

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBefore the Atomic Safety and Licensing Board

In the Matter of)
Louisiana Power & Light Company) Docket 50-382
(Waterford Steam Electric Station,)
Unit 3))

APPLICANT'S RESPONSE TO SAVE OUR WETLANDS, INC.
AND OYSTERSHELL ALLIANCE, INC. CONTENTIONS

In a filing on April 11, 1979, Save Our Wetlands, Inc. and Oystershell Alliance, Inc. (Joint Petitioners), filed a set of contentions with the Atomic Safety and Licensing Board. These contentions were discussed at a Special Prehearing Conference held in New Orleans, Louisiana, on April 26, 1979.

It was agreed at this Conference that counsel for the Applicant, the Joint Petitioners, and the NRC would discuss informally the Joint Petitioners' contentions, and would file a submission with the Board stating the agreements that could be reached among the parties. (Tr. 109-111.) It was further agreed that where there were disagreements on the admissibility of a contention, counsel for each party would file a submission with the Board stating its position on such contentions. (Order of May 10, 1979, at 2-3.) This submission of Applicant is in response to the Board's latter direction, and states Applicant's position on those contentions where agreement could not be reached.

Contention 8 (health and environmental effects from
existing sources of pollution)

In this contention, Joint Petitioners assert that the Applicant has failed to evaluate the health and environmental effects of certain pollutants that are not related to the operation of the Waterford plant. This contention asks that the cumulative effects of such pollutants be evaluated "in combination with low-level radiation introduced into the environment by operation of the Waterford 3 facility."

Applicant objects to the admission of this contention, since it seeks to consider matters that are well beyond the scope of the operating license proceeding for the Waterford facility. There is no requirement in NRC regulations or elsewhere that the Applicant evaluate all environmental effects of ongoing industrial or manufacturing activities near the site of a commercial nuclear power generating facility. Thus, the environmental effects of these continuing activities are not relevant to the Waterford proceeding.

Contention 9 (synergistic effects)

This contention asserts that the Applicant has failed to properly evaluate synergistic effects of low-level radiation in combination with certain other suspected carcinogens.

Applicant objects to the admission of this contention. In this contention, Joint Petitioners assert a failure on the Applicant's part to make an analysis which, under Commission regulations, it has no obligation to make. The issue which Joint Petitioners raise is a generic issue regarding radiation and constitutes a challenge to 10 C.F.R. Part 50, Appendix I, which establishes numerical guides for the release of radioactive effluents based solely on dose levels from such releases.

To the extent that Joint Petitioners believe that there are synergistic effects from pollutants that are peculiar to the Waterford site, they have failed to identify such pollutants specifically and have failed to state the basis for their belief that the postulated synergistic effects actually exist.

Additionally, in its present formulation, this contention is so general and vague that it would be virtually impossible for the Applicant or other parties to meaningfully litigate the matter.

Contentions 10 & 11 (spent fuel storage)

These two contentions assert that the radiation emissions from spent fuel have been underestimated because the amount of spent fuel stored at Waterford, and the amount of processing and handling of spent fuel, have been underestimated.

Applicant objects to the admission of both contentions for several reasons. First, these contentions should not be admitted because they lack any basis, and, in fact, assume certain facts which are known to be incorrect. Joint Petitioners postulate that there has been an underestimation of the amounts of spent fuel held in storage during the useful life of the Waterford facility, and thus an underestimate of radiation emissions. It is not clear whether this storage is at Waterford or elsewhere. Nevertheless, it is well established that after a relatively short initial storage period, there is virtually no radiation emission from spent fuel. Pursuant to Section 2.743(i) of the Commissions's regulations, the Board can take official notice of scientific facts, like this one. Thus, if Joint Petitioners seek to have this contention considered, they would have to present a basis for the view that there are any but the most negligible emissions from spent fuel as a result of extended fuel storage.

Second, since Applicant is providing approximately 15 years of on-site storage capability, there is no basis for an assertion by Joint Petitioners that this storage is underestimated. Joint Petitioners would have to advance a basis for their belief that these figures have been understated.

Third, even if Joint Petitioners' statement were true, it would not constitute a valid contention, since there is no allegation that any regulation of the Commission has been violated. For example, Appendix I to 10 C.F.R. Part 50 sets out certain radioactive release guides. The Waterford plant will comply with these requirements, and Joint Petitioners do not assert that it will fail to do so.

With regard to the issue of processing and handling of spent fuel, Applicant believes that the above points would also apply. Additionally, Applicant does not understand how the amount of spent fuel handling would increase even if spent fuel storage at Waterford were increased, since the frequency of handling is a function of the number of fuel rods discharged from the reactor, and not of the storage capacity at any given site. For the stated reasons, these contentions should not be admitted.

Contention 12 (transportation of spent fuel
and radioactive wastes)

This contention asserts that the Applicant has not evaluated certain risks to human beings caused by the transportation of spent fuel and other radioactive wastes, because there are inadequate details about the specifics of transportation, and because radiation releases from transportation are not accurately evaluated.

Applicant objects to the admission of this contention. The impacts of transportation of spent fuel are covered by Commission regulations. This contention is therefore a challenge to such regulations and should not be admitted. The environmental impacts of transporting radioactive materials in connection with facility operation are specified in 10 C.F.R. Part 51, Table S-4. These impacts include those from transportation accidents as well as the exposure to transportation workers and the general public. Thus, the environmental impacts of transportation are covered by Commission regulation and cannot be litigated in individual proceedings. See, e.g. Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit No. 1), LBP-75-33, 1 NRC 618, 619-20 (1975). Additionally, the first part of this contention, raising the question of adequate details of transportation, is not admissible because there is no requirement that the transportation routes or other details be identified. The Commission's determination on the type and magnitude of transportation impacts, as stated in the materials cited above, does not depend upon the selection of particular transportation routes.

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Contention 13 (long-term spent fuel storage)

This contention asserts that Applicant has failed to evaluate the health, safety, and environmental risks associated with storage of spent fuel at the Waterford site on an extended basis. The contention postulates that such extended storage is necessary because there is presently no program for permanent storage.

Applicant believes that this contention should not be admitted. The Atomic Safety and Licensing Appeal Board has held 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 the pool will become an indefinite or permanent repository for its contents." Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2) and Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Station), ALAB-455, 7 NRC 41 (1978). This Appeal Board decision was based upon a decision of the Commission denying a rulemaking petition of the Natural Resources Defense Council (NRDC) in which the Commission stated its reasonable confidence that methods of safe permanent disposal of high-level wastes can be available when needed. (42 Fed. Reg. 34391 (1977).)

On May 23, 1979 the United States Court of Appeals for the District of Columbia Circuit issued its opinion in the appeal of ALAB-455. In its decision, the Court remanded the cases to the Commission for clarification and further consideration of the basis for the Commission's confidence in the time of availability of high-level waste storage capacity, but the Court declined to set aside or stay the license amendments that permitted spent fuel pool expansion at the Prairie Island and Vermont Yankee nuclear power plants. New England Coalition on Nuclear Pollution v. NRC, No. 78-2032, Minnesota v. NRC, No. 78-1269 (D.C. Cir., May 23, 1979), slip opinion at 3.

It is the Applicant's view that this court decision does not enhance the admissibility of Joint Petitioners' proposed contention. If the Court had intended that long-term spent fuel storage should be litigated in each individual license proceeding, then it presumably would have stayed the Prairie Island and Vermont Yankee license amendments and remanded the cases to the NRC with a direction that contentions on long-term spent fuel storage be litigated. The Court did not take such an action.

Based on the Court's decision, the Commission is required to further consider the long-term spent fuel issue, but is free to choose its own procedure for making this determination, including a rulemaking procedure.

Such consideration will presumably consider "whether it is reasonably probable that an off-site fuel repository will be available when the operating license of the nuclear plant in question expires." Id., concurring opinion at 1.

The Applicant presumes that the Commission will respond to the directive of the Court by proceeding to make the determinations required. If a determination should be made that off-site storage is not reasonably probable in the foreseeable future, then this would be new information which could form the basis for a late contention by Joint Petitioners.

At this time, however, the question of long-term spent fuel storage should not be admitted into this single license proceeding. See also NRDC v. NRC, 582 F.2d 166 (2d Cir. 1978).

Contention 14 (spent fuel pool expansion)

This contention raises the possibility of spent fuel pool expansion at Waterford.

The contention is redundant, in that it substantially duplicates the elements of Contentions 10, 11, and 13. Thus, the reasons for the inadmissibility of those contentions are relevant here. If spent fuel pool enlargement should be necessary, then that will require a separate licensing activity by the NRC. An operating license proceeding is not the proper forum in which to

consider a completely hypothetical spent fuel pool expansion, which, if it occurs, is some 15 years in the future.

Thus, this contention should not be admitted because of its redundancy, lack of basis, and inappropriateness for an operating license proceeding.

Contention 22 (alleged construction defects)

As written, this is an exceedingly vague contention which alleges failure of the Applicant to discover, acknowledge, report, or remedy defects in materials, construction, and workmanship. Specific mention is made of improper concrete construction in the containment vessel.

As offered by Joint Petitioners, the contention is so lacking in basis and specifics that it would be impossible for Applicant to prepare for litigation. If Joint Petitioners are aware of certain specific instances of defects that were undiscovered, unacknowledged, unreported, or unremedied, then they should set forth specifically each instance with the basis for such allegation. This is necessary to meet the requirements of 10 C.F.R. §2.714(b).

Recently, the Atomic Safety and Licensing Appeal Board, in a proceeding regarding the Three Mile Island nuclear plant, was confronted with a situation of

anonymous comments about the practices of commercial airlines in flying over the plant site. That evidentiary situation is similar to the one in this proceeding on this contention, where the construction problems with the Waterford facility have been alleged by individuals who remain unidentified. The Applicant believes that the comment of the Appeal Board in the Three Mile Island proceeding is relevant; the Board said:

"It is to be hoped that we are long past that sorry day in this Nation's history when reliance was placed upon statements assertedly made by anonymous informants unwilling to come forward and be confronted on the accuracy of those statements."

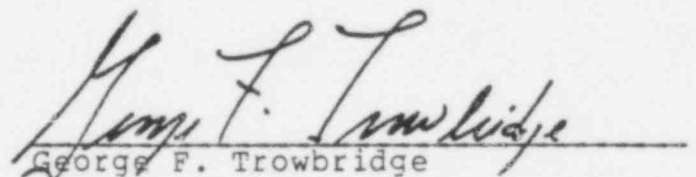
Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 2),
ALAB-525 (1979) at 6.

Conclusion

For the reasons set forth above, Applicant believes that none of the eight contentions discussed should be admitted in the Waterford operating license proceeding.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE



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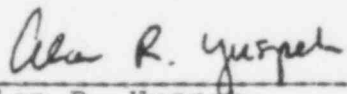
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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing
"Applicant's Response to Save Our Wetlands, Inc. and
Oystershell Alliance, Inc. Contentions" were served by deposit
in the U.S. Mail, first class, postage prepaid, this 1st day of
June, 1979, to all those on the attached Service List.



Alan R. Yuspen

Dated: June 1, 1979

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