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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

before the

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	
TEXAS UTILITIES ELECTRIC COMPANY, et al.	Docket No. 50-445-CPA
(Comanche Peak Steam Electric Station, Unit 1)	

PERMITEES' RESPONSE TO CONSOLIDATED INTERVENORS' MOTION TO ADMIT AMENDED CONTENTIONS OR, IN THE ALTERNATIVE, FOR RECONSIDERATION OF CERTAIN PREVIOUSLY DENIED CONTENTIONS

Under date of September 30, 1986, petitioners CASE and Meddie Gregory (Consolidated Intervenors) filed with this Board[1] a Motion to Admit Amended Contentions or, In the Alternative, for Reconsideration of Certain Previously Denied Contentions (the Motion). Herein, the permittees, Texas Utilities Electric Company (TUEC) et al., respond to

[1] Originally the filing was captioned as being before the Appeal Board. However, subsequently the Consolidated Intervenors advised that the motion was intended to be made to the Licensing Board.

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this motion and say that for the reasons set forth below, the motion should be denied.

I. The Background

On March 13, 1986, the Commission referred a request for a hearing filed by CASE with respect to the extension of the last completion date in the construction permit for CPSES Unit No. 1 to the Chairman of the ASLBP for designation of a hearing board and further proceedings. Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 1), CLI-86-04, 23 NRC 113, 121 (1986). On March 20, 1986, the Chairman of the ASLBP designated this Board to preside in this matter; and on March 24, 1986, this Board issued a notice of prehearing conference to be held on April 22, 1986. Thereafter, on April 7, 1986, see 10 CFR § 2.714(a)(3), the Consolidated Intervenors filed herein two petitions to intervene. The CASE petition proposed a total of nine contentions for litigation; the Gregory petition proposed a total of four. This Board rejected all of the contentions as drafted. Special Prehearing Conference Memorandum and Order (May 2, 1986). It admitted as a single contention all but the last paragraph of CASE's sixth contention, which paragraph it treated as being the statement of basis for the admitted contention. Id. This ruling was appealed to the Appeal Board. That Board heard oral argument, and certified a question to the Commission

thereafter. The Commission answered the certified question. Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 1), CLI-86-15, 24 NRC ___ (Sept. 30, 1986). The appeal is now, once again, sub judice the Appeal Board, which has requested and received comments on CLI-86-15 from the parties.

I. THE CONSOLIDATED INTERVENORS HAVE NOT MADE THE NECESSARY SHOWING UNDER 10 CFR § 2.714(a)(1)

The Consolidated Intervenors appear at one point to concede that no matter what title they adopt for the request they are making, they have to satisfy the "late-filed contention" test under 10 CFR § 2.714(a). Motion at 3. This concession is not surprising. The time for amending the original petitions under 10 CFR § 2.714(a)(3) has long since passed.[2] The time to seek reconsideration of the prior Board rulings by objecting to the prehearing conference order, 10 CFR § 2.751(a)(d) has also passed. As will be seen below, the "five factors" test for late-filed contentions has not been satisfied.

a. The "first" factor: Good Cause, if any, to File on Time

Consolidated Intervenors argue that good cause for the failure to file on time exists because CLI-86-15 represents

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[2] In addition, to the extent the Motion is one to "amend contentions", nowhere does it state which of the thirteen original contentions are being amended.

"a modification of the law." Motion at 11. CLI-86-5 is not a "modification" of the law. Indeed, it is a statement of the legal principle that we advocated in this matter. At most, it is a decision which decides a question of first impression. Thus, the issue presented is whether good cause for failure to file on time can be predicated upon the issuance of an adjudicatory decision which decides a question of law under existing regulations differently than the moving party had hoped it would be decided. The answer, we respectfully suggest, is no. The Consolidated Intervenors concede that the cases cited by them at Page 11 of the Motion do not stand for that proposition; all of those cases being ones that dealt with recently disclosed facts as opposed to legal interpretations. There is at least one Licensing Board decision that holds that a change in the regulatory requirements can be the basis for arguing good cause for failure to file on time. See Cincinnati Gas & Electric Co. (William H. Zimmer Nuclear Station), LBP-80-14, 11 NRC 570, 572-74 (1980) (changing regulatory requirements on emergency planning held to constitute good cause for an otherwise untimely filing). But no case of which we are aware goes so far as to say the good cause for failure to file on time can be predicated on a legal decision interpreting existing law and regulations. To hold otherwise would result in administrative chaos and have the potential to flood ongoing proceedings with late-filed

contentions every time the Commission or an Appeal Board spoke to a new or unresolved issue. Thus, the good cause for failure to file on time alleged by Consolidated Intervenors is insufficent. Accordingly, Consolidated Intervenors' burden is heavier with respect to the other factors. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 2, ALAB-384, 5 NRC 612, 615 (1977); Duke Power Co. (Perkins Nuclear Station, Units 1, 2 & 3), ALAB-431, 6 NRC 460, 462 (1977).

b. The "Second" and "Fourth" Factors: Availability of Other Means to Protect Petitioners' Interest; and the Extent to Which Other Parties Will Represent Petitioners' Interest

In the Motion the Consolidated Intervenors treat the "second" and "fourth" factors (described in the title immediately above) together, Motion at 11-12; we will do likewise. We would agree that these factors weigh in favor of Consolidated Intervenors. These factors almost always weigh in favor of the moving party in these cases, but they are to be accorded less weight than the other three factors. Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 & 2), CLI-86-8, 23 NRC 241, 245; South Carolina Electric and Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 895 (1981).

c. The "Third" Factor: The Extent to Which the Petitioners Can Contribute to Development of a Sound Record

Here the only showing made is a statement that "Consolidated intervenors and their counsel have years of experience in litigating licensing cases and in working with the Board on the related operating license proceeding." Motion at 13. This is wholly insufficient. "When a petitioner addresses this criterion it should set out with as much particularity as possible the precise issues it plans to cover, identify its prospective witnesses and summarize their proposed testimony." Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 & 2), ALAB-204, 16 NRC 1725, 1730 (1982), quoted with approval in CLI-86-8, supra at 246. Consolidated Intervenors have not complied with this directive. Secondly, the Consolidated Intervenors are proceeding, in part, from the erroneous premise that the ability and experience of counsel is relevant here. "But it is the ability to contribute sound evidence -- rather than asserted legal skills - that is of significance in considering a late-filed petition to intervene." Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-671, 15 NRC 508, 513 n.14 (1982). More recently the Commission itself has held that counsels' participation (skilled or otherwise) in other proceedings is wholly irrelevant in analyzing this factor and further indicated that there was no support in prior NRC jurisprudence for the proposition that the prior participation of the party itself in NRC proceedings is a

weighty factor. CLI-86-8, supra at 247. In that same decision the Commission made clear that where, as here, the petitioners had not provided specifics as to witnesses and topics to be pursued and have erroneously relied upon the asserted skills of counsel in other NRC proceedings, the holding must be that the "third" factor weighs against the movant.

d. The "Fifth" Factor: The Extent to Which the Petitioners' Participation Will Broaden the Issues or Delay the Proceeding

In the event the Appeal Board reverses this Board's prior ruling admitting a single contention, there will be no hearing absent the grant of this motion. Thus, this factor too weighs against the Consolidated Intervenors.

e. Summary

The two least important factors weigh, as usual, in favor of the moving party herein. The first, third and fifth all weigh heavily against.

II. The Motion, Insofar as It Seeks Reconsideration of the Rulings on CASE 3-5 and 7 and Gregory 2 as Originally Worded Should Be Denied

At Page 14 of the Motion, the Consolidated Intervenors request that if the Board does not permit "amendment" of the contentions, the Board should nevertheless reconsider its prior rulings with respect to original CASE Contention 3-5 and 7 and Gregory 2. The argument for this relief appears in n.3 at Page 6 of the Motion as follows:

> "Intervenors' other contentions, in particular Gregory No. 2 and CASE Nos. 3-5 and 7, alleged, inter alia,

> that Applicants still did not intend to comply with NRC requirements and thus did not have good cause for the extension. These contentions, taken as a whole, allege that there has been no change in policies and essentially no change in management personnel on Applicants' part."

At the outset, it is important to note that the Commission's recent decision in this proceeding, CLI-86-15, did not, as Consolidated Intervenors appear to assume, in any way overrule or otherwise denigrate from the prior Commission precedent in WPPSS. Washington Public Power Supply System (WPPSS Nuclear Project Nos. 1 and 2), CLI-82-29, 16 NRC 1221, 1224-25 (1982). It was that decision which dictated the ruling with respect to the five contentions as to which CASE now seeks reconsideration. Set forth below is our original analysis of these contentions under CLI-82-29, which analysis this Board cited as the basis for its exclusion of these contentions in the Order as to which CASE now seeks reconsideration. Special Prehearing Conference Memorandum and Order (May 2, 1986) at 11, n.8.

CASE No. 3

CASE Contention No. 3 is:

> "3. Further delay will be caused by Applicants' refusal and failure to follow NRC regulations, particularly with respect to repeating and exacerbating design deficiencies in direct violation of 10 CFR Part 50, Appendices A and B requirements."

This contention does not purport to question the reasons for past delay, but rather predicts the occurrence of delay in the future. Possible problems arising out of future construction activities are not litigable in a construction permit extension proceeding. CLI-82-29, supra, 16 NRC at 1225, 1230.

CASE NO. 4

CASE Contention No. 4 is:

> "4. There is no good cause for the extension because at present there is no basis for concluding that there is reasonable assurance that Applicants will construct Unit 1 in conformance with its construction permit and 10 CFR Part 50, Appendix B, or that there is adequate and/or appropriate management control over CPSES Unit 1 to ensure that NRC requirements are being and will be met. Thus continued construction of Unit 1 creates immediate health and safety implications. See Cincinnati Gas & Electric (Zimmer), CLI-82-33, 16 NRC 1489 (1982)."

Essentially this is a contention that the extension should be denied because there presently is no reasonable assurance that CPSES No. 1 will be constructed properly and there is not extant management competence to do the job right. The first theory (a lack of "reasonable assurance") is being litigated in the ongoing operating licensing proceeding and thus is not a candidate for separate litigation herein. CLI-82-29, 16 NRC at 1227. The second theory (lack of management control or a lack of competence

to control) is likewise nonlitigable in a construction permit extension proceeding. CLI-82-29, supra, 16 NRC at 1224-25, 1230.

CASE No. 5

CASE Contention No. 5 is:

> "5. There is substantial evidence that Applicants are not technically competent to build Unit 1 properly, are not willing to follow NRC regulations in building Unit 1, have not and will not implement a proper QA/QC program for inspection, design, and construction of Unit 1, and cannot and will not meet the architectural and engineering commitments they have made in their application for a construction permit, in the hearing record for the construction permit and the operating license and to the Staff. Under these circumstances, unless and until Applicants present evidence that overcomes this evidence or agree to conditions to assure that the problems will not recur, they should not be allowed to continue construction of CPSES Unit 1 because continued construction involves immediate health and safety implications. Cincinnati Gas & Electric (Zimmer), supra."

This again is a contention that the permittees do not have the technical competence to construct the unit. Such a contention is not litigable in a construction permit extension proceeding. CLI-82-29, supra, 16 NRC at 1224-25, 1230.

CASE No. 7 and Gregory No. 2

CASE Contention No. 7 is:

7. Applicants have failed to establish a good cause for the extension.

"a. Applicants' stated reason for the extension is to be allowed to complete the CPRT reinspection, redesign, and reconstruction process in order to make the plant licensable. However, this process is not being conducted in compliance with the requirements and practices of the NRC and thus its completion cannot produce the intended result of a licensable plant but will instead necessitate further reinspection, redesign, and reconstruction. In particular the CPRT plan is inherently flawed because:

"i. The CPRT is not sufficiently independent from TUEC since all judgments on the safety significance of deficiencies and disposition of NCRs, design changes, and reconstruction are made by TUEC personnel, many of whom, like Messrs. Tolson, Brandt, Purdy, and Finneran (all now employed at CPSES), made the original judgments that allowed the deficient conditions to exist.

"ii. CPRT reinspections are being conducted without complying with Appendix B, thus making trending, documentation, and any verification of the work performed impossible.

"iii. The CPRT program has not been approved by the Staff but has been modified at least three times, apparently without going back to redo work conducted under the rejected plans.

"iv. The CPRT implementation has violated CPRT standards for reinspections, including the use of production quotas for inspectors and harassment and intimidation of inspectors.

"b. It is not a good cause for an extension of time to complete construction of a nuclear plant where

the applicant has revealed that it does not intend to properly reinspect, redesign, and reconstruct the nuclear plant.

"c. The work which Applicants propose to conduct under the extended construction permit represents major changes in the original proposed construction and design and cannot be lawfully undertaken unless the construction permit is amended. No such amendment has been sought or received. Thus there is no good cause for Applicants to obtain an extension to conduct work for which no valid construction permit exists in violation of 10 CFR §50.10.

"d. An applicant with a history of noncompliance with NRC regulations, with a history of failing to heed the warnings of independent auditors and the NRC regarding the implementation of its QA/QC program, and with a history of implementing an unapproved reinspection, redesign, and reconstruction program that does not meet NRC regulatory requirements cannot show good cause for extending its construction completion date unless it at least is subject to conditions to assure that the reinspection, redesign, and reconstruction are properly undertaken. Included among these conditions are:

"i. full independence from all current and former CPSES employees,

"ii. stop work on construction and on reinspection of construction until reanalyses and redesigns have been completed and the designs have been approved as acceptable by the hearing Board,

"iii. existence and implementation of a QA/QC program for reinspection, redesign, and reconstruction which complies with 10 CFR Part 50, Appendix B,

"iv. full documentation that fundamental engineering principles have been correctly applied in the reinspection, redesign, and reconstruction process,

"v. full documentation that all previously identified design issues (including, but not limited to, the Walsh/Doyle allegations and concerns raised by Cygna or during the Cygna hearings have been correctly identified and properly addressed,

"vi. hold points in the reinspection, redesign, and reconstruction process to enable staff, public, and Board review of the previously completed tasks, and

"vii. full public access to all documents generated by the process, transcription of all meetings, and public attendance at those meetings."

Gregory Contention No. 2 is essentially identical and reads:

"2. Applicants have failed to establish a good cause for the extension.

"a. Applicants' stated reason for the extension is to be allowed to complete the CPRT reinspection, redesign, and reconstruction process in order to make the plant licensable. However, this process is not being conducted in compliance with the requirements and practices of the NRC and thus its completion cannot produce the intended result of a licensable plant but will instead necessitate further reinspection, redesign, and reconstruction. Thus continued reinspection, redesign, and reconstruction as proposed by Applicants have immediate health and safety implications. See Cincinnati Gas & Electric (Zimmer), CLI-82-33, 16 NRC 1849 (1982). In particular the CPRT plan is inherently flawed because:

"i. The CPRT is not sufficiently independent from TUEC since all judgments on the safety significance of deficiencies and disposition of NCRs, design changes, and reconstruction are made by TUEC personnel, many of whom, like Messrs. Tolson, Brandt, Purdy, and Finneran (all now employed at CPSES), made the original judgments that allowed the deficient conditions to exist.

"ii. CPRT reinspections are being conducted without complying with Appendix B, thus making trending, documentation, and any verification of the work performed impossible.

"iii. The CPRT program has not been approved by the Staff but has been modified at least three times, apparently without going back to redo work conducted under the rejected plans.

"iv. The CPRT implementation has violated CPRT standards for reinspections, including the use of production quotas for inspectors and harassment and intimidation of inspectors.

"b. It is not a good cause for an extension of time to complete construction of a nuclear plant where the applicant has revealed that it does not intend to properly reinspect, redesign, and reconstruct the nuclear plant.

"c. The work which Applicants propose to conduct under the extended construction permit represents major changes in the original proposed construction and design and cannot be lawfully undertaken unless the construction permit is amended. No such amendment has been sought or received. Thus there is no good cause for Applicants to obtain an extension to conduct work for which no valid construction permit exists in violation of 10 CFR §50.10.

"d. An applicant with a history of noncompliance with NRC regulations, with a history of failing to heed the warnings of independent auditors and the NRC regarding the implementation of its QA/QC program, and with a history of implementing an unapproved reinspection, redesign, and reconstruction program that does not meet NRC regulatory requirements cannot show good cause for extending its construction completion date unless it at least is subject to conditions to assure that the reinspection, redesign, and reconstruction are properly undertaken. Included among those conditions are:

"i. full independence from all current and former CPSES employees;

"ii. stop work on construction and reinspection of construction until reanalysis of the design and approval of the design have been completed and the design has been approved and accepted by the hearing board;

"iii. existence and implementation of a QA/QC program for reinspection, redesign, and reconstruction which complies with 10 CFR Part 50, Appendix B;

"iv. full documentation that fundamental engineering principles have been correctly applied in the reinspection, redesign, and reconstruction process;

"v. full documentation that all previously identified design issues (including but not limited to the Walsh/Doyle allegations raised by CYGNA during the CYGNA hearings) have been correctly identified and properly addressed;

"vi. hold points in the reinspection, redesign, and reconstruction process to enable staff, public, and Board review of the previously completed tasks; and

"vii. full public access to all documents generated by the process, transcription of all meetings, and public attendance at those meetings."

Subpart a of each of these contentions raises issues concerning the activities of the CPRT; subpart b in essence alleges that the reinspection, redesign and reconstruction is not being done properly. Both of these matters, if at all litigable, are properly within the ambit of the ongoing operating license proceeding and thus may not be litigated herein. CLI-82-29, supra, 16 NRC at 1227.

Subpart c is an allegation that rework to date and that which will be done in the future is not validly authorized by the CPSES No. 1 construction permit in its present form. To begin with we are unenlightened as to the basis for saying that this work is outside the four corners of the permit as it reads and thus the required basis and specificity are lacking. More importantly, if the petitioners believe that work is or will be done in violation of the construction permit, the remedy is a petition to the Director of Nuclear Reactor Regulation under 10 CFR § 2.206, not a hearing on the construction permit extension. CLI-82-29, 16 NRC at 1229. The issue in a construction permit extension proceeding is extension of the permit, not enforcement of it.

In subpart d, the petitioners assert their view of what a proper redesign and reinspection effort should include. This is not a contention as to why past delay was not for

good cause; it is a contention as to what should be done in the future. It is not litigable in a construction permit extension proceeding. The "scope of [such a proceeding] is limited to direct challenges to the permit holder's asserted reasons that show 'good cause' justification for the delay." CLI-82-29, supra, 16 NRC at 1229. Subpart d of CASE No. 7 and Gregory No. 2 present no such challenge and should therefore be rejected.

Summary

The force of the foregoing arguments based upon CLI-82-29 is undiminished by anything in the recent Commission decision herein. CLI-86-15. The motion, as a motion for reconsideration, should, therefore, be denied.

III. Even Assuming the Late-Filed Criteria Had Been Satisfied the Amended Contentions Should Still Be Excluded

Amended Contention 1

Amended Contention No. 1 is:

> "Since Applicants do not allege that they have a good cause for the delay, they can only prevail if they allege and prove good cause for the extension by demonstrating that they have identified the cause for the delay and have discarded and repudiated the policies that led to and/or caused the delay.
>
> "Applicants have not alleged or established that they have discarded and repudiated the policies that caused the

delay in completion of construction of Unit 1."

To begin with, a contention phrased in terms of: "the applicants have not alleged or established" raises no litigable issue. NRC practice does not encompass any concept in the nature of a common law demurrer. One does not raise a litigable issue by saying an applicant has failed to allege something. Indeed, if that were the case, the filing of an amendment setting forth the desired allegations would result in immediate summary disposition of the contention; a result Consolidated Intervenors would hardly accept.

Prescinding from the foregoing, there is no adequate basis alleged. The three paragraph statement of basis can be summarized as follows: TUEC et al. have stated that the purpose of CPRT was to evaluate the plant in light of TRT findings and that permittees need more time to complete reinspection and in CASE's view the efforts at reinspection by CPRT are not adequate because they will not identify root causes of all TRT identified problems. This is an argument that the CPRT effort is inadequate to provide reasonable assurance. This is a proper contention for litigation, if at all, in the OL proceeding. Under WPPSS, matters properly the subject of OL proceedings are not properly included within the scope of a CPE proceeding. CLI-82-29, supra at 1227.

Amended Contention No. 2 is:

> "The delay in construction of Unit 1 was caused by Applicants' intentional conduct, which had no valid purpose and was the result of corporate policies which have not been discarded or repudiated by Applicants."

Four-lettered paragraphs of basis are set out with respect to this contention. The first is a series of allegations as to alleged past conduct. These alone avail Consolidated Intervenors nothing. CLI-86-15 passim. The second (¶ B) says that Applicants have never acknowledged that what Consolidated Intervenors claim was the corporate policy was the case and that therefore applicants have never discarded or repudiated these policies. The short answer to this is, assuming the policy to have been what Consolidated Intervenors allege, and it was not, the actions of the applicants speak louder than words. Hundreds of millions of dollars are being devoted, under the command of all new senior nuclear management, to ferret out and resolve all questions of design and construction. Part C of the Statement of Basis alleges that the same people running the plant are most of the same persons who made what the Consolidated Intervenors call the "original decision" to ignore the law. Policy is not set by individuals in middle or lower management of a project. Policy is set by the top of the nuclear House. All of these persons are new to project. The balance of Part C is a series of allegations about why the CPRT effort is inadequate; that is an OL-type

issue as noted earlier. Similarly, Part D is Consolidated Intervenors statement of what a proper CPRT effort should be. That is not part of a CPE case under CLI-82-29.

IV. This Board Lacks Jurisdiction to Entertain the "Amended" Contentions Because it Lacks Jurisdiction to Reconsider Its Denial of the Previously Denied Contentions

We also respectfully submit that, because however parsed the proposed additional contentions are in fact merely less verbose restatements of the previously rejected contentions, this Board now lacks jurisdiction to entertain them.

Prescinding from the jurisdictional implications arising out of the pendency of an interlocutory appeal simpliciter, the fact of the matter is that what is now before the Appeal Board is not simply the admissibility of a single contention -- were that the issue, there would have been no avenue for obligatory interlocutory appeal. E.g., Puget Sound Power and Light Co. (Skagit/Hanford Nuclear Power Project, Units 1 and 2), ALAB-712, 17 NRC 81 (1983). Rather, the appeal provided for under section 2.714a, available only when the order on contentions has either admitted or excluded a party and the appellant contends that the admitted party should have been excluded or the excluded party should have been admitted, subsumes the entire

question of admission of a party.[3] Thus, assuming the Board to have admitted a party on the basis of the denial of all but one contention, if that ruling is affirmed on appeal, the ruling on the denied contentions will be open for appellate review at a later stage (because the other contentions will not be considered on the interlocutory appeal). If, on the other hand, such a Licensing Board ruling is reversed on appeal, the excluded petitioner has no further right to obtain obligatory appellate review of the denied contentions. Unless the appellee has chosen to defend his admission on the ground that so much of the ruling below as excluded contentions was erroneous, appellate review of the exclusion is forever foreclosed.[4]

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[3] And, where no hearing is required as a matter of law, the issue of whether there is to be any contested proceeding. See, e.g., Duquesne Light and Power Co. (Beaver Valley Power Station, Unit No. 1), ALAB-109, 6 AEC 243, 245 & n.4 (1973), quoting the Commission in Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), RAI-73-3 (1973): "Since a hearing must be held, however, the task of generally shaping the proceeding and specifically sorting out the contentions which warrant exploration is appropriately left to the discretion of the Licensing Board at a prehearing conference." (Emphasis supplied by the Appeal Board.)

[4] Though we believe these principles follow ineluctibly as a matter of law, logic and the structure of the section 2.714a interlocutory appeal structure, we are aware of no case presenting precisely such a situation. In Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 424 n.3 (1973), the Appeal Board held that reversal of a Licensing Board decision admitting a petitioner on a

In this case, CASE and Gregory had the right, had they chosen to avail themselves of it, to contend in defense of their admission that, regardless of the correctness of this Board's ruling on the admitted contention, its rulings excluding the other contentions were erroneous. E.g., Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-832, 23 NRC 135, 141 (1986). They chose, however, not to avail themselves of that right.[5] In this posture, these appellees can no longer oppose the appeal on that ground and, we submit, they can no longer accomplish the same thing by now asking, either directly or by attempt to camouflage reconsideration in the garb of "amendment," that

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finding of one good contention would require remand to the Board to consider additional contentions; however, in Grand Gulf the Licensing Board (after finding one good contention and admitting the petitioner) had previously determined to defer ruling on additional proposed contentions. Remand was thus required whatever the outcome of the interlocutory appeal; ALAB-130 does not stand for the proposition that an appellee may eschew urging reversal of the denial of the denied contentions while defending the single admitted one, while preserving the right later to raise that issue if he should lose.

[5] See "Case and Meddie Gregory's Opposition to Appeal of TUEC and NRC Staff" at 17 n.5. While the appellants took the position that they were foreclosed from raising the validity of the denial by the Licensing Board of the denied contentions in defense of their admission of petitioners, such a view was plainly wrong. Not only does it fly in the teeth of the "any grounds in defense" rule, see Shoreham, supra, but it leads to an obviously anomalous situation: if the admission of the admitted contention is reversed, when do the petitioners appeal the rejection of the rejected ones?

this Board revisit the admissibility of the previously rejected contentions. The proposed "amended" contentions being at best restatements with minor revisions of the contentions this Board previously rejected, they may not now be reconsidered.

CONCLUSION

The motion should be denied.

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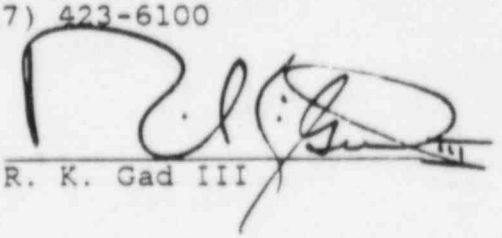
By 
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CERTIFICATE OF SERVICE

I, R. K. Gad III, one of the attorneys for the Applicants herein, hereby certify that on October 10, 1986, I made service of the within document by mailing copies thereof, postage prepaid, to:

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