

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF OBJECTIONS TO INTERVENOR LEWIS'
INTERROGATORIES TO THE NRC STAFF

Intervenor Marvin I. Lewis has served four sets of interrogatories on the NRC Staff. The first set dated January 6, 1980, has been fully answered. The second set, dated January 29, 1980, has not yet been answered but objections to Interrogatories NRC 14, 15, 19 and 19 were made by the Staff in its February 25, 1980 pleading entitled "NRC Staff Objections to Discovery Requests." The Staff is working to complete the remainder of Mr. Lewis' second set of interrogatories.

Mr. Lewis has since served two additional sets of interrogatories. The third set entitled "Further Discovery Requests and Interrogatories by Intervenor Lewis" was filed on February 15, 1980 and the fourth set entitled "Intervenor Lewis' Fourth Set of Interrogatories and Further Discovery Requests to the NRC Staff", undated, was received February 27, 1980. The Staff submits objections to certain of the questions posed by Mr. Lewis in his third and fourth sets of interrogatories.

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The Licensing Board, as a matter of discretion, admitted Mr. Lewis as an intervenor on a strictly limited basis. (First Special Prehearing Conference Order, December 18, 1979, at 59). Under the Board's Order he is permitted to engage in discovery and present evidence on only one contention. Id. 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.

The Staff interprets this contention to mean: (1) there are no filters on the TMI-1 auxiliary building, (2) there should be filters on the TMI-1 auxiliary building prior to restart, (3) the filters should be equipped with preheaters, and (4) there are certain unspecified errors in the design of the filter system for TMI-2.

Further, the regulations which govern NRC proceedings state that "[i]t is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." 10 C.F.R. §2.740(b)(1). It follows that a permissible ground for objection is that the information sought does not appear "reasonably calculated to lead to the discovery of admissible evidence." Because Mr. Lewis' participation in discovery and in the presentation of evidence is limited to the subject matter of his one contention, interrogatories which do not relate to his contention cannot lead to the discovery of admissible evidence.

Mr. Lewis does, however, ask several questions which do not pertain to his only admitted contention and thus are not "reasonably calculated to lead to the discovery" of evidence which Mr. Lewis could use in the presentation of his case. For these reasons, the Staff objects to NRC 23, 24, 25, 29, 30, 31, and 37.^{1/}

The Staff also objects to NRC 27 and 28 which refer only to the design and operation of vent heaters and filters at TMI-2. Such questions do not appear relevant to the subject matter involved in this proceeding as discussed above, and thus are not reasonably calculated to lead to the discovery of admissible evidence. This proceeding is concerned with the design and operation of TMI-1 not TMI-2.

NRC 36 which asks for the Staff's opinion as to whether the Licensee's answers to Mr. Lewis' interrogatories are accurate is also objectionable. The Staff will address the licensee's compliance with restart requirements to the extent necessary and appropriate in its evaluation of the licensee's restart report and supplements. The Staff's belief as to the accuracy of Licensee's responses to Mr. Lewis is irrelevant

For the reasons set forth above, the NRC Staff objects to interrogatories numbered NRC 23, 24, 25, 27, 28, 29, 30, 31, 36 and 37 which were submitted by Mr. Lewis in his third and fourth sets of interrogatories to the NRC Staff. The remainder

^{1/} The interrogatories to which the Staff objects are reproduced in the Appendix to this pleading.

of Mr. Lewis' interrogatories will be answered as soon as possible.

Respectfully submitted,

Lucinda Low Swartz

Lucinda Low Swartz
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 7th day of March, 1980

APPENDIX

Intervenor Lewis Third Set of Interrogatories to NRC Staff.

NRC 23. Does the NRC keep a dossier of file on intervenors and active anti-nuclear types? Are the names Susan Barley or Marvin I Lewis on any files in the NRC researching our backgrounds, criminal records, social contacts, hearsay, or other information which is or can be used by investigative organizations within and without the government?

Intervenor Lewis is especially interested in the type of file recently disclosed as being kept by the Georgia Power Company on anti nuclear activists.

NRC 24. Does any other branch of government keep a file on antinuclear activists which is available to the NRC? Have the names Marvin Lewis or Susan Barley, been added to these files at the request of or direction from the NRC or any of its employees, consultants or minions?

NRC 25. Send the curriculum vitae or Professional Qualifications of Dr C Gallina, who made many statements to the press during the TMI accident concerning releases.

NRC 27. Did the leaking vent header and the HEPA and charcoal filters meet the requirements of

a. GDC 41

b. GDC 60

c. GDC 61

d. 10CFR50 Appendix I ALARA (1 Sep 1978.)

If any of the above are not applicable , please state why. If these criteria were not met , state specifically how and why they were not met. (Curies, dollars per Curie, release rate.)

e. Include all the filters in your analysis ; not just the filters in the auxiliary building.

NRC 28. Why was the vent header leaking ? What materials failed? Where did they fail? How did they fail? When did they fail? If not a material problem, be specific as to what was the problem. State who discovered leak, when , how, where. Who logged leak and when? Where is the work order to fix vent header leak? Above interrogatory refers to the vent header in TMI#2. NRC 27 refers to TMI#2 also.

Intervenor Lewis's FOURTH SET OF INTERROGATORIES TO NRC STAFF

NRC 29. The Status Report dated 1-11-80 is much greater than the 8 1/2 x 11" size ordered by the Board in its first Prehearing Conference. Intervenor Lewis does not remember Staff objected to that size at the time Chairman Smith specified it.

Obviously, the Staff received permission to use other than 8 1/2 x 11" from the Board. The Staff would not break or ignore a Board Order unilaterally.

Nonetheless, Intervenor Lewis has seen no guidance concerning new sizes of paper for submittals which are now allowed. Since Intervenor Lewis has very limited filing space, he requires to know what sizes of paper to expect from Staff in their filings.

What sizes of paper will staff use in their future filings specifically with reference to Status Reports?

NRC 30. Has some means been promoted for the NRC to obtain anonymous tips from informants as to practices on the construction and maintenance of the TXIS-1 facility?

This concern is especially pertinent to the Lewis Contention as the filters and vent header are deep within the facility and any adverse handling or practices would not easily be reported without the threat of anonymous tips.

Please note that the problems of Westinghouse Turbine Cracking (Varga:Knight:80, 2/16) and concrete problems at Wolf Creek and Sumner were also brought to light thru anonymous tips.

ERC 31. The letters NRC /TMI 80-028 and Eisenhut:All Power Reactor Licensees -80.01.29] raise several issues which are explored in the following interrogatories.

A. What provisions , if any , are presently in place to guarantee that the requirements specified in Eisenhut:All Power Reactor Licensees-80.01.29 can be met?

Answer with specificity for delay and decay tank bottoms, spent charcoal and HEPA filter media pertinent to the Lewis Contention.

B. What guarantees are in place to assure that spent filter media can be moved off site to appropriate low level waste sites? Are LLW sites available now and in the future?

C. Referring to Kemeny Report ,Page 30, Item 11.

"Iodine filters in the auxiliary and fuel handling buildings did not perform as designed because the charcoal filtering capacity was apparently partially expended due to improper use before the accident . Required testing for of filter effectiveness for the fuel handling building had been waived by the NRC . There were no testing requirements to verify auxiliary building filter effectiveness."

C-1 What was "the improper use" referred to in the quote above from the Kemeny Commission? Give type of use; dates; who authorized; where written authorizations , such as logs, work or job tickets, proper paperwork stored?~~xxx~~ Send copies if not in an easily , accessible public reading room of all supporting documents referred to in ~~this~~ the answer to this and all interrogatories.?

C-2 When, why , and how was "required testing for filter effectiveness for the fuel handling building ...waived by the NRC"? Specify names , dates, send copies of letters and any other pertinent documentation with your answer.

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C-3 Considering that there were "no testing requirements to verify auxiliary building filter effectiveness", was the licensee operating in violation of 10CFR 50 Appendix A GDC 41 "Systems to control fission products... shall be provided as necessary to reduce...the concentration and quality of fission products released to the environment." GDC 60 All.

GDC 61 The fuel storage and handling, radioactive waste, and other systems which may contain radioactivity shall be designed to assure adequate safety under normal and postulated accident conditions. These systems shall be designed (1) with a capacity to permit appropriate periodic inspection and testing... (3) with appropriate containment, confinement and filtering systems."

C-4 Was the NRC knowingly allowing the Licensee to operate in violation to any GDC?

C-5 Did the NRC allow the Licensee to operate without checking the effectiveness of the filter media because there was a problem of where to get rid of the Low Level waste generated in the filtering systems? Was this a form of relief granted to the Licensee by the NRC to circumvent a LLW disposal problem? Has any form of LLW been refused at any site from TMI? If so, have the intervenors received any notification of said refusal and why?

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NRC 36. NRC 10 was objected to as "burden-some and improper. " It was not meant to be. It is rewritted and resubmitted as NRC 36. The Licensee has supplied everyone on the Distribution List with his answers to Lewis Interrogatories . The Staff will read (or appropriate Staffer) the Licensee's answers to Lewis Interrogatories, and answer the following :

A. Are the Licensee's answer's to Lewis Interrogatories accurate? No opinion on responsiveness is asked.

B. If any of the above answers are not accurate, would the Licensee jeopardize the health and safety of the public by implementing said inaccuracies?

NRC ~~37~~ ^{no} 37. The Staff's answer to NRC 8 is not responsive in that it does ~~not~~ give times nor state that they are unavailable. Intervenor Lewis is not objecting to this answer since he has obtained sufficient times and dates on his and his associate's researches. One question remains:
Does the Staff agree with the dates and times of releases referred to in the Rogovin and Kemeny Reports? In order to reduce the burden , the Staff need only answer for the major document and not the Staff reports. However, Intervenor Lewis reserves the right to refer to above mentioned Staff reports in direct and indirect testimony.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF OBJECTIONS TO INTERVENOR LEWIS' INTERROGATORIES TO THE NRC STAFF", dated March 7, 1980 in the above-captioned proceeding, have been served on the following, by deposit in the United States mail, first class, or, as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, this 7th day of March, 1980:

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