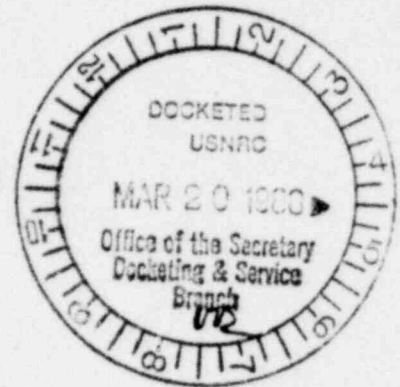


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Ivan W. Smith, Chairman
Dr. Walter H. Jordan
Dr. Linda W. Little



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

MEMORANDUM AND ORDER REJECTING
CEA CONTENTIONS PURSUANT TO REVIEW OF NUREG/CR-1270

(March 18, 1980)

By a filing dated February 13, 1980, CEA has submitted two new contentions (numbered 14 and 15), purportedly based upon its review of a document entitled Human Factors Evaluation of Control Room Design and Operator Performance at Three Mile Island-2, NUREG/CR-1270, January 1980. Contention 14 relates to human factors in control room design, and Contention 15 states that operator training, especially in regard to emergency procedures, is inadequate.

The October 22, 1979 date for filing timely contentions on general subjects is long past. CEA has provided no explanation justifying its late filing nor any reference to

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the five factors of 10 CFR §2.714(a) against which late filings are weighed for admissibility.^{1/} However, we may infer from CEA's reference to NUREG/CR-1270 that it considers its contention to be based on new information contained in that recently released publication.

We reject CEA's Contentions 14 and 15 as being inexcusably late, with no reason for admitting the contentions, aside from the question of good cause, based upon a balancing of the other four factors. See Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 275 (1975).

The NUREG/CR-1270 referenced by CEA deals with the subject matter of the contentions. However, this does not qualify as new information, since the basis for the subject matter of the

^{1/} The five factors are:

- (i) Good cause, if any, for failure to file on time.
- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.
- (v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

contentions existed long before NUREG/CR-1270. Indeed, as pointed out by the staff and licensee,^{2/} there are many contentions which have been timely filed by many parties which contend that the "human factor" has not been properly evaluated in control room design and in operator training and operating procedures for normal and emergency situations. This is not surprising, since these subjects have been of highly visible concern since the TMI-2 accident. They are discussed in NUREG-0578 (July 1979) and NUREG-0600 (August 1979), which were cited as the bases for some of the timely contentions on this subject. In addition, the Kemeny Commission report, available in November 1979, highlighted deficiencies in control room design and in operator training and operating procedures as part of its major conclusions. See licensee's response, pp. 2-4; staff's response, pp. 3-5.

Some of the previously admitted timely contentions are very similar to CEA's untimely Contentions 14 and 15. CEA's Contention 14 is comparable to Sholly Contention 15, ANGRY Contention 5(C), and ECNP Contention 1(i). Contention 15 is comparable to Aamodt Contention 2 and Sholly Contention 3. Accordingly, there is no basis to find that CEA has advanced

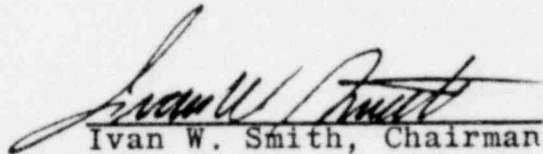
^{2/} The responses of the licensee and staff were filed on February 22 and 28, 1980, respectively.

contentions based on significant new particularized information within an old general subject. Indeed, if anything, CEA's late-filed contentions are more generalized than some of the admitted timely contentions.

The existence of the previously admitted timely contentions, in addition to demonstrating that CEA lacks any good cause for failure to file on time, also provides the linchpin for finding that there is no other reason for admitting CEA's contentions. CEA's belatedly expressed generalized interest will be represented by existing parties (factor 4). CEA shows no special expertise, and indeed its long dormant interest in the subject and the very generalized nature of its contentions suggests the opposite. In any event, CEA is free informally to assist the other parties (factor 3). Factor 5 at best, from CEA's point of view, weighs neutrally -- the discovery schedule would be upset since the time for parties to make original requests of CEA has passed. This would not necessarily delay the proceeding, but it might. Even if CEA has no means to protect its interest, this is its own fault for sitting on its rights. Moreover, CEA has no interests which would be uniquely affected by the subjects of Contentions 14 and 15. We are confident that the overall public interest in having the board explore this subject will be satisfied with the assistance of those parties with admitted contentions on the subjects.

In this complex, multi-party proceeding, we are unhappy with the fact that the parties and the board have had to spend time on a filing like CEA's which totally lacks any explanation set forth by the filing party and which, upon even cursory examination, totally lacks any justification for granting the relief requested -- in this case the admission of late contentions. In the future, we will deny similar requests for relief which are not expressly and well-supported by the moving party. In particular, absent extraordinary circumstances, late-filed contentions will have an almost insurmountable burden to overcome when there are previously admitted similar contentions.

THE ATOMIC SAFETY AND
LICENSING BOARD



Ivan W. Smith, Chairman

Bethesda, Maryland

March 18, 1980