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UNITED STATES OF AMERICA APR 16 11:15
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board
OFFICE OF SECRETARY
BRANCH

Public Service Electric and)
Gas Company)
(Hope Creek Generating) Docket No. 50-354-OL
Station))

APPLICANTS' MOTION TO DISMISS PROCEEDING
DUE TO LACK OF BASES OF CONTENTIONS

Preliminary Statement

In its Special Prehearing Conference Order, the Atomic Safety and Licensing Board ("Licensing Board" or "Board") presiding over this proceeding admitted four contentions proposed by the Public Advocate of the State of New Jersey, Mr. Joseph H. Rodriguez ("Public Advocate").^{1/} Subsequent depositions of the Public Advocate's experts on Contention 4 revealed no basis for the contention.^{2/} Accordingly, the Board dismissed Contention 4 from the proceeding.^{3/}

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- 1/ Public Service Electric & Gas Company (Hope Creek Generating Station), Docket No. 50-354, "Special Prehearing Conference Order" (December 21, 1983).
- 2/ Applicants' Motion to Strike Contention 4 (February 3, 1984); The Public Advocate's Consent to the Applicant's Motion to Dismiss Contention IV and Comments on the Applicant's Arguments in Support Thereof (February 17, 1984).
- 3/ Public Service Electric & Gas Company (Hope Creek Generating Station), Docket No. 50-354, "Order Dismissing Contention IV" (February 21, 1984).

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In order to determine the bases of the three remaining contentions in this proceeding, Applicants applied for a subpoena of Mr. Rodriguez.^{4/} On March 15, 1984, the requested subpoena was issued by the Board. In response, the Public Advocate moved the Atomic Safety and Licensing Appeal Board ("Appeal Board") to quash the subpoena.^{5/} In his affidavit accompanying his motion to quash, Mr. Rodriguez stated that he has "no personal knowledge or specialized technical information beyond the information presented to the Board in support of [his] contentions."^{6/} Thus, as Mr. Rodriguez is the intervenor in this proceeding and as he has no knowledge of the bases of his contentions, Applicants move that the Board dismiss this proceeding.

Argument

The NRC Rules of Practice and applicable Licensing Board and Appeal Board decisions make it abundantly clear that, in order to be admissible in an operating license

^{4/} Applicants' Response to the Public Advocate's "Motion to Vacate PSE&G's Notice of Deposition and for a Protective Order in the Form of Declaratory Ruling" (March 13, 1984); Application for Subpoena (March 13, 1984).

^{5/} The Public Advocate of the State of New Jersey's Motion to Quash the Applicant's Subpoena (March 26, 1984).

^{6/} Affidavit of Joseph H. Rodriguez, Esq., Public Advocate of the State of New Jersey at 6 (March 26, 1984).

proceeding, contentions must have a basis.^{7/} If there is no basis, then the contentions should be dismissed. This result is required by the NRC's rules.^{8/}

The purpose of the basis requirement of 10 C.F.R. §2.714(b) has been explained as three-fold: (a) to assure that the matter sought to be put into question is not a challenge to the Commission's regulations or an attack upon the basic structure of the Commission's regulatory process; (b) to establish sufficient foundation to warrant further inquiry into the subject matter; and (c) to put the other parties sufficiently on notice "so that they will know at least generally what they will have to defend against or oppose."^{9/} Compliance with this requirement is particularly important at the operating license stage because an operating license hearing is not mandatory.^{10/} Thus, it must be

^{7/} 10 C.F.R. §2.714(b); Washington Public Power Supply System (WPPSS Nuclear Project No. 2), ALAB-722, 17 N.R.C. 546 (1983); Puerto Rico Electric Power Authority (North Coast Nuclear Plant, Unit 2), ALAB-662, 14 NRC 1125 (1981); Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-565, 10 NRC 521 (1979); Commonwealth Edison Company (Dresden Station, Units 2 and 3), LBP-82-65, 16 NRC 714 (1982).

^{8/} Cf. Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), Docket Nos. 50-443 and 50-444, "Order" (September 20, 1983) (slip op. at 2).

^{9/} Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974).

^{10/} Detroit Edison Company (Enrico Fermi Atomic Power
(Footnote Continued)

assured that an asserted contention raises an issue which clearly is open to adjudication.^{11/}

Despite this requirement that contentions must have a basis, Mr. Rodriguez, the intervenor in this proceeding, has now admitted under oath that he has "no personal knowledge or specialized technical information beyond the information presented to the Board in support of [the] contentions."^{12/} Mr. Rodriguez further states that his "direct participation was limited to reviewing the proposed petition to intervene, and assuring [himself] that the attorneys had researched the matter thoroughly."^{13/} Finally, he states that his participation was limited to (1) determining that the public interest of New Jersey residents would benefit from the intervention, and (2) participating in meetings, consultations, and briefings with two attorneys in his office.^{14/}

In sum, Mr. Rodriguez admits that he merely read documents drafted by another attorney and has himself no

(Footnote Continued)

Plant, Unit 2), LBP-78-37, 8 NRC 575, 582 (1978); Cincinnati Gas & Electric Company (William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 9 (1976).

^{11/} Cincinnati Gas & Electric Company (William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 12 (1976); Gulf States Utilities Company (River Bend, Units 1 and 2), ALAB-183, 7 AEC 222, 226 (1974).

^{12/} Affidavit of Joseph H. Rodriguez, Esq., Public Advocate of the State of New Jersey at 6 (March 26, 1984).

^{13/} Id.

^{14/} Id. at 6-7 (citations omitted).

personal or technical knowledge of the bases for his contentions. Thus, as Applicants have suspected throughout, it has now been demonstrated that there were no bases for the contentions when filed by the Public Advocate, and that the filings were founded only upon speculation by intervenor's attorneys on technical matters. Accordingly, because there were no bases for the contentions at the time they were admitted, Applicants move that the Board dismiss this proceeding due to the failure of the remaining admitted contentions to have a basis.

Conclusion

For the reasons stated above, the Board should dismiss this proceeding.

Respectfully submitted,
CONNER & WELLS P.C.

Troy B. Conner by *JH*
Troy B. Conner, Jr.
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April 12, 1984

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Motion to Dismiss Proceeding Due to Lack of Bases of Contentions," dated April 12, 1984 in the captioned matter have been served upon the following by deposit in the United States mail on this 12th day of April, 1984:

*Marshall E. Miller, Esq. Chairman Atomic Safety and Licensing Board Panel U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Atomic Safety and Licensing Appeal Panel U.S. Nuclear Regulatory Commission Washington, D.C. 20555
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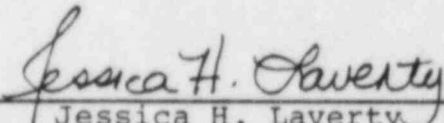
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