



By agreement of the parties, the time for filing contentions related to the accident at Three Mile Island, Unit 2 ("TMI-2") was extended until after issuance of the Final Report of the NRC Lessons Learned Task Force. See ASLB Order of September 12, 1979, at 9. On December 10, 1979, Joint Intervenors served their additional TMI-related contentions, including Contention 28. On December 26, 1979, Applicant served its Response To Joint Intervenors' Additional Contentions, which took the following position on Contention 28:

Applicant is aware that the Final Report of the Lessons Learned Task Force (pp. 2-6 and A-14, 15) recommends a new rulemaking proceeding which, among other things, would re-examine hydrogen control measures. If the Commission adopts this recommendation, Applicant believes that the rulemaking proceeding rather than this hearing should be the forum for resolution of this generic item.

Applicant's Response, at 2.

Accordingly, Applicant stated that it "reserves the right at a later date to move to strike Contention 28 . . . ." Applicant's Response, at 1. On January 11, 1980, the Board issued an Order noting Applicant's reservation of rights and admitting Contention 28 as an issue in controversy.

On October 2, 1980, the NRC published in the Federal Register a Notice of Proposed Rulemaking entitled "Interim Requirements Related to Hydrogen Control and Certain Degraded Core Considerations." 45 Fed. Reg. 65,466 (1980). The proposed rule recognizes the magnitude of hydrogen generated during the course of the TMI-2 accident and proposes a series of measures involving hydrogen generation and

management, hydrogen control penetrations, hydrogen recombiner capacity, and reactor coolant system venting. On the same day, the NRC also published an Advance Notice of Proposed Rulemaking entitled "Consideration of Degraded or Melted Cores in Safety Regulation." 45 Fed. Reg. 65,474 (1980). One of the matters to be considered in this long-term rulemaking is the issue of hydrogen control:

7. Should the NRC require incorporation into containment design, systems for controlling combustion of hydrogen? Do you favor methods of control that suppress combustion or do you favor controlled burning? If you favor suppression of combustion, what techniques would you recommend and should they vary as a function of the design capability of current containments? If you favor controlled burning, do you recommend open flames, spark plugs, catalytic combustors, or some other means? What percent of zirconium oxidation in the core and at what rate would you design for? Would you respond differently for different reactor or containment types? If so, what differences would you recommend?

45 Fed. Reg. at 65,476.

All of the issues raised by Joint Intervenors' Contention 28 fall squarely within the scope of the NRC's generic rulemaking proceeding on hydrogen control. This is demonstrated by Joint Intervenors' answers to Applicant's interrogatories relating to Contention 28. For example, Interrogatory No. 28-3, served February 29, 1980, asked Joint Intervenors to specify in what way Applicant's hydrogen control plans are inadequate. On April 24, 1980, Joint Intervenors gave the following answer:

28-3 Section 6.2.5 of the FSAR does not adequately provide plans for the elimination of dangerous hydrogen quantities in the following areas:

(1) Containment Hydrogen Indication 2.1.9 of "Discussion of Lessons Learned Short Term Requirements."

(2) Dedicated H<sub>2</sub> Control Penetrations 2.1.5a of the same reference.

(3) The Combustible Gas Control System is designed to control a 4% cladding reaction [FSAR 6.2.5.3(b)]. This gives an error factor of 5 over the accident design level of 10 CFR 50.46(3). However, Three Mile Island, Unit 2 suffered cladding failure of 44°-63° (Kemeny Commission Report, page 30). The CGCS is underdesigned, therefore, by an order of magnitude.

Each of these three areas is covered and discussed in the NRC's proposed rule. Instrumentation is addressed in depth at 45 Fed. Reg. 65,470-71; dedicated hydrogen control penetrations are discussed at page 65,468; and the percentage of cladding reaction is covered at pages 65,466-67.

Thus, Contention 28 is subject to the established NRC rule that "licensing boards should not accept in individual licensing proceedings contentions which are (or are about to become) the subject of general rulemaking by the Commission." Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 A.E.C. 79, 85 (1974).<sup>\*/</sup> From the standpoint of consistency and administrative economy, generic consideration of such

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<sup>\*/</sup> A possible exception to this rule was identified by the NRC in a decision arising out of the TMI-1 restart proceeding before the proposed hydrogen control regulations had been promulgated. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), CLI-80-16, 11 N.R.C. 674 (1980). There, the NRC rejected an intervenor's attempt to challenge directly the then-existing hydrogen generation assumptions in 10 C.F.R. § 50.44. However, the Commission also held that the issue of hydrogen control theoretically could be litigated under 10 C.F.R. Part 100 if a credible loss-of-coolant accident scenario would lead to hydrogen generation, hydrogen combustion, a containment breach or leaking, and offsite radiation doses in excess of Part 100 guideline values. 11 N.R.C. at 675. This exception is inapplicable here because Contention 28 does not even approach the specific allegations that, according to the Commission, are necessary to litigate the hydrogen control issue under Part 100.

generic issues is clearly the sensible approach, and it is an approach that has been approved by the courts. See Union of Concerned Scientists v. AEC, 499 F.2d 1069, 1081-82 (D.C. Cir. 1974); Ecology Action v. AEC, 492 F.2d 998, 1002 (2d Cir. 1974).

Certainly it makes no sense for licensing boards to be establishing varying standards for hydrogen management and control in individual licensing proceedings, while at the same time the Commission itself is in the process of formulating generic standards on the same issues in a general rulemaking proceeding. As the Appeal Board put it in the Potomac Electric case, "[o]ur consideration in adjudicatory proceedings of issues presently to be taken up by the Commission in rulemaking would be, to say the least, a wasteful duplication of effort." 8 A.E.C. at 85. Moreover, the interests of the intervenors are protected because they may participate and make their views known in the general rulemaking proceeding. In fact, as the court pointed out in Ecology Action, the resolution of common issues in a generic rulemaking proceeding should "benefit all parties, particularly the poorly-financed environmental groups." 492 F.2d at 1002. Thus if Joint Intervenor believe that certain minimum requirements should be prescribed in the area of hydrogen control, they may make an appropriate demonstration directly to the NRC in the generic rulemaking proceeding. If their ideas are accepted, then the NRC can put them into effect not only for Waterford 3, but also for the nuclear power generating industry as a whole.

Finally, the NRC Staff's Safety Evaluation Report ("SER") on Waterford 3, issued on July 9, 1981 (NUREG-0787), lends further support to this motion. The SER discusses the hydrogen generation experience at TMI-2 and the generic rulemaking on hydrogen control initiated by the NRC on October 2, 1980. SER, at C-18 and C-19. The Staff stated with respect to hydrogen control that "pending resolution of this unresolved safety issue and the rulemaking proceeding on hydrogen generation, we have concluded that the Waterford 3 plant can be operated without undue risk to the health and safety of the public." Id. at C-19.

In light of the Staff's SER and under all the circumstances, it plainly would be both inefficient and inconsistent with Potomac Electric to continue litigating Joint Intervenors' Contention 28 in the face of the NRC's generic rulemaking on hydrogen control. Contention 28 therefore should be dismissed.

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of )  
 )  
LOUISIANA POWER & LIGHT COMPANY ) Docket No. 50-382  
 )  
(Waterford Steam Electric )  
Station, Unit 3) )

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