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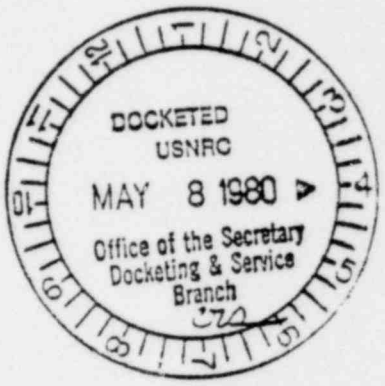
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



ATOMIC SAFETY AND LICENSING BOARD
Ivan W. Smith, Chairman
Dr. Walter H. Jordan
Dr. Linda W. Little

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

MEMORANDUM AND ORDER ON PENDING MOTIONS
FOR RECONSIDERATION OF ANGRY, LEWIS AND AAMODT

(May 8, 1980)

This order rules on three separate and unrelated motions for reconsideration which are pending before the board.

ANGRY

By motion dated March 10, 1980, the Anti-Nuclear Group Representing York (ANGRY) objects to our "disposition" of its contention II(C) in the Fourth Special Prehearing Conference Order, dated February 29, 1980 (at pp. 27-32). That contention, and ANGRY contentions III(A)(a) and III(B)(a), challenge the failure of the licensee to consider local conditions in adopting the 10-mile plume emergency planning zone (EPZ) in its emergency plans. Our lengthy discussion of these contentions in the February 29, 1980 order was itself a ruling on ANGRY's earlier request for reconsideration of our denial of contention II(C), III(A)(a) and III(B)(a) in the Third Special Prehearing Conference Order of January 25, 1980 (at pp. 12-14).

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No party has responded to ANGRY's objections of March 10. We agree that further response is unnecessary, and stand by our discussion and rulings in the prior special prehearing conference orders referenced above. ANGRY's motion implies, incorrectly, that it has been cut off from its right to demonstrate the merits of its allegation that there are local conditions which would require a different EPZ. This is the allegation which is the gravamen of contention II(C), III(A)(a) and III(B)(a). ANGRY has selectively ignored the point that our prior ruling of February 29, 1980 gave it the opportunity, in consolidation with Mr. Sholly's contention 8(C), to jointly advance a final contention (at the appropriate future time in the schedule for final contentions) setting forth the specific local conditions which must be taken into account. See the February 29, 1980 order at p. 29, n. 12. In short, our "disposition" was not an outright denial of the contention although we had grounds to do so as discussed in the prior order.

Mr. Lewis

By a filing of April 11, 1980, Mr. Lewis objects to and asks us to clarify and reconsider our statement in the course of ruling on discovery matters,[1/] that the Lewis contention is limited to the example presented of the need for new filters

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1/ Memorandum and Order on March 19, 1980 Lewis Motion to Compel NRC Staff to Answer Interrogatories (April 3, 1980), at pp. 1-2.

similar to those of Unit 2 and filter preheaters on the Unit 1 auxiliary building.[2/] We decline to do so. All of our many rulings on the scope of Mr. Lewis' limited participation in the proceeding have either explicitly or implicitly so limited his contention. He was admitted on that one contention, despite his lack of standing as of right, because the board was independently interested in pursuing the matter of auxiliary building filters and filter preheaters. First Special Prehearing Conference Order, LBP-79-34, 10 NRC 828, 853 (December 18, 1979). See also Second Special Prehearing Conference Order (January 11, 1980), at pp. 13-15; Memorandum and Order of April 3, 1980, supra, at note 1; and Memorandum and Order Denying Addition of New Contention by Mr. Lewis (April 23, 1980). We could not, of course, have been independently interested in unspecified "many design errors" and a "larger problem". Such a contention would have been impermissibly vague, and also therefore without articulated bases or nexus to the TMI-2 accident. Accordingly, the contention is confined to the example presented, without the inclusion of the last two sentences.

2/ The Lewis contention states:

> Filters: There are New filters on the auxiliary building of TMI#2. There are no similar structures on the auxiliary building of TMI#1. Further, preheaters must be placed on the filters of the auxiliary building because they got wet during the accident on 3/28/79 in TMI#2. To mitigate a similar accident in TMI#1, preheaters on the filters in the auxiliary building of TMI#1 are necessary. There are many design errors in the filter system and design of same. I am presenting the above as examples of a larger problem.

Aamodt Family

By motion filed on April 24, 1980, the Aamodt family seeks reconsideration of the portions of the board's order of April 9, 1980 (pp.7-8) denying the Aamodts' motion to compel licensee to respond to its interrogatories 22 through 26 and 36. These interrogatories were contained in the Aamodts' Contention 2 - Fourth (Sic; Fifth) Set dated February 25, 1980. Licensee filed a response on May 5, 1980 in opposition to the Aamodt motion for reconsideration.[3/]

Contention 2 states:

> 2. It is contended that TMI-1 should not open until the performance of licensee technicians and management can be demonstrated to be upgraded as certified by an independent engineering firm. This upgrading should include 100% test performance of job description with provision for retraining and retest, or discharge of those who cannot consistently and confidently master all necessary information for safe conduct of their job description under all anticipated critical situations as well as routine situations.

3/ Because it is not clear that a response to the reconsideration request is required under the Rules of Practice, on May 1, counsel for the board contacted counsel for the licensee to inquire if licensee planned to respond to the Aamodt motion. Licensee stated it would unless the board believed no response to be necessary. Counsel for the board stated that, to the contrary, the board was interested in a response from licensee which addressed the argument that the Aamodts are entitled to inquire into the actual working conditions to test the validity of the testing program.

The essence of Aamodt Contention 2 as we view it is that the competence of licensee "technicians and management" must be demonstrated by an independent firm, with such demonstration to include a 100% test performance on a test of "anticipated critical situations as well as routine situations." We believe it permissible for the Aamodts to pursue information which will bear on the validity of the testing program. This view was demonstrated when we required an answer in the April 9, 1980 order (p.5) to Aamodt interrogatory 16 which asks whether the licensee plans to introduce stress into simulator training and/or operator performance testing.

In our April 9, 1980 order we agreed with the licensee's view (expressed again in its response of May 5, 1980), that interrogatories 22 through 26 as a package were directed rather abstractly to plant operation itself, without any expressed connection to or focus on the independent testing or certification which is the subject of Contention 2. As licensee properly recognizes in its response of May 5, obviously plant operations can be related to technical training and testing of plant operators. But the drafting of these interrogatories is overly broad and of no assistance in making the connection between the information sought and Contention 2.

However, we have now reconsidered our ruling on interrogatories 22 through 26. We do not believe our prior ruling to be incorrect, but we now believe it to be a closer question than our previous ruling indicated. It is a matter of judgment. We are not solely guided by the Aamodts' contention, although as stated above we are interested in permitting the Aamodts latitude in developing information on the validity of the testing program. We are also being very liberal in allowing portions of the disputed interrogatories to be answered, as specified below, because the information also bears on the overall subject of licensee's competence to safely operate the facility, an issue in which the board and the Commission have previously expressed strong interest.

Interrogatories which seek information on actual conditions for personnel involved in operation of the plant (as supervisors or directly) are permitted. Interrogatories which dispute the wisdom of the operating conditions (22, 22a, 23), or are overly broad in seeking information about non-operating personnel (part of 22b), or are hopelessly vague (26), are not permitted. Interrogatory 25 (longest shift worked by any one person) is unlikely to shed any light on the adequacy of a training and testing program, and is of no interest to the board with respect to management capability.

Accordingly, within ten days of service of this order, the following interrogatories should be answered by the licensee:

a. Interrogatory 22(b) limited to operating personnel (which as indicated above includes supervisors of such personnel).

b. Interrogatory 24 and 24(a).

We decline to reconsider our ruling on Aamodt "interrogatory" 36. We need not repeat the reasons stated in our order of April 9, 1980 for refusing to compel discovery on this item. "Interrogatory" 36 asked no question. It was a vague request to take depositions of unidentifiable employees of licensee, and therefore simply could not be responded to or otherwise acted upon by licensee.[4/]

The Aamodts have now set out a new proposed procedure which is still quite unclear. The best we can understand it is that it is not within permissible discovery, and certainly not within the discovery schedule of the proceeding.

4/ Our prior misunderstanding that the Aamodts intended first to send written questionnaires to all licensee employees, as opposed to a sample of employees to be later selected, is not material to the fact that the Aamodts failed to timely identify (by name or description) those employees it seeks to depose.

The Aamodts still are no closer to identifying by name or otherwise the individuals they would depose. In fact, it now appears they do not wish to take oral depositions at all, but rather wish to serve written questions, well beyond the deadline for interrogatories, to be answered directly by licensee personnel without benefit of objections by or consultation with counsel.

In short, the Aamodts' original request on February 25, even when liberally construed as a notice for deposition, could not have been complied with. The subsequent permutations proposed by the Aamodts are no more comprehensible, are totally irregular and impermissible (if we have correctly understood their most recent proposal), and are too late.

THE ATOMIC SAFETY AND
LICENSING BOARD

Ivan W. Smith, Chairman

Bethesda, Maryland
May 8, 1980

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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(Three Mile Island Unit No. 1	)	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document(s) upon each person designated on the official service list compiled by the Office of the Secretary of the Commission in this proceeding in accordance with the requirements of Section 2.712 of 10 CFR Part 2 - Rules of Practice, of the Nuclear Regulatory Commission's Rules and Regulations.

Dated at Washington, D. C. this
5th day of May 19 80

Peggy T. Fleming
Office of the Secretary of the Commission

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