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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
 )  
PUBLIC SERVICE ELECTRIC & GAS ) Docket No. 50-272  
COMPANY, et al. )  
 )  
(Salem Nuclear Generating )  
Station, Unit 1) )

LICENSEE'S OPPOSITION TO MOTION OF  
INTERVENORS ALFRED AND ELEANOR COLEMAN TO CONVENE  
THE BOARD TO RECEIVE PUBLIC TESTIMONY

Introduction

The Public Advocate of the State of New Jersey ("Public Advocate") on behalf of the intervenors which it represents in this proceeding, Alfred and Eleanor Coleman ("Intervenors" or "the Colemans") has filed a motion asking the Licensing Board to convene a "special session" to receive "testimony and written statements from all interested members of the public" regarding issues or concerns that should be admitted as issues in controversy.

No authority is cited for the extraordinary procedure suggested. In essence, Intervenors ask the Licensing Board to circumvent and to enlarge upon the procedures established by the Commission codified as Part 2 of the NRC's regulations. Intervenors fail to demonstrate that the existing procedures for the formulation of contentions by parties and evidentiary hearings thereupon, as well as procedures by which persons may present limited appearance statements, are, in this

instance, inadequate to protect the public interest.

In addition, Intervenors request, again with no supporting authority, that the secretary and parties be required to serve Intervenors' technical consultants with all documents and pleadings filed. Public Service Electric and Gas Company ("Licensee") opposes this motion and requests that it be denied for the reasons discussed below.

THE REQUESTED SPECIAL SESSION IS NOT  
AUTHORIZED BY THE RULES AND IS  
UNNECESSARY IN ANY EVENT

To put Intervenors' motion for a special hearing in proper perspective, one must keep in mind that the instant proceeding is not plenary in nature, as with an application for a construction permit, or, to a somewhat lesser extent, an operating license, at which wide ranges of issues may potentially be considered. Rather, the instant proceeding is related to a proposed amendment to the operating license, which is limited solely to an increase in the spent fuel storage capacity in the spent fuel pool of the No. 1 Unit of the Salem Nuclear Generating Station. The tenor of intervenors' motion contemplates a much more comprehensive discussion of matters than the narrow issue pending review before this Atomic Safety and Licensing Board ("Board").

Whatever its purpose, Intervenors' motion amounts to a challenge of NRC regulations prohibited by 10 C.F.R. §2.758. The Intervenors have not made the showing of special circumstances required by that section for challenging a Commission

regulation. Commission procedures simply do not provide for such special sessions of the Licensing Board or the reconsideration of issues already resolved.

The Commission's recently revised regulations cited by Intervenors relating to the receipt of limited appearance statements already have liberalized the times when such presentations can be made, i.e., they now may be received, at the discretion of the Board, at a prehearing conference as well as at the evidentiary hearing. Any further revision of the "limited appearance" provisions must be left to subsequent amendment of the rules by the Commission. Thus, while the Licensing Board will undoubtedly accommodate public participation where possible, it must adhere to the Commission's established procedures.<sup>1/</sup>

The requested procedure appears to be a thinly veiled attempt by Intervenors to introduce new issues into this proceeding for which the Board has no jurisdiction and apparently to amend their contentions without a showing of substantial good cause required by the regulations. See 10 C.F.R. §2.714(a)(3). Intervenors have already had a full opportunity to plead and amend their contentions and pursue discovery. This Board should not permit the Commission's requirements to be circumvented in this manner.

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<sup>1/</sup> For example, in Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-73-28, 8 AEC 666, 680 (1973), the Licensing Board admonished intervenors that "such complex hearings must be handled in accord with the Rules of Procedure set down by the Commission, although every practical and reasonable effort will be made to assist in the public's participation in the licensing process."

In any event, Intervenors have completely failed to show any deficiency in the existing procedure or, in fact, any need for their proposed procedure.<sup>2/</sup> The "scores of concerned individuals, political leaders and groups" to which Intervenors allude<sup>3/</sup> can contribute their views by way of limited appearances as the Board in its discretion may permit. Inasmuch as the "limited appearance" provision of 10 C.F.R. §2.715(e) permits only the submission of one's "position on the issues," the rule clearly does not contemplate, as Intervenors apparently suggest, that nonparties have a stated role in developing contentions for hearing.<sup>4/</sup>

INTERVENORS' REQUEST THAT THEIR TECHNICAL CONSULTANTS BE SERVED IS ENTIRELY IMPROPER

Intervenors ask the Board to direct the Secretary and the parties to serve their technical consultants with all documents or pleadings filed in this action. Pursuant to 10 C.F.R. §2.712(b), service upon a party who has appeared by an attorney, as have the Intervenors herein, is made by .

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- 2/ Licensing Board hearings are still quasi-judicial proceedings in which expert decisions are made on defined issues resolved upon competent evidence. They are not town meetings at which decisions are made on the basis of the opinions of members of the audience who happen to attend. The purpose of limited appearances is to suggest to the Board pertinent questions on the issues which might not already be in the record.
- 3/ Intervenors' Motion to Convene at 5.
- 4/ Contrary to the assertion found on p. 3 of the Public Advocate's Motion, 10 C.F.R. §2.715(d) permits individuals to file a brief amicus curiae only before the Atomic Safety and Licensing Appeal Board or Commission and not before a licensing board.

service upon the attorney of record. As previously noted, in this proceeding, the Colemans are represented by the Public Advocate. Nonetheless, in light of "the special circumstances here concerning the manner of representation and the location of counsel," the Board in the instant proceeding has, by Order of July 19, 1978, granted Intervenor's motion requesting that they personally be added to the service list. Moreover, the Licensee has agreed to serve a second attorney in the Office of the Public Advocate. <sup>5/</sup>

Now, in addition, Intervenor's ask that their technical consultants also be served with all pleadings and documents. Intervenor's offer no authority for this unusual request, nor do they recite any particular hardship. It is apparent that there has been a de facto substitution of the Public Advocate, which undeniably has extensive resources, for the Colemans as the party in interest, in addition to its role as counsel. The Public Advocate which is financed by the taxpayers of New Jersey and has large financial resources available to it has chosen and undoubtedly is paying the consultants in California. Simply put, the Public Advocate wishes to pass on the burden and expense of communicating with its own consultants to the parties. This request is palpably unfair and should be denied. <sup>6/</sup>

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<sup>5/</sup> See letter from Troy B. Conner, Jr. to R. William Potter dated July 24, 1978.

<sup>6/</sup> The Commission has itself declined to give financial assistance to intervenors. Nuclear Regulatory Commission (Financial Assistance to Participants in Commission Proceedings), CLI-76-23, 4 NRC 94 (1976).

For the same reasons, the Board should deny Intervenors' alternative request for an additional ten days to respond to all pleadings, motions and orders. There are many methods available to the Public Advocate for expediting delivery of relevant materials such that it can meet the requirements of the Commission's rules.

The interest of the Licensee, other parties, the Commission and the general public in a speedy conclusion to this single issue proceeding should not be prejudiced by the movants. The Public Advocate has certainly shown no basis for being granted the special privileges it seeks. If Intervenors are truly unable to meet the deadlines fixed by the rules of the Nuclear Regulatory Commission or the Board, it would be more appropriate for them to reconsider their status as parties or for the Public Advocate to consider his participation in this proceeding.

Respectfully submitted,

CONNER, MOORE & CORBER



Mark J. Wetterhahn  
Counsel for the Licensee

November 22, 1978

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Opposition to Motion of Intervenors Alfred and Eleanor Coleman to Convene the Board to Receive Public Testimony," dated November 22, 1978, in the captioned matter, have been served upon the following by deposit in the United States mail this 22nd day of November, 1978:

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