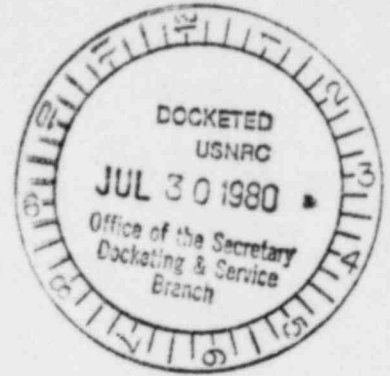


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Robert M. Lazo, Esq., Chairman
Dr. Emmeth A. Luebke, Member
Dr. Cadet H. Hand, Jr., Member



In the Matter of
DUKE POWER COMPANY
(William B. McGuire Nuclear
Station, Units 1 and 2)

Docket Nos. 50-369-OL
50-370-OL

(July 29, 1980)

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MEMORANDUM AND ORDER

An Initial Decision in the above-identified proceeding was issued by the Atomic Safety and Licensing Board ("Board") on April 18, 1979. Duke Power Company (William B. McGuire Nuclear Station, Units 1 and 2), LBP-79-13, 9 NRC 489 (1979). Therein, the Board, on the basis of specific findings of fact and conclusions of law derived therefrom, ordered that the Director of the Office of Nuclear Reactor Regulation, upon making requisite findings with respect to uncontested matters not embodied in the Initial Decision, was authorized to issue operating licenses for the facilities. 9 NRC at pp. 547-8. However, the Board stayed the effectiveness of the Initial Decision "until further order by the Board following the issuance of a supplement to the NRC Staff's Safety Evaluation Report ("SER") addressing the significance of any unresolved safety issues." Id.

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In May 1980, the NRC Staff issued its Safety Evaluation Report Supplement No. 3 (SER, Supp. 3) addressing the significance of the unresolved generic safety issues as they relate to the McGuire facilities. Copies of the SER, Supp. 3 were furnished to members of the Licensing Board on June 19, 1980 and copies have been furnished to the parties.

Based upon issuance of SER, Supp. 3, Duke Power Company ("Applicant") on May 30, 1980 filed a motion to terminate the stay of the Initial Decision. That motion has been opposed by Intervenor, Carolina Environmental Study Group ("CESG") in a pleading filed on June 9, 1980 in which CESG asserts that matters being considered following the Three Mile Island, Unit 2 ("TMI-2") accident raise unresolved safety issues that must be addressed in a further safety supplement before the stay ordered by the Board can be lifted. On the same day CESG also filed a motion requesting the Board to reopen the McGuire operating license hearing to add six new contentions arising out of the TMI-2 accident.

In responses filed on July 9, 1980 by the Applicant and on July 10, 1980 by the NRC Staff, both take the position that CESG has failed to meet the standards set forth for reopening

the records in licensing proceedings.^{1/} We agree. However, the Board has concluded that it should adopt the Staff's suggestion to provide CESH an opportunity to revise its motion to meet, if it can, the requirements for reopening a record and to reframe its contentions in accordance with the guidance recently provided by the Commission for taking TMI-2 related issues into account in operating license proceedings.^{2/}

In their responses to CESH's motion to reopen the record, both the Applicant (pp. 8-11) and Staff (pp. 7-10) have correctly specified the criteria which would justify the granting of a motion to reopen this license proceeding. There is no need to repeat here what they have said in their pleadings. CESH should pay

^{1/} By order of June 27, 1980, the Board extended to July 7, 1980 the time for filing of Applicant's response to the instant motions. By oral order of July 7, 1980, the Board further extended Applicant's filing deadline until July 9, 1980. This latter extension was based upon Applicant's representation that its request was unopposed by either the NRC Staff or CESH.

On June 19, 1980, the Board granted NRC Staff's request for an extension of time until July 10, 1980 to respond to both Duke's motion to lift the stay of the Initial Decision and CESH's motion to reopen the McGuire operating license record to consider TMI-2 related contentions. Order, June 19, 1980.

^{2/} Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 1), CLI-80-16, NRC (May 16, 1980).

"Further Commission Guidance For Power Reactor Operating Licenses: Statement of Policy" 45 Fed. Reg. 41738 (June 20, 1980).

close attention to such comments and guidance if it chooses to revise its motion and to reframe its contentions in accordance with the opportunity here provided.

CESG's motion to reopen is hereby denied. However, CESG may within ten (10) days from the date of service of this Order file a revised motion and specify admissible contentions applicable to the McGuire operating license proceeding in accordance with the indicated requirements.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Robert M. Lazo
Robert M. Lazo, Chairman

Dated at Bethesda, Maryland
this 29th day of July 1980.