UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
DUKE POWER COMPANY	)	Docket Nos. 50-369
	)	50-370
(William B. McGuire Nuclear Station, Units 1 and 2)	)	

APPLICANT'S RESPONSE TO CESG'S REVISED MOTION TO REOPEN THE OPERATING LICENSE PROCEEDING AND TO RAISE NEW CONTENTIONS

I. BACKGROUND

On April 18, 1979, the Atomic Safety and Licensing Board ("Licensing Board") issued an Initial Decision in the captioned proceeding. Duke Power Company (William B. McGuire Nuclear Station, Units 1 and 2), LBP-79-13, 9 NRC 489 (1979). Therein, the Licensing 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 Regulations, upon making requisite findings with respect to uncontested matters not embodied in the Initial Decision, was authorized to issue operating licenses for the units. 9 NRC at 547. However, the Licensing 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

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("SER") addressing the significance of any unresolved safety issues." Id. On May 23, 1980, the NRC Staff issued the aforementioned supplement to the SER. Thereafter, on May 30, 1980, Applicant filed a motion requesting a termination of the stay of the effectiveness of the Initial Decision. Accompanying its June 9, 1980 response to Applicant's motion, Intervenor, Carolina Environmental Study Group ("CESG"), filed motions requesting the reopening of the McGuire operating license hearing and the admission of six new contentions.

On July 9 and July 10, 1980, Applicant and the NRC Staff, respectively, filed responses in opposition to CESG's motions. By order of July 29, 1980, the Licensing Board denied CESG's motion, but provided CESG an additional ten days "to revise its motion to meet, if it can, the requirements for reopening a record and to reframe its contentions . . . ." Thereafter, on August 15, 1980, CESG filed its revised motion requesting reopening of the record and advancing four new contentions ("CESG's Revised Motion"). 1/

1/ Included in CESG's filing was its response to Applicant's August 1, 1980 motion for issuance of a license authorizing fuel loading, initial criticality, zero power physics testing, and low power testing. Applicant is currently preparing a motion for summary disposition regarding this issue and will file such in the near term if necessary.

We submit that CESG has failed to meet the standards regarding reopening of a hearing record, and thus, CESG's motion to reopen the record, as well as its motion to add contentions, must be denied. 2/ In the event CESG's motions to reopen and add contentions are granted, Applicant maintains that contentions 2, 3 and 4 regarding emergency planning and comparative containment design are either irrelevant or constitute impermissible attacks upon the Commission's regulations, and, thus, must be denied.

II. CESG HAS FAILED TO MEET STANDARDS REGARDING REOPENING THE RECORD

As set forth in "Applicant's Response To CESG's Motions To Add New Contentions And To Reopen The McGuire Operating License Hearing" (July 9, 1980) incorporated herein by reference, for CESG to be successful in its revised motion to reopen the record it must show that (1) the issues it raises are timely, or that good cause exists for an

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2/ When considering CESG's motion, Applicant submits the following observation is warranted. CESG is an experienced intervenor having actively participated in the construction permit proceedings for Applicant's McGuire, Catawba and Perkins nuclear plants, the McGuire transportation proceeding, as well as the instant case. CESG is well aware of the Commission's rules and regulations. Specifically, CESG is quite familar with the reopening procedure of the Commission, having sought such relief on several occasions. Indeed, one of the lead Commission reopening cases is Catawba. Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-359, 4 NRC 619 (1976). Accordingly, CESG should be held to a high standard of compliance with the pertinent regulations and precedents.

untimely filing, (2) that the issues are significant 3/ and, if they have not been timely raised without good cause, are of such gravity that public interest demands their further exploration in a reopened hearing, and, (3) based on the material submitted in support of its motion that a different result would have been reached had such material been considered. See Kansas Gas & Electric Company (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320, 328 (1978); Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 2), ALAB-486, 8 NRC 9, 21, (1978); Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station) ALAB-138, 6 AEC 520, 523 (1973). Further, if the subject of CESG's allegations regarding reopening the record is part of Commission and NRC Staff actions which involve continuing Staff efforts to improve reactor safety standards, CESG must demonstrate that there is an "indication in the 'new evidence' that the decision on the existing record would permit the use of unsafe equipment or create some other situation similarly fraught with danger to the public that merits immediate attention." Pacific Gas

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3/ See American Optometric Association, et al. v. Federal Trade Commission, ___ F.2d ___ (D.C. Cir. 1980) wherein the court noted that for the record to be reopened the change of circumstances must not only be "material" but "the kind of change that goes to the very heart of the case." (Slip op. at p. 25). Accord, Greater Boston Television Corp. v. FCC, 463 F.2d 268, 283 (1971), cert. denied, 406 U.S. 950 (1972).

& Electric Company (Diablo Canyon Nuclear Power Plant, Unit No. 1 and 2), ALAB-598, ___ NRC ___ (Slip op. at pp. 19-20) (June 24, 1980). These criteria are addressed in seriatim below.

1. Timeliness

In Vermont Yankee, supra, the Appeal Board stated:

> Regardless of when the motion [to reopen] is presented, the question [regarding timeliness] in each case must center on whether the matter could have been raised earlier. [6 AEC at 523 n. 12].

Thus, to prevail on the timeliness issue, CESG must demonstrate that it could not have raised the issue until the timeframe of its initial motion to reopen. The facts are contrary to such a showing.

The issue CESG attempts to raise in its revised motion relates to the consequences of a hypothetical incident regarding the excessive generation and subsequent explosion of hydrogen in the McGuire containment. This matter is not new. Excessive hydrogen generation results from a loss of coolant accident followed by termination or failure of the Emergency Core Cooling System ("ECCS"). 4/ The issue of termination or failure of ECCS operation during a loss of coolant accident, and thus, the possibility of hydrogen

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4/ See Regulatory Guide 1.7, "Control of Combustible Gas Concentrations In Containment Following A Loss-Of-Coolant Accident" Rev. 2 (1978); SECY-80-107, "Proposed Interim Hydrogen Control Requirements For Small Containments (February 22, 1980); NUREG/CR-1250, "TMI, A Report To The Commissioners And To The Public," Vol. II Part 2, pp. 527-535.

generation in excess of design quantities has long been known to CESG. CESG was a party to the Construction Permit proceeding involving the McGuire units, and thus was aware of the relationship between hydrogen production and ECCS operation as stated in Applicant's Preliminary Safety Analysis Report ("PSAR") issued in 1970.

> Hydrogen accumulation in the containment atmosphere following the design basis accident can be the result of production from several sources. Potential sources of hydrogen are the zirconium-water reaction. . . . The quantity of zirconium which reacts with the core cooling solution depends on the performance of the emergency core cooling system ("ECCS"). Analysis of the performance of the ECCS shows that core cooling initiation is sufficiently rapid such that the increase in temperature of the zircaloy cladding and contact with steam or water during the period immediately following a loss-of-coolant accident will be limited. [McGuire PSAR, Volume II at p. 5B-1.]

In addition, during 1971 through 1973 CESG was a party to the "Acceptance Criteria For Emergency Core Cooling Systems For Light Water Cooled Nuclear Power Reactors Rulemaking Proceeding" in which it was found that one of the acceptance criterion for the ECCS was "to insure that hydrogen would not be generated in amounts that could lead to explosive concentrations." Rulemaking Hearing (Acceptance Criteria For Emergency Core Cooling Systems For Light Water Cooled Nuclear Power Reactors) RM-50-1, CLI-73-39, 6 AEC 1085, 1099 (1973). 5/ Further, the dependency of hydrogen generation

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5/ In CESG's "Motions By Intervenor With Respect To ECCS Issues" (May 31, 1972) filed in the McGuire construction permit proceeding, CESG stated that it was a party to the ECCS acceptance criteria rulemaking proceeding.

on ECCS operation is noted in the McGuire Final Safety Analysis Report 6/ ("FSAR") Sections 6.2.5 and 6.2.6, and Regulatory Guide 1.7 (Safety Guide 7) referenced therein which states:

> If a sufficient amount of hydrogen is generated, it may react with the oxygen present in the containment atmosphere. . . . The reaction would take place at rates rapid enough to lead to high temperatures and significant over-pressurization of the containment, which could result in a loss of integrity . . . . The extent of metal water reaction and associated hydrogen production depends strongly on the course of events assumed for the accident and the effectiveness of emergency cooling systems. [Safety Guide 1.7, "Control Of Combustible Gas Concentrations In Containment Following A Loss-Of-Coolant Accident", at p. 7.1 (1971)].

Finally, see CESG's September 8, 1978 Motion to Reopen the environmental hearings in this proceeding. In the attachment thereto, the subject of potential hydrogen generation in ice condenser containments such as that at McGuire is discussed. 7/

In sum, the issue of termination or failure of ECCS operation resulting in an exposed core and excessive hydrogen generation has long been known to CESG, and thus CESG's attempts to raise the issue at this late date must be viewed as untimely.

Upon a finding of untimeliness, attention must focus on whether good cause exists to override such an irregularity. In this regard, CESG raises the TMI-2 accident.

6/ The McGuire FSAR was published on May 30, 1974.

7/ see also Applicant and Staff Responses dated September 25 and 28, 1978, respectively.

However, CESG does not substantively address the issue of why it waited 14 months after the TMI-2 accident to seek reopening. CESG was well aware of the issue immediately subsequent to the accident and was appraised of TMI issues on a periodic basis thereafter. Indeed, the official service list indicates that CESG was routinely furnished NRC Staff documents concerning TMI-related issues including hydrogen generation. E.g., see Letter to all pending operating license applicants from Domenic B. Vassallo, NRC, concerning, "Follow-Up Actions Resulting From The NRC Staff Reviews Regarding The TMI Unit 2 Accident," at p. 2, Enclosure 1 at pp. 1-2, and Enclosure 3 at pp. 1-5 (September 27, 1979). 8/ In addition, on November 1, 1979, CESG publicly stated its intention to raise hydrogen generation as an issue. See the November 1, 1979 Charlotte Observer Newspaper Article attached to "Applicant's Response To CESG's Motion To Add New Contentions And To Reopen The McGuire Operating License Hearing" (July 9, 1980).

8/ In this regard we note that CESG has long had access via the local public document room in Charlotte, North Carolina, to major TMI-related studies. For example, the "Report On The President's Commission On The Accident At Three Mile Island" (October 1979), which discusses, inter alia, hydrogen generation, has been on file in the Charlotte public document room since December 18, 1979.

On the basis of the above, it is clear that CESG has long been aware of the hydrogen generation issue raised by the TMI-2 accident. Thus, CESG's failure to timely file its concerns in this regard must be viewed as contrary to Commission requirements. 9/

CESG attempts to circumvent its failure to timely act by alleging that ongoing staff activities render the matter "premature." In short, this position is contrary to legal precepts governing intervention in administrative proceedings. See BPI v. AEC, 502 F.2d 424 (D.C. Cir. 1974) which requires that contentions must be filed at an early stage despite ongoing staff review. 10/ CESG further alleges that "it was not until the issuance of SECY-80-107B on June 20, 1980, that the hydrogen problem for ice condenser, pressure suppression containments was considered with specificity." This statement is false; the hydrogen generation issue in ice condenser containments was addressed with specificity, inter alia, in SECY-80-107 which was published on

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9/ In other proceedings, intervenors/petitoners have raised TMI issues, including hydrogen generation, in a timely manner (e.g., Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), Docket No. 50-289 (Restart) (issues raised on October 22, 1979); Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2), Docket Nos. 50-445 and 50-446 (issues raised on May 7, 1979)).

10/ Indeed, see note 9 supra, wherein reference is made to the fact that petitioners in other proceedings have long ago filed hydrogen generation contentions, despite ongoing Staff actions.

February 22, 1980. Therein, specific reference was made to McGuire. 11/

Summarizing Applicant submits that CESG's instant motion to reopen the record to explore the issue of hydrogen generation is untimely and without good cause. Accordingly, the first reopening criterion has not been satisfied and the instant motion should be denied. Based on CESG's knowledge of the Commission's rules and regulations (see note 2, supra) its failure to provide good cause for a nontimely filing can only be viewed as a tactic directed to delay of this proceeding. Such an objective should not be countenenced by this Board.

2. Safety Significance

The second reopening criterion, as noted above, requires that CESG demonstrate that the issue it seeks to raise is significant, and in the absence of a timely filing and good cause, that it is of such gravity that the public interest demands its further exploration in this proceeding.

With regard to this criterion, CESG submits that the safety issue it "seeks to have considered in reopening the

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11/ CESG also alleges that there is no immediate need for the McGuire facility and thus its tardy filing is excusable. Applicant submits that this issue has been previously litigated and is not subject to scrutiny here. See the previously issued Initial Decision in this proceeding. 9 NRC at pp. 492-508, supra. In any event, Applicant notes that at the time of the 10,364 MW peak of July 16, 1980, the actual reserves were 2%.

operating license proceeding record is the performance of the McGuire ice condenser containment for a spectrum of hydrogen combustions or explosions." CESG's Revised Motion at p. 6. CESG concludes that if an excessive amount of hydrogen is generated and explodes, the containment may rupture. Applicant does not dispute this conclusion which has been common knowledge for a number of years. See Regulatory Guide 1.7 (1971). To provide reasonable assurance that excessive hydrogen generation would not occur, the ECCS was designed with adequate redundancies to assure that during a loss of coolant accident it would not fail. 12/ The TMI-2 accident referenced by CESG did nothing

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12/ In this regard, Applicant notes that the assumption of ECCS operation when needed is one of the prime bases for licensing and continued operation of every nuclear power plant in this nation. The ECCS must be designed in accordance with strict criteria contained in 10 CFR §50.46 and Appendix A and K to 10 CFR Part 50, which includes the criteria that (1) the ECCS must be able to perform its function even assuming "the most damaging single failure of ECCS equipment has taken place" (Section D.1, Appendix K to 10 CFR Part 50) and (2) the ECCS must be able to transfer heat from the reactor core following any loss of reactor coolant at a rate such that . . . (2) clad metal-water reactions are limited to negligible amounts." (Criterion 35, Appendix A to 10 CFR Part 50). In this regard, the NRC Staff has evaluated the McGuire ECCS and concluded that it is acceptable. See NUREG-0422, "Safety Evaluation Report Related To Operation Of McGuire Nuclear Station, Units 1 and 2," Section 6.3 (March 1978); Supplement 2 to NUREG-0422 (March 1979). In addition, in the construction permit hearings regarding the McGuire facility, a significant amount of testimony was introduced regarding the adequacy of the ECCS. LBP-73-7, 6 AEC 92, 104-106 (1973). In the Licensing Board's Initial Decision issued in that proceeding, the Licensing Board found that "the emergency core cooling

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to alter this reasonable assurance. 13/ Rather, TMI-2 raised the possibility that premature operator termination of the ECCS would defeat the purpose of the ECCS design and result in excessive hydrogen generation. 14/ Indeed, the Commission explicitly stated that at issue with regard to excessive hydrogen generation is "the likelihood of an operator interfering with ECCS operation." Three Mile Island Unit 1, CLI-89-16 at slip op. 2. The Commission responded to this concern, by requiring that licensees be given "explicit instructions not to turn off prematurely the ECCS system." Id. at slip op. 4. These requirements have been implemented at McGuire as set forth in the Affidavit of K. S. Canady which is attached to Applicant's July 9, 1980

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system ("ECCS") will be designed to provide emergency core cooling during those postulated accident conditions where it is assumed that mechanical failures occur in the reactor coolant system piping resulting in a loss of coolant from the reactor vessel greater than the available coolant makeup capacity using normal operating equipment." Id. at 104.

13/ Indeed, the Commission itself in the wake of TMI-2 elected not to alter the hydrogen generation design basis assumptions of 10 CFR §50.44, including the very root assumption that, if called upon, ECCS would function as required. Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), CLI-80-16, ___ NRC ___ (May 16, 1980).

14/ The Commission has conclusively established that excessive hydrogen generation during the TMI accident was a direct result of operator interference with the

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Response and is incorporated herein by reference. 15/ The measures taken by Applicant provide reasonable assurance that ECCS operation will not be terminated 16/ and, thus, hydrogen in excess of the design quantities will not be generated. So postured, CESG's concern cannot be viewed as raising a significant safety issue, let alone one of such gravity that cries out for reopening.

Applicant would note that the issue of hydrogen generation has been and continues to be the subject of NRC Staff and Commission action. As discussed above, the Commission has required, and industry has completed, implementation of the specific actions regarding hydrogen generation referenced in the Affidavit of K.S. Canady. Further, the Commission has stated its intent to continue

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emergency core cooling system ("ECCS"):

> We are, of course, aware that the Three Mile Island accident resulted in hydrogen being generated far in excess of the hydrogen generation design basis assumptions of 10 CFR 50.44. This was because the operator interfered with actual ECCS operation with the result that the safety system did not operate as designed and as 50.44 assumed it would operate. Three Mile Island Unit 1, CLI-80-16, Slip. op. at 2.

15/ A copy of K.S. Canady's Affidavit is attached hereto for the convenience of the Board and parties.

16/ In this regard, contrary to CESG's representation, see SECY-80-107B wnerein the NRC Staff states that "implementation of lessons learned at TMI makes the likelihood of severly degraded accidents sufficiently remote that, pending the [degraded core] rulemaking pro-

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its pursuit of generic rulemaking on these issues, and during the interim, to generically promulgate intermediate requirements, if necessary, as a condition to issuance of new operating licenses. (NUREG-0660, "Action Plans For Implementing Recommendations of the President's Commission and Other Studies of TMI-2 Accident," Task II.B.8. (May 1980)). As can be seen, Commission and NRC Staff actions with regard to hydrogen generation are continuing efforts to improve reactor safety standards. Under such a circumstance, the case law is clear that the record should not be reopened unless CESG has demonstrated that there is an "indication in the 'new evidence' that the decision on the existing record would permit the use of unsafe equipment or create some other situation similarly fraught with danger to the public that merits immediate attention." Pacific Gas & Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-598, ___ NRC ___ (Slip. op. at pp. 19-20) (June 24, 1980). 17/ CESG has failed to make such a demonstration. Significantly, CESG

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> ceeding, interim modification of our licensing criteria for combustible gas control systems need not be made for most containments (except the Mark I and Mark II containments) [i.e., not ice condenser containments such as that at McGuire]." SECY-80-107B at p. 4.

17/ Such a holding is consistent with the nature of operating license proceedings such as McGuire, which are convened to resolve those matters in controversy and leave to the Staff resolution of all remaining issues. This latter Staff review cannot be viewed as giving rise to new contentions absent exceptional circumstances. 10 CFR §2.760(a) and §50.57. See also Cincinnati Gas & Electric Company (Zimmer Station), ALAB-305, 3 NRC 8, 9 (1976).

does not raise as an issue the inability of the Staff and Commission to perform their statutory function of assuring that hydrogen generation will not adversely effect public health and safety prior to issuance of a license for the McGuire facility. Nor does CESG state how reopening this proceeding will contribute to that assurance.

In view of the foregoing, Applicant maintains that CESG has failed to adequately demonstrate that hydrogen generation is such a grave issue that public interest demands that it be further explored by reopening this operating license hearing. 18/ Accordingly, the second reopening criterion has not been satisfied. 19/

18/ If the hydrogen generation issue presented a situation significantly adverse to the public health and safety, clearly the Commission would have shut down the operating nuclear reactors in this nation, some of which have the same ice-condenser-type containment as the McGuire facility. However, rather than shutting down nuclear plants, the Commission is proceeding with licensing actions such as issuance of an operating license for North Anna and the current operating proceeding for the Sequoyah facility which also has an ice-condenser containment. Significantly, it is the NRC Staff's position that with respect to Sequoyah, and indeed all other pressurized water reactor facilities, licensing should not be delayed pending the completion of a generic rulemaking on the hydrogen generation issues. See SECY-80-107 "Proposed Interim Hydrogen Control Requirements For Small Containments" (February 22, 1980); SECY-80-107A (April 22, 1980); SECY-80-107B (June 20, 1980). Accordingly, the issue cannot be viewed as so grave that it is "fraught with danger to the public." It should be noted that CESG has also failed to demonstrate that its present interest in hydrogen generation "goes to the very heart of [its] case." See note 3, supra.

19/ Applicant would stress that denial of CESG's Motion will not result in the dimunition of interest in

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3. Decisional Consequences

Although CESG's instant motion is both untimely without good cause and fails to demonstrate that the public interest demands exploration in a reopened license proceeding, Applicant maintains that even if these questions were resolved in CESG's favor, CESG must demonstrate by the material submitted in support of its motion that "a different result would have been reached initially had [the material submitted in support of the motions] been considered." 20/

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hydrogen control. Rather, continued protection of the public interest, which is the statutory mandate of the Commission, will continue to be provided for. This is best seen in the Commission's ongoing consideration of the Sequoyah operating license application, an uncontested proceeding (Docket No. 50-327). In sum, irrespective of this Board's actions, the issues will be reviewed and, if necessary, resolved by the Commission prior to issuance of any operating license.

20/ Any argument that an Initial Decision has not been issued is in error. The plain language of the decision document specifies that it is an "Initial Decision" not a partial initial decision. The fact that the ordering clause does not conform to 10 CFR §§2.760 or 2.762 should not be viewed as an indication in this instance that an Initial Decision has not been rendered. To the contrary, it was premature for the Licensing Board to include appellate right references, since it retained jurisdiction by virtue of its action staying the effectiveness of the decision. Further Licensing Board action is necessary to lift the stay and at that time the appellate instructions can be given.

Regardless of how one views the status of the Initial Decision, the above standard was recently applied by the Appeal Board in its consideration of a partial initial decision. See Diablo Canyon, supra.

Kansas Gas and Electric Co., supra, 7 NRC at 338, quoting from Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-227, 8 AEC 416, 418 (1974). Indeed, the Commission specifically reiterated this standard in its Policy Statement regarding litigation of TMI related items in instances where initial decisions have already been issued:

> Thus, for example, where initial decisions have been issued, the record should not be reopened to take evidence on some TMI-related issue unless the party seeking reopening shows that there is significant new evidence, not included in the record, that materially affects the decision. [45 Fed. Reg. at 41740].

Applying this criterion here, Applicant submits that the undisputed facts noted herein, including those contained in the attached Affidavit of K.S. Canady, 21/ clearly establish that excessive generation of hydrogen due to a TMI-type accident at the McGuire facility is not a credible event. CESG presents no material to dispute these facts. Rather, CESG would have this Licensing Board reopen the record, not on the basis of new factual material, but on the basis of questions which CESG raises (i.e., "[a]n operator may have forgotten his training in regard to TMI-matters, or may have failed to comprehend." CESG Revised Motion at p. 12). This proceeding has long past the period at which a threshold contention such as raised by CESG here is sufficient to warrant litigation of that

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21/ It is clear that affidavits are an appropriate means for responding to motions to reopen a record. Vermont Yankee, supra, 6 AEC at 523.

issue. For CESG to succeed it must establish that, inter alia, there is "new factual information" and that if such new information had been considered a different result would have been reached. In sum, CESG has failed to make such a showing, and thus has failed to comply with the third reopening criterion. 22/

Mindful of the Commission's admonition that "present standards governing the reopening of hearing records to consider new evidence on TMI-related issues should be strictly adhered to" (45 Fed. Reg. at 41740), Applicant submits that from the foregoing CESG has failed to meet the standards set forth for reopening the record in a licensing proceeding, and, thus, CESG's motion should be denied. 23/

22/ To the extent that CESG attempts to raise events other than a TMI-type situation, we note that such are not "new", and, accordingly, such attempts must fail.

23/ Applicant submits that to countenance what CESG requests here would be contrary to the basic precept of administrative law that administrative actions must at some time draw to a close. In this regard we note that Mr. Justice Jackson's discussion of this issue over 35 years ago is still applicable today:

> One of the grounds of resistance to administrative orders throughout federal experience with the administrative process has been the claims of private litigants to be entitled to rehearings to bring the record up to date and meanwhile to stall the enforcement of the administrative order. Administrative consideration of evidence . . . always creates a gap between the time the record is closed and the time the administrative decision is promulgated. This is especially true if the issues are difficult,

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Accordingly, we urge this Licensing Board to deny CESG's instant motion. 24/

III. CESG'S CONTENTIONS 2, 3 AND 4 MUST BE DENIED

While Applicant maintains that CESG has failed to meet the appropriate reopening standards thus requiring denial of its motion, Applicant submits, in any event, that CESG's Contentions 2, 3 and 4 are defective and must be denied. These contentions are addressed in seriatum below.

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> the evidence intricate, and the consideration of the case deliberate and careful. If upon the coming down of the order litigants might demand rehearings as a matter of law because some new trend has been observed, or some new fact discovered, there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening. [ICC v. Jersey City, 322 U.S. 503, 515 (1944). See Northern Indiana Public Service Co., supra, 8 NRC at 418].

24/ Applicant is cognizant of the Commission's action in TMI-1, CLI-80-16, supra, wherein certain aspects of the hydrogen generation question were determined to be the proper subject of a hearing. However, that was not a "reopening" case with respect to this issue, and thus is to be distinguished from the situation here. Indeed, the Commission directed that intervention in that proceeding should be governed by 10 CFR §2.714 relating to initial intervention. CLI-79-8, 10 NRC 141, 149-50 (1979). Therefore, the Commission there was procedurally precluded from examining the substantive merits of the contentions advanced. Whereas here, reopening standards direct that such an examination occur and, as previously noted, the record be supplemented, as necessary, with affidavits to support the decision on the motion to reopen. Indeed, to hold that the Commission decision in CLI-80-16 is binding in all cases would be contrary to the later guidance of the Commission that reopening standards be "strictly adhered to." 45 Fed. Reg. at 41740.

1. CESG's Contention 2

CESG asserts that "neither licensee nor NRC Staff has demonstrated that a McGuire ice containment will not breach as a result of the rapid combustion of quantities of hydrogen which a dry containment could withstand." CESG Revised Motion at p. 22.

Applicant submits that CESG's Contention 2 is irrelevant and raises no issue appropriate for resolution in this proceeding. To explain, CESG apparently takes the position in this contention that the NRC Staff and Applicant are required to demonstrate that the ice condenser containment is comparable to a dry containment with regard to the ability to withstand the combustion of hydrogen. In short, in that such a comparison sheds no light on whether there is reasonable assurance that the facility in question may be operated without endangering public health and safety, the contention itself is irrelevant and must be denied.

2. CESG's Contention 3

CESG asserts that "neither licensee nor NRC Staff has demonstrated that the emergency planning radius of ten miles is sufficient for protecting the public from the radioactive releases of a low pressure, ice condenser containment rupture by a hydrogen explosion." Id.

Applicant submits that CESG contention 3 is, pursuant to 10 CFR §2.758, an impermissible attack on the Commission regulations regarding emergency planning (e.g., Appendix E to 10 CFR Part 50; 10 CFR §50.47, and 45 Fed. Reg. 55402 (August 19, 1980)). Specifically, the amendments to 10 CFR §50.47 require that emergency planning zones of 10 and 50 miles be established for plume exposure and ingestion exposure pathways, respectively. The basis for these standards, as set forth in 10 CFR §50.47 note 1, is contained in NUREG-0654: FEMA-REP-1 entitled "Criteria For Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants" (January 1980). Therein, the Commission determined that the appropriate emergency planning zones are based upon consideration of a range of specified potential accidents to include a worst case core melt accident involving a breach of containment. NUREG-0654, supra. In short, CESG contends that the emergency planning zones referenced in the emergency planning regulations are inadequate in that consideration was not given to the specific accident scenario which CESG references in its contention. The basis for the Commission regulations is, as noted above, specified accident scenarios. Thus, CESG's contention that this range of accidents is not adequate as

the appropriate planning basis is a direct attack upon the basis of the Commission regulations, and thus, the contention must fail. Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 88-89 (1974). See also, Union of Concerned Scientists v. AEC, 499 F.2d 1069 (D.C. Cir. 1974).

3. CESG's Contention 4

CESG asserts that "licensee and NRC planning do not provide for crisis relocation which would be required as a result of containment breach and radioactive particle release." CESG's Revised Motion at p. 22.

Applicant submits that CESG contention 4 is, pursuant to 10 CFR §2.758, an impermissible attack upon Commission regulations regarding emergency planning. Commission regulations regarding emergency planning, as noted above, are applicable to the McGuire station. Therein, the NRC has set forth those actions which are required to "assure that adequate protective measures can and will be taken in the event of a radiological emergency." 45 Fed. Reg. 55402. CESG, in its contention 4, apparently submits that such regulations are inadequate in that they do not provide for crisis relocation planning. Thus, to the extent that CESG maintains that such emergency planning regulations are

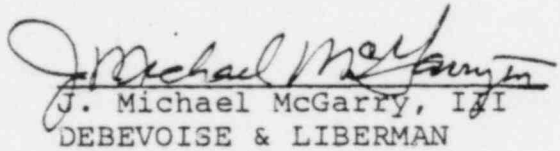
inadequate, CESG's contention is an impermissible attack upon the regulations and must be denied. 10 CFR §2.758 and Douglas Point, supra.

From the above, Applicant submits that CESG's contentions 2, 3, and 4 are fatally flawed and must be denied.

IV. CONCLUSION

From the foregoing, Applicant submits that CESG has failed to meet standards regarding reopening the record, and accordingly, CESG's motion must be denied. In any event, Applicant submits that CESG's Contentions 2, 3 and 4 are deficient and must be denied. Due to the exigencies of this matter, Applicant respectfully requests expeditious resolution of CESG's Motions.

Respectfully submitted,



J. Michael McGarry, III
DEBEVOISE & LIBERMAN
1200 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 857-9800

Of Counsel:

William L. Porter, Esq.
Associate General Counsel
Duke Power Company

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