

September 6, 1983

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

83 SEP-9 A11:22

In the Matter of)
DUQUESNE LIGHT CO., ET AL.)
(Beaver Valley Power)
Station, Unit 2))

Docket No. 50-412 OL

OFFICE OF SECRETARY
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MANAGEMENT

OCRE AMENDED PETITION FOR LEAVE TO INTERVENE

Pursuant to the Licensing Board's August 4, 1983 Memorandum and Order (Scheduling of a Special Prehearing Conference), Ohio Citizens for Responsible Energy ("OCRE") hereby amends its petition for leave to intervene to include the identification of an OCRE member having standing who authorizes OCRE to represent her interests and specific contentions OCRE intends to litigate in this proceeding. OCRE has attached the affidavit of Glorianne M. Leck, an OCRE member residing about 40 miles from the Beaver Valley facility, as responsive to the first need. The contentions detailed below satisfy the second requirement.

Contentions

1. Need for Power and Petition to Waive the Regulations

OCRE contends that there is no need for the generating capacity of Beaver Valley Unit 2 in the CAPCO system. Both the National Environmental Policy Act and the Atomic Energy Act demand the

1/ Section 103b of the Atomic Energy Act of 1954 (42 USC 2133) states that the Commission shall issue commercial licenses to applicants "whose proposed activities will serve a useful purpose proportionate to the quantities of special nuclear material or source material to be utilized."

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consideration of the need for the facility, and, logically, the abandonment of a project for which there is no need. Demand projections have changed drastically since the CP stage, with the result that CAPCO has excess capacity, so that the operation of Beaver Valley 2 is unnecessary. Accordingly, the Licensing Board should deny the OL application, terminate this proceeding, and recommend that the Commission revoke the construction permit.

OCRE recognizes that this contention is a challenge to 10 CFR 51.53(c). OCRE therefore petitions to waive that regulation, in accordance with 10 CFR 2.758, because the special circumstances in this case are such that the application of the rule herein would not serve the purposes for which it was adopted. The particular supporting facts and arguments are set forth in the attached affidavit of Susan L. Hiatt.

OCRE further requests that, should the Licensing Board choose not to hear this issue, it be referred to the Public Utilities Commission of Ohio ^{2/} for consideration, and this proceeding be held in abeyance pending the PUCO's determination on the need for Beaver Valley 2.

2. Floodplain Management

OCRE contends that the operation of Beaver Valley 2 is an impermissible activity violating the requirements of Executive Order 11988. OCRE further contends that the NRC has failed to meet its responsibilities as required by that Order by not, at the earliest possible time, evaluating the Beaver Valley 2 facility for compliance with that Order (issued May 24, 1977).

2/ The PUCO has jurisdiction over facilities not located in Ohio
(continued next page)

The Federal Register notice of opportunity for hearing for Beaver Valley 2 states that the facility is located on a floodplain (48 FR 24489, June 1, 1983). The Commission has apparently deferred consideration of this issue until the issuance of the environmental impact statement (ibid.)

Executive Order 11988, Floodplain Management, (as well as the Water Resources Council's guidelines for implementing same, 43 FR 6030 et seq., February 10, 1978) plainly delineates federal policy concerning floodplain management.

The NRC has responsibilities under that Order, since it applies to all agencies that "conduct activities and programs affecting land use, including planning, regulating, and licensing" (43 FR 6030, emphasis added; see also 43 FR 6033). Basically, the Order requires that agencies: avoid the base floodplain (the 100-year floodplain) unless it is the only practicable alternative (43 FR 6030); avoid direct or indirect support of floodplain development (43 FR 6049); amend or issue regulations implementing the Order within one year (id.); consider alternatives to allowing action in a floodplain, and if the only practicable alternative requires siting in a floodplain (as determined by the head of the agency), the agency shall modify its action so as to minimize harm to or within the floodplain and issue a notice to the general public explaining why the activity is to be located in a floodplain (43 FR 6034, emphasis added); provide early notification and guidance to applicants concerning floodplain

2/ (continued) if they are owned, at least in part, by Ohio utilities. See Cleveland Electric Illuminating Co. v. PUCO, 42 Oh.St. 2d 403, 330 NE2d 1 (1975).

management so that applicants will not go to the trouble of completing plans without being aware of agency standards (43 FR 6034); avoid hazardous and uneconomic uses of floodplains (43 FR 6035); avoid completely the critical action floodplain (500-year floodplain) if the action would create an added dimension to a flood disaster, as could be the case for facilities producing and storing highly volatile, toxic, or water-reactive materials (43 FR 6043); and, provide early (as early as it is known that an action affects the floodplain) public notice and review of the proposed action (43 FR 6044).

It is apparent that the NRC has been negligent in discharging its duties with regard to floodplain management. 10 CFR contains no regulations concerning floodplain siting or management. The Commission appears willing to support the licensing of a hazardous facility in a floodplain, contrary to the Executive Order, by explaining away deleterious effects in a forthcoming environmental impact statement. There was no early public review of this action. Nor, apparently, were the Applicants warned at the earliest possible time that their activities would violate an Executive Order.

It is clear that the operation of a nuclear power plant in a floodplain, with its adverse environmental effects, e.g., routine release of radionuclides and the potential for catastrophic accidents, is contrary to Executive Order 11988, the goals of which are to reduce risks of flood loss, to minimize impacts of floods on human safety, health, and welfare, and to restore and preserve the natural and beneficial values served by floodplains (43 FR 6052). The OL application must therefore be denied. (Alternative sites need not be considered since there is no need for the facility; see Contention #1, supra.)

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Respectfully submitted,

Susan L. Hiatt

Susan L. Hiatt
OCRE Representative
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83 SEP -9 AM 11:2

CERTIFICATE OF SERVICE

This is to certify that the foregoing has been served by deposit in the U.S. Mail, first class, postage prepaid, this 6th day of September 1983 to those on the attached service list.

Susan L. Hiatt

Susan L. Hiatt

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AFFIDAVIT

I, Glorianne M. Leck, duly sworn depose and say that:

A. the statements made herein are true and correct to the best of my knowledge and belief;

B. I reside at 1330 Wick Avenue, Youngstown, Ohio 44305, approximately 40 miles from the Beaver Valley Nuclear Power Station in Pennsylvania;

C. as of July 1, 1983, I am a member of Ohio Citizens for Responsible Energy ("OCRE");

D. I have authorized OCRE to represent my interests in the licensing proceeding for the Beaver Valley 2 nuclear plant;

E. my interests are those stated by OCRE in its petition for leave to intervene;

F. OCRE has authorized Susan L. Hiatt to act as representative for and on behalf of OCRE in the Beaver Valley 2 OL proceeding.

Sworn to and subscribed before me this 26th day of July, 1983.

Jeanette Ellen Buelty
Notary Public

JEANETTE ELLEN BUELTY, Notary Public
State of Ohio
My Commission Expires December 20, 1986