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UNITED STATES OF AMERICA

October 29, 1987
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before the

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NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
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In the Matter of)

VERMONT YANKEE NUCLEAR POWER)
CORPORATION)(Vermont Yankee Nuclear)
Power Station))Docket No. 50-271-OLA
(Spent Fuel Pool
Amendment)APPLICANT'S ANSWER TO
NECNP PETITION FOR
REVIEW OF ALAB-876Background

Under date of October 20, 1987, New England Coalition on Nuclear Pollution (NECNP) an intervenor herein, filed, pursuant to 10 CFR § 2.786(b), a Petition for Review of a decision of the Appeal Board, ALAB-876 ("Petition"). ALAB-876 is a decision rejecting motions by NECNP and The Commonwealth of Massachusetts ("The Commonwealth") for reconsideration of a portion of an earlier decision of The Appeal Board herein, ALAB-869. In that decision, the Appeal Board reviewed, and, inter alia, reversed a portion of decision of the Licensing Board, LBP-87-17, which admitted into litigation two contentions drafted by the Licensing Board and denominated Nos. 2 and 3. ALAB-869, Slip Op. at 16-34. NECNP and The Commonwealth sought reconsideration of ALAB-869 only insofar as it reversed admission of the contention denominated No. 2. That contention reads as

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follows:

"The proposed amendment would create a situation in which consequences and risks of a hypothesized accident (hydrogen detonation in the reactor building) would be greater than those previously evaluated in connection with the Vermont Yankee reactor. This risk is sufficient to constitute the proposed amendment as a 'major federal action significantly affecting the quality of the human environment' and requiring preparation and issuance of an Environmental Impact Statement prior to approval of the amendment."

LBP-87-17, Slip Op. at 44. In admitting the contention, the Licensing Board stated, inter alia, that the accident referenced in the contention was: "clearly a 'beyond design basis accident'." LBP-87-17, Slip Op. at 10.

In holding the contention inadmissible, The Appeal Board ruled that as a matter of law there was no requirement under NEPA that an EIS be written to cover severe, beyond design basis, events, nor was such an EIS required under the Commission 1980 NEPA Policy Statement. ALAB-869, Slip Op., at 27-29.

In its motion for reconsideration, NECNP argued that in reaching its decision in ALAB-869 regarding Contention 2, the Appeal Board had engaged in improper fact finding in holding the accident at issue to be remote and speculative. In addition, NECNP argued that a less than design basis accident, such as a self sustaining fire, could have the same results as that posited in the contention. Once again The Appeal Board rejected these arguments for the same reasons as already stated in ALAB-869. ALAB-876, Slip Op. at 8-13.

As a result, the Petition at bar was brought. NECNP argues that The Appeal Board erred as to three matters (Petition at 2).

1. The Appeal Board erred in holding that "catastrophic events" could be "disregarded under NEPA simply because they may be of low probability."

2. The Appeal Board allegedly erred in removing an issue from adjudication under the Atomic Energy Act by relying upon a policy statement of the Commission.

3. The Appeal Board erred because "NECNP's proffered contention did not rest on the assumption that a core melt accident occurs."

Argument

The first alleged error, i.e., that it was error to hold that NEPA does not require a discussion of catastrophic, remote, and speculative events is simply wrong as a matter of law. Natural Resources Defense Council v. Morton, 458 F.2d 827 (D.C. Cir. 1972). See also Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519, 551 (1978); San Luis Obispo Mothers for Peace v. NRC, 751 F.2d 1287, affirmed en banc, 789 F.2d 26, cert. denied 107 S. Ct. 330 (1986); Public Service Electric and Gas Co. (Hope Creek Generating Station, Units 1 and 2), ALAB-518, 9 NRC 14, 38-39 (1979) and cases there cited.

As to the other two assignments of error, NECNP still ignores the fact that the remoteness, speculativeness, and

"beyond design basis" characterization of the accident did not come from Appeal Board fact finding or Commission fact finding by Policy Statement, but rather from the Licensing Board, itself, which wrote the contention and so stated the accident to be. NECNP may not like what the Licensing Board did, but NECNP is still held to the terms of the contention as it was admitted. E.g., Texas Utilities Electric Co. (Comanche Peak Station Electric Station), ALAB-868, 25 NRC _____, Slip Op. at 37 n. 83 (June 30, 1987); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 709 (1985); Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant), ALAB-856, 24 NRC 802, 816 (1986).

Conclusion

The Petition should be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Thomas G. Dignan, Jr., hereby certify that
October 29, 1987, I made service of the within document in accordance with the rules of the Commission by mailing a copy thereof postage prepaid to the following:

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