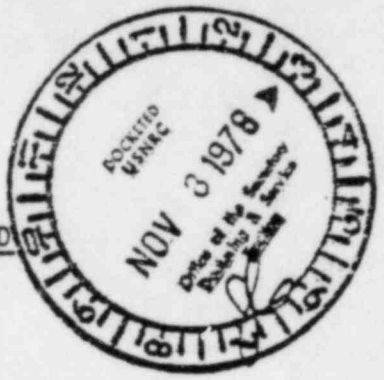
UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



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In the Matter of	)	
	)	
DUKE POWER COMPANY	)	
	)	
(Amendment to Materials License SNM-1773 for Oconee Nuclear Station Spent Fuel Transportation and Storage at McGuire Nuclear Station)	)	Docket No. 70-2623

11/3/78

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RESPONSE TO APPLICENTS' COMMENT OF OCTOBER 27, 1978
RE: CESG'S CONTENTIONS

Applicant has taken the position that a cask that meets the tests of 10 CFR part 70, Appendices A and B is subject to no further challenge. This is because any challenge postulating other tests is "an attack on the regulations contrary to 10 CFR § 2.758" Comment p. 4.

10 CFR § 71.36 makes it clear that the appendices are minimum requirements. Nothing in that part states that they are also the maximum required requirements under all circumstances. Indeed, see § 71.15:

> The Commission may by rule, regulation or order, impose upon any licensee such requirements, in addition to those established in this part, as it deems necessary or appropriate to protect health or to minimize danger to life or property.

It appears that, if a Board is so convinced, it has the power to order stricter requirements. To reach such a result, one logical course would be to consider Intervenor's contentions arguing they are necessary.

Further, as Applicant's comment points out, the regulations are aimed at "normal transport conditions" and certain "hypothetical accident conditions". It is an entirely appropriate contention to point out dangerous circumstances which this particular case creates, which in turn go beyond the test circumstances.

The Board is to draw a cost/benefit analysis. Applicant has stated that it feels it is "more economical to transport spent fuel to McGuire". (Discovery Response 4). Thus, the benefit is a savings in money. The Board would then have to look at the costs: residual risk from a normal hypothetical accident plus special risks of the proposed route.

A set of facts in support of this position which could be proven might include the following: the truck with cask must negotiate a particular hazardous intersection; at said intersection there have been a series of load shifting accidents and overturned trucks; there is a small but possible chance of a collision at this intersection between an overturned cask and a gasoline tank truck which would create conditions that would exceed the test conditions of (1) free drop, (2) puncture, and (3) thermal.

Intervenor has the right to prove "that whatever residual risks there were within regulation parameters should yet be deemed unacceptable in view of the absence of justification for their being taken in view of special circumstances" Citizens for Safe Power, Inc. v Nculear Regulatory Commission 524 F.2d 1291 (D.C. Cir., 1975) at 1300.

Further, if Applicant had no choice other than moving the spent fuel on the highways, there might be seen to be more benefits. As it is, they are just saving an unknown amount of money and, in any case, will have to either spend that money in early 1983, when McGuire fills up, or drive the spent fuel to a third place before then. In other words, the cost/benefit analysis could easily reach another balance when the scheme is a temporary one.

Intervenor believes therefore, that the way to challenge a contention is via § 2.749, motion for summary disposition, fully supported by affidavits. This would squarely pose the scientific problems and provide evidence on the casks and conditions of travel. Applicant has not done its homework to eliminate special circumstances. Answer 8, "Currently no efforts have been made to identify hazardous intersections for a tractor trailer along the proposed routes",

and 9, "Duke is not aware of any efforts to study the intersection of I-77 and I-85." They are relying on the minimal testing required by the regulations as if taping a copy to the cask will be a magic charm insuring no accident worse than predicted will happen.

Intervenor has requested (question 5) and Applicant has undertaken to provide "documentation of these tests [impact tests on the spent fuel casks] . . ." by October 16, 1978. It would be, of course, well within the bounds of our contention to challenge the method of testing of the specific cask, NAC-1. Applicant states the cask has a "Certificate of Compliance, No. 6698." We see no reason why a Certificate of Compliance should be given the same status as a rule or regulation under § 2.758.

Further discovery may bear out Intervenor's intended statistical analysis and show that insufficient tests have been performed on the cask, leaving a high residual doubt as to its true reliability even under the tests of Appendix 3. In that case, even if a certification becomes a rule or regulation, then such a rule ought to be waived under the procedures of § 2.758(b). That remains to be seen, however.

CESG believes the foregoing argument bears on the contention of the other Intervenors as well. Since other Intervenors are unrepresented, counsel cannot resist commenting on Applicants tirade against them. In particular, the Board would clearly have authority to require an emergency plan if it deemed a serious emergency to be a residual risk. Since there is no such plan, this contention is a serious one. That a petition for a general regulation is pending does not remove the § 71.15 responsibility to protect health and minimize danger.

Technical qualifications and quality control are very much a part of transportation hearings and fill much of § 71. A contention directed to Applicant's ability and desire to inspect and check the casks after each shipment, for example, is appropriate and this is the thrust of Contention 5. This has nothing to do with prior hearings, and technical qualifications to run a nuclear power plant,

CERTIFICATE OF SERVICE

I hereby certify that copies of the attached in the captioned matter have been served on the following by depositing same in the United States mail this 3rd day of November, 1978.

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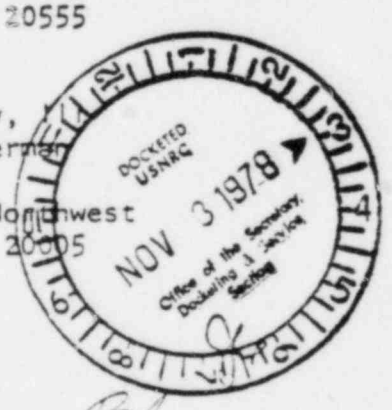

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except that the legal maxim "sloppy in 41, sloppy in one" would seem to apply to proof of lack of qualifications to run a transfer program. Collateral estoppel, of course, only occurs when both parties are the same. Here, a different Intervenor ought to be allowed to prove its points.

As to Contention 6, it is manifest that whatever fears of nuclear power there may be and whatever justification therefor, power plants do not rumble down the highway by people's homes. Whether people's fears are justified or not (a matter of proof herein), harmful anxiety that may be generated is a real cost of transportation. Again, if this movement were absolutely necessary, as opposed to merely economical (i.e. if it were to a final destination should one ever be found), then it might be justified. As it is, needless psychological damage is just a way of shifting costs from Applicant to the general population.

Based on the foregoing, all contentions should be passed on to the Hearing Board, when named, and discovery should continue on each.

Dated: November 3, 1978.

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