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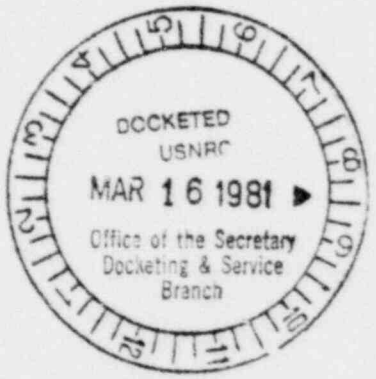
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges:
Ivan W. Smith, Chairman
Dr. Walter H. Jordan
Dr. Linda W. Little

In the Matter of	)	
	)	
METROPOLITAN EDISON COMPANY	)	Docket No. 50-289
	)	(Restart)
(Three Mile Island Nuclear Station, Unit No. 1)	)	

March 12, 1981

MEMORANDUM AND ORDER DENYING
ADMISSION OF TESTIMONY OF BEYEA
IN SUPPORT OF ANGRY CONTENTION V(D)

The board has previously stated on the record that it was denying the admission into evidence of the prefiled written testimony of Dr. Jan Beyea proffered by ANGRY in support of its Contention V(D) (Tr. 11,024, January 27, 1981).[1/] In addition to licensee's written objections of November 3, 1980, extensive argument by all interested parties was heard on the record (Tr. 8865-8915, December 19, 1980). This memorandum and order explains the reasons for our ruling.

1/ The board confirmed this ruling on the record of February 12, 1981, indicating that a written order would further supply the rationale (Tr. 12,390-392).

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ANGRY Contention V(D) advocates, as a condition of restart of TMI-1:

> Installation in effluent pathways of systems for the rapid filtration of large volumes of contaminated gases and fluids.

The proffered testimony of Dr. Beyea urges that a new structure for controlled filtered venting of the reactor containment be installed at TMI-1. Dr. Beyea believes that such a system is needed to reduce offsite consequences should it become necessary to vent the containment following a meltdown or other event which threatens breach of containment due to, for example, overpressurization or hydrogen buildup.

Licensee and staff argue that the contention deals with the capacity of filters in conventional effluent pathways in the event of an accident, rather than with either hydrogen control or Class 9 accident issues. We agree, and therefore we could reject the testimony on the ground that it is beyond

the scope of the contention. However, we decline to reject the testimony on this narrow ground.[2/]

Even if we accept, arguendo, the right of ANGRY to construe its Contention V(D) as alleging the need for the system advocated by Dr. Beyea, we cannot admit the testimony due to the pendency of a rulemaking proceeding and the Commission's direction that we defer to that rulemaking.

As has been discussed previously in this proceeding, we believe that generally boards have discretion to accept or reject for litigation in individual proceedings issues which are (or are about to become) the subject of generic rulemaking

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2/ Since our ruling is not grounded on this view, we need not rehearse our reasons for agreement in detail. Briefly, Class 9 and hydrogen control contentions were each treated specially in our First Special Prehearing Conference Order, 10 NRC 828, December 18, 1979, and throughout the proceeding. ANGRY was granted the right to participate in the litigation of both Class 9 issues (in rejecting ANGRY's Contention 6, we permitted ANGRY to adopt UCS 13) and hydrogen control issues, as later defined by the Commission (through ANGRY Contention V(A) and later consolidation of ANGRY and UCS with Mr. Sholly's hydrogen control contention No. 11, as redrafted by the board in our order of May 30, 1980). In sharp contrast, ANGRY V(D) was admitted, albeit subject to later specification in the course of discovery, without segregation into these two special categories. As noted, ANGRY was permitted to participate in these two categories in any event. Prior to the filing of Dr. Beyea's testimony on October 2, 1980, just before the October 15 commencement of the evidentiary hearing, ANGRY never complained that its Contention V(D) had been mischaracterized by omission from the categories of Class 9 and/or hydrogen control contentions. The bare reference to a report on post-accident containment filtration in an answer by ANGRY to licensee's interrogatory does not overcome the history of the treatment of contentions in this proceeding.

by the Commission. In general, Commission precedent indicates that we should not accept such issues. Potomac Electric Power Company (Douglas Point, Units 1 and 2), ALAB-218, 8 AEC 79, 85 (1974). However, the fact that an issue relevant to an individual proceeding will be resolved in a generic rulemaking proceeding does not perforce permit the individual proceeding to conclude as if the generic issue does not exist. The board would either have to defer any authorization otherwise justified in the individual case until a determination is reached in the rulemaking proceeding and then factor that determination in, or be able to conclude that such authorization can be granted in the individual case in advance of resolution of the issue on a generic basis. This latter determination could be premised on findings that the problem has been resolved for the individual reactor, or that there is reasonable assurance the problem will be resolved before it has adverse safety implications for the individual reactor, or that alternative means will be available for assuring that lack of resolution of the problem generically would not pose an undue risk from operation of the individual reactor. Cf. Gulf States Utilities Co. (River Bend, Units 1 and 2), ALAB-444, 6 NRC 760, 775 (1977). In this particular instance, the Commission has made the determination for us.

In CLI-80-16, 11 NRC 674, May 16, 1980, the Commission declined to waive or suspend the hydrogen generation design basis assumptions of 10 CFR 50.44 in this proceeding. The

Commission ruled that the question of safety features to deal with degraded core conditions, including measures to deal with hydrogen generation following a loss-of-coolant accident, will be more properly dealt with in a planned rulemaking proceeding (now formally noticed). Advance Notice of Proposed Rulemaking: Consideration of Degraded or Melted Cores in Safety Regulation, 45 Fed. Reg. 65474, October 2, 1980. In so ruling, the Commission found that the hydrogen generation issue presented by the TMI-2 accident is not so urgent and serious as to prohibit deferral of its resolution until the completion of the rulemaking, the results of which will be applicable to TMI-1. The Commission noted that the hydrogen generation concern at TMI-2 is tied to the operator's prematurely turning off the ECCS system, not to improper design of the ECCS. Accordingly, the Commission noted that licensees are now instructed not to turn off the ECCS prematurely and that this serves as a basis to sustain the hydrogen generation assumptions of Section 50.44 for the interim until the degraded core rulemaking can be completed.

One of the express questions listed for the degraded core rulemaking is Question 6:

> Should the NRC require construction, at each nuclear reactor plant site, of a new structure for controlled filtered venting of the reactor containment structure? * * *

45 Fed. Reg. 65476.

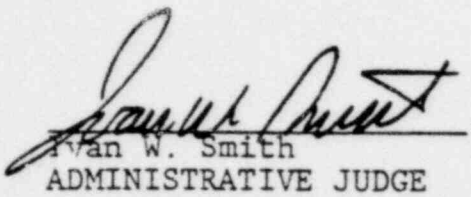
This of course is the very system proposed by Dr. Beyea's testimony. Consistent with the Commission's order, we may not permit litigation of it in this proceeding. Rather, it will be addressed in the rulemaking proceeding. In that forum, Dr. Beyea and ANGRY may present their views. If the Commission finds, as Dr. Beyea, members of the ACRS and others have urged, that a controlled filtered containment venting system should be required, the results of the rulemaking will reflect this. The board expresses its view that in light of the TMI-2 accident, the issue merits the serious consideration which the Commission is apparently prepared to give it in the rulemaking proceeding.

We agree with ANGRY that Dr. Beyea's testimony that a filtered vented containment system be required is not solely premised on excess hydrogen generation. It is premised on degraded core conditions, which includes but is broader than the concerns over excess hydrogen generation. This broader consideration of degraded core conditions is the precise subject of the rulemaking.

Dr. Beyea's testimony assumes that containment integrity will be threatened as a result of degraded core conditions. He offers no testimony pertinent to an inquiry into the mechanisms of such threats or the ability of the containment to withstand them. Therefore, Dr. Beyea's testimony does not provide any

information material to the litigation of either Class 9 or hydrogen control issues as those issues have been admitted in this proceeding. ANGRY was given the opportunity to litigate those issues independent of our ruling herein.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

 , Chairman
Ivan W. Smith
ADMINISTRATIVE JUDGE

Harrisburg, Pennsylvania
March 12, 1981