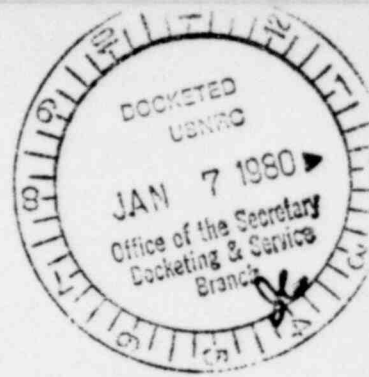


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of)
)
METROPOLITAN EDISON)
COMPANY, et al.,)
)
(Three Mile Island)
Nuclear Station, Unit)
No. 1))
)

Docket No. 50-289
(Restart)

UNION OF CONCERNED SCIENTISTS REQUEST FOR
RECONSIDERATION OR, IN THE ALTERNATIVE, FOR CERTIFICATION

The Union of Concerned Scientists requests this Board to reconsider its rulings on the admissibility of UCS Contentions No. 20, 17 and 18. In the alternative, UCS urges the Board to certify the admissibility of these contentions to the Commission.

I. Contention 20: NEPA and Class 9 Accidents

In its First Special Prehearing Conference Order of December 18, 1979, this Board ruled on three contentions formulated by UCS which, in various ways, raise issues concerning the Staff's treatment of accidents beyond the present design basis. Contention #13, challenging the Staff's basic method of accident analysis, was admitted at least for the purposes of discovery. Moreover, the Board directed the Staff by or before February 1, 1980, to inform

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it whether or not any specific accident sequence, which has a reasonable nexus to the TMI-2 accident and which heretofore may have been regarded as a Class 9 accident, should be considered in the analysis of the acceptability of returning TMI Unit 1 to operation.

The Board treated UCS's other two contentions differently. A ruling on Contention No. 16, dealing with emergency planning, was deferred pending the Board's ruling on all emergency planning contentions. Contention No. 20, claiming that NEPA requires consideration of the consequences of Class 9 accidents, particularly core melt with breach of containment, was rejected. It is as to this ruling which UCS seeks reconsideration or, in the alternative, certification to the Commission.

The Board rejected Contention No. 20 on the ground that it is "too vague and unfounded." In light of the Board's general discussion of Class 9 issues, UCS understands this to mean that the Contention is inadmissible because it does not specify a specific accident sequence or sequences with a "reasonable nexus" to the TMI-2 accident sequence.

We have briefed the question of NEPA's scope and application to these proceedings in detail and do not intend to repeat the arguments made therein. See "Union of Concerned Scientists' Reply Brief on the Application of the National Environmental Policy Act," November 30, 1979. However, the Board should understand that the same arguments which favor accepting Contention No. 13 also favor accepting

Contention No. 20. Both contentions challenge the pre-TMI practice of excluding accidents beyond the design basis from consideration in the review of the nuclear power facilities. Contention No. 13 is a challenge to this practice on the safety side; Contention No. 20 applies the same reasoning on the environmental or NEPA side. The two contentions proceed in lockstep with each other.

In each case, analysis of the issues must begin with the fundamental premise that it is the obligation of the NRC, through its Staff, to assure (1) that operation of the plant being reviewed will not be inimical to public health and safety and (2) that NEPA's mandate to disclose and weigh all environmental costs is fulfilled. In fulfillment of both of these obligations, the Staff considers the potential for various accidents. On the safety side, the purpose of this analysis is to determine whether the facility is designed to protect against (or provide mitigation for) accidents which may occur. On the NEPA side, the purpose is to ensure that all environmental costs have been weighed and considered.

In both cases, the Staff has limited the scope of its review by deeming certain possible accidents so improbable as to be beyond the need for consideration, in the realm of the purely speculative. These possible accidents encompass those which would have the greatest consequences, including core melt with breach of containment. Thus, on the safety side, applicants were required to provide design protection not against all potential accidents, but just a circumscribed group claimed to be "credible." (Classes 1-8) All

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accidents judged to have a probability of occurrence of less than 1×10^{-6} per year are excluded. Based on precisely the same rationale, the environmental impact statements for proposed plants disclose the consequences of only the same group of accidents. Those accidents which would result in significant consequences are excluded.

It is UCS's contention that the TMI-2 accident, which involved a combination of design errors, equipment failures and human errors significantly beyond what NRC had previously deemed probable (hence its designation as a Class 9 accident), has prima facie established that the method by which the Staff classifies possible accidents as either within or outside the group of "credible" accidents is fundamentally faulty. As we discussed at length in the UCS brief on these issues, the Staff task force on the lessons learned from TMI-2 concluded exactly the same:^{*/}

Many of the events that occurred [at TMI-2] were known to be possible, but were not previously judged to be sufficiently probable to require consideration in the design basis.... A central issue that will be considered is whether to modify or extend the current design basis events or to depart from the concept. NUREG-0578, p. 16-17.

...[A]n explicit consideration of core-melt accidents in the design

^{*/} For a more complete quotation, as well as fuller discussion see "Union of Concerned Scientists Reply Brief on the Application of the National Environmental Policy Act," November 30, 1979, p. 19-21.

and operation of light water nuclear power plants has not been a part of current and past licensing scrutiny. Because the accident at Three Mile Island exceeded many of the present design bases by a wide margin and was evidently a significant precursor of a core melt accident, the Task Force has concluded that the NRC should begin to formulate requirements for design features that could mitigate the consequences of core melt accidents. NUREG-0585, p. 3-5.

Thus, it cannot be maintained that the Contention is not reasonably related to the accident at TMI-2, since the lessons learned group clearly perceived and articulated the issue as flowing directly from the accident. Nor can the contention fairly be rejected on the basis that it is too "vague." The contention is precisely as specific as it can be under the circumstances and is at least as specific as the Lessons Learned Task Force. UCS claims that the staff has not identified all "credible" accidents because they have improperly discounted the possibility of events such as those which occurred at TMI-2. Within the class of these previously-discounted events are included some which would have far more serious consequences than TMI-2, such as the core melt possibilities explicitly recognized by the Lessons Learned Task Force. Recognizing this, it is now the Staff's obligation to come up with an analysis which corrects the pre-TMI error and, in effect, redraws the line between the credible and the incredible. It is UCS's obligation as an intervenor to establish that an error has been made, but it is the Staff's

obligation to correct the error. Certainly, this redrawn line would encompass some core melt events. It then follows inexorably that NEPA compels the Staff to disclose the environmental consequences of these newly-included accidents. Thus, the Board should treat the two contentions in the same manner; both should be admitted at this stage.

If the Board decides not to reconsider its previous ruling, UCS urges it to certify this question to the Commission pursuant to 10 CFR §2.718 (i). Although certification is sparingly used, it is appropriate in the present situation, where a major policy issue has been raised in an individual proceeding and the proper application of Commission policy is unclear. A similar question was encountered in Offshore Power Systems (Floating Nuclear Power Plants), ALAB-500, 8 NRC 323 (1978). There, the Appeal Board granted certification of the question of whether the Staff could consider Class 9 accidents in the environmental impact statement for floating nuclear plants. In that case, the novelty arose from the fact that only land-based facilities had previously been reviewed by the Staff and the application of prior policy to floating plants was questionable. Here, the situation is novel because the accident at TMI-2 has presented a direct challenge to prior practice, the implications of which have not yet been considered by the Commission. Moreover, since the Commission has specifically directed the Staff to tell it how to modify its present position on this precise issue,*

* / Offshore Power Systems (Floating Nuclear Power Plants)
CLI 79-9, 10 NRC --, Sept. 14, 1979, Sl. op. at 9-10.

to take account of "developments since 1971," certification would be appropriate.

II. Contentions 17 and 18: Unresolved Safety Problems and Regulatory Guides.

Contentions Nos. 17 and 18 follow the same pattern. In Contention No. 17, UCS alleges (and no party contests) that the accident at TMI-2 was caused or aggravated by factors which are under study as generic unresolved safety issues. Two specific examples are given: (1) interaction between safety and non-safety systems (Task A-17) and (2) environmental qualification of safety-related equipment (Task A-24). UCS contends that this demonstrates that the policy of permitting plants to operate in the absence of a plant-specific resolution of the unresolved safety problems is unjustifiable. TMI-2 showed that unresolved safety problems can and will cause accidents; thus the analysis now mandated by the Appeal Board prior to the issuance of an operating license^{*/} is required at this stage for TMI-1.

The Board rejected this contention on the ground that it lacks specificity. We frankly cannot perceive how it could be more specific. We have stated precisely what we believe is required to assure public health and safety: a plant-specific resolution of the generic unresolved safety problems applicable to B&W PWR's as listed in NUREG-0410. The Board's ruling amounts to accepting the principle that each unresolved safety problem must itself cause another accident before the Staff

^{*/} Virginia Electric Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-491, 8 NRC (1978).

and licensee are required to address them. This would be a tragic mistake.

Similarly, Contention 18 alleges the uncontested fact that the accident at TMI-2 was caused or aggravated by factors which are the subject of Regulatory Guides which were not applied during the design or review of TMI-1. As an example, the absence of an automatic indication of the disabling of a safety system is cited (Regulatory Guide 1.47). UCS contends that a systematic analysis is required of the design of TMI-1 against present Regulatory Guides to determine whether TMI-1 conforms with each or provides an equivalent level of protection.

If the Board will not reconsider its ruling rejecting these contentions, we urge certification. The scope of this proceeding is a fundamental question. No other proceeding exactly like this has ever taken place. Thus, there is no established line of precedent that may be usefully consulted. Further, we note that in an emergency amendment to 10 CFR Part 2, the Commission has directed sitting Boards to "identify any aspects of the case which, in their judgment, present issues on which prompt policy guidance is called for."*/ Thus, in the absence of reconsideration by this Board, certification is appropriate.

*/ Modified Adjudicatory Procedures, November 6, 1979, Sl. op. at 5.

III. Conclusion

For the reasons stated above, UCS requests the Board to reconsider its rulings and to admit UCS Contentions Nos. 20, 17 and 18. In the alternative, UCS requests the Board to certify to the Commission the question of the admissibility of these contentions.

Respectfully submitted,

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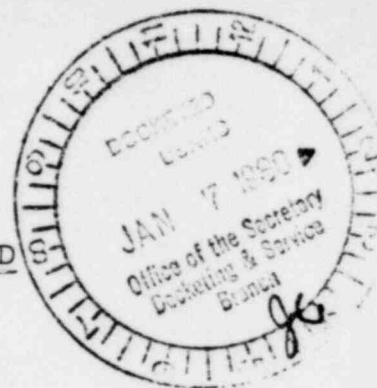
Counsel for UCS

Dated: January 7, 1980

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the attached "Motion For Late Filing of the Union of Concerned Scientists Request For Reconsideration Or, In The Alternative, For Certification," and a corrected copy of the, "Union of Concerned Scientists Request for Reconsideration or, In the Alternative, For Certification," were mailed postage prepaid this 7th day of January, 1980, to the following:

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