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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 SP
	)	(Restart Remand on
(Three Mile Island	)	
Station, Unit No. 1)	)	

UNION OF CONCERNED SCIENTISTS' RESPONSE TO GPU COMMENTS ON JULY 13, 1983 MEMORANDUM AND ORDER ON LEAD INTERVENORS AND MOTION TO PARTIALLY EXCLUDE UCS FROM PARTICIPATION IN THE MANAGEMENT REMAND.

1. The training contentions as to which UCS is lead do not impermissibly expand the scope of the proceeding

GPU claims that "inquiry into the NRC exam is permitted only to the extent justified by the degree of reliance placed on it by licensee's consultants in thier evaluation " of GPU's training program and moves to modify subissue (2) accordingly. GPU Comments, p.7.

On the contrary, the Appeal Board specifically enumerated the following questions as among the issues not resolved on the record: "Are the licensee and NRC examinations an effective way to measure an operator's ability to run the plant? Do the format and context of the examinations encourage cheating?" ALAB-772, Sl.op. at 63, emphasis added.

We recognize that the Board has placed restrictions on the extent to which the content of the NRC exam can be considered.

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Although we did not agree with those restrictions, we also do not believe that they can be read as broadly as GPU intends. The extent of reliance of GPU's experts on the NRC exam is surely not the only issue, nor can the scope of this proceeding be limited to what GPU's witnesses choose to consider. The GPU training and testing program is part of a system of assuring operator competence which culminates in NRC exams. Indeed, the NRC considers only the results of its own examinations; the staff has made it clear that it makes no substantive review of GPU's or any utility's training program. Id. at 74. Therefore, insofar as NRC standards for operator competence are concerned, the question which this Board must decide is whether the system does, in fact, assure competence. Therefore, even under the Board's restriction, the NRC exam should at least be considered relevant to the extent that it is relied upon by NRC rules, and the staff, and as it functions as part of a system for assuring operator competence.

GPU also objects to the following subissue: "1) Are the operators equipped to safely operate the plant, particularly in emergency situations?" GPU would substitute "trained" for "equipped." The full basis for GPU's objection is not clear; the remarkable 13-page tirade which follows the objection distorts UCS's position in previous portions of the proceeding, is internally inconsistent, and appears intended primarily to convince this Board in advance of the hearings that UCS is unreasonable or inept.

Insofar as the Board may be concerned that UCS intends to litigate the adequacy of procedures per se, it need have no such concern. Since the training is geared specifically toward teaching the operators to perform the steps required by the procedures so that they can maneuver the plant safely through a variety of plant conditions, the procedures will certainly come into the hearings. UCS anticipates, for example, that operators may be questioned to determine if they understand and can perform the steps required by the procedures. The training and testing program may also be reviewed to see if it is consistent with the procedures. UCS does not intend to litigate the adequacy of the procedures as a separate issue.

Beyond this point, GPU mounts a rambling and confusing argument attacking UCS for lack of interest in training. In fact, UCS's main point on appeal-that the record does not support a finding that training has been adequate to ensure competence - was accepted by the Appeal Board in ALAB-772. ALAB-772 at 62-63. In any case, since GPU does not object to UCS's participation in the training issue, Licensee's Comments, n.11 at 22, these remarks have no apparent bearing on the admissibility of this subissue or its phrasing. UCS does not have the time, nor would it be productive of the Board's resources, to rebut Licensee's assertions in detail. We do wish to note that the company's assertion that UCS contended as the "lynchpin" (sic) of its case that hardware should be "operator-proof" is a grave misrepresentation which GPU

fabricates on the basis of its consistent and apparently deliberate misunderstanding of UCS contention 10. Licensee's Comments at 10.

On the contrary, UCS argued, inter alia, that the plant should be designed so as to minimize the demands on the operators, particularly under accident conditions, and that to the extent the operators are called upon to perform important systems and components safety functions, the systems and components upon which they must rely to diagnose the condition of the plant and to take appropriate corrective action should be highly reliable safety-grade components. See eg. U.S.C. Contentions 1, 2, 3. These principles are both unobjectionable and entirely consistent with NRC rules and practice. The disagreements arise over questions of interpretation such as whether the demands on the operators are, in fact, reasonable and whether the components are sufficiently reliable. Eg. LBP-81-59, 14 NRC 1211, 1269-1270, 1277-1282, 1369-1372.

Similarly bizarre is GPU's contention that the "underlying premise" of UCS position was "that operators would not need to be well trained." Licensee's Comments, n.5 at 11. Fortunately, at least one member of this panel sat through the previous hearings on design issues and therefore knows that UCS did not and would never have considered adopting such a preposterous "premise," nor does GPU provide a citation in support of its claim.

2. UCS should be permitted to participate in the other remanded issues.

GPU objects to UCS's participation in a non-lead role in the Dieckamp mailgram and leak rate issues. It is, of course, true that UCS had no management contentions in 1979 and did not, therefore, participate in previous management hearings. It is also true with respect to the leak rate falsification issues, that the information which serves as the basis for the remand was concealed from the parties or did not become disclosed in meaningful form until well after 1979. As the Appeal Board stated:

> It is thus understandable that neither the other parties nor the Licensing Board pursued the matter at the hearing below. See LBP-81-32, supra, 14 NRC at 557-58. The first time that it became apparent to intervenors that Hartman's allegations were not "off limits" and could be pursued at hearing was upon examination of the B&W trial record. That proceeding demonstrated that the pendency of the DOJ investigation does not necessarily preclude other types of inquiries into the same matter. In these circumstances, it would be fundamentally unfair to find that intervenors could and should have raised the Hartman allegations earlier. Had they tried to do so, we have no doubt that the staff and licensee would have interposed forceful objections on the basis of the Grand Jury proceeding. ALAB-738, 18 NRC 177, 188 (1983), emphasis added.

With regard to Unit 1 leak rates, the disclosure of instances of hydrogen and water addition came even later. The belated disclosure of these facts distinguishes this case from those cited by GPU.

UCS can perhaps be technically faulted for not moving to amend its contentions. However, we believed and believe that since we had filed in support of the Motion to Reopen (Id. at 180) the following language of the Appeal Board anticipated our

participation. "We believe the most fruitful way to achieve [resolution] is within the adjucatory setting and with the active participation of all parties." Id. at 191. It should also be noted that from the time that the staff publicly disclosed that it had concluded that unit 2 leak rates were in fact, falsified, UCS has participated in every possible opportunity to comment both orally and in writing and that UCS's comments have been full and detailed. The first example is "UCS Comments on Commission Briefing of May 24, 1984 (Leak Rate Falsification)...,"June 3, 1983. The latest example is "UCS Comments on TMI-1 Restart Immediate Effectiveness," July 26, 1984, pp. 46-48, 52-54.

Should the Board determine that UCS is not entitled to participation as a matter of right on these issues, it should permit it as a matter of discretion. The factors enumerated in 10 CFR§ 2.714 (a)(1) for late intervention may serve as guidance.

The first factor is good cause. Good cause should be found, as discussed above, in the late disclosure of the gravity of the leak rate evidence and the fact that GPU and the Staff would surely have objected to earlier litigation of these issues as premature or barred in light of the Grand Jury investigation. See ALAB-738, 18 NRC 177, 183-188. This is consistent with the Appeal Board's ruling that the issues were timely raised by the Intervenors. Id.

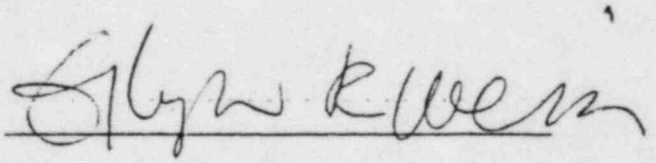
The second factor is the availability of other means to protect petitioner's interest. This factor may be considered in conjunction with the fourth element, the extent to which petitioner's interest will be represented by other parties. TMIA will be taking the lead in these issues and UCS intends essentially to help and to consult with TMIA. The Board need not disregard the plain fact that none of the Intervenor counsel have access to human or financial resources which remotely approach these of the staff and GPU. It is therefore essential that what resources Intervenors do possess be managed wisely and that they cooperate to the extent that their interests coincide. We seek permission to work together in the interest of bringing forward the information necessary for decision.

The third factor, and the most important, is the extent to which petitioner's participation may reasonably be expected to assist in developing a sound record. UCS submits that there is no serious question but that its participation will assist in development of the record. Our role in earlier hearings demonstrates as much. Perusal of UCS's proposed findings of fact and conclusion on law in the various hardware issues demonstrates this. In addition, UCS's knowledge of the management issues is partially reflected in the detailed " UCS Comments on TMI-1 Restart Immediate Effectiveness," July 26, 1983.

The last factor, the potential for broadening or delaying the proceeding, is a non-issue. Particularly given the limitations on the role of non-lead intervenors, there is no such potential.

In conclusion, UCS urges that GPU's motion be denied in all respects. While it is perhaps understandable that GPU wishes to rid itself of an adversary, this Board's primary interest must be in developing a record sufficient to reach the correct decision in this serious matter. That interest would be ill-served by granting the motion.

Respectfully submitted,



Ellyn R. Weiss
Harmon, Weiss & Jordan
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Union of Concerned Scientists

August 17, 1984

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	)	(Restart Remand on Management)
(Three Mile Island Nuclear Station, Unit No. 1)	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of UNION OF CONCERNED SCIENTISTS' RESPONSE TO GPU COMMENTS ON JULY 13, 1983 MEMORANDUM AND ORDER ON LEAD INTERVENORS AND MOTION TO PARTIALLY EXCLUDE UCS FROM PARTICIPATION IN THE MANAGEMENT REMAND were served this 17th day of August, 1984, by depositing them in the U.S. mail, first class postage prepaid, to the parties on the attached service list.

Ellyn R. Weiss

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