

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of)
METROPOLITAN EDISON COMPANY)
(Three Mile Island Nuclear)
Station, Unit No. 1))

Docket No. 50-289
(Restart)

LICENSEE'S RESPONSE TO UCS MOTION TO
RECONSIDER ADMISSIBILITY OF
UCS CONTENTION NO. 17

On October 3, 1980, UCS filed for the second time^{1/} a motion to reconsider the admissibility of UCS Contention No. 17, a contention which was rejected by the Board in its First Special Prehearing Conference Order, dated December 18, 1979 (pp. 24-25) and again in its Third Prehearing Conference Order, dated January 25, 1980 (p. 16). As described by the Board in the first of these Orders, Contention No. 17 relates to the so-called "generic unresolved safety issues" and contends that all of those which may be applicable to TMI-1 must be resolved before operation is permitted to resume. For the reasons set forth below Licensee opposes UCS' second motion to reconsider the contention.

^{1/} UCS' first motion to reconsider Contention No. 17 was dated January 4, 1980. Licensee replied to that motion on January 21, 1980.

1. The UCS motion is inexcusably late. It has been filed on the eve of the evidentiary hearing nearly ten months after the Board first rejected the contention and over eight months after the Board's second rejection. The Board rejected Contention No. 17 for lack of specificity and, more particularly, on the ground that the only examples of generic unresolved safety issues provided by UCS were already adequately covered by other UCS contentions. UCS could long ago have resubmitted its contention specifying other generic unresolved safety issues (if any) claimed to have a nexus to the TMI-2 accident. As noted below, UCS has still not done so and thus has not provided the specificity required by the Board.

UCS seeks reconsideration of Contention No. 17 on the basis of several recent NRC decisions, principally the Appeal Board decisions in Northern States Power Company (Monticello Nuclear Generating Plant, Unit 1), ALAB-611, September 3, 1980, and Jersey Central Power & Light Co. (Oyster Creek Generating Station), ALAB-612, September 5, 1980. These decisions do not represent new law or new information justifying UCS' late request for reconsideration. In fact, in the Monticello decision the Appeal Board pointed out that its decision was based on principles previously enunciated in Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760 (1977) and Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-491, 8 NRC 245 (1978), both of which decisions had initially been referenced by UCS as support for its

original Contention No. 17.

Further, even if the Monticello and Oyster Creek decisions were to be considered new law or new information, UCS has been dilatory in presenting its motion. The Licensing Board should treat UCS' motion in the same category as motions to amend existing contentions or to add new contentions based on new information. As to these, the Board has already ruled that motions based on new information must be filed within ten days of the availability of the new information. Memorandum and Order, dated May 5, 1980, at p. 2; Memorandum and Order, dated May 22, 1980, at p. 14. The Board had previously warned the parties that increasingly tighter standards would be applied to motions to add or amend contentions as we approach the time for hearing. (Tr. 1930)

Licensee does not, of course, know exactly when UCS received the Monticello decision or the decision applying Monticello to Oyster Creek. Licensee notes, however, that the Monticello decision was served by the Docketing & Service Branch on September 4, 1980. Licensee also notes that the NRC Public Document Room at 1717 H Street, N.W., (only one block from the offices of UCS and its counsel) extends to UCS the same service which it extends to certain other organizations by placing in a folder marked for UCS and available for pick up on a daily basis NRC issuances of interest, including Appeal Board decisions. In any event, UCS has ignored the Board's instruction that "[i]t will be the obligation of the intervenor in the first instance

to demonstrate when the information first became available with particular reference to the intervenor's diligence under the circumstances." Memorandum and Order, dated May 22, 1980, at p. 14.

2. Licensee submits that in any event the River Bend, North Anna, Monticello and Oyster Creek decisions are not germane to this proceeding. The Appeal Board's rulings in those proceedings were addressed to the scope of a licensing board's responsibilities in Construction Permit and Operating License hearings governed only by the general provisions of NRC regulations and not by specific Commission instructions in those proceedings. Here the scope of the hearing and the Board's responsibilities are the subject of a specific Commission Order and should be governed by that Order and the circumstances under which it was issued. The Board determined early in this proceeding that under that Order contentions must be shown to have some nexus to the TMI-2 accident. The Commission has endorsed that principle in its Order of March 14, 1980. UCS itself proposed the nexus test adopted in the Board's First Prehearing Conference Memorandum and Order. (Tr. 133) UCS' motion for reconsideration, however, still fails to identify which of the generic unresolved safety issues it claims to have a nexus to the TMI-2 accident.

Due process requires that the Board not now expand the scope of the hearing. The Commission's July 2, 1979 and

August 9, 1979, Orders suspend Licensee's authority to operate TMI-1 on an immediately effective basis without prior hearing. The basis for suspension was the TMI-2 accident. UCS seeks to inject in the proceeding issues unrelated to the TMI-2 accident and to thereby extend the period for which TMI-1 operating authority is suspended. None of the Appeal Board decisions on which UCS relies deal with a remotely comparable situation.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By


George F. Trowbridge

Dated: October 7, 1980

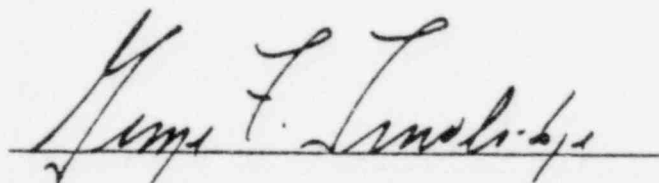
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Response to UCS Motion to Reconsider Admissibility of UCS Contention No. 17," dated October 7, 1980, were served upon those persons on the attached Service List by deposit in the United States mail, postage prepaid, this 7th day of October, 1980.


George F. Trowbridge

Dated: October 7, 1980