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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of :  
: Public Service Electric and : Docket No. 50-354 OL  
Gas Company :  
: (Hope Creek Generating Station) :  
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THE PUBLIC ADVOCATE'S CONSENT  
TO THE APPLICANT'S MOTION TO DISMISS  
CONTENTION IV AND COMMENTS ON THE  
APPLICANT'S ARGUMENTS IN SUPPORT THEREOF

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The intervenor, Public Advocate of the State of New Jersey ("Public Advocate") hereby consents to the applicant's motion of February 3, 1984 to dismiss the Public Advocate's Contention 4, relating to the potential environmental impacts from the operation of the Hope Creek cooling tower. The Public Advocate agrees that the experts identified by the State of Delaware know of no significant new information sufficient to require further, evidentiary consideration of this issue. Additionally, the Public Advocate now intends to rely on the State remedies set forth in the New Jersey Coastal Area Facilities Review

Act ("CAFRA") permit of February 1, 1976 issued by the Department of Environmental Protection ("DEP") to PSE&G for the Hope Creek station on February 1, 1976.<sup>1</sup>

That permit provides for PSE&G to develop

a preoperational and operational monitoring program to evaluate the effects of salt released from the cooling towers on terrestrial life; such program shall be submitted to DEP for approval. If salt deposition during operation causes detrimental effects, PSE&G shall take such remedial steps as DEP requires.<sup>2</sup>

The Public Advocate has been informed by DEP that its officials continue to review PSE&G's cooling tower plans. Accordingly, the Public Advocate will focus his resources on the DEP's ongoing considerations.

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1. N.J.S.A. 13:19-1, et seq. For details, please see the attachment to the Public Advocate's Contentions, which contains the complete CAFRA permit # CA74-014 for Hope Creek.

2. Id., p. 5, para. 16.

Comments on the Applicant's  
Motion to Dismiss

For reasons known only to the applicant, its motion to dismiss contains a clearly unfounded attack on the Public Advocate's representations to the Board at the November 22, 1983 Special Prehearing Conference. These attacks in turn substantially misrepresent the record of that proceeding and the basis of the Board's action. PSE&G argues, for example, that, regardless of the merits, the contention should be stricken due to the alleged misstatement of counsel that the contention was drafted after consultation with the experts, Drs. Peterson and Perizek.<sup>3</sup> A reading of the cited transcript references reveals that no such representation was made, nor can one be reasonably inferred, and, further, that the Board was well-aware that the contention was being "re-drafted" by intervenor's counsel at that very moment and without the aid of on-the-spot experts. Thus,

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3. See pp. 2, 13-16 and 17 of Applicant's Motion to Strike Contention 4 (especially Point I, pp. 13-16, which is devoted entirely to this line of attack).

contrary to applicant's argument that the Public Advocate and the State of Delaware had represented to the Board "that prior discussion with technical expert(s) was (sic) the basis for raising the rephrased contention (Tr. 226,228),"<sup>4</sup> the record reveals the very opposite.

For instance, at Tr. 226, Mr. Conner for the applicant -- after arguing at length with the Chairman -- asked the Board to "inquire to the Public Advocate . . . to identify the name of the technical expert person upon [whom] they relied for Contention [4]."

The Chairman, Judge Miller, then turned to the Public Advocate counsel and observed that:

We are just saying, okay, tell us who . . . would have the knowledge that would be the subject of a deposition fairly one way or the other, studies and all the rest.

The response and resulting colloquy shows beyond a doubt that the Advocate's counsel neither deceived nor intended to deceive:

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4. Applicant's motion, p. 2 (emphasis added).

MR. POTTER: I don't think I can answer that.

JUDGE MILLER: Can your associate?

MS. REMIS: Not at this moment, no sir.

JUDGE MILLER: How soon can you get it?

A telephone . . . [?]

. . . . .

MR. POTTER: If we supply it . . . by, say, 5 o'clock tomorrow, would that be sufficient?

JUDGE MILLER: Oh, sure.<sup>5</sup>

There follows additional dialogue between Mr. Conner and Judge Miller which suggests that the applicant's rash claims are rooted in a bizarre theory expressly rejected by the Board. Specifically, the applicant argued that the Board must disallow, or dismiss if previously allowed, any contention where the proponent himself lacked personal expertise or expert assistance at the time the contention was drafted. The Board dismissed this notion out of hand.

MR. CONNER: I would like to make a point which I think has been sloughed

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5. Special Prehearing Conference (November 22, 1978), Tr. 226-227.

over . . . If he would give me the name of the person he talked to for this technical input --

JUDGE MILLER: He will give you by 5 o'clock tomorrow the names of the person or persons whom you may depose and start to obtain the information you wish. You contend it was there available and this is nothing different. They say it is. Okay, either it is or isn't. One or two depositions will show you that.

MR. CONNER: I am just trying to make the distinction that if I think --

JUDGE MILLER: I see your distinction, but I'm not making it.

MR. CONNER: I think they are betting on "to come" and they are going to go find an expert.

MR. DEWEY: May I make a final point about this contention? That is the fact that salt deposition, the adverse effects on the land were, in fact, considered at the CP.

JUDGE MILLER: I'm sure they were. It was an uncontested hearing. . . . I am up with you up to the third [reiteration],



but where there might be something new, I think the public interest requires it, and we represent the public interest.

MR. DEWEY: All right, sir.<sup>6</sup>

In short, applicant's counsel, after seeking unsuccessfully to convince the Board of its creationist-inspired argument -- either the contention emerges whole and wondrous at the moment of inception or else it is void -- now tries to rewrite history to show that the intervenor had said what he had not and that the Board had ruled as it had because of the alleged but nonexistent deceit. Clearly, such a crude effort at sleight-of-hand should not be ignored or go undisputed. Not only may it taint these proceedings -- e.g., by distorting the written record -- but, as will be seen in the Public Advocate's forthcoming motion for a protective order, applicant's creationist theory of pleading may be resurrected repeatedly throughout discovery, or at least until the Board finally lays it to rest.

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6. Tr. 228-229 (emphasis added)

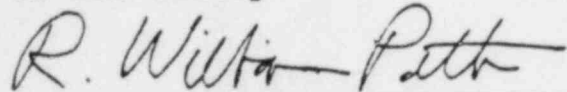
CONCLUSION

The Public Advocate agrees that no new information has been revealed to date which requires continued consideration of Contention 4. The Public Advocate therefore consents to its dismissal, but is mindful of the Board's independent duty to protect the public interest, and therefore does not urge its dismissal.

Respectfully submitted,

JOSEPH H. RODRIGUEZ  
Public Advocate of the State  
of New Jersey

By:



R. WILLIAM POTTER  
Assistant Public Advocate

Dated: February 17, 1984



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On today's date, February 17, 1984, I certify that copies of the Public Advocate's Consent to the Applicant's Motion to Dismiss Contention IV and Comments on the Applicant's Arguments in Support Thereof were sent by Express or regular mail to the following:

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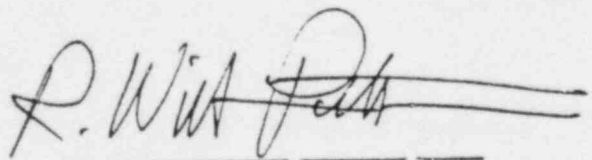
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A handwritten signature in dark ink, appearing to read "R. William Potter", is written over a horizontal line. The signature is stylized with a large, looped "P" and a long horizontal stroke extending to the right.

R. WILLIAM POTTER

\*Sent by Express Mail.