1 and 2 provides adequate support for his conclusion that use of the modified pools will not endanger the public health and safety.

Ex. 5

^{1/} 10 CFR 51.5 provides that a negative declaration and environmental impact appraisal in support thereof may satisfy NEPA requirements if the proposed action will not significantly affect the quality of the human environment.

The Director plans to examine the outcome of the Unit 1 proceeding and will take any further action called for as a result of his examination at that time.

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Ex 5

Recommendation:

Martin G. Malach

Martin G. Malach
Deputy General Counsel

Attachments:

1. Petition from Mayor Donelson
2. Director's Denial, dtd 4/29/80

Commissioners' comments should be provided directly to the Office of the Secretary by c.o.b. Tuesday, May 27, 1980.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT May 19, 1980, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

Ex 5

DISTRIBUTION

Commissioners
Commission Staff Offices
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Secretariat

ATTACHMENT 1

Del.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

IN THE MATTER OF
PUBLIC SERVICE ELECTRIC & GAS
COMPANY'S - SALEM NUCLEAR
GENERATING STATION UNIT #2

:
:
:
: REQUEST FOR SUSPENSION OR
: MORATORIUM ON THE ISSUANCE *
: ON THE OPERATING LICENSE FOR
: SALEM UNIT #2
:

TO: Director of Nuclear Reactor Regulation
1717 H. Street, N.W.
Washington, D.C., 20555

1. The Petitioner, Samuel E. Donelson, is the Mayor of the Township of Lower Alloways Creek, a municipal unit of government in Salem County, N.J., and an intervenor in the matter of Public Service Electric & Gas Co., Salem Nuclear Generating Station, Unit #1 - Docket #50-272. The aforementioned intervention involves the application by the utility to place dense storage racks in the spent fuel pool at Salem Unit #1 and similar racks in Salem Unit #2. The practical effect if the application for reracking is granted will be to increase spent fuel storage from 264 spent fuel assemblies to 1,170 spent fuel assemblies. If the operating license for Salem Unit #2 is granted the enlarged spent fuel pool will permit 1,170 fuel assemblies to be stored at Salem Unit #2.

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2. The Atomic Safety & Licensing Board in the Salem Unit #1 proceedings - Docket #50-272 has propounded various questions predicated on concerns of safety and health. The hearing is scheduled on April 28, 1980 and testimony is to be submitted on the following question:

5th Question:

"In the event of a gross loss of water from the spent fuel storage pool at Salem 1, what would be the difference in consequences between those occasioned by the pool with the expanded storage proposed by the Licensee and those occasioned by the present pool?"

3. The Petitioner verily believes it would be arbitrary, capricious and unreasonable to issue the operating license for Salem Unit #2 which would permit the same enlarged spent fuel pool that is subject to an ongoing hearing at Salem Unit #1 prior to the conclusion of the hearing on the Salem Unit #1 application for spent fuel storage enlargement.

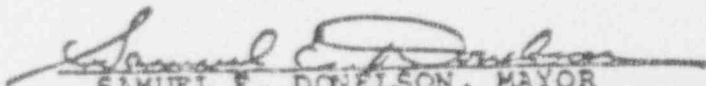
4. The enlargement of the spent fuel pool at Salem Unit #1 and the potential long term - defacto storage of spent fuel at Salem Unit #1 and #2, has never received environmental analysis as required under the National Environmental Policy Act. The Nuclear Regulatory Commission has taken a position that enlargement of spent fuel storage capacity and storage of spent fuel at reactor sites throughout the country does not require a NEPA type of analysis.

Instead, negative declarations of environmental impacts pursuant to the Code of Federal regulations have been filed in each license procedure by the NRC. The Petitioner contends the NRC has failed to comply with the National Environmental Policy Act on the impacts of nationwide storage of spent fuel at reactor sites and particularly at Salem Unit #1 and #2. The operating license for Salem Unit #2 should not be issued until this National Environmental Policy Act environmental impact statement is prepared and issued by the NRC.

5. 10 CFR 2.200 permits any person to request requirements or such other action as may be proper in respect to a license for a nuclear facility. The Petitioner has attempted to raise this issue in the matter of Township of Lower Alloways Creek v. The United States Nuclear Regulatory Commission, Civil Action, #79-1129 and in the Spent Fuel Confidence Rulemaking Proceeding, #PR-50,51(44FR61372). The United States District Court Action was dismissed and at the first prehearing conference in the waste confidence proceeding the Petitioner was advised by legal counsel for the NRC on the record that a NEPA type analysis of spent fuel storage at reactor sites would not be undertaken by the NRC in that proceeding.

6. This request specifies the following requests of actions:

- A. The operating license for Salem Unit #2 not be issued until conclusion of the hearing before the Atomic Safety & Licensing Board on Salem Unit #1, Docket #50 -272 is concluded, and
- B. the operating license for Salem Unit #2 not be issued and any amendment to the license for Salem Unit #1 not be issued to permit enlargement of the spent fuel pool until an environmental impact statement for storage of spent fuel at Salem Unit #1 and Unit #2 pursuant to the National Environmental Policy Act be completed by the NRC. Alternatively, a generic environmental impact statement dealing with storage of spent fuel as a national policy of temporary or permanent storage of spent fuel which has been and is being accomplished at nuclear power facilities throughout the United States.


SAMUEL E. DONELSON, MAYOR
TOWNSHIP OF LOWER ALLOWAYS CREEK
SALEM COUNTY, NEW JERSEY

Dated: March 25, 1980

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

IN THE MATTER OF PUBLIC
SERVICE ELECTRIC & GAS
COMPANY'S SALEM NUCLEAR
GENERATING STATION UNIT #2

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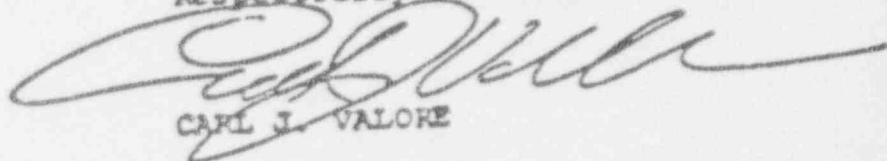
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NOTICE OF APPEARANCE ON
BEHALF OF PETITIONER
SAMUEL E. DONELSON

PLEASE TAKE NOTICE, that Carl J. Valore, a member
of the firm of Valore, McAllister, Aron, Westmoreland &
Vesper, P.A., 535 Tilton Road, Northfield, N.J., 08225, member
of the bar of the State of New Jersey and admitted to practice
before the United States Supreme Court and the United States
District Court, District of New Jersey, appears as Attorney
of Record for the Petitioner, Samuel E. Donelson, Mayor
of Lower Alloways Creek Township, Salem County, New Jersey.

Respectfully submitted,


CARL J. VALORE

March 25, 1980

Re.

ATTACHMENT 2



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

APR 29 1980

Mayor Samuel E. Donelson
Lower Alloways Creek Township
Municipal Building
Hancock's Bridge, New Jersey 08038

Dear Mayor Donelson:

This letter is written in response to your petition, dated March 25, 1980, requesting that I take certain actions with respect to the storage of spent fuel at the Salem Nuclear Generating Station, Units 1 and 2. Your petition has been considered under 10 CFR 2.206 of the Commission's regulations. For the reasons set forth in the enclosed "Director's Decision under 10 CFR 2.206" your request is hereby denied.

A copy of this decision will be placed in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D. C. 20555 and at the local public document room for the Salem Nuclear Generating Station, Units 1 and 2 at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079. A copy will also be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c).

Sincerely,

A handwritten signature in cursive script, appearing to read "Harold R. Denton".

Harold R. Denton, Director
Office of Nuclear Reactor Regulation

Enclosure:
As stated

cc w/enclosure:
Carl Valore, Jr., Esq.
535 Tilton Road
Northfield, New Jersey 08225

Mark J. Wetterhahn, Esq.
Conner, Moore & Corber
1747 Pennsylvania Avenue, N.W.
Washington, D. C. 20006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

PUBLIC SERVICE ELECTRIC
& GAS COMPANY, et al.
(Salem Nuclear Generating Station,
Units 1 & 2)

}
Docket No. 50-311
50-272
(2.206)
}

DIRECTOR'S DECISION UNDER 10 CFR 2.206

By petition dated March 25, 1980, Samuel E. Donelson, requested the Director of Nuclear Reactor Regulation to: 1) stay issuance of the operating license for Salem, Unit 2 until conclusion of a hearing currently being conducted on a license amendment for Salem, Unit 1 to permit expansion of the spent fuel pool storage capacity; 2) stay issuance of the operating license for Unit 2 and the license amendment for Unit 1 until an environmental impact statement on storage of spent fuel at Salem Units 1 & 2 is completed or until a generic environmental impact statement on the national policy of the temporary or permanent storage of spent fuel at nuclear facilities is completed. Mr. Donelson's petition has been treated as a request for action under 10 CFR 2.206 of the Commission's regulations. For the reasons set forth below, I have determined Mr. Donelson's petition should be denied.

I

As the basis for his request that environmental impact statements be prepared, Mr. Donelson asserts that the enlargement of the spent fuel pool at Salem and the potential long term de facto storage of spent fuel at Salem 1 & 2 have received the environmental analysis, i.e., consideration in an environmental impact statement, which he feels is required under the National Environmental Policy Act.

Act (NEPA). His central concern appears to be that the "NRC has taken a position that enlargement of spent fuel storage capacity and storage of spent fuel at reactor sites throughout the country does not require a NEPA type of analysis." Petition at 2.

First, to the extent that Mr. Donelson's petition requests any action with regard to the proposed expansion of the Salem Unit 1 spent fuel pool, it will not be considered here. The license amendment to permit such expansion is currently the subject of a proceeding before an Atomic Safety and Licensing Board of this Commission. Mr. Donelson states that he is an intervenor in that proceeding. Petition at 1. Any questions or issues he wishes to raise regarding the expansion of the Salem 1 spent fuel pool properly lie before that Board.

With regard to Mr. Donelson's central premise that the NRC has taken the position that enlargement of spent fuel pools throughout the country does not require a NEPA analysis, his assertion is incorrect.

In 1975, the Commission, recognizing a developing shortage of spent fuel storage capacity, announced its intention to prepare a Generic Environmental Impact Statement on Handling and Storage of Light Water Power Reactor Fuel. 40 Fed. Reg. 42801 (September 16, 1975). In that notice the Commission recognized that licensing actions intended to ameliorate a possible shortage of spent fuel storage capacity would take place during the time the generic EIS was in preparation. 40 Fed. Reg. 42802.

In response to the Licensee's request to modify and expand the spent fuel pools for Salem Units 1 & 2, the Staff, in accordance with the Commission's regulations implementing NEPA's requirements (10 CFR Part 51), issued an Environment

Impact Appraisal (EIA) on January 16, 1979. An appraisal was prepared for the proposed licensing action of amending the Operating License No. DPR-70 for Salem Unit 1 to modify the storage capacity of its spent fuel pool. However, recognizing that the Licensee had indicated it also intended to make identical modifications to Salem 2, and in view of the fact that the Final Environmental Statement (FES) for the Salem Station addressed both facilities, the Staff addressed the cumulative environmental impacts of the expansion of both spent fuel pools in the EIA. The Staff concluded that proposed modifications would not significantly affect the quality of the human environment and that there would be no significant environmental impact attributable to the modifications other than those which had already been predicted and described in the Commission's FES for the facility.^{1/}

In August 1979, the Commission issued its generic EIS on spent fuel storage.^{2/} On the basis of that analysis, the Commission concluded that increasing the capacities of individual spent fuel storage pools was environmentally acceptable.^{3/}

It is clear the Nuclear Regulatory Commission has addressed, both generically and for the Salem facility specifically, the environmental effects of expansion of the spent fuel pool. Mr. Donelson has not provided any information which

^{1/} "Environmental Impact Appraisal by the Office of Nuclear Reactor Regulation Relating to the Modification of the Spent Fuel Pools; Facility Operating License No. DPR-70 Construction Permit No. CPPR-53 Public Service Electric & Gas Company; Salem Nuclear Generating Stations Unit 1 Docket No. 50-272" at 27.

^{2/} Final Generic Environmental Impact Statement on Handling & Storage of Spent Light Water Power Reactor Fuel, NUREG-0575, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, August 1979.

^{3/} NUREG 0575, Vol. 1, supra, at 8-1 to 8-3.

would suggest a major change in facts which would warrant any further consideration of this issue.^{4/}

To the extent that Mr. Donelson's concern about "the potential long term de facto storage of spent fuel at Salem Unit 1 & 2", represents a concern about the ultimate disposal of the spent fuel, that concern is currently being addressed in the Commission's Rulemaking Proceeding on the Storage and Disposal of Nuclear Waste. See 44 Fed. Reg. 61372 (October 25, 1979). The purpose of that proceeding is to:

(1) reassess [the Commission's] confidence that safe off-site disposal of radioactive waste from licensed facilities will be available; (2) determine when any such disposal or off-site storage will be available; (3) if disposal or off-site storage will not be available until after the expiration of the license of certain nuclear facilities, determine whether the wastes generated by those facilities can be safely stored on-site until such disposal is available.

The Commission, in its Notice of Proposed Rulemaking, also noted that licensing practices need not be altered during this proceeding nor should the issues being considered in the rulemaking be addressed in individual licensing proceedings. All licensing proceedings currently underway, however, would be subject to whatever final determination is reached.^{5/} While the Commission's limitation on consideration of these issues is addressed only to licensing proceedings, I can perceive no reason why a different course should be followed in consideration of a request for action under 10 CFR 2.206. Whatever rule is promulgated following the conclusion of the generic rulemaking proceeding will apply to all nuclear reactor facilities, including Salem 2.^{6/}

^{4/} Director's Decision Under 2.206 in Public Service Company of Indiana, et al. (Marble Hill Nuclear Generating Station Units 1 & 2, DD-79-21, 10 NRC 717, 719 (1979).

^{5/} 44 Fed. Reg. 61372, 61373.

^{6/} Id.

In summary, the Commission has adequately addressed the environmental impacts of spent fuel storage at Salem Unit 2.

III

Mr. Donelson also asserts that in view of the fact that a licensing board is currently conducting a hearing on the proposed expansion of the spent fuel pool at Salem Unit 1, which involves consideration of various questions of safety and health, it would be "arbitrary, capricious and unreasonable to issue the operating license for Salem Unit 2 which would permit the same enlarged spent fuel pool...prior to the conclusion of the hearing on Salem Unit 1". Petition at 2.

The Commission Staff prepared a safety evaluation on the modifications proposed for the spent fuel pools at Salem Units 1 & 2.^{7/} On the basis of that evaluation, the Staff concluded that there was reasonable assurance that the health and safety of the public will not be endangered by operation with an expanded spent fuel pool and that such activity can be conducted in compliance with the Commission's regulations.^{8/} That analysis is set forth in Section 9.4 and Appendix D to Supplement No. 4 to the Safety Evaluation Report for Salem Unit 2.^{9/}

^{7/} Safety Evaluation by the Office of Nuclear Reactor Regulation Relating to the Modification of the Spent Fuel Storage Pool; Facility Operating License No. DPR-70, Public Service Electric & Gas Co., Salem Nuclear Generating Station, Unit No. 1, Docket No. 50-272 (January 15, 1979).

^{8/} Safety Evaluation Report, supra, at 3-1, 4-1.

^{9/} NUREG 0517, Supplement No. 4 to the Safety Evaluation Report by the Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission. In the Matter of Public Service Electric & Gas Co. (Salem Nuclear Generating Station, Unit 2) Docket No. 50-311, April, 1980.

The Staff has concluded that the modifications to the Salem Unit 2 spent fuel pool are acceptable from a health and safety and an environmental standpoint. The Licensee has advised, however, that it will not need, and presently does not plan, to use the modified high density racks for storing spent fuel until the end of the first fuel cycle of Unit 2. The NRC Staff will carefully examine the Commission's ultimate disposition of the ongoing proceedings regarding the re-racking of the spent fuel pool at Salem, Unit 1. If the Staff determines, on the basis of that examination, that further action is appropriate at the Unit 2 spent fuel pool, it will take such action.

Consequently, Mr. Donelson's request to stay the issuance of the operating license of Salem Unit 2 is denied.

A copy of this decision will be placed in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555 and in the local Public Document Room for the Salem Unit 2 facility located at Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079. A copy of this decision will also be filed with the Secretary for review by the Commission in accordance with 10 CFR 2.206(c) of the regulations of the Commission. As provided in 10 CFR 2.206(c), this decision will constitute the final action of the Commission twenty (20) days after the date of issuance, unless the Commission on its own motion institutes the review of this decision within that time.


Harold R. Denton, Director
Office of Nuclear Reactor Regulation

Dated at Bethesda, Maryland
this 29th day of April, 1980.