

08/23/82

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	}	
CONSUMERS POWER COMPANY		Docket No. 50-155
(Big Rock Point Nuclear Power Plant)		Spent Fuel Pool Modification

NRC STAFF PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON O'NEILL CONTENTION VIII

I. BACKGROUND

This is a decision on an application from Consumers Power Company (Licensee) to amend its operating license to modify its spent fuel storage pool at Big Rock Point Nuclear Power Plant. The application for amendment is contested by Christa-Maria et al. and John O'Neill (Intervenors) who have submitted a number of contentions opposing the proposed modification of the spent fuel pool. This decision treats only Contention VIII of John O'Neill which concerns the adequacy of the NRC Staff's Environmental Impact Appraisal (EIA).

II. O'NEILL CONTENTION VIII

In Consumers Power Company (Big Rock Point Nuclear Plant), LBP-80-25, 12 NRC 355 (1980), the Atomic Safety and Licensing Board (Board) restated and admitted O'Neill Contention VIII in the following form:

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An environmental review of the proposed spent fuel pool expansion is necessary under Section 102(2)(c) of NEPA and would indicate that the environmental costs of this expansion exceed the benefits. 12 NRC 355 at 366.

The parties to this proceeding have submitted briefs^{1/} prior to the hearing on this contention which address two issues raised by this Board on the outstanding NEPA issues left after the Appeal Board's decision, in Consumers Power Company (Big Rock Point Nuclear Power Plant) ALAB-636, 13 NRC 313 (1981). The resolution of these two issues essentially requires a determination by this Board of the adequacy of the Staff's Environmental Impact Appraisal (EIA) which was submitted on May 10, 1982 and admitted into evidence in this proceeding. (Tr. 2286).

The two issues are:

1. In light of the Staff's Environmental Appraisal, which was issued on May 15, 1981, whether an Environmental Impact Statement (EIS) on the expansion of the spent fuel pool is called for; and
2. Whether the Board is required to consider alternatives to the expansion by Section 102(2)(E) of NEPA. (Tr. 268).

Based on the following reasons the Board finds that the Staff's uncontroverted evidence is adequate to support the conclusion of the EIA which states that the proposed modification of the spent fuel pool will

^{1/} NRC Staff Brief on NEPA Issues, filed May 17, 1982; Brief of Consumers Power Company on the Status of Remaining NEPA Issues, filed April 27, 1982; Intervenors Memorandum Regarding NEPA Issues, filed May 13, 1982; John O'Neill's Discussion of NEPA, filed May 17, 1982.

not significantly affect the quality of the human environment. Since the issuance of the license amendment requested by the Licensee is not a major Commission action significantly affecting the quality of the human environment, it therefore does not require the preparation of an environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. Section 4321, et. seq. (NEPA) and Part 51 of the Commission's regulations. Also, the Board has determined that a consideration of alternatives is not required in this proceeding by Section 102(2)(E) of NEPA.

III. STATEMENT OF APPLICABLE LAW

Section 102(2)(C) of NEPA (42 U.S.C. § 4332(2)(C)) requires the preparation of an EIS only for any major federal action which significantly affects the quality of the human environment. Section 102(2)(E) of NEPA (42 U.S.C. § 4332(2)(E)) requires the consideration of alternatives to an action by a Federal Agency where the action involves an unresolved conflict in alternative uses of resources.

IV. OPINION

This Board must initially determine whether the proposed expansion of spent fuel pool capacity will significantly affect the quality of the human environment before an EIS can be required. The NRC Staff offered into evidence the EIA which it had prepared regarding the proposed action, and which was issued on May 15, 1981. (Staff Exhibit 3; Tr. 2274, 2286). In the EIA, the Staff considered land use, water use, radioactive material

released to the atmosphere, solid radioactive wastes, radioactivity released to receiving waters; occupational radiation exposures, non-radiological effluents, impacts on the community, and the environmental impact of postulated accidents. In the conclusion of the EIA, the Staff stated:

The Staff has determined, based on this assessment, that the proposed license amendment will not significantly affect the quality of the human environment. Therefore, the Commission has determined that an environmental impact statement need not be prepared, and that, pursuant to 10 C.F.R. § 51.5(c), the issuance of a negative declaration to this effect is appropriate. (EIA at 14).

In view of the Staff conclusion that the proposed spent pool expansion will not significantly affect the quality of the human environment, the issue before this Board is whether the Staff's conclusion is supported by the evidence. After the EIA was admitted into evidence at the evidentiary hearing, the parties had the "chance to define or challenge the content and conclusions of the document during the course of the hearing." Big Rock Point, ALAB-636, 13 NRC at 331.

The Staff presented evidence on the adequacy of the EIA. The NRC Staff presented witnesses Jack N. Donohew, Jr. and Richard Emch to testify on the bases for the conclusion of the EIA. Mr. Emch is the Project Manager for the Big Rock Nuclear Plant. Although Mr. Emch did not personally write any sections of the EIA (Tr. 2279), he adopted the document as his own and undertook the activities necessary to form an opinion as to the truth of the matters contained in the EIA. He stated he has discussed the contents with the reviewers who put the document

together and with the former Project Manager, Mr. Paulson. (Tr. 2275-76). Mr. Donohew, a Senior Program Manager in the Operating Reactor Assessment Branch for the NRC, wrote the Radiological Sections of the EIA along with two other individuals. (Tr. 2276). The Board stated that if there were questions on which the witnesses for the Staff were not qualified that counsel for the Intervenors would have the opportunity to speak to the experts who prepared those Sections of the EIA. (Tr. 2286). No requests were made by the Intervenors during the evidentiary hearing for additional witnesses. (See, Tr. 2271-2327). Mr. Emch agreed with Mr. Donohew that the proposal to expand the spent fuel pool would not significantly affect the quality of the human environment. (Tr. 2326).

Counsel for the Intervenors objection to the admissibility of the document on the ground that it failed to "consider alternatives," (Tr. 2286), was expressly overruled by the Board (Tr. 2299-2309. (Tr. 2287-88). The Board ruling is in accord with prior decisions of the Commission's adjudicatory boards on this matter. See Portland General Electric Co. (Trojan Nuclear Plant), ALAB-531, 9 NRC 263, 265 (1979); Virginia Electric and Power Co. (North Anna Nuclear Power Station), ALAB-584, 11 NRC 451, 457 (1980). Counsel for the Intervenors pursued cross-examination on the issue of thermal discharge from the plant, (Tr. 2299-2309), however, it was noted that a prior contention, 15(1) which dealt specifically with thermal discharge was withdrawn. (Tr. 2309, 2325.) Intervenors's counsel attempted to determine whether increased atmospheric releases from the plant had any impact on the birth weight in the area surrounding Big Rock Point Plant (Tr. 2319-2321);

however, on cross-examination counsel for the Licensee established that no evidence suggests that Big Rock Point Plant may be causing a reduction in babies' weights in Charlevoix County. (Tr. 2325). The Intervenors did not produce any direct evidence challenging the contents of the EIA. Furthermore, the Intervenors presented no testimony or evidence stating why an Environmental Impact Statement would be necessary for the expansion of the spent fuel pool under NEPA § 102(2)(C). The Intervenors did not present any evidence or testimony on any unresolved conflict involving the alternative uses of resources or the need for a discussion of alternatives required by NEPA § 102(2)(E). (Tr. 2271-2327).

Finally, the Intervenors presented no testimony on either the contents or conclusion of the EIA. The evidence on the adequacy of the EIA was, and remains, entirely uncontroverted. (Tr. 2271-2327).

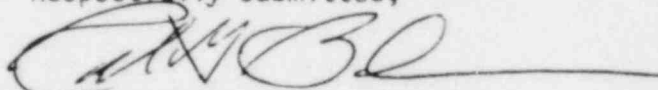
The Board has reviewed the content of the NRC Staff's EIA and finds that it supports the conclusion that the proposed license amendment will not significantly affect the human environment. That conclusion is uncontroverted by any evidence of record.

V. CONCLUSIONS OF LAW

Based on the foregoing reasons, this Board finds as a matter of law that the EIA submitted by the Staff is adequate to fulfill the requirements of 10 C.F.R. Part 51. The Board also concludes that since the issuance of the requested license amendment is not a major Commission action significantly affecting the quality of the human environment it does not require the preparation of an environmental impact statement

under Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. § 4332(2)(C)). The Board also finds that this action involves no unresolved conflict in the alternative uses of resources, and therefore, there is no need to consider alternatives to the proposed amendment under Section 102(2)(E) of NEPA (42 U.S.C. 4332(2)(E)).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. G. Bachmann', with a long horizontal line extending to the right.

Richard G. Bachmann
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 23rd day of August, 1982