UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF ILLINOIS POWER COMPANY, SOYLAND POWER COOPERATIVE, INC. and WESTERN ILLINOIS POWER COOPERATIVE, INC. (Operating License for Clinton Power Station, Unit 1	)))))))))	Docket No. 50-461 OL

ADDITIONAL RESPONSE OF
APPLICANTS TO PRAIRIE ALLIANCE
PROPOSED SUPPLEMENTAL CONTENTION 8

Illinois Power Company ("Illinois Power"), Soyland Power Cooperative, Inc., and Western Illinois Power Cooperative, Inc. ("Applicants"), at the request of the Atomic Safety and Licensing Board ("Board") at the Third Special Prehearing Conference held May 4, 1982, submit this additional response to the Intervenor's Prairie Alliance, Proposed Supplemental Contention 8.

INTRODUCTION

Initially Applicants state that their previously filed Response to Prairie Alliance's Proposed Supplemental Contentions ("Response"), dated April 12, 1982, is sufficient to dispose of Proposed Supplemental Contention 8.

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Applicants reiterate here the position stated in that Response.

National Environmental Policy Act

As is apparent from the content of Proposed Supplemental Contention 8, and so stated in the Memorandum filed in support by Prairie Alliance, the only reason any issue that may be raised therein would be considered by this Board is because of the mandate imposed by the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§4321 et seq.

Proposed Supplemental Contention 8 however, suffers from innumerable infirmities. It states and assumes facts that are simply incorrect and the slightest review of the materials of record in this proceeding would have demonstrated those errors. It assumes circumstances without foundation or support that are factually wrong or contrary to logic and common sense. It is so awesomely vague that, as illustrated before, it can only be responded to by Applicants piling assumption on top of assumption in order to give it any substantive meaning. Even with these assumptions Proposed Supplemental Contention 8 totally fails to raise a single issue that is either relevant or not previously considered or a single change of facts from the prior proceedings which might justify its admission.

After eliminating the factual and logical errors and after assuming meanings for what remains, each portion of that remainder suffers from one or more of the following

deficiencies: (1) The issue raised was appropriate for, considered at, and resolved during the construction permit phase; (2) The issue raised is irrelevant to this proceeding and beyond the scope of consideration required by NEPA; (3) The issue raised at this stage is so lacking in the required "notion of feasibility" under NEPA as to be inappropriate for consideration here. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519(1978). In other words, Prairie Alliance has failed to provide any feasible alternatives.

Unless some significant change in facts is demonstrated, this Board's inquiry is complete if the Board finds that the Nuclear Regulatory Commission ("NRC" or the "Commission") considered the "environmental consequences" of the issues posed. Strycker's Bay Neighborhood, etc. v. Horlen, __ U.S.____, 100 S.Ct. 497, 500 (1980). The Board, because it is in the stance of reviewing a federal agency's action, cannot "interject itself within the area of discretion of the executive as to the choice of action to be taken." Id. at 500 (citing Kleppe v. Sierra Club, 427 U.S. 390, 410 N.21).

Examining the Proposed Supplemental Contention in light of the NRC's rules on specificity and on late filed contentions, 10 CFR §§2.714(a)(1), (b) recalls the Supreme Court's mandate that "it is still incumbent

upon intervenors who wish to participate to structure their participation so that it is meaningful, so that it alerts the agency to the intervenor's position and contentions." Vermont Yankee, at 554 (emphasis added). Supplemental Contention 8 fails that test and therefore fails to meet the requirements of 10 C.F.R. §2.714(b) for basis and specificity, especially given the stringent review applied to late-filed contentions under 2.714(a)(1).

Prior Proceedings

The licensing of a nuclear power plant is a two-phased proceeding. NEPA applies at both the construction permit phase and the operating license phase, although the considerations are not the same. The Clinton Power Station has already been through the construction permit phase. This phase involved the preparation of an Environmental Report by Applicants (ER-CP); the necessary staff review, comment and supplementing by the applicants; preparation and circulation of a draft environmental statement (DES-CP); review of the comments submitted thereon and preparation of final environmental statement (FES-CP).

In addition the Salt Creek Association (SCA) intervened in the construction permit proceeding. SCA's original intervention petition in that proceeding contained

63 "contentions." After settlement discussions, prehearing conferences and other preliminary procedures these were narrowed to eight contentions. Of those eight, the first three concerned environmental matters and were phrased by the Board to read:

Contention No. 1

(a) "The taking of 15,000 acres by the Applicant for a nuclear power plant site will have adverse agricultural and/or economic impacts on the members of Salt Creek Association residing in DeWitt County."

(b) "These impacts have not been adequately considered in Applicant's cost-benefit analysis."

Contention No. 2

"The damming of Salt Creek and resulting proposed impoundment will have an adverse effect on the surrounding agricultural lands, especially by blocking drainage tiles emptying into Salt Creek."

Contention No. 3

"Other sites and alternative waste heat dispersion methods are feasible and more desirable than those proposed by the Applicant."

Extensive hearings were held on the contentions. The transcript of the cross-examination on Contention 1 alone occupies about 650 pages.

On appeal, in summarizing the contentions and evidence, the Appeal Board stated "In short, the intervenors opposed construction of the facility on exclusively socio-economic grounds." Illinois Power Company (Clinton Power Station, Units No. 1 & 2) ALAB-340,

4 NRC 27, 30 (July 29, 1976). After disposing of certain preliminary matters, the Appeal Board addressed the merits:

> Both the applicant's Environmental Report and the staff's Final Environmental Statement treat in considerable detail the alternative of building no generating plant at all, as well as the alternatives of employing other kinds of cooling systems, constructing a different type of facility (e.g., a coal-fired plant) and selecting another site. Leaving aside their criticism of the analysis of the coal alternative (which we reach later in this opinion), the intervenors do not point to anything which might suggest that the consideration of any of the reasonable alternatives to the construction of Clinton as proposed was deficient in some material respect. And our independent examination of both the entire record (including the FES) and the Licensing Board decision satisfies us that there is no merit to the intervenors' claim that the benefits and costs of each such alternative were not developed and analyzed sufficiently to insure, in the words of the guideline established by the Council on Environmental Quality, that there would not be a "foreclos[ure] prematurely [of] options which might enhance environmental quality or have less detrimental effects." 40 CFR §1500.8(a)(4).

Id. at 36-37

Later in the opinion the Board stated:

> B. At the center of the intervenor's opposition to the Clinton facility is their desire to preserve the current predominantly agricultural uses of the land area proposed to be utilized for the facility (including its cooling reservoir). As previously noted (supra, pp. 3-4), that opposition took the form of a challenge to three

> discrete aspects of the cost-benefit analysis of the facility performed by the applicant and staff: the need for the facility; the evaluation of the societal cost of taking prime agricultural land out of production; and the assessment of the relative desirability of the coal alternative.

Id. at 37

Obviously the thrust of SCA's intervention in the construction permit phase was directed at, as is Prairie Alliance's proposed Supplemental Contention 8, the impact of changing the existing land use from agriculture to electric generation and the attendant effects. Below the specific parts of Proposed Supplemental Contention 8 are addressed.

Supplemental Contention 8.A

Applicants must first note that Proposed Supplemental Contention 8 is factually inaccurate. Proposed Supplemental Contention 8.A alleges ownership of "over 15,000 acres." Had Prairie Alliance bothered to read the DES-OL (draft environmental statement - operating license) it would have found that the amount of land owned is in fact 14,092 acres. DES-OL pp. 4-2 -- 4-3*.

Because Proposed Supplemental Contention 8.A contains such vaguely alleged impacts as to fail the tests of Vermont Yankee and 10 C.F.R. §2.714(b) for specificity, Applicants, to be able to respond, must make

*Citations will be to page numbers of the various documents unless otherwise specifically indicated.

assumptions in order to give some meaning to these allegations. The first sentence of Proposed Supplemental contention 8.A alleges some unspecified "significant meaning in the community social structure and personal values" which the impact of Applicants' land ownership has had. The obvious point in response is that Applicants now own the land, the lake has been constructed, and whatever "significant meaning" may reference, it has already occurred. Furthermore no alternative to Applicants' land ownership is advanced, and it is difficult to conceive of one that would meet the necessary "notion of feasibility" to alter these effects.

During the construction permit phase extensive attention was given to the kinds of concerns this contention presumably encompasses. The summary of that attention is set forth in the FES-CP, pp. 4-10 -- 4-11, 5-45 -- 5-46. Although there have been some changes in specific land uses since the construction permit phase, none of these are even mentioned, let alone advanced as the basis for this portion of Proposed Supplemental Contention 8.A. Those changes have been found not to alter the earlier analysis. DES-OL pp. 5-1 -- 5-2.

The second sentence of 8.A is equally vague and, although with great reluctance, Applicant again speculate

on its meaning even if it is deficient under the Commission's rules and Vermont Yankee. Applicants will assume that "funding community services" refers to the taxes that Applicants pay on the plant and property and "dependency," ignoring any connotation, indicates that Applicants will be a significant taxpayer in the county. If these assumptions are correct, this impact too was analyzed at the construction permit phase, FES-CP pp. 4-11, 5-45, and the local taxes to be paid by Applicant were considered a benefit. FES-CP p. 10-9. Taxes are also considered in the DES-OL which finds that the socioeconomic effects of operation "are expected to be minimal with the exception of tax benefits to DeWitt County..." DES-OL p. 5-14 (emphasis added). Reiterating the conclusion of the FES-CP, the DES-OL, with respect to all the effected communities, including DeWitt County, concluded "(b)ecause of the relatively small number of workers required to operate the station, the impact on the infrastructure of the communities in which they reside and on traffic is expected to be minimal" Id.

The second sentence of Proposed Supplemental Contention 8.A also refers to "proper development of community participation in said funding." If, as assumed above, "funding" references the taxes paid, it follows that the political system and political process will determine not only the amount of taxes (funding) paid by Applicants

but also the expenditure or use of those taxes. Prairie Alliance does not appear to be alleging Applicants will change the political system since, on the most generous assumption, see DES-OL p. 5-14, about 135 of the permanent employees will live in DeWitt County which had a population in 1980 of 17,945 people. DES-OL p. 4-22. While it is not disputed that the plant will be a significant taxpayer, it defies credulity to even suggest that existing "community participation" will be altered. Here no alternative has even been proposed to whatever the problem supposedly is and any conceivable alternative would be too remote and speculative, requiring basic changes in statutes or political structures, to require consideration here. N.R.D.C. v. Morton, 458 F.2d 827 (D.C. Cir. 1972).

Applicants submit that, to the extent that any substance to Proposed Supplemental Contention 8.A can be deciphered, it either was thoroughly addressed at the construction phase, or is simply devoid of factual support and logical meaning, or is too remote to merit consideration.

Supplemental Contentions 8B and 8G

At the Third Special Prehearing Conference, counsel for Prairie Alliance indicated that these two parts of Proposed Supplemental Contention 8 addressed the same issue. The difficulty with both parts is speculating

on just what the issue is. Taking them in reverse order, 8G first is too remote and speculative (as, for that matter, is 8B). NRDC v. Morton, supra. Future land use requirements are determined by the governing bodies with the appropriate jurisdiction which will be true during plant operation and after retirement irrespective of whether Applicants continue to own the land.

As to 8B the critical word seems to be "withdrawal." Land use and other factors relevant to decommissioning previously were considered. FES-CP pp. 10-3 -- 10-7. Applicants again are reluctant to speculate on the meaning of "withdrawal" but presumably it could mean abandonment or sale. As to the reactor site itself and its related facilities Applicants believe it is reasonable to conclude the NRC will not permit abandonment. Similarly, to assume Applicants could simply abandon the remaining property owned in the county requires too great a flight of fancy. Less absurd would be the sale of that portion of the site the Applicants would not be required to retain as part of decommissioning. It is a bit inconceivable that such a sale would have a significant impact -- the purchaser(s) presumably would be subject to the same land use requirements, referred to above, as are Applicants and would pay taxes just as Applicants do.

Supplemental Contention 8B and 8G are thus either meaningless or, in any attempt to give them rational meaning, are not cognizable or of any significance here.

Supplemental Contention 8C and E

Both these parts of Supplemental Contention 8 address the impacts of the recreational use of Clinton Lake, one by an unidentified reference to an expected number of visitors* and the other to a catalogue of speculated ills. Applicants assume that the estimation contained in 8C of the proposed Supplemental Contention refers to recreational users. This estimation in fact, is below the actual use and the prior estimate. The Illinois Department of Conservation (IDOC) estimated over 520,000 people actually visited the site in 1980 and that the number will rise to 750,000 in 1982 and 1,000,000 in 1983 and thereafter. DES-OL p. 4-4. The FES-CP estimated a higher 1980 usage, 700,000. FES-CP p. 5-46. At that time both the existing and proposed recreational uses were extensively analyzed. FES-CP pp. 2-1; 2-5 -- 2-6; 4-5; 4-11; 5-3; 5-29; 5-45 -- 5-46; and 10-7 -- 10-9. At the last reference the FES-CP stated:

*At the Third Special Prehearing Conference counsel for intervenors could not identify the source of that data.

> An additional major benefit will be the development of an important recreational facility well suited to the needs of the surrounding area. Offering the opportunity for relatively isolated hiking, canoeing, and camping, as well as higher-density activities such as swimming, fishing from shore, and picnicking, the Clinton facility should be valuable to many thousands of people, particularly to the 721,000 residents within 50 miles. The applicant has estimated that in excess of one million visitors a year may eventually use the facility. The staff believes that this level of usage can be readily supported if the facility is effectively planned, developed, and operated.

The FES-CP is the distillation of a long and thorough process which, for Clinton, was particularly focused on land use and changes in land use. The extensive discussion of recreation throughout the FES-CP is an indicia of the depth to which these issues were considered during the construction permit phase. No new facts are alleged or even suggested with respect to recreation in 8C or 8E, or elsewhere in the Supplemental Contention, that were not considered in the process of developing the FES-CP and the earlier hearings.

Supplemental Contention 8D

Many of the references already cited are responsive to the allegations in Proposed Supplemental Contention 8D but Applicants will address the specific allegations in the sub-parts.

Subpart D(1) is correct, there was a loss of hunting days. The FES-CP stated that hunting would not be permitted on the site. It was estimated that there were 15,400 hunting trips in 1970, FES-CP p. 4-11, which at that time were considered to be permanently lost, FES-CP p. 5-46, and the analysis in the FES-CP was based on that conclusion. The important factor here is not that hunting was lost, but that it was considered and the consequences analyzed at the construction permit phase. Strycker's Bay, supra. As more recently noted, DES-OL p. 4-4, the original plan to prohibit hunting has been changed and hunting is now allowed in some areas of the site thus reducing the loss previously analyzed.

Applicants must also note that the suggestion in 8D(1), "(d)rastic loss of timber and forest land," is over-stated. It was recognized that some timber would be removed for the lake and construction of facilities and the consequences analyzed, FES-CP pp. 4-6 -- 4-7, but additional trees have been planted as was recommended by the NRG staff during the construction permit phase, Id.; and see ER-OL (environmental report - operating license) pp. 4.5-5 -- 4.5-6. The result, as indicated in DES-OL Table 4.1, p. 4-3, does not suggest a "drastic" loss at all but, rather, a probable gain.

Subpart 8D(2), is also factually correct. Stream fishing was lost but this was explicitly recognized and the consequences considered at the construction permit stage. Strycker's Bay, supra. The timeliness of this matter, since the lake now exists is extremely dubious since there is no alternative suggested or imaginable which would fulfill the required "notion of feasibility." Vermont Yankee, supra

Although no reliable statistics were available at the time of the construction permit proceedings, based on a study found reasonable by the staff, it was estimated that in 1972 there had been between 2,500 and 5,000 user-days of stream fishing activity, FES-CP p. 4-11, which was treated as permanently lost in analyzing the consequences. FES-CP p. 5-46. In response to a comment, the FES-CP stated: "The staff would anticipate greater fishing benefits from the lake than in the former reaches of Salt Creek that are inundated." FES-CP p. 11-9. In discussing thermal effects for two units it also pointed out that even under a "worst case" scenario the lake would support at least 50,000 fisherman-days per year, or an order of magnitude greater than the pre-existing usage. FES-CP p. 9-6.

The point to emphasize, as with hunting, is that the loss of stream fishing was explicitly addressed and the consequences considered during the construction permit phase. Furthermore, remembering that the lake now exists and Applicants' recreational program is nearing full implementation, from the NEPA prespective, the Supreme Court's admonition in Vermont Yankee, supra, that consideration of alternatives must be bounded by some notion of feasibility is especially applicable.

These considerations are equally applicable to 8D(3) even if we were to assume the facts intimated there were accurate. It seems doubtful either now or during the construction permit phase that there was anywhere in Illinois over 14,000 contiguous acres of privately owned and utilized land that had "free open (recreational) use." Even limiting the allegations of 8D(3) to the forest and stream portions of the site flies in the face of common sense. More substantially, however, the earlier discussion and references in the FES-CP on changing recreational uses demonstrates the consdieration of this issue at the construction permit phase. A comparison of the user statistics, given above, prior to the acquisition by Applicants with the 1980 actual usage and the future estimated usage, strongly implies that this land was not at all "free" and "open"

to recreational use. As more recently noted, sport fishing on Salt Creek and its tributaries is generally at road crossings. ER-OL p. 2.1-11. The reason, although unstated, is obvious - the land was not free nor open nor accessible.

As is apparent, in addition to the objections previously raised, Supplemental Contention 8D raises issues whose consequences were thoroughly analyzed during the construction permit phase. Even if that were not true, the physical realities now existing are such that under NEPA, as construed by the Supreme Court, a consideration of these issues is not required nor appropriate.

Supplemental Contention 8F

The simple response to 8F is that, even if true, it is both irrelevant and beyond the jurisdiction of this Board or the NRC. First it assumes there has been "reallocation" of Illinois Department of Conservation funds so that it can administer Lake Clinton and it particularly assumes those funds were taken from Welden Springs State Park. Applicants know of no basis for this allegation but, even if true, it still would be irrelevant to this proceeding. Neither Applicants, the Board, the NRC nor intervenors have any control over the Department's budgeting process and little more could possibly be said about this than that the Department voluntarily entered the lease of the facilities. ER-OL pp. 5.6-1 -- 5.6-2.

Supplemental Contention 8H

Initially Applicants should point out that intervenor probably understated the number of employees who will commute to the plant from Decatur. The plant is expected to employ 300 people, 42% of whom, or 126, will live in Decatur. DES-OL p. 5-14.

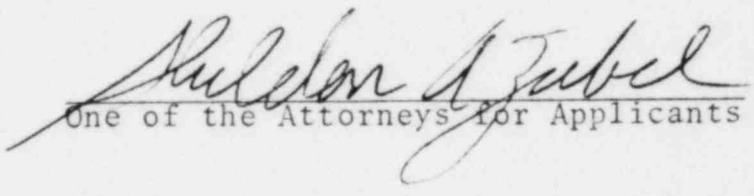
More significantly, however, during the construction phase the consequences of a far greater number of commuting construction workers were analyzed as were the consequences of a portion of the permanent work force commuting. Strycker's Bay, supra. The analysis of these types of impacts at the construction phase involved between 1000 and 1200 construction workers, most of whom it is assumed would commute. FES-CP pp. 2-5, 4-11. The impacts of the permanent employees, estimated at that time at a somewhat lower number than currently estimated, was similarly analyzed. FES-CP p. 5-45. Consistent with the previous conclusions, the DES-OL p. 5-14 states: "Because of the relatively small number of workers required to operate the station, the impact on the infrastructure in which they reside and on traffic is expected to be minimal."*

*Applicants would also note, as all of Supplemental Contention 8 deals with alleged issues arising under NEPA, that the intervenors failed to avail themselves of the opportunity to submit comments on the DES-OL. This is in marked contrast to the intervenors in the construction permit proceeding, who did utilize the process to raise many of their concerns, FES-CP pp. 11-12 -- 11-15, A-16 -- A-46, in detail and with great specificity.

SUMMARY

For these reasons, and those stated in Applicants' earlier response, Supplemental Contention 8 must be denied.

Respectfully submitted,



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PLEASE TAKE NOTICE that I have filed with the Secretary of the United States Nuclear Regulatory Commission ADDITIONAL RESPONSE OF APPLICANTS TO PRAIRIE ALLIANCE PROPOSED SUPPLEMENTAL CONTENTION 8 in the above-captioned matter. A copy of this document is attached hereto and hereby served upon you.

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CERTIFICATE OF SERVICE

I hereby certify that an original and two conformed copies of the foregoing document were served upon the following:

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in each case by deposit in the United States Mail, postage prepaid on May 12, 1982.

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