

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Morton B. Margulies, Chairman
Frederick J. Shon
Dr. Richard F. Foster

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In the Matter of
WASHINGTON PUBLIC POWER SUPPLY
SYSTEMS, ET AL.
(WPPSS, Nuclear Project No. 3)

) Docket No. 50-508
)
) ASLBP No. 83-486-01 OL
)
) September 27, 1983
)

MEMORANDUM AND ORDER
(Ruling on Proposed Contentions)

By Memorandum and Order of April 21, 1983, this Licensing Board found that petitioner Coalition For Safe Power (Coalition) satisfied the interest and standing requirements of 10 CFR 2.714 for intervention in the proceeding but required the submission of a litigable contention for it to be admitted as a party intervenor.

Coalition filed a supplement to its petition on June 15, 1983 containing 17 proposed contentions. On July 6, 1983 Applicant, Washington Public Power Supply System (Supply System) responded objecting to the admissability of all proposed contentions. Nuclear Regulatory Staff (Staff), in its answer of July 11, 1983 concluded 12 of the proposed contentions to be inadmissable, with the remainder litigable in whole, in part or combined.

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A special prehearing conference was held pursuant to 10 CFR 2.751a on August 17, 1983 at Montesano, Washington. By stipulation at the conference, accepted by the Licensing Board, Petitioner withdrew 7 of its proposed contentions, numbered 1, 7, 9, 10, 14, 15 and 17 (Exhibit 1). All participants agreed to rewording proposed contentions 2, 3, 4, 5, 6 and 13 and Petitioner made some revisions in the wording of 8, 11, 12 and 16. The proposed contentions, as revised, will continue to bear their original numbers.

Applicant and Staff stipulated with Petitioner that proposed contention 8 and 16 were admissible. Staff and Coalition also stipulated as to the admissibility of proposed contentions 12 and 13 (Tr. 78).

We concur with the 3 participants that proposed contentions 8 and 16 contain litigatable issues, satisfying the requirements of 10 CFR 2.714(b). No useful purpose would be served by a detailed review of the 2 contentions.

Legal Requirements Pertaining To Proposed Contentions

We have relied upon the following basic legal principles governing the admissibility of contentions in making our rulings:

Section 2.714(b) requires that the proposed contentions be set forth with particularity and that there be some basis for the contentions. In deciding whether these criteria are met, Licensing Boards are not to decide whether the proposed contentions are meritorious. Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1

and 2), ALAB-183, 7 AEC 210, 216 (1974). The regulation does not require the petitioner to detail the evidence which will be offered in support of the contention. Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973).

The bases for contentions must be sufficiently detailed and specific (a) to demonstrate that the issues raised are admissible and further inquiry into the matter is warranted and (b) to put the parties on notice as to what they will have to defend against or oppose. A contention must be rejected where:

- (1) It constitutes an attack on applicable statutory requirements;
- (2) It challenges the basic structures of the Commission's regulatory process or is an attack on the regulations;
- (3) It is nothing more than a generalization regarding the intervenor's view of what applicable policies ought to be;
- (4) It seeks to raise an issue which is not proper for adjudication in the proceeding or does not apply to the facility in question; or
- (5) It seeks to raise an issue which is not concrete or litigable.

See Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974).

Commission regulations do not allow the filing of vague, unparticularized contentions, to be followed by an attempt to flesh them out through discovery of Applicant and Staff. Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 468 (1982). A Licensing Board has no duty to recast contentions offered by a

petitioner to remedy the infirmities of the type described in Peach Bottom, supra, for which they may be rejected. Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-226, 8 AEC 381, 406 (1974).

Proposed Contentions

Proposed Contention 2:

Petitioner contends that Applicant has underestimated the human cost of the project in the cost-benefit analysis required by 10 C.F.R. Section 51.21 in that Applicant has failed to address properly the potential releases of radionuclides from WNP-3 during normal, transient and accident conditions and further that such releases will not meet the requirements of 10 C.F.R. 20.103 and 10 C.F.R. Part 50, Appendix I.

In this contention we discern two distinct allegations: the first is that an analysis of the costs required, particularly the costs ensuing from the radiological impact which the plant presents, has not been properly presented; the second is that releases will not meet the requirements of 10 CFR 20.103 and Appendix I to 10 CFR 50. We deal with these allegations seriatim.

Applicant questions the admissibility of the first allegation on grounds that to question the Staff's assessment of health effects, an assessment on which Appendix I to 10 CFR 50 is based, is to question the regulation (Applicants' Response at 22-23; Tr. 29). Staff's objection seems to be primarily that the contention does not expressly say that a proper analysis would tip the environmental balance (Staff Response at 6).

We believe that the gap the Staff sees is implicitly filled. It cannot be assumed Petitioner wants to engage in an academic exercise.

Its proposed contention implies that the balance would tilt against the plant.

Applicant's objection warrants closer inspection. If this indeed challenges the regulation we would perforce be obliged to reject it. However, we feel that Petitioner's citation of Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), CLI-80-31, 12 NRC 264 is on point. In reaching its decision in that case the Commission specifically pointed out at page 277 that the Appendix I rulemaking record "does not mean of course that the health effects of Appendix I releases cannot be contested." The Commission expressed its belief that it might be crucial that "... 'present thinking' ..." be brought to bear in determining the acceptability of the risk (Id.). It noted that the Appendix I record was then five years old (Id.). Three more years have now passed, and these eight years have seen the publication of both the Heidelberg Study and J. Gofman's Radiation and Human Health, bases cited by the Petitioner for the allegation herein (Supplement at 3; Tr. 29). We believe this allegation and its bases would cause reasonable minds to inquire further.

As to the second allegation, it is evident that here it is primarily the validity of the algorithm connecting releases with dose which Petitioner would challenge (Tr. 24, 25). Further it appears that no substantial change has occurred in estimated releases since the CP was issued. (Tr. 29, 30).

We recognize, however, that the bulk of the limitations required to comply with 10 CFR 50, Appendix I are limitations upon calculated dose.

(Cf. 10 CFR 50, Appendix I, Section II). The chain of calculation which leads from release to dose is a complex one. In our view, it is here that the Commission's admonition to apply "present thinking" might well be borne in mind. Here, too, we would inquire further, using the adversary process to spark the inquiry.

Contention 2 is admitted in its entirety as a litigable issue in this case.

Proposed Contention 3:

Petitioner contends that Applicant has not satisfied 10 C.F.R. Part 50, Appendix A, GDC 1, 2 and 4 in that it has not shown that safety-related electrical and mechanical equipment will be environmentally qualified as required by 10 C.F.R. Section 50.49.

Applicant asserts that the proposed contention constitutes an impermissible attack on Commission regulations and lacks the requisite supporting basis as mandated by Commission regulations (Applicant's Response at 28). In opposing the admission of this contention, Applicant makes much of the notion that the plant is committed to comply with a Staff document, NUREG-0588 (Applicant's Response at 32; Tr. 35) suggesting that to ignore that commitment is to challenge the regulations (Applicant's Response at 28). At the same time Applicant would have us ignore any alleged failure to comply with Regulatory Guides 1.7 and 1.89, the guides cited by Petitioner as here applicable (Supplement at 8), since "regulatory guides are not binding requirements" (Applicant's Response at 36). To accept this notion is to stand the traditional hierarchy of Regulations - Regulatory Guide - NUREG Report on its head. We accept the idea that a failure to comply

with Regulatory Guides may well call forth litigation to determine whether their equivalent is being effected. Further, a mere allegation that Applicant will comply with procedures recommended in a NUREG report in no way precludes examination of either the fact of or the sufficiency of such compliance, which we will review.

Petitioner's proposed contention is predicated on the assertion that Applicant is required to comply with 10 CFR 50.49 which provides for establishing a program for environmentally qualifying electric equipment important to safety for nuclear power plants. Subsection 50.49(a) places upon "[e]ach holder or each applicant for a license to operate a nuclear power plant" the requirement to establish a program for qualifying defined electric equipment.

Subsections 50.49(g) and (i) make exceptions as to compliance. 50.49(g) makes provision for holders of operating licenses issued prior to February 22, 1983. 50.49(i) provides as to how "[a]pplicants for operating licenses that are to be granted on or after February 22, 1983, but prior to November 30, 1985" are to perform. It is undisputed that WNP-3 will not be licensed by 1985 (Tr. 36). No other exemptions as to compliance are made in 50.49.

Applicant takes the position the requirements of 49 CFR 50.49 are not applicable to it because it does not expect to be licensed by November 30, 1985 (Tr. 36). Staff in its filed response at page 7 incorrectly stated 10 CFR 50.49(g) was applicable to applicants rather than licensees. That section has a compliance date of March 31, 1985 at the earliest, which could be extended to November 30, 1985 and in some

cases beyond. On that basis Staff concluded there is no deadline for the environmental qualification of equipment that is within the authority of the Licensing Board to enforce and that there is no litigable issue. Counsel for Staff that appeared at the hearing recognized the Staff response was incorrect. He had no Staff position as to how the regulation should be interpreted for an applicant that would be licensed after 1985 (Tr. 33-36).

We find the regulation requires full compliance of Applicant with its provisions. The regulation is of general applicability. Compliance is not to be deferred or altered except to the extent an exception is made. The Commission saw fit to grant a deferral to those holding operating licenses prior to February 22, 1983 and to applicants for operating licenses that would be granted on or after February 22, 1983 but prior to November 30, 1985. Applicant falls into neither category and is entitled to no deferral or exemption.

The recent case of Union of Concerned Scientists v. Nuclear Regulatory Commission, 711 F.2d 370 (CA DC 1983) does nothing to alter the above determination. The case deals with whether the Commission had legal justification to grant operating license holders a deferral for compliance. The matter was remanded to the Commission. It has no applicability to the matter before us. The case only dealt with the justification for deferral to holders of operating licenses. It did not involve applicants. Furthermore, our holding does not recognize any deferral for Supply System, as an applicant, but requires it to comply with the regulation.

Both Applicant and Staff also object to this contention on grounds of specificity (Tr. 16, 17). We see no vagueness here; Petitioner asserts that the equipment may not withstand the environment to which it will be exposed and lists a series of reports criticizing the test program it is expected to undergo and two Regulatory Guides it will not meet (Supplement at 6-9). True, one Regulatory Guide requirement Petitioner cites, (viz., a list of equipment positions), is already in place according to Applicant (Applicant's Response at 36). But Petitioner's mention of this requirement is only by way of example (Supplement at 8), and Petitioner further alleges that the very lists cited by Applicant "do not provide complete information in this matter." (Id.). Further, some of the specific alleged failings of the proposed program, such as failure to account for synergistic and dose-rate effects, are mentioned in the portions of 10 CFR 50.49 which set forth standards for compliance (10 CFR 50.49(e)(4), (e)(7)).

We believe that adequate ground for further inquiry has been established. The contention is admitted to litigation.

Proposed Contention 4:

Petitioner contends that the CESSAR design utilized at WNP-3 is inadequate to provide rapid depressurization, decay heat removal and the capability for natural circulation contrary to 10 C.F.R. Appendix A, GDC 34, 35, 38 and 44 in that the WNP-3 design improperly places reliance upon the auxiliary (emergency) feedwater and steam generator systems without providing adequate safety-grade back-up systems (for example, PORV - Feed and Bleed) and without upgrading other systems (for example, high pressure injection and diesel generators) which are necessary to increase the reliability of the design.

Staff would admit this contention, limiting it to the rather narrow allegation that the auxiliary feedwater system is not environmentally

qualified. (Staff Response at 8; Tr. 10, 11). Curiously, Staff would reject the bases for certain other aspects of the contention, particularly those concerning adequacy of back-up cooling systems, as "hearsay" (Staff Response at 8). We know of no rule rejecting hearsay as a basis for supporting a contention.

Staff believes certain other bases lack nexus with the contention; the bases concerning steam generator problems are said to be examples of this flaw (Staff Response at 8). We believe Petitioner has provided adequate nexus: if a design depends on steam generators for off-normal as well as routine cooling, the reliability of those steam generators is indeed connected to depressurization and heat removal (Cf. Supplement at 12).

Applicant attacks the admissibility of Proposed Contention 4 on a different basis. Applicant notes that the following bases adduced by Petitioner are simply not factual, or, more precisely, that they are contradicted by the CESSAR and the FSAR. They were available to Petitioner prior to filing its Supplement and Petitioner failed to indicate where they are incorrect.

1. The emergency feedwater system (auxiliary feedwater system) is not safety grade.

2. The auxiliary pressurized spray system is not safety grade.

3. The auxiliary feedwater system is not environmentally qualified.

4. The auxiliary pressurizer spray cannot effectively function during a low temperature overpressure event.

5. The auxiliary feedwater system normally operates during startup and shutdown.

6. Loss of offsite power necessitates reliance on motor driven auxiliary feedwater pumps and hence on diesels.

7. The steam generators are of questionable quality.

8. The design of the primary system is similar to that of the Babcock and Wilcox design used at TMI-2.

(Applicants' Response at 40-44).

As we see the situation, the objections to bases 1, 2, and 6 are straightforward assertions that the CESSAR and FSAR contradicts those bases. Those documents were available but Petitioner chose to ignore them. We give weight to the documents and we would expect Petitioner to have specified, at the time of the pleading, exactly how the CESSAR or FSAR was incorrect in that respect. Clearly, Petitioner did not do so, and we cannot credit these bases. We note that, at the prehearing conference, Petitioner was still unable to give real specifics covering number 1. (Tr. 49).

The basis numbered 3 is, of course, simply a special case under Contention 3, already admitted, supra.

Basis 5 is apparently contradicted by the CESSAR and FSAR also, but it scarcely seems a basis for Proposed Contention 4 at any rate. We do not see it as a basis, since it does not bear upon behavior of the system in an emergency situation.

Bases 4, 7 and 8 are not simple factual statements. The question of whether or not they are flatly contradicted by the CESSAR and FSAR is

a matter of judgment. We consider them reasonable bases for the contention proposed as they require further inquiry.

As a final matter, we note that the question of whether a power operated relief valve (PORV) is needed in CE designed plants is a question still under Staff scrutiny. Indeed, a recent Board Notification (BN 83-110), while directed at PORV qualification for other reactors, notes that the Staff position on PORV requirements for CE plants "will not be finalized for a couple of months." We believe that, in view of the interlocking nature of auxiliary feedwater cooling, feed-and-bleed possible PORV requirements, and primary pressure control, a contention reviewing all these matters should be admitted in this case. We will, however, reject the bases numbered 1, 2, and 6 above as bases for this contention absent a positive showing by Petitioner that the sections of the CESSAR and FSAR dealing therewith are wrong.

Proposed Contention 4 is admitted to litigation with the restriction in scope set forth above. Its recognized bases are those numbered 4, 7, and 8 above. Bases 1, 2, and 6 will be considered if Petitioner can state precisely how the CESSAR and FSAR fail to set forth a proper description of the system. Any such statement must be filed with us within 20 days of the date of this order. Applicant and Staff have 10 days from receipt of the statement to respond.

Proposed Contention 5:

Petitioner contends that methods proposed by Applicant to meet the requirements for instrumentation for detection of inadequate core cooling (ICC), NUREG-0737 (II.F.2) and GDC 13 of Part 50 to 10 C.F.R. are inadequate in that Applicant has not provided a reactor coolant meter capable of measuring coolant inventory from zero to 100%.

This Proposed Contention was reworded in the process of stipulation to make it considerably more specific than it was in the Petitioner's original Supplement. In particular, the notion of a "coolant meter", previously mentioned only as a basis, has been incorporated into the contention itself. The change did not, however, remedy the objections of Staff and Applicant. At the prehearing conference (Tr. 55) both those parties stood upon their previous pleading.

Applicant takes the position that the Proposed Contention is an impermissible attack on the Regulations and that it lacks specificity and basis (Applicant's Response at 49). Applicant would further have us read page 13 of Petitioner's Supplement in a manner quite different from that in which we believe it was offered. That page inartfully juxtaposes the notion that the inadequate core cooling (ICC) detection system does not meet environmental qualification requirements with the notion that that same ICC system - when tested at other reactors - failed to give accurate indications (Supplement at 13). Applicant would have us read that juxtaposition as a cause-and-effect relation and would have us then throw the notion of failure out on grounds that environmental qualification is not yet required by the Regulations (Applicant's Response at 50, 51). We have already treated the need for environmental qualification of safety-related equipment in dealing with

Contention 3. We read the allegation of failure on test, with its rather cryptic citation "DPRI Section 3.2", as another matter entirely (Supplement at 13).

Applicant also asserts that the plant will comply with a "model set forth in NUREG-0737." But the very section of that document which Applicant quotes suggests that the devices used in the design at bar are only such as "could ... supplement [] ..." water level instrumentation. (Applicant's Response at 53, n. 116).

Petitioner has cited Metropolitan Edison Co., (Three Mile Island), 14 NRC 1211 at 1244 for the notion that a water level meter should be required (Supplement at 13). Applicant faults Petitioner for not having mentioned the phrase "or-its-equivalent" which that case used (Applicant's Response at 53). In admitting the Proposed Contention we would, of course, take due account of evidentiary presentations which established that the design would offer "equivalent" certainty that the core had not uncovered.

Staff's objection to the Proposed Contention is grounded on three ideas:

1. It does not establish which NUREG-0737 requirement is uncomplied with or insufficient.
2. No nexus to TMI has been shown.
3. It is not necessary for Applicant to comply with Regulatory Guides.

(Staff's Response at 9, 10).

We feel that these objections cannot carry the day. Clearly the NUREG-0737 requirements applicable are those ferreted out by Applicant (Applicant's Response at 53). In the matter of requiring water-level measurement, common wisdom would suggest that the mere fact that both TMI and WNP-3 are PWR's would supply sufficient nexus to spark inquiry. And, of course, the Contention is not, as we note above, based on alleged non-compliance with the cited Regulatory Guide. But even were it so based, an allegation of failure to comply would call for litigation to determine whether equivalent protection were provided.

Proposed Contention 5 is admitted to litigation in this case.

Proposed Contention 6:

Petitioner contends that the emergency diesel generators as designed and installed are unreliable as a source of on-site emergency power necessary for safety thus failing to meet GDC 17 of 10 C.F.R. Part 50, Appendix A, in that Applicant has failed to overcome the problem of poor emergency diesel generator reliability, in that procurement, installation and maintenance of emergency diesel generator equipment and controls at WNP-3 has been faulty and in that they are not environmentally qualified.

Petitioner asserts diesel generators have not been proven uniformly reliable and that failure of the generators should be considered a design basis event (Supplement 14). It relies on Florida Power and Light Company (St. Lucie Nuclear Power Plant, Unit No 2) 12 NRC 30, 52 (1980), where the Licensing Board found that diesel generators are relatively unreliable pieces of equipment compared to other equipment to which the single failure criterion is commonly applied and concluded, "blind reliance on the single failure criterion (that is simple

redundancy) does not provide an adequate degree of plant safety and public protection in this state of affairs."

It further asserts water had been permitted to enter the generators and a worker was informed by the contractor not to rectify the situation. Petitioner further alleges Applicant has not shown that the emergency diesel generators and associated controls are environmentally qualified.

Applicant objects to the proposed contention on the grounds it is proscribed by 10 CFR 2.758(a) because it constitutes an attack on Commission regulation and it lacks an adequate supporting basis (Applicant's Response at 55).

The regulation alleged to be attacked by Coalition is 10 CFR Part 50, Appendix A, General Design Criteria 17, which is applicable to onsite power systems, of which diesel generators are a part. GDC 17 provides "onsite electric power supplies ... shall have sufficient independence, redundancy and testability to perform their safety functions assuming a single failure." Applicant thus contends the Commission does not require that the simultaneous loss of both diesel generators be considered a design basis event.

Supply System asserts Petitioner's reliance on St. Lucie, supra, as a basis for its contention is misplaced. Applicant does not consider the case as binding upon it because it was not a party to the proceeding. Further, particular geographical circumstance led to the Appeal Board's concern with emergency diesel generators at that facility (Applicant's Response at 56).

As to the claim of failure to safely install and maintain the generators, Applicant posits it was only of minor safety significance and the matter was dropped. Supply System further asserts that the current equipment qualification rule does not require that Applicant demonstrate compliance with the rule at this time (Applicant's Response at 57).

Staff agrees with Applicant's assertion that proposed contention 6 constitutes a challenge to the regulations and the bases stated are inadequate (Applicant's Response at 10, 11).

We agree that the proposed contention constitutes an impermissible attack on Commission regulation, as prohibited by 10 CFR 2.758(a). GDC-17 calls for a single failure criterion in nuclear plant design. There is no Commission requirement that the simultaneous loss of both diesel generators be considered a design basis event. In that Petitioner would have this done, is a challenge to the regulations and is inadmissible, Peach Bottom, supra.

The St. Lucie case, supra, does nothing to alter the foregoing. Although the failure of both diesel generators was considered as a probable design basis event for that facility, the determination was not made to have general applicability. The finding related only to St. Lucie Unit 2, because particular circumstances existed at that plant. No claim was made nor has there been any indication that there are similarities between St. Lucie and WNP-3, that would warrant drawing the same conclusion. Furthermore, the Commission stated in St. Lucie, CLI-81-12, 13 NRC 838, 844 (1981) that ALAB-603 did not establish

generic guidelines for determining design basis events nor did it establish station blackout as a design basis event.

The principal ground for the proposed contention, failure to meet GDC 17, is not litigable. The other bases submitted do not support the contention that the failure of the generators should be considered a design basis event. The allegation that Applicant and its contractor failed to ensure the operability of the generators after water entered them, may best be pursued under proposed Contention 11 which asserts that the Applicant lacks the management responsibility required by Criteria I of Appendix B to 10 C.F.R. Part 50 or under proposed Contention 12 that charges Power Supply will not implement a QA/QC program.

As to the allegation by Petitioner that Applicant has not shown that the emergency diesel generators and associated controls are environmentally qualified, this has previously been set forth in proposed Contention 3. It is repetitious and should not be again considered under proposed Contention 6.

Proposed Contention Eight:

Petitioner contends that the emergency response plans proposed by the Applicant are inadequate to assure that protective measures can and will be taken in the event of a radiological emergency as required by 10 C.F.R. 50.47 and Appendix E to Part 50 in that Applicant has not shown that adequate education and notification procedures will be followed during normal plant operation and during accident conditions.

The admissibility of the proposed contention has been stipulated to by Applicant, Staff and Petitioner (Exhibit 1). We also find the proposed contention meets the requirements of 10 CFR 2.714(b).

Proposed Contention Eleven:

Petitioner contends that the Applicant is not technically qualified nor has it exhibited the management capability necessary to operate WNP-3 as required by 10 C.F.R. 50.40(b) and that operation will therefore endanger the public health and safety. Applicant's construction of WNP-3 has revealed the lack of management responsibility required by criterion I of Appendix B to 10 C.F.R. Part 50.

The proposed contention places at issue whether Applicant has the management capability to assure safe operation of the facility. Petitioner alleges Supply System has not demonstrated this capacity. In part Coalition relies upon an investigation report it states evidences a consistent failure by Applicant to exercise authority over contractors whose performance falls short of meeting quality assurance standards. In addition to this lack of control there is asserted a failure to take prompt and effective corrective action. Another staff report is cited for failure of management to act on other problems related to construction (Supplement at 27, 28).

Concededly the alleged inadequancies of Applicant's management to provide quality assurance/quality control direction were in the area of construction and not within the scope of plant operation. Since the Applicant has not yet operated any nuclear plants there is no reviewable track record for managing a quality assurance/quality control program other than for construction. It is not unreasonable to look to performance in construction area management in an attempt to determine Supply System's capability to manage the operational phase. Can Applicant be expected to manage an adequate quality assurance/quality control program for operating the plant, if it were established that it

could not manage one for its construction program? An adverse inference can be drawn from a lack in Applicant's past performance in managing a quality assurance/quality control program, albeit in another sector. Such an inference is not irrebutable. Applicant can come forward and show why it is not valid for determining Supply System's management capability to assure safe operation of WNP-3. Applicant has already contended in its response that such inference is without merit because the construction and operations organizations within Supply System are for the most part separate.

The issue has been joined and it is up to the parties to marshal their proofs to sustain their positions on this question of fact. This segment of the contention has an adequate basis which is not unduly vague or broad to make it unlitigable. Applicant is made aware of what Petitioner expects to litigate. The tools of litigation are capable of providing whatever further delineation Applicant seeks.

As to that segment of the proposed contention that alleges Applicant is not technically qualified to operate WNP-3, as required by 10 CFR 50.40(b), Petitioner has not provided an adequate basis to support the assertion. The matters it cites, cost overruns and schedule delays in construction, the general loss of large numbers of employees, the loss of craft workers and the like, do not support directly or indirectly the claim Applicant is not technically qualified to operate the facility (Supplement at 26, 27). That segment of the contention, consisting of the first sentence, does not meet the criteria for admissibility and will not be made part of the proceeding.

The contention as admitted shall read: Petitioner contends Applicant's construction of WNP-3 has revealed the lack of management responsibility required by Criterion 1 of Appendix B to 10 CFR Part 50.

Proposed Contention Twelve:

Petitioner contends that Applicant has not and will not implement a QA/QC program which will function as required by 10 C.F.R. Part 50, Appendix A, GDC 1 and 10 C.F.R. Part 50 Appendix B such that a reasonable assurance exists that operation of the plant will not endanger the public health and safety in that systematic QA deficiencies have existed, and continue without resolution in the following areas: proper welding; placement of concrete, rebar, bolts and electrical cables; the use of properly trained personnel; incorporation of applicable industry codes; vendor surveillance; adequate audits; proper on-site design change control; implementation of quality control measures and material preservation; maintenance of records; proper tagging procedures; and adequate and complete corrective action.

Petitioner supports its contention by citing NRC inspection reports which relate quality assurance problems that have occurred at WNP-3. Coalition contends they evidence a failure on the part of Applicant to provide and implement an adequate QA/QC program and are systematic of regular violations of NRC and industry standards (Supplement 29-33). The violations are cited to show Applicant will not implement a QA/QC program as required by regulation so that a reasonable assurance exists that operation of the plant will not endanger public health and safety.

Applicant contends the proposed contention is inadmissible because it is without limitation, therefore impermissibly vague and that no factual basis has been provided (Applicant's Response at 93). It offers a point by point refutation of the alleged noncompliance.

Staff has stipulated to the admissibility of the proposed contention. It believes that although the instances of noncompliance

cited have been corrected and there has been no loss as to the integrity of the facility, the cumulative impact of the problems appears to raise questions as to future work and therefore form an adequate bases for the admission of the proposed contention (Staff's Response at 18-19, Exhibit 1).

We agree with Staff that Petitioner has provided a basis supporting its contention. Many instances of noncompliance in the area of quality assurance at the facility have been cited. Based upon what has been presented, further inquiry is required to determine whether Applicant will implement a QA/QC program as required and if there is reasonable assurance that operation of the plant will not endanger public health and safety. At this pleading stage of the hearing process Petitioner has come forth with what is sufficient information for support of its proposed contention. The contention is broad but the cited instances of failure to comply span a wide area. We are not to decide the merits of the proposed contention at this time. Applicant will have the opportunity to establish through the hearing process that the inspection reports show nothing more than isolated construction anomalies, as it asserts.

As with Contention 11, to which this relates, the proposed contention is not unduly broad or vague to make it unlitigable. Applicant is aware of what it is required to meet. The issue has been joined and it is up to the participants to make their cases.

Proposed Contention Thirteen:

Based on the April 21, 1983, letter to R. E. Jackson, Chief, Geoscience Branch, Division of Engineering, USNRC from S. T. Algermissen, USGS, Enclosure 1 at 1, petitioner contends that Applicant has not adequately or accurately assessed the seismic capability of the WNP-3 site as required by GDC of Appendix A, 10 C.F.R. 50 and Appendix A to 10 C.F.R. 100, and consequently the SSE for WNP-3 site has been underestimated.

The basis for the contention is contained in a letter from the United States Department of the Interior to the NRC advising that Applicant in its assessment did not show it took into account specified seismic and geologic conditions that could cause the seismicity of the site to be underestimated. The letter also questioned whether Supply System correctly evaluated data in making the assessment (Supplement at 34, 35). Failure to do so could reduce the estimate of the magnitude of potential earthquakes in the area. Various calculations were not provided that relate to conclusions reached. Staff stipulated to the admissibility of the contention finding sufficient basis for the claim that Applicant has not adequately or accurately assessed the seismic capability of the WNP-3 site thereby underestimating the risk to public health and safety from a seismic event (Exhibit 1). Staff further postulates that were it determined that the seismicity of the WNP-3 site is greater than previously given, further inquiry into the structural adequacy of WNP-3 would be in order.

Applicant asserts the proposed contention lacks the requisite supporting basis, mandated by Commission regulation. It contends Petitioner has mischaracterized the thrust of the letter as reaching conclusions that Applicant "has not taken into account" certain material

or "has not justified its position." It claims the letter transmits a series of questions to be asked of the licensee regarding its analysis, similar to the hundreds of questions any Applicant must answer from the Staff (Tr. 77).

We find the proposed contention supported by an adequate basis to be litigable. The letter details areas that the evaluation did not show were considered. The method of assessing site seismology was shown to be open to question. Supply System may well be able to provide the answer to satisfy the criticisms. Until it is done, the assessment, involving a matter that can be vital to health and safety, is not adequately justified. The issue must be resolved on the record before a final determination can be made. Further inquiry into the matters raised is fully warranted. Petitioner has satisfied the requirements for submitting a litigable contention.

Proposed Contention Sixteen:

Petitioner contends that the Applicant has underestimated the cost of WNP-3 operation in the cost-benefit analysis required by 10 C.F.R. Section 51.21 in that Applicant had underestimated the effects of WNP-3 operation on aquatic biota of the Chehalis River.

The admissibility of the proposed contention has been stipulated to by the Applicant, Staff and Petitioner (Exhibit 1). We also find the proposed contention meets the requirements of 10 CFR 2.714(b).

Schedule For Further Actions

At the conference Applicant advised of its intention to file an appeal from the Licensing Board's rulings in this matter. The participants agreed that at the conclusion of the appeal process, if a

hearing is to be held they will file briefs with the Licensing Board proposing a schedule covering discovery, pretrial pleadings, the filing of testimony and the holding of the hearing (Tr. 80-85).

Based upon Applicant's indication of a construction deferral of WNP-3, of up to 3 years (Tr.56), Petitioner was of the position there should be a hiatus before proceeding with the prehearing process until such time as construction is restarted. Applicant asserted that should it be determined a hearing is necessary, the matter should immediately proceed irrespective of the status of construction.

The proposal of participants to file a brief, at the conclusion of the appeal period, proposing a schedule for further actions in the proceeding is acceptable. The briefs also should cover the issue of whether there should be a delay in proceeding pending a resumption of construction. It is expected Applicant, Staff and Petitioner will confer prior to submitting briefs in an attempt to reach agreement on the proposed scheduling periods. The due date for filing briefs will be set by further notice.

Conclusion

We found in our Memorandum and Order of April 21, 1983 Coalition had satisfied (1) the interest and standing requirements of 10 CFR 2.714

for intervention and (2) the requirements of 10 CFR 2.714(a)(1) for our acceptance of its late filed petition. Its participation as a party intervenor in this proceeding had been conditioned on submission of a litigable contention, as required by 10 CFR 2.714(b). Coalition has fulfilled this last requirement with our acceptance of 9 of its proposed contentions, as litigable for the reasons previously given. The 9 contentions as admitted are set forth in the attached Appendix. Coalition has satisfied the requirements for being admitted as a party intervenor, under the provisions of 10 CFR 2.714.

ORDER

Based upon all of the foregoing, it is hereby Ordered:

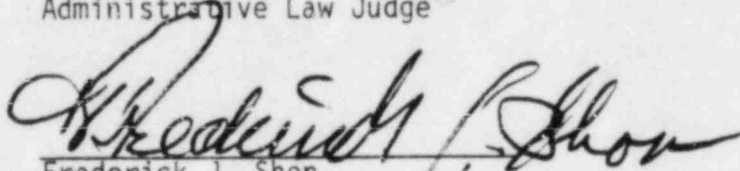
1. Petitioner, Coalition is admitted as a party intervenor in this proceeding.
2. Coalition's Proposed Contentions 2, 3, 4, 5, 8, 11, 12, 13 and 16 are admitted in the manner set forth in the memorandum and reproduced in the Appendix, with the proposed remainder denied.
3. Petitioner may file a statement to justify supporting bases discussed under Contention 4, within 20 days of the date of this Order. Applicant and Staff have 10 days from receipt of the statement to respond.

4. The parties will file briefs proposing schedules for further actions in the proceeding, the due date to be set by further notice.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD



Morton B. Margulies, Chairman
Administrative Law Judge



Frederick J. Shon
Administrative Judge



Dr. Richard F. Foster
Administrative Judge

Dated at Bethesda, Maryland
this 27~~th~~ day of September, 1983.

Admitted Contentions

Contention Two:

Petitioner contends that Applicant has underestimated the human cost of the project in the cost-benefit analysis required by 10 C.F.R. Section 51.21 in that Applicant has failed to address properly the potential releases of radionuclides from WNP-3 during normal, transient and accident conditions and further that such releases will not meet the requirements of 10 C.F.R. 20.103 and 10 C.F.R. Part 50, Appendix I.

Contention Three:

Petitioner contends that Applicant has not satisfied 10 C.F.R. Part 50, Appendix A, GDC 1, 2 and 4 in that it has not shown that safety-related electrical and mechanical equipment will be environmentally qualified as required by 10 C.F.R. Section 50.49.

Contention Four:

Petitioner contends that the CESSAR design utilized at WNP-3 is inadequate to provide rapid depressurization, decay heat removal and the capability for natural circulation contrary to 10 C.F.R. Appendix A, GDC 34, 35, 38 and 44 in that the WNP-3 design improperly places reliance upon the auxiliary (emergency) feedwater and steam generator systems without providing adequate safety-grade back-up systems (for example, PORV - Feed and Bleed) and without upgrading other systems (for example, high pressure injection and diesel generators) which are necessary to increase the reliability of the design.

Contention Five:

Petitioner contends that methods proposed by Applicant to meet the requirements for instrumentation for detection of inadequate core cooling (ICC), NUREG-0737 (II.F.2) and GDC 13 of Part 50 to 10 C.F.R. are inadequate in that Applicant has not provided a reactor coolant meter capable of measuring coolant inventory from zero to 100%.

Contention Eight:

Petitioner contends that the emergency response plans proposed by the Applicant are inadequate to assure that protective measures can and will be taken in the event of a radiological emergency as required by 10 C.F.R. 50.47 and Appendix E to Part 50 in that Applicant has not shown that adequate education and notification procedures will be followed during normal plant operation and during accident conditions.

Contention Eleven:

Petitioner contends Applicant's construction of WNP-3 has revealed the systematic lack of management responsibility required by criterion I of Appendix B to 10 C.F.R. Part 50.

Contention Twelve:

Petitioner contends that Applicant has not and will not implement a QA/QC program which will function as required by 10 C.F.R. Part 50, Appendix A, GDC 1 and 10 C.F.R. Part 50 Appendix B such that reasonable assurance exists that operation of the plant will not endanger the public health and safety in that systematic QA deficiencies have existed, and continue without resolution in the following areas: proper welding; placement of concrete, rebar, bolts, and electrical cables; the use of properly trained personnel; incorporation of applicable industry codes; vendor surveillance; adequate audits; proper on-site design change control; implementation of quality control measures and material preservation; maintenance of records; proper tagging procedures; and adequate and complete corrective actions.

Contention Thirteen:

Based on the April 21, 1983, letter to R. E. Jackson, Chief, Geoscience Branch, Division of Engineering, USNRC from S. T. Algermissen, USGS, Enclosure 1 at 1, petitioner contends that Applicant has not adequately or accurately assessed the seismic capability of the WNP-3 site as required by GDC 2 of Appendix A, 10 C.F.R. 50 and Appendix A to 10 C.F.R. 100, and consequently the SSE for the WNP-3 site has been underestimated.

Contention Sixteen:

Petitioner contends that the Applicant has underestimated the costs of WNP-3 operation in the cost-benefit analysis required by 10 C.F.R. Section 51.21 in that Applicant has underestimated the effects of WNP-3 operation on aquatic biota of the Chehalis River.