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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

LICENSEE'S REPLY TO INTERVENOR SHOLLY'S  
RESPONSE TO ORAL BOARD ORDER  
REGARDING MOTION TO REOPEN THE RECORD

I. Introduction

Pursuant to its Memorandum and Order of March 2, 1982, the Board presided over a preliminary hearing on March 18, 1982, the purpose of which was to determine whether the evidentiary record in this proceeding should be reopened. The need for this preliminary hearing grew out of motions filed by intervenors UCS and Sholly on September 16, 1981, which requested that the record on plant design and procedures issues be reopened to receive additional information regarding a memorandum entitled "Recommendations of TMI-2 IE Investigation Team (Operational Aspects)" (the "Martin Report"). Intervenors assert that several of the recommendations set forth in the Martin Report are substantively the same as the positions adopted by the intervenors during the litigation of several contentions in this proceeding, and contrary to those put forward by the Staff.

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Licensee<sup>1/</sup> and the Staff<sup>2/</sup> filed responses opposing the intervenors' motions, arguing that the motions were not timely (given the notice of the Martin Report in the May, 1980 Action Plan, NUREG-0660) and did not raise such significant new safety issues to warrant reopening the record. The Board took the matter under advisement, and on February 9, 1982, following the issuance of its Partial Initial Decision on plant design and procedures issues, initiated a telephone conference call in order to establish a procedure for resolution of the motions. During the conference call, the Board set forth its findings as follows:

(1) The discovery process in this case failed, through no fault of the Staff or intervenors, resulting in the late discovery of the Martin Report. The Board, therefore, found that the motions were timely made.

(2) The affidavits submitted by the authors of the Martin Report in support of the Staff's Response of September 30, 1981, did not reveal the technical bases for the Martin Report recommendations and the Board therefore could not determine whether the information underlying the Martin Report would materially affect its Partial Initial Decision.

See February 11, 1982 Memorandum of February 9, 1982 Telephone

1/ Licensee's Answer to Motions by Intervenors Sholly and UCS to Reopen the Record and for Further Relief, dated October 5, 1981.

2/ NRC Response in Opposition to Sholly and UCS Motions to Reopen the Record and for Further Relief, dated September 30, 1981.

Conference Regarding Intervenors' Motions to Reopen Evidentiary Record ("Memorandum of February 9, 1982 Telephone Conference"), at 2, 3. The Board further suggested several procedures for resolving the second issue set forth above, and at the close of the conference call the parties agreed to attempt to proceed informally in order to bring this matter to a conclusion. Memorandum of February 9, 1982 Telephone Conference at 4-6.

For reasons which need not be set forth here, informal procedures could not be agreed upon, and therefore the Board ordered that a preliminary hearing be held on March 18, 1982, at which time the Martin Report authors would be made available for examination by the parties.<sup>3/</sup> See, generally, Memorandum and Order Setting Preliminary Hearing, dated March 2, 1982. In accordance with this Order, the preliminary hearing was convened on March 18, 1982 and five of the Martin Report authors<sup>4/</sup> were subjected to extensive examination by the parties as to the bases for their recommendations. At the close of the examination of the witnesses, the Board requested that the intervenors submit briefs directed particularly at how the testimony given at the preliminary hearing developed technical bases (i.e., facts and analyses) not included in the positions presented by the Staff at the hearing-in-chief or, with reasonable diligence by parties adverse to the Staff,

<sup>3/</sup> Informal interviews of two of the Martin Report authors were conducted on March 17, 1982 by the intervenors. The Board was not in attendance.

<sup>4/</sup> Messrs. T. T. Martin, D. R. Hunter, A. N. Fasano, D. C. Kirkpatrick and R. D. Martin (the I&E Operations Team leader). Two additional members of the Operations Team are no longer employed by the Staff. Tr. 27,060 (R. D. Martin).

could not have been produced.<sup>5/</sup> Tr. 27,185-27,187 (Smith). The Board additionally provided a schedule for submitting responses to the intervenors' brief.

## II. STANDARDS FOR REOPENING

In order for the moving party to prevail in reopening an evidentiary record, the motion must be both timely presented<sup>6/</sup> and addressed to a significant safety or environmental issue. Further, where, as here, the initial decision has already been rendered, the proponent of the motion must establish that a different result would have been reached if the material submitted in support of the motion had been initially considered. Kansas Gas and Electric Company, et al. (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 N.R.C. 320, 328 (1978); see also, Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-05, 13 N.R.C. 361, 362-363 (1981).

In order to meet the standards set forth above, the Board has mandated that

[t]he burden would be upon the intervenors to demonstrate in detail that the facts and analyses underlying the Staff positions on

<sup>5/</sup> Intervenor<sup>s</sup> were given the opportunity at the preliminary hearing to present oral argument outlining any non-technical bases in support of their motion. See Tr. 27,186-28,187 (Smith).

<sup>6/</sup> Licensee maintains that the intervenors' motions to reopen were not timely made. See "Licensee's Answer to Motions...", dated October 5, 1981 at 4-11. However, in view of the Board's holding that the motions were timely under the facts of this case (Memorandum of February 9, 1982 Telephone Conference at 2), Licensee will not repeat those arguments here.

the respective issues during the hearing did not include the facts and analyses underlying the Martin Report conclusions. Implicit but unstated in this step was the requirement that it be demonstrated that any excluded material facts and analyses would materially affect the Board's decision.

Memorandum of February 9, 1982 Telephone Conference at 4-5, see also Tr. 27,187 (Smith).

In addition to the general standards of law for reopening an evidentiary record and the specific demonstration required by the Board, Licensee believes that the Board's consideration of Mr. Sholly's motion must also be guided by the scope of the hearing as set forth in the Commission's Order and Notice of Hearing, that is, whether the short-term and long-term actions recommended by the Director of Nuclear Reactor Regulation are necessary and sufficient to provide reasonable assurance that the facility can be operated without endangering the health and safety of the public. Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), CLI 79-8, 10 N.R.C. 141, 148 (1979).

### III. ARGUMENT

Pursuant to the Board's order announced at the March 18, 1982 preliminary hearing, intervenor Sholly submitted his "...Response to Oral Board Order Regarding Motion to Reopen the Record" on March 26, 1982 ("Sholly Response"). In accordance with the Board's request that the intervenors identify any portions of their original motions which have been withdrawn as a result of information developed during the preliminary hearing (Tr. 27,188)

Mr. Sholly completely withdrew those portions of his original motion which dealt with Martin Report recommendation C.1.a.15 (Instrumentation Failure Modes) and recommendation C.1.b.3 (ICS). Sholly Response at 4, 9.

Mr. Sholly's initial "...Motion to Reopen the Record...", dated September 10, 1981 ("Sholly Motion") also sought to reopen the record with respect to Martin Report recommendation C.1.a.16, Multipoint Recorders. Sholly Motion at 7. Mr. Sholly now withdraws his motion with respect to this issue, but suggests that the Board consider requesting the Staff to examine the use of multipoint recorders in the TMI-1 control room and that this issue be reported to the Commission in connection with its immediate effectiveness review. Sholly Response at 5. With respect to the present TMI-1 control room recorders, Licensee calls the Board's attention to Licensee Ex. 23, "A Review of the Three Mile Island Unit 1 Control Room from a Human Factors Viewpoint." The review team which prepared that report specifically recommended that Licensee initiate a long-term program of recorder replacement following appropriate testing of new designs.<sup>7/</sup> Lic. Ex. 23 at 14-15 and App. B at 26-27. Licensee has committed to undertake detailed engineering studies in response to the review team recommendations. Lic. Ex. 33 at 3. In view of this commit-

<sup>7/</sup> Mr. Sholly asserts that had he been aware of criticisms of the control room recording systems, such as that set forth in Martin Report recommendation C.1.a.16, he would have raised this issue on cross-examination. Sholly Motion at 7; see also Sholly Response at 5. As discussed above, Licensee's human factors review of the control room did note a number of shortcomings with the present recorders which parallel the Martin Report recommendation, yet Mr. Sholly did not pursue this issue on cross-examination with Licensee's witnesses. See, generally, Tr. 10,239-10,310.

ment, Licensee sees no point in requiring further Staff review or Commission action.

The sole remaining item for which Mr. Sholly has renewed his motion to reopen relates to Martin Report recommendation C.l.a.4, Control Room Sound Recording System, which Mr. Sholly contends provides support for the audio/video taping system proposed in Sholly proposed finding 160. Sholly Response at 5, passim. Intervenor Sholly asserts that the testimony presented at the preliminary hearing establishes that the lack of such a recording system constitutes a significant safety issue.<sup>8/</sup> Id. at 7. Licensee maintains the positions set forth in its reply findings 155-158 and contends that the testimony presented at the preliminary hearing failed to establish this as a significant safety issue.

In explaining the basis for the recording system recommendation, Mr. R. D. Martin testified that one of the difficulties encountered by the IE team was establishing when actions occurred which were not automatically recorded. Mr. Martin further testified that "[t]his recommendation falls in the general category of, given that amount of inconvenience,

<sup>8/</sup> Licensee notes that intervenor Sholly's response did not explicitly address one of the points requested by the Board -- whether the bases for the Martin Report recommendation differ from the bases underlying the positions adopted by the Staff during the hearing. Licensee submits that there are no such differences; rather, both groups of witnesses considered the advantages, for post-accident evaluation and investigation, of a recording system. Compare Tr. 10,498-10,501 (Ramirez, Price) and Tr. 27,158-27,160 (R. D. Martin). The two groups merely reached different conclusions, based no doubt on the different viewpoints of the two -- human factors considerations vs. ease of investigation.

wouldn't it have been nice if there was a recording system" that the investigators could use to reconstruct events. Tr. 27,158 (R. D. Martin) (emphasis added); see also Tr. 27,163 (R. D. Martin). Licensee does not dispute that a control room recording system may be helpful in conducting an after-the-fact investigation or in analyzing operator response to a transient and other human factors considerations.<sup>9/</sup> See Sholly Response at 8. A helpful investigative tool does not, however, rise to the level of a significant safety issue.<sup>10/</sup> A control room recording system, by itself, will do nothing to prevent an accident from occurring at TMI-1 nor will it mitigate the consequences of an accident at TMI-1. Intervenor Sholly acknowledges this when he characterizes the system as one which could "assist in the evaluation of future accidents (should there be any) and transient events." Sholly Response at 8 (emphasis added).

In that the proposed system would not provide any real-time capability to protect the public health and safety, Licensee fails to see how this type of recording system could be deemed "significant" or "necessary", within the scope of this proceeding. Here guidance may be taken from the Board's Partial Initial Decision, holding that necessary modifications, within the terms of the Commission's hearing order, are those "which would produce

<sup>9/</sup> The potential uses of various recording systems in evaluating operator action are being studied by Licensee. See Licensee RF 158.

<sup>10/</sup> Indeed, while the Martin Report authors stated that a recording system would be nice and would have made the TMI-2 investigation easier, at no point did they characterize such a system as required or necessary to conduct a proper investigation. See, generally, Tr. 27,158-27,163.



a substantial and additional protection to the public health and safety...". PID ¶689. There has been no showing made that a control room recording system would provide even an incremental addition to the level of protection afforded the public during TMI-1 operations.

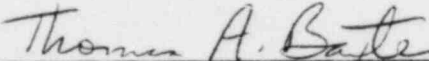
Intervenor Sholly has also attempted to overcome the concerns expressed by the Board, the Staff and Licensee regarding the inhibiting factor that recording would have. See PID ¶920, Licensee RF 156, 158. Mr. Sholly cites Mr. R. D. Martin's testimony that these potential chilling effects were considered, but the recommendation as written was reached nonetheless. Sholly Response at 7. Licensee here believes that the Board must weigh the respective qualifications of the earlier Staff witnesses with the Martin Report authors -- and must conclude, based on the human factors considerations inherent in such a system, that the opinion of those with expertise in this field must hold sway.

In sum, then, Licensee does not believe that intervenor Sholly has made the requisite showing that the proposed control room recording system is of sufficient safety significance to warrant reopening the evidentiary record on this issue or that a different result would have been reached initially if this

additional evidence had been considered. Accordingly, the Board should deny Mr. Sholly's motion.

Respectfully submitted

SHAW, PITTMAN, POTTS & TROWBRIDGE

  
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Dated: April 2, 1982

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Reply to UCS' Comments Subsequent to Preliminary Hearing Concerning the Martin Report" and "Licensee's Reply to Intervenor Sholly's Response to Oral Board Order Regarding Motion to Reopen the Record" were served this 2nd day of April, 1982, by hand delivery upon the parties identified by an asterisk and by deposit in the U.S. mail, first class, postage prepaid, to the other parties on the attached Service List.

Thomas A. Baxter  
Thomas A. Baxter, P.C.

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