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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges:
Ivan W. Smith, Chairman
Dr. Walter H. Jordan
Dr. Linda W. Little

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

Docket No. 50-289

(Restart)

April 26, 1982

MEMORANDUM AND ORDER
DENYING MOTIONS TO REOPEN RECORD



Intervenors Steven Sholly and Union of Concerned Scientists (UCS) have filed motions to reopen the record for consideration of various issues discussed in the so-called "Martin Report".^{1/} This report, which came to light only after the evidentiary hearing, contains recommendations consistent with some of the intervenors' contentions. The Board was not able to rule on the motions without additional information. Our efforts to obtain such information at minimum expense and delay are reflected in our memoranda of October 13, 1981, February 11, 1982 and March 2, 1982. There

^{1/} Recommendations of TMI-2 IE Investigation Team (Operational Aspects), September 1979.

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is no need to repeat what is recorded in those memoranda. Here it suffices to say that ultimately the Board found it necessary to hold a preliminary hearing to develop a record adequate for ruling on the motions. After the preliminary hearing, at our request, the intervenors restated their motions. Intervenor Sholly's restated motion abandons all but one of his issues in this area. Also, the Licensee and Staff filed answers to the restated motions. Now, having held that hearing, having heard the testimony of most of the Martin Report team, and having carefully reviewed the restated motions and answers thereto, we deny the motions to reopen the record.

Reopening the record is, of course, an extraordinary action. To prevail, UCS and Sholly have the burden of demonstrating that their motions are timely, that the issues they seek to litigate are significant, and that the information they seek to add to the record would change the results reached in the Board's Partial Initial Decision. Kansas Gas and Electric Company (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320, 338 (1978).^{2/} Since the Board already has found the motions to be timely, we are concerned only with the safety significance and materiality of the Martin Report information relied on by intervenors.

In order to deal with issues of significance and materiality, the Board from the beginning has sought a specification of the technical bases of the

^{2/} Memorandum of February 9, 1982 Telephone Conference Regarding Intervenor's Motions to Reopen Evidentiary Record, February 11, 1982, at 2.

pertinent Martin team recommendations. Early in the development of this matter the intervenors also appeared to attach some importance to the technical bases of the Martin team recommendations.^{3/} More recently, however, the intervenors have emphasized the idea that the Martin team recommendations should be given more weight than earlier Staff testimony simply because the Martin team members had a different, and presumably better, perspective due to their allegedly greater familiarity with the TMI-2 accident and reactor operations generally. The issue, as now framed by the intervenors, seems to be one of comparing the credibility of the Martin Report authors with the credibility of the Staff's witnesses in the hearing. Because we had sensed that they were going in this direction, we cautioned the intervenors even before the preliminary hearing that it would be "virtually impossible" to justify reopening the record on the basis of bare conclusions at variance with conclusions reached by earlier staff witnesses.^{4/}

Now that the intervenors have had an ample opportunity to explore the technical bases of the Martin team recommendations, we find little, if any, new and material facts or analyses to justify a reopening of the record.

^{3/} See, e.g., "What is important to the restart proceeding is the technical reasoning behind the recommendations because they are at variance with the otherwise monolithic Staff Line." Union of Concerned Scientists Reply to Staff and Licensee Opposition to UCS Motion to Reopen the Record, October 30, 1981, at 13.

^{4/} Memorandum and Order, February 11, 1982, at 3.

UCS itself admits as much, albeit guardedly, by saying in its final brief that it "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." Comments, March 26, 1982, at 3. And in this connection we must note, in addition, that the intervenors have essentially ignored our requests for a specification of any allegedly new technical bases discovered through the preliminary hearing. Tr. 27,187, 27,190.

In principle we have never disagreed with the intervenors' contention that a technical basis for a conclusion could be found in, say, the witness' superior perspective or qualifications. Now, however, we must focus on whether as a practical matter the particular perspective and qualifications of the Martin team witnesses give their particular conclusions such "technical bases" as to warrant a reopening of the record. And although we are persuaded that the Martin team members do bring different and relevant perspectives and qualifications to the issues, in no case do we find these factors, by themselves, sufficient to warrant reopening the record.^{5/}

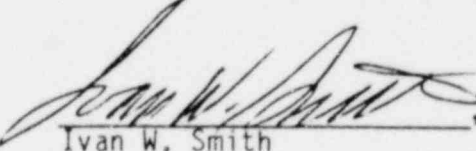
^{5/} The Martin team members themselves have not sought further review of their recommendations by this Board (or by any other authority to our knowledge). At the hearing the team's leader testified that the "recommendation" had been offered "for consideration" and not as positive "recommendations for change". Tr. 27,057-58. Also, although in ruling on the motions to reopen we have not relied on the team members' affidavits submitted in support of the Staff's pleading of September 30, 1981, those affidavits do indicate that the team members are generally satisfied that their recommendations received appropriate consideration from the Staff. For these and all other reasons discussed in this Memorandum and Order, we do not see this situation as one in which we should reopen the record on our own motion.

As a final matter, we turn to the single remaining issue raised by intervenor Sholly's motion to reopen. This issue has to do with the need for an audio or video recording system in the control room. In our Partial Initial Decision we resolved this matter as a safety issue within our jurisdiction. At the preliminary hearing we learned that the Martin team had recommended the installation of a recording system primarily to facilitate investigation of any future accidents. Witness Martin testified, at Tr. 27,160, that his team's investigation of the TMI-2 accident had been hampered by the lack of a recording system at that plant. The problem which witness Hunter illustrated at Tr. 27,162 with a concrete example, seems to be that the TMI-2 reactor operators had somewhat unreliable recollections of what occurred during the accident. The Board itself was impressed by this testimony. Although we consider it beyond our mandate to impose requirements solely for the purpose of facilitating future investigations, we do consider the point to be of sufficient apparent merit to warrant consideration by an appropriate part of the Commission. We therefore commend this matter to the Staff for such additional consideration as it may deem appropriate in light of the preliminary hearing transcript and our comments.

The motions to reopen are, however, denied.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

 , Chairman
Ivan W. Smith
ADMINISTRATIVE LAW JUDGE

Bethesda, Maryland

April 26, 1982