

DOCKETED  
USNRC

'83 NOV -7 A10:39

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
Public Service Electric and Gas	)	Docket No. 50-272-OLA
Company, <u>et al.</u>	)	[ASLBP 84-494-02 LA]
	)	
(Salem Nuclear Generating	)	
Station, Unit 1)	)	

LICENSEE'S ANSWER TO ATTORNEY GENERAL  
OF THE STATE OF DELAWARE PETITION FOR  
LEAVE TO INTERVENE AND REQUEST FOR  
HEARING ON LICENSE AMENDMENT RELATING TO  
INSERVICE INTEGRATED LEAK TESTS

Preliminary Statement

On October 21, 1983, the Attorney General of the State of Delaware ("Attorney General") filed a petition for leave to intervene and a request for a hearing on the proposed issuance of an amendment to the operating license for Salem Nuclear Generating Station, Unit 1. The proposed amendment relates to inservice integrated leak tests.<sup>1/</sup> Specifically, the Attorney General requested that intervention be granted and that the application for an operating license amendment concerning inservice integrated leak tests be denied.<sup>2/</sup>

1/ Petition for Leave to Intervene and Request for Hearing, October 21, 1983 ("petition").

2/ Id. at 5.

8311080184 831104  
PDR ADOCK 05000272  
G PDR

D503

Alternatively, the petition requested that a hearing be scheduled prior to issuance of any amendment to the Salem operating license.<sup>3/</sup>

As discussed below, Public Service Electric and Gas Company, et al. ("Licensee") believes that the Attorney General has demonstrated his standing to intervene in the amendment proceeding. Admission is dependent, however, on the pleading of at least one valid contention. Additionally, the amendment and the NRC's Safety Evaluation Report ("SER") supporting its issuance were issued on October 31, 1983. Thus, it is hoped that the Attorney General's consideration of the amendment and the SER will assure him that no litigable safety issue exists.

#### I. Background

On September 14, 1983, the Nuclear Regulatory Commission ("NRC") published in the Federal Register a notice of the proposed amendment of Facility Operating License No. DPR-70, issued to Licensee, for operation of the Salem Nuclear Generating Station, Unit No. 1, located in Salem County, New Jersey.<sup>4/</sup> The notice stated that the NRC was considering an amendment to Technical Specification 4.6.1.2a to extend the 40 ± 10 month interval, on a one-time basis, in order to permit the second inservice integrated leak rate

---

<sup>3/</sup> Id.

<sup>4/</sup> 48 Fed. Reg. 43113 (September 21, 1983).

test to be performed during the fifth refueling outage.<sup>5/</sup> The notice further stated NRC's preliminary determination that the amendment did not involve a significant hazards consideration.<sup>6/</sup> The notice requested public comment on this determination and provided that, by October 21, 1983, any person whose interest might be affected by the proposed license amendment could request a hearing.<sup>7/</sup> On October 21, 1983, the instant petition was filed.

On October 31, 1983, the NRC issued the requested amendment.<sup>8/</sup> Prior to its issuance, the NRC found that the amendment would not endanger the health and safety of the public.<sup>9/</sup> Similarly, the NRC found that the amendment involved no significant hazards considerations.<sup>10/</sup> Under the NRC's regulations in 10 C.F.R. §50.92, this means that operation of the facility in accordance with the amendment will not (1) involve a significant increase in the probability or consequences of any accident previously evaluated, (2) create the possibility of a new or different kind of

---

5/ Id.

6/ Id.

7/ Id. at 43114.

8/ Amendment No. 54 to Facility Operating License No. DPR-70, October 31, 1983.

9/ Id.

10/ SER at 2.

accident from any accident previously evaluated, or (3) involve a significant reduction in any margin of safety.

Specifically, the NRC concluded that containment integrity had been demonstrated by previous Type A tests and verified by an effective local leak rate test program.<sup>11/</sup> This conclusion rests on the fact that (1) acceptable integrated leakage tests were performed for both the pre-operational Type A test and for the first Type A retest, (2) a complete local leak rate test program was completed on all penetrations and valves during the most recent refueling outage, and (3) there has been no indication of any kind of problem with the concrete containment or the containment liner since the initiation of commercial operation.<sup>12/</sup> Moreover, the Licensee agreed to undertake an increased surveillance program for local leak rate tests until the next refueling outage.<sup>13/</sup> On this basis, the NRC issued the amendment which would permit the second inservice integrated leak rate test to be performed during the fifth refueling outage (May 1984) rather than in October 1983.

## II. Discussion

It is axiomatic that a petition for leave to intervene must comply with the requirements of 10 C.F.R. §2.714. That

---

<sup>11/</sup> SER at 1.

<sup>12/</sup> Id. at 2.

<sup>13/</sup> Id.

rule provides that a petition must set forth with particularity the interest of the petitioner and must demonstrate how that interest may be affected by the results of the proceeding.<sup>14/</sup> In considering the petition, the Licensing Board should take into account (a) the nature and extent of the petitioner's right to be made a party, (b) the nature and extent of the petitioner's property, financial, or other interests in the proceeding, and (c) the possible effect of any order which may be entered in the proceeding on the petitioner's interests.<sup>15/</sup>

Judicial concepts of standing are applied in NRC licensing proceedings to determine whether a petitioner is entitled to intervene. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-26, 4 NRC 610, 613-14 (1976). These judicial concepts require a showing (a) that the action being challenged could cause injury-in-fact to the person seeking to establish standing, and (b) that the injury is arguably within the zone of interests protected by the statutes governing the proceeding. Sierra Club v. Morton, 405 U.S. 717 (1972); Barlow v. Collins, 397 U.S. 159 (1970); Association of Data Processing Service Organizations v. Camp, 397 U.S. 150 (1970); Pebble

---

<sup>14/</sup> 10 C.F.R. §2.714(a)(2).

<sup>15/</sup> 10 C.F.R. §2.714(a)(2) and §2.714(d); Washington Public Power Supply System (WPPSS Nuclear Projects, Nos. 3 and 5), LBP-77-16, 5 NRC 650 (1977).

Springs, supra; Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-342, 4 NRC 98 (1976).

When the foregoing principles are applied to the instant petition, it appears that the Attorney General has asserted the requisite interest to intervene in this proceeding. Thus, the Attorney General alleges that delay of this particular test will adversely affect the safety of Delaware residents. While the Attorney General does not state why delay of the test will adversely affect safety, he has stated an interest that is within the zone of interests protected by the Atomic Energy Act.<sup>16/</sup> Accordingly, it is Licensee's view that the Attorney General possesses the requisite interest to intervene in the proceeding.

Although the Attorney General need not at this time propose specific contentions, it appears that at least some of the matters he wishes to litigate are beyond the limited scope of this proceeding. The Attorney General asserts that delay of the second inservice integrated leak rate test from October 1983 to the fifth refueling outage (May 1984) will adversely affect the safety of Delaware citizens.<sup>17/</sup> No further elaboration is given. Instead, the Attorney General states reasons unrelated to safety as the basis for his opposition to grant of the requested operating license

---

<sup>16/</sup> 42 U.S.C. §§2011 et seq.

<sup>17/</sup> Petition at 2.

amendment.<sup>18/</sup> The Attorney General appears to believe that the NRC should deny the requested license amendment so that the denial will serve as a penalty in addition to an earlier penalty imposed by the NRC for failure of the Salem unit to trip automatically on two demands.<sup>19/</sup> Any proposal for additional enforcement action is outside the scope of this proceeding which concerns the one-time extension of an inservice integrated leak rate test. Thus, Licensee concludes that while the Attorney General has established his interest and the potential effect of the proceeding on his interest, it is not clear whether the matters which the Attorney General seeks to litigate are admissible. This ambiguity is significant in light of the fact that the Attorney General's admission is dependent upon the filing of at least one valid contention.

### III. Conclusion

In sum, Licensee concludes that the Attorney General possesses the requisite interest to intervene in this proceeding. Admission to the proceeding is dependent, however, on the filing of one valid contention and it is not yet clear that the Attorney General wishes to litigate matters within the scope of this proceeding. In lieu of

---

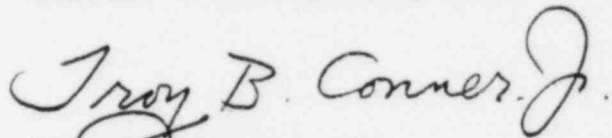
<sup>18/</sup> Id. at 3-5.

<sup>19/</sup> That penalty was paid on October 28, 1983. See Letter to Richard C. DeYoung from R. Edwin Selover (October 28, 1983).

such filing, however, Licensee is hopeful that upon review of the amendment and the SER,<sup>20/</sup> the Attorney General will be assured that delay of this particular leak rate test to May 1984 will not adversely affect the safety of Delaware residents and that accordingly, the Attorney General will withdraw his request for a hearing.

Respectfully submitted,

CONNER & WETTERHAHN, P.C.



Troy B. Conner, Jr.  
Mark J. Wetterhahn  
Jessica H. Laverty  
Counsel for the Licensee

November 4, 1983

---

<sup>20/</sup> Licensee understands that the NRC has already sent the Attorney General a copy of the license amendment and the SER accompanying that amendment.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

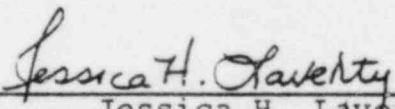
Before the Atomic Safety and Licensing Board

In the Matter of )  
 )  
Public Service Electric and Gas ) Docket No. 50-272-OLA  
Company, et al. ) [ASLBP 84-494-92 LA]  
 )  
(Salem Nuclear Generating )  
Station, Unit 1) )

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance on behalf of the Licensee in the captioned matter. In accordance with §2.713, 10 C.F.R. Part 2, the following information is provided:

Name - Jessica H. Laverty  
Address - Conner & Wetterhahn, P.C.  
1747 Pennsylvania Avenue, N.W.  
Suite 1050  
Washington, D.C. 20006  
Telephone Number - 202/833-3500  
Admission - Supreme Court of the United  
States  
Supreme Court of the State  
of Virginia  
Name of Party - Public Service Electric and  
Gas Company

  
\_\_\_\_\_  
Jessica H. Laverty

Dated at Washington, D.C.,  
this 7th day of November, 1983.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

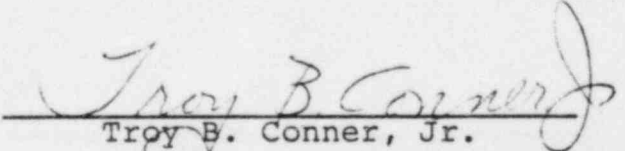
In the Matter of )  
 )  
Public Service Electric and Gas ) Docket No. 50-272-OLA  
Company, et al. ) [ASLBP 84-494-92 LA]  
 )  
(Salem Nuclear Generating )  
Station, Unit 1) )

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance on behalf of the Licensee in the captioned matter. In accordance with §2.713, 10 C.F.R. Part 2, the following information is provided:

Name - Troy B. Conner, Jr.  
Address - Conner & Wetterhahn, P.C.  
1747 Pennsylvania Avenue, N.W.  
Suite 1050  
Washington, D.C. 20006  
Telephone Number - 202/833-3500  
Admission - United States Court of Appeals  
District of Columbia Circuit  
Supreme Court of the United  
States  
Name of Party - Public Service Electric and  
Gas Company

Notice is further given pursuant to §2.708, 10 C.F.R. Part 2, that service upon the Licensee should be made upon the undersigned.

  
Troy B. Conner, Jr.

Dated at Washington, D.C.,  
this 4th day of November, 1983.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of )  
 )  
Public Service Electric and ) Docket No. 50-272-OLA  
Gas Company )  
 )  
(Salem Nuclear Generating )  
Station, Unit 1) )

Certificate of Service

I hereby certify that copies of "Licensee's Answer to State of Delaware's Petition for Leave to Intervene and Request for Hearing on License Amendment Relating to Inservice Integrated Leak Tests," "Notice of Appearance for Troy B. Conner, Jr." and "Notice of Appearance for Jessica H. Laverty" all dated November 4, 1983, in the captioned matter, have been served upon the following by deposit in the United States mail this 4th day of November, 1983:

Marshall E. Miller  
Chairman  
Atomic Safety and  
Licensing Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 10555

Chairman, Atomic Safety  
and Licensing Appeal  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Dr. Emmeth A. Luebke  
Atomic Safety and  
Licensing Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 10555

Chairman, Atomic Safety  
and Licensing Board  
Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Dr. Jerry Harbour  
Atomic Safety and  
Licensing Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 10555

Docketing and Service  
Branch  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

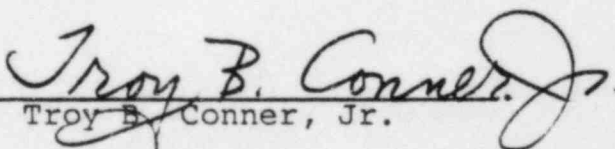
Janice Moore, Esq.  
Counsel for NRC Staff  
Office of the Executive  
Legal Director  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Richard Fryling, Jr., Esq.  
Associate General  
Solicitor  
Public Service Electric  
and Gas Company  
P.O. Box 570 (T5E)  
Newark, NJ 07101

Fred S. Silverman, Esq.  
State Solicitor  
Carol E. Delaney, Esq.  
Deputy Attorney General  
Department of Justice  
State Office Building  
820 N. French Street  
Wilmington, DE 19801

Mr. Alfred Coleman, Jr.  
Mrs. Eleanor Coleman  
35 K Drive  
Pennsville, NJ 08070

Carl Valore, Jr., Esq.  
Valore, McAllister, Aron  
& Westmoreland  
Mainland Professional  
Plaza  
P.O. Box 175  
Northfield, NJ 08225

  
Troy B. Conner, Jr.