

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION



IN THE MATTER OF)
)
CONSUMERS POWER COMPANY) Docket No. 50-155-OLA
) (Spent Fuel Pool
) Modification)
Big Rock Point Nuclear)
Power Plant)

ANSWER OF CONSUMERS POWER COMPANY TO PETITION OF
JOHN O'NEILL AND JO ANNE BIER FOR COMMISSION
REVIEW OF ALAB-725

Pursuant to 10 C.F.R. § 2.786(b) Consumers Power Company ("Licensee") hereby responds to the petitions of John O'Neill and Jo Anne Bier for Commission review of the decision of the Atomic Safety and Licensing Appeal Board ("Appeal Board") in Consumers Power Company (Big Rock Point Nuclear Plant), ALAB-725, _____ NRC _____ (April 27, 1983).

Section 2.786 provides that the grant or denial of a petition for review of an appeal board decision is within the Commission's discretion, except that a petition will not be granted: (i) unless it raises an important question concerning the public health and safety or an important matter of public policy; or (ii) unless it appears that the appeal board has committed a clear error of fact in reversing a decision of a licensing board; and (iii) to the extent that the petition raises matters not raised before the appeal board. Licensee submits that Mr. O'Neill's and Mrs. Bier's petitions should be denied because they raise no important question of law or policy, demonstrate no error of fact committed by the Appeal Board and raise matters

not raised before the Appeal Board. In support thereof, Licensee states as follows:

1. Mr. O'Neill argues that the Appeal Board erred in interpreting relevant NRC Staff guidance, namely Standard Review Plan § 9.1.2. The guidance states that spacing between spent fuel assemblies must be "sufficient to maintain the array, when fully loaded and flooded with nonborated water, in a sub-critical condition" (SRP § 9.1.2, at 9.1.2-4). The Appeal Board concluded that this guidance clearly states that the criticality calculation is to assume a pool flooded with unborated water (ALAB-725, Slip. Op. at 13). Mr. O'Neill's argument that this was error flies in the face of the plain language quoted.

2. Mr. O'Neill argues that the Appeal Board misinterpreted General Design Criterion 62 of 10 C.F.R. Part 50, Appendix A, which provides: "Criticality in the fuel storage and handling system shall be prevented by physical systems or processes, preferably by use of geometrically safe configurations." The Appeal Board held that Licensee's remotely controlled makeup water line to the spent fuel pool was a "physical system" within the meaning of GDC 62, and that if it functioned adequately, it would "necessarily aid in preventing criticality as contemplated by GDC 62" (ALAB-725, Slip Op. at 19). Furthermore, the Appeal Board noted that this physical system was in addition to, not in place of, the geometrically safe configuration of the pool, the preferred method of preventing criticality, because with the coolant inventory maintained there was no claim that the

geometrical configuration of the fuel was not safe (ALAB-725, Slip Op. at 19-20, fn. 17).

Mr. O'Neill simply misunderstands the Appeal Board's reasoning. He argues that the Appeal Board committed a "serious error of law" because it preferred a physical system over the geometrically safe rack configuration without ever addressing the language of GDC 62 favoring the latter. This claim is factually incorrect.

3. Mr. O'Neill argues that the Appeal Board erred by ignoring GDC 23 of 10 C.F.R. Part 50, Appendix A. It is unnecessary to address the relevance of this regulation because this issue was not before the Appeal Board and has been raised for the first time in Mr. O'Neill's petition.

4. Mr. O'Neill argues that the Appeal Board erred in ignoring the decision of the licensing board in Commonwealth Edison Company (Zion Station, Units 1 and 2), LBP-80-7, 11 NRC 245 (1980). This argument must fail, because the portions of the Zion decision cited were inapposite, Mr. O'Neill's analysis of Zion is flawed, and the decision was in any case not binding on the Appeal Board.

5. Mr. O'Neill argues that the Appeal Board improperly precluded the Licensing Board from exercising its discretion to require Licensee to meet more stringent criteria than those contained in the NRC Staff guidance. This argument is without merit. The Appeal Board reasoned that the Licensing Board had felt itself constrained by the Staff guidance but that it had misinterpreted that guidance. The Appeal Board went on to recognize that in some instances it may be appropriate for a Licensing Board to require more stringent measures of compliance

than those contained in Staff guidance. Such an exercise of Licensing Board discretion would have to be justified, however, by facts appearing in the record (ALAB-725, Slip Op. at 16). The Appeal Board reviewed the record in this case and determined that it did not support imposition of requirements going beyond the Staff guidance (ALAB-725, Slip Op. at 16-19). The Appeal Board concluded: "Assuming, however, that the Board would have taken the same action as a matter of discretion, it failed to establish that consideration of this type of accident was justified here" (Slip Op. at 16).

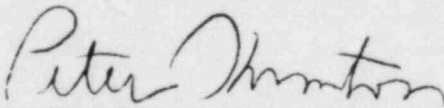
6. Mr. O'Neill argues that the Licensee's makeup water line will not function adequately and asserts that the Appeal Board's "main policy error" lay in not considering the consequences of a failure of the line. He cites several decisions which he claims show that the effectiveness of engineered safeguards must be considered as very limited. Mr. O'Neill has mischaracterized the cited cases, but even if they stood for this proposition, they would be irrelevant. The adequacy of the makeup water line was clearly not an issue before the Appeal Board. Indeed, that issue has not yet been decided by the Licensing Board. The Appeal Board simply instructed the Licensing Board to "make its finding on the adequacy of the applicant's criticality analysis contingent upon the reliability of the makeup line" (ALAB-725, Slip Op. at 20).

7. The petition of Mrs. Bier consists entirely of matters that were not raised before the Licensing Board and that

would have been irrelevant had they been raised. Mrs. Bier makes various representations about the Big Rock spent fuel pool cooling system and the adequacy of the makeup line. These issues were not before the Appeal Board. Mrs. Bier also makes various representations about the contents of depositions by Dr. Walter L. Brooks and Mr. Daniel B. Fieno of the NRC Staff, taken in December 1982 and January 1983. These depositions were taken after the decision of the Licensing Board on appeal and were not part of the record before the Appeal Board.

For the reasons stated, the petitions of Mr. O'Neill and Mrs. Bier for Commission review of the Appeal Board's decision in ALAB-725 should be denied.

Respectfully submitted,

BY 

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CERTIFICATION OF SERVICE

I hereby certify that copies of ANSWER OF CONSUMERS POWER COMPANY TO PETITION OF JOHN O'NEILL AND JO ANNE BIER FOR COMMISSION REVIEW OF ALAB-725 were served on all persons listed below by deposit in the United States mail, first-class postage prepaid, delivery this 17th day of June, 1983.

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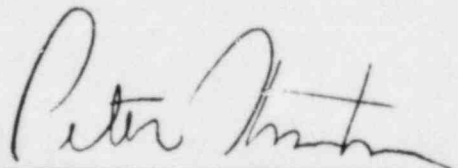
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