



NRC PUBLIC DOCUMENT ROOM
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

for the matter of)
)
POWER COMPANY)
)
(William B. McGuire Nuclear)
Station, Units 1 and 2))

Docket Nos. 50-369
50-370

11/13/78

APPLICANT'S REPLY TO "INTERVENOR'S PROPOSED
FINDINGS OF FACT AND ARGUMENT
IN SUPPORT OF CONSIDERATION"^{1/}

On October 19, 1978 Intervenor filed its Proposed Findings of Fact and Argument In Support of Consideration. Pursuant to 10 CFR Section 2.754(a)(3) Applicant makes the following reply.

At the outset Applicant wishes to make several general comments. First, presentation of argument is not proper in proposed findings. 10 CFR Section 2.754(c) clearly defines the extent of such findings:

"Proposed findings of fact shall be clearly and concisely set forth in numbered paragraphs and shall be confined to the material issues of fact presented on the record, with exact citations to the transcript of record and exhibits in support of each proposed finding. Proposed conclusions of law shall be set forth in numbered paragraphs as to all

^{1/} On November 1, 1978 Applicant requested that the time within which it could comment on Intervenor's Proposed Findings of Fact be extended to and including November 10, 1978. Such request was granted by this Board's Order of November 6, 1978. Unbeknownst to Applicant at the time it requested the extension was the fact that November 10, 1978 was a federal holiday. As a result, Applicant was unable to serve its reply until the next working day, November 13, 1978. Applicant apologizes for this oversight and respectfully requests that the instant reply be received.

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material issues of law or discretion presented on the record. Proposed findings of fact and conclusions of law submitted by a person who does not have the burden of proof and who has only a limited interest in the proceeding may be confined to matters which affect his interests."

The Appeal Board, in another context, had occasion to address the matter of inadequate findings. See Consumers Power Company (Midland Plant, Units 1 & 2), ALAB-123, 6 AEC 331, 332-34 (1973). Therein they held that findings filed in contravention of 10 CFR Section 2.754 work a hardship on the administrative process. In this instance, it is quite difficult to determine where argument ceases and proposed findings begin.^{2/}

Secondly, the proposed findings raise impermissible challenges to Commission regulations^{3/} and improperly state facts by taking them out of context.^{4/} Such error renders

^{2/} Applicant has not addressed the argument contained in pp. 1-8 of Intervenor's Proposed Findings inasmuch as it views such to be in violation of the regulations. It would note, however, that despite Intervenor's argument, the fact remains that Applicant, Staff and the State of North Carolina support the need for McGuire in the timeframe sought.

^{3/} In paragraphs 22 & 44, Intervenor challenges the timeframe within which the Commission assesses financial qualifications to operate a nuclear facility. Such is in contravention of Appendix C to 10 CFR Part 50, Section I.B. In paragraph 51, Intervenor attacks the substance of Table S-3, 10 CFR Section 51.20(e). That such challenges are impermissible, see 10 CFR Section 2.758; Union of Concerned Scientists v. AEC, 499 F. 2d 1069 (D.C. Cir. 1974); Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 & 2), ALAB-218, 8 AEC 79, 89 (1974).

^{4/} Intervenor makes numerous references to the testimony of William H. Grigg, which testimony was made a part of Amendment 50 to the Application. Applicant submits that such testimony, taken as a whole, simply does not support the points asserted by Intervenor. See also Tr. 2581-2604 wherein Applicant's witness, Richard C. Ranson explained the context within which Mr. Grigg was testifying and the nature of such testimony.

those aspects of Intervenor's Proposed Findings defective. Applicant would note that Intervenor has made several admissions in its Proposed Findings which render moot some of the issues it has pursued.^{5/}

With specific reference to Intervenor's Proposed Findings Applicant would simply address those matters which are more clearly set out and so clearly in error to warrant notation. As to other matters, Applicant relies on its Proposed Findings of Fact filed October 6, 1978.

Seismology^{6/}

Paragraph 5

According to the Applicant's witness, the relation of acceleration to intensity is logarithmic (Tr. 2023), and an intensity X earthquake would cause an acceleration at the site of 0.05g (Tr. 2022) whereas an IX intensity earthquake would cause an acceleration of 0.0125g, a four-fold difference. Intervenor quotes Applicant's witness as stating that "however the ratio of accelerations between an XI and a X intensity quake is put at perhaps three times the amount of

^{5/} In Paragraph 1 Intervenor admits that contrary to its contention, "observations made in Eastern North Carolina fail to show a continuation of the anomalous changes in [land elevation and groundwater behavior]....The data now available do not support a finding of dilatancy and the inference that a major quake can be expected in the vicinity of Southport". In paragraph 10 Intervenor acknowledges that, contrary to its allegation that Applicant is not financially qualified to operate McGuire, Applicant "currently is enjoying good earning performance".

^{6/} In its Proposed Findings Applicant noted that Intervenor's failure to present affirmative evidence on the seismic issue rendered such an uncontested matter and thus beyond the operating license proceeding. See p. 46. Applicant, by addressing the substance of Intervenor's allegations, does not retreat from this position.

shaking which you would have for one intensity level lower" (Tr. 2023, 1.13). This statement is taken out of context, and is in reference to the logarithmic relationship of earthquake intensity. In the witness' next statement, he rephrased this statement and said "it could handle an earthquake larger than Intensity X at that distance. I wouldn't really care to be more specific than that without actually thinking about what numbers I might get from the calculations" (Tr. 2023). The Intervenor also quotes the witness as stating that "it might be on the order of two times for one intensity level increase" (Tr. 2024). This statement is also taken out of context and was referring to the acceleration between intensity levels if "you are fairly close to the epicenter of the earthquakes" (Tr. 2024).

Paragraph 6

Although the state-of-the-art earthquake prediction is still developing, the historical record and studies of related geological structure indicate there are specific areas far more prone to earthquake activity than others. These areas in the central and eastern United States are New Madrid, Missouri and Charleston, South Carolina. These areas are characterized by continuing activity within a well-defined local area. The McGuire area is in a totally different geologic setting than any of these areas. Moreover, it has no history of anomalous continuing earthquake activity (Tr. 2014-21, 2026-30).

Paragraph 9

Intervenor has completely misinterpreted Applicant's testimony (Tr. 2026) regarding the "design earthquake". Applicant's witness reiterated that "the design earthquake for McGuire is a composite of many, many different earthquakes, and no earthquake having all of those bad conditions has ever occurred" (Tr. 2026).

Paragraph 11

Detailed information regarding duration and wave frequency was presented at the construction permit stage. This Board may take notice of the discussions therein. See 8 AEC 92, 97-99 (1973).

Financial Qualifications

Paragraph 14

Applicant refutes Intervenor's determination of "base load" for the same reasons stated in Applicant's September 18, 1978, response to Affidavit of Jesse Riley dated September 13, 1978: a base load cannot be determined in those months which contain both heating and cooling elements of load.

In addition, Applicant notes that Intervenor has failed to give recognition to the economic recession resulting from the Arab oil embargo in the mid 1970's. (See testimony of D. H. Sterrett following Tr. 997 at pp. 2, 6-7; testimony of G. Thomas Sev following Tr. 1117 at pp. 2 & 16; Tr. 1442.)

Paragraph 15

Applicant views as pure conjecture the statement by the Intervenor that "the largest contributing factor to seasonal peak demand is the temperature responsive component of residential use". The evidence fails to show that there is any means available to determine what portion of residential energy sales, which comprise about 25% of total energy sales, is due to the temperature sensitive component.

Paragraphs 21 & 36

Intervenor makes reference to the financial burden that will be imposed upon Applicant's customers as a result of the operation of McGuire and other planned facilities. Applicant has maintained that consideration of future facilities is improper. In any event, such calculations are in error, inter alia, in that they assume residential customers will bear the entire alleged financial burden. As recognized by Intervenor, Applicant's residential load comprises only 25-30% of the total. (Tr. 2244-45)

Paragraph 43

Intervenor's allegation that Applicant would compromise safety in times of financial stress is totally at odds with the record evidence. (Tr. 2625-26)

Intervenor's assertion that decommissioning will be unprovided for, is in contradiction to Applicant's testimony. (Tr. 2559-62, 2614-20).

Radon

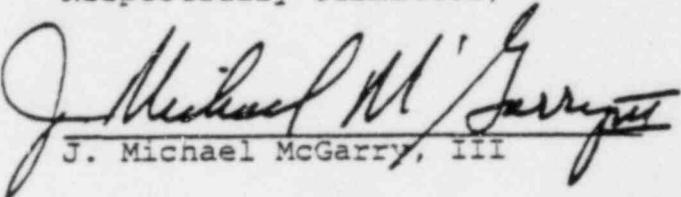
Paragraph 47

Intervenor's reference to Dr. Gotchy's use of "philosophy and value judgements" in assessing radon impacts has been taken out of context. The essence of Dr. Gotchy's testimony in this regard was that the Staff did not go beyond 1000 years in calculating impacts because postulating such a more remote scenario would be philosophical and involve value judgements due to climatological uncertainties (Tr. 2447-54); it appears that Dr. Gotchy wanted to avoid this and only consider technical matters.

Conclusion

Applicant submits that this Board should issue an initial decision authorizing the operation of the McGuire facility consistent with the above stated reasons and those set forth in Applicant's Proposed Findings of Fact and Conclusions of Law.

Respectfully submitted,


J. Michael McGarry, III

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November 13, 1978

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Certificate of Service

I hereby certify that copies of "Applicant's Reply to 'Intervenor's Proposed Findings of Fact and Argument in Support of Considerations'", dated November 13, 1978 in the captioned matter, have been served upon the following by deposit in the United States mail this 13th day of November, 1978.

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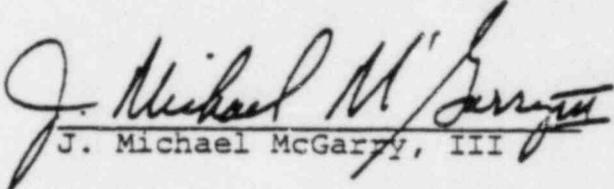
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