

12/11/78

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
PUBLIC SERVICE ELECTRIC & GAS)	Docket No. 50-272
COMPANY, et al.)	(Proposed Issuance of
)	Amendment to Facility
(Salem Nuclear Generating)	Operating License
Station, Unit 1))	No. DPR-70)

LICENSEE'S OBJECTIONS TO CERTAIN OF
MR. AND MRS. ALFRED C. COLEMAN, JR.'S'
FIRST SET OF INTERROGATORIES TO THE LICENSEE

On November 21, 1978, Mr. and Mrs. Alfred C. Coleman, intervenors in the captioned proceeding (hereinafter "Colemans"), propounded a set of interrogatories entitled "Intervenors' First Set of Interrogatories to the Licensee." For the reasons stated hereinafter, Licensee objects to interrogatories 18, 18(a), 18(b), 19, 19(a), 19(b), 19(c), 20, 21 and 21(a) and, in part, to interrogatories 13 and 17. Licensee further moves, pursuant to 10 C.F.R. §2.740(c), for a protective order that the objectionable discovery not be had. ^{1/}

In addition, Licensee's response to interrogatory 16(a) contains information relating to a Boral-stainless steel corrosion program which is proprietary to the supplier of

^{1/} While one Licensing Board has recently recognized that "[n]othing in the NRC discovery rules would require a party to apply for an unnecessary protective order as a condition precedent to making an objection to, say a totally irrelevant interrogatory." Northern States Power Company (Tyrone Energy Park, Unit 1), Docket No. 50-484, "Memorandum and Order Ruling on Motions to Compel Discovery" (November 17, 1978). Slip Op. 3. Licensee chooses to err on the side of caution in so seeking herein.

the new spent fuel racks, Exxon Nuclear Company, Inc. ("Exxon"). Licensee will shortly apply to the NRC on behalf of Exxon that the subject report be withheld from public disclosure pursuant to the provisions of 10 C.F.R. §2.790. Licensee will make the subject document available to the Public Advocate of New Jersey ("Public Advocate"), counsel for the Colemans, and to the Public Advocate's consultant under a suitable protective order. Licensee has submitted a form of protective order (attached hereto as Appendix A), patterned after previous protective orders issued by other licensing boards, to the Public Advocate and counsel to the NRC Staff. Both indicated no objection to its form. Therefore, pursuant to 10 C.F.R. §2.740(c), Licensee moves that the Board issue a protective order with regard to the subject document substantially in the form of Appendix A, hereto.

Under Nuclear Regulatory Commission regulations and precedents, discovery is limited to matters in controversy as admitted by the Atomic Safety and Licensing Board ("Board").^{2/} The proffered interrogatories are clearly beyond the scope of admitted contentions and are not reasonably calculated to lead to the discovery of admissible evidence. For the convenience of the Board, a copy of the admitted contentions is attached as Appendix B.

^{2/} 10 C.F.R. §2.740(b)(1); Allied General Nuclear Services (Barnwell Fuel Receiving and Storage Station), LBP-77-13, 5 NRC 489 (1977), Public Service Company of Oklahoma (Black Fox, Units 1 and 2), Docket Nos. STN 50-556 and STN 50-557, "Memorandum and Order Regarding Interrogatory Discovery" (March 22, 1977), Slip Op. at 4; Puget Sound Power and Light Company (Skagit Nuclear Power Project, Units 1 and 2), Docket Nos. STN 50-522 and STN 50-523, "Order Denying Motion for Discovery" (November 24, 1978).

Interrogatory 13, in part, requests information on "how the consequences of an accident would be affected by acts of sabotage." No contention pertaining to this subject has been admitted as an issue in this proceeding. In fact, this Board specifically rejected a contention which would have raised the issue of sabotage as it relates to the spent fuel pool.^{3/} Therefore the second part of Interrogatory 13 is objectionable.

To the extent Interrogatory 17 requests information on Licensee's "contingency plans for removal and repair" of the spent fuel rods themselves, it is beyond the scope of the contentions admitted as issues in this proceeding. The design of the fuel assemblies is, of course, unaffected by the proposed amendment and may not be considered in this proceeding.

Interrogatories 18, 18(a), 18(b), 19, 19(a), 19(b) and 19(c) request information related to the spent fuel cooling system, including analyses relating to the loss of such system and its capability with regard to a full core discharge. No contention related to these subjects, i.e., the ability of the installed spent fuel pool cooling system to perform its intended function, has been admitted as an issue in this proceeding. Cf. this Board's "Memorandum and Order" dated August 2, 1978, rejecting a contention raised

^{3/} Public Service Electric and Gas Company (Salem Nuclear Generating Station, Unit 1), Docket No. 50-272, "Memorandum and Order" (April 26, 1978) Slip Op. at 14-15.

by intervenor Lower Alloways Creek Township on the Residual Heat Removal System. No response to these interrogatories should be required.

Interrogatory 20 requests information regarding the allowable distortion or damage for fuel storage cells as the result of a fuel handling accident. The Board has not admitted a contention related to this matter and therefore this discovery is beyond the scope of the issues in this proceeding and should not be permitted.

Interrogatory 21 requests the provision of the results of certain seismic analyses. This Board specifically rejected the Coleman's Contention 1 and Part C of Contention 2 which would have required reconsideration of the design of the spent^{4/} fuel pool with respect to, inter alia, seismic events. Intervenor^{4/}s admitted Contention 2, Parts "A" and "B" relate only to "deterioration" of the Boral Plates and the rack structure. This interrogatory is objectionable.

Similarly, Interrogatory 21(a) which requests the results and copies of certain analyses relating to postulated accidents and time history analyses, which are part of the seismic analyses, are beyond the scope of the admitted contentions and are not reasonably calculated to lead to the discovery of admissible evidence and should be denied.

^{4/} Public Service Electric and Gas Company (Salem Nuclear Generating Station, Unit 1), Docket No. 50-272 (May 24, 1978) Slip Op. at 5-6, "Order Following Special Pre-hearing Conference," (unpublished).

For the foregoing reasons, the stated Interrogatories are objectionable and Licensee's motion for a protective order should be granted.

Respectfully submitted,

CONNER, MOORE & CORBER

A handwritten signature in dark ink, appearing to read "Mark J. Wetterhahn". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mark J. Wetterhahn.
Counsel for the Licensee

December 11, 1978

APPENDIX A

In the Matter of)	
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PUBLIC SERVICE ELECTRIC AND GAS)	Docket No. 50-272
COMPANY, et al.)	(Proposed Issuance of
)	Amendment to Facility
(Salem Nuclear Generating)	Operating License
Station, Unit 1))	No. DPR-70)

PROTECTIVE ORDER

Pursuant to §§2.730, 2.740(b) (c) and (f) and 2.790(d) of the Rules of Practice of the Nuclear Regulatory Commission ("NRC"), the Atomic Safety and Licensing Board issues the following order with directions to the Public Service Electric & Gas Company ("PSE&G"), the Public Advocate of the State of New Jersey ("Public Advocate"), and its technical consultant, M.H.B. Technical Associates, to adhere to the letter and the spirit of this Protective Order:

1. PSE&G shall turn over the following documents which have been or will be submitted to the NRC with a request that they be withheld from public disclosure pursuant to 10 C.F.R. §2.790 or materials which PSE&G or its contractor, Exxon Nuclear Company, Incorporated, otherwise asserts to contain proprietary data to the Public Advocate and its consultant, M.H.B. Technical Associates:

a. Fuel Storage Racks Corrosion Program, Boral - Stainless Steel - Proprietary

2. Except to the extent that additional individuals may be named pursuant to the provisions of Section 7 of this Protective Order, all materials turned over pursuant to

Section 1 of this Protective Order ("confidential material") shall, in the case of each recipient party, be received and maintained only by the following named individuals:

a. In the case of the Public Advocate, R. William Potter, Esq. or Sandra T. Ayres, Esq.

b. In the case of M.H.B. Associates, Dale Bridenbaugh or Gregory Minor.

3. (a) Prior to the receipt by any individual of each item of confidential material from PSE&G, he shall execute an undertaking (in the form set forth in the attachment to this Protective Order) to be bound by this Protective Order with respect to such item, and provide such executed undertaking to PSE&G.

(b) Prior to making each item of confidential material available to any other authorized individual (which shall include only an individual named herein associated with the same party), the individual possessing the item shall first obtain and promptly transmit to PSE&G a similar undertaking executed by the recipient.

4. Each individual receiving any confidential material:

(a) will utilize the confidential material, the information therein, and any other information he obtains concerning the subject matter thereof only in connection with his preparation for this NRC proceeding;

(b) will not reproduce the confidential material or any part thereof;

(c) will not discuss or otherwise divulge the confidential material, the information therein or any other information he obtains concerning the subject matter thereof with any other person, except that he may discuss such material or information:

(i) With another individual associated with the same party, if any, authorized to receive such specific item of confidential material under this Protective Order;

(ii) with another individual associated with another party named in Section 1 of this Protective Order, if counsel for such other party represents to him (or counsel to PSE&G acknowledges to him upon request) that such specific item relates to an admitted contention of such other party and that such other individual would be authorized to receive such specific item of confidential material under this Protective Order;

(iii) with representatives of PSE&G, identified by counsel to PSE&G, as authorized to receive such confidential material;

(iv) with representatives of the NRC Staff identified by counsel to the NRC Staff as authorized to receive such confidential material; or

(v) in hearings held before this Board, or in any appeal thereof, at which this Board or an appellate body has authorized such confidential material to be discussed;

(d) will return the confidential material to counsel for PSE&G at the conclusion of his need therefor for

this proceeding, but in no event later than the conclusion of this proceeding and any appeal thereof.

(e) will destroy all notes and data taken with regard to the confidential material no later than the conclusion of this proceeding and any appeal thereof; and

(f) will give written notice to counsel for PSE&G to the maximum extent practicable providing full details and give PSE&G a reasonable time to protect its interests before complying with such a directive by the NRC or a court of competent jurisdiction to reproduce or disclose any of the confidential material, the information therein or any other information he obtains concerning the subject matter thereof in any manner other than provided herein.

5. (a) All administrative proceedings regarding the contents of the confidential materials shall be held in camera, under the conditions set forth in Section 3, hereof, and 10 C.F.R. §2.790(b)(6) and the transcript of such portion of the evidentiary hearing shall be sealed, pending future order of this Board or any appellate body.

(b) If any party desires to use information derived from any confidential material in a pleading in this proceeding, the portion of such pleading that contains such information shall be filed separately and shall be clearly marked PROPRIETARY. It shall be served only upon the Board, counsel for PSE&G, counsel for the NRC Staff, counsel for the party which is involved in such pleading and authorized

to receive the specific confidential material involved, and one copy only upon the Secretary of the Commission, the Atomic Safety and Licensing Board Panel and the Atomic Safety and Licensing Appeal Board Panel.

6. (a) Neither the issuance of this Protective Order nor the execution of an undertaking by any recipient shall constitute a waiver by such recipient of any claim or argument that the received item does not contain proprietary data. Such recipient shall, however, treat such item as constituting confidential material pursuant to this Protective Order until and unless there is a final adjudication by the Board, Commission or any appellate body that the item does not contain proprietary data.

(b) The turning over by PSE&G of any confidential material to any party shall not constitute a waiver by PSE&G of any claim or argument that such material or similar material is not within the scope of such party's admitted contentions in this proceeding or is otherwise not subject to discovery.

7. (a) At the request of any party, PSE&G may, by a written document (a copy of which shall be filed with the Board), agree to list additional individuals who will thereafter be authorized to receive confidential material pursuant to all terms of this Protective Order, subject to any further restriction that may be imposed by this Board.

(b) If PSE&G refuses any request to agree to list any additional individuals, the requesting party may file a motion with this Board to direct such addition, reciting the reasons for desired addition.

8. All written notices or correspondence under this agreement to counsel for PSE&G shall be given by registered or certified mail, return receipt requested, postage prepaid to Mark J. Wetterhahn, Esq., Conner, Moore & Corber, 1747 Pennsylvania Avenue, N.W., Suite 1050, Washington, D.C. 20006 with a copy to Richard Fryling, Jr., Esq., Public Service Electric and Gas Company, 80 Park Place, Newark, New Jersey 07101.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Issued at Bethesda, Maryland

this ____ day of _____, 197__.

In the Matter of)
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PUBLIC SERVICE ELECTRIC & GAS) Docket No. 50-272
COMPANY, et al.) (Proposed Issuance of
) Amendment to Facility
(Salem Nuclear Generating) Operating License
Station, Unit 1) No. DPR-70)

FORM OF UNDERTAKING

I, [insert name of individual], hereby acknowledge the receipt on behalf of [insert name of party] of the following confidential material:

1. Fuel Storage Racks Corrosion Program,

Boral - Stainless Steel

under the terms of the Protective Order dated [insert date], and agree to be bound by the terms of such Protective Order with respect to such material. I also represent that I do not and do not presently intend to represent or seek to represent a competitor of Exxon Nuclear Company, Inc.

[Signature of individual]

[Date of execution]

Coleman's Admitted Contentions

2. The licensee has given inadequate consideration to the occurrence of accidental criticality due to the increased density or compaction of the spent fuel assemblies. Additional consideration of criticality is required due to the following:

- A. deterioration of the neutron absorption material provided by the Boral plates located between the spent fuel bundles;
- B. deterioration of the rack structure leading to failure of the rack and consequent dislodging of spent fuel bundles;

6. The licensee has given inadequate consideration to qualification and testing of Boral material in the environment of protracted association with spent nuclear fuel, in order to validate its continued properties for reactivity control and integrity.

9. The licensee has given inadequate consideration to alternatives to the proposed action. In particular, the licensee has not adequately evaluated alternatives associated with the Nuclear Regulatory Commission adopting the "no action" alternative for licensee's application, which would implicate the following:

- A. expansion of spent fuel storage capacity at reprocessing plants;
- B. licensing of independent spent fuel storage installations;
- C. storage of spent fuel from Salem No. 1 at the storage pools of other reactors;
- D. ordering the generation of spent fuel to be stopped or restricted (leading to the slow-down or termination of nuclear power production until ultimate disposition can be effectuated); and

13. The licensee has failed to give adequate consideration to the cumulative impacts of expanding spent fuel storage at Salem Nuclear Generating Station Unit 1 in association with the recently filed proposed amendment to the application for an operating license at the sister unit, Salem Unit 2. (See Amendment No. 42, Docket No. 50-311, filed April 12, 1978 which proposes modifications of spent fuel storage which the intervenor believes are similar in scope to the Salem Unit 1 application.) For example, the licensee assumes an increase in releases of Kr-85 by a factor of 4.5 -- due to the factor of 4.5 increase in spent fuel (licensee's application, at 10). A similar increase, absent exceptional controls, can be expected at Salem No. 2, resulting in a cumulative increase in Kr-85 emissions by a factor of 9 -- almost a full order of magnitude increase. (If similar spent fuel increases are postulated for the companion units, Hope Creek 1 and 2, now under construction, the cumulative increase could rise by a factor of 18, or almost two full orders of magnitude.)

Lower Alloways Creek Township Admitted Contentions

1. The Licensee has not considered in sufficient detail possible alternatives to the proposed expansion of the spent fuel pool. Specifically, the Licensee has not established that spent fuel cannot be stored at another reactor site. Also while the GESMO proceedings have been terminated, it is not clear that the spent fuel could not by some arrangement with Allied Chemical Corp. be stored at the AGNS Plant in Barnwell, South Carolina. Furthermore, the Licensee has not explored nor exhausted the possibilities for disposing of the spent fuel outside of the U.S.A.

3. While the Licensee has requested increased spent fuel storage capacity at its Salem Unit 1 it has not limited the use of such storage facility to fuel removed from Salem Unit 1. Storage of spent fuel from other units on or off Artificial Island therefore is a possibility and such storage creates many hazards not analyzed by the Licensee in its application. Included among these hazards are those created by unloading spent fuel casks.

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(Salem Nuclear Generating)	
Station, Unit 1))	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Objections to Certain of Mr. and Mrs. Alfred C. Coleman, Jr.s' First Set of Interrogatories to the Licensee," dated December 11, 1978, in the captioned matter, have been served upon the following by deposit in the United States mail this 11th day of December, 1978:

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