



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

Ivan W. Smith, Chairman  
Dr. Walter H. Jordan  
Dr. Linda W. Little

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

MEMORANDUM AND ORDER OF  
PREHEARING CONFERENCE OF  
AUGUST 12-13, 1980

(August 20, 1980)

Pursuant to 10 CFR §2.752 the board conducted a prehearing conference on August 12 and 13, 1980 in Harrisburg, Pennsylvania. All parties and Commonwealth agencies, except Dauphin County, attended and participated. The purpose of this order is to report, pursuant to §2.752(c), the actions taken at the conference, and to dispose of other pending matters.

By agreement of the parties, ANGRY's objections of August 5 to licensee's interrogatories on Revision 2 of its Emergency Plan is treated as if the licensee has made a motion to compel responses and as if the objections are an answer to the motion. Tr. 2045-2054. The board ruled that the interrogatories are timely because 10 CFR §2.710 requires that five days for mailed service be added to the ten days specified in the board's order

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of July 15. Tr. 2045-2054. The board had previously extended to the time of the prehearing conference ANGRY's opportunity to make further objections to the licensee's discovery requests. ANGRY has timely objected to the interrogatories as burdensome and was to have renewed the motion on or before August 15 if it seeks protection on that basis. Tr. 2054-55.

The board directed the licensee to provide an evidentiary explanation on certain aspects of the incident at TMI-1 on June 27, 1980 which produced a 10,000 gallon leak of water. Tr. 2064-69. This directive disposes of TMIA's request that discovery on its withdrawn Contention 7 be pursued by the board. Tr. 2069.

Litigation on post-accident hydrogen control issues continues to be deferred. Licensee is assigned the responsibility to revive the issue when the matter becomes ripe for further action. Tr. 2087.

The board accepted Intervenor Sholly's July 29 report on consolidation reports by intervenors. PANE and Newberry Intervenor will function as lead intervenors on psychological stress issues if they become a part of the proceeding. TMIA is the lead intervenor on management and financial issues. UCS is the lead intervenor on hydrogen control, detection of inadequate core cooling, and "Safety System ByPass and Override" (Tr. 2091).

In other joint presentations agreed upon at the prehearing conference, Mr. Sholly will be the lead intervenor on Sholly Contention 15 and ANGRY Contention V(C) (Tr. 2096-97, 2100); ECNP is the lead intervenor on Sholly Contention 13 and ECNP Contention 1(a) (Tr. 2100-01); ECNP is the lead intervenor on Sholly Contention 5 and ECNP Contention 1(d) (Tr. 2101); UCS is the lead intervenor on UCS Contention 9 and ECNP Contention 1(c) (Tr. 2257-58).

The board accepted TMIA's revised Contention 5, (following Tr. 2138) provided that the contention be further revised to specify that the maintenance referred to in the contention is safety-related maintenance, that Item 5b.3. be deleted as duplicating Item 5a., and that the quality assurance/quality control programs of Item 5b.5. are programs related to maintenance. Tr. 2140-52. TMIA does not rely upon negligent conduct at TMI Unit 2 in its case on the restart of Unit 1. Therefore the revised contention refers only to Unit 1 activities. TMIA's July 31 response to licensee's motion for sanctions. Counsel for TMIA was directed to resubmit the contention with language conforming to the clarification at the prehearing conference. Tr. 2152.

In its July 16 Motion for Sanctions Against TMIA licensee seeks an order dismissing TMIA Contention 5 because of what it views to be a failure by TMIA to respond fully to licensee's interrogatories on the contention. The NRC staff

supports the motion. Tr. 2107. Because the issue raised by TMIA's Contention 5 is, in the board's view, a very important safety issue related to licensee's management and technical competence, licensee's motion for sanctions is denied. However the board is not satisfied that TMIA has fully responded to discovery, nor are we satisfied that the licensee and staff have been provided with sufficient information from TMIA to prepare evidence on the contention sufficient for a complete record. Therefore the board directed TMIA to proceed first with its affirmative case on Contention 5 early in the hearings.<sup>1/</sup> We will provide an opportunity later in the hearings for the licensee and staff to meet TMIA's affirmative case on Revised Contention 5. Tr. 2106-28.

The board accepted TMIA's July 31 revision of its Contention 6 with the further specification that the contention refers to licensee's ability to borrow money. Tr. 2170-71, 2178.

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<sup>1/</sup> In the memorandum and order of August 15, 1980 the evidentiary hearing is set to begin on October 15. TMIA's affirmative case is the first substantive matter on the order of hearing.

UCS, by motion served August 6, moves for summary disposition of its Contentions 13 and 5. Contention 13 asserts that the staff's method of determining which accidents fall within and which fall without the design basis is faulty. In support of the motion UCS quotes from various staff documents with the argument that the staff has, in effect, conceded the accuracy of the contention. The board ruled that because of the importance of UCS Contention 13, it wanted evidence presented at the hearing on the issue and that, as a matter of discretion, summary disposition was not an appropriate method to resolve the issue. Tr. 2230. The board also observed that whatever admissions were made in staff documents would not be binding upon the licensee, Ibid. The board ruled further that the issue raised in the motion on UCS Contention 13 must be addressed in the hearing (Tr. 2230-31) and that UCS is entitled to advanced notification from the staff (in lieu of the staff being required to respond to the motion for summary disposition) of an explanation of the questions raised by the statement of material facts in UCS's motion. Tr. 2231-32.

Upon this ruling UCS withdrew its August 11 Specification of UCS Contention 13. Tr. 2232. However, in compliance with earlier board requirements that the contention be specified, UCS agreed that its Contention 13 is bounded by the specification set forth in its motion for summary disposition. Tr. 2199, 2233.

UCS's Contention 5 would require that all components of power operated relief valves (PORV's) should be classified as components important to safety and required to meet safety-grade design criteria. The board ruled that the issue was one that, within its discretion, must be addressed at the evidentiary hearing and was therefore not suitable for summary disposition. Tr. 2353. In addition, the staff represented that its analysis on the subject was still incomplete and that a factual response to the motion for summary disposition on UCS Contention 5 would be premature. Tr. 2354. Such a response, if filed under 10 CFR §2.749(c), would be an adequate basis for denying the motion.

With no party objecting, the board accepts UCS's August 11 specification of its Contentions 9 and 10. Tr. 2280-81. UCS served its July 31 Review of Contentions in which it seeks leave to withdraw Contentions 6, 8 and 12. UCS also requests the board to adopt UCS Contentions 6, 8 and 12 as board questions. The board adopted these contentions, but denied UCS's motion for the board to retain independent experts to review the record and to present testimony on UCS Contention 10. UCS and the other intervenors urging this action and similar action on other contentions have failed to demonstrate any particular reason to depart from traditional Commission practice which assigns to the NRC staff the primary responsibility to present independent evidence on issues in NRC hearings. Tr. 2362-85, 2389-90. The board stated some of its concerns under each of UCS's Contentions 6, 8, and 12 (Tr. 2374 -85) which we discuss further below.



The board dismissed CEA's Contentions 5, 6, 7 and 8. Tr. 2249, 2253.<sup>2/</sup> As set forth in the board's June 23 Memorandum and Order Requiring Further Specification of Contentions, (at pp. 10-13), we have been heavily involved in the problem presented by the lack of participation by CEA in prehearing matters pertinent to its Contentions 5, 6, 7 and 8. Among other things, we summarized in that order how CEA had failed to respond to motions to compel discovery and to comply with a board order and CEA's own promise to provide discovery information. However, we there concluded that although CEA was in default on some discovery matters, the principal problem was not limited to the default. Rather, it was that the essence of CEA's responses to licensee's discovery questions on these four contentions was that CEA stated that it did not know the answers. If true, these are answers which complied with the discovery rules, but it also showed that CEA did not know much about the subject matter of its own contentions. This, of course, was not a harbinger of participation by CEA which would assist in developing the record.

We concluded in the June 23 order that licensee was entitled to the information on the particulars of CEA's contentions. Therefore we directed CEA either to supply the

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<sup>2/</sup> The summary of our ruling at Tr. 2256 erroneously failed to refer to the dismissal of CEA Contention 8.

information by responding to the interrogatories or, in the alternative, to specify better the contentions. CEA failed to do either.

In addition, CEA, as one of the parties permitted to adopt UCS Contention 13, was directed by our June 23 order to provide the specification within this contention which it wished to litigate. CEA has failed to do so.

Notwithstanding all of the above, we also stated in our June 23 order that if CEA did fail to respond to discovery or to specify the contentions, we would not prospectively and out of the context of a particular circumstance limit CEA's litigation. We stated that licensee should prepare its case, giving due regard to the importance of the contentions, the extent to which the issue is also embodied in other contentions and mandatory issues, and the information on the contentions made available to it by the intervenor.

The history of this matter and CEA's total lack of response after the June 23 order indicated that CEA would be of little assistance in developing a record in this proceeding. However, had nothing else occurred, CEA could have participated in the hearing on its Contentions 5, 6, 7 and 8 (and perhaps been directed to coordinate with UCS as lead intervenor on UCS Contention 13). But other developments have recently occurred.



At the prehearing conference, CEA submitted a document, Status of CEA's Contentions, dated August 12, 1980. The subject of that document was discussed on August 12 at Tr. 2241-57. CEA states in its submittal that due to the absence of intervenor funding it regrettably cannot be expected to have any meaningful participation in the proceedings, and suggests, inter alia, that the board adopt the contentions raised by CEA. Further, CEA's submittal states that it does not plan to file the required plans for cross-examination. As further amplified at the prehearing conference, CEA does not know if it will be able to be present at the evidentiary hearings, which will begin in October 1980.

In the light of these developments, the board dismisses CEA Contentions 5, 6, 7 and 8 from the proceedings and dismisses any right CEA may have had to offer affirmative evidence in the evidentiary hearing on UCS Contention 13 (Tr. 2253). We were inclined to dismiss all of CEA's contentions based upon the threatened failure to participate further. However, in the course of the discussion at the prehearing conference, CEA evinced a desire to retain its remaining contentions. We will permit it to do so, but CEA must comply with all further procedures on these contentions, including the filing of written direct testimony and cross-examination plans.

In taking the above action, we are mindful of CEA's request in its August 12 submittal that we take such steps as we see fit to assure that its dismissed contentions are thoroughly addressed. To this end, we direct the licensee and staff to provide direct testimony on CEA Contention 5. CEA Contention 6, to the extent it may differ from Contention 5, will be subsumed as a mandatory issue and the licensee and staff will therefore, in due course, provide evidence on it.

CEA Contention 7 will also be subsumed as a mandatory issue and the licensee and staff will therefore present evidence. In addition, it should be noted that board question 8 deals with the subject matter of CEA Contention 7. Tr. 2397.

CEA Contention 8, dealing with licensee's management capability, presents no specific issue on this subject in addition to the contentions of the other parties (including Sholly Contention 14 which it references) and the mandatory issues on this subject. Finally, with respect to UCS Contention 13, the contention will be litigated with UCS as the lead intervenor. Therefore, the dismissal of CEA from formally participating in this contention will have no effect on the development of a record. CEA is free, of course, to assist informally other parties on their surviving contentions.

Mr. Sholly filed on June 5 his Reconsideration of Contentions in which he withdraws Sholly Contentions 2, 7, 10, 12. The board approved the withdrawal of these contentions. Tr. 2287-88. Mr. Sholly also added additional specification to Sholly Contentions 1, 5, 6, and 14. There were no objections to the revisions of Sholly Contentions 1, 5, and 6, which the board accepts. Tr. 2290, 2294-95, 2308. Mr. Sholly further specified Contention 14 to delete and change language in the introduction of the contention. Without objection, the board accepted the revised language of Contention 14. Tr. 2301-02, 2308-09. The introduction to Contention 14 now reads:

The Licensee's management capability, in terms of organization, staffing, and technical capabilities, is not sufficient. Specifically the following [omit "specific"] deficiencies in Licensee's management capability are contended:

Sholly Contention 9, on radiation monitoring was overlooked in previous filings, and was accepted by the board without objection. Tr. 2297-99, 2300. Mr. Sholly's Contention 17 was redrafted to conform with previous board rulings to the effect that the contention is to be litigated as a radiological health and safety issue, not a NEPA issue. Tr. 2305-09. See Second Special Prehearing Conference Order, January 11, 1980, pp. 5-9.

In its June 30 Reconsideration of Contentions ANGRY withdrew its Contentions IIE, IIIA(C), IIIB(B), IIIB(C), and IIIC (1) through (6). The board accepted the withdrawal of these contentions. Tr. 2317-19.

ANGRY Contention VI was rejected by the board in the First Special Prehearing Conference Order, December 18, 1979, p. 37, but ANGRY was permitted to adopt UCS Contention 13 on the same general subject. ANGRY, in default of the board's order to specify its view of UCS Contention 13, agreed to be bound by UCS's own specification, (p. 3, supra), and to permit UCS to be lead intervenor on the issue. The board accepted these conditions. Tr. 2322-24.

Mrs. Aamodt served on August 11 her Reconsideration of Contentions in which she withdrew her Contention 8 and agreed to consolidation on her Contention 9 with PANE and others in the lead. The board accepts the withdrawal of Mrs. Aamodt's Contention 8 and the consolidation of the presentation on her Contention 9. Although, for reasons explained to Mrs. Aamodt the board declined to adopt as its own her Contention 2 on operator training, this should not be taken as an indication that the board has deemed this contention to be unimportant. Tr. 2343-47.

In addition to the board's questions on UCS Contentions 6, 8 and 12, p. 6, supra, (Tr. 2374-85), the board posed nine additional questions as to which it wants testimony. Tr. 2390-99.

Any party may within ten days following service of this order make recommendation for the modification or specification of the board's questions or present arguments as to why the questions are not appropriate for consideration in this proceeding. The board will later submit its questions in written form, perhaps with additional clarification.

Counsel for the Commonwealth requested and received additional time to take positions on emergency planning contentions. The Commonwealth may file its emergency planning positions within two weeks following service (not receipt) of the respective intervenor's emergency planning contention. Tr. 2460.

In our "Memorandum and Order Resuming Schedule For Discovery and Contentions on Emergency Planning," dated July 15, 1980, we inter alia implemented prior board orders and required ECNP to specify its emergency planning contentions 2-2 and 2-4 (by September 8, 1980). In a filing dated July 14, 1980,<sup>3/</sup> the NRC staff suggested how particular aspects of ECNP Contentions 2-2 and 2-4 should be further specified. The board agrees with the NRC staff that the further specificity it suggests would be useful. We therefore commend those

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<sup>3/</sup> "NRC Staff's Response to Licensee's Motion to Require Further Specification of Contentions of Environmental Coalition on Nuclear Power," received after the July 15 order.

suggestions to ECNP's attention as a desirable means of compliance by ECNP with the board's orders requiring further specification of Contentions 2-2 and 2-4.

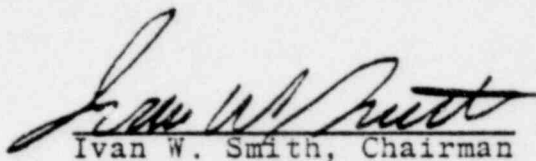
By letter of August 19, 1980 counsel for UCS requested the board to reconsider its determination not to permit its motion for summary disposition on UCS Contentions 13 and 5 to be decided on the merits of this motion. Parties should regard the letter as a motion for reconsideration. While the board continues to believe that it correctly determined that the issues should be heard rather than summarily disposed of, we tentatively favor UCS's position that its motion entitled it to notice of the manner in which the licensee and staff will meet the thrust of the issues raised by the summary disposition motion at trial or an explanation as to why that information cannot be provided.

The board believes that it has by this order disposed of or addressed all motions pending in the proceeding received through August 19. If this is not the case, any party sponsoring motions still pending has the responsibility to bring his pending motion to the board's attention.



Pursuant to 10 CFR §2.752(c) parties other than the NRC staff may file objections to this order within five days after its service. The NRC staff may file objections within ten days of service of the order.

THE ATOMIC SAFETY AND  
LICENSING BOARD



Ivan W. Smith, Chairman

Bethesda, Maryland

August 20, 1980