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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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In the Matter of
GENERAL PUBLIC UTILITIES NUCLEAR
CORPORATION, ET AL.
(Three Mile Island Nuclear Station, Unit 2)
Docket No. 50-320 OLA, ASLBP No. 87-554-OLA

Dear Administrative Judges:

During argument at the Prehearing Conference held on December 8, 1987, SVA/TMIA referred to York Committee for a Safe Environment v. USNRC, 527 F.2d 812 (D.C. Cir. 1975) (hereafter "York Committee"), as providing support for the admission of proposed Contention 1. Tr. 8. Since SVA/TMIA had not previously referenced York Committee, the other parties were afforded the opportunity to file any supplemental comments they deemed necessary regarding the admissibility of proposed Contention 1 in light of that decision. In response to a telephone inquiry from the secretary for the Licensing Board Chairman, NRC staff counsel stated that the Staff would review the Licensee's response (subsequently filed by letter dated December 16, 1987) and file any additional comments deemed necessary by December 23rd. Due to equipment unavailability resulting from our move to a new building, we were unable to meet that date.

The Staff has reviewed York Committee and the Licensee's letter and concurs, in part, with the Licensee's analysis. The Staff agrees with the Licensee that nothing in York Committee indicates that Appendix I to 10 C.F.R. Part 50 is invalid. In fact, Appendix I was not under review in York Committee. Nevertheless, the Court noted its promulgation subsequent to the institution

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of the legal action and commented favorably upon the new rule. 527 F.2d at 815. The Court particularly noted the provision of § II.D that

> In addition to the provisions of paragraphs A, B, and C, above [numerical guidelines], the applicant shall include in the radwaste system all items of reasonably demonstrated technology that, when added to the system sequentially and in order of diminishing cost-benefit return, can for a favorable cost-benefit ratio effect reductions in dose to the population reasonably expected to be within 50 miles of the reactor. As an interim measure and until establishment and adoption of better values (or other appropriate criteria) the values of $1000 per total body man-rem and $1000 per man-thyroid rem (or such lower values as may be demonstrated to be suitable in a particular case) shall be used in the cost-benefit analysis.

The Court concluded

> Thus the Commission recognizes in App. I that its "as low as practicable" [now phrased as "as low as is reasonably achievable"] standard requires individualized consideration of the costs and benefits of reducing radioactive emissions from any particular reactor below the numerical guidelines.

527 F.2d 815.

Where we depart from the Licensee's analysis is in its characterization of SVA/TMIA as relying on York Committee solely for the assertion that the Appendix I numerical guidelines are invalid. While SVA/TMIA did appear to be advancing that argument (Tr. 8, 13), they also appeared to assert that the Licensee and the Staff had failed to demonstrate compliance with the ALARA standard in that they had failed to conduct an analysis under § II.D of Appendix I. Tr. 9, 13-14. The Staff considers these statements by SVA/TMIA's representative to be permissible clarifications of proposed Contention 1. The Staff is not opposed to the admission of so much of proposed Contention 1, as clarified, as asserts that an evaluation must be done by the Licensee or the Staff under § II.D to determine whether any additions to the proposed evaporation system should be incorporated in accordance with the provision of II.D including the provisions of the Concluding Statement appended to Appendix I. Although Appendix I guidelines do not directly apply to facilities such as TMI-2 for which an application for a construction permit was filed before January 2, 1971, the licensee of such a reactor was nevertheless required to provide information demonstrating that radioactive effluents were to be kept as low as reasonably achievable. (App. I, Sec. V.). The Staff has customarily used the Appendix I guidelines, including those of the Concluding Statement appended to Appendix I, to assess the information provided by such facilities. Thus, the Staff took the position in its "Clarification of NRC Staff Response to Proposed Contentions of SVA/TMIA and Response to Amended Proposed Contentions" dated December 3, 1987, that compliance with the numerical guidelines demonstrated compliance

with "as low as reasonably achievable." During the prehearing conference it appeared that SVA/TMIA intended under this contention to challenge whether there was in fact compliance with the App. I guidelines, specifically with respect to § 11.D. The Staff does not object to this contention challenging compliance with applicable Commission regulations. The Staff would note however, that in applying § 11. D to TMI-2, in its assessment of whether TMI-2 effluents satisfied the "as low as reasonably achievable" standard, the Staff would also apply the provisions of § 11.D. that authorizes use of the standards of the Concluding Statement appended to Appendix I in lieu of a plant specific marginal cost-benefit analysis.

The Staff would also note the admitted contention should, however, reflect that the amendment under consideration would only delete the prohibition in the plant's Technical Specifications on disposal of the accident-generated water ("AGW"). See Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing, 52 Fed. Reg. 28626 (July 31, 1987). Consistent with the amendment requested, it is not necessary for the Licensee to have yet submitted to the Staff a specific design for the proposed evaporator. The Staff would expect that submittal to be made following Commission authorization of the deletion of the prohibition. The Staff will review the specific system design for acceptability and to determine that its anticipated environmental impacts fall within the scope of those estimated in the PEIS, Supplement No.2. As part of that review, the Staff will determine, in accordance with Appendix I, § II.D, whether any modifications to the specific system would result in cost-beneficial reductions in dose.

With the exception of the aspect of proposed Contention 1 asserting that an evaluation must be done under § II.D of Appendix I, the Staff remains opposed to the admission of the proposed contention for the reasons set forth in the "NRC Staff Response to Proposed Contentions of SVA and TMIA," dated November 16, 1987, and the "Clarification of NRC Staff Response to Proposed Contentions of SVA/TMIA and Response to Amended Proposed Contentions," dated December 3, 1987.

Sincerely,

Stephen H. Lewis
Senior Supervisory Trial Attorney

cc: Service List