



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

8/27/79

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	}	Docket No. 50-312
SACRAMENTO MUNICIPAL UTILITY DISTRICT		
(Rancho Seco Nuclear Generating Station)		

NRC STAFF'S BRIEF ON SCOPE OF THE PROCEEDING

Background

In its Prehearing Conference Order (August 3, 1979) the Licensing Board, inter alia

- (b) directed all parties, including the California Energy Commission, to submit to the Board no later than August 27, 1979, briefs on the scope of this Board's jurisdiction in this proceeding. In their briefs, the parties were requested to address the effect, if any, of a commission rulemaking, either in program or planned, on the admissibility of any contentions.

This pleading constitutes the NRC Staff's response to the Board's order.

This proceeding had its genesis in the May 7, 1979 order of the Commission, which

- (1) confirmed the shutdown of the Rancho Seco facility;
- (2) directed that the facility remain in a shutdown condition until certain actions were completed by the licensee to the satisfaction of the Director of the Office of Nuclear

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Reactor Regulation (hereafter referred to as the "short-term" actions;^{1/} and

- (3) directed the licensee to accomplish as promptly as practicable certain identified "long-term" modifications.^{2/}

1/ These actions (set forth in Section IV of the order) are:

- (a) Upgrade the timeliness and reliability of delivery from the Auxiliary Feedwater System by carrying out actions as identified in Enclosure 1 of the licensee's letter of April 27, 1979.
- (b) Develop and implement operating procedures for initiating and controlling auxiliary feedwater independent of Integrated Control System control.
- (c) Implement a hard-wired control-grade reactor trip that would be actuated on loss of main feedwater and/or turbine trip.
- (d) Complete analyses for potential small breaks and develop and implement operating instructions to define operator action.
- (e) Provide for one Senior Licensed Operator assigned to the control room who has had Three Mile Island Unit No. 2 (TMI-2) training on the B&W simulator.

2/ These actions (set forth in Section II of the Order) are:

- The licensee will provide to the NRC Staff a proposed schedule for implementation of identified design modifications which specifically relate to items 1 through 9 of Enclosure 1 to the licensee's letter of April 27, 1979, and would significantly improve safety.
- The licensee will submit a failure mode and effects analysis of the Integrated Control System to the NRC Staff as soon as practicable.
- The reactor trip following loss of main feedwater and/or trip of the turbine to be installed promptly pursuant to this Order will thereafter be upgraded so that the components are safety grade. The licensee will submit this design to the NRC Staff for review.
- The licensee will continue operator training and have a minimum of two licensed operators per shift with TMI-2 simulator training at B&W by June 1, 1979. Thereafter, at least one licensed operator with TMI-2 simulator training at B&W will be assigned to the control room. All training of licensed personnel will be completed by June 28, 1979.

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That order provided that the licensee or any person whose interest might be affected by the order could request a hearing with respect to the order. Following requests for a hearing filed by Friends of the Earth and associated groups (collectively "FOE") and Messrs. Gary Hursh and Richard D. Castro, the Commission issued an order on June 21, 1979 directing that a Licensing Board be designated to pass upon the standing of the requesters and to conduct any hearing that might be required. The Commission further directed that the "subjects to be considered at any such hearing shall include":

1. Whether the actions required by subparagraphs (a) through (e) of Section IV of the Order are necessary and sufficient to provide reasonable assurance that the facility will respond safely to feedwater transients, pending completion of the long-term modifications set forth in Section II.
2. Whether the licensee should be required to accomplish, as promptly as practicable, the long-term modifications set forth in Section II of the Order.
3. Whether these long-term modifications are sufficient to provide continued reasonable assurance that the facility will respond safely to feedwater transients.

Following the formation of this Licensing Board it issued an "Order for Filing of Amended and Supplemented Requests for and Notice of Prehearing Conference" (July 3, 1979). In footnote 3 to that order the Board stated:

The Commission has already identified in its June 21, 1979, Order the broad issues to be considered. Each requester for hearing can, of course, assert in its [amended and supplemented request for a hearing] that further issues should be specified as long as they are related to the action taken by the Commission in its May 7, 1979, Order.

The above three orders provide the boundaries for this proceeding.

Limitations on Scope of Proceeding

As seen in the description of the background of this case, the Commission specifically identified the issues to be considered in this proceeding. While it is true that the Commission used the words "shall include" in identifying the three issues to be considered, we nonetheless believe that the Licensing Board correctly interpreted these words in its footnote (quoted above) as limiting any further issue sought to be raised in this proceeding to matters expressly "related to the action taken by the Commission in its May 7, 1979, Order." The action taken by the Commission is defined in the list of short-term actions and long-term modifications set forth in its order. The Commission's action was aimed at providing reasonable assurance that "the facility will respond safely to feedwater transients."^{3/} We believe this is the touchstone which the Board had in mind.

By virtue of its orders then, the Commission has directed that any hearing which the Board might conduct would be limited to the issues identified by the Commission. It is clear, of course, that the Commission may limit the jurisdiction it confers upon a licensing board in a particular proceeding.^{4/} The

^{3/} June 21, 1979 order at 2. In identifying the issues which could be considered should a proceeding be held, the Commission had before it, and apparently did not adopt, pleadings suggesting a broader scope for the proceeding. See FOE's May 15, 1979 letter request for hearing, specifically pp. 9-10 of the statement of "Generic Problems with Babcock & Wilcox PWR's" attached thereto; Hursh-Castro May 25, 1979 telegram requesting a hearing.

^{4/} Section 191 of the Atomic Energy Act (42 U.S.C. 2241) provides that the Commission may convene licensing boards "to conduct such hearings as the Commission may direct." See Public Service Company of Indiana (Marble Hill), ALAB-316, 3 NRC 167, 170 (1976); Northern Indiana Public Service Company (Bailly), ALAB-249, 8 AEC 980, 987 (1974); Consumers Power Company (Midland) ALAB-235, 8 AEC 645, 646 (1974).

notice of hearing or of opportunity for hearing governing a proceeding is the proper place to look in determining the scope of that proceeding.^{5/} In a proceeding, such as this one, where a hearing is not mandatory there are particularly strong reasons for limiting the issues to those which the Commission has stated may be raised.^{6/}

In more precisely defining the subject of this proceeding, we have looked at the documents available to the Commission when it issued its May 7 order. It appears that the basis for the Commission's order is found in "NRR STATUS REPORT ON FEEDWATER TRANSIENTS IN B&W PLANTS - April 25, 1979." In this report, it is quite clear from the statement of the problem found on page 1-1 that the total scope of concern was the sensitivity of B&W plants to feedwater transients and the role that this sensitivity might play as a precursor or contributor to a TMI-2 type of accident.

In evaluating the B&W plants' response to feedwater transients, the Staff specified improvements which would be necessary to provide reasonable assurance of protection of the public health and safety for continued operation of these facilities. The Staff considered three alternative ways of implementing these design changes, one of which was to shutdown the B&W plants until the changes were completed. The Staff evaluated these alternatives solely on the basis of safety considerations. The Staff recommended to the Commission that the plants be shutdown until the required actions were completed, based on two major considerations: (1) this action was the most conservative and (2) this action would allow time for the Staff and industry to work in a more orderly fashion. The

^{5/} Marble Hill, supra, 3 NRC at 170-71.

^{6/} See 10 CFR §2.760a; Cincinnati Gas and Electric Company (Zimmer), ALAB-305, 3 NRC 8, 12 (1976). We would note that if any person believed that enforcement action additional to that required here should be imposed on Rancho Seco, that position could be asserted via 10 CFR §2.206. See Commission's June 21, 1979 order at 2-3.

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Commission acted upon this recommendation and issued orders to all of the B&W operating plants, directing them to shutdown (or remain shutdown) until the actions necessary to insure that the plants could safely respond to feedwater transients had been accomplished by each licensee to the satisfaction of the Director of the Office of Nuclear Reactor Regulation.

As noted above, the May 7 order with respect to Rancho Seco provided that any hearing to be held with respect to this facility would include as issues whether the short and long-term actions are necessary and sufficient to provide reasonable assurance that the facility will respond safely to feedwater transients. At this time it does not appear that any party challenges whether the short or long-term actions are necessary. However, there is concern on whether the actions specified are sufficient to provide reasonable assurance of protection of the public health and safety for the continued operation of Rancho Seco.

Therefore, any party challenging the sufficiency of the actions taken must limit their contentions to Rancho Seco's ability to respond to feedwater transients. A feedwater transient either reduces the amount of feedwater provided to the steam generators or provides too much feedwater to the steam generators. A reduction or loss of feedwater reduces the amount of heat removed from the primary system by the secondary system and will result in increasing the pressure in the reactor coolant system. Too much feedwater increases the amount of heat removed from the primary system by the secondary and will result in decreasing the pressure in the reactor coolant system. Either of these situations if not acted upon by operator action and/or automatic plant design features can lead to inadequate cooling of the reactor core and subsequent damage to the reactor fuel.

In order for a plant to respond safely to a feedwater transient, there must be reasonable assurance that operator actions and/or automatic plant responses are

such that any resultant inadequate core cooling (described above) does not lead to core damage. Therefore any contentions that deal with the following areas appear to be within the scope of the plant's ability to respond safely to feedwater transients (including small break loss of coolant accidents):

1. operator training and qualifications which are required for insuring that prompt and correct action are taken during the course of a feedwater transient,
2. any plant design feature, control system or equipment which can lead to or aggravate the consequences of a feedwater transient,
3. any plant design feature, control system or equipment which is relied upon to mitigate the consequences of a feedwater transient prior to experiencing core damage,
4. any supporting analyses upon which items in 2 or 3 above are designed,
5. any supporting analyses developed for the purpose of determining plant response to feedwater transients, and
6. any supporting analyses developed for the purpose of providing operator guidelines and/or emergency procedures for coping with feedwater transients.

Our position with respect to the specific contentions put forward by FOE and by Messrs Castro and Hursh and the issues put forward by the California Energy Commission are set forth in separate filings. We will comment here, however, about one common theme asserted by all three.

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Both Intervenor and the Energy Commission have asserted that the Board must consider all information generated regarding the accident at TMI-2 subsequent to the May 7, 1979 order, and have specifically identified two documents which they seek to have considered, namely, NUREG-0560^{7/} and NUREG-0578.^{8/} The Staff has objected to this assertion as being legally insufficient.^{9/} For, while the Intervenor and the Energy Commission have identified these documents, they have failed to focus on which of the numerous recommendations contained in these reports are relevant to this proceeding. The law is now abundantly clear that in circumstances such as the present, the Intervenor and the Energy Commission have an express duty to demonstrate the connection, if any, between the specific recommendations in NUREG-0560 and NUREG-0578 which they desire considered by this Board and the subject matter of this proceeding. In rejecting similarly vague contentions, the Appeal Board in Gulf States Utilities Co. (River Bend Station Units 1 and 2), ALAB-444, 6 NRC 760, 773 (1977), expressly observed that

given the generalized nature of the studies identified in the TSAR [Technical Safety Activities Report], and the status of regulatory guides, it was not erroneous for the Licensing Board to have imposed its nexus requirement. Unlike in the case of the SER, where the relationship to the facility is perforce established by its introduction into evidence in connection with the application, there is no necessary connection between the safety of a facility and any particular TSAR item or regulatory guide. Some connecting link must therefore be supplied.

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- 7/ Staff Report on the Generic Assessment of Feedwater Transients in Pressurized Water Reactors Designed by the Babcock & Wilcox Company, July 1979.
- 8/ TMI-2 Lessons Learned Task Force Status Report and Short-Term Recommendations, July 1979.
- 9/ See, e.g., "Response of NRC Staff to Contentions of Intervenor and to Issues of Interested State," August 20, 1979, at 5-6.

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In seeking to apply this standard to the present proceeding, it is instructive, we believe, to observe that the TMI-2 Lessons Learned Task Force (the authors of NUREG-0578) were charged with making a much broader and more generic inquiry than the authors of NUREG-0560.^{10/} NUREG-0578, therefore, deals with the reactors manufactured by all four principal light water reactor vendors.^{11/} One of the recommendations (2.1.5.b - Inerting Boiling Water Reactor Containments) is, on its face, not applicable to B&W plants because it applies only to boiling water reactors. Other recommendations, which apply to pressurized water reactors, may not apply specifically to Rancho Seco.

While many, if not most, of the matters addressed in NUREG-0560 relate to the ability of B&W plants to respond safely to feedwater transients, there are some recommendations contained therein which are beyond the scope of this proceeding. For example, various recommendations are related to internal actions which the NRC Staff should undertake, such as updating Standard Review Plans and developing new Regulatory Guides.^{12/} As noted above with respect to NUREG-0578, the Intervenor and Energy Commission must establish a nexus between the recommendations of NUREG-0560 which they believe should be considered by the Board and the subject matter of this proceeding

Effect of Pending or Proposed Rulemaking on Admissibility of Contentions in This Proceeding

In response to a point raised by Staff counsel at the prehearing conference,^{13/} the Board directed the parties to treat in their briefs the effect, if any,

^{10/} NUREG-0578, p. 2.

^{11/} Westinghouse, Combustion Engineering, Babcock & Wilcox, and General Electric.

^{12/} NUREG-0560 at 4.

^{13/} Tr. 16.

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of a rulemaking, "either in program [sic] or planned", on the admissibility of contentions in this proceeding. The Staff has not identified any rulemaking, either in progress or formally planned, which deals with subjects within the scope of this proceeding. The Commission has published an advance notice of proposed rulemaking regarding "Adequacy and Acceptance of Emergency Planning Around Nuclear Facilities."^{14/} Since we view the subject of radiological emergency response plans as beyond the scope of this proceeding, we do not believe the Board need reach the question of whether this advance notice would have the effect of precluding consideration of this subject in this proceeding.

Conclusion

This proceeding is a limited one, with its boundaries deriving from the Commission's orders of May 7 and June 21, 1979, as interpreted by the Licensing Board in its order of July 3, 1979. Certain of the contentions and issues raised by the Intervenors and by the California Energy Commission are beyond the scope of this proceeding and should be rejected by the Board. As to others, no nexus has been established between the matters sought to be raised and the subject of this proceeding. The Board may wish to afford Intervenors and the Energy Commission an opportunity to cure these defects.^{15/}

Respectfully submitted,

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Dated at Bethesda, Maryland
this 27th day of August, 1979.

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^{14/} 44 FR 41483 (July 17, 1979).

^{15/} Staff intends to offer to meet further with Intervenors and the Energy Commission for discussions regarding their contentions or issues. Should any definitive progress be made toward agreement on contentions or issues, we will promptly so notify the Board.

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