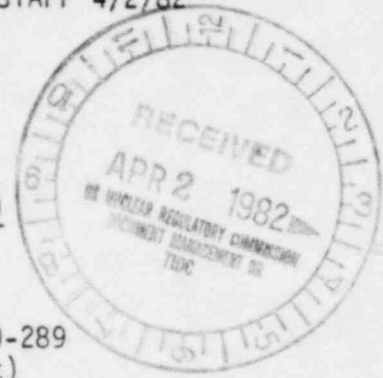


STAFF 4/2/82

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of)
METROPOLITAN EDISON COMPANY, ET AL.) Docket No. 50-289
(Three Mile Island, Unit 1)) (Restart)

NRC STAFF'S ANSWER TO INTERVENOR UCS'
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.

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 UCS filed its response to the Board's Order.^{2/} In its response UCS renewed its motion to reopen the record on all the matters addressed in its original motion.^{3/} For the reasons set forth below the Staff opposes the motion.

^{2/} "Union of Concerned Scientists Comments Subsequent to Preliminary Hearing of March 18, 1982, Concerning the Martin Report," dated March 26, 1982. ("Renewed Motion"). In its renewed motion UCS states that the Staff refused to make the Martin Report authors available to UCS for questioning. Renewed Motion at 1 and 4. The Staff feels compelled to point out that this allegation is incorrect. The Staff only refused to assemble the authors locally for UCS' convenience at NRC expense. The Staff did not refuse to make them available to UCS at their duty stations.

^{3/} UCS in its original motion had asked the Board to reopen the record on matters related to UCS Contentions 3, 5, 10 and 14.

DISCUSSION

Contrary to the Board's directive (Tr. 27,187) and caution (Tr. 27,193), UCS devotes much of its filing to what the Board chairman labelled the non-technical bases (Tr. 27,186) for its argument that it should prevail. UCS does not identify specific technical bases in the form of facts or analyses presented by the Martin Report authors in their testimony at the preliminary hearing. UCS does not direct the Board's attention to specific Board findings and point out to the Board how UCS believes those findings would be materially altered were the Board to reopen the evidentiary record to receive facts or analyses identified in the testimony of the Martin Report authors. Instead, under subheadings identifying the issues on which it seeks to have the evidentiary record reopened, UCS merely lists related Martin Report recommendations, PID paragraphs and UCS proposed findings and states that:

The impact of the testimony of March 18, 1982, must be considered in concert with the UCS findings and reply findings and the PID, in order to identify the heart of the issues in controversy. In view of the limitations on the time and length of this brief, we ask the Board to review those findings as it considers the issues. Renewed Motion at 8.

UCS totally ignores the fact that it has the burden of demonstrating "in detail that the facts and analyses underlying the Staff positions on the respective issues during the hearing did not include the facts and analyses underlying the Martin Report conclusions" and that "any excluded material facts and analyses would materially affect the Board's

decision."^{4/} UCS appears to expect the Licensing Board, without any assistance from UCS, to ferret out from the testimony of the Martin Report authors the technical bases in the form of facts and analyses underlying those authors' recommendations, to match those with the related PID paragraphs and UCS proposed findings and, merely by noting that terms used by the authors in their recommendations and testimony agree with those used in certain contentions raised by UCS, to decide to reopen the evidentiary record. Renewed Motion at 3, 7, 11, 12 & 15.

UCS also appears to believe that simply because UCS' conclusions and those of the Martin Report authors are similar UCS should prevail on its related contentions. Yet, the Martin Report authors did not insist that their recommendations be adopted. They only expected that they be considered. Tr. 27,057-27,058 (Martin, R.). They were satisfied that their recommendations had been considered. Tr. 27,074-27,076 (Martin, R.). Nor were they aware of technical facts known only to themselves and not to others in the NRC. Tr. 27,059 (Martin, R.). However, UCS seeks to have the Board assign importance to the circumstance that Staff witnesses who testified at the evidentiary hearing on restart were not aware that the Martin Report existed. Renewed Motion at 2. That circumstance only indicates that those particular Staff witnesses were not aware that the recommendations existed. It does not indicate that they were unaware of technical bases in the form of facts or analyses known only to the Martin Report authors. UCS itself, in fact, concedes that:

^{4/} "Memorandum of February 9, 1982 Telephone Conference Regarding Intervenors' Motions to Reopen Evidentiary Record" dated February 11, 1982 at 4-5.

UCS has never claimed nor believed that the authors of the Martin Report had knowledge of some hitherto secret fact not available to other diligent staff members. Renewed Motion at 3.

Moreover UCS states its belief that the issue to be decided by the board is whether there is sufficient technical merit to the recommendations made in the Martin Report based on the information elicited from its authors by UCS to convince the Board that it would like to adopt them. Tr. 27,046 and 27,195 (Weiss). Thus, UCS would have the Board give greater weight to the recommendations in the Martin Report than the authors of the report intended (Renewed Motion at 4) or than given to the evidence on which the Board grounded its PID. UCS asks that this be done in spite of the fact that the authors state, and UCS agrees, that the factual basis for those recommendations is not different from that available to those who considered the recommendations, or to the Staff witnesses who testified at the hearing on restart.


That UCS has not demonstrated that there are new factual bases in the testimony of the Martin Report authors that would require the Board to conclude that its PID was materially in error on the issues on which UCS asks that the record be reopened is fatal to the UCS position. To require the design changes sought by UCS in its renewed motion to reopen the Board would have to find that those changes are necessary, not merely desirable. UCS has not shown that in the testimony of the Martin Report authors there are facts which should cause the Board to alter its PID finding that, subject to conditions recommended in its PID, the actions taken and to be taken are sufficient to provide reasonable assurance that TMI-1 can be operated without endangering the health and safety of the public.

Therefore, the Staff submits that UCS has not met its "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 would be materially different.^{5/}

CONCLUSION

For the reasons set forth above, UCS' motion to reopen the evidentiary record should be denied.

Respectfully submitted,


James M. Cutchin, IV
Counsel for NRC Staff

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

^{5/} See: Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320, 338 (1978).