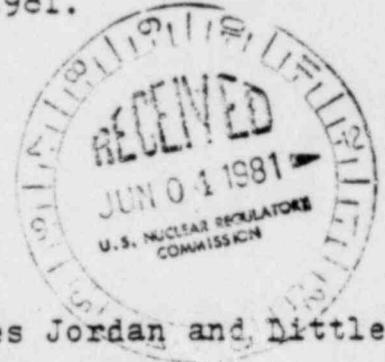


50-299



Marvin I. Lewis  
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June 1, 1981.



Ivan W. Smith, Esq.  
Dr Walter H. Jordan  
Dr Linda W. Little  
Atomic Safety and Licensing Board  
USNRC  
Washington, D.C. 20555

Dear Chairman Smith and Administrative Law Judges Jordan and Dittle:  
This cover letter and "Intervenor Lewis's Initial Proposed Findings of Fact and Conclusion of Law" are submitted in response to "Memorandum and Order on Schedule and Format for Proposed Findings." (April 22, 1981.)

This cover letter includes certain observations which may form a basis for subsequent appeals.

INTEREST.

My interest is my own life. Apparently this was not specific enough for the Licensee, Staff and Board. My life will be endangered by the operation of TMI#1. This statement derives directly from statements in the 1964 revision of Wash 740, "Theoretical Possibilities and Consequences of Major Accidents in Large Nuclear Power Plants." Wash 740 was a report generated by the Atomic Energy Commission. Wash 740 states that deaths will occur as far from a reactor as 150 KM in a major nuclear accident.

I live and work within 150 KM of TMI#1.

My life is an interest that I may defend. This right was stated in the Declaration of Independence. The Declaration of Independence may not have the force of law. It does have historical precedent of the highest quality.

I have not met the standards of interest used by the Board. The standard is not broad enough to allow me the right envisioned by the Founding Fathers in the Declaration of Independence: the inalienable right to life.

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BIAS OF NUCLEAR REGULATORY COMMISSION.

The actions of the NRC demonstrate the old adage that regulatory agencies soon become handmaidens to the industry that they are supposed to regulate. These actions in support of the industry at the expense of the safety of the public are daily occurrences.

1. May 22, 1981, 10CFR2 Immediate Effectiveness Rule Final.

This rule will eliminate any protection of the public by allowing operation of reactors while specific safety questions are being appealed. This rule eliminates any aid that the public can hope for from the Hearing Process.

## 2. CLI -8-81 Statement of Policy on Conduct of Licensing Hearings.

Another assault of the Public's Right to its fair hearing.

## 3. 10 CFR 50.34 (f) Additional TMI related requirements for applications for an operating license.

All this paragraph does is formalize the means that a Licensee <sup>has to</sup> get relief from the implementation schedule for these so-called requirements.

## 4. However, nowhere is the handmaiden relationship of the NRC to the nuclear industry so clearly illustrated as in the TMI#2 accident. As Congressman Morris K Udall put it in a letter of transmittal to the Members of the Committee on Interior and Insular Affairs: "The Commission's weak enforcement action and the associated report prepared by the NRC Office of Inspection and Enforcement have had the effect of obscuring the issue." (Com. Print 3 Mar. 1981)

The NRC has shown itself to be exceedingly biased toward the industry. This bias destroys the NRC's ability to regulate the nuclear industry effectively. The NRC should remove itself from the regulatory picture, and turn its functions over to the Congress and the Courts as best it can under the present laws. Conversely, the NRC could improve its regulatory function by employing anti-nuclear advocates as extensively as it presently employs pro-nuclear types. I have never met one admitted anti-nuclear type on any NRC Board or in any high NRC administrative position. No wonder there is an obvious pro-nuclear bias in the NRC. This clear pro-nuclear bias eliminates <sup>the NRC's</sup> ability to deal effectively with the nuclear industry to protect the health and safety of the public.

BIAS OF STAFF.

Chairman Smith pointed out that the staff comes to hearings as a party defending its position. (8.13.80 around 1:20PM Tr # not available) This is true, but the staff also has other duties to which it must adhere. The staff is a part of the NRC. The NRC has the Atomic Energy Act duty and its own charter duty to protect the health and safety of the public. Protection of the health and safety of the public must come before defending its position. I have no argument with the staff for defending its own position as long as that position is consistent with the Atomic Energy Act duty of protecting the health and safety of the public. Unhappily, I see that the staff's attitude seems to be one of protecting the Licensee.

This attitude of protecting the Licensee and presenting discourtesies to the intervenors was evident even before the hearings began. Ms Freida Berryhill, an intervenor who could not afford to pursue her contention, described a most unpleasant meeting with the staff. I was subjected to what I felt were discourtesies. I was also very taken back that the Licensee was invited to the meeting that I had with the staff while the same invitation was not proffered to the other intervenors by the staff. This aid to scheduling that the staff gave to Licensee only shows an obvious bias on the staff's part.

When I attempted to bring up the discourtesies that I felt demonstrated the staff's bias, I was told by Chairman Smith, "I can tell you right now I'm not interested in that and it does not assist the Board." (Tr 14 (Smith))

When I attempted to point out how the staff bias might sully the record, Chairman Smith answered, "It is irrelevant to any subject matter." (Tr 15,16 (Smith))

However, there are many NRC rulings which make clear that the staff's actions are directly related to the record and even the outcome of the case.

In the matter of Florida Power and Light Company, (St Lucie Nuclear Power Plant Unit No 2) ALAB 335 Decision June 29, 1976 the Appeals Board overturned a decision to grant an LWA because the Appeals Board concluded the the staff had mislead the intervenors and the Licensing Board.

In the Matter of Duke Power Company, (Amendment to Materials License SNM 1773 for Oconee Nuclear Station Spent Fuel transportation and Storage at Maguire Nuclear Station) Docket No 70-2623 Initial Decision Oct 31, 1980 the ASLB ruled in response to

the NRC staff witness , Brett S. Spitalny, the "NRC should not frustrate a fair NEPA review to in reasonable depth by permitting any Licensee to truncate or fragment the area of inquiry by a crabbed definition of the proposed action." at Page 24 of the Coonee I.D. The Coonee Decision is especially pertinent to these proceedings. The very NRC lawyer that "frustrated a fair NEPA review" at Coonee is the lawyer that the staff is using in this Hearing: James R. Tourtelotte, Esq. U.S. Nuclear Regulatory Commission Washington, D C 2055. (See Appearances in Coonee I. D. and this Hearing.)

It is very clear that the staff in this hearing has a bias that sullied the record beyond redemption. Since the testimony of the staff cannot be relied on to protect the health and safety of the public, the testimony of the staff witnesses should not be given any weight when said testimony is used to justify the restart of TMI#1.

BIAS OF THE BOARD.

First, I want to point out that the Board does consist of three members.

I would have a very difficult time ever suggesting that Dr Jordan is unfairly biased. He is ,admittedly, pro-nuke; but that does not mean that he is unfairly biased. His words, "It is very difficult to argue that deaths to future generations are unimportant", have been an inspiration to me in my fight against nuclear power. (Memo Jordan to Yore ASLB titled , Errors in 10CFR 51.20, Table S-3)

I would like to be as sure of the other two Board members as I am of Dr Jordan. However, I cannot.

Chairman Smith's exchange with Mrs Aamodt and with me concerning the staff's conduct cloud Chairman Smith's chairing of this proceeding.

Dr Little is an unknown. Save that she is in "Who's Who in American Science" and admits to being president of a firm that does work for utilities , I have no feeling for Dr Little's bias , if any. However, in this day and age of interconnected companies and financing, I cannot help but wonder how a person who is presently doing work for a utility can judge another utility without bias.

BIAS IN BEING HUMAN.

"Our ability to reject unwelcomed facts is one of the most interesting - and , often, disheartening - facts about humankind." Phila Inquirer Aug 6.1980 page 9A "Holocaust was hard to believe" Gary Wills. Article. Allen Funt of Candid Camera, in same article, sprang "miracles on unsuspecting people, they did not argue with the unexpected, or actively disbelieve , in most cases. They just ignored the inconvenient event."

We are now ignoring the victims of TMI. There have been and there will be deaths. Playing with numbers does not change that fact. There have been and there will be Class 9 accidents . I pray that the next class 9 accident will be no worse , but that it will , nonetheless, allow people to learn that nuclear power is a dead end <sup>to</sup> technology as nuclear bombs are a dead end to existence.

I know that an unpopular decision by the Board will expose you to the criticism of your peers, jeopardy to your livelihood, and loss of your professional reputations. I really have no significant balm to give you for your concerns .

I railed earlier in my submissions that you should worry about a Nuerenberg-type trial if there was a Class 9 accident at TMI#1 when and if it goes on line .

I admit now that if TMI#1 has a Wash 740 type accident , the last thing anybody will have to worry about is a Nuerenberg-type trial.

The only things that anybody will have to worry about if TMI#1 has a Wash 740 type accident is "how fast and how far."

Hopefully,

*William J. ...*