DOCKETED
USNRC

'82 APR 14 A11:13

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF ILLINOIS POWER COMPANY, SOYLAND POWER COOPERATIVE, INC. and WESTERN ILLINOIS POWER COOPERATIVE, INC. (Operating License for Clinton Power Station, Unit 1)	)	Docket No. 50-461 OL

NOTICE

TO:

Hugh K. Clark, Esq., Chairman
P. O. Box 127A
Kennedyville, Maryland 21645

Dr. George A. Ferguson
School of Engineering
Howard University
2300 Sixth Street, N.W.
Washington, D.C. 20059

Dr. Oscar H. Paris
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Executive Legal Director
United States Nuclear Regulatory Commission
Washington, D.C. 20555

Philip L. Willman
Assistant Attorney General
Environmental Control Division
188 West Randolph Street
Suite 2315
Chicago, Illinois 60610

Jan Kodner
Tutt and Kodner
173 W. Madison Street
Suite 1004
Chicago, Illinois 60602

RECEIVED
APR 15 1982
US NUCLEAR REGULATORY COMMISSION
DOCUMENT MANAGEMENT BR
TIDC

D503
50/1

8204160005 820412
PDR ADOCK 05000461
PDR
G

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Appeal Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

PLEASE TAKE NOTICE that I have filed with the Secretary of the United States Nuclear Regulatory Commission RESPONSE OF APPLICANTS TO PRAIRIE ALLIANCE'S PROPOSED SUPPLEMENTAL CONTENTIONS in the above-captioned matter. A copy of this document is attached hereto and hereby served upon you.

One of the Attorneys for
Applicants

Sheldon A. Zabel
William Van Susteren
Charles D. Fox IV
SCHIFF HARDIN & WAITE
7200 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
(312) 876-1000

Dated: April 12, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF ILLINOIS POWER COMPANY, SOYLAND POWER COOPERATIVE, INC. and WESTERN ILLINOIS POWER COOPERATIVE, INC. (Operating License for Clinton Power Station, Unit 1)	)	Docket No. 50-461 OL

RESPONSE OF APPLICANTS TO PRAIRIE ALLIANCE'S PROPOSED SUPPLEMENTAL CONTENTIONS

Illinois Power Company ("Illinois Power"), Soyland Power Cooperative, Inc., and Western Illinois Power Cooperative, Inc. ("Applicants"), pursuant to the oral order of the Atomic Safety and Licensing Board of April 1, 1982, hereby respond to the proposed supplemental contentions submitted by Prairie Alliance on March 26, 1982.

I. GENERAL COMMENTS

Applicants object to the admission of all of Prairie Alliance's proposed supplemental contentions. Two of the proposed supplemental contentions concern a matter which falls outside the scope of the Board's authority. The six remaining proposed supplemental contentions fail to meet the basis and specificity requirements of Section 2.714(b) of the Rules of Practice of the Nuclear Regulatory Commission ("NRC"). This is either because the contention has no

basis in fact or because the contention as written is so vague that it fails to provide both Applicants and the NRC Staff with "a fair opportunity to know what the issues are, exactly what proof, evidence or testimony is required to meet that issue and exactly what support Intervenor intends to adduce for its allegations." Gulf States Utilities Co. (River Bend Station, Units 1 & 2) ALAB-444, 6 NRC 760, 771 (1977).

This lack of specificity is especially inexcusable since, given the short period of time remaining before the prehearing conference, any supplemental contentions must be drafted precisely or the other parties will be unable to prepare their cases. Prairie Alliance has not met this burden.

II. FAILURE TO MEET THE REQUIREMENTS FOR LATE-FILED CONTENTIONS.

Prairie Alliance's proposed supplemental contentions also fail to meet many of the requirements of 10 C.F.R. § 2.714(a)(1) which the Board considers in determining the admissibility of late-filed contentions.

Good Cause for Failure to File on Time. None of the proposed supplemental contentions is based on either the Safety Evaluation Report ("SER") or on any new information. Instead, seven of the eight proposed supplemental contentions are simply restatements of contentions or portions

of contentions which Prairie Alliance submitted in March 1981 and which the Board rejected in its Memorandum and Order of May 29, 1981. See Illinois Power Co. (Clinton Power Station, Units 1 and 2) LBP-81-5, 13 NRC 708 (1981).[1] Proposed Supplemental Contention 4, which does not restate a previous contention, is based on false information, as shown below, and therefore lacks any basis in fact.

Availability of Other Means by Which Petitioner's Interest Will Be Protected. Prairie Alliance has had other means by which to address the issues it attempts to raise in the proposed supplemental contentions. For example, with respect to the proposed supplemental contentions dealing with environmental issues (Proposed Supplemental Contentions 1, 2, 3, 7, 8), Prairie Alliance had the opportunity to comment on the Draft Environmental Statement ("DES") but failed to do so.

Development of A Sound Record. Prairie Alliance has failed to demonstrate how it will contribute to the

---

1

Proposed Supplemental Contention, March 26, 1982	Original Proposed Contention Rejected by Board
1	5
2	18
3	17
5	8
6	10(f)
7	9(f), 9(g)
8	9(a),9(b),9(c),9(d)

development of a sound record. In neither its proposed supplemental contentions nor its Memorandum in Support of Proposed Supplemental Contentions (nor, for that matter, at any point in these proceedings) has Prairie Alliance identified experts or in any other way indicated what expertise it has or what contribution it will make to the proceedings. A party is unable to present its own witnesses or cross examine the witnesses of other parties effectively unless it has a demonstrated expertise in the matters under consideration. This failure contributes to the impermissible vagueness of Prairie Alliance's proposed supplemental contentions.

Unnnecessary Delay. Admission of any of the proposed supplemental contentions would unnecessarily delay the proceedings. Seven of the eight proposed supplemental contentions are restatements of previously rejected contentions. For the same reasons that the original contentions were rejected, the proposed supplemental contentions are unacceptable. Any attempt to litigate such ill-defined issues would be pointless and only lead to unnecessary delay.

III. SPECIFIC CONTENTIONS

Proposed Supplemental Contention 1: Applicants object to the admission of Proposed Supplemental Contention 1 because it is impermissibly vague. Proposed Supplemental

Contention 1 is not based on the SER. Instead it is merely a restatement of Proposed Contention 5 which was submitted by Prairie Alliance on March 31, 1980 and rejected by the board in its Memorandum and Order of May 29, 1981 for lacking the requisite specificity. Clinton Power Station, 13 NRC at 713. For the same reason that the Board denied Proposed Contention 5, Proposed Supplemental Contention 1 is impermissibly vague and should be denied.

Moreover in rejecting Original Contention 5, the Board stated that this contention was denied without prejudice to the proffer of a specific contention after Prairie Alliance had an opportunity to study the Staff's FES and SER. Id. at 713. The FES has not been issued at this time and Prairie Alliance advances no basis from the SER for this contention.

Proposed Supplemental Contentions 2 and 3: Applicants object to the admission of Proposed Supplemental Contentions 2 and 3 because the Board, under the recently promulgated 10 C.F.R. § 51.53(c), has no authority to consider contentions raising the need for power or alternative energy sources. 47 Fed. Reg. 12943 (March 26, 1982).

Proposed Supplemental Contention 4: Applicants object to Proposed Supplemental Contention 4 because it has no basis in fact. General Electric is not withdrawing from the nuclear market as Prairie Alliance asserts. See

attached Exhibit 1 which is a letter of April 2, 1982 from W. H. Bruggeman, Vice President and General Manager, Nuclear Energy Business Operations, for General Electric Company, to Leonard J. Koch, Vice President, Illinois Power Company. (In the April 1, 1982 conference call, Prairie Alliance indicated it would withdraw this contention if the inferences it made based on press reports were erroneous. Exhibit 1 demonstrates that the inferences were erroneous but, for the sake of clarity in the record, this contention should be denied.)

Proposed Supplemental Contention 5: Applicants object to Proposed Supplemental Contention 5 because it is impermissibly vague. Proposed Supplemental Contention 5 raises a purely generic issue of systems interaction. The NRC Staff is presently resolving this safety issue in a generic proceeding as Unresolved Safety Issue A-17. The NRC Staff has found that the Clinton Power Station may be operated safely without awaiting the resolution of Unresolved Safety Issue A-17. SER pp. C-9 - C-11. Prairie Alliance has failed to indicate any circumstances which would prohibit an operating license for the Clinton Power Station from issuing in spite of the unresolved generic safety issue. Consequently, Prairie Alliance has not provided the required nexus between the generic issue of systems interaction and the Clinton Power Station. See Virginia

Electric and Power Company (North Anna Nuclear Power Station, Units 1 & 2) ALAB-491, 8 NRC 245 (1978).

Proposed Supplemental Contention 6: Applicants object to Proposed Supplemental Contention 6 because Prairie Alliance has failed to provide the required nexus between the unresolved generic safety issue of hydrogen control and the Clinton Power Station. The only nexus alleged, General Electric's supposed withdrawal from the nuclear marketplace, is untrue. See attached Exhibit 1 and the response to Proposed Supplemental Contention 4, supra.

Proposed Supplemental Contention 7: Applicants object to Proposed Supplemental Contention 7 because it is impermissably vague. Proposed Supplemental Contention 7 is basically a restatement of Proposed Contentions 9(f) and 9(g), which the Board rejected in its Memorandum and Order of May 29, 1981 for lacking the requisite specificity. Clinton Power Station, 13 NRC at 714. For the same reason that the Board denied Proposed Contention 9(f) and 9(g), Proposed Supplemental Contention 7 is impermissibly vague and should be denied.

Prairie Alliance in its Memorandum in Support of Proposed Supplemental Contentions has misstated the recent order issued by the District of Columbia Circuit Court of Appeals in People Against Nuclear Energy v. Nuclear Regulatory Commision, et al. (No. 81-1131) (Unpublished

Judgement, January 7, 1982). There is still no requirement that contentions dealing with psychological trauma be allowed. The judgment of the Circuit Court merely vacated the NRC's order that psychological trauma contentions not be considered. The Court's judgment has not reversed the Commission's order. Moreover, the Court of Appeals decision would not excuse Prairie Alliance's failure to revise its previously denied contention to cure the lack of specificity which was the primary reason for denial.

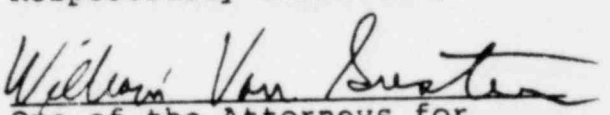
Proposed Supplemental Contention 8: Applicants object to Proposed Supplemental Contention 8 because it is impermissibly vague. This contention is not based on any information contained in the SER since socioeconomic effects are not covered in the SER. Moreover, this contention is not based on any new information which would justify a late filed contention. Instead, this contention is a restatement of Prairie Alliance Proposed Contention 9(a)-9(d), which the Board rejected as lacking the requisite specificity. Clinton Power Station, 13 NRC at 714.

Furthermore, much of this Proposed Supplemental Contention, specifically parts A, C, D, E and H, is appropriate for and was considered in the construction permit phase and Prairie Alliance has alleged no new facts warranting any reconsideration now. Parts B and G appear redundant, but, in any event, are too vague to be admissible. Part F

assumes a "reallocation" with no basis in fact. Even if the assumption were valid, the Illinois Department of Conservation ("IDOC") has voluntarily agreed to participate in the recreational development at Lake Clinton, the allocation of funds by IDOC is beyond this Board's jurisdiction or the control of Applicants, and the impact, if any, on Weldon Springs State Park was appropriate for and considered during the construction permit phase and Prairie Alliance has alleged no new facts warranting reconsideration. For these reasons and the reasons that the Board rejected Proposed Contention 9(a)-9(d), Proposed Supplemental Contention 8 should be denied.

WHEREFORE, for reasons set forth above, Applicants request that the Board deny each of Prairie Alliance's proposed supplemental contentions.

Respectfully submitted,



One of the Attorneys for
Applicants

Sheldon A. Zabel
William Van Susteren
Charles D. Fox IV
SCHIFF HARDIN & WAITE
7200 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
(312) 876-1000

Dated: April 12, 1982

EXHIBIT 1

GENERAL ELECTRIC

GENERAL ELECTRIC COMPANY

NUCLEAR ENERGY BUSINESS OPERATIONS

WARREN H. BRUGGEMAN

VICE PRESIDENT AND GENERAL MANAGER

175 CURTNER AVENUE

SAN JOSE, CALIFORNIA 95125

April 2, 1982

Mr. Leonard J. Koch, Vice President
Illinois Power Company
500 South 27th Street
Decatur, Illinois 62525

Dear Mr. Koch:

You have asked for a statement of the General Electric Company's intentions with respect to its role in the nuclear industry. This letter responds to your request.

The General Electric Company is aggressively and diligently satisfying its obligations under existing Nuclear Steam Supply contracts. That effort shall continue, in support of IPC and other plant operators around the world.

The General Electric Company perceives the fuel and services needs of nuclear plants as sensible business opportunities. We intend to be aggressive in our pursuit of those opportunities. Illinois Power Company and other utilities will be served by our continued participation.

The General Electric Company recognizes that opportunities for the sale of new Nuclear Steam Supply Systems is presently limited. Nonetheless, we are actively pursuing appropriate opportunities as they emerge. Our most recent efforts have been in Taiwan and Mexico.

In summary, General Electric Company has no expectation of abandoning the nuclear business. IPC and other BWR owners can look forward to the continued support and expertise of the General Electric Company.

I trust this will satisfy your needs.

Sincerely,

W. H. Bruggeman

WHB:eg

CERTIFICATE OF SERVICE

I hereby certify that an original and two conformed copies of the foregoing document were served upon the following:

Secretary of the Commission
United States Nuclear Regulatory Commission
Washington, D.C. 20555
Attention: Docketing and Service Branch

and that one copy of the foregoing document were served upon each of the following:

Hugh K. Clark, Esq., Chairman
P.O. Box 127A
Kennedyville, Maryland 21645

Dr. George A. Ferguson
School of Engineering
Howard University
2300 Sixth Street, N.W.
Washington, D.C. 20059

Dr. Oscar H. Paris
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Executive Legal Director
United States Nuclear Regulatory Commission
Washington, D.C. 20555

Philip L. Willman
Assistant Attorney General
Environmental Control Division
188 West Randolph Street
Suite 2315
Chicago, Illinois 60610

Jan Kodner
Tutt and Kodner
173 W. Madison Street
Suite 1004
Chicago, Illinois 60602

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Appeal Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

in each case by deposit in the United States Mail, postage prepaid on April 12, 1982.

One of the Attorneys for
Applicants

Sheldon A. Zabel
William Van Susteren
Charles D. Fox IV
SCHIFF HARDIN & WAITE
7200 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
(312) 876-1000