

Staff 4/2/82

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, Unit 1))

Docket No. 50-289
(Restart)

NRC STAFF'S ANSWER TO INTERVENOR SHOLLY'S
RENEWED MOTION TO REOPEN THE RECORD DATED MARCH 26, 1982

INTRODUCTION

On March 18, 1982 the Licensing Board held a preliminary hearing to enable the Board to determine whether the evidentiary record in the TMI-1 restart proceeding should be reopened as requested by Intervenors UCS and Steven C. Sholly in separate motions filed on September 10, 1981.^{1/} The authors of the so-called "Martin Report" appeared as witnesses at the preliminary hearing and were examined by the Staff, Intervenors UCS and Sholly, the Licensee and the Board. Following the completion of testimony by the witnesses, the Board, although urged by the Staff and the Licensee to do so, declined to rule from the bench. See: Tr. 27,182-27,185. Instead, the Board gave the

1/ See: "Memorandum and Order Setting Preliminary Hearing" dated March 2, 1982 at 4 and Tr. 27,008-27,208.

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parties present an opportunity to orally argue the non-technical bases for or against reopening the evidentiary record. Tr. 27,186-27,187. In addition, the Board directed Intervenors UCS and Sholly to file written arguments of no more than 20 pages and 10 pages, respectively, that show how the testimony of the witnesses presents technical bases in the form of facts or analysis not appearing in the Board's initial decision or in the proposed findings of the parties or elsewhere in the evidentiary record and to reaffirm and resupport their motions to reopen the record. Tr. 27,187-27,188. On March 26th Intervenor Sholly filed his response to the Board's Order.^{2/} In his response Mr. Sholly withdrew his motion to reopen except as it relates to installation of an audio/video recording system in the TMI-1 control room.^{3/} He renewed his motion to reopen the record on that matter. For

^{2/} "Intervenor Steven C. Sholly Response to Oral Board Order Regarding Motion to Reopen the Record" dated March 26, 1982. ("Renewed Motion")

^{3/} In withdrawing his motion as it relates to the use of multipoint recorders, Mr. Sholly stated that he "now believes its significance is insufficient to cause the Board to grant the motion [to reopen the record on this matter]" and suggests that "[t]he Board may want to consider requesting the Staff to examine this matter for the TMI-1 control room and including this as a matter to be reported to the Commission in connection with the immediate effectiveness review of the Board's decision in this case." Renewed Motion at 5. Other than to note that Mr. Sholly has neither properly made nor supported what amounts to a motion that the Board reopen the record to receive his suggestion, reconsider its decision and rule differently than it previously has on matters related to his suggestion and that the Board should decline to accept it, the Staff will not comment further on Mr. Sholly's suggestion.

the reasons set forth below the Staff opposes Mr. Sholly's renewed motion to reopen the record on the matter of requiring installation at TMI-1 of a control room audio/video recording system.

DISCUSSION

In support of his renewed motion to reopen the evidentiary record on his proposal that control room activities at TMI-1 be required to be video and audio taped Mr. Sholly cites testimony of the Martin Report authors stating their belief that their investigation of the TMI-2 accident would have been easier had there been such a taping system in the TMI-2 control room. Renewed Motion at 7; See generally: Tr. 27,158-27,162. However, the Licensing Board found that the evidentiary record on the issue of taping control room activities did not demonstrate to the Board that the potential advantages of taping outweighed the inhibiting effect that taping would have. PID ¶ 920. Moreover, witness Robert Martin, when asked whether the Martin Report authors had discussed any of the potential disadvantages of a taping system such as the "Big Brother" objection, said that they had discussed the "Big Brother" objection and the "chilling effect" on free and open expression in the control room that a taping system might have but had not resolved any such concerns. Tr. 27,162-27,163. He then reiterated that the Martin Report authors' motivation for recommending a control room taping system was that it would be nice to have and said "we did not spend a

great deal of time on this topic." Tr. 27,163. None of the other witnesses disagreed, and none opined that a taping system is necessary for the safe operation of a nuclear plant.

Thus, the Staff submits that Mr. Sholly has not met his "heavy burden" of demonstrating that were the evidentiary record to be reopened and the testimony of the Martin Report authors to be received in evidence the Licensing Board's decision on the issue of whether to require a control room taping system at TMI-1 would be different.^{4/} He has cited no new technical bases in the form of facts or analyses that support his position. To the contrary, he can cite only opinions, based on admittedly limited consideration of its disadvantages, that a taping system in the TMI-1 control would make investigation easier should an accident occur.^{5/}


^{4/} See Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit No. 1), ALAR-462, 7 NRC 320, 338 (1978).

^{5/} The Staff has not repeated here its comments concerning whether the Board has jurisdiction to require a taping system that arguably does not make the TMI-1 plant safer to operate but merely could make investigation of an accident at the facility easier. See: Tr. 27,202-27,204. However, the Staff understands that such oral comments of the parties will be taken into consideration by the Board in reaching its decision on whether to reopen the evidentiary record.

CONCLUSION

For the reasons set forth above, Mr. Sholly's renewed motion to reopen the evidentiary record on his proposal that control room activities at TMI-1 be required to be video and audio taped should be denied.

Respectfully submitted,


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Dated at Bethesda, Maryland
this 2nd day of April, 1982