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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges:
Ivan W. Smith, Chairman
Sheldon J. Wolfe, Alternate Chairman
Gustave A. Linerberger, Jr.

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DOCKETING & SERVICE
BRANCH

SERVED AUG 31 1984

In the Matter of)	Docket No. 50-289-SP
)	(ASLBP 79-429-09-SP)
METROPOLITAN EDISON COMPANY)	(Restart Remand on
)	Management)
(Three Mile Island Nuclear)	
Station, Unit No. 1))	August 30, 1984

MEMORANDUM AND ORDER ON LICENSEE'S JULY 31, 1984
COMMENTS ON LEAD INTERVENORS AND
MOTION TO PARTIALLY EXCLUDE UCS FROM MANAGEMENT PHASE

In the Memorandum and Order Following Prehearing Conference, July 9, 1984, the Board set out its rulings on the scope of the issues to be considered in the proceeding remanded by ALAB-772. On July 13 we ruled on Intervenor's recommendations for lead-intervenor responsibilities. In the July 13 order we noted our concern that Intervenor's view of their respective lead responsibilities suggests that they may seek to litigate matters not covered in ALAB-772, but, since the purpose of the ruling was to identify lead intervenors, and not to revisit our July 9 order, we simply approved the lead assignments. We invited the other parties to comment on the lead-intervenor assignments.

Despite the Board's pointed observation in the July 13 order that we were not then redefining issues, Licensee believed that it was

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prudent to request the Board to clarify that certain "subissues" respecting lead intervenor assignments are not within the scope of the remanded hearing. Licensee states that the attempted expansion of the issues by Intervenor must be stopped now to avoid unnecessary discovery and preparation time. Discovery demands have been very broad, and, while we have not yet analyzed them to determine whether Licensee's foreboding is justified, we agree that further Board comment on the issues might be helpful to the parties. Licensee also requests a ruling that UCS may not participate in the Dieckamp-mailgram and TMI-1 leak-rate issues.

TMIA Subissue 4

Intervenors identified four subissues as to which TMIA will carry lead-intervenor responsibilities. Subissue 4, objected to by Licensee, would place into contention the question of "how does the history of GPU's problems and its current training program reflect on the competence and integrity of GPU management?" It was precisely this subissue which suggested to the Board that TMIA may be seeking to litigate matters that are res judicata as we stated in the July 13 order. TMIA did not respond to Licensee's request that subissue 4 be ruled out of the remanded proceeding. In any event, it is clear that it does not belong there.

UCS Subissues (1) and (2)

The Board assigned to UCS responsibility for leading the Intervenor's litigation regarding two issues, namely:

- (1) Are the operators equipped to safely operate the plant particularly in emergency situations?
- (2) Do the NRC and Company examinations reliably measure the operators' ability to safely operate the plant?

As to subissue (1), Licensee is concerned that UCS will carry the litigation beyond training to the adequacy of the hardware and operating procedures. In response, UCS assures the Board that it does not intend to litigate procedures (or apparently hardware) as a separate issue. We agree that plant equipment and operating procedures as such are not proper issues for consideration on remand. Accordingly, we adopt Licensee's suggestion and modify UCS subissue (1) as follows:

- (1) Are the operators trained to safely operate the plant in accordance with approved procedure, particularly in emergencies?

As to UCS subissue (2), it seems that Licensee had a well-founded concern that UCS might attempt to take the NRC licensing examination aspect of the case beyond the scope of the remand. In our memorandum and order of July 9, in which we identified the issues on remand, we explained extensively (at 4-6) why ALAB-772 does not require or permit a relitigation of the sufficiency of the NRC operators' licensing examinations. But we ruled that Licensee's witnesses could be challenged to the extent that they rely upon the NRC examinations as a measure of operator competence.

In its response to licensee's comments, UCS would, in effect, have us reopen the entire NRC operators' examination aspect of the proceeding. UCS presents no indication that it has accepted or understood the Board's July 9 ruling and would cast the NRC examination subissue as:

[I]nsofar 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.

UCS Response at 2.

The Board has reread its July 9 order and believes that it clearly bounds the NRC examination issue. We find nothing to add except to comment that UCS' view of the issue exceeds the scope set by the Board.

UCS' Participation on Other Issues

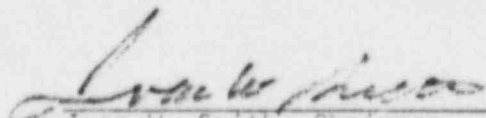
UCS entered the management phase late in the proceeding and, for that reason, Licensee argues that UCS should not be permitted, either as a matter of right or of board discretion, to participate in the reopened remanded proceeding on the TMI-1 leak-rate issue or the Dieckamp-mailgram issue. Since we conclude that UCS' participation as a matter of discretion is appropriate, we need not analyze the very lengthy argument by Licensee as to UCS' lack of standing to participate.

We see no large practical implications in ruling against Licensee on this point. UCS is not the lead intervenor on the two issues. It

must work with and through TMIA to participate unless good-faith efforts to consolidate fail. Even if we were to bar UCS' formal participation as the non-lead intervenor, it could informally lend its expertise and resources to TMIA. The result would probably be the same as the participation presently approved unless TMIA and UCS materially differ on the issues, which seems very unlikely in view of their common interests.

Authorizing UCS' participation as a matter of discretion, as compared to a matter of right, will have the effect of requiring UCS to demonstrate that any independent participation will contribute to a sound record. This is a consideration which will be addressed when and if the issue arises.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Ivan W. Smith, Chairman
ADMINISTRATIVE LAW JUDGE

Bethesda, Maryland

August 30, 1984