Applicant 1/24/83

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY
AND LICENSING BOARD

In the Matter of	)	
	)	
WASHINGTON PUBLIC POWER	)	
SUPPLY SYSTEM	)	Docket No. 50-460-OL
	)	
(WPPSS Nuclear Project No. 1)	)	

APPLICANT'S RESPONSE IN OPPOSITION TO
SUPPLEMENT TO REQUEST FOR HEARING
AND PETITION FOR LEAVE TO INTERVENE

The Washington Public Power Supply System ("Applicant") hereby responds to the proposed contentions set forth in the Supplement to Request for Hearing and Petition for Leave to Intervene ("supplemental petition") filed by the Coalition for Safe Power ("petitioner"). In the discussion which follows, Applicant first discusses the general legal principles that underlie objections common to many of these contentions. Applicant also sets forth its specific objections to the proposed contentions filed by petitioner.[1]

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1 Although Applicant does not discuss again in this Response the question of whether petitioner has demonstrated an interest affected by this proceeding such that it has standing to intervene, Applicant does not wish to imply that it has abandoned these objections to petitioner's request for a hearing. Applicant understands that pursuant to its December 1, 1981 Order, the Board will address this objection, set forth in detail in Applicant's Amended Answer In Opposition to Amended Request for Hearing and Petition
(footnote continued)

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I. GENERAL LEGAL OBJECTIONS

Applicant objects to certain of petitioner's contentions on two grounds. First, the contentions do not have their bases set forth with reasonable specificity and thus do not meet the requirements set forth in the 10 C.F.R. §2.714(b). Second, some of the contentions seek to challenge NRC Rules and Regulations, in violation of 10 C.F.R. §2.758. These are shortcomings in petitioner's pleading that alone preclude the contentions from being accepted by the Board.

A. Basis and Specificity

The Commission's Rules, as amended effective May 16, 1978, require that

> . . . the petitioner shall file . . . a list of the contentions which petitioner seeks to have litigated in the matter, and the bases for each contention set forth with reasonable specificity. [Section 2.714(b)].

The Statement of Considerations issued with amended Section 2.714(b) indicates the importance which the Commission attaches to the basis and specificity requirements, and states that "a proposed contention must be set forth with particularity and with the appropriate factual basis." 43 Fed. Reg. 17798 (April 26, 1978). It is clear

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for Leave to Intervene (November 17, 1982), and that those objections currently remain before the Board.

that the Commission intends the requirement to establish a threshold test which a contention must meet before it can be admitted as an issue in controversy in a proceeding.

The Appeal Board has explicitly recognized the importance of the basis and specificity requirements, as follows:

> A purpose of the basis-for-contention requirement in Section 2.714 is to help assure at the pleading stage that the hearing process is not improperly invoked. For example, a licensing proceeding before this agency is plainly not the proper forum for an attack on applicable statutory requirements or for challenges to the basic structure of the Commission's regulatory process.
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> Another purpose is to help assure that other parties are sufficiently put on notice so they will know at least generally what they will have to defend against or oppose. Still another purpose is to assure that the proposed issues are proper for adjudication in the particular proceeding. In the final analysis, there must ultimately be strict observance of the requirements governing intervention, in order that the adjudicatory process is invoked only by those persons . . . who seek resolution of concrete issues. [Philadelphia Electric Company, et al. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974) (citations omitted).]

In short, what is required of petitioner is that, first, it identify each allegation against which Applicant must defend. However, in NRC proceedings mere "notice

pleading" is insufficient, and the Commission's requirements clearly extend beyond the simple "notice pleading" allowed in the Federal courts. Kansas Gas & Electric Co., et al. (Wolf Creek Generating Station, Unit No. 1), ALAB-279, 1 NRC 559, 575 n. 32 (1975). This is a point of particular importance because in NRC licensing proceedings an applicant bears the burden of proof on any contention admitted (10 C.F.R. §2.732), and thus is entitled to clear and specific notice of the issues on which it is expected to bear that burden. Second, the basis of the contentions must be set forth with sufficient specificity so that the Board can determine that they have adequate foundation "to warrant further exploration" and that they state issues "proper for adjudication in the particular proceeding." Peach Bottom, ALAB-216, supra, 8 AEC at 21.

The Licensing Board has every reason to require that petitioner file meaningful contentions that properly state the matters it wishes to place in controversy and to otherwise meet the requirements of the Rules of Practice. Petitioner has participated and is now participating in a number of other NRC licensing hearings and is presumably familiar with the Rules of Practice governing such proceedings.[2] Therefore, deficiencies in its pleadings

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2 See ¶9 of Request for Hearing and Petition for Leave to Intervene, filed by petitioner on September 10, 1982.

should not be excused on the basis that they were prepared by a "layman." Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 2), ALAB-474, 7 NRC 746, 748 (1978); Detroit Edison Co. (Enrico Fermi Atomic Plant, Unit 2), ALAB-469, 7 NRC 470 (1978); Wolf Creek, ALAB-279, supra, 1 NRC at 576-77; Public Service Electric and Gas Company (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487, 489 (1973).

Moreover, in this proceeding, as in all NRC proceedings, Applicant has filed extensive documents which petitioner is expected to review.[3] These documents include the operating license application, the Environmental Report ("ER"), and a nineteen-volume Final Safety Analysis Report ("FSAR"). These documents have been available to petitioner in the Local Public Document Room located in Richland, Washington, and the FSAR has also been available at the offices of the Bonneville Power Administration in Portland, Oregon. Accordingly, in light of the availability of such material, it is incumbent upon petitioner to identify with specificity those parts of Applicant's documents with which it disagrees and state clearly the basis

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3 See, e.g., BPI v. AEC, 502 F.2d 424 (D.C. Cir. 1974); Wisconsin Electric Power Co. (Koshkonong Nuclear Plant, Units 1 and 2), CLI-74-45, 8 AEC 928 (1974); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 192, reconsideration denied, ALAB-110, 6 AEC 247, aff'd, CLI-73-12, 6 AEC 241 (1973).

for its disagreement.[4] See, e.g., Cleveland Electric Illuminating Co., et al. (Perry Nuclear Power Plant, Units 1 and 2, 14 NRC 175, 181-184 (1981).

Applicant recognizes that the requirements of Section 2.714(b), including the sufficiency of the basis and specificity of any contention, "involves the exercise of judgment on a case-by-case basis." Peach Bottom, supra, 8 AEC at 20. Nevertheless, it is quite clear that to be first admitted, a contention must be written with sufficient specificity for the Licensing Board to determine that it has an appropriate basis regardless of whether it may ultimately be determined that it has no factual merit. Applicant believes that given the comprehensive materials in this docket available to petitioner and its experience in other NRC licensing hearings, the Licensing Board should scrutinize petitioner's contentions closely for

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4 Applicant is not suggesting that Section 2.714(b) requires an evidentiary showing at this stage by petitioner on the merits of its contentions. Clearly, this is not the case. See Peach Bottom, supra, 8 AEC at 20; Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973); Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 548-549 (1980). And in ruling on the admissibility of the contention, it is not necessary for the Licensing Board to determine whether the contentions are "well-founded in fact." Duke Power Company (Amendment to Materials License SNM-1773 -- Transportation of Spent Fuel from Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-528, 9 NRC 146, 151 (1979). That determination should be made only after a particular contention has been admitted to a proceeding.

adequate specificity and basis. Applicant submits that such scrutiny will reveal four general inadequacies in many of the proposed contentions.

First, as noted above, when petitioner seeks to put in issue a topic discussed in materials that have been filed by Applicant, such as the ER and FSAR, it cannot plausibly be sufficient for petitioner to file a contention which fails to take such information, including all latest revisions, into account. Clearly, Applicant is entitled to specificity as to the nature of the alleged deficiency and as to the basis for petitioner's belief that such deficiency exists so that Applicant is on notice as to the matters to be litigated or otherwise addressed in the proceeding. See, e.g., Commonwealth Edison Company (Dresden Nuclear Power Station, Unit No. 1), Docket No. 50-10-OLA, __ NRC __ (slip. op. at 9, July 12, 1982). Petitioner has failed to meet this obligation for several proposed contentions, including, for example, proposed contentions two, four, seven, and eight.

Second, when petitioner seeks to put in issue a matter which arguably is not covered in Applicant's filings, it is incumbent on it to specify precisely the nature of its allegation and provide in detail the basis for it. This is necessary so that, as a threshold matter, the Licensing Board can determine whether the issue sought

to be raised is within the scope of the proceeding. As one example, petitioner has not satisfied this duty in connection with proposed contention five.

Third, it is not sufficient for petitioner to seek to raise an issue simply by stating that Applicant has "not demonstrated" compliance with a regulatory requirement, using as the sole basis for such assertion the fact that the regulatory review process has not yet been completed or that a commitment made by the Applicant has not been implemented fully. The Commission's procedures require that proposed contentions be framed on the basis of information available to petitioner at the time the Notice of Hearing is published. Accordingly, if petitioner seeks to raise a matter on which review has not yet been completed as an issue in this proceeding, its contention must, at a minimum, take account of the information set forth in the ER and FSAR, as well as identify the regulatory requirement which it claims is not met, and explain clearly why it believes the matter is deficient.[5] See, e.g.,

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5 In Koshkonong, supra, 8 AEC at 929, the Commission stated as follows:

> Petitioners also argue that without the benefit of discovery they could not have 'basic scientific information' and could not prepare adequately their request for intervention. This claim may be resolved under BPI v. AEC , 502 F.2d 424, 428 (C.A. D.C. 1974), rejecting the argument that the Atomic Energy Act should be so construed

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Cleveland Electric Illuminating Co., et al. (Perry Nuclear Power Plant, Units 1 & 2), LBP-81-24, 14 NRC 175, 216 (1981). Petitioner has failed to do so with regard to proposed contention six, as one example.

Fourth, the proposed contentions are drafted in such general terms that they fail to afford the Applicant and the NRC Staff a reasonable understanding of the precise issues to be litigated. At a minimum, each proposed contention should contain both the specific deficiency perceived by the petitioner and the Commission regulation or other legally binding requirement that would be violated if the specific deficiency alleged is found to exist.

A comparison of proposed contentions thirteen and fourteen illustrates the point. In contention thirteen, petitioner broadly alleges that 10 C.F.R. §50.46 and Appendices A (GDC 35) and K of 10 C.F.R. Part 50 are not

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'that the interested person need not articulate the issues until after having been admitted as a party to the proceeding, with consequent access to discover.' The argument fails to account for the sum of technical and environmental material already available in the record to assist in formulating contentions. Furthermore, petitioners' theory is contrary to the general thrust of judicial, as well as administrative practice whereby parties file their basic pleadings before they complete discovery. See BPI, supra, at p. 428, favorably noting a report which compared AEC's 'contentions' requirement to pleadings in civil cases.

fulfilled. The contention contains no specifics that would connect it to the purported basis for it, and therefore would in no manner confine discovery and litigation to the issues raised. Rather, the contention arguably would permit wholesale discovery and full litigation of each and every aspect of the B&W ECCS Model. This would be patently unfair to the Applicant, burdensome on the Staff and Board, and inappropriate as a matter of law. In Illinois Power Co. et al. (Clinton Power Station, Unit 1), LBP-81-61, 14 NRC 1735, 1737 (1981), the licensing board recognized the difficulty with such broadly worded contentions when, in the context of discovery, it ruled, as follows:

> Where a contention is made up of a general allegation which, standing alone, would not be admissible under 10 CFR §2.714(b), plus one or more alleged bases for the contention set forth with reasonable specificity, the scope of the matters in controversy raised by such contention are limited by the specific alleged basis or bases set forth in the contention.

Similar deficiencies exist in other proposed contentions including, ten, eleven, fifteen, sixteen, seventeen, and nineteen. Proposed contention five challenging the entire Quality Assurance Program for WNP-1 on the purported basis of a few isolated instances is a prime example of an overly broad contention.

This serious shortcoming in petitioner's supplemental petition is not merely a mistake in draftsmanship. A comparison of proposed contentions thirteen and fourteen indicates that petitioner can state a contention with sufficient specificity to at least connect it with and confine it to the purported basis advanced.[6] In contention fourteen, petitioner alleges that 10 C.F.R. §50.48 and Appendices A (GDC 3) and R are not fulfilled "in that Applicant has not demonstrated that redundant systems, equipment and components necessary for safety will not be damaged in the event of a fire." Supplemental petition at 21, emphasis added. Thus, at least the issue petitioner attempts to raise in this contention is focused and pointed.

At bottom, many of petitioner's proposed contentions are too general and broad to be acceptable under any standard of specificity. For this reason alone these contentions should be denied.

If these principles are not observed in ruling on the admissibility of proposed contentions, Section 2.714(b) will be emasculated. For all practical purposes,

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6 Applicant does not concede by this discussion of proposed contention fourteen that it is admissible, but merely compares it with contention thirteen to illustrate the need for more precision in draftsmanship of contentions. For Applicant's position on the admissibility of contention fourteen, see the discussion, infra, at 47-48.

petitioner could go through the table of contents of Applicant's FSAR and ER, allege that inadequate information has been provided concerning each subject matter heading, and thus place in controversy every aspect of the proposed activity without stating any basis whatsoever. A petitioner could similarly bring into controversy a myriad of subjects not discussed in Applicant's documents, even though they had no reasonable nexus to the proceeding or the facility and had been properly omitted from consideration by the Applicant.

Perhaps most importantly, from the standpoint of the public interest, the admission of contentions that fail to meet the specificity and basis requirements of Section 2.714(b) will frustrate compliance with the Commission's directive of May 20, 1981 set out in its "Statement of Policy and Conduct of Licensing Proceedings" (CLI-81-8, 13 NRC 452) to licensing boards to expedite hearings to the maximum extent feasible, consistent with fairness and sound procedures. Further, undue leniency in the specificity and basis requirements runs counter to the reason underlying the Commission's amendment of its intervention rules, i.e., the allowance of additional time for petitioner to "frame and support adequate contentions." 43 Fed. Reg. 17798 (1978).

B. Challenge to Commission's Regulations

Commission Rules of Practice provide in pertinent part that absent special circumstances[7] "any rule or regulation of the Commission, or any provision thereof . . . shall not be subject to attack by way of discovery, proof, argument or other means in any adjudicatory proceeding involving initial licensing . . . ." 10 C.F.R. §2.758(a). See Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 221 (1978); Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 2), ALAB-456, 7 NRC 63, 65 and 67 (1978); Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-410, 5 NRC 1398, 1402 (1977); Union Electric Company (Callaway Plant, Units 1 and 2), ALAB-347, 4 NRC 216, 218 (1976).

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7 The sole ground for waiver or exception of any rule or regulation in an adjudicatory proceeding involving initial licensing "shall be that special circumstances ". . . are such that application of the rule or regulation (or provision thereof) would not serve the purposes for which the rule or regulation was adopted." 10 C.F.R. §2.758(b). Further, a petition seeking waiver or exception of Commission rules or regulations must by affidavit make a prima facie showing that such special circumstances do exist. 10 C.F.R. §§2.758(b), (c), and (d). See also Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LHP-78-37, 8 NRC 575, 584,-5 (1978). Petitioner has not alleged and provided a prima facie showing that such circumstances exist here.

This prohibition against challenges to Commission regulations in adjudicatory proceedings also extends to the basis and foundation of such regulations. See Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 89 (1974) ("to go behind [provisions within a regulation] . . . and challenge the basis on which they rest is in effect a challenge to the regulation itself"). See also Union of Concerned Scientists v. Atomic Energy Commission, 499 F.2d 1069, 1090 (D.C. Cir. 1974); Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), CLI-80-31, 12 NRC 264, 270 (1980); Vermont Yankee Nuclear Power Corporation (Vermont Yankee Power Station), ALAB-138, 6 AEC 520, 528 (1973); Consumers Power Company (Midland Plant, Units 1 and 2), LBP-82-118, __ NRC __ (slip op. at 3-7, Dec. 30, 1982).

Moreover, issues that are, or are about to become, the subject of ongoing rulemaking proceedings in which generic determinations will be made are equally inappropriate for resolution in individual licensing proceedings. Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), ALAB-655, 14 NRC 799 (1981); Union Electric Company (Callaway Plant, Units 1 and 2), ALAB-352, 4 NRC 371, 373-4 (1976); Wisconsin Electric Power Company (Point Beach Nuclear Plant, Unit 2), ALAB-78, 5

AEC 319, 325-6 (1972). In sum, any of petitioner's proposed contentions that challenge a Commission regulation, or raise issues which are, or are about to become, the subject of ongoing rulemaking proceedings are not proper subjects for litigation in this proceeding, and must be denied.[8]

II. PETITIONER'S PROPOSED CONTENTIONS

In its January 10, 1983 filing, petitioner set forth twenty proposed contentions for consideration. Applicant's specific responses are set forth below.

A. Proposed Contention One

Petitioner's first contention addresses whether WNP-1 will be completed substantially in a timely manner. The proposed contention states, as follows:

> Petitioner contends that there is no reasonable assurance that WNP-1 will be substantially completed, in a timely fashion as required by 10 C.F.R. Part 2, Appendix A, Section VIII(b)(1) and 10 C.F.R. 50.55(b)&(d) which provide that an application for an Operating License will be filed "at or about the time of completion of the contruction ... of the facility" and that a license may be issued when there is "reasonable assurance that the construction of the facility will be substantially completed on a timely basis."

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8 Such restrictions do not preclude challenges to Commission regulations. However, the proper forum to advance a challenge to the Commission's regulations is before the Commission, and not in individual licensing proceedings. Douglas Point, supra, 8 AEC at 89.

This proposed contention attempts to raise a guidance provision (Part 2, Appendix A) to the level of a regulation and therefore make it jurisdictional in effect. See Pacific Gas & Electric Co., v. FTC, 506 F.2d 33, 38-39 (D.C. Cir. 1974). The regulation governing the legal requirements and findings for an operating license case is contained in 10 C.F.R. §50.57. Conspicuous by its absence from 10 C.F.R. §50.57 is any mention of the need for a finding that the facility will be completed in "a timely fashion," as the petitioner suggests is necessary. Absent a legal requirement for such a finding, there is no legal basis for the proposed contention, and it should be denied.

Further, petitioner's reference to 10 C.F.R. §50.55(b) and (d) cannot salvage the proposed contention. That regulation prescribes conditions for construction permits, and specifically in the context used here, provides that a permit shall expire if the facility is not completed by the latest completion date in the permit and if the completion date is not extended. In fact, because construction of WNP-1 has been deferred for from two to five years, the Supply System has requested that the NRC Staff amend the construction permit for WNP-1 to extend the latest completion date to June 1, 1991. This matter is before this Board (in another proceeding) in the con-

text of this same petitioner's request for a hearing on the CP amendment request. The matter that the petitioner is attempting to raise here is subject to litigation in that case.

The Board should resolve the issues properly placed in controversy by the parties and any sua sponte raised by the Board.[9] The completion date for the facility is not an appropriate substantive issue for this OL case, particularly in light of the pending CP amendment case. Of course, the NRC Staff must find, in accordance with 10 C.F.R. §50.57, that construction of WNP-1 has been substantially completed before it issues an operating license for the plant.

Even assuming that the proposed contention is litigable in this case, it should be rejected as lacking basis and specificity. As a basis for its contention, petitioner observes that construction of WNP-1 has been deferred. It then speculates that the Supply System will default on its debts for two Supply System nuclear plants (projects 4 and 5) that were terminated last year and that such default will make it impossible to complete construction of WNP-1.[10]

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9 See Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-81-36, 14 NRC 1111 (1981).

10 Supplemental petition at 1-2.

Such representations do not provide any basis for the proposed contention. A deferral in construction of WNP-1 is an insufficient basis for concluding that WNP-1 will not be completed. Nor does speculation involving a theoretical Supply System default in connection with its two cancelled projects provide any basis to conclude that WNP-1 will not be finished. As discussed above, petitioner is obliged to provide a factual basis in support of its belief that construction at WNP-1 will not be completed. It has failed to do so.

The rationale of the licensing board in Public Service Company of New Hampshire, et al., (Seabrook Station, Units 1 and 2), ASLBP No. 82-471-02-OL, __ NRC __ (slip op. at 9, n. 7, November 17, 1982) is instructive overall in evaluating the acceptability of this proposed contention:

> Particularity requires not only an allegation of the fact of non-compliance with a specified regulation, but also sufficient detail to permit the Board to determine how the regulation is supposedly being violated. This specificity is necessary to avoid admitting a contention that misstates a regulatory requirement or collaterally attacks that regulation by seeking to impose extra-regulatory requirements.

So viewed, petitioner's first contention should be rejected.

B. Proposed Contention Two

Petitioner's second proposed contention addresses the somatic, teratogenic and genetic effects of ionizing radiation, and states, as follows:

> Petitioner contends that Applicant has neither adequately nor correctly assessed the somatic, teratogenic and genetic effects of ionizing radiation which will be released by WNP-1 during normal, transient and accident conditions and thus underestimates the human cost of the project in the cost benefit analysis required by 10 C.F.R. 51.21, 51.20(b)&(c) and 51.23(c).

This proposed contention reflects the view of petitioner that Applicant's approach to addressing the effects of ionizing radiation during normal, transient and accident conditions at WNP-1 has not been adequate. As such, the proposed contention is an attack on NRC regulations and is, therefore, proscribed by 10 C.F.R. §2.758(a). Appendix I to 10 C.F.R. Part 50 establishes numerical guides for design objectives and limiting conditions for operation "to assist applicants for . . . licenses of light-water-cooled nuclear power rectors in meeting the requirement . . . that radioactive material in effluents released from these facilities to unrestricted areas be kept as low as is reasonably achievable." Appendix I at §1. Appendix I implements the standards set forth at 40 C.F.R. Part 190, which establish radiation levels below which "normal operations of the uranium fuel cycle are to

be determined to be environmentally acceptable." 42 Fed. Reg. 2858 (1977). These standards, which were promulgated by the Environmental Protection Agency, are imposed on power reactor licensees by NRC as part of its licensing duties.[11] Other applicable standards governing radioactive releases are set forth at 10 C.F.R. Part 20 ("Standards for Protection Against Radiation") and 10 C.F.R. Part 100 ("Reactor Site Criteria").

Petitioner has not demonstrated or even alleged with supporting basis that Applicant fails to comply with any of these provisions. Section 5.2 of the Environmental Report states that "[p]otential radionuclide releases and exposure pathways are identified and evaluated to assure plant operation within the design criteria of 10 C.F.R. 50, Appendix I, and applicable sections of 10 C.F.R. 20." ER §5.2 at 5.2-1. In addition, ER §7.1 demonstrates that WNP-1 will meet all applicable release requirements governing potential plant accidents involving radioactivity. Further, Chapter 15 of the Final Safety Analysis Report documents that "doses from all accidents are well below the guideline values of 10 CFR 100", FSAR §15.0.7,

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11 See September 11, 1973 AEC-EPA Memorandum of Understanding With Respect to AEC-Licensed Facilities, 38 Fed. Reg. 24936 (1973), and Memorandum of Understanding between EPA and NRC Concerning the Clean Air Act, as Amended in 1977, 45 Fed. Reg. 72981 (1980).

and Chapter 11 establishes that radioactive waste management will assure that releases are in compliance with Appendix I and 10 C.F.R. Part 20.

To the extent petitioner claims that such analysis is inadequate to address the effects of potential radioactive releases from WNP-1, petitioner is alleging that compliance with 10 C.F.R. Parts 20, 50 (Appendix I) and 100 and 40 C.F.R. Part 190 is inadequate to assure that the public health and safety will be protected during operation of WNP-1. As such, the proposed contention is an attack on the Commission regulations set forth above and is not suitable for litigation in this proceeding. If petitioner wishes the NRC to rehash the well-worn theories of Gofman and the like, then it should raise the issues in a petition for rulemaking to the Commission under 10 C.F.R. §2.802. Petitioner should not be permitted to inject these generic theories and value preferences into this individual licensing case, which is governed by NRC Rules and Regulations, not suppositions.

Second, to the extent petitioner alleges that these requirements were not satisfied, it has failed to provide any basis for such contention. Although petitioner referenced ER §5.2, it did not identify any <u>specific</u> analysis in that section with which it disagrees. Nor did it identify the reasons for any disagreement. In addition,

petitioner failed even to reference ER §7.1 or FSAR Chapters 11 and 15, let alone identify any alleged inadequacies in such analyses. Petitioner, therefore, has failed to establish with any specificity a basis for its contention.[12]

Third, petitioner apparently alleges that Applicant has underestimated the doses of radiation to workers over the life of the plant, even though all doses will comply with 10 C.F.R. Part 20. FSAR §12.4.1.1 establishes that the operation of WNP-1 will satisfy 10 C.F.R. Part 20, and petitioner seems to allege that such compliance is not sufficient to protect the health and safety of plant employees. This constitutes a challenge to Part 20 which is proscribed by 10 C.F.R. §2.758(a). Alternatively, if petitioner is alleging that 10 C.F.R. Part 20 is or will not be satisfied, it has wholly failed to identify the aspects of FSAR §12.4.1 with which it disagrees and to provide any basis for that disagreement.

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12 As part of this proposed contention, petitioner alleges that "[t]he effect of low-level ionizing radiation are underestimated by Applicant in Environmental Report Section 5.3." Supplemental Petition at 5. However, ER §5.3 addresses the effects of liquid chemical and biocide discharges, which simply have no bearing on low-level radiation. As a result, this assertion provides no basis for the proposed contention.

Fourth, to the extent petitioner alleges that Applicant has violated 10 C.F.R. §51.21 and 10 C.F.R. §51.20(b) and (c), which require the preparation of an Environmental Report, petitioner has failed to identify which of those provisions it alleges are not satisfied and to provide a basis for such allegations. As indicated above, petitioner has not indicated which portions of Applicant's ER or FSAR it wishes to challenge, why the analyses therein are defective, and why the newspaper articles, magazine articles and other reports referenced in its supplemental petition provide a reason for the Board to address this proposed contention. For these reasons, the contention should not be admitted in this proceeding.

C. Proposed Contention Three

Petitioner's proposed third contention addresses the question of electromagnetic pulse (EMP). It states:

> Petitioner contends that Applicant should be required to conduct an evaluation of and provide protection from the potential problems posed by Electromagnetic Pulse (EMP) to meet the requirements of 10 CFR 50.40(c). Licensing WNP-1 without protection from EMP unreasonably jeopardizes the common defense and safety by 1) impairing defense responses which might release EMP over the State of Washington and thereby cause a major release of radiation from WNP-1 and 2) acting as a potentially large source of lethal radioactivity which might be released by means of an EMP trigger which could be activated by any power, friend or foe, able to deliver a nuclear device over the U.S.

> 3) placing the U.S. population hostage to threats of EMP attack against WNP-1 and 4) placing the people of Washington State at risk of major peacetime loss for which no compensation can be expected.

Applicant maintains that this proposed contention is an impermissible challenge to Commission regulations (10 C.F.R. §50.13),[13] and therefore should be denied. Beyond that, the proposed contention is based on rank speculation and conjecture more suited for an Ian Fleming novel than for consideration in an NRC licensing hearing, and should be denied for lack of supporting basis.

The basic question raised by petitioner is whether the effects of an EMP generated by a high altitude detonation of a nuclear device should be litigated in individual licensing proceedings. This precise issue was addressed by the licensing board in Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 and 2), LBP-

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[13] Section 50.13 was upheld in Siegel v. AEC, 400 F.2d 778, 780-82 (D.C. Cir. 1968). That regulation provides, as follows:

> An applicant for a license to construct and operate a production or utilization facility, or for an amendment to such license, is not required to provide for design features or other measures for the specific purpose of protection against the effects of (a) attacks and destructive acts, including sabotage, directed against the facility by an enemy of the United States, whether a foreign government or other person, or (b) use or deployment of weapons incident to U.S. defense activities.

81-42, 14 NRC 842 (1981). The licensing board there ruled that consideration of EMP in individual licensing proceedings was directly barred by 10 C.F.R. §50.13.

The licensing board reasoned that detonation of any device capable of producing EMP would be considered a hostile act against the United States, even if it was not directed at the United States, and thus pursuant to 10 C.F.R. §50.13 may not be considered in a licensing proceeding. Perry, LBP-81-42, supra, 14 NRC at 845.[14] The licensing board noted that such reasoning was consistent with the Statement of Considerations published in conjunction with 10 C.F.R. §50.13, as follows:

> The protection of the United States against hostile enemy acts is a responsibility of the nation's defense establishment and of the various agencies having internal security functions. The power reactors which the Commission licenses are, of course, equipped with numerous features intended to assure the safety of plant employees and the public. The massive containment and other procedures and systems for rapid shutdown of the facility included in these features could serve a useful purpose in protection against the effects of enemy attacks and destructive acts, although that is not their specific purpose. One factor underlying the Commission's practice in this connection has been a recognition that reactor design features to protect against the full

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14 An identical result was reached more recently in Duke Power Company (Catawba Nuclear Station, Units 1 and 2), LBP-82-16, 15 NRC 566, 587-88 (1982); remanded on other grounds, ALAB-687, ___ NRC ___, (August 19, 1982).

> range of the modern arsenal of weapons are simply not practicable and that the defense and internal security capabilities of this country constitute, of necessity, the basic "safeguards" as respects possible hostile acts by an enemy of the United States.
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>
> Furthermore, assessment of whether at some time during the life of a facility, another nation actually would use force against that particular facility, the nature of such force and whether that enemy nation would be capable of employing the postulated force against our defense and internal security capabilities are matters which are speculative in the extreme. Moreover, examination into the above matters, apart from their extremely speculative nature, would involve information singularly sensitive from the standpoint of both our national defense and our diplomatic relations. [Id. at 844-45. See also 32 Fed. Reg. 13445 (September 26, 1967), and Siegel, supra, 400 F.2d at 780].

Petitioner apparently seeks to avoid the effects of Section 50.13 and pertinent case law (Perry and Catawba) by distinguishing its proposed contention from the proposed contentions in those cases and asserting that it is concerned only with threats of EMPs, accidental EMP release, release of EMPs by foreign parties or terrorists engaged in hostilities not directly involving the U.S., and constraints placed on U.S. defense forces by the existence of power reactors not protected from EMPs. Supplemental petition at 6. However, each of these concerns is

squarely within Section 50.13 and pertinent case law proscribing consideration of this matter in licensing proceedings.

Section 50.13 is clear on its face that the hostile acts by an enemy of the United States contemplated by the regulation could be performed by a foreign government "or other person". Terrorist organizations obviously fall in the second category and are within the scope of the regulation. Further, as the Statement of Considerations accompanying Section 50.13 makes clear, the policy decision behind such regulation is that consideration of whether and, if so, how another nation would use such force involves information which is sensitive from both a foreign policy and defense perspective. Clearly such information would be required to assess the likelihood of whether the threat of such force is credible. Moreover, the licensing board in Perry, supra, specifically found that EMPs generated by accident or inadvertently by nations other than the U.S. involved in a conflict with each other fall within Section 50.13. Id. at 844-45. Lastly, Section 50.13(b) states that power reactors need not be protected against deployment of weapons incident to U.S. defense activities. To argue that WNP-1 must be designed so as not to place a constraint on "U.S. defense forces by the existence of nuclear power plants which are

not protected from EMP"[15] simply shifts the focus of concern away from the power reactor and to U.S. defense activities. Thus, regardless of how petitioner formulates the issue, it is in fact arguing (contrary to 10 C.F.R. §2.758) that WNP-1 must be "hardened" against EMPs generated by weapons incident to U.S. defense activities.

In addition to challenging a Commission regulation, petitioner sets forth no plausible basis on which the proposed contention rests. While it describes a number of "scenarios" which it characterizes as "reasonably likely occurrences", no information is provided as to the likelihood or even possibility that the scenarios may in fact occur. In fact, by any reasonable standard the scenarios are obviously far-fetched and incredible. The contention should, therefore, be rejected.

D. Proposed Contention Four

Petitioner's fourth proposed contention, concerned with ashfall from volcanic activity, states as follows:

> Petitioner contends that Applicant has not provided sufficient information to show that WNP-1 can operate without hazard to the public health and safety in the event of an ash eruption of the Mount St. Helens, or other active, volcano as required by Appendix A of Part 50, 10 CFR.

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15 Supplemental petition at 6-7.

Petitioner has provided absolutely no basis for this contention. First, petitioner ignores a discussion of potential ashfall in the WNP-1 FSAR and overlooks Applicant's commitment to assure compliance with Part 50, Appendix A. In the FSAR at §9.4.18, Applicant states that a design basis ashfall for WNP-1 has been established and that it is set forth in the FSAR for the Supply System's Nuclear Project No. 2, at §2.5.1.2.6.1. FSAR §9.4.18 goes on to state that Applicant will determine which safe shutdown systems and structures of WNP-1 will be affected by such potential ashfall and will identify the impact of the ashfall on these systems and structures. FSAR §9.4.18 concludes by noting that changes will be established to adapt existing HVAC systems to enable the plant to be safely shut down during a volcanic ash fallout event.

In addition to its failure to account for these statements made in the WNP-1 FSAR, petitioner sets forth no basis upon which to conclude that Applicant will not satisfy the commitments made therein. Nor is any reason offered as to why specifically Applicant will not or does not meet 10 C.F.R. Part 50, Appendix A given such commitments, or that the design basis ashfall is inadequate. As discussed in §I.A. of this Response, the basis and specificity requirement of 10 C.F.R. Section 2.714(b) is not met by simply stating that Applicant has "not

demonstrated" compliance with a regulatory requirement, using as the sole basis for that assertion the fact that the regulatory review process has not yet been completed or that a commitment has not yet been satisfied fully. Accordingly, proposed contention four should be rejected.

E. Proposed Contention Five

Proposed contention five addresses quality assurance/quality control. It states, as follows:

> Petitioner contends that Applicant will not, and, in fact, does not have the ability to, implement a QA/QC program which will function as required by 10 CFR Part 50 Appendix A, GDC 1, 10 CFR 50.40 and Section VIII(2)&(3) of Appendix A to Part 2 to assure public health and safety. Moreover, Applicant has repeatedly violated 10 CFR 50.55(e)(2)(i) in not reporting the numerous breakdowns in its QA/QC program.

Applicant submits that this proposed contention should be rejected for lack of specificity and basis, and for raising matters which are not within the scope of this OL proceeding. Further, even if litigable, this proposed contention is so general and vague that its scope far exceeds any purported basis, and fails to provide a specific issue sought to be litigated.

First, the matters which petitioner seeks to raise in this contention involve the adequacy of Applicant's QA/QC program for construction of WNP-1. That issue is patently outside the scope of permissible issues in this OL case,

and should be pursued directly with the NRC through an action pursuant to 10 C.F.R. §2.206. The contention should be rejected for this reason alone.

Second, petitioner must relate the factual basis of its proposed contention to each of the requirements it alleges are not satisfied. Seabrook Station, Units 1 and 2, ASLBP No. 82-471-02-OL, supra, at 9, n. 7. Clearly it has failed to do so. Although petitioner has cited a number of NRC Inspection and Enforcement Reports, it has failed to connect any of them to any of the regulatory provisions governing quality and administrative controls for operation. As such, the reports do not provide any basis for a contention litigable in this OL case.

Third, many of the "incidents" cited by the petitioner as a basis for its contention did not even occur at WNP-1 and petitioner has provided no reason to conclude that they are relevant to its proposed contention involving that facility.

Lastly, petitioner asserts that "Applicant has repeatedly violated 10 CFR 50.55(e)(2)(i) in not reporting numerous breakdowns in its QA/QC program."[16] Again, this is an issue that is outside the scope of this OL case. Section 50.55 prescribes conditions for construction permits (not operating licenses), and any violations of

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16 Id. at 10.

that section that petitioner alleges to have occurred should be pursued through 10 C.F.R. §2.206 and not in this OL case. Further petitioner has provided no basis for concluding that such alleged violations have indeed occurred. Moreover, as discussed in connection with proposed contention one, petitioner may not invoke Appendix A to 10 C.F.R. Part 2 to save this proposed contention. That guidance document does not establish any legal requirements governing issuance of an operating license.

In sum, petitioner has failed to propose a contention relevant to this hearing. In any event, petitioner has not provided a basis with sufficient specificity for the proposed contention. Accordingly, the proposed contention should be rejected.

F. Proposed Contention Six

Proposed contention six addresses decay heat removal by natural circulation, as follows:

> Petitioner contends that Applicant has not demonstrated the ability to remove decay heat from WNP-1 using natural circulation in the event of an accident and thus violates GDC 34 & 35 of 10 CFR 50 Appendix A[.]

This proposed contention lacks basis and should be rejected. First, much of the basis for this proposed contention is nothing more than statements alleging what Applicant has not done. For example, petitioner asserts

that Applicant has not shown that "emergency feedwater" is safety grade and that Applicant has failed to demonstrate that the use of hot leg vents, when installed as a result of the "TMI Lessons Learned," will have the capability to reduce steam voiding sufficiently to allow natural circulation. Supplemental petition at 13. In addition, petitioner simply asserts without any reference to analysis prepared for WNP-1 that other methods of core cooling such as "feed and bleed" are inadequate. However, as discussed in §I.A. of this Response, it is not enough to simply assert that the Applicant has failed to demonstrate compliance with a requirement. Petitioner must provide a basis for its proposed contention addressing with sufficient specificity why the demonstration provided by the Applicant is not adequate. Petitioner has failed to do so.

Second, to the limited extent petitioner gives reasons why Applicant has failed to demonstrate compliance with 10 C.F.R. Part 50, Appendix A, GDC 34 and 35, those reasons are so patently in error that the Board may simply conclude that the contention is defective. Contrary to petitioner's allegation, the auxiliary feedwater system is in fact Quality Class I. FSAR §10.4.9. We recognize that the Board normally may presume that facts alleged by a petitioner for intervention are correct at this stage. We

submit, however, that the Board is not compelled to blink at patent misstatements of fact even at the pleading stage. Certainly 10 C.F.R. §2.718 alone provides the necessary authority and discretion to avoid the useless exercise of admitting a proposed contention easily known to be founded on erroneous facts. See Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ASLBP No. 81-463-01-OL, __ NRC __ (slip op. at 20, Dec. 1,. 1982). Accordingly, because its contention is founded on erroneous facts, petitioner has failed to set forth any valid basis in support of this proposed contention, and it should be rejected.

G. Proposed Contention Seven

Proposed contention seven concerns improvements in the power operated relief valve ("PORV") and other safety and relief valves. It states, as follows:

> Petitioner contends that the improvements proposed by the Applicant to the Power Operated Relief Valve and Safety & Relief Valves will not meet the requirements of NUREG-0737 and 10 CFR Part 50 Appendix A, GDC 14 and the defense-in-depth principle of the Commission.

This proposed contention lacks a basis and should be rejected. First, petitioner asserts that the PORV should be safety grade. It does not cite any regulatory requirement which would mandate such action. Nor does it cite any independent technical basis in support of this

functions can only be performed by the PORV . . . ." Supplemental petition at 14. That observation, without more, does not provide a basis for the proposed contention.

Additionally, petitioner asserts that the reactor coolant system safety valves should be safety grade. In fact, FSAR §§5.2.2.4.1 and 3.2 describe these valves as Quality Class I. Petitioner has failed to address these provisions and has provided no basis for concluding that all applicable regulatory requirements are not satisfied.

Second, petitioner asserts that the Applicant has not shown that the PORV system is reliable or that such system is fully redundant and qualified. Again, it is insufficient simply to allege that Applicant has failed to do something without identifying with specificity where in Applicant's FSAR or related documents inadequate or erroneous information was submitted. See Section I.A. of this Response. The entire pressurizer discharge system (including PORV reliability) is discussed throughout the FSAR (see, e.g., FSAR §5.4.11 ("Pressurizer Relief Discharge System") and FSAR §1.10.1 at II.K.3 ("Final Recommendations of B&O Task Force")), yet petitioner has not even referenced let alone provided any basis as to why such discussions are inadequate.

Third, petitioner asserts that the "testing of safety and relief valves used in WNP-1 is insufficient." Supplemental petition at 14. Again, this bald assertion provides no basis for the proposed contention. FSAR §1.10.1 at II.D.1 states that the Applicant is participating in the "EPRI PWR Safety and Relief Valve Test Program" and sets forth a description of the program. Petitioners have not provided any reason why that test program is inadequate. Indeed, petitioner has not even recognized in its supplemental petition that such program is underway. Petitioner should not be permitted simply to advance general allegations of inadequacy, totally blind itself and the Board to undisputed facts to the contrary, then put the Applicant (and the Board and Staff) to the unnecessary task of formally addressing the allegations either in trial or through summary disposition. See Catawba Nuclear Station, Units 1 and 2, ALSBP No. 81-463-01-OL, supra, slip op. at 20. For these reasons petitioner has failed to provide any basis for this proposed contention, and it should be rejected.

H. Proposed Contention Eight

Petitioner's proposed contention eight states, as follows:

> Petitioner contends that methods proposed by Applicant to meet instrumentation for detection of inadequate core cooling, NUREG-0737, are inadequate.

This proposed contention is totally without basis and should be rejected. First, petitioner cites no regulatory authority binding on Applicant for the assertion that "Applicant should be required to provide a reactor coolant meter capable of measuring coolant inventory from zero to 100%." Supplemental petition at 15. Indeed, no such requirement exists. Moreover, FSAR §§1.10.1 (at II.F.2) and 7.5 clearly establishes that inadequate core cooling ("ICC") instrumentation for WNP-1 meets all applicable regulatory requirements as well as Regulatory Guide 1.89. Therefore, to the extent petitioner contends that compliance with existing regulatory requirements will not assure adequate ICC instrumentation, such contention is a challenge to NRC regulations, which is prohibited by 10 C.F.R. §2.758. Alternatively, to the extent petitioner contends that Applicant has failed to satisfy existing requirements, petitioner has not shown where Applicant's analysis demonstrating compliance is deficient and why such deficiencies exist.

Second, petitioner cannot simply assert that Applicant's operating procedures will be insufficient to ensure that operator actions will "enhance" core cooling. Supplemental petition at 15. As discussed in detail in Section I.A. of this Response, petitioner does not establish a basis for its proposed contention by alleging that

compliance has not been demonstrated when it is evident that the regulatory review process has not yet been completed. Nor has petitioner set forth any basis for concluding that Applicant will be unable to provide such procedures in the future or that, when such procedures are implemented, all applicable requirements will not be satisfied. Accordingly, proposed contention eight should be rejected.

I. Proposed Contention Nine

Proposed contention nine states, as follows:

> Petitioner contends that there are systems, equipment and components classified as non-safety that were shown in the accident at TMI-2 to have a safety function or an adverse effect on safety and that such systems should be required to meet safety-grade criteria. Moreover, Applicant should be required to perform an analysis to identify all such systems, equipment and components.

This proposed contention is not appropriately before the Board. First, NRC establishes criteria for determining whether structures, systems or components are safety grade. See 10 C.F.R. Part 50, Appendix A, GDC 1; 10 C.F.R. §50.55(a) and Regulatory Guide 1.26. Applicant has demonstrated compliance with those criteria. FSAR §§1.8, 3.1 and 3.2. See also FSAR Chapter 7. To the extent petitioner contends that other structures, systems or components should be safety grade, it is challenging the

NRC regulatory criteria set forth above, contrary to 10 C.F.R. §2.758. In effect, petitioner is saying that it is dissatisfied with the manner in which the NRC regulates power reactors in this regard. Of course, such expressions of generic dissatisfaction with NRC regulation should be addressed to the Commission pursuant to 10 C.F.R. §2.802.

Second, as discussed in Section I.A. of this Response, petitioner must show where Applicant's classification of structures, systems or components is deficient, with reference to specific portions of the FSAR. In addition, it must provide reasons which support such alleged deficiencies. Petitioner has not done so, but rather has simply asserted the need for Applicant to perform further analysis. Accordingly, the Board should reject proposed contention nine.

J. Proposed Contention Ten

Proposed contention ten states, as follows:

> Petitioner contends that the B&W Once through Steam Generator (OTSG) design used for WNP-1 is overly sensitive to secondary side perturbations and has not been adequately analized [sic] as required by 10 CFR 50 Appendix A.

This contention lacks adequate basis and should be rejected. With respect to petitioner's allegation that Applicant has failed to address the significance of certain data referenced by petitioner, Applicant notes that

petitioner has failed to identify specific weaknesses in Applicant's analysis and to provide a basis for such allegation. See FSAR §1.10.1 at II.E.5. Petitioner makes no effort to identify any deficiencies in this study and thus fails to provide a basis for its allegation.

Petitioner also asserts that Applicant has "failed to discuss the long and short term safety significance of the entry point of the Auxiliary Feedwater System to the steam generators." Supplemental petition at 17. Again, petitioner has provided no basis for this allegation. FSAR §10.4.9 and §1.10.1 at II.E.5 discuss the Auxiliary Feedwater System and state that it satisfies all applicable requirements. If petitioner alleges that such is not the case, it has an obligation to disclose the basis for its assertion with specificity and with reference to the applicable FSAR sections. It is simply not enough to claim that Applicant has failed to take an alleged problem into account in the face of clear indications to the contrary. See Section I.A. of this Response. Accordingly, proposed contention ten lacks basis and should be rejected.

K. Proposed Contention Eleven

Proposed contention eleven addresses environmental qualification of equipment. It states, as follows:

> Petitioner contends that the Applicant has not shown that safety-related (electrical and mechanical) equipment

> and components are environmentally qualified to a degree that would provide adequate assurance that the requirements of GDC 2 and 4 of 10 CFR 50 Appendix A are satisfied[.]

This contention should be rejected for a number of reasons. First, petitioner alleges that "the present testing methods used to meet applicable criteria are inadequate." Supplemental petition at 17. FSAR §3.11.2. sets forth in detail the qualification tests and analyses which comprise Applicant's testing and analysis program. If petitioner contends that such program is inadequate, it must provide specific information as to which aspects of the program are inadequate as well as why such inadequacies exist. A general indictment of the program as set forth in the supplemental petition is inadequate to provide a basis for the contention. In addition, the approach of NUREG-0588 (to which Applicant is committed, FSAR §1.10.3) was incorporated in 10 C.F.R. §50.49, recently promulgated by the Commission. Therefore, to the extent petitioner challenges this approach, it is contesting the adequacy of an NRC regulation.

Second, petitioner alleges the Applicant has failed to satisfy Regulatory Guides 1.70 and 1.89 as well as IE Bulletin 79-01B by failing to provide certain information. As a basis for this contention it asserts that the exact location of each item of safety-related equipment is not

provided. Supplemental petition at 18. In fact, FSAR Appendix 3.11A defines location coding information and references where such information is available. See also FSAR §3.11.1.1.

Third, petitioner asserts that "Applicant has not accurately defined the parameters of an accident which would affect the operability of safety-related equipment" and that Applicant has "underestimated the period of time safety-related equipment will be required to operate." Supplemental petition at 19. FSAR §3.11.1 and several FSAR Tables and Figures cited therein set forth the parameters used by Applicant in demonstrating that its safety-related equipment is properly and fully qualified. In addition, FSAR §3.11.1.4. and Table 3.11-1 set forth the length of time that each is required to operate in a specified accident environment. These parameters are consistent with pertinent NRC requirements set forth in 10 C.F.R. §50.49(k) (endorsing NUREG-0588), and any dissatisfaction that petitioner may feel with those parameters is a challenge to NRC requirements. Further, petitioner has provided no specific discussion as to the aspects of such analyses with which it disagrees. Nor has it provided any basis in support of such disagreement.

Lastly, petitioner asserts as a basis for its proposed contention that "Applicant . . . has stated that it has not complied with the 'DOR Guidelines' . . ., NUREG-0588, adopted as the criteria documents for establishing environmental qualification." This assertion is incorrect for a number of reasons. First, in Petition for Emergency and Remedial Action, CLI-80-21, 11 NRC 707, 711 (1980), the Commission endorsed the use of the DOR Guidelines to review operating plants and NUREG-0588 to evaluate plants under licensing review. As a result, the DOR Guidelines do not apply to WNP-1. Second, FSAR §1.10.3 reflects an intention on the part of the Applicant to satisfy fully NUREG-0588. Petitioner sets forth no reason to indicate that such is not or will not be the case or that, when this commitment is satisfied, all applicable regulatory requirements will not be satisfied. Accordingly, proposed contention eleven is without any basis and should be rejected.

L. Proposed Contention Twelve

Proposed contention twelve, which addresses the adequacy of the intake/discharge structure of WNP-1 states, as follows:

> Petitioner contends that Applicant has not provided reasonable assurance that the Asiastic clam (Corbicula fluminiea) and other aquatic debris will not befoul the intake/discharge structure of WNP-1 in both normal and

> emergency operating conditions, thus endangering the public health and safety.

This contention lacks any basis. The overall thrust of this proposed contention is that certain aquatic debris (and particularly Corbicula fluminiea) will clog the intake/discharge structure of WNP-1 in the Columbia River in both normal and emergency conditions, thus endangering public health and safety. This contention again is founded on a patently erroneous understanding of the plant design. In fact, the Seismic Category I spray pond for WNP-1 provides for safe shutdown and core cooling, in accordance with NRC requirements (10 C.F.R. Part 50, Appendix A, GDC 44), without receiving make-up water from the river. Thus, even if the intake structure were clogged, it would have no adverse effect on the ability of the licensee to shut down the plant safely and maintain it in that condition. It follows that there could be no adverse impact to public health and safety, as petitioner contends, even if the intake were to be clogged.

FSAR §2.2.3.1.6. discusses the effects of total destruction of the intake structure and concludes that "destruction of the make-up water intake structure would be comparable in effect to a loss of offsite power to the make-up water pumps. The Seismic Category I spray ponds provide for 30 day cooling without make-up." Petitioner

fails to address this fact and accordingly offers no basis for concluding that a potential safety problem could exist in the event the structure is inoperable due to the collection of aquatic organisms or for any other reason.

Moreover, Applicant has in fact addressed the question of blockage caused by Corbicula fluminiea. It has determined that Corbicula is present in the Columbia River only in limited numbers (a single specimen collected in May, 1981), and has submitted a plan to the NRC in response to IE Bulletin 81-03. This plan was specifically referenced in Inspection Report No. 50-460/82-03, paragraph 7(b). Although petitioner was presumably aware of this plan,[17] it provided no basis for contending that such response was inadequate.

M. Proposed Contention Thirteen

Proposed contention thirteen states, as follows:

> Petitioner contends that the Babcox [sic] and Wilcox Emergency Core Cooling System (B&W ECCS) Model relied upon by Applicant does not meet the requirements of 10 CFR 50.46, Appendix K of Part 50 or GDC 35.

This proposed contention is so vague and general that it cannot possibly meet the specificity requirements of 10 C.F.R. §2.714. See Section I.A of this Response, supra, at 9-11. Further, the contention should be rejected as

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17 This Report in which the plan is referenced was cited by petitioner in support of proposed contention, at page 20 of its supplemental petition.

well because it lacks supporting basis. First, petitioner cites as its basis for the contention that the B&W evaluation model is inadequate and does not meet the requirements of 10 C.F.R. 50.46 and 10 C.F.R. Part 50, Appendix K or Appendix A, GDC 35 because that model failed to "predict the TMI accident." Supplemental petition at 21. This statement is founded upon a misunderstanding of the role of such models in plant analyses. Such models are used to predict plant response to a given set of conditions and not to predict accidents.

In addition, FSAR §§6.3, 1.6.1 and 1.10.1 (at II.K.30 and II.K.31) indicate how the Applicant will comply with such regulatory requirements. These FSAR sections also show specifically that small-break loss-of-coolant accidents (such as TMI) have been considered. Therefore, the allegation has no bearing on whether the applicable requirements will be fulfilled.

Second, to the extent petitioner challenges the verification plan proposed by the B&W Owners Group, petitioner has failed to relate such challenge to the demonstrations made by the Applicant in its FSAR noted above.

Additionally, petitioner has failed to set forth any basis as to why the verification plan is inadequate as applied to WNP-1. In fact, the reference cited by the petitioner does not question compliance with 10 C.F.R. Part 50, Appendix K or 10 C.F.R. §50.46.

Lastly, petitioner asserts that Applicant has not yet demonstrated compliance with 10 C.F.R. Part 50, Appendix K. Again, the fact that the regulatory review process has not yet been completed is no basis to conclude that it will not be completed nor does it provide any basis for concluding that all applicable requirements will not be met when such review is completed. See §I.A. of this Response. Petitioner has raised no valid reason why compliance will not be achieved, but rather attempts to base the contention on conjecture. Proposed contention thirteen should be rejected accordingly.

N. Proposed Contention Fourteen

Proposed contention fourteen addresses fire protection and states, as follows:

> Petitioner contends that the fire protection measures at WNP-1 do not meet the requirements of 10 CFR 50.48, Appendix R to Part 50, and GDC 3 in that Applicant has not demonstrated that redundant systems, equipment and components necessary for safety will not be damaged in the event of a fire.

The proposed contention is without any basis and should be rejected. First, petitioner asserts that "Applicant should be required to provide a safety-grade fire protection system." Supplemental petition at 22. However, neither 10 C.F.R. §50.48 nor 10 C.F.R. Part 50, Appendix R require a fire protection system which is fully safety grade. Therefore, to the extent petitioner would argue that a safety grade fire system is required, its proposed contention challenges NRC regulations and as such is proscribed by 10 C.F.R. §2.758.

Second, petitioner has set forth no basis for concluding that Applicant will not satisfy the requirements of Section 50.48 and Appendix R. Applicant has addressed Appendix R in FSAR §§1.10.5 and 9.5.1. Petitioner has set forth no basis for concluding that the commitments made there will not be satisfied. Mere statements that a certain result will not occur can hardly constitute the specific basis required by 10 C.F.R. §2.714. Therefore, petitioner has failed to provide a basis for its proposed contention. See Section I.A. of this Response.

O. Proposed Contention Fifteen

Proposed contention fifteen states:

> Petitioner contends that Applicant has not met the requirements of NUREG-0737 II.K.2.9, II.E.5.2(f) and I&E Bulletin 79-27 by not completing a plant-specific Failure Mode and Effects Analysis (FMEA) of the Integrated Control System for WNP-1.

This proposed contention should be rejected. Petitioner's basic assertion upon which this contention rests is that until Applicant completes a plant-specific Failure Modes and Effects Analysis (FMEA) of the Integrated Control System for WNP-1, and performs the required changes identified by the analysis, WNP-1 operation "will pose a threat to the public health and safety." Supplemental petition at 23. Petitioner then goes on to selectively cite FSAR §1.10.1 at II.K.2.9 for the proposition that, "the Supply System has not performed a detailed review of its (BAW-1564) applicability to WNP-1/4." Supplemental petition at 22.

In fact, FSAR §1.10.1 at II.K.2.9 states, as follows:

> The operating B&W plants have submitted a generic FMEA for the ICS (BAW-1564). Because the staff has not completed its review of this report, the Supply System has not performed a detailed review of its applicability to WNP-1/4.
>
> When the staff's review is completed the Supply System will perform such a review and either establish that BAW-1564 is applicable to WNP-1/4 or perform a FMEA for the ICS specifically for WNP-1/4.
>
> The Supply System is aware that BAW-1564 did not address the response of the ICS to power supply failures. To address this item, and as part of the evaluation required by IE Bulletin 79-27, a FMEA is being performed for the ICS/NNI for power supply failures. This includes evaluation of the failure of sensor inputs from the ECI. The results of this evaluation will be

> contained in a report by Science Applications, Inc. titled "ICS/NNI/ECI Failure Modes and Effects Analysis for WNP-1/4". Copies of this report will be submitted separately.

In short, rather than stating that Applicant has not performed this analysis, the FSAR states that Applicant has already committed to do such analysis. Petitioner has set forth no basis for concluding that this commitment will not be met or that all applicable regulatory requirements will not be fulfilled when the commitment is met. Accordingly, proposed contention fifteen should be rejected for lack of basis. See Section I.A. of this Response.

P. Proposed Contention Sixteen

Proposed contention sixteen addresses emergency diesel generators. It states, as follows:

> Petitioner contends that the Emergency Diesel Generators as designed and installed are unreliable as a source of on-site emergency power necessary for safety. Failure of the diesel generators should be considered a design basis accident.

Petitioner has provided no basis for this contention. First, petitioner has again selectively cited the FSAR but failed to address any of the analysis reflected in the FSAR which establish that of the emergency diesel generators to be used at WNP-1 meet all applicable regulatory requirements. See, e.g., FSAR §§9.5.4 through 9.5.8. As

indicated in Section I.A. of this Response, petitioner is required to do so and may not simply assert that the generators are inadequate as a basis for its contention.

Second, petitioner has failed to provide any regulatory authority binding on the Applicant which would warrant application of a standard more stringent than that which Applicant will meet, viz., 10 C.F.R. Part 50, Appendix A at Definitions and Explanations and GDC 17. Nor has petitioner provided a basis for requiring the imposition of a more stringent standard. In the absence of such a basis, the proposed contention should be rejected.[18]

Third, petitioner may not allege that the diesel generators are inadequate because certain actions to which Applicant is committed have not yet been completed. Moreover, such a proposed contention may not rest on an assertion that information such as environmental and seismic qualification data is not yet available. As discussed more fully in Section I.A. of this Response, petitioner

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18 To the extent petitioner relies on Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit No. 2), ALAB-603, 12 NRC 30 (1980), as a basis for its contention, such reliance is misplaced. First, as a legal matter that decision has no effect on the Applicant, which was not a party in such proceeding. Second, particular factual circumstances lead to the Appeal Board's concern with emergency diesel generators at St. Lucie. Petitioner has provided no basis for concluding that those circumstances are present in this case.

must provide a basis for concluding that the Applicant will not satisfy fully its commitments regarding diesel generators,[19] or show that fulfillment of those commitments will fall short of compliance with regulatory requirements. Because proposed contention sixteen lacks a basis, it should be rejected.

Q. Proposed Contention Seventeen

Proposed contention seventeen states as follows:

> Petitioner contends that WNP-1 Seismic Category I systems, components, and equipment, during a seismic event at the site, at or below the SSE, would fail in such a manner as to prevent safe shutdown of the plant. Such a failure violates GDC 2 and presents an undue risk to the public health and safety. Furthermore the Architect/ Engineer's response spectra is wholely [sic] defective and can not be relied upon for a seismic analysis.

Applicant submits that, for a number of reasons, this proposed contention should be rejected. First, many of the "examples" cited by petitioner in support of its proposed contention, such as alleged inadequacies in assembling cable trays and the design of the containment purge system, do not constitute any basis at all for the

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19 Petitioner cites F.S.A.R. Table 3.11B-1 in suport of its proposed contention that components of the emergency diesel generators are unreliable, presumably because they lack necessary environmental and seismic qualification. Supplemental petition at 24. In fact, Table 3.11B-1 states that documentation concerning such qualification will be submitted later. It does not say that components of the emergency diesel generators are not qualified.

contention. FSAR Table 1.3-2 at 13 and 14 references changes made in assembling cable trays and the design of the containment purge system. In both cases a reason for this change was given. And, in both cases petitioner has failed to provide any basis for arguing that those reasons are inadequate. See also FSAR §9.4.6 and 6.2.5, with respect to the containment purge system. To the contrary, Regulatory Guide 1.7 Rev. 2 at C.4 specifically states that the purge system need not be redundant or be designated Seismic Category I to satisfy the applicable regulatory requirements.

Similarly, petitioner may not set forth as a basis for its contention the fact that Applicant has not yet completed a program to assure snubber operability (supplemental petition at 24). In FSAR §3.9.3.4.2.1 Applicant commits to provide a snubber operability program. Petitioner does not question the adequacy of such program, or set forth any basis to argue that applicable requirements will not be satisfied.

Nor may petitioner validly assert as a basis for its proposed contention that Applicant has not identified "the applicable seismic analysis methods for testing the supports for all Seismic Category I systems, components,

and equipment" (supplemental petition at 24). FSAR §3.7 addresses this concern, yet petitioner does not even reference it, let alone provide any basis to challenge it.

Lastly, contrary to the supplemental petition at 24, FSAR §3.7.1.3 sets forth the critical damping values which petitioner claims have yet to be identified. Petitioner does not challenge the adequacy of these values.

Nor does petitioner's allegation that Applicant has failed to provide certain design and analysis procedures concerning containment provide a basis for this proposed contention. Supplemental petition at 25. Contrary to petitioner's assertions, tangential shears are addressed in FSAR §§3.8.1.4.2, and structural audits are discussed in FSAR §§3.8.1.6.2 and 3.8.2.6.2. In addition, information regarding the ultimate capability of the containment will be provided by September of this year. FSAR Response to NRC Questions, Question 21. Petitioner gives no basis for arguing that this commitment will not be met, or that fulfillment of the commitment will fall short of compliance with pertinent requirements.

Second, petitioner asserts that Applicant has failed to meet the requirements of Regulatory Guide 1.70 and Regulatory Guide 1.61. Supplemental petition at 24-26. This assertion does not provide any basis for the proposed contention. Regulatory Guides are not legally binding

documents and do not impose requirements on licensees. Petition for Emergency and Remedial Relief, CLI-78-6, 7 NRC 400, 406 (1978). Petitioner must identify a specific regulatory requirement which is allegedly not satisfied and provide a basis for arguing that such requirement is not met. It has failed to do so.

Third, to the extent petitioner seeks to challenge Applicant's seismic analysis, it has provided no basis for such a challenge. As best can be gleaned from the supplemental petition, a claim is made that Babcock & Wilcox has erroneously failed to include "soil damping values for structures, systems, and components which are part of the NSSS." Supplemental petition at 25. This statement is simply erroneous and for that reason alone the proposed contention should be rejected. Petitioner should not be permitted to quote or reference the FSAR selectively, while ignoring (and asking this Board to ignore) other FSAR information that places petitioner's claims in the proper text. See Section I.A. of this Response. The soil damping values are used by the Architect/Engineer, United Engineers & Constructors in the generation of the seismic input provided to Babcock & Wilcox, the NSSS vendor. Because the A/E has already taken soil/structure interaction into account, there is no need for the NSSS vendor to do the same. These analyses are described in FSAR

§3.7. Further, petitioner has given no reason why these values are not correct or not properly applied. Thus, this aspect of its proposed contention has no basis.

Fourth, petitioner asserts that the amplified response spectra used by the Architect/Engineer is unreliable. While petitioner has cited a number of letters from the A/E and Applicant to NRC as support for its proposed contention, petitioner has chosen to ignore the fact, reflected in those letters, that Applicant discovered and reported this matter. Petitioner has provided no basis for concluding that corrective action will not be taken as needed or that when such action is taken, all applicable regulatory requirements will not be fulfilled.

Lastly, petitioner claims as a basis for its contention that "numerous electrical equipment remains seismically unqualified." Supplemental petition at 26. Again, FSAR Appendix 3.11B states that, where indicated, equipment will be qualified. Petitioner fails to provide any basis for concluding that such commitment will not be satisfied or that, when satisfied, compliance with all applicable regulations will not be achieved. Accordingly, proposed contention seventeen lacks a basis and should be rejected.

R. Proposed Contention Eighteen

Proposed contention eighteen states as follows:

> Petitioner contends that Applicant has failed to conduct an adequate assessment of the interactivity of WNP-1 and surrounding nuclear/chemical facilities including the ability (of WNP-1 or the other facilities) to continue safe operation in the event of an accident (at WNP-1 or the other facilities) and the consequences of loss of operability as required by 10 CFR 51.20 and 10 CFR 100.10.

This proposed contention should be rejected for lack of basis and specificity. The "basis" cited by petitioner consists of identifying a number of facilities located near WNP-1 and asserting that Applicant should consider them in greater detail in its FSAR. However, petitioner does not identify with any degree of specificity why, as a matter of public health and safety, Applicant need consider such facilities further or why its analysis in this regard is inadequate.

Specifically, Regulatory Guide 1.70 provides that the regulations can be met if all facilities and activities within five miles are considered and if facilities at greater distances are considered as appropriate. Of these, the Fast Flux Test Facility (FFTF) is apparently of concern to petitioner, which alleges that the FSAR fails to address the "potential hazard created by the proximity of [such facility]." Supplemental petition at 28. This is a misstatement of the FSAR. FSAR at §§6.4.4.1, 12.3.2.2.9 and 15.6.5.6 establish that WNP-1 is designed

such that an in-plant loss-of-coolant accident will not affect control room personnel. Petitioner has provided no basis for arguing that the potential radiological hazard from an accident at the FFTF would exceed the potential radiological hazards posed by an on-site loss-of-coolant accident. Nor has it provided any basis for concluding that Applicant need consider the effects of WNP-1 specifically on the FFTF, especially because Applicant has established compliance with NRC regulations governing the release offsite of radioactive materials. See Section II.B. of this Response. Thus, petitioner has provided no basis for concluding that Applicant's analysis with regard to the proximity of the FFTF from a public health and safety perspective is invalid.

Second, petitioner apparently asserts that Applicant has failed to analyze with sufficient detail measures regarding aircraft and materials transportation. Supplemental petition at 28-29. Again, petitioner has provided no basis for this assertion. Petitioner sets forth no reason why consideration of such matters in greater detail than that in the FSAR is warranted or specifically what additional measures should be taken.

Lastly, petitioner provides no basis for concluding that Applicant's analysis of the N-Reactor, the Purex facility and use of the mainline railroad track operated

by DOE is inadequate. As indicated in §I.A of this Response, petitioner must identify with specificity a particular regulatory provision which requires detailed consideration of such facilities and provide a basis for its allegation that such provision is not satisfied. Petitioner has failed to do so, and its proposed contention should be rejected.

S. Proposed Contention Nineteen

Proposed contention nineteen addresses emergency planning. It states as follows:

> Petitioner contends that the emergency plans proposed by Applicant are insufficient to assure that adequate protective measures can and will be taken in the event of a radiological emergency as required by 10 CFR 50.33, 50.47, 50.54 and Appendix E to Part 50.

Applicant submits that this proposed contention should be rejected. First, while petitioner cites various sections of the FSAR and Emergency Plans for WNP-1, in many instances petitioner has failed to take into account certain amendments to the Emergency Plan. For example, contrary to petitioner's allegations, transient population forecasts are provided in FSAR §2.1.3.3, as are significant transient populations which could require special notice (Id.).

Second, petitioner raises a number of issues concerning the adequacy of the plume exposure pathway EPZ. It asserts that the plume exposure pathway EPZ should be larger for pregnant women and children; that "the Applicant should be able to plan for the displacement of a significant percentage of the population outside of the [plume exposure] EPZ", and that Applicant "has not demonstrated why it is appropriate to establish a plume exposure EPZ of an exact ten-mile radius" and to thereby exclude the City of Richland. Supplemental petition at 32.

The conservative 10 mile radius of the plume exposure pathway EPZ is prescribed generally by 10 C.F.R. §50.47(c)(2). Petitioner cannot be permitted to challenge that regulation. 10 C.F.R. §2.758. There is no basis in the supplemental petition upon which to conclude that the EPZ for WNP-1 does not comply with 10 C.F.R. §50.47(c)(2) or to otherwise provide support for the proposed contention. Simply because the petitioner thinks that special provisions and planning are necessary for special groups such as children, or that the plume exposure pathway EPZ should be expanded beyond 10 miles, does not create a litigable issue in the case. The NRC sets the regulations, not the petitioner, and there is nothing here to suggest that the NRC's regulations are not met.

Petitioner asserts that there are a number of additional "showings" which Applicant is required to make to establish compliance with the applicable emergency planning regulations. Supplemental petition at 31-35. However, petitioner has failed to provide any basis for arguing that, where required, these showings will not be made and that when made, full compliance with Section 50.47 will not be achieved. As discussed in §I.A of this Response, it is not enough for the petitioner to allege that the Applicant has not demonstrated compliance with a specific requirement when the regulatory review process is not yet completed.

Finally, petitioner asserts that "Applicant's plan relies heavily upon the support of various public or private agencies located on or connected with DOE's Hanford Reservation" and that "it cannot be assumed that they have the combined manpower or experience to provide the required support." Supplemental petition at 33. Petitioner has provided no basis for concluding that such support is lacking or that Applicant's reliance on these organizations is not justified. Rather, petitioner has simply asserted that "detailed information should be provided." Id. At bottom, petitioner has provided no basis for this proposed contention. In addition, such

proposed contention challenges the applicable NRC regulations governing emergency planning. It should, therefore, be rejected.

T. Proposed Contention Twenty

Proposed contention twenty raises a number of issues pertaining to overall plant construction. It states, as follows:

> Petitioner contends that there is no reasonable assurance that WNP-1 will be completed on a timely basis and that the project has not been constructed "in conformity with the construction permit and the application as amended, the provisions of the Act, and the rules and regulations of the Commission" as required by 10 CFR Part 2, Appendix A, VIII(b)(1). Numerous deficiencies, both known and unknown, exist in the construction of WNP-1 such that its operation would cause an undue risk to the public health and safety. The halt in construction, in addition to the previously existing delays, will prevent completion of the project on a timely basis. Continued conformance with the construction permit by Applicant is unlikely due to inadequate measures at the present and into the future, taken to protect the portions of the plant that are already built and the systems that are already installed.

This proposed contention lacks basis and is much too vague and general to be admitted. First, the proposed contention attempts to join a number of issues which are not related and which, if they were properly before the Board, should be divided into a number of discrete

contentions. These issues are whether (1) there is a reasonable assurance that WNP-1 will be completed on a timely basis; (2) the project has been completed in accordance with all applicable requirements and the WNP-1 construction permit; (3) continued conformance with the construction permit by the Applicant is likely. On this basis alone, the proposed contention is inadequately framed and thus should be rejected.

Second, the issues identified in the proposed contention lack basis and specificity. The question of whether there is reasonable assurance that WNP-1 will be completed on a timely basis is identical to issues raised in connection with proposed contention one. As was the case with that proposed contention, such issue is inappropriate in this OL case and, in any event, petitioner has failed to provide any basis for its assertion. Moreover, as was the case with that proposed contention, petitioner may not elevate a guidance document (Part 2, Appendix A) to the legal level of a regulation and seek then to require Applicant to satisfy it. See §II.A of this Response.

The second issue raised in this proposed contention is whether there is reasonable assurance that WNP-1 has been and will be constructed in accordance with its construction permit and applicable regulations. As a basis for this aspect of the proposed contention,

petitioner submits a number of Inspection Reports prepared by the NRC Staff. Applicant submits that merely to identify such reports does not itself provide any basis for the proposed contention. Petitioner does not provide any reason for arguing that the matters in the Inspection Reports have not been or will not be corrected or for contending other undiscovered deficiencies are present in the plant. If petitioner wishes to contend that the plant was not constructed in conformance with its construction permit and/or regulatory requirements, it must identify with specificity which requirements were violated and provide a factual basis for such allegations sufficient to appraise Applicant and the Board of the matters it wishes to litigate. Vague assertions will not suffice. Seabrook Station, Units 1 and 2, ASLBP No. 82-471-02-OL, supra. See also §I.A of this Response.

The third issue raised in this contention is whether the Applicant will continue to satisfy its construction permit. As a basis for this proposed contention, petitioner asserts that Applicant should protect WNP-1 from "the elements, sabotage, etc." during the deferral period. Supplemental petition at 37. It is evident from the outset that these concerns have no place in an operating license proceeding. Such considerations fall within the purview of 10 C.F.R. §50.55. If the petitioner has a

specific concern regarding the status of construction, it should pursue it through 10 C.F.R. §2.206, not in this OL case. Moreover, even if the issue were litigable here, petitioner has failed even to discuss why Applicant's present course of conduct during construction deferral is not acceptable. Accordingly, proposed contention twenty is unduly vague, lacks sufficient basis and specificity, and is not relevant to this operating license proceeding. It should, therefore, be rejected.

III. CONCLUSION

For the reasons set forth above, petitioner's proposed contentions should be rejected and petitioner should be denied status as an intervenor.

Respectfully submitted,

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January 24, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
WASHINGTON PUBLIC POWER SUPPLY SYSTEM	)	Docket No. 50-460-OL
	)	
(WPPSS Nuclear Project No. 1)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicant's Response In Opposition to Supplement to Request for Hearing and Petition for Leave to Intervene" in the above-captioned matter were served upon the following persons by hand delivery (*) or deposit in the United States mail, first class, postage prepaid this forenoon of the 24th day of January, 1983:

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