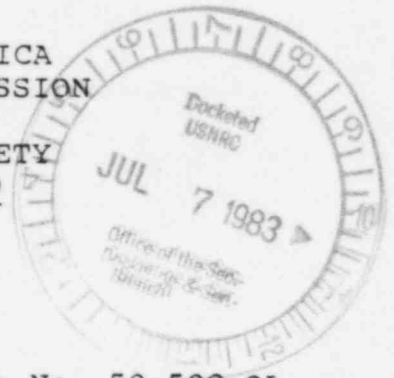
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY
AND LICENSING BOARD



In the Matter of	)	
	)	
WASHINGTON PUBLIC POWER SUPPLY SYSTEM	)	Docket No. 50-508-OL
	)	
(WPPSS Nuclear Project No. 3)	)	

APPLICANT'S RESPONSE IN OPPOSITION TO
SUPPLEMENT TO REQUEST FOR HEARING
AND PETITION FOR LEAVE TO INTERVENE

The Washington Public Power Supply System ("Applicant") hereby responds to the proposed contentions set forth in the Supplement to Request for Hearing and Petition for Leave to Intervene ("supplemental petition") filed by the Coalition for Safe Power ("petitioner"). In the discussion which follows, Applicant first discusses the general legal principles that underlie objections common to many of these contentions. Applicant then sets forth its specific objections to the proposed contentions filed by petitioner.

I. GENERAL LEGAL OBJECTIONS

Applicant objects to certain of petitioner's contentions on two grounds. First, the contentions do not have their bases set forth with reasonable specificity and thus do not meet the requirements set forth in the 10 C.F.R. Section 2.714(b). Second, some of the contentions seek to

challenge NRC Rules and Regulations, in violation of 10 C.F.R. Section 2.758. These are shortcomings in petitioner's pleading that alone preclude the contentions from being accepted by the Board.

A. Basis and Specificity

The Commission's Rules, as amended effective May 16, 1978, require that

> . . . the 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.[1]

The Statement of Considerations issued with amended Section 2.714(b) indicates the importance which the Commission attaches to the basis and specificity requirements, and states that "a proposed contention must be set forth with particularity and with the appropriate factual basis."[2] It is clear that the Commission intends the requirement to establish a threshold test which a contention must meet before it can be admitted as an issue in controversy in a proceeding.

The Appeal Board has explicitly recognized the importance of the basis and specificity requirements, as follows:

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1 10 C.F.R. §2.714(b).

2 43 Fed. Reg. 17798 (1978).

> A purpose of the basis-for-contention requirement in Section 2.714 is to help assure at the pleading stage that the hearing process is not improperly invoked. For example, a licensing proceeding before this agency is plainly not the proper forum for an attack on applicable statutory requirements or for challenges to the basic structure of the Commission's regulatory process. Another purpose is to help assure that other parties are sufficiently put on notice so they will know at least generally what they will have to defend against or oppose. Still another purpose is to assure that the proposed issues are proper for adjudication in the particular proceeding. In the final analysis, there must ultimately be strict observance of the requirements governing intervention, in order that the adjudicatory process is invoked only by those persons . . . who seek resolution of concrete issues. [3]

In short, what is required of petitioner is that, first, it identify each allegation against which Applicant must defend. However, in NRC proceedings mere "notice pleading" is insufficient, and the Commission's requirements clearly extend beyond the simple "notice pleading" allowed in the Federal courts.[4] This is a point of particular importance because in NRC licensing proceedings an applicant bears the burden of proof on any contention

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[3] Philadelphia Electric Company, et al. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974) (citations omitted).

[4] Kansas Gas & Electric Co., et al. (Wolf Creek Generating Station, Unit No. 1), ALAB-279, 1 NRC 559, 575 n. 32 (1975).

admitted,[5] and thus is entitled to clear and specific notice of the issues on which it is expected to bear that burden. Second, the basis of the contentions must be set forth with sufficient specificity so that the Board can determine that they have adequate foundation "to warrant further exploration" and that they state issues "proper for adjudication in the particular proceeding."[6]

The Licensing Board has every reason to require that petitioner file meaningful contentions that properly state the matters it wishes to place in controversy and to otherwise meet the requirements of the Rules of Practice. Petitioner has participated and is now participating in a number of other NRC licensing hearings and is presumably familiar with the Rules of Practice governing such proceedings.[7] Therefore, deficiencies in its pleadings should not be excused on the basis that they were prepared by a "layman."[8]

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5 10 C.F.R. §2.732.

6 Peach Bottom, ALAB-216, supra, 8 AEC at 21.

7 See Request for Hearing and Petition for Leave to Intervene, filed by petitioner on February 18, 1983 at 7.

8 Metropolitan Edison Co., et al. (Three Mile Island Nuclear Station, Unit No. 2), ALAB-474, 7 NRC 746, 748 (1978); Detroit Edison Co. (Enrico Fermi Atomic Plant, Unit 2), ALAB-469 7 NRC 470 (1978); Wolf Creek ALAB-279, supra, 1 NRC at 576-77; Public Service Electric and Gas Company (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487, 489 (1973).

Moreover, in this proceeding, as in all NRC proceedings, Applicant has filed extensive documents which petitioner is expected to review.[9] These documents include the operating license application, the Environmental Report ("ER"), an eighteen-volume Final Safety Analysis Report ("FSAR") and CESSAR-F. These documents have been available to petitioner in the Local Public Document Room located in Montesano, Washington, and the ER and FSAR have also been available at the offices of the Bonneville Power Administration in Portland, Oregon. Accordingly, in light of the availability of such material, it is incumbent upon petitioner to identify with specificity those parts of Applicant's documents with which it disagrees and state clearly the basis for its disagreement.[10]

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9 See, e.g., BPI v. AEC, 502 F.2d 424 (D.C. Cir. 1974); Wisconsin Electric Power Co., et al. (Koshkonong Nuclear Plant, Units 1 and 2), CLI-74-45, 8 AEC 928 (1974); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 192, reconsideration denied, ALAB-110, 6 AEC 247, aff'd, CLI-73-12 AEC 241 (1973).

10 See, e.g., Duke Power Co. (Catawba Nuclear Station (Units 1 and 2), CLI-83-19, __ NRC __, June 30, 1983 slip op. at 10-14. Cleveland Electric Illuminating Co., et al. (Perry Nuclear Power Plant, Units 1 & 2), LBP-81-24 14 NRC 175, 181-184 (1981). Applicant is not suggesting that Section 2.714(b) requires an evidentiary showing at this stage by petitioner on the merits of its contentions. Clearly, this is not the case. See Peach Bottom, ALAB-216, supra, 8 AEC at 20; Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973); Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC (footnote continued)

Application of the requirements of Section 2.714(b), including the sufficiency of the basis and specificity of any contention, "involves the exercise of judgement on a case-by-case basis."[11] Nevertheless, it is quite clear that to be first admitted, a contention must be written with sufficient specificity for the Licensing Board to determine that it has an appropriate basis regardless of whether it may ultimately be determined that it has no factual merit. Applicant believes that given the comprehensive materials in this docket available to petitioner and its experience in other NRC licensing hearings, the Licensing Board should scrutinize petitioner's contentions closely for adequate specificity and basis. Applicant submits that such scrutiny will reveal five general inadequacies in many of the proposed contentions.

(footnote continued from previous page)
542, 548-549 (1980). In ruling on the admissibility of the contentions, it is not necessary for the Licensing Board to determine whether the contentions are "well-founded in fact." Duke Power Company (Amendment to Materials License SNM-1773 -- Transportation of Spent Fuel from Oconee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-528, 9 NRC 146, 151 (1979). That determination should be made only after a particular contention has been admitted to a proceeding.

11 Peach Bottom, ALAB-216, supra, 8 AEC at 20.

First, as noted above, when petitioner seeks to put in issue a topic discussed in materials that have been filed by Applicant, such as the ER and FSAR, it cannot plausibly be sufficient for petitioner to file a contention which fails to take such information, including all latest revisions, into account. Clearly, administrative efficiency compels that result. Further, Applicant is entitled to specificity as to the nature of the alleged deficiency and as to the basis for petitioner's belief that such deficiency exists so that Applicant is on notice as to the matters to be litigated or otherwise addressed in the proceeding.[12] Petitioner has failed to meet this obligation for several proposed contentions, including two, three, eight, fourteen and fifteen.

Second, when petitioner seeks to put in issue a matter which arguably is not covered in Applicant's filings, it is incumbent on it to specify precisely the nature of its allegation and provide in detail the basis for it. This is necessary so that, as a threshold matter, the Licensing Board can determine whether the issue sought to be raised is within the scope of the proceeding. Petitioner has not satisfied this duty in connection with, for example, proposed contentions two and five.

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12 See, e.g., Commonwealth Edison Company (Dresden Nuclear Power Station, Unit No. 1), LBP-82-52, 15 NRC 183 (1982).

Third, it is not sufficient for petitioner to seek to raise an issue simply by stating that Applicant has "not demonstrated" compliance with a regulatory requirement, using as the sole basis for such assertion the fact that the regulatory review process has not yet been completed or that a commitment made by the Applicant has not been implemented fully. The Commission's procedures require that proposed contentions be framed on the basis of information available to petitioner at the time the Notice of Hearing is published. Accordingly, if petitioner seeks to raise a matter on which review has not yet been completed as an issue in this proceeding, its contention must, at a minimum, take account of the information set forth in the ER and FSAR, as well as identify the regulatory requirement which it claims is not met, and explain clearly why it believes the matter is deficient.[13] It may not simply assert as a basis for its proposed contention the fact that that the regulatory review process is not yet completed.[14] Proposed contentions two, three, four, seven and fourteen all rest on the "fact" that the Applicant has not yet provided certain information. In none of those

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13 See, e.g., Cleveland Electric Illuminating Co., et al. (Perry Nuclear Power Plant, Units 1 & 2), LBP-81-24, 14 NRC 175, 216 (1981).

14 Cf. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2); Docket No. 50-443-OL, 50-444-OL; Memorandum and Order; June 20, 1983; slip op. at 3.

cases does petitioner argue or provide any basis for arguing that such information will not be fully satisfactory when it is provided. Accordingly, these proposed contentions fail to meet the specificity and basis requirement.

Fourth, many of the proposed contentions are drafted in such general terms that they fail to afford the Applicant and the NRC Staff a reasonable understanding of the precise issues to be litigated. At a minimum, each proposed contention should contain both the specific deficiency perceived by the petitioner and the Commission regulation or other legally binding requirement that would be violated if the specific deficiency is found to exist.

A comparison of proposed contentions twelve and four illustrates the point. In proposed contention twelve petitioner broadly alleges that WNP-3 is not built in accordance with NRC requirements, applicable industry codes and with an adequate QA program. The contention contains no specifics that would connect it to the purported basis for it, and therefore would in no manner confine discovery and litigation to the issues raised. Rather, the contention arguably would permit wholesale discovery and full litigation of each and every aspect of the construction of WNP-3. This would be patently unfair to the Applicant, burdensome on the Staff and Board, and

inappropriate as a matter of law. In Illinois Power Co., et al. (Clinton Power Station, Unit 1),[15] the licensing board recognized the difficulty with such broadly worded contentions when, in the context of discovery, it ruled as follows:

> Where a contention is made up of a general allegation which, standing alone, would not be admissible under 10 CFR §2.714(b), plus one or more alleged bases for the contention set forth with reasonable specificity, the scope of the matters in controversy raised by such contention are limited by the specific alleged basis or bases set forth in the contention.

Similar deficiencies exist in other proposed contentions, including, six, seven, eight, ten, eleven, fourteen and fifteen. Proposed contention seventeen challenging the entire Quality Assurance Program for WNP-1 in view of a few NRC inspection reports is a prime example of an overly broad contention.

This serious shortcoming in petitioner's supplemental petition is not merely a mistake in draftsmanship. A comparison of proposed contentions twelve and four indicates that petitioner can state a propsed contention with sufficient specificity to at least connect it with

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15 LBP-81-61, 14 NRC 1735, 1737 (1981).

and confine it to the purported basis advanced.[16] In contention four, petitioner alleges that 10 C.F.R., Part 50 Appendix A (GDC 34,35, 38 and 44 and NUREG 0737) are not satisfied because "the CESSAR design utilized at WNP-3 is inadequate to provide rapid depressurization, decay heat removal and the capability for natural circulation."[17] Thus, at least the issue petitioner attempts to raise in this contention is focused and pointed.

Fifth, in a number of cases petitioner purports to support its proposed contention with citations to various documents such as NRC inpsection reports. However, in many of these instances, petitioner provides only incomplete references to these documents. As a result, preparing a response to its supplemental petition was akin to a game of "hunt the peanut with technical information,"[18] in which Applicant was forced to guess

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16 Applicant does not concede by this discussion of proposed contention four that it is admissible, but merely compares it with contention twelve to illustrate the need for more precision in draftsmanship of contentions. For Applicant's position on the admissibility of contention four, see the discussion, infra, at 39.

17 Supplemental petition at 9.

18 Connecticut Light & Power Co. v. U. S. Nuclear Regulatory Commission, 673 F.2d 525, 530 (D. C. Cir. 1982), cert. denied, 51 U.S.L.W. 3254 (1982).

what petitioner's concern in a particular area was and how, if at all, the referenced document addressed that concern.

Similarly, in many cases it is evident either that petitioner did not understand fully the documents on which it chose to rely as a basis for its proposed contention or that petitioner simply mischaracterized those documents. Petitioner accuses Applicant of, for example, "disguising" the environmental effects of plant operation.[19] However, as is evident from the discussions below, petitioner has failed to provide an accurate factual basis for that charge or for its proposed contentions.

Applicant does not mean to suggest that the Board should consider the merits of petitioner's proposed contention when addressing this aspect of the basis and specificity argument. However, petitioner should not be permitted simply to advance general allegations of inadequacy, totally blind itself and the Board to undisputed facts to the contrary, then put the Applicant, Board and Staff to the unnecessary task of formally addressing the allegations either in trial or through summary disposition.[20]

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19 Supplemental petition at 36.

20 See Duke Power Co. (Catawba Nuclear Station, Units 1 and 2); Docket Nos. 50-413, 50-414; Memorandum and Order, December 1, 1982 slip op. at 20.

> Particularly requires not only an allegation of the fact of non-compliance with a specified regulation, but also sufficient detail to permit the Board to determine how the regulation is supposedly being violated. This specificity is necessary to avoid admitting a contention that misstates a regulatory requirement or collaterally attacks that regulation by seeking to impose extra-regulatory requirements.[21]

This failure of petitioner to accurately cite documents as a basis for its proposed contentions is particularly glaring in proposed contentions four, six, seven, nine, ten, eleven, twelve and seventeen.

If these principles are not observed in ruling on the admissibility of proposed contentions, Section 2.714(b) will be emasculated. For all practical purposes, petitioner could go through the table of contents of Applicant's FSAR and ER, allege that inadequate information has been provided concerning each subject matter heading, and thus place in controversy every aspect of the proposed activity without stating any basis whatsoever. A petitioner could similarly bring into controversy myriad of subjects not discussed in Applicant's documents, even though they had no reasonable nexus to the proceeding or the facility and had been properly omitted from consider-

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21 Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2); Docket Nos. 50-443-OL, 50-444-OL; Memorandum and Order; November 17, 1982 slip op. at 9, n. 17.

ation by the Applicant. Also, by reciting allegations which are factually inaccurate on their face, a petitioner could invoke the hearing process even though its claims were based on nothing more than erroneous statements.

Perhaps most importantly, from the standpoint of the public interest, the admission of contentions that fail to meet the specificity and basis requirements of Section 2.714(b) will frustrate compliance with the Commission's directive of May 20, 1981 set out in its "Statement of Policy and Conduct of Licensing Proceedings"[22] to licensing boards to conduct efficient hearings to the maximum extent feasible, consistent with fairness and sound procedures. Further, undue leniency on the specificity and basis requirements runs counter to the reason underlying the Commission's amendment of its intervention rules, i.e., the allowance of additional time for petitioner to "frame and support adequate contentions."[23]

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22 CLI-81-8, 13 NRC 452 (1981).

23 43 Fed. Reg. 17798 (1978).

B. Challenge to Commission's Regulations

Commission Rules of Practice provide in pertinent part that absent special circumstances[24] "any rule or regulation of the Commission, or any provision thereof ... shall not be subject to attack by way of discovery, proof, argument or other means in any adjudicatory proceeding involving initial licensing...."[25]

This prohibition against challenges to Commission regulations in adjudicatory proceedings also extends to the basis and foundation of such regulations. As a result, it is impermissible for a petitioner to provide, as the "basis" for a proposed contention that a

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24 The sole ground for waiver or exception of any rule or regulation in an adjudicatory proceeding involving initial licensing "shall be that special circumstances . . . are such that application of the rule or regulation (or provision thereof) would not serve the purposes for which the rule or regulation was adopted." 10 C.F.R. §2.758(b). Further, a petition seeking waiver or exception of Commission rules or regulations must by affidavit make a prima facie showing that such special circumstances do exist. 10 C.F.R. §§2.758(b), (c), and (d). See also Detroit Edison Co., et al. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-37, 8 NRC 575, 584-5 (1978). Petitioner has not alleged and provided a prima facie showing in connection with any of its proposed contentions that such circumstances exist here.

25 10 C.F.R. §2.758(a). See, e.g., Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 221 (1978); Metropolitan Edison Co., et al. (Three Mile Island Nuclear Station, Unit No. 2), ALAB-456, 7 NRC 63, 65, 67 (1978); Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-410, 5 NRC 1398, 1402 (1977); Union Electric Company (Callaway Plant, Units 1 and 2), ALAB-347, 4 NRC 216, 218 (1976).

requirement was not met, studies already considered and rejected by the Commission when it promulgated that requirement, and then contend that these studies demonstrate that the requirement in issue is not satisfied.[26]

Moreover, issues that are, or are about to become, the subject of ongoing rulemaking proceedings in which generic determinations will be made are equally inappropriate for resolution in individual licensing proceedings.[27] In sum, any of petitioner's proposed contentions that challenge a Commission regulation, or raise issues which are, or are about to become, the

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26 See Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 89 (1974) ("[t]o go behind [provisions within a regulation] . . . and challenge the basis on which they rest is in effect a challenge to the regulation itself"). See also Union of Concerned Scientists v. Atomic Energy Commission, 499 F.2d 1069, 1090 (D.C. Cir. 1974); Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), CLI-80-31, 12 NRC 264, 270 (1980); Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 528 (1973); Consumers Power Company (Midland Plant, Units 1 and 2), LBP-82-118, ___ NRC ___, December 30, 1982, slip op. at 3-7.

27 Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), ALAB-655, 14 NRC 799 (1981); Union Electric Co., et al. (Callaway Plant, Units 1 and 2), ALAB 352, 4 NRC 371, 373-4 (1976); Wisconsin Electric Power Co., et al. (Point Beach Nuclear Plant, Unit 2), ALAB-78, 5 AEC 319, 325-6 (1972).

subject of ongoing rulemaking proceedings are not proper subjects for litigation in this proceeding, and must be denied.[28]

II. PETITIONER'S PROPOSED CONTENTIONS

In its June 15, 1983 filing, petitioner set forth seventeen proposed contentions for consideration. Applicant's specific responses to those contentions are set forth below.

A. Proposed Contention One

Proposed contention one addresses whether WNP-3 will be completed in a timely manner. It states, as follows:

> Petitioner contends that there is no reasonable assurance that WNP-3 will be "substantially completed on a timely basis" as required by 10 CFR part [sic] 2. Appendix A, Section VIII(b)(1).[29]

This proposed contention is inadmissible for two reasons. First, there is no legal basis for it. Second, the proposed contention lacks a factual basis. Accordingly, proposed contention one should not be admitted in this proceeding.

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28 Such restrictions do not preclude challenge to Commission regulations. However, the proper forum to advance a challenge to the Commission's regulations is before the Commission, and not in in individual licensing proceedings. Douglas Point, ALAB-218, supra, 8 AEC at 89.

29 Supplemental petition at 1.

Part 2, Appendix A is a statement of general policy and procedure which explains the procedures the Commission expects to be followed by the Atomic Safety and Licensing Boards in construction permit and operating license proceedings. As such, it does not impose any legal requirements on Applicant.[30]

In contrast, the regulation governing the legal requirements and findings for an operating license case is contained in 10 C.F.R. Section 50.57. This is the provision which must be satisfied before NRC may issue an operating license. Conspicuous by its absence from Section 50.57 is any mention of the need for a finding that the facility will be completed in "a timely basis," as the petitioner suggests is necessary.

The Board should resolve the issues properly placed in controversy by the parties and any sua sponte questions raised by the Board.[31] The completion date for the facility is not an appropriate substantive issue for this OL case. Of course, the NRC Staff must find, in accordance with 10 C.F.R. Section 50.57, that construction of WNP-3 has been substantially completed before it issues an operating license for the plant following authorization

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30 See Pacific Gas & Electric Co. v. FPC, 506 F.2d 33, 38-39 (D.C. Cir. 1974).

31 10 C.F.R. §2.760a. See Texas Utilities Generating Co. et al. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-81-36, 14 NRC 1111 (1981).

from the Licensing Board to do so. However, the Board need not find that a facility will be completed in a timely manner. Absent such a requirement, there is no legal basis for the proposed contention.

Second, even assuming that the proposed contention is litigable in this case, it should be rejected as lacking basis and specificity. As a basis for its proposed contention, petitioner observes erroneously that construction of WNP-3 has been deferred. It then speculates that Applicant will default on its debts for two nuclear plants (Projects 4 and 5) which were terminated last year and that such default will make it impossible to complete construction of WNP-3. It also offers the view that alternative financing of the project would not be obtained without the approval of the Bonneville Power Administration ("BPA"), which it claims is not likely.[32]

Such representations do not provide any basis for the proposed contention. WNP-3 has not been deferred, and in any event, such a deferral would be an insufficient basis for concluding that WNP-3 will not be completed. Nor does speculation involving a theoretical Supply System default in connection with its two cancelled projects provide any basis to conclude that WNP-3 will not be finished. The

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[32] Supplemental petition at 3.

plant is 74.8% complete, and there is no basis for concluding that it will not be completed. As discussed above, petitioner is obliged to provide a factual basis in support of its contention that construction of WNP-3 will not be completed. It has failed to do so. Accordingly, proposed contention one should be rejected.

B. Proposed Contention Two

Proposed contention two addresses the somatic, teratogenic and genetic effect of radiation. It states as follows:

> Petitioner contends that Applicant has neither adequately nor correctly assessed the potential releases of radionucleides [sic] from WNP-3 during normal, transient and accident conditions, nor the somatic, teratogenic and genetic effects of the ionizing radiation. Applicant thus fails to meet the requirements of 10 CFR 50.34, 50.36, 210.103, 210.203, and Appendix I of Part 50 and, further, underestimates the human cost of the project in the cost-benefit analysis required by 10 CFR 51.21, 50.20(b)&(c) and 51.23(c).[33]

This proposed contention should not be admitted for a number of reasons. First, it is an attack on NRC regulations and is, therefore, proscribed by 10 C.F.R. Section 2.758(a). Moreover, several of the regulations

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33 Supplemental petition at 2.

petitioner claims were not satisfied are not relevant to this proposed contention. Finally, the proposed contention lacks an adequate supporting basis.

Appendix I to 10 C.F.R. Part 50 establishes numerical guides for design objectives and limiting conditions for operation "to assist applicants for . . . licenses of light-water-cooled nuclear power reactors in meeting the requirement[s] . . . that radioactive material in effluents released from these facilities to unrestricted areas be kept as low as is reasonably achievable."[34] Appendix I implements the standards set forth at 40 C.F.R. Part 190, which establish radiation levels below which "normal operations of the uranium fuel cycle are to be determined to be environmentally acceptable."[35] These standards, which were promulgated by the Environmental Protection Agency ("EPA"), are imposed on power reactor licensees by NRC as part of its licensing duties.[36] Other applicable standards governing radioactive releases are

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34 Appendix I at §1.

35 42 Fed. Reg. 2858 (1977).

36 See September 11, 1973 AEC-EPA Memorandum of Understanding with Respect to AEC-Licensed Facilities, 38 Fed. Reg. 24936 (1973) and Memorandum of Understanding Between EPA and NRC Concerning the Clean Air Act, as Amended in 1977, 45 Fed. Reg. 72981 (1980).

set forth in 10 C.F.R. Part 20 ("Standards for Protection Against Radiation") and 10 C.F.R. Part 100 ("Reactor Site Criteria").

The basis offered by petitioner in support of its proposed contention for the most part consists of a recitation of numerous studies, the thrust of which is that no release of radioactivity from power reactors is environmentally acceptable.[37] Therefore, it is apparent that one (if not the) primary concern of petitioner is the validity of regulatory requirements permitting routine releases of radioactivity already found in rulemaking proceedings to be environmentally acceptable.

To the extent petitioner wishes to raise this concern, proposed contention two is an attack on Commission regulations and is not suitable for litigation in this proceeding. If petitioner wishes the NRC to rehash the well-worn theories of Gofman and the like, then it should raise the issues in a petition for rulemaking to the Commission under 10 C.F.R. Section 2.802. Petitioner should not be permitted to inject these generic theories and value preferences into this individual licensing case, which is governed by NRC Rules and Regulations.

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37 See Supplemental petition at 3-4.

Second, petitioner contends that the Applicant has failed to satisfy a number of NRC regulations, including 10 C.F.R. Sections 50.34, 50.36, 20.103, 20.203 and Part 50, Appendix I.[38] However, either these provisions are not relevant to the proposed contention petitioner attempts to raise or there is no supporting basis set forth in the supplemental petition to support a claim that such provisions were not satisfied.

Sections 50.34 and 50.36 require respectively that the Applicant submit an FSAR and proposed technical specifications. The basis offered by petitioner in support of its proposed contention simply fails to elaborate upon or even relate Sections 50.34 and 50.36 to proposed contention two. Manifestly, Applicant has submitted its operating license application and FSAR which were found to be acceptable for docketing.[39] Moreover, petitioner simply has raised no issues in this proposed contention involving the adequacy of proposed plant technical specifications. Therefore, Sections 50.34 and 50.36 are not relevant to this proposed contention and a reference to them does not warrant its admission to this proceeding.

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38 Id. at 2.

39 See 10 C.F.R. §2.101.

Nor has petitioner provided any basis for its contention that Sections 20.103, 20.203 and Part 50, Appendix I have not been satisfied. Compliance with 10 C.F.R. Section 20.103 is discussed in FSAR Sections 12.4.1 and 12.3.3. Petitioner does not even reference these provisions, let alone identify why they are inadequate. Additionally, FSAR Section 12.5.3.1 specifically addresses compliance with Section 20.203. Again, petitioner fails even to acknowledge this discussion, let alone identify why it believes that discussion is inadequate.

Similarly, FSAR Sections 11.2 and 11.3 address in detail how compliance with Part 50 Appendix I will be achieved. Nowhere in its purported basis for proposed contention two does petitioner discuss and identify alleged inadequacies in these FSAR sections.

Third, petitioner apparently believes that Applicant's Environmental Report is inadequate, presumably in violation of 10 C.F.R. Sections 51.21, 51.20(b) and (c) and 51.23(c).[40] It claims in this regard that ER Section 5.2 allegedly fails to consider certain studies petitioner believes should have been addressed. However, petitioner makes no effort to identify why the analysis set forth in Section 5.2 is inadequate and why the studies petitioner references need be considered.

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[40] Supplemental petition at 3-4.

For example, petitioner asserts that the ER "does not discuss the entire scope of artificial radiation in the Pacific Ocean and food substances found therein including biota such as salmon which return to the vicinity of WNP-3."[41] In fact, ER Section 5.2.3 addresses dose rate estimates for biota other than man, and specifically discusses the effect of artificial radiation on salmon.

Similarly, petitioner's claim that Applicant underestimated in ER Section 5.3 the effect of projected doses of low-level ionizing radiation is without basis. First of all, Section 5.3 addresses potential liquid chemical and biocidal discharges. It does not address low-level ionizing radiation. Moreover, petitioner has not offered any reason why the analysis of low-level radiation doses set forth elsewhere in the ER is inadequate.

In addition, petitioner erroneously cites 10 C.F.R. Section 51.23(c) as a legal requirement Applicant is obliged to satisfy. Section 51.23(c) deals exclusively with the contents of the draft environmental impact statement which the NRC Staff must prepare. Therefore, reliance on this provision in support of a claim regarding Applicant's alleged failure to prepare an adequate environmental report simply is incorrect.

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41 Id.

Fourth, petitioner asserts that Applicant has failed to address the potential radiological consequences following a fuel handling accident and a postulated loss-of-coolant accident.[42] This claim is incorrect on its face. Applicant in fact evaluated the radiological consequences of these potential events, the results of which are set forth in FSAR Section 15.6.5. Significantly, petitioner has not alleged any inadequacies in this evaluation. All it has done is identify a letter from the NRC Staff to the Applicant asking it a question as part of the Staff's routine review regarding this matter, to which Applicant is now responding. Importantly, petitioner has provided no basis for concluding that such responses will be inadequate or that all applicable regulatory requirements have not or will not be met. Moreover, as discussd above, a request by the Staff for additional information clearly does not provide the basis for a proposed contention. This aspect of proposed contention two, therefore, lacks an adaequate supporting basis.

Fifth, petitioner raises a number of claims concerning occupational exposures and the Applicant's alleged failure to justify projected subaverage annual

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42 Id. at 4-5.

doses for workers at WNP-3.[43] However, petitioner simply ignores several discussions of occupational doses in FSAR Sections 12.4.1, 12.4.1.3 and 12.5.1. If petitioner contends these discussions are not adequate to establish compliance with all applicable requirements, it has the duty to provide its factual or legal basis for such claims. Because it has failed to do so, this aspect of proposed contention two is inadmissible.

Lastly, petitioner claims that Applicant has underestimated the effects of low-level radiation emissions on the health of the population living near facilities related to the nuclear fuel cycle which provided fuel to be used at WNP-3.[44] This aspect of proposed contention two is a transparent attempt to challenge Table S-3, the Table of Uranium Fuel Cycle Environmental Data, set forth at 10 C.F.R. Section 51.20(e).

The Supreme Court in Baltimore Gas & Electric Co. v. NRDC,[45] last month upheld the validity of Table S-3, which was promulgated by the Commission specifically to avoid litigation of the environmental effects of the fuel cycle

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43 Id. at 5-6.

44 Id. at 6.

45 51 U.S.L.W. 4678 (June 7, 1983).

in individual licensing proceedings.[46] By now attempting to litigate in this proceeding the environmental effects of the fuel cycle, petitioner is impermissibly challenging a Commission regulation (Table S-3), contrary to 10 C.F.R. Section 2.758. In any event this aspect of the proposed contention lacks basis and specificity. For all of these reasons, proposed contention two is inadmissible and should not be admitted in this proceeding.

C. Proposed Contention Three

Petitioner's proposed contention three addresses environmental qualification of safety-related components. It states, as follows:

> Petitioner contends that Applicant has not shown that safety-related electrical and mechanical equipment and components will be environmentally qualified at the onset of operation and throughout the life of the plant such that there is adequate assurance that the requirements of General Design Criteria 1, 2 and 4 of 10 CFR 50, Appendix A are satisfied.[47]

Applicant submits that this proposed contention constitutes an impermissible attack on Commission regulations and lacks the requisite supporting basis with specificity as mandated by Commission regulations. Accordingly, this proposed contention should be denied.

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46 See note 1 to Table S-3.

47 Supplemental petition at 6.

In an attempt to provide support for proposed contention three, petitioner makes allegations involving five areas of concern, viz., testing, calculation of environmental parameters, compliance with regulatory guidance, open items regarding qualification, and qualification of specific pieces of equipment. However, the very nature of these allegations demonstrates that proposed contention three should be denied.

Testing. As the first basis for its proposed contention, petitioner alleges that Applicant "has not demonstrated that the present testing methods used to meet applicable criteria are adequate."[48] In support of this assertion, petitioner cites two reports regarding tests performed by Sandia National Laboratories[49] which provide some indication that on certain polymers (1) the cumulative effect of low-level radiation for long periods of time is more damaging than the effect of an equal amount of radiation exposure over a short period of time, and (2) a synergistic effect between radiation and heat

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48 Id.

49 NUREG/CR-2156 and 2157. In addition, petitioner cites the June, 1982 edition of "Industrial Research and Development" as a separate basis for this position. However, the cited periodical simply contains a one paragraph synopsis of the previously noted Sandia reports and thus provides no independent basis for petitioner's proposed contention.

may exist.[50] Petitioner concludes that "[t]he results of these reports have not been applied to the environmental qualification testing performed and referenced by Applicant to demonstrate compliance of safety-related equipment and components with applicable standards."[51]

Significantly, in promulgating the final Commission regulations regarding environmental qualification of electrical equipment, the regulations applicable to electrical equipment such as cables referenced by petitioner, the Commission considered and discussed at length the precise reports which petitioner references here.[52] In its discussion, the Commission made clear that it understood precisely the issues raised by these two reports, and that such positions constituted a challenge to the "normal way of qualification" as set forth in the proposed rule that the Commission was considering:

> COMMISSIONER AHEARNE: As I understand it . . . essentially the argument [presented by the two reports] would be that if you qualify the material by a . . . high dose rate over a short period of time, that is not going to give you an accurate qualification because in the plants two things are more likely. One is a much lower dose rate so that the dosage is received over many years and, second, it is likely that some of the dose rate at

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50 Supplemental petition at 7.

51 Id.

52 January 6, 1983 Commission Meeting Transcript regarding 10 C.F.R. §50.49 ("Tr.") at 2-13.

> least will be in a higher temperature environment. So at least the description would say that the normal way of qualification is invalid.[53]

Significantly, the NRC had been analyzing this issue for some time. In addition to the Sandia reports which the Commission had authorized and funded, Franklin Research Institute had also performed an evaluation of this area.[54] From such evaluations, the Commission concluded that these issues did not raise an unknown concern or unresolved technical issue of significant magnitude:

> CHAIRMAN PALLADINO: I have a follow-up question that is almost the same as one you asked before but I don't think was answered. Do I understand correctly that so far as the electrical characteristics are concerned that for a given total dose the property change is similar whether you are at a low dose rate or at a high dose rate? I got that impression by something you said.
>
> MR. FARMER: The jacket is more deteriorated, but it doesn't deteriorate in either case to the point where the jacket would not provide sufficient insulating characteristics to enable the cable to perform its function of carrying current.
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> COMMISSIONER AHEARNE: So the current carrying material is essentially unaffected.

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53 Tr. at 4, emphasis supplied.

54 Tr. at 3-4.

MR. FARMER: Yes.[55]

Significantly, after considering these reports, on January 21, 1983, the Commission issued 10 C.F.R. Section 50.49,[56] which endorses the "normal" testing methodology and approach set forth in NUREG-0588 (to which Applicant is committed, FSAR Section 3.11.2.1 and CESSAR-F at Section 3.11.2).[57]

Petitioner apparently has not alleged that Applicant does not or will not comply with NUREG-0588 testing requirements, and to the extent that it so alleges, petitioner has provided no supporting basis regarding such assertions. Rather, petitioner is apparently challenging the Commission's regulation regarding environmental qualification of electrical equipment by contending that the Commission inadequately considered the two Sandia reports noted as the basis for the petitioner's proposed contention. Petitioner apparently takes the view that the Commission should have, after considering such reports, modified proposed Commission regulations to reflect the contents of the reports. Applicant maintains that this

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55 Id. at 12-13.

56 48 Fed. Reg. 2729 (1983).

57 10 C.F.R. §50.49(k). In Petition For Emergency And Remedial Action, CLI-80-21, 11 NRC 707, 711 (1980), the Commission specified that NUREG-0588 would be used to evaluate plants under licensing review, such as WNP-3.

position constitutes a challenge to the basis of the Commission's regulations, and as such, is proscribed by 10 C.F.R. Section 2.758.[58]

Calculation of Environmental Parameters. As a second basis for its proposed contention 3, petitioner states that Applicant (1) "has not accurately defined the parameters of an accident which would affect the operability of safety-related equipment" and (2) "has underestimated the period of time safety-related equipment will be required to operate."[59] In support of this position, petitioner references general statements of a NRC Staff employee and a Union of Concern Scientists consultant made in 1979 relating to the broad subject of environmental qualification in light of lessons learned from the Three Mile Island ("TMI") accident.[60] Fairly characterized, these statements reflected the personal

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58 In addition, Applicant maintains that petitioner's assertion that Applicant uses cables like those tested in the Sandia reports, is entirely in error. Supplemental petition at 7. See Tr. at 6, wherein the Staff states that the material tested by Sandia has not been used in commercial plants for 20 years. See also Tr. at 13. Thus, Applicant also submits that petitioner's assertion is inadequate in that it has not established a relationship between the material tested in the Sandia study and that currently used within WNP-3.

59 Supplemental petition at 7.

60 Id. at 7-8.

beliefs of those individuals that in light of the TMI accident, environmental qualification needed to be reanalyzed.

Significantly, subsequent to the TMI accident the Commission did indeed reanalyzed the issue of environmental qualification, and, as previously noted, on January 21, 1983, issued its final regulation in this area, i.e., 10 C.F.R. Section 50.49.[61] As stated above, 10 C.F.R. Section 50.49 endorses NUREG-0588 requirements for plants such as WNP-3. NUREG-0588 sets forth specific criteria regarding acceptable methods of determining the values of parameters associated with a loss of coolant accident and main steamline break to which Applicant must qualify its equipment.[62] Further, NUREG-0588 sets forth specific requirements regarding margins with which Applicant must qualify its equipment, including margins regarding time of operation.[63] Applicant has committed to

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61 It should be noted, however, that during and after the Three Mile Island accident (which included a burning of hydrogen inside containment) there were essentially no environmentally induced failures. See SECY 80-107, Enclosure 1 at 16-17 (February 22, 1980).

62 See NUREG-0588 at Section 1, "Establishment of the Qualification Parameters for Design Basis Events;" Appendix A, "Methods for Calculating Mass and Energy Release;" and Appendix B, "Model for Environmental Qualification for Loss of Coolant Accident and Main Steamline Break Inside PWR and BWR Dry Type of Containments."

63 NUREG-0588 at §3.0, "Margins."

comply with all such requirements.[64] In sum, in the wake of the TMI accident, the Commission considered all aspects of the accident including those referenced by petitioner in its Supplemental Petition, and, after due consideration, issued 10 C.F.R. Section 50.49, its final regulations regarding environmental qualification.

To the extent that petitioner contends that such regulations are inadequate, or should be modified, Applicant maintains that this contention constitutes an impermissible attack on Commission regulations. To the extent petitioner contends Applicant is not in compliance with such regulations, Applicant maintains that petitioner must state precisely which parameters are inadequate, where Applicant has underestimated the period of time equipment will be required to operate, which specific pieces of equipment are not in compliance with appropriate Commission regulations, and the precise provisions of the Commission's regulations with which petitioner contends Applicant does not comply. In other words, petitioner must state the specific bases for the proposed contention. It has not done so. Applicant notes that information regarding environmental qualification is contained in FSAR Section 3.11, which consists of over 170 pages of written text and 14 detailed figures. In that petitioner has

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64 FSAR §3.11.2.1 and CESSAR-F §3.11.2.

failed to provide any indication whatsoever of which portions of Applicant's FSAR, as set forth above, are deficient, Applicant maintains that petitioner has failed to provide with requisite specificity its basis in support of this proposed contention.

Compliance With Regulatory Guidance. As its next basis for proposed contention three, petitioner states that "Applicant has not met the criteria of Regulatory Guides Nos. 1.70 and 1.89 (or an acceptable alternative) and IE Bulletin 79-01B in failing to provide the required information for each item of safety-related equipment."[65] As support for this position, petitioner states that Applicant has failed to provide the exact location of each item of equipment. Petitioner maintains that this information is mandatory to evaluate the environmental condition associated with flooding.[66]

Leaving aside the fact that regulatory guides are not binding requirements,[67] contrary to petitioner's allegation, FSAR Tables 3.11.1 and 3.11.2 contain the location of each such item. Further, the figures contained in Applicant's FSAR, including those provided in Section 3.11, set forth in detail the precise location of

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65 Supplemental petition at 8.

66 Id.

67 Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 400, 406 (1978).

all items of safety-related equipment contained throughout the plant. In short, petitioner's only specific allegation regarding Applicant's alleged failure to comply with regulatory guidance (i.e., that Applicant does not provide the location of each piece of equipment) is simply in error. Accordingly, this assertion provides no support for petitioner's proposed contention.

Open Items Regarding Qualification. In further support of its proposed contention, petitioner asserts that since additional information will be provided to the NRC Staff by the Applicant regarding environmental qualification, as reflected in certain open portions of FSAR Tables 3.11.1 and 3.11.2, Applicant's qualification program is somehow deficient.[68] Petitioner is apparently not aware of, or chooses to ignore, 10 C.F.R. Sections 50.49(i) and (g), which provide that the completion of environmental qualification of such equipment need not be accomplished until the end of the second refueling outage after March 31, 1982 or by March 31, 1985, whichever is earlier.[69] Thus, pursuant to Commission regulations, Applicant's environmental qualification program need not

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68 Supplemental petition at 8.

69 See 48 Fed. Reg. at 2730 wherein the Commission states that "the dates specified in this rule for completion of environmental qualification of electric equipment important to safety applies to all licensees and applicants, and supercede any dates previously imposed."

be completed now. To the extent that petitioner maintains otherwise, which it apparently does, Applicant submits that this position constitutes an impermissible challenge to Commission regulations. In any event, petitioner has not alleged that Applicant will not comply with all applicable requirements. As set forth above, mere assertions, without more, do not constitute a supporting basis upon which a proposed contention can rest. In sum, petitioner's allegation provides no supporting basis for its proposed contention.

Qualification of Equipment. In support of its proposed contention, petitioner lastly asserts that "[m]uch of the equipment and components important to safety are not environmentally qualified at WNP-3."[70] As examples of such equipment, petitioner lists "NAMCO limit switches, Diesel Generator Control Panels, containment isolation and safety injection systems."[71]

As noted above, Commission regulations do not require qualification of equipment to be completed at this time. To the extent that petitioner contends otherwise, this proposed contention constitutes an impermissible attack upon Commission regulations. In this regard, Applicant notes that it has committed to the qualification of the

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70 Supplemental petition at 8-9.

71 Id.

equipment listed by petitioner.[72] Petitioner does not allege that Applicant will not qualify such equipment in a timely manner. As discussed above, mere assertions that reviews are ongoing do not provide the requisite support for a proposed contention.

In conclusion, Applicant submits that petitioner's attempts to provide support for this proposed contention consist of challenges to Commission regulations and generalized, unsupported and often inaccurate statements. Applicant maintains that such attempts fall far short of the mark mandated by Commission regulations. Accordingly, Applicant submits that petitioner's proposed contention three should be denied.

D. Proposed Contention Four

Petitioner's proposed contention four addresses Applicant's capability regarding decay heat removal. It states as follows:

> Petitioner contends that the CESSAR design utilized at WNP-3 is inadequate to provide rapid depressurization, decay heat removal and the capability for natural circulation and thus violates the requirements of 10 CFR 50 Appendix A, General Design Criteria 34, 35, 38 and 44 and the provisions of NUREG-0737.[73]

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[72] See FSAR §§3.11 at 3.11-11, 3.11-91, 3.11-94, and 3.11-102.

[73] Supplemental petition at 9.

Applicant maintains that proposed contention four lacks the requisite supporting basis with specificity required by Commission regulations. It should accordingly be rejected.

Petitioner's supporting basis for this proposed contention contains numerous factual inaccuracies and mischaracterized references regarding key aspects of the proposed contention. Due to such inaccuracies and misrepresentations, it is extremely difficult, if not impossible to determine the true and valid concerns, if any, of petitioner. A partial listing of the significant factual inaccuracies in petitioner's supporting basis are, as follows:

1. As an underlying assumption upon which much of petitioner's argument is based, it states that "Applicant cannot place reliance on emergency feedwater at WNP-3 because this system is not safety-grade."[74] This statement is simply not true. As set forth in numerous places in Applicant's FSAR and CESSAR-F, the emergency feedwater system (which is the same as, and used interchangeably with, the auxiliary feedwater system) is safety-grade.[75]

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74 Supplemental petition at 9.

75 See FSAR §§10.4.9.1, 3.2.2 and 3.11 (at 3.11-115 and 116), and CESSAR-F §5.1.4 (at 5.1-5, 5.1-8 and 5.1-9).

2. As a basis for its assertion that Applicant's emergency depressurization process is inadequate and that the requirements of GDC 38 are not met, petitioner states that the auxiliary spray system at WNP-3 "is not fully safety-grade . . . ."[76] Again, this statement is simply not true. As stated in numerous sections in Applicant's FSAR and CESSAR-F, the auxiliary spray system is safety-grade.[77]

3. In support of its position that the auxiliary (or emergency) feedwater system is not reliable, petitioner states that "the AFW system is not environmentally qualified."[78] This statement is totally misleading in that Applicant's FSAR and CESSAR-F clearly state in numerous sections that the emergency (or auxiliary) feedwater system will be environmentally qualified.[79] As to when such qualification must be completed, see Applicant's response to proposed contention three, supra.

4. In support of its position that the auxiliary pressurizer spray will not effectively provide depressurization, petitioner states that "the auxiliary

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76 Supplemental petition at 10.

77 See FSAR §§3.2.2, 5.4.3, 5.4.10 and 9.3.4, and CESSAR-F §§3.2.2. and Table 3.2-1 (at 3 of 20).

78 Supplemental petition at 10.

79 See FSAR §§3.2.2 and 3.11 (at 3.11-115); CESSAR-F §§3.2.2. and 5.1.4 (at 5.1-19) and Appendices 3.11A and 3.11B.

pressurizer spray cannot effectively function in a low temperature overpressurization event."[80] This statement simply is not true. As reflected in Applicant's FSAR and CESSAR-F, since the auxiliary pressurizer spray uses cool water from the refueling water storage tank (or volume control tank),[81] pressure control within the steam space of the pressurizer can be readily achieved using this system.[82] Additionally, the auxiliary pressurizer spray is not the primary mode of pressure reduction for this situation. Normally, overpressure protection of the reactor coolant system during low temperature conditions is provided by relief values located in the shutdown cooling system suction lines.[83]

5. Petitioner states that "[t]he Auxiliary Feedwater System (AFS) normally operates during startup and shutdown of the reactor . . . ."[84] This statement simply is not

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80 Supplemental petition at 11.

81 In this regard, petitioner's assertion that cool water for the auxiliary pressurizer spray is drawn from the cold leg of the reactor coolant system is in error. See CESSAR-F §9.3.4, and Figures 9.3-1 and 9.3-3.

82 See FSAR and CESSAR-F §§3.2.2., 5.4.3 and 5.4.10 and 9.3.4. See also Appendix 3.11A of CESSAR-F.

83 See FSAR at §9.2.10 and CESSAR-F at §5.4.7.2.3.

84 Supplemental petition at 10.

true. As discussed in FSAR Section 10.4.12, the standby feedwater system, not the auxiliary feedwater system, is used for normal startup and shutdown.

6. Petitioner states that loss of offsite power necessitates "reliance on the motor-driven auxiliary feedwater pumps (requires only a diesel failure to remove from service) . . . ."[85] This statement is simply not true. As stated in numerous sections of Applicant's FSAR and CESSAR-F (some sections of which petitioner cites), reliance may also be placed on steam-driven auxiliary feedwater pumps which do not require diesel power.[86] Additionally, contrary to petitioner's assertion, failure of both emergency diesel generators is required before a loss of both motor driven auxiliary feedwater pumps would occur.[87]

7. In support of petitioner's position that "the steam generators as-built at WNP-3 are of questionable quality", petitioner cites three inspection reports which it states "document discrepancies related to welding of supports, exterior damage, and possible weld shrinkage."[88] However, an analysis of such inspection reports reveals

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85 Id. at 11.

86 See FSAR §10.4.9.2.1 and CESSAR-F §5 1.4 (at 5.1-5, 5.1-8 and 5.1-9).

87 Id. See also FSAR §10.4.9.4 (at 10.4-70 through 72).

88 Supplemental petition at 12.

that they contain no items of noncompliance with regard to Applicant's steam generators and only one (I&E Report 81-12) notes any problems at all with regard to such steam generators. That problem was damage to the outside coating which is used for transporting the steam generator,[89] and has no bearing whatsoever on the steam generator itself or its ability to perform as intended inside the plant.[90]

8. Petitioner asserts that the "C-E primary system is similar to that of the Babcock and Wilcox design used at Three Mile Island No. 2."[91] Contrary to petitioner's assertion, there are major and significant differences in the two primary system configurations and designs which go to the heart of petitioner's concerns stated here, e.g., the steam generator at Three Mile Island uses a "once through" concept whereas Applicant uses a "double path U-tube" design.[92] Indeed, the Commission has recognized the

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89 I&E Report 81-12 at 7.

90 Ironically, petitioner also attempts to make much of an I&E Report 81-17, which questioned the adequacy of documentation regarding the surface finish of a base plate upon which steam generator No. 2 would rest. Supplemental petition at 12. However, as noted by petitioner, due to the finish of the base plate, Applicant replaced such plate. Id. In short, any discrepancy associated with this issue has been repaired and provides no support for petitioner's proposed contention.

91 Supplemental petition at 10.

92 See FSAR §1.2.2.3 at 1.2-5.

significance of such differences in establishing differing post-TMI requirements for each type of plant.[93]

In view of the numerous inaccuracies, many of which form the basic assumptions upon which petitioner's scenarios and allegations are based, Applicant maintains that the basis of the proposed contention is fatally flawed. On this ground alone proposed contention four should be rejected. Nevertheless, Applicant has analyzed petitioner's supporting basis in an attempt to determine specifically which portions support directly its allegation that Applicant is not in compliance with General Design Criteria 34, 35, 38, 44 and NUREG-0737, as set forth in the proposed contention. In doing so, Applicant found three references (addressed below), where petitioner alleges that Applicant is not in compliance with these regulations (or for that matter any regulations) or NUREG-0737.[94]

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93 See, e.g., NUREG-0737.

94 In its attempt to provide support for this proposed contention, on several occasions petitioner suggests that WNP-3 is in some way deficient in that equipment used or analyses performed are not consistent with the opinions of petitioner or other individuals. See, e.g., Supplemental Petition at 9, wherein petitioner notes that Applicant has not committed to "other improvements" as proposed in a January 29, 1982 internal NRC memorandum; and Supplemental Petition at 10-11, wherein petitioner, in citing the April 18, 1983 issue of Inside NRC, states that "installation of fully safety-grade PORV's should be required . . . ." Applicant maintains that such opinions are neither

(footnote continued)

First, petitioner contends that because Applicant's emergency feedwater system is not safety-grade, reliance cannot be placed on this system to remove decay heat from the reactor core.[95] Based on this assumed fact, petitioner then reasons that because there is no assurance that decay heat will be removed, steam bubbles (which may not be removed by the reactor coolant pumps) may form within the primary cooling system.[96] Due to this postulated scenario, petitioner states that Applicant fails to satisfy the requirements of GDC 34 and 35.[97]

Petitioner's assertion regarding Applicant's failure to comply with Commission regulations rests squarely on its assumption that Applicant's emergency feedwater system cannot be relied upon because it is not safety-grade. As noted above, this statement is simply not true.[98] In

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Commission requirements with which Applicant must comply, nor authoritative positions upon which a proposed contention can rest, and accordingly, such opinions provide no support for petitioner's proposed contention that Applicant is not in compliance with Commission regulations.

95 Supplemental petition at 9.

96 Id.

97 Id.

98 See, e.g., FSAR §§16.4.9.1, 3.2.2 and 3.11 (at 3.11-115 and 116), and CESSAR-F §5.1.4.

short, petitioner's assertion provides no support for its proposed contention that Applicant has failed to comply with Commission regulations.

Petitioner next alleges that in the event that emergency cooling and depressurization are required, and the reactor coolant pumps are unavailable, an auxiliary spray system must be used.[99] Petitioner states that the auxiliary spray system at WNP-3 is not safety-grade.[100] Accordingly, petitioner states that the requirements of GDC 38 are not met.[101]

Clearly petitioner's assertion that Applicant is not in compliance with Commission regulations rests squarely on its assumption that Applicant's auxiliary spray system is not safety-grade. As previously noted, this statement is simply not true.[102] Accordingly, petitioner's assertion provides no supporting basis for this proposed contention.

Finally, petitioner asserts that "Applicant has not provided an AFW flow analysis as required by NUREG-0737 (II.K.2.19). See FSAR Table 1.8.2."[103] Contrary to

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99 Supplemental petition at 10.

100 Id.

101 Id.

102 See, e.g., CESSAR-F §3.2.2.

103 Supplemental petition at 10.

petitioner's position, NUREG-0737 does not require that such an analysis be provided until much later in the licensing process, viz., six months prior to fuel load.[104] Petitioner has provided no indication that Applicant will fail to provide such an analysis as required by NUREG-0737, or that such an analysis when provided will be inadequate. Rather, petitioner simply states that because an analysis has not now been provided, Applicant has failed to comply with NUREG-0737. Applicant maintains that such a position is contrary to the criteria set forth in NUREG-0737. Accordingly, petitioner's assertion provides no supporting basis for this proposed contention.

In conclusion, Applicant submits that petitioner's supporting basis for this proposed contention is replete with false statements, mischaracterizations and inaccuracies upon which the Board must focus, and, in any event, does not support its proposed contention that Applicant does not comply with pertinent Commission regulations or NUREG-0737. Accordingly, petitioner has failed to provide a supporting basis with the requisite specificity as mandated by Commission regulations, and thus, this proposed contention should be denied.

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104 NUREG-0737 at §3.136.

E. Proposed Contention Five

Proposed contention five addresses instrumentation for detection of inadequate core cooling. It states, as follows:

> Petitioner contends that methods proposed by Applicant to meet the requirements for instrumentation for detection of inadequate core cooling (ICC), NUREG-0737, NUREG 0578 and GDC 13 of Part 50 to 10 CFR are inadequate.[105]

Applicant submits that this proposed contention constitutes an impermissible attack on Commission regulations. Moreover, it lacks a supporting basis with specificity as required by Commission regulations. Accordingly, proposed contention five should be rejected.

As apparently the sole supporting basis for this proposed contention, petitioner states that Applicant has not shown that instrumentation designed to measure inadequate core cooling ("ICC") will meet the "requirements" of Regulatory Guide 1.89 (regarding environmental qualification).[106] Petitioner provides as the only example of its apparent concern regarding the

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105 Supplemental petition at 12.

106 Supplemental petition at 13. In this regard, if petitioner's sole concern (as set forth in its supporting basis) is environmental qualification (as it appears to be), then this supporting basis provides no support for its proposed contention which apparently does not address environmental qualification. Accordingly, on these grounds alone the proposed contention should be rejected.

environmental qualification of such instrumentation, the results of "testing for C-E plants" which indicate that during reactor coolant pump operation (which petitioner apparently contends is an environmental condition), ICC instrumentation tested did not in all cases provide accurate indications of water level in the reactor vessel.[107] In short, the stated basis for petitioner's proposed contention is that Applicant's ICC instrumentation may not now be environmentally qualified.

Petitioner's assertion that Applicant has not demonstrated compliance with Regulatory Guide 1.89 provides no support for petitioner's proposed contention. First, Regulatory Guides are not legally binding documents and do not impose requirements on licensees.[108] Second, Regulatory Guide 1.89, in its current form, is not entirely applicable in that the Commission has recently promulgated regulations regarding environmental qualification (i.e., 10 C.F.R. Section 50.49) and is currently in the process of updating Regulatory Guide 1.89 to reflect those changes.[109] In any event, as discussed fully in Applicant's response to petitioner's proposed contention three, 10 C.F.R Section 50.49 provides that

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107 Id.

108 Petition for Emergency and Remedial Action, CLI-78-6, supra, 7 NRC at 406.

109 See 48 Fed. Reg. 2729, 2731 (January 21, 1983).

environmental qualification does not need to be completed until the second refueling outage after March 31, 1982 or by March 31, 1985, whichever is earlier.[110] In that petitioner does not allege that such equipment will not be qualified prior to that date, it is apparently petitioner's position that the Commission's regulations should be revised to require qualification at some earlier date. This clearly constitutes an impermissible challenge to Commission regulations, and thus, the proposed contention must be rejected.

In addition, Applicant submits that petitioner's supporting basis does not provide the requisite specificity required by Commission regulations for several reasons.[111] First, petitioner's submittal regarding this

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110 See 48. Fed. Reg. at 2730 and 10 C.F.R. §§50.49(i) and (g).

111 Applicant notes that once again petitioner has misrepresented and mischaracterized the facts in an attempt to bolster its tenuous position. Here, petitioner cites "EPRI Sections 6.2" for the position that the tests indicated that with reactor coolant pumps in operation "existing methods of measurement [of the reactor vessel water level] and proposed designs such as the HJIC [sic] (heated junction and unheated thermocouples in the water level measure system) are not accurate. . . ." Supplemental petition at 13. While Applicant (and indeed this Board and all other parties) has no way of knowing what is meant by the citation "EPRI Section 6.2," the tests at issue here and all test results of which Applicant is aware, at worst, simply reflect that operation of reactor coolant pumps may effect only a very small portion of the ICC instrumentation, i.e., the HJTC system level indicators, when the water

(footnote continued)

proposed contention provides no indication of what specific provisions of the regulations or regulatory criteria are not met, in what way they are not met, or a basis for such allegations. Second, as petitioner readily admits, the issues associated with ICC instrumentation, to include its qualification, are not yet fully resolved.[112] The fact that the regulatory review process has not yet been fully completed is no basis for concluding that it will not be completed satisfactorily. In short, petitioner's proposed contention lacks the requisite supporting basis required by Commission regulations, and thus, must be rejected.

Notwithstanding the above, Applicant believes that the concern expressed by petitioner may be grounded in its misunderstanding of the regulatory criteria regarding ICC instrumentation. For example, petitioner cites the Licensing Board in Metropolitan Edison Company (Three Mile Island Nuclear Station 1),[113] for the position that Applicant "should be required to provide a reactor coolant

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level drops to the level of the outlet plenum region of the reactor vessel. See e.g., NUREG-0852, Supplement 1 at 4-32 wherein the NRC Staff also concludes that in the face of such test results the system meets NUREG-0737 Section II.F.2 requirements and is acceptable. In short, petitioner's proposed contention is based on erroneous factual assumptions.

112 Supplemental petition at 13.

113 LBP-81-59, 14 NRC 1211, (1981).

meter capable of measuring coolant inventory from zero to 100%."[114] However, contrary to petitioner's implications, the Licensing Board in Three Mile Island stated that the licensee was required to provide a meter "or its equivalent."[115] Petitioner apparently overlooks or chooses to ignore that portion of the Licensing Board's decision which provided flexibility for the licensee to design a system (as opposed to providing one meter) which in total would fulfill the applicable regulatory criteria. This flexible position is also provided in NUREG-0737, which petitioner references in its proposed contention.[116]

The ICC monitoring system at WNP-3 uses the model set forth in NUREG-0737. See FSAR Section 1.8.2, and CESSAR-F at Appendix B, Section II.F.2 where this system is described in detail as comprising (1) a subcooled margin

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114 Supplemental petition at 13, emphasis added.

115 Three Mile Island Nuclear Station 1, LBP-81-59, supra, 14 NRC at 1244.

116 See, e.g., NUREG-0737 at 3-114, Section II.F.2, regarding this issue, which states as follows:

> For example, water-level instrumentation may be chosen to provide advanced warning of two-phase level drop to the top of the core and could be supplemented by other indicators such as incore and core-exit thermocouples provided that the indicated temperatures can be correlated to provide indication of the existence of ICC and to infer the extent of core uncovery. [Emphasis added.]

monitor (to determine if conditions are present that could eventually lead to ICC), (2) a HJTC system (consisting of a series of thermocouples which indicate water level in two regions, the first of which is the upper head region (approximately the upper 15 feet of vessel) and the second being the upper plenum or outlet plenum region (approximately 5 feet between the core and upper head region))[117] and (3) core exit thermocouples (to provide indication of the water level in the event it drops below the top of the core). In short, contrary to petitioner's implications, Applicant's ICC monitoring system consists of numerous instruments and several readouts and "meters" (not one) all of which when combined are designed to provide the requisite ICC monitoring capability set forth in NUREG-0737.

In sum, Applicant maintains that the basis of petitioner's proposed contention constitutes an impermissible challenge to Commission regulations, and

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117 Applicant notes that the potential impact on vessel level measurements due to operation of the reactor coolant pumps would be limited to the situation where the pumps are left on while the vessel level drops into the upper plenum region. This situation is not a realistic condition, however, as such a loss of water inventory would be possible only during a significant breach in the reactor coolant pressure boundary during which the reactor coolant pumps would be stopped to limit the water inventory losses. Emergency procedures which address operator actions in this area will include this type of instruction, e.g., Applicant has committed to such instructions in accordance with NUREG-0852, Supplement 1 at 4-32.

does not provide the requisite support with specificity as mandated by Commission regulations. Accordingly, the proposed contention must be rejected.

F. Proposed Contention Six

Proposed contention 6 addresses the emergency diesel generators. It states as follows:

> Petitioner contends that the Emergency Diesel Generators as designed and installed are unreliable as a source of on-site emergency power necessary for safety. Failure of the diesel generators should be considered a design basis accident; the existing design of WNP-3 does not meet the requirements of GDC 17 of 10 CFR Part 50, Appendix A.[118]

Applicant objects to this proposed contention. First it is proscribed by Section 2.758(a) because it constitutes an attack on Commission regulations. Second, it lacks an adequate supporting basis

The requirements for onsite power systems, of which diesel generators are a part, are set forth in 10 C.F.R. Part 50, Appendix A, General Design Criteria 17. GDC 17 provides that the "onsite electric power supplies . . . shall have sufficient independence, redundancy, and testability to perform their safety functions assuming a single failure" (emphasis added). Thus, NRC does not require that the simultaneous loss of both diesel

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118 Supplemental petition at 13.

generators be considered a design basis event. Because the proposed contention is an effort by the petitioner to impose such a requirement, it constitutes an attack on Commission regulations and is inadmissible.

Moreover, petitioner has set forth no basis that supports the proposed contention. First, to the extent petitioner relies on Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit No. 2)[119] as a basis for its contention, such reliance is misplaced. As a legal matter, that decision has no effect on the Applicant, which was not a party to that proceeding. Additionally, particular factual (geographical) circumstances lead to the Appeal Board's concern with emergency diesel generators at that facility. Petitioner has provided no basis for concluding that those circumstances are present in this case.

Second, "errors" concerning the procurement and installation of the diesel generators to which petitioner refers in its supplemental petition fall short of establishing a basis for this contention. Nor is petitioner correct when it relies upon I&E Reports 80-09 and 82-16 to support its allegations in this regard.

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119 ALAB-603, 12 NRC 30 (1980).

While I&E Report 80-09 does state that the installing contractor's specification for the diesel generators was erroneous, it also states that there could not have been any hardware deficiencies with that equipment since it had been properly purchased with all of the appropriate quality requirements intact.[120] In addition, I&E Report 82-16 only identified a noncompliance[121] of minor safety significance which was subsequently closed out.

Third, petitioner is simply inaccurate when it states as a factual basis for this contention that Applicant has not shown that the diesel generators and associated controls are environmentally qualified. FSAR Section 3.11.2 discusses the qualification program which will be used by the Applicant in satisfying all applicable requirements. Petitioner does not take issue with that program. Rather, it simply asserts that, with respect to the diesel generators, the program has yet to be completed. In these circumstances, petitioner must provide a basis for concluding that the Applicant will not satisfy fully its commitments regarding diesel generators or show that fulfillment of those commitments will fall short of compliance with regulatory requirements. It has manifestly failed to do so here.

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120 See I&E Report 80-09 at 6.

121 See I&E Report 82-16 at 2.

Moreover, as discussed in connection with proposed contention three, the current equipment qualification rule does not require that Applicant demonstrate compliance with that rule at the present time.[122] To the extent petitioners contend that Applicant should be subjected to more stringent standards, such contention is an inadmissible attack on Section 50.49 and should be denied.[123]

G. Proposed Contention Seven

Petitioner's proposed contention seven addresses the seismic capability of Category I equipment at WNP-3. It states as follows:

> Petitioner contends that there is no reasonable assurance that the Seismic Category I structures, systems, components and equipment at WNP-3 would continue to operate during a seismic event in the vicinity of the site, thereby violating GDC 2 of Appendix A to Part 50, 10 CFR and jeopardizing the public health and safety.[124]

Applicant maintains that the proposed contention lacks the requisite supporting basis with specificity as mandated by Commission regulations. Accordingly, it should be denied.

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122 See 10 C.F.R. §§50.49(i) and (g).

123 See Applicant's response to proposed contention three, supra, at 28.

124 Supplemental petition at 15.

In support of its proposed contention, petitioner makes allegations in five areas, viz., installation of concrete structures, improper quality classification of structures and components, excavation near the reactor building, Applicant's ongoing reviews, and the consideration of geological theories in design of WNP-3. However, none of these allegations provide a basis for the proposed contention.

Installation of Concrete Structures. As support for its proposed contention, petitioner first alleges that "[c]oncrete structures important to safety have not been properly installed, nor adequate quality assurance actions taken, to ensure conformance with applicable codes."[125] In support of this position, petitioner, citing I&E Inspection Reports 79-03 and 81-08, states that quality assurance personnel have "repeatedly accepted faulty concrete placement and improper rebar placement."[126] Contrary to petitioner's assertion, however, I&E Inspection Report 79-03 does not state or even imply that Applicant has repeatedly accepted faulty concrete or rebar placement.[127] In a similar manner, I&E Inspection Report 81-08 provides no support for petitioner's allegations.

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125 Supplemental petition at 15.

126 Id.

127 See I&E Report 79-03 at 9.

Rather, the report states, in pertinent part, as follows:

> d. Concrete Preplacement Activities
>
> The inspector examined concrete preplacement activities for Unit 3 concrete placement 3 RBI-044-372.
>
> It was observed that quality verification personnel had an adequate work station in the immediate vicinity of the work, that they had controlled copies of necessary documents, and that they utilized design documents versus placement drawings for inspection verification.
>
> Through discussion with the quality verification personnel, it was determined that the replacement verification of reinforcing steel and embed items was performed in a systematic orderly manner.[128]
>
> * * * *
>
> e. Concrete Placement
>
> The inspector examined the placement of concrete in Unit 3 containment, concrete placement 3RBI-44-372, for compliance to applicable codes and standards. The inspector observed adequate numbers of quality verification and crafts personnel and proper placement and consolidation techniques. The placement in and around the congested reinforcing steel under column CR-11 appeared to be adequate.[129]

The report, however, did note that preliminary rebar placement in one area was not precisely in accordance with design requirements.[130] However, in that the quality

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128 I&E Report 81-08.

129 Id. at 59.

130 Id. at 57.

assurance inspection process on the item had not been completed, this was not considered an item of noncompliance.[131] In short, in direct conflict with petitioner's assertion, these documents provide no support for petitioner's position that Applicant has repeatedly accepted faulty concrete placement and improper rebar placement.

In support of its position regarding inadequate installation of concrete structures, petitioner next alleges that I&E Inspection Report 82-06 reflects (1) questions regarding the seismic capability of the "walls in the North Diesel Generator Room (Nos. 41 and 42) and the Reactor Auxiliary Building" and (2) that "adequate documentation of such repairs [to one area of the shear wall of the Reactor Auxiliary Building] do not exist."[132] Applicant submits that petitioner has once again mischaracterized the document on which it bases its proposed contention.

I&E Inspection Report 82-06 does not even address the seismic capability of walls or related structures in the north diesel generator room, and, with regard to the walls of the auxiliary building, it states (with supporting documentation from an NRC consultant report) that the

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131 Id. at 58.

132 Supplemental petition at 15.

auxiliary building wall previously repaired was acceptable.[133] Further, contrary to petitioner's assertion, the report does not reflect that "adequate documentation of such repairs does not exist."[134] Rather, the report simply acknowledges that one of the attachments (Attachment 6) of a report prepared by the NRC's consultant did not "accurately depict the repaired areas of the wall."[135] In short, contrary to petitioner's assertion, I&E Inspection Report 82-06 does not reflect any inadequacies regarding seismic capability, and accordingly, provides no support for this proposed contention.

Improper Quality Classification. In support of its proposed contention, petitioner next cites "Attachment 2 to Letter G03-82-1240, December 2, 1982" which sets forth a list of approximately 15 generic items that have been downgraded in classification, i.e., from a Quality Class I to a Quality Class G. Petitioner apparently seeks to demonstrate that there are some systems which are improperly classified, and accordingly, that seismic capability of WNP-3 may be compromised.[136] However, this

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133 I&E Report 82-06 at 3-4.

134 Supplemental petition at 15 (emphasis added).

135 Id.

136 Supplemental petition at 16.

document does not raise concerns regarding the seismic capability at WNP-3. If anything, it illustrates the very conservative initial design of WNP-3 regarding classification of components and structures. In any event, petitioner has failed to identify or allege that there are any specific systems or components containing seismic related classification deficiencies at WNP-3. Accordingly, this information provides no basis for petitioner's proposed contention.

Excavation Near the Reactor Building. In support of its proposed contention, petitioner next alleges that "Applicant may not ensure that adequate drainage under and alongside the foundation walls of the Reactor Auxiliary Building occurs on a regular basis."[137] In support of this position, petitioner, in referencing I&E Inspection Report 83-05, states that "[i]nadequate attention to care and maintenance of the Ground Water Drainage System [a system designed to maintain ground water level adjacent to the auxiliary building walls thereby relieving external pressure] has been identified."[138] Petitioner chooses to ignore the fact that I&E Inspection Report 83-05 (at 6) does not classify this item as a deviation or noncompliance, and states that the corrective action taken

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137 Supplemental petition at 16.

138 Id.

(i.e., covering the ends of the pipe so that dirt will not enter) was satisfactory to correct the situation. Significantly, petitioner does not state or even imply that such corrective action is inappropriate, or that, if so, such alleged inadequate "care and maintenance" will have an adverse impact on the seismic capability of the structure. In short, this report provides no support for petitioner's position.

Petitioner also alleges that "controls applied to excavation near the Reactor Auxiliary Building have been substandard."[139] Again petitioner chooses to ignore the facts presented in the Staff document it cites in support of its position, i.e., the Staff's October 27, 1982 "SALP" report (apparently miscited by petitioner as the December 6, 1982 SALP report). In that report the Staff notes (1) that Applicant had brought to the Staff's attention potential problems regarding backfill and excavation activities conducted in April and May, 1982; and (2) backfill had been removed and replaced to assure that no problems remained.[140] Significantly, petitioner once again does not, and indeed cannot, state with supporting bases that the seismic capability of the plant has been

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139 Id.

140 1982 SALP Report at 9-10.

adversely affected by this situation. Accordingly, this report also provides no support for petitioner's proposed contention.

Applicant's Ongoing Reviews. In its next attempt to provide support for this proposed contention, petitioner states that Applicant has not yet completed several ongoing reviews.[141] As discussed earlier, the basis and specificity requirement of 10 C.F.R. Section 2.714(b) is not met by simply stating that Applicant has not completed ongoing reviews. Significantly, petitioner has not alleged that Applicant will not complete necessary reviews in a timely manner, or that when completed actions flowing therefrom will not be in compliance with Commission regulations. In short, petitioner's observation that there are ongoing reviews provides no support for its proposed contention.

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141 Petitioner once again mischaracterizes a number of documents it cites in support of its position. For example, petitioner cites I&E Report 82-03 at 7 for the position that some seismic monitoring equipment was "shown to be deficient." Supplemental Petition at. This is not true; there were no deficiencies reported regarding this issue. I&E Report 82-03 at 7. Also, petitioner cites I&E Reports 82-14 and 81-04 for the position that "adequate QA has not taken place to ensure the seismic capability of cable tray supports." Supplemental Petitioner at 16. This is not true; I&E Inspection Report 82-14 at 2 closes out this item which was referenced initially in I&E Report 81-04.

Consideration of Geological Theories As its final attempt to support this proposed contention, petitioner states that Applicant has not "shown that the plant's design is adequate" taking into consideration the "1980 volcanic activity of Mt. St. Helens volcano" and theories regarding "subduction of the Juan de Fuca plate."[142] Contrary to petitioner's assertions, Applicant has taken into consideration and extensively analyzed and addressed these two concerns in its seismic analysis and design of the plant.[143] To the extent that petitioner was unaware of Applicant's consideration of such theories, petitioner's concerns are now moot. To the extent petitioner is aware of Applicant's analysis, and contends that Applicant's analysis is inadequate, petitioner has failed to state what part of Applicant's analysis is flawed, how it is flawed and how this may have an adverse impact on the public health and safety. The basis and specificity requirement of the Commission's regulations is certainly not met by expressing a generalized concern that in some unspecified way, Applicant may not have adequately considered general seismic theories. In short, this provides absolutely no support for petitioner's proposed contention.

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142 Supplemental petition at 17.

143 See FSAR §§2.5.1 and 2.5.2.

In conclusion, for the foregoing reasons, Applicant maintains that proposed contention seven should be rejected.

H. Proposed Contention Eight

Petitioner's proposed contention eight, addresses offsite emergency planning. It states, as follows:

> Petitioner contends that the emergency response plans proposed by the Applicant are inadequate to assure that protective measures can and will be taken in the event of a radiological emergency as required by 10 CFR 50.33, 50.47, 50.54 and Appendix E to Part 50.[144]

Applicant maintains that this proposed contention constitutes an impermissible attack on Commission regulations and lacks the requisite supporting basis with specificity as mandated by Commission regulations. Accordingly, Applicant maintains that this proposed contention should be denied.

In attempting to provide support for this proposed contention, petitioner raises a number of allegations in the following areas: emergency response drills, the size of the Emergency Planning Zone ("EPZ") for the plume exposure pathway, plans for displacement of individuals, county and local plans, and notification and education of

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144 Supplemental petition at 17.

the public. However, these allegations do not support the admission of proposed contention eight for the reasons set forth below.

Emergency Response Drill, the Size of the EPZ, and Plans for Displacement of Individuals. Applicant maintains that the concerns expressed by petitioner regarding these three areas constitute an impermissible attack on Commission regulations, and thus, are not subject to litigation in this proceeding.

With regard to emergency drills, petitioner asserts that emergency response plans must be tested with exercises and drills.[145] Applicant does not disagree. However, the Commission has made it clear that such exercises and drills "are part of the operational inspection process and are not required for any initial licensing decision."[146] Accordingly, absent allegations with supporting bases that such exercises and drills will not be conducted properly, not present here, petitioner is precluded from raising such issues in this proceeding.

With regard to the size of the EPZ, petitioner asserts that the plume exposure pathway EPZ should be expanded beyond 10 miles.[147] Commission regulations

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145 Supplemental petition at 18-19.

146 10 C.F.R. §50.47(a)(2).

147 Supplemental petition at 20.

regarding emergency planning[148] clearly establish EPZs out to a distance of 50 miles around a nuclear power plant, viz., (1) an approximately 10 mile radius plume exposure pathway EPZ for airborne exposure to radioactive materials and (2) an approximately 50 mile radius ingestion pathway EPZ for contamination of food and water. In each of these EPZs, Commission regulations require specific actions to protect the public health and safety in the unlikely event of an accident. Thus, to the extent that petitioner seeks to enlarge the 10 mile EPZ set forth in such regulations, petitioner's proposed contention is clearly an impermissible attack upon such regulations and their bases. The special circumstance petitioner attempts to raise in order to justify waiver of such regulations regarding the size of the plume exposure pathway is the sensitivity of children and pregnant women to radiation. However, as discussed below, these conditions were considered in promulgating the emergency planning regulations, and thus, do not constitute "special circumstances" for waiver.[149]

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148 E.g., Appendix E to 10 C.F.R. Part 50 and 10 C.F.R. §50.47.

149 In any event, petitioner has failed to comply with 10 C.F.R. §2.758(b), which sets forth the conditions which must be met to waive the applicability of a rule or regulation in a proceeding such as this. See note 24, supra.

The basis for establishing the size and nature of the EPZs set forth in Commission regulations is contained in, inter alia, NUREG-0396,[150] a report prepared jointly by NRC and EPA.[151] NUREG-0396 was developed by a Task Force composed of recognized NRC and EPA experts on the effects of radioactivity. In recommending the size and nature of the EPZs, this planning document specifically recognized the possibility of a range of accidents in adverse meterological conditions and their effects on the public, which includes children and pregnant women.[152] Commission regulations also reference NUREG-0654[153] as providing a basis for selection of the size and nature of the EPZs.[154] NUREG-0654, a joint NRC and Federal Emergency Management Agency (FEMA) document, adopted the approach recommended in NUREG-0396 regarding the size and nature of the EPZs.[155]

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150 "Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light Water Nuclear Power Plants," NUREG-0396; EPA 520/1-78-016 (December 1978).

151 Appendix E to 10 C.F.R. Part 50, note 2.

152 See, e.g., NUREG-0396 at 16-7.

153 "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants," NUREG-0654/FEMA-REP-1, (January 1980).

154 10 C.F.R. §50.47, note 1.

155 See, e.g., NUREG-0654 at 5-11.

In short, Commission regulations regarding EPZs and the bases for such regulations, were promulgated after thorough consideration of, inter alia, accidents of all types and their effect on the population to include children and pregnant women. Thus, to the extent petitioner asserts that such effects should provide special circumstances for waiving the emergency planning regulations, petitioner's position is without merit and must fail.

With regard to plans for displacement of individuals, petitioner asserts that "Applicant should be able to plan for the displacement of a significant percentage of the population outside the EPZ. . . ."[156] As noted above, the Commission's regulations regarding emergency planning (i.e., 10 C.F.R. Section 50.48 and Appendix E to 10 C.F.R. Part 50) and their bases as endorsed by such regulations (i.e., NUREGs 0654 and 0396) provide detailed requirements regarding offsite emergency preparedness. Such regulations call for much more detailed planning for the 10 mile EPZ, such as requiring that

> A nuclear power plant applicant shall perform a preliminary analysis of the time required to evacuate various sectors and distances within the [ten-mile] plume exposure pathway EPZ for transient and permanent

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156 Supplemental petition at 18.

> populations, noting major impediments to the evacuation or taking of protective actions.[157]

Applicant has committed to and must comply with NRC regulations governing emergency planning.[158]

To the extent that petitioner contends Applicant is or will not be in compliance with such regulations, petitioner has failed to state precisely what provisions of the regulations it contends Applicant does not fulfill, and precisely how it contends Applicant has failed to comply. A bald assertion that "Applicant should be able" to take some unspecified actions, without more, does not meet the basis with specificity requirements of the Commission regulations. On the other hand, if it is petitioner's contention that Commission regulations are inadequate in that they do not require detailed "displacement" (whatever that term means) planning beyond the 10 mile EPZ, petitioner's contention is proscribed as an attack on Commission regulations.

State and Local Emergency Plans. In support of its proposed contention, petitioner states that county and local emergency response plans have not been prepared, and thus, "there exists no adequate plan" to protect the

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157 Section II.G. of Appendix E to 10 C.F.R. Part 50.

158 See Applicant's Emergency Plan at §12.

public health and safety.[159] Contrary to petitioner's assumption, emergency plans for Grays Harbor County, Mason County and the State of Washington have been prepared and are currently being reviewed by the Federal Emergency Management Agency ("FEMA") pursuant to 10 C.F.R. Section 50.47(a)(2), and 44 C.F.R. Sections 350 and 351. Accordingly, petitioner's position is simply in error and provides no support for its proposed contention.

Further, petitioner states that Applicant's Emergency Plan is inadequate in that with regard to the "ingestion pathway" (10 C.F.R Section 50.47(c)(2)), Applicant focuses its discussion on the "statewide network of technical support."[160] Applicant's discussion in fact focuses primarily on the state's planning efforts. However, this approach is consistent with NUREG-0654, the basis of the Commission's emergency planning regulations. NUREG-0654 (at 11, 21, 22), endorsed by 10 C.F.R. Section 50.47 as the basis for the Commission's regulation regarding criteria such as cited by petitioner here, provides that with regard to the ingestion pathway, planning is best handled by the state and accordingly, focus should be placed on the state's efforts. To the extent that petitioner takes issue with this position,

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159 Supplemental petition at 18.

160 Id.

Applicant maintains that such contention constitutes an impermissible attack on the basis of the Commission's regulations. To the extent petitioner contends that state efforts in conjunction with those described in the state's emergency plan are inadequate, however, petitioner must specifically describe its concerns and provide a basis with specificity for those concerns. In that it has not done so, this position provides no support for petitioner's proposed contention.

Notification and Protective Action for the Public. In attempting to support its proposed contention petitioner next makes a series of bald allegations regarding notification of the public and protective actions, without any apparent regard to the factual material contained in Applicant's Emergency Plan.[161] As discussed previously, the basis and specificity requirements are not met by bald, unsupported assertions which do not state in sufficient detail the alleged deficiencies in Applicant's calculations or analysis and the regulation at issue or the harm flowing from such alleged deficiencies. With regard to these unsupported assertions, petitioner provides no such specificity.

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161 Supplemental petition at 19-21.

For example, petitioner generally questions the capability of the prompt notification system,[162] yet alleges no specific deficiencies regarding the system (discussed in Applicant's Emergency Plan at Sections 7.2.3, 7.3.3 and 8.2.8), such as why it does not comply with Commission regulations, how it is allegedly deficient and the harm that would flow from the alleged deficiency. In short, this bald allegation, without more, provides no support for the proposed contention.

Petitioner has made several other bald allegations which are similarly flawed in that they contain no specific reference to deficiencies in Applicant's Emergency Plan, or make totally false statements regarding such Plan. Such allegations are listed below:

1. Petitioner generally questions the adequacy of the public education and notification procedures,[163] yet ignores the detailed discussion of this area in Applicant's Emergency Plan throughout Section 9.

2. Petitioner generally questions the capability to alert the public in the plume exposure pathway "within about 15 minutes,"[164] yet ignores Applicant's discussion of this area set forth in its Emergency Plan at, inter

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162 Supplemental petition at 19-20.

163 Id. at 19.

164 Id.

alia, Sections 7.2.3, 7.3.3 and 8.2.8.

3. Petitioner states that Applicant's Emergency Plan does not describe its radiological orientation training program "for personnel, including the media,"[165] yet ignores the description of the program set forth in Applicant's Emergency Plan at Sections 9.2.2 and 16.2.

4. Petitioner alleges that Applicant's Emergency Plan does not provide for (1) a range of protective actions, (2) different response times and organizational capabilities at different times of the day and (3) different meterological conditions,[166] yet ignores Section 12 of Applicant's Emergency Plan which addresses all of these variables by, inter alia, assuming the worst case accident required to be considered by the Commission.

5. Finally, petitioner generally questions whether Applicant has an adequate response staff,[167] yet ignores Applicant's Emergency Plan at 4-2 which sets forth in detail Applicant's response staff.[168]

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165 Id. at 20-21.

166 Id. at 21.

167 Id.

168 To the extent that petitioner questions the capability of the response staffs of the concerned county, state or federal organizations, petitioner has failed to specifically state with a supporting basis its concerns.

In short, petitioner's bald allegations regarding deficiencies in Applicant's Emergency Plan provide no support for this proposed contention. Accordingly, petitioner's supporting basis for proposed contention eight is fatally flawed, and that proposed contention should be rejected.

I. Proposed Contention Nine

Proposed contention nine is a generalized indictment of the NRC Inspection and Enforcement Program. It states, as follows:

> Petitioner contends that NRC inspection and enforcement has not been adequate to ensure that construction of WNP-3 conforms to NRC criteria and applicable industry codes and that, as a consequence, operation of the plant will endanger the public health and safety.[169]

This proposed contention is outside the scope of this proceeding and lacks specificity and basis. Accordingly, it should not be admitted.

If an operating license hearing is held for WNP-3, it will focus only on specific issues raised concerning whether the Applicant should be granted its operating license.[170] The proposed contention does not address such

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169 Supplemental petition at 21-22.

170 See Establishment of Atomic and Safety Licensing Board to Preside in Proceeding, Washington Public Power Supply System (WPPSS Nuclear Project No. 3), Docket No. 50-508, March 3, 1983.

an issue. Instead, it purports to raise questions as to the ability of the NRC Staff to protect the public health and safety and alleges that more frequent inspections are needed at WNP-3. It also presumes to assert that NRC has failed to take sufficiently aggressive enforcement action in the past with regard to WNP-3.

Clearly an operating license proceeding is the wrong forum in which to raise these questions. Given the limited scope of this proceeding, the Licensing Board should not (and indeed may not) begin an inquiry into how the I&E Staff (a separate arm of the same agency) chooses to conduct its business.[171] How could Applicant, upon which the burden of proof rests, ever possibly demonstrate that the NRC Staff has properly fulfilled its regulatory function? If petitioner has concerns of this nature, its proper course should be to bring them to the attention of the appropriate NRC officials directly by filing a petition pursuant to 10 C.F.R. Section 2.206.

Second, this contention is inadmissible in any event because petitioner has failed to provide an adequate basis in its support. In many instances petitioner seeks to rely on information which is over two years old and which on its face does not reflect the current situation. This

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171 See Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), CLI-82-31, __NRC__, October 14, 1982 slip opinion.

information includes an inquiry into the Supply System by the legislature of the State of Washington in 1980 (into matters such as cost not safety issues), as well as the 1981 SALP Report. In neither case do these documents reflect recent improvements in construction activities at WNP-3 which suggest that the conclusions set forth therein are no longer valid.

Additionally, petitioner cites the state inquiry at 45 in support of its claim that "WNP-3 had more than the average noncompliances per inspection hour than plants in Region V or the nation."[172] In fact, that report at 45 compares the Supply System only to "two other west coast plants during the eighteen months before July, 1980."[173] This is hardly a fair recitation of the facts by petitioner. Moreover, that comparison becomes considerably more favorable to the Supply System when only WNP-3 is used as a basis for the comparison.

Additonally, in several instances petitioner distorts and mischaracterizes I&E Reports upon which this contention purports to rest. For example, I&E Report 82-13 states that there was rain leakage into the control room, as petitioner states. However, petitioner does not state that the leakage was coming through the uncompleted

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172 Supplemental petition at 22, emphasis added.

173 State inquiry at 45.

south walls of the adjoining south relay room, that these concerns were immediately addressed by the contractor, that no items of noncompliance were identified as a result of this incident and that corrective action was immediately taken.[174]

Similarly, petitioner does not accurately characterize I&E Report 82-16 which it cites in support of its claim that "[r]ain and other water leaks into the Control Room and onto equipment important to safety have occurred and gone uncorrected."[175] In fact, the single incident discussed in I&E Report 82-16 regarding equipment important to safety was corrected[176] and, in any event, it was considered by the Staff to be of only minor safety concern. Nor has petitioner set forth any basis for concluding that this incident is anything but an isolated event, that the Staff's analysis of it was incorrect, or that corrective actions beyond those taken were required.

Petitioner is also incorrect when it cites I&E Reports 82-18, 82-15 and 81-02 as support for its assertion that the NRC has been "hesitant to make the violations of codes, procedures and construction practices nonconformances or proceed to other forms of enforcement

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174 See I&E Report 82-13 at 4.

175 Supplemental petition at 22.

176 I&E Report 82-16 at 2.

action."[177] As a result of the alleged nonconformances identified in I&E Reports 81-02 and 82-18, Notices of Violation were in fact issued to the Applicant. In addition, I&E Report 82-15 addressed an issue which was then unresolved and, as such, provided no basis for taking enforcement action.[178]

Lastly, petitioner fails entirely to support its bald assertion that NRC inspections during the period of WNP-3 period of "preservation" will be inadequate. First of all, as discussed in connection with proposed contention ten, petitioner simply assumes incorrectly that WNP-3 is now "mothballed." Moreover, petitioner's assertions in this regard seem to suggest that NRC inspections for a "mothballed" facility should be as frequent and extensive as those performed for a plant actively under construction.[179] This undocumented claim is simply illogical on its face.

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177 Supplemental petition at 22.

178 I&E Report 82-15 at 4. Petitioner is also in error when it characterizes I&E Report 82-18 as identifying a "lack" of moisture controls (Supplemental petition at 23). In fact, I&E Report 82-18 identified only a relaxation of the implementation of moisture control. I&E Report 82-18 at 4.

179 Petitioner states, for example, that "[w]hile allegedly seeking to ensure that certain systems most important to safety were preserved, inspectors ignored other areas which would be of importance in a plant under construction." Supplemental petition at 23.

At bottom, proposed contention nine is outside of the scope of this proceeding and lacks a supporting basis. Accordingly, it should not be the subject of litigation in this proceeding.

J. Proposed Contention Ten

Proposed contention ten attempts to raise as an issue in this proceeding the ability of Applicant to maintain WNP-3 in a preservation state. It states, as follows:

> Petitioner contends that Applicant will not adequately maintain the structures, systems and components of WNP-3 which are important to safety, during the period of time during which it is held in a "preservation state" pending completion resulting in violations of Appendix B to Part 50, 10 CFR.[180]

Proposed contention ten should not be admitted because it is factually incorrect on its face. It also raises an issue outside of the scope of this proceeding and lacks an adequate supporting basis.

Petitioner apparently believes that a formal decision has been made to place WNP-3 in a "preservation state" pending completion. In fact, that simply is not the case. No decision has been made as to whether and, if so, for how long, WNP-3 will be placed in a "preservation state." Because of this basic factual error, proposed contention ten should be rejected.

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180 Id.

In any event, this proposed contention is not subject to litigation here because it is outside the scope of this proceeding. Petitioner in essence contends that Applicant will not comply with 10 C.F.R. Part 50, Appendix B during the period in which WNP-3 is in a "preservation state." Clearly the legal obligation for Applicant to do so flows not from its operating license application, but from its construction permit. Therefore, because the proposed contention rests on the allegation that Applicant will not satisfy its construction permit, this proposed contention has no place in an operating license proceeding. If petitioner has a specific concern regarding compliance with that permit, it should pursue such concerns through 10 C.F.R. Section 2.206, not in this OL proceeding.

Lastly, there is no factual basis for this proposed contention. First, with respect to staffing levels, petitioner erroneously characterizes I&E Report 81-08 and 81-17 for the proposition that "Applicant was consistently understaffed during normal construction hampering the implementation of its QA/QC program."[181] To the contrary, I&E Report 81-08 states that "Supply System management appears to be properly allocating quality resources during the lower manning period and is setting appropriate priorities to assure quality functions are properly

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181 Supplemental petition at 24.

performed. No immediate detrimental effects (with respect to nuclear safety) were identified from use of the reduced staffing level."[182] Moreover, I&E Report 81-17 at 11 which petitioner also references does not even address inadequate staffing levels.

Second, petitioner claims that in view of the termination of a number of manual workers, "maintenance will be greatly curtailed."[183] However, even assuming that manual workers have been terminated, that fact bears no logical relationship to the adequacy of a preservation program. Clearly, such a program will employ fewer individuals than an active construction program. However, petitioner fails to recognize this and provides no basis for contending that employment levels will fall short of that needed to support a preservation program.

Third, petitioner cites I&E Reports 82-12, 81-17 and 83-01 in support of its claim that housekeeping and cleanliness at WNP-3 were inadequate and that, consequently, the "preservation" program will not satisfy Appendix B.[184] However, the adequacy of "housekeeping and

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182 I&E Report 81-08 at 10.

183 Supplemental petition at 24.

184 Id. at 24-25.

cleanliness" during construction has no bearing on the adequacy of a preservation program. Nor has petitioner provided any reason for making this leap in logic.

More importantly, however, petitioner again has failed to characterize accurately the inspection reports upon which its allegations regarding housekeeping and cleanliness rest. While I&E Reports 82-12 and 81-17 do address such matters, petitioner fails to disclose that no noncompliances of any kind were identified relating to this area of activity and that the findings upon which petitioner relies referenced in I&E Report 82-12 were in fact made by the Applicant as part of its licensee surveillance activities.[185] Additionally, the matter identified in I&E Report 81-17 has since been corrected. These omissions by petitioner are significant because they illustrate that Applicant has implemented a quality assurance program that fulfills the requirements of Appendix B through the identification of nonconforming conditions and the initiation of appropriate corrective action. Similarly, I&E Report 83-01 states only that cleanliness in the reactor pit area was at that time an open item.[186] No Staff determination was made as to any item of noncompliance and the item has since been closed.

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185 I&E Report at 82-12 at 6.

186 I&E Report 83-01 at 2.

Relying on I&E Report 82-02, petitioner next asserts that there have been problems in the past with water control measures at WNP-3 and that such problems indicate the site preservation program will be inadequate.[187] I&E Report 82-02 does not support petitioner's claims. That Report states with respect to water control measures at WNP-5 that "[t]ours of the Unit 5 area revealed only minor problems with rain water control which were referred to the Licensee." It adds that no items of noncompliance were identified.[188] I&E Report 82-07, also referenced by petitioner in this regard, does not even appear to discuss the matter.

Lastly, petitioner relies upon I&E Report 82-19 for the proposition that Applicant was cited for its failure to protect adequately electrical penetration terminal boxes.[189] In fact, that report states that Applicant identified this problem through its QA program and that corrective actions were initiated. It also reflects that the NRC Staff did not consider this matter to be an item of noncompliance.[190]

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187 Supplemental petition at 25.

188 I&E Report 82-02 at 2.

189 Supplemental petition at 26.

190 I&E Report 82-19 at 4.

Fourth, petitioner cites as a factual basis for this proposed contention the alleged inadequacy of NRC inspection and enforcement activities at WNP-3 and the alleged inability of Applicant to maintain the site during the preservation state. However, as discussed above in connection with proposed contention nine, the adequacy of the NRC Inspection and Enforcement program is not an issue properly before the Board in this operating license proceeding. If petitioner has concerns in this regard, it should raise them in a petition filed pursuant to 10 C.F.R. Section 2.206. Nor has petitioner provided any factual support at all for its claim that Applicant will not have the resources to maintain the site in accordance with Part 50, Appendix B. Accordingly, proposed contention ten is inadmissible and should not be admitted in this proceeding.

K. Proposed Contention Eleven

Proposed contention 11 attempts to raise the issue of management capability to operate WNP-3. It states, as follows:

> Petitioner contends that the Applicant is not technically qualified nor exhibited the management capability necessary to operate WNP-3 as required by 10 CFR 50.40(a) and that operation will therefore endanger the public health and safety. Applicant's construction of WNP-3 has revealed the systematic

lack of management responsibility required by Section I of Appendix B to 10 CFR Part 50.[191]

The proposed contention should be rejected for two reasons. First, it lacks an adequate supporting basis. Second, the proposed contention is so general and vague that its scope far exceeds any purported basis, and thus fails to provide a specific issue sought to be litigated.

To establish a basis for proposed contention eleven, petitioner first cites a study prepared by the Washington State Legislature which alleges that Supply System management has been the most significant cause of cost overruns and schedule delay. It also references certain findings in that study regarding integrated management.[192] However, the matters addressed by the state legislature involve the adequacy of Applicant's construction program for WNP-3 from cost and schedule standpoints, not from a safety standpoint. That issue is patently outside of this operating license proceeding.

Second, petitioner references a SALP report (NUREG-0834) for WNP-2 in support of its proposed contention.[193] That report was based on activity performed at WNP-2 from April, 1979 to April, 1980. Manifestly, an evaluation of

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191 Supplemental petition at 25.

192 Id. at 25-26.

193 Id. at 26.

activity at WNP-2 over three years ago has no bearing on Applicant's ability to operate WNP-3, and petitioner has provided no reason for concluding otherwise. Such reference, therefore, does not support its proposed contention.

Third, petitioner asserts in support of its contention that a deferral at WNP-3 will adversely affect the ability to operate WNP-3 because of the alleged difficulty in hiring adequate personnel.[194] This assertion does not support the proposed contention. As indicated in connection with proposed contention ten, WNP-3 has not been formally deferred. Moreover, even assuming that personnel terminations have occurred at WNP-3 as alleged in the supplemental petition, petitioner fails to identify with any specificity why and in what manner such terminations will effect the ability of management to operate WNP-3 upon the completion of construction. Clearly, factors governing staff availability at an operating facility are entirely different from factors governing operating staff availability during construction.

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194 Id.

Fourth, petitioner identifies a number of I&E Reports in support of its claim that staffing levels at WNP-3 have been and will be inadequate.[195] However, its reliance on these reports is totally misplaced. I&E Report 80-17, which petitioner cites to support its claim that welding problems at WNP-3 were "directly attributable" to "newer welders,"[196] in fact states that the high rate of radiographic test rejection rate on the Unit 5 dome was due in part to the use of newer welders. It also states that these "problems" did not constitute an item of noncompliance or a deviation.[197] Moreover, I&E Report 82-7 at 3 and 4 also cited by petitioner does not even address inadequate staffing, let alone support petitioner's allegations in this regard. Lastly, while I&E Report 81-08, recognizes that staffing levels may be low, it also commends the Applicant for compensatory action it took as a result and notes that no immediate adverse affects were observed in terms of nuclear safety as a result of those staffing levels.[198] This report, therefore, directly rebuts petitioner's proposed allegation.

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195 Id. at 27.

196 Id.

197 I&E Report 80-17 at 3.

198 I&E Report 81-08 at 10.

Fifth, petitioner asserts that Applicant's management has not rectified inadequacies in construction practice and quality assurance. As support for this claim, petitioner relies upon the report of the state legislature discussed above and a SALP report presumably discussing WNP-3.[199] Neither of those documents reflect recent improvements in construction practices. Nor as a factual matter do they bear on the proposed contention relating to the ability of the Supply System to operate WNP-3. In addition, I&E Report 81-14 at 13 upon which petitioner relies in support of its claim regarding management inadequacies simply does not address the allegations made by petitioner.

Lastly, petitioner cites the September, 1982 SALP Report for WNP-3 to support its claim that Applicant lacks the ability to operate that facility safely.[200] Again, the SALP Report addresses construction activities and is not relevant to the question of Applicant's ability to operate WNP-3. This is especially the case because the construction and operations organizations within the Supply System are, for the most part, entirely separate.[201] Moreover, the SALP Report does not state

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199 Supplemental petition at 28.

200 Id. at 28.

201 See FSAR §§13.1.1 and 13.1.2.

simply that management is "excessively detached," as petitioner claims. Rather, the report states, as follows:

> The report period for this license performance evaluation is the first period in which the functioning of the licensee's revised management structure can be evaluated. The overall evaluation of the new Supply System management for WNP-3 and 5 is favorable. However, the Review Board believes that the license is excessively detached from the day-to-day problems at the site. . . .[202]

In any event, even if adequately supported, this proposed contention is so general and vague that its scope far exceeds any purported basis. Moreover, it fails to identify a specific issue sought to be litigated. As presently framed, the proposed contention would provide petitioner with the ability to conduct an unlimited inquiry into any and all aspects of plant construction without first relating those aspects to the question of whether Applicant is qualified or capable of operating WNP-3. Indeed, petitioner apparently believes that <u>any</u> problem in construction, no matter how minor, has a bearing on whether the Applicant is capable of operating the facility under construction. Clearly, that view is simply incorrect. Therefore, because proposed contention

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202 SALP Report at 5.

eleven lacks an adaequate supporting basis, has an unlimited scope and is impermissibly vague, it should not be admitted in this proceeding.

L. Proposed Contention Twelve

Proposed contention twelve alleges simply that there is no reasonable assurance that operation of WNP-3 will not endanger public health and safety. It states as follows:

> Petitioner contends that Applicant has failed to construct WNP-3 in accordance with NRC rules and regulations, applicable industry standards and codes and with a quality assurance program which meets the criteria of 10 CFR Part 50, Appendix B and GDC 1 of Appendix A and thus there is no reasonable assurance that operation of the plant will not endanger the public health and safety as required by 10 CFR 50.40.[203]

This proposed contention is inadmissible for two reasons. First, it is totally without any limitations and is, therefore, impermissibly vague. Second, petitioner has failed to provide any factual basis for it.

As presently framed, proposed contention twelve is nothing more than an assertion by petitioner that WNP-3 was not built properly. The contention itself does not on its face identify why WNP-3 allegedly was not properly built and which NRC requirements allegedly were violated.

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203 Supplemental petition at 28-29.

Moreover, it does not put Applicant on notice as to what factual matters will be raised by this proposed contention. If petitioner wishes to contend that the plant was not constructed in conformance with regulatory requirements, it must identify with specificity which requirements were violated and provide a factual basis for such allegations. Vague assertions will not be sufficient. On these grounds alone, proposed contention twelve should be rejected.

Moreover, petitioner has failed to provide a sufficient factual basis for proposed contention twelve. In addressing this inadequacy of the proposed contention, Applicant will focus on each of the factual areas on which the proposed contention purportedly rests, viz., personnel training; the QA program; vendor surveillance; audit procedures; construction of structures; installation of rebar; welding; bolt torquing; and excavation and backfill operations.

However, before doing so, one preliminary observation is appropriate. It is not enough for petitioner simply to string together inspection and enforcement reports and other documents to attempt to provide a "basis" for its proposed contention. As will become evident from the discussion below, the fact that isolated construction anomalies have been identified does not provide any basis

for contending that WNP-3 has not been constructed in accordance with all applicable requirements, standards and codes. To the contrary, it demonstrates that the construction quality assurance process worked as it should have: problems were identified and those problems were or will be corrected. Simply stated, the fact that noncomforming conditions are disclosed by the QA program and that corrective actions are taken demonstrate that Applicant's program is functioning properly, not the converse, as petitioner suggests. Petitioner apparently either does not understand this process, or has chosen simply to ignore it because the process is inconsistent with petitioner's preconceived notions.

Moreover, in a number of instances, petitioner cited documents incorrectly, making it difficult for Applicant to respond to its allegations. In other cases it mischaracterized the content of the documents on which it chose to base its allegations. However, it is clear that petitioner has neither argued nor provided a factual basis for arguing that construction anomalies other than those previously identified exist at WNP-3. Nor has petitioner set forth any basis for concluding that the disposition of such matters has not been or will not be satisfactory.

Its failure to do so is fatal to petitioner's case, for without a factual basis to support these claims, its proposed contention is inadmissible.

Personnel Training. Petitioner first cites I&E Reports 78-06, 79-12, 80-08 and 81-14 in support of its claim that the use of improperly trained personnel has been a "consistent" problem at WNP-3 since 1978.[204] In fact the I&E Reports upon which petitioner relies do not provide any basis for this statement. I&E Report 78-06 does not address the issue petitioner purports to raise. In addition, I&E Report 79-01 did not identify any non-compliances in this area, nor did I&E Reports 80-08 and 81-14.[205] Moreover, the matters identified therein have been closed out.

Second, petitioner relies upon I&E Report 78-08 in support of its allegation that "[i]nstances of forgery of qualifications exist."[206] In fact that report identifies a single incident of alleged falsification which occurred five years ago and which NRC investigated[207] and closed

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204 Supplemental petition at 29.

205 I&E Reports 79-01 at 4, 80-08 at 6, and 81-14 at 9.

206 Supplemental petition at 29.

207 See I&E Report 78-08 at 5.

out. It does not provide any factual basis for petitioner's allegations of "instances" of forgery nor has petitioner provided one.

Third, relying on I&E Reports 79-03, 81-14 and 81-01, petitioner claims that QA inspectors did not understand the construction practices, recording procedures and requirements which they were to oversee.[208] Again, upon closer examination of these reports it is evident that they do not support the proposed contention. I&E Report 79-03 indicates that no items of noncompliance were identified and states only that two items of minor significance were identified.[209] Moreover, those matters were closed out to the satisfaction of NRC. Similarly, while I&E Report 81-14 does discuss an anomaly in this area, petitioner fails to note that it was discovered by the Applicant before safety-related construction commenced and that Applicant aggressively pursued the matter.[210] Lastly, I&E Report 81-01 documents that a welding operator and not a QC inspector (as petitioner states) had allegedly forgotten a procedural requirement.[211] In any

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208 Supplemental petition at 29.

209 I&E Report 79-03 at 8.

210 I&E Report 81-14 at 4.

211 I&E 81-01 at 2.

event, this matter has since been closed out. In short, none of these inspection reports provide a basis for the proposed contention.

Fourth, petitioner suggests based on the state legislature's inquiry and I&E Report Nos. 79-09 and 81-10 that Applicant and its contractors are not sufficiently committed to QA activities in their relations with employees.[212] Again, none of these documents support petitioner's contention. In stark contrast to petitioner's assertions, the state's inquiry found that Applicant's Board of Directors instructed all employees to cooperate fully with the state inquiry and that contractors and architect-engineers cooperated without the use of subpoenas.[213] However, petitioner ignored this fact in citing that inquiry as support for its proposed contention.

Similarly, I&E Report 79-09 discusses an incident in which a contractor employee became involved in a dispute regarding the details of radiographic interpretation with the AE. This matter was closed by I&E Report 79-09. In

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212 Supplemental petition at 29-30.

213 State inquiry at introduction.

fact, the individual making the allegations expressed his "satisfaction" with the results of the NRC investigation.[214]

In addition, I&E Report 81-10 documents only a single instance in which NRC found that a memorandum prepared by a single contractor could have been viewed by employees as discouraging involvement with QA. It did not find that Applicant or its contractors have actively discouraged employee involvement with QA or that the single memorandum in fact discouraged any such involvement.[215] In any event, corrective action was taken immediately in that case and the matter has long since been closed.

At bottom, after reviewing several I&E Reports, petitioner identified a number of isolated instances which it claims supports its allegations. In each of those instances, however, either no violation of NRC requirements was identified or an isolated item of noncompliance was found and prompt corrective action taken. Petitioner has not provided any basis for challenging the factual conclusions reached in any of the I&E reports it erroneously cited. Nor has it demonstrated any basis for its apparent assertion that these isolated

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214 I&E Report 79-09 at 5.

215 I&E Report 81-10 at 6-7.

occurrences reflect a broader problem. Therefore, its allegations in this area lack the necessary supporting basis and should be rejected.

The QA Program. Petitioner next raises a number of allegations regarding Applicant's construction QA program. It first claims that the quality assurance program has "repeatedly" failed to identify and report construction errors found subsequently by NRC inspectors. Petitioner relies upon I&E Reports 79-03 and 79-10 as well as a SALP evaluation to provide a basis for its allegation.[216] However, such reliance is misplaced.

I&E Report 79-03, discussing the close out of a single violation of NRC requirements involving the alleged failure of Applicant to test six cubic yards of grout, in fact stated that quality concrete had been produced consistently at satisfactory strengths during the period in question.[217] Similarly, I&E Report 79-10 addressed only one item which is even possibly related to the proposed contention, viz., the omission of reinforcing steel from a wall in the fuel handling building. As reflected in that report, this matter was in fact discovered by the Applicant, reported to the NRC[218] and

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216 Supplemental petition at 30.

217 I&E Report 79-03 at 5.

218 I&E Report 79-10 at 3.

subsequently resolved. Lastly, there simply are no statements on page eleven of the SALP Report cited by petitioner which support its claim that the QA program "repeatedly" failed to identify and report construction errors found subsequently by NRC.

Second, relying on I&E Report 82-17 and 82-19, petitioner claims that in some cases QA procedures have been bypassed altogether.[219] Significantly, I&E Report 82-17 and 82-19 identify only two instances in which procedures were not followed and these matters were promptly investigated and closed out. They do not suggest or even intimate that the problems reflect an underlying breakdown of the QA program.[220] Accordingly, no basis exists to support an allegation that QA procedures were avoided such that the QA program repeatedly failed to identify construction deficiencies.

Third, based on the 1982 SALP report, petitioner claims that when the QA program for piping was found not to support Quality Class I work, the AE released the contractor to continue despite these findings.[221] In

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219 Supplemental petition at 30.

220 Moreover, I&E Report 82-19 states that an employee of one of the contractors raised the point that this procedure was not followed, clearly undercutting petitioner's charge discussed above that employees were discouraged from QA involvement. See note 212, supra, and accompanying text.

221 Supplemental petition at 30.

fact, as the SALP report cited by petitioner recognizes, that QA program was in fact able to support some Class I activities. In addition, only a limited amount of work was performed immediately following the release.[222] Thus, petitioner's claim in this regard is again not supported by any factual basis.

Fourth, relying on I&E Report 82-19 and the SALP Report, petitioner alleges that the QA program was not and is not effective and that improvements which Applicant in 1978 represented would be made have not been implemented.[223] Again, each "factual basis" offered for this claim amounts to a misrepresentation of fact or it ignores relevant data which are contrary to petitioner's preconceived opinions.

With respect to I&E Report 82-19, petitioner overlooks the fact that the Applicant discovered the alleged problem addressed in that report (which was later also identified by the NRC Staff) and that the report does not identify any items of noncompliance. Moreover, neither that report nor the SALP report include a finding that improvements Applicant had "represented" would be made in 1978 were not in fact implemented. Lastly,

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222 December 6, 1982 response to SALP Report at Appendix, p. 5 and SALP at 12.

223 Supplemental petition at 30.

petitioner has failed to identify with any basis and specificity what improvements the Applicant represented would be made which have not since been implemented.

Fifth, petitioner asserts that when "significant deficiencies in the implementation of QA were identified, often no restrictions on work were placed."[224] Again, petitioner has simply failed to allege any factual basis in support of a claim that the matter identified in I&E Report 81-14 (upon which petitioner chose to base its claims) was not properly resolved. Nor has the petitioner provided any reason to conclude that any other "significant" deficiencies existed for which work restrictions were not placed.

Sixth, petitioner claims that the failure to "incorporate relevant industry codes into the work has been the subject of repeated NRC findings."[225] Again, the factual basis upon which that allegation rests, I&E Report 81-08, does not support the proposed contention. That report is over two years old and does not reflect recent improvements in construction practices at WNP-3. Moreover, the matter identified in that I&E Report has

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224 Id.

225 Id.

since been closed out by NRC. Petitioner has failed to allege why such disposition of the matter has been inadequate.

At bottom, petitioner has identified only a few isolated instances of what it believes are "discrepancies" in the QA program at WNP-3. However, in none of those instances did such "discrepancies" relate directly to the broad claims advanced by the petitioner regarding the construction of WNP-3. Accordingly, its unsubstantiated allegations regarding the QA program do not provide an adequate basis for admitting this proposed contention.

Vendor Surveillance. Petitioner contends next that "Applicant has systematically failed to ensure an adequate and consistent vendor surveillance program."[226] However, it has provided no factual basis to support this claim.

I&E Reports 80-04, 81-14, and 81-08 upon which petitioner relies do not identify weaknesses in vendor surveillance. Moreover, to the extent those reports address alleged deficiencies in materials and components supplied by vendors, they simply do not support the claim that there has been a "systematic" failure to "ensure an adequate and consistent vendor surveillance program.[227] Lastly, where instances of inadequately supplied materials

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226 Supplemental petition at 30-31.

227 Id.

were identified, those instances were considered of minor regulatory significance.[228] Moreover, to the extent I&E Report 82-25 addresses vendor surveillance, it does so within the context of a discussion closing out a matter.[229] In short, no factual basis exists for contending that Applicant has systematically failed to ensure an adequate vendor surveillance program.

Audit Procedures. Petitioner next makes a number of assertions regarding allegedly inadequate audit procedures, which are based on its characterization of I&E Reports 78-09, 81-08 and 82-21. First, it asserts that NRC found audits by the AE to be superficial.[230] I&E Report 78-09, upon which petitioner relies in support of this claim, has since been closed out. Moreover, no finding was made in that report of such a programmatic weakness. Similarly, the reference to I&E Report 81-08 does not support petitioner's claim that "no audits" were being done of "project organizations" or "important Appendix B criteria." In fact, that report indicates as follows:

> The qualifications of four site auditors was [sic] also examined. The audits were examined for compliance . . . [with the PSAR] and implementing procedures in effect at

228 I&E Report 80-04 at 3-7.

229 I&E Report 82-25 at 3.

230 Supplemental petition at 31.

> the time of the audit . . . . The audits examined included three audits of a site contractor . . . and four corporate audits of site activities. . . . The audits examined were found to be appropriate in scope, depth, and handling of audit finding. It was noted, however, that audits of the mechanical contractor had been postponed resulting in important Appendix B criteria . . . not having been audited in the past 12 months, as required. This condition had already been identified by the audit group and audits of these areas have been scheduled. . . . No items of noncompliance or deviations were identified.[231]

Thus, petitioner's claim rests on the fact that in one case an audit was postponed. However, even in that case, Applicant was aware of the postponement, corrective action was instituted and no violations of any requirements were identified. These facts provide no basis for the proposed contention.

Second, petitioner claims that no trend analyses have been performed at WNP-3 and that the "Applicant simply waits for failures to occur."[232] Again, no such finding was made in I&E Report 81-08. While that report discusses the desirability of such a system,[233] the fact remains that it was not specifically required. At any rate, this "perceived weakness" was subsequently resolved to the

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231 I&E Report 81-08 at 13.

232 Supplemental petition at 31.

233 I&E Report 81-08 at 16.

satisfaction of NRC at least two years ago and sophisticated trend analyses have been regularly prepared since then. In addition, no finding was made at either page 11 or 16 of that report that the "Applicant simply waits for failures to occur," as petitioner claims.

Third, relying on the 1982 SALP Report, petitioner asserts that "[c]ontrol of onsite design changes . . . has continued to be a prevalent weakness."[234] Again, petitioner has simply failed to recognize corrective action by the Applicant both with respect to identifying past problems in this area and instituting corrective actions to avoid future problems. Nor can reliance on I&E Report 82-21 save its position. That report details the results of a meeting between Applicant and the NRC to discuss Applicant's initiatives to increase its level of involvement in the design control process. No items of noncompliance were identified and numerous voluntary programs were initiated by the Applicant following the meeting.[235]

Lastly, petitioner claims that the "end-of-the-year SALP confirmed no improvements had been made."[236] Applicant is unable to determine to what petitioner is

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234 Supplemental petition at 31.

235 I&E Report 82-21 at 2.

236 Supplemental petition at 31.

referring in this statement. Clearly, its failure to provide an identifiable basis for this allegation renders it inadequate to support the proposed contention.

In short, petitioner has failed to provide any basis to support its allegations regarding audit procedures at WNP-3. Accordingly, these allegations are insufficient to warrant admission of proposed contention twelve.

Construction of Structures. Petitioner next raises a series of allegations regarding the construction of numerous structures at WNP-3 in hopes of providing a basis for proposed contention twelve. However, these allegations themselves lack an adequate supporting basis.

First, relying on I&E Reports 78-06, 80-08 and 83-01, petitioner contends that "[w]orkers have systematically utilized vibrators improperly or failed to use them entirely in the placement of concrete resulting in voids and therefore weakened structures."[237] In fact, I&E Report 78-06 does not appear to address petitioner's concern because no Quality Class I concrete had been placed at the time this report was prepared. Similarly, I&E Report 80-08, while addressing concrete placement procedures, did not state that there were voids in concrete structures and did not identify any violation of

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237 Id.

NRC requirements in this regard.[238] In addition, the matter was subsequently closed out by NRC. Lastly, I&E Report 83-01 does not identify any items of noncompliance. Nor does it indicate that voids or other concrete defects were evident.[239]

Second, the petitioner claims that I&E Report 81-18 "confirms" allegations of voids in shear walls.[240] In fact, an accurate summary of that report suggests a contrary conclusion. I&E Report 81-18 at 1 states that follow-up on a potentially reportable item under 10 C.F.R. Section 50.55(e) (voids in the WNP-3 shear wall of the reactor building) was under way and that a "final [Section] 50.55(e) report would address the subjects of corrective action to prevent recurrence and the structural integrity of the wall."[241] Moreover, I&E Report 81-18 did not identify any items of noncompliance. To the contrary, it reflects the adequacy of the repair work which was completed. Accordingly, it provides no basis for petitioner's allegations that structures have been improperly constructed and, if anything, demonstrates just the opposite.

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238 I&E Report 80-08 at 6.

239 I&E Report 83-01 at 3.

240 Supplemental petition at 31.

241 I&E Report 81-18 at 1.

Third, based on I&E Report 79-06, petitioner claims that "[a]llegations of equipment left in concrete structures have not been proven wrong."[242] Again, petitioner fails to accurately cite that report. I&E Report 79-06 states that because Applicant was unable to verify that certain equipment (a pneumatic vibrator) was inside of a concrete placement, a nonconformance report (NCR) was written, conservatively assuming that the allegation was true. It also states that the NCR was subsequently evaluated and resolved based on worst case orientations and locations. The inspection report then stated that the NCR was dispositioned and reviewed in accordance with the QA program requirements and that no items of noncompliance or deviations were identified by the inspector.[243] Petitioner does not provide any basis for challenging this disposition of the matter.

Fourth, petitioner asserts based on I&E Reports 79-01 and 79-04 that "[g]rout application and testing have been inadequate."[244] However, the Reports relied upon by petitioner in fact indicate that in only two instances were minor deficiencies in grout application and testing

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242 Supplemental petition at 31-32.

243 I&E Reports 79-06 at 8 and 79-07 at 3.

244 Supplemental petition at 32.

identified.[245] No statements were made in those reports suggesting wide spread deficiencies in this regard and the issue was resolved based on the small amount of grout involved. Significantly, petitioner provides no basis at all for contending either that the disposition of both of these reports was incorrect or that other unidentified instances of grouting inadequacies exist.

Lastly, petitioner claims that "[u]ncertified technicians have been used to place concrete and procedures have not met applicable codes."[246] Again, petitioner misconstrues the two I&E Reports upon which it purports to rely, I&E Report 78-08 and 78-09. Neither report identifies anything other than isolated instances where the matters cited by petitioner were identified.[247] Moreover, in both of those cases, the matter was closed out.

At bottom, petitioner has provided no basis for concluding that structures at WNP-3 have been improperly constructed. In each case, a review of the "factual basis" for petitioner's claim shows first that either no deficiencies or noncompliances existed. It also shows that when inadequacies were identified, they were properly

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245 See I&E Reports 79-01 at 6 and 79-04 at 8.

246 Supplemental petition at 32.

247 See I&E Reports 78-08 at 5 and 78-09 at 8-9.

closed out. Accordingly, its claims regarding improperly constructed structures do not support proposed contention twelve.

Rebar. Petitioner next contends that "[f]ailures to install or install properly steel reinforcing bar (rebar) have repeatedly occurred at WNP-3."[248] Again, petitioner has cited only a limited number of isolated instances, in which questions arose as to the installation of rebar and in many of these cases no deficiencies or items of noncompliance were even identified. In addition, petitioner has provided no factual basis for relating these instances to its broader contention or for arguing that they were not properly resolved.

First, petitioner cites I&E Reports 79-04 and 79-07 to support its claim that "inadequate preservation and quality control measures have been implemented to assure quality of . . . rebar . . . ."[249] In fact, I&E Report 79-04 identified no violations of NRC requirements in this regard.[250] Moreover, I&E Report 79-07 described only one isolated violation of QA procedures relating to rebar,[251] which was promptly closed out.

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248 Id.

249 Id.

250 I&E Report 79-04 at 2-3.

251 I&E Report 79-07 at 2-3.

Second, petitioner asserts based on I&E Reports 79-03, 79-10 and 81-08 that "[w]orkers have improperly placed, left out entirely or bent rebar" and that QA personnel failed to discover these alleged discrepancies.[252] Those reports again fail to provide any basis for petitioner's allegations.

I&E Report 79-03 does not identify any items of nonconformance or deficiencies regarding rebar and in one instance where an NRC inspector had a question concerning bent rebar, his question was promptly answered.[253] Similarly, I&E Report 79-10 identifies one item which was the subject of a Section 50.55(e) Report and which was subsequently closed out.[254] Lastly, although I&E Report 81-08 does identify incidents where bent rebar was discovered, petitioner omits referencing the following statement in that Report:

> M-K personnel stated that the above field apparatus had been used in the past to bend rebar for use in safety-related applications. The licensee took immediate action to stop work on rebar bending. The licensee initiated action to evaluate the effects of bending reinforcing steel to a smaller inside diameter than required by specification.[255]

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252 Supplemental petition at 32.

253 I&E Report 79-03 at 9.

254 I&E Report 79-10 at 3.

255 I&E Report 81-08 at 47.

In addition, although that incident was identified as an item of noncompliance, it was subsequently closed out. Petitioner has provided no factual basis for contending either that such disposition was not adequate or that this incident was anything more than an isolated occurrence. Accordingly, its unsubstantiated claims concerning rebar do not provide any basis for the admission of proposed contention twelve.

Welding. Petitioner next raises a claim that "[t]he quality of welding, quality assurance of welding and records of welding have routinely failed to meet applicable codes and QA requirements."[256] However, this claim lacks an adequate supporting basis.

First, based on I&E Reports 80-17, 81-06, 81-14 and 82-13, petitioner contends that the qualification of welders has repeatedly been questioned. I&E Report 80-17 does identify allegations of improper welder qualifications. However, it does not provide any basis for concluding that this problem was anything but an isolated event.[257] In addition, corrective action was initiated promptly and the matter has since been closed out. Petitioner has not provided any basis for challenging this disposition of the matter.

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256 Supplemental petition at 32.

257 I&E Report 80-17 at 4-6.

Similarly, petitioner relies upon I&E Report 81-06 in support of its allegations. Yet in that report no items of noncompliance were identified. Moreover, where that report discusses welder qualification, it is done within the context of a matter which was designated as closed out.[258]

Nor does I&E Reports 81-14 and 82-13 support petitioner's allegations regarding inadequate welder qualifications. In fact, I&E Report 81-14 does not address welder qualifications. Moreover, I&E Report 82-13 does not identify any deficiencies or items of noncompliance and, to the extent it even addresses welder qualifications, it states only that Applicant itself was investigating allegations regarding unqualified welders in a particular area.[259]

Second, petitioner asserts that QA inspectors "have routinely accepted bad welds."[260] While petitioner purports to base its allegations on I&E Reports 79-10, 80-06, 81-01, 81-14 and 82-19, in fact petitioner offers little more than misrepresentations of those reports. I&E Report 79-10 simply does not state that any "bad" welds

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258 I&E Report 81-06 at 6.

259 I&E Report 82-13 at 5.

260 Supplemental petition at 32.

were accepted by QA inspectors.[261] In addition, I&E Report 80-06 does not support petitioner's claims. That report documents one incident in which an inadequate weld was accepted by the contractor's quality control organization. It does not indicate that this was a repetitive occurrence or a matter of safety significance, and the matter was subsequently closed.[262]

Nor does I&E Report 81-01 provide a basis for petitioner's claims. That report documents an isolated incident where contractor QA personnel did not adhere to procedures.[263] It does not indicate that this matter was a repetitive occurrence and it was subsequently closed. Petitioner also incorrectly relies on I&E Report 81-14. That report does not discuss instances in which welds were incorrectly accepted by QA personnel and as such cannot support petitioner's claims. Lastly, I&E Report 82-19 does not identify any instances in which QA personnel incorrectly accepted inadequate welds, contrary to applicable requirements. Accordingly, petitioner's allegations in this regard are without any factual basis whatsoever.

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261 See I&E Report 79-10.

262 See I&E Report 80-06 at 3.

263 I&E Report 81-01 at 2.

Third, petitioner cites I&E Report 81-14 at 9 for the proposition that "significant deficiencies" exist in the welding of the reactor vessel and steam generator supports.[264] A review of I&E Report 81-14 as cited by petitioner did not disclose any discussion of "significant deficiencies" in such welds. Moreover, to the extent any noncompliance was documented in that report, it has since been corrected. Therefore, petitioner may not rely upon it as a factual basis for its proposed contention.

Fourth, petitioner asserts that welding QA records and radiographs have been "forged" for unknown periods of time. To establish this assertion, it cites I&E Report 81-17. Again, petitioner neglects a number of salient facts. Specifically, the Applicant discovered the alleged irregularities and initiated a full examination into this matter. In addition, appropriate corrective actions were taken to assure the irregularities were fully investigated, including a complete review of all affected radiographs.[265] Petitioner simply ignores this corrective action.

Lastly, petitioner cites I&E Reports 80-03, 80-04, 80-06, 80-07, 81-08 and 83-05 as support for its claim that "[i]mproper welding procedures noted by NRC

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264 Supplemental petition at 32.

265 See I&E Report 81-17 at 13-14.

inspectors have gone unchanged inspection after inspection."[266] In essence, petitioner alleges that the Applicant has been cited time and again for using the same improper welding procedures and that it has failed to initiate prompt, corrective action. The facts as reflected in the I&E Reports upon which petitioner relies simply do not support this claim and provide no factual basis for it.

Specifically, I&E Report 80-03 does not identify any item of noncompliance pertaining to welding procedures. In addition, I&E Report 80-04 discusses two instances of inadequate welding. It does not identify deficiencies in welding procedure.[267] In addition, any problems identified in 81-08 and 81-10 with welding procedures have been closed by the NRC, contrary to petitioner's claims. Lastly, I&E Report 83-05 does not even identify any problems with weld procedures.

At bottom, while petitioner raises a number of allegations regarding inadequate welds and welding procedures in support of its claim, it documents only isolated instances of "problems" which in many instances did not even constitute a deficiency or infraction and which in all instances were properly resolved. Absent any

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266 Supplemental petition at 33.

267 I&E Report 80-04 at 7.

factual basis for its allegations regarding welding, such claims may not provide a basis for proposed contention twelve.

Bolt Torquing. Petitioner next asserts numerous inadequacies involving "[p]rocedures used to ensure the proper torqu[ing] of bolts. . . ."[268] Again, it has failed to provide any factual basis in support of such claims. Therefore, its allegations in this regard provide no basis for proposed contention twelve.

First, petitioner cites the 1982 SALP Report at 11 for the proposition that "Applicant has never taken steps to assure worker and quality assurance personnel understanding of bolt marking which has, as a result, been conducted improperly from 1979 to the present."[269] In fact, the SALP Report states as follows:

> Two 10 CFR 50.55(e) items were reported in this functional area. One involved deficiencies in an auxiliary building concrete wall placement and the other involved welding defects in structural steel. Reporting, evaluation of safety implications, and corrective action were adequate for both items. Technical reviews by the licensee and Ebasco were deficient in one instance as evidenced by failure to identify and correct a flawed statistical analysis of reactor auxiliary building structural steel bolting deficiencies. This item was reported as 10 CFR 50.55(e) item during the

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268 Supplemental petition at 33.

269 Id.

> previous assessment period but was examined by the NRC during this assessment period. The licensee's analysis of this deficiency is now under NRC review. The final report of one other previously reported 10 CFR 50.55(e) item involving cracks in safety related embedment plates is under NRC evaluation.[270]

Similarly petitioner erroneously relies on I&E Report 80-13. It only identifies one item pertaining to bolt torquing[271] and that the matter has since been closed. As it failed to do in countless other instances, petitioner fails even to allege (let alone provide a basis for contending) that such closure was inadequate.

Lastly, relying on I&E Reports 82-05, 82-06 and 82-13, petitioner claims "[p]ersonnel have not been properly trained in tagging procedures."[272] Reliance on these reports is again misplaced.

I&E Report 82-05 identifies one item considered by NRC to be of minor significance and which has since been closed.[273] I&E Report 82-06 also discusses torquing. However, petitioner overlooks the fact that the matter addressed in I&E Report 82-06 is the same matter discussed in I&E Report 82-05 and that the discussion in 82-06 is

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270 SALP Report at 11.

271 I&E Report 80-13 at 2-3.

272 Supplemental petition at 33.

273 I&E Report 82-05 at 7.

presented in connection with the final closeout of this matter.[274] Again, petitioner fails to provide any basis for alleging that this disposition was inadequate. Lastly, Applicant can find no reference to tagging procedures in I&E Report 82-13.[275]

In light of the foregoing, it is clear that petitioner's allegations regarding bolt torquing rests on the mischaracterization of isolated events which were properly identified, evaluated, and resolved. Petitioner has alleged no facts in support in its claims regarding procedures to insure proper torquing, and for that reason, its allegations provide no basis for proposed contention twelve.

Excavation and Backfills. Lastly, petitioner contends that "Applicant has not conducted excavation and backfilling operations in accordance with applicable Appendix B."[276] As was the case previously, this allegation is baseless.

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274 I&E Report 82-06 at 8-9.

275 Because of the poor copying quality of the supplemental petition, it is not clear whether petitioner seeks to rely on I&E Report 82-13, 82-18, or 82-19. In any event, none of these reports address this matter.

276 Supplemental petition at 33.

First, relying on the 1982 SALP Report and I&E Report 83-02, petitioner claims that "[d]ocumentation on the quality of backfill and density tests are lacking."[277] Neither of these documents support its proposed allegations.

I&E Report 83-02 addresses allegations regarding insufficient backfill materials during construction. However, it does so in a discussion of the final closeout of such matter.[278] Similarly, the matters identified in the SALP Report are now under evaluation. Petitioner has provided no basis for contending that these matters have not been or will not be resolved in accordance with all applicable requirements.

Second, petitioner relies on the SALP Report as a basis for its allegation that backfilling operations for safety related piping have not been classified as Quality Class I activity. Again, the petitioner has omitted a number of facts set forth in that report. These include the fact that the Applicant identified this matter and that corrective actions have been taken which include removal of previously compacted safety-related lines for examination of compaction under the lines and replacement of the lines with proper backfill. Additionally,

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277 Id. at 33.

278 I&E Report 83-02 at 7.

petitioner fails to disclose that the Applicant has reported that its engineering evaluation shows this matter to be not significant under the criteria of 10 C.F.R. Section 50.55(e).[279]

Third, relying on I&E Report 83-05, petitioner claims that support for electrical cables has been deficient. In fact, I&E Report 83-05 identifies an issue in this area which was considered by NRC to be of minor significance[280] and which is now being closed out. Moreover, this I&E Report apparently is not even relevant to petitioner's claims regarding excavation and backfilling operations.

Lastly, petitioner relies upon I&E Report 83-01 as support for its claim that "[c]leanliness has been a continuing and unresolved deficiency in the reactor pit area."[281] This allegation is not relevant to petitioner's claim regarding excavation and backfilling operations and in any event the item has been closed. As such, it provides no basis for the proposed contention.

At bottom, petitioner has constructed a proposed contention based upon factual errors, misstatements, and unsupported assertions. It has done nothing more than identify inspection and enforcement reports and other

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279 SALP Report at 9.

280 I&E Report 83-05 at 5.

281 Supplemental petition at 5.

records which, at most, document some isolated instances in which anomalous conditions were identified and for which in all cases corrective action has been or is being taken. Importantly, petitioner has utterly failed to provide any factual basis in support of its claim that either these matters raise safety issues or have not been or will not be properly corrected. Nor has petitioner provided any basis for contending that other unidentified construction deficiencies exist. For these reasons, proposed contention twelve should be rejected.

M. Proposed Contention Thirteen

Petitioner's proposed contention thirteen addresses the seismic capability of WNP-3. It states as follows:

> Petitioner contends that Applicant has not adequately or accurately assessed the seismic capability of the WNP-3 site as required by GDC 2 of Appendix A, 10 CFR 50 and Appendix A to 10 CFR 100 thereby underestimating the risk to public health and safety from a seismic event.[282]

This proposed contention lacks the requisite supporting basis with specificity mandated by Commission regulations. Accordingly, it should be denied.

In attempting to support its proposed contention, petitioner relies solely on an April 21, 1983 letter from S.T. Algermissen (USGS) to R.E. Jackson (NRC). At the outset, petitioner has mischaracterized the thrust of this

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282 Id. at 34.

letter as reaching conclusions that Applicant "has not taken into account" certain material or "has not justified" its position.[283] This is simply not true. The letter transmits a series of questions to be asked of licensee regarding its analyses, similar to the hundreds of questions any applicant must answer from the Staff. Such questions should not, and indeed cannot, provide an independent bases for a contention. As noted above, if this were the case, every operating license proceeding would have literally hundreds of contentions admitted based simply on the routine questions of the Staff. In short, the basis with specificity requirement of the Commission is not met by referencing a NRC Staff question which is in itself simply a request for information and not a statement of deficiency. For this reason alone, Applicant maintains that this proposed contention should be rejected as failing to provide the requisite supporting basis with specificity.

In addition, however, Applicant maintains that petitioner's "supporting basis," consisting simply of a series of bald allegations, is flawed in that it provides absolutely no reference as to what specific provisions of the Commission's regulations are at issue, why Applicant's seismic analysis does not comply with those regulations,

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283 Id.

and the specific harm that flows from alleged deficiencies. For example, petitioner contends that "Applicant has not taken into account in its seismic analyses the works of Ruff and Kanamori (1980) and [unnamed] others" regarding the subduction of the Juan de Fuca plate.[284] However, contrary to petitioner's assertions, Applicant has considered the subduction of the Juan de Fuca plate in its extensive seismic analysis.[285] Petitioner, however, apparently chooses to ignore Applicant's analysis. Accordingly, this allegation provides no support for petitioner's proposed contention. In a similar manner, this failure, as noted above, permeates all of petitioner's attempts to support this proposed contention.[286]

In sum, petitioner has failed to provide an adequate basis with specificity in support of proposed contention thirteen, and accordingly, it must be rejected.

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284 Supplemental petition at 34.

285 See, e.g., FSAR §2.5.1 and 2.5.2.

286 In such attempts, petitioner uses the phrases "has not justified," lacks "adequate justification," "fails to adequately justify," "has not considered" and "has chosen not to regard." Supplemental petition at 34-35. However, as previously noted, petitioner's attempts are fatally flawed in that they fail to state why Applicant must take such action, what is wrong with Applicant's analysis, and what regulation is breached or harm flows from not taking such action.

N. Proposed Contention Fourteen

Proposed contention fourteen addresses the adequacy of Applicant's fire protection program. It states, as follows:

> Petitioner contends that the fire protection program at WNP-3 does not meet the requirements of 10 CFR 50.48, Appendix R and General Design Criteria 3.[287]

To the extent that petitioner's proposed contention alleges that Applicant must comply with Appendix R to 10 C.F.R. Part 50, Applicant submits that this proposed contention constitutes an impermissible attack on Commission regulations. Further, Applicant maintains that the proposed contention lacks the requisite supporting basis with specificity mandated by Commission regulations. Proposed contention fourteen, therefore, should be denied.

Appendix R to 10 C.F.R. Part 50 applies only "to licensed nuclear power electric generating stations that were operating prior to January 1, 1979 . . . ."[288] In its proposed contention, petitioner apparently takes the position that Commission regulations should be modified to require compliance with Appendix R for plants licensed to operate after January 1, 1979, such as WNP-3. Such a position constitutes an impermissible attack on Commission

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287 Supplemental petition at 35.

288 Section I of Appendix R to 10 C.F.R. Part 50. See also 10 C.F.R. §50.48(b).

regulations. Accordingly, to the extent that petitioner's proposed contention seeks to litigate Applicant's compliance with Appendix R to 10 C.F.R. Part 50, Applicant maintains that the proposed contention must be denied.

As the supporting basis for this proposed contention petitioner states that "Applicant has not conducted an evaluation of the WNP-3 design against the requirements of 10 C.F.R. 50.48 and Appendix R."[289] In support of this position, petitioner cites (without further explanation) two documents, viz., (1) a January 27, 1983 letter to G.W. Knighton (NRC) from G.D. Bouchey (Applicant) and (2) Applicant's FSAR at Table 1.8-3.[290] In that petitioner's first referenced document, the January 27 letter, does not even mention Applicant's fire protection program, it provides no support for petitioner's position. Petitioner's second referenced document, Table 1.8-3 of Applicant's FSAR, contains a statement by Applicant that "the design of WNP-3 is currently being evaluated against the requirements of 10 C.F.R. §50.48 and BTP CMEB 9.5-1 as part of the Safe Shutdown Analysis and Appendix R evaluation. The fire hazards analysis will be submitted by October, 1983."[291]

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289 Supplemental petition at 35.

290 Id.

291 FSAR Table 1.8-3 at 1.8-393. While petitioner did
(footnote continued)

In short, petitioner's supporting basis for this proposed contention consists solely of Applicant's statement that the design of WNP-3 is currently being evaluated against Commission requirements and guidelines that do not even apply to WNP-3. Significantly, petitioner does not state how (or even if) the overall fire protection program, described in over 250 pages of written text and 29 detailed figures,[292] is deficient. Nor does petitioner state (1) with what portion of the overall program it is concerned, (2) what specific provisions of the Commission's regulations are at issue, or (3) what, if any, deficiencies exist in the specific systems, procedures, components, and design features which are described as part of that program.[293] At bottom, petitioner has failed to provide any indication of specific concerns it seeks to litigate in this proceeding, much less the requisite supporting bases with specificity for its proposed contention. Moreover, as discussed earlier, the fact that the review process is not yet

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(footnote continued from previous page)
not include specific reference to any section or page within Table 1.8-3 (which is over 540 pages in length), Applicant assumes that the passage quoted above (contained on about one-fourth of a page), is the section to which petitioner was referring.

292 Applicant's FSAR at Appendix 9.5A.

293 See Section 9.5.1 of Appendix 9.5.A of Applicant's FSAR.

complete provides by itself no basis for the admission of proposed contention fourteen. Accordingly, Applicant maintains that proposed contention fourteen must be denied.

O. Proposed Contention Fifteen

Petitioner's proposed contention fifteen addresses emergency core cooling capability. It states, as follows:

> Petitioner contends that Applicant's Emergency Core Cooling System (ECCS) calculations do not meet the requirements of 10 CFR 50.46 and the criteria of Appendix K, 10 CFR Part 50.[294]

Applicant contends that this proposed contention lacks the requisite supporting basis with specificity. Accordingly, it should be denied.

As the supporting basis for its allegations that Applicant's ECCS calculations do not meet Commission requirements, petitioner states that (1) "Applicant has not performed plant specific Emergency Core Cooling System calculations required by 10 CFR 50.46" and (2) "Applicant has not used the revised Small-Break LOCA method required by NUREG-0737 (Item II.K.3.30) to show compliance with Appendix K."[295]

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294 Supplemental petition at 35.

295 Id.

With regard to its first basis, petitioner is either unaware of or chooses to ignore the CESSAR-plant specific ECCS calculations set forth in Section 6.3 of CESSAR-F. Such detailed calculations were performed in strict adherence to 10 C.F.R. Section 50.46 criteria. To the extent that petitioner is concerned that such calculations are inaccurate or are not in compliance with 10 C.F.R. Section 50.46, petitioner must specify which calculation is in error and provide a basis for its assertion. In that petitioner has failed to provide such information, this alleged basis provides no support for its proposed contention.

With regard to its second basis, petitioner is also either unaware of or chooses to ignore Section II.K.3.30 of Appendix B of CESSAR-F which clearly reflects that Applicant used the revised small-break LOCA method required by NUREG-0737 to demonstrate compliance with Appendix K. To the extent that it is concerned that such calculations are inaccurate or are not in compliance with Appendix K, petitioner must specify which calculation is in error and provide a supporting basis with specificity for its assertion. In that petitioner has failed to do so, this alleged basis provides no support for its proposed contention.

In sum, petitioner has failed to provide the requisite supporting basis with specificity for proposed contention fifteen, and accordingly, the proposed contention must be rejected.

P. Proposed Contention Sixteen

Petitioner's proposed contention sixteen questions the water quality standards to which Applicant has committed. It states as follows:

> Petitioner contends that the Applicant has underestimated the effects of WNP-3 operation on the aquatic biota of the Chehalis River in violation of 10 CFR 51.20 and the National Environmental Policy Act.[296]

In this proposed contention, petitioner questions the levels of Applicant's liquid discharges into the Chehalis River and their effects on the aquatic biota.[297] In this regard, the water quality standards and effluent limitations to which Applicant must adhere are clearly established by state and federal agencies other than NRC and are the subject of specific state regulations and permits. The limitations on liquid discharges which Applicant must meet are set forth in Applicant's National Pollutant Discharge Elimination System ("NPDES") Permit

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296 Supplemental petition at 36.

297 Id. at 36-38.

issued on renewal by the State of Washington Energy Facility Site Evaluation Council on September 14, 1981 (Permit No. WA-002496-1).[298]

Further, the application for the initial permit was noticed and concerned individuals had a right to request a hearing in this regard. Indeed, proceedings on the initial permit (issued October 27, 1976) consumed seven days of hearings, producing over 1,600 pages of hearing transcript. Supplemental hearings held in June, 1979 lasted twenty days and produced nearly 3,000 pages of transcript. Effluent characteristics and effects on aquatic biota were considered at length in these permit proceedings. In that Congress has given the Environmental Protection Agency ("EPA") (and, through the EPA, the appropriate state) jurisdiction in this area, limitations established by such agencies are not subject to litigation or question in this NRC proceeding.[299]

Significantly, petitioner apparently does not apparently allege that Applicant will not meet the NPDES permit standards.[300] However, to the extent it does so,

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298 See ER at Appendix A.

299 Tennessee Valley Authority (Yellow Creek Nuclear Plant, Units 1 and 2), ALAB-515, 8 NRC 702 (1978).

300 In addition, Applicant notes that petitioner contends the Applicant is "in violation of 10 C.F.R. 51.20 and the National Environmental Policy Act" ("NEPA"). Supplemental petition at 36. The former is a

(footnote continued)

petitioner has failed to set forth a supporting basis for such allegations. To the extent that petitioner contests such standards, this operating license proceeding is an inappropriate forum, in which to do so. Accordingly, proposed contention sixteen must be rejected.[301]

Q. Proposed Contention Seventeen

Proposed contention seventeen addresses in rather general terms QA/QC. It states as follows:

> Petitioner contends that Applicant does not have and will not implement a QA/QC program which will function as required by GCD 1 of Appendix A to 10 CFR Part 50, 10 CFR 50.40, Section

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(footnote continued from previous page)
regulation applying to environmental reports at the construction permit stage, and the latter is a statute applying to agencies of the Federal government. Neither has relevance to petitioner's assertions regarding Applicant's calculations in this operating license proceeding. Accordingly, petitioner's concern that Applicant has violated 10 C.F.R. §51.20 and NEPA is not subject to litigation in this proceeding.

301 As a basis for proposed contention sixteen petitioner asserts (without support) that Applicant has generally "miscalculated and disguised" the effects of heavy metal discharges. Supplemental petition at 36. Applicant strongly objects to petitioner's suggestion that Applicant has disguised or in any way deliberately misrepresented any figures or calculations that could result in an adverse impact on the environment. If petitioner has evidence which supports its position that Applicant has "disguised" the adverse effects of heavy metal discharges on the public, it should provide such evidence. If not, Applicant requests this Board to direct that the allegation be stricken.

VIII(2)&(3) of Appendix A to Part 2 to assure the protection of the public health and safety.[302]

This proposed contention should be rejected for a number of reasons. First, it is impermissibly vague because it fails to put the Applicant, Staff and Board on notice as to what petitioner seeks to have litigated. Second, it lacks an adequate factual basis. Accordingly, proposed contention seventeen is inadmissible.

From the outset, it is clear that the proposed contention is impermissibly vague. As presently framed, it purports to address any aspect of the QA/QC program both at the construction and at the operating stage. Without any greater specificity, petitioner could identify any aspect of plant construction covered by the QA/QC program and try to litigate whether the QA/QC program functioned properly. To admit such an open-ended contention would clearly eviscerate the meaning of the specificity requirement established by the Commission in Section 2.714 of the NRC Rules of Practice.

Moreover, proposed contention seventeen lacks an adequate supporting basis. Much of its purported basis involves the adequacy of Applicant's QA/QC program for construction of WNP-2. That issue is patently outside of the scope of permissible issues in this operating license

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302 Supplemental petition at 38.

proceeding. Surely the Board would not permit the construction of WNP-2 to be litigated in the operating license case for WNP-3. The proposed contention should be rejected for this reason alone.

Moreover, petitioner raises a number of other factual allegations in a vain effort to support proposed contention seventeen. However, as was evident in connection with proposed contention twelve, these allegations rest on nothing more than the mischaracterization of numerous documents which in fact do not support petitioner's claims.

First, relying on I&E Report 81-17 at 11, petitioner asserts that Applicant will not be able to retain sufficient numbers of employees. However, the referenced report discusses a number of issues (observation of work activities, review of quality records, mechanical containment penetrations) none of which even remotely bears on its allegation. Similarly, while the BPA Analysis, cited by petitioner in support if its claim, addresses the availability of staffing at the OL stage, it also discusses how the staffing effects resulting from a construction deferral on future operation can be minimized. Petitioner simply ignores this discussion.

Second, petitioner claims that Applicant has repeatedly allowed QA procedures to be entirely bypassed and cites I&E Report 82-15 in support of this claim.[303] In fact, that I&E Report identifies one instance in which a repair was covered by a project change proposal rather than a nonconformance report. It also states that the use of a project change proposal could bypass certain QA/QC controls. It did not state that QA/QC was regularly bypassed.[304]

Third, based on I&E Report 81-02, petitioner asserts that "Applicant has failed to carry out committments [sic] made to the NRC for corrective actions."[305] Although I&E Report 81-02 discusses the status of a previously identified matter regarding the satisfaction of certain commitments, this matter was subsequently closed out.

Fourth, based on the 1982 SALP Report, petitioner contends that "Applicant has repeatedly failed to take prompt, corrective action" and that "management has . . . remained aloof from the day to day plant activities, a matter the NRC attributes to systematic management failures at WNP-3."[306] Reliance on the SALP Report as a

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303 Supplemental petition at 39.

304 I&E Report 82-15 at 3-4.

305 Supplemental petition at 39.

306 Id.

basis for this allegation is misplaced. That report does not take into account recent improvements in management at WNP-3. Moreover, it states in full as follows:

> The report period for this licensee performance evaluation is the first period in which the functioning of the licensee's revised management structure can be evaluated. The overall evaluation of the new Supply System management for WNP 3 and 5 is favorable. However, the Review Board believes that the licensee is excessively detached from the day to day problems at the site. . . .[307]

At bottom, therefore, proposed contention seventeen lacks a supporting basis and should be rejected.

III. CONCLUSION

For the reasons set forth above, petitioner's proposed contentions should be rejected and petitioner should be denied status as an intervenor.

Respectfully submitted,

Nicholas S. Reynolds
Malcolm H. Philips
Sanford L. Hartman
DEBEVOISE & LIBERMAN
1200 Seventeenth St., N.W.
Washington, D.C. 20036
(202) 857-9817

Counsel for Applicant

July 6, 1983

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307 1982 SALP Report at 5.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
WASHINGTON PUBLIC POWER SUPPLY SYSTEM	)	Docket No. 50-508 OL
	)	
(WPPSS Nuclear Project No. 3)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicant's Response in Opposition to Supplement to Request for Hearing and Petition for Leave to Intervene" in the captioned matter were served upon the following persons by deposit in the United States mail, first class, postage prepaid this 6th day of July, 1983:

Morton Margulies, Esq.
Chairman, Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Adm. Judge Frederick J. Shon
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

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

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

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

Stuart A. Treby, Esq.
Office of the Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Gerald C. Sorensen
Washington Public Power
Supply System
3000 George Washington Way
Richland, Washington 99352

Mr. Scott W. Stucky
Docketing & Service Branch
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Mr. Kenneth W. Cook
Licensing Project Manager
Washington Public Power
Supply System
P. O. Box 1223
Elma, Washington 98541

Mr. Eugene Rosolie
Coalition for Safe Power
Suite 527
408 South West 2nd
Portland, Oregon 97204

Sanford L. Hartman