

December 11, 1981

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

'81 DEC 14 P3:11

In the Matter of)	
)	
SACRAMENTO MUNICIPAL UTILITY DISTRICT)	Docket No. 50-312
)	
(Rancho Seco Nuclear Generating Station))	

OFFICE OF SECRETARY
OF ENERGY
& SERVICE
BRANCH

LICENSEE'S MEMORANDUM OF LAW
IN ASSOCIATION WITH ITS RESPONSES TO
THE INFORMATION REQUESTS IN ALAB-655



In its Memorandum and Order of October 7, 1981, ALAB-655, 14 NRC _____, the Atomic Safety and Licensing Appeal Board requested the NRC Staff and licensee Sacramento Municipal Utility District to submit specified information that has developed since the close of the evidentiary record which formed the basis for the Atomic Safety and Licensing Board's decision, LBP-81-12, 13 NRC 557 (1981), here under review. This memorandum addresses one of the seven Appeal Board requests and the Appeal Board's observations on the authority of the Licensing Board to order further modifications.

I. High Pressure Injection

Part II.D of the Appeal Board's Memorandum and Order (ALAB-655, slip op. at 18-21) discusses the Licensing Board's concern with the number of high pressure injection (HPI) initiation cycles permissible on each injection nozzle, and finds that the record does not support the

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Licensing Board's appraisal. Consequently, the Appeal Board retained jurisdiction of the case to enable supplementation of the record with analyses of: (1) the maximum allowable number of thermal cycles on the HPI nozzles; (2) methods of detecting thermal cycle effects on the nozzles; (3) possible means of prolonging the useful life of the nozzles; and (4) technical specifications or operating procedures that might reduce the use of the HPI without endangering the core. SMUD and the Staff were requested to submit a proposed schedule for supplying this information.

A specific interest in thermal cycles on the HPI nozzles arose during the course of the hearing before the Licensing Board and consequently was not expansively addressed in the pre-filed, direct testimony. The information obtained from the witnesses on oral examination was not extensive, and Licensee appreciates that a more thorough explanation of the situation may be in order. Therefore, instead of providing the Appeal Board only with a schedule for supplying additional information, the SMUD response, filed today, provides a more complete description of the purposes for, and means of, calculating the allowable number of design basis transients. The SMUD response also provides the information requested, and noted above, in items (2), (3), and (4).

As to item (1), however, the SMUD response explains why it is not meaningful to attempt to analyze for and calculate the maximum allowable number of thermal cycles on the

HPI nozzles. To the extent that this response does not comply with the Appeal Board's request, Licensee respectfully seeks reconsideration of that aspect of the Memorandum and Order for the reasons stated in the SMUD response. It is Licensee's position, and hope, that the information provided in the SMUD response is sufficient to enable the Appeal Board to supplement the record and complete its review at this time.

II. Licensing Board Authority

Licensee disagrees with the observations made by the Appeal Board in Footnote 6 of the Memorandum and Order. ALAB-655, 14 NRC _____, slip op. at 7-8. There the Appeal Board implies that the Licensing Board might have ordered further long-term modifications, beyond those ordered by the Commission on May 7, 1979, if the Licensing Board had not reached what the Appeal Board views to be a mistaken understanding of the scope of its authority. These observations reflect a misreading of the Licensing Board's findings and of the law governing its authority in the unique circumstances of this proceeding.

The question of authority to order modifications beyond those ordered by the Commission arises only if a finding is made that the modifications ordered by the Commission were not sufficient to provide reasonable assurance that Rancho Seco can respond safely to feedwater transients. The Licensing Board, however, specifically found, on the

basis of the evidentiary record, that additional actions were not necessary. See, for example, 13 NRC at 649 (I.D., ¶ 243):

The record compiled in this proceeding contains several suggestions for further modifications and requirements to be imposed on or studied by the Licensee. We have found, however, that the record does not support their adoption at this time, although some may deserve additional study by the NRC and industry on a generic basis. None of them are required to provide reasonable assurance that the Rancho Seco facility will respond safely to feedwater transients or to further enhance management's and operator's understanding and safe operation of the facility.

The Licensing Board's statements on the appropriate course for it to follow if it determined that the Commission's Order was not adequate, 13 NRC at 566-567 (I.D., ¶ 15), were gratuitous because the Licensing Board never made such a determination.^{1/} To the contrary, the Licensing Board found that the actions ordered by the Commission were sufficient to provide reasonable assurance that Rancho Seco will respond safely to feedwater transients. 13 NRC at 649-650 (I.D., ¶¶ 241, 243, 245, 247).

As the Appeal Board observed, the Licensing Board did comment favorably on a number of other actions already accomplished, in progress, and under consideration as a result of various reviews of the TMI-2 accident. This

^{1/} Licensee raised this matter with the Licensing Board only in reply to 18 additional modifications suggested in CEC's proposed findings of fact. See Licensee's Memorandum of Law in Association with its Reply Proposed Findings of Fact and Conclusions of Law, September 5, 1980, a copy of which is attached hereto.

does not undermine the Licensing Board's determination on the adequacy of the Commission's immediately effective Order of May 7, 1979. The Licensing Board candidly acknowledged that it was unrealistic to attempt to evaluate that order in a vacuum. The adequacy of the Commission's Order to some extent must be judged in light of other actions taken from independent origins.

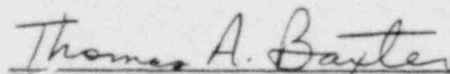
For example, prior to the Commission's Order certain post-TMI-2 accident actions had already been taken in April, 1979, in response to NRC Inspection and Enforcement bulletins. Before and during the course of the hearings, the Commission issued orders to Licensee with respect to other actions evolving from its review of the TMI-2 accident. See, e.g., in this docket, Order to Show Cause, January 2, 1980, 45 Fed. Reg. 2447 (1980) (Category A requirements of NUREG-0578, TMI-2 Lessons Learned Task Force Status Report and Short-Term Recommendations); Confirmatory Order, April 14, 1980, 45 Fed. Reg. 26856 (1980) (Short-term actions in response to the event which occurred at Crystal River, Unit 3 on February 26, 1980). Even after the issuance of the Licensing Board's decision, the Commission has continued to impose additional, but related, TMI Action Plan requirements upon Licensee. See Order Confirming Licensee Commitments on Post-TMI Related Issues, July 10, 1981, 46 Fed. Reg. 38007 (1981). In short, the imposition of post-TMI requirements on this plant could not be viewed as being limited to the Commission Order under review here. While the Licensing Board's

decision rests on the merits of the Commission's Order, Licensee believes it was appropriate to assess that order in the context of the changing regulatory atmosphere at the time of the hearing.

As to the authority of the Licensing Board and this Appeal Board to order further long-term modifications, it continues to be Licensee's position, for the reasons set forth in the attached memorandum of law of September 5, 1980, that absent a supportable finding by the Commission that the public health and safety require that an order directing further modifications be made immediately effective, Licensee is entitled to notice and the opportunity to request a hearing on any proposed modifications beyond the Commission's Order of May 7, 1979.

Respectfully submitted,

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