

September 14, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE COMMISSION

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

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OFFICE OF SECRETARY
DOCKETING & SERVICE
Docket No. 50-289
(Restart)

LICENSEE'S REPLY TO THE
RESPONSES OF OTHER PARTIES TO THE
COMMISSION'S ORDER OF AUGUST 5, 1983

In an Order issued on August 5, 1983, the Commission requested briefs from the parties on: (1) whether the concerns raised by BN-83-47 (Board Notification Regarding the Need for Rapid Primary System Depressurization Capability in PWR's, April 4, 1983) are outside the scope of the TMI-1 adjudicatory proceeding; and (2) whether, if they are within the scope of the proceeding, the information contained in BN-83-47 warrants reopening the record sua sponte. The Commission directed that the parties have twenty-five days from the date of the Order to provide their briefs, and fifteen days thereafter to provide any reply briefs.

On August 30, 1983, Licensee, the NRC Staff, and intervenor Union of Concerned Scientists filed responses to the Commission Order of August 5, 1983. Licensee herein submits its reply to the responses filed by the NRC Staff and UCS.

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I. NRC Staff Response

Licensee and the NRC Staff, in their August 30 pleadings, both answered in the negative the two questions posed by the Commission -- i.e., both took the positions that the concerns raised by BN-83-47 are outside the scope of the TMI-1 Restart adjudicatory hearing and, in any event, the information contained in BN-83-47 does not warrant sua sponte reopening of the record. Accordingly, Licensee is in substantial agreement with the Staff's response to the Commission's Order of August 5, 1983.^{1/}

II. UCS Response

Pursuing any opportunity to escape from the decisions below in which the Licensing Board and the Appeal Board have rejected the UCS contentions, UCS has responded to the two narrow questions posed in the Commission's Order of August 5, 1983 with an unrelated, wholesale repetition of the UCS litigative position in the design phase of this proceeding. The UCS Response addresses the following subjects which have no relationship whatsoever to the Order or the concerns raised in BN-83-47:

1/ It is particularly useful that the Staff now has corrected the Appeal Board's mistaken conclusion that the Staff has changed its position in this proceeding on whether the PORV must meet all safety-grade criteria. Compare ALAB-724, 17 N.R.C. ___, slip op. at 3 (April 20, 1983), with NRC Staff's Brief in Response to Commission's Order Dated August 5, 1983, at 4, n.5 (Aug. 30, 1983).

- o Design of the pressurizer heaters;
- o Feed and bleed cooling with the PORV;^{2/}
- o Seismic qualification of the Emergency Feedwater System;^{3/}
- o General standards for requiring components, systems and structures to meet safety-grade design criteria.

In response to these misplaced presentations, Licensee relies upon the decisions of the Licensing and Appeal Boards, rendered on the basis of the evidentiary record.^{4/}

When UCS does address the questions posed by the Commission, UCS mischaracterizes what the Staff has said in BN-83-47, ignores the consistent holdings on the scope of this proceeding, and attempts to define the scope of the proceeding in terms of its arguments below rather than addressing the adjudicators' decisions on the relevance of those positions.

2/ Feed and bleed cooling, which Licensee and the Staff addressed below in the context of events beyond the design basis, is nowhere mentioned in BN-83-47, which addresses mitigation of design basis steam generator tube rupture events. It is true that on appeal UCS attempted, in its brief, to relate the then-recent Ginna incident to the use of the pressurizer safety valves for feed and bleed cooling. That argument, not presented to the Licensing Board and wholly without evidentiary support, makes no more technical sense now. In any event, the wild arguments UCS makes on appeal, and which it now strains without further success to explain, do not define the scope of this proceeding.

3/ UCS continues to flaunt the Commission's holding that this subject is outside the scope of the TMI-1 Restart proceeding. See CLI-83-5, 17 N.R.C. ____ (March 4, 1983). Further, UCS ignores BN-83-123 (Aug. 22, 1983).

4/ Both Boards reviewed the evidence advanced by UCS and concluded that the PORV at TMI-1 need not be safety-grade, except in its role as a part of the reactor coolant system pressure boundary. LBP-81-59, 14 N.R.C. 1211, 1282, (1981); ALAB-729, 17 N.R.C. ____, slip op. at 111 (May 26, 1983).

The following facts cannot be disputed: (1) no party raised a contention on the adequacy of the PORV or any other components or systems to mitigate steam generator tube rupture events; (2) UCS did not advance steam generator tube rupture events as a basis for its Contention 5, which asserts that the PORV should be safety-grade.^{5/} Consequently, the tortured UCS discussions of its attempt to relate steam generator tube ruptures to the role of pressurizer heaters in maintaining natural circulation is of no avail. It is undeniable that the concerns raised in BN-83-47 are totally foreign to the TMI-1 Restart proceeding as it has been tried and decided to date.

UCS also represents that BN-83-47 establishes a new Staff position on UCS Contention 5. See UCS Response at 4. It clearly does not, as the Staff states in its response to the Commission's Order. The Notification explicitly states that the implications of the review for operating reactors are still under consideration by the Staff, and that no recommendations have been made. Further, the Notification indicates that the Staff needs additional information to determine if some of its concerns are even valid.^{6/}

5/ UCS concedes that "[t]he evidence before the Atomic Safety and Licensing Board on Contention 5 did not deal with steam generator tube ruptures." UCS Response at 6. This statement applies as well to the direct testimony of UCS witness Pollard. It is at best mysterious, then, that UCS asserts "...the Licensee and Staff were successful in preventing the information contained in BN-83-47 from reaching the Atomic Safety and Licensing Board." Id. at 8. Not only was the information not available, but presentation of the theory was not attempted by UCS in support of its PORV contention.

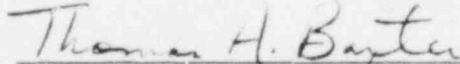
6/ In addition, the Notification does not represent a Staff position since CRGR review has not been accomplished. See BN-83-110 (Aug. 26, 1983).

Subsequently, in Board Notification 83-110 (Aug. 26, 1983), the Staff has clarified its position, previously expressed in BN-83-47, to indicate that there may be means, short of meeting safety-grade design criteria for the PORV, by which an applicant may justify the acceptability of its depressurization capability in the face of a design basis steam generator tube rupture event. With respect to operating reactors, the Staff has stated that it will address this issue in the same manner as other potential backfit requirements.

In conclusion, the UCS Response, which reflects an almost studied effort to confuse, largely does not address the questions posed by the Commission and fails to establish any nexus between the possible role of the PORV in steam generator tube rupture mitigation and the specific TMI-2 accident scenario.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE



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Dated: September 14, 1983

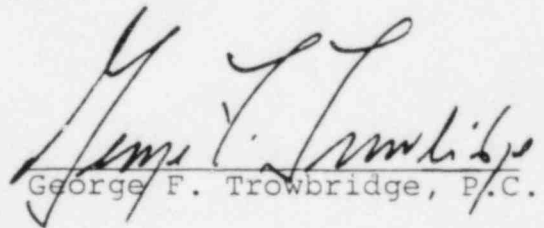
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Reply To The Responses Of Other Parties To The Commission's Order Of August 5, 1983" were served this 14th day of September, 1983, by deposit in the U.S. mail, first class, postage prepaid, to the parties on the attached Service List.


George F. Trowbridge, P.C.

Dated: September 14, 1983

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