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July 24, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

CLEVELAND ELECTRIC ILLUMINATING)
COMPANY, ET AL.)

(Perry Nuclear Power Plant,)
Units 1 and 2))

Docket No. 50-440 ^{BOOKETED} OL
50-441 OL ^{NRC}

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OFFICE OF SECRETARY
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NRC RESPONSE IN OPPOSITION TO OCRE
MOTION TO REOPEN THE RECORD AND ADMIT
CONTENTION ON PARTIAL EXEMPTION TO APPENDIX J

I. INTRODUCTION

By its Motion to Reopen the Record and to Submit a New Contention ("Motion") dated July 5, 1985, Intervenor Ohio Citizens for Responsible Energy (OCRE) seeks to reopen to record in this proceeding for the purpose of admitting the following contention:

Applicants have not demonstrated, pursuant to 10 CFR 2.758, that the application of Section III.D.2(b)(ii) of Appendix J to 10 CFR 50 to the Perry facility does not serve the purposes for which that regulation was adopted.

Motion, at 2.

OCRE's Motion is in response to the Applicants' request for partial exemption, pursuant to 10 C.F.R. § 50.12, from the requirement in Paragraph III.D.2(b)(ii) of Appendix J to 10 C.F.R. Part 50 which states that:

Air locks opened during periods when containment integrity is not required by the plant's Technical Specifications shall be tested at the end of such periods at not less than P_a .

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As part of the exemption request, Applicants proposed to substitute the seal leak test of Appendix J, Paragraph III.D.2(b)(iii), for the test otherwise required by Paragraph III.D.2(b)(ii). Although OCRE claims that the requested exemption has been granted, the Staff has only indicated an intent to consider and evaluate the exemption request in an SER Supplement and to document the exemption, if granted, in the Perry Unit 1 operating license. See Letter, dated June 21, 1985, from B. J. Youngblood to M. R. Edelman, transmitting Environmental Assessment and Finding of No Significant Impact (Motion, Exh. 3). ^{1/}

OCRE's newly proffered contention claims a failure to meet the requirements of 10 C.F.R. § 2.758. OCRE asserts that it is this regulation, rather than 10 C.F.R. § 50.12, which applies to Applicants' request; nevertheless, OCRE addresses the Section 50.12 exemption standards in arguing that the requested exemption ought not be granted. OCRE claims that the Commission has no authority to grant exemptions, that even if it does have such authority, the subject request cannot meet Section 50.12 requirements, and that financial burden is not permitted to form a basis for granting the subject exemption. Motion, at 2-3. OCRE further asserts that the proposed substitution of the seal leak test specified in Paragraph III.D.2(b)(iii) of Appendix J is inadequate to assure the facility is "as safe as if it were in compliance" with the full pressure test requirement of Paragraph III.D.2(b)(ii), citing Long Island Lighting Co.

^{1/} As noted by OCRE, the Staff has undertaken an environmental assessment of the proposed exemption and published in the Federal Register a finding of "No Significant Impact" as required by 10 C.F.R. § 51.35. These actions did not constitute a grant of the exemption.

(Shoreham Nuclear Power Station), CLI-84-8, 19 NRC 1154 (1984). ^{2/} OCRE, in reference to the Section 50.12 criteria, argues that the substitution of the seal leak test "would clearly endanger life and property by increasing the probability of containment leakage during an accident" and thus "is obviously not in the public interest." Motion at 6.

More directly pertinent to its contention, OCRE argues that Applicants, as "a party to a proceeding" must seek waiver of the Appendix J regulatory requirement pursuant to 10 C.F.R. § 2.758, showing that application of the regulation in this case would not serve the purposes for which the rule was adopted and that special circumstances of the case justify such waiver or exception. Motion at 7, 8. Although no such waiver has been sought in this case, OCRE argues that there is nothing unusual about the request for exemption which would constitute a showing of "special circumstances" under § 2.758. ^{3/}

Intervenor acknowledges that it is required to meet the standards for reopening the record, and for admitting late-filed contentions, and

^{2/} The Commission has determined to limit the applicability of CLI-84-8 to the Shoreham case, and to consider changes to the current exemption process in separate rulemaking. Memorandum for W. J. Dircks, H. H. E. Plaine from S. J. Chilk, dated July 27, 1984 (reporting vote of Commission). See, 50 Fed. Reg. 16506 (April 26, 1985) (proposed rule to amend 10 CFR § 50.12). See also, Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Unit 1), CLI-84-19, 20 NRC 1055, 1059 n.7 (1984); Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), ALAB-809 (June 17, 1985) (slip op. at 12 n.10).

^{3/} Intervenor also argue that exemptions are granted only in extraordinary cases upon a showing of exceptional circumstances, citing Shoreham, supra, CLI-84-8, 19 NRC 1154, and that, under that decision, applications for exemptions in a contested case must be submitted to the Licensing Board. Motion, at 8.

makes brief arguments asserting that the pertinent requirements are satisfied. Motion at 8-11. Specifically, OCRE claims its motion meets the reopening standards because it was filed within 10 days of the Staff's Notice of Environmental Assessment and Finding of No Significant Impact, because it addresses the significant issue of "containment integrity," and because it alleges non-compliance with the regulations which would preclude making the requisite safety findings under 10 C.F.R. § 50.57 (presumably leading to a different licensing decision). Motion, at 9.

Similarly, OCRE argues, pursuant to 10 C.F.R. § 2.714(a)(i)-(v), ^{4/} that (1) the contention could not have been filed earlier, (2) relief (and thus representation of OCRE's interest) by the Staff is unlikely, (3) OCRE will be able to contribute to a sound record based on its "considerable research on the subject of containment performance and integrity" relating to Issue #8, (4) no other party can represent OCRE's interest in the matter, and (5) while some delay might result, any delay should be attributed to the Applicants. Motion, at 10-11.

4/ The factors considered in determining whether to admit late-filed contentions are:

- (i) Good cause, if any, for failure to file on time.
- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.
- (v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

10 C.F.R. § 2.714(a)(1).

As discussed below, OCRE's arguments seeking to justify reopening the record and to admit its late-filed contention are non-specific and unpersuasive, and fall far short of meeting the applicable standards. While it is therefore unnecessary to reach the question whether OCRE's contention is otherwise admissible, the contention is, in any event, inadmissible, since it seeks to impose requirements on Applicants which are not found in Commission regulations. 10 C.F.R. § 2.758. Similarly, to the extent OCRE's contention might be read as challenging the Commission's exemption authority or the grounds which may form the basis for issuance of an exemption under Section 50.12, the contention is also a challenge to the regulations, as interpreted by the Commission. Finally, Intervenor has failed to provide the requisite basis for a contention. For all these reasons, the Staff opposes the OCRE motion.

II. DISCUSSION

A. OCRE Has Failed to Satisfy the Requirements for Reopening the Record

It is well-settled under Commission case law that before a motion to reopen a closed record will be granted the motion must (1) be timely presented (except in the case of an exceptionally grave issue, which may be entertained even if untimely presented), (2) address a significant safety or environmental issue, and (3) establish that a different result would have been reached initially had the newly proffered material been considered. See, e.g., Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-598, 11 NRC 876, 879, 883 (1980); id., ALAB-775, 19 NRC 1361, 1365-67, n.18 (1984), aff'd, sub nom.

San Luis Obispo Mothers for Peace v. NRC, 751 F.2d 1287 (D.C. Cir. 1984), vacated in part and rehearing on banc granted on other grounds, 760 F.2d 1320 (1985). See also, Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), CL1-85-07, 21 NRC __ (May 9, 1985) (slip op. at 3); Proposed Rule: Criteria for Reopening [Records] in Formal Licensing Proceedings, 49 Fed. Reg. 50189 (December 27, 1984) (proposing to codify the case law standard and to provide specific particularity requirements for affidavits). For a motion to reopen to be timely presented, the movant must show that the issue sought to be raised could not have been raised earlier. Diablo Canyon, supra, ALAB-775, 19 NRC at 1366. On the matter of significance, mere allegations or broad assertions that the regulations have been violated, without specific information which "would permit realistic appraisal of the safety significance," fail to establish the safety significance of the issue, notwithstanding the statement of serious charges. Louisiana Power & Light Company (Waterford Steam Electric Station, Unit 3), ALAB-/86, 20 NRC 1087, 1090-91 (1984). Neither bare allegations nor simple submission of new contentions will suffice. Diablo Canyon, supra, ALAB-775, 19 NRC at 1366. The material submitted in support of the motion must be in excess of that required to support an admissible contention. Id. In order to show that the new information would materially affect the decision, the movant must submit material which would constitute "relevant, material, and reliable" evidence under 10 C.F.R. § 2.743(c). Id. at 1366-67, n.18.

Against these heavy burdens ^{5/} OCRE comes up short. First, OCRE is silent as to why it waited until July 5, 1985, two months after the May 3, 1985 closing of the hearing record, before raising its contention. OCRE's May 8, 1985 letter to the Staff concerning the April 8, 1985 exemption application shows that OCRE was aware of the pertinent details of the exemption request for at least two months prior to submitting its contention. Motion, Exh. 2. Inasmuch as OCRE's underlying concern is whether the plant will be safe should the exemption be granted (see Motion, at 9), it need not have waited for Commission action on the request before raising its concerns. See also, discussion infra, at 9-10. Although a two-month delay in filing the motion ordinarily might not be fatal, at this late stage of the Perry proceeding it is not insignificant and it has not been justified. OCRE's Motion is not timely.

Second, although OCRE notes that containment integrity is vital to protection of the public health and safety, and that non-compliance with Commission requirements for finding the plant to be safe might prevent licensing, OCRE draws no cogent link between such statements and whether the air lock seal leak test may adequately substitute for a full pressure test when no maintenance on the air lock has been performed. Contrary to OCRE's argument, Motion, at 4-5, that the 3-day seal test may not substitute for the full pressure test prescribed in Appendix J, Para-

^{5/} See, Waterford, supra, ALAB-786, 20 NRC at 1090, citing Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320, 328 (1978).

graph III.D.2.(b)(ii), the language in Paragraph III.D.2(b)(iii) prohibits only the substitution of the 3-day seal test for the 6-month test prescribed in Paragraph III.D.2.(b)(i), implying that substitution of the seal leak test for the full pressure test in Paragraph III.D.2(b)(ii) is not prohibited. OCRE's statement that air lock doors have failed to close or latch does not support its argument and does not address whether the seal leak test is a safe and acceptable substitute. See, Motion at 5.

That substitution of the seal leak test for the full pressure test for the limited purposes of Paragraph III.D.2(b)(ii) of Appendix J does not raise a significant safety issue is attested to by the numerous facilities which have received the very same exemption. Exemption from the requirement of Paragraph III.D.2(b)(ii) has been granted for the Catawba, McGuire, Grand Gulf, Limerick, Byron, Fermi, and Wolf Creek facilities. See Attachment. In short, OCRE has presented nothing which establishes that Applicants' specific request for exemption is of such safety significance as to warrant reopening the record.

Finally, OCRE has offered no "significant new evidence," as the Appeal Board has defined it in ALAB-775. OCRE has submitted neither affidavits nor anything which might be characterized as "relevant, material, and reliable" evidence. As noted above, the reference to NUREG/CP-0056 concerning failure of air lock doors to close or latch does not raise a significant issue regarding whether the door seals will leak when closed, or whether seal leak tests will serve the purpose of full pressure tests at the close of periods when containment integrity is not required. OCRE thus fails to show how the information presented is

relevant or material to containment integrity at Perry, and offers no information regarding the Perry plant which may be considered reliable evidence. Thus, OCRE has failed to show that this new information or issue might change the overall result in the proceeding. ^{6/}

In sum, OCRE's motion to reopen is not timely, does not show that Applicants' request for exemption raises a matter of safety significance, and does not demonstrate that were the matter considered, a different overall result might be reached. Thus, OCRE has not met any of the standards for reopening the record and its motion to reopen should be denied.

B. The Five-Factor Test for Late-Filed Contentions Balances Against Admission of the OCRE Contention

In moving to reopen the record for litigation of a new contention, OCRE must not only demonstrate that the standards for reopening are met but it must show that the criteria for admission of late-filed contentions balance in its favor. Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-82-39, 16 NRC 1712, 1714-15 (1982). Those criteria are set forth in 10 CFR § 2.714. OCRE's showing on each of the late-filing factors is addressed below.

Factor i. It is conceded that OCRE could not have raised a contention on the safety of granting an exemption to Paragraph III.D.2(b)(ii)

^{6/} OCRE's argument, Motion at 8-9, that the standard relating to whether a different result would have been reached does not apply where an initial decision has not yet issued, was implicitly rejected in Public Service Company of Oklahoma, et al. (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 804 (1975).

of Appendix J prior to filing of the application therefor on April 8, 1985. As noted in the previous section, however, OCRE sent a letter to the Staff, dated May 8, 1985, commenting on the exemption application. It is therefore clear that OCRE had enough information available to it no later than May 8, 1985 with which to file the subject contention. OCRE argues that it did not file its contention until after the Federal Register Notice of the Environmental Assessment and Finding of No Significant Impact because "it was not [until] then known whether the Staff would grant the exemption." Motion, at 9. Similar arguments (i.e., that intervenor had to await availability of Staff positions before being able to file an adequate contention), however, have been rejected by the Commission.

As the Commission noted in Duke Power Company, et al. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1049 (1983), it is the applicant who carries the burden of proof on safety issues, and the possibility that a Staff Safety Evaluation Report may lead to modification of an applicant's safety analysis in support of its license application "does not provide a reasonable basis for deferring of safety-related contentions until the Staff issues its SER." Id. While, under Catawba, supra, CLI-83-19, 17 NRC at 1047, good cause may be found for filing a late contention where the late-filed contention is based solely on information contained in licensing-related documents which had previously been institutionally unavailable, late contentions must be filed promptly after information sufficient to formulate an adequate contention becomes available. See Catawba, supra, ALAB-687, 16 NRC 460, 469 (1982). In this case, the document on which a contention could have

been formulated came into existence on April 8, 1985 and was accessible for public examination shortly after April 15, 1985. OCRE's May 8, 1985 letter demonstrates that it had sufficient information to file its contention at least two months prior to its actual submission. While good cause may exist for filing OCRE's contention promptly after April 15, 1985, good cause has not been shown for the subsequent several-month delay in filing, and therefore the good cause factor (10 C.F.R. § 2.714(a)(1)(i)) weighs somewhat against admission.

Factors ii and iv. It does not appear that there is another party or another adjudicatory forum through which OCRE can have its interest in the exemption represented, and therefore the second and fourth late-filing factors (10 C.F.R. §§ 2.714(a)(1)(ii), (iv)) appear to favor admission. Cf. Washington Public Power Supply System et al. (WPPSS Nuclear Project No. 3), 18 NRC 1167, 1173-77 (1983). However, these factors ordinarily are accorded "relatively minor importance" in the balancing of the five factors. The Detroit Edison Company, et al. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC 1760, 1767 (1982).

Factor iii. With respect to whether OCRE can be expected to assist in developing a sound record (10 C.F.R. § 2.714(a)(1)(iii)), Intervenor has made a very weak showing, giving no indication that it has access to experts, or that Intervenor itself is technically qualified or prepared to address the pertinent issue -- i.e., whether safety is adversely affected by the substitution of a seal leak test for a full pressure test at the conclusion of periods when containment integrity is not required. Cf. WPPSS, supra, ALAB-747, 18 NRC at 1177. It is the ability to

contribute sound evidence, rather than asserted legal or litigation skills that is of significance to this late-filing factor. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-671, 15 NRC 508, 513 n.14 (1982). OCRE's preparation for other issues involving containment integrity appears to be largely irrelevant. OCRE has shown little in the way of its ability to contribute to the development of a sound record on the exemption issue, and this factor weighs against admission of OCRE's proffered contention.

Factor v. Finally, OCRE concedes that admission at this late date of a new contention would delay the proceeding. Motion, at 10. Since the adequacy of air lock tests was not a subject of a previous contention or hearings, litigation of this matter would also broaden the proceeding. It should be noted that the question before the Licensing Board on factor five is not whether licensing will be delayed, ^{7/} but whether the proceeding will be delayed. 10 C.F.R. § 2.714(a)(1)(v). See, WPPSS, supra, ALAB-747, 18 NRC at 1178-1180. Admission of the proffered contention will both broaden the issues and delay completion of the proceeding. Thus, factor five weighs against admission.

^{7/} In point of fact, the Staff does not believe that licensing would have to be delayed for litigation of OCRE's late-filed contention. Were the Licensing Board to determine that the standards for re-opening and late-filed contention admission were met, and the contention were deemed otherwise admissible, the matter would no longer be before the Staff for determination. However, in such circumstances, a decision on the exemption need not hold up licensing. A hearing on the exemption could be held after the Licensing Board issues its initial decision on issues already litigated. If that initial decision were favorable to licensing, the operating license for Perry Unit 1 could be issued without the requested exemption (and with technical specifications imposing Appendix J, Paragraph III.D.2(b)(ii) test requirements) and the matter of whether the exemption ought to be granted could be litigated subsequently.

In sum, the three heavily weighted late-filing factors weigh against admission of the contention, while only the two lightly weighted factors weigh in favor. In these circumstances, a balancing of the factors under 10 C.F.R. § 2.714(a)(1) should lead to rejection of the proffered contention.

C. OCRE's Contention Is Not Litigable Because It Challenges Commission Regulations and Lacks Basis and Specificity

1. Limiting Applicants to Invoking Section 2.758 is Inappropriate

The legal premise underlying OCRE's contention is that, in order to be relieved of the requirements of Paragraph III.D.2(b)(ii) of Appendix J to Part 50, Applicants must demonstrate under 10 C.F.R. § 2.758 that application of the subject provision should be waived because it does not serve the purposes for which that regulation was adopted. OCRE's attempt to place such a requirement upon Applicants would, contrary to 10 C.F.R. § 2.758, impose obligations not found in Commission regulations and preclude pursuit of other avenues of relief authorized by the regulations.

Section 2.758(b) provides that a party to a proceeding "may petition that application of a specified Commission rule or regulation ... be waived or an exception made for a particular proceeding." (Emphasis added.) Section 2.758(b) is, on its face, permissive, applies only to application of requirements in initial licensing proceedings, and in no way precludes a party to a proceeding from seeking an exemption pursuant

to Section 50.12(a). ^{8/} Indeed, by its terms, Section 2.758 focuses more on the mechanism by which a party may challenge or attack an NRC regulation in an adjudication (10 C.F.R. §§ 2.758(a), (b)) than on the manner in which a party may be relieved from compliance with a regulation which it admits is valid and applicable. Moreover, inasmuch as what Applicants seek is an exemption from a regulatory requirement for the life of the Perry plant, Section 2.758 does not provide the relief they seek. In addition, Applicants do not contend that the regulation would not serve its purpose, but, rather, that literal compliance would entail unnecessary burdens on the facility without concomitant safety benefits. ^{9/} Motion, Exh. 1. Finally, since the subject matter of the exemption request is not a matter in controversy in this proceeding, ^{10/} it would not have been appro-

^{8/} Both the Commission and the Appeal Board have tacitly approved the approach of seeking a 10 C.F.R. § 50.12 exemption rather than a 10 C.F.R. § 2.758 waiver in similar circumstances. Shoreham, *supra*, CLI-84-8, 19 NRC at 1155; Limerick, *supra*, ALAB-809, at 6 *et seq.*

^{9/} Relief from a regulatory requirement pursuant to 10 C.F.R. § 2.758 is appropriate only "when an interpretation or application of a regulation to particular facts is called into question, which is not the case in the instant request." Washington Public Power Supply System (WPPSS Nuclear Project Nos. 3 and 5), CLI-77-11, 5 NRC 719, 723 (1977).

^{10/} A licensing board has before it only those matters put in controversy by the parties. 10 C.F.R. § 2.760a and Section VIII, Appendix A to Part 2. Under § 2.760a, a licensing board may raise issues on its own initiative, but only upon a determination that "a serious safety, environmental, or common defense and security matter exists." However, as discussed in Section II.A. of the text, *supra*, there has been no such showing, nor is there any reason to believe that the issuance of an exemption from Paragraph III.D.2.(b)(ii) of Appendix J to Part 50 raises a substantial safety matter.

priate to submit the exemption request to the Licensing Board. ^{11/} Thus, the relief provided by Section 2.758 is not particularly pertinent here and there is no basis for requiring or limiting Applicants to resort to that provision.

In sum, since OCRE's contention seeks to require Applicants to petition for a Section 2.758 waiver where such waiver is not required, and to limit relief to that available under Section 2.758 where such relief is neither appropriate nor adequate, and where other regulatory relief is permitted and available, the contention itself appears to constitute a challenge to Commission regulations (both Sections 2.758(b) and 50.12(a)) in violation of Section 2.758(a), and should be rejected.

2. Intervenors May Not Challenge Section 50.12 or Commission Interpretations Thereof in this Proceeding

Although OCRE's contention does not itself raise the question whether Applicants' exemption request satisfies the requirements of 10 C.F.R. § 50.12 (presumably because OCRE believes it does not apply), OCRE argues at some length that granting of an exemption to Appendix J is unauthorized, ultra vires, and, in any event, not consistent with the findings required to be made under Section 50.12(a). Motion, at 2-6.

Since it is clear from Commission regulations that the Commission is, indeed, authorized to issue exemptions under Section 50.12 when the

^{11/} This case is distinguishable from Shoreham, supra, CLI-84-8, 19 NRC at 1155, where a request for an exemption from General Design Criterion 17 arose directly from consideration of an admitted contention challenging the reliability of Shoreham's diesel generators. See also, WPPSS Project Nos. 3 and 5, supra, CLI-77-11, 5 NRC at 721-724.

appropriate findings are made, to the extent OCRE's Motion can be read to raise a contention that issuance of exemptions is not authorized by law, such contention is also a challenge to Commission regulations, contrary to 10 C.F.R. § 2.758. ^{12/}

Second, OCRE argues that the Commission may not consider the financial burden of literal compliance with a regulation when determining whether to grant an exemption under Section 50.12. Motion at 3. Here again, however, the prohibition OCRE seeks to read into the Section 50.12(a) goes well beyond the regulation. Moreover, in the recently published notice of proposed amendment to 10 C.F.R. § 50.12, which the Appeal Board has noted provides helpful insight into the application and purpose of the existing rule, ^{13/} the Commission rationale for amending the regulation relies substantially on Federal case law authority which holds that administrative agencies have as part of their authority to proceed "'by means of rules of general application a concomitant authority to provide exemptions procedures in order to allow for special circumstances.'" Proposed Rule, Specific Exemption, 50 Fed. Reg. 16506 (April 26, 1985), citing, U.S. v. Allegheny-Ludlum Steel Corp., 406 U.S.

^{12/} OCRE's interpretation of "authorized by law" as requiring specific statutory authority to authorize a particular exemption is clearly at variance with the Commission's interpretation of that language. See, 50 Fed. Reg. 16506 (April 26, 1985). ("As in the existing rule, an exemption must be authorized by law. Apart from the very fact of granting the exemption relief itself, the granting of the exemption cannot be in violation of other applicable laws, such as the Atomic Energy Act or the National Environmental Policy Act.")

^{13/} Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), ALAB-809 (June 17, 1985) (slip op. at 7 n.5).

742, 755 (1972). The authority to issue exemptions is based on just such considerations as inequity or financial hardship that agency rules or regulations may cause in particular circumstances. Id. Intervenor has simply misinterpreted the requirements which must be satisfied in granting an exemption under Section 50.12 as being the only factors which the Commission may consider. For example, in the consideration of an exemption in the Shoreham proceeding, which Intervenor references, the Commission specifically determined that "exigent circumstances" considered should include financial or economic hardship. Id.; Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1 (CLI-84-8, 19 NRC 1154, 1156, n.3 (1984). Although the Commission's directives in Shoreham have been limited to the Shoreham proceeding, ^{14/} they do indicate the Commission's agreement that financial or economic burdens may form the basis of need for an exemption. OCRE's attempt to preclude consideration of financial burden is clearly inconsistent with the purpose of exemptions, generally, and Commission interpretation of current requirements. ^{15/} To the extent OCRE's Motion is read to raise a

^{14/} See n.2 supra.

^{15/} Since the authority to grant exemptions from rules of general applicability based on equitable considerations peculiar to a particular regulated person is not based on the underlying purpose of the agency regulation, but upon fairness, the fact that the underlying purpose of Commission regulations is the public health and safety and common defense and security does not itself preclude considering economic or financial hardship in determining whether an exemption is needed. On the other hand, such equitable considerations may not be balanced against the health and safety and common defense and security. Limerick, supra, ALAB-809, at 11-12, citing

contention that consideration of financial burden is unauthorized, such contention also constitutes a challenge to 10 C.F.R. § 50.12, as interpreted by the Commission, contrary to 10 C.F.R. § 2.758.

Finally, OCRE argues that granting Applicants' exemption request would endanger life and property by increasing the probability of containment leakage during an accident. Motion, at 4-6. Again, this matter is not raised in OCRE's contention, but appears to be in support of OCRE's position that since no exemption may properly be granted under 10 CFR § 50.12, the Licensing Board must now apply 10 C.F.R. § 2.758. Motion, at 6.

Even assuming that compliance with Section 50.12 were the subject of OCRE's contention, it would, in any event fail, for lack of the required basis with reasonable specificity. OCRE's Motion references several provisions of the Perry FSAR, but aside from these, it is devoid of reference to the Perry facility and the safety of granting an Appendix J exemption to Applicants. Surely, citation to the Proceedings on the Second Workshop on Containment Integrity (Motion, at 5) fails to provide the requisite nexus to a safety concern at Perry. OCRE does not state

(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

Shoreham, supra, CLI-84-8, 19 NRC at 1156, n.3. However, the fact that the Commission may not consider the financial investment of a utility in construction of a facility in determining whether an application for an operating license can be granted does not preclude granting exemptions where the requisite safety findings have been made. Cf. Power Reactor Development Co. v. International Union of Electrical, Radio and Machine Workers, AFL-CIO, 367 U.S. 396, 415 (1961); Pacific Gas and Electric Company v. State Energy Resources Conservation & Development Commission, 461 U.S. 190, 207 (1983).

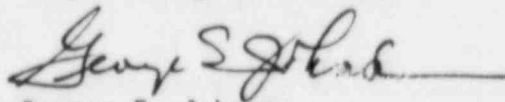
any basis for questioning the safety of granting the subject exemption for the Perry facility. As a result, even if the Motion were treated as raising a contention on the sufficiency of the exemption under Section 50.12, it must be rejected for failing to meet the basis and specificity requirement in 10 C.F.R. § 2.714(b).

In sum, OCRE has not presented a contention which meets Commission requirements for admissibility, and its proffered contention should be rejected.

III. CONCLUSION

OCRE has failed to meet Commission requirements applicable to reopening a closed record, admitting late-filed contentions, and submission of contentions with basis and reasonable specificity. As a result, OCRE's Motion and its contention should be denied.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "George E. Johnson", followed by a horizontal line.

George E. Johnson
Counsel for NRC Staff

Dated at Bethesda, Maryland,
this 24th day of July, 1985.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

ATTACHMENT

January 17, 1985

Docket No. 50-413

Mr. H. B. Tucker, Vice President
Nuclear Production Department
Duke Power Company
422 South Church Street
Charlotte, North Carolina 28242

Dear Mr. Tucker:

Subject: Issuance of Facility Operating License No. NPF-35 -
Catawba Nuclear Station, Unit 1

The NRC has issued the enclosed Facility Operating License NPF-35 together with Technical Specifications and Environmental Protection Plan for the Catawba Nuclear Station, Unit 1. The license authorizes operation at 100 percent power (3411 megawatts thermal).

A safety evaluation supporting changes to license conditions 2.C.(6) and 2.C.(22) and deletion of license conditions 2.C.(20) and 2.C.(25) contained in Facility Operating License NPF-31 is enclosed. This safety evaluation will be incorporated in Supplement No. 5 to the Catawba Safety Evaluation Report.

Also enclosed is a copy of a related notice, the original of which has been forwarded to the Office of the Federal Register for publication.

Five signed copies of Amendment No. 3 to Indemnity Agreement No. B-100 which covers the activities authorized under License No. NPF-35 are enclosed. Please sign all copies and return one copy to this office.

Sincerely,

Darrell G. Eisenhut, Director
Division of Licensing
Office of Nuclear Reactor Regulation

Enclosures:

1. Facility Operating License NPF-35
2. Safety Evaluation
3. Federal Register Notice
4. Amendment No. 3 to Indemnity Agreement B-100

cc w/enclosures:
See next page

DESIGNATED ORIGINAL

Certified By



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

DUKE POWER COMPANY

NORTH CAROLINA ELECTRIC MEMBERSHIP CORPORATION

SALUDA RIVER ELECTRIC COOPERATIVE, INC.

DOCKET NO. 50-413

CATAWBA NUCLEAR STATION, UNIT 1

FACILITY OPERATING LICENSE

License No. NPF-35

1. The Nuclear Regulatory Commission (the Commission or the NRC) has found that:
 - A. The application for license filed by the Duke Power Company acting for itself and North Carolina Electric Membership Corporation and Saluda River Electric Cooperative, Inc. (the licensees) complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations set forth in 10 CFR Chapter I; and all required notifications to other agencies or bodies have been duly made;
 - B. Construction of the Catawba Nuclear Station, Unit 1 (the facility) has been substantially completed in conformity with Construction Permit No. CPPR-116 and the application, as amended, the provisions of the Act and the regulations of the Commission;
 - C. The facility will operate in conformity with the application, as amended, the provisions of the Act, and the regulations of the Commission (except as exempted from compliance in Section 2.D. below);
 - D. There is reasonable assurance: (i) that the activities authorized by this operating license can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations set forth in 10 CFR Chapter I (except as exempted from compliance in Section 2.D. below);
 - E. Duke Power Company* is technically qualified to engage in the activities authorized by this license in accordance with the Commission's regulations set forth in 10 CFR Chapter I;
 - F. The licensees have satisfied the applicable provisions of 10 CFR Part

*Duke Power Company is authorized to act as agent for the North Carolina Electric Membership Corporation and the Saluda River Electric Cooperative, Inc., and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

(22) Progress of Offsite Emergency Preparedness (Section 13.3, SER, SSER #1, SSER #2, SSER #3, SSER #4)

In the event that the NRC finds that the lack of progress in completion of the procedures in the Federal Emergency Management Agency's final rule, 44 CFR Part 350, is an indication that a major substantive problem exists in achieving or maintaining an adequate state of preparedness, the provisions of 10 CFR Section 50.54(s)(2) will apply.

(23) Emergency Preparedness Issues (ASLB PID, 9/18/84)

By June 4, 1985, Duke Power Company shall have submitted for staff review and received staff approval on the following items:

1. The Public Information Brochure shall state that high levels of radiation are harmful to health and may be life threatening. Such statements shall be contained within that portion of the brochure that deals with actions to be taken in the event of an emergency.
 2. The warning signs and decals shall specify the types of emergencies they cover including nuclear.
 3. The warning signs and decals shall notify transients as to where they can obtain local emergency information, as provided in NUREG-0654 Evaluation Criterion II.G.2.
 4. The emergency plans shall reflect the kinds of locations within the plume exposure EPZ wherein the warning signs and decals and emergency response information will be placed and the procedures employed to assure that sufficient numbers are being distributed to effectively reach transients, and that the plans are implemented.
 5. Comprehensive plans shall provide for early notification to Carowinds of a radiological emergency at Catawba and for evacuation of Carowinds. The plans shall describe the responsibilities of the emergency response organizations of Mecklenburg and York Counties and provide for the coordination of their efforts among themselves and with Carowinds' officials. The plans shall provide for immediate notification of patrons and staff of Carowinds at the time of the precautionary closing of the park, of the cause of the emergency. The means to implement the plans shall be made available.
- D. The facility requires exemptions from certain requirements of Appendices A, E and J to 10 CFR Part 50. These include (a) partial exemption from General Design Criterion 1 of Appendix A, with respect to the upgrade to safety-related of the pressurizer power

operated relief valves (PORVs) and steam generator PORVs until first refueling (Section 5.4.4 of SER and SSER 2, and Section 15.4.4 of SSERs 3 and 4), (b) exemption from the requirements of Appendix E, IV.F, insofar as they may require the active participation of all Crisis Management Center personnel for the Catawba Station emergency preparedness exercises (Section 13.3 of SSER 4), (c) partial exemption from the requirement of paragraph III.D.2(b)(ii) of Appendix J, the testing of containment airlocks at times when the containment integrity is not required (Section 6.2.6 of the SER, and SSERs 3 and 4), (d) exemption from the requirement of paragraph III.A.(d) of Appendix J, insofar as it requires the venting and draining of lines for type A tests (Section 6.2.6 of SSER 3), and (e) partial exemption from the requirements of paragraph III.B of Appendix J, as it relates to bellows testing (Section 6.2.6 of the SER and SSER 3). These exemptions are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest. These exemptions are, therefore, hereby granted pursuant to 10 CFR 50.12. With the granting of these exemptions, the facility will operate, to the extent authorized herein, in conformity with the application, as amended, the provisions of the Act, and the rules and regulations of the Commission.

- E. Duke Power Company shall fully implement and maintain in effect all provisions of the Commission approved physical security, guard training and qualification and safeguards contingency plans, including amendments made pursuant to the authority of 10 CFR 50.54 (p). The approved plans which contain 10 CFR 73.21 information are collectively entitled: "Catawba Nuclear Station Physical Security Plan" Revision 1 dated February 1, 1982, with additional pages dated May 17, 1982 (transmittal letter dated May 27, 1982), Revision 2 dated May 17, 1982 (transmittal letter dated May 18, 1982), Revision 3 dated July 20, 1982 (transmittal letter dated August 18, 1982), Revision 4 dated June 1, 1983 (transmittal letter dated June 20, 1983), Revision 5 dated April 13, 1984 (transmittal letter dated April 16, 1984) and Revision 5 additional pages dated June 25, 1984 (transmittal letter dated July 3, 1984); and the "Catawba Nuclear Station Safeguards Contingency Plan" dated June 29, 1981 (transmittal letter dated June 30, 1981), Revision 1 dated February 1, 1982 (transmittal letter dated February 10, 1982), Revision 2 dated January 3, 1983 (transmittal letter dated January 25, 1983), Revision 3 dated April 13, 1984 (transmittal letter dated April 16, 1984); and the "Catawba Nuclear Station Training and Qualification Plan" dated October 21, 1981, and Revision 4 dated October 25, 1983.

F. Reporting to the Commission

Duke Power Company shall report any violations of the requirements contained in Section 2, Items C.(1), C.(3) through C.(23) of this license. Initial notification shall be made within twenty-four

Safety Evaluation Report

related to the operation of
Catawba Nuclear Station,
Units 1 and 2

Docket Nos. 50-413 and 50-414

Duke Power Company, et al.

**U.S. Nuclear Regulatory
Commission**

Office of Nuclear Reactor Regulation

December 1984



The staff has completed the review of the information submitted concerning the operability of the ITT Grinnell 4-in. diaphragm valves and the Borg Warner 4-in. gate valves used to purge and vent the containment at Catawba. The staff finds that the information submitted demonstrated the ability of these valves to close against the buildup of pressure in the containment in the event of a DBA/LOCA, and therefore they may be used to purge and vent the containment during operating conditions 1, 2, 3, and 4.

6.2.5 Combustible Gas Control System

By letter dated August 31, 1984, the licensee confirmed that the Unit 1 distributed ignition system used to control hydrogen released during a LOCA is installed and operable and that the system will be energized following verification of a valid safety injection signal. On this basis, the staff concludes that the first element of proposed License Condition 11 of the July 18, 1984, proposed low-power license has been satisfactorily resolved and is no longer required.

With regard to the second element of License Condition 11, the licensee submitted responses to all outstanding staff questions on hydrogen control measures on May 22, 1984. The staff has reviewed the material provided in the licensee's submittal and concludes that the responses do not adequately resolve the staff's concerns. Accordingly, by letter dated October 3, 1984, the staff requested additional information and will modify the license to require the licensee to submit upgraded analysis for staff review and approval by April 1, 1985.

The staff has determined that full-power operation is acceptable before final resolution of these matters because the staff has reviewed a virtually identical hydrogen mitigation system installed at the McGuire Nuclear Station and supplementary analyses submitted for the Catawba facility and concludes that there is reasonable assurance that the hydrogen control measures used at Catawba will satisfactorily mitigate the consequences of the hydrogen release generated during the more probable degraded core accident sequences. The staff concludes that a date of April 1, 1985, will provide adequate time for resolution of the remaining issues without undue risk to public health and safety. Final resolution of this item will be addressed on completion of the staff's review.

6.2.6 Containment Leakage Testing

By letter dated September 19, 1984, the licensee requested a partial exemption from the requirements of paragraph III.D.2(b)(ii) of Appendix J to 10 CFR 50 for the life of the facility.

Paragraph III.D.2(b)(ii) of Appendix J states:

Air locks opened during periods when containment integrity is not required by the plant's Technical Specifications shall be tested at the end of such periods at not less than Pa.

As discussed in Supplement 3 to the SER, whenever the plant is in cold shutdown (mode 5) or refueling (mode 6), containment integrity is not required. However, if an air lock is opened during modes 5 and 6, paragraph III.D.2(b)(ii) of Appendix J requires that an overall air lock leakage test at not less than the

calculated peak containment pressure from a design-basis LOCA (Pa) be conducted before plant heatup and startup (i.e., entering mode 4). The existing air lock doors are so designed that a full-pressure (i.e., Pa = 14.7 psig) test of an entire air lock can only be performed after strongbacks (structural bracing) have been installed on the inner door. Strongbacks are needed because the pressure exerted on the inner door during the test is in a direction opposite to that of the accident pressure direction. Installing strongbacks, performing the test, and removing strongbacks requires at least 6 hours per air lock (there are two air locks) during which access through the air lock is prohibited.

If the periodic 6-month test of paragraph III.D.2(b)(i) of Appendix J and the test required by paragraph III.D.2(b)(iii) of Appendix J are current, no maintenance has been performed on the air lock, and the air lock is properly sealed, there should be no reason to expect the air lock to leak excessively just because it has been opened in mode 5 or mode 6.

Accordingly, the staff has concluded that the licensee's proposed approach of substituting the seal leakage test of paragraph III.D.2(b)(iii) for the full-pressure test of paragraph III.D.2(b)(ii) of Appendix J is acceptable when no maintenance has been performed on an air lock. Whenever maintenance has been performed on an air lock, the requirements of paragraph III.D.2(b)(ii) of Appendix J must still be met by the licensee.

Therefore, on the basis of the foregoing and in accordance with 10 CFR 50.12(a), the staff has concluded that the partial exemption from paragraph III.D.2(b)(ii) of Appendix J to 10 CFR 50, as discussed above, is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest.

period of time due to the release of HCl and As_2O_3 .

The current production program for SRM's should be near full phase (up to 24 flight sets per year) in 1987 with a launch transition of 5/year in FY 1984 to 24/year in FY 1988.

DATE: Comments must be received on or before November 13, 1984.

ADDRESS: National Aeronautics and Space Administration, Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Paul Wetzel, 202-453-1872.

SUPPLEMENTARY INFORMATION: The Environmental Assessment for SRM Production was completed in July 1984. EIS's for the SRM DDT&E Program, and the Space Shuttle Program, and the subject Environmental Assessment are available upon request.

Conclusion: The SRM production program will not result in any significant adverse environmental impacts. No EIS is required.

Dated: October 4, 1984.

C. Robert Nysmith,
Associate Administrator for Management.

[FR Doc. 84-29931 Filed 10-11-84; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for International Programs; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for International Programs.

Dates: October 29, 1984, 9:00 a.m. to 5:00 p.m.;

October 30, 1984, 9:00 a.m. to 3:00 p.m.
Place: National Science Foundation, 1800 G Street, NW, Washington, DC; Room 1224.

Type of meeting: Open.

Contact person: Dr. Bodo Bartocha, Director, Division of International Programs, National Science Foundation, Washington, DC 20550. Telephone (202) 357-8552.

Summary of minutes: May be obtained from Contact Person.

Purpose of meeting: To provide advice, recommendations, and oversight related to support for international cooperation in science and engineering.

Agenda: October 29: Welcome and initial briefing by NSF officials. Science activities with developing countries. UNESCO, committee discussions.

October 30: Eastern European program, export controls update. Discussion, assignments, and future agendas.

Dated: October 9, 1984.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 84-27021 Filed 10-11-84; 8:45 am]

BILLING CODE 7565-01-M

Advisory Panel for Cellular Physiology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Cellular Physiology.

Date and time: Monday, Tuesday and Wednesday, October 29, 30, and 31, 1984, from 9:00 a.m. until 5:00 p.m.

Place: Room 338, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Maryanna P. Henkart, Program Director, Cellular Physiology, Room 332, Telephone: 202/357-7377.

Purpose of advisory panel: To provide advice and recommendations concerning support for research in Cellular Physiology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(b)(c). Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: October 9, 1984.

M.R. Winkler,
Committee Management Officer.

[FR Doc. 84-27022 Filed 10-11-84; 8:45 am]

BILLING CODE 7565-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-369 and 50-370]

Duke Power Co. (McGuire Nuclear Station, Units 1 and 2); Exemption

I

Duke Power Company (the licensee) is the holder of Facility Operating Licenses NPF-9 and NPF-17 which authorize the operation of the McGuire Nuclear Station, Units 1 and 2 (the facilities). The licenses provide, among other things, that they are subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission). The facilities comprise two pressurized water reactors at the licensee's site in Mecklenburg County, North Carolina.

II

10 CFR Part 50, Appendix J, paragraph III.D.2(b)(ii) of the Commission's regulations requires overall containment airlock tests to be performed if an airlock is opened during Modes 5 or 6. An overall airlock leakage test at not less than P_a must be conducted prior to plant heatup and startup (i.e., entering Mode 4).

III

By letter dated August 2, 1983, the licensee requested a change in the McGuire Nuclear Station Technical Specification 4.6.1.3.b which currently requires overall containment airlock leakage tests to be performed "... if opened when CONTAINMENT INTEGRITY was not required ...". The proposed change would be to require the overall airlock leakage test to be performed "... when maintenance has been performed on the airlock that could affect the airlock sealing capability." This change requires an exemption from the requirements of Appendix J, to 10 CFR Part 50.

The existing airlock doors are so designed that a full pressure, i.e., (14.8 psig), test of an entire airlock can only be performed after strong backs (structural bracing) have been installed on the inner door. Strong backs are needed since the pressure exerted on the inner door during the test is in a direction opposite to that of the accident pressure direction. Installing strong back, performing the test, and removing strong backs requires at least 6 hours per airlock (there are 2 airlocks) during which access through the airlock is prohibited.

If the periodic 6-month test of paragraph III.D.2(b)(i) of Appendix J and the test required by paragraph III.D.2(b)(iii) of Appendix J are current, not maintenance has been performed on the airlock, and the airlock is properly sealed, there should be no reason to expect the airlock to leak excessively just because it has been opened in Mode 5 or Mode 6. Accordingly, the staff finds that the licensee's proposed approach of relying on the seal leakage test of paragraph III.D.2(b)(iii) of Appendix J is acceptable when no maintenance has been performed on an airlock, and will not adversely affect maintaining containment integrity. Whenever maintenance has been performed on an airlock, the test requirement of paragraph III.D.2(b)(ii) of Appendix J must still be met.

IV

Accordingly, the Commission has determined that an exemption in

accordance with 10 CFR 50.12 is authorized by law, will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, the requested exemption from the containment airlock test requirements of 10 CFR Part 50, Appendix J, Section II, D.2(b)(ii) is hereby granted.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will have no significant impact on the environment (49 FR 38425).

This exemption is effective upon issuance.

Dated at Bethesda, Maryland this 5th day of October 1984.

For the Nuclear Regulatory Commission,
Darrell G. Eisenhut,

Director, Division of Licensing, Office of
Nuclear Reactor Regulation.

[FR Doc. 84-27080 Filed 10-11-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-272 and 50-311]

Public Service Electric and Gas Co., et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of relief from certain requirements of ASME Code Section XI to Public Service Electric and Gas Company, Philadelphia Electric Company, Delmarva Power and Light Company, and Atlantic City Electric Company (the licensees), for the Salem Nuclear Generating Station, Units 1 and 2, Salem County, New Jersey.

Environmental Assessment

Identification of Proposed Action

The relief pertains to the Ten-Year System Leakage and Hydrostatic In-Service Inspection programs for Class 1, 2, and 3 components. One relief relates to Articles IWB 5222 and IWC 5200, which require system leakage and hydrostatic pressure test temperatures be "not less than 100 °F."

The licensee proposes to meet the following alternative requirements:

"Test temperature of systems containing ferritic steel components shall meet the requirements specified by fracture prevention criteria. If fracture toughness criteria were neither specified nor required in the construction of the components, the owner will determine the test temperature. No limit on system test temperature is required for systems or portions of systems constructed entirely of austenitic steel."

The second relief relates to Article IWA 5200, which does not include

pneumatic testing as an acceptable method of pressure testing.

The licensee proposes to meet the following alternative requirements:

"Pneumatic testing may be used in place of hydrostatic when the system is not compatible with a liquid test medium or the system is normally charged with a gas, provided code-required pressures and temperatures are met."

The Need for the Proposed Action

The request for relief from Article IWB 5222 and IWC 5200 is required because there is no viable means of heating certain components, systems, or portions of systems.

The request for relief from Article IWA 5200, ASME Code, 1974 Edition, stems from the fact that no provision was made in the Code for testing systems not compatible with a liquid test medium or systems normally charged with gas. This section of the Code was changed in the 1977 Edition to permit pneumatic testing in lieu of hydrostatic testing for those systems.

Environmental Impacts of the Proposed Action

The proposed relief will provide a degree of assurance of operability that is equivalent to that prescribed by the ASME Code. Consequently, the probability of the components not operating properly will not be increased and post-accident radiological releases will not be greater than previously determined nor does the proposed relief otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with these proposed reliefs.

With regard to potential non-radiological impacts, the proposed relief involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed relief.

Alternative use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the Salem Nuclear Generating Station, Units 1 and 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensees' request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed relief.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for the reliefs dated June 21, 1984 and supplement dated August 15, 1984, which are available for public inspection at the Commission's Public Document Room, 1717 H Streets, NW., Washington, D.C. and at the Salem Free Library, 112 West Broadway, Salem County, New Jersey 08079.

Dated at Bethesda, Maryland, this 2nd day of October 1984.

For the Nuclear Regulatory Commission,
Darrell G. Eisenhut,

Director, Division of Licensing, Office of
Nuclear Reactor Regulation.

[FR Doc. 84-27080 Filed 10-11-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-406]

Tuskegee Institute; Order Authorizing Disposition of Component Parts and Termination of Facility License

By application dated August 9, 1983, Tuskegee Institute (the licensee) requested authorization from the Nuclear Regulatory Commission (the Commission or NRC) to dismantle the Tuskegee AGN-201 Reactor (the facility), a research and training reactor located on the Institute's campus at Tuskegee, Alabama, to dispose of the component parts, and to terminate Facility License No. R-122. The authorization would allow the licensee to dismantle the facility, dispose of the component parts in accordance with the application, and terminate Facility License No. R-122. A "Notice of Proposed Issuance of Order Authorizing Disposition of Component Parts and Termination of Facility License," dated June 5, 1984, was published in the Federal Register on June 12, 1984. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has found the facility has been decontaminated, that satisfactory disposition has been made of the fuel, and the component parts can be disposed of without restriction in accordance with the Commission's regulations in 10 CFR Chapter I, and in a manner not inimical to the common



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

Young

November 1, 1984

Docket No. 50-416

Mr. J. B. Richard
Senior Vice President, Nuclear
Mississippi Power & Light Company
P.O. Box 23054
Jackson, Mississippi 39205

Dear Mr. Richard:

Subject: Issuance of Facility Operating License NPF-29 -
Grand Gulf Nuclear Station, Unit 1

The U.S. Nuclear Regulatory Commission has issued the enclosed Facility Operating License NPF-29, together with Technical Specifications and Environmental Protection Plan for the Grand Gulf Nuclear Station, Unit 1. This action has been taken in accordance with the Commission's Order dated October 25, 1984. This license authorizes operation at 100% power (3833 megawatts thermal).

Also enclosed are copies of a related notice, the original of which has been forwarded to the Office of the Federal Register for publication, and of an evaluation of the effect of 40 years of license duration with respect to environmental matters.

Four signed copies of Amendment No. 2, Indemnity Agreement No. B-72 which covers the activities authorized under License No. NPF-29 are also enclosed. Please sign all copies and return one copy to this office.

Sincerely,

Frank J. Muraglia
for Darrell G. Eisenhart, Director
Division of Licensing
Office of Nuclear Reactor Regulation

Enclosures:

1. Facility Operating License
NPF-29
2. Federal Register Notice
3. 40-year Evaluation
4. Amendment No. 2 to Indemnity
Agreement B-72

cc w/encl:
See next page



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

MISSISSIPPI POWER & LIGHT COMPANY

MIDDLE SOUTH ENERGY, INC.

SOUTH MISSISSIPPI ELECTRIC POWER ASSOCIATION

DOCKET NO. 50-416

GRAND GULF NUCLEAR STATION, UNIT 1

FACILITY OPERATING LICENSE

License No. NPF-29

1. The Nuclear Regulatory Commission (the Commission or the NRC) has found that:
 - A. The application for license filed by Mississippi Power & Light Company, for itself and Middle South Energy, Inc., and South Mississippi Electric Power Association (hereinafter referred to as the licensees) complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations set forth in 10 CFR Chapter I, and all required notifications to other agencies or bodies have been duly made;
 - B. Construction of the Grand Gulf Nuclear Station, Unit 1 (the facility), has been substantially completed in conformity with Construction Permit No. CPPR-118 and the application, as amended, the provisions of the Act, and the regulations of the Commission;
 - C. The facility will operate in conformity with the application, as amended, the provisions of the Act, and the regulations of the Commission (except as exempted from compliance in Section 2.D. below);
 - D. There is reasonable assurance: (i) that the activities authorized by this operating license can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations set forth in 10 CFR Chapter I (except as exempted from compliance in Section 2.D. below);
 - E. The Mississippi Power & Light Company (MP&L)* is technically qualified to engage in the activities authorized by this operating license in accordance with the Commission's regulations set forth in 10 CFR Chapter I;

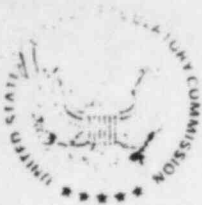
*The MP&L is authorized to act as agent for the co-owners and has exclusive responsibility and control over the physical construction, operation, and maintenance of the facility.

- (b) Provide the second level undervoltage protection for Division 3 power supply (Item No. 373, T.S. Table 3.3.3-2).
- (c) Incorporate a bypass or coincident logic in all Division 1 and 2 diesel generator protective trips, except for trips on diesel engine overspeed and generator differential current (Item No. 808, T.S. 4.8.1.1.2.d.16.d).

(38) Control Room Leak Rate (Section 6.2.6, SSER #6)

MP&L shall operate Grand Gulf Unit 1 with an allowable control room leak rate not to exceed 590 cfm. Upon restart of construction of Unit 2 control room, MP&L will be permitted to operate at a leak rate of 760 cfm as evaluated in SSER No. 6.

- D. The facility requires exemptions from certain requirements of Appendices A and J to 10 CFR Part 50. These include: (a) exemption from General Design Criterion 17 of Appendix A until startup following the first refueling outage, for (1) the emergency override of the test mode for the Division 3 diesel engine, (2) the second level undervoltage protection for the Division 3 diesel engine, and (3) the generator ground over current trip function for the Division 1 and 2 diesel generators (Section 8.3.1 of SSER #7) and (b) exemption from the requirements of Paragraph III.D.2(b)(ii) of Appendix J for the containment airlock testing following normal door opening when containment integrity is not required (Section 6.2.6 of SSER #7). These exemptions are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest. Therefore, these exemptions are hereby granted pursuant to 10 CFR 50.12. With the granting of these exemptions, the facility will operate, to the extent authorized herein, in conformity with the application, as amended, the provisions of the Act and the rules and regulations of the Commission.
- E. MP&L shall maintain in effect and fully implement all the provisions of the Commission-approved physical security plan, guard training and qualification plan and safeguards contingency plan, including amendments made pursuant to the authority of 10 CFR Section 50.54(p). The approved plans, which are safeguards information protected under 10 CFR 73.21, are collectively entitled Grand Gulf Nuclear Station "Physical Security Plan," Revision 1, 2 and 3; the Grand Gulf Nuclear Station "Security Training and Qualification Plan," and the Grand Gulf Nuclear Station "Safeguards Contingency Plan." The identification of vital areas and measures used to control access to these areas, as described in the physical security plan, may be subject to amendments in the future based upon a confirmatory evaluation of the plant to determine those areas where acts of sabotage might cause a release of radionuclides in sufficient quantities to result in dose rates equal to or exceeding 10 CFR Part 100 guidelines.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

Docket No. STN 50-454

FEB 14 1985

Page 7
Byron Full
Power License

Mr. Dennis L. Farrar
Director of Nuclear Licensing
Commonwealth Edison Company
P. O. Box 767
Chicago, Illinois 60690

Dear Mr. Farrar:

Subject: Issuance of Facility Operating License NPF-37 - Byron Station, Unit 1

The U.S. Nuclear Regulatory Commission (NRC) has issued the enclosed Facility Operating License NPF-37, together with Technical Specifications and Environmental Protection Plan for the Byron Station, Unit 1. Based upon the findings of the Commission as reflected in the enclosed license and the favorable vote by the Commission on full-power operation, License No. NPF-37 authorizes operation of the Byron Station, Unit 1 at reactor core power levels not in excess of 3411 megawatts thermal (100% power), and supersedes License No. NPF-23, issued on October 31, 1984.

Enclosed is a copy of a related notice, the original of which has been forwarded to the Office of the Federal Register for publication.

Two signed copies of Amendment No. 2 to Indemnity Agreement No. B-97 which covers the activities authorized under License No. NPF-37 are also enclosed. Please sign both copies and return one to this office.

An Assessment of the Effect of License Duration on Matters Discussed in the Final Environmental Statement for the Byron Station, Unit 1 is enclosed as Enclosure 4.

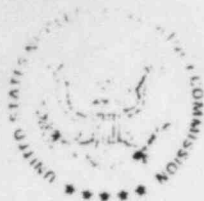
Sincerely,

Frank J. Miraglia, Acting Director
Division of Licensing
Office of Nuclear Reactor Regulation

Enclosures:

1. Facility Operating License NPF-37
2. Federal Register Notice
3. Amendment No. 2 to Indemnity Agreement No. B-97
4. Assessment of the Effect of License Duration on Matters Discussed in the FES

cc w/enclosures:
See next page



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

COMMONWEALTH EDISON COMPANY

DOCKET NO. STN 50-454

BYRON STATION, UNIT NO. 1

FACILITY OPERATING LICENSE

License No. NPF-37

1. The Nuclear Regulatory Commission (the Commission) has found that:
 - A. The application for license filed by Commonwealth Edison Company (licensee), complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations set forth in 10 CFR Chapter I, and all required notifications to other agencies or bodies have been duly made;
 - B. Construction of the Byron Station, Unit No. 1 (the facility) has been substantially completed in conformity with Construction Permit No. CPPR-130 and the application, as amended, the provisions of the Act, and the regulations of the Commission;
 - C. The facility will operate in conformity with the application, as amended, the provisions of the Act, and the regulations of the Commission (except as exempted from compliance in Section 2.D below);
 - D. There is reasonable assurance: (i) that the activities authorized by this operating license can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations set forth in 10 CFR Chapter I (except as exempted from compliance in Section 2.D below);
 - E. Commonwealth Edison Company is technically qualified to engage in the activities authorized by this license in accordance with the Commission's regulations set forth in 10 CFR Chapter I;
 - F. Commonwealth Edison Company has satisfied the applicable provisions of 10 CFR Part 140 "Financial Protection Requirements and Indemnity Agreements," of the Commission's regulations;
 - G. The issuance of this license will not be inimical to the common defense and security or to the health and safety of the public;

(15) Operating Staff Experience Requirements (Section 13.1.2.1, SSER #5)

The licensee shall have a licensed senior operator on each shift who has had at least six months of hot operating experience on a similar type plant, including at least six weeks at power levels greater than 20% of full power, and who has had start-up and shut-down experience, except as follows. For those shifts where such an individual is not available on the plant staff, an advisor shall be provided who has had at least four years of power plant experience, including two years of nuclear plant experience, and who has had at least one year of experience on shift as a licensed senior operator at a similar type facility. Use of advisors who were licensed only at the RO level will be evaluated on a case-by-case basis. Advisors shall be trained on plant procedures, technical specifications and plant systems, and shall be examined on these topics at a level sufficient to assure familiarity with the plant. For each shift, the remainder of the shift crew shall be trained as to the role of the advisors. These advisors shall be retained until the experience levels identified in the first sentence above have been achieved. The NRC shall be notified at least 30 days prior to the date that the licensee proposes to release the advisors from further service.

- D. The facility requires exemptions from certain requirements of Appendices A, E and J to 10 CFR Part 50. These include (a) an exemption from the requirement of Paragraph III.D.2(b)(ii) of Appendix J, the testing of containment air locks at times when containment integrity is not required (Section 6.2.6 of the SER), (b) an exemption from GDC-2 of Appendix A, the requirement that structures, systems and components important to safety be designed to withstand the effects of natural phenomena such as earthquakes (Section 3.10 of SSER #5), (c) an exemption from GDC-13 and GDC-17 of Appendix A, the requirement that instrumentation be provided to monitor variables and systems over their anticipated ranges, and the requirement that provisions be included to minimize the probability of losing electric power (Section 9.5.4.1 of SSER #5), (d) an exemption from GDC-19 of Appendix A, the requirement that the control room have adequate radiation protection to permit access and occupancy under accident conditions (Section 6.5.1 of SSER #6), and (e) an exemption from the requirement of Section IV.F of Appendix E that a full participation emergency planning exercise be conducted within one year before issuance of the first operating license for full power and prior to operation above 5% of rated power (Section 13.3 of SSER #6). These exemptions are authorized by law and will not endanger life or property or the

common defense and security and are otherwise in the public interest. Therefore, these exemptions are hereby granted pursuant to 10 CFR 50.12. With the granting of these exemptions the facility will operate, to the extent authorized herein, in conformity with the application, as amended, the provisions of the Act, and the rules and regulations of the Commission.

- E. The licensee shall maintain in effect and fully implement all provisions of the Commission approved Physical Security Plan, Guard Training and Qualification Plan, and Contingency Plan, including amendments made pursuant to the authority of 10 CFR 50.54(p). The approved plans which contain Safeguards Information and are required to be protected against unauthorized disclosure in accordance with 10 CFR 73.21 are collectively entitled: Commonwealth Edison Company, Byron Nuclear Power Station Physical Security Plan, Security Personnel Training and Qualification Plan*, and Safeguards Contingency Plan*, Revision 2 (May 1980), transmitted by letter dated May 2, 1980, as revised by Revision 3 (June 1980) transmitted by letter dated June 27, 1980, as revised by Revision 4 (August 1980) transmitted by letter of August 11, 1980, as revised by Revision 5 (January 1982) transmitted by letter of January 25, 1982, as revised by Revision 6 (April 1982) transmitted by letter dated April 19, 1982, as revised by Revision 7 (September 1982) transmitted by letters dated October 8 and December 22, 1982, as revised by Revision 8 (August 1983) transmitted by letters dated September 16, 1983 and October 28, 1983, as revised by Revision 9 (October 1983) transmitted by letter dated November 17, 1983, as revised by Revision 10 (January 1984) transmitted by letter dated December 30, 1983, as revised by Revisions 11 and 12 (July and August 1984) transmitted by letter dated August 29, 1984.
- F. Except as otherwise provided in the Technical Specifications or Environmental Protection Plan, the licensee shall report any violations of the requirements contained in Section 2.C of this license in the following manner: initial notification shall be made within 24 hours to the NRC Operations Center via the Emergency Notification System with written followup within thirty days in accordance with the procedures described in 10 CFR 50.73(b), (c) and (e).
- G. The licensee shall have and maintain financial protection of such type and in such amounts as the Commission shall require in accordance with Section 170 of the Atomic Energy Act of 1954, as amended, to cover public liability claims.

*The Security Personnel Training and Qualification Plan and the Safeguards Contingency Plan are Appendices to the Security Plan.

the containment that will be isolated during the Type A tests. However, if modifications should result in any such instrumentation lines being isolated during Type A tests, the applicant has committed to locally (Type C) leakage testing the lines and adding the measured leakage to the total leakage resulting from the Type A test.

Fluid systems which may be open to the containment atmosphere under postaccident conditions and become extensions of the boundary of the containment must, in general, be vented and drained during Type A testing so as to ensure exposure of the system containment isolation valves to containment air test pressure and postaccident differential pressure. Certain exceptions are allowed, as noted in paragraph III.A.1(d) of Appendix J to 10 CFR 50. The applicant has not yet completed preparation of the Type A test procedures concerning venting and draining, but has committed to comply with the appropriate requirements of Appendix J to 10 CFR 50. When the procedures are completed, the staff will confirm, prior to initial fuel loading, that proper venting and draining provisions are employed.

The applicant will perform Type B tests (local leakage tests of containment penetrations) preoperationally and also periodically at least once every two years, as required by Appendix J to 10 CFR 50. For Type B testing of the electrical penetrations, a permanently installed leakage surveillance system will be used for pressurization between the closure flanges of all the electrical penetrations at the same time. The total measured leakage will be added to the total of Type B and Type C leakage. This method will be used in lieu of more conventional Type B testing. The staff finds this acceptable.

The leakage testing provisions for the two containment air locks for personnel are in compliance with the requirements of Appendix J to 10 CFR Part 50, with one exception which is discussed below.

The applicant has requested an exemption for the Byron Units 1 and 2 from certain requirements of 10 CFR 50, Appendix J, paragraph III.D.2(b)(ii), which states:

"Air locks opened during periods when containment integrity is not required by the plant's Technical Specifications shall be tested at the end of such period at not less than P_a ."

Whenever the plant is in Mode 5 (cold shutdown), containment integrity is not required. Hence, if an air lock is opened during Mode 5 operations, paragraph III.D.2(b)(ii) requires that an overall air lock leakage test at not less than P_a be conducted prior to entry into Mode 4.

Even if the periodic 6-month test required by paragraph III.D.2(b)(i) of Appendix J has been satisfied, to meet the requirement of paragraph III.D.2(b)(ii), no access to the containment can be allowed while preparing to leave Mode 5 until every air lock that has been opened in Mode 5 is first tested and the plant has entered Mode 4. The test would effectively be required every time Mode 5 was entered. The containment would have to be cleared of personnel during performance of this test or they would be required to remain inside containment during the test and until the plant reached Mode 4. Often there are several minor operational and maintenance problems that require containment entry just prior to entering Mode 4; the special air lock test would have to wait until

all problems requiring containment entry were first corrected. This is a very restrictive requirement and would slow the process of returning to operation.

If the periodic 6-month test of paragraph III.D.2(b)(i) and the test required by paragraph III.D.2(b)(iii) are current, no maintenance has been performed on the air lock, and the air lock is properly sealed, there should be no reason to expect the air lock to leak excessively just because it has been opened in Mode 5 or Mode 6.

Accordingly, the staff concludes that the applicant's proposed approach of substituting the seal leakage test of paragraph III.D.2(b)(iii) is acceptable when no maintenance has been performed on an air lock. Whenever maintenance has been performed on an air lock, the requirements of paragraph II.D.2(b)(ii) of Appendix J must still be met by the applicant.

Therefore, an exemption from this requirement [10 CFR 50, Appendix J, paragraph III.D.2(b)(ii)] is justified and acceptable for Byron Units 1 and 2, and appropriate requirements will be added to the plant Technical Specifications.

The applicant will perform Type C tests (local leakage tests of containment isolation valves) preoperationally and also periodically at least once every two years, as required by Appendix J to 10 CFR Part 50. Not all containment isolation valves are required by Appendix J to be Type C tested; those containment isolation valves not receiving Type C tests will be identified and justified during the staff's review of the plant Technical Specifications, and the staff will ensure that the valves to be Type C tested will be properly identified at that time.

The applicant will place under administrative control the test, vent, and drain connections that are used to facilitate Type A, B, and C testing. These connections will be closed and signed off and under periodic surveillance to ensure their integrity and to verify the effectiveness of administrative controls.

Based on the above discussion, the staff concludes that the proposed reactor containment leakage testing program is acceptable and complies with the requirements of GDC 52, 53, and 54; Appendix J to 10 CFR 50; and 10 CFR 100. Such compliance provides adequate assurance that containment leak-tight integrity can be verified periodically throughout service lifetime on a timely basis to maintain such leakage within the limits of the Technical Specifications. Maintaining containment leakage rates within such limits provides reasonable assurance that, in the event of any radioactivity releases within the containment, the loss of the containment atmosphere through the leak paths will not be in excess of acceptable limits specified for the site.

6.2.7 Fracture Prevention of Containment Pressure Boundary

The staff safety review assessed the ferritic materials in the Byron Units 1 and 2 containment system that constitute the containment pressure boundary to determine if the material fracture toughness is in compliance with the requirements of GDC 51, "Fracture Prevention of Containment Pressure Boundary."

GDC 51 requires that under operating, maintenance, testing, and postulated accident conditions (1) the ferritic materials of the containment pressure



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

MAR 20 1985

Docket No. 50-341

Dr. Wayne Jens
Vice President - Nuclear
Operations
The Detroit Edison Company
2000 Second Avenue
Detroit, Michigan 48226

Dear Dr. Jens:

Subject: Issuance of Facility Operating License NPF-33, Fermi-2

The U.S. Nuclear Regulatory Commission (NRC) has issued the enclosed Facility Operating License NPF-33, together with the Technical Specifications and the Environmental Protection Plan for the Fermi-2 facility. License No. NPF-33 authorizes operation of Fermi-2 at reactor core power levels not in excess of 3292 megawatts thermal (100% power). Pending Commission approval, operation is restricted to power levels not to exceed 5 percent of full power (165 megawatts thermal).

Enclosed is a copy of a related notice, the original of which has been forwarded to the Office of the Federal Register for publication.

Three signed copies of Amendment No. 26 to Indemnity Agreement No. B-20 which covers the activities authorized under License No. NPF-33 are also enclosed. Please sign all copies and return one to this office.

*See Page
8 (Fermi-2
Low Power
License)*

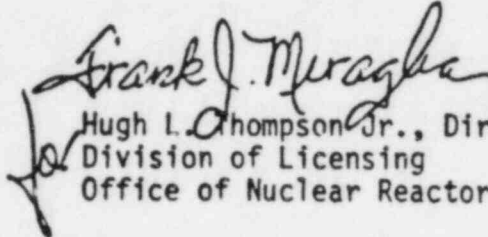
Dr. Wayne Jens

- 2 -

MAR 20 1965

An Assessment of the Effect of License Duration on Matters Discussed in the Final Environmental Statement for the Fermi-2 is provided in Enclosure 4.

Sincerely,

A handwritten signature in dark ink, appearing to read "Frank J. Miraglia". The signature is written in a cursive style with a large, prominent "F" and "M".

Hugh L. Thompson Jr., Director
Division of Licensing
Office of Nuclear Reactor Regulation

Enclosures:

1. Facility Operating License NPF-33
2. Federal Register Notice
3. Amendment No. 26 to Indemnity Agreement No. B-20
4. Assessment of the Effect of License Duration on Matters Discussed in the FES

cc w/enclosures:
See next page



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

DETROIT EDISON COMPANY

WOLVERINE POWER SUPPLY COOPERATIVE, INCORPORATED

DOCKET NO. 50-341

FERMI-2

FACILITY OPERATING LICENSE

License No. NPF-33

1. The Nuclear Regulatory Commission (the Commission) has found that:
 - A. The application for license filed by the Detroit Edison Company and Wolverine Power Supply Cooperative, Incorporated (licensees) complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations set forth in 10 CFR Chapter I, and all required notifications to other agencies or bodies have been duly made;
 - B. Construction of Fermi-2 (the facility) has been substantially completed in conformity with Construction Permit No. CPPR-87 and the application, as amended, the provisions of the Act, and the regulations of the Commission;
 - C. The facility will operate in conformity with the application, as amended, the provisions of the Act, and the regulations of the Commission, (except as exempted from compliance in Section 2.D below);
 - D. There is reasonable assurance: (i) that the activities authorized by this operating license can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations set forth in 10 CFR Chapter I (except as exempted from compliance in Section 2.D. below);
 - E. The Detroit Edison Company* is technically qualified to engage in the activities authorized by this license in accordance with the Commission's regulations set forth in 10 CFR Chapter I;
 - F. Detroit Edison Company and Wolverine Power Supply Cooperative, Incorporated, have satisfied the applicable provisions of 10 CFR Part 140 "Financial Protection Requirements and Indemnity Agreements," of the Commission's regulations;

*Detroit Edison Company is authorized to act as agent for Wolverine Power Supply Cooperative, Incorporated, and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

(17) Iodine/Particulate Sampling System (Section 22, Item II.F.1, SSER #5)

Prior to startup following the first refueling outage, DECo shall demonstrate that the operating iodine/particulate sampling system will perform its intended function.

(18) Emergency Planning

In the event that the NRC finds that the lack of progress in completing the procedures in the Federal Emergency Management Agency's final rule, 44 CFR Part 350, is an indication that a major substantive problem exists in achieving or maintaining an adequate state of emergency preparedness, the provisions of Section 50.54(s)(2) of 10 CFR Part 50 will apply.

(19) Emergency Response Capability (NUREG-0737, Supplement No. 1)

DECo shall complete the required emergency response capabilities as described in Attachment 2 to this license, which is incorporated into this license.

(20) Generic Letter 83-28 (Required Actions Based on Generic Implications of Salem ATWS Events)

DECo shall submit responses to and implement the requirements of Generic Letter 83-28 on a schedule which is consistent with that given in its letters dated November 3, 1983, and November 29, 1984.

- D. An exemption from certain requirements of Appendix J to 10 CFR Part 50, is described in Supplement No. 5 to the SER. This exemption is authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest. Therefore, this exemption is hereby granted pursuant to 10 CFR 50.12. With the granting of this exemption, the facility will operate, to the extent authorized herein, in conformity with the application, as amended, the provisions of the Act, and the rules and regulations of the Commission.
- E. DECo shall maintain in effect and fully implement all provisions of the Commission approved physical security, guard training and qualification and safeguards contingency plans, including amendments made pursuant to the authority of 10 CFR 50.54(p). The approved plans, which contain information described in 10 CFR 73.21 are collectively entitled, "Enrico Fermi Atomic Power Plant Unit 2 Physical Security Plan" Revision 4, dated April 1983 (transmitted June 29, 1983) (It is noted that Revision 4 is a completely reformatted revision which replaces all previous revisions); Amendment 5, dated July 1984

CPW

NUREG-0798
Supplement No. 5

Safety Evaluation Report

related to the operation of
Fermi-2

Docket No. 50-341

Detroit Edison Company, et al.

**U.S. Nuclear Regulatory
Commission**

Office of Nuclear Reactor Regulation

March 1985



In addition to the two innermost, quick-acting isolation valves, a third block valve is located in each of the four main steam lines to provide a redundant leakage control volume for the back-up pressurization system. Paragraph 3.6.1.4 of the Fermi-2 Technical Specifications requires that functional operability tests of the leakage control system be performed every 18 months to verify that the leak tightness integrity of this third isolation valve and to ensure that this leakage control system has the capability to maintain the control volume at a pressure greater than that in the containment.

We conclude that leak testing of the main steam isolation valves in the manner described above is an acceptable alternative to the specific requirements of Appendix J. Accordingly, we hereby grant an exemption from the specific requirements of Appendix J as described above.

Air Lock Testing

In its letter dated January 26, 1985, the applicant has requested an exemption from the full-pressure air lock testing required by Paragraph III.D.2(b)(ii) of Appendix J to 10 CFR Part 50. Specifically, this paragraph states:

"Air locks open during periods when containment integrity is not required by the plant's Technical Specifications shall be tested at the end of such periods at not less than Pa."

This provision requires that if an air lock is opened during either Operational Condition 4 or 5, it must be tested satisfactorily via an overall air lock door test prior to plant entry into Operational Condition 3.

The applicant states in its January 26th letter that performing this test would impose a significant hardship on it in that an average time of between 11 to 13 hours would be required to perform the overall test as specified in Appendix J. This time interval is required since the following steps need to be performed to complete the overall test: (1) install 14 tie downs to the interior air lock door; (2) pressurize the air lock to Pa; (3) wait for the air lock volume to stabilize and perform the leakage measurement; and (4) depressurize the air lock, remove and store the tie downs.

The applicant proposes in its January 26th letter, an alternative method of verifying the air lock integrity in lieu of the method specified in Paragraph III.D.2(b)(ii) of Appendix J. The applicant's proposed method consists of leak testing the seals of the inner and outer doors at Pa rather than testing the entire door, provided no maintenance has been performed on the air lock since the last successful test. The proposed approach represents a nearly equivalent test since the seals are the most significant leakage source. The acceptance criteria for the seal test is proposed to be a leak rate less than or equal to 5 standard cubic feet per hour at a pressure, Pa, equal to 56.5 psig. If an air lock maintenance will have been performed since the last successful test, an overall air lock leakage test at Pa shall be performed prior to entering Operational Condition 3. It is our conclusion that the proposed air lock seal test performed as described above, will provide reasonable assurance that the leak-tightness integrity of the air lock will be maintained.

On this basis, we find that the applicant's request for an exemption from the requirements of Paragraph III.D.2(b)(ii) of Appendix J to 10 CFR Part 50, is acceptable. Accordingly, we have incorporated the applicant's proposed method of performing air lock tests as discussed above and in the applicant's letter of January 26, 1985, into the Fermi-2 Technical Specifications.

6.4 Control Room Habitability Systems

6.4.1 Radiological Dose Protection

In the SER we issued in July 1981, we concluded that the calculated dose estimates for the Fermi-2 control room meet the requirements of General Design Criterion (GDC) 19 of Appendix A to 10 CFR Part 50. We further concluded that the design of the Fermi-2 control room provides an acceptable means of maintaining the control room in a safe and habitable condition by providing adequate protection under radiation accident conditions.

Subsequently, the applicant submitted Amendment No. 58 to its FSAR in July 1984 in which it revised its estimate of the time to draw down the secondary containment to a partial vacuum. (Refer to Sections 6.2.3 and 15.2.3 of this supplement.) Based on the applicant's latest estimate of the secondary containment drawdown time, we have revised Table 6.4-1 of the SER and replaced it in its entirety with Table 6.4-1 of this supplement. The only significant change in this table is the calculated thyroid and whole-body doses to the control room operators in the first eight hours following the initiation of the postulated loss-of-coolant accident. The net result is that the total thyroid dose increases from an estimated value of 15.7 rem to 16.1 rem while the estimated whole-body dose increases from 1.50 rem to 1.53 rem. Both these revised doses are within the guideline values contained in GDC 19 of Appendix A to CFR Part 50. Accordingly, we find that the calculated dose estimates for the Fermi-2 control room still meet the requirements for GDC 19.

With respect to the habitability of the Fermi-2 control room under postulated accident conditions, our inspection of the Fermi-2 control room ventilating ducts during the week of November 5 through 9, 1984, indicated that one of the assumptions used in estimating the dose rates to the control room operators might not be valid. (We assume in our analysis that no more than 10 cubic feet per minute of unfiltered air infiltrates into the control room.) The results of this inspection effort is described in Report No. 50-341/84-43, dated January 11, 1985. In this report, we expressed our concern that contrary to the guidelines in Regulatory Guide 1.52, silicone sealants were used to seal leaks found during leakage acceptance tests on the control room filter system ducts and housings. Both of these components are engineered safety features (ESF) and, therefore, must meet applicable guidelines. In response to our concerns, the applicant submitted additional information in its letter dated January 8, 1985, to clarify its FSAR commitment regarding Regulatory Guide 1.52. The applicant stated that the Fermi-2 heating, ventilating and air-conditioning (HVAC) ducts, filters and filter housings were designed prior to issuance of both Regulatory Guide 1.52 and ANSI/ASME Standard N509-1976, which is referred to in Regulatory Guide 1.52. The applicant further stated that the Fermi-2 HVAC systems were designed to the standards available at that time; namely, Sheet Metal and Air-Conditioning Contractors' National Association, Inc. (SMACNA) High Velocity Duct Construction Standards and ORNL-NSIC-65. The



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

JUN 4 1985

Docket No. STN 50-482

Mr. Glenn L. Koester
Vice President - Nuclear
Kansas Gas and Electric Company
201 North Market Street
Post Office Box 208
Wichita, Kansas 76201

Dear Mr. Koester:

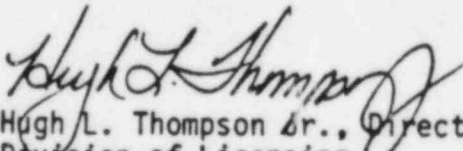
Subject: Issuance of Facility Operating License NPF-42 - Wolf Creek
Generating Station, Unit 1

The U.S. Nuclear Regulatory Commission (NRC) has issued the enclosed Facility Operating License NPF-42, together with Technical Specifications and Environmental Protection Plan for Wolf Creek Generating Station, Unit 1. Based upon the findings of the Commission as reflected in the enclosed license and the favorable vote by the Commission on full-power operation, License No. NPF-42 authorizes operation of the Wolf Creek Generating Station, Unit 1 at reactor core power levels not in excess of 3411 megawatts thermal (100% power), and supersedes License No. NPF-32, issued on March 11, 1985.

Enclosed is a copy of a related notice, the original of which has been forwarded to the Office of the Federal Register for publication.

Four signed copies of Amendment No. 3 to Indemnity Agreement No. B-99 which covers the activities authorized under License No. NPF-42 are also enclosed. Please sign all copies and return one to this office.

Sincerely,


Hugh L. Thompson Jr., Director
Division of Licensing
Office of Nuclear Reactor Regulation

Enclosures:

1. Facility Operating License NPF-42
2. Federal Register Notice
3. Amendment No. 3 to Indemnity Agreement No. B-99

cc w/enclosures:
See next page

Page 6
Wolf Creek
Full Power
License



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

KANSAS GAS AND ELECTRIC COMPANY

KANSAS CITY POWER & LIGHT COMPANY

KANSAS ELECTRIC POWER COOPERATIVE, INC.

DOCKET NO. STN 50-482

WOLF CREEK GENERATING STATION, UNIT NO. 1

FACILITY OPERATING LICENSE

License No. NPF-42

1. The Nuclear Regulatory Commission (the Commission) has found that:
 - A. The application for license filed by Kansas Gas and Electric Company, Kansas City Power & Light Company, and Kansas Electric Power Cooperative, Inc. (licensees), complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations set forth in 10 CFR Chapter I, and all required notifications to other agencies or bodies have been duly made;
 - B. Construction of the Wolf Creek Generating Station, Unit No. 1 (the facility) has been substantially completed in conformity with Construction Permit No. CPPR-147 and the application, as amended, the provisions of the Act, and the regulations of the Commission;
 - C. The facility will operate in conformity with the application, as amended, the provisions of the Act, and the regulations of the Commission, (except as exempted from compliance in Section 2.D below);
 - D. There is reasonable assurance: (i) that the activities authorized by this operating license can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations set forth in 10 CFR Chapter I, (except as exempted from compliance in Section 2D below);
 - E. Kansas Gas and Electric Company* is technically qualified to engage in the activities authorized by this license in accordance with the Commission's regulations set forth in 10 CFR Chapter I;

*Kansas Gas and Electric Company is authorized to act as agent for the Kansas City Power & Light Company and the Kansas Electric Power Cooperative, Inc., and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

(11) Steam Generator Tube Rupture (Section 15.4.4, SSER #5)

Prior to restart following the first refueling outage, KG&E shall submit for NRC review and approval an analysis which demonstrates that the steam generator single-tube rupture (SGTR) analysis presented in the FSAR is the most severe case with respect to the release of fission products and calculated doses. Consistent with the analytical assumptions, the licensee shall propose all necessary changes to Appendix A to this license.

(12) LOCA Reanalysis (Section 15.3.7, SSER #5)

Prior to restart following the first refueling outage, KG&E shall submit for NRC review and approval a reanalysis for the worst large break LOCA using an approved ECCS evaluation model.

(13) Generic Letter 83-28

KG&E shall submit responses to and implement the requirements of Generic Letter 83-28 on a schedule which is consistent with that given in their February 29, 1984 and February 6, 1985 letters.

(14) Surveillance of Hafnium Control Rods (Section 4.2.3.1(10), SER and SSER #2)

KG&E shall perform a visual inspection of a sample of hafnium control rods during one of the first five refueling outages. A summary of the results of these inspections shall be submitted to the NRC.

- D. Exemptions from certain requirements of Appendix J to 10 CFR Part 50, and from a portion of the requirements of General Design Criterion 4 of Appendix A to 10 CFR Part 50, are described in the Safety Evaluation Report. These exemptions are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest. Therefore, these exemptions are hereby granted pursuant to 10 CFR 50.12. With the granting of these exemptions the facility will operate, to the extent authorized herein, in conformity with the application, as amended, the provisions of the Act, and the rules and regulations of the Commission.
- E. KG&E shall fully implement and maintain in effect all provisions of the Commission approved Physical Security, Guard Training and Qualification, and Safeguards Contingency plans, including all amendments and revisions made pursuant to the authority of 10 CFR 50.90 and 10 CFR

Safety Evaluation Report

related to the operation of
**Wolf Creek Generating Station,
Unit No. 1**

Docket No. STN 50-482

Kansas Gas and Electric Company, et al.

**U.S. Nuclear Regulatory
Commission**

Office of Nuclear Reactor Regulation

March 1985



safety injection. The staff has reviewed this design change and finds it acceptable because the hydrogen monitoring system will still meet the requirements of TMI Action Plan Items II.E.4.2 and II.F.1, Attachment 6.

6.2.6 Containment Leakage Testing

Containment Air Lock Surveillance

By letter dated November 6, 1984, the applicant requested an exemption from the requirement of paragraph III.D.2(b)(ii) of Appendix J to 10 CFR 50. Paragraph III.D.2(b)(ii) of Appendix J states: "Air locks opened during periods when containment integrity is not required by the plant's Technical Specifications shall be tested at the end of such periods at not less than P_a ." The above Appendix J requirement would require a full-pressure air lock test after each and every shutdown regardless of the purpose of the shutdown. In place of this requirement, the applicant proposes to perform a full-pressure air lock test only when maintenance is performed on the air lock that could affect the air lock sealing capability. This proposed change requires an exemption from the requirements of Appendix J to 10 CFR 50. The staff's evaluation of this exemption request follows.

Whenever the plant is in cold shutdown (Mode 5) or refueling (Mode 6), containment integrity is not required. However, if an air lock is opened during Modes 5 and 6, paragraph III.D.2(b)(ii) of Appendix J requires that an overall air lock leakage test at not less than P_a be conducted before plant heatup and startup (i.e., entering Mode 4). The existing air lock doors are so designed that a full-pressure test (P_a , 48.0 psig) of an entire air lock can only be performed after strong backs (structural bracing) have been installed on the inner door. Strong backs are needed because the pressure exerted on the inner door during the test is in a direction opposite to that of the accident pressure direction. Installing strong backs, performing the test, and removing strong backs require at least 6 hours per air lock. During which access through the air lock is prohibited.

If the periodic 6-month test of paragraph III.D.2(b)(i) of Appendix J and the test required by paragraph III.D.2(b)(iii) of Appendix J are current, no maintenance has been performed on the air lock, and the air lock is properly sealed, there should be no reason to expect the air lock to leak excessively just because it has been opened in Mode 5 or Mode 6.

Accordingly, the staff concludes that the applicant must still meet its proposed approach of substituting the seal leakage test of paragraph III.D.2(b)(iii) for the full-pressure test of paragraph III.D.2(b)(ii) of Appendix J.

Therefore, an exemption from this requirement [10 CFR 50, Appendix J, paragraph III.D.2(b)(ii)] is justified and acceptable for Wolf Creek Unit 1, and the applicant's proposed changes to the Technical Specifications concerning this subject are acceptable.

6.6 Inservice Inspection of Class 2 and 3 Components

This section was prepared with the technical assistance of Department of Energy (DOE) contractors from the Idaho National Engineering Laboratory (INEL).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
CLEVELAND ELECTRIC ILLUMINATING)
COMPANY, ET AL.)
)
(Perry Nuclear Power Plant,)
Units 1 and 2))

Docket No. 50-440 OL DOCKETED
50-441 OL USNRC

*85 JUL 25 P4:42

CERTIFICATE OF SERVICE

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

I hereby certify that copies of "NRC RESPONSE IN OPPOSITION TO OCRE MOTION TO REOPEN THE RECORD AND ADMIT CONTENTION ON PARTIAL EXEMPTION TO APPENDIX J" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 24th day of July, 1985:

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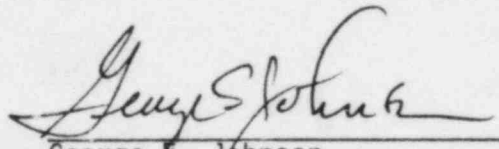
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