

4/8/81



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

Docket Nos. 50-369  
50-370

NRC STAFF RESPONSE TO APPLICANT'S MOTION FOR  
LICENSE AUTHORIZING OPERATION UP TO AND INCLUDING  
35 PERCENT RATED POWER AND NRC STAFF MOTION FOR  
LEAVE TO RESPOND TO CESG'S REPLY THERETO

On March 24, 1981, Duke Power Company (applicant) filed a motion for a license authorizing operations up to and including 35 percent rated power operations, citing 10 C.F.R. § 50.57(c) as the regulatory framework for such motion. The motion cites testimony of witness Muench for the proposition that at 35 percent rated power a TMI type accident, generating sufficient hydrogen to threaten containment, cannot occur.

The staff raises no objection to applicant's motion. The staff also requests leave to respond to objections raised by CESG's reply to applicant's motion.

II. BACKGROUND

As a result of previous hearings in this proceeding, the Licensing Board issued an Initial Decision on April 19, 1979,<sup>1/</sup> deciding all matters raised in issue in this proceeding prior thereto, in favor of the issuance of a full power operating license for both Units 1 and 2 of the McGuire

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<sup>1/</sup> Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), LBP-79-13, 9 NRC 489 (1979).

Station. 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 addressing the significance of any unresolved generic safety issues." 9 NRC 489, 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. All that remains of the issues raised prior to April 1979 is for the Board to terminate the stay of its Initial Decision with respect to such issues.

On November 25, 1980, the Licensing Board granted the motion of Carolina Environmental Study Group (CESG) to reopen the McGuire hearing record to consider four new contentions, all related to hydrogen generation control arising out of the TMI-2 accident,<sup>2/</sup> and on the same day granted applicant's motion for a low power license to the extent of authorizing fuel loading, initial criticality, and zero power testing.<sup>3/</sup> The hearings relating to the hydrogen generation and control issues commenced February 24, 1981, and were completed on March 19, 1981.<sup>4/</sup> The applicant's motion under 10 C.F.R. 50.57(c) for a license authorizing operation up to 35 percent of rated power was filed March 24, 1981.

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<sup>2/</sup> "Memorandum and Order Regarding CESG's Motion to Reopen Record," (unpublished).

<sup>3/</sup> "Memorandum and Order Regarding Applicant's Motion for Summary Disposition" (unpublished). This Memorandum and Order denied applicant's request with respect to low power testing at up to 5% of full power.

<sup>4/</sup> The record remaining open for the limited issue of providing the staff with an opportunity to supplement the record, if needed, on questions relating to the potential for pyrolysis and combustion of polyurethane insulating material. Staff information was submitted on March 27, 1981.

III. NRC'S STAFF ANSWER TO APPLICANT'S MOTION

Applicant's motion for operation at 35 percent of rated power is made pursuant to 10 C.F.R. § 50.57(c). That section provides:

An applicant may, in a case where a hearing is held in connection with a pending proceeding ... make a motion in writing ... for an operating license authorizing low power testing (operation at not more than 1 percent of full power for the purpose of testing the facility) and further operation short of full power operation. Action on such motion by the presiding officer shall be taken with due regard to the rights of the parties to the proceedings, including the right of any party to be heard to the extent that his contentions are relevant to the activity to be authorized. Prior to taking any action on such a motion which any party opposes, the presiding officer shall make findings on the matters specified in paragraph (a) of this section as to which there is a controversy, in the form of an initial decision with respect to the contested activity sought to be authorized. The Director of Nuclear Reactor Regulation will make findings on all other matters . . . . [I]f no party opposes the motion, the presiding officer will issue an order pursuant to § 2.730(e) . . . authorizing the Director of Nuclear Reactor Regulation to make appropriate findings on the matters specified in paragraph (a) of this section and to issue a license for the requested operation.

Thus, 10 C.F.R. § 50.57(c) provides a simple two-stage approach to low power testing and other partial power licenses during the pendency of a hearing. If no party objects, the Board simply issues an order authorizing the Director of Nuclear Reactor Regulation to make appropriate findings with respect to the issuance of the requested license. If a party objects, the Board then is to make findings with respect to those contentions, relevant to the activity requested to be authorized, which are placed in controversy with respect to the motion by the objection. With respect to all other matters covered by 10 C.F.R. § 50.57(a), the Director of Nuclear Reactor Regulation is authorized to make findings.

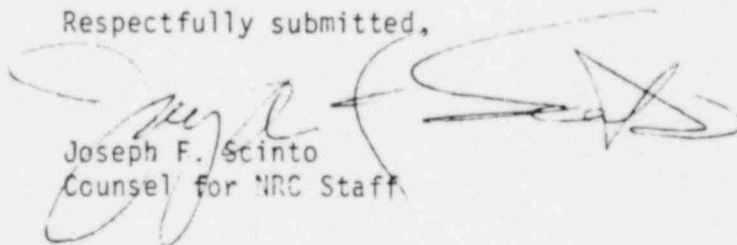
As noted above, all issues have already been decided by the Licensing Board in this case except for the four contentions related to hydrogen generation and control admitted in connection with the reopened proceeding on November 25, 1980. Thus, if an objection is interposed, the Board is required only to decide the issues raised in connection with such contentions to the extent relevant to the requested partial power operation. With respect to all other issues, only a termination of its stay with respect to such issues is needed.<sup>5/</sup>

The staff does not object to the applicant's motion and interposes no issues which must be decided by the Licensing Board in accordance with 10 C.F.R. 50.57(c).

IV. NRC STAFF MOTION FOR LEAVE TO RESPOND  
TO CESG REPLY TO APPLICANT'S MOTION

By reply, dated April 2, 1981, CESG opposed applicant's motion. CESG's reply asserts that certain CESG contentions are relevant to the partial power authorization request by the applicant. The NRC staff requests leave to respond by April 17, 1981, to CESG's position.

Respectfully submitted,

  
Joseph F. Scinto  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 08th day of April, 1981

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<sup>5/</sup> Provided that the ordering clause be modified to reflect the reopened status of the proceeding and the provisions of Appendix B to 10 C.F.R. Part 2 (unless waived or otherwise modified).

See "NRC Staff Response to (1) Carolina Environmental Study Group's (CESG) Motion to Admit New Contentions and Reopen the McGuire Operating License Hearing and (2) Duke Power Company's (Duke or Applicant) Motion to Terminate the Stay of Initial Decision" dated July 10, 1980.