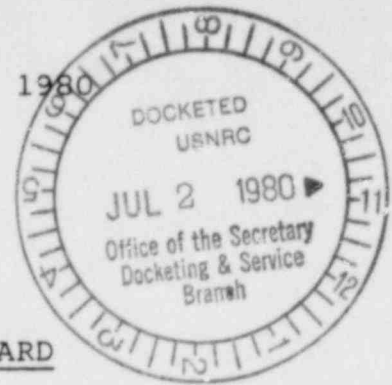


July 1, 1980



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY LICENSING BOARD

In the Matter of )  
 )  
TEXAS UTILITIES GENERATING ) Docket Nos. 50-445  
COMPANY, et al. ) 50-446  
 )  
(Comanche Peak Steam Electric )  
Station, Units 1 and 2) )

APPLICANTS' STATEMENT OF OBJECTIONS  
TO PREHEARING CONFERENCE ORDER  
AND MOTION FOR MODIFICATION

Pursuant to 10 C.F.R. §2.752(c), Texas Utilities Generating Company, et al. ("Applicants") hereby submit a Statement of Objections to the "Order Subsequent to the Prehearing Conference of April 30, 1980" ("Order"), issued by the Atomic Safety and Licensing Board ("Board") in the captioned proceeding on June 16, 1980. 1/ In the Order, the Board ruled on the admissibility of contentions proposed by the Intervenor in this proceeding and set forth three Board questions to be answered by Applicants and the NRC Staff during the forthcoming evidentiary sessions. For the reasons set forth below, Applicants object to the Board's ruling on Contentions 3, 4, 9, 11, 17 and 23.

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1/ The Board orally authorized Applicants to file these objections out of time.

# I. STATEMENT OF OBJECTIONS

Contention 3. The computer codes used in the CPSES/FSAR must be tested and, if necessary, modified to accept the parameters reflecting the sequence of events at Three Mile Island and then to realistically predict plant behavior. (CFUR 2B)

## A. Commission Policy Requires That Contention 3 Not Be Admitted in This Proceeding

On June 16, 1980, the same day on which the Board issued the Order, the Commission issued "Further Commission Guidance for Power Reactor Operating Licenses; Statement of Policy" (Statement of Policy). 45 Fed. Reg. 41738 (June 20, 1980). Therein the Commission stated that NUREG-0694 2/

must be the principal basis for consideration of TMI-related issues in the adjudicatory process.  
[45 Fed. Reg. at 41740 (emphasis added)]

NUREG-0694 supplements existing NRC regulations by imposing requirements in addition to those already in the regulations. In view of those additional requirements, the Commission limited the scope of licensing reviews, as follows:

[Atomic Safety Licensing and Appeal Boards] may not entertain contentions asserting that additional supplementation is required.  
[45 Fed. Reg. at 41740 (emphasis added).]

In other words, any contention which seeks to impose requirements related to events at TMI-2 in addition to

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2/ U.S. Nuclear Regulatory Commission, "TMI-Related Requirements for New Operating Licenses," NUREG-0694 (June 1980) ("NUREG-0694").

those set forth in NUREG-0694 may not be admitted in a licensing proceeding.

Among the requirements set forth in NUREG-0694 is one requiring that, prior to fuel loading, certain accident analyses be conducted, as follows:

I.C.1. SHORT-TERM ANALYSIS AND PROCEDURE REVISION

Analyze small-break LOCAs over a range of break sizes, locations and conditions (including some specified multiple equipment failures) and inadequate core cooling due to both low reactor coolant system inventory and the loss of natural circulation to determine the important phenomena involved and expected instrument indications. Based on these analyses, revise as necessary emergency procedures and training.

These analyses are referenced in NUREG-0694 as being discussed in NUREG-0578. 3/ In NUREG-0578 the analyses are specified and include computer calculations that reflect, inter alia, certain transients and accident situations which are intended to reflect the experience at TMI-2. 4/

Contention 3, on the other hand, would require that computer codes used at Comanche Peak evaluate the entire sequence of events which occurred at TMI-2 as well as predict the behavior observed at TMI-2. This contention clearly seeks imposition of requirements in addition to

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3/ U.S. Nuclear Regulatory Commission, "TMI-2 Lessons Learned Task Force Status Report and Short-Term Recommendations," NUREG-0578 (July 1979).

4/ See id. at 42-45.

the requirements of NUREG-0694. Consequently, the Commission Statement of Policy precludes the admission of the contention in this proceeding.

Of course, we recognize that the Board did not have the benefit of this Commission policy when it issued its Order. Thus, admission of Contention 3 at that time was within the discretion of the Board. However, NRC policy is now clear that such contentions must be denied, and we hereby move that the Board modify its Order to delete Contention 3.

Contention 4. Some accident sequences heretofore considered to have probabilities so low as to be considered incredible, based, in part, upon the findings of WASH-1400, are in fact more probable in light of additional findings, such as those of the Lewis Committee and should be evaluated as credible accidents for CPSES. This evaluation should include a hydrogen explosion accident. In order to insure conservatism, the probabilities associated with such accident sequences should be the highest probabilities within the specified confidence band. (CFUR 3A, 3B and ACORN 11)

B.1 Interim Commission Policy Requires That  
Contention 4 Not Be Admitted In This Proceeding

We submit that the Board has incorrectly applied the Commission's June 9, 1980, Statement of Interim Policy on "Nuclear Powerplant Accident Consideration Under the National Environmental Policy Act of 1969," 45 Fed. Reg. 40101 (June 13, 1980), as the basis for this safety-related contention. In that Policy Statement the Commission stated as follows:

It is the intent of the Commission in issuing this Statement of Interim Policy that the Staff will initiate treatments

of accident considerations, in accordance with the foregoing guidance, in its ongoing NEPA reviews, i.e., for any proceeding at a licensing stage where a Final Environmental Impact Statement has not yet been issued.  
[45 Fed. Reg. at 40103 (emphasis added).]

The Commission distinguished between environmental issues on the one hand and safety issues on the other, noting that in addition to its responsibilities under NEPA, the NRC has the responsibility under the Atomic Energy Act to protect the public health and safety. Pursuant to this health and safety responsibility, the Commission has undertaken an evaluation of several safety issues (including accidents which exceed the design basis) which are now either the subject of rulemaking, are being considered for rulemaking or are incorporated into the TMI Action Plan. 5/ 45 Fed. Reg. at 40103-4. The Commission finally noted that the Statement of Interim Policy under NEPA is being taken "in coordination with" safety considerations of plant design, operational safety, siting policy, and emergency planning.

Thus, the Commission has clearly distinguished between consideration of the environmental aspects of Class 9 accidents (which is governed by the Interim Policy Statement)

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5/ U.S. Nuclear Regulatory Commission, "NRC Action Plan Developed as a Result of the TMI-2 Accident," NUREG-0660 (May, 1980).



and of the safety aspects of accidents which exceed the design basis (which is not governed by the Policy Statement). 6/ The Policy Statement requires that Class 9 accidents be evaluated only in environmental reviews, and contemplates that consideration of accidents which exceed the design basis would be addressed for safety purposes in rulemaking and under the Action Plan.

Against this summary of the Commission's Policy Statement, it is obvious that certain contentions which were granted by the Board should have been rejected. A review of the bases advanced by CFUR and ACORN for Contention 4 concerning Class 9 accident considerations confirms that it was intended as a safety contention. Contention 4 is an amalgam of CFUR proposed contentions 3A and 3B, and of ACORN proposed contention 11. CFUR 3A apparently was intended as a challenge to the adequacy of the Applicants' Final Safety Analysis Report ("FSAR") and CFUR 3B sought an analysis of a hydrogen explosion accident as a Class 9 accident. CFUR demonstrated its concern with a safety review of Class 9 accidents in its April 10, 1980 report in which it stated

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6/ See also, Transcript of NRC Meeting of April 16, 1980, "Class 9 Accident Considerations Under NEPA" at pp. 3-8. Therein the Commissioners discuss with the NRC Staff the differences between accident considerations under environmental and safety reviews, and note that the Policy Statement affects accident considerations in environmental reviews, and that future rulemakings will address accident considerations in safety reviews.

that such accidents "should be evaluated to meet the 'conservative requirements' of 10 C.F.R., Part 50," and were not adequately evaluated in Applicants' FSAR. See CFUR April 10, 1980 Report, Enclosure 1, pp. 16-19. ACORN likewise was concerned with addressing the public health and safety aspects of Class 9 accidents. ACORN demonstrated its concern with a safety review of Class 9 accidents when it stated that its concern is with the "inadequacy of previous design bases calculations." See ACORN's Statement of Position on Contentions (April 10, 1980), p. 22.

Finally, Applicants submit CFUR's and ACORN's reference to communications between the Council on Environmental Quality and the Commission is insufficient basis under 10 C.F.R. §2.714 on which to admit a Class 9 contention regarding the environmental review. Neither are afterthoughts at the prehearing conference by ACORN 7/ or CFUR 8/ to the effect that they are concerned with an evaluation of Class 9 accidents in the environmental review an adequate basis for admitting the contention.

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7/ Transcript of Prehearing Conference ("Tr.") at 329.

8/ Tr. at 179.

Consequently, Applicants contend that the Board should reconsider its interpretation of the Commission's Policy Statement. We believe the Commission intended that Statement solely to require consideration of Class 9 accidents in environmental reviews and not to permit such inquiries in safety reviews (as the Board seems to suggest when it says that the Policy Statement generally "permits consideration of accident sequences previously referred to as 'Class 9' accidents." Order, supra at 3-4 (emphasis added)). Accordingly, Applicants believe that a proper reading of the Policy Statement demonstrates that Contention 4 should be dismissed, and hereby move the Board to modify its Order to delete Contention 4 as a contention admitted in this proceeding.

B.2. Measures To Control Hydrogen Generation Are About To Become The Subject Of Rulemaking

Since the prehearing conference the Commission has made it clear that the issue of hydrogen management during an accident will be dealt with in rulemaking. The portion of Contention 4 which seeks evaluation of a hydrogen explosion accident should, therefore, be dismissed on the grounds that the issue is about to be addressed in rulemaking.

On May 16, 1980, the Commission approved a list of requirements for new operating licenses, now contained in



NUREG-0694. 9/ That list of requirements is divided in four sets, one of which is actions the NRC will take "prior to issuing . . . a full-power operating license." Among the items in this set are two actions which address the issue of hydrogen control, as follows:

#### II.B.7 ANALYSIS OF HYDROGEN CONTROL

Reach a decision on the immediate requirements, if any, for hydrogen control in small containments and apply, as appropriate, to new OLs pending completion of the degraded core rulemaking in II.B.8 of the Action Plan.

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#### II.B.8 DEGRADED CORE-RULEMAKING

Issue an advance notice of rulemaking for design and other features for accidents involving severely damaged cores.

The Commission has thus clearly spoken that the issue of hydrogen control will be dealt with by rulemaking. The schedule for issuing both the proposed interim rule on hydrogen control (Item II.B.7) and approving the advance notice of degraded core rulemaking (Item II.B.8.) is July, 1980. 10/

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9/ U.S. Nuclear Regulatory Commission, "TMI-Related Requirements for New Operating Licenses," NUREG-0694 (June, 1980).

10/ SECY-80-107B, "Additional Information Re: Proposed Interim Hydrogen Control Requirements" (June 20, 1980) at p. 5.

In CFUR proposed contention 3B, CFUR expressly stated that the issues it is concerned with involve procedures and equipment to control, and analyses of, hydrogen generation following an accident. CFUR's April 10, 1980 Report, at pp. 19-20. CFUR Contention 3B is, therefore, clearly intended solely to have hydrogen explosion accidents evaluated in the context of "accident and safety system design bases," the precise focus of the upcoming generic rulemaking. 11/

It is well settled that issues which "are, or are about to become" the subject of a general Commission rulemaking proceeding may not be raised in an individual licensing proceeding. Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85 (1974). Consequently, in that the issues with which CFUR is concerned in its proposed contention 3B are about to be addressed in a Commission rulemaking, that contention may not be raised in this proceeding. Accordingly, that portion of Contention 4 which is based on CFUR proposed contention 3B should be dismissed, and Applicants hereby move the Board to dismiss Contention 4 in its entirety.

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11/ The purpose of proceeding with a degraded core rulemaking for all containment types (except Mark I and II) is to assure "that hydrogen control can be evaluated in broader context of accident and safety system design bases." See, SECY-80-107B, at p. 5.

Contention 9. Applicants have failed to make any effort to determine the effect of radioactive releases on the general public other than at the exclusion boundary. Various transport mechanisms may cause, in certain cases, the bulk of the health effects to occur some distance from the exclusion boundary. (CFUR 8)

C. Contention 9 Should Be Dismissed As a Challenge To Commission Regulations And Because It Is The Subject Of Rulemaking

Applicants submit that Contention 9 is clearly a challenge to Commission regulations and is in part the subject of rulemaking. We hereby request that the Board reconsider its admission of this contention because these arguments are in our view so compelling as a matter of law.

Contention 9 raises two issues. First, the contention alleges, in effect, that the health effects of routine radioactive releases have not been adequately considered. As we noted at the prehearing conference (Tr. at 262-265), and in our April 10, 1980 Statement of Positions on Proposed CFUR Contentions, the contention is a challenge to Commission regulations governing routine radioactive releases. Requirements set forth in 10 C.F.R. Part 50, Appendix I provide that compliance with the Appendix I numerical guides is a conclusive showing of compliance with the "as low as is reasonably achievable" ("ALARA") requirements of 10 C.F.R. §50.36a. In promulgating Appendix I, the Commission found that the biological consequences (and thus health effects) of effluents in compliance with the guides of

Appendix I were inconsequential, i.e., small fractions of normal background radiation as well as far below the standards of 10 C.F.R. Part 20. See 35 Fed. Reg. 18385 (December 3, 1970). Thus, in challenging the health effects of routine releases which are not alleged to fail to comply with the Appendix I numerical guides, Contention 9 is a challenge to Commission regulations. As such, Contention 9 should not have been admitted. Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 89 (1974).

Second, since the basis for Contention 9 reflects the intent to impose emergency planning requirements beyond a 50-mile radius, this issue is clearly inappropriate for consideration in an individual licensing proceeding. The Commission has been conducting a rulemaking on emergency planning for several months now. See, 44 Fed. Reg. 75167 (December 19, 1979). Such generic issues are not appropriate for resolution in individual proceedings, particularly where the Commission is conducting a rulemaking proceeding on the topic. See Douglas Point, ALAB-218, supra at 85. Accordingly, that aspect of Contention 9 dealing with the emergency planning should also be dismissed. We hereby move the Board to modify its Order by deleting Contention 9 as a contention admitted in this proceeding.

Contention 11. Neither the Applicants nor the Staff has a reliable method of evaluating or insuring that Class IE safety-related equipment is designed to accommodate the affects of and to be compatible with the environmental conditions associated with the most severe postulated accident; thus General Design Criterion 4 has not been satisfied. (ACORN 3)

Contention 17. Neither the Applicants nor the Staff has adequately considered the effects of aging and cumulative radiation on safety-related equipment which must be seismically and environmentally qualified, thus, General Design Criterion 4 has not been satisfied. (ACORN 10)

D. Commission Requirements Establish The Method For Satisfying GDC-4

On May 23, 1980, the Commission issued a Memorandum and Order regarding a Petition for Emergency and Remedial Action filed by the Union of Concerned Scientists. CLI-80-21 ("Order on the UCS Petition"). Therein, the Commission stated that it endorses the Staff's use of NUREG-0588 12/ and other guidelines to review safety-related electrical equipment for environmental qualification at plants under licensing review. The Commission also ordered that NUREG-0588 and the other guidelines "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 C.F.R. 50, Appendix A, General Design Criteria-4 [sic] which relate to environmental qualification of safety-related electrical equipment." 13/

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12/ U.S. Nuclear Regulatory Commission, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment", NUREG-0588 (November, 1979).

13/ Order on the UCS Petition, at 6 (footnote omitted).



Contention 11 is directed at establishment of an "adequate methodology" to demonstrate compliance of safety-related electrical equipment with GDC-4. At the prehearing conference, ACORN stated that the "heart of this contention is a lack of reliable methodology to demonstrate equipment qualification. . ." (emphasis added). <sup>14/</sup> It is clear, therefore, that the precise concern of Contention 11 has been resolved by the Commission's Order establishing the requirements for satisfying GDC-4. Likewise, Contention 17 also raises issues (aging and cumulative radiation) which are by implication accounted for in the Commission's Order.

In this regard, we urge the Board to review the Order on the UCS Petition (particularly at pp. 6-7). We also hereby move the Board to modify its Order to delete Contentions 11 and 17 as admissible contentions in this proceeding.

Contention 23. Neither the Applicants nor the Staff has adequately considered the health effects of low-level radiation on the population surrounding CPSES in as much that the CPSES design does not assure that radioactive emissions will be as low as is reasonably achievable. (ACORN 25 and CASE 9)

E. Contention 23 Should Be Dismissed In Part As a Challenge To Commission Regulations

The first part of Contention 23 (dealing with the health effects of low-level radiation) is a challenge to Commission

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<sup>14/</sup> Tr. at 294.

regulations and should be deleted. We invite the Board's attention to our discussion of Contention 9, supra, at 11-12, where we advance an argument equally applicable here.

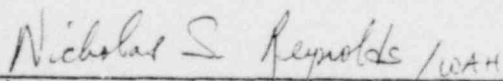
If the Board intended Contention 23 to deal with Applicants' compliance with ALARA, then we request that Contention 23 be reworded so to confine it. Applicants believe that the language of the second part of the contention would be appropriate to reflect that concern, as follows:

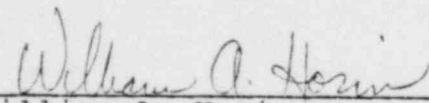
The CPSES design does not assure that radioactive emissions will be as low as is reasonably achievable.

## II. MOTION FOR MODIFICATION

For the foregoing reasons Applicants request that the Board modify its Prehearing Conference Order consistent with the above positions.

Respectfully submitted,

  
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Nicholas S. Reynolds

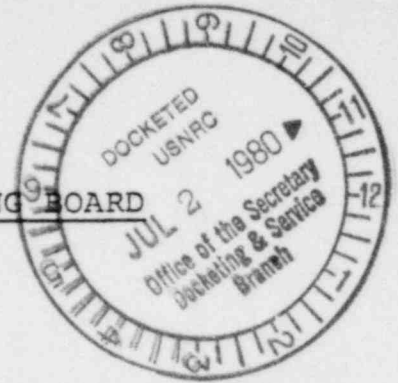
  
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Date: July 1, 1980

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of )

TEXAS UTILITIES GENERATING )  
COMPANY, ET AL. )

(Comanche Peak Steam Electric )  
Station, Units 1 and 2) )

Docket Nos. 50-445  
50-446

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicants' Statement Of Objections To Prehearing Conference Order And Motion For Modification," in the captioned matter were served upon the following persons by deposit in the United States mail, first class, postage prepaid, this 1st day of July, 1980:

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