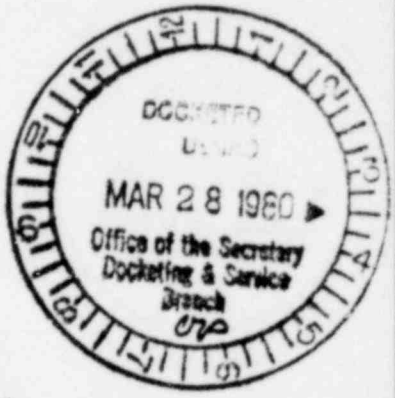
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



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)	)	

SERVED MAR 28 1980

MEMORANDUM AND ORDER
(March 28, 1980)

In its Order of March 14, 1980 the Commission stated with respect to the issues in this proceeding:

> We wish to make it clear that it was intended by the Commission that any party to the proceeding may raise an issue whether one or more safety concerns, not specifically listed as "short term" in the Commission's August 9, 1979 Order and Notice of Hearing, should be satisfactorily resolved prior to startup. Such issues may serve as valid contentions, to be either summarily disposed of or litigated on the merits and decided as part of the Licensing Board's decision regarding resumption of operation, so long as they satisfy the requirements (e.g., specificity and basis) applicable to contentions generally, and there is a reasonable nexus between the issue and the TMI-2 accident.

Id. pp. 1-2.

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The Order specifically referred to discussions in this proceeding of the intended distinction between "long term" and "short term" actions in the Commission's August 9, 1979 Order. The March 14 Order also refers to our rulings on Union of Concerned Scientists (UCS) contention 15 and Sholly contention 6 (First Special Prehearing Conference Order, December 18, 1979, pp. 23-24, 34). Apparently these rulings and the other discussions prompted the Commission to provide the additional guidance quoted above.

In order to assure that the Commission's intent with respect to the issues is exactly complied with, the board provides the parties an opportunity below to seek relief consistent with the Commission's March 14 Order and consistent with the provisions of this memorandum and order. First, however, a review of our earlier determinations concerning the scope of the proceeding and the basis for ruling upon the referenced contentions may be helpful.

In the First Special Prehearing Conference Order, pp. 4-10, we discussed the scope of the proceeding and established a standard (advanced by the staff and UCS) which would accept as issues in the proceeding those which have a clear and close analogue to the TMI-2 accident and/or where there was a reasonable nexus between the issue sought to be raised and the TMI-2 accident. Id. pp. 6-8. This

test was to be applied to each valid contention regardless of whether the contention fell within one or another of the short term actions listed on pages 7-8 of the Commission's August 9, 1979 Order, or the long term actions set forth on pages 7-8 of that Order. This standard, we believe, has been specifically endorsed by the Commission's March 14 Order. As far as we are aware, we have made no ruling inconsistent with the March 14 Order.

Sholly contention 6 is a case in point. This contention states in part:

> It is further contended that the short-term actions identified in the Commission's Order and Notice of Hearing dated 9 August 1979 are insufficient to provide the requisite reasonable assurance of operation without endangering public health and safety because these short-term actions do not include the following items:
>
> a. Completion of a failure mode and effects analysis of the Integrated Control System;
>
> b. Completion of installation of instrumentation for detection of inadequate core cooling;
>
> c. Completion of installation of hydrogen gas control penetrations of the containment;
>
> d. Completion of a review of the basis for recombiner use;
>
> e. Completion of installation of high-range effluent monitor system.

Items a. through e. of Sholly contention 6, under the Commission's August 9, 1979 Order, were presumptively long term actions.[1/] By accepting this portion of Mr. Sholly's contention 6 we were precisely consistent with the Commission's intention expressed in the March 14 Order in that we accepted as a contention issues of whether some long term actions spelled out in the notice of hearing should be satisfactorily resolved prior to restart.

Rejected UCS contention 15 presented a different consideration. UCS contention 15 asserts:

> The measures identified by the staff in NUREG-0578 and the Commission's Order of August 9, 1979 include many which will not be implemented until after the plant has resumed operation and some which will not even be identified until some unspecified time in the future. No justification has been provided for concluding that the plant can safely operate in the period while these corrective actions are being identified and prior to their implementation. The public health and safety demands that all safety problems identified by the accident be corrected prior to resumption of operation at TMI-1.

We viewed this contention as requiring that all long term actions identified in the August 9, 1979 Order and in NUREG-0578 must be implemented and that all safety problems

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1/ Item a. is long term action No. 1., p. 7 of the Commission's August 9, 1979 Order. Items b. through e. are long term actions by virtue of their "Category B." designation in NUREG-0578.

identified by the TMI-2 accident must be corrected before the facility may operate and more. It was defective, in our view, on two counts: 1) without any explanation, it would substitute UCS's philosophy for the Commission's judgment (expressed in the August 9, 1979 Order) that at least some "long-term" actions could be deferred if the record establishes that certain short term actions are sufficient to protect the public health and safety, and 2) the contention totally lacks specificity and basis. It is too unbounded to be litigable. It was, by UCS's admission, "... intended to cover all the issues which are raised by the staff which have not been independently challenged by us." Tr. 332.

Looking at our UCS ruling from another direction, we rejected UCS contention 15 not because we believed that the Commission's designation of certain actions as "long term" rendered them ineligible for consideration as issues under "short term" requirements. The contention failed under traditional tests for litigable contentions, and still fails with the guidance provided by the Commission's March 14 Order. If UCS had designated specific "long term" actions it wished to litigate as being required before operating the plant, as did Mr. Sholly, the board would have given favorable consideration to the contention.[2/]

2/ In fact many of the contentions advanced by UCS (and other intervenors) urged pre-operational action beyond the "short term" actions of the August 9, Order and NUREG-0578, and the board accepted them although they had elements of the "long-term" actions specified in the Order and the NUREG, or weren't even specified in either document.

We have reviewed our contention rulings to determine whether any should be reconsidered in light of the Commission's guidance of March 14. We find none; this is to be expected because the guidance is exactly the standard we had in mind when we ruled on contentions. However, in view of the Commission's expressed determination that this standard be applied to issues in the proceeding, the board invites the parties to move for relief consistent with the Commission's March 14 Order and our interpretation of the order.

In seeking relief parties may also argue the correctness of our interpretation of the Commission's March 14 Order. Motions pursuant to this order must be served within 5 days after service of this order. Answers to motions must be served within 5 days after the service of the motion.

THE ATOMIC SAFETY AND
LICENSING BOARD

Ivan W. Smith, Chairman

Bethesda, Maryland

March 28, 1980