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September 26, 1983 '83 SEP 27 P12:15

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
DUQUESNE LIGHT CO., et al.	)	Docket No. 50-412 OL
	)	
(Beaver Valley Power Station, Unit 2)	)	

APPLICANTS' RESPONSE TO PROPOSED
CONTENTIONS OF ENVIRONMENTAL COALITION ON NUCLEAR POWER

In its August 4, 1983 Memorandum and Order (Scheduling of a Special Prehearing Conference), the Licensing Board directed that each petitioner for leave to intervene file an amendment and/or supplement to its petition setting forth, among other things, the contentions which it seeks to litigate. Petitioners were to file their amendments and/or supplements so that they were received by the Licensing Board and the parties by September 9, 1983. The Environmental Coalition on Nuclear Power ("Pecitioner" or "ECNP") filed its contentions in a document (dated September 6, 1983) entitled Supplement to the Request of the Environmental Coalition on Nuclear Power for an Operating License Hearing and Petition for Leave to Intervene, which Applicants received on September 9.

Each of ECNP's contentions is defective in one or more respects. All of the contentions are vague and amorphous. They lack the basis and specificity required by 10 C.F.R. § 2.714(b).

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In addition, some are inappropriate challenges to Commission regulations, some have been litigated and resolved during the construction permit proceedings, and some should be excluded because they are the subject of generic proceedings. Accordingly, none of the contentions should be admitted as issues to be litigated in this proceeding. Having failed to submit at least one valid contention, ENCP must be denied status as an intervenor. 10 C.F.R. § 2.714(b).

I. Preliminary Matters

A. Anticipatory Approval for Late Filed Contentions

Petitioner requests the Licensing Board to permit subsequent additions to its contentions because NRC Staff has allegedly not yet established a document repository for this proceeding at State College, Pennsylvania, and because of "other responsibilities and transportation limitations." Applicants oppose this request as contrary to the applicable NRC regulations. NRC regulations specify in detail the conditions under which late-filed contentions are permissible. See 10 C.F.R. § 2.714. Petitioner makes no pretense of complying with these regulations in its extraordinary request for anticipatory approval for filing additional contentions at some unstated future date. There is no reason to grant such extraordinary relief here. If at some point in the future, ECNP submits untimely contentions, it will have the opportunity to make the requisite showing required by § 2.714. Petitioner has articulated no basis for waiver of the applicable NRC requirements.

B. Deficient Affidavit

In order for an organization to establish standing, the organization must identify at least one of its members and submit an affidavit from that member (a) establishing that he or she would have standing if injured, (b) describing the nature of the injury alleged, and (c) authorizing the organization to represent that individual in the proceeding. Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-536, 9 N.R.C. 402, 404 (1979); Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 N.R.C. 377, 390-96 (1976). Applicants have received only one document directed at this requirement as it relates to ECNP. This is a letter dated September 9, 1983 from Dr. Robert W. Freedman to Chairman Margulies. The letter does not satisfy the enumerated requirements for several reasons. First, it contains insufficient information to establish the standing of Dr. Freedman. In particular, it fails to indicate how the operation of Beaver Valley Unit 2 would cause him any injury. The vague assertion of "unacceptable health and safety risk" is insufficient to qualify. Second, the author of the letter fails to authorize the petitioner to represent him; instead, the letter designates Judith Johnsrud as his representative.[1/]

1/ We would also note that the notarization at the bottom of the letter is insufficient to qualify the letter as an affidavit because it asserts that the Chairman of this panel rather than the author of the letter acknowledged that he executed the letter.

II. Analysis of Contentions

A. Overview of Applicable Law

The standards for admissibility of contentions are set forth in Applicants' Response to Proposed Contentions of George S. White, dated September 21, 1983, and need not be restated here.

B. Petitioner's Contentions

Contention 1. Petitioner vaguely alleges that

> interrelated financial associations and ownerships between the Applicant, the reactor vendor and other suppliers, specifically the Westinghouse Corporation, and financial institutions, specifically the Mellon Bank headquartered in Pittsburgh, constitute conflicts of interests with respect to the safe construction and quality of equipment utilized in the construction of Beaver Valley 2 and with respect to the adequate assurance of safe operation of the plant.

This obscure contention is totally lacking in specificity and basis. Petitioners fail to indicate what the "interrelated financial associations and ownerships" are, how they "constitute conflicts of interest," and how those conflicts affect safe construction and operation. The contention is also inconsistent with NRC's statutory charter and regulations. The Atomic Energy Act and regulations promulgated by NRC proscribe only one kind of financial relationship, namely, control of a utilization facility license by a foreign interest. See 42 U.S.C. § 2133(d); 10 C.F.R. § 50.33(d)(3)(iii). ECNP's contention is in essence an attack on the statute and implementing regulations. Finally,

Applicants would note that they, equipment vendors, and any involved financial institutions have an obvious and vital interest in assuring the safe and reliable operation of Beaver Valley Power Station Unit 2. Safe construction and operation can only benefit the companies involved. The fact that there may be "inter-relationships" between the companies involved in a nuclear power reactor certainly does not minimize or alter in any way this vital interest. It would, if anything, reinforce it. In short, ECNP's contention flies in the face of logic; it utterly fails to notify Applicants of the allegation against which they are to defend; and it is an attack on the applicable law. Moreover, the contention is "nothing more than a generalization regarding the intervenor's view of what applicable policies ought to be" and it "seeks to raise an issue which is not concrete or litigable." Carolina Power and Light Company (H. B. Robinson Steam Electric Plant, Unit 2), Memorandum and Order (Report on Special Prehearing Conference Held Pursuant to 10 C.F.R. § 2.751a), LBP-83-_____, 17 N.R.C. _____, slip op. at 3 (April 12, 1983). Contention 1 should therefore be denied.

Contention 2. This contention seems to contain two separate issues relating to radioactive waste disposal -- cost uncertainties and technological/institutional uncertainties.

The first issue is stated by ECNP as follows:

> It is contended that the economics of safe disposal of radioactive wastes that will be generated by the operation of Beaver Valley 2 remain uncertain.... This cost uncertainty has not been fully and properly evaluated in the cost-benefit comparison with alternatives to the reactor as is required by the National Environmental Policy Act of 1969, and as is indicated in the California decision by the Supreme Court.

Supplement at 2. This aspect of the contention is essentially a challenge to an Act of Congress. In the Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10101 et seq., Congress established a funding mechanism for the disposal of spent fuel and/or high-level radioactive waste and established the fee to be paid by those owning and generating this material at 1 mill per kilowatt hour. 42 U.S.C. § 10222. The Department of Energy has implemented this part of the Nuclear Waste Policy Act by promulgating a regulation setting forth the standard contract which all owners and generators of spent fuel and/or high-level radioactive waste must enter into with the Department of Energy. 48 Fed. Reg. 16590 (1983). That regulation and contract include the 1 mill per kilowatt hour fee. 48 Fed. Reg. at 16593, 16602.[2/]

This aspect of the contention is also inconsistent with NRC rules. ECNP claims that the alleged uncertainty should be evaluated in the "comparison with alternatives to the reactor." However,

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2/ A study by the Congressional Budget Office found the 1 mill per kilowatt hour fee substantially higher than the predicted range of fees (0.48 to 0.57 mills/kwh) needed to fund the entire waste disposal program. Cong. Budget Office, "Financing Radioactive Waste Disposal" (Sept. 1982).

Commission regulations provide that such alternative energy sources need not be considered at the operating license stage. 10 C.F.R. §§ 51.21, 51.23(e), 51.26, 51.53(c). As stated in the latter provision:

> Presiding officers shall not admit contentions proffered by any party concerning need for power or alternative energy sources for the proposed plant in operating license hearings.

This aspect of the contention is also lacking in basis and specificity. ECNP has failed to indicate the nature of the uncertainties in waste disposal costs or a basis for challenging the Congressionally considered disposal costs. The reference to the "California decision by the Supreme Court," presumably Pacific Gas & Electric Co. v. State Energy Resources Cons. and Dev. Comm., 103 S.Ct. 1713 (1983), provides no basis. That case dealt with an issue totally unrelated to ECNP's argument -- the authority of a state to regulate non-safety issues involving nuclear power. Rejection of ECNP's argument is further buttressed by the Commission's recent decision in Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), CLI-83-21, 18 N.R.C. _____ (August 2, 1983), where the Commission rejected a petition urging shutdown of that reactor because of the claimed lack of assurance that the utility could pay for the costs of storage and disposal of spent fuel.

The second aspect of ECNP's contention claims that

> in the continued absence of either approved sites or demonstrated effectiveness of such waste disposal, the Beaver Valley 2 nuclear reactor must not be permitted to receive an operating license.

The issue is essentially the same as one which ECNP tried to raise in the Limerick proceeding. The licensing board there rejected the contention as barred by the Commission's "Waste Confidence" rulemaking, which the Commission initiated following State of Minnesota v. NRC, 602 F.2d 412 (D.C. Cir. 1979). Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 N.R.C. 1423, 1455 (1982).[3/] See also Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP-82-119A, 16 N.R.C. 2069, 2102 (1982). Subsequent to the Limerick decision, the Commission issued its decision in the Waste Confidence proceeding and determined that there is reasonable assurance that one or more geologic repositories for commercial high-level radioactive waste and spent fuel will be available by 2007-2009 and that such spent fuel and waste can be safely managed until repository capacity is available. Rulemaking on the Storage and Disposal of Nuclear Waste (Waste Confidence Rulemaking), PR-50, -51 (44 F.R. 61372) Decision (May 16, 1983). As a result of this decision, consideration of the feasibility of waste disposal must be excluded from individual licensing proceedings since it has been determined generically. See also Proposed Rulemaking on Requirements for Licensee Actions Regarding the Disposition of Spent Fuel Upon Expiration of the Reactors' Operating Licenses, 48 Fed. Reg. 22730 (May 20, 1983).

To the extent that the second aspect of the contention implies that the environmental impacts of waste disposal are

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3/ The Limerick licensing board also rejected ECNP's argument that the Ninth Circuit decision, affirmed by the Supreme Court in Pacific Gas & Electric Co., reported at 659 F.2d 903 (9th Cir. 1981), supported admission of its waste confidence contention. Id.

uncertain, that issue is excluded from litigation by Table S-3 of 10 C.F.R. Part 51. See Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-83-6, 17 N.R.C. 153 (1983) (dismissing ECNP contention on Table S-3 impacts).

Both aspects of ECNP's Contention 2 must therefore be rejected.

Contention 3. Petitioner next contends:

> In view of the uncertainties about the costs of safe disposal of the radioactive wastes generated by the Beaver Valley 2 reactor, the Applicant's projection of sales of electricity to be generated by this plant are not adequate or accurate enough to sustain the issuance of an operating license for Beaver Valley 2.

This contention is vague, unspecific, and difficult to understand. To the extent that it argues that the costs of radioactive waste disposal are uncertain, it is inadequate for the same reasons that the similar allegations in Contention 2 are inadequate. To the extent that the contention challenges "Applicant's projection of sales of electricity to be generated by this plant," it is barred by Commission regulations excluding need for power issues from operating license proceedings. 10 C.F.R. §§ 51.21, 51.23(e), 51.26 and 51.53(c).

If one tries to read the two parts of the contention together, it is a challenge to the Congressionally-mandated method for utilities to pay for disposal of spent fuel and high-level waste. The Nuclear Waste Policy Act establishes a "pay-as-you-go" charge -- for every kilowatt hour generated, the utility pays 1 mill to the

Department of Energy. 42 U.S.C. § 10222(a)(2). Thus, the costs of disposal are directly proportional to the electricity generated by Unit 2. If ECNP is dissatisfied with this scheme, its complaint should be directed to Congress, not to the Licensing Board.

A final reason for rejecting this contention is that it also appears to challenge the Commission's rule excluding financial qualifications as an issue. 10 C.F.R. § 50.33(f)(1); 47 Fed. Reg. 13750 (1982). By arguing that the sales of electricity are somehow not adequate and relating that argument to the cost of waste disposal, ECNP may be reaching for the claim that Applicants would be financially unable to pay for waste disposal costs. Such an argument would be excluded by Section 50.33(f)(1).

Contention 4. Petitioner argues that the "Low Level Radioactive Waste Policy Act of 1980 [provides] that each state must be responsible for the management" of low level radioactive waste after January 1, 1986; that Pennsylvania has failed to assure provision for safe isolation of low level radioactive waste, and that such isolation is therefore not assured. Petitioner concludes that an operating license must accordingly be denied to Beaver Valley Unit 2.[4/]

4/ Because virtually all NRC licenses will at some point generate low level radioactive waste, all NRC licenses (including materials licenses held by hospitals, research labs, and universities) in the State of Pennsylvania and in most other states would presumably have to be revoked under the logic of petitioner's contention.

Petitioner's contention is predicated on faulty legal premises and is without any basis. The Low Level Radioactive Waste Policy Act of 1980, 42 U.S.C. § 2021(b) et seq., in order to foster greater availability of low level radioactive waste repositories, strongly encourages states to locate new sites for such repositories. 42 U.S.C. § 2021(d). However, it does not alter existing law providing for NRC regulation of storage or disposal of low level radioactive waste. See e.g., Washington State Building and Construction Trades Council v. Spellman, 684 F.2d 627 (9th Cir. 1982) (state bar on interstate shipment of low level nuclear waste violates Supremacy Clause and Interstate Commerce Clause notwithstanding Low Level Waste Act); NRC, The Role of the State in the Regulation of Low-Level Radioactive Waste (NUREG-0962) (states do not acquire additional regulatory authority under Low Level Radioactive Waste Policy Act; even so-called Agreement States must regulate such waste in a fashion compatible with NRC and consistent with DOT requirements). In particular, the new statute does not abridge NRC's authority to authorize storage or disposal of low-level radioactive waste at sites proposed by licensees. In short, nothing in the Low Level Radioactive Waste Policy Act of 1980 adversely affects the availability of low level waste storage or disposal. To the contrary, the purpose of the Act is to enhance the availability of facilities by encouraging the designation of new sites. Petitioner has thus failed to afford any basis for its contention.

Contention 5. Petitioner alleges that

> the health effects caused by the emission of radon gas into the environment as a result of the mining and milling and mill tailings piles created in support of the annual operation of Beaver Valley 2 remain uncertain in the absence of resolution of this issue (10 C.F.R. 51.20(e) Table S-3), and that the long-term impact of this radon gas will be unacceptably detrimental to the health of future human beings.

Petitioner demands that an operating license not be granted "[a]bsent resolution of this issue by the Courts."

This contention presents a generic issue which is pending before the Commission. The Commission is addressing the issue in the "Consolidated Radon proceeding" by means of a "lead case approach" involving Duke Power Co. (Perkins Nuclear Stations, Units 1, 2 and 3) LBP-78-25, 8 N.R.C. 87 (1978). The licensing board there found that releases of radon associated with the uranium fuel cycle and the health effects that can reasonably be associated therewith "are insignificant in striking the cost-benefit balance" for a nuclear reactor. The Appeal Board afforded to interested parties in other proceedings raising radon issues an opportunity "to supplement, contradict or object to" the Perkins record and findings. ALAB-480, 7 N.R.C. 796, 804-06 (1978). The Appeal Board, after consideration of all matters presented under its "lead case approach," affirmed the Licensing Board's Perkins determination in Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-701, 16 N.R.C. 1517 (1982). The Appeal Board explained that

> the record establishes without contradiction that the radon contribution of the uranium fuel cycle is a minute fraction of the radon that is released to the atmosphere from other sources -- so minute, indeed, that the contribution is not even detectable. 16 N.R.C. at 1524.

The Appeal Board further concluded that "the incremental health risk to the population stemming from the fuel cycle emissions (if indeed there is any) is vanishingly small." 16 N.R.C. at 1528. ECNP is a full participant in the Consolidated Radon proceeding. See 16 N.R.C. at 1518.

In a decision issued on May 27, 1983 the Commission voted 3 to 2[5/] to hold the issue of radon in abeyance pending issuance of EPA standards for active uranium processing sites and pending

> a determination whether to initiate a further rulemaking to amend the mill tailings regulations and, if such a rulemaking is initiated, pending its conclusion.

Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-83-14, 17 N.R.C. _____, slip op. at 10-11 (May 27, 1983). In the meantime, the Commission directed that

> licensing boards should continue to defer consideration of radon issues and appropriately condition licenses pending a final decision of the status of ALAB-701 after a determination regarding rulemaking as described above.

Slip op. at 11. This directive by the Commission is controlling here.

5/ Two of the Commissioners would have affirmed ALAB-701.

Wholly apart from being deferred in accordance with CLI-83-14, the contention should be rejected based on the doctrine of collateral estoppel. As noted above, ECNP was and continues to be a full party in the Consolidated Radon proceedings. It has had the full opportunity to litigate the impact of radon emissions. And it has identified no information not already considered in the Consolidated Radon proceeding. The doctrine of collateral estoppel therefore bars ECNP from relitigating the radon issue here. As the Supreme Court stated:

> Collateral estoppel, like the related doctrine of res judicata, has the dual purpose of protecting litigants from the burden of relitigating an identical issue with the same party or his privy and of promoting judicial economy by preventing needless litigation.

Parklane Hosiery Co., Inc. v. Shore, 439 U.S. 322, 331 (1979). Collateral estoppel is applied in NRC proceedings[6/] and should clearly be applied here.

Contention 6. Petitioner contends that

> the issue of systems interaction has not been resolved by the Nuclear Regulatory Commission and that the uncertainties of safe operation of Beaver Valley 2 are therefore too great to permit issuance of an operating license for this reactor until the Commission has actually solved this issue.

The issue of systems interaction (possible safety problems arising from interplay between systems) is a generic issue.

6/ Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2) CLI-74-12, 7 A.E.C. 203 (1974); Cleveland Electric Illuminating Co., (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-24, 14 N.R.C. 175, 199 (1981); Philadelphia Electric Co., (Limerick Generating Station, Units 1 and 2), LBP-82-43A, supra at 1459.

NUREG-0606, Unresolved Safety Issues Summary, Vol 5 No. 2, Task A-17 (May 27, 1983). ECNP's contention is simply that an operating license may not be issued until NRC resolves the generic issue of systems interaction.

The Appeal Board set out the criteria for accepting a contention based on a generic issue in Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-444, 6 N.R.C. 760, 773 (1977). The party presenting the contention must show

> (1) that the undertaken or contemplated project has safety significance insofar as the reactor under review is concerned, and (2) that the fashion in which the application deals with the matter in question is unsatisfactory, that because of the failure to consider a particular item there has been an insufficient assessment of a specific type of risk for the reactor, or that the short-term solution offered in the application to a problem under staff study is inadequate.

See also Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-491, 8 N.R.C. 245, 248 (1978) (similar test at operating license stage).

Petitioner makes no effort to show how the proposed contention meets either test (1) or test (2). It accordingly must be denied. See, e.g., Illinois Power Company (Clinton Power Station, Unit No. 1), LBP-82-103, 16 N.R.C. 1603, 1608 (1982).

An unspecific claim that NRC must have "actually solved" the generic issue cannot constitute a valid contention where ECNP has failed to identify the systems or components which might interact, how they would interact, or the purported consequences which could occur at Unit 2 from such systems interaction. Nor has ECNP specified the "uncertainties of safe operation" of Unit

2 which are "too great to permit issuance of an operating license." This lack of specificity is particularly significant where the available licensing record shows that the Unit 2 design takes into consideration physical separation criteria, independence of redundant safety systems, high energy line ruptures, internal and external missiles, high winds, internal and external flooding, seismic events, fires and operator error. See FSAR, Chapters 3, 8 and 9; Failure Modes and Effects Analysis. Given the information available in these licensing documents, such an unspecific contention must be denied. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-24, 14 N.R.C. 175, 222, 223-4 (1981).

The contention must be rejected because it "fails to identify specific problems or particular systems that might interact, and to postulate the possible consequences as a basis." Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP-82-119A, 16 N.R.C. 2069, 2090 (1982) (rejecting systems interaction contention for lack of basis). See also Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-82-16, 15 N.R.C. 566, 586 (1982) and LBP-82-51, 16 N.R.C. 167, 173 (1982) (rejecting proposed contention on systems interaction for lack of nexus and basis); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-76, 16 N.R.C. 1029, 1061-2 (1982) and LBP-82-106, 16 N.R.C. 1649, 1658 (proposed contention on systems interaction rejected for lack of basis and specificity); Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1

and 2), LBP-81-27, 14 N.R.C. 325, 331 (1981) (no regulatory basis for requiring systems interaction analyses). Since ECNP's Contention 6 sets forth no basis whatever, it too must be rejected.

Contention 7. Petitioner contends that

> operability of auxiliary equipment necessary to the safe operation and shutdown of Beaver Valley 2 is dependent in part upon non-safety grade equipment whose performance cannot be relied upon to provide adequate protection of the public.

Applicants oppose this contention as unduly vague and totally lacking in any specificity or basis. ECNP does not specify the "auxiliary equipment" it has in mind. Nor does it specify the "non-safety grade equipment" on which such "auxiliary equipment" is assertedly dependent. Nor does ECNP explain why the performance of this unidentified "non-safety grade equipment" "cannot be relied upon to provide adequate protection of the public." ECNP does not explain what it means by "adequate protection of the public." The contention does not even explain what is meant by "non-safety grade," a term not found in statutes or Commission regulations.

The vague allegations of the contention, by failing to put Applicants on notice of the issue to be litigated, lack the requisite specificity and basis, particularly given the information provided in the FSAR.[7/] See Cleveland Electric Illuminating Co., supra.

7/ The FSAR demonstrates that all equipment employed at Unit 2 meets applicable regulatory requirements and standards. See FSAR §§ 1.8, 1.9 and 3.2.

Contention 8. Petitioner next contends

> that the probability and consequences of pressurized thermal shock in Beaver Valley 2 have been inadequately and incompletely addressed by the Nuclear Regulatory Commission.

More specifically, ECNP contends that there must be "demonstrated proof testing in sufficient quantity to establish a margin of certainty" as a condition for licensing. Petitioner's contention lacks basis, is contrary to the Commission's regulations, purports to raise a generic issue and is otherwise defective.

ECNP's reference to pressurized thermal shock (PTS) evidently is intended to express concern over reactor vessel embrittlement. Potential reactor embrittlement arises when neutron flux from the reactor core causes propagation of crack-like defects in the reactor vessel wall compromising reactor vessel integrity in the event of a PTS event. Reactor embrittlement (and susceptibility to PTS) hinges on a number of factors including degree of irradiation and the presence of certain materials such as copper in the reactor vessel wall.[8/]

The Commission's regulations deal extensively with reactor vessel integrity. 10 C.F.R. 50 Appendix G specifies fracture toughness requirements for pressure-containing components which are fabricated from ferritic materials, including reactor vessel walls. In the event that a pressure-containing component fails to meet the material toughness requirements during its service

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8/ See generally SECY-465, Policy Issue Memorandum re Pressurized Thermal Shock (PTS) from J. W. Dircks to the Commissioners (November 3, 1982).

life, continued operation of the component is permissible only if requirements specified in Section V.C. of Appendix G are satisfied. One of these requirements is that a fracture analysis be performed to demonstrate the existence of an adequate margin for continued operation. The proposed program for satisfying this requirement must be submitted to NRC for review and approval at least three years prior to the date fracture toughness levels are predicted to no longer exceed requirements. 10 C.F.R. 50 Appendix H specifies the surveillance program which all power reactor licensees must maintain to monitor irradiation induced fracture toughness changes.

The FSAR shows in detail how Beaver Valley Unit 2 complies with all applicable fracture toughness and surveillance requirements. See FSAR §§ 5.2.3.1 (material specifications); 5.2.3.3.1 (fracture toughness); 5.3.1.5 (same); 5.3.1.6 (material surveillance). FSAR § 5.3.2 describes how Applicants have taken precautions against nonductile fracture due to radiation exposure. FSAR § 5.3.3 discusses how the reactor vessel is in compliance with applicable fatigue and stress limits.

ECNP's vague contention regarding PTS fails to indicate how Applicants' measures fail to comply with NRC requirements or are otherwise inadequate to deal with embrittlement. Indeed, ECNP makes no reference to the extensive FSAR materials. Moreover, the question of reactor embrittlement has arisen with respect to older reactors with high copper content. See SECY-465 at Enclosure A, Figures E-1, 5-7 and Enclosure D, page 2.

In contrast, the Unit 2 reactor vessel has low copper content. See FSAR p. 5.3-1. ECNP has failed to provide any connection between Unit 2 and reactors where embrittlement has been a concern. Contention 8 is virtually identical to the contention rejected in Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-82-16, 15 N.R.C. 566, 588 (1981). As in Catawba, the contention "does not contain a sufficiently clear statement to put the Applicant and Staff on notice of the crux of Intervenor's concern." The contention is totally lacking in basis and specificity.

In addition, NRC is addressing the PTS/embrittlement issue on a generic basis. The Commission has designated PTS as Unresolved Safety Issue (USI) A-49.[9/] ECNP's contention fails to meet the tests specified in Gulf States Utilities Companies (River Bend Station, Units 1 and 2), ALAB-444, 6 N.R.C. 760, 773 (1977) for raising a generic issue in a licensing proceeding. In particular, ECNP has failed to show (a) that the issue has safety significance insofar as Unit 2 is concerned and (b) that the application fails to deal with the matter satisfactorily pending completion of NRC staff study. Petitioner's contention must therefore be denied.

The contention must be denied for an additional reason. ECNP, insofar as its contention is specific at all, appears to call for testing of a reactor vessel to destruction in order "to

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9/ NUREG-0606, "Unresolved Safety Issues Summary," Vol. 5 No. 2 (May 27, 1933) at 40.

establish a margin of certainty" with respect to the embrittlement question before Unit 2 may be licensed. Such testing is not generally required as a condition of licensing and is directly contrary to Appendices G and H of Part 50. This aspect of the contention must therefore be denied pursuant to 10 C.F.R. § 2.758.

Finally, the Commission has indicated that a rulemaking proceeding to deal with the PTS/embrittlement issue on a generic issue is imminent. NUREG-0606, supra. Contentions should not be admitted "which are (or are about to become) the subject of general rulemaking by the Commission." Potomac Electric Co. Douglas Point Nuclear Generating Station), ALAB-218, 8 A.E.C. 79, 85 (1974); see also Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-675, 15 N.R.C. 1105, 1112 (1982); Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), ALAB-655, 14 N.R.C. 799, 816 (1981).

For all these reasons, the Licensing Board should reject ECNP's Contention 8.

Contention 9. Petitioner next contends that

> the operational record of Beaver Valley 1 constitutes a basis for uncertainty as to the management capability of the Applicant to operate safely two reactors at this site. In the absence of improved performance of management, an operating license for Beaver Valley 2 should be withheld.

ECNP fails to identify any instance of management incapability. The contention utterly fails to provide any specificity or bases to support a challenge to Unit 2's management.

The contention is devoid of any compliance with the requirements of 10 C.F.R. § 2.714.

Contention 10. ECNP proposed contention states:

> Evacuation planning and emergency response capability in the event of an accident exceeding design basis are insufficient to assure the health and safety of the public. A license should be withheld pending demonstration of full evacuation in which the entire population within the emergency planing zone has participated under adverse conditions constituting a worst case evacuation.

The contention is invalid for many reasons.

The first sentence taken alone is nothing more than a totally unspecific, generalized allegation. To the extent that it refers to planning for "an accident exceeding design basis" it may also be a challenge to Commission emergency planning regulations, which define the requirements for emergency planning and response independent of any postulated accident. 10 C.F.R. § 50.47 and Appendix E.

The second sentence of the contention, which may have been intended as the specificity for the first sentence, is also inconsistent with Commission regulations. NRC rules have never required full evacuation by the public as part of emergency exercises. Indeed, Appendix E to 10 C.F.R. Part 50 defines the requirements of emergency plan exercises to exclude full evacuation by the public.

> A full-scale exercise which tests as much of the licensee, State and local emergency plans as is reasonably achievable <u>without mandatory public participation</u> shall be conducted.

10 C.F.R. Part 50, App. E, § F.1 (emphasis added). Certainly the regulations do not require full evacuation by the public "under adverse conditions constituting a worst case evacuation." On two occasions, the Commission has denied petitions for rulemaking which sought to amend NRC rules to require mandatory public evacuation in emergency plan exercises. In both cases, ECNP was one of the petitioners. See 40 Fed. Reg. 43778 (1975); 44 Fed. Reg. 32486 (1979). In denying the first rulemaking petition, the Commission stated that the risks of an evacuation drill involving the public were greater than the benefits (if any) to be gained.

> [I]f one considers a 40-year period and assumes an evacuation drill each year, the mortality risk from the evacuations is about 200 times greater than the mortality risk from the potential reactor accident.... [T]he proposed rule would not further ensure the health and safety of the public, and in fact may increase the probability of injuries and loss of life, in addition to causing other inconveniences and costs not commensurate with the benefit.

42 Fed. Reg. 36326, 36327, 36328 (1977). The petition, after being supplemented and renewed, was denied a second time with the Commission stating:

> [T]he risks associated with exercise evacuation of the public argue against public evacuation. In any event, the NRC could not order the public to participate in such an exercise.

46 Fed. Reg. 11289 (1982).

The contention is therefore a challenge to Commission regulations as well as lacking in basis and specificity.

Contention 11. Petitioner contends that

> the potential for cumulative radiation exposures in excess of permitted levels as a result of the operation of the two Beaver Valley units plus activities associated with the proposed and pending decommissioning of Shippingport has not been properly assessed.

More specifically, petitioners contend that Applicants must demonstrate that "such potential multiple exposures will not result in adverse health effects for the residents of the surrounding area."

The contention is deficient for a number of reasons. It is totally vague and unspecific. It fails to specify what the "potential for cumulative radiation exposures" is. It neither identifies or defines the "permitted levels" of radiation exposure which will be potentially exceeded. It does not specify the exposures which ECNP believes would result from operation of the Beaver Valley units, nor from decommissioning of the Shippingport Atomic Power Station. It does not say why existing assessments are improper.

This lack of specificity and basis is particularly significant where the potential exposures have been thoroughly evaluated and are available in the record of this proceeding and in a final Environmental Impact Statement. Applicants' FSAR and Environmental Report for the Operating License Stage ("ER-OLS") specify the potential cumulative radiation exposures to residents of the Beaver Valley area and demonstrate that they are within

permitted levels. See ER-OLS, § 3.2 (compliance with 10 C.F.R. Part 20 and 40 C.F.R. Part 190); FSAR, App. 11A (compliance with 10 C.F.R. Part 50, App. I). The Department of Energy has completed a Final Environmental Impact Statement for the decommissioning of the Shippingport Atomic Power Station, DOE/EIS 0080F (May 1982). This EIS specifies the standards applicable to the DOE and shows that the radiation dose to the residents of the Beaver Valley area from the decommissioning would be trivial, i.e., less than 1×10^{-4} man-rem per year. DOE/EIS at 2-13. These doses are similar to the "very small" doses from Shippingport operation (0.02 mrem/year to the maximum individual) already evaluated in conjunction with doses from operation of both Beaver Valley units. Final Environmental Statement Related to Beaver Valley Power Station, Unit 2 (July 1973), § 5.4.5.

To the extent that ECNP may wish to collaterally attack the conclusions of DOE's impact statement on Shippingport decommissioning,[10/] it would be an "inappropriate" challenge to the validity of another federal agency's environmental impact statement in a reactor licensing proceeding. See Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 N.R.C. 73, 85 (1979), citing Public Service Co. of Indiana (Marble Hill

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10/ ECNP had the opportunity to comment on the draft EIS and apparently failed to do so. See DOE/EIS 0080F at App. E.

Nuclear Generating Station, Units 1 and 2), ALAB-493, 8 N.R.C. 253, 266-68 (1978). See also Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1, 2 and 3) ALAB-664, 15 N.R.C. 1, 11 (1982).

To the extent that ECNP may be challenging the combined releases from the Beaver Valley units, these have already been considered and litigated in the construction permit proceedings. Indeed they were considered and litigated in conjunction with the releases from the operation[11/] of the Shippingport facility Final Environmental Statement. Duquesne Light Co. (Beaver Valley Power Station, Unit 2), LBP-74-25, 8 A.E.C. 711, 713-14, 719-731, 742-43 (1974).

Indeed, the licensing board at the construction permit phase concluded

> While, to evaluate the environmental impact of the Beaver Valley facility, it is essential to consider the accumulation of radioactive releases, including long-lived fission products, from Shippingport Atomic Power Station, based on earlier releases from Shippingport, the accumulation, if any, is so small that it may be disregarded in assessing the environmental effect of the Beaver Valley facility.

LBP-74-25 at 743. Since ECNP was a party in the Unit 2 construction permit proceeding, LBP-74-25 at 712, the doctrine of collateral estoppel should bar relitigation of Beaver Valley-Shippingport exposures. See p. 14, supra.

11/ As noted above, releases from Shippingport operation are similar to those projected for Shippingport decommissioning. If a dose level has been previously considered and found to be acceptable, a similar dose level must similarly be acceptable and should not be re-examined.

For all these reasons, ECNP's contention 11 should be rejected.

III. Conclusion

The discussion above demonstrates that none of ECNP's contentions meet the requirements established by 10 C.F.R. § 2.714. These deficiencies are reinforced by the Appeal Board's caveat that contentions at the operating license stage should receive particular scrutiny. Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-183, 7 A.E.C. 222, 226 n.10 (1974); Cincinnati Gas and Electric Co. (William Zimmer Power Station), ALAB-305, 3 N.R.C. 8, 12 (1976). Having failed to submit at least one adequate contention, ECNP's petition must be denied.

Respectfully submitted,

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DATED: September 26, 1983

September 26, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
DUQUESNE LIGHT CO., et al.	)	Docket No. 50-412 OL
	)	
(Beaver Valley Power Station, Unit 2)	)	

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing "Applicants' Response to Proposed Contentions of Environmental Coalition on Nuclear Power" were served by deposit in the United States Mail, first class, postage prepaid, this 26th day of September, 1983, to all those on the attached Service List.

Jay E. Silberg

DATED: September 26, 1983

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