

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

LICENSEE'S RESPONSE TO UCS LETTER  
DATED AUGUST 19, 1980

By motion dated August 6, 1980, UCS moved for summary disposition of its Contentions 13 and 5. At the prehearing conference on August 12-13, 1980, the Board ruled that it wanted evidence presented at the hearing on both contentions, that as a matter of discretion summary disposition was not an appropriate method to resolve the contentions and therefore that the Staff and Licensee need not respond to the UCS motion.

By letter dated August 19, 1980, UCS reiterated its position that the Staff and Licensee should be ordered to respond to the motion for summary disposition. In its Memorandum and Order dated August 20, 1980, the Board construed UCS' August 19 letter as a request for reconsideration of its determination not to permit the UCS motion for summary disposition

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to be decided on the merits.\* The Board directed the parties to treat UCS' letter as a motion for reconsideration and this response has been prepared accordingly.

In Licensee's view the Board acted properly within its authority to regulate the course of the hearing in deciding not to entertain a motion for summary disposition on issues as to which the Board itself desired to hear testimony. In addition, Licensee believes the Board would have been on equally sound ground in denying the motion for summary judgment, without waiting to hear from the Staff and Licensee as to whether there were material facts in issue, on the ground that the facts as stated by UCS do not as a matter of law entitle UCS to a decision in its favor. We discuss below both the facts as stated by UCS and the conclusions of law which UCS would have the Board draw from them.

### UCS Contention 13

UCS Statement of Material Facts. Licensee has no important differences with statements 1 through 6 insofar as they quote or paraphrase statements made by the Staff in various

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\*Licensee reads UCS' August 19 letter somewhat differently, i.e. as an acceptance by UCS of the Board's decision not to dispose of Contentions 13 and 5 by summary disposition but a request that the Staff and Licensee nevertheless be required to respond to the motion. In preparing this response Licensee has adopted the Board's construction of UCS' letter. In so doing, Licensee provides essentially the same response as it would have made had the Board directed Licensee to respond to UCS' motion.

documents or answers to UCS interrogatories. The quotations selected by UCS, however, fall far short of an adequate description of past NRC methodology in the determination of credible accidents, much less the Staff's current efforts in connection with TMI-1. Licensee submits that without further examination of the subject, it would be impossible for the Board to conclude that UCS' attack on Staff methodology is justified.

Licensee has difficulty in understanding UCS' statement 7. We read statement 7, together with its supporting reference, as alleging that the Staff does not know how many other accidents previously deemed incredible are, in fact, credible because the Staff has not evaluated the absolute probability of accidents beyond the design basis for TMI-1. As such, statement 7 is a conclusion, not a statement of fact, and is covered by Licensee's discussion of UCS' argument below.

UCS Argument. Licensee does not attempt to respond here to each and every UCS argument. We are concerned at this point only with the question whether as a matter of law UCS is entitled to a decision in its favor. Two observations are sufficient to establish that it is not.

First, UCS' motion would have the Board decide the adequacy of the Staff's methodology for selecting design basis accidents for TMI-1 without waiting to hear from the Staff what,

if any, modifications or additions to past practice may have been made by the Staff in connection with its TMI-1 restart review. The Board has instructed the Staff to consider accident sequences beyond the original design basis for TMI-1 and the Staff intends to do so. Of the material facts claimed by UCS not to be in issue, only one (the absence of absolute probability assessments) bears on the current and still ongoing Staff accident review. We discuss this matter next.

Second, UCS may believe that it is not possible to select design basis accidents without having performed reliable probabilistic risk assessments with small error bands, but it does not follow as a matter of law that UCS is right. UCS cites no legal authority whatsoever in support of its position. Without such authority and with no instructions from the Commission, UCS would have this Board simply cast aside, without even hearing expert testimony on the subject, industry and government experience and methodology developed over a period of more than twenty years.

#### UCS Contention 5

UCS Statement of Material Facts. The first seven UCS statements quote or paraphrase material contained in various Staff documents or answers to UCS interrogatories. Licensee takes exception only to UCS statements 3 and 4.

Statement 3 refers to and paraphrases selectively material appearing on pages 6-7 of NUREG-0578. It fails to include the Staff's acknowledgment at page 6 of the document that power-operated relief valves have not previously been included in the licensing interpretation of equipment designated as "important to safety."

Statement 4 inaccurately quotes the SER as requiring connection of power-operated relief valves to emergency power supply (a connection which incidentally has existed all along at TMI-1) "in order to satisfy" certain general design criteria, including GDC 17. The precise Staff statement is that the connection is "[c]onsistent with satisfying the requirements" of the referenced general design criteria.

Statement 8 is a quotation from GDC 4 and does not belong in a statement of material facts.

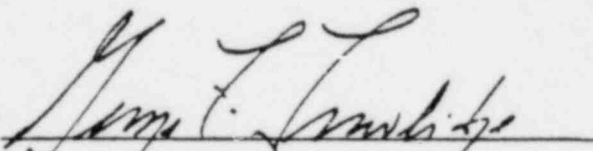
Statement 9 cites the Standard Review Plan, Appendix to Section 7.3, as authority for the proposition that it is current Commission policy that a structure, system or component required for safety must meet all safety-grade criteria. Section 7.3 and its Appendix, however, deal solely with Emergency Safety Feature Actuation Systems (ESFAS) and essential auxiliary supporting systems. The power-operated relief valve and its control circuitry do not fall in this category of equipment.

UCS Argument. UCS' own references establish the fact that power-operated relief valves have not heretofore been classified as safety-grade equipment. It would nevertheless have this Board determine as a matter of law that for the last ten years the Staff, the ACRS and Atomic Safety and Licensing Boards have misapplied the General Design Criteria.

UCS does not base its argument on a technical discussion of the consequences of a malfunction of the power operated relief valve or of the availability of other safety-grade equipment to cope with transients in the event of a PORV failure. It rests its case instead largely on a specious syllogism to the effect that because the Staff has decided to backfit certain older plants to require emergency power supply to the PORV, the PORV must now be classified as safety-grade equipment for all other purposes. The Board was entirely correct in deciding to resolve the issue on the basis of technical evidence.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By   
George F. Trowbridge

Dated: September 2, 1980

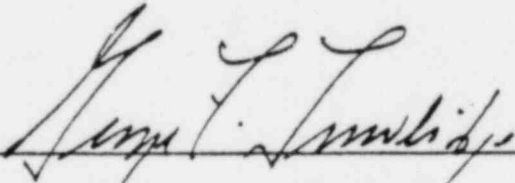
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Response to UCS Letter Dated August 19, 1980," dated September 2, 1980, were served upon those persons on the attached Service List by deposit in the United States mail, postage prepaid, this 2d day of September, 1980.

  
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George F. Trowbridge

Dated: September 2, 1980

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