

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'86 SEP 15 P2:00

In The Matter Of:

COMMONWEALTH EDISON COMPANY

(Braidwood Station, Units 1 and 2)

Docket Nos. 50-456 02  
50-457

INTERVENORS' OPPOSITION TO APPLICANT'S MOTION FOR  
AUTHORIZATION OF FUEL LOADING AND PRECRITICAL TESTING

Intervenors, by their undersigned counsel, oppose Applicant's motion requesting the Licensing Board to grant authorization to load fuel and conduct precritical testing at Braidwood Unit 1.

Applicant's Motion is triply flawed:

- First, relying on a creative misreading of 10 C.F.R. 50.57(c), Applicant seeks to oust this Board of its responsibility to make findings on all applicable criteria under 10 C.F.R. 50.57(a), once any party opposes the request to load fuel and do precritical testing.
- Second, because of that misreading, Applicant would have this Board ignore Applicant's obvious inability - in the absence of a demonstrably reliable electrical system at Braidwood - to comply with all applicable criteria of 10 C.F.R. 50.57(A).

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Third, even as to the one criterion of 10 C.F.R. 50.57(a) which Applicant does address - reasonable assurance of safety - Applicant improperly seeks to deny Intervenor's the hearing procedures to which we are entitled.

For each of these reasons, discussed in parts I, II and III below, Applicant's Motion must be denied.

I. APPLICANT MISREADS 10 C.F.R. 50.57(c) IN AN EFFORT TO IGNORE CRITERIA OF 10 C.F.R. 50.57(a).

This Board's responsibilities are set forth in a straightforward manner by 10 C.F.R. 50.57(c), which reads as follows:

An Applicant may, in a case where a hearing is held in connection with a pending proceeding under this section make a motion in writing...for an operating license authorizing low power testing..., and further operations short of full power operation. Action on such a motion by the presiding officer shall be taken with due regard to the rights of the parties to the proceeding, including the right of any party to be heard to the extent that his contentions are relevant to the activity to be authorized. Prior to taking any action on such a motion which any party opposes, the presiding officer shall make findings on the matters specified in paragraph (a) of this section as to which there is a controversy, in the form of an initial decision with respect to the activity sought to be authorized.

(Emphasis added.)

This section plainly mandates the Board to make findings on all matters specified in 10 C.F.R. 50.57(a) whenever:

- . "any party opposes" - as do Intervenor here, and
- . "as to which there is a controversy" - which plainly exists here, because Intervenor's pending contention challenges the reliability and safety of the electrical system at Braidwood,\*/which will necessarily be used in fuel loading and precriticality testing at Braidwood.

This is not, for example, a case in which it is contended that the inadequacy of Applicant's off-site emergency planning precludes fuel loading and precriticality testing. In such a case (assuming Applicant could, indeed, assure that it would not reach criticality), Intervenor's contention would not be "relevant to the activity to be authorized," i.e., there would be no "controversy," and the Board would therefore not be called upon to make the 10 C.F.R. 50.57(a) findings. Here, in contrast, the adequacy of the electrical system is patently "relevant" to the "activity" (namely, fuel loading and precriticality testing). Accordingly, it is the Board which must make the 10 C.F.R. 50.57 (a) findings.

In an effort to avoid this conclusion - because Applicant cannot satisfy the 10 C.F.R. 50.57(a) criteria - Applicant's

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\* Applicant admits (Motion, p.9) that Intervenor's "contention asserts that the quality of Comstock's electrical installations is indeterminate".



entire argument, boiled down, appears at p.9 of its Motion, where Applicant states that it "will demonstrate that no reliance need be placed on any electrical systems or circuitry in order for Applicant to conduct safely its fuel loading and precritical testing activities. The contention thus can have no relevance to these activities."

Even if it were true, as Applicant claims, that the electrical system is not needed to load and test "safely", Applicant has not claimed - and cannot claim - that the electrical system is not needed to load fuel and to conduct precriticality testing. Obviously it is needed for these activities, unless Applicant were to propose to monitor and conduct loading and testing by visual inspection, manual valve turning, and so on, with no reliance on electrical gauges, controls or power. But even if such a herculean feat were physically possible, it would be pointless, because the very purpose of precriticality testing is to ensure that the plant's integrated systems - including the electrical system interacting with others - will function once the plant goes critical.

Under 10 C.F.R. 50.57(c), then, the threshold question of relevance is not merely whether, as Applicant suggests, the pending contention is relevant to the safe conduct of the proposed activity. Instead, the relevance contention is broader: whether the pending contention is relevant to the conduct of the proposed activity, period.

This interpretation - not Applicant's more restricted reading - is consistent with the plain language of 10 C.F.R. 50.57(c), which asks only whether "contentions are relevant to the activity to be authorized." Section 50.57(c) does not state, as Applicant would have it, "relevant to the safe conduct of the activity to be authorized."

The wording of 10 C.F.R 50.57(c) is no accident. Its purpose is to specify whether the Board must make 10 C.F.R 50.57(a) findings. Those findings are not limited only to "safety." On the contrary, section 50.57(a) expressly contemplates findings as well on the following (among others):

- . "... conformity with the construction permit and the application as amended, the provisions of the Act, and the rules and regulations of the Commission" (§50.57(a)(1)),
- . that, "The facility will operate in conformity with the application as amended, the provisions of the Act, and the rules and regulations of the Commission" (§50.57(a)(2)), and
- . reasonable assurance that the proposed activities "will be conducted in compliance with the regulations in this chapter..." (§50.57(a)(3)(ii)).

Moreover, this regulatory scheme is entirely sensible. It prudently requires proof of compliance with relevant regulations

prior to proceeding with fuel loading and precriticality testing.

This does not mean that all requirements for a full power license must be met in order to obtain a low power license. It does mean that where Intervenor's contention - here the indeterminate quality of the electrical system - is relevant to the fuel loading and precriticality testing, 10 C.F.R. 50.57(a) findings on compliance with regulations applicable to the electrical aspects of all systems and equipment used in the loading and testing must be made before a low power license can be authorized. (See Texas Utilities Electric Co. (Comanche Peak), LBP-84-30A, 20 NRC 442 (1984)). In that case, involving a "broad quality control contention," the Board identified the particular plant systems to be involved in the precriticality testing (e.g., fuel handling systems, reactor protection systems) and required "evidence concerning the adequacy of quality control for the contested systems." 20 NRC at 444. Similarly, here Applicant must identify what systems are to be involved in the precriticality testing, and produce evidence on the quality of the electrical aspects of each system, before the 10 C.F.R. 50.57(a) findings can be made or Applicant's requested authorization granted.

As noted earlier, relying on its misreading of 10 C.F.R. 50.57(c), Applicant's Motion does not even attempt to show compliance of the electrical aspects of relevant systems with applicable regulatory requirements, even in the face of Intervenor's



pending contention which, as Applicant admits, "asserts that the quality of Comstock's electrical installations is indeterminate." (Motion, p.9.) Applicant has therefore failed to meet its burden to justify the requested authorization. Moreover, as shown in the next part of this memorandum, it is not difficult to demonstrate that Applicant cannot now do so.

II. APPLICANT HAS NOT SHOWN AND CANNOT NOW SHOW COMPLIANCE WITH REGULATORY REQUIREMENTS GOVERNING THE ELECTRICAL ASPECTS OF THE SYSTEMS INVOLVED IN FUEL LOADING AND PRECRITICALITY TESTING.

Even though Applicant's Motion does not specify all the plant systems to be used in its fuel loading and precriticality testing, it is clear that the electrical aspects of all those systems are subject to a number of the General Design Criteria and Technical Specifications. (See Appendix A hereto for an illustrative listing.)

Given Applicant's failure to date to demonstrate the quality of its electrical systems, Applicant is faced with several choices. Either it can seek exemption from the relevant General Design Criteria and Technical Specifications, pursuant to 10 C.F.R. 50.12 (See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1) CCI-84-4, 19 NRC 1154 (1984)) or Applicant can seek to prove that the electrical system will in fact not be relied upon at all in its fuel loading and precriticality testing; or, to the extent it is relied upon, that the GDC and technical specifications will still be satisfied. If Applicant

persists in its 50.57(c) request, the Board should begin the formal adjudicatory process whereby Applicant is held to its burden, as described in the next section.

### III. INTERVENORS' RIGHT TO A HEARING

10 C.F.R. 50.57 (c) directs the presiding officer to act on Applicant's Motion "with due regard to the rights of the parties to the proceedings, including the right of any party to be heard to the extent that his contentions are relevant to the activity to be authorized."

Intervenors agree, as Applicant suggest (Motion, p.7), that the legal question of the relevance of our contention to Applicant's proposed activities is a legal question to be resolved on the pleadings. As shown in parts I and II above, the pleadings in this case demonstrate that the contention is relevant to Applicant's proposed activities.

However, once that threshold determination of relevancy is made, Intervenors are entitled to a hearing on whether Applicant satisfies the applicable 10 C.F.R. 50.57(a) criteria, i.e., in this case, whether the electrical aspects of the plant systems to be used in fuel loading and precriticality testing satisfy all regulatory requirements including applicable General Design Criteria and Technical Specifications.

Applicant argues that its asserted non-electrical means of avoiding criticality will mean that the reactor can be tested safely without reliance on electrical systems. (Motion, pp.7-8.) Applicant (p.8) attempts to portray this assertion as bearing



only on the "relevance" issue, and therefore as not requiring a hearing. In fact, as shown above, Intervenor's contention is relevant regardless of whether Applicant's assertion is true. Applicant's assertion thus goes not to "relevance" but to the issue of whether the following 10 C.F.R. 50.57(a) criteria are met:

- . whether "[t]here is reasonable assurance (i) that the activities authorized by the operating license can be conducted without endangering the health and safety of the public..."(10 C.F.R. 50.57(a)(3)(i)), and
- . whether "issuance of the license will not be inimical...to the health and safety of the public" (10 C.F.R. 50.57(a)(6)).

And on these questions - whether the 50.57(a) criteria are met - Intervenor's are plainly entitled to a hearing.\* The extensive Diablo Canyon 50.57(c) proceedings - including discovery, prefiled testimony, motions for summary disposition, and cross examination - demonstrate the extent to which the regulation contemplates a formal adjudicatory process as protection for the rights of the parties. Pacific Gas & Electric (Diablo Canyon), LBP 81-21, 14 NRC 107, 110 (1981) and LBP 81-5, 13 NRC 226, 251 (1981).

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\* In that hearing, Applicant has the burden of proving compliance with 10 C.F.R. 50.57(a). 10 C.F.R. 2.732.

In this case, Intervenorors are entitled to a 50.57(c) hearing process not only on the "safe shutdown" issue raised by Applicant's Motion, but also on the many 50.57(a) regulatory compliance issues not addressed by Applicant's Motion.

However, in this case it is not clear that the issues in the 50.57(c) hearing would be any different from the issues on the merits of Intervenorors' contention. The nature of each set of issues would be the same: whether extensive harassment, intimidation and production pressure has resulted in electrical work of indeterminate quality. The only theoretical difference might be the scope of this issue: Intervenorors' contention relates to all L.K. Comstock electrical work, whereas the 50.57(c) hearing would relate only to L.K. Comstock electrical work involved in those plant systems to be used for fuel loading and precriticality testing. As a practical matter, given the number of systems involved in precriticality testing, the evidence in each hearing might be identical, and separate hearings would be duplicative.

It thus appears that the 50.57(c) hearing should be consolidated with the hearings on Intervenorors' contention. (On the other hand, if Applicant can show that separate hearings would not be duplicative and wasteful, Intervenorors would not oppose separate hearings on the 50.57(c) issues.)

IV. DIRECTED CERTIFICATION TO THE APPEAL BOARD IS NOT APPROPRIATE.

Anticipating an adverse ruling, Applicant asks that the Board refer this matter to the Appeal Board pursuant to 10 C.F.R. 2.730(f) in the following circumstance:

If the Licensing Board does not agree with Applicant's interpretation of the regulatory scheme set forth in 10 C.F.R. 50.57(c), and, in particular, if the Board deems it appropriate to permit discovery or hold a hearing on the issue whether the admitted contentions are relevant to the matters raised in the Motion,...

(Motion, p.16.)

But as noted earlier, no discovery or hearing is needed on the relevancy question. It is obvious on the face of the pleadings that the indeterminate quality of Applicant's electrical system is relevant to fuel loading and precriticality testing, i.e., to the electrical aspects of the plant systems to be used in such loading and testing.

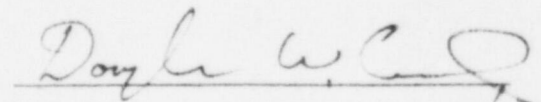
There is thus no need for the Board to address the Applicant's hypothetical request for directed certification, because no hearing on relevancy is required.

CONCLUSION

For the foregoing reasons, Applicant's Motion for Authorization Of Fuel Loading And Precritical Testing should be denied.

Dated: September 10, 1986

Respectfully Submitted



Douglass W. Cassel, Jr.  
One of the Attorneys  
for Intervenors



APPENDIX A: ILLUSTRATIVE LISTING OF GENERAL DESIGN CRITERIA  
APPARENTLY IMPLICATED BY APPLICANT'S PROPOSED FUEL LOADING  
AND PRECRITICALITY TESTING

Under Commission regulations, Applicant must submit principal design criteria and technical specifications as part of its application. 10 CFR 50.34 (a)(3)(i); 50.34(b)(6)(vi). The principal design criteria are based on the General Design Criteria of Part 50, Appendix A. 10 CFR 50.34(a)(3)(i). The General Design Criteria (GDC), establish minimum design, fabrication, and testing standards necessary to provide a "reasonable assurance" that the facility can be operated without undue risk to the health and safety of the public." Appendix A, Introduction; 50.34(a)(3)(i).

Thus, those GDC which bear upon L.K. Comstock electrical work involved in those plant systems to be used in fuel loading and precriticality testing are necessarily controverted matters under 50.57(a). Applicant, to receive a less than full power license, must prove compliance with these GDC.

An illustrative list of apparently applicable GDC's includes the following:

- . GDC 1: Quality Standards and Records
- . GDC 17: Electric Power Systems
- . GDC 18: Inspection and Testing of Electric Power Systems
- . GDC 24: Separation of Protection and Control
- . GDC 33: Reactor Coolant Makeup
- . GDC 44: Cooling Water
- . GDC 46: Testing of Cooling Water System

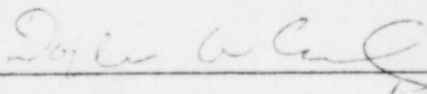
Section 50.34 also requires the Applicant to file technical specifications. 10 C.F.R 50.34(6)(vi). These technical specifications must be prepared in accordance with the requirements of 10 C.F.R. 50.36 Id. Section 50.36 requires the Applicant to prepare technical specifications in seven areas: Surveillance Requirements; Design Features; Administrative Controls; Initial Notification; and Written Reports. 10 C.F.R. 50.86.

Thus, as with the General Design Criteria, the Applicant must prove conformance with the technical specifications in order to comply with Commission regulations 50.36 and 50.34. Moreover, compliance with Commission regulations is necessary to meet the requirements of 50.57(a). Therefore, Applicant must also conform to the technical specifications in order to comply with 50.57(a).

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CERTIFICATE OF SERVICE

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I hereby certify that I caused copies of the foregoing Intervenor's Opposition To Applicant's Motion For Authorization To Load Fuel and To Conduct Precriticality Testing to be served on all parties on the attached service list by personal delivery this 10th day of September, 1986, to the members of the Licensing Board and to counsel for Applicant and Staff in open hearing, and by depositing copies in the U.S. mail, first class postage prepaid, to all others on the service list this same date.

  
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Douglass W. Cassel, Jr.

SERVICE LIST

Herbert Grossman, Esq.  
Chairman  
Administrative Law Judge  
Atomic Safety and Licensing  
Board  
United States Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Dr. Richard F. Cole  
Administrative Law Judge  
Atomic Safety and Licensing  
Board  
United States Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Dr. A. Dixon Callihan  
Administrative Law Judge  
1911 Parkview Street  
Huntington, West Virginia 25701

Stuart Treby, Esq.  
Elaine E. Chan, Esq.  
Office of the Executive Legal  
Director  
United States Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Atomic Safety and Licensing  
Appeal Board Panel  
United States Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Robert Guild  
413 Pall Mall  
Columbia, S. Carolina 29201

Docketing & Service Section  
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Ms. Bridget Little Rorem  
117 North Linden Street  
P.O. Box 208  
Essex, IL. 60935

Charles Jones, Director  
Illinois Emergency Services  
and Disaster Agency  
110 East Adams  
Springfield, IL. 62705

William Little, Director  
Braidwood Project  
Region III  
United States Nuclear Regulatory  
Commission  
799 Roosevelt Road  
Glen Ellyn, IL. 60137

Ms. Janice A. Stevens  
United States Nuclear Regulatory  
Commission  
7920 Norfolk Avenue  
Bethesda, MD. 20014

George L. Edgar, Esq.  
Thomas A. Schmutz, Esq.  
1615 "L" Street, N.W.  
Washington, D.C. 20036

Gregory Berry, Esq.  
NRC Staff Counsel  
U.S. Nuclear Regulatory  
Commission  
7335 Old Georgetown Road  
Bethesda, MD. 20014

Joseph Gallo, Esq.  
Isham, Lincoln & Beale  
1120 Connecticut Av., N.W.  
Washington, D.C. 20036

Michael I. Miller, Esq.  
Peter Thornton, Esq.  
Isham, Lincoln & Beale  
Three First National Plaza  
Chicago, Illinois 60602



Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Nunzio J. Palladino  
Chairman and Commissioner  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Thomas M. Roberts  
Commissioner  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Erie Jones, Director  
Illinois Emergency Services  
and Disaster Agency  
110 East Adams  
Springfield, IL. 62705

Lorraine Creek  
Route 1, Box 182  
Manteno, IL. 60950

James K. Asselstine  
Commissioner  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Frederick M. Bernthal  
Commissioner  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Lando W. Zech, Jr.  
Commissioner  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

H. Joseph Flynn, Esq.  
Associate General Counsel  
FEMA  
500 C Street, S.W., Suite 480  
Washington, D.C. 20472