

UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF RESPONSE TO LICENSEE'S
 MOTION FOR FURTHER SPECIFICATION

On May 23, 1980, counsel for Metropolitan Edison Company filed a pleading entitled "Licensee's Motion to Require Further Specification of Contentions" (Motion). The Motion asks the Licensing Board to "implement and enforce certain of its prior orders" which required some contentions to be further specified during or after discovery and to order further specification of CEA contentions 5, 6, 7, and 8 and TMIA contentions 6 and 7. The Staff's response to this Motion is set forth below.

Licensee's Request for Further Specification after Discovery

The Licensee in its Motion cites ten instances where the Licensing Board admitted certain contentions with the understanding that they would be further specified during or after discovery.^{1/} Two of the contentions cited, however, were erroneously included in this category. The Licensing Board in discussing UCS contentions 9 and 10 did not require them to be further specified. Rather, both these contentions were admitted unconditionally but

^{1/} The contentions cited by Licensee are: Aamodt #5, ANGRY #5(D), Newberry #3(d)(9), Sholly #8(C), Sholly #8(T), Sholly #14, Sholly #16, UCS #9, UCS #10, and UCS #13.

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were limited by the Licensing Board to pertain to the core cooling and containment isolation systems only. First Special Prehearing Conference Order, December 18, 1979, at 20. No further specification of UCS contentions 9 and 10 was ordered by the Licensing Board. This portion of Licensee's Motion should be denied.

The remaining eight contentions cited by Licensee were indeed admitted by the Licensing Board, subject to further specification at a later time. The Licensing Board's decisions on these contentions, however, preceded the Appeal Board's ruling in Allens Creek,^{2/} a ruling which impacts upon this proceeding.

In Allens Creek, the Appeal Board overturned the rejection of a contention submitted by a pro se intervenor in connection with his petition for leave to intervene in the proceeding. The contention asserted that a marine biomass farm would be environmentally preferable to the Allens Creek nuclear facility and that a construction permit ought to be denied under the National Environmental Policy Act of 1969. The Licensing Board in that proceeding rejected the contention on the ground that the intervenor had offered no justification for his assertion of environmental superiority. The Appeal Board, however, decided that "all that was required of [the petitioner] on the petition level was to state his reasons (i.e., the basis) for his contention that the

^{2/} Houston Lighting and Power Co., (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC _____, April 22, 1980

biomass alternative should receive additional consideration." Slip op. at 11. The Appeal Board held that his reference to a Federal Energy Agency report satisfied the basis requirement. A showing of factual support for particular assertions need not be taken as a precondition to the acceptance of a contention for the limited purpose of determining whether to allow intervention under 10 C.F.R. § 2.714. Slip op. at 16.

Thus, based on this ruling, some of the contentions originally thought by the Licensing Board, the Licensee, or the Staff to have insufficient bases and to need further specificity may be admissible without a further showing. It is the Staff's view that, under the Allens Creek decision, Aamodt #5, ANGRY #5(D), Newberry #3(d)(9),^{3/} Sholly #8(C), Sholly #8(T) and Sholly #16^{4/} are all presently admissible without further specificity by the parties. Each of the contentions named above includes a basis for the assertions and gives all parties involved reasonable notice as to the issues to be litigated.^{5/} For these reasons, that portion of Licensee's Motion which seeks further clarification of these six contentions should be denied.

3/ In its Fourth Special Prehearing Conference Order, the Licensing Board accepted Newberry #3(d)(9). Order at 13. The Board noted that there was an inadequate basis for only part of the subsection and that "Newberry should specify the basis of this statement." Id.

4/ The Licensing Board has already stated that Sholly #16 "is specific enough to be admitted..." although further specificity would be desirable. Second Prehearing Conference Order, January 11, 1980, at 2.

5/ Allens Creek only discussed "the acceptance of a contention for the limited purpose of determining whether to allow intervention under 10 C.F.R. 2.714." Slip op. at 16. Although denial of any of these five contentions will not deny intervention status to the parties concerned, it seems that the acceptability of all contentions should be judged by the same standard.

The Staff does agree with Licensee that Sholly #14 and UCS #13 are presently inadequate inasmuch as no basis for these contentions has been set forth.

The Licensing Board should require Mr. Sholly and UCS to provide some basis for those contentions.

Licensee's Request for Further Specification by CEA and TMIA

In its Motion, Licensee also seeks an order by the Licensing Board compelling further specification of CEA contentions 5, 6, 7 and 8 and TMIA contentions 6 and 7. The Staff believes this part of Licensee's Motion should be denied.

The Licensee states that, in response to its interrogatories, CEA and TMIA stated they could not yet provide certain factual information in support of their contentions. Because it did not receive the information it sought through interrogatories, the Licensee now seeks the same information by asking for further specificity.

First, these contentions are already admitted for litigation in the proceeding; no conditions were placed on their admission. The Licensing Board, therefore, has already determined that the contentions were set forth with adequate specificity.

Secondly, the answers given by CEA and TMIA indicating that they did not yet have the information sought by the Licensee does not mean that these intervenors ought to be penalized by forcing them to further define their contentions at this time. All parties are still in the process of gathering data in

preparation for the presentation of evidence. The fact that some parties might not yet have certain information does not mean that their contentions ought to be subjected to closer scrutiny than that given other contentions. CEA and TMIA are, of course, obligated to respond to Licensee's interrogatories upon receipt of the requested information.

Finally, the Licensee's proper recourse, if it believes certain contentions are without merit, is to seek summary disposition. Although the Licensing Board has expressed its disinterest in the summary disposition process^{5/} it seems clear that some allowance should be made for such motions. See Allens Creek, Slip op. at 14-16. (Discussion of summary disposition procedures as a means of eliminating spurious and non-meritorious contentions). See also Commission's March 14, 1980 Order which indicates summary disposition procedures will be available in this proceeding. While the CEA and TMIA contentions cited need not be redefined at this time, if these parties are still unable to provide factual information at a date closer to the hearing, then the Licensee could assert that there is "no genuine issue to be heard" and could seek summary disposition. In the meantime, these contentions are presently specific enough to put the licensee on notice as to what is to be litigated and to allow it ample opportunity to prepare its testimony.

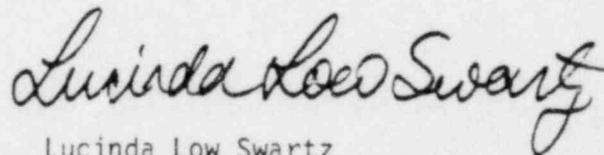
^{5/} Fourth Special Prehearing Conference Order, February 29, 1980, at 26.

For the reasons stated above, Licensee's Motion to require further specificity of CEA and TMIA contentions should be denied.

Conclusion

In its Motion, the Licensee requested the Licensing Board to: (1) require further specificity of contentions which were conditionally admitted and (2) require further specificity of CEA contentions 5, 6, 7 and 8 and TMIA contentions 6 and 7. The Staff supports Licensee's Motion only insofar as it would require bases set forth with reasonable specificity for Sholly #14 and UCS #13. The other contentions cited by the Licensee in its Motion do not require additional bases and further specificity in order to be litigated and the portions of the Motion pertaining to those contentions should be denied.

Respectfully submitted,



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Counsel for NRC Staff

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METROPOLITAN EDISON COMPANY,
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Docket No. 50-289

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO LICENSEE'S MOTION FOR FURTHER SPECIFICATION," dated June 12, 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 12th day of June, 1980:

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