LBP-83-66

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Herbert Grossman, Chairman
Glenn O. Bright
Dr. Jerry Harbour

In the Matter of	Docket No. 50-460-OL
WASHINGTON PUBLIC POWER SUPPLY SYSTEM, et al.	(ASLBP No. 82-479-06 OL)
(WPPSS Nuclear Project No. 1)	October 14, 1983

MEMORANDUM AND ORDER
(Admitting Intervenor, Ruling on Contentions, and Establishing a Further Schedule)

MEMORANDUM

On June 23, 1983, this Board issued a Memorandum determining that Petitioner, the Coalition for Safe Power (CSP), had met the interest requirements of 10 C.F.R. § 2.714. We did not rule on contentions and, since we did not determine that Petitioner had raised at least one litigable contention, we could not rule on granting the petition to intervene. On that same date, we granted the motion of the State of Washington to participate as an interested state and gave it until July 12,

can only properly be raised in the context of Applicant's application for an extension of its construction permit completion date. A Licensing Board has been convened and a proceeding is in progress with regard to that proposed construction permit extension in which CSP is also an Intervenor.

The contention is denied.

Contention 2

Contention 2 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 CFR 51.21, 51.20(b)&(c) and 51.23(c).

The contention itself would be too broad to litigate. However, Petitioner has supplied approximately four pages of specifics with regard to Applicant's alleged underestimation of the human cost of the nuclear project. Supplement to Request for Hearing at 3-6. We would limit any litigation on this contention to the matters specified in the basis.

Staff opposes this contention because, while it questions the cost-benefit balance, it does not allege that the errors would tilt the cost-benefit balance against issuance of the operating license. We see little merit in Staff's objection. Given that Petitioner questions the cost-benefit analysis in the context of opposing the issuance of the operating license, we see it as implicit in the contention that Petitioner is alleging that a proper assessment of the cost would result in an unfavorable balance. See discussion at Tr. 129-132. There is no need to rewrite the contention to take cognizance of that allegation.

Applicant raises certain objections that have little relevance to the contention. Applicant challenges as impermissible any attack by Petitioner on the standards established by the Commission in Appendix I to 10 C.F.R. Part 50 or applicable regulations. We agree. However, the contention does not question the values adopted by the Commission in Appendix I. It questions only the health effects of radiological releases from the facility -- an area not proscribed by Commission regulation.

Applicant also objects (Tr. 138) to Petitioner's assertion that Applicant has misstated the total and cumulative impact required for multi-reactor sites, on the ground that the regulations do not require combining the doses from multiple plants on the site. Applicant is correct with regard to Part 50 dose limitations unless Applicant has elected not to comply with the requirements of ¶ D of Appendix I, § II. See

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1983 to respond to Petitioner's contentions. The State of Washington did not avail itself of the opportunity.

We now rule on contentions. Since we admit several of these contentions, we admit the Petitioner as an Intervenor in this proceeding. For reasons discussed below, we also are suspending discovery.

I. RULING ON CONTENTIONS

Contention 1

Contention 1 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 CFR Part 2, Appendix A, Section VIII (b)(1) and 10 CFR 50.55(b)&(d) which provided that an application for an Operating License will be filed "at or about the time of completion of the construction ... 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."

This contention questions whether the application for an operating license is ripe rather than raises a substantive issue to be litigated. It is, perhaps, an argument for the Board's not entertaining the operating license application at this time, but not a matter to be litigated in this proceeding. To the extent that it raises the issue of whether whether the facility is being completed on a timely basis, that issue

can only properly be raised in the context of Applicant's application for an extension of its construction permit completion date. A Licensing Board has been convened and a proceeding is in progress with regard to that proposed construction permit extension in which CSP is also an Intervenor.

The contention is denied.

Contention 2

Contention 2 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 CFR 51.21, 51.20(b)&(c) and 51.23(c).

The contention itself would be too broad to litigate. However, Petitioner has supplied approximately four pages of specifics with regard to Applicant's alleged underestimation of the human cost of the nuclear project. Supplement to Request for Hearing at 3-6. We would limit any litigation on this contention to the matters specified in the basis.

Staff opposes this contention because, while it questions the cost-benefit balance, it does not allege that the errors would tilt the cost-benefit balance against issuance of the operating license. We see little merit in Staff's objection. Given that Petitioner questions the cost-benefit analysis in the context of opposing the issuance of the operating license, we see it as implicit in the contention that Petitioner is alleging that a proper assessment of the cost would result in an unfavorable balance. See discussion at Tr. 129-132. There is no need to rewrite the contention to take cognizance of that allegation.

Applicant raises certain objections that have little relevance to the contention. Applicant challenges as impermissible any attack by Petitioner on the standards established by the Commission in Appendix I to 10 C.F.R. Part 50 or applicable regulations. We agree. However, the contention does not question the values adopted by the Commission in Appendix I. It questions only the health effects of radiological releases from the facility -- an area not proscribed by Commission regulation.

Applicant also objects (Tr. 138) to Petitioner's assertion that Applicant has misstated the total and cumulative impact required for multi-reactor sites, on the ground that the regulations do not require combining the doses from multiple plants on the site. Applicant is correct with regard to Part 50 dose limitations unless Applicant has elected not to comply with the requirements of ¶ D of Appendix I, § II. See

second paragraph of Appendix I, § II.D. If Applicant has not so elected, only the more liberal limitations of 10 C.F.R. § 100.11, rather than those of Part 50, need be met by combined doses from multi-reactors.

Finally, the Licensing Board will not entertain any matters covered in the basis to the contention that were published prior to the issuance of the notice for opportunity for hearing on the construction permit or were actually considered at the construction permit hearing.

Limited to the matters specified in the basis for the contention and by our discussion of the contention, the contention is admitted.

Contention 3

Contention 3 states as follows:

> Petitioner contends that Applicant should be required to conduct an evaluation of and provide protection from the potential problems posed by Electro-magnetic 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.

As Petitioner recognizes (Supplement to Request for Hearing at 6; Tr. 140-141), 10 C.F.R. § 50.13 provides, inter alia, that an Applicant is not required to provide design features for protection against the effects of "attacks and destructive acts *** directed against the facility by an enemy of the United States." This regulation has been held by other Licensing Boards to preclude the admission of similar contention involving electromagnetic pulse (EMP): Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Unit 1 and 2), LBP-81-42, 14 NRC 842, 843-845 (1981); Duke Power Company (Catawba Nuclear Station, Units 1 and 2), LBP-82-16, 15 NRC 566, 587-8 (1982); Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-82-28, 15 NRC 759 (1982), aff'd on other grounds, ALAB-674, 15 NRC 1101 (1982).

Here, however, Petitioner provides scenarios under which a thermonuclear device is detonated over the United States thereby creating EMP that adversely affects the facility, by accident, by friendly forces, or by the United States as a defense measure.

We view these scenarios as cosmetic devices to circumvent the prohibition of § 50.13 against hearing the subject matter of this contention, and too speculative to achieve that result. We agree with the Board in Perry, supra, that the nature of the act itself of detonating a thermonuclear device over the facility with an adverse impact on the facility constitutes a priori, a destructive act directed against the facility by an enemy of the United States.

The contention is denied.

Contention 4

Contention 4 starts 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.

Applicant objects to the contention on the grounds that it ignores the discussions of potential ashfall in the WNP-1 FSAR and overlooks Applicant's commitment to assure compliance with Part 50, Appendix A. Applicant's Opposition to Supplement to Request for Hearing at 28-30; Tr. 146-152. As Applicant indicates, however, the thrust of the FSAR discussion is that Applicant has not yet complied with the regulatory requirements with regard to ashfall but merely commits itself to do so before the issuance of the operating license. Where Applicant has a present regulatory requirement, albeit one that it has committed to satisfy, Petitioner has every right to raise as a contention the failure to currently satisfy the requirement. The contention, involving only the ash eruption from Mount St. Helens, is narrow enough to satisfy the specificity requirements.

This situation is unlike that passed on by the Commission in Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC ____ (June 30, 1983), involving contentions which lack specificity because the information to be relied upon would be in future licensing related documents, to be submitted on Commission-established schedules. Here, Applicant has a current obligation to demonstrate in the FSAR that it can operate WNP-1 without hazard to the public health and safety in the event of an ash eruption of Mount St. Helens, and Petitioner's contention does not lack specificity.

The contention is admitted.

Contention 5

As originally submitted in Petitioner's Supplement to Petition for Hearing (at 10), Contention 5 read 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.

In order to accommodate certain objections by Staff and Applicant (see Tr. 164, 170-171), Petitioner reworded the contention (Tr. 279) to

read: "Petitioner contends that Applicant will not adequately implement a QA/QC program at the operating-license stage."

The purpose of the change was to clarify the thrust of the contention as being directed toward the operating QA/QC, rather than the construction QA/QC. Notwithstanding the rewording of the contention, Staff and Applicant continued to oppose its admission, primarily on the grounds that it lacked specificity and basis, and for raising matters which are not within the scope of this operating license proceeding. Applicant's Response at 30-32; Staff Response at 10-11; Tr. 170-171, 279-280. The matters raised in Petitioner's basis relate to defective construction practices with regard to WNP-1 and WNP-2. Applicant and Staff insist that the problems encountered with regard to WNP-2 are unrelated to WNP-1, and that, in any event, whatever transpires during construction is unrelated to any quality assurance program implemented for plant operation.

We do not agree. In Duquesne Light Co. (Beaver Valley Power Station, Unit 2), ALAB-240, 8 AEC 829 (1974), relied upon by Petitioner, the Appeal Board reviewed an initial decision in which it found that the Licensing Board had inadequately considered the quality assurance program at the Applicant's nuclear unit 2 in light of quality assurance problems encountered at unit 1. The Appeal Board stated (at 833):

> Certainly, the applicant's and architect-engineer's actual performance at an ongoing construction program is a factor which must be taken into account in evaluating the likelihood that the established QA program for another project will be implemented. [Footnote omitted.]

Nor did the Appeal Board limit its concern with the quality assurance programs during construction of one unit only to the construction of another unit, but acknowledged the implication that faulty quality assurance at construction might carry over to plant operation, as follows (at 840):

> What we have said here involves construction activity. It goes without saying, however, that the same concerns are applicable at the operating license stage. It is equally important that the applicant be committed to, and that properly qualified people be available to carry out adequately, the operational quality assurance program.

In addition to the quality assurance problems discussed in the basis for Contention 5, Petitioner also discussed quality assurance problems in the basis for Contention 20. Petitioner has requested that the Board consider both bases for each of these contentions. Tr. 268-9. Whether or not the basis for Contention 20 is included, we accept the examples given in the basis for Contention 5, even to the extent that they relate to the construction of WNP-2, as being sufficient to support the questions raised by Petitioner concerning the implementation of the quality assurance program for the operation of the plant.

Contention 5, as restated, is admitted.

Contention 6

Contention 6 states 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.

In its written response to Petitioner's Supplement to Request for Hearing, Staff did not object to the admission of Contention 6 provided that the scope of the contention were limited to the issues stated in the basis supporting the contention. Staff Response at 11. At the prehearing conference, however, Staff conceded that the contention is narrowly worded. Tr. 173. The Board agrees that it is narrowly worded and would not further limit its scope.

Staff had approved the admission of this contention on the basis of the Appeal Board's consideration of this issue in Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-708, 16 NRC 1770 (1982), but offered that the resolution of these issues in the eyes of the Appeal Board and the NRC Staff would moot Petitioner's concern. Id. at 12. Although the Appeal Board has now spoken on this issue in ALAB-729, issued on May 26, 1983 (slip op. at 21-88), 17 NRC ____, ____, the

decision has not yet been reviewed by the Commission. To the extent that the final disposition of that proceeding is on a generic basis, this contention can be resolved by appropriate motions for summary disposition.

Similarly, Applicant's objections (Applicant Response at 33-34; Tr. 172-3), that the FSAR demonstrates that the allegations in the contention are in error, are arguments on the merits that are appropriate for summary disposition, rather than for the pleading stage. We also do not agree with Applicant (Applicant's Response at 32-33) that Petitioner has not stated a sufficient basis for the contention.

The contention is admitted.

Contention 7

Contention 7 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.

In the basis stated for its contention (Petitioner's Supplement to Request for Hearing at 14-15), Petitioner failed to list any particulars in which the PORV failed to meet the requirements of NUREG-0737 and GDC

14. Although offered a further opportunity to state these particulars at the prehearing conference, Petitioner was unable to do so. Tr. 177-183.

The contention does not meet the specificity requirements of 10 C.F.R. § 2.714(b) and is denied.

Contention 8

Contention 8 states as follows:

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

Petitioner withdrew Contention 8 at the prehearing conference. Tr. 183-184.

Contention 9

Contention 9 states as follows:

> Petitioner contends that there are systems, equipment and components classified as non-safety related 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.

With regard to the first sentence in the contention, Petitioner has not particularized any systems, equipment or components that it asserts are classified as non-safety related but should be required to meet safety grade criteria. Therefore, that portion of the contention lacks the required specificity.

With regard to the second sentence of the contention, requiring Applicant to perform an analysis to identify all systems, equipment and components that have a safety function, there appears to be an established process by which those items are categorized as being required to meet safety grade criteria. Tr. 185-8. Petitioner has failed to identify any deficiencies in the process or any example of a mischaracterization of any item. Consequently, the second sentence of the contention fails to meet the specificity requirements of the regulations.

The contention is denied.

Contention 10

Contention 10 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 analyzed as required by 10 CFR 50 Appendix A.

Staff does not oppose the admission of the contention provided that the scope is limited to the issues stated in the basis to the contention. The basis gives a number of specifics with regard to the alleged over-sensitivity of that particular steam generator design. We would allow Petitioner to litigate all of the specifics mentioned in its basis. However, given what we view as a fairly narrow area of controversy, i.e., the alleged over-sensitivity of the steam generator, we do not see any utility to restricting further the scope of what is already limited by the wording of the contention itself.

Applicant's objection (Applicant's Response at 39-40) is a factual rebuttal, more appropriate to disposition at some later stage in the proceeding than an objection to admissibility.

The contention is admitted.

Contention 11

Contention 11 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 1 and 4 of 10 CFR 50 Appendix A are satisfied.

Staff and Applicant object to this contention, in part because a new environmental qualification rule was approved by the Commission on January 6, 1983 which provides a deadline for meeting the requirements that has not yet passed. Staff Response at 16; Tr. 191-193. We do not consider that objection valid because the Commission amended its regulations to promulgate that new rule only to "clarify and strengthen the criteria for environmental qualification" of the equipment. 48 Fed. Reg. 2729, 2730 (January 21, 1983). If Applicant has not met the old criteria, upon which the new rule was primarily based, it would not meet the "strengthened" criteria.

However, the contention itself is so vague that it clearly cannot meet the specificity requirements of the rules. Neither, for the most part, can the underlying basis. The allegations therein that Applicant has not met the criteria of Regulatory Guides 1.70 and 1.89, IE Bulletin 79-01B, DOR guidelines, NUREG-0588, etc., are not supported by concrete and substantial instances to make them litigable issues.

Only one matter raised by Petitioner appears specific enough at this juncture in the proceeding to be litigable. Petitioner alleges that the present testing methods underestimate the long-term effects of radiation exposure on polymers found in cable insulation and jackets, seals, rings and gaskets, because they use high levels of radiation over short periods of time, rather than low levels over long periods of time.

Petitioner refers to certain NRC documents and articles to support its allegations.

We admit as a contention only that portion of the basis relating to the testing of polymers.

Contention 12

Contention 12 states as follows:

> Petitioner contends that Applicant has not provided reasonable assurance that the Asiatic clam (Corbicula fluminiea) and other aquatic debris will not befoul the intake/discharge structure of WNP-1 in botn normal and emergency operating conditions, thus endangering the public health and safety.

Applicant opposes this contention purely on factual grounds. It attempts to demonstrate that even if the intake/discharge structure were clogged, there would be no adverse effect upon the ability to shut down a plant safely and maintain it in that condition. Applicant's Response at 43-45; Tr. 198. Staff appears to agree with Applicant's analysis, but believes that the contention should be disposed of by summary disposition. Tr. 199, 203.

From the discussion at prehearing conference (Tr. 197-204), it appears likely that Applicant could easily establish by reference to the FSAR and relevant safety criteria that the contention is factually

invalid. Nevertheless, the Appeal Board has prohibited Licensing Boards from dismissing contentions on the merits at the pleading stage even if demonstrably insubstantial. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 550 (1980). But, cf. dissenting opinion in that proceeding, at 553-558. We cannot entertain Applicant's challenge to the contention prior to a motion for summary disposition.

The contention is admitted.

Contention 13

Contention 13 states as follows:

> Petitioner contends that the Babcox 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.

In its basis, Petitioner relies primarily upon the investigation into the adequacy of the B&W ECCS model in the TMI-2 Restart Proceeding and on Applicant's not yet having responded fully to the requirements of NUREG-0660 and NUREG-0737 with respect to the conformance of the computer model to 10 C.F.R. Part 50, Appendix K.

Staff does not object to the admission of Contention 13, although it would limit the scope of the contention to the issues raised in the basis, but suggests that the resolution of the issue by the TMI Appeal Board will moot Petitioner's concerns. Staff Response at 18-19.

We do not agree with Staff (and Applicant) that the contention is too vague and general to be litigated without limiting it to the basis stated by Petitioner. In addition, we have reviewed Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-729, 17 NRC ____ (May 26, 1983), issued subsequent to Staff's response to the contentions, and do not discern a decision on this issue that would resolve Petitioner's contention in this proceeding. See slip op. at 56 et seq. If Applicant and Staff think otherwise, their recourse is to move for summary disposition when appropriate. We also do not agree with Applicant (Applicant's Response at 47) that its failure to fully comply with 10 C.F.R. Part 50, Appendix K because the regulatory review process has not yet been completed is grounds for not admitting the contention. For purposes of this operating license proceeding, Applicant is assumed to be obligated to fulfill all the regulatory requirements for the issuance of an operating license unless otherwise provided by the Commission. Having satisfied the specificity requirements of the rules, Petitioner's contention is currently valid. If and when Applicant fully complies with the requirements, the issue can then be resolved.

The contention is admitted.

Contention 14

In Petitioner's Supplement to Request for Hearing (at 21), Contention 14 stated 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.

At the prehearing conference, Petitioner reworded Contention 14, as follows (Tr. 278):

> Petitioner contends that the fire-protection measures at WPPSS-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 safety-related systems, equipment and components will not be damaged in the event of a fire.

In its basis, Petitioner refers to only two fire protection items: the requirement of separation of cables used to power redundant safety systems; and the seismic qualification of fire protection components such as fire pumps. Petitioner's Supplement at 21-22.

Staff does not object to admitting the contention to the extent of the issue of separation of cables stated in the basis, but it opposes admitting the issue of seismically qualifying the fire pumps because the regulations do not require them to be seismically qualified. It also

opposes admitting the contention for any broader litigation than the separation of cables. Ibid.

We agree with Staff that the contention is overly broad to be admitted without limiting it to the basis stated, and that litigating the question of whether the fire pumps should be seismically qualified would conflict with the regulatory requirements.

Applicant's further point (Applicant's Response at 48) that its commitments to satisfy the requirements of cable separation should suffice cannot be entertained by the Board as a challenge to admissibility.

Contention 14 is admitted only insofar as it relates to the separation of cables.

Contention 15

Contention 15 states as follows:

> 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.

Petitioner withdrew this contention. Tr. 212.

Contention 16

Contention 16 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.

Implicit in the second sentence of the contention is the Petitioner's position that this Board should impose a more stringent requirement on Applicant's emergency diesel generators than the Commission has provided in General Design Criterion 17 of Appendix A to Part 50 in which onsite electric power supplies need to perform their safety functions assuming only "a single failure." Petitioner relies upon Florida Power and Light Co. (St. Lucie Nuclear Power Plant, Unit 2), ALAB-603, 12 NRC 30 (1980) in which the Appeal Board considered a loss of all AC power onsite, at variance with GDC 17. However, in that proceeding the Appeal Board's justification for not following the GDC was the special circumstance of the location of the St. Lucie plant in the Florida peninsula so that the applicant's electrical distribution system (grid) could be connected to only the grids of other utilities to the north, making the system less reliable than ones interconnected with multiple grids.

Here, Petitioner has offered no such weighty reason for not following the Commission's rule enunciated in GDC 17, as required by 10 C.F.R.

§ 2.758(a). The reason given (Supplement to Request for Hearing at 23) of emergency diesel generator unreliability, is a generic problem that the Commission has already considered and determined not to require designating a station blackout as a design basis event in the absence of exceptional circumstances such as at St. Lucie. Florida Power and Light Co. (St. Lucie Nuclear Power Plant, Unit 2), CLI-81-12, 13 NRC 838 (1981). The second sentence of Contention 16 must be denied.

Although the first sentence of the contention appears to be broad, the supporting basis raises specific, litigable issues. To begin with, Petitioner alleges that three defects exist with regard to the emergency diesel generators at WNP-1 which the Applicant has admitted requires further corrective action.

Furthermore, the last paragraph of the supporting basis states as follows (Supplement to Request for Hearing at 24):

> Additionally the diesel generator medium and large motors, and small motors lack necessary environmental and seismic qualification. FSAR Appendix 3.11B, Table 3.11B-1 (Sheet 3 of 6). Also lacking qualification are the diesel generator engine control panel and diesel generator control panel. Supra. Given the above there is no reasonable assurance that the emergency diesel generators will operate as planned.

Applicant objects to the admission of this paragraph as a contention because of alleged lack of specificity. Applicant's Response at 51-52; Tr. 222-224. It submits that the simple statement that Applicant

has not yet met the burden of demonstrating the environmental and seismic qualification of this equipment is overly broad in that there has been no suggestion, allegation, demonstration or other offer to the effect that Applicant will not meet that burden. Tr. 223.

Staff, on the other hand, does not consider this paragraph as overly broad and would admit the issue of seismic qualification but demurs to the environmental qualification because the environmental qualification rule that will govern this operating license is not yet effective with regard to Applicant (see discussion on Contention 11, above). Tr. 224-5, 233-4.

We agree with Staff that this paragraph is specific enough in light of Applicant's not having met the requirements in toto at this point in time. If it had attempted to meet the requirements and had failed in some particulars, Petitioner would be required to specify those particulars in greater detail. But under the circumstances, Petitioner's allegations are as specific as can be raised. As to Staff's argument with regard to the effective date of the new environmental qualification rule, we read Petitioner's allegation as requiring compliance with whatever environmental qualification rules are appropriate for the issuance of this operating license (i.e., the current rules or whatever they may be superseded by before the license is issued).

The first sentence of Contention 16 is admitted.

Contention 17

Contention 17 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 wholly defective and can not be relied upon for a seismic analysis.

Clearly, this contention is extremely broad. In its basis, however, Petitioner has raised a number of concrete issues. Supplement to Petition for Hearing at 24-26. Applicant objects to these issues primarily on the merits and, where applicable, to allegations that Applicant has not yet completed what it has committed itself to do. We cannot entertain Applicant's objections on the merits at this juncture. Nor, where Applicant has safety obligations it has not yet satisfied, can we accept its commitment in resolution of the issues raised.

Because of the fragmented presentation of the issues underlying this contention in Petitioner's supplement to petition for hearing, we accept the Staff's reworded, comprehensive statement of the issues (Staff's Response at 22-23) as follows:

(1) whether the as-built seismic capability of the cable tray supports is substandard; (2) whether the Applicant has used Quality Class II equipment in place of Quality Class I as required for seismic category I systems, components and equipment with respect to pipe rupture restraints, cable trays and the containment purge system; (3) whether the Applicant has completed a program to assure snubber operability; (4) whether the Applicant has provided Reg. Guide 1.70 critical damping values; (5) whether the Applicant has identified adequate seismic analysis methods to verify pipe support baseplate flexibility and the design of structural steel framing for platforms that support safety-related systems in the containment; (6) whether the Applicant has provided adequate design and analysis procedure to verify the adequacy of the containment; (7) whether there are adequate soil damping values for structures, systems and components in the nuclear steam supply system (NSSS); (8) whether the electrical equipment listed in FSAR Appendix 3.11B has been seismically qualified; (9) whether the Architect/Engineer's amplified response spectra is reliable for HVAC equipment and modified structural steel framing; and (10) whether the Applicant has performed an adequate dynamic analysis of ASME class piping.

We admit as Contention 17 the basis given by Petitioner, as restated by Staff, above.

Contention 18

Contention 18 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.

Staff objects to the admission of this contention, first, on the grounds that it is very broad and ambiguous and, secondly, because the parentheticals used in the contention would place into controversy the ability of non-NRC licensed facilities to operate safely in the event of an accident at WNP-1. Staff Response at 23. Staff points out that the NRC does not have jurisdiction to consider, particularly in an operating license proceeding, the ability of surrounding facilities to operate safely in the event of an accident at WNP-1. Ibid.

We agree with Staff that the safe operation of the other facilities in the event of an accident at WNP-1 is outside the scope of what this Board can consider. Although we do not necessarily agree with Intervenor's choice of regulatory basis (10 C.F.R. § 51.20 and 10 C.F.R. § 100.10 relate to construction permits and site evaluations), we agree with the parties (Tr. 244) that external hazards to the WNP-1 plant (including those from surrounding nuclear/chemical facilities) must be analyzed to ensure the continued safe operation of the plant. We do not agree with Staff that the contention is too broad and ambiguous, considering the few nuclear/ chemical facilities in the surrounding area. Nevertheless, Petitioner feels (Tr. 238) that it has identified all the facilities of concern to it in its basis and would not see any difficulty in limiting the contention to those facilities. Staff has restated the contention limited to the six items listed in the basis in a comprehensible manner (Staff's Response at 24), we would adopt as the contention, as follows:

> WNP-1 has not been designed to withstand the effects of: (a) an explosion at the Department of Energy's Fast Flux Test Facility; (b) potential hazards from military overflights; (c) an aircraft collision into a power line tower; (d) an accident at the N-reactor which is located approximately 18 miles away; (e) the PUREX facility which is scheduled to operate in 1984; and (f) the transportation of potentially dangerous radioactive materials on a mainline railroad track within the exclusion area of WNP-1.

Applicant's objections to the contention go mostly to the merits of the adequacy of Applicant's analysis of the interaction of the facilities. We cannot consider the merits in ruling on admissibility.

Petitioner had also raised in its basis the alleged inadequacy of Applicant's emergency plans in considering the nuclear and chemical facilities in the vicinity. Petitioner's Supplement at 27. At the prehearing conference, Petitioner deleted its reference to emergency plans in Contention 18, in order to include all of the emergency planning considerations in Contention 19. Tr. 243.

We admit Contention 18 as restated above to limit it to the six enumerated items in Petitioner's basis.

Contention 19

Contention 19 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.

Although the contention is very broadly stated so as to challenge the entirety of Applicant's emergency plans, Petitioner has supported it with six pages of specifics in its basis. Petitioner's Supplement at 30-35. Since the facility is not expected to be operational until at least 1988, the emergency plans are necessarily in an incipient stage, notwithstanding that the WNP-2 plans are nearing completion. Consequently, Applicant and Staff challenge Petitioner's specific allegations with regard to insufficiencies in the plan as being premature. Staff opines that Petitioner will have an opportunity to raise contentions at a later date after the state and local plans are filed. Staff's Response at 25. At the time of Staff's response, only the Appeal Board had spoken to the matter of filing late contentions, in Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460 (1982). The Appeal Board held that Licensing Boards have no authority to admit a contention conditionally that falls short of meeting the specificity requirements because of the unavailability of relevant documents that make it impossible to assert a sufficiently specific contention. But, when the documents are issued, a reworded contention containing the required specifics could be admitted by the Licensing Board without a showing that the five-factor test had been satisfied. Since our prehearing conference, the Commission has stated its disagreement with the

Appeal Board and asserted that any refiled contention would have to meet the five-factor test of 10 C.F.R. § 2.714(a)(1), if not timely filed, even if the specifics could not have been known earlier because the documents on which they were based had not yet been issued. Catawba, CLI-83-19, 17 NRC ____ (June 30, 1983).

Viewing Contention 19 in the context of the Commission's ruling, we cannot dismiss it so lightly on the understanding that a revised contention would be accepted at some later date. We must examine the contention closely at this point to see whether it meets the specificity requirements even while we acknowledge that the specifics of Applicant's emergency plans will necessarily change before the issue is close to an evidentiary hearing. With that in mind, we find that the six pages of specifics raised by Petitioner as its basis (and the emergency planning matter raised in the basis to Contention 18) are certainly adequate to support the contention at this time. If the specifics change while the emergency plans evolve, Petitioner will be required during the prehearing stages of this proceeding to refocus its concerns.

In its basis, Petitioner has questioned, inter alia, the propriety of not including the City of Richland, the nearest part of which is 12 miles away, in the 10-mile emergency planning zone (EPZ) by using an exact 10-mile radius. Petitioner's Supplement at 32. Although Applicant (Applicant's Response at 60) and Staff (Staff's Response at 26) object to enlarging the EPZ as a challenge to the regulations (10 C.F.R.

§ 50.47(c)(2)), Staff could not rule out a variation in the zone's 10-mile radius to 12 miles at some location as being a challenge to the regulations. See discussion at Tr. 247-56. Under 10 C.F.R. § 50.47 (c)(2) the exact size and configuration of the EPZ (of "about 10 miles") may be affected by conditions such as demography, topography, land characteristics, access routes and jurisdictional boundaries. We would not hold the contention to be inadmissible at this juncture with regard to the 12 miles, but would require that Petitioner prove at the evidentiary hearing that special circumstances require varying the 10-mile zone to include the City of Richland.

The contention is admitted.

Contention 20

As originally submitted in Petitioner's Supplement to Request for Hearing (at 35), Contention 20 is stated 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.

However, at the prehearing conference, Petitioner reworded the contention, as follows (Tr. 260-1):

> Petitioner contends that there is no reasonable assurance that construction of WNP-1 has been substantially completed in conformity with the construction permit and the application, as amended, provisions of the Act and Rules and Regulations of the Commission, as required by 10 C.F.R. 50.57, ¶ 1.

The discussion of Contention 20 (Tr. 260-276) indicated that it had been rewritten by Petitioner in consultation with the Staff and perhaps Applicant. Petitioner intended to separate more clearly the issues of Contention 5 from Contention 20: Contention 5 was intended to question the adequacy of Applicant's quality assurance/quality control program in light of alleged deficiencies with the QA/QC program during construction; Contention 20 was intended to question the safety of the plant because of construction defects, some of which may have arisen because of an inadequate QA/QC program during construction.

Even as rewritten, however, Staff and Applicant object to the contention, primarily upon the grounds that it is too broad and vague, that it would open for litigation every conceivable item of construction, and that Applicant would be unfairly put to the burden of demonstrating that it meets all of the requirements of the regulations without being on

notice as to what it must demonstrate in order to meet those requirements. Staff has no objection to admitting the contention provided it is limited to the construction defects concerning WNP-1 that were mentioned in the underlying basis (and in the basis to Contention 5, which Petitioner cross-referenced to Contention 20). In the basis to Contention 20, there were questions raised with regard to welding, electrical cable installations, the use of unqualified personnel, and the use of drugs among construction workers. In the basis to Contention 5, an inspection report for WNP-1 was mentioned, covering the welding of skewed joints of piping support structural steel. In addition, in Contention 20 Petitioner questioned the adequacy and propriety of "mothballing" or otherwise attempting to preserve the plant during the hiatus in construction, which Petitioner contended would result in additional construction defects.

Although Petitioner resisted limiting the contention to the specific matters covered in their bases to Contentions 5 and 20, and claimed to offer those items only as examples, we agree with Staff and Applicant that it would be inappropriate to permit Petitioner to expand its "shopping list" of construction defects under its broadly worded contention. We would therefore limit the contention to the specifics mentioned, including unnamed construction defects that may result from Applicant's method of preserving the construction, a procedure which Petitioner contends should not be permitted in the first instance. That aspect of this contention will, of course, be litigated after

construction resumes, at which time Petitioner will be required to specify the complained of construction defects.

The contention is admitted as limited by the discussion above.

II. FURTHER SCHEDULING

At the special prehearing conference, the Board asked the parties to submit briefs on further scheduling in view of the fact that Applicant had announced a suspension of construction of the facility for up to five years. Tr. 225-32. Applicant's position was that there should be no deferral of this proceeding because the areas of concern raised by Petitioner are now ripe for resolution. Applicant's Memorandum on Scheduling at 7-10.

Staff informed the Board that, due to the announced delays in construction, Staff was proceeding on a "manpower available" basis, pursuant to which it is reviewing only those portions of the WNP-1 operating license application which parallel other current applications of similar design or with similar features. Staff's Position on Timetable at 3. Under these circumstances, Staff continued, it would be premature and unproductive to schedule any further proceedings until the Board satisfies itself that certain issues are ripe for adjudication. Staff felt that proceeding with discovery would be largely unproductive; might require substantial supplementation at later stages of the proceeding;

and would be burdensome to the Staff because Staff does not currently have extra manpower available to devote to the review of WNP-1. Id. at 3-4.

Staff suggested that, upon its informing the Board and the parties of its completion of review of certain contested issues, the Board could then set a schedule for discovery, summary disposition and hearing on these limited issues. Litigation of the remaining contested issues would await the resumption of construction activities at WNP-1. Staff further proposed that the Board direct the Applicant to keep the Board and the parties informed, quarterly, as to the status of construction at the plant. Ibid.

Petitioner's position generally paralleled that of Staff in requesting that the proceeding be deferred at this time. Among other things, Petitioner opposed having to commit its limited resources to litigating issues that might have to be relitigated, or to discovery that might have to be supplemented, to arrive at findings that are unlikely to retain their validity in light of expected advances in the technology of nuclear power engineering and associated scientific fields. See Petitioner's Position on Scheduling at 3-6. Petitioner went further than Staff in requesting that the entire proceeding be suspended until construction is restarted.

All of the parties relied upon Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-277, 1 NRC 539 (1975) to support their respective positions on either deferring the proceeding or continuing with it. In that case, the Appeal Board indicated (at 547), that among the principal factors to be taken into account in deciding whether to hear the issues during suspension of construction are:

> (1) the degree of likelihood that any early findings on the issue(s) would retain their validity; (2) the advantage, if any, to the public interest and to the litigants in having an early, if not necessarily conclusive, resolution of the issue(s); and (3) the extent to which the hearing of the issue(s) at an early stage would, particularly if the issue(s) were later reopened because of supervening developments, occasion prejudice to one or more of the litigants.

In Douglas Point, the Licensing Board had denied in its entirety the Applicant's motion to proceed with evidentiary hearings on its construction permit application even though Applicant had postponed construction for some years. Considerable effort had already been expended in trial preparation on a number of issues and certain of the parties (including Staff) had expressed concern that part of the fruits of that effort might be lost were a hearing on those issues to be postponed for a substantial period. Id. at 551. The Appeal Board suggested that, under the factors to be considered, certain of the site-related issues might appropriately be heard at that time, and directed the Licensing

Board to reconsider its deferral of the proceeding in light of the views expressed by the Appeal Board.

In Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 2), ALAB-570, 10 NRC 679 (1979), the Appeal Board applied the principles it had enunciated in Douglas Point to decide to continue with an evidentiary hearing after a catastrophic accident had occurred to the plant. The hearing had been scheduled three weeks before the accident, to begin four weeks later. In accordance with an established schedule, the parties served and filed written testimony and Staff caused the issuance of subpoenas to prospective witnesses. After the accident occurred, the hearing was postponed indefinitely. In applying the Douglas Point principles, the Appeal Board decided to proceed with the evidentiary hearing.

In the instant proceeding, we are not concerned with site suitability issues, as in Douglas Point, or in concluding the evidentiary process with the culminating evidentiary hearing after all of the prehearing matters had been completed, as in Three Mile Island. The issues before us are, for the most part, ones that involve a nuclear technology that may advance rapidly during the hiatus in construction. Any discovery taken now would, in all likelihood, have to be supplemented at a later date. Moreover, Staff is not even prepared to participate in discovery because of its decision to conduct the review of the licensing application only on a "manpower available" basis.

Applying the Douglas Point factors in general to this proceeding, it is doubtful that many early findings on any of the issues would retain their validity; there would be little benefit to the public interest to having an early resolution on the issues; and, if the issues were later reopened because of supervening developments, the parties with the most limited resources would find it extremely difficult to redo their litigation efforts.

It appears to us that the wisest procedure is to defer discovery until, at least, Staff indicates that it has completed its review of an issue encompassed by the contentions. At that point, we would ascertain the views of the parties on whether to proceed with discovering and litigating that issue, taking into account the factors discussed in Douglas Point. We wish to be informed, as Staff proposed (Staff Position on Timetable at 4), of the status of construction at the plant by means of quarterly reports from Applicant to the Board and parties setting forth in summary fashion the progress, if any, in construction at the plant and any anticipated near-term change in status of construction activity.

ORDER

For all of the foregoing reasons and based upon a consideration of the entire record in this proceeding, it is this 14th day of October, 1983,

ORDERED

(1) That CSP's Contentions 4, 5, 6, 10, 12, 13 and 19 are admitted;

(2) That CSP's Contentions 2, 11, 14, 16, 17, 18 and 20 are admitted as limited above;

(3) That CSP's Contentions 1, 3, 7 and 9 are denied;

(4) That CSP is admitted as an Intervenor in the proceeding;

(5) That the proceeding is held in abeyance;

(6) That Staff notify the Board and the parties when it has completed its review of any issues covered by the admitted contention;

(7) That the Applicant file quarterly reports, with the first one due by January 1, 1984, regarding construction activities at WNP-1 as discussed above; and

(8) That any party opposing the admission of CSP shall have until ten (10) days after service of this Order, pursuant to 10 C.F.R. § 2.714a, to appeal this order and any prior

orders of the Board relating to standing which led to the admission of CSP.

FOR THE ATOMIC SAFETY AND LICENSING BOARD

Herbert Grossman

Herbert Grossman, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland,

October 14, 1983.