TERA

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

BRIEF OF THE
SACRAMENTO MUNICIPAL UTILITY DISTRICT
ON THE SCOPE OF THE BOARD'S JURISDICTION

Discussion

The starting point for any consideration of the scope of this Board's jurisdiction must be the Commission's June 21 order initiating this proceeding, since "licensing boards 'are delegates of the Commission and exercise only those powers which the Commission has given [them].'" In the Matter of Public Service Company of Indiana, Inc., ALAB 316, NRCI 76/3, 167, 170 (1976), quoting Northern Indiana Public Service Co., ALAB 249, RAI-74-12, 980, 987 (1974). "[E]xcept where it recuses itself in a particular case, a licensing board's actions can neither enlarge nor contract the jurisdiction conferred by the Commission." In the Matter of Consumers Power Company, ALAB 235, RAI-74-10, 645, 647. (1974).1/

1/ The transcript of the Commission's meeting on July 11, 1979 shows, on page 12, that the Commission did not intend to preclude this Board from considering the subject of management competence and control even though that subject is not referred to in the June 21 Order. However, since we do not anticipate controversy over that aspect of the Board's jurisdiction, we shall not discuss it further.

1114 092

7910090 374

G

The June 21 Order lists three subjects to be considered at the hearing:

> "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. A contention challenging the correctness of the NRC staff's conclusion that the actions described in subparagraphs (a) through (e) have been completed satisfactorily will be considered to be within the scope of the hearing. However, the filing of such a contention shall not of itself stay operation of the plant.
>
> "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."

If the foregoing is to be read literally, it seems clear that Subjects 1 and 3 deal only with the ability of the facility to respond to feedwater transients, and that Subject 2 is limited to the single question of whether the long-term modifications required by the May 7 Order must be accomplished as promptly as practicable.

Before considering whether there is anything in the June 21 order or elsewhere to suggest that a broader reading would be appropriate, we shall discuss another document that gives assistance in interpreting that order. That document is the Commission's August 9 Order providing for a hearing in the Three Mile Island No. 1 proceeding. It seems reasonable that generally accepted principles of statutory inter-

pretation should be applied in interpreting the Commission's orders, and one of those principles is that statutes dealing with the same subject "should be construed together and compared with each other." 73 Am. Jur. 2d 386-387, Statutes §187. Another is that "[W]here a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject ... is significant to show that a different intention existed." People v. Drake (1977) 19 Cal. 3d 749, 755, 566 P. 2d 622; People v. Valentine (1946) 28 Cal.2d 121, 142, 169 P.2d 1; Fair v. Fountain Valley School District (1979) 90 Cal.App.3d 180, 187; see also United States v. Gila River Pima-Maricopa Indian Community (Ct. Cl., 1978) 586 F.2d 209, 215. If these principles are to be applied, it follows that insofar as specific hearing subjects are set forth in the Three Mile Island No. 1 order but are omitted from the Rancho Seco order, the omission is significant to show that the Commission did not intend the Rancho Seco hearing to extend to those subjects.

When we compare the Commission's August 9 order in the Three Mile Island No. 1 proceeding with its May 7 and June 21 orders in this proceeding, we see that the initial group of short-term actions required by the TMI order are essentially the same as the short-term actions required by the Rancho Seco May 7 order. We see also that the first of the long-term actions required by the TMI order - the submission of a failure modes and analysis of the

Integrated Control System to the NRC - is similar to one of the long-term actions required by the Rancho Seco May 7 order. But we also see that there are differences between the TMI order and the Rancho Seco order. The TMI order directs, as part of the short-term requirements, that a series of actions relating to emergency preparedness be taken and also lists certain emergency preparedness measures among the long-term actions; the Rancho Seco orders do not deal with the subject of emergency preparedness. The TMI order requires a demonstration of the adequacy of waste management capability; the Rancho Seco orders do not deal with that subject. There are other differences between the TMI and Rancho Seco orders, but we will not prolong this discussion by setting them forth.

Most important of all, the TMI order contains the following language:

> "In addition to the items identified for the other B&W reactors, the unique circumstances at TMI require that additional safety concerns identified by the NRC staff be resolved prior to restart. These concerns result from (1) potential interaction between Unit 1 and the damaged Unit 2 ... , and (4) recognized deficiencies in emergency plans and station operating procedures."

This language makes it clear that the omission of the subjects of emergency preparedness and evacuation plans from the Rancho Seco order was deliberate. And we believe the same may be said about the subject of waste management since the reference to waste management in the TMI order is coupled with a requirement that the licensee

demonstrate "that TMI-1 waste handling capability is not relied on by operations at TMI-2."

Based on the foregoing, we submit that a comparison of the Commission's orders in this proceeding with its August 9 order in TMI-1 proceeding shows that the Commissioners did not intend to delegate to this Board authority to consider matters such as emergency preparedness, evacuation plans and waste management.

We now return to the question which we raised earlier: Is there anything in the June 21 order or elsewhere to suggest that the Commission intended to vest in this Board jurisdiction over matters other than the ability of the facility to respond to feedwater transients and the schedule under which the long-term modifications required by the May 7 order should be accomplished? Our answer is a qualified affirmative, and we base that answer not on the June 21 order itself, but on the transcript of the Commission's July 11 meeting.

During that meeting, Chairman Hendrie noted, with apparent approval, that this Board, in its July 3 order, had stated that further issues could be specified "as long as they are related to the action taken by the Commission in its May 7, 1979, order." (Order of July 3, footnote 3, page 3; see also transcript of the Commission's July 11 meeting, pages 5-6). It seems fair to say that the remainder of the Commission's discussion on July 11 indicates that

the other Commissioners concurred in Chairman Hendrie's approval of this portion of the Board's July 3 order. Therefore, it seems fair to conclude that the July 11 transcript indicates that the Board has jurisdiction to consider matters related to the May 7 order even if those matters extend beyond the subject of the ability of the facility to respond to feedwater transients. We hasten to point out, however, that, as we read the May 7 order, it deals with little other than that subject.

The Board's prehearing conference order also requested the parties to address, in their briefs, the effect, if any, of a Commission rulemaking, either in program or planned, on the admissibility of any contentions. The Appeal Board's position on this point is set forth in In the Matter of Potomac Electric Power Company, (1974) ALAB 218, 8 AEC 79, 85:

> "In short, the Vermont Yankee line of cases stands for the proposition that licensing boards should not accept in individual license proceedings contentions which are (or are about to become) the subject of general rulemaking by the Commission. If this was only implicit in the Vermont Yankee opinion (4 AEC 930), it was explicitly articulated in the cases which followed. See, e.g., Shoreham, supra, ALAB-99, RAI-73-2 at 55-56, and Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), ALAB-179, RAI-74-2, 159 at 163-164 (February 28, 1974)."

The explanation given by the Appeal Board for its position, which is also set forth on page 85, is as follows:

> "Our consideration in adjudicatory proceedings of issues presently to be taken up by

the Commission in rulemaking would be, to say the least, a wasteful duplication of effort."

That the Appeal Board's position is tenable and would be sustained by the courts is, we believe, clear from the decision of the United States Supreme Court in Vermont Yankee Nuclear Power Corporation v. Natural Resources Defense Council (1978) 435 U. S. 519. The Court there stated, at page 543:

> "But this much is absolutely clear. Absent constitutional constraints or extremely compelling circumstances the 'administrative agencies should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.' FCC v. Schreiber, 381 U.S., at 290 ..."

As the Board is aware, the Vermont Yankee case dealt with the rulemaking procedures of the Nuclear Regulatory Commission.

It follows from the foregoing authorities, we submit, that the Board should not consider any matter that is about to become the subject of Commission rulemaking.

Conclusion

Our conclusion, then, is that this Board has jurisdiction to consider issues related to the action taken by the Commission in its May 7 order, but that its jurisdiction does not extend to other matters. Further, should it appear, at any time during the course of this proceeding, that any of the issues being considered by the Board is or

is about to become the subject of Commission rulemaking, the Board should give no further consideration to that issue.

Dated: August 24, 1979

Very respectfully submitted,

DAVID S. KAPLAN
JAN E. SCHORI

By David S. Kaplan
David S. Kaplan
Attorneys for Sacramento Municipal Utility District
P O Box 15830
Sacramento CA 95813
Telephone (916) 452-3211

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the following document:

Brief of the Sacramento Municipal Utility District on the scope of the Board's jurisdiction.

in the above captioned proceeding have been served on the following by deposit in the United States mail, first class, on this 24th day of August 1979:

Michael L. Glaser, Esq., Chairman
1150 17th Street, N.W.
Washington DC 20036

Dr. Richard F. Cole
Atomic Safety and Licensing Board Panel
U. S. Nuclear Regulatory Commission
Washington DC 20555

Mr. Frederick J. Shon
Atomic Safety and Licensing Board Panel
U. S. Nuclear Regulatory Commission
Washington DC 20555

Timothy V. A. Dillon, Esq.
1850 K Street N.W., Suite 380
Washington DC 20006

Gary Hursh, Esq.
520 Capitol Mall, Suite 700
Sacramento CA 95814

Mr. Richard D. Castro
2231 K Street
Sacramento CA 95816

Mr. Mark Vandervelden
Ms. Joan Reiss
Mr. Robert Christopherson
Friends of the Earth
California Legislative Office
717 K Street, #208
Sacramento CA 95814

Reed, Samuel & Remy
717 K Street, Suite 405
Sacramento CA 95814

Ms. Dian Greuneich
California Energy Commission
1111 Howe Avenue
Sacramento CA 95825

Atomic Safety and Licensing Board Panel
U. S. Nuclear Regulatory Commission
Washington DC 20555

Atomic Safety and Licensing Appeal Board Panel
U.S.Nuclear Regulatory Commission
Washington DC 20555

1114 100

Docketing and Service Section
Office of the Secretary
U. S. Nuclear Regulatory Commission

Mr. Lawrence Brenner
Counsel for NRC Staff
U. S. Nuclear Regulatory Commission
Office of the Executive Legal Director
Washington DC 20555

Mr. Stephen H. Lewis
Counsel for NRC Staff
U. S. Nuclear Regulatory Commission
Office of the Executive Legal Director
Washington DC 20555

David S. Kaplan
Counsel for SACRAMENTO
MUNICIPAL UTILITY DISTRICT