April 29, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
South Carolina Electric & Gas Company, et al.	)	Docket 50-395 OL
	)	
(Virgil C. Summer Nuclear Station, Unit 1)	)	

APPLICANTS' RESPONSE IN OPPOSITION TO INTERVENOR'S "MOTION FOR ADMISSION OF NEW CONTENTIONS"

On April 15, 1982, Brett A. Bursey, the intervenor herein, served a motion dated April 14, 1982 for admission of new contentions on three matters: accelerated steam generator tube wear, a related financial qualifications question, and a related NEPA cost-benefit question. The record in this proceeding was closed as to all issues on January 20, 1982 (Tr. 6137; see Tr. 3871, 3872, 4677, 6014). On April 20, 1982 the NRC Staff reported to the Commissioners that the V.C. Summer Nuclear Station will be ready to operate in May and Mr. Cotter reported that the Board's initial decision is expected at the end of May (Briefing on Status and Assessment of Near-Term Operating Licenses, April 20, 1982, Tr. 29-30). Mr. Bursey implicitly seeks to have the record reopened because he requests hearings on these matters.

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To justify granting a motion to reopen, the moving papers must be strong enough, in light of any opposing filings, to avoid summary disposition. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973). Thus, even if a matter is timely raised and even if it involves a significant safety issue (which we do not concede), no reopening of the evidentiary record will be required if the affidavits submitted in response to the motion demonstrate there is no genuine unresolved issue of fact, i.e., if the undisputed facts establish that the allegedly significant safety issue does not exist, has been resolved, or for some other reason will have no affect on the outcome of the proceeding. 1/

Mr. Bursey seeks to have the record reopened to consider accelerated steam generator tube wear and various postulated consequences of tube failure, financial qualifications of South Carolina Electric and Gas Company to pay for modifications and operate Summer; and reassessment of the favorable cost-benefit analysis reached at the construction permit proceeding (Motion, April 14, 1982, at 2-3).

The affidavits hereto and the affidavits and various attachments to our April 26, 1982 response in opposition to FUA's April 9, 1982 petition to intervene provide the

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1/ See discussion of the requirements for reopening at pages 2-12, infra.

basis for summary disposition of these issues on the pleadings as set forth by the Appeal Board in Vermont Yankee, supra, 6 AEC at 523. Nonetheless, we discuss all of the legal requirements for reopening the record and the standards for admitting late-filed contentions. The motion under either set of standards should be denied.

Legal Standards for Reopening

Parties have an obligation to report "new information which is relevant and material to the matter being adjudicated" in an uncompleted licensing proceeding. Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Units 1 and 2), ALAB-291, 2 NRC 404, 411 (1975). 2/ Once the record has been closed, however, the proponent of a motion to reopen has a "heavy burden." Kansas Gas & Electric Co., et al. (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320, 328 (1978). 3/ Reopening the record is based on appraisal of three factors: (1) Is the motion timely? (2) Does it address significant safety (or environmental) issues? (3) Might a different result have been reached or would the outcome have been affected had the newly proffered material been considered initially? Pacific Gas & Electric Co.

2/ See Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-143, 6 AEC 623, 625-26 (1973).

3/ See Public Service Electric & Gas Co., et al. (Salem Nuclear Generating Station, Unit 1), ALAB-650, 14 NRC 43, 63 (1981); Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-359, 4 NRC 619, 620 (1976).

(Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-598, 11 NRC 876, 879 (1980); see Public Service Co. of Oklahoma (Black Fox Station Units 1 and 2), ALAB-573, 10 NRC 775, 804 (1979).

First, as to timeliness, the movant must show that the issues could not have been raised earlier, such as prior to close of the hearing. Vermont Yankee, supra, 6 AEC at 523. 4/ Second, prior to a final agency decision in a licensing proceeding, a motion to reopen, even though timely, will not be granted unless the new circumstance, trend, or fact discovered gives rise to a "signficant safety-related issue." Wolf Creek, supra, 7 NRC at 338; Catawba, supra, 4 NRC at 620. 5/ Finally, when the record has been closed but no decision rendered, the movant must show "that the outcome of the proceeding might be affected" by the newly discovered evidence. Black Fox, supra, 10 NRC at 804. 6/

4/ See Northern States Power Co. (Tyrone Energy Park, Unit 1), ALAB-464, 7 NRC 372, 374 n.4 (1978); Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-75-6, 1 NRC 227, 229 (1975).

5/ Vogtle, supra, 2 NRC at 409; Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-167, 6 AEC 1151, 1152 (1973).

6/ Another way of expressing this factor is that the "result might be altered in some material respect." Metropolitan Edison Co., et al. (Three Mile Island Nuclear Station, Unit No. 2), ALAB-486, 8 NRC 9, 21

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Board Notification, BN-82-02, dated January 20, 1982 (Motion, April 14, 1982, at 1).

In this instance, the timeliness factor should be accorded less weight than the other reopening factors i.e., significance of the issue and affect on the outcome of the proceeding. 8/ As is evident from the affidavits of Michael D. Quinton, SCE&G, and W.D. Fletcher, Westinghouse Corporation, as well as the NRC papers and correspondence attached to our response to the FUA petition, resolution of the problem of accelerated tube wear in Model D3 steam generators is being diligently pursued by the Applicants, Westinghouse, and the NRC. We briefly discuss the various documents relating to the tube wear problem.

On January 20, 1982, in a letter from Mr. Eisenhut to Mr. Nichols, the agency requested that SCE&G provide information concerning its reliance on Westinghouse test data, testing at operational plants, its plans for instrumentation to detect flow-induced vibrations, and the testing and start-up procedures proposed for Summer (Attachment B to our April 26, 1982 Response to FUA's Petition). 9/

8/ Further discussion of timeliness, which is not the critical issue here, is found under the analysis of good cause at pages 13-14, infra.

9/ Attachments A-G and the initial affidavits of W.D. Fletcher and Michael D. Quinton are appended to our April 26, 1982 Response to FUA's Petition to Intervene.

The following grounds have been held insufficient to grant a motion to reopen: generic safety concerns, Vogtle, supra, 2 NRC at 411; change in some detail involving plant construction or operation, Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), CLI-74-39, 8 AEC 631 (1974); motions based on "need for power" arguments, Cleveland Electric Illuminating Co., et al. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 750 (1977) 7/; and, generalized assertions that "more evidence is needed," Salem, supra, 14 NRC at 63.

For the sake of clarity, we discuss each of Mr. Bursey's contentions separately. With regard to Contention 1, accelerated tube wear in Model D3 steam generators, Mr. Bursey claims he only recently became aware of the problem as a result of newspaper reports, NRC memoranda, and the

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(1978); see Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 64 n.35 (1977); Vermont Yankee, supra, 6 AEC at 523. In a proceeding in which a decision has been rendered, the language (but not the standard) is somewhat different, the movant must show that a "different result might have been reached" had the matter been considered earlier. Tyrone, supra, 7 NRC at 374 n.4: Wolf Creek, supra, 7 NRC at 338; North Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-227, 8 AEC 416, 418, (1974). Cf. Unarco Industries, Inc. v. Evans Products Co., 403 F.2d 638, 639 (7th Cir. 1968) (standards for granting Knight v. Hersh, 313 F.2d 879, 880 (D.C. Cir. 1963).

7/ See discussion on cost-benefit at pages 20-23, infra.

Also on January 20, the Staff issued a Board Notification, BN-82-02, on Preheater Type Steam Generators which included information on the results of testng and inspection of steam generators at Duke Power Company's McGuire station and two foreign plants (Attachment C). The McGuire testing program discussed was conducted primarily at power levels of 50% or less. No significant tube wear was indicated (Id.).

An NRC memorandum from Mr. Chesnut to Mr. Youngblood, dated February 19, summarized a meeting in Bethesda between the NRC, Westinghouse, and representatives of various utilities, including SCE&G, at which the problems with Model D steam generators were addressed (Attachment D).

SCE&G, in a letter from Mr. Nichols to Mr. Denton dated February 19, 1982, outlined its plans to inspect for, monitor, and correct problems associated with the Model D3 steam generators (Attachment E). The letter describes the Westinghouse testing program for Model D steam generators and proposes the following program for Summer: 1) normal low power testing, 2) completed startup testing with power escalation up to 50% power, 3) continue operation at 50% power for approximately two months, or at power levels above 50% based on information available to preclude tube damage, 4) shut down and eddy current test rows 49, 48, and 47 of one steam generator, and 5) reevaluate available data to

confirm continued limited power operation until a modification can be made to resolve the matter (Id.). Following that phase of the test program, jointly SCE&G and Westinghouse are committed to jointly establish an operating power level for Summer considering: 1) results of the eddy current inspection, 2) experience and data from other operating plants, 3) status of the Westinghouse program, and 4) status of any proposed Westinghouse modification to resolve the problem (Id.).

Further, on April 14, SCE&G informed the Commission, in a letter from Mr. Nichols to Mr. Denton, that internal diagnostic instrumentation will be installed in one of the steam generators at the Summer plant as part of its monitoring program outlined on February 19 (Attachment F).

In a letter from Mr. Nichols to Mr. Denton dated April 27, SCE&G advised the Staff of the estimated total time that will be required to modify the steam generators, estimated radiation levels where personnel would be working, and the estimated total radiation exposure to workers performing the modifications. (Attachment H).

Aside from the specific problem of accelerated tube wear because of flow-induced vibration in preheater type steam generators, at the request of the Commission, the Staff is engaged in an overall review of steam generators

as a generic matter. In a memorandum from Mr. Dircks to Mr. Minogue dated February 17, transmitting its Status Report on Steam Generators, the NRC outlined its current overall steam generator program (Attachment A). The report defined the problem associated with tube degradation and its safety significance (which includes problems of tube wear arising from flow-induced vibration in preheater-type units); the NRC regulatory approach; current corrective actions; the NRC, industry, and foreign research and development activities; and, the long term approach for resolving the matter of steam generator tube integrity and the NRC/industry program (Id.). The NRC Status Report and the agency's outline of ongoing work were transmitted to the Commissioners as SECY-82-72 on February 18, 1982. (Id.).

In a memorandum dated March 25, 1982, SECY-82-72A, Mr. Dircks advised the Commissioners of the Staff's coordinated program to address steam generator problems. (Attachment G). The program will involve the efforts of the Atomic Industrial Forum, Electric Power Research Institute, Steam Generator Owners Group, the ACRS, and the Staff to coordinate and manage research, review needs, and develop short-term and long-term solutions. The program will pursue the areas of materials, water chemistry and control, design and technical considerations (which includes problems arising from excessive vibration), secondary system components,

primary and secondary side inspection, repair procedures and personnel exposure, systems interactions, quality assurance, and operating experience.

As a result of these combined efforts, both the Applicants and the Staff, with the cooperation of the industry, have been fully aware of the further work which needs to be done with respect to resolving the problems with tube degradation in the Model D3 steam generators. The Applicants are committed to correct the problem. (See Quinton Affidavit at 2).

The parties have satisfied their obligation to report new information which is relevant to the proceeding. See Vogtle, supra, 2), ALAB-291, 2 NRC 404, 411. In this instance, as in numerous others, a board notification was issued informing the Board of a potentially significant issue. That alone, of course, does not determine whether the hearing should be reopened or a late petition granted. As we stated in our March 11 response to Mr. Bursey's motion for admission of a new contention and our recent response to FUA's petition to intervene, while the Board might reasonably want assurance that the Staff is "on top of" the matter, it need not, in an operating license proceeding, take up every matter that crops up during ongoing Staff review, but may leave matters outside the hearing process to resolution by

the Staff. 10 C.F.R. § 2.760a; see South Carolina Electric & Gas Co., et al. (Virgil C. Summer Nuclear Station, Unit 1) ALAB-642, 13 NRC 881, 895-96 (1981), appeal pending sub nom. Fairfield United Action v. NRC, No. 81-2042 (D.C. Cir.) (See Grossman, Tr. 6136). The Applicants believe that this assurance is provided by the affidavits and attachments hereto and are confident that this matter can and should be resolved by the Staff.

It should be understood that the tube wear issue which Mr. Bursey uses as a basis for his motion is only one part of the overall steam generator "picture" discussed in the attached NRC documents. Mr. Fletcher, of Westinghouse, states in his affidavit that significant tube wear will be precluded during interim operation and alleviated by a permanent modification (Fletcher Affidavit, at 2). Mr. Bursey seeks to raise issues concerning PORV failure and accident sequences involving LOCA and ECCS failure. These issues are not concerns during the V.C. Summer interim program. (Fletcher Affidavit, at 3). Operation during this period is designed to minimize tube wear so that tube rupture, actions of the PORV, and LOCA events are not relevant (Id.). All the evidence currently available shows that it is amply conservative to operate plants employing Model D preheater-type steam generators at reduced power (Fletcher Affidavit, at 2) (Quinton Affidavit, at 2). Thus, the various consequences of steam generator tube failure

postulated by Mr. Bursey as a result of tube wear never arise because significant tube wear will be precluded.

For these reasons, as detailed in the attached affidavits, a "significant" safety concern with regard to steam generators does not arise (Fletcher Affidavit, at 2), (Quinton Affidavit, at 2).

Finally, we consider whether the steam generator issue would affect the outcome of the proceeding. As stressed in the preceding discussion of the significance of the issue, there is no need for the Board to consider this matter for the Applicants, Staff, Commission, and manufacturer have an acceptable plan for interim operation and are moving toward, and are committed to resolution of the problem by a permanent modification. Thus, there is nothing for the Board to adjudicate or require of the parties that is not already being done.

Legal Standard Governing Late-Filed Contentions

The standards governing late intervention set forth at 10 C.F.R. § 2.714(a)(1) also apply to late-filed contentions. 10/ Although a ruling declining to reopen the

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10/ ". . . § 2.714 is revised to specifically provide that late filed contentions . . . will be considered for admission under the clarified criteria set forth in subparagraph (a)(1) . . . revised § 2.714 makes clear that late filed contentions must meet the same requirements as timely filed contentions. That is, a proposed contention must be set forth with particularity and with the appropriate factual basis." (43 Fed. Reg. 17799 (April 26, 1978)).

proceeding after consideration of the reopening standards might obviate further analysis under § 2.714(a)(1), we nonetheless discuss the standards for admitting or denying a late-filed contention. Five factors are balanced in deciding whether to grant or deny a late-filed petition: (1) good cause, if any, for failure to file on time; (2) availability of other means whereby the petitioner's interests will be protected; (3) extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record; (4) extent to which the petitioner's interest will be represented by existing parties; and, (5) the extent to which the petitioner's participation will broaden the issues or delay the proceeding. 10 C.F.R. § 2.714(a)(1)(i)-(iv). 11/ Mr. Bursey's motion refers to 10 C.F.R. § 2.714(a)(1) and arguably touches upon four of the five factors, but little or no showing is made in support thereof. On balance, factor (iii) weighs most heavily against Mr. Bursey for he has shown no ability to contribute to resolution of this matter.

Good Cause. Mr. Bursey claims that he only recently became aware of the steam generator problem and that upon learning of it he moved as quickly as he could (Bursey,

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11/ Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-671, slip op. (March 31, 1982); Project Management Corp., et al. (Clinch River Breeder Reactor Plant), ALAB-354, 4 NRC 383, 388-94 (1976).

April 14, 1982, at 1-2). A petitioner who files at the eleventh hour has a very heavy burden to carry. Summer, supra, ALAB-642, 13 NRC at 886-88. In this instance, the good cause factor should not weigh in favor of the petitioner, and viewed in isolation, should weigh against him since he did not act reasonably promptly upon receipt of the board notification.

Availability of Other Means Whereby Petitioner's Interest Will be Protected/Representation by Existing Parties. On the second factor, availability of other means to protect his interest, Mr. Bursey intimates that the Board should call Westinghouse and Staff experts "to get to the bottom of this." (Bursey, April 14, 1982, at 4). 11/ As we have already discussed at pages 11-12, supra, both Westinghouse and the Staff, plus the Applicants and the Commission, are already working to resolve the steam generator problem outside of the hearing process. This problem, like many matters in the licensing process can be resolved without hearing as part of the Staff's review prior to licensing or thereafter. The weight to be given this factor is discussed later.

With regard to the fourth factor, representation by existing parties, Mr. Bursey argues that neither the Applicants, the Staff, nor the State represent his interest in this matter. As we have

stated before we do not claim that it is the function of the Applicants or the Staff in this proceeding to protect Mr. Bursey's litigative interests. But those parties are protecting the public health and safety outside the hearing process. The weight to be given the fourth factor is discussed later.

Ability to Contribute to Devleopment of a Sound Record. Mr. Bursey does not address this factor. He gives no indication that he is capable of making a meaningful and substantial contribution to development of a record on the issue of accelerated steam generator tube wear; and gives no indication as to what expert witnesses or other evidence, if any, he would offer on this matter. It is not the Board's role to supervise the Staff, including the information it obtains from the Applicants and Westinghouse, as might be implied from Mr. Bursey's suggestion that witnesses might be called by the Board. 12/ Further, Mr. Bursey does not specify what corrective actions, if any, he believes should be taken in lieu of or in addition to those to which the Applicants are already committed. Based on Mr. Bursey's motion, there is no reason to believe that he can contribute meaningfully and substantially to resolution of this matter.

12/ See discussion of the Board's exercise of its sua sponte authority at pages 23-24, infra.

When a petitioner has no ability to contribute to development of a sound record, the fourth factor (as to protection of its interest by existing parties) should not be weighed very heavily and the second and third factors, i.e., other means by which its interest may be protected and its ability to contribute, should be weighed quite heavily. Indeed this was the case in the recent Appeal Board decision in Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-671, slip op. at 10 (March 31, 1981). Similarly in this case, both the Licensing Board (as to rejected contentions, including steam generators), LBP-81-11, 13 NRC at 426, and the Appeal Board (denying intervention), ALAB-642, 13 NRC at 891-93, weighed the ability to contribute factor heavily against FUA in balancing the § 2.714(a)(1) factors.

Delay. Mr. Bursey admits that a hearing on this matter might cause delay. There is no question that it would. The extent to which the petitioner's participation will broaden the issues or delay the proceeding is an extremely important factor and the late petitioner bears a heavy burden. Allens Creek, supra, ALAB-671, slip op. at 6, 11; Summer, supra, ALAB-642, 13 NRC at 888-89.

As we have previously stated, the record in this proceeding is closed, completion of construction is expected in May, as is the Board's initial decision. The Applicants

have an investment in the V.C. Summer Nuclear Station in excess of $1.0 billion. It cannot reasonably be controverted that substantial carrying costs would be incurred by both owners if the plant were ready to load fuel and commence operation but was without a license; that both the State of South Carolina and the Federal Energy Regulatory Commisison (FERC) provide for recovery of such costs from customers; and that South Carolina Public Service Authority would incur further additional costs for purchasing capacity and energy to replace Summer generation. Finally, it is reasonably ascertainable that energy from Summer would be cheaper from an incremental cost standpoint for SCE&G than oil. We have explained why there is no reason for a hearing on this matter; but focusing for the moment on the practicalities, no prompt hearing could be conducted without sacrificing trial preparation as discussed by the Appeal Board in Virginia Electric & Power Co. (North Anna Station, Units 1 & 2), ALAB-289, 2 NRC 395, 400 (1975). Delay at this juncture would be measured in terms of months required for trial preparation, hearings, proposed findings, and the Board's decision.

Thus, the adverse impact on the rights of the parties and the very real consequences of delay at this point in the proceeding are substantial. The delay factor should weigh against admitting the contention.

Financial Qualifications

Mr. Bursey's Contention 2 raises the question of the Applicants' financial ability to operate Summer assuming operation at half-power. On March 31, 1982, the Commission published its final rule eliminating entirely the financial qualifications review and findings for electric utility applicants in pending and future construction permit and operating license proceedings. 47 Fed. Reg. 13750, 13753 (March 31, 1982); see Allens Creek, supra, ALAB-671, March 31, 1982 slip op. This matter is the subject of a pending motion to dismiss Intervenors Contention A2 to which we refer the Board. (NRC Staff Motion to Dismiss Contention 2, April 7, 1982; Applicants' Response in Support of Staff Motion to Dismiss Contention, April 21, 1982).

Given the Commission's elimination of the financial qualifications issue, there is no need to consider the reopening or five-factor tests in ruling on Contention 2. Nonetheless, since the Appeal Board in Allens Creek, supra, March 31, 1982 slip op., discussed the five factors in addition to holding the financial qualification contention to have been eliminated, we briefly outline our response under those tests.

Timeliness is to be considered under both the reopening and five-factor tests. The financial ability of the Applicants to operate Summer for a reasonable period of time at reduced power or to pay for some share of steam generator modifications

could have been raised during the hearing, and indeed is a much lesser issue than the Board's financial questions regarding premature decommissioning which would involve zero power production and presumably much greater costs (See Applicants' Proposed Findings, Aug. 17, 1981, at 10-33). Because of this, the second and fourth factors, i.e., other means to protect litigative interests and representation by other parties, must be weighted against Mr. Bursey because he could have explored this assumption during the hearings. Most importantly, Mr. Bursey has never shown, and has not shown in the instant motion, any ability to contribute to development of a sound record on financial issues. Finally, as was the case with Contention 1, the delay factor must weigh against the intervenor.

As to the remaining tests for reopening, Mr. Bursey has not demonstrated that the financial impact of interim reduced power operation and permanent modification of steam generators is a significant safety or environmental issue; his motion is silent in this regard. Finally, again given the Board's questions on more serious problems, such as premature decommissioning, it is obvious that consideration of Mr. Bursey's Contention 2 would not affect the outcome of this proceeding. Again, the intervenor's motion is silent on this matter.

Moreover, any contention filed at any time must meet the requirements of 10 C.F.R. § 2.714(b) regarding specificity and supporting bases; and this contention is devoid of both. See Detroit Edison Co. (Greenwood Energy Center, Units 2 & 3), ALAB-476, 7 NRC 759, 764 (1978). Intervenor's Contention 2 should be denied.

Cost-Benefit

Mr. Bursey's Contention 3 questions the favorable cost-benefit analysis reached in the construction permit proceeding.

The Commission, on March 26, 1982, issued its final rule on the need for power and alternative energy issues in operating license proceedings. 47 Fed. Reg. 12,940 (March 26, 1982). The rule effectively eliminates consideration of cost-benefit analyses based on power production at the operating license stage. The Commission has not diminished the importance of these issues at the construction permit stage, but rather has recognized that at the operating license stage the plant would be needed either to meet increased energy needs or replace older, less economical, generating capacity and that no viable alternatives to the completed nuclear plant are likely to tip the NEPA cost-benefit balance against issuance of the operating license. Id. Experience shows that completed nuclear power plants are used to their maximum availability and there has never been

a finding in an NRC operating license proceeding that a viable environmentally superior alternative to operation of the nuclear facility exists. Id. at 12,942. The purpose of the amendment is to avoid unnecessary consideration of issues at the operating license stage that are not likely to tilt the cost-benefit balance. (Id.). Hence, 10 C.F.R. § 51.53(c) is amended to provide: "Presiding officers shall not admit contentions proferred by any party concerning need for power or alternative energy sources for the proposed plant in operating license hearings." Id. at 12,943. We necessarily defer to the Staff for further development of the impact of the amended rule.

Applying the reopening test as to whether Mr. Bursey's proposed contention raises a significant environmental issue or one that would affect the outcome, we believe there is no change in the favorable cost-benefit analysis reached in the construction permit proceeding. There is no basis to assume that the plant will operate at reduced power for its entire lifetime. Although we would not argue with an assumption, but only for purposes of discussion of the contention, that operation at reduced power would extend as long as a year it seems obvious that even one year at fifty percent power would not result in more than a minimal adjustment in total output over the lifetime of the facility. Additionally, there is no reasonable basis for the assumption that the

cost of steam generator repair or even replacement would tip the cost-benefit balance. Of course, in connection with this contention and Contention 2 as well, Applicants have the responsibility to pursue legitimate claims against those responsible for design defects in accordance with applicable law, and it is speculative at this point to suppose that any or all of the costs will fall on the Applicants.

Further, it seems clear that Contention 3 does not raise a significant environmental question because the interim operating program is prudent not only from a safety standpoint, but also from an economic standpoint to minimize or preclude significant tube wear and costly tube replacement. Additionally, the permanent modification will tend to assure that extended outages in the future to replace prematurely worn tubes will be avoided. The interim operation/permanent modification programs tend to assure that the projected long term benefits from operation of Summer will more likely be realized and that the forecast environmental impacts will be within those previously estimated (See Attachment H, April 27, 1982 Letter from Nichols to Denton).

Again as to timeliness, we have already addressed the point that Mr. Bursey could have raised the economic implications of reduced power operation and steam generator modifications at the hearings. Likewise he could have

addressed the radiation exposure considerations associated with steam generator modifications in connection with the Staff's estimates of average annual worker exposure from maintenance and repair activities (FES, May 1981, at 4-23 to -24). Additionally, Dr. Barker previously addressed the Applicants' ALARA program for minimizing these exposures (Tr. 3822-62) (Applicants Proposed Findings, August 17, 1981, at 117) (See also Attachment H). For these reasons, the second and fourth factors must again (as with Contention 2) be weighed against Mr. Bursey.

Most importantly, as to the third factor, the intervenor has shown no ability to contribute to development of a sound record and has given no indication as to the witnesses or other evidence he would offer on the cost-benefit issue. This factor should weigh heavily against the intervenor. What we have said with respect to delay in conjunction with Contentions 1 and 2 applies equally to Contention 3. Intervenor's Contention 3 should be denied.

Other Issues

Indirectly, Mr. Bursey alludes to the Board's sua sponte authority when he says "the Board needs to get in the Westinghouse and Staff experts and get to the bottom of this." (Bursey, April 14, 1982, at 4). As previously stated, there is no need for the Board to consider these matters for the Commisison and the NRC Staff are moving to

resolve the problem. There is nothing for the Board to add or require which is not already being done.

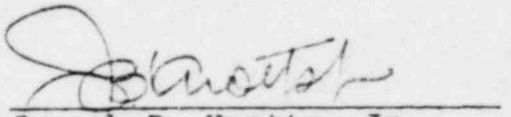
The issue of the Licensing Board's sua sponte authority was thoroughly addressed by the Commission in Texas Utilities Generating Co., et al. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-81-36, slip op. (Dec. 30, 1981). The standard for exercise of sua sponte authority is analogous to that for reopening, i.e., that a significant safety, environmental, or common defense and security matter remains. 10 C.F.R. § 2.760a; see Consolidated Edison Co. of New York (Indian Point Station, Unit 3), CLI-74-28, 8 AEC 7, 9 (1974). In Comanche Peak, the Commission stated that "the apparent need to . . . monitor the Staff's progress in identifying and/or evaluating potential safety or environmental issues are not factors which authorize a board to exercise its sua sponte authority." Comanche Peak supra, December 30, 1981 slip op. at 3. Based on the authorities cited, we do not believe this to be a case in which the exercise of the Board's sua sponte authority is warranted or justified.

Conclusion

For all the foregoing reasons, the Intervenor has failed to meet the burden required for reopening the record

and has failed to satisy the five requirements for admitting late contentions. Accordingly, the Board should deny the Intervenor's motion in all respects.

Respectfully submitted,



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