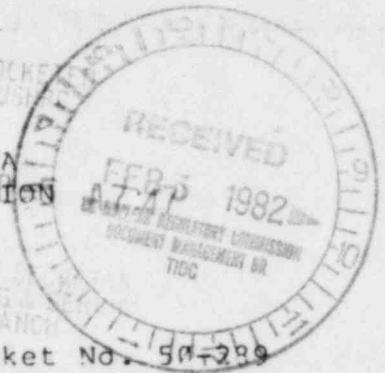


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION



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

Docket No. 50-289
(Restart)

Union of Concerned Scientists' Reply to NRC Staff
Comments on Immediate Effectiveness

Given the time available to prepare this pleading, UCS will comment only on the staff's egregiously inadequate and disingenuous response to the Board's order that it "certify to the Commission, for review in immediate effectiveness, a report on Licensee's compliance with CL 1-80-21 as it relates to safety equipment functioning in a radiological environment in a TMI-2 type accident." (PID 1162)

It is necessary for the Commission to understand something of the context of this issue. UCS Contention 12 and the Board questions regarding that contention raised the issue of the environmental qualification of equipment in TMI-1 important to safety. As the Board found, the Staff "defaulted" on this question (PID 1156) by deliberately choosing to present no evidence on the ability of such safety equipment to withstand a SBLOCA as severe as the TMI-2 accident. The Staff limited its review to a design-basis SBLOCA with a maximum of 1% failed fuel.

UCS attempted in a variety of ways to develop a record relevant to its contention. In particular, UCS attempted to introduce the NRC's own SER on environmental qualification for TMI-1. The Staff successfully objected to the introduction of

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its own official document, although the Board now believes it "unfortunate" that the SER was not received. (PID 1162) The SER was only permitted in to show its "existence," "not for the evidence of compliance or noncompliance with CLI-80-21." (PID 1152). UCS was permitted to ask no questions concerning the substance of the document.

Precisely because the SER was not on the record, the Board ordered the Staff to provide the Commission with a report on compliance by TMI-1 with the requirements of CLI-80-21. The full paragraph is as follows:

"1162. However, we believe that it was unfortunate that the Staff objected to the receipt into evidence of the substance of its SER on Licensee's progress under CLI-80-21 (UCS Exhibit 40). Upon reflection, we wish that we had required an equitable arrangement for its admission into evidence for the information contained in it. Having failed to accomplish this, the Board instead now directs the Staff to certify to the Commission, for review in immediate effectiveness, a report on Licensee's compliance with CLI-80-21 as it relates to safety equipment functioning in a radiological environment in a TMI-2 type accident."

In purported fulfillment of this order, to report on compliance, the Staff now sends the Commission two documents - the very SER which was not permitted in the record to show compliance, and a one page "report" which provides no substantive information whatsoever, merely reiterating verbatim the three totally unsupported conclusions which appear on the page 11 of the SER. Of course, those are exactly the conclusions which UCS

sought to and was prevented from challenging during the hearing. The Commission can not now rely on them. To do so would not only be legal error, it would be technically wrong. The fact is that the Staff has no basis for such conclusions.

This much was clear during the TMI-1 hearing: the Staff (and the Board) have misconstrued CLI-80-21. That order explicitly does not allow plants with demonstrably unqualified safety equipment to continue to operate indefinitely until the generic deadline for meeting the DOR guidelines is reached. On the contrary the Commission could not have been clearer:

"These deadlines, however, do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly. CLI-80-21, 11 NRC 707, 715.

The Commission continued:

During its review, the Staff will be faced with many situations where qualification documentation is poor or where the existing documentation raises questions about the ability of the equipment to perform its intended function in accident conditions. In such cases, the Staff will make a technical judgment regarding continued operation. (Id, emphasis added.)

Despite this clear injunction (no less than is required under the NRC's regulations), the Staff has made no such technical judgments with respect to components for which qualification deficiencies have been clearly documented. They seem to regard their sole obligation as meeting the CLI-80-21 deadline, which is now proposed to be extended for several years. The simple fact is that many components vital to safety in TMI-1 are demonstrably unqualified and there is no basis provided by the Staff to you or to the

Board for believing that these components would function when needed.

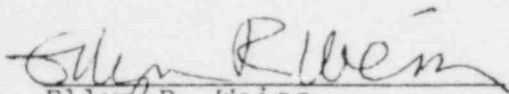
Even as to the narrow issue of a 1% fuel-failure SBLOCA, the record does not support a finding favorable to the Staff and Licensee. The Commission is referred to UCS Proposed Findings 661-724, which deal in detail with the evidence on this subject and which were generally treated not at all in the Board's decision apparently because UCS "prevailed" in showing the lack of qualification of safety equipment in TMI-1. (PID 1181)

In summary, the record in this proceeding supports only one finding -- that equipment important to safety in TMI-1 does not meet the NRC's minimum requirements for environmental qualification. As the Board found: "[T]hey [UCS] have prevailed to the extent that UCS has demonstrated that all of the safety equipment at TMI-1 will not meet all the criteria of regulatory guide 1.89 at the time of restart." (PID 1181).

It is true that, as the Board observes, the Commission previously declined to order all plants shut down pending a demonstration of environmental qualification, (PID 1159). The Commission essentially adopted the position that lack of immediate access to documentation did not necessarily equate to lack of qualification. It did not however, as noted above, broadly permit all plants to operate indefinitely with unqualified equipment. The distinction is crucial. We have now proceeded to the next step. TMI-1 has many

unqualified components. A plant-specific hearing was held. There is no justification for permitting TMI-1 to operate in such circumstances. To do so would represent a clear threat to safety.

By:



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DATED: February 4, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
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CERTIFICATE OF SERVICE

I hereby certify that copies of "UCS's Reply to NRC Staff Comments on Immediate Effectiveness" have been served on the following persons by deposit in the United States mail, first class postage prepaid, this 4th day of February 1982.

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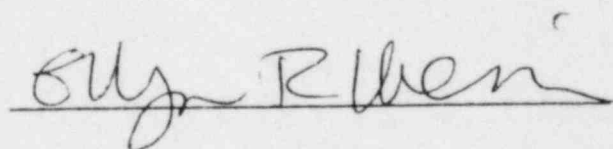
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