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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

July 16, 1984

Ivan W. Smith
Administrative Law Judge
Chairman, Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Sheldon J. Wolfe
Administrative Judge
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Gustave A. Linenberger, Jr.
Administrative Judge
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

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

Dear Administrative Judges:

On July 9, 1984 the Licensing Board issued its Memorandum and Order Following Prehearing Conference (Order). Although the Staff has no objection to that Order (see 10 C.F.R. § 2.752(c)), Counsel for the Staff would like to correct a statement made by the Board. The Board stated that the Staff suggested that the Appeal Board, in ALAB-774, foreclosed any consideration of the RHR report in connection with the remanded issue of training. Order at 3, n.1. The Staff made no such suggestion. Rather, the Staff suggested only that the prehearing conference discussion regarding the RHR report was more appropriately an evidentiary matter to be resolved in a particular factual context at hearing rather than an appropriate discussion of the scope of the hearing, which the parties were supposed to be addressing. As the transcript shows:

> With respect to the RHR there was a specific motion to reopen the record on the content of the RHR Report. That motion was denied. We are here now not talking about the scope of this proceeding, but about evidentiary rulings.
>
> To the extent that TMI-A (sic) believes it is relevant, wants to introduce it into evidence, is not satisfied with he (sic) consultants that Licensee calls to testify, they can make their arguments in the course of the hearing.

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> But I don't understand at this point why we need to resolve whether they can get some of the information which is in the RHR report into evidence, or whether they can call some of the authors of the RHR report, when we are here to define the scope of the proceeding and not what evidence is ultimately going to be deemed admissible.

Tr. 27,257-58 (Goldberg).

> I agree with Mr. Goldberg. I think you are trying to argue prospectively, evidentiary problems which haven't come up yet. Or, unlikely to come up. Well, they are likely to come up.

Tr. 27,259 (Judge Smith). Thus the Board's ruling that the RHR report argument advanced by TMIA "is a question of evidence, not of issues, and as such, it is premature," Order at 3, is precisely the point which was made by the Staff at the prehearing conference.

Also, the Staff's reference to the Appeal Board's denial of a motion to reopen the record on the content of the RHR report was to the May 23, 1983, Three Mile Island Alert Motion to Reopen the Record, part of which sought reopening on the content of the RHR report. That portion of TMIA's May 23, 1983 motion was denied by the Appeal Board in ALAB-738, 18 NRC 177, 197-99 (1983). The TMIA motion to reopen the record on the content of the RHR report should be distinguished from the TMIA motion to reopen the record on the reportability of the RHR report. See TMIA Motion to Reopen the Record on Training Program Irregularities and Reportability of BETA and RHR Consultant Reports, May 23, 1984, which also was denied by the Appeal Board. See ALAB-774 (June 19, 1984).

Sincerely,

Jack R. Goldberg
Counsel for NRC Staff

cc: TMI-1 service list