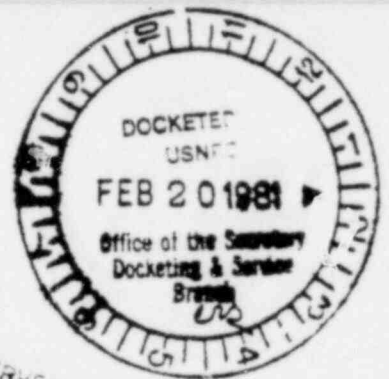


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE PRESIDING OFFICER



SERVED

FEB 20 1981

In the Matter of
PROPOSED RULEMAKING ON THE STORAGE
AND DISPOSAL OF NUCLEAR WASTE
(Waste Confidence Rulemaking)

PR-50, 51 (44 Fed. Reg. 61372)



ORDER DENYING MOTION TO REQUIRE
DETAILED CONSIDERATION OF WASTES RESULTING
FROM THREE MILE ISLAND ACCIDENT
(February 20, 1981)

On February 9, 1981, the Environmental Coalition on Nuclear Power (ECNP) and the individual participant Marvin I. Lewis filed a motion to include in this rulemaking proceeding a full consideration of the disposition and storage of high level radioactive wastes and damaged fuel generated by the TMI-2 accident, or generated in the course of cleanup of TMI-2.^{1/} The Movants requested the Commission to direct the Presiding Officer and the NRC Staff to supplement the record with full information relating to such wastes, and to require the Department of Energy to supplement the record with full information and analysis pertaining to the storage and disposal of TMI accident-related radioactive wastes. It was also moved that all participants be given an extension of time to review this additional material, to amend their previous statements and cross-statements of position, and to respond to the comments of other participants. A response opposing this motion was filed by the United States Department of Energy (DOE) on February 17, 1981.

^{1/}This refers to the accident of March 28, 1979, at the Three Mile Island Nuclear Station, Unit 2.

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Although this motion purports to be filed before the Commission rather than the Presiding Officer, the initial response to the motion will be made by the latter. The procedure originally adopted by the Commission provided that "participants shall be supervised by" a Presiding Officer.^{2/} It was further stated that "That officer's principal responsibility will be to monitor the early stages of the proceeding for the Commission, and to assist the Commission in conducting the later portions."^{3/} In accordance with this responsibility to monitor the early stages of this proceeding, the Presiding Officer in the past has issued rulings on proposals by participants to alter the scope of the proceeding.^{4/} That practice will be continued here, and the motion will be denied.

As Movants state, they have previously raised the issue of permanent disposal of severely damaged fuel caused by the accident at TMI-2.^{5/} This identification by ECNP of a potential issue concerning the capability of the DOE waste management program to handle safely severely damaged fuel from major reactor accidents, was a useful contribution to this proceeding. That issue was subsequently considered by the Working Group, which in identifying areas where additional information might be needed, stated:

^{2/} Notice of Proposed Rulemaking, 44 Fed. Reg. 61372 at 61374 (October 25, 1979).

^{3/} Id.

^{4/} First Prehearing Conference Order, dated February 1, 1980, pp. 6-11; Order Denying Motions to Strike Filings of SE₂, dated February 4, 1981.

^{5/} Statement of Position of ECNP, pp. 2, 4. See also Cross-Statement of ECNP, pp. 2, 8; Suggestions of ECNP as to the Nature and Scope of Further Proceedings, pp. 1-2.

"Another potential issue raised by participants and considered by the Working Group is the capability of the DOE waste program to safely store and dispose of damaged spent fuel including that which has been severely damaged in major reactor accidents (e.g., the core from TMI-type accidents). The spectrum of fuel damage analyzed in the DOE Position Statement stops short of considering severely damaged fuel. The Working Group recognizes that management and disposal of severely damaged fuel might present unique problems.

"Although it is assumed for purposes of this proceeding that the spent fuel to be stored and disposed of has not been severely damaged in the course of its use in power reactors, i.e., the condition of the spent fuel is essentially the same as all spent fuel presently being stored at reactor sites, DOE states that only spent fuel meeting predetermined acceptance criteria will be accepted in the repository. There is no description of the final disposition of spent fuel which does not meet the criteria."^{6/}

This is a generic rulemaking proceeding for the Commission to reassess its degree of confidence that radioactive wastes produced by nuclear facilities will be safely disposed of.^{7/} Hybrid rulemaking procedures are to be utilized rather than adversarial adjudicatory procedures. Accordingly, the nature of severely damaged fuel at TMI-2 is properly the subject of generic consideration in this proceeding.

The high specific activity wastes resulting from the cleanup operations at TMI-2, as well as spent fuel in the damaged core and other wastes having some characteristics very similar to high-level waste, help to establish the parameters of nuclear waste to be considered in this proceeding. It is anticipated that the Working Group and the Presiding Officer will take into consideration the comments of participants such as ECNP regarding identification

^{6/} The Report of the Working Group on the Proposed Rulemaking on the Storage and Disposal of Nuclear Wastes, Part IV, Technical Issues for Spent Fuel Storage, p. 28 (January 29, 1981).

^{7/} 44 Fed. Reg. 61372-73.

and description of issues in making recommendations to the Commission concerning further proceedings.^{8/} It is also expected that consideration will be given by the Commission to the best approach to obtain additional information where it deems additional information to be required.

It is apparent from the letter of Chairman Ahearne cited by Movants,^{9/} that the question of handling and processing unusual nuclear wastes at the TMI site is receiving careful attention at the highest levels of NRC. It is also apparent that since ECNP and some of its principals are intervening parties to pending TMI proceedings,^{10/} they thus have had access to such information as would be relevant to this rulemaking proceeding. Accordingly, the management and disposal of high specific activity wastes and of severely damaged fuel from major reactor accidents (such as TMI-2), have been and will continue to be given careful generic consideration in this waste confidence proceeding.

However, the pending motion seeks to compel the Commission to go further by now interjecting a specific and very detailed review of TMI proceedings into this proposed rulemaking. It would improperly expand the scope of this proceeding and unduly delay it. All participants have already had ample opportunity to address this and other issues if they wished, as the TMI-2 contentions have been repeatedly asserted here by ECNP, commencing with its

^{8/} Commission's Memorandum and Order, entered January 16, 1981, pp. 1-3.

^{9/} Letter of October 20, 1980, from Chairman John F. Ahearne to Secretary of the Department of Energy, Charles W. Duncan.

^{10/} Metropolitan Edison Company, et al. (Three Mile Island Nuclear Station, Unit 1, Restart Proceedings) Docket No. 50-289 (Restart); Metropolitan Edison Company, et al. (Three Mile Island Nuclear Station, Unit 2, Operating License Amendments), Docket No. 50-320-OLA.

original statement of position and continuing through its cross-statement and suggestions for further proceedings. An additional, extensive and detailed consideration of TMI wastes is unnecessary for a generic rulemaking proceeding. The Movants can participate in a thorough review of TMI-generated waste problems by their interventions in those proceedings, without unnecessarily expanding the scope of the instant proceeding.

The relief requested by the instant motion reflects a continuing misunderstanding or misinterpretation of the nature of this waste confidence proceeding and of the proper role of participants therein. The Movants seek by motion to compel the Presiding Officer (and the NRC Staff) immediately to "reopen the record"; to "supplement the record fully" with a large volume of information and data regarding the ultimate disposal of TMI-related wastes and damaged fuel remaining in its pressure vessel; to permit all participants to file more comments, amended statements and cross-statements; and to extend the 35-day response period to the Working Group's summaries and identification of issues. These requests are unreasonable and will be denied.

In the first place, the record has not been closed, and hence need not be reopened for any proper purpose. This is an on-going proceeding which continues to generate information for ultimate decision-making by the Commission. Next, the Working Group's summaries, identification of issues and suggestions for the development of additional information are part of the record so far compiled. So are the responses thereto made by the participants within the established comment period. In addition, following the close of the comment period the Presiding Officer will "promptly transmit

those comments to the Commission, together with his recommendations concerning further proceeding."^{11/} Thus, the nature of TMI nuclear wastes is now pending as a potential issue which will be resolved by the Commission itself, in accordance with the process described above.

However, ECNP seeks by this motion to short-circuit established procedures and to compel the Presiding Officer and others to decide immediately in its favor on these issues as a matter of law. No party has a right to foreclosure the deliberate and sequential consideration of important issues by those persons or bodies which are given that responsibility by the Commission's procedures. An attempt to accomplish this result by motion would constitute a distortion if not a misuse of motion practice, and will not be permitted.

An additional aspect of motion practice employed by ECNP will be considered at this time. Along with its cross-statement, ECNP included an undated paper entitled "Motion Filed Consequent Upon And As Part Of The Cross-Statement of ECNP." This paper asked for the immediate suspension of all further proceedings because the statements filed by numerous parties "have raised indisputable areas of deficiency, uncertainty, lack of necessary and sufficient information, and procedural voids." Although denominated a motion, this paper was considered to be merely ECNP's suggestions concerning procedures for the remainder of the proceeding. As such, these suggestions would be considered together with the differing suggestions of all other participants.^{12/} Obviously, ECNP has no right to impose its conclusions upon

^{11/} Commission's Memorandum and Order of January 16, 1981.

^{12/} Order of Presiding Officer dated May 29, 1980.

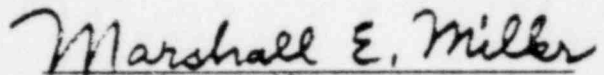
everyone else simply by couching them in the form of a motion. However, if ECNP insists on having this filing treated as a motion, it is summarily denied.

ORDER

For all the foregoing reasons, it is, this 20th day of February, 1981

ORDERED

That the Motion of Environmental Coalition on Nuclear Power and Marvin I. Lewis to Commissioners to Include in This Proceeding a Consideration of High Level Radioactive Wastes Resultant From the Three Mile Island Accident, be and the same is hereby DENIED.


Marshall E. Miller
Presiding Officer