

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

3/27/78

In the Matter of	)	
	)	
PUBLIC SERVICE ELECTRIC & GAS	)	Docket No. 50-272
COMPANY, et al.	)	
	)	
(Salem Nuclear Generating	)	
Station, Unit 1)	)	

LICENSEE'S ANSWER TO  
PETITION FOR LEAVE TO INTERVENE  
OF ELEANOR G. COLEMAN AND ALFRED C. COLEMAN

On January 13, 1978, the Nuclear Regulatory Commission ("NRC" or "Commission") published in the Federal Register (43 Fed. Reg. 5443) a notice of "Proposed Issuance of Amendment to Facility Operating License" to permit revision of the technical specifications for the Salem Nuclear Generating Station Unit 1 to allow an increase in fuel storage capacity in the spent fuel pool. This notice permitted any person whose interest might be affected by the proceeding to file a request for a hearing in the form of a petition for leave to intervene, with respect to the issuance of the amendment to the subject operating license.

On March 20, 1978, counsel for Licensee, Public Service Electric & Gas Company, et al., received from the NRC's Office of the Secretary, Docketing and Service Section, copies of a letter from Eleanor G. Coleman and Alfred C.

Coleman, as well as two Mailgrams to the Secretary of the NRC, a "Petition to U.S. Nuclear Regulatory Commission to Enjoin this Proceeding," and a "Petition to the U.S. NRC for Leave to Intervene to Hold a Public Hearing in the County of Salem, New Jersey, City of Salem" ("Petition").<sup>1/</sup> As discussed below, Petitioners have failed to set forth their interest in this proceeding and have not stated any contentions which may be considered under the Commission's Rules of Practice. Therefore, their petition should be denied. Moreover, no general right to amend the submitted contentions should be given and the request that "[t]he decision on this application should be set aside until the final disposition of pending Docket Number RM 50-3 ... is made" should be denied.

#### INTEREST

Petitioners have completely failed to address the interest requirements of 10 C.F.R. §2.714(a). They have not demonstrated, with particularity, the facts pertaining to their interest and how that interest would be affected by the outcome of this particular limited proceeding. This showing is particularly important in this case where the

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<sup>1/</sup> On March 23, 1978, a copy was received in our offices. The delay can be attributed to an incorrect address appearing in the Federal Register which had been previously brought to the attention of the Docketing and Service Section.

requested action is very limited. An interest which would suffice for a construction permit or operating license proceeding may very well not fulfill the interest requirements for this proceeding.<sup>2/</sup>

Having failed to state the specific interest of the Petitioners and how that interest might be affected by the granting of permission to increase the number of fuel elements that can be stored in the Salem Unit 1 fuel pool, the Petition should be denied.

#### CONTENTIONS

Petitioners list 20 "contentions" in their Petition. These "contentions" constitute unparticularized assertions that fail to meet the specificity requirements of 10 C.F.R. §2.714. While technical terms are bandied about in certain of the "contentions," there is no indication that Petitioners comprehend these terms or can utilize them in their generally accepted usage. Furthermore, no attempt is made to relate these terms or the very general assertions to the particular nuclear facility at issue.

Some "contentions" attempt to raise matters far afield of the requested change which would permit additional fuel

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<sup>2/</sup> Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), LBP-75-22, 1 NRC 451, 454-5 (1975).

elements to be stored onsite. Petitioners have a fundamental misunderstanding of the purpose of this proceeding which permeates their "contentions." The requested action only involves Salem Unit 1 and no other facility and contentions must be confined to matters related to the facility at issue.

Moreover, this Atomic Safety and Licensing Board cannot consider issues beyond the scope of the Notice. It could not reconsider the initial licensing action on Salem Unit 1 or any other facility. Therefore, as discussed below, many of the "contentions" fall completely outside the scope of this proceeding and must be denied. Since many of the paragraphs are repetitious or may be conveniently addressed as a group, they will be addressed together.

Paragraph 1 asserts that increasing the number of spent fuel rods stored "presents an unreasonable risk of radiation release and contamination of the surrounding area." Paragraph 4 also makes the same recitation and attributes this to "lack of extended experience."<sup>3/</sup> No further factual basis is given and the two paragraphs fail to present valid contentions for want of specificity.

Paragraph 2 is another "shotgun contention" merely listing areas of usual Staff site review at the construction

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<sup>3/</sup> Paragraph 4 may be read as implying that foreign fuel may be stored at Salem Unit 1. There is no basis for this statement.

permit stage and asserting there are "discrepancies" without any further specification. As previously discussed, the proposed action merely involves an increase in the number of fuel racks in the existing storage pool. There is no basis for consideration of this "contention."

Paragraph 3 asserts that there are some unnamed and unspecified "unresolved generic and safety issues" contained in NUREG-0410. By Petitioners own admission, they cannot assert that there are, in fact, any such safety issues and have not shown that they have any application to the subject facility.<sup>4/</sup> Even were there to be generic questions, Petitioners have not shown its applicability to Salem Unit 1. Not having shown such a nexus, this contention must be denied.<sup>5/</sup>

Paragraph 5 states that "increased density ... has yet to be tested for additional heat load and ultimate effect on inventory and racks." It is not possible to discern what Petitioners mean by this statement, nor is any reference given to the Licensee's technical submittals. This contention must be denied for want of specificity.

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<sup>4/</sup> Denial of such contention in these circumstances is mandated by Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 773 (1970).

<sup>5/</sup> Id. An examination of NUREG-0410, "Category A Technical Activity No. A-28," at pp. 273-89, does not reveal any unresolved technical problems, merely an effort to standardize the NRC Staff review of requests for increased spent fuel storage.

In Paragraph 6, Petitioners contend "there is no assurance of commercial reprocessing, or off-site interim or permanent repository."<sup>6/</sup> Paragraph 8 asserts "the applicant

must demonstrate access to a 'safe and final' method of storing high level radioactive waste." Paragraph 19 states that "[a]pproval of the subject application will not force those responsible to develop acceptable disposal ...."

Petitioners misunderstand the purpose of the requested NRC approval. The contemplated Commission action does not involve storage beyond the duration of the operating license for the Salem Nuclear Power Station, Unit 1. Any such request would be the subject of further licensing action.

This request does not involve long-term storage of nuclear waste in salt mines or at any other location. In a Decision in Prairie Island and Vermont Yankee proceedings,<sup>7/</sup> the NRC's Atomic Safety and Licensing Appeal Board held that:

We accordingly hold that, in the evaluation of a proposed expansion of the capacity of a spent fuel pool, neither the staff nor the Licensing Board need concern itself with the matter of the ultimate disposal of the spent fuel, i.e., with the possibility that

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<sup>6/</sup> They also contend that a separate license is required in that the four fuel storage pools constitute a "waste repository." The Salem Unit 1 Facility Operating License, DPR-70, clearly permits possession of the spent fuel (see Paragraph 2.B.(6)) and no separate license is required.

<sup>7/</sup> Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC \_\_\_\_\_, Slip op. at 18 (January 30, 1978).

the pool will become an indefinite or permanent repository for its contents. This being so, the limitations placed by the Boards below upon the scope of the inquiry here were proper and the intervenors' attack upon these limitations must be rejected.

This holding is also dispositive of Petitioner's assertion that handling, storage, and reprocessing of radioactive wastes must be considered.<sup>8/</sup> The question of the environmental impact of the fuel cycle is also not a question to be raised here. In Public Service Electric & Gas Company (Salem Nuclear Generating Station, Units 1 and 2), ALAB-426, 6 NRC 206, 209 (1977), the Appeal Board found that "[o]n the basis of the interim rule ... - an analysis which is accepted by all members of the Appeal Board - we conclude that the balance for none of those facilities [which included Salem Unit 1] is tipped by the placement of fuel cycle environmental impacts on the scale [footnote omitted]."

Paragraph 7 contends "that for the subject storage facility plus 3 other such storage facilities in the same vicinity [sic], applicant must prove beyond a reasonable doubt their ability to handle channeled and unchanneled fuel

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<sup>8/</sup> See also the Commission's notice in the Federal Register (42 Fed. Reg. 34391, July 5, 1977) denying a petition for rulemaking which would have required it to refrain from granting any operating licenses until a definitive safety finding on fuel storage is made, cited in Prairie Island, Slip op. at 14-18.

and fuel with burnable poison rods inserted in the assemblies."<sup>9/</sup> Paragraph 9 relates to certain hypothesized events leading to "emergency situations." Neither of these paragraphs provide further specificity nor show how they are directly and specifically related to Salem Unit 1 and they should be denied as contentions.

Paragraphs 7, 9, 10, 11, 12, 13, and 16 take the position the NRC must expand its review to include reexamination of the other three spent fuel pools on Artificial Island. No basis is given for such assertion. Petitioner has not demonstrated that there is any interaction among the spent storage pools and that the proposal to increase the size of the Salem Unit 1 pool is not entirely independent.<sup>10/</sup> Thus, to the extent that Petitioners would require reconsideration of the review already conducted of the other fuel pools, or require special consideration of the increase in size of the Salem Unit 1 pool merely because of the existence of these other facilities, the contentions should be denied.

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<sup>9/</sup> Since the application is for an increase in storage, these questions should have been raised previously, inasmuch as the present Facility Operating License gives authority to handle and store fuel. There is no hint as to why the procedures are inadequate because additional fuel is stored.

<sup>10/</sup> Paragraph 11 alleges that visual inspection is not sufficient, while Paragraph 12 states that "detailed systematic examinations have not been conducted." These "contentions" also fail for want of specificity.



One further note needs to be made with regard to Paragraph 10. The fact that the NRC Staff has not completed its Safety Evaluation Report or environmental evaluation does not excuse the requirement for an intervenor to set forth definitive contentions at the outset.<sup>11/</sup>

In Paragraph 14, Petitioners "contend that the Salem I storage facility structure is not constructed to withstand large aircraft accidents (i.e., 747) ...." It must again be emphasized<sup>12/</sup> that the design of the fuel storage facility was fully examined at the operating license stage (See S.A.R. §5.6 and Safety Evaluation of the Salem Nuclear Generating Station, Units 1 and 2, dated October 11, 1974, at page 2-6. The Staff concluded that "the Salem facility need not be designed or operated with special provisions to protect the facility against the effects of an aircraft crash." No significant new information is given by Petitioners as to why that evaluation need again be examined. Moreover, the design of the fuel storage building is unchanged and not at issue here. This "contention" should be denied.

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<sup>11/</sup> B.P.I. v. A.E.C., 502 F.2d 424 (D.C. Cir. 1974).

<sup>12/</sup> See discussion at pp. 3-4, supra.

Paragraphs 15 and 20 deal with general allegations that "the applicant has not adequately assessed the consequences of spent fuel rods reaching "criticality" or "the spent fuel rods coming in contact with one another." There is no supporting basis given for these assertions nor any mechanism even postulated by Petitioner for these occurrences. No reference is made to Licensee's technical submittal in support of its application. These contentions should be denied.

Contention 16 relates to an assertion that emergency planning is somehow deficient. No relationship between this "contention" and the proposed action, i.e., increasing the number of fuel elements stored is given. Time for consideration of emergency planning for the facility was prior to the issuance of an operating license. This "contention" should be denied.

In Paragraph 17, Petitioners allege that "since citizens are unable to obtain insurance coverage for nuclear accidents and/or occurrences at the present time, this facility (proposed addition) as well as previously licensed facilities continue to pose unfair threats to our health and safety." This is an attack on the Price-Anderson insurance provisions of the Atomic Energy Act. Such challenges have, in the past, been

denied by licensing boards in other proceedings.<sup>13/</sup> This "contention" is totally unrelated to the limited action requested and should be denied.

Contention 18 seemingly alleges that water from the spent fuel pool will be utilized as a backup source of water for the emergency core cooling system. No source for this assertion, which is entirely without factual basis, is given and it should be denied as a contention.

REQUEST FOR LEAVE TO FURTHER AMEND THE PETITION

With regard to the general request of the Petitioners to amend their Petition,<sup>14/</sup> the Commission's Rules require the submission of firm contentions at the outset. Prehearing procedures have, inter alia, the objective of refining, clarifying, and narrowing the original contentions, but the petitioner must advance firm contentions at the outset. No reservation of a general right to amend the petition at a later time is permitted. In Florida Power & Electric Company (Turkey Point Units Nos. 3 and 4), 4 AEC 787, 788-9, the

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<sup>13/</sup> See, for example, Southern California Edison Company (San Onofre Nuclear Generating Station, Units 2 and 3), "Memorandum and Order" dated January 27, 1978, at pp. 15-16.

<sup>14/</sup> Petition, Paragraph IX, at 3.

Commission, in ruling on a petition for leave to intervene, stated:

We also deny petitioner's general request to amend or supplement his petition in the event it is deficient. Our rules call for dismissal of untimely intervention petitions except where good cause is shown."

Thus, no party seeking intervention may reserve the general <sup>15/</sup> right to file new contentions at some later point in time.

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<sup>15/</sup> It is well established that leave to file new contentions out of time or to amend a petition for intervention will be granted only where a petitioner shows that substantial good cause exists for their belated assertion and where such amendment will assist the Board in resolving issues before it without undue delay. Thus, as the Commission pointed out in Wisconsin Electric Power Company (Koshkonong Nuclear Plant, Units 1 and 2), CLI-74-25, 8 AEC 928, 929 (1974), an intervenor is not precluded from adding to its original contentions "should an unforeseen issue present itself further on in the proceedings." However, where the matters sought to be raised by contentions filed out of time could have been raised earlier and "a substantial showing of good cause for their being filed out of time" has not been made, a motion for the addition of new contentions should be denied.\*

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\* Public Service Electric & Gas Co.  
(Atlantic Generating Station, Units  
1 and 2), "Rulings on Motions" (ASLB,  
May 25, 1976 (unpublished) Slip op. at 6.)

REQUEST TO STAY CONSIDERATION

The Petitioners ask "[t]he decision on this application be set aside until the final disposition of pending Docket Number 50-3 concerning nuclear waste (including spent fuel) be made."<sup>16/</sup> Petitioners have failed to address the criteria for a stay contained in 10 C.F.R. §2.788 or make any showing whatsoever that a stay or any delay is warranted.<sup>17/</sup> They also failed to show any connection between the pending application to increase the fuel storage capacity and RM-50-3. The question of the application of RM-50-3 to the Salem facility has already been disposed of. See ALAB-426, p. 7, supra.

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16/ While the word "enjoin" is used in the title of the pleading, there is no indication that Petitioners appreciate the implications of the remedy they request.

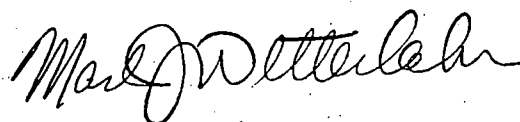
17/ The Petitioners have not made any showing that it is likely to prevail on the merits, or that the irreparable injury would be should the Board consider the issuance of the requested amendment. The granting of a stay would, of course, harm the Licensee and its customers and increase the exposure of the plant workers should construction have to be delayed until after spent fuel was first loaded into the pool.

CONCLUSION

For the foregoing reasons, the Petition should be denied, and the request for leave to further amend the petition and the motion to enjoin should also be denied.

Respectfully submitted,

CONNER, MOORE & CORBER



Mark J. Wetterhahn  
Counsel for the Licensee,  
Public Service Electric  
& Gas Company

March 27, 1978

OF COUNSEL:

Richard Fryling, Jr., Esq.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

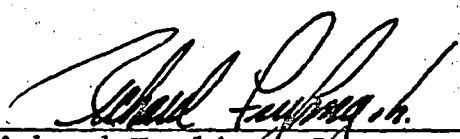
In the Matter of )  
 )  
PUBLIC SERVICE ELECTRIC )  
AND GAS COMPANY )  
 )  
(Salem Nuclear Generating )  
Station, Units 1 and 2) )

Docket No. 50-272

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the captioned matter. In accordance with §2.713, 10 CFR Part 2, the following information is provided:

Name	- Richard Fryling, Jr.
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Telephone Number	- Area Code 201-430-6468
Admission	- The Supreme Court of the State of New Jersey  United States Supreme Court
Name of Party	- Public Service Electric and Gas Company

  
Richard Fryling, Jr.  
Counsel for Public Service  
Electric and Gas Company

Dated at Newark, New Jersey

this 23rd day of March, 1978.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )

PUBLIC SERVICE ELECTRIC & GAS )  
COMPANY, et al. )

(Salem Nuclear Generating )  
Station, Unit 1) )

Docket No. 50-272

CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Answer to Petition for Leave to Intervene of Eleanor G. Coleman and Alfred C. Coleman," dated March 27, 1978, and "Notice of Appearance" of Richard Fryling, Jr., dated March 23, 1978, in the captioned matter, have been served upon the following this 27th day of March, 1978:

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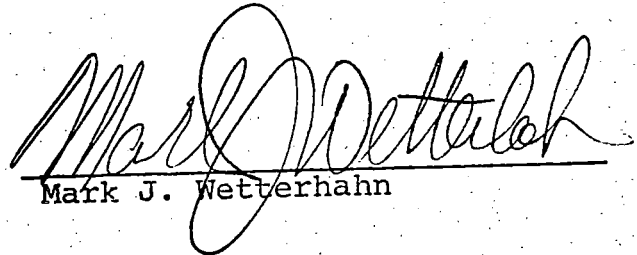
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