

UNITED STATES
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Joseph M. Hendrie, Chairman
Victor Gilinsky
Richard T. Kennedy
Peter A. Bradford
John F. Ahearne



In the Matter of)
)
SACRAMENTO MUNICIPAL UTILITY DISTRICT)
)
Rancho Seco Nuclear Generating Station)
)
)

Docket No. 50-312

ORDER

By a confirmatory Order dated May 7, 1979 the Commission directed that the Rancho Seco facility, then in a shutdown condition, should remain shut down until certain actions specified in the Order were satisfactorily completed, as confirmed by the Director, Office of Nuclear Reactor Regulation. The Order also directed the licensee to accomplish as promptly as practicable the long-term modifications set forth in Section II of the Order. The Order stated further:

Within twenty (20) days of the date of this Order, the licensee or any person whose interest may be affected by this Order may request a hearing with respect to this Order. Any such request shall not stay the immediate effectiveness of this Order.

Requests for a hearing have been received from Friends of the Earth and from members of the Board of Directors of the Sacramento Municipal Utility District.

The Commission hereby directs that the Chairman of the Atomic Safety and Licensing Board Panel shall, pursuant to

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10 CFR 2.105(e), select a board to determine whether the requesters meet the requisite personal interest test and to conduct any hearing which may be required.

The subjects to be considered at the 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. 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.


Resumed operation of the Rancho Seco facility on terms consistent with the Order of May 7, 1979, is not stayed by the pendency of these proceedings. Contrary to the contention of the Friends of the Earth in their filing of June 8, 1979, the transcripts of the Commission proceedings of April 25 and 27 reflect no Commission intent that hearings necessarily precede restart of the facility. Nor is such a requirement compelled by law or by the factual circumstances before us. Mere speculation that the hearing might develop facts indicating the need for further

enforcement action does not suffice to warrant a prohibition on restart of the facility. In the event that a need for further enforcement action becomes apparent, either in the course of the hearing or at any other time, appropriate action can be taken at that time.

NRC staff has now determined that the actions set forth in subparagraphs (a) through (e) have been completed satisfactorily, and it shall provide the Commission with an informational briefing as to the basis for its conclusions prior to permitting restart of the facility. That briefing will be open to the public. In receiving this briefing, the Commission will in no manner prejudge the merits of the adjudicatory hearing authorized by this Order. Any adjudicatory determination by the Commission that may arise from that hearing will be based solely on the record developed in that proceeding.*

It is so ORDERED.

For the Commission



SAMUEL J. CHILK
Secretary of the Commission

Dated at Washington, D.C.,
this 21st day of June, 1979.

*/ The decision of the Licensing Board will be made on the basis of the record developed before it. Accordingly, pursuant to our rules, statements made by any person in the course of the staff's informational briefing for the Commission may not be "pleaded, cited, or relied upon" in the adjudicatory proceedings before the Licensing Board, or in subsequent appellate proceedings before the Appeal Board. 10 CFR 9.103. If and when Commission review of that adjudication takes place, any party wishing to plead, cite, or rely on the transcript of the informational briefing will be at liberty to do so. To that extent, owing to the unusual factual circumstances present here, we waive the prohibition contained in 10 CFR 9.103, in accordance with the provision of that rule authorizing such waiver by the Commission.