

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of

DUKE POWER COMPANY

(William B. McGuire Nuclear Station,
Units 1 and 2)

Docket Nos. 50-369
50-370

April 10, 1979

MEMORANDUM AND ORDER RULING ON
MOTIONS TO REOPEN RECORD

1. CESG's Petition to Reopen the Safety Phases
of Licensing Proceedings for Duke Power's
McGuire and Catawba Nuclear Stations

On January 28, 1979, the Carolina Environmental Study Group (CESG), an intervenor in the above-identified proceeding, petitioned the Commission to reopen the safety phases of the licensing proceedings for Duke Power Company's Catawba Nuclear Station and McGuire Nuclear Station. On March 7, 1979, the Director of the Office of Nuclear Reactor Regulation advised CESG that its request to reopen the Catawba proceeding is being treated as a request under 10 CFR §2.206 of the Commission's regulations. However, since the matter of issuance of operating licenses for the McGuire facility is currently pending before this Board, CESG's request to reopen the safety phase of the McGuire proceeding has been referred to us. On the same day, we issued an order advising the parties

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that we were treating the CESG request as a motion to reopen the record in this proceeding and directed the Applicant and the NRC Staff to file timely answers to the motion.

On March 23, 1979, the Applicant and the NRC Staff each filed an answer urging the Board to deny CESG's Petition to Reopen. We have reviewed all of the filings and for the reasons set forth below conclude that the matters raised by CESG do not establish good cause for reopening the record in this proceeding. Accordingly, the request is denied.

Discussion

CESG's motion to reopen the safety phase of this proceeding is grounded upon the Commission's January 18, 1979, policy statement concerning the Reactor Safety Study (Rasmussen Report or WASH-1400) in which the Commission, among other things, withdrew its approval of the Executive Summary of WASH-1400.^{1/} However, CESG states in its petition that the "Rasmussen Report was not relied on in making the safety evaluations of either McGuire or Catawba." Thus, there is no nexus between the

^{1/} "NRC Statement on Risk Assessment and the Reactor Safety Study Report (WASH-1400) in light of the Risk Assessment Review Group Report", dated January 18, 1979. See press release No. 79-19 entitled, "Nuclear Regulatory Commission Issues Policy Statement on Reactor Safety Study and Review by Lewis Panel", mailed January 19, 1979.

1. In reviewing the Clinch River application, the staff used the RSS analyses of the time to containment failure for various core melt sequences as an aid in determining what licensing requirements would assure comparability of residual (Class 9) risks between the CRBR and LWRs generally. If the Clinch River review is reactivated or another similar review is requested, this licensing position should be reconsidered.
2. In the report on ATWS, the NRR staff used the RSS estimates of the overall probability of core melt as a benchmark in recommending a quantitative safety objective for ATWS. The staff is reconsidering the degree of reliance on the RSS in light of the Review Group report and expects that the forthcoming supplement to NUREG-0460 will take an approach which is consistent with the Review Group's recommendations.
3. In addressing the concerns of an ACRS consultant relating to d.c. power supply reliability, the staff utilized WASH-1400 to confirm the staff's conclusion that adequate protection of the public health and safety had been provided, and that the evaluation of this generic issue was proceeding at a reasonable pace. The use of WASH-1400 in the staff evaluation of this issue is being reconsidered as a part of the resolution of Task Action Plan A-30 dealing with the adequacy of d.c. power supplies.

The first item is limited to Clinch River and has no applicability to the instant proceeding. CESC has not raised d.c. power supply reliability as an issue and therefore the third item is also inapplicable. The only item possibly related to McGuire is the ATWS issue inasmuch as CESC has made reference thereto.^{2/} However, an examination of Vol. 3

^{2/} CESC's allegation asserts that WASH-1270 requires "dual independent control rod systems". WASH-1270 is a technical report which merely lists possible approaches to address Anticipated Transients Without Scram (ATWS); it imposes no requirements upon any applicant.

has undertaken an in-house study "to provide a basis for submitting recommendations to the Congress regarding the extension or modification of the Price-Anderson Act." A draft version of the study report was circulated for comment in April, 1974. On October 30, 1975, the Nuclear Regulatory Commission announced that the final report had been completed.^{3/}

* * *

The Commission later commissioned an assessment of WASH-1400:

The Risk Assessment Review Group, chartered by the NRC in July, 1977 to "provide advice and information to the Commission on the final report of the Reactor Safety Study, WASH-1400," and related matters, submitted its report to the Commission on September 7, 1978. The Review Group, chaired by Professor Harold Lewis of the University of California at Santa Barbara, was formed in response to letters from Congressman Udall, Chairman of the House Committee on Interior and Insular Affairs, expressing misgivings about the Reactor Safety Study (WASH-1400), and in particular about the "Executive Summary" published with the Main Report. It was expected that the Review Group's report would "assist the Commission in establishing policy regarding the use of risk assessment in the regulatory process" and that it would "clarify the achievements and limitations of the Reactor Safety Study." [footnotes omitted]^{4/}

^{3/} Ibid., p. 1.

^{4/} Ibid., p. 1.

In its petition, CESG also attempts to use the Commission's position on WASH-1400 as a vehicle for relitigating additional matters, most of which were previously considered at length in this proceeding. These include need for power, stud bolts, Class-9 accidents, and ice-condenser pressure suppression containments. However, CESG presents no specification of any factual information that would support a proposal that the Licensing Board probe these matters.

Need for power and cost-benefit balancing of need for power bear no relationship to the Rasmussen Report. Moreover, CESG has failed to present new or significant information. The adequacy of the "stud bolt" data was addressed in the McGuire Construction Permit decision and CESG abandoned this contention in the present Operating License proceeding. As noted by the Appeal Board recently, "[t]he policy that environmental statements on (land-based) plants generally need not consider Class 9 accidents rests upon a 1971 Commission judgment that their likelihood is so remote as to make them incredible." Offshore Power System (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 212 (1978). Thus, WASH-1400 clearly was not the basis on which Class 9 accidents were excluded from detailed discussion in this and other individual licensing proceedings for land-based reactors. Regarding the "ice condenser type pressure suppression containment" utilized in the McGuire design, we note that the matter was raised by CESG at the Construction

2. CESG's Renewal of Motion to Reopen Environmental
Hearing to Add Contention (3)

On September 8, 1978, Intervenor CESG filed a motion seeking to reopen the environmental phase of the hearing which is now closed. CESG would have the Board accept a contention relating to the environmental effects of the fuel cycle, particularly regarding the storage of high-level wastes, on the ground that "[t]he absence of even a plan for the long term storage of nuclear wastes ... makes meaningless the projected radiological impacts of waste given in the Final Environmental Impact Statement."

In their oppositions to CESG's motion, Applicant and Staff point out that the motion raises no new matters not raised in a similar motion filed by CESG on June 26, 1978, and denied by this Board's Memorandum and Order of August 14, 1978 (unpublished). Applicant and Staff do point out that in the instant motion, CESG has now requested that the matter raised in the motion be certified to the Commission. Applicant and Staff oppose this request.

The Board agrees that CESG has not presented any new or significant material which would bear on the Board's ruling of August 14, 1978. Accordingly, the instant motion is denied for the reasons set forth in our Memorandum and Order of August 14, 1978. The request for certification also must be denied. The Commission's policy regarding the environmental effects of the fuel cycle is well settled. It has not changed

following negotiations among CESG, Staff and Applicant which led to a stipulation of contentions.

In the circumstances (i.e., the record having been closed but no initial decision issued), we believe the Staff states the appropriate legal principle against which to judge the CESG motions. Accordingly, we weigh the five factors governing untimely petitions to intervene set forth in 10 CFR §2.714.

1. Has CESG shown good cause for its untimely filing? With regard to the emergency plan, CESG's argument that "good cause" has been shown is brief:

This issue is raised at this date because the issue was postponed to the SER stage. Clarification of the plan ... was received in July, 1978, during discovery for the July-August, 1978 hearings. This is the first chance to raise this contention intervenors have had.

CESG's statement that it has not had a prior opportunity to raise this issue is clearly incorrect. CESG did include an emergency planning contention in its Petition to Intervene and subsequently abandoned it. Staff points out that the plan itself has been available to CESG since February 1976 and the Staff's evaluation of it since March 1978. CESG does not explain how the supposed "clarification" of the plan in July 1978 now requires that the contention be taken up. Clearly in these circumstances, "good cause" has not been shown.

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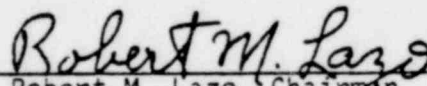
absence of specific allegations of inadequacies in the Applicant's design of the ice condenser system or in the emergency plan, or the Staff's review of them, we are of the opinion that the Staff's review does represent CESG's and the public's interests adequately.

5. Would CESG's participation broaden the issues or delay the proceeding? Clearly, where the record has been closed and the Board is engaged in formulating its decision, the issues would be broadened and the proceeding delayed.

In light of the above discussion, CESG's motions to add Contentions (4) and (5) are denied.

It is so ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Robert M. Lazo, Chairman

Dated at Bethesda, Maryland,
this 10th day of April, 1979.

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