UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
METROPOLITAN EDISON COMPANY, ET AL.	)	Docket No. 50-320 OLA
	)	
(Three Mile Island Nuclear Station Unit 2)	)	

NRC STAFF ANSWER IN OPPOSITION TO PETITIONER STEVEN C. SHOLLY'S MOTION FOR TEMPORARY SUSPENSION OF VENTING AND, IN THE ALTERNATIVE, MOTION FOR REFERRAL

I. INTRODUCTION

On July 3, 1980, Petitioner Steven C. Sholly filed a document styled "Petitioner's Motion for Temporary Suspension of TMI-2 Containment Venting Pending Hearing" (Motion)[1/] Therein, Petitioner asserts that this Atomic Safety and Licensing Board has the authority, which he asks that it exercise, to issue an order suspending the venting of the Three Mile Island Nuclear Station, Unit 2 (TMI-2) reactor building which had been authorized by the Commission on June 12, 1980. See CLI-80-25.

For reasons presented below and in the "NRC Staff Answer in Opposition to the Requests of Karen Lee Miller and Mary H. Douglas and Portions of the

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1/ The Staff was not formally served with Petitioner's Motion but was provided with a copy by counsel for the Licensee. It is unclear whether copies were served on the Licensing Board or any other party.

Joint Request of Steven C. Sholly and Ronald [sic] E. Hossler, dated July 3, 1980 (Staff Answer), the NRC Staff (Staff) opposes Petitioner's Motion and urges that it be denied.

The procedural background underlying the Motion is clear. On June 12, 1980, the Nuclear Regulatory Commission issued a Memorandum and Order, CLI-80-25, and an Order for Temporary Modification of License, each addressing the matter of venting the Krypton-85 (Kr-85) from the TMI-2 reactor building. The thrust of the Memorandum and Order is to authorize the licensee, Metropolitan Edison Company (Met Ed or the licensee), to vent the Krypton-85 (Kr-85) as described therein and as permitted by the concurrently issued Order for Temporary Modification of License. The latter Order, by revising certain technical specification on a temporary basis, in effect allows the attainment of a faster venting rate. The Memorandum and Order does not provide an opportunity for hearing; the Order for Temporary Modification of the License did provide such an opportunity to persons whose interests may be affected by its explicit provisions.

II. DISCUSSION

As discussed in the Staff Answer, we do not believe that the Licensing Board has the jurisdiction to consider the matter of venting (as opposed to the rate of venting as provided by the Order for Temporary Modification

of License).[2/] This position is based on what the Staff believes to be the better intrepretation of the totality of actions taken by the Commission respecting venting, in particular, its Order Denying Motion for Reconsideration of CLI-80-25 and Order for Temporary Modification of License, CLI-80-26, wherein the Commission declared:

> With regard to purging itself, the unmodified technical specifications which allow for purging were adopted as part of the licensing proceeding for TMI-2 after full opportunity for public hearing. There has been extensive public participation in the purging decision through public meetings and comments on the environmental assessment. There has thus been ample opportunity for members of the public to raise any issue which might have been brought up in an adjudicatory hearing and to present evidence contradictory to the positions of the NRC Staff or Metropolitan Edison. The joint petitioners complain that there has been no public hearing specifically devoted to purging, but they have not indicated that any relevant evidence exists which they have somehow been prevented from bringing to the Commission's attention. Accordingly, since the procedures by which the Commission's orders were developed met the requirements of the Atomic Energy Act and have provided for a thorough consideration of the issues, we reject the suggestion that these orders should be withdrawn on procedural grounds. (slip op. at 6-7)

A contrary interpretation, less supportable, can be made, however, namely that in the context of the request that was before the Commission[3/], it was presented with and decided only a question of whether a prior hearing was necessary with respect to venting. The issue of whether a hearing nonetheless could be conducted during or after the action to consider the matter of venting itself was never explicitly addressed.

2/ The thrust of Petitioner's Motion in general, as we read it, is directed at venting, not at the provisions of the Order for Temporary Modification of License, in spite of his reference to the latter.

3/ Joint Motion for Reconsideration of CLI-80-25 and Order for Temporary Modification of License, dated June 23, 1980.

With respect to Petitioner's request for a temporary suspension of venting, such action is in any event clearly outside of the scope of what this Licensing Board may undertake. Under either interpretation of the Commission's intentions regarding the need for a hearing on this matter, it is evident that no prior hearing is warranted. To grant the relief sought by Petitioner would be tantamount to granting the prior hearing expressly determined to be unnecessary by the Commission. Implicitly, the Court of Appeals' denial of injunctive relief, copy attached,[4/] supports the Commission's determination in this regard. Furthermore, a prior hearing would frustrate the express intent of the Commission in both its Memorandum and Order authorizing venting, CLI-80-25, and in its Order Denying Motion for Reconsideration CLI-80-25..., CLI-80-26, to assure the timely venting of the TMI-2 containment building.

Accordingly, Petitioner's Motion for a temporary suspension of venting should be denied.

If the Licensing Board determines that it has jurisdiction to order a hearing on venting, at any time, the Staff moves that the Licensing Board promptly refer its ruling with respect to this matter in accordance with the provisions of 10 C.F.R. § 2.730(f), to the Appeal Board for prompt determination. We believe such action to be necessary to prevent detriment to the public interest which would result from adding to "the uncertainty and aura of indecision which

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4/ Order, U.S. Court of Appeals for the District of Columbia, Docket No. 80-1691, filed on June 26, 1980.

has [already] contributed to concern and stress among persons living near TMI-2."[5/] Furthermore, a hearing, which the Staff believes to be unnecessary in these circumstances, would be largely duplicative of the decisionmaking process heretofore completed.

Irrespective of the question of this Licensing Board's jurisdiction to consider venting as a matter of law, discussed above, the facts advanced by Petitioner in support of his Motion themselves do not warrant the relief requested.

Petitioner posits his Motion on several grounds. These claims were advanced in Petitioner's unsuccessful "Joint Motion for Reconsideration of CLI-80-25 and Order for Temporary Modification of License" (Joint Motion for Reconsideration) and rejected by the Commission in its Order of June 26, 1980 denying the same (CLI-80-26) or otherwise received Commission consideration.

Petitioner argues that no need has been established in the record for venting within the next six to eight months.[6/] Petitioner cites favorably from the study prepared by the Union of Concerned Scientists (UCS) for Pennsylvania Governor Thornburgh, entitled "Decontamination of Krypton-85 from the Three Mile Island Nuclear Plant," dated May 15, 1980, for a contrary view.[7/] The NRC

5/ Nuclear Regulatory Commission's Opposition to Motion for Injunction Pending Appeal, dated June 26, 1980, at 15, before U.S. Court of Appeals for the District of Columbia, Docket No. 80-1691.

6/ Motion at 2.

7/ Id. at 4-6.

Staff had available the UCS report when it considered the need for venting in its "Final Environmental Assessment for Decontamination of the Three Mile Island Unit 2 Reactor Building Containment (NUREG-0662, v.1.1), dated May, 1980, a copy of which is attached to this pleading. The Staff concluded therein that it was in the best interest of the public health and safety to commence immediate purging of the containment building.[8/] The Commission arrived at the same conclusion in deciding that the containment should be "promptly" purged.[9/] These decisions were undisturbed in the Commission's Order denying the motion for reconsideration (CLI-80-26).

Petitioner next argues that the Commission has failed to perform a "public health assessment" of the health impacts of venting by "public health officials" as distinct from a "radiological assessment."[10/] Petitioner attaches a copy of a letter from Dr. Irwin Bross, dated June 19, 1980, in support of this position. Petitioner raised the identical claim before the Commission[11/] which the Commission rejected citing the overwhelming view that venting the TMI-2 containment presented a negligible impact on physical health.[12/]

Petitioner further argues that inadequate consideration has been given to the matters raised in the report prepared by B. Franke and D. Teufel, entitled

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8/ NUREG-0662 at 5. Only Volume 1 which contains the Staff's environmental assessment, is attached; Volume 2, which contains the comments received, is not provided herewith.

9/ CLI-80-25 at 9.

10/ Motion at 2, 6.

11/ Joint Motion for Reconsideration at 3-4.

12/ CLI-80-26 at 4-5.

"Radiation Exposure Due to Venting TMI-2 Reactor Building Atmosphere" (Heidelberg Report), dated June 12, 1980 and the statements of Drs. Jan Beyea and Karl Z. Morgan.[13/] The material presented in the statements of Drs. Beyea and Morgan, as well as the material from Dr. Bross, questions the Commission's assessment of the health effects associated with the venting operation.[14/] The statements of Drs. Beyea and Morgan take the form of comments on the Heidelberg Report.[15/] None of these statements address the rate at which venting is to proceed as distinct from the act of venting itself.[16/] Nor do the statements evidence an express concern over the offsite doese limitations temporarily imposed in the June 12, 1980 Commission Order for Temporary Modification of License[17/] to replace the release limits contained in the license technical specifications. The analyses and discussions advanced in the referenced statements are familiar to the NRC Staff. The substance of the positions espoused therein were considered and discussed by the Staff in its evaluations of the venting proposal and the Heidelberg Report.[18/] In the judgment of the Staff, there is no new information presented in the referenced statements that would lead the Staff to change its evaluation regarding the acceptability of the venting itself or the rate at which is taking place.[19/]

13/ Motion at 2, 7.

14/ See attached Affidavit of Frank J. Congel and Richard A. Weller, dated July 7, 1980 (Congel/Weller Affidavit).

15/ Id.

16/ Id.

17/ Id.

18/ Id.

19/ Id.

Lastly, Petitioner references two documents issued by the Environmental Protection Agency on July 1 and 2, 1980, entitled "Environmental News," regarding radiation monitoring at TMI.

According to Petitioner, the "Environmental News" of July 1, 1980 notes that particulate radiocesium had been detected in the vent filters from the venting process.[20/] Petitioner does not state what conclusion should be drawn from this assertion. The referenced document indicates that a "slight trace" of radiocesium, so small that it "could not be quantified," was detected in some particulate filters collected by the Licensee from a reactor stack sampler on June 29-30, 1980 and provided to EPA for analysis. The subject document further states that "no radioactivity was detected in the airborne filter and charcoal cartridge samples collected" at 19 locations on June 30, 1980 and that "no radiation above background was detected on continuous gamma rate recorders" at the 19 fixed stations. Moreover, in the judgment of the Staff, the radiological monitoring program established for measurement of particulate and noble gas effluents during venting is the most comprehensive ever developed for a domestic commerical nuclear power plant and is fully capable of accurately predicting whole body and beta skin doses in each of the 16 designated sectors around TMI-2.[21/]

20/ Motion at 2, 7-8.

21/ Congel/Weller Affidavit at 2.

Petitioner also claims that venting has resulted in Kr-85 concentration in uncontrolled areas which are 35-75 times the normal background levels of Kr-85 in the Harrisburg/Middletown area.[22/] Again Petitioner cites the two referenced EPA documents and again fails to draw any particular conclusion or inference from his statement; indeed, support for his assertion is not apparent in the two documents in question. According to the July 1, 1980 document, radiation doses accumulated at Hill Island, the TMI Observation Center, and Middletown "where above-background concentrations of Krypton-85 have been measured at less than 1 percent of the applicable limit or standard." The document also indicated there was "no reason to expect Krypton concentrations above background at Goldsboro." The total skin dose during the sampling period at Middletown, "where the highest concentration was measured... was less than 1 percent" of the skin dose limit. The whole body dose at the same location for the sampling period was a "very small fraction of 1 percent" of the whole body dose standard.[23/] According to the EPA document of July 2, 1980, concentrations of Kr-85 above background increased in measurements taken at Hill Island, the Observation Center, and Middletown from June 30-July 1, 1980. Samples collected at Bainbridge and Goldsboro reportedly showed no Kr-85 above background. At the same time, the total skin dose during this sampling period at the Observation Center, "where the highest concentration was measured," was "less than 1 percent" of the skin dose limit and a "very small fraction of 1 percent" of the whole body dose standard.[24/]

22/ Motion at 3, 8.

23/ July 1, 1980 "Environmental News."

24/ July 2, 1980 "Environmental News."

In summary, Petitioner has raised no matters of law or fact which would justify the relief sought.

III. CONCLUSION

For the foregoing reasons, the Staff urges the Board to deny the present Motion. If the Board declines to deny the Motion, the Staff moves the Board to promptly refer its ruling to the Appeal Board pursuant to 10 C.F.R. § 2.730(f).

Respectfully submitted,

Lawrence J. Chandler
Counsel for NRC Staff

Steven C. Goldberg
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 7th day of July, 1980