

U.S. Nuclear Regulatory Commission
ATTN: Chief, Docketing & Service Br.
Washington, D.C. 20555
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

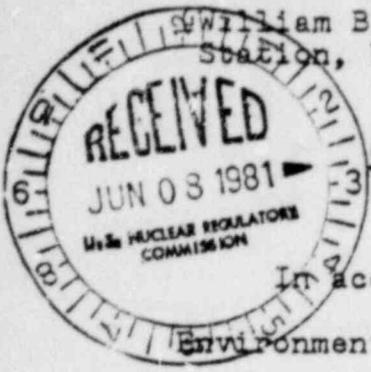
BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of)
DUKE POWER COMPANY)

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

William B. McGuire Nuclear)
Station, Units 1 and 2)

CESG'S REQUEST FOR STAY OF INITIAL DECISION



In accordance with 10 CFR §2.788, intervenor, Carolina Environmental Study Group (CESG), hereby requests a stay of the Initial and Supplemental Initial Decisions in the instant matter.

(1) Initial and Supplemental Initial Decisions (ID and SID) have been issued in the subject matter. The SID was served May 27, 1981. The SID was the result of reopening the hearing to consider matters related to hydrogen generation and combustion (ASLB Order, Nov. 25, 1980). Four CESG contentions were admitted for hearing (SID ¶12). Contentions 1 and 2, concerned with hydrogen generation, combustion, and containment breach as a result of a loss-of-coolant accident were heard and provide the record on which the SID is based (SID ¶7 and 8). Contentions 3 and 4 in regard to the health, safety, and environmental consequences of containment breach were not heard, the ASLB having reached the conclusion before the hearing adjourned that CESG had not "succeeded" in regard to Contention 1 (SID ¶8).

(2) The SID concludes that 1) there is reasonable assurance that substantial quantities of hydrogen will not be generated, i.e. quantities in excess of the design basis of 10 CFR §50.44;

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2) that Duke Power Company (DPC) has taken actions and adopted procedures which provide reasonable assurance that ECCS operation will not be prematurely terminated in a TMI-2 type accident, or, if it is, will be reinstated to prevent hydrogen generation in excess of 10 CFR §50.44; and 3) that McGuire can be operated without undue risk to the public health and safety with respect to hydrogen generation accidents (SID ¶32 and 33) [emphasis supplied].

(3) The SID also concludes that the premise for Contentions 3 and 4 had not been established, removing the need to make specific findings (SID ¶58(3)).

(4) The ASLB also concluded that Supplement 3 to the McGuire Safety Evaluation Report provided a reasonable foundation for Staff conclusions regarding certain generic matters (SID ¶58(4)).

(5) CESH is taking exception to both the ID and the SID. The SID removed the stay placed on the ID at the time of its issuance, April 18, 1979, and thereby authorized the Director, Office of Nuclear Reactor Regulation, to proceed in the matter of an operating license (SID p. 32).

(6) A stay is requested because, among other things, the hearing did not provide a basis for the finding that the McGuire facility "can be operated without undue risk to the public health and safety with regard to the possible generation of hydrogen resulting from accidents of the type which occurred at TMI-2" [emphasis supplied].

(7) The NRC Staff, because the question of risk is a central one, has developed an operating definition of risk

(Draft Environmental Statement related to the operation of Virgil C. Summer Nuclear Station Unit No. 1, NUREG-0534 Supplement, 6.1.4.6). Staff recognizes, as does CESH, that consideration of likelihood and consequences enters into an estimation of the level of risk. The ASLB in the instant matter concerned itself only with the likelihood. The ASLB finds that specified changes "have substantially reduced the likelihood of recurrence of an event at McGuire such as TMI-2" (SID #32). The ASLB also finds that "the likelihood of ECCS operations being prematurely terminated by the control room staff is so remote that such an accident is not credible" (SID #33). A reduced likelihood is not zero probability. A "not credible" finding is not equivalent to zero probability. Before the accidents at Fermi, Browns Ferry, and TMI-2 occurred they were, depending on the mindset of the individual, "not credible". The searching examination of NRC and nuclear industry practices and attitudes by the Lessons Learned Task Force raised serious doubts about the safe regulation of nuclear generation (NUREG-0578 and NUREG-0585 as cited in CESH's Revised Motion to Reopen, Etc., of August 15, 1980, pp. 9-11).

Operations personnel in particular must not have a mindset that future accidents are impossible. The experience of Three Mile Island has not been sufficient to eradicate that mindset in all quarters and the effects of that experience will fade with time. This is probably the single most important human factor with which this industry and NRC has to contend. (NUREG-0585, p. 2-7)

These considerations appear equally applicable to decision makers.

(8) CESH has raised the matter of the factors in risk (CESH's Motion to Permit Appeal of ASLB Order, May 15, 1981, pp. 2-4) in this context.

(9) The consequences of containment breach due to a hydrogen deflagration or detonation were not considered in the proceeding. The ASLB did not admit CESC's Contention 6, which maintained that a supplemental Environmental Impact Statement considering the consequences of very severe accidents, including containment breach be required. It is Commission policy to require such consideration in the EIS as of June 13, 1980. CESC has unsuccessfully sought to convince the ASLB that a special circumstance exists which requires preparation of such a supplement for McGuire; namely high population density and the close proximity of four thin-shell ice condenser containments to Charlotte, NC, the McGuire Nuclear Station at 17 miles from the center, Catawba at 18 miles. A supplemental EIS concerned with the offsite releases and consequences under severe accident conditions has been issued for the nearby Virgil C Summer plant which has a lower power level and a stronger containment than McGuire (Virgil C. Summer Draft Environmental Statement, NUREG-0534 supplement, November, 1980).

(10) The ASLB's findings are confined to hydrogen generation resulting from "accidents of the type which occurred at TMI-2" (SID 158(2)(c)). CESC's Contention 1 in no way limited consideration to one class of accident.

The licensee has not demonstrated that, in the event of a loss-of-coolant accident at McGuire: [Emphasis supplied.]

(11) CESC holds that the ignoring by the ASLB of the spectrum of severe accidents now considered in licensing proceedings in arriving at its findings, and its failure to consider the

consequences of such severe accidents in finding that operation of the plant posed no undue risk to the health and safety of the public constitutes grave legal and factual error. (cf. 10 CFR 2.788(e)(1))

(12) The operation of McGuire with significant safety issues unresolved should not be permitted. A Staff witness regarded the operation of the hydrogen mitigation system as "fraught with danger" (SID Staff Exhibit E, p. 5; also CESG Exhibit 40). The SID unless stayed has the potential for doing irreparable harm to CESG's members and to the general public. (cf. 10 CFR 2.788(e)(2))

(13) The granting of a stay will harm neither Duke Power Company nor Staff. Indeed a more adequate and appropriate decisional process will be a beneficial example to Staff and the industry. DPC will, at worst, fail to gain some anticipated increase in earnings through a favorable rate action. (cf. 10 CFR 2.788(e)(3))

(14) The public interest lies in being protected from the consequences of extremely severe accidents. Not only is McGuire 17 miles from the center of Charlotte, it is in line with a prevailing wind direction which carries over the "golden crescent", Concord, Kannapolis, Salisbury, Lexington, Thomasville, Winston-Salem, Greensboro and Burlington, all within 100 miles. There is no indication in the record that a PWR-1 event could not take place in which significant damage could occur at very substantial distances. The public interest will be protected by staying the effectiveness of the ID and SID. (cf. 10 CFR 2.788(e)(4))

(15) It may be argued that the public interest would be better served by making available the generating capacity of McGuire unit 1 in time for 1981 summer peak. Based on the experience within the NRC as to the time required for low power testing and for power escalation, it is unlikely that if a license were to issue ten days after Commission review, on or about July 6, McGuire unit 1 could be put on line during the period of probable summer peak demand. It is further unlikely that this generating capacity would be required. DPC may be expected to have a nominal reserve of 1000 to 1500 MW. If, as it has indicated, it shuts down Oconee unit 1 for refueling, and maintenance, at the start of the summer peak period, there will still remain a reserve of 500 MW. With SERC interconnections to Georgia Power and Light, TVA, CP&L, and SCE&G, all of which have substantial reserves, it is unlikely that DPC's customers will be exposed to any inconvenience.

CONCLUSION

Because the ASLB did not determine the consequences of the rupture of the thin shell McGuire containment by hydrogen deflagration or detonation it lacks the basis for a finding that operation would not expose the public health and safety to undue risk.

The ASLB by confining its consideration to a TMI-2 type LOCA as the cause of hydrogen generation has erred. There is a spectrum of accidents as severe or more severe for which Duke Power Company made no provision. Nor did the Supplemental Initial Decision take into account Staff's witness' opinion that operation of the

mitigation system could be dangerous.

The authorization of an operating license relies on erroneous findings. In the public interest these defects should be remedied. The Atomic Safety and Licensing Appeal Board is requested to stay the Initial and Supplemental Initial Decisions until adequate consideration is given these matters.

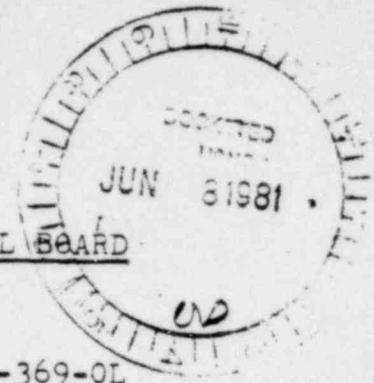
Respectfully submitted,

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AFFIRMATION OF SERVICE

I hereby affirm that copies of "CESG's Request for Stay of Initial Decision", dated June 5, 1981, have been served on the Appeal Board and other NRC persons listed this 6th day of June, 1981, by deposit in U.S. Express Mail and served to other parties listed by deposit in the U.S. Mail:

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