UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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

4/17/81

Intervenor, Carolina Environmental Study Group (CESG), hereby RESPONDS to Applicant's request for Waiver, Exception or Exemtion from 10 CFR, part 2, Appendix B.

Background:

Intervenor moved to reopen the Operating License Hearing in regard to the McGuire Nuclear Station after Three Mile Island (TMI) and that motion was granted. The reopened OL hearings began on February 24, 1981 and ended on March 19, 1981. Findings of Facts and Conclusions of Law were proposed by the parties thereafter, and all such have been filed. The Atomic Safety and Licensing Board is now studying the proposals and the review by the ASLB is under way.

Applicant, nevertheless, seeks to set aside the procedure set forth in Appendix B, regulating licensing post-TMI, and, apparantly, have the decision of the ALAB be immediately effective, or omit the Atomic Safety and Licensing Appeal Board (ASLAB) step. Neither is appropriate for the licensing of this nuclear station.

Applicant sets forth alleged "special circumstances," a term it finds in 10 CFR §2.758. These circumstances are that this is a reopened OL hearing, that there is a need for power, and that hydrogen generation in a nuclear power plant and particularly in an ice condenser plant, is a familiar topic to the Commission and Boards. None of these factors alleged, however, provides any circumstance that

DS03
S 0/1

G

alters the post TMI need for full, exacting and deliberate review of every step taken in licensing a nuclear plant. Appendix B wisely requires full consideration be given to environmental issues, and requires the ASLAB to attend to whether the licensing of a plant will create novel safety or environmental issues in light of TMI or prejudice review of significant safety or environmental issues. Any expedited procedure as requested by the Applicant will impact on both these considerations.

Applicant's first factor is that the hearing was on a reopened operating license. This is indeed true. The OL was reopened after TMI, to consider the effects of information gathered from TMI on a thin-shelled ice condenser plant. The reopened hearing was held on motion of Intervenor, taking four weeks to address only the first two of four contentions raised and accepted by the ASLB. Two further contentions have not been heard as yet, and apparantly will only be heard if the Board decides that there is a realistic probability that hydrogen will be produced in a possible accident and if so will breach the containment. Then, the subsequent contentions, regarding the area's inability to cope with the releases (McGire is a short distance from the City of Charlotte, North Carolina, about 300,000 in population) would be considered. The fact that the OL was reopened is a direct consequence of the TMI accident. Appendix B is another such consequence. Thus, a reopened hearing is not a special circumstance that requires exemption from Appendix B, but is a normal expectation of the procedure established to review the consequences of TMI in an orderly manner. The fact that the hearing was reopened, then, is really an argument that TMI consequences ought to be reviewed in the procedural manner established for their review via

Appendix B.

Applicant, Duke Power, makes a second argument, that there is a serious need for power in the region. They supply an Attachment A that has become familiar to Intervenor, since Duke Power has been distributing it widely in order, we assert, to panic the public into accepting an unreviewed nuclear power plant. Their figures show that without McGuire, the system will have a net operating reserve with Oconee #1 out and 500 MW of miscellaneous sources forced out. The conclusion we are to come to is that Duke will be forced to brownouts if they do not have McGuire and something goes wrong. The Commission has been the recipient of numerous communications, from Congresspeople and others, to this end. Intervenor notes, however, that the predicted peak usage is no greater than last years, and we somehow struggled through without McGuire. Conservation may even lower that peak. Further, Robert L. Tedesco has furnished the parties with a chart of cost of replacement energy for 10 nuclear plants (3/25/81). Of these, the cost of replacement of McGuire 1 is placed at 16.9 mills per kWh, easily the lowest of any on the list. What should be looked to is the operating reserve of the region, which Intervenor believes is ample. There is no emergency need for the power from this plant, even assuming that Duke would have better luck with power production from it than TVA reportedly is having with Sequoyah. Given any kind of a reasonable review, and then a measured experiment and testing program at McGuire, it cannot be made available for a summer peak in any case, assuming a peak in August. It appears to Intervenor that the real rush is to get the plant in the rate base by making it operational by October, 1981. That is certainly not a consideration that should encourage expedited review. The last time a plant was put on line to try to meet a rate

base deadline, the result was the accident at TMI.

Applicant's third argument is that hydrogen generation in ice-condenser plants is a familiar problem to the Board. Indeed, the Board licensed Sequoyah, an ice condenser plant, and as a condition of that license, required certain experiments to be done. In the course of the McGuire hearings, the fruit of some of that experimentation was produced and commented on. In response to this argument, then, two points need to be made. Firstly, the Sequoyah license was granted without the participation of an Intervenor. Whatever the utilities think of Intervenors the Chair of this ASLB, Chairman Lazo, said: "I think too that on behalf of all the Board members, I'd simply like to note our gratitude to Mr. Riley (technical representative of Intervenor, CESG). I think Mr. Riley has brought matters to the attention of this Board which should be dealt with in a public hearing of this sort. I think there has been no doubt in the minds of anyone from the beginning that any license for McGuire, if it issues, would be like the Sequoyah plant. It would undoubtedly be a conditional license, and those conditions are matters which we will want to consider based on the evidence that has been brought forth in this proceeding. I think we all should be grateful to Mr. Riley for helping us assist in building a full record on which a logical and reasonable decision can be made." (Tr. p. 5257). Given the nature of thin shelled ice condenser plants, the record built with an Intervenor ought to be thoroughly examined, and the staff examined license of Sequoyah ought not to be a precedent excusing any steps.

Secondly, the post-Sequoyah studies need to be carefully examined by all levels of the Commission. Intervenor believes that reports issuing from Sandia Labs, Brookhaven National Labs, R&D Associates

and evidence taken during the hearing demonstrate that there are many unsolved problems concerning hydrogen generation in ice condenser plants, and that some of these can be extremely serious. In the course of the hearing, Applicant moved for a summary dismissal of CESG and for the Board to relieve itself of jurisdiction. In denying this motion, Chairman Lazo said: ". . .this is a very complicated proceeding even though in Mr. McGarry's [attorney for Applicant] eyes it may all seem to be rather simple. It involves some very complex technical matters, and we feel that we would be far better able to render a decision one way or the other based on the complete record if we have the advantage of proposed findings . . . ." (Tr. p. 5253). Similarly, the Commission can best function in review if all the steps are taken.

Intervenor further notes that there are serious evidentiary questions in the conduct of the hearing that may need to be considered. Of course, the Board may decide to deny the license pending further experimentation in any case, but if it does not, and if it does not consider documentary evidence offerred to it by Intervenor, consisting of NRC documents (NUREG's and NUREG/CR's), then those issues must be reviewed by the ASLAB and Commission. This memorandum in opposition cannot serve as a full request for stay motion, but an ASLAB would be needed to perform this review. In addition to evidentiary questions concerning such documents, there were requests for subpoenas denied, an expert witness' testimony refused, and two contentions unreached. The contentions, stated above, may be reached later, but it is Intervenor's position that, having not taken evidence on them, it is incumbent on the ASLB to reach their decision assuming that the contentions (dealing with the serious consequences of a breach of containment) are true. Thus, a full review will be required to determine

that the Board worked with a full and complete evidentiary record.

Intervenor notes that, apart from the comments in this record, it was successful in winning a denial of Duke's request to transfer spent nuclear fuel from its Oconee plant to the McGuire facility's spent fuel pool. That matter is being argued on appeal on April 22, 1981. Intervenor is not frivolous in these matters. (In excuse for these comments being late, we also note that findings of fact, etc., in this matter were filed this week, and that we also filed opposition to a 35% license in connection with this docket. Counsel for Applicant kindly agreed to an informal extention of time for this response.)

Intervenor believes Applicant is attempting to generate pressure on the Commission through political means and by creating the impression that people in Charlotte want the plant operational. A review of the limited appearances will squelch the latter contention, and the Commission must ignore the former. Applicant is also working in all legal ways to the same end. As the ASLB did, so should the Commission do, insisting on all formal steps in its procedure, including those established especially for this occasion, consideration of the lessons of TMI on post-TMI licensing of nuclear power plants. There are no special circumstances that require short circuiting those procedures and the seriousness of this matter requires that they each be completed in an insightful and deliberate manner. Applicant's motion should be denied.

Dated: April 17, 1981.

Jesse L. Riley
854 Henley Place
Charlotte NC 28207

Shelley Blum
Attorney for CESG
1402 Vickers Ave.
Durham, N. C. 27707