

3/12/81

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



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

Docket No. 50-289



UNION OF CONCERNED SCIENTISTS' OBJECTION TO TENTATIVE SCHEDULE FOR TESTIMONY AND PROPOSED ALTERNATIVE SCHEDULE

The Union of Concerned Scientists received at approximately noon on Monday, March 9th an undated document entitled "Tentative Schedule for Testimony." As will be discussed below, much of the testimony on the subjects covered by the schedule is not yet filed and some which is filed will be "modified" on the stand. This was the first time that Counsel for UCS was informed that a schedule for the design-related issues that have been outstanding for months was under consideration. Neither the Staff nor the Licensee had contacted us while this tentative schedule was being prepared.

On receiving the tentative schedule, Counsel of UCS immediately called the Chairman to inform him that UCS cannot meet this schedule. I stated to the Chairman that

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Mr. Pollard will be in the Philippines from March 14-24, and that preparation and examination requires his presence. Even if Counsel for UCS were capable of conducting cross-examination on these highly technical issues without Mr. Pollard's presence, it would clearly be impossible to do so without some reasonable period of time to go over the testimony with him in advance in order to prepare the examination. Because I felt it necessary to inform the Board without delay of UCS's objections, I did so before locating and reading those pieces of testimony which have been filed.

The Chairman then arranged a conference call including UCS, the Licensee, the Staff and himself to discuss this matter. Both the Staff and the Licensee objected to changing the tentative schedule and claimed that it would delay the final decision. In addition, it was suggested that since certain of the testimony is in response to Board questions, UCS's interest in the testimony may be unimportant. In view of the responses, UCS informed the Board that it would formally make this motion in writing.

In the extremely limited period of time since the conference call - approximately 24 hours - Counsel for UCS has located and read the portions of the testimony that were prefiled and has conferred with Mr. Pollard. In addition, the Licensee served us late Monday afternoon (March 9) with its "Memorandum of Law In Association with Testimony In Response to Question No. 6" (13 pages of text and 14 pages

of attachments) and the Licensee's Second Supplemental Testimony of Robert W. Keaten in Response to Board Question No. 6" (Emergency Feedwater Reliability) (11 pages). After reading this material, UCS is more firmly convinced that the tentative schedule is unfair, would seriously prejudice UCS's interests and would result in an incomplete and inaccurate record. We will ask the Board to consider the following points:

1. UCS has a clear interest in the great majority of the issues covered by the tentative schedule. Most of these issues follow directly from UCS contentions or Board questions related to UCS contentions. They are being heard, or in many cases re-heard, now because UCS direct or cross-examination or Board scrutiny established significant weaknesses in the Licensee and/or Staff's original presentations.

Specifically, the Staff's testimony in Board Question 2^{1/} responds to the following question:

... [N]owhere have we seen in the Restart Report, SER, the Accident Sequence Report, or elsewhere, an explanation as to how the staff or licensee has determined that all of the necessary TMI-2 related recommendations have been identified and that all the appropriate accident sequences have been addressed. The board wants testimony or other evidence which explains, if such be the case, how the licensee and the staff have concluded that the NUREG-0578 short- and long-term recommendations, other subsequent safety recommendations, and the identified accident sequences (with

^{1/} NRC Staff Testimony of Denwood F. Ross, Jr. Relative to the Sufficiency of the Proposed Additional Requirements (Board Question 2).

their respective preventative or mitigative measures) are in their totality sufficient to provide reasonable assurance that TMI-1 can be operated without endangering the health and safety of the public. 2/

The testimony then goes on to generally discuss the way in which NRC determined that the measures contained in the Staff's recommendations (and no others) are necessary and sufficient for the safe operation of TMI-1. Since UCS's specific contentions are that these measures are insufficient, the Ross testimony bears directly on UCS's interest. It contains broad statements to the effect that the staff's position represents a comprehensive integration of the recommendations of all of the TMI investigatory groups^{3/} which UCS considers to be inaccurate but if, left unchallenged, prejudice UCS's interests.

The Ross and Capra testimony on the Board's question on UCS Contention 8^{4/} relates to the B&W small break LOCA analysis. This contention was adopted by the Board on UCS's motion and UCS spent many hours cross-examining the staff's original witness on this subject, Mr. Jensen. It was our questioning which originally brought out the inconsistencies between the Staff and Licensee positions and internal inconsistencies in the Staff's position as reflected in the various NUREG's covered by this supplemental testimony.

2/ Id, p. 2.

3/ E.g., Id. p. 4.

4/ NRC Staff Testimony of Dr. Denwood F. Ross, Jr. and Robert A. Capra in Response to the Board Question on UCS Contention 8.

The testimony on Emergency Feedwater Reliability is essentially re-hearing on Board questions 6.a through 6.e which relates directly to UCS's Contentions 1 and 2. While the Licensee disputed this during the conference call, it is clearly demonstrated by noting that both the Licensee's and Staff's original testimony on many of the portions of Board question 6 were contained in their testimony on UCS Contentions 1 and 2. In any case, UCS cross-examined in detail the testimony on the design and operation of the TMI-1 feedwater systems^{5/} and was significantly instrumental in building the record which has required the Licensee and Staff to supplement their testimony.

Finally, the testimony on diesel loading is in direct response to UCS Contention 4 (connection to pressurizer heater to diesel) and the testimony on flood level and instrument relocation is in response to UCS 12 (environmental qualification of safety equipment).

There can be no question but that UCS has a direct interest in these issues and has contributed substantially to the development of a sound record concerning them.

2. The tentative schedule does not provide UCS a reasonable opportunity to review the testimony and prepare

^{5/} Tr. 5685-5915.

for hearing.

As of this writing, testimony has been received by UCS on the following:

1. Ransome - IREP
2. Ross - Board Question 2
3. Ross & Capra - Board Question on UCS 8
4. Board Questions 1, 5, 7
5. Keaten, Colitz, Ross (EFW)
6. Supplemental Testimony of Keaton (EFW) received March 9, 1981

The following testimony included on the tentative schedule for hearing has not been received:

1. Wermeil, Curry (EFW)
2. Hartman, Toravia (Diesel Loading)
3. Licensee witness (Flood level and instrument relocation)

As noted above, the Ross testimony on Board Question 2 bears directly on UCS's specific contentions. The Ross & Capra Testimony on UCS 8 goes over each recommendation in NUREG-0565 and 0623, states the License and Staff positions and discusses "implementation" of each item. It is extremely lengthy (56 pages) and raises a great many questions primarily concerning whether the record to date provides justification for permitting restart. To compound this situation further, in many cases the testimony notes that Staff decisions will be made on the basis of analyses not completed at the time testimony was written but scheduled to be completed before the witnesses take the stand.^{6/} It is therefore apparent

^{6/} E.g., analysis of safety valve failure rate due Jan. 1, 1981 (Ross/Capra, p. 17); Revision and documentation of B&W plant specific small break LOCA analyses, detailed scope and schedule due Nov. 15, 1980, (Ross/Capra, p. 21); Reanalysis of transients and accidents and inadequate core cooling and preparation of guidelines for development of emergency procedures, due Jan. 1, 1981 (Ross/Capra, p. 23); RCP seal damage & leaking analysis, due to be reviewed late Dec. 1981, (Ross & Capra, p. 45.)

that significant new information will be provided by the witness orally. Indeed, the Staff's attorney has indicated that the testimony will be "modified" on the stand. UCS is unable to participate in a meaningful examination of the Ross and Ross/Capra testimony without the presence and technical expertise of Mr. Pollard. The Keaten, Colitz & Ross testimony on EFW reliability and the just-served "Second Supplemental Testimony" of Keaten on EFW reliability present different issues. It is UCS's position that the Keaten, Colitz and Ross testimony dated Nov. 25, 1980, is entirely duplicative of testimony presented earlier by witness Capodanno, Lanese and Torcivia on which UCS did extensive cross-examination. It merely reiterates the conclusions of that testimony without offering, so far as we can tell, one new fact.^{7/} If it is permitted to be introduced, UCS will have no choice but to reiterate it's cross-examination. We suggest that the far better course is to refuse to admit the repetitive Keaten, Colitz and Ross testimony.

The "Second Supplemental Testimony" of Robert Keaten does at least purport to present some new evidence with respect to the failure rate of emergency feedwater systems,

^{7/} Pages 1-7 of the Keaten, Colitz & Ross testimony reiterate the Licensee's Testimony of Gary R. Capodanno, Louise C. Lanese and Joseph A. Toravia in Response to Board Questions 6.a, 6.b, 6.c, 6.g, 6.h, 6.l, 6.j and 6.k (Oct. 21, 1980). The remainder of the issue concerning means to go to cold shutdown and bleed and feed was also discussed in detail. The Board will remember UCS's questioning on this subject. In the time available, Counsel has not been able to locate the transcript references.

but a perusal of the testimony shows that none of the "new" evidence is competent. Mr. Keaten has not performed his own independent review of EFW failure rates, nor does he offer any qualification which would enable him to do so; he simply gives his characterization of certain portions of the Staff's analyses (in which he did not participate), references Staff testimony in the Rancho Seco case (Keaten Testimony, p. 7-8) and "reports" the gross results of work done by a Mr. Koppe. Neither Mr. Koppe's data nor Mr. Koppe are offered. Mr. Keaten concludes from his characterization of these other persons' work that B&W and TMI-1 EFW failure rates are less than would otherwise appear. The testimony is deficient in two major respects. First, Mr. Keaten is not qualified as an expert in statistical or probabilistic analysis nor has he any direct personal experience in analyzing the historical record on feedwater failures. Therefore, his opinions of the work of others is not probative and inadmissible. Second, since he relies entirely on the work of others, the bases for the Keaten testimony cannot be crossexamined in any meaningful way.^{8/} Therefore, UCS will object to the admission of the Second Supplemental Testimony of Robert W. Keaten.

^{8/} For example, Keaten states on page 8 that Mr. Koppe examined data "on events where operating reports clearly state that main feedwater was lost." Did Mr. Koppe make any attempt to discover the reason for failures for which reports were unclear or ambiguous? How does Mr. Koppe justify looking only at data for 1979 and 1980? Is this constriction of the data base reasonable as a matter of statistical analysis? Even assuming Mr. Keaton's criticisms of the staff's analysis are well-founded, what is the expected failure rate for B&W feedwater failures?

In short, UCS believes that the Keaton, Colitz and Ross testimony and Second Supplemental Keaten testimony should not be admitted. They add no new probative evidence and would simply burden the record. However, if they are admitted, UCS will have no choice but to cross-examine.

UCS has no objection to the Board scheduling the testimony on IREP, ICS, Board Questions 1, 5, 7, water level instrumentation or health physics management. The remainder, on Board Question 2, UCS 8, EFW reliability, diesel loading and flood level and instrument relocation should be scheduled no sooner than the week of March 30. This will give UCS several days to prepare after Mr. Pollard's return to this country on March 24 and will allow his presence at the hearing.

3. There is no reason to believe that the schedule UCS suggests will delay the issuance of the Board's decision or the operation of the plant. First, it is apparent that certain issues can be heard without sacrificing UCS's rights. These include those listed above (IREP; ICS; Board questions 1, 5, 7; water level instrumentation; health physics management) not to mention all of the testimony on off-site emergency planning. Moreover, even if the hearing were recessed for a few days, the Board has indicated before that such time can be well spent reviewing the record and preparing for the testimony to come. It need not delay the process at all. In any case, it is worth emphasizing that the primary responsibility of this Board, as it has recognized, is to compile a full and fair record so that

the decision will be correct. UCS's participation assists in achieving that goal. The dubious benefit of producing a decision a few days earlier cannot reasonably be argued to compensate for denying UCS the opportunity to effectively participate.

Finally, it should be noted that UCS has been placed in this position through no fault of its own. These issues have been outstanding for months and the Staff and Licensee have been fully aware of their obligation to address them. Both Mr. Pollard and I have been in Washington available for discussion about scheduling and for hearing all this time. However, we were not consulted about the schedule, nor did we receive this proposal until one week before the Staff and Licensee propose to begin hearing the issues. Mr. Pollard's 10-day trip to the Philippines has been scheduled for some time. He has been requested by Senator Lorenzo Tanada to consult with groups in the Philippines concerning the design of the Philippine Nuclear Power Plant, which is under construction and will be docketed for an operating license.

The unspoken presumption appears to have arisen that, if UCS cannot meet this tentative schedule, UCS is causing a delay in the hearings. This results from the fact that the tentative schedule was drafted to accommodate the Staff and Licensee prior to consulting us and apparently reflects the Staff's unreadiness on other issues. However, the Staff has no greater rights than other parties in this case. Its

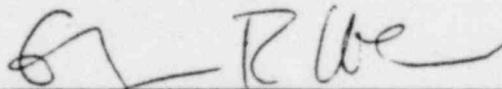
unreadiness is not a legitimate reason to compel another party to meet a schedule which is unreasonable for it. The Board will also remember that the schedule has been re-arranged to accomodate other party's commitments to other matters (Denwood Ross is only one example).

For the above-stated reasons, UCS objects to the tentative schedule and proposes that the following be heard no sooner than the week of March 30, 1981:

1. Staff testimony on Board Question 2 and UCS 8 (Ross and Ross/Capra)
2. Licensee and Staff testimony on EFW reliability.
3. Licensee testimony on diesel loading.
4. Licensee testimony on flood level and instrument relocation.

In addition, UCS notes that it will object to the admission of the Licensee's testimony on EFW reliability for the reasons stated above.

By:



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DATED: March 12, 1981