UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges:
Hugh K. Clark, Chairman
Dr. George A. Ferguson
Dr. Oscar H. Paris

In the Matter of	
ILLINOIS POWER COMPANY, et al.	Docket No. 50-461-OL
(Clinton Power Station, Unit No. 1)	November 10, 1982

MEMORANDUM AND ORDER
(Ruling on Proposed Supplemental Contentions, Proposed Issues, Motion for Summary Disposition, and Dismissing a Previously Admitted Contention)

SUMMARY

In this Memorandum and Order, the Licensing Board rules on the acceptance for litigation of proposed contentions of the Intervenor, Prairie Alliance (PA), proposed issues of the State of Illinois (Illinois), and dismisses two previously accepted contentions.

More specifically Proposed Contentions of PA Nos. 1 (Beyond Design Basis Accidents), 2 (Alternatives to Nuclear Power), 3 (Need for Power), 5 (Systems Interaction), 6 (Hydrogen Control), 7 (Psychological Stress), and 8 (Socioeconomic Effects) were denied admission. PA's Proposed Contention No. 4 (General Electric Withdrawal from Market) was admitted. Illinois' Proposed Issues 1 (QA/QC program) and 2 (Adverse Systems Interaction) were denied admission. Previously allowed PA

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Contention 3 (Financial Qualification of Applicant, Illinois Power et al. (IP)) was deleted because of change in 10 C.F.R. § 2.104(c)(4). Motion to Dismiss was granted as to previously allowed PA Contention No. 5 (ATWS), as amended by parties.

RULINGS ON PROPOSED SUPPLEMENTAL CONTENTIONS AND PROPOSED ISSUES

Supplemental Contention No. 1

PA's Proposed Supplemental Contention No. 1 reads as follows:

1. BEYOND DESIGN BASIS ACCIDENTS

Neither the Applicant nor the NRC Staff in the SER or the DES disclose what measures have been taken or are planned to assure public health and safety or are planned to assure public health and safety in the event of 'beyond design basis accidents', formerly known as 'Class 9' accidents, especially as regards additional safety features and such cases as might warrant such features.

In its Memorandum and Order of May 29, 1981, the Board denied admission of old Contention 5, concerned with beyond design basis accidents, on the ground of lack of specificity required by 10 C.F.R. § 2.714, "without prejudice to the proffer of a specific contention after PA has had a chance to study the Staff's FES and SER." It was there pointed out that the Commission's Policy Statement of June 13, 1980, 45 F.R. 40101, requires the NRC Staff, not the Applicant, to consider the environmental consequences of such accidents in the Environmental Statement.

Both the Staff and IP object to this proposed issue as lacking in specificity. We do not agree. The contention is that the Staff failed, in the SER and the DES, to "disclose what measures have been taken or are planned to assure the public health and safety" in the event of such accidents. But this specific allegation is not in accordance with the facts. The Staff's DES discusses the matter in detail beginning at page 5-41 and ending at page 5-65. On page 65, the following statement appears:

> A comprehensive 'NRC Action Plan Developed as a Result of the TMI-2 Accident', NUREG-0660, Vol. 1, May 1980, collects the various recommendations of those groups and describes them under the subject areas of: Operational Safety; Siting and Design; Emergency Preparedness and Radiation Effects; Practices and Procedures; and NRC Policy, Organization and Management. The action plan presents a sequence of actions, some already taken, that will result in a gradual increased improvement in safety as individual actions are completed. The Clinton station is receiving and will receive the benefit of these actions on the schedule indicated in NUREG-0660.

The Staff's SER, pages 6-18 et seq. also discusses the topic. It is clearly disclosed in both the DES and the SER that the Staff is actively pursuing the program detailed in NUREG-0660. Therefore, proposed Contention No. 1 is rejected as being without bases.

The Staff and the IP also attack the proposed contention as a mere restatement of a previously denied contention. PA was permitted to file proposed contentions based upon the SER and the DES during the telephone conference of March 15, 1982. This contention is based on

the SER and the DES. The Board does not agree with the position of the Staff and the IP on this issue.

IP also opposes this and the other proposed contentions as not meeting the requirements of 10 C.F.R. § 2.714(a)(1) concerning late filed contentions. Since contentions based on the SER and the DES could not have been filed sooner, the Board does not agree that this is a late filed contention. See Duke Power Company, et al. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, __ NRC ___ Slip Op. (August 19, 1982).

Supplemental Contention Nos. 2 and 3

PA's Proposed Supplemental Contention No. 2 alleges inadequate consideration of alternatives to the nuclear power plant.

PA's Proposed Supplemental Contention No. 3 alleges inadequate assessment of the need for power and production costs of the facility.

Amendments to 10 C.F.R. § 50 (47 F.R. 12943, March 26, 1982) and amendments to 10 C.F.R. § 2.105 (47 F.R. 13793, March 31, 1982) preclude consideration of Contention Nos. 2 and 3 in this proceeding. PA admits the truth of this assertion in its brief in support of supplemental contentions dated April 12, 1982 at pages 2-3, and also made the same admission during the Third Special Prehearing Conference on May 4, 1982, Tr. 252. See also Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-671, (March 31, 1982).

Admission of Proposed Contention Nos. 2 and 3 are denied.

Supplemental Contention No. 4

PA's Proposed Supplemental Contention No. 4 reads as follows:

4. GENERAL ELECTRIC WITHDRAWAL FROM MARKET

> General Electric recently announced that they will withdraw from the nuclear hardware market. The effects of this withdrawal have not been considered by the Applicant nor the Staff. This withdrawal is especially germane in light of Applicant's lack of experience in operating nuclear plants and its future needs relative to plant servicing and design modifications mandated by present and future Commission regulations and orders.

Attached to the IP's response of April 12, 1982 to the proposed supplemental contentions of PA as Exhibit 1 is a copy of letter dated April 2, 1982 from Mr. W. H. Bruggeman, Vice President of General Electric, to Mr. Leonard J. Koch, Vice President of Illinois Power. In part, the letter states:

> In summary, General Electric Company has no expectation of abandoning the nuclear business. IPC and other BWR owners can look forward to the continuing support and expertise of the General Electric Company.

In a telephone conference on June 4, 1982, counsel for PA stated that he was not satisfied that the above noted letter gave assurance that General Electric intends to make its services available in the future to make design modifications mandated by present or future Commission regulations or orders. PA is willing to withdraw this contention if satisfied that General Electric is not discontinuing hardware design modifications. In taking this stand, PA is iterating remarks on page 7 of PA's Brief in Support of Supplemental Contentions dated April 12, 1982. IP has taken no steps to reassure PA on this point. The contention is based on an alleged new event, the withdrawal of General Electric from the nuclear hardware market. It is specific and pertinent. We have not weighed the factual evidence presented by

the parties because such evidence should not be taken into consideration in ruling on admissibility of contentions. Mississippi Power and Light Company (Grand Gulf Nuclear Stations, Units 1 and 2), ALAB-130, 6 AEC 423 (1973), and Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542 (1980).

Proposed Supplemental Contention 4 is admitted.

Supplemental Contention No. 5

PA's Proposed Supplemental Contention 5 reads as follows:

> 5. SYSTEMS INTERACTION
>
> The Applicant and the NRC Staff inadequately consider the interaction of systems installed by engineers with differing functional specialties, such as civil, electrical, mechanical, and nuclear. The SER reveals that the Applicant has not yet described a comprehensive program that separately evaluate all structures, systems and components important to safety for the three categories of adverse systems interaction (spatially coupled, functionally coupled, and humanly coupled). These programs are especially significant in the light of Applicant's quality assurance and quality control problems during construction of the Clinton Plant.

The proposed contention attempts to raise a generic issue, see NUREG-0606, Task A-17 (August 20, 1982). In Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 773 (1977), the decision of the Appeal Board affords guidance as to the validity of a contention based upon a generic issue. It states:

> To establish the requisite nexus between the permit or license application and a TSAR item (or task action plan) it must generally appear both (1) that the undertaken or contemplated project has safety significant insofar as the reactor under review is concerned, and (2) that the fashion in which the application deals with the matter in question is

> unsatisfactory, that because of the failure to consider a particular item there has been an insufficient assessment of a specific type of risk for the reactor, or that the short term solution offered in the application to a problem under Staff study is inadequate.

Although the cited case dealt with an application for a construction permit, the Appeal Board enunciated the same guidance for an application for an operating license. See Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-491, 8 NRC 245 (1978). The proposed contention fails to meet either test (1) or (2) laid down by the Appeal Board. Admission of Proposed Supplemental Contention No. 5 is denied.

Supplemental Contention No. 6

PA's Proposed Supplemental Contention No. 6 reads as follows:

> 6. HYDROGEN CONTROL
>
> The Applicant and staff fail to adequately protect against hydrogen accumulation and hydrogen explosions or burns in the Clinton reactor. No system has yet been installed. There is no consideration of the contingency of GE's role in the owner's group formed to evaluate the hydrogen concerns for MARK III containments, in the light of GE's announced withdrawal from the marketplace.

BACKGROUND

10 C.F.R. § 50.44 sets standards for hydrogen control that each facility must meet before being licensed. As a result of the TMI-2 accident, 10 C.F.R. § 50.44 has been revised on an interim basis for Mark I and Mark II BWR's 46 F.R. 58484-6, December 2, 1981. A similar revision for Mark III BWR's (of which Clinton is one) is being considered. Meanwhile, the standards in 10 C.F.R. § 50.44 may not be attacked in a proceeding such as the present one. In TMI-1 Restart,

the Commission refused to waive the application of 10 C.F.R. § 50.44 standards for TMI-1, but found that:

> quite apart from 10 C.F.R. § 50.44, hydrogen gas control could properly be litigated in this proceeding under 10 C.F.R. Part 100. Under Part 100, hydrogen control measures beyond those required by 10 C.F.R. § 50.44 would be required if it is determined that there is a credible loss of coolant scenario entailing hydrogen generation, hydrogen combustion, containment breach or leaking, and offsite radiation doses in excess of Part 100 guideline values.

Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-80-16, 11 NRC 674 at 675. (May 16, 1980).

By motion of June 9, 1980, amended August 15, 1980, Intervenor, Carolina Environmental Study Group, sought to reopen the Proceeding in Duke Power Company (William B. McGuire Nuclear Station, Units 1 and 2) to include consideration of hydrogen control under the terms of the Commission decision of May 16, 1980 in TMI-1 Restart cited above. The Board, having jurisdiction in that case, reopened the proceeding and, after a hearing, found that there was reasonable assurance that in the event of a TMI-2 type accident at McGuire, substantial quantities of hydrogen (in excess of the design basis of 10 C.F.R. § 50.44) would not be generated. The Board also found:

> the actions taken and the procedures adopted by Duke Power Company subsequent to the TMI accident provided reasonable assurance that (a) in the event of a TMI-type accident at McGuire, the likelihood of ECCS operations being prematurely terminated by the control room operating staff is so remote that such an accident scenario is not credible; (b) in the unlikely event of premature termination of the ECCS, operations will be reinitiated within sufficient time to prevent the generation of hydrogen in excess of 10 C.F.R. § 50.44; and (c) the McGuire facility can be operated without

> undue risk to the public health and safety with respect to possible hydrogen generation resulting form accidents of the type which occurred at TMI-2.

See Duke Power Company (William B. McGuire Nuclear Station, Units 1 and 2 - reopening operating license proceeding), LBP-81-13, 13 NRC 652 (1981), issued May 16, 1981.

On appeal, the Appeal Board held that in admitting the contention the Licensing Board quite properly relied on the Commission's ruling in TMI-1 Restart. The Appeal Board also found that there was reasonable assurance that the McGuire plant could be operated, without endangering the health and safety of the public, during the short term while the Applicant and Commission continue to explore the adequacy of the existing hydrogen mitigation and control system and of possible long-term alternatives to it. The Appeal Board's decision, Duke Power Company (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-669, March 30, 1982 is a detailed discussion of the hydrogen control problem, the propriety of admission of the pertinent contention, the record in the McGuire case, and the Licensing Board's decision.

In a shorter opinion dated May 17, 1982, Cleveland Electric Illuminating Company, et al. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-675, the Appeal Board had before it a motion for direct certification and ruling on the admission by the Licensing Board of a contention on hydrogen control, (LBP-82-15), March 3, 1982. The Licensing Board had denied previously the admission of the contention on hydrogen control submitted March 5, 1981 (nearly 10 months after the Commission's decision in TMI-1 Restart) because the contention lacked a

loss of coolant scenario required in that decision. The Licensing Board warned the Intervenors that, if a new contention concerning hydrogen control should be submitted later, they would have to satisfy the criteria of 10 C.F.R. § 2.714(a)(1) governing late-filed contentions LBP-81-24, 14 NRC 175 (1981). More than five months later the Intervenors filed a revised contention, which was admitted over strong protests by the Applicant. The Appeal Board denied the Applicant's motion for certification.

There is no indication that Prairie Alliance is at all familiar with the background facts stated above. The contention was filed on March 30, 1982, and hence lack of knowledge of the Appeal Boards' decisions in the McGuire case (March 30, 1982) and the Perry case (May 17, 1982) is understandable. However, the Commission's decision in TMI-1 Restart (May 16, 1980) and the Licensing Boards' decisions in the McGuire case (May 26, 1981 and July 28, 1981) and the Perry case (March 1, 1982) were available to PA in advance of its submission of its supplemental contentions. Yet there is not the slightest suggestion of a credible loss of coolant scenario, which is mandatory in view of TMI-1 Restart.

Admission of Contention No. 6 is denied. Should PA later submit an appropriate contention directed to this subject matter, the Intervenor would have to satisfy the criteria of 10 C.F.R. § 2.714(a)(1) governing late-filed contentions.

Supplemental Contention No. 7

PA's Proposed Supplemental Contention No. 7 reads as follows:

7. PSYCHOLOGICAL STRESS

The Applicant and the NRC staff fail to adequately consider the psychological stress and trauma, and mitigation thereof, which will be experienced by persons residing in DeWitt and surrounding counties caused by: (a) the operation of the Clinton Plant; (b) emissions of radioactivity, accidental and planned, by the plant; (c) transportation of spent nuclear fuel from the plant through said communities; (d) on site storage of spent nuclear fuel; (e) possibility of future accidents involving occurrences, design basis accidents and beyond design basis accidents, including, but not limited to, events such as the 1979 TMI near meltdown; and (f) emergency and/or evacuation planning.

In its brief dated April 12, 1982 in support of its proposed supplemental Contention, at page 7, PA withdrew this contention pending further action by the U.S. Court of Appeals for the District of Columbia in People Against Nuclear Energy v. NRC (PANE v. NRC), No. 81-1131, without waiving its right to resubmit the contention subsequent to final decision in that case.

The U.S. Court of Appeals for the District of Columbia issued, in PANE v. NRC, an oral Amended Judgment dated April 2, 1982 with written opinion filed May 14, 1982. The majority held that psychological health effects are cognizable under NEPA and remanded the case with instructions that NRC determine whether to prepare a supplemental EIS. PA resubmitted Proposed Supplemental Contention No. 7 on June 16, 1982.

On July 16, 1982, the Commission issued a statement of policy to provide guidance on the applicability of the PANE v. NRC decision to NEPA issues raised in proceedings other than the Three Mile Island Unit 1 restart proceedings. See 47 Fed. Reg. 31762, July 22, 1982. A copy of this Statement of Policy was

sent to all parties to this proceeding by the Staff on July 19, 1982. As the Commission states, contentions alleging psychological stress resulting from Commission licensed activities must meet three criteria:

> First, the impacts must consist of "post-traumatic anxieties," as distinguished from mere dissatisfaction with agency proposals or policies. Second, the impacts must be accompanied by physical effects. Third, the "post-traumatic anxieties" must have been caused by "fears of recurring catastrophe." This third element means that some kind of nuclear accident must already have occurred at the site in question, since the majority's holding was directed to "post-traumatic" anxieties and by fears of a "recurring" catastrophe. Statement of Policy at 4.

There has not been any kind of a nuclear accident at the Clinton site. Hence, there cannot have been post-traumatic anxieties caused by fear of a recurring catastrophe. Admission of Proposed Supplemental Contention No. 7 is denied.

Supplemental Contention No. 8, SOCIOECONOMIC EFFECTS

PA's Proposed Supplemental Contention No. 8 deals with socioeconomic effects of operation. Matters considered in the NEPA analysis for the construction permit application may not be relitigated during the proceedings for an operating license, unless some significant change in facts is demonstrated.

The socioeconomic effects of construction and operation of the facilities were considered during the construction permit proceeding concerning the Clinton Plant in Applicant's Environmental Report (ER-CP). They were also considered in the Staff's Draft Environmental Statement (DES-CP), and in the Staff's Final Environmental Statement

(FES-CP). The Salt Creek Association (SCA) successfully sought intervention in the CP proceeding. Three of its proposed contentions concerning socioeconomic matters survived prehearing activities, and extensive testimony was taken on this topic.

In its partial initial decision, LBP-75-59, NRC 579 (1975), the Licensing Board recited the FES-CP summary of socioeconomic items considered. The summary specifically mentioned agriculture, timber, grazing, hunting, fishing, water use, and the impact of 1200 construction workers' families on the area. The summary also dealt with the socioeconomic effect of operation of the Clinton Plant. The Staff, in the FES-CP, concluded that, subject to certain limitations for the protection of the environment, the action called for under NEPA and Appendix D to 10 C.F.R. Part 50 was the issuance of a construction permit for the facilities. The Licensing Board concluded that the NEPA requirements had been met. In its second partial initial decision on Clinton Plant, the Licensing Board reaffirmed its position as to NEPA, decided safety matters in favor of Applicants, and ordered the issuance of a construction permit. See LBP-76-6, 3 NRC 135 (1976).

The Appeal Board summarized the SCA contentions thus: "In short, the intervenors opposed construction of the facility on exclusively socioeconomic grounds." The Licensing Board was affirmed, ALAB-340, 4 NRC 27, 30 (1976).

The DES-OP LI.2.2. p. 4-2 to 4-4 details the increased recreational opportunities provided by 10,250 acres of land leased to the Illinois Department of Conservation (IDOC) to manage as a

recreation/conservation area. Lake Clinton offers year round extensive recreational facilities. IDOC estimates that the site was visited by 520,212 persons in 1980, and expects the number of visitors to increase to 750,000 in 1981, and to 1,000,000 in 1983.

We turn now to the specific items alleged to show that the economic and social effects of station operation have not been adequately assessed. Items A, B and G, while vaguely worded, seem to imply that there should be a consideration of the effect of taxes on the Clinton Plant, and a decrease of taxes upon decommissioning of the plant and upon different use of the land. Such taxes have no place in the NEPA Cost Basis Analysis of a project. Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), ALAB-19, 7 NRC 159. 177 (1974); Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), ALAB-336, 4 NRC 3, 4 (1976); and Illinois Power Company (Clinton Power Station, Units 1 and 2), ALAB-340, 4 NRC 27, 49 (1976).

Item A deals with the impact of Applicant's ownership of the Clinton Plant. As has been indicated above, this item was fully dealt with in the CP proceeding.

Items C and D deal with the impact of the recreational use of Clinton Lake. This was considered in the FES-CP. Opportunities for hunting, fishing and other recreational activities were increased, not diminished. The DES-OL at section 4.2.2 indicates the magnitude of the use of the increased opportunity.

After alleging adverse effects of loss of recreational opportunitis in Item D, PA alleges in Item E adverse effects of increased recreational opportunities, such as crowding, littering, vandalism, etc. While such possible effects are postulated, none of them are alleged to have occurred. Item E fails to meet the reasonable specificity of 10 C.F.R. § 2.714. Moreover, since the State of Illinois operates the recreation facility, policing the area is the responsibility of the State of Illinois.

Item F deals with the impact of reallocation of IDOC funds to the Clinton Lake area from other areas, especially the nearby Welden Spring State Park. Funds for recreational purposes at both sites are provided by the State of Illinois. The amounts of such funds from year to year and their allocation are matters under the control of the State of Illinois. This is not an appropriate topic for consideration here because state appropriations cannot be predicted or controlled by IP. Moreover, Item F does not state with reasonable specificity the nature and effect of said alleged reallocation.

Item H deals with the impact of operational personnel on transportation and social services facilities in DeWitt County. The FES-CP dealt with the impact of a much larger number of construction personnel and found the impact minimal. Moreover, the DES-OL Section 5.8 deals with the impact of the operational personnel. DES-OL Section 4.2.2 details the road changes which have been made to accommodate the needs of the Clinton Plant.

In summary, the socioeconomic aspects of the construction and operation of the Clinton Plant were extensively explored in the FES-CP proceeding. They were reconsidered in the DES-OL proceeding. The allegations in Contention No. 8 of inadequate assessment by Applicant and Staff are not reasonably specific in that they are based on speculation. Admission of Proposed Supplemental Contention No. 8 is denied.

Illinois has proposed two issues for litigation. The first proposed issue reads as follows:

ILLINOIS PROPOSED ISSUE NO. 1

1. The Applicants have failed to establish and execute a Quality Assurance (QA)/Quality Control (QC) program during construction of CPS-1 that adheres to the criteria set forth in 10 C.F.R. 50, Appendix B. Numerous problems in the QA/QC program have been discovered during construction of CPS-1, resulting, in some instances, in the termination of construction work. Many of these problems directly affect the construction at CPS-1 of safety related systems. Yet, the NRC Staff in its SER has failed to adequately address these problems. Thus, there is no assurance that CPS-1 has been constructed in such a way that it will not endanger the health and safety of the public.

This proposed issue essentially follows allowed PA's Contention No. 2, which reads as follows:

2. The CPS should not be licensed to operate until IP has demonstrated, as required by 10 CFR 50.34(b) and Part 50, Appendix B, that it possesses sufficient management and technical qualifications to assure that the CPS will be (a) maintained in a safe condition while operating normally, or (b) safely operated and controlled in the event of an abnormal occurrence or emergency, or (c) permanently shut down and maintained in a safe condition.

> Repeated Quality Assurance (QA) and Quality Control (QC) problems are noted in NRC Region III Inspection Reports. Specifically, IP's QA and QC program is consistently deficient in its ability to assure (1) a sufficient number of experienced personnel, (2) integrity of welding procedures, and (3) numerous other QA and QC inadequate consideration of alternatives to the nuclear plant. The DES and SER present no examination or disclosure as to the economic and environmental improvements in coal, conservation, solar and wind energy technologies from the time of construction permit to the present.

Illinois attempted to establish this proposed issue on results from its study of the SER and, hence, that its filing is timely. This attempt fails. The SER discusses the QA program as it is set forth on paper in the FSAR. Although it mentions the existence of open matters, it does not really address the question of whether or not the Applicant is satisfactorily carrying out the program. (SER Section 17, pages 17-1 to 17-6). However, Staff's Office of Inspection and Enforcement does inspect construction activities and reports. Where weaknesses or errors which substantially affect safety are detected, the Staff requires the Applicant to take appropriate aciton. Deliberate or careless failure of Applicant to adhere to the program is the basis for the imposition of penalties. Activities of the Office of Inspection and Enforcement are made public both in Washington and at the public document room and near the site. Illinois was aware of this availability of these records from a time preceding its admission to this proceeding. Its petition for leave to intervene, filed November 3, 1980, on page 2 and 3, states:

> Illinois has no assurance that the Station will be operated in a safe manner. At various times since at

> least 1978 representatives of the Commission's Office of Inspection and Enforcement have inspected the Station and discovered that certain activities there were not in compliance with the Commission's requirements and the Applicant's design plans. These investigations have uncovered problems that raise questions of whether the operation of the Station will affect public health and safety.

Thus, Illinois' concern in this matter did not arise from a study of the SER but has been in existence from November 1980.

AS AN INTERESTED STATE, HAVING ELECTED TO FILE ISSUES TO BE LITIGATED, ILLINOIS MUST FOLLOW THE PROCEDURAL REQUIREMENTS GOVERNING PARTIES ADMITTED UNDER 10 C.F.R. § 2.714

Illinois urges that the five "lateness" factors to be considered pursuant to 10 C.F.R. § 2.714(a) do not apply to statements of issues offered by a state, citing Cincinnati Gas and Electric Co. (William H. Zimmer Nuclear Station), LBP-79-22, 10 NRC 213 (1979). In taking this position, the Licensing Board in the Zimmer case ignored the Appeal Board ruling in Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-44, 6 NRC 760, 768 (1977) that "Once let in, however, an 'Interested State' must observe the procedural requirements applicable to other participants."

The five factors applying to late filings will be considered pursuant to 10 C.F.R. § 2.714(a) with regard to this proposed issue.

(i) GOOD CAUSE FOR FAILURE TO FILE ON TIME

Illinois argues that the availability of new information or documents is a valid reason for accepting new contentions. However, the proposed issue is broad enough to include every failure of Applicant's QA/QC program from the inception of construction. It is in

no way limited to items of recent date. As broadly as drafted, the contention does not rest on new information or documents. No good cause for failure to file on time has been advanced by Illinois.

(ii) THE AVAILABILITY OF OTHER MEANS WHEREBY ILLINOIS' INTERESTS WILL BE PROTECTED

Illinois argues that there is no other means or proceeding available to protect its interest. This misses the meaning of the second factor. The gist of allowed Contention No. 2 and the proposed issue, which are presented above, is the same. Both may be stated same. Both may be stated thus: "Safe operation of the plant will not be possible because of failures of Applicant's QA/QC program during construction."

Illinois, as a party to this proceeding, can protect its own interest by its own participation in this proceeding. In the special prehearing conference held May 4, 1982, Tr. 271, Illinois admits that the factual basis for Contention No. 2 and proposed issue is essentially the same. Illinois argues that Proposed Issue No. 1 "refers to construction of the plant itself rather than the operation, while the PA's Contention No. 2 calls operation into question." The present proceeding is concerned with an application for an operating license and not with a construction permit. Moreover, references to the QA/QC program in the wording of both issues are to construction activities. As noted above, Contention No. 2 covers all the ground of Illinois' Proposed Issue No. 1.

(iii) THE EXTENT TO WHICH ILLINOIS' PARTICIPATION MAY REASONABLY BE EXPECTED TO ASSIST IN DEVELOPING OF A SOUND RECORD

This factor appropriately applies to a petition for intervention rather than to admission of the proposed issue. Since, the proposed issue is covered by an admitted contention, Illinois' contribution to the record will be neither more nor less whether or not the Proposed Issue No. 1 is admitted.

(iv) THE EXTENT TO WHICH THE PETITIONER'S INTEREST WILL BE REPRESENTED BY EXISTING PARTIES

(v) THE EXTENT TO WHICH THE PETITIONER'S PARTICIPATION WILL BROADEN THE ISSUES OR DELAY THE PROCEEDINGS

These two factors will be unchanged whether or not Proposed Issue No. 1 is admitted, since it is not essentially different from admitted Contention No. 2.

(vi) WEIGHING OF THE FIVE FACTORS AND CONCLUSION

As to factor (i), Illinois has not shown good cause for the delay in filing Proposed Issue No. 1. Since Proposed Issue No. 1 is covered by previously allowed Contention No. 2, the additional four factors do not provide any positive effect to offset the negative effect of factor (i).

Proposed Issue No. 1 is not allowed.

The foregoing ruling on Illinois' proposed Issue No. 1 does not prevent Illinois from actively participating in the prosecution of PA's allowed Contention No. 2. Indeed, since PA's counsel has withdrawn because PA does not have the means to pay for further legal services, PA and Illinois should consider consolidation of their participation in

hearings as to some or all allowed contentions, with counsel for Illinois being lead spokesman for both.

The second proposed issue reads as follows:

ILLINOIS' PROPOSED ISSUE NO. 2

2. The Applicants and the NRC Staff in its SER have failed to provide a comprehensive evaluation of CPS-1 for adverse systems interaction, as required by 10 C.F.R. Part 50, Appendix A, Criteria 19, 20, 22 and 29. Neither the Applicants nor the NRC Staff has adequately addressed the interaction of nonsafety grade components, equipment, systems, structures, and human and functional factors with safety systems and the effect this interaction will have during operations, transients, and accidents. This inadequacy is exacerbated by the Applicants' failure to adhere to a safety Quality Assurance/Quality Control program during construction of CPS-1.

This proposed issue No. 2 tracks PA's Proposed Supplemental Contention No. 5, which reads:

5. The Applicant and the NRC Staff inadequately consider the interaction of systems installed by engineers with differing functional specialties, such as civil, electrical, mechanical, and nuclear. The SER reveals that the Applicant has not yet described a comprehensive program that separately evaluate all structures, systems and components important to safety for the three categories of adverse systems interaction (spatially coupled, functionally coupled, and humanly coupled). These programs are especially significant in the light of Applicant's quality assurance and quality control problems during construction of the Clinton Plant.

A comparison of the two proposals shows, without extended discussion, that the two are so similar that for all practical purposes they are identical. The discussion and ruling herein above concerning PA's Proposed Supplemental Contention No. 5 apply equally to this Proposed Issue No. 2. Admission of Proposed Issue No. 2 is denied.

DISMISSAL OF PREVIOUSLY ACCEPTED CONTENTION NO. 3

Previously accepted Contention No. 3 reads as follows:

> 3. In noncompliance with 10 C.F.R. § 50.33(f) and Part 50, Appendix C, IP has not demonstrated that it possesses or has reasonable assurance of obtaining the funds necessary to pay the estimated costs of operation, plus the estimated cost of permanently shutting the facility down and maintaining it in a safe condition.

By amendment to 10 C.F.R. § 2.104(c)(4) published in 47 Fed. Reg. 13753 (March 31, 1982) the financial Qualification of an Applicant for an operating license was removed from the scope of contentions which may be heard by an Atomic Safety and Licensing Board. Accordingly, previously allowed Contention No. 3 is deleted from the list of allowed contentions.

RULING ON IP's MOTION FOR SUMMARY JUDGMENT ON PA's CONTENTION NO. 5

As filed by PA on March 30, 1981, Contention No. 5 reads as follows:

> 5. The CPS is especially vulnerable to anticipated transients without scram (ATWS) due to the faulty welds during construction which have caused "burn through/suck back" on a number of control rod drive tubes. These defects have not been adequately analyzed or repaired. The CPS should not be licensed to operate until IP has completed an ATWS analysis for (1) redundancy, (2) systems interaction, (3) loss of coolant accident,

> and (4) incidents such as those experienced in other GE boiling water reactors.

In its Memorandum and Order of May 29, 1981, at p. 10, this contention was accepted by the Board based on the conclusion that the specificity requirement of 10 C.F.R. § 2.714(b) was met by the allegation that due to faulty welds on a number of control rod drive tubes the Clinton Power Station was especially vulnerable to anticipated transients without scram (ATWS).

On November 6, 1981, the parties filed a stipulation which deleted the first two sentences of Contention No. 5. The stipulation was approved by the Board in its Memorandum and Order of December 16, 1981. The amended Contention No. 5 reads thus:

> 5. The CPS should not be licensed to operate until IP has completed an ATWS analysis for (1) redundancy, (2) systems interaction, (3) loss of coolant accident, and (4) incidents such as those experienced in other GE boiling water reactors.

On November 25, 1981, IP filed a Motion for Summary Disposition of Contention No. 5 urging that, as amended, the contention presents only the generic safety issues of ATWS. The Motion calls attention to the fact that Revised Contention No. 19 filed by PA on March 20, 1981 listed a number of generic issues. This Contention No. 19 was rejected by the Board. See Memorandum and Order of May 29, 1981 at p. 14. IP argues that by rejecting PA's Contention No. 19, the Board eliminated all generic aspects of ATWS from this proceeding. In its pleading of December 7, 1981, the Staff supported the argument of IP. However, the Staff moved that consideration of IP's Motion for Summary Disposition

be postponed until the report in the Safety Evaluation Report (SER) of results of the Staff's review of ATWS. The Staff's motion for postponement was granted by the Board in a telephone conference on March 9, 1982 and the Board also granted time until March 23, 1982 for filing supplemental briefs.

In answer to IP's arguments, Illinois points to Cleveland Electric Illuminating Co. et al. (Perry Nuclear Power Plant, Units 1 and 2)(Memorandum and Order concerning Motion to Dismiss ATWS Contention), January 6, 1982. In the Perry case, the contention was stated thus:

> "Applicant should install an automatic standby liquid control system to mitigate the consequences of an anticipated transient without scram."

The Perry Board denied the Motion to Dismiss this contention. The Perry Board commented on the specificity of the contention before it, thus:

> Second, whether or not Perry should have an automated standby liquid control system is far more specific to Perry than nuclear waste disposal ever was to any particular plant. Perry is one of the first General Electric BWR/6 reactors with a Mark III containment to apply for a license and an appropriate decision about an SLCS for Perry requires detailed knowledge of its characteristics. Hence, specific knowledge of this particular plant is required both for an adjudicatory determination and for issuance of a reasoned rule affecting Perry. In this sense, this issue is by nature specific.

The language of Contention No. 5 reads as though it was an admonition to the Commission, or the Staff, not to grant an operating license for the Clinton Plant until IP and the Staff have performed their duties with respect to ATWS. No party has challenged the

requirement that IP and the Staff perform their duties in this respect. Moreover, no party alleges that ATWS studies by IP or by the Staff have been completed.

In our discussion of PA's Proposed Supplemental Contention No. 5, supra, attention was called to the Appeal Board's ruling in the River Bend case concerning the validity of a contention based on a generic issue and the two tests laid down by the Appeal Board for admissibility of such contentions. Even if we accept the assertion that previously allowed Contention No. 5 contains a real issue, such issue fails to meet the second test required by the Appeal Board quoted above in that it does not mention a "particular item". Moreover, allowed Contention 5, as it now stands, lacks the specificity required by 10 C.F.R. § 2.714(b). The Motion for Summary Disposition of previously accepted Contention No. 5, as amended, is granted. This contention is no longer accepted. It is deleted from the list of accepted contention.

RENUMBERING OF ACCEPTED CONTENTIONS

Appendix A to the Memorandum and Order dated May 29, 1981 set forth twelve renumbered and revised allowed contentions remaining in this proceeding. Since that time the following changes in allowed contentions have occurred:

a. Previously allowed Contentions Nos. 5 and 11 were modified by Joint Stipulation of the Parties, dated November 6, 1981.

b. Previously allowed Contentions Nos. 7 and 8 were withdrawn by said Stipulation.

c. Previously allowed Contentions Nos. 4, 9 and 12 were withdrawn by PA after discussion between the Parties (see Staff letter of September 24, 1982).

d. Previously allowed Contentions Nos. 3 and 5 have been deleted by the Board for reasons stated in this Memorandum and Order.

e. PA's Proposed Supplemental Contention No. 4 has been admitted and Proposed Supplemental Contentions 1 through 3 and 5 through 8 have been denied admission for reasons stated in this Memorandum and Order.

f. Illinois' Proposed Issues No. 1 and 2 have been refused admission for reasons stated in this Memorandum and Order.

To facilitate future reference to the currently allowed contentions, they are renumbered and set forth in Appendix A to this Memorandum and Order.

ORDER

For the foregoing reasons and based upon a consideration of the entire record in this matter, it is this 10th day of November, 1982

ORDERED

1. That Proposed Supplemental Contentions of PA Nos. 1, 2, 3, 5, 6, 7, 8 are denied admissions.

2. That Proposed Supplemental Contentions of PA Nos. 4 is admitted.

3. That Issues Nos. 1 and 2 proposed by Illinois are denied admission.

4. That the previously allowed Contention No. 3 is deleted.

5. That the motion by IP for summary judgment of previously admitted Contention No. 5 is granted.

6. That all contentions which are, as of this date, accepted for litigation in this proceeding are set forth and renumbered in Appendix A to this Memorandum and Order.

THE ATOMIC SAFETY AND
LICENSING BOARD

Hugh K. Clark, Chairman
Administrative Judge

Dr. George A. Ferguson
Administrative Judge

Dr. Oscar H. Paris
Administrative Judge

Bethesda, Maryland

APPENDIX A

The following contentions are currently admitted in this proceeding:

CONTENTION I.

(PA's previous Contention No. 1) Clinton Power Station (CPS) should not be licensed to operate until a safe and feasible emergency plan has been developed which complies fully with current NRC requirements. See 10 C.F.R. Part 50, Appendix E, NUREGs-0696 and -0654. The emergency plan currently proposed by Illinois Power Company (IP) as delineated in the Final Safety Analysis Report (FSAR), is insufficient in the following respects:

(a) IP has failed to adequately incorporate emergency planning for a plume exposure pathway emergency planning zone (plume EPZ) of a minimum ten-mile radius from the CPS and an ingestion exposure pathway emergency planning zone (ingestion EPZ) of a minimum fifty mile radius from the CPS, as required by 10 C.F.R. Part 50, Appendix E. This planning should include, at a minimum, consideration of the following items peculiar to the CPS site vicinity and region:

(1) Problems posed in effecting termination of activities at outdoor recreational facilities within the plume EPZ and ingestion EPZ;

(2) Difficulties posed by "special facilities" which, because of the nature of the populace, the number of people involved or the means of available communication and transportation, give rise to

especially acute problems in emergency response actions. Included in this category are universities and other schools, nursing homes, mental health facilities, prisons and jails, children's camps, state parks, industrial parks, and other such facilities located within the plume EPZ and ingestion EPZ;

(3) The severe, but not uncommon, weather conditions, such as heavy snowfalls, sleet storms, and tornadoes which occur in the site vicinity and plume and ingestion EPZs throughout the year.

(b) IPC has not demonstrated concrete coordination plans with the appropriate state and local agencies involved in emergency planning and response actions. Thus far IP has failed to effect meaningful agreements with "17 named agencies as well as others such as local hospitals and physicians" as required by the NRC Staff in the Construction Permit Safety Evaluation Report, Section 13.4. See FSAR Emergency Plan, Sections 5.5.3, 5.5.4, B6, B7, and B9.

(c) The emergency plan lacks sufficient detail in the area of emergency preparedness training. For example, the plan does not state who will provide the training of local services personnel or how often that training will be provided. The same is true of training plans for accident assessment personnel and the "Emergency Response Organization". Additionally, there is no provision for emergency training of security personnel or a radiological orientation training program for local services personnel, including local news media persons, as required by 10 C.F.R. Part 50, Appendix E.

(d) As required by 10 C.F.R. Part 50, Appendix E, the emergency plan fails to identify or describe the following items:

(1) The special qualifications of non-IP employees who will be utilized in emergency training operations or recovery;

(2) The criteria for determining the need for notification and participation of local, state and federal agencies;

(3) An analysis of the time required to evacuate or provide other protective measures for various sectors and distances within the plume exposure and ingestion EPZs for both transient and permanent publics;

(4) A sufficient identification of the persons who will be responsible for making off-site dose projections;

(5) An adequate description of how off-site dose projections will be made and how the results will be transmitted to appropriate government entities;

(6) Plans for yearly dissemination to the public within the plume exposure and ingestion EPZs of basic emergency planning information, general information as to the nature and effects of radiation, and a listing of local broadcast stations that will be used for dissemination of information during an emergency;

(7) An identification of the appropriate state and local government officials within the EPZ which will require notification under accident conditions.

(8) A demonstration that state and local officials have the capability to make a public notification decision promptly upon being informed of an emergency condition.

(e) The requisite protective actions necessary to assure isolation of people from the plume and ingestion EPZs in case of an off-site or general emergency or other serious accident is not described with sufficient detail in the Emergency Plan. See FSAR Emergency Plan, Section 5.4.3.1.

(f) IP has failed to provide adequate emergency support facilities for the CPS. The FSAR lacks documentation concerning compliance with the current regulatory requirements for the Technical Support Center, the Operational Support Center, the Emergency Operations Facility, the Safety Parameter Display System, and the Nuclear Data Link. See NUREG-0696.

CONTENTION II.

(PA's previous Contention No. 2) The CPS should not be licensed to operate until IP has demonstrated, as required by 10 C.F.R. § 50.34(b) and Part 50, Appendix B, that it possesses sufficient management and technical qualifications to assure that the CPS will be (a) maintained in a safe condition while operating normally, or (b) safely operated and controlled in the event of an abnormal occurrence or emergency, or (c) permanently shut down and maintained in a safe condition.

Repeated Quality Assurance (QA) and Quality Control (QC) problems are noted in NRC Region III Inspection Reports. Specifically, IP's QA and QC program is consistently deficient in its ability to assure (1) a sufficient number of experienced personnel, (2) integrity of welding procedures, and (3) numerous other QA and QC functions. These incidents, among others, raise serious questions as to IP's management and technical capabilities to operate, backfit, and permanently shut down the CPS in compliance with regulatory requirements.

CONTENTION III.

(PA's previous Contention No. 6) The design and fabrication of the CPS control room layout and instrumentation have not been modified to meet current regulatory requirements in NUREGs-0660, -0694, -0737. Specifically:

(a) The CPS lacks sufficient instrumentation for displaying and recording the reactor pressure vessel water level.

(b) The CPS lacks sufficient instrumentation for detecting inadequate core cooling in case of an abnormal occurrence.

(c) Direct indication of safety relief valve position should be, but is not, provided for in the CPS instrumentation.

(d) A Safety Parameter Display System should be, but is not, provided for in the main control room.

(e) The CPS lacks adequate instrumentation for monitoring accident conditions.

(f) IP has not demonstrated its ability to comply with current NRC requirements for overall control room design standards.

(g) The CPS control room design and instrumentation has not been subjected to a comparative evaluation of the interaction of human factors and efficiency of operation.

(h) Not all CPS control panels are completely unobstructed and accessible. It is insufficient to have certain surveillance and monitoring actions on back row panels. Moreover, there has been no documentation of the criteria used to determine which instruments should be placed on back row panels.

(i) The FSAR contains no evaluation of the CPS control room layout and instrumentation in terms of the new criteria resulting from the accident at TMI Unit 2.

(j) The FSAR contains no documentation of how the power station can or will be modified to meet the new criteria imposed following the TMI accident.

CONTENTION IV.

(PA's previous Contention No. 10) The CPS Emergency Core Cooling System (ECCS) has not been demonstrated to meet the requirements of 10 C.F.R. Part 60.46 and 10 C.F.R. Part 50, Appendix K. Specifically,

(a) In noncompliance with 10 C.F.R. Part 50.46, the core spray distribution of CPS's ECCS is of unproven operating capability;

(b) In noncompliance with 10 C.F.R. Part 50, Appendix K, the models used to predict ECCS performance of the CPS have not been proven accurate.

CONTENTION V.

(PA's previous Contention No. 11) The effects of the low-level radiation to be released from Clinton Unit 1 has not been adequately assessed and considered in the following respects:

(a) the methods used to calculate atmospheric effluents of routine releases are inadequate in that conservative estimates were not, but should have been, used by IP;

(b) the residual risks of low-level radiation which will result from the release of radionuclides from Clinton Unit 1 have not been, but should be, adequately assessed and factored into the NEPA cost-benefit analysis for Clinton Unit 1.

CONTENTION VI.

(PA's supplemental Contention No. 4) General Electric recently announced that it will withdraw from the nuclear hardware market. The effects of this withdrawal have not been considered by the Applicant nor the Staff. This withdrawal is especially germane in light of Applicant's lack of experience in operating nuclear plants and its future needs relative to plant servicing and design modifications mandated by present and future Commission regulations and orders.