

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE NUCLEAR REGULATORY COMMISSION



In the Matter of )  
METROPOLITAN EDISON COMPANY )  
(Three Mile Island Nuclear )  
Station, Unit No. 1) )

Docket No. 50-289  
(Restart)

LICENSEE'S RESPONSE TO UCS' MOTION FOR  
RECONSIDERATION OF CLI-80-16

On June 6, 1980, the Union of Concerned Scientists (UCS) filed a motion requesting the Commission to reconsider its decision in CLI-80-16 not to waive or make an exception in this proceeding to the hydrogen control criteria established by 10 CFR 50.44. For reasons different than those advanced by UCS, Licensee joins UCS in its request.

It has been Licensee's position that post-accident hydrogen control is a long-term generic issue intended to be dealt with by the Commission through rulemaking and therefore outside the intended scope of the TMI-1 restart hearing. Five Commissioners have ruled otherwise in CLI-80-16 and Licensee does not now seek to relitigate the question of scope. Licensee, however, does urge that if the issue of hydrogen control is to be considered in this proceeding, the Commission should accomplish this objective through a waiver of or exception to 10 CFR

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50.44 rather than through a novel and, in Licensee's view, improper application of 10 CFR 100.

NRC and its licensees have long promoted the establishment of design and other regulatory criteria through generic rulemaking proceedings. One of the advantages sought, and generally believed by NRC applicants and licensees to have been obtained, through the establishment of criteria by regulation is the removal of such criteria from litigation in individual licensing proceedings. Thus Atomic Safety and Licensing Boards and Appeal Boards have consistently rejected challenges to the ECCS design criteria established by Commission regulation. See e.g., Commonwealth Edison Company (Zion Station, Units 1 & 2) ALAB-226, 8 A.E.C. 381, 402 (1974) and cases cited therein; Consolidated Edison Company (Indian Point Station, Unit No. 2) ALAB-188, 7 A.E.C. 323, 330-31 & nn. 27-28 (1974). It has been widely assumed that similar treatment would be accorded to attacks on the Commission's companion regulation on hydrogen control design criteria.

Applicants and licensees have, of course been aware of a mechanism in the Commission's Rules of Practice (10 CFR 2.758) which permits a waiver of or exception to the Commission's regulations. This could occur, however, only in special circumstances and by concurrence of both the Licensing Board and the Commission. In contrast, the Commission's decision in CLI-80-16 would permit any intervening party, without special

approval by the Licensing Board or Commission, to inject in any individual licensing proceeding the adequacy of a design feature covered by Commission regulation simply by claiming a credible sequence of events (including operator action or inaction) which challenges the adequacy of that design feature and which may lead to accident doses more severe than Part 100.

Part 100 is concerned with reactor siting criteria, not with plant design. It is concerned with maximum credible accidents only for purposes of establishing suitable exclusion areas and low population zones. Section 100.11(a), fn.1. It was never intended as a vehicle for challenging the validity of other Commission regulations whose very purpose is to establish design criteria which bound the accident events determined by the Commission through rulemaking proceedings to be credible.

Licensee particularly disagrees with the Commission's reliance on the Court of Appeals decision in Union of Concerned Scientists v. AEC, 499 F.2d 1069 (D.C. Cir. 1974). That decision contradicts rather than supports the Commission's ruling in this proceeding. In that case UCS contended that the maximum accident which should have been considered in the Pilgrim operating license proceeding was a core melt accompanied by a breach of containment. The Court of Appeals sustained the Licensing Board's ruling that the contention was an improper challenge to the AEC's interim ECCS acceptance criteria "for

the simple reason that the accident UCS would postulate could only occur upon failure of the ECCS. If the criteria are met, the ECCS is presumed to be effective, in which case a LOCA would not escalate into a meltdown of the fuel core." Id at 1089. The Court expressly rejected UCS' reliance on Section 100.11(a) of Part 100 as a basis for the contention. While acknowledging that conformance with the interim acceptance criteria does not establish compliance with Part 100, the Court concluded:

"It was open to petitioner to challenge the manner in which the Staff performed this site criteria analysis, but that would raise a question quite different from the maximum credible accident for purposes of analyzing ECCS performance. The AEC has chosen to employ a most conservative (drastic) assumption in determining site suitability because site selection is the most critical decision. Once a site has been approved, however, it is entitled to indulge more realistic assumptions, such as the assumption that an ECCS meeting the IAC will work effectively. That assumption may be wrong, but the forum for challenging it was correctly held not to be the licensing hearing but the rule making." [Id at 1090]

Thus the Court of Appeals rejected precisely the proposition espoused in CLI-80-16, i.e. that Part 100 could be used as a vehicle for bypassing other Commission regulations bounding accident events which need be considered in licensing proceedings.

Thus if the Commission adheres to its position that

post-accident hydrogen control should be considered in the TMI-1 restart hearing, it should do so by waiving or making an exception to the 10 CFR 50.44 hydrogen design basis assumptions and not by distorting the intended purpose of Part 100. Such a waiver or exception need not entail the dire consequences assumed in CLI-80-16, namely that "[u]nder those portions of 50.44 that would remain, and under 10 CFR Part 50, Appendix A, General Design Criterion 50, the evaluation would need to assume that a loss-of-coolant accident is certain to occur, that any hydrogen generated is certain to burn, and that the containment is certain to fail at pressures in excess of design pressure." It is unclear to Licensee on what basis the Commission concludes that these consequences would necessarily flow from a waiver or exception. The simple answer, however, is that in any event the Commission can in its order direct a different result by permitting the Licensing Board to make its own evaluation of these occurrences.

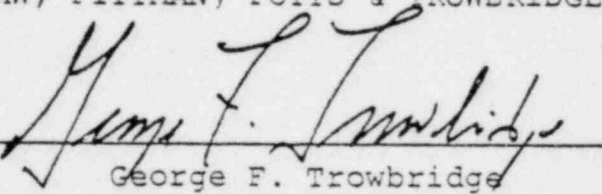
Under a waiver of or exception to 10 CFR 50.44, and with suitable instruction from the Commission, the Licensing Board would apply to the issue of hydrogen control the conventional standard under the Atomic Energy Act and Commission regulations as to whether the design of TMI-1, including modifications proposed by Licensee in connection with the restart hearing, provides reasonable assurance that the public health and safety will not be endangered. Based on the evidence

presented in the restart hearing, the Board would consider whether there remains a credible sequence of accident events which would lead to the generation of substantial quantities of hydrogen and, if so, whether potential consequences of such generation are such as to require hydrogen control measures pending completion of the Commission's impending rule-making proceeding.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

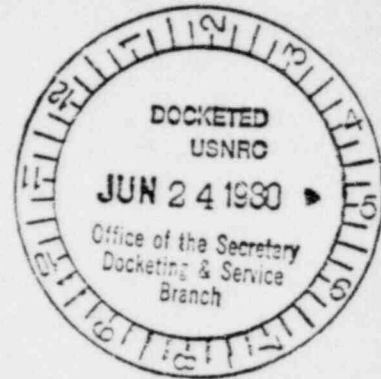
By

  
George F. Trowbridge

Dated: June 24, 1980

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE NUCLEAR REGULATORY COMMISSION

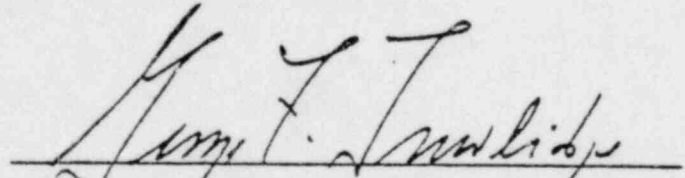


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CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Response to UCS' Motion for Reconsideration of CLI-80-16," dated June 24, 1980, were served upon those persons on the attached Service List by deposit in the United States mail, postage prepaid, this 24th day of June, 1980, and that copies of said Licensee's Response have on the same day been delivered by hand to the following:

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Commissioner Richard T. Kennedy  
Commissioner Joseph M. Hendrie  
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Dated: June 24, 1980

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
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METROPOLITAN EDISON COMPANY ) Docket No. 50-289  
 ) (Restart)  
(Three Mile Island Nuclear )  
Station, Unit No. 1) )

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