

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



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

RESPONSE OF SACRAMENTO MUNICIPAL
UTILITY DISTRICT TO REVISED STATE-
MENT OF ISSUES OF CONCERN TO THE
CALIFORNIA ENERGY COMMISSION

The Board's August 3 Order

"directed that all parties, including the California Energy Commission, meet and confer regarding possible stipulation of contentions in this proceeding, and submit to the Board no later than August 20, 1979, a proposed stipulation concerning agreed-upon contentions, and a statement of contentions on which agreement cannot be reached;" (emphasis added)

The foregoing directive had, of course, been issued orally at the prehearing conference on the morning of August 1, and the parties met that afternoon to discuss the situation. Counsel for the Energy Commission stated during that meeting that she would probably wish to amend her previous filing, and we stated, on behalf of the District, that upon receipt of the amended filing we would file a response in which we would advise the Board which of the contentions in the amended filing we

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would stipulate were proper contentions and which contentions we would contend were improper.

The "revised statement" which the Energy Commission has now filed is not a list of contentions. It contains ten items which are characterized as "major issues which the California Energy Commission has identified as requiring examination in this proceeding." It also lists "areas" which certain of these issues "will require inquiry into." And, in addition, it sets forth several pages of quotations from NUREG 0560 and 0578.

The Energy Commission's procedural position, and its justification for disregarding the Board's directive that it submit a stipulation relating to contentions, appears on the first page of its revised statement and in the second of the two footnotes on that page. The Energy Commission there states that it is participating as the representative of an interested state pursuant to Section 2.715(c) of the Rules of Practice and indicates, at least if our reading is correct, that under Section 2.715(c) it is obligated only to identify the issues it intends to address and that it need not assert contentions.

In considering the Energy Commission's position, the most helpful recent decision appears to be In the Matter of Gulf States Utilities Company, 6 NRC 760 (1977). The Appeal Board there stated, at pages 768-769:

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"The State sought admittance to the proceeding as an 'interested state.' LBP-76-32, supra, 4 NRC at 296. It accordingly was not required to set forth contentions as a precondition to its participation. 10 CFR §2.715(c); ALAB-317, supra, 3 NRC at 179 (1976). Once let in, however, an 'interested state' must observe the procedural requirements applicable to other participants. See ALAB-317, 3 NRC at 180, n.7. It may - as they may - raise particular issues of interest or concern to it. Project Management Corp. (Clinch River Breeder Reactor Plant), ALAB-354, 4 NRC 383, 392-93 (1976). The Board is entitled to insist, however, that any new issue raised be framed with sufficient detail and preciseness. Cf. 10 CFR §2.714(a). A hearing participant 'must be specific as to the focus of the desired hearing.' BPI v. Atomic Energy Commission, 502 F.2d 424, 429 (D.C.Cir. 1974). And contentions (or their equivalent in the case of an 'interested state') serve the purpose of defining the 'concrete issues which are appropriate for adjudication in the proceeding.' Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 191, affirmed, CLI-73-12, 6 AEC 241 (1973), affirmed sub. nom. BPI v. Atomic Energy Commission, supra."

Later in the decision, at page 771, the Appeal Board summarized the rulings of the Licensing Board in the following language:

"Early in the ensuing hearing, after extensive oral argument, the Licensing Board ruled that the mere notation of TSAR and SER items and of regulatory guides was insufficient (Tr. 1657-59). Such notations, standing alone, were thought by the Board not to provide 'a fair opportunity to other parties to know precisely what the limited issues [are], exactly what proof, evidence or testimony is required to meet that issue and exactly what support the State intends to adduce for its allegations' (Tr.1658; 4 NRC at 298). What was required in addition were allegations establishing, with respect to each item or guide, a relationship to the River Bend application (4 NRC at 312-13). ..."

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In the Gulf States case, the State had generally identified its questions "as those described in GESSAR-238 [the General Electric Safety Analysis Report for the type of reactor the facility was to employ], in the staff's safety evaluation of GESSAR-238, and in the staff's TSAR. (6 NRC 770). The Appeal Board held that given the generalized nature of these documents, "it was not erroneous for the Licensing Board to have imposed its nexus requirement." 6 NRC 773.

The conclusions to be drawn from the Gulf States decision are that the Board is entitled to ask (1) that any issue raised by the Energy Commission be framed with sufficient detail and preciseness, and (2) that as to each such issue the Energy Commission make allegations establishing a relationship between the issue and the Rancho Seco facility.

Against this background, we now consider the "major issues" identified by the Energy Commission.

Issue No. 1

In its proposed Issue No. 1 the Energy Commission has simply restated the first of the subjects referred to in the Commission's June 21 Order. The proposed issue reads as follows:

Whether the short-term modifications and actions described in subparagraphs (a) through (e) of Section IV of the Nuclear Regulatory Commission's ("NRC") May 7, 1979 Order are 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 of the May 7 Order.

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Our understanding of the Board's July 3 Order, and of its August 3 Order, is that the parties were directed to set forth with reasonable specificity contentions (or issues, if the Energy Commission is correct in its view that it may not be required to assert contentions) lying within the scope of the broad, general subjects identified by the Commission in its June 21 Order. As we have shown, the Gulf States case is authority for the proposition that the Board may require the Energy Commission to frame its issues with such specificity. As proposed Issue No. 1 does not satisfy what we understand to be the Board's request that particular issues, narrower than the three broad "subjects" specified by the Commission, be identified by the parties, we will not stipulate that it is a proper issue.

We appreciate that Issue No. 1 is followed in the revised statement by several pages of quotations from NUREG-0560 and NUREG-0578. Those quotations do not supply the missing specificity. They are abstract statements which do not relate to the Rancho Seco facility.

Issue No. 2

In its proposed Issue No. 2 the Energy Commission has simply restated the third of the subjects referred to in the Commission's June 21 Order. The proposed issue reads as follows:

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Whether the long-term modifications described in the NRC's May 7 Order are sufficient to provide continued reasonable assurance that the facility will respond safely to feedwater transients.

Our position on proposed Issue No. 2 is identical to our position on proposed Issue No. 1

Issue No. 3

Proposed Issue No. 3 reads as follows:

Whether facility operators and associated personnel have adequate training and experience to respond safely and responsibly to feedwater transients and other unexpected events.

SMUD will stipulate that Issue No. 3 is a proper issue save and except for the last four words. We believe the phrase "other unexpected events" lacks the specificity required by the Board's orders.

Proposed Issue No. 3 is followed by seven subissues which we will not here set forth. We believe the fifth of these is improperly framed because it assumes that design changes are needed in the control room without alleging facts to support that assumption. We believe the sixth is improperly framed because it assumes that the plant has less than its originally intended design margins without alleging facts to support that assumption. We appreciate that the draftsman of this sentence had in mind the statement in NUREG-0578 that the frequency with which some safety systems are called upon to function may exceed their previously accepted design basis, but the two statements are not precisely the same. In any case, the sixth subissue adds nothing to the basic issue. The seventh subissue lacks the specificity required by the Board's orders.

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Issue No. 4

Proposed Issue No. 4 reads as follows:

Whether, notwithstanding measures taken and contemplated to deal with feedwater transient problems, the facility should be required to revise emergency planning procedures so that, in the event of future problems, persons in the immediate reactor area and in the facility's reasonable impact area will not be exposed to danger.

The Energy Commission's discussion of this proposed issue indicates that it wishes to litigate not only the facility's emergency plans but also "the State and local plans associated therewith." We do not think it reasonable to read the Commission's June 21 Order as extending to subjects of this sort. Therefore, we will not stipulate that Issue No. 4 is a proper issue.

Issue No. 5

Proposed Issue No. 5 reads as follows:

Whether, notwithstanding measures taken and contemplated to deal with feedwater transient problems, the facility should be required to revise its accident responses and mitigation measures so that, in the event of future problems, the risk of hazardous consequences will be reduced.

As worded, this proposed issue lacks the specificity required by the Board's orders. The issue is followed by a listing of three sub-issues, the last of which is followed by a list of five "hazards" which consist of quotations from NUREG-0578. The Energy Commission does not allege that these "hazards" exist at Rancho Seco, and some of them do not, since arrangements for containment isolation at Rancho Seco are quite different from those at Three Mile Island.

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Overall, our position on Proposed Issue No. 5 is (a) that it lacks the necessary specificity, (b) that it is not supported by allegations that the hazards described exist at Rancho Seco, and (c) that it is directed at mitigating the consequences of a serious accident whereas a reasonable reading of the Commission's June 21 Order is that it deals with measures necessary to ensure that the facility can be operated in such a manner that a serious accident will not occur.

Issue No. 6

Proposed Issue No. 6 reads as follows:

Whether, notwithstanding the short-term and long-term modifications described in the May 7 Order, the facility should be required to operate at less than full rated capacity in order to produce an additional margin of safety to respond to feedwater and other transients, pending a complete analysis and understanding of the ramifications of the Three Mile Island accident.

We believe this issue lacks the necessary specificity. If the Energy Commission believes the facility cannot be safely operated at its full rated capacity, it should allege, with specificity, the facts which lead it to that conclusion. We point out also that the proposed issue might be looked on as falling within the area of "remedy." We assume the Board will not consider "remedies" such as directing operation at less than full capacity until and unless it determines that the plant cannot be operated safely at its design rating. What the parties and the Board are now attempting to do is to identify the issues that must be considered in order to

enable the Board to make that determination. Consideration of remedies at this point would be putting the cart before the horse.

Issue No. 7

Proposed Issue No. 7 reads as follows:

Whether the facility should be required to retrofit as promptly as practicable in order to have the same or better safety devices to respond to feedwater transients as are required on new plants which are currently being licensed.

As worded, this proposed issue lacks the necessary specificity. We note that the Energy Commission recognizes this and has alleged in a footnote that it is unable to list at this time the specific devices which are required at new plants but which are not in place at Rancho Seco. We do not see why the Energy Commission could not have obtained this information through informal inquiries to the staff and to District personnel. In any case, the proposed issue is defective in its present form.

Issue No. 8

Proposed Issue No. 8 reads as follows:

Whether the Three Mile Island events and subsequent inquiries and analyses have identified areas in addition to transients originated by failures in the feedwater systems where current design margins are inadequate to provide reasonable assurance that the facility will respond safely if a problem should arise.

This proposed issue lacks the necessary specificity. The Energy Commission has available to it the reports that have been issued by the Commission staff and others as the

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result of Three Mile Island. If it believes that those reports have identified problem areas which exist at Rancho Seco, it should specify the problem areas with which it is concerned and allege facts supporting its belief that such problems exist at Rancho Seco.

Issue No. 9

Proposed Issue No. 9 reads as follows:

Whether the procedures and criteria used by the NRC and SMUD for determining when to require corrective action or to shut down the facility are sufficient to provide reasonable assurances that the facility will be operated safely.

This is far less specific than the three general "subjects" listed in the Commission's June 21 Order. We recognize that it is followed by a reference to two specific communications - a January 1978 letter from a then-member of the TVA staff and a recent letter from SMUD's Assistant General Manager and Chief Engineer. However, neither of these references is framed as an issue.

Issue No. 10

This proposed issue reads as follows:

Whether the procedures and criteria used by SMUD and the NRC for determining the actions necessary prior to restart of the facility after either a forced outage or shutdown required by the NRC, are sufficient to provide reasonable assurances that the facility will be operated safely.

If the Energy Commission believes that the procedures and criteria used by SMUD prior to restart pose a threat to

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the public, it should allege, with specificity, the facts which have led it to that belief.

CONCLUSION

The Energy Commission has taken the position that it need not stipulate on contentions and that under Section 2.715(c) of the Rules of Practice it is required only to identify issues. Assuming that position is correct, the teaching of the Gulf States case is that the Board is entitled to insist that such issues be framed with detail and preciseness and that a nexus be shown between each proposed issue and the Rancho Seco facility. We respectfully submit that the document the Energy Commission has filed does not satisfy those requirements.

Dated: August 17, 1979

Very respectfully submitted,

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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) Docket No. 50-312
Station)
)

CERTIFICATE OF SERVICE

I hereby certify that copies of the following document:

Response of Sacramento Municipal Utility District
to Revised Statement of Issues of Concern to the
California Energy Commission.

in the above captioned proceeding have been served on the follow-
ing by deposit in the United States mail, first class, on this

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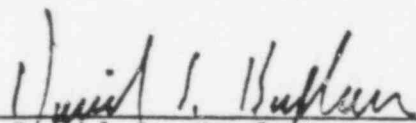
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