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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

METROPOLITAN EDISON COMPANY)

(Three Mile Island Nuclear)
Station, Unit No. 1))

Docket No. 50-289
(Restart)

LICENSEE'S REPLY TO UCS' COMMENTS
SUBSEQUENT TO PRELIMINARY HEARING
CONCERNING THE "MARTIN REPORT"



I. Introduction

Pursuant to the Board's direction at the preliminary hearing of March 18, 1982, the Union of Concerned Scientists filed on March 26, 1982, its "... Comments Subsequent to Preliminary Hearing of March 18, 1982, Concerning the 'Martin Report'," ("UCS Comments"). Licensee submits this response to the UCS Comments.

The events which have led to this set of pleadings on the UCS motion of September 10, 1981, to reopen the record on plant design and procedures issues are recited in Licensee's separate response, also filed today, with respect to intervenor Steven C. Sholly's motion. See "Licensee's Reply to Intervenor Sholly's Response to Oral Board Order Regarding Motion to Reopen the Record," April 2, 1982.

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II. Governing Standards

The standards used in determining whether or not to reopen an evidentiary record are well settled in NRC case law and were discussed in Licensee's October 5, 1981 answer to both intervenor motions. Since that time, however, the Board has issued its Partial Initial Decision on Plant Design and Procedures Issues. There the Board decided each of the contentions, which are the subjects of the instant motion to reopen, against UCS. PID ¶¶ 756 (UCS Contention 3 - Pressurizer Heaters), 792 (UCS Contention 5 - Valves), 745 (UCS Contention 10 - Safety System Bypass and Override), 1003 (UCS Contention 14 - Systems Classification and Interaction).

The issue now is whether UCS has established that there is significant new evidence not included in the record which, had it been considered initially, would have caused the Board to reach a different result. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CII-81-5, 13 N.R.C. 361, 362-363 (1981); Kansas Gas and Electric Company, et al., (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 N.R.C. 320, 338 (1978). The proponent of a motion to reopen has a heavy burden. Wolf Creek, supra, 7 N.R.C. at 338.

Citing no law, UCS suggests that issuance of the Board's Partial Initial Decision should not alter the standards for deciding the motion to reopen. While the standards are not

vastly different for deciding such a motion prior to decision, it is absurd to pretend that the Board's decision has not been reached on the merits of the UCS contentions. Indeed, the Board has stated:

The standard that should be applied is whether the ramifications of the Martin Report would affect the Board's decision. The decision, incidentally, can now be directly addressed because it has since issued.

Memorandum of February 9, 1982 Telephone Conference at 3. Of course, UCS has attacked findings from the Board's Partial Initial Decision throughout the UCS Comments.

Prior to the preliminary hearing, the Board provided the parties with its position on how the governing standards apply to the "new" evidence (the Martin Report) and what UCS must establish:

We stressed that it was the technical bases underlying the Martin Report conclusions that would determine whether the record should be reopened in that it would be virtually impossible that the author's conclusions alone could justify reopening. We stated that we were interested in material facts and analyses that were not included in the facts and analyses underlying the Staff positions on the respective issues presented during the hearing.

Id. at 3. See also, Memorandum and Order Setting Preliminary Hearing, March 2, 1982, at 5 ("it is the technical bases for the Martin Report conclusions that we view to be relevant to the motions to reopen; . . . unsupported conclusions could not carry the day for the moving intervenors.")

Chairman Smith again stated the Board's interest at the preliminary hearing when, after inviting oral argument

on the "non-technical bases," he stated:

Then we will have briefs, limited to UCS and Mr. Sholly's view of how this testimony this afternoon has developed technical bases and limited to technical bases, that is, facts and analyses which were not included in the positions that were not taken into account, and the positions presented by the staff at the hearing, or with reasonable diligence by parties adverse to the staff could not have been produced.

Tr. 27,187.

III. Argument

A. There Are No New Technical Facts or Analyses

The existence of the Operations Team, OIE-TMI Investigation, has been no secret. The team was organized shortly after the TMI-2 accident, and the purpose of its investigation was to establish the facts concerning the events of the TMI accident during the first 16 hours and to evaluate the performance of Licensee. The results of the investigation were published in the widely-disseminated NUREG-0600 (August 1979). Affidavit of Robert D. Martin, ¶ 3. This document was used at the hearing and obviously was available to Staff and other witnesses long before testimony was presented on the UCS contentions. It has also been used extensively by the many groups who subsequently studied the TMI-2 accident and made recommendations as a result of their studies.

The team members who appeared at the preliminary hearing were candid about the bases for the recommendations

found in the Martin Report. During the course of the investigation, the members of the team formulated a number of views with regard to certain technical issues that arose during the course of the investigation. The team decided to prepare a memorandum to forward those views to Staff management for consideration during any post-accident actions taken by the agency. Affidavit of Robert D. Martin, ¶¶ 4, 5; Tr. 27,056-57 (R. D. Martin). The recommendations were not the result of detailed analyses, but rather they represented a consensus judgment of issues which were believed to deserve consideration. The points contained in the document were not intended as final Staff conclusions ready for implementation. The purpose was to highlight areas which merited further consideration by other Staff in the aftermath of the accident. Affidavit of Robert D. Martin, ¶ 5; Tr. 27,057-58 (R. D. Martin). No analytical studies or special studies were conducted by the group. The team members, in addition, are not aware of any technical facts which were not available to the other Staff witnesses. Tr. 27,059 (R. D. Martin).

UCS does not address the Board's interest in new technical facts and analyses, other than by attempting to ascribe this view of "technical basis" to Licensee and the Staff, and to concede that there are no such new facts or analyses. See UCS Comments at 2, 3. Indeed, the UCS motion now resembles one for reconsideration -- it merely reargues the points already raised before and decided by the Board.

In abandoning any pretext that there is new factual evidence to be presented, UCS has moved from the heavy burden always placed upon proponents of a motion to reopen to the "virtually impossible" burden, as the Board forewarned, of justifying further hearings in this case on the basis of the Martin Report authors' conclusions alone.

B. The Authors' Opinions Alone Do Not Justify Reopening

One could almost get the impression from the UCS Comments that the authors of the Martin Report had the direct experience of observing the TMI-2 accident in progress. The team did thoroughly investigate the first 16 hours of the accident, and its work product has been widely available and used by other members of the NRC Staff. No one but UCS argues that this investigative experience by itself should elevate the team's recommendations above those of the numerous Staff and Licensee witnesses who testified before the Board. Certainly, the authors themselves do not share UCS' view of the importance of the recommendations. As we have already pointed out, the team simply wanted the recommendations to be considered by other Staff personnel -- recognizing themselves that an inter-disciplinary review was necessary. The affidavits of the team members and their testimony at the preliminary hearing make it clear that they were satisfied simply to have their ideas evaluated. See, e.g., Tr. 27,174-75 (R. D. Martin).

Not only should the authors' conclusions not be elevated above those of the Staff witnesses -- they should receive, in fact, much less weight. The Staff witnesses testified well over one year after the Martin Report was written. The Staff witnesses had the benefit of an entire universe of information, analyses and studies which had not been available by August, 1979. Further, the Martin Report authors were not even aware, at the time they wrote the report, of the work which had been done up to that point elsewhere in the Staff and in the industry. Tr. 27,055-56 (R. D. Martin).

Just as one would not want to decide on lessons learned from the TMI-2 accident solely from the perspective of an electrical engineer with a project manager's familiarity with regulatory standards, neither would one decide on such lessons solely from the perspective of an isolated investigations team. We fail to see the benefit UCS does in being "hermetically sealed off" from the rest of the technical world.

The members of the TMI Action Plan Steering Group and of the Lessons Learned Task Force brought a diversity of knowledge and experience to their task. They included representatives of the Office of Inspection and Enforcement. As the Board stated:

In addressing the question of sufficiency of the requirements, the Staff pointed out that the Action Plan items resulted from the recommendations of a number of task forces and review groups following the TMI-2 accident. The TMI

Action Plan Steering Group considered all of the recommendations and consulted with ACRS and other experts. To quote Dr. Ross,

Such a collective and comprehensive assessment by persons, both inside and outside the NRC having expert knowledge over a broad range of technical disciplines provides reasonable assurance that the probable causes of the accident at TMI-2 and their associated corrective measures have been completely and adequately identified.

Ross, ff. Tr. 15,555, at 5.

PID ¶ 1120.

Investigations of the TMI-2 accident which the Staff considered in formulating the Action Plan include those performed by: the President's Commission on the Accident at Three Mile Island; Congress; the General Accounting Office; the NRC Special Inquiry Group; the Advisory Committee on Reactor Safeguards (ACRS); the Staff's Lessons Learned Task Force; the Bulletin and Orders Task Force; and, the Office of Inspection and Enforcement's Special Review Group. Ross, ff. Tr. 15,555, at 3, 4.

It borders on the ridiculous to assert that -- the protestations of the prospective witnesses notwithstanding -- the Board's decision might change as a result of these once voiced "ideas" in the Martin Report. UCS simply seeks the possibility that one or more voices might be added to that of the UCS witness in this case. There is absolutely no reason to suspect that if one of the witnesses did still agree in part with UCS there would be a single reason advanced in support of the contention which has not already been heard.

The Staff did not rely solely on computer analyses, as UCS argues. Computers, however, are a recognized tool for analyzing the performance of complicated mechanical systems. One would not want to develop operator guidelines for small-break LOCAs solely by consulting the opinions of people with operations experience.

UCS also ignores the numerous witnesses Licensee presented in response to the UCS contentions. One of those witnesses, Mr. Ross, is Supervisor of Operations at TMI-1 and a licensed senior reactor operator. Yet, Mr. Ross attracted very little cross-examination by UCS. It is apparent that the UCS interest in the reactor operations perspective is one which has developed only since the Martin Report emerged.

UCS finds it significant that none of the Staff witnesses knew of the Martin Report when they testified. This is totally inconsequential. The Report does no more than the bare-bones contentions themselves. Yet, the Staff witnesses responded to those contentions and to the UCS testimony in support of the contentions. The Martin Report ideas would not have inspired a Staff witness to respond any differently than the witness did to the UCS contentions, especially if the witness knew that the recommendations were not supported by new facts or analyses.

Licensee has not attempted once more to present proposed findings to the Board on UCS Contentions 3, 5, 10 and 14. The arguments advanced by the UCS Comments all have been thoroughly aired in the proposed and reply findings, and

resolved in the Board's Partial Initial Decision. UCS has done nothing more than seek reconsideration of the Board's decision on the same arguments heard previously.

We do point out, however, for the Board's information, that in suggesting some endorsement of the UCS concept of "safety grade," UCS overlooked testimony that there was a diversity of views among the team members as to the exact requirements for "safety grade." Tr. 27,102 (R. D. Martin). Cf. UCS Comments at 7. Further, when UCS argues that providing a connection to emergency power supplies does not constitute the improvement envisioned, it ignores the fact that assuring emergency power availability was one of the team's explicit concerns.^{1/} Compare UCS Comments at 7-8, with Martin Report at p. 23.

All of the testimony discussed in the UCS comments at page 9 includes a witness assumption that loss of off-site power has occurred.

Finally, we remind UCS that the Board has found that Staff witness Conran was qualified to present his testimony. Compare PID ¶ 1002 with UCS Comments at 16.

Conclusion

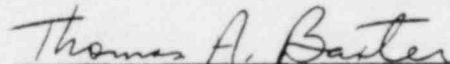
For all of the reasons advanced herein, in Licensee's previous pleadings and in oral argument before the Board,

^{1/} There is no evidence of a history of breaker failures at TMI-1 affecting pressurizer heater reliability because of environmental conditions.

Licensee submits that the UCS motion to reopen the record should be denied because UCS has failed to meet its burden under the standards set by the Board and applicable case law.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE


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