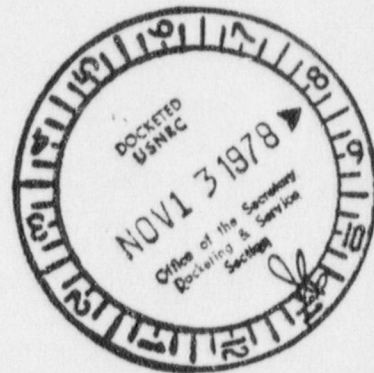


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
OFFSHORE POWER SYSTEMS)
(Manufacturing License for Floating)
Nuclear Power Plants))

Docket No. 50-437



MEMORANDUM AND ORDER

MEMORANDUM

On September 15, 1978, Natural Resources Defense Council (NRDC) filed a Request For Reconsideration Or In The Alternative For Certification. Applicant filed its opposition thereto on October 2, 1978. The NRC Staff did not file a response.

In our Order of September 11, 1978, we had denied NRDC's Motion to Amend Contentions dated August 9, 1978 because "It is clear that the NRDC motion contending that the Staff must locate and evaluate specific estuarine and riverine sites at the manufacturing license stage constitutes a challenge to Appendix M and thus violates 10 CFR §2.758". However, NRDC urges that we, as well as Applicant and the NRC Staff, misperceived the thrust of its contention--viz that, where there is no evidence that there are possible estuarine, riverine or barrier island

sites for a floating nuclear plant (FNP), the Staff may not conclude in the Final Addendum to FES II (June 1978) that there is reasonable assurance that it is acceptable to site FNPs either at offshore or shoreline sites.

1. The Motion for Reconsideration Is Denied

It is clear that, in clarifying the thrust of its proposed contention, NRDC once again runs afoul of 10 CFR §2.758 which prohibits the challenging of the Commission's rules and regulations. In the instant proceeding Applicant merely seeks a license authorizing the manufacture of eight (8) FNPs but not their construction and installation at the sites on which the facilities are to be operated. However, NRDC would have us consider at this time whether or not there are any possible riverine, estuarine and barrier island sites which would possess acceptable postulated site parameters. Such a proposed contention obviously constitutes an impermissible challenge to Appendix M which provides in substance that the Staff's environmental statement "... shall be directed at the manufacture of the reactor(s) at the manufacturing site; and, in general terms, at the construction and operation of the reactor(s) at an hypothetical site or sites having characteristics that fall within the postulated site parameter."

(Emphasis added)^{1/}.

^{1/} In passing, we consider and reject two arguments advanced by NRDC. NRDC urges that, if evidence is not adduced in this proceeding which would assure that there are possible sites for the FNPs, construction of the FNPs will constitute major sunk costs which will be used as legal and psychological pressures for approval of such sites when the sites would not be acceptable if judged objectively. The short answer (footnote 1 continued on p. 3)

2. The Alternative Motion For Certification Is Denied

Although NRDC requests that we certify four questions to the Appeal Board, it actually is requesting certification of the question as to whether the Board has properly denied its amended contention on the ground that it constitutes a challenge to regulations. However, in the first place, certification is not favored to arbitrate at the threshold disputes over what are cognizable contentions. Project Management Corp. (Clinch River Breeder Reactor Plant), ALAB-326, 3 NRC 406 (1976), reconsideration denied ALAB-330, 3 NRC 613 (1976), reviewed and reversed in part on other grounds sub nom. U.S.E.R.D.A. (Clinch River Breeder Reactor Plant), CLI-76-13, 4 NRC 67 (1976). Second, as discussed at length by Applicant, NRDC has not shown, pursuant to Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-405, 5 NRC 1190 (1977), that our ruling either threatens it with immediate and serious irreparable impact which, as a practicable matter, could not be

I/(Footnote continued)

is that the cost-benefit analyses to be made in connection with any specific site applications for FNPs will be separate and independent of the cost-benefit analysis made in the instant case. NRDC also urges that, even assuming that its proposed contention is a challenge to Appendix M, we should admit it now as an issue lest the Board deprive NRDC of an opportunity under §2.758 to make a showing of special circumstances in future summary disposition procedures. This is a cart-before-the-horse argument. When, as here, a party seeks to attack a rule or regulation, §2.758 requires that a petition for waiver or exception, accompanied by an affidavit, be filed. NRDC failed to take this initial action.

alleviated by a later appeal or affects the basic structure of the proceeding in a pervasive or unusual manner.

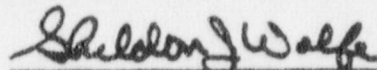
ORDER

Natural Resources Defense Council's Request For Reconsideration Or In the Alternative For Certification is denied.

Dr. David Schink did not participate herein.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Sheldon J. Wolfe, Chairman

Dated At Bethesda, Maryland
this 9th day of November 1978.