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REGULATION DURING THE COPY

December 15, 1980

Docket Nos. 50-369/370

Mrs. Patricia Edmondson
P.O. Box 2516
Davidson, North Carolina 28036

Dear Mrs. Edmondson:

Your letter dated October 2, 1980 to the Nuclear Regulatory Commission, received on October 8, 1980 has been referred to me for response.

You express concerns about emergency and evacuation plans to be implemented for the McGuire Nuclear facility.

On November 25, 1980, the presiding Atomic Safety and Licensing Board issued an order (copy enclosed) which reopens the McGuire operating license proceedings. One of the issues to be considered in the reopened hearings concerns whether the McGuire facility meets the Commission's emergency planning regulations. With respect to your concerns, the NRC Staff is currently reviewing Duke's evacuation plans for the McGuire facility to determine whether they meet the emergency planning requirements of the U.S. Nuclear Regulatory Commission as set forth in 10 CFR Part 50 of the Commission's regulations.

If you have further questions regarding this matter, you may contact the undersigned at (301) 492-7502.

Sincerely,

Edward G. Ketchen
Counsel for NRC Staff



Enclosure: As stated

cc (w/o enclosure):
Robert M. Lazo, Esq.
Dr. Emmeth A. Luebke
Dr. Cadet H. Hand, Jr.
J. Michael McGarry, III, Esq.
William L. Porter, Esq.
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Atomic Safety & Licensing Board Panel
Atomic Safety & Licensing Appeal Board
Secretary

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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)

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

November 25, 1980

MEMORANDUM AND ORDER REGARDING
CESG's MOTION TO REOPEN RECORD

*Ketchen/Curtiss
Chandler/Tountellote
FF*

I. INTRODUCTION

On August 15, 1980, Carolina Environmental Study Group ("CESG") filed a Revised Motion to reopen the McGuire hearing record to consider contentions related to the matter of hydrogen-generation control arising out of the Three Mile Island 2 (TMI-2) accident. Earlier, on July 29, 1980, the Atomic Safety and Licensing Board (Licensing Board) had granted CESG ten (10) days to submit a revised motion meeting the requirements for reopening a record, and to reframe its contentions in accordance with the guidance recently provided

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by the Commission for taking TMI-2 related issues into account in operating license proceedings.^{1/}

CESG's revised motion (1) discusses the requirements for reopening a record, (2) submits four proposed contentions related to hydrogen-generation control, and (3) requests the Licensing Board to deny Applicant's request for authorization to load fuel and conduct low power testing under NTOL requirements.^{2/}

In its response of September 3, 1980 to CESG's revised motion, Applicant argued that CESG has failed to meet standards regarding reopening the record, CESG's Contentions 2, 3 and 4 are deficient, and that the Board should deny the revised motion.

^{1/} Duke Power Company (William B. McGuire Nuclear Station, Units 1 and 2), Memorandum and Order, Slip Op. (July 29, 1980). In previous proceedings in this case, the Licensing Board issued an Initial Decision on April 18, 1979 (i.e., LBP-79-13, 9 NRC 489 (1979)) but 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 addressing the significance of any unresolved generic safety issues." Ibid at 547-48. SER, Supplement 3, which addressed the significance of the unresolved safety issues as they relate to the McGuire facilities, was published in May 1980. Based on issuance of SER, Supplement 3, on May 30, 1980, Duke Power Company ("Applicant") filed a motion to terminate the stay of the Initial Decision.

^{2/} NTOL refers to the "near-term operating license" provisions specified in NUREG-0694, "TMI Related Requirements for New Operating Licenses." (June 1980). These requirements are set forth in "Further Commission Guidance for Power Reactor Operating Licenses; Statement of Policy," (45 Fed. Reg. 49738; June 20, 1980).

In a response filed on September 4, 1980, the Staff took the position that the Licensing Board should defer ruling on CESH's Revised Motion with respect to hydrogen-generation control matters until resolution of a motion for reconsideration of CLI-80-16^{3/} then pending before the Commission in Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), Docket No. 50-289-SP (Restart). On September 26, 1980, the Commission issued an Order denying the motion for reconsideration. In a conference call of October 28, 1980, the Board requested positions from the parties on this matter. Responses filed by the Applicant on November 3, 1980 and by the Staff and CESH on November 7, 1980, make it clear that none of the parties believe that the Commission's Order of September 26, 1980 has a direct bearing on the issue of whether CESH's motion to reopen should be granted, rather the decision was of assistance in ascertaining the scope of the hearing once it has been determined whether such would be necessary. We agree.

We have carefully considered the filings of all of the parties and concluded that the operating license proceeding must be reopened to hear evidence on the hydrogen-generation control matter.

^{3/} CLI-80-16 is the Commission's decision regarding certified hydrogen-related questions in the Three Mile Island, Unit No. 1 restart proceeding, 11 NRC 674 (May 16, 1980).

Accordingly, Applicant's "Motion to Terminate Stay of Initial Decision" dated May 30, 1980 is denied, and CESG's August 15, 1980 Revised Motion to reopen the operating license proceeding, is granted.

II. DISCUSSION

A Licensing Board has the discretion to reopen a record if the motion to reopen is timely, addresses a significant safety or environmental issue, and might have required a different result to be reached if the newly proffered material had been considered initially. See Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-598, 11 NRC 876, 879 (1980); Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station) ALAB-138, 6 AEC 520, 523-24 (1973).

We have considered the motion to reopen in the light of those standards as well as in the context of the Initial Decision issued on April 18, 1979 and the record upon which it rests. In our judgment CESG's proposed contentions related to the matter of hydrogen-generation control arising out of the Three Mile Island 2 (TMI-2) accident may well shed significant light upon key safety findings which are required to be made before operation of McGuire Units 1 and 2 could be authorized. The matter has obvious safety implications and CESG's motion was made with reasonable dispatch after it became apparent that

analyses conducted since the TMI-2 accident demonstrate that the Commission and others recognize that the question of hydrogen-generation control is a significant one. Accordingly, we grant the motion to reopen on this issue and admit CESC's Revised Contentions 1-4 to be adjudicated at a hearing on a full-term, full-power operating license for McGuire, Units 1 and 2.

It is so ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Robert M. Lazo
Robert M. Lazo, Chairman

Dated at Bethesda, Maryland
this 25th day of November 1980.