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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the
ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)	Docket No. 50-309-OLA
MAINE YANKEE ATOMIC POWER STATION,)	(To Increase and Modify
(Maine Yankee Atomic Power Company),)	Spent Fuel Pool Storage
Applicant.))	and Systems; Compaction)

SMP RESPONSE TO STAFF AND APPLICANT OBJECTIONS
UPON SMP'S "ADDITIONAL SPECIFIC CONTENTIONS"

Pursuant to this Board's Order of July 20, 1982, Intervenor Sensible Maine Power, ("SMP"), here responds to Staff's and Applicant's objections upon SMP's "Additional Specific Contentions" filed August 30, 1982.

Introduction

Prior to a seriatim discussion of SMP's additional contentions and the objections thereto, several points raised in Staff's and Applicant's introductory remarks merit at least brief consideration here, especially those efforts or arguments as would unfairly or unlawfully restrict an Intervenor's statutorily and constitutionally guaranteed right to be heard by way of pleading contentions or, where an Intervenor deems such advisable, repleading contentions under appropriate circumstances. We respectfully submit that the circumstances here presented favor this Board's serious consideration and acceptance of SMP's additional contentions.

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In deciding the propriety of additional contentions herein, substantial consideration should be accorded the purpose and function of pleadings in an intervention, the purpose and function of the EIA and SER, and the construction to be put upon this Board's Order of April 12, 1982, (hereinafter "Order"). SMP respectfully submits that the reasoned application of these factors to its additional contentions favors their consideration and acceptance.

The introduction to SMP's additional contentions, the first two paragraphs of which we here expressly incorporate by reference, admittedly begins: "The contentions set forth below are drawn from several sources." *Id.*, at 1. While the word choice there made now seems unfortunate, given the misconstruction of it attempted by Staff, its plain purpose was the ready identification of contentions, including the recognition that a number of them had been expressly described as "premature" when previously made. By way of example only, the Order so recognizes SMP's original contention No. 1, treating the need for an Environmental Impact Statement, (Order at 5, first line), and SMP's original contention No. 4, treating alternatives, (Order at 7, first line of last full paragraph).

The fact that SMP may have prematurely asserted contentions in certain subject areas reasonably anticipated to be addressed in the EIA and SER cannot lawfully or logically bar consideration of those issues at the appropriate time, which we submit is now, and which conclusion is supported by the Order.

SMP further submits that the scope and purpose of the EIA and SER, and pleadings relative thereto, cannot validly be so thoroughly restricted, or functionally proscriptive, as both Staff and Applicant

seem ultimately to assert. Taken to its natural conclusion, the position of Staff and Applicant upon the EIA and SER and contentions relative thereto, would seem to be that said documents need include only such issues and concerns as to which Applicant may choose to disclose and which Staff may choose to analyze, and that unless an Intervenor can point to an item of clear, self-evident error, then no contentions can be posed, nor any questions raised, as to the sufficiency, adequacy or validity of said documents or any of the subject areas properly to be addressed therein.

SMP submits that the scope, purpose and function of the EIA and SER and pleadings relative thereto cannot logically admit of such an artificially constrained and prohibitive construction as urged upon us by Staff and Applicant, which argument fails upon serious consideration. In the event that Staff were to file an EIA or SER fairly described as excessively brief, conclusory, or even evasive — then where and how could an Intervenor challenge the same, except to urge the need for greater disclosure, detail, specificity or analysis by means of contentions addressing particular subject areas, and suggesting, insofar as possible on the basis of insufficient information, the nature of the concerns meriting further inquiry.

One example of such troublesome insufficiency arising in this proceeding merits comment and correction: In three years of filings Applicant has nowhere identified or described the means and methods to be employed in pursuit of its proposed d/r/c scheme, and the Staff's SER upon this point acknowledges an unconscionable degree of speculation. (Please see SMP's "Supplementary Argument" upon its first additional contention, Id., at 4-5.) Given such sort of insuf-

iciencies, SMP respectfully submits that Intervenor herein cannot fairly or validly be burdened with such overly nice degree of pleading as Staff and Applicant would impose.

In addition to these efforts at imposing an impermissibly restrictive standard of pleading against Intervenor, both Staff and Applicant seem to urge a general argument that certain contentions previously excluded on a prematurity basis, some of which are reasserted by SMP as additional contentions, should now be excluded as late-filed contentions. One example of such is SMP's additional contention No. 2 upon specific operating procedures, of which more below. With all possible respect, such defense or objection as may be raised in this "too soon-too late-too bad" style of argument should not be allowed to frustrate this Board from responsible inquiry into the subject areas proposed by Intervenor.

Staff also argues that certain additional contentions be rejected because SMP has allegedly "not established the nexus between . . . the contention and either the SER or EIA". SMP acknowledges that such nexus is more often implicitly rather than expressly made in its additional contentions, but where the subject areas raised by SMP properly should have been but have not been sufficiently addressed in Staff's EIA and SER, SMP submits that adequate connection is made to support such contentions. Further, and as developed above, (discussion running from bottom of 2 to top of this page, and especially last paragraph of same), the very nature of the weaknesses, infirmities or insufficiencies in the EIA and SER all but prohibit the overrefined standard of pleading which Staff's argument would wrongfully impose at this still-preliminary stage of this proceeding.

Last by way of introduction, SMP also acknowledges that at least

one of its additional contentions may arguably be characterized as a resubmission of a previously-rejected contention, although here reasserted with enhanced basis and specificity, (additional contention No. 6, on Class 9 Accidents and related concerns). SMP intends this Board and its Order no disrespect in making such reassertion, and further submits that the subject area treated therein properly merit attention and analysis in at least the SER, treating as it does an essential safety concern.

In summary, then, SMP urges this Board to disfavor the preliminary defenses and objections attempted by Staff and Applicant as improperly restrictive upon Intervenor's right to pose appropriate contentions, as misleading upon the purpose, scope and function of a thorough and responsible EIA and SER and pleadings relative thereto, and as generally subversive of the recognized central purpose of these proceedings to protect and promote the public interests of safety, health and environmental concerns. SMP respectfully submits that such interests are best served by the consideration and acceptance of its additional contentions.

Discussion of Additional Contentions

1. Environmental Impact Statement: Insofar as Staff's response to this contention constitutes a proffer that SMP be "joined as a co-sponsor of the State's contention 6", SMP thanks Staff for the same and makes no objection thereto, save to expressly acknowledge SMP's respect for the right of the State to be heard upon such joinder.

Insofar as Staff's response to this contention recommends the rejection of parts (c) and (d), SMP objects to such recommendation.

Upon part (c) SMP respectfully directs the attention of this Board to the discussion set forth below under contention No. 5, treating the Minnesota-Potomac subject area of long term waste fuel storage, infra at

Upon part (d), Staff advances an NRC "position paper" as prohibiting consideration of psychological stress as part of an environmental impact assessment. We disagree, especially insofar as spent fuel pool workers, who constitute a very immediate part of the human environment, may be concerned. As more particularly set forth in SMP's additional contention No. 7, (Id., at 11-14, and especially those concerns set forth at the second half of 12 to the end of the first full paragraph at 13), these workers will be exposed to a greater degree of psychological stress in the pursuit of Applicant's proposed d/r/c scheme. SMP submits that this narrower inquiry merited attention in Staff's EIA and supports the need for an EIS to consider such impact in thorough and responsible detail.

Last, relative to both Staff and Applicant objections, SMP here incorporates by reference the arguments made in support of this contention in its January 24, 1982, filing, (Id., at 8-11), especially such remarks as urge, relative to Applicant's perpetual argument of "normal operation" that responsible inquiry into reasonably foreseeable adverse circumstances cannot be so lightly avoided as Applicant argues. Finally upon this point SMP respectfully directs the attention of the Board to Maine's additional contention No. 6, and the first reason of the Basis statement there set forth, Id., at 4, which same is acceptable to Staff and which makes an able demonstration of at least one of the concerns previously urged by SMP.

While most of Applicant's objections have been met in previous filings or in the earlier parts of this filing, some few points merit comment lest SMP be held to have agreed to the variously improper assertions therein set forth. The first of these is Applicant's attempted mischaracterization, even misrepresentation, that SMP's pleading "simply suggest(s) the possibility of unspecified alternatives and require(s) NRC to ferret them out." (Applicant's Reply, at 7.) Not only have SMP's prior pleadings identified specific alternatives, but SMP's past filings, (Exhibit to additional contentions upon dry cask storage), demonstrate that SMP is ready, willing and at least somewhat able to "ferret them out" on its own. SMP takes vigorous exception to the degree of improper argument here propounded by Applicant.

Second, SMP submits that at least some degree of obfuscation is practiced in Applicant's proffered argument upon "forever preclude" versus "delay". Sufficient credible circumstances have been advanced by both Intervenors upon the serious compromise of Applicant's capability to ship fuel off-site as to merit further inquiry in this subject area, which inquiry is most properly pursued by means of a responsibly thorough Environmental Impact Statement.

Third, Applicant would make much of the assertion, which same is open to question on a factual basis, that "76 of 76 EIA's" upon spent fuel pool expansions have concluded that environmental effects will be insignificant. Applicant's assertion is both worthless and misleading for the quite simple reason that not one single compaction out of these 76 proceeded by Applicant's untried and functionally experimental d/r/c scheme.

Last, and with all due respect for Applicant's claimed confusion upon the meaning of the word "flood", "flooded" or "flooding", SMP intended the ordinary meaning of that word, or as set forth in a standard dictionary: "flood . . . 1. A great flow of water; esp., a body of water rising, swelling, and overflowing land." Webster's New Collegiate Dictionary, Second Edition, Springfield, MA (1954), at 318. Thus the clear concern of this part of this contention is to gain some reasoned inquiry into the likelihood and environmental impact of Applicant's spent fuel pool "overflowing (the) land" and the surrounding area at Applicant's plant site, and that Applicant's disingenuous assertion of being "mystifie(d)" represents little more than an attempted evasion that should not be allowed.

2. Specific Operating Procedures: By way of introduction, and prior to any particular rebuttal argument, SMP urges the parties to this proceeding to pause and consider that which is developing here, including especially the current status of the desired application, contrasted to the current status of any party's demonstrated or demonstrable knowledge of that which is here being pursued. More particularly, SMP submits that unless and until Applicant be ready, willing and able to identify the means and methods by which it plans to pursue its proposed d/r/c scheme, and unless and until Staff be ready, willing and able to responsibly analyze the means and methods by which Applicant plans to pursue its proposed scheme, then these proceedings may be, or may produce a result which is, legally void and defective for the clearly evident reason that Staff cannot lawfully presume, nor can this Board reasonably find, technical capability based upon a foundation of silence and nondisclosure on the

part of Applicant. In what is now more than three years' of filings relative to this case, whether by legal pleadings, applications, amendments or supplementary statements, Applicant has nowhere identified or described the means and methods to be employed in the pursuit of its d/r/c scheme. SMP respectfully submits that no legally defensible result can be made to flow from this informational vacuum.

Upon this contention the Board's Order stated: "(T)here is no requirement that such procedures be submitted now", but concluded three lines later: "If at some later time when the Licensee has developed specific procedures, SMP wishes to submit contentions directed to their adequacy, the Board will evaluate such contentions at that time." Order at 6. In view of the long look taken at the future of these proceedings by the Board, then, it almost begs reality to hear Staff argue that the critical delict here recognized by SMP constitutes a "late filed contention", as Staff would have us believe. Staff also urges that SMP should "(detail) which, if any, particular implementing procedures need be examined before the amendment is issued, in order to protect the public health and safety." NRC Staff Response, at 7. As respectfully as possible, SMP submits that the wait-and-see attitude of Staff, Applicant, and arguably even our Board promotes an irresponsibility of pleading essentially subversive of these proceedings and violative of Intervenors' due process rights insofar as any reasonable protection of the same should ensure against the conduct of determinative legal proceedings without reasonable notice and opportunity to be heard. Finally, Staff's extensive footnote attempting to avoid responsibility on this issue by asserting a delegation of the same to "the appropriate regional office" cannot

reasonably be held to work some retroactive cure upon this all-too basic invalidity. Only prompt and full disclosure by Applicant upon the means and methods to be employed in pursuit of its proposed d/r/c scheme, and a responsibly thorough analysis of the same by Staff, can establish the sound factual foundation necessary to ensure the validity of these proceedings, and to protect against the ultimately destructive pursuit of further speculation and conjecture upon one of the most basic issues in this case.

3. Alternatives: Only those objections of Staff or Applicant not met elsewhere will be treated here. SMP incorporates by reference the applicable parts of its first additional contention as relative to alternatives, supra, at 5-7.

Both Staff and Applicant appear to argue that the negative conclusion in Staff's EIA altogether forecloses any further inquiry into this subject area. We disagree. The weaknesses, omissions and unsupported speculation of the EIA have been sufficiently demonstrated to negative the use of its conclusion as urged.

Further, anything in Staff's or Applicant's arguments to the effect that an Intervenor must demonstrate environmental superiority of proposed alternatives at this preliminary stage of this proceeding is also misleading; the purpose here is to plead, not to prove.

4. Seismic Durability: SMP stands upon the entirety of its prior pleadings in this subject area, and adds the following: (1) Insofar as the NRC's Seismic Division is reconsidering design criteria, SMP submits and requests that the part of this contention urging more stringent design criteria stands as a contention previously premature but which now merits consideration due to the existence of the noted NRC inquiry. Thus any arguments against this part of this contention

as "late-filed" are inapplicable. (2) SMP also urges the Board that the NRC's reconsideration of design criteria merits express attention here for the plain, practical reason that the effect of such reconsideration is to undermine any reliance upon existing or current criteria. Otherwise stated, if we can't be sure of the design criteria to be effective in the future (example, a change coincident with the commencement of hearings), then how can we validly proceed upon such point in this unprecedented case? SMP readily acknowledges that its concerns in this area may have been inartfully put, but we submit that design criteria are open to question, are being reconsidered by the NRC, and that this subject area merits express consideration here.

5. The Minnesota-Potomac Contention: SMP stands upon the entirety of its prior pleadings in this subject area, which same are here incorporated by reference, and also respectfully directs the attention of the Board to the State's excellent discussion of applicable law in its additional contentions at 7-9.

SMP submits that Staff and Applicant have also failed to meet a further consideration which is properly addressed here. There is no guarantee in the pending Application as to when, if ever, the radioactive waste here in issue will ever be removed from Applicant's spent fuel pool. SMP respectfully submits that if this Board grants this amendment without consideration of, and reasonable assurances against, long-term nuclear waste storage of an indefinite period, then this Board has granted a license allowing for the establishment of a long-term nuclear waste repository, which it is beyond this Board's jurisdiction to do.

6. Class 9 Accident: SMP stands upon the entirety of its prior pleadings in this subject area, and also directs the attention of the Board to the brief preliminary discussion of the same, supra, at 4-5.

Any pre-existing infirmity, whether asserted under a label of basis, specificity or nexus, has been cured by the express recognition of the shared heat exchanger employed by both the PCC and the spent fuel pool. SMP submits that Staff should have, but failed to, address this subject area in its SER, and that such failure merits the inquiry here proposed.

7. Increased Fuel Handling Accident Risks and Consequences: SMP submits this contention at this time for the simple reason that the concerns presented herein should have been, but were not, adequately addressed in either the EIA or SER. Those documents should have a greater or more effective purpose in this proceeding than merely providing Staff and Applicant something to hide behind.

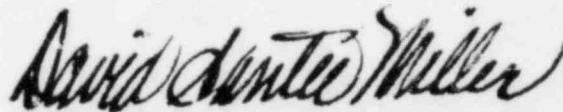
Insofar as Staff's response constitutes a guarantee that the concerns here presented are also properly presented under SMP's admitted contention 7, SMP thanks Staff for the same, but additionally urges the Board that the concerns noted merit express recognition.

8. Cumulative or General: While the accumulation of concerns here presented is not definitively pled, yet SMP submits that the issues raised are not so baseless or inspecific as to be discarded out-of-hand. All derive directly from the EIA and SER, and those applicable to the EIA can properly be considered as supporting the need for an Environmental Impact Statement. If the Board finds that the presen-

tation as made is unacceptable as a contention, SMP respectfully submits that the concerns addressed herein do merit further consideration and that they be addressed under appropriate admitted contentions.

Conclusion

For the foregoing reasons, SMP submits that its additional specific contentions merit consideration and acceptance in this proceeding, and that the standards of pleading sought to be imposed by Staff and Applicant be disfavored as unfairly and improperly restrictive of an Intervenor's right to be heard. The serious concerns addressed herein should not be avoided, essentially by default, on a basis of querulous niceties.



David Santee Miller
Counsel for Sensible Maine Power
Perkins Road
Boothbay Harbor, ME 04538
Telephone: (207) 633-4102