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June 22, 1988

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'88 JUN 23 P4:23

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)	
VERMONT YANKEE NUCLEAR POWER CORPORATION)	Docket No. 50-271-OLA-2
(Vermont Yankee Nuclear Power Station))	(Testing Requirements for ECCS and SLC Systems)

NRC STAFF RESPONSE TO JOINT CONTENTION OF THE STATE OF VERMONT AND THE COMMONWEALTH OF MASSACHUSETTS

I. INTRODUCTION

On June 13, 1988, in response to the Atomic Safety and Licensing Board's (Board) Order of May 24, 1988, Petitioners the State of Vermont and the Commonwealth of Massachusetts submitted a proposed contention that they wish to litigate in this proceeding. ^{1/} The Staff's response is set forth below.

II. DISCUSSION

A. Standards Applicable to Proposed Contentions

In order for petitioners' contentions to be admitted as matters in controversy, they must satisfy the Commission's requirement that the basis for the contention be set forth with reasonable specificity. 10 C.F.R. § 2.714(b). Also, proposed contentions must fall within the scope of the

^{1/} Joint Contention of the State of Vermont and the Commonwealth of Massachusetts, June 13, 1988.

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issues set forth in the Notice of Hearing initiating the proceeding.^{2/} The purposes of the basis requirements of 10 C.F.R. § 2.714 are (1) to assure that the contention in question raises a matter appropriate for adjudication in a particular proceeding,^{3/} (2) to establish a sufficient foundation for the contention to warrant further inquiry into the subject matter addressed by the assertion and, (3) to put the other parties sufficiently on notice "... so that they will know at least generally what they will have to defend against or oppose." See, Peach Bottom, at 20. From the standpoint of basis, it is unnecessary for the petition to detail the evidence that will be offered in support of each contention. Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973). Furthermore, in examining the contentions and their

^{2/} Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170 (1976). See, also, Commonwealth Edison Company (Carroll County Site), ALAB-601, 12 NRC 18, 24 (1980); Portland General Electric Co. (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289-290, n. 6 (1979).

^{3/} A contention must be rejected where:

- (a) it constitutes an attack on applicable statutory requirements;
- (b) it challenges the basic structure of the Commission's regulatory process or is an attack on the regulations;
- (c) it is nothing more than a generalization regarding the intervenor's views of what applicable policies ought to be;
- (d) it seeks to raise an issue which is not proper for adjudication in the proceeding or does not apply to the facility in question;
or
- (e) it seeks to raise an issue which is not concrete or litigable.

See, Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974).

bases, a licensing board should not reach the merits of the contentions. Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 548 (1980); Duke Power Co. (Amendment to Materials License SNM-1773-Transportation of Spent Fuel From Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-528, 9 NRC 146, 151 (1979); Peach Bottom, supra, at 20; Grand Gulf, supra, at 426.

As the Appeal Board instructed in Alabama Power Company (Joseph M. Farley Nuclear Power Plant, Units 1 and 2), ALAB-182, 7 AEC 217, 216-217 (1974), in asserting the acceptability of a contention as a basis for granting intervention:

[t]he intervention board's task is to determine, from a scrutiny of what appears within the four corners of the contention as stated, whether (1) the requisite specificity exists; (2) there has been an adequate delineation of the basis for the contention; and (3) the issue sought to be raised is cognizable in an individual licensing proceeding. (Footnotes omitted).

If a contention meets these criteria, the contention provides a foundation for admission "irrespective of whether resort to extrinsic evidence might establish the contention to be insubstantial." Farley, supra, 7 AEC at 217. ^{4/} The question of the contention's substance is for later resolution - either by way of 10 C.F.R. § 2.749 summary disposition prior to the evidentiary hearing "... or in the initial decision following the conclusion of such a hearing." Farley, supra, 7 AEC at 217. Thus, it is incumbent upon petitioners to set forth contentions supported by bases

^{4/} However, the proposed contention should refer to and address relevant documentation available in the public domain.... See, Cleveland Electric Illuminating Company, et al. (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-24, 14 NRC 175, 181-185 (1981).

that are sufficiently detailed and specific to demonstrate that the issues they purport to raise are admissible.

B. The Proposed Joint Contention

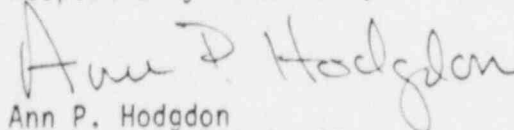
In their proposed joint contention, Vermont and Massachusetts assert that the proposed amendment is inconsistent with the protection of the public health and safety and of the environment in that the increase in risk of failure of the subject systems occasioned by the proposed elimination of testing is not outweighed by any reduction in risk attributable to the testing changes proposed by the amendment. Joint Contention, at 1-2.

As basis for the proposed joint contention, Vermont and Massachusetts state, among other things, that the Applicant has not provided quantitative support for its assertion that testing the components adversely affects their reliability nor for its reliance on other testing programs to provide the assurance that the remaining safety components will operate as intended. Joint Contention at 2. In the Staff's view, these statements provide an adequate basis for the proposed joint contention.

III. CONCLUSION

Petitioners have submitted a contention supported by a basis set forth with reasonable specificity. The Licensing Board should grant Petitioners' request that a hearing be held on the proposed application and admit the proposed joint contention for hearing.

Respectfully submitted,



Ann P. Hodgdon
Counsel for NRC Staff

Dated at Rockville, Maryland
this 22nd day of June, 1988

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POWER CORPORATION) (Testing Requirements for
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Station)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO JOINT CONTENTION OF THE STATE OF VERMONT AND THE COMMONWEALTH OF MASSACHUSETTS" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, or as indicated by two asterisks by express mail, this 22nd day of June, 1988.

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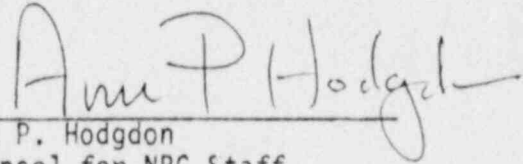
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