

10/14/82

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
MAINE YANKEE ATOMIC POWER COMPANY)	Docket No. 50-309
(Maine Yankee Atomic Power Station))	(Spent Fuel)

NRC STAFF RESPONSE IN OPPOSITION TO
SMP'S MOTION FOR CLARIFICATION AND MODIFICATION

INTRODUCTION

On September 24, 1982, Sensible Maine Power (SMP) filed a Motion seeking clarification and modification of the Licensing Board's April 12, 1982, Order (Order), that ruled on the admissibility of SMP's proposed contentions. For the reasons set forth below, the Staff opposes granting the relief sought in this Motion.

II. BACKGROUND

Pursuant to the Board's Prehearing Conference Order dated August 24, 1981, as amended by an Order of September 15, 1981, SMP filed eighteen revised contentions on October 5, 1981.^{1/} The Board admitted nine of SMP's proposed contentions. In admitting these contentions, the Board

^{1/} See "Intervenor's Specific Contentions" dated October 5, 1981 and "Intervenor's Response to Staff and Applicant Objections to Intervenor's Contentions" dated January 24, 1982.

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redrafted several contentions so that they would be admissible or more susceptible to litigation.^{2/}

When the aforementioned Orders were served upon the parties, SMP filed neither objections to the Board's actions nor a motion to reconsider. Now, approximately six months after its issuance, SMP requests that the Board: (i) restore the wording of those proposed SMP contentions which were redrafted prior to their admission; (ii) clarify the scope of the edited, admitted contentions; and (iii) reconsider its rejection of certain contentions.

III. DISCUSSION

In effect, the challenged Order is a Prehearing Conference Order - it admits contentions and establishes the issues for this proceeding. The rules of practice require a party to file objections to a Prehearing Conference Order within five days after service of that order. 10 C.F.R § 2.751a(d) and 2.752(c). Accordingly, the objections of SMP are out of time by over six months, and therefore, should not now be heard by the Board.

Notwithstanding the above, a consideration of the merits of SMP's Motion also require it to be denied. SMP first seeks restoration of the original language contained in its proffered contentions. In most instances, the Board reworded an otherwise objectionable contention so that it would be acceptable. That being so, it is inappropriate for SMP to now argue that the original wording of contentions should be restored.

^{2/} Specifically, SMP Proposed Contentions 6, 8, 9, 10, 11, 16 and 17 were admitted following redrafting by the Board.

This Board was under no obligation to recast SMP's defective, proposed contentions for the purpose of making them acceptable. Commonwealth Edison Company (Zion Station, Units 1 and 2), ALAB-226, 8 AEC 381, 406 (1974); Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), LBP-79-6, 9 NRC 291, 295-96 (1979). Moreover, the several reasons why the Board did reword certain of SMP's proposed contentions were clearly set forth in the challenged Order.

A review of the Board's Order indicates that the Board found that several of the proffered contentions were too broadly drafted and did not sufficiently relate to the proposed license amendment in order for the proposed contentions to be admitted in this proceeding. Proposed Contentions 6, 8 and 11 fall within this category. Rather than rejecting these contentions outright, the Board narrowed these contentions so that they could be litigated in the context of this license amendment proceeding. See Order at 8-12. Elsewhere in the Order, aspects of other proposed contentions were deleted by the Board to the extent that they did not relate to the spent fuel modification. Rejected aspects of Proposed Contentions 8, 10 and 17 fall within this category. See Order at 9-11 and 15-16. Still other parts of proposed contentions were rejected as vague and without legal basis. Proposed Contentions 6(b) and (c) are examples of sections of partially admitted contentions which were deleted for this reason. See Order at 8. Finally, other proposed contentions were considered confusing because the basis of the contention appeared to be set forth in the body of the contention. Accordingly, in at least one instance the Board deleted the basis section of a proposed contention before admitting it. See Proposed Contention 16 and Order at 15. In short, the various reasons why SMP's proposed contentions were modified

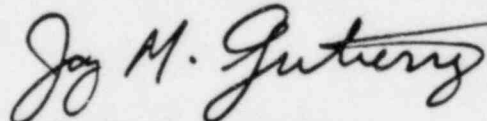
were clearly set forth in the challenged Order. Thus, despite this Board's well reasoned Order, SMP, six months late, has requested clarification relative to the scope of the admitted contentions. The Staff submits that the scope of each of the admitted contentions is clear from the Board's Orders.

SMP also seeks reconsideration of three previously rejected contentions. Specifically, SMP Proposed Contentions 2, 6(a) and (b) and 15. Beyond merely urging that it do so, SMP offers no additional argument as to why the Board should reconsider its earlier rulings and now admit these contentions. Motion at 10-11. It is a well established principle that the mere repetition of arguments previously presented does not form a basis for reconsideration of a prior ruling. Nuclear Engineering Company, Inc. (Sheffield Illinois Low-Level Radioactive Waste Disposal Site), CLI-80-1, 11 NRC 1, 5-6 (1980). Here, as in Sheffield, without any new argument put forward, there is nothing for this Board to reconsider. Id at 5.

IV. CONCLUSION

For the reasons aforesaid, the Licensing Board should deny SMP's Motion in its entirety.

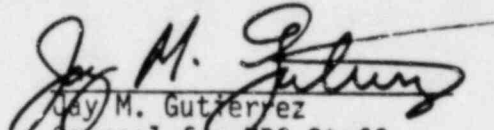
Respectfully submitted,



Jay M. Gutierrez
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 14th day of October, 1982.

Mr. Raymond G. Shadis
P.O. Box 76
North Edgecomb, Maine
04556


Jay M. Gutierrez
Counsel for NRC Staff