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Office of Nuclear Reactor Regulation, Director (post 851125)

SUBJECT: Initial response of B&W Owners Group to petition filed
under 10CFR2.206 by UCS. * Recommends that UCS request for
immediate suspension of all CLs & CPs for B&W plants be
summarily denied.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE

DIRECTOR OF THE OFFICE OF
NUCLEAR REACTOR REGULATION

In the Matter of)

Petition for Immediate Action)
to Relieve Undue Risk)
Posed by Nuclear Power)
Plants Designed by the)
Babcock & Wilcox Company)

Docket No. _____
(10 C.F.R. §2.206)

INITIAL RESPONSE OF B&W OWNERS GROUP
TO PETITION FILED UNDER 10 C.F.R.
§ 2.206 BY THE UNION OF CONCERNED SCIENTISTS

I. INTRODUCTION

On February 10, 1987 the Union of Concerned Scientists (UCS) filed, pursuant to 10 C.F.R. §2.206, a "Petition For Immediate Action To Relieve Undue Risk Posed By Nuclear Power Plants Designed By The Babcock & Wilcox Company." The petition includes a request to suspend the operating licenses of Arkansas Nuclear One Unit 1, Crystal River Unit 3, Davis-Besse, Oconee Units 1, 2 and 3, Rancho Seco and Three Mile Island Unit 1. The petition also requests the suspension of

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the construction permits of Bellefonte Units 1 and 2.¹ The holders of these operating licenses and construction permits (hereinafter referred to as the B&W Owners Group)² strongly oppose the suspension request because it fails to demonstrate that continued activities present an unreasonable risk to the public health and safety. Support for the B&W Owners Group position is set forth below.

These comments relate only to the petitioner's request for immediate action (i.e. suspension). The B&W Owners Group will provide detailed comments on the petition in chief in the near future.

1/ Bellefonte Units 1 and 2 are currently under construction. The Bellefonte construction permits were issued on the basis of decisions rendered in a contested proceeding. A full airing of environmental, site suitability and safety issues resulted in a finding of reasonable assurance that the plant could be constructed and operated without undue risk to the health and safety of the public and that any remaining safety issues would be resolved prior to issuance of an operating license. In the Matter of Tennessee Valley Authority (Bellefonte Nuclear Plant Units 1 and 2), LBP-74-91, 8 AEC 1124, 1137 (1974), aff'd, ALAB-253, 8 AEC 1182 (1975). TVA has requested an extension to complete construction of Units 1 and 2 in 1993 and 1995 respectively. Under these circumstances there is no need to address the issue of emergency relief as to these units. See Porter County Chapter of the Izaak Walton League v. NRC, 606 F.2d 1363, 1369 (D.C. Cir. 1979) (construction of nuclear plant "does not of itself pose any danger to the public health and safety").

2/ For purposes of these comments, the B&W Owners Group consists of Arkansas Power & Light Company (Arkansas Nuclear One Unit 1), Duke Power Company (Oconee Units 1, 2 and 3), Florida Power Corporation (Crystal River Unit 3), GPU Nuclear Corporation (Three Mile Island Unit 1), Sacramento Municipal Utility District (Rancho Seco), The Toledo Edison Company (Davis-Besse) and Tennessee Valley Authority (Bellefonte Units 1 and 2).

II. DISCUSSION

A. Legal Considerations

The NRC, on past occasions, has acted upon requests for immediate suspension such as that sought here.³ The Commission,⁴ as well as the Courts,⁵ have noted that such relief is of a "drastic" nature, and will only be granted upon a clear showing of an imminent threat to public health and safety. Illustrative of the Commission's standard for immediate relief is its statement in In The Matter of Nuclear Regulatory Commission (Licensees Authorized to Possess or Transport Strategic Quantities of Special Nuclear Materials), 5 NRC 16, 20-21 (1977):

The emergency action requested by petitioner is a drastic procedure which can radically and summarily affect the rights and interests of others, including licensees and those who depend on their activities. Our emergency powers must be responsibly exercised. Cf. Nader v. Federal Aviation Administration, 440 F.2d 292, 294 (D.C. Cir. 1971). Available

3/ See, e.g., In the Matter of Petition for Emergency and Remedial Action, CLI-78-6, 7 NRC 400, 403-07 and 427-28 (1978); In the Matter of Philadelphia Electric Company (Limerick Generating Station, Units 1 & 2), DD-85-11, 22 NRC 149 (1985); In the Matter of Power Authority of the State of New York (James A. FitzPatrick Nuclear Power Plant), DD-84-14, 19 NRC 1307 (1984). See also In the Matter of Consolidated Edison Co. (Indian Point Units 1, 2 and 3), CLI-75-8, 2 NRC 173 (1975).

4/ See, e.g., In the Matter of Consumers Power Company (Midland Plant, Units 1 and 2), CLI-73-38, 6 AEC 1082, 1083 (1973); Petition Concerning Financial Qualifications of Nuclear Power Plant Licensees, DD-81-23, 14 NRC 1807, 1811 (1981).

5/ See Nader v. NRC, 513 F.2d 1045, 1055 (D.C. Cir. 1975).

information must demonstrate the need for emergency action and the insufficiency of less drastic measures. In the context of the request for emergency relief in this case, the available information must show that the continued activities of NRC licensees, under current safeguards programs, are inimical to the common defense and security and constitute an unreasonable risk to the public health and safety. We are not required either by the Atomic Energy Act or by our regulations, to take the emergency action petitioner has requested whenever we receive information adverse to the integrity of existing nuclear power safety or safeguards systems. See Nader v. Nuclear Regulatory Commission, 513 F.2d 1045, 1054-55 (D.C. Cir. 1975).

It is against such a standard that the instant request for suspension must be measured.⁶

B. UCS Has Made No Demonstration That Continued Operation Of B&W Plants Poses An Undue Risk To Public Health And Safety

UCS asserts that the NRC has "no technical basis" for its decision to allow continued operation of B&W reactors pending completion of the ongoing reassessment program. Petition, p. 38. In making this assertion, UCS wholly ignores the fact that the operating B&W reactors have been licensed by the NRC

^{6/} Under the Commission's regulations, any enforcement action taken in response to a Section 2.206 petition cannot be made immediately effective unless the Commission can make the findings required by 10 C.F.R. §2.202(f)(i.e., the existence of an emergency situation or the occurrence of a willful violation). The UCS petition does not purport to show any willful violation; and for the reasons presented in this Response, the petition provides no basis for a finding of an "emergency" situation.

upon the definitive finding of safety required by Section 182 of the Atomic Energy Act. As the Commission has recognized, once a plant has been licensed for operation, there is "a presumption of safety" which is based not only on the NRC's findings at the time of licensing but also on the NRC's vigilant inspection and enforcement activities. See Final Rule: Revision of Backfitting Process for Power Reactors, 50 Fed. Reg. 38097, 38103 (1985). UCS's petition represents nothing more than a technically inadequate attempt to shift the burden to the NRC and licensees to show that continued operation is safe, when the burden properly rests with UCS to show otherwise. UCS's failure to make a demonstration of "undue risk" is fatal to its request for immediate relief. See In the Matter of Nuclear Regulatory Commission, supra, 5 NRC at 20.

UCS alleges that "the operating history of the B&W plants" "make[s] them inherently more dangerous than other pressurized water reactors." Petition, p.4. UCS couples with this allegation its concern that the NRC has not taken prompt or effective action to correct the matter. Petition, p.5.

The incidents referred to in the petition range from 1974 through 1985.⁷ The NRC has reviewed each incident, the utility

^{7/} It is important to note that the incidents referenced by UCS should be characterized as operational transients rather than "accidents" such as those set forth in the accident assessment section of the Safety Analysis Report for each facility. The plants are designed for serious
(Footnote 7 Continued on Next Page

response, and if necessary, has determined further corrective action to be taken. UCS did not challenge the utility/NRC responses to these incidents at the time they were made,⁸ but rather waited until February 10, 1987 to request immediate relief. UCS's inaction weighs heavily against the grant of emergency relief. See Citibank v. Citytrust, 756 F.2d 273, 276 (2d Cir. 1985)(delay in seeking relief "tends to indicate at least a reduced need for such drastic, speedy action").

UCS nevertheless argues that the referenced incidents have generic implications which call into question the safety of all B&W plants. Petition, p. 17. The NRC has had occasion to address this allegation in the past. In response to questions by Representative Markey in hearings during April 1986, the NRC explained that "B&W reactors can safely continue to operate while the NRC reassess[es] the B&W plant design requirements." The NRC described the Davis-Besse transient of June 9, 1985 as "plant-specific" and, with respect to the Rancho Seco transient of December 26, 1985, noted that "a loss of ICS power at other B&W plants would not have resulted in as

(Footnote 7 Continued from Previous Page)
accidents. The operational transients referred to in the petition were not accidents of this severity.

8/ UCS did participate in the TMI-1 restart proceeding in which B&W design issues were litigated. After exhaustive adjudicatory hearings, the NRC found that the restart of TMI-1 would be consistent with the public health and safety. In the Matter of Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 1), 20 NRC 1 (1984)(operating procedures and B&W design issues).

severe an over-cooling event as that experienced at Rancho Seco due to plant design differences and previous actions taken to compensate for a loss of ICS power event." NRC Response, dated April 15, 1986, Question 18; see also Letter from V. Stello to H. Tucker, dated January 24, 1986.⁹

UCS has provided no new information which would disturb these findings. Indeed the substantive matter presented in the petition was also set forth in a February 1986 report UCS submitted to the NRC. The NRC concluded at that time that suspension was not appropriate, noting that UCS had "not provided any information that would cause us to alter our conclusion that continued operation of the B&W plants, during the time it takes to complete our reexamination, does not pose an undue risk to the public health and safety." Letter from V. Stello to R. Pollard and E. Weiss, dated March 25, 1986.

Since that time there have been no events at the subject plants that would call the B&W design into question. Also, during this time additional modifications have been made at the subject facilities. The Rancho Seco and Davis-Besse incidents cited previously were two of the events that have been evaluated by the B&W Owners Group, and procedures and training have been closely scrutinized. See B&W Owners Group, Safety and Performance Improvement Program, Rev. 2 (October

^{9/} Rancho Seco is presently shutdown to make substantial upgrades. The NRC will review the adequacy of these upgrades before permitting the facility to re-start.

1986) at IV-25 to IV-30. Moreover, in the course of the reassessment program neither the B&W Owners Group nor the NRC has identified any issue that requires immediate corrective action to avoid undue risk to the public health and safety. These factors, together with UCS' failure to present new substantive information, underscore the correctness of the NRC's findings regarding the safety of the B&W plants.

Petitioner's only attempt to dissuade the NRC with respect to its past findings is to challenge their bases. This challenge should have been made contemporaneously with the subject findings. It was not and this fact must weigh heavily against the grant of emergency relief. See Citibank v. Citytrust, supra. In any event, an examination of the reasons presented by the Commission for permitting continued operation are supportive of a denial of the petition.

The Commission has stated that the operational history of the subject facilities is not a basis for suspending operation in that: (1) there have been no adverse consequences to the public; (2) post-TMI actions have upgraded the safety of the plants; and (3) the Davis-Besse and Rancho Seco incidents cited previously were not generic and resulted in no adverse offsite consequences. Each of these reasons is discussed below.

As noted above, NRC precedent requires that in determining if immediate action is warranted the NRC must assess whether

an unreasonable risk is present. Risk is composed of two components, probability and consequences. See Carolina Environmental Study Group v. U.S., 510 F.2d 796 (D.C. Cir. 1975). Therefore, it was clearly appropriate for the NRC to consider the presence or absence of offsite consequences with regard to past events.¹⁰ Furthermore, the NRC was well aware of the fact that the B&W plants have been operating collectively for approximately 100 reactor years and that despite the events in question there have been little or no offsite consequences. This fact is certainly a proper consideration in determining whether immediate relief is necessary.

The post-TMI modifications are a direct result of implementation of the corrective actions set forth in NUREG-0737. NUREG-0737, which applied to all power reactors, was specifically approved by the Commission, and the actions set forth therein have been determined to be sufficient to assure

¹⁰/ UCS claims that the Commission has equated "undue risk" with the occurrence of offsite consequences and that "[s]uch a crabbed interpretation" of its statutory mandate is inconsistent with NRC precedent. Petition, p.41, citing CLI-78-6, supra, 7 NRC at 404. Contrary to UCS's assertion, the Commission has considered such consequences as one relevant factor in deciding whether the immediate shutdown of plants is warranted. See In the Matter of Rochester Gas and Electric Corporation (R. E. Ginna Nuclear Power Plant), 16 NRC 1473, 1483 (1982). Nothing in CLI-78-6, in which the Commission actually denied a request for suspension of operating licenses (7 NRC at 428), suggests that the Commission is precluded from considering this factor as part of its determination.

adequate response to the TMI-2 accident. See Statement of Policy: Further Commission Guidance for Power Reactor Operating Licenses, 45 Fed. Reg. 85236, 85238 (1981) (Policy Statement regarding NUREG-0737). It was therefore appropriate for the Commission to rely upon post-TMI modifications as a basis for concluding that the public health and safety was being protected and no immediate suspension action was necessary.¹¹ UCS' allegation that the post-TMI modifications were not sufficient in light of events at Rancho Seco and Davis-Besse is discussed below.

The events at Rancho Seco and Davis-Besse in 1985 do not have generic implications that would support the immediate shutdown of B&W plants and thus do not call into question the adequacy of post-TMI modifications. As noted above, Davis-Besse involved a plant-specific issue; Rancho Seco, because of scheduler matters, had yet to make modifications that all other B&W plants had made, thereby rendering a loss of the ICS power incident less probable and less significant at the other B&W reactors.

¹¹/ The NRC has found that as a result of post-TMI modifications there has been an improvement in performance of B&W reactors. As the Commission explained in April 1986, "the total number of trips for B&W plants has decreased from an average of about 45 in 1981, 1982, and 1983 to an average of about 27 over the past two years." Letter from Chairman Palladino to Representative Matsui, dated April 23, 1986.

UCS makes much of the fact that these incidents are the basis for proceeding with the ongoing reassessment of B&W plants. The fact that a reassessment is being conducted does not lead to the conclusion that plants are unsafe. See Lorion v. NRC, 785 F.2d 1038, 1041 (D.C. Cir. 1986), wherein the Court stated:

We cannot accept the contention that the NRC has implicitly categorized the concerns raised by petitioner as "substantial health and safety" problems. This phrase is a term of art within the Commission, because it is the language reserved as a trigger for action rather than a description of the severity of the concern. The language of the Commission's references here shows that it considered embrittlement a problem, but not necessarily a "substantial" problem that would mandate a hearing procedure. The Commission's precedents make it clear that it is not obligated to take enforcement action "whenever we receive information adverse to the integrity of existing nuclear power safety or safeguard systems." In re Nuclear Regulatory Commission, 5 NRC 16, 21 (1977), citing Nader v. Nuclear Regulatory Commission, 513 F.2d 1045, 1054-55 (D.C. Cir. 1975).

In this instance, the B&W plants have already been found safe to operate and, through the vehicle of the reassessment, are in the process of being made even safer. As explained in the Safety and Performance Improvement Program (at II-4), the objective of the reassessment is to "[r]educe the number of trips and complex transients . . . and ensure acceptable plant response during those trips and transients which do occur." Numerous meetings have been held between the B&W Owners Group and the Staff (as well as the Commission and the ACRS) on the adequacy of the

reassessment program, and no items have been identified that would warrant immediate corrective action to avoid an undue risk to public health and safety.

There are many examples of where the NRC has taken prompt action to resolve potential safety issues at B&W plants. For instance, after the accident at Three Mile Island Unit 2, B&W plants were issued show cause orders and were shut down to make modifications. See, e.g., 44 Fed. Reg. 27779 (May 11, 1979). Both Davis-Besse and Rancho Seco also shut down after the 1985 incidents to make substantial upgrades, subject to the approval of the NRC. This demonstrates that if the situation warrants it, the NRC has not hesitated to see that action is taken. However, the instant petition fails to make the necessary demonstration of "undue risk" to justify the relief sought. It simply provides no new information.

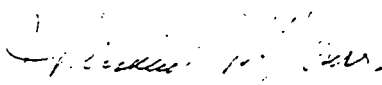
In essence, UCS is concerned with the reassessment of B&W plants and the time it is taking. This is certainly not grounds for granting immediate suspension of licenses/permits. Indeed, where issues are currently being addressed in an ongoing program, the Commission has denied requests for immediate enforcement action under Section 2.206. See, e.g., CLI-78-6, supra, 7 NRC at 428; Lorion v. NRC, supra; Nader v. NRC, 513 F.2d at 1055. Thus UCS' claim should be resolved in the normal course of the Director's consideration of the petition under 10 C.F.R. § 2.206.

III. CONCLUSION

UCS has come to the Commission with a request for immediate suspension of the operating licenses or construction permits for all B&W plants. Granting such relief would drastically affect the licensees using the B&W design by requiring the shutdown of some 7,000 megawatts of generating capacity.

In requesting such drastic immediate relief, UCS has brought no new information to the NRC's attention. Instead, UCS has simply rehashed information well known to the NRC and which the NRC has already found not to justify shutdown of B&W plants. Further, all the issues raised by UCS are currently under study in the ongoing reassessment program. In these circumstances, the request for immediate suspension should be summarily denied.

Respectfully submitted,


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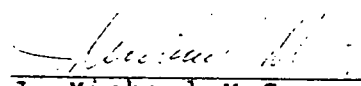
March 6, 1987

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Initial Response of B&W Owners Group to Petition Filed Under 10 C.F.R. § 2.206 by the Union of Concerned Scientists" were served by hand delivery (as indicated by an asterisk) or by deposit in the U.S. mail, postage prepaid, on the following this 6th day of March 1987:

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