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June 4, 1984
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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of
ROCHESTER GAS & ELECTRIC CORPORATION
(R.E. Ginna Nuclear Power Plant,
Unit No. 1)

Docket No. 50-244

NRC STAFF RESPONSE TO LICENSING
BOARD'S ORDER OF MARCH 30, 1984

I. INTRODUCTION

By Order dated March 30, 1984 this Board directed, inter alia, that the parties file, by June 4, 1984, responses to any revised or additional contentions filed by Intervenor, "including responses to the already admitted contentions to the extent their validity has been affected by matters that have occurred since their admission." Order at 2. While no revised or additional contentions have been filed,^{1/} the validity of one of the previously admitted contentions in this proceeding has been affected by matters occurring since its admission.^{2/} Pursuant to the Board's Order, the Staff hereby submits its response to that contention and urges that it be dismissed.

1/ See Memorandum and Order of May 25, 1984.

2/ One other contention, also discussed below, will be affected by proposed revisions to 10 CFR Part 51 which are expected to become effective on or before the end of July 1984.

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Certified By

D. J. [Signature]

II. DISCUSSION

A. Intervenor's Contention D

Contention D, as admitted by the Licensing Board's Memorandum and Order of March 25, 1977, states as follows:

The Applicant is in violation of applicable Federal and New York State water quality standards in that it does not possess an exemption for the discharge of water at temperatures of 23.4°F above ambient as described in the FES, pp. 3-7, sec. 3.4.1.

This contention, which refers to Federal and State water quality standards, is now deemed to be outside the scope of responsibility and authority of the NRC. Federal water quality standards are governed by the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. § 1251 et seq., and compliance with those standards is under the jurisdiction of the Environmental Protection Agency. Tennessee Valley Authority (Yellow Creek Nuclear Plant, Units 1 and 2), ALAB-515, 8 NRC 702, 706-07, 712-14 (1978). Since a National Pollutant Discharge Elimination System Permit (No. NY-0000493) was issued for the Ginna facility, effective March 31, 1975, pursuant to Section 402 of the FWPCA, Contention D raises an issue within the province of EPA and New York State but not the NRC.^{3/} See, Long Island Lighting Company (Jamesport Nuclear Power Station, Units 1 and 2), LBP-78-17, 7 NRC 826, 843-44 (1978) (§ 401 certification is dispositive of compliance with applicable limitations and standards). Accordingly, this Board should modify the Board's prior order of March 25, 1977, and dismiss Contention D in this proceeding as raising issues outside the jurisdiction of the NRC.

^{3/} See Affidavit of George F. Dick, Jr. (attached).

B. Contention F

Contention F, as admitted by the Licensing Board's Memorandum and Order of March 25, 1977, states as follows:

The FES is inadequate because it fails to treat the following energy conservation alternatives:

- a. ending special discounts for large volume electrical use;
- b. increasing electrical pricing in order to decrease demand;
- c. implementation by the Applicant of maximum lighting levels per square foot by its customers;
- d. setting insulation standards for new and old customers;
- e. promoting energy efficiency labeling;
- f. discouraging electric space heating and air conditioning (in climatic conditions that do not require it); and
- g. peak or demand load flattening techniques including time of day metering charges, load staggering and/or selective load shedding.

This contention asserts that the FES should have considered certain energy alternatives that would arguably make unnecessary the power from the Ginna facility.

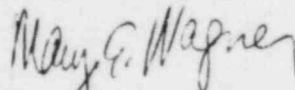
Under the Commission's current rules, an environmental impact statement prepared in connection with the issuance of an operating license need contain "no discussion of need for power or alternative energy sources or alternative sites . . . , unless otherwise required by the Commission." 10 CFR § 51.23(e); see also § 51.56(a). Part 51 is arguably not applicable to the Ginna proceeding since the original notice of hearing in this proceeding was published before August 19, 1974. See § 51.56(a). However, the Commission on March 12, 1984 published a fully

revised Part 51. 49 Fed. Reg. 9352^{4/} Section 51.106 of the new Part 51 prohibits the litigation of need for power and alternative energy sources in an operating license proceeding. The revised Part 51 does not contain a provision similar to the current 10 CFR 51.56 limiting its applicability. Accordingly, when the new Part 51 becomes effective, it will prohibit the admission and litigation, in operating license proceedings, of contentions involving need for power and alternative energy sources. The Staff intends to file a motion to dismiss Contention F on the basis of the new § 51.106 when the new regulations become effective.

III. CONCLUSION

For the reasons set forth above, Contention D should be dismissed. Contention F will also be subject to dismissal when the new regulations of 10 CFR Part 51 become effective.

Respectfully submitted,



Mary E. Wagner
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 4th day of June, 1984

^{4/} The new Part 51 was submitted on May 21, 1984 to the Office of Management and Budget for clearance under the Paperwork Reduction Act, 44 USC § 3501 et seq. Clearance from OMB is expected within 60 days of that submission, and the new Part 51 will become effective upon clearance.