October 13, 1982

Robert M. Lazo, Esq., Chairman
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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Peter A. Morris
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

In the Matter of
Maine Yankee Atomic Power Company
(Maine Yankee Atomic Power Station)
Docket No. 50-309 (Spent Fuel)

Dear Administrative Judges:

Enclosed for the information of the Board and parties is a recent Partial Initial Decision in the Big Rock Point spent fuel pool amendment proceeding. In that decision, the Big Rock Point Board first took evidence on the adequacy of the Environmental Impact Appraisal (EIA) prepared by the Staff and then denied two intervenor contentions alleging NEPA required that alternatives to the spent fuel expansion be considered. The Board dismissed these environmental contentions since, in the words of the Board, the intervenors failed to sustain their burden to cast doubt upon the credibility or completeness of the EIA. Decision at 2.

It is this procedure that the Staff suggested should be followed in its September 15, 1982 filing in the instant case. Specifically, the decision to require an Environmental Impact Statement (EIS), and the litigation of contentions premised on the position an EIS should be drafted, should await an evidentiary determination on the adequacy of the Staff's EIA.

Sincerely,

Jay M. Gutierrez
Counsel for NRC Staff

Enclosure: As Stated

cc: See Page 2

A507

cc: (w/enclosure)
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Stanley Tupper
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David Santee Miller
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Board Panel
Atomic Safety and Licensing
Appeal Board
Docketing and Service Section
Mr. Raymond G. Shadis

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Peter B. Bloch, Chairman
Dr. Oscar H. Paris
Mr. Frederick J. Shon

In the Matter of

CONSUMERS POWER COMPANY

(Big Rock Point Plant)

Docket No. 50-155
(Spent Fuel Pool Amendment)

September 15, 1982

INITIAL DECISION

(Concerning Environmental Issues)

This decision, the third in a series of initial decisions, addresses Christa-Maria et al.'s (Christa-Maria) environmental contentions: (1) that the environmental impact appraisal (EIA) issued by the Staff of the Nuclear Regulatory Commission (staff) does not comply with section 102(2)(E) of the National Environmental Protection Act (NEPA), 42 U.S.C. §4332(2)(E), and (2) that staff must "study, develop and describe" alternatives to the expansion of the Big Rock Point Spent Fuel Pool.

We find these contentions to be without merit. Christa-Maria's principal argument is that NEPA §102(2)(E) requires attention to alternatives to the proposed pool expansion. However, we interpret that section to require studies of alternatives only if there are "unresolved conflicts concerning alternative uses of available resources." Furthermore, we find that none of the cases relied on by Christa-Maria, including Dairyland Power Cooperative (La Crosse Boiling Water Reactor), LBP-80-2, 11 NRC 44 (1980), is inconsistent with our interpretation of §102(2)(E).

Christa-Maria has asked us to find that:

> The Staff has not demonstrated that there is no unresolved conflict conerning alternative uses of available resources.

But we observe (see I A., below) that staff has carefully considered the commitment of resources and found that it is negligible. Furthermore, the intervenors have not introduced any evidence or raised any inferences through cross-examination that challenge the staff's conclusion concerning the negligible commitment of resources.

We also conclude that direct testimony and cross-examination failed to cast any doubt on the credibility or completeness of the EIA prepared by staff. As a result, we have reached conclusions quite similar to those proposed to us by Consumers Power Company (applicant). Since we agree so completely with applicant on this subject, we adopt (with minor editorial and substantive modifications) its findings and conclusions, which were presented to us clearly and thoroughly, in a format we suggested to the parties. Those findings and conclusions appear, without quotation marks, in the following section of our opinion.

I. ENVIRONMENTAL CONTENTIONS

A. Statement of Facts

In Consumers Power Company (Big Rock Point Nuclear Plant), ALAB-636, 13 NRC 312 (1981),the Atomic Safety and Licensing Appeal Board held that Section 102(2)(C) of NEPA, 42 U.S.C.A. § 4332(2)(C), did not require preparation of an environmental impact statement ("EIS") covering the effects of the additional term of reactor operation that the proposed expansion of the Big Rock Point spent fuel pool would permit. 13 NRC at 333. This decision reversed a previous determination by this Board in its Memorandum And Order On NEPA Review, LBP- 80-25, 12 NRC 355 (1980). The Appeal Board did not preclude a finding on remand that the direct effects of pool expansion required preparation of an EIS, but directed this Board to await the issuance of the NRC Staff's environmental document before determining this issue. 13 NRC at 333. The Appeal Board likewise left open the question whether, if an EIS were not required, a discussion of alternatives might nonetheless be

mandated by Section 102(2)(E) of NEPA, reasoning that a determination would be premature in the absence of a record. 13 NRC at 332.

On May 10, 1982, the staff issued a revised Environmental Impact Appraisal ("EIA"), originally issued on May 15, 1981.1/ The staff concluded that Section 102(2)(C) of NEPA did not require preparation of an EIS:

> The NRC staff has reviewed this proposed facility modification relative to the requirements set forth in 10 C.F.R. Part 51 of the Commission's regulations. 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.

Moreover, the EIA contains the basis for staff's conclusion that Section 102(2)(E) of NEPA does not require a consideration of alternatives in this case. Staff concluded that expansion of the Big Rock spent fuel pool "will not result in any significant change in the commitment of water, land and air resources." (EIA at 13.) The most significant use of resources will be that of the stainless steel used to fabricate the racks; but the staff concluded that in comparison to the amount of stainless steel used annually in the United States, the amount to be used in the racks is "insignificant" and there are no unresolved conflicts with respect to it (EIA at 13-14). Although the EIA as originally issued contained a voluntary discussion of alternatives, the revised document omitted this discussion in accordance with the staff's conclusion that NEPA does not require consideration of alternatives to the proposed action.

On March 1, 1982, during a telephone conference held in this case, the Board Chairman requested that the parties brief "the outstanding NEPA issues

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1/ Environmental Impact Appraisal By The Office of Nuclear Reactor Regulation Relating To The Modification Of The Spent Fuel Storage Pool Facility Operating License No. DPR-6 Consumers Power Big Rock Plant Docket No. 50-55, Revised May 10, 1982 (Staff Exhibit No. 3).

left after the Appeal Board's decision." (Tr. 267.) Specifically, the Chairman requested that the parties brief the questions (a) whether, in light of the Staff's EIA, an EIS is required in this proceeding, and (b) whether the Board is required to consider alternatives to the completion of the spent fuel pool. On April 27, 1982, Licensee filed a brief on the status of the remaining NEPA issues. On May 17, 1982, the staff filed a brief expressing agreement with the applicant's two main arguments, characterized by the staff as follows:

> (1) the decision to require an EIS should be made only after an evidentiary determination on the adequacy of the Staff's EIA, (2) a discussion of alternatives is not proper prior to litigating the adequacy of the EIA's finding that there are no unresolved conflicts about alternatives uses of available resources...

NRC Staff Brief on NEPA Issues at 1-2.

On June 7 through June 12, 1982, hearings were held in Boyne Falls, Michigan for the presentation of evidence on the license amendment. The record was closed on several issues at the conclusion of the hearings, including the issue regarding the adequacy of the staff's EIA. At the hearing the EIA, marked as Staff Exhibit 3, was admitted into evidence pursuant to 10 C.F.R. §2.743(g)(Tr. 2286). The document was sponsored by staff witnesses Emch and Donohew.

B. Applicable Law

Section 102(2)(C) of NEPA, 42 U.S.C. §4332(2)(C), requires preparation of an EIS with respect to every recommendation by a federal agency of a major federal action significantly affecting the quality of the human environment.

Section 102(2)(E) of NEPA, 42 U.S.C. §4332(E), provides that "all agencies of the Federal Government shall --develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources."

The staff has the responsibility of determining the baseline data regarding environmental impacts and producing a final environmental statement which is necessarily a prime ingredient in the ultimate fashioning of the NEPA determinations by the agency's adjudicatory tribunals. Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2), ALAB-260, 1 NRC 51, 55 (1975). The staff's environmental documents must be introduced into evidence at the hearing before the Licensing Board. 10 C.F.R. §51.52(b)(1). The staff's environmental documents are subject to review and amendment by the Licensing Board in an adjudicatory setting, in which all parties with a demonstrated interest may participate in evidentiary hearings. New England Power Company (NEP, Units 1 and 2), LBP-78-9, 7 NRC 271, 279 (1978).

In Consumers Power Company (Big Rock Point Nuclear Plant), ALAB-636, 13 NRC 312 (1981), the Appeal Board held that a reasonable application of NEPA to this license amendment proceeding does not require consideration of the continued operation of the Big Rock Point plant, whose operation already has been licensed. 13 NRC at 333.

C. Discussion

1. Status of NEPA Issues

In light of the Appeal Board's decision in Big Rock Point, ALAB-636, supra, there are only two environmental issues for us to decide. The first issue is whether in light of the Staff's EIA, an EIS is required regarding the direct environmental impacts of the proposed spent fuel pool expansion. This issue must be resolved by considering the adequacy of the analysis supporting staff's conclusion that the proposed action does not constitute a major federal action significantly affecting the human environment. If staff's conclusion is supported by the evidence, there is no need for preparation of an EIS under the statute. In particular, we must consider whether any evidence of record, either presented directly by another party or elici-

ted on cross-examination of a Staff witness, casts doubt on the soundness or completeness of the Staff's analysis.

The second issue is whether, if preparation of an EIS is not necessary, a discussion of alternatives is required by Section 102(2)(E) of NEPA. Again, we believe this issue must be resolved by considering the adequacy of the Staff's EIA. The Staff concludes that there will be no significant change in the use of land, water or air resources. Although 63,000 pounds of stainless steel will be used in the fabrication of the new fuel racks, staff concludes that there are no unresolved conflicts about alternative uses of this mineral resource. If these staff conclusions are supported by the evidence, there is no need for a discussion of alternatives under Section 102(2)(E) of NEPA.

The Staff argued in its pretrial brief that the meaning of "available resources" in Section 102(2)(E) was intended to be limited to natural resources. Staff Brief at 5-8. The Staff pointed out, inter alia, that this was the view taken in at least two prior spent fuel pool expansion proceedings, Portland General Electric Co. (Trojan Nuclear Plant), ALAB-531, 9 NRC 263, 266 (1979), and Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-584, 11 NRC 451, 458 (1980). Moreover, since the Appeal Board in Big Rock Point, ALAB-636, supra at 332, cited North Anna with approval, the Staff argues there is an implication that it agreed with this characterization of "resources." We do not believe it is necessary for us to determine whether the Licensing Board in Dairyland Power Cooperative (La Crosse Boiling Water Reactor), LBP-80-2, 11 NRC 44, 73-77 (1980) may have been in error in defining the term "resources" in the statute. We are at a loss to find any evidence of record which suggests that there might be an unresolved conflict about alternative uses of available resources.

We are aware that in La Crosse, the Licensing Board held that the nuclear plant itself was a resource within the meaning of the statute and that since expansion of the spent fuel pool would permit continued plant

operation, an unresolved conflict existed as to the use or nonuse of the plant. We believe, however, that this decision, which applied to a provisionally licensed facility that had not been subjected to any prior environmental balance concerning the need for the plant (id. at 74), was limited in its applicability to this case by the Appeal Board's decision in Big Rock Point, ALAB-636, supra. The Appeal Board's holding that a reasonable interpretation of NEPA did not require consideration of the environmental impacts of the continued plant operation made possible by pool expansion was made in the context of Section 102(2)(C) of NEPA. Nonetheless, we believe that the Appeal Board's reasoning is equally applicable to Section 102(2)(E). Because continued plant operation is beyond the scope of the environmental inquiry in this proceeding, there can be no unresolved conflicts about the use or nonuse of the entire plant. (Because our determination on this issue is adverse to Sunflower, we need not reach the merits of staff's argument in its reply brief that this issue was not properly raised.)

With respect to both of the remaining NEPA issues, therefore, the relevant inquiry is the same: does the evidentiary record, including the evidence marshalled in the EIA itself and any developed during the hearing on this issue, support the relevant conclusions reached by the Staff in the EIA? If it does, there is no need for preparation of an EIS or a consideration of alternatives.

2. The Evidentiary Record

Our review of the EIA convinces us that the proposed spent fuel pool modification would not cause any significant environmental impacts and would not involve any unresolved conflicts about alternative uses of resources. Offsite radiological impacts, in the form of increased releases to the atmosphere, are conservatively estimated to be so small that they can only be characterized as insignificant (Section 5.3.2). No increased releases to

receiving waters are expected (Section 5.3.4). Likewise, no increase in solid radwaste from the spent fuel pool purification system is expected, and a conservatively estimated increase in the amount of such radwaste to be shipped from the plant annually would have no significant environmental impact (Section 5.3.3). The occupational radiation exposure that will be incurred in the reracking process is quite small compared to the total annual occupational exposure burden, and the incremental burden from the presence of additional, relatively old, spent fuel in the pool is negligible (Section 5.3.5).

The only nonradiological impact of the proposed action will be a slight increase in the plant thermal discharge to Lake Michigan. This increase would amount to less than 0.04% of the thermal discharge from the plant's main condenser (Section 5.4). At the hearing, Mr. Axtell testified that the change in temperature across the main condenser averages about 15 degrees (Tr. 2303). Thus the temperature increase resulting from the modification, 0.04% of 15 degrees, will be insignificant.

Because the proposed modification will not change the dimensions of the pool, it is obvious that no additional commitment of land is involved (Section 5.1). As regards water use, there will be a slight incremental heat load on the SFP cooling system, but this heat load --and the accompanying need to replace water lost through evaporation-- will not exceed the design basis (Section 5.2). The Appeal Board in Consumers Power Company, ALAB-636, supra at 332, reasoned that NEPA had application only when there were environmental changes to evaluate. Although the Appeal Board was considering Section 102(2)(C) of NEPA, we believe this reasoning is equally applicable to Section 102(2)(E).

Approximately 63,000 pounds of stainless steel will be required to fabricate the new fuel racks. There is no evidence that calls into question staff's conclusion that there are no unresolved conflicts about the use of this material (Section 7.2.2).

Nothing put into evidence at the hearing in any way modifies our view that the staff's conclusions in the EIA have adequate evidentiary support. The Intervenors presented no direct testimony regarding the adequacy of the EIA. The Board raised no questions regarding the adequacy of the staff's conclusions. The intervenors did not elicit on cross-examination any testimony which might conceivably cast doubt on the adequacy of any of the staff's analyses or conclusions.

Intervenors' questions on Section 5.2, "Water Use", were abandoned (Tr. 2297). Intervenors' questions, supplemented by the Board, concerning Section 5.4, "Non-radiological Effluents", elicited testimony showing how negligible the increase in the temperature of the plant discharge caused by pool modification would be (Tr. 2300-04). Intervenors' questions about the environmental impacts of thermal discharge in the lake were held improper because they formed the specific subject of a contention that Intervenors had previously withdrawn (Tr. 2309). Intervenors' questions on Section 5.3.2, "Radioactive Material Released to the Atmosphere", were abandoned without eliciting any testimony.

A document marked as Intervenors' Exhibit 11 for identification, but not introduced into evidence, was shown to witnesses Emch and Donohew. It purported to be a study showing that a trend to lower birth weight was found in Charlevoix County and adjacent counties but was more pronounced in Charlevoix County (Tr. 2320). The Board Chairman asked Mr. Emch whether in preparing the EIA the Staff had considered the possibility that releases from the Big Rock Point plant might cause a reduction in birth weight in the vicinity (Tr. 2320). Mr. Emch testified that generic consideration had been given to this question in that the NRC considers possible genetic and actual biological effects of radiation on unborn children and the mother, but not when the releases are as small as those the proposed modifications could cause (Tr. 2321). The Board Chairman asked Mr. Emch as a hypothetical question, what significance it would have if there were a valid study showing reduced birth weight in the area of the plant (Tr. 2321). Mr. Emch testi-

fied that such a study would have no particular significance unless it included a finding that such a trend was caused by radiation. (Tr. 2322). Mr. Emch testified further that nothing in the article suggested that operation of the Big Rock Point plant may be causing a reduction in birth weights in Charlevoix County.

Thus, no doubt whatever has been cast on the staff's conclusion that the proposed spent fuel pool expansion will have no significant environmental impacts. Similarly, the staff's omission of a discussion of alternatives in the EIA was based on its conclusion in Section 7.2 that there are no unresolved conflicts about alternative uses of resources raised by the proposed action. Intervenors did not even cross-examine the staff witnesses with regard to this issue. Thus, the hearing process cast no doubt whatever on this conclusion.

II PROCEDURAL RULINGS

The parties are hereby directed that all future briefs should explain, possibly within a parenthetical phrase following the case citation, the facts of a case that are being relied on and the relationship between the facts of the case and the proposition for which the case is offered. In the alternative, a party may indicate that it is relying on dictum and cite in full the relevant passage of the case. Failure to comply with these directions may cause the Board to ignore the nonconforming citations.

The schedule of this case is modified so that replies must be filed within ten days of the filing of any brief due after the issuance of this order.

O R D E R

For all the foregoing reasons and based on consideration of the entire record in this matter, it is this 15th day of September 1982

ORDERED:

(1) Christa-Maria, et al.'s contentions concerning the need for the Staff of the Nuclear Regulatory Commission (staff) to review alternatives to the expansion of the Big Rock Point spent fuel pool and concerning the inadequacy of the Environmental Impact Appraisal issued by the staff on May 15, 1981, are dismissed.

(2) The procedural rulings contained in Section II. of the accompanying memorandum shall be effective on issuance of this Order.

(3) Within ten (10) days after service of this decision, a party may appeal by filing exceptions to paragraph (1) of this Order or Part I of this decision or any part thereof, pursuant to the provisions of 10 CFR §2.762, which imposes requirements of conciseness and particularity and provides for the subsequent filing of appeal briefs.

FOR THE
ATOMIC SAFETY AND LICENSING BOARD

Peter B. Bloch, Chairman
ADMINISTRATIVE JUDGE

Dr. Oscar H. Paris,
ADMINISTRATIVE JUDGE

Mr. Frederick J. Shon,
ADMINISTRATIVE JUDGE

Bethesda, Maryland