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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
MISSISSIPPI POWER & LIGHT)	Docket No. 50-416
COMPANY, <u>et al.</u>)	ASLBP No. 84-497-04 LA
)	
(Grand Gulf Nuclear Station,)	
Unit 1))	

LICENSEE'S ANSWER TO "SUPPLEMENT TO JACKSONIANS
UNITED FOR LIVABLE ENERGY POLICIES' REQUEST FOR HEARING
AND PETITION FOR LEAVE TO INTERVENE"

Preliminary Statement

On September 23, 1983, the Nuclear Regulatory Commission ("NRC" or "Commission") issued Amendment No. 10 to Facility Operating License No. NPF-13 for the Grand Gulf Nuclear Station ("Grand Gulf"), Unit 1. On October 26, 1983, the NRC published in the Federal Register a notice of its issuance of the amendment and of the opportunity for a hearing on the amendment.^{1/} A petition to intervene and request for hearing was filed on November 17, 1983 by "petitioner Ken Lawrence on behalf of Jacksonians United for

^{1/} Notice of Issuance of Amendment to Facility Operating License and Final Determination of No Significant Hazards Consideration and Opportunity for Hearing (Exigent or Emergency Circumstances), 48 Fed. Reg. 49608 (October 26, 1983).

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Livable Energy Policies" ("JULEP").^{2/} Both the NRC Staff and Mississippi Power & Light Company ("Licensee") opposed the JULEP petition on the grounds that it did not meet the Commission's requirements for standing and did not identify "aspects" JULEP wished to litigate.^{3/}

On December 11, 1983, JULEP filed an amended petition which attempted to cure the deficiencies noted by the Staff and Licensee in JULEP's first petition.^{4/} In its response to the amended petition, the NRC Staff concluded that JULEP has satisfied the interest and aspects requirements of 10 C.F.R. §2.714.^{5/} Despite the Staff's conclusion, Licensee continues to believe that the amended petition does not satisfy these requirements in light of JULEP's failure to

^{2/} Petition to Intervene and Request for Hearing (November 17, 1983).

^{3/} NRC Staff Response to Request by Jacksonians United for Livable Energy Policies for Adjudicatory Hearing on Amendment No. 10 (December 7, 1983); Licensee's Answer to "Petition to Intervene and Request for Hearing" by Ken Lawrence and Jacksonians United for Livable Energy Policies Regarding Amendment No. 10 (December 14, 1983).

^{4/} Amendment to Request by Jacksonians United for Livable Energy Policies on Behalf of its Members for Adjudicatory Hearing on Amendment No. 10 (December 11, 1983) ("Amended Petition").

^{5/} NRC Staff Response to Amended Request by JULEP for Adjudicatory Hearing on Amendment No. 10 (January 3, 1984).

demonstrate the requisite interest of an individual member and to raise a litigable aspect.^{6/}

In its Order of January 11, 1984, the Atomic Safety and Licensing Board ("Licensing Board" or "Board") designated to preside over this amendment proceeding directed that JULEP file a supplement to its amended petition no later than February 14, 1984 setting forth the specific contentions it seeks to litigate in the proceeding.^{7/} The Licensing Board further directed the Staff and the Licensee to respond to the supplemental petition by February 27, 1984 and stated its intent to conduct a prehearing conference on February 29, 1984.^{8/}

On February 13, 1984, JULEP filed its supplemental petition setting forth three proposed contentions.^{9/} Licensee opposes admission of these contentions because they fail to satisfy the requirements of 10 C.F.R. §2.714 and raise issues totally outside the scope of this license amendment proceeding and thus beyond the Board's

^{6/} Licensee's Answer to Amended Petition to Intervene and Request for Hearing by Jacksonians United for Livable Energy Policies (December 22, 1983).

^{7/} Order (Setting First Prehearing Conference) (January 11, 1984) (slip op. at 4).

^{8/} Id.

^{9/} Supplement to Jacksonians United for Livable Energy Policies' Request for Hearing and Petition for Leave to Intervene (February 13, 1984) ("Supplemental Petition").

jurisdiction. Further, the proposed contentions constitute an authorized challenge to the Commission's regulations in violation of 10 C.F.R. §2.758(a). Thus, in light of the patent deficiencies in JULEP's contentions, a prehearing conference is unnecessary. Instead, the Board may simply rule on the contentions on the basis of the pleadings before it and dismiss the proceeding.

Argument

JULEP 1

In its first contention, JULEP contends that the Safety Evaluation Report ("SER") accompanying the NRC's issuance of Amendment No. 10 "unrealistically assumes perfect fuel."^{10/} As a basis for this contention, JULEP asserts that the "operators who installed the fuel currently in place had no significant experience in running this type of plant."^{11/} JULEP next states that the NRC has underway an investigation into certification of operator qualifications.^{12/} JULEP asserts that "[t]his lack of experience and possible lack of satisfactory training and qualification make it much more likely that the cladding may have been damaged enough to affect safety"^{13/}

^{10/} Supplemental Petition at 1.

^{11/} Id.

^{12/} Id.

^{13/} Id.

Section 2.714(b) requires that a petitioner for a hearing set forth the bases for each contention with reasonable specificity. Instead, JULEP has set forth various statements that appear to have no relation to each other or to the contention. Moreover, instead of providing a basis for its contention, these statements show that JULEP possesses no information or expertise that would indicate that the SER's "assumption of perfect fuel" is, in some way, incorrect or that the fuel has been damaged in any way. Rather, these statements constitute JULEP's pure speculation that lack of prior commercial experience on other nuclear plants may somehow have had an effect on the loading of fuel at the Grand Gulf plant and that an incomplete NRC investigation into certification of operator qualifications may somehow relate to this. Such unsupported speculation, of course, does not satisfy the specificity requirements of 10 C.F.R. §2.714(b) and is therefore inadmissible as a contention.^{14/}

^{14/} Duquesne Light Company (Beaver Valley Power Station, Unit 2), Docket No. 50-412, "Report and Order on Special Prehearing Conference Held Pursuant to 10 C.F.R. §2.751a" (January 27, 1984) (slip op. at 13-15). See also Carolina Power & Light Company (H. B. Robinson Steam Electric Plant, Unit 2), Docket No. 50-261-OLA, "Memorandum and Order (Report on Special Prehearing Conference Held Pursuant to 10 C.F.R. §2.751a)" (April 12, 1983) (slip op. at 4); Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460, 467-68 (1982).

Even more important, however, is the fact that this contention is wholly outside the scope of this license amendment proceeding. It is well established that a Licensing Board's jurisdiction is limited by the notice of hearing^{15/} and that a Licensing Board can neither enlarge nor contract that jurisdiction.^{16/} A licensing board cannot explore matters beyond those which are embraced by the notice of hearing for the particular proceeding.^{17/} Thus, a Licensing Board is obliged to reject issues raised by intervenors which are "manifestly beyond the bounds of the

^{15/} 10 C.F.R. §2.714(h); Commonwealth Edison Company (Zion Station, Units 1 & 2), ALAB-616, 12 NRC 419, 426 (1980); Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), ALAB-249, 8 AEC 980, 987 (1974); Maine Yankee Atomic Power Company (Maine Yankee Atomic Power Station), Docket No. 50-309-OLA, "Memorandum and Order" (February 8, 1983) (slip op. at 16); Maine Yankee Atomic Power Company (Maine Yankee Atomic Power Station), Docket No. 50-309-OLA, "Memorandum and Order" (April 12, 1982) (slip op. at 4); Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), Docket No. 50-289 (Restart), "Memorandum and Order Ruling on Petitions and Setting Special Prehearing Conference" (September 21, 1979) (slip op. at 6).

^{16/} Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-316, 3 NRC 167, 170 (1976); Consumers Power Company (Midland Plant, Units 1 & 2), ALAB-235, 8 AEC 645, 677 (1974).

^{17/} Portland General Electric Company (Trojan Nuclear Plant), ALAB-534, 9 NRC at 287, 289-90 n.6 (1979).

issues identified in the notice of hearing which triggered [the] proceeding."^{18/}

The Federal Register notice which provided the opportunity for a hearing on Amendment No. 10 specifically stated that "contentions shall be limited to matters within the scope of the amendment under consideration."^{19/} The amendment under consideration granted requested changes to the Technical Specifications relating to Tables 3.3.3-1 and 4.3.3.1-1, Bases Figure 3/4 3-1 (High Pressure Core Spray ("HPCS") Operability) and Table 3.6.4.-1 (RHR Jockey Pumps). The amendment also granted one-time exceptions to specifications 4.4.2.1.2.b, 4.4.2.2.1.b, and Table 3.3.3.-1 (ADS Trip System) and 4.1.3.1.4.a (Scram Discharge Volume). Thus, in order to comply with the Federal Register notice and with NRC regulations and case law, JULEP was required to raise contentions related to the specific Technical Specification changes and one-time exceptions permitted by Amendment No. 10. Instead, JULEP has raised contentions which in no way relate to these changes and exceptions and which are thus wholly outside the scope of the proceeding and the Board's jurisdiction.

^{18/} Id.; Duke Power Company (Catawba Nuclear Station, Units 1 & 2), Docket Nos. 50-413, 50-414, "Memorandum and Order (Ruling on Spent Fuel Contentions)," (February 25, 1983) (slip op. at 2-3).

^{19/} 48 Fed. Reg. 49609.

Without explanation, JULEP suggests that the fuel cladding may have been damaged during fuel loading.^{20/} This ignores the fact that (1) the procedures for fuel load were followed prior to achieving initial criticality on August 18, 1982 and (2) the fuel is designed to withstand the loading predicted to occur during handling without impairment of its operational capability.^{21/} Moreover, the fuel is designed to ensure that fuel damage, if it were to occur, would not result in the release of radioactive materials in excess of regulatory limits.^{22/}

Finally, there is no requirement that an operator licensed to operate a particular nuclear facility have prior commercial experience in the operation of other nuclear facilities. To the extent that JULEP 1 is interpreted as an assertion to the contrary, it is a challenge to the NRC's regulations under 10 C.F.R. Part 55 and, in light of JULEP's failure to show special circumstances, is inadmissible as a contention in this NRC proceeding.^{23/} The fact that one

^{20/} Supplemental Petition at 1.

^{21/} Final Safety Analysis Report ("FSAR"), Sections 4.2.1.1.1.1, 4.2.1.1.1.2, 4.2.1.2.1.7 and 9.1.4.1; see also FSAR Section 4.2.6 (Reference 3); FSAR Figure 4.2-3 and 4.2-4.

^{22/} Id.

^{23/} 10 C.F.R. §2.758(a); Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 & 3), ALAB-216, 8 AEC 13, 20-21 (1974); Potomac Electric and
(Footnote Continued)

Commissioner wrote a memorandum to the four other Commissioners containing some of his thoughts on the issue of prior commercial experience in no way alters this fact. Thus, JULEP 1 should be denied admission by the Board in light of its failure to raise issues related to Amendment No. 10 and its lack of specificity. If it is interpreted as an assertion that licensed operators must have prior commercial experience on other nuclear facilities, it is an impermissible attack on the NRC's regulations.

JULEP 2

In its second contention, JULEP asserts that that portion of the SER relating to the High Pressure Core Spray ("HPCS") "leaves a problematic gap in safety performance" based on its "questionable assumption of perfect fuel."^{24/} As a basis for this contention, JULEP asserts that "[i]mperfect fuel could result in fuel performance failure at a lesser pressure at which the HPCS would not activate."^{25/} JULEP further alleges that "[s]uch a failure

(Footnote Continued)

Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 89 (1974); Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 2), ALAB-456, 7 NRC 63, 67 (1978).

^{24/} Supplemental Petition at 2.

^{25/} Id.

If anything, this contention is even more vague and speculative than the first contention. Moreover, on its face, the reasoning underlying it is circular. Based on JULEP's statements with regard to its first contention, Licensee interprets "imperfect fuel" to mean damaged fuel. In JULEP 2, however, JULEP asserts that imperfect fuel (presumably damaged fuel) could lead to failure of the HPCS to activate which could lead to damaged fuel.

JULEP has not provided any explanation of why it thinks the Grand Gulf fuel might be damaged nor why such damage, if assumed to exist, constitutes a safety problem. Further, JULEP has provided no basis for the alleged nexus between fuel load and operation of the HPCS. Additionally, it provides no information on the asserted "problematic gap in safety performance." Instead, JULEP asserts merely a vague, speculative, and unfounded concern that Grand Gulf fuel may become damaged and that fuel damage somehow may affect JULEP. As such, JULEP 2 should be denied admission for failure to satisfy the specificity and bases requirements of 10 C.F.R. §2.714(b).

Further, allegations of "imperfect fuel," which are the only basis of the contention, are beyond the scope of this proceeding. As discussed in response to proposed JULEP 1, supra, JULEP's speculation that the SER "unrealistically assumes perfect fuel" is wholly without nexus to any of the changes in the Technical Specifications granted by Amendment No. 10. In particular, no showing is made how fuel for

proceeding. As discussed in response to proposed JULEP 1, supra, JULEP's speculation that the SER "unrealistically assumes perfect fuel" is wholly without nexus to any of the changes in the Technical Specifications granted by Amendment No. 10. In particular, no showing is made how fuel for Grand Gulf relates to the changes in Tables 3.3.3-1 and 4.3.3.1-1, Bases Figure 3/4 3-1 regarding operability of HPCS. On its face, the contention is a total non sequitur without technical basis.^{27/} Any leak at low pressure would be covered by the Low Pressure Coolant Injection System and the Low Pressure Core Spray.

JULEP 3

In its third contention, JULEP asserts that the Safety Evaluation Report accompanying Amendment No. 10 is "unrealistically based on single failure criteria."^{28/} JULEP then goes on to define single failure criteria as meaning that "unless one thing by itself poses a danger to the public, the risk is not considered significant enough to address."^{29/} No authority is cited for this definition. JULEP proceeds to assert that use of single failure criteria "constitutes a serious shortcoming of the evaluation and may well render it an ineffective attempt to accurately

^{27/} Id.

^{28/} Id.

^{29/} Id.

facilities and, without any attempt at nexus, concludes that "[i]t is clear that multiple failures occur frequently."^{31/}

JULEP's third contention constitutes an impermissible attack on the NRC's regulations, as prohibited by 10 C.F.R. §2.758(a). The NRC's regulatory scheme in general and its General Design Criteria in particular adopt the single failure concept.^{32/} As defined by the NRC, "single failure" means "an occurrence which results in the loss of capability of a component to perform its intended safety functions."^{33/} Thus, it is not that the NRC ignores single failures but rather that systems must be designed to continue to operate in the event of a single failure of a component.

JULEP appears to believe that the NRC's use of single failure criteria is inconsistent with the occurrence of "multiple failures." Rather, the NRC regulatory concept of defense-in-depth applies to this latter point. This JULEP challenge to the single failure and defense-in-depth concepts is an impermissible attack on the NRC's regulatory scheme. Moreover, this generic attack is totally beyond the

^{31/} Id. at 3. It is interesting that JULEP appears to equate the TMI incident with a shutdown at Crystal River.

^{32/} 10 C.F.R. Part 50, Appendix A; Washington Public Power Supply Systems (WPPSS, Nuclear Project No. 3), Docket No. 50-508, "Memorandum and Order (Ruling on Proposed Contentions)" (September 27, 1983) (slip op. at 16).

^{33/} Id.

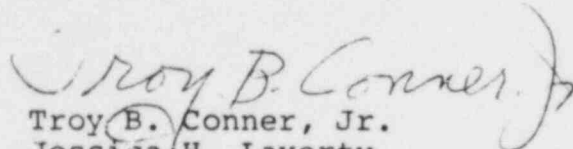
scope of this license amendment proceeding. Finally, JULEP 3 is vague, speculative, and unspecific. It suggests that there may be a safety problem but does not state what that problem is. For all of the above stated reasons, this contention should be denied.

Conclusion

The contentions proposed by JULEP for litigation in this license amendment proceeding are vague, speculative, and unspecific. The proposed contentions are also beyond the scope of the proceeding and an attack on the NRC's regulations. Accordingly, the Licensing Board should deny their admission. In light of the obvious failure of JULEP to satisfy the Commission's requirements for admission of contentions, the Board may forego conduct of a prehearing conference and deny the contentions on the basis of the pleadings before it. In the absence of an admissible contention, the Board should deny JULEP's request for a hearing and dismiss the proceeding.

Respectfully submitted,

CONNER & WETTERHAHN, P.C.


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February 21, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
MISSISSIPPI POWER & LIGHT)	Docket Nos. 50-416
COMPANY, <u>et al.</u>)	50-417
)	
(Grand Gulf Nuclear Station,)	
Units 1 and 2))	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Answer to 'Supplement to Jacksonians United for Livable Energy Policies' Request for Hearing and Petition for Leave to Intervene" dated February 21, 1984 in the captioned proceeding have been served upon the following by deposit in the United States mail this 21st day of February, 1984:

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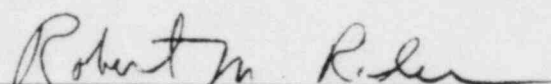
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