

disposition on the grounds that there is no genuine issue of material fact with regard to this contention and, thus, Applicants are entitled to a decision rejecting the merits of Contention 4 as a matter of law. Staff affidavits are attached hereto in support of this factual conclusion and these are discussed further below. CCANP's Response to the motion, filed April 8, 1985, is not accompanied by any affidavits of persons having knowledge of material facts, and fails to show that there is any genuine issue of material fact which presents a bar to granting applicants' motion for summary disposition of Contention 4.

II. Background

CCANP Contention 4 was originally admitted by the Licensing Board in its Memorandum and Order of August 3, 1979. It addresses the ability of STP to withstand hurricane wind loads safely during operation of the plant. Further, while the contention does not specifically address the effects of heavy rainfall and hurricane-induced storm surge on the South Texas Project, as the Applicants point out (see Motion at 4), certain discovery responses do refer to such conditions. See "CCANP Response to Applicants' Motion to Compel Answers to its Seventh Set of Interrogatories and Requests for Production of Documents to CCANP," (May 31, 1983). These collateral effects, as well as the hurricane wind loads, are addressed by the applicant's motion and its supporting affidavits.

In addition, the Licensing Board has stated concerns and raised other questions with respect to this contention. For example, the Board has questioned whether certain high wind speed data cited in the FSAR may

have been improperly discounted by Applicants, whether the "thousand-year hurricane" would be more applicable than the "hundred-year one," and whether hurricane and tornado wind speeds are comparable given the usual greater duration of the former. See Tr. 10750; Memorandum and Order (issued October 15, 1982). The motion for summary disposition also addresses these concerns of the Licensing Board, and adequately disposes of these.

III. Discussion

A. Legal Standard for Summary Disposition

The Commission Rules of Practice for Domestic Licensing Proceedings provide for summary disposition on motion, if the filings in the proceeding, including affidavits, show that there is no genuine issue as to any material fact and the moving party is entitled to a decision as a matter of law. 10 C.F.R. § 2.749. The Commission rule is modeled after the summary judgment provisions of the Federal Rules of Civil Procedure (Rule 56). Alabama Power Company (Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 AEC 210, 217 (1974). The use of summary disposition is the preferred method of resolving contentions when no genuine issues exist, so that the cost and delay of unnecessary litigation is avoided by all parties and the tribunal. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-73-12, 6 AEC 241 (1973), aff'd sub nom. BPI v. Atomic Energy Commission, 502 F.2d 424 (D.C. Cir. 1974); Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 550 (1980); Statement

of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 457 (1981).

A material fact is a fact that might affect the outcome of the proceeding. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 752-754 (1977); see Adickes v. Kress, 398 U.S. 144, 157 (1970); Mutual Fund Investors, Inc. v. Putnam Mgt. Co., 553 F.2d 620, 624 (9th Cir. 1977). The party moving for summary disposition carries the burden of demonstrating the absence of any genuine issue as to the material facts. Perry, supra, 6 NRC 741, at 753. In reviewing such a motion, the record and submissions must be considered by the Board in the light most favorable to the party or parties opposing the motion. See Dairyland Power Cooperative (LaCrosse Boiling Water Reactor), LBP-82-58, 16 NRC 512, 519 (1982); Poller v. Columbia Broadcasting System, 368 U.S. 464, 473 (1962).

A party opposing the motion, nevertheless, may not rest upon mere allegations or denials; the answer to the motion must set forth specific facts showing that there is a genuine issue. 10 C.F.R. § 2.749(b); Virginia Electric Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-584, 11 NRC 451, 453 (1980); Perry, supra, 6 NRC 741, at 754; Gulf States Utilities Co. (River Bend Station, Units 1 and 2), LBP-75-10, 1 NRC 246, 248 (1975). There must be presented to the Board a basis for an adequate factual controversy that would compel reasonable minds to inquire further. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-629, 13 NRC 75, 78 (1981); Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 340 (1980). A party opposing a

motion for summary judgment in the federal courts is not entitled to hold back evidence, if any exists, until the time of trial; it must come forward with the evidence adequate to demonstrate a genuine material issue at the time it responds to the motion. See Stansifer v. Chrysler Motors Corp., 487 F.2d 59, 63 (9th Cir. 1973); Lipschutz v. Gordon Jewelry Corp., 367 F. Supp. 1086, 1095 (S.D. Tex. 1973).

This principle, by analogy, is applied to motions under 10 C.F.R. 2.749 in Commission practice. See Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775 (1978). Indeed, as the Appeal Board has stated, a hearing on each issue "is not inevitable," but "wholly depends upon the ability of the intervenors to demonstrate the existence of a genuine issue of material fact." Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-654, 14 NRC 632, 635 (1981).

Applicant's Motion for Summary Disposition has met these tests and standards applicable for a grant of summary disposition of Contention 4, while intervenor's response failed to present a basis for concluding that a genuine issue of material fact exists so as to prevent the granting of such a motion.

B. No Genuine Issue of Material Fact Exists and Applicants are Entitled to a Decision as a Matter of Law on Contention 4

Structures, systems, and components of nuclear power plants important to safety shall be designed to withstand the effects of natural phenomena, including hurricanes. 10 C.F.R. Part 50, App. A, I, General Design Criterion 2. The design bases for these structures, systems, and components shall reflect, inter alia, appropriate consideration of the most severe of the natural phenomena that have been historically

reported for the site and its surrounding area. Id. An examination of the methods used at the South Texas Project to design the plant to withstand hurricane wind loads shows that this criterion has been met.

The NRC's Standard Review Plan (SRP) (§§ 2.3.1, 3.3.1, Rev.2, July 1981), sets out the Staff's position that a nuclear power plant's design should withstand an operating basis wind load, in combination with other severe loads, calculated on the basis of the 100-year recurrence fastest-mile wind speed. Id. This calculation should be done on the basis of data on severe weather phenomena taken from standard meteorological records from representative National Weather Service, military, or other "standard installations" with long periods of record. Id. Consequently, nuclear plants should be designed to continue operations without creating risk to public health and safety under wind conditions anticipated to occur once in every 100 years. See Fairbent Affidavit, at ¶ 6-7; Linderman Affidavit, at ¶ 7.

An operating basis wind (OBW) of 125 mph was chosen as appropriate for the South Texas Project in accordance with applicable NRC guidance. See Fairbent Affidavit, at ¶ 11-14; Wolfe Affidavit, at ¶ 9-13.

CCANP contends that "the SRP guidance is not meant to be the exclusive basis for selecting data on severe weather phenomena" and that a "more comprehensive approach" is called for in this case. CCANP Response, at 5. Intervenors, however, provide no suggested suitable alternative approach. CCANP simply relies on its bald assertion that the unverifiable observations of excess wind speeds somehow make applicants'

calculation of the appropriate OBW incorrect. No technically competent support is provided for this argument, and it is insufficient to create a genuine issue of material fact.

Intervenor asserts that wind speeds in excess of 125 mph have been observed in the area of the plant. While the Staff and applicants acknowledge such reports have been made (See "NRC Staff Response to the State of Texas' First Set of Interrogatories and Request for Production on Contention 4"), the discounting of those records was proper in view of their lack of reliability or lack of relevance to the South Texas Project. See Fairobent Affidavit, at ¶¶ 10-15.

Intervenor presents no basis on which to support its averments that unverifiable observations or wind speeds of hurricanes at other locations should have been considered in setting the OBW for the South Texas Project. See CCANP Response, at 5. CCANP merely speculates, without scientific support, that such winds may have been present or have some applicability to the South Texas Project. Oppositions to motions for summary disposition cannot be based on such conjecture. See e.g., North Anna, supra, 11 NRC 451, at 453; Allens Creek, supra, 13 NRC 75, at 78; Perry, supra, 6 NRC 741, at 754.

To reject the unverifiable observations does not shift the burden of proof to the intervenor as CCANP contends. CCANP Response, at 4. See Peach Bottom, supra, 14 NRC 632, at 635. The material issue is not whether wind speeds in excess of 125 mph have been recorded, the issue is whether applicants need take those recordations into account when determining the appropriate OBW. As the Staff's and Applicants'

affidavits point out, this is not necessary because the reporting station should be in a location similar to, or representative of, the vicinity of the STP site. See Fairbent Affidavit, at ¶¶ 9-15; Wolfe Affidavit at ¶¶ 14-18. In addition, if observations are considered unrepresentative with respect to location, elevation, or poor instrument exposure, maintenance or calibration, these observations cannot be combined with standard or verifiable measurements. Id.

Moreover, even if the operating basis wind speed is exceeded, nuclear plants are designed to perform necessary safety functions and safely shutdown under design basis conditions without any affect on the public health and safety. This is a design basis wind (DBW). For the STP, this design basis wind is a tornado (DBT). See NRC Regulatory Guide 1.76; SRP (3.3.1; 3.3.2); Ma Affidavit, at ¶ 3. Even though the operating basis wind is exceeded, a plant to be licensed must be able to shut-down and withstand design basis wind loads without an adverse affect on the public health and safety. Id.

The applicant's South Texas Category I structures have to be designed to withstand loads and safely shut down in the face of conditions caused by a design basis tornado. 10 CFR Part 50, App. A, I, General Design Criterion 2; See SRP 3.3.2. The load combinations that include the DBT result in loads on Category 1 structures that are considerably greater than those resulting from load combinations which include the OBW. Ma Affidavit, at ¶ 3; Linderman Affidavit, at ¶ 17; The DBT is asserted to generate winds as great as 360 mph. Id. Thus, design loads are greatly in excess of those that could be anticipated by hurricanes. This is true regardless

of the wind load duration. See Linderman, at ¶ 18. In short, a plant designed to withstand extreme load combinations to be seen in a DBT will necessarily withstand those generated by an OBW. Ma Affidavit, ¶ 3.

CCANP further argues, without affidavit or other scientific support, that the design calculations for the STP should assume the maximum wind load would be the OBW plus the DBT. Such an approach is unfounded. Fairobent Affidavit, at ¶¶ 18-20 . Again, CCANP attempts to create material facts and genuine issues by speculation. See Perry, supra at 754. Summary disposition cannot be defeated on these bald assertions. See cases cited, supra, at 4.

Contention 4 also refers to the possibility that structures, other than Category 1 structures, might release missiles that could penetrate Category 1 structures that are inadequately protected. Except for the isolation valve cubicle roof (IVC), all South Texas Category structures appear to be designed and constructed (see Ma Affidavit) so as to withstand any missiles generated by a DBT, including missiles from non-Category 1 structures. As is the case with wind loads, the greater includes the lesser; therefore, designing and constructing the plant to resist the DBT-generated missiles will be adequate to withstand hurricane-generated missiles. See Ma Affidavit. Consequently, no issue of material fact exists with regard to this aspect of the Contention.

As to the IVC roof, on the basis of a probabilistic risk assessment, the Staff agrees that the applicants have adequately demonstrated that the probability of a tornado or hurricane-generated missile striking the structure is sufficiently low that the design need not consider it. See

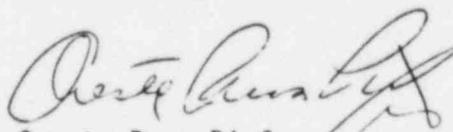
id. at ¶ 4. No genuine issue of material fact is presented by the discrepancy between the Staff's and Applicants' assessment of the risk, since each is well below the risk at which such matters need to be considered. See id. Intervenor's argument that a probabilistic risk analysis cannot be relied upon with regard to the IVC roof at STP because of a low probability occurrence at one reactor site does not affect the sufficiently low probability computed with regard to the IVC roof here. Wilson Affidavit, at ¶ 6. While a margin of error does exist, this margin of error is not so large as to cause rejection of the probabilistic assessment. Id.

With regard to the impact of storm surge on Category I buildings at the STP, both the Linderman Affidavit (see ¶ 25) and the Staley Affidavit (attached hereto) demonstrate why such phenomenon poses no realistic threat. CCANP's response attempts to discount these facts by simply asserting that the "power of a storm surge is so immense" that Category I buildings could be jeopardized. No specific factual basis is presented. Even considering the motion in a light most favorable to intervenor, no genuine issue of material fact exists. CCANP must come forward in its response with more than conclusions and allegations.

IV. Conclusion

With regard to CCANP Contention No. 4, there is no genuine issue of material fact and applicants are entitled to a favorable decision on that contention as a matter of law.

Respectfully submitted,


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Dated at Bethesda, Maryland
this 15th day of April, 1985