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UNITED STATES OF AMERICA ⁸¹ NOV 23 P5:20
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD OF SECRETARY
OF ENERGY
DOCKETING & SERVICE
BRANCH

Before Administrative Judges
Sheldon J. Wolfe, Chairman
Dr. Paul W. Purdom
Frederick J. Shon

In the Matter of)	
)	
PUBLIC SERVICE COMPANY OF)	
OKLAHOMA, ASSOCIATED)	Docket Nos. STN 50-556CP
ELECTRIC COOPERATIVE, INC.)	STN 50-557CP
and)	
WESTERN FARMERS ELECTRIC)	
COOPERATIVE,)	
)	
(Black Fox Station,)	
Units 1 and 2))	

APPLICANTS' RESPONSE TO INTERVENORS'
PROPOSED CONTENTIONS FOR CONTINUED
RADIOLOGICAL AND SAFETY HEARINGS

Public Service Company of Oklahoma ("PSO"),
Associated Electric Cooperative, Inc., and Western Farmers
Electric Cooperative ("Applicants"), by their attorneys,
hereby submit their response to the "Proposed Contentions
For The Continued Radiological and Safety Hearings," dated
November 5, 1981^{1/} submitted by Citizens' Action for Safe
Energy, Lawrence Burrell, and Ilene Younghein ("Intervenors").

^{1/} Applicants are responding by separate pleading to
Intervenors' "Motion to Reopen the Radiological Health
and Safety Hearings" dated November 5, 1981.

For the reasons stated herein, Applicants object to the admission of all of Intervenor's' proposed contentions except 9, 12(e), 13(a), 13(e), 14(g), and the siting aspects of 15.

I. INTRODUCTION

The procedural background of this construction permit proceeding is that the evidentiary record had been closed, but a final initial decision had not been rendered,^{2/} when on March 28, 1979 the accident at Unit 2 of Three Mile Island occurred. The case has been in abeyance since that time. In the interim, on August 19, 1980, the NRC promulgated new emergency planning and preparedness requirements applicable to construction permit applicants,^{3/} and on July 14, 1981, the NRC Staff sent applicants with pending near-term construction permit applications a list of TMI-related licensing requirements based on the proposed revision to 10 C.F.R. Part 50 (section 50.34(e)) and NUREG-0718. The proposed rule was approved by the Commission on August 27, 1981. However, the final form of the rule has not yet been published in the Federal Register, and Applicants understand

2/ A "Partial Initial Decision Authorizing Limited Work Authorization" had been issued on July 24, 1978.

3/ See 10 C.F.R. Part 50, Appendix E, 44 Fed. Reg. 55410 (August 19, 1980).

that it may be revised from its proposed form in some respects.

In September, October, and November of 1981, Applicants submitted Amendments 16, 17 and 18 of their Preliminary Safety Analysis Report. Amendment 16 contains Applicant's Emergency Response Report, which was prepared in accordance with the post-TMI revisions to NRC emergency planning requirements. Except for hydrogen control matters, Amendment 17 contains Applicants' response to the post-TMI requirements applicable to construction permit applicants. Amendment 18 contains Applicants' response to the section of the post-TMI requirements relating to hydrogen control.

In its Order dated October 14, 1981 the Licensing Board adopted, with some modifications, a schedule for further proceedings proposed by Applicants, the State of Oklahoma, and Intervenors, which provided that:

Contentions challenging the sufficiency of the Applicants' Emergency Plan and TMI PSAR Amendments to meet NRC regulations and motions to reopen the hearing record on other issues will be filed by November 5, 1981, which is 30 days after the Applicant filed the TMI Amendments to its PSAR.

Order at 2.

Intervenors filed their proposed contentions on November 5, 1981.^{4/} This is Applicants' response.

II. LEGAL STANDARDS TO BE USED IN EVALUATING THE SUFFICIENCY OF INTERVENORS' CONTENTIONS

The Commission's Rules of Practice provide that a petitioner shall file "a list of the contentions which petitioner seeks to have litigated in the matter, and the bases for each contention set forth with reasonable specificity." 10 C.F.R. § 2.714(b). The Commission has stated, "definition of the matters in controversy is widely recognized as the keystone to the efficient progress of a contested proceeding." 37 Fed. Reg. 15123. In setting forth issues of interest or concern to it, the petitioner "'must be specific as to the focus of the desired hearing' . . . [a]nd contentions . . . serve the purpose of defining the 'concrete issues which are appropriate for adjudication in the proceeding.'" Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-106, 6 AEC 188, 191, affirmed CLI-73-12, 6 AEC 241 (1973), affirmed sub nom., BPI v. Atomic Energy Commission [502 F.2d 424, 425

^{4/} The Licensing Board has granted Intervenors' request for additional time to respond to PSAR Amendment 18 by Order dated November 12, 1981.

(D.C. Cir. 1974)]." Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 768-69 (1977). The primary purpose for requiring that the issues be set forth with adequate specificity and particularity is to provide the applicant/licensee and the NRC Staff with a fair opportunity to know precisely what the issues are and exactly what support Intervenors intend to adduce for its allegations. River Bend, supra at p. 771. As another Licensing Board has recently explained, "'Bases' does not mean evidentiary proof, which is produced at the hearing. But it does contemplate a clear articulation of the theory of the contention, sufficient that the Applicant can make an intelligent response." Commonwealth Edison Company (Quad Cities Station, Units 1 and 2), "Order (Reflecting Actions Taken at Preliminary Conference)." (October 27, 1981) at p. 6.

In this case, the degree of specificity and basis required of Intervenors should be judged by reference to the amount of information Applicants have provided in PSAR Amendments 16 and 17. In most cases, Applicants have submitted a detailed explanation of how compliance will be achieved with emergency planning and TMI-related requirements, and therefore it is not reasonable for Intervenors merely to assert that Applicants have failed to consider

something adequately or that Applicants have failed to provide sufficient information. Such conclusory statements fail to inform Applicants of why the PSAR discussion is inadequate or what specific additional information Intervenor think is necessary. Moreover, it should be remembered that this is a construction permit proceeding in which it is not necessary or customary for Applicants to provide operating license review-level information. Indeed, 10 C.F.R. § 50.34(e) in its proposed form is very explicit in describing the level of information applicants must submit (and the schedule for such submissions) to support issuance of construction permits. Some of Intervenor's contentions, by arguing that further information or analyses are needed before construction permits are issued, would be clearly inconsistent with 10 C.F.R. § 50.34(e), and they would constitute rule challenges which must meet the requirements of 10 C.F.R. § 2.758 to be admissible in this proceeding. Since the final form of 10 C.F.R. § 50.34(e) has yet to be published in the Federal Register, it would be premature to interpose this objection at this time. However, Applicants reserve the right to object on this ground to the various contentions proffered by Intervenor when the final rule is adopted.

Not only must an intervenor raise specific and focused issues in its contentions, such issues must be appropriate for adjudication in the particular proceeding. As the Atomic Safety and Licensing Appeal Board has stated:

The imposition of reasonable limitations on the scope of full trial-type hearings in administrative proceedings is essential. The need for limitations in such hearings is a general one which is not limited to hearings which concern the licensing of nuclear power plants. These limitations do not mean that interested members of the public may not express their concern before other forums which are appropriate. If facts pertaining to the licensing of a particular nuclear power plant are at issue, an adjudicatory proceeding is the right forum. But if someone wants to advance generalizations regarding his particular views of what applicable policies ought to be, a role other than as a party to a trial-type hearing should be chosen.

Duke Power Company (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-128, 6 AEC 399, 401 (1973) (emphasis supplied).

III. SPECIFIC CONTENTIONS

PROPOSED CONTENTION 1: ENVIRONMENTAL QUALIFICATION

The Applicant has not demonstrated that it will be in compliance with NUPEG-0588* and Generic Technical Activity A-24 for existing safety related equipment and equipment added as a result of post-TMI requirements.

Applicants oppose this contention. First, it lacks nexus, basis, and specificity required by 10 C.F.R. § 2.714. As the Appeal Board observed in Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, (1977).

The mere identification of a generic technical matter which is under further study by the staff (such as a TSAR item** or Task Action Plan) does not fulfill this obligation [to supply a legal nexus for the contention], even if the matter has some patent relationship to the category of reactor under review. For as we have seen, the generic study may have little

* (Footnote from original contention) NUREG-0588 Interim Staff Position on Environmental Qualifications of Safety-Related Electrical Equipment, U.S.N.R.C., December 1979.

** (Applicants' Footnote) The TSAR was a compendium of NRC Staff research topics which has now been replaced by the Task Action Plans.

bearing on safety -- e.g., where it concerns the methodology of the staff's review. To establish the requisite nexus between the permit or license application and a TSAR item (or Task Action Plan), it must generally appear both (1) that the undertaken or contemplated project has safety significance insofar as the reactor under review is concerned; and (2) that the fashion in which the application deals with the matter in question is unsatisfactory, that because of the failure to consider a particular item there has been an insufficient assessment of a specified type of risk for the reactor, or that the short-term solution offered in application to a problem under staff study is inadequate. To bring newly issued regulatory guides into play, it would have to be shown, e.g., that the means adopted by the applicant (as reflected in the application) for satisfying a regulatory requirements are either not efficacious or significantly less satisfactory than those recommended in the guide.

6 NRC at 773. (Material in brackets added by Applicants, Appeal Board's footnote omitted.)

In this case, Intervenors have done nothing more than reference a NUREG document and a Task Action Plan, without making any attempt to show how Applicants' approach to environmental qualification of electrical equipment is unsatisfactory. In the PSAR, Applicants have agreed to

follow IEEE-323 (1974) and Reg. Guide 1.89, Rev. 0, November 1974, yet contrary to River Bend, supra, proposed Contention 1 fails to indicate why application of this standard may be inadequate. NUREG-0588, which is entitled, "Interim Staff Position on Environmental Qualifications of Safety-Related Electrical Equipment," was made applicable to operating reactors and near-term operating license applicants until a forthcoming rulemaking on environmental qualification is completed. See Petition for Emergency and Remedial Action, CLI-80-21, 11 NRC 707, 712 (1980). To Applicants' knowledge, however, the interim positions in NUREG-0588 have not been imposed on construction permit applicants.

Second, Contention 1 should be rejected because the environmental qualification of equipment is the subject of proposed rulemaking. NUREG-0588 states:

On May 23, 1980, a Commission Memorandum and Order (CLI-80-21) endorsed the position in the "For Comment" NUREG-0588 as the interim positions that shall be satisfied (in order to verify conformance to General Design Criterion No. 4 in Appendix A of 10 C.F.R. 50) until the 'final' positions are established in rulemaking. The staff is currently developing these positions for rulemaking, and anticipates that the proposed rule (that is, the 'final positions') will be issued for public comment in December 1981.

(Nureg-0588, Rev. 1, Introduction at ix.)

In fact, on November 10, 1981, the Commission met to review alternative proposed rules for environmental qualification of electrical equipment. See SECY-81-603 (dated October 20, 1981). Following additional revisions, a proposed rule will soon be published for comment. Construction permit holders and applicants will, of course, be bound by the results of this rulemaking and the interim positions in NUREG-0588 will be supplanted. In view of the fact that publication of a proposed rule appears imminent, the Licensing Board should follow the Appeal Board's recent directive that,

licensing boards should not
accept in individual license
proceedings contentions
which are (or are about to
become) the subject of
general rulemaking by the
Commission. (Emphasis added.)

Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), ALAB-655, 14 NRC ____ (October 7, 1981), quoting Potomac Electric Power Co. (Douglas Point Station, Units 1 and 2), ALAB218, 8 AEC 79, 85 (1974).

Applicants recognize, of course, that even though Intervenor's have failed to submit contentions meeting the requirements of the Commission's Rules of Practice, this Licensing Board has a duty to inquire whether the NRC

Staff's review of unresolved generic safety problems has been adequate. River Bend, supra, 6 NRC at 774-5.

Applicants have no objection to this sort of review of the environmental qualification issue in Black Fox in the context suggested by the NRC Staff in their November 5, 1981, motion to reopen the hearing record. But there is an important distinction to be drawn between the review of uncontested generic issues mandated by River Bend and the litigation of a properly framed contention. In Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2) ALAB-491, 8 NRC 245 (1978), a case in which the River Bend rationale was extended to operating license proceedings, the Appeal Board indicated the standard of substantive review applicable to River Bend issues:

In view of the limitations imposed by regulations and the fact that our review was necessarily unaided by any of the parties, we have not probed deeply into the substance of the reasons put forth by the staff for allowing operation to go forward. Rather, we have only looked to see whether the generic safety issues have been taken into account in a manner that is at least plausible and that, if proven to be of substance, would be adequate to justify operation. Scrutiny of the substance of particular explanations will have to await a contested proceeding.

North Anna, supra, 8 NRC at 248 f.n. 7.

An understanding of the last sentence in the above quotation is of crucial importance. In view of the fact that both River Bend and North Anna were contested proceedings at the licensing board level, this sentence cannot possibly be read as requiring that a licensing board should address generic safety issues as matters in controversy irrespective of whether there are adequate contentions which raise such issues. Rather, a licensing board is required to scrutinize "the substance of particular explanations" regarding proposed solutions to applicable generic safety issues only where there is a viable, properly pleaded contention challenging the appropriateness of the solution. See, River Bend, supra, 6 NRC at 774, f.n. 26. Intervenors have failed to submit such a valid contention in Black Fox. Therefore, this Licensing Board's examination of environmental qualification should be limited as indicated in North Anna.

PROPOSED CONTENTION 2: POST ACCIDENT MONITORING

The Applicant has not demonstrated that it will meet the requirements of 10 CFR 50.34(e)(2)(xii)* and (xix) and Reg. Guide 1.97 Rev. 2 in the following areas:

- a. The Applicant has not provided sufficient preliminary design information to show that it can provide an on-line monitor capable of continuous sampling of halogens and provide a timely indication of actual releases of radioactive halogens and particulate from all potential accident release points.
- b. The Applicant has failed to provide sufficient preliminary design information with respect to instrumentation for monitoring accident conditions. They have not provided conceptual design information or justification for alternatives to items in Ref. Guide 1.97, Rev. 2 as required by 10 CFR 50.34(e)(2)(xvii) and (x).*

* These references in proposed Contention 2 appear to be typographical errors. Applicants assume Intervenor's mean to refer to subsections 50.34(e)(2)(xvii) and (xix).

- C. The Applicant has not provided sufficient preliminary design information to show how it will meet the environmental qualifications requirements described in Reg. Guide 1.97, Rev. 2, for post-accident monitoring instruments.

Applicants on November 5, 1981, moved to reopen the record with respect to Board Question 13-1, so that the record may reflect Applicants' commitment to follow Reg. Guide 1.97, Rev. 2. In PSAR Amendment 17, Applicants have provided detailed information on post-accident monitoring, including how the commitment to comply with Reg. Guide 1.97, Rev. 2, will be implemented. Proposed Contention 2 amounts to the naked assertion that Applicants have not provided "sufficient preliminary design information" on post-accident monitoring without referring to the specific deficiencies, if any, which they may perceive in Reg. Guide 1.97, Rev. 2, and without alleging any specific inadequacies in the information supplied by Applicant in PSAR Amendment 17. Therefore, this contention should be dismissed for lack of basis and specificity.

For example, subsection (a) of Proposed Contention 2 fails to specify why the detailed system of sample collection, transport, and analysis described at pages 142-143 of PSAR Amendment 17 is inadequate. It is not at all clear

whether Intervenor's challenge is to the technical feasibility of the sampling equipment Applicants will use, or to the proposed sampling mode of operation, or to the location of the proposed equipment such that it will provide a timely indication of actual releases from "all potential accident release points." Applicants should not be forced to guess what problem Intervenor's seek to raise. This same criticism applies to subsection (b).

Subsection (b) also calls on Applicants to provide "conceptual design information or justification for alternatives to items in Reg. Guide 1.97, Rev. 2," but as PSAR Amendment 17 makes clear, no such alternatives have been proposed. Therefore, this assertion has no basis.

Subsection (c) argues that Applicants have not provided sufficient preliminary design information to show how they will meet the environmental qualification requirements of Reg. Guide 1.97, Rev. 2. But the point is that Applicants have committed to meet Reg. Guide 1.97, Rev. 2, and that Regulatory Guide contains within itself and by reference to NUREG-0588* a fairly detailed program for

* By committing to follow Reg. Guide 1.97, Rev. 2, Applicants have also committed to using NUREG-0558 with respect to post-accident monitoring equipment described

accomplishing environmental qualification of post-accident monitoring equipment. Intervenor fail to specify what further information is needed, or any basis supporting the need for this additional information at the construction permit stage.

PROPOSED CONTENTION 3: ECCS MODELS

The Applicant has not adequately demonstrated compliance with 10 CFR 50.34(e)(1)(iii), (v), (viii), and (xi) because it has not fully resolved deficiencies in its computer models for ECCS and Fuel performance as identified in NUREG-0630.

This proposed contention lacks sufficient basis for two reasons. First, no effort is made to explain what the perceived relationship is between NUREG-0630 and the proposed TMI-related requirements referenced in the contention. NUREG-0630, which is a draft report entitled "Cladding Swelling and Rupture Models for LOCA Analysis," suggests that there may be a need to reevaluate all cladding models used for LOCA analyses to assure that licensing analyses are performed in accordance with 10 C.F.R. Part 50,

in Reg. Guide 1.97, Rev. 2. With respect to other equipment, Applicants will follow the rule which results from the permanent environmental qualification rulemaking proceeding.

Appendix K. The four subsections of proposed 10 C.F.R. § 50.34(e)(1) cited by Intervenor require studies of the impact of reactor coolant pump seal damage following a small-break LOCA with loss of offsite power (iii), separation of HPCI and RCIC system imitation levels (v), restart of core spray and LPCI systems on low level (viii) and depressurization methods other than by full actuation of the automatic depressurization system (xi). While all these subsections refer in some fashion to ECCS or LOCA's, it is not at all clear, and Intervenor provide no explanation why the possible ECCS model deficiencies described in NUREG-0630 would have any effect on analyses of these TMI-related topics. Moreover, there has been no showing that the deficiencies referred to in NUREG-0630 are significant in and of themselves. Certainly the NRC has not taken action with respect to licensees' and applicants' ECCS models following the publication of NUREG-0630. In short, it is not sufficient for Intervenor merely to refer to an interim report of a NRC Staff research effort in juxtaposition with certain proposed TMI-related construction permit requirements, without explaining what they have to do with each other or what specific issues Intervenor wish to litigate.

PROPOSED CONTENTION 4: CONTROL ROOM/HUMAN FACTORS

The Applicant has not performed an independent human factors review of the control room design concepts utilized in the proposed Black Fox control room, nor has it applied the evaluation criteria in NUREG-0700.*

Applicants object to Contention 4 for a lack of basis as required by section 2.714. Three examples serve to support this objection. First, the contention criticizes Applicants for not having performed an "independent" human factors review of the control room design. The section of the pending rule covering this subject, § 50.34(e)(2)(iii), however, does not purport to require an applicant to do an independent review. What is mandated by that section is that an applicant provide for NRC review "a control room design that reflects state-of-the-art human factor principles prior to committing to fabrication or revision of fabricated control room panels and layouts." Applicants' response to Section (e)(2)(iii) clearly commits to do just that. Intervenors have not made any showing as to why Applicants should be required to go beyond the provisions of the pending rule and perform an independent review.

* NUREG-0700, "Guidelines for Control Room Design Reviews," September, 1981.

Second, this contention ignores the fact that Section (e)(2)(iii) is a Category 4 requirement, which means that an applicant must provide sufficient information to demonstrate that the required actions will be satisfactorily completed by the operating license stage, and that Applicants have made the necessary commitments to take these action in the future. The thrust of Contention 4, however, is that Applicants have not yet taken certain actions which the proposed rule postpones to the operating license stage. Intervenors failed to provide any insight as to why the operating license deadline is inadequate.

Finally, Applicants have already done or have committed in Amendment 17 of the PSAR to do everything that is required by Section (e)(2)(iii), including the use of a control room evaluation plan which will meet the guidance of NUREG-0700. In the face of these commitments, Intervenors have made only the bare assertion that Applicants' program is not adequate. Clearly, more is required in order to state a valid contention.

For these reasons, Contention 4 should be rejected as lacking in basis.

PROPOSED CONTENTION 5: PLANT SHIELDING

The Applicant has failed to perform adequate radiation and shielding design reviews to assess the need for shielding as required by 10 CFR 50.34(e)(2)(vii). Nor have they demonstrated that the possible design changes are technically feasible and that there exists reasonable assurance that the requirements will be properly implemented.

This proposed contention falls far short of meeting the requirements of the Commission's Rules of Practice. In the first place, proposed 10 CFR § 50.34 (e)(2)(vii) does not, contrary to the assertion in this contention, require applicants to complete radiation and shielding design reviews prior to issuance of a construction permit. All that is required is sufficient information to demonstrate that the required studies will be completed by the operating license stage. Applicants have committed to do such radiation and shielding studies, and provided detailed information on how they will be done, in PSAR Amendment 17. Rather than pointing to any specific aspect of Applicants' discussion and providing a basis for believing it is deficient, as the Rules of Practice require, Intervenor simply ignore the discussion altogether.

The second sentence of this proposed contention argues that Applicants have not demonstrated that "the

possible design changes are technically feasible." Applicants have no idea what "possible design changes" are being referred to. Specific design changes, if any, can not be identified until the radiation and shielding studies are completed, and there is no requirement that this take place prior to issuance of the construction permits. Applicants have stated in PSAR Amendment 17 that the following options are available for dealing with any potential problems:

- a. Move the offending radiation source to a less sensitive location.
- b. Move the target equipment or operator control/work station to a location with an acceptable radiation field.
- c. Place additional shielding around the offending radiation source.
- d. Place local shielding around the target equipment or operator control/work station.
- e. Purchase equipment designed to withstand the newly specified radiation environment.

Intervenors have not attempted to provide any basis suggesting why these options may not be technically feasible or may not be properly implemented.

This proposed contention illustrates why the Commission's requirements of basis and specificity are more

than mere procedural obstacles -- they are essential to the adjudicatory process. If Intervenor have specific problems with Applicants' plans to perform radiation and shielding studies, these problems are certainly not disclosed by proposed Contention 5. The proposed contention does not provide Applicant with a fair opportunity to know precisely what the issues are and what support Intervenor intend to adduce for their allegations. Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 771 (1977). Therefore, Contention 5 should be rejected for lacking sufficient basis as required by section 2.714.

PROPOSED CONTENTION 6: DEGRADED CORE-RELIABILITY ANALYSIS

The Applicant has failed to submit a program plan that demonstrates how it will conduct an adequate site/plant-specific probabilistic risk assessment as required by 10 CFR 50 (e)(1)(i), because they have failed to include accidents more severe than those listed in PSAR Chapter 15; because they have not included an extended Liquid Pathway Study including the effects of the underclay layer on the Liquid Pathway; and because they have not established acceptance criteria for judging the acceptability of the results.

Applicants object to Contention 6 in its entirety because, as explained below, it lacks basis as required by section 2.714. Contention 6 asserts that the Applicants' program plan for a plant/site-specific probabilistic risk assessment ("PRA") is inadequate because the plan (1) does not include a consideration of accidents more severe than those listed in Chapter 15 of the Black Fox Preliminary Safety Analysis Report ("PSAR"), (2) does not include "an extended Liquid Pathway Study (including the effects of the underclay layer on the Liquid Pathway), and (3) does not provide acceptance criteria for judging the acceptability of the PRA. These three criticisms will be addressed seriatim.

The requirement for a PRA is found in section 50.34 (e)(1)(i) of the proposed rule, and it is addressed by Applicants in Amendment 17 of the PSAR, Addendum II, pp. 1-5. Page 2 of Addendum II states that:

The methodology to be used will be similar to that employed in WASH-1400 . . . [t]he initiating events will include LOCA (small, intermediate and large),, loss of offsite power, together with the accidents and transients identified in PSAR Chapter 15 and those applicable accidents [meaning BWR accidents] in WASH-1400.

Table (1)(i)-1 on page 5 indicates that the PRA report will include a Chapter V on "Core Melt Probabilities," including "Dominant Sequences" and "Dominant Cut-Sets."

Chapter 15 sets forth so-called design basis accidents, and core-melt accidents are not included therein. However, this Licensing Board can take official notice of the fact that WASH-1400 core-melt accident scenarios, as indicated in Addendum II above, are "accidents more severe than those listed in Chapter 15." Thus, it is simply not accurate for Intervenors to state otherwise. Intervenors cannot ignore the above-cited information for purposes of framing a contention under section 2.714. If they believe the selection of the various accident scenarios is inadequate in some respect, they must say so and provide a basis therefor. Having failed to provide such information and because the assertion is inaccurate on its face, this part of Contention 6 must be rejected.

The purpose of the PRA is to seek "improvements in the reliability of core and containment heat removal systems" within the reactor. NUREG-0718, Rev. 1 - Licensing Requirements for Pending Applicants for Construction Permits and Manufacturing License, section II.B.8(1), pp. B-4 and B-5. Intervenors assert that "an extended Liquid Pathway Study" is needed. Such a study might be necessary if the

purpose of the PRA was to assess accident consequences. However, as shown by the quotation from NUREG-0718, the purpose is instead to improve the reliability of certain reactor systems. Hence, a liquid pathway study would appear to be irrelevant. Intervenors fail to provide any clue as to why they believe that such a study is needed. Thus, this part of Contention 6 lacks basis, and it should be rejected.

Page 3 of Addendum II states that "Acceptance criteria for the reliability analyses will be established during the initial phase of the [PRA] program." Intervenors apparently believe such acceptance criteria should be established before the program begins. It seems perfectly reasonable to establish a program whereby during Phase I acceptance criteria are established as a part of the overall scoping and "fleshing out" of the PRA plan. Again, Intervenors provide no insight as to why they believe otherwise. Again, this fundamental lack of basis is fatal to the standard of admissibility under section 2.714, and this part of Contention 6 must be rejected.

PROPOSED CONTENTION 7: SAFETY/RELIEF VALVE TESTING

Applicant has failed to comply with 10 CFR 50.34(e)(2)(x) because it has not committed to demonstrate the applicability of the generic valve tests described in the PSAR to the plant-specific valve and piping design of Black Fox or to modify their design on the basis of plant-specific testing. Also, the tests have not been conducted over ATWS conditions and thus are not adequate to assure safety.

Applicants object to Contention 7 in its entirety because Intervenorors have failed to set forth with specificity any bases whatsoever for their assertions. First, as shown in PSAR Amendment 17, Applicants are meeting the requirements of section (e)(2)(x) of the proposed rule through their participation in the BWR Owners' Group, which is conducting the required tests in order to qualify safety/relief valves and piping. The PSAR discussion points out that the safety/relief valves purchased for Black Fox were included in those tests, as well as another type of valve which could be used in Black Fox. Thus, there is no basis for Intervenorors' claim that Applicants have not demonstrated the applicability of the generic, Owners' Group, tests to Black Fox.

Applicants' final objection to Contention 7 relates to Intervenorors' charge that the safety/relief valve

tests are not adequate to assure safety because they were not conducted over ATWS conditions. There is no basis for this contention insofar as it purports to require more than section (e)(2)(x) of the pending rule requires. That section states: "Actual testing under ATWS conditions need not be carried out until subsequent phases of the test program are developed." As Intervenor's have not attempted to demonstrate why tests under ATWS conditions are necessary at this time to assure safety, this part of Contention 7 lacks the specificity and basis demanded by § 2.714(b) and, thus, cannot be admitted.

PROPOSED CONTENTION 8: DETECTION OF INADEQUATE CORE COOLING

Applicant has failed to provide preliminary design information required by 10 CFR 50.34(e)(2)(xviii), at a level consistent with that normally required at the construction permit stage of review with respect to the design of their system for monitoring conditions leading to inadequate core cooling, including in-core thermocouples. Nor have they demonstrated that their design concept is technically feasible and within the state of the art or that there exists reasonable assurance that the requirements will be implemented properly.

Applicants object to Contention 8 in its entirety because it does not attempt to meet the standard articulated

in 10 C.F.R. § 2.714(b), which requires that an intervenor provide "the bases for each contention set forth with reasonable specificity."

Contention 8 pertains to section (2)(xviii), "Identification of and Recovery from Conditions Leading to Inadequate Core Cooling," of the proposed rule concerning post-TMI requirements for construction permit applicants, which will be codified as 10 C.F.R. § 50.34(e). The requirements of section (2)(xviii) are further detailed in NUREG-0718, Rev. 1.

Rather than point to specific faults or inadequacies in Applicants' response to those requirements, however, Intervenors' Contention 8 merely parrots the language of the NUREG-0718 elaboration of section (2)(xviii). That document states:

Applicants shall, to the extent possible, provide preliminary design information at a level consistent with that normally required at the construction permit stage of review. . . . Applicants shall also demonstrate that the design concept is technically feasible and within the state of the art, and that there exists reasonable assurance that the requirements will be implemented properly prior to the issuance of operating licenses.

NUREG-0718, Rev. 1, at B-11.

A comparison of this text with the words of Contention 8 reveals that Intervenorors have done nothing but reiterate the post-TMI requirement relating to detection of inadequate core cooling. Such a reiteration does not constitute a valid contention, which requires that the bases be set forth "with reasonable specificity." Obviously, Intervenorors have set forth no bases for this contention, much less described them with specificity.

Applicants believe that this failing is fatal. After all, it must be remembered that the requirements of § 2.714(b) are not mere legal formalisms. Rather, they are vital to the integrity of the NRC hearing process, for an applicant cannot be expected to litigate and, indeed, bear the burden of proof on, an issue which has not been clearly framed. Because Intervenorors have not made any attempt in Contention 8 to indicate how or why Applicants' design as described in PSAR Amendment 17 is inadequate or does not comport with the requirements of the pending rule, this contention must be rejected.

PROPOSED CONTENTION 9: WATER LEVEL MEASUREMENT

The Applicant has not demonstrated compliance with 10 CFR 50.34(e)(2)(xviii) and the requirement for an unambiguous indication of inadequate core cooling because it relies mainly on several vessel water level measurements which may be misleading because they do not have a common reference level. The Applicant has failed to provide sufficient preliminary design information to show that its design will provide an unambiguous indication of water level under all transient and accident conditions.

Contention 9, like Contention 8, relates to section (2)(xviii) of the proposed rule. Unlike the previous contention, however, this one does state a basis, as Intervenor's assert, that Applicants' proposal is inadequate "because it relies mainly on several vessel water measurements which may be misleading because they do not have a common reference level." Applicants, while disagreeing with the conclusion drawn by Intervenor's, agree that the first sentence of Contention 9 properly sets forth a litigable issue.

The second sentence of Contention 9 is another matter, however. There, Intervenor's contend that:

The Applicant has failed to provide sufficient preliminary design information to show that its design will provide an unambiguous indication of water level under all transient and accident conditions.

It is unclear to Applicants whether this sentence is simply a restatement of the idea expressed in the previous sentence, in which case it can be dismissed as mere verbiage, or whether Intervenor's are attempting to put forth an additional issue concerning water level measurement. If the latter is true, Applicants object to the second half of Contention 9 because it lacks a basis set forth with specificity, as required by 10 C.F.R. § 2.714(b). Although it is obvious that that sentence is addressed generally to Applicants' design for water level indication, it is far from obvious in what particular respect Intervenor's believe that design to be inadequate. Absent further explication, the second sentence of Contention 9 does not present an issue which can be litigated in this proceeding.

PROPOSED CONTENTION 10: DOCUMENTATION OF DEVIATIONS

Applicants object to Contention 10 in its entirety. Contention 10 seeks to place into controversy a question as to "the need to document deviations from current

regulatory practices." This asserted requirement is based on, among other things, Section 110 of Public Law 96-295 (the NRC Authorization Bill for fiscal year 1980).

Section 110 directed the NRC to develop a plan for the systematic safety review of all operating nuclear power plants. The NRC, pursuant to this Congressional directive, developed a plan and published it for comment on October 9, 1980, in the form of a proposed rule. 45 Fed. Reg. 67099 (copy attached as Exhibit A). The proposed rule would extend the plan for a systematic safety review to all applicants for construction permits. A final rule has not yet been approved and issued by the NRC.

Since the subject of Contention 10 is in the throes of rulemaking, it is not appropriate for litigation in an individual licensing proceeding. Potomac Electric Power Co. (Douglas Point Station, Units 1 and 2), ALAB-218, 8 AEC 79 (1974). The Appeal Board stated that "licensing boards should accept in individual license proceedings contentions which are (or are about to become) the subject of general rulemaking by the Commission." Id at 85. This holding was recently affirmed in Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), ALAB-655, 14 NRC _____ (October 7, 1981). Thus, Contention 10 should be rejected.

PROPOSED CONTENTION 11: GENERIC SAFETY ISSUES

Contrary to the principles of the River Bend decision (ALAB-444), the Applicant has failed to include in its PSAR an adequate action plan for BFS with respect to the following unresolved safety issues which the Staff identified as a result of investigations of the TMI-2 accident:*

1. Shutdown Dec ' Heat removal Requirements, Task A-45.
2. Safety Implications of Control Systems, Task A-47.
3. Hydrogen Control Measures and Effects of Hydrogen Burns on Safety Equipment, Task A-48.

Applicants object to Contention 11 in its entirety because it does not set forth an issue which is properly within the scope of this proceeding. The thrust of Contention 11 is that Applicants have not satisfied the requirements laid down by the Atomic Safety and Licensing Appeal Board ("Appeal Board") in Gulf States Utilities Company (River Bend, Units 1 and 2), ALAB-444, 6 NRC 760

* 6 NRC at 775. The NRC Staff has stated that it intends to fulfill this obligation for Black Fox by the submission of Supplement No. 3 to the Safety Evaluation Report, which will discuss both unresolved safety issues and other generic safety concerns. "Motion of NRC Staff to Reopen the Record the the Purpose of Receiving into Evidence a Supplemental Safety Evaluation Report," November 5, 1981.

(1977), in that Applicants have not included in the PSAR an action plan for Black Fox with respect to three specified unresolved safety issues. The simple response to this contention is that River Bend imposes no such requirement upon an Applicant. On the contrary, even the most cursory reading of River Bend reveals that the Appeal Board's words concerning the treatment of unresolved generic safety problems were directed to the NRC Staff. What the Appeal Board did require in River Bend was that the Staff provide the Licensing Board with "a summary description of those generic problems under continuing study which have both relevance to facilities of the type under review and potentially significant public safety implications." 6 NRC 760, 775. No similar duties devolve upon the applicants.

Further, as we have previously pointed out, there is a significant distinction which must be drawn between litigated contentions and the Licensing Board's limited responsibility under River Bend as to uncontested generic issues, to determine whether the Staff's review has been adequate. Applicants agree that this Board must undertake the latter inquiry with respect to these three new Unresolved Safety Issues. But if Intervenors are not satisfied with this limited inquiry and seek to introduce a litigable

contention for the Board to resolve, River Bend makes it clear that they must do more than merely identify the generic technical matters, which is all that has been done here.

PROPOSED CONTENTION 12: CONTAINMENT DESIGN CHANGE

The Applicant has made a substantial structural change to the containment design by adding a concrete wall as backing for the steel containment shell in the area of the annulus surrounding the suppression pool. This change is mentioned in Amendment 17 (pages 1.2-15, 3.8-2, through 3.8-26, and also in Figures 3.8-1a and 3.8-1b). The Applicant has not provided sufficient preliminary design information to show how it will impact the following design factors:

- (a) Thermal transients in the suppression pool and lines during blow-down and LOCA events.
- (b) Heat transfer from the suppression pool.
- (c) Stress levels in the welds and joints of the lining and connected piping.
- (d) Connections with the base mat and shield wall.
- (e) Vibratory motion transmitted to other structural components.

- (f) Ability to perform in-service inspection and leak rate analysis of the suppression pool lines.

Without the foregoing analyses, there is no assurance the present suppression pool and containment design is adequate to protect containment integrity during accidents and LOCA conditions.

Applicants have no objection to subsection (e) of Contention 12. This subsection raises the phenomenon of containment vessel "ringing" which formed the basis for Applicants' decision to add the concrete wall as a backing for the containment vessel. Applicants, of course, contend that the proposed wall is a safety improvement, as will be shown when that issue is litigated on its merits.

Applicants object to subsections (a), (b), (c), (d), and (f), for the following reasons.

Subsection (a) lacks specificity in that the use of the phrase "thermal transients" is ambiguous. As Applicants' previous testimony in this proceeding explained, there are many phenomena which may occur in the suppression pool during blow-down and LOCA events. It is not at all clear which of these phenomena are being referred to in subsection (a). Further, no basis is given for supposing that the thermal effects associated with any of these phenomena may be modified by the presence of the proposed concrete reinforcement outside the suppression pool.

Similarly, subsection (b) provides no basis indicating that heat transfer from the suppression pool may be affected in any significant way by the proposed concrete reinforcement, or any reason why such an effect would be important to safety.

Subsection (c) calls for further preliminary design information on containment vessel welds and joints and connected piping. The contention, however, ignores Applicants' commitments to meet applicable codes and standards, as set forth in great detail in 10 C.F.R. § 50.55a and the PSAR, as modified by Amendment 17. At the construction permit stage, Applicants are not required to do more than agree to meet such codes and standards; following issuance of construction permits, adherence to such commitments is monitored by the NRC Staff and confirmed at the operating license stage. On the other hand, if Intervenors have a specific question concerning the adequacy or sufficiency of the codes and standards for welding and piping set forth in 10 C.F.R. § 50.55a and in the PSAR, this issue should be raised with more specificity and basis, and, if the challenge is to 10 C.F.R. § 50.55a, it should be made in accordance with the procedures outlined in 10 C.F.R. § 2.758.

Subsection (d) also lacks specificity and basis in that no attempt is made to indicate why the discussion of base mat and shield building connection in PSAR Amendment 17 is deficient. This is true even though the contention itself refers to the relevant pages of PSAR Amendment 17. Therefore, there is no reason why Intervenor could not have supplied a basis for this subsection, if indeed there is any valid concern.

Subsection (f) is inadmissible because no basis is given for the assertion that in-service inspection and leak-rate analysis of the suppression pool lines is required or desirable.

For the foregoing reasons, subsections (a), (b), (c), (d), and (f) should be rejected as lacking the requisite specificity and basis required by section 2.714.

PROPOSED CONTENTION 13: EMERGENCY RESPONSE PLAN

Proposed Contention 13 begins:

The Applicants and Staff have failed to account properly for local emergency response needs and capabilities in establishing boundaries for the plume exposure pathway and ingestion pathway Emergency Planning Zones for BFS, as required by 10 CFR 50.34(a) and 10 CFR Part 50, Appendix E.

Specifically, Applicants and Staff have failed to consider adequately or to account properly for the effect of the following factors specific to BFS on local emergency response needs and capabilities, and, hence, on the appropriate size and configuration of the BFS EPZ's.

NRC regulations state that:

The size of the EPZs for a nuclear power plant shall be determined in relation to local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries.... Generally, the plume exposure pathway EPZ for nuclear power plants with an authorized power level greater than 250 MW thermal shall consist of an area about 10 miles (16 km) in radius and the ingestion pathway EPZ shall consist of an area about 50 miles (80 km) in radius.

10 C.F.R. Part 50, Appendix E n.2.

Consistent with this NRC requirement, the Black Fox site plume exposure EPZ is 10 miles in radius and the ingestion exposure is 50 miles in radius. PSAR Amendment 16, Section 1.3. Applicant accepts the premise of Interventors' proposed contention 13 that this Licensing Board could require different EPZ's if local conditions specific to the Black Fox site warranted a departure from the 10-mile and 50-mile

zones generally prescribed by Appendix E. However, despite the fact that this proposed contention alleges the existence of local factors "specific to BFS," only subsections 13(a) and 13(e) set forth such factors with reasonable specificity and basis. Applicants do not concede the merits of 13(a) and 13(e) by acknowledging that said subsections meet the requirements of section 2.714. Each of the subsections of proposed Contention 13 is discussed below.

Subsection 13(a)

- (a) The proximity of the proposed plant site to Verdigris River and the groundwater conditions and soil composition including the underclay layers on said site, with their resulting implications for travel of radionuclides through a liquid pathway in the event of a reactor meltdown accident at BFS;*

Applicants have no objection to the admission of proposed Contention 13(a).

* (Footnote from original contention) See, NUREG/CR-1596, "The Consequences from Liquid Pathways on a Reactor Meltdown Accident," June, 1981.

Subsection 13(b)

- (b) The number, location, and capacity of local sheltering facilities and the degree of protection from radio-nuclides afforded thereby;

This subparagraph lacks specificity and basis. The term "sheltering facilities" is ambiguous in that it could refer to ordinary housing or to special facilities constructed in the purpose of providing protection to the public during radiological emergencies. If the former interpretation is correct, Intervenor provide no hint why the degree of protection afforded by existing housing surrounding the Black Fox site is "specific to BFS" or different from the assumed by the NRC in specifying the presumptive 10-mile and 50-mile EPZ's or how the EPZ boundaries should be changed to account for whatever special housing conditions Intervenor believe exist. If Intervenor believe that specially equipped fallout shelters should be built, this was a proposal that was expressly rejected by NRC and EPA emergency planners in NUREG-0396 (at p. 14). Special sheltering facilities are not contemplated by 10 C.F.R. Part 50, Appendix E, and therefore Intervenor should provide a basis why such unique facilities are necessary for Black Fox, and what effect such facilities would have on the size and configuration of the Black Fox EPZ's.

Subsection 13(c)

- (c) The heightened sensitivity to radiation (over that of the average healthy adult male) of children and pregnant women.

This subparagraph is clearly a generic challenge to NRC and FEMA emergency planning requirements and as such should not be entertained in this proceeding. Intervenor provide no basis supporting the view that the "heightened sensitivity to radiation . . . of children and pregnant women" is a factor "specific to BFS," nor do they provide any basis for believing that there are unusual numbers of pregnant women and children near the Black Fox site. Thus, this subsection lacks the requisite basis required by section 2.714.

Subsection 13(d)

- (d) Local meteorological conditions, including the distribution of wind directions and speeds and the frequency of tornados;

This contention lacks specificity and basis. Despite the fact that Applicants have provided voluminous information on local meteorological conditions in the PSAR and ER, Intervenor make no attempt to specify what it is

about Black Fox site meteorology that requires different EPZ's for Black Fox, or how the EPZ's should be changed. Similarly, Intervenors fail to explain why or how the "frequency of tornados" should influence the choice of EPZ's. Obviously weather conditions at the time of an accident would influence the decision whether evacuation should take place, but Applicants are at a loss to understand how Intervenors would change EPZ boundaries to take into account the probability of concurrent reactor accidents and tornados, or what good redrawing EPZ boundaries would do. Applicants should not be forced to guess what Intervenors have in mind, if indeed Intervenors have any specific proposal for different EPZ's in mind.

Subsection 13(e)

- (e) Radionuclides which will be significant contributors to dominant exposure modes for prompt and latent effects in the event of a BWR-1, -2, and -3 accidental release as described in the NRC's Reactor Safety Study (WASH-1400), or its equivalent, at BFS.*

* (Footnote from original contention) NUREG-0396 and NUREG-0654, arriving at their generic guidance on the size of EPZ's, rely on the potential consequences of a spectrum of accidents, such as the BWR-1, -2, and -3

Applicants have no objection to the admission of subparagraph 13(e).

Subsection 13(f)

- (f) The consequences of a BWR-1, -2, and -3 accidental release at BFS, or its equivalent, at harvest time.

This subparagraph lacks specificity and basis. Intervenor's fail to specify what crop or crops being harvested specific to the Black Fox site, and provide no basis explaining why this harvest renders the conventional 50-mile emergency planning zone inadequate.

accidents described in WASH-1400. See NUREG-0396, pp. 4-6; NUREG-0654, pp. 5-7. The BFS fission product inventory, however, exceeds the inventory of the 3200-megawatt thermal reactor used as the model for WASH-1400's estimates of accident consequences. And the BFS average fuel burn-up will likely exceed the 17,600 megawatt-days (thermal) per metric ton assumed in WASH-1400. Thus, the generic guidance of NUREG-0396 and NUREG-0654 is based on estimates of accident consequences which fail to account for radionuclides which will be significant contributors to dominant exposure modes for prompt and latent effects in the event of a BWR-1 and -2 and -3 release at BFS.

PROPOSED CONTENTION 14: ALLEGED INADEQUACY OF PSAR AND
EVACUATION TIME ESTIMATES

Proposed Contention 14 can be divided into three general categories. Subsections 14(a), 14(b), 14(c), 14(d) and 14(h) argue in various ways that the PSAR is inadequate because it does not contain a plant-specific, site-specific WASH-1400 type study of Black Fox Station. Subsections 14(e), 14(f) and 14(g) contend that the evacuation time estimates calculated by Oklahoma State University contained in the PSAR fail to account adequately for various factors. Subsections 14(i), 14(j) and 14(k) allege miscellaneous other inadequacies in PSAR discussions of emergency response planning. Each of these categories is discussed separately below.

Subsections 14(a), 14(b), 14(c), 14(d) and 14(h) state:

Subsection 14(a)

- (a) The PSAR contains no evidence of plant-specific probabilities of BWR-1, -2 or -3 releases.

Subsection 14(b)

- (b) The PSAR contains no evidence of site-specific consequences in the event of BWR-1, -2 or -3 releases.

Subsection 14(c)

- (c) WASH-1400's estimates of accident probabilities and consequences are not sufficient evidence of the probabilities and consequences in the case of BFS because:
1. WASH-1400 provides insufficient evidence of accident consequences where evacuation is restricted, as may be the case under the current emergency plans for BFS, to a ten-mile radius.
 2. WASH-1400 provides insufficient evidence of the consequences resulting from releases through liquid pathways in the event of a reactor meltdown accident, which omission is particularly critical in the case of BFS given to the proximity of the proposed plant site to Verdigris River and the ground-water conditions and soil composition on the site.
 3. The PSAR contains insufficient evidence that WASH-1400's assumptions regarding medical treatment are applicable to BFS.
 4. There is a large degree of uncertainty associated with WASH-1400's estimates of accident probabilities.
 5. The assumptions upon which WASH-1400's estimates of accident probabilities and consequences are based are not conservative for BFS and are inconsistent with the following factors specific to BFS:

- (i) BFS fission product inventory;
 - (ii) BFS fuel burn-up;
 - (iii) The heightened sensitivity to radiation (over that of the average healthy adult male) of children and pregnant women.
 - (iv) Meteorological conditions specific to BFS site, including the distribution of wind directions and the frequency of tornados.
6. The PSAR contains insufficient information to assure that the assumptions upon which WASH-1400's estimates of accident probabilities and consequences are based are consistent with the following factors specific to BFS.
- (i) The degree of protection afforded by the protective action of sheltering in the event of an accident at BFS.
 - (ii) The latent consequences of a BWR-1, -2, and -3 accidental release at BFS, or its equivalent, at harvest time.
 - (iii) The difficulty in restricting livestock feeding on contaminated feed, confiscating contaminated cattle and confiscating and destroying contaminated milk and crops.

Subsection 14(d)

- (d) Because of the large degree of uncertainty associated with WASH-1400's estimates of accident probabilities, the probabilities of exposures exceeding Protective Action Guides (PAG's) set forth in NUREG-0396 may be seriously understated for BFS.

Subsection 14(h)

- (h) The evacuation time estimates contained in the PSAR and those calculated by Oklahoma State University for PSO are sufficiently high to warrant the conduct of a full plant-specific accident consequences analysis and consideration of design modifications and other preventive and mitigation measures. This has not been done for BFS.

Intervenors' suggest that a Black Fox-specific WASH-1400 type study be performed prior to issuance of construction permits. No such requirement exists in 10 C.F.R. Part 50, Appendix E, or any other NRC regulation, and accordingly the foregoing subsections represent a rule challenge. A challenge to NRC regulations must meet the requirements of 10 C.F.R. § 2.758. Intervenors have failed to meet these requirements, and for that reason, subsections 14(a), 14(b), 14(c), 14(d), and 14(h) must be rejected.

In addition, each of these subsections lack the requisite basis required by section 2.714. Subsections 14(a) and 14(b) merely observe that the Black Fox PSAR does not contain evidence of plant-specific probabilities and site-specific consequences in the event of "BWR-1, -2, or -3 releases."^{6/} But as we have seen, the Commission's regulations

^{6/} "BWR-1, -2, and -3 releases" are a reference to certain release categories postulated in WASH-1400.

do not require such studies for emergency planning purposes, or otherwise, and subsections 14(a) and 14(b) provide no basis explaining why such a study is needed for Black Fox.

Subsection 14(c) argues that WASH-1400's estimates of accident probabilities and consequences are not sufficient for Black Fox Station for various reasons, but again, Intervenor provide no basis for the underlying premise that a WASH-1400 type study is needed for emergency response planning at Black Fox. Absent such a basis, their Licensing Board should not be side-tracked into an investigation of the adequacy or inadequacy of WASH-1400.

Subsection 14(d) argues that because of the large degree of uncertainty in WASH-1400, the probabilities of exposures exceeding Protective Action Guides set forth in NUREG-0396 may be seriously understated for BFS. The applicability of this criticism to Black Fox Station is speculative and without basis, in that no specific reason, pertinent to the Black Fox site, is given why general NRC emergency planning guidance "may be seriously understated for BFS," any more than for any other nuclear power station.

Subsection 14(h) amounts to a naked assertion that PSAR evacuation time estimates are "sufficiently high" that they warrant a WASH-1400 type study for BFS and also "consideration of design modifications and other preventive and

mitigation measures." The latter phase is hopelessly vague; Applicants have no idea what specific "design modifications" or "other preventative and mitigative measures" Intervenor have in mind. The first phrase lacks any basis; Intervenor do not identify an objective or relative standard which supports their assertion that the time estimates presented in the PSAR are "sufficiently high." Nor do Intervenor explain the logical connection between the allegedly high evacuation times and the perceived need for a WASH-1400 type study.

Subsections 14(e), 14(f), and 14(g) state:

Subsection 14(e)

- (e) The evacuation time estimates contained in the PSAR have been limited to a geographical area determined without reference to local emergency response needs and capabilities.

Subsection 14(f)

- (f) The evacuation time estimates contained in the PSAR have not been properly calculated so as to estimate accurately the time required to evacuate the population within the plume exposure pathways EPZ proposed by the Applicants. Specifically, those evacuation time estimates fail to:
 - 1. Account for the full public transportation-dependent population;
 - 2. Account properly for notification, preparation and mobilization time;

3. Account fully and properly for the effect on evacuation times of adverse weather conditions, including tornados;
4. Account for the possibility that multiple-car families will evacuate in more than one car;
5. Use realistic assumptions with respect to the information available to evacuees when choosing evacuation routes.

Subsection 14(g)

(g) The evacuation time estimates contained in the PSAR Amendment 16 underestimate actual evacuation times because they fail to adequately account for any of the following possibilities:

1. vehicles breaking down or running out of fuel;
2. traffic accidents;
3. abandoned vehicles;
4. disregard of traffic control devices; and
5. evacuees using inbound traffic lanes for outbound travel.

Subsection 14(e) essentially states that Applicants' evacuation time estimates are wrong because the 10-mile plume exposure EPZ is wrong. The subsection adds nothing to proposed contention 13; it can not stand alone because it provides no basis (other than a reference to proposed contention 13) for the assertion that Applicants'

EPZ is inadequate. Therefore, subsection 14(e) should be dismissed as redundant.

Subsection 14(f) alleges that Applicants' evacuation time estimates have not been properly calculated, and lists five purported deficiencies in such calculations. However, none of these deficiencies provide adequate specificity to allow meaningful litigation. For example, it is alleged that Applicants have failed to "account for the full public transportation-dependent population." This enigmatic statement fails to give Applicants reasonable notice as to what group of people Applicants are alleged to have missed, or what Applicants should have done to account for such people. If Intervenorors have a specific evacuation problem in mind, they ought to be more forthcoming; if Intervenorors do not have a specific concern there is no basis for a litigable contention. Similarly enigmatic claims are made that Applicants have failed to "account fully and properly" for "notification, preparation, and mobilization time," "adverse weather conditions," "multiple car families," and have failed to use "realistic assumptions with respect to the information available to evacuees when choosing evacuation routes." In light of the detailed explanation of Applicants' evacuation models provided in PSAR Amendment 16, Intervenorors ought to be required to do more than simply

allege that some facet of the calculations have not been handled correctly. The specificity and basis requirement in the Rules of Practice demands that Intervenor provide an intelligible explanation of what Applicants allegedly did wrong and what the proposed issue is. Intervenor have failed to do this, and subsection 14(f) should be dismissed.

Applicants do not object to the admission of subsection 14(g).

Subsection 14(i)

- (i) The PSAR contains insufficient evidence of the availability and adequacy of local sheltering facilities to assure the feasibility of sheltering as a protective action in the event of a BWR-1, -2, and -3 release at BFS.

This subsection covers the same ground as proposed contention 13(i). The subsection lacks specificity in that it is not clear whether Intervenor is advocating (contrary to NRC guidance in NUREG-0396) that special fallout shelters be built around Black Fox Station, or merely that the sheltering capability of existing housing surrounding Black Fox has not been described adequately. If the former interpretation is correct, Intervenor have provided no basis why such extraordinary measures are necessary for Black Fox Station but not other plants. If the latter interpretation

is correct, Intervenor's have provided no basis for asserting that Applicants' proposed shielding factors for existing housing surrounding the Black Fox site inadequately reflect local housing conditions. See PSAR Amendment 16, Section 4.3.1.2 and Reference 12 thereto, "Public Protection Strategies for Potential Nuclear Reactor Accidents: Sheltering Concepts with Existing Public and Private Structures," SAND-77-1725, D. C. Aldrich, D. M. Ericson, and J. D. Johnson, Sandia Labs (February, 1978). In light of this wealth of material, Intervenor's should provide some reasonable basis why the proposed use of the Sandia guidance for emergency planning will inadequately account for the sheltering properties of local housing near Black Fox Station.

Subsection 14(j)

- (j) The PSA contains insufficient assurance of prompt protective action decision-making and notification. The PSAR contains no letters of agreement providing for prompt (15 minute) protective action decision-making on a 24-hour basis by off-site agencies.

Contrary to the apparent assertion in this proposed contention, there is no requirement in NRC regulations that protective action decision-making take place in a 15-minute period. This 15-minute requirement applies only to notification of the public once a decision to do so is made.

Further, in light of the extensive information provided in PSAR Amendment 16, Sections 3.2 and 4.2 with respect to Applicants' commitments to provide immediate, 24-hour-manned communication systems and the careful description of notification scenarios, and in light of the letters in Appendix A which reflect the commitment of responsible state and local agencies to fulfill their emergency response obligations, Intervenor should do more than merely assert that there is "insufficient assurance" of prompt protective action decision-making and notification. Intervenor has failed to identify any specific problem in Applicants' PSAR discussion of proposed communications facilities, any specific governmental agency which cannot be relied upon to make prompt decisions, or any other basis for believing that a problem exists. The contention thus fails to inform the Board or the parties of what specific concerns Intervenor has with respect to the present arrangements.

Subsection 14(k)

- (k) There are no established quantitative or qualitative standards by which one can assess the feasibility of protective action in the event of a BWR-1, -2, or -3 release at BFS.

PSAR Amendment 16, Section 4.3 discusses the protective actions which will be taken in the event of substantial releases of radioactivity from Black Fox Station. As that discussion points out, the basis for protective actions will be the EPA "Manual of Protective Action Guides and Protective Actions for Nuclear Incidents," the BFS evacuation time estimates in PSAR Appendix C, and other referenced documents, all of which provide quantitative and qualitative criteria. Therefore, the assertion in Contention 14(k) that such criteria do not exist is without basis. To the extent that the contention calls for specific protective action criteria for the specific BWR-1, -2, and -3 release scenarios postulated in WASH-1400, this is inconsistent with NRC guidance in NUREG-0610 and followed by Applicants in PSAR Amendment 16, which contemplates four "Emergency Action Levels" (Notification of Unusual Event, Alert, Site Emergency, General Emergency). Intervenors have provided no basis or explanation why emergency planning for the specific WASH-1400 release categories BWR-1, -2, and -3 is necessary at Black Fox Station, but not other nuclear power plants, nor have they provided any hint as to what specific "quantitative or qualitative criteria" they believe is necessary. Accordingly, Contention 14(k) should be dismissed.

PROPOSED CONTENTION 15: TSC AND EOF INADEQUACIES

Subsection 15(a)

- (a) The TSC location does not meet the requirements for rapid access from the control room (i.e., 2 minutes as required in NUREG-0696), nor is it designed to withstand tornado force winds.

Subsection 15(b)

- (b) The EOF is not designed to withstand tornado force winds and the backup EOF is beyond the 20 mile siting requirement of NUREG-0696.

Applicants have no objection to proposed Contention 15 insofar as it alleges that the TSC and EOF do not meet the two-minute and 20-mile siting recommendations in NUREG-0696.

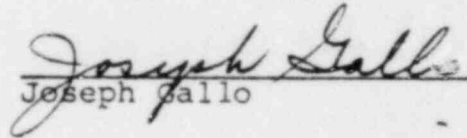
Applicants object to the portions of Contention 15 which observe without explanation that the TSC and EOF are not designed to withstand "tornado force winds." The referenced NRC guidance document specifically states that the TSC and EOF should be designed to withstand "high winds (other than tornados)" (See, NUREG-0696 Sections 2.5 and page 18, Table 2, n.2). Intervenors fail to provide any basis for their suggestion that the Black Fox TSC and EOF should be designed to withstand tornado winds. Moreover, because safety-related structures at Black Fox Station

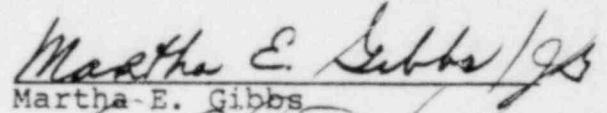
(including the control room) are designed to withstand tornados, Applicant is forced to speculate as to what need there is for tornado-proof, TSC's and EOF's. It is not clear whether Intervenor's are postulating that, despite the design of Black Fox Station, a tornado causes a reactor accident and also disables the TSC and EOF, or whether their hypothesis is the simultaneous occurrence of two unlikely, independent events (a reactor accident and a tornado). Nor do Intervenor's attempt to address what safety significance loss of the TSC and EOF would have, taking into account that the TSC and EOF are merely support facilities. In short, Intervenor's have failed to provide any support whatsoever for the proposition that TSC and EOF should withstand tornado force winds.

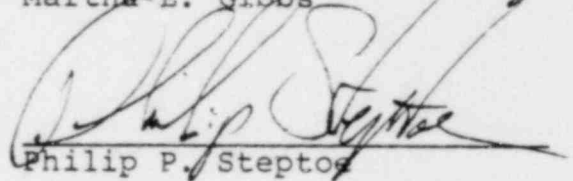
IV. CONCLUSION

In view of the foregoing, all of Intervenor's proposed contentions should be rejected except for 9, 12(e), 13(a), 13(e), 14(g), and the siting aspects of 15.

Respectfully submitted,


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Dated: November 20, 1981

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1990

Biomass Energy and Alcohol Fuels Loans and Loan Guarantees; Additional Information

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule; additional information.

SUMMARY: At 45 FR 51818, August 5, 1980, the Farmers Home Administration (FmHA) published a proposed rule regarding biomass energy and alcohol fuels. The purpose of this document is to provide additional information regarding this program.

FOR FURTHER INFORMATION CONTACT: Mr. Weldon Barton, Director, Office of Renewable Resources, FmHA, Rm. 5175 South Bldg., USDA, 14th and Independence Ave. SW., Washington, D.C. 20250, phone: 202-447-7195.

SUPPLEMENTARY INFORMATION: The Biomass Energy and Alcohol Fuels Act of 1980 (Title II of the Energy Security Act, Public Law 96-294) provides for the solicitation of applications for financial assistance under Subtitle A within 120 days after enactment (i.e., October 28, 1980). Farmers Home Administration (FmHA), USDA, has published (45 FR 51818, August 5, 1980) proposed regulations to establish guidelines for solicitation of such applications and is reviewing comments received pursuant to such publication and related hearings. FmHA expects to publish Final Regulations and to initiate the solicitation of applications as part of such Final Regulations on or before October 28, 1980. Applicants wishing to undertake preliminary preparatory work on such applications may consult the Proposed Regulations but are advised that some changes will be made in them when the Final Regulations are published on or about October 28, 1980. Applications will not be accepted by

FmHA before the solicitation is announced at the time of publication of the Final Regulations.

In general, the FmHA has jurisdiction over projects below 15 million gallons of annual capacity and the Department of Energy has jurisdiction over projects with annual capacity of 15 million gallons and larger, except for projects using forestry feedstocks or projects owned and operated by agricultural cooperative which can be considered by either FmHA or DOE.

Dated: October 6, 1980.

James E. Thornton,
Associate Administrator, Farmers Home Administration.

[FR Doc. 80-21788 Filed 10-8-80; 11:41 am]
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NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Plan To Require Licensees and Applicants to Document Deviations From the Standard Review Plan

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Nuclear Regulatory Commission is considering requiring all nuclear power plant licensees and all applicants for construction permits and manufacturing licenses to identify and justify deviations from the acceptance criteria of the applicable revision of the Standard Review Plan, NUREG-75/087. This program will provide the NRC with uniform documentation of the extent to which each plant deviates from current licensing acceptance criteria. Comment is sought on the proposal and on the preferred method of implementing such a proposal.

DATE: The comment period expires on November 24, 1980.

ADDRESSES: Comments should be submitted in writing to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, Attention: Docketing and Service Branch. All comments received will be available for public inspection in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Malcolm L. Ernst, Assistant Director for

Technology, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, (301) 492-8016.

SUPPLEMENTARY INFORMATION: The Standard Review Plan (SRP), NUREG-75/087, first published in 1975, was prepared for the guidance of NRC staff reviewers in performing safety reviews of applications to construct or operate nuclear power plants. The principal purpose of the SRP is to ensure the quality and uniformity of the staff reviews and to present a well-defined base from which proposed changes in the scope of these reviews may be evaluated. The SRP also serves to make information about regulatory matters widely available, and improves understanding of the staff review process by interested members of the public and the nuclear power industry.

The NRC's current techniques for the safety evaluation of nuclear power facilities as set forth in the SRP, are the result of years of experience. A great deal of progress has been made in the methods of review and in the development of regulatory guides and other staff positions referenced in the SRP.

As this experience acquired over the years is incorporated into the regulatory process, regulatory guides, including the SRP, are periodically reviewed and revised to reflect the current state-of-the-art. This results in a varying scope of review over time and tends to lead to lack of uniform documentation of each plant's conformance with current staff acceptance criteria. Some plants, for instance, have been reviewed against the SRP at the OL stage but not at the CP stage, while still others, although reviewed against the SRP at both the CP and OL stage, lack uniformity because of updating of the SRP after the CP review was completed. This lack of uniform documentation makes it difficult to determine the extent to which plants reviewed some time ago deviate from current acceptance criteria, and if so, the safety significance of such deviations.

As a result of the accident at Three Mile Island, many regulatory requirements have been revised and new requirements have been promulgated. Accordingly, the staff has begun to revise the SRP to reflect these new requirements. This next revision of

the Standard Review Plan, scheduled for completion in April 1981, will consist of the May 1980 version of the SRP, modified to reference all applicable

safety and safeguards regulations and those Division 1 Regulatory Guides, staff positions, and other documents currently used by the staff to interpret the intent of these regulations, including requirements resulting from the TMI accident.

Requiring license applicants to identify and justify deviations from the acceptance criteria in the applicable revision of the SRP would enhance the quality of the staff's review of applications and assist the staff in making the determinations required by 10 CFR Part 50. In addition, such documentation would more clearly identify the bases for the acceptability of plant designs and their relationship to current licensing criteria. A similar post-licensing requirement for currently operating plants would improve the staff's ability to evaluate the extent and safety significance of deviations from current staff acceptance criteria for these plants.

In a related matter, the NRC is required by Section 110 of Public Law 96-295 (NRC FY 80 Authorization Bill) to develop a plan for the systematic safety review of all operating nuclear power plants. This plan must include among other things: the identification of each current rule and regulation, compliance with which the NRC determines to be of particular significance to the protection of the public health and safety; and the determination of the extent to which each currently operating plant complies with those regulations, including an indication of whether such compliance was achieved by use of Division 1 Regulatory Guides and staff positions¹ and where such compliance was achieved by equivalent means.

In order to carry out the requirements of Pub. L. 96-295, to document deviations from the SRP and to improve the staff's ability to evaluate the safety significance of such deviations, the NRC is considering requiring all nuclear power plant licensees and license applicants to identify and provide the safety bases for deviations from applicable revisions of the SRP. Several methods of implementing this requirement are under consideration. These methods are issuance of a Regulatory Guide, specification of a construction permit or operating license condition, a Policy Statement, or rulemaking.

¹ The revised SRP (April 1981) has been designed and defined to be equivalent to Division 1 Regulatory Guides and staff positions.

Specifically, the NRC is considering imposing the following requirements:

1. All nuclear power plants issued operating licenses on or before June 30, 1980,² would be required to identify and justify all deviations from the acceptance criteria of the SRP revision scheduled to be issued in April 1981 that relate to those regulations which the Commission determines to be of particular significance to the protection of the public health and safety.

2. All applicants who are issued a nuclear power plant operating license after June 30, 1980, and for which the NRC staff's Safety Evaluation Report will be issued on or before January 1, 1982³ would be required to identify and justify, after issuance of an OL, all deviations from the acceptance criteria of the SRP revision scheduled to be issued in April 1981 that relate to those regulations the Commission determines to be of particular significance to the protection of the public health and safety.

3. All applicants for a nuclear power plant operating license for which the NRC staff's Safety Evaluation Report is issued after January 1, 1982, would be required to identify and justify, prior to issuance of the operating license, all deviations from all acceptance criteria of the SRP revision scheduled to be issued in April 1981.

4. All applicants for a nuclear power plant construction permit or manufacturing license for which the NRC staff's Safety Evaluation Report TMI Supplement is issued before January 1, 1982, would be required to identify and justify, prior to issuance of the construction permit or manufacturing license, all deviations from all acceptance criteria of the May 1980 version of the SRP and from the "Proposed Licensing Requirements for Pending Applications for Construction Permits and Manufacturing Licenses," in NUREG-0718, (as modified after public comment).

5. All applicants for a nuclear power plant construction permit or manufacturing license for which the NRC staff's Safety Evaluation Report is issued after January 1, 1982, would be required to identify and justify, prior to issuance of the construction permit or manufacturing license, all deviations from all acceptance criteria of the SRP.

² The date on which Pub. L. 96-295 became effective.

³ The basis for the January 1, 1982 date, is to permit adequate time after issuance of the revised SRP for a licensee to document and justify deviations and for the NRC staff to incorporate evaluations of the more safety significant deviations into the staff Safety Evaluation Reports.

revision scheduled to be issued in April 1981.

The Commission published a Federal Register Notice on October 2, 1980 (45 FR 65247) inviting comment on Requirements 4 and 5 of the current plan. The present notice reiterates those requirements and integrates them with the requirements for operating plants and applicants for operating licenses.

The Commission will consider public comments received in response to this notice in determining the appropriate action to be taken, including the possible issuance of final rules on some or all of these matters.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and Section 553 of Title 5 of the United States Code, notice is hereby given that amendment of the Commission's regulations in 10 CFR Part 50 with regard to some or all of the subjects and issues described in this notice is contemplated.

Dated at Washington, D.C. this 3d day of October 1980.

For the Nuclear Regulatory Commission,

Samuel J. Chilk,

Secretary of the Commission.

[PR Doc. 80-31485 Filed 10-80; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. 1

[Docket No. 20487; Petition Notice No. PR 80-15]

Petition for Rule Making of Rosenbalm Aviation, Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Publication of petition for rulemaking; request for comments.

SUMMARY: By letter dated March 31, 1980, Mr. Arthur J. Schmidt, Vice President, Rosenbalm Aviation, Inc., petitioned the Federal Aviation Administration (FAA) to amend §§ 25.832 and 121.220 of the Federal Aviation Regulations (FAR) to exempt large, cargo-only aircraft from installing ozone control equipment or using ozone avoidance procedures.

DATES: Comments must be received on or before December 10, 1980.

ADDRESS: Send comments on the petition in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204),