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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
PACIFIC GAS AND ELECTRIC)	Docket Nos. 50-275 OLA
COMPANY)	50-323 OLA
)	
(Diablo Canyon Nuclear Power Plant)	(Spent Fuel Pool)
Units 1 and 2))	

RESPONSE OF THE NRC STAFF TO THE LICENSING
BOARD'S ORDER OF JULY 31, 1987 [DIRECTING THE
PARTIES TO FILE COMMENTS ON THE APPLICABILITY
OF THE APPEAL BOARD'S DECISION IN VERMONT
YANKEE NUCLEAR POWER CORPORATION, ALAB-869,
TO THE PROPOSED CONTENTIONS AT ISSUE IN THIS MATTER]

I. INTRODUCTION

On July 31, 1987 the Licensing Board in an Order noted that the Decision of the Appeal Board in Vermont Yankee Nuclear Power Corp., (Vermont Yankee Nuclear Power Station), 26 NRC____, ALAB-869, (July 21, 1987) concerned, inter alia, the admissibility of certain types of contentions dealing with beyond design-basis, severe accidents in spent fuel pools. Because ALAB-869 was issued after the parties in this proceeding had filed their pleadings relating to the Sierra Club's motion to admit contentions, the Licensing Board directed the parties to file simultaneous briefs on or before August 14, 1987 discussing the applicability of ALAB-869 to the proposed contentions.

II. BACKGROUND

On March 27, 1987, the Staff issued a Board Notification, BN 87-05, transmitting to the Commission, as a matter of possibly substantial public,

1501

press or Congressional interest, a draft report prepared by the Brookhaven National Laboratory (BNL) entitled "Beyond Design-Basis Accidents in Spent Fuel Pools (Generic Issue 82)." Sierra Club Ex. 1, for identification only (Draft report or draft BNL report). The Staff's preliminary assessment of the draft report and its relation to ongoing proceedings was presented with the Board Notification. Copies of the Board Notification were transmitted to the Board and parties to this proceeding.

On June 16, 1987, the first day of the hearings on the admitted contentions concerning the Licensee's application to rerack its spent fuel pools in the captioned proceeding, the Sierra Club orally moved for the admission of a new contention regarding the possibility of zircaloy cladding fires in the Diablo Canyon spent fuel pools and asked that the Board direct the preparation of an EIS on this matter. Tr. 142-149. Sierra Club argued that the basis for admission of the new contention was information contained in the draft BNL report. Id. The Sierra Club's motion was opposed by both the Licensee and Staff. Tr. 150-156, 156-160, respectively. Nonetheless, without ruling on the oral motion, the Board permitted the Sierra Club to file a written motion regarding this matter. Tr. 291, 630.

On June 29, 1987, the Sierra Club filed a written motion requesting that the Atomic Safety and Licensing Board admit a new contention and direct the preparation of an environmental impact statement (EIS) regarding the possibility of zircaloy cladding fires in the spent fuel pools at the Diablo Canyon Nuclear Power Plant. (Motion). The Licensee and the Staff separately opposed the motion.

As noted, the Appeal Board in its Vermont Yankee Decision, hereinafter ALAB-869, at Slip Op. 20-29, discusses a proposed contention relating to severe accidents in spent fuel pools and determines, inter alia, that NEPA does not require NRC consideration of severe, beyond design-basis accidents because they are by definition remote and speculative events, Id. at 27, and the Commission's NEPA Policy Statement ^{1/} does not specifically apply to license amendment proceedings or to proceedings where an EIS is not otherwise required. Id. at 28.

III. DISCUSSION

A. Sierra Club's Motion to Admit New Contention

In its Answer to the Sierra Club's motion to admit contentions the Staff concluded that the Sierra Club failed to satisfy any of the requirements for the admission of its proposed contentions. ^{2/} The Staff pointed out that the draft BNL report was generic in nature ^{3/} and that it therefore was incumbent upon the Sierra Club to establish the required nexus between the draft report and the Diablo Canyon facility. The

^{1/} Commission's Interim Policy on "Nuclear Power Plant Accident Considerations Under the National Environmental Policy Act of 1969," 45 Fed. Reg. 40,101 (1980) hereafter NEPA Policy Statement. The NEPA Policy Statement sets forth the circumstances under which the more severe, low probability accidents should be considered in an EIS.

^{2/} Staff's comments concerning the Sierra Club's failure to demonstrate a balancing of the five factors set forth in 10 C.F.R. § 2.714(a)(1) for late filed contentions are not addressed herein because they are not germane to the issue addressed in ALAB-869.

^{3/} The Sierra Club agrees, "...the problem of cladding fires is not unique to Diablo Canyon...." Motion at 6.

Sierra Club, however, failed to establish such a nexus, relying instead on a simplistic characterization of the generic conclusions of the draft BNL report. ^{4/} As the Licensing Board is aware, the draft BNL report analyzes, for two older, surrogate plants, a complex chain of events leading to the catastrophic failure of the spent fuel pool, the resultant initiation of combustion of the zircaloy fuel cladding and the eventual release of radioactivity into the environment. This chain starts with an analysis of the probability of a seismic event exceeding the design basis of the facility sufficiently to cause the loss of the spent fuel pool's structural integrity. It then considers the fragility of the spent fuel pool, that is, the probability that the structure can survive the seismic event. The draft report goes on to assess, for various rack configurations, the likelihood and timing of possible combustion of the cladding, assuming the total loss of pool coolant resulting from the loss of pool integrity. Next, the draft report discusses estimates of radiological releases, and, finally, the consequences of such releases. Throughout the report, there are a number of significant caveats discounting its direct and literal application to other specific facilities.

The proposed contention casually assumes the applicability of the draft report to the Diablo Canyon spent fuel pools without consideration of the critical factors underlying BNL's analysis. The Sierra Club simply asserts that the racks to be used at Diablo Canyon are "like those identified in the Brookhaven report." Motion at 2. It does not assert

^{4/} See, Staff Answer to Sierra Club's Motion to Admit a Contention Regarding Generic Issue 82...at 9-11.

that, beyond the similarity of the racks, the Diablo Canyon spent fuel pools are in any way structurally equivalent to the "pool" structure analyzed in the draft BNL report such that the draft report has any direct and substantive applicability to the Diablo Canyon facility. Based on the above, the Sierra Club's motion concludes that the failure to consider the possibility of catastrophic cladding fires at Diablo Canyon whose risk is comparable or greater than core melt accidents would be in clear violation of existing law. Motion at 6. In response to this proposed contention the Staff in its Answer on July 10, 1987 advised:

But the predicate for the admission of such contention is the establishment, by the Sierra Club, of a "credible" scenario, the consequences of which would be radiological releases in excess of the guideline values of Part 100. The credibility of the scenario hypothesized in the draft BNL report in the context of the proposed Diablo Canyon rerack amendment, or for that matter, its applicability to any particular facility, is, however, explicitly discounted by the draft report itself through its numerous caveats. See discussion above at 11-12. Thus, simple reliance on the document for that proposition, as obviously was all that was done by the Sierra Club in its Motion, is insufficient to provide the requisite basis for its proposed contention.

Answer at 12.

Finally, with regard to the Sierra Club's motion for the preparation of an EIS, the Staff noted...

As a general matter, an EIS is not required unless it is found that the environmental impacts associated with the Licensee's proposed reracking may be significant. See, Staff Ex. 2. That the previously issued Environmental Assessment (EA), Staff Ex. 2, did not consider the draft BNL report should come as no particular surprise in that the draft report was not published until almost nine months after the EA was issued. The Staff nonetheless intends to give due consideration to the draft report and will supplement its EA to the extent necessary to assure compliance with NEPA and the Commission's regulations before any license amendment is issued by the Staff in this proceeding.

Answer at 8-9. fn.5

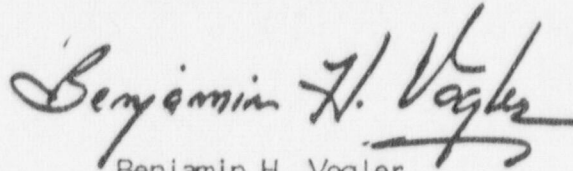
B. The Appeal Board's Decision in Vermont Yankee, ALAB-869

The Appeal Board in its Vermont Yankee Decision rejected the Licensing Board's admission of a contention that broadly asserted that the NRC had not complied with the National Environmental Policy Act (NEPA) and its own regulations. The contention in Vermont Yankee postulated an accident based upon a hypothesized failure of the spent fuel pool scenario involving a chain of unlikely events for which no basis was provided. The Licensing Board construed the proposed contention as postulating a situation in which consequences and risks would be greater than those previously evaluated and this was sufficient to constitute a "major federal action" requiring the preparation of an Environmental Impact Statement.^{5/} As noted, the Appeal Board rejected the Licensing Board's admission of this proposed contention and the Licensing Board's interpretation of NEPA and the Commission's regulations. In doing so, the Appeal Board supported the Staff position in Vermont Yankee that the proposed contention must be rejected because it is premised on a comparative assessment of risks involving spent fuel pools for a remote chain of unlikely events. The Appeal Board cited San Luis Obispo Mothers for Peace v. NRC, 751 F.2d. 1287, 1301, (D.C. Cir. 1984), aff'd en banc, 789 F.2d. 26 (1986), cert. denied, ___ U.S. ___ 107 S. Ct. 330 (1986), for its holding that NEPA does not require NRC consideration of severe, beyond design-basis accidents because they are

^{5/} Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station) LBP-87-17, 25 NRC ___ (May 26, 1987) (Slip op. at 44).

characterizations of the generic conclusions of the draft BNL report. As such, the Sierra Club's proposed contention is based on a assessment of risks involving spent fuel pools for a chain of unlikely events for which no nexus to Diablo Canyon is provided. In the absence of a basis for arguing that such a chain of events is other than remote and speculative, such events would properly be beyond the design basis and, consistent with ALAB-869, would not require an EIS. In that regard the proposed contention in this case is similar to the contention rejected by the Appeal Board in ALAB-869. Therefore, Staff is of the view that ALAB-869 directly supports the position taken by the Staff in this proceeding and submits that the Sierra Club should not be permitted to use a remote and speculative beyond design-basis accident scenario to "bootstrap" their way to an admissible contention that asserts an EIS is required to examine the environmental risks of such an accident where an EIS is not otherwise required. See, ALAB-869 at 29.

Respectfully submitted,

A handwritten signature in cursive script, reading "Benjamin H. Vogler". The signature is written in dark ink and is positioned above the printed name.

Benjamin H. Vogler
Senior Supervisory Trial Attorney

Dated at Bethesda, Maryland
this 13th day of August, 1987

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COMPANY) 50-323 OLA
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(Diablo Canyon Nuclear Power Plant) (Spent Fuel Pool)
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CERTIFICATE OF SERVICE

I hereby certify that copies of "RESPONSE OF THE NRC STAFF TO THE LICENSING BOARD'S ORDER OF JULY 31, 1987 [DIRECTING THE PARTIES TO FILE COMMENTS ON THE APPLICABILITY OF THE APPEAL BOARD'S DECISION IN VERMONT YANKEE NUCLEAR POWER CORPORATION, ALAB-869, TO THE PROPOSED CONTENTIONS AT ISSUE IN THIS MATTER]" 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, this 13th day of August, 1987:

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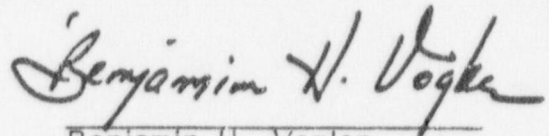
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