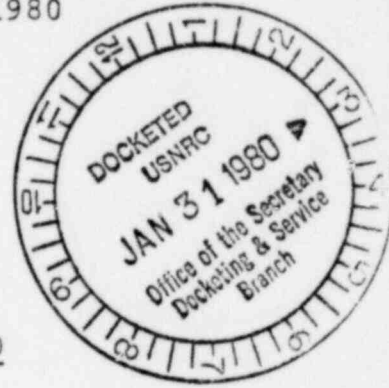


January 30, 1980

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
METROPOLITAN EDISON COMPANY )  
 ) Docket No. 50-289  
(Three Mile Island Nuclear ) (Restart)  
Station, Unit No. 1) )

LICENSEE'S RESPONSE TO  
COMMENTS IN SUPPORT OF AMENDMENT OF AAMODT CONTENTION 4  
AND NEW EVIDENCE REGARDING REJECTED CONTENTION 1  
SUBJECT TO BOARD APPROVAL FOR CONSIDERATION

I. INTRODUCTION

In her submission dated January 15, 1980, Ms. Aamodt ("Petitioner") included, inter alia, a petition entitled "Comments In Support of Amendment of Aamodt Contention 4 and New Evidence Regarding Rejected Contention 1 Subject To Board Approval For Consideration." Licensee has addressed Petitioner's proposed amendment to her Contention No. 4 in another document. See "Licensee's Second Supplemental Response to Emergency Planning Contentions," pages 8 and 9, (January 25, 1980). Therefore, Licensee here addresses only Petitioner's comments on "new evidence" regarding her rejected Contention No. 1.

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## II. ARGUMENT

A. Even If Asserted "New Evidence" Provided Required Basis, Contention No. 1 Would Still Be "Outside The Scope of The Proceeding"

In the "Petition For Intervention of Marjorie M. Aamodt" (October 22, 1979), at page 2, Petitioner set forth the following contention:

1. It is contended that TMI-1 should not open until a program of psychological testing and counseling of operator personnel and management be instituted and routinely maintained to observe and/or alleviate or ameliorate fatigue, boredom, hostility, confusion, substance abuse, and/or other characteristics deemed inconsistent or contrary to the safe operation of said nuclear plant.

In its "First Special Prehearing Conference Order" (December 18, 1979), at page 32, the Board rejected the proposed Contention No. 1 as "without basis and . . . outside the scope of the proceeding" [emphasis supplied]. Thus, assuming arguendo that Petitioner's asserted "new evidence" provided the required basis for her rejected contention, her latest submission could conceivably cure at most only one of the defects of the contention. The rejected contention would still be fatally flawed. Nothing that Petitioner can submit can itself enlarge the scope of the hearing. Similarly, nothing that she has submitted affects the Board's ruling that the rejected contention is "outside the scope of the proceeding." Accordingly, the Board need not reach the merits of whether the asserted

"new evidence" provides a basis for Petitioner's rejected Contention No. 1, and Licensee opposes further reconsideration of the rejected contention.

B. Petitioner's Asserted "Evidence" Does Not Provide Required "Basis" For Contention No. 1

In her January 15 submission, Petitioner cites, as a basis for her rejected Contention No. 1: (1) a series of excerpts from the Appendix to NUREG-0640, "Three Mile Island, Unit 2, Radiation Protection Program" (December 1979); (2) two brief excerpts from the Report of the Kemeny Commission; (3) a quotation from NUREG-0578, "TMI-2 Lessons Learned Task Force Status Report and Short-Term Recommendations" (July 1979); and (4) a reference to allegations of drug abuse by several employees of the security force at the Trojan nuclear power plant in Oregon. Assuming, arguendo, that Petitioner's rejected Contention No. 1 was within the scope of this proceeding, this "evidence" set forth in her latest submission nevertheless does not provide the required basis for the contention which the Board, at page 32 of its December 18 Order, found lacking.

Petitioner's reliance upon NUREG-0640 as support for her rejected Contention No. 1 is misplaced. The report was issued by special panel commissioned to study the radiation safety program supporting the recovery effort at Unit 2, in response to the "extraordinary radiation safety problems . . . faced by

the General Public Utilities/Metropolitan Edison" following the accident at Unit 1. NUREG-0640, p. 1. In fact, the panel was specifically "instructed to limit its retrospective inquiries to those with direct bearing on the present and future radiation safety capability of GPU/Met Ed," as they relate to the Unit 2 recovery effort. NUREG-0640, p. A-1.

The panel's attention was focused solely upon Unit 2 and, even more narrowly, upon one aspect of the Unit 2 post-accident recovery effort: the radiation safety program. Even within that context, the panel did not consider factors such as "fatigue, boredom, hostility, confusion [or] substance abuse," or the impact of psychological testing and counseling upon those factors, which Petitioner seeks to litigate in her rejected Contention No. 1. The only "attitude" problems addressed in the report referred to the alleged "attitude that safety was not an operational responsibility, but rather that of the radiation safety group" at Unit 2. NUREG-0640, p. A-4. This "attitude" is not the kind of psychological characteristic to which Petitioner refers in her rejected Contention No. 1. Finally, neither the panel nor Petitioner related the alleged "attitude" problems experienced in the Unit 2 recovery effort to the safe operation of Unit 1. Thus, the quotations from the report, taken wholly out of context, provide no reasonable basis for Petitioner's "psychological testing and counseling" contention, even if the contention were within the scope of this proceeding.

Petitioner also relies upon two brief excerpts from the "Overview" section of the Report of The President's Commission on The Accident At Three Mile Island ("the Kemeny Report") in support of her rejected Contention No. 1. Petitioner focuses upon the Kemeny Commission's general observation, at page 8 of the Kemeny Report, that "the fundamental problems are people-related problems and not equipment problems." As Petitioner noted, the Commission further observed that it did not mean "to limit this term [people-related problems] to shortcomings of individual human beings -- although those do exist" [emphasis supplied by Petitioner]. However, the Commission continued:

We mean more generally that our investigation has revealed problems with the "system" that manufactures, operates, and regulates nuclear power plants. There are structural problems in the various organizations, there are deficiencies in various processes, and there is a lack of communication among key individuals and groups.

The Kemeny Report, p. 8. The Commission's observations in this context are thus general observations about the "system" which it studied, not the kind of psychological characteristics of individuals to which Petitioner refers in her rejected contention. Moreover, Petitioner has not related the problems which the Commission cites - structural problems within organizations, deficiencies in various processes, and communication failures - to factors such as "fatigue, boredom, hostility,

confusion [or] substance abuse" and the impact of psychological testing and counseling upon those factors, which Petitioner seeks to litigate in her rejected Contention No. 1. The excerpts from the Kemeny Report therefore provide no reasonable basis for Petitioner's "psychological testing and counseling" contention, even if the contention were within the scope of this proceeding.

As a third source of support for her rejected contention, Petitioner refers generally to United Airlines' use of psychological testing, and notes that "NUREG 0578 compares nuclear power plant shift supervisor with a pilot stating, p. A-4 [sic], 'supervisors should be trained and required to supply the pilot's thinking and decision making . . .'" The full text of the paragraph which Petitioner cites indicates the explicitly limited nature of the intended analogy:

The physical size of a nuclear power plant control room precludes a direct analogy with aircraft. In an airplane, the controls are within arms' reach of the pilot. Thus, the pilot analyzes the situation and makes corrective manipulations. However, to use a limited analogy, the nuclear power plant shift supervisor should be trained and required to supply the pilot's thinking and decision making and to delegate the necessary control manipulations to the console operators.

NUREG-0578, p. A-47. The Lessons Learned Task Force further clarifies the purpose of the analogy in its "Position" on the Shift Supervisor's Responsibilities, which states in part:



The responsibility and authority of the shift supervisor shall be to maintain the broadest perspective of operational conditions . . . at all times when on duty in the control room . . . [T]he shift supervisor should not become totally involved in any single operation in times of emergency when multiple operations are required in the control room.

NUREG-0578, p. A-47. The Task Force's comments in this respect thus generally address the division of labor and responsibility among control room personnel, not the kind of psychological characteristics of individuals to which Petitioner refers in her rejected contention. Petitioner has not attempted to relate the Task Force's "position" on the authority of the shift supervisor to factors such as "fatigue, boredom, hostility, confusion [or] substance abuse" and the impact of psychological testing and counseling upon those factors, which Petitioner seeks to litigate in her rejected contention. Therefore, the explicitly "limited analogy" which Petitioner excerpts from NUREG-0578 provides no reasonable basis for her "psychological testing and counseling" contention, even if the contention were within the scope of this proceeding.

Finally, in support of her rejected contention, Petitioner refers to allegations of drug abuse by several employees of the security force at the Trojan power plant, relating the allegations to "the saboteur [sic] incident at Surry" cited as a basis for the contention in Petitioner's October 22 "Petition for Intervention of Marjorie M. Aamodt." However, just as the reference to the Surry incident was implicitly rejected as a

basis for Contention No. 1 in the Board's December 18 Order, so the reference to the allegations of drug abuse at Trojan must be rejected as a basis for the contention. Petitioner has completely failed to factually relate the allegations of drug abuse at Trojan to the operation of either Unit 1 or Unit 2 at Three Mile Island. The allegations thus provide no reasonable basis for Petitioner's "psychological testing and counseling" contention, even if the contention were within the scope of the proceeding.

Accordingly, since none of the "new evidence" which Petitioner cites in her latest submission provides the required basis for her rejected Contention No. 1, the contention must be rejected even if the Board were to reverse its ruling that the contention is "outside the scope of the proceeding."

C. Petitioner's Request For Relief Is Not Timely

Petitioner's request for relief is clearly out of time, and no adequate explanation for the delay is provided. Three of the items which she asserts in her January 15 petition as "new evidence" in support of her rejected Contention No. 1 are not, in any sense, "new evidence." The Kemeny Report was released to the public on October 30, 1979, and was served upon the intervenors in this proceeding on November 26. Petitioner obviously had access to a copy of NUREG-0578 prior to October 22, 1979, since she cited that document as a basis for her



Contention No. 1 when she originally submitted it, on that date, in her "Petition For Intervention of Marjorie M. Aamodt." Moreover, the allegations of drug abuse by employees of the security force at the Trojan plant in Oregon were reported via the national news media during the course of the Special Prehearing Conference in this proceeding in mid-November, on or about November 9, 1979. Thus, none of these items cited by Petitioner as "new evidence" was released or became available within the 30-day period immediately preceding her January 15 filing.<sup>1</sup>

Only NUREG-0640, mailed to Petitioner on December 20, 1979, could even arguably be considered "new evidence" available to Petitioner within the 30-day period immediately preceding January 15. However, the 30-day rule applies to revised contentions based upon new information, not unaltered contentions which have been already once submitted and rejected. The "First Special Prehearing Conference Order" (December 18, 1979), in which the Board rejected Petitioner's proposed Contention No. 1, specified at page 67 that "Motions for corrections of this order shall be filed within 10 days

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1 The Board has consistently taken the position that, except in extenuating circumstances, (not set forth here), revised contentions based upon "new information" are due within thirty days of the availability of the information. This position has most recently been reaffirmed in the Board's "Memorandum and Order Ruling On Intervenors' Requests For Extensions of Time To File Revised Emergency Planning Contentions" (January 8, 1980), p.5 n.2.

after its service." Yet Petitioner gave no notice whatsoever of her objections to the Board's December 18 Order until her January 15 filing.

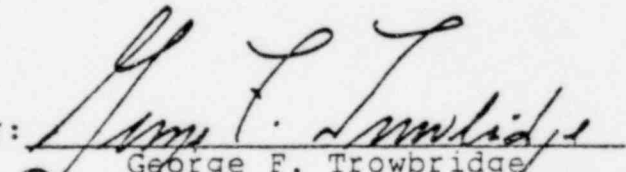
### III. CONCLUSION

This Board has already ruled, in its "First Special Prehearing Conference Order" (December 18, 1979), that Petitioner's proposed Contention No. 1 is without basis and beyond the scope of this proceeding. Therefore, even if the "new evidence" asserted by Petitioner provided a basis for the contention, it would still be inadmissible as an issue in the proceeding. However, none of the asserted "new evidence" in fact provides a basis for the rejected contention. Moreover, even if the rejected contention were within the scope of the proceeding, and the asserted "new evidence" provided the required basis for the contention, Petitioner's request for relief from the Board's December 18 Order is not timely.

Accordingly, for all the reasons set forth above, Petitioner's request for relief from the Board's Order rejecting her Contention No. 1 should be denied.

Respectfully submitted,  
SHAW, PITTMAN, POTTS & TROWBRIDGE

By:

  
George F. Trowbridge

Dated: January 30, 1980

January 30, 1980

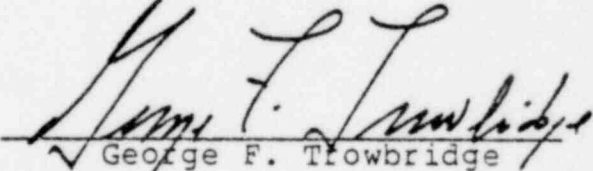
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Response To Comments In Support of Amendment of Aamodt Contention 4 and New Evidence Regarding Rejected Contention 1 Subject To Board Approval For Consideration" were served upon those persons on the attached Service List by deposit in the United States mail, postage prepaid, this 30th day of January, 1980.

  
George F. Trowbridge

Dated: January 30, 1980

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NUCLEAR REGULATORY COMMISSION

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