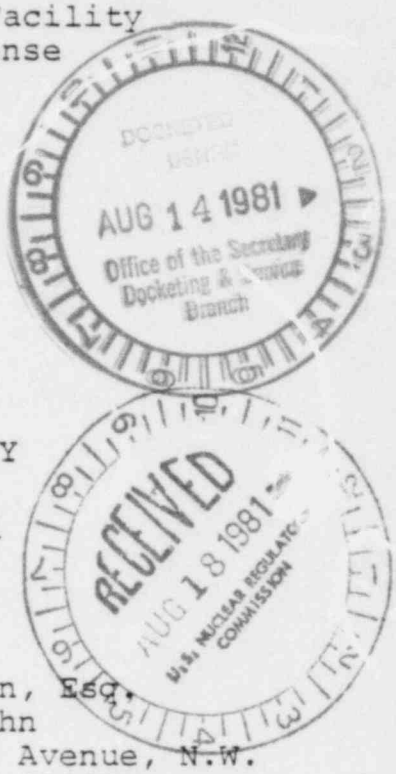
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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



ANSWER OF LICENSEE
PUBLIC SERVICE ELECTRIC AND GAS COMPANY
TO PETITION FOR REVIEW OF ALAB-650
FILED BY LOWER ALLOWAYS CREEK TOWNSHIP

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August 14, 1981

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ANSWER OF LICENSEE PUBLIC SERVICE ELECTRIC AND GAS COMPANY TO PETITION FOR REVIEW OF ALAB-650 FILED BY LOWER ALLOWAYS CREEK TOWNSHIP

Introduction

On August 3, 1981, Lower Alloways Creek Township ("Petitioner") filed a petition for review of ALAB-650 issued on July 17, 1981.[1/] That decision denied all exceptions to an Atomic Safety and Licensing Board ("Licensing Board") Initial Decision which permitted the installation of new, higher capacity spent fuel racks at Salem Nuclear Generating Station, Unit 1 ("Salem Unit 1"). The instant petition would have the Commission reconsider the finding that further analysis was not necessary to more precisely fix the probability of oxidation of spent fuel elements stored longer than four years in the event of an assumed, instantaneous total loss of water from the spent fuel pool and the finding that no environmental impact statement need be prepared in conjunction with the approval of the reracking.

1/ Citations will be as follows: Appeal Board Decision: ALAB-650 at ___; Licensing Board Initial Decision: LBP-80-27, 12 NRC 435 (1980); Intervenor Township of Lower Alloway [sic] Creek's Petition in Support of the Decision and Action of the Atomic Safety and Licensing Appeal Board (10 C.F.R. §2.786): Br. Pet. at ___.

Both of these arguments were considered in great detail by the Licensing Board and, again, by the Appeal Board; neither found any merit in either position advanced by Petitioner.

On November 18, 1977, Public Service Electric and Gas Company ("Licensee") applied to increase the storage capacity of the Salem Unit 1 spent fuel pool from 264 to 1170 spent fuel assemblies. The NRC Staff performed both a thorough safety evaluation and environmental analysis of the proposed action and issued a favorable Safety Evaluation and Environmental Impact Assessment. The Licensing Board, after hearing evidence on the contested issues and on its own questions, concluded that "the additional storage can be accomplished without endangering the health or safety of the public," and authorized the issuance of the requested license amendment.[2/] After full consideration of the briefs on appeal, the record, the Licensing Board's decision and after hearing oral argument, the Appeal Board affirmed.[3/]

The petition raises no matter of fact, law or policy which, when viewed against the criteria of 10 C.F.R. §2.786(b)(4) for Nuclear Regulatory Commission review of Appeal Board decisions, warrants Commission consideration.[4/]

2/ LBP-80-27, 12 NRC at 435, 436, 458.

3/ ALAB-650 at 2, 48.

4/ Pursuant to 10 C.F.R. §2.786(b)(4)(iii), the myriad deficiencies in Petitioner's brief below would also bar the instant request for Commission intervention. See ALAB-650, slip op. at 11 wherein the Appeal Board stated:

(Footnote 4/ continued on next page)

Petitioner has utterly failed to demonstrate that this proceeding has unique issues associated with it which distinguish it from the many similar approvals for spent fuel reracking issued over the last several years which the Commission has treated consistently and uniformly. The petition should be denied.

Discussion

I.

As an outgrowth of certain questions related to the Three Mile Island accident, the Licensing Board asked the parties what the difference in consequences would be between a "gross loss of water," which was construed by the Licensing Board to be a total instantaneous loss of cooling water from the spent fuel pool with no specific causal mechanism associated with it, with expanded capacity and such an event at the pool with its original configuration. The Licensing Board satisfied itself that, even assuming such a "gross loss of water," there would not be a great difference between the consequences occasioned by the proposed storage configuration and the consequences occasioned by the original one.[5/]

Petitioner advances arguments identical to those rejected by the Licensing and Appeal Boards and presents no

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4/ (continued)

> As for TOLAC, it has apparently taken the term "brief" literally. Its seven page offering is simply a rehearsal of its four page exceptions. It adds little in the way of coherent argument to facilitate our disposition of this matter.

5/ LBP-80-27, 12 NRC at 455.

specific cogent argument as to why these panels were in error. Petitioner contends that the Licensing Board incorrectly rejected the testimony of a Staff witness that certain further analysis "could predict more precisely whether oxidation could propogate to older fuel and that calculations for such analysis could be performed."[6/] The Appeal Board independently reviewed this aspect of the Licensing Board's decision in great detail and, as fully set forth in its decision, affirmed the Licensing Board's findings. Basing its decision in part on the inability of Petitioner's witness to describe a credible mechanism for propagation of oxidation from newly discharged to older fuel, the low probability of the event to begin with and, considering that even if oxidation were to spread to older fuel, the resulting radioactive releases would be insignificant compared to those from recently discharged fuel,[7/] the Appeal Board affirmed the Licensing Board's action. Thus, rather than raising a legal matter as suggested by Petitioner, the matter of whether further technical analysis was necessary is a question for the finder of fact. Because both the Licensing and Appeal Board found that no further information need be generated, Commission review is barred by 10 C.F.R. §2.786(b)(4)(ii).

Furthermore, while perhaps further analysis could have added further preciseness to calculations Petitioner fails

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6/ Br. Pet. at 3.

7/ ALAB-650 at 29-30.

to enlighten the Commission as to what end such additional precision regarding the probability of the propagation of oxidation to the older fuel elements would have served. Both the Licensing Board and Appeal Board found that the existing record was sufficient to support the findings made by the Licensing Board in approving the spent fuel reracking. The reasons are clearly delineated in their decisions and need not be rehearsed.[8/] Importantly, the Appeal Board did assume that there would be some oxidation of older fuel, and found that radioactive releases from it would not substantially exceed those from fresher spent fuel.[9/] Petitioner points to no testimony or evidence which rebuts this finding. Thus, while perhaps being of academic value, such studies could not affect the ultimate finding made by the boards below.

8/ See ALAB-650 at 26-36. Licensee, in reliance upon an earlier Appeal Board decision in this proceeding, ALAB-588, 11 NRC 533 (1980), submitted testimony discussing the possibility and consequences of a "gross loss of water" incident which did not exceed the design basis for the facility, i.e., was not a "Class 9 accident." The Licensing Board rejected such testimony. While the Licensee supported the factual findings made by the Licensing Board before the Appeal Board, it alternatively argued that the rejection of its testimony and consideration of the instantaneous "gross loss of water" as formulated by the Licensing Board, which was in Licensee's view a Class 9 accident, violated the Commission's Statement of Interim Policy, Nuclear Power Plant Accident Considerations under the National Environmental Policy Act of 1969, 45 Fed. Reg. 40101 (June 13, 1980). The Appeal Board decision never reached Licensee's argument. However, Licensee submits that this remains as a separate and independent reason for rejecting Petitioner's request for further review of this matter.

9/ ALAB-650 at 31-32.

The single NRC decision cited by Petitioner in this section of its brief was clearly distinguished by the Appeal Board.[10] Petitioner shows no error in the Appeal Board's legal analysis.[11] While vaguely complaining about the exclusion of certain testimony filed by it, Petitioner demonstrates no error in the treatment and certainly demonstrates no valid reason for requesting Commission intervention pursuant to 10 C.F.R. §2.786.[12] Petitioner also fails to enlighten the Commission how he was prejudiced by the Licensing Board's action in striking the Licensee's testimony and what issue this raises worthy of Commission review.[13] Petitioner complains of the "heavy burden" placed upon it by the Appeal Board[14] but he fails to demonstrate that this standard was legal error and not in accord with the cited Commission precedents.[15]

In summary, aside from Petitioner's own characterization of this matter as "a serious matter involving public health and safety,"[16] there is simply nothing advanced which would

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10/ Id. at 28-29.

11/ See also ALAB-650 at 36, n.30.

12/ Br. Pet. at 4.

13/ Id. at 4-5.

14/ Id. at 5.

15/ ALAB-650 at 36.

16/ Br. Pet. at 7. In coming to this conclusion, Petitioner would give substantial weight to the testimony of Dr. Webb, its witness, but fails to point to any flaw in the Licensing and Appeal Board analyses which excluded much of the testimony and discounted the remainder. See ALAB-650 at 30, n.23; 32, n.25; 33.

require the Commission to consider whether the Appeal Board and Licensing Board's findings and disposition of this matter should be disturbed. This is particularly true in that no mechanism has been postulated for the "gross loss of water" under consideration and that this is an event of extremely low probability.

II.

Petitioner would have the Commission consider the necessity under the National Environmental Policy Act for the preparation of a generic environmental impact statement, before the Commission could act, to permit reracking of any spent fuel pool, including the one for Salem, Unit 1. The environmental review in this case in complete accord with Commission requirements, instructions and guidance.[17/] Petitioner's arguments are again merely repetitious of its arguments before the Licensing and Appeal Boards,[18/] lack coherent analysis and reasoning, and generally do not rise to the dignity of matters which should be considered by the Commission for review.[19/]

Initially, NUREG-0575 "Final Generic Environmental Impact Statement on Handling and Storage of Spent Light

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17/ E.g., Intent to Prepare Generic Environmental Impact Statement on Handling and Storage of Spent Light Water Power Reactor Fuel, 40 Fed. Reg. 42801 (September 16, 1975).

18/ The question of the need, as a legal matter, of an environmental impact statement in conjunction with any reracking was never raised below and Petitioner is barred from raising it before the Commission.

19/ This is particularly true of Petitioner's opening remark in this section that "[e]ither through intention or inadvertence, the NRC has developed a masterful strategy for avoiding the requirements of NEPA . . . ." Br. Pet. at 7.

Water Power Reactor Fuel" is not a part of the record of this proceeding. The Appeal Board correctly found that the Licensing Board had not relied upon it.[20/] Petitioner apparently does not argue to the contrary. Therefore, any purported error or misstatements are irrelevant to and should not be permitted to be injected in this proceeding. Petitioner had adequate opportunity to comment upon the draft of NUREG-0575;[21/] the Commission was itself satisfied as to the contents of NUREG-0575.[22/] No reason exists to disturb the Commission's findings. The issuance of the license amendment was supported by an Environmental Impact Assessment which was found to be in complete compliance with Commission requirements.[23/] Again, no error is alleged by Petitioner with regard to the EIA.

Despite failing to show that the reracking was a major Federal action significantly affecting the environment, which Petitioner was given a full opportunity to litigate,[24/] the question of whether any alternative to the proposed action was environmentally preferable was considered by both the

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2/ ALAB-650 at 45.

21/ That draft was referred to as NUREG-0404.

22/ 46 Fed. Reg. 14506 (February 27, 1981). The Petitioner's position is particularly confusing because the Commission's notice clearly specified that "[t]his action does not affect any other requirements which may exist to address specific environmental and safety issues for individual licensing actions." Id. at 14507.

23/ LBP-80-27, 12 NRC at 456-57.

24/ ALAB-650 at 39, n.33.

Licensing and Appeal Boards.[25] Both boards rejected Petitioner's position and no purported error has been advanced.

Petitioner argues that the Commission must consider away-from-reactor storage as a "permanent disposal" technique. However, in the very next paragraph, Petitioner recognizes the pendency of the Waste Confidence rulemaking proceeding, as well it must, inasmuch as it is a participant therein.[26] Having established a rulemaking proceeding to deal with this subject and having prohibited consideration in individual proceedings of these issues, it is entirely unnecessary and inappropriate to now consider the matter on review in the context of a single station. Certainly, Petitioner has given no reason to depart from the course established by the Commission.

Petitioner apparently argues that inasmuch as the accident at Three Mile Island was a "Class 9" accident, this must be factored in an impact statement dealing with accident effects on the spent fuel pool.[27] Initially, the Licensing Board fully considered the effects on the Salem Unit 1 spent fuel pool of an accident similar to the one which occured at Three Mile Island, Unit 2.[28] In addition, the instant proceeding was one in which the Commission stated that Class 9

25/ ALAB-650 at 47.

26/ Br. Pet. at 8; See LBP-80-27, 12 NRC at 449-51.

27/ Br. Pet. at 9.

28/ LBP-80-27, 12 NRC at 449-51.

accidents[29] need not be considered. Moreover, as previously discussed, both the Licensing Board and Appeal Board considered the "gross loss of water" and concluded that the difference in consequences between the original pool and the reracked pool were not significant. Finally, the Appeal Board dealt directly with the argument that the "gross loss of water accident" by itself requires preparation of an environmental impact statement, rejecting this on the basis that NEPA does not require consideration of remote and speculative possibilities.[30] This matter does not warrant Commission consideration.

Conclusion

Petitioner has raised no issue which warrants Commission consideration. The petition for review should be denied.

Respectfully submitted,

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August 14, 1981

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29/ See n__, supra.

30/ ALAB-650 at 35, n.29.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Answer of Licensee Public Service Electric and Gas Company to Petition for Review of ALAB-650 filed by Lower Alloways Creek Township," dated August 14, 1981, in the captioned matter, have been served upon the following by deposit in the United States mail this 14th day of August, 1981:

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