

UCS - March 28, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

'85 APR -1 10:59
Docket No. 50-289 SP
(Restart Remand on Management)
OFFICE OF SECRETARY
NUCLEAR SERVICE
BRANCH

UCS' COMMENT ON COMMISSION POLICY STATEMENT ON
TRAINING AND QUALIFICATION OF NUCLEAR POWER PLANT PERSONNEL

On March 14, 1985. the Commission issued a Policy Statement on Training and Qualification of Nuclear Power Plant Personnel. The Board has sought the parties' comments on "the effect the policy statement should have on the Board's partial initial decision on the training issue." The Board particularly invited the parties to comment on the fact that the NRC has endorsed the five essential elements of the INPO-managed accreditation program.

For various reasons, the policy statement should not affect this proceeding at all. First, the Commission must not have intended this policy statement to affect the proceeding. The Board's charge is to address the issues raised by the Appeal Board in ALAB-772. The Commission itself has reviewed ALAB-772. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), CLI-85-2 (February 25, 1985). The Commission did not reverse or modify the Appeal Board's

8504020292 850328
PDR ADDCK 05000289
G PDR

DS03

decision. To the contrary, the Commission effectively confirmed the significance of the issues raised in ALAB-772 by ruling that as a matter of policy the Commission will allow the Licensing Board to render a decision on the training issue and by urging the Board to inform the Commission of its decision as soon as it can, even before the Partial Initial Decision, if possible. Slip op. at 8-9. Moreover, the Commission took this action on February 25, only 17 days before it issued the policy statement. If the Commission had intended the policy statement to have any effect on this proceeding, it would surely have said so when it issued the policy statement.

Second, the issues in this case and the principles on which the Board must base its decision have been determined primarily by the previous course of this unique litigation. As established by the evidence presented in this case and particularly by the proposed findings of the Licensee and UCS, the Board must, in essence, determine the adequacy of the current TMI-1 training program in order to address the Appeal Board's concerns.

Licensee Proposed Findings : 16, UCS Proposed Findings : 35. Many of the principles discussed in the policy statement, including the essential elements of a training program, were the subject of factual litigation during this hearing. See, e.g., Regan, ff. Tr. 33,532 at 5-11.

It is well settled that the Commission may not rely upon a policy statement to resolve contested issues of fact. State of Minnesota v. U.S. Nuclear Regulatory Commission, 602 F.2d 412 (D.C. Cir. 1979). Thus, the Board may not rely upon this policy statement as establishing the essential elements of a training

program or for any other purpose.¹

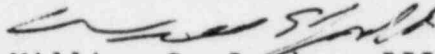
Third, the only other way that the policy statement could affect this proceeding is by influencing the Board's factual determination as to the adequacy of the training program under the applicable principles. For the reasons discussed in the previous paragraph, any such use of the policy statement would be illegal. The parties litigated the adequacy of the training program at length. Several witnesses mentioned INPO and the INPO accreditation program.² If the Board is to reach any

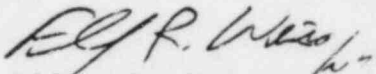
¹ UCS takes this position despite the fact that the policy statement strongly favors UCS' position on one of the central issues in this case. According to the Commission, a sound training program must include "evaluation and revision of the training based on the performance of trained personnel in the job setting." Policy Statement at 4. (Emphasis added). This is precisely what Dr. Regan testified and what UCS argued in both its Proposed Findings and its Reply to Licensee's Supplemental Proposed Findings. UCS believes, however, that the fundamental principle of adhering strictly to the hearing record must override any benefit that UCS might derive from the policy statement in this particular situation.

² See, e.g., Newton , ff. Tr. 32,409 at 65-68 and Tr. 32,408 (describing briefly the INPO accreditation program and Licensee's effort to receive accreditation); Persensky, Tr. 33,249-260 (cross-examination concerning primarily relative qualifications of INPO accreditation reviewers and members of the OARP Committee, also generally describing the policy statement in the context of a discussion of the adequacy of the work done by the OARP Committee); Knief & Leonard, ff. Tr. 33,364 at 10-11 (discussing Licensee reference to INPO materials in developing aspects of its training program and noting that Licensee has applied for INPO accreditation); OARP Committee, Tr. 32,044-053 (general discussion of INPO accreditation), 32,108-109 (discussion of Kimel's experience with INPO and comparison of hours spent by accreditation team with hours spent by OARP Committee). Any findings related to INPO must be based upon this testimony and the few other scattered references to INPO that appear in the record. The relevant testimony does not support a favorable ruling by the Board on the adequacy of the licensed operator training program at TMI-1, nor does it support a finding that the program is adequate under the Commission's new policy statement.

findings concerning INPO, Licensee's application for INPO accreditation, or the significance of the INPO accreditation program, those findings must be based on the record of this proceeding, not on this policy statement. It may not rely upon this policy statement for any purpose. State of Minnesota v. U.S. Nuclear Regulatory Commission, 602 F.2d 412.

Respectfully submitted,


William S. Jordan, III


Eilyn R. Weiss

HARMON, WEISS, & JORDAN
2001 S Street, N.W.
Suite 430
Washington, D.C. 20009
(202) 328-3500

Dated: March 28, 1985

March 28, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
)

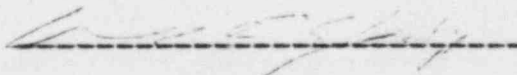
METROPOLITAN EDISON COMPANY)

(Three Mile Island Nuclear)
Station, Unit No. 1))

) Docket No. 50-289
) (Restart Remand on
) Management)
)
)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the UNION OF CONCERNED SCIENTISTS' COMMENT ON COMMISSION POLICY STATEMENT ON TRAINING AND QUALIFICATION OF NUCLEAR POWER PLANT PERSONNEL, was served on those indicated on the accompanying Service List. Service was made by deposit in The United States mail, first class, postage prepaid, on March 28, 1985, except that those indicated by an asterisk were delivered by hand.



William S. Jordan, III

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

METROPOLITAN EDISON COMPANY)

(Three Mile Island Nuclear)
Station, Unit No. 1))

) Docket No. 50-289
) (Restart Remand on
) Management)

SERVICE LIST

Administrative Judge
Gary J. Edles, Chairman
Atomic Safety & Licensing Appeal Bd.
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Jack R. Goldberg, Esq.
Office of the Executive Legal Dir.
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Administrative Judge
John H. Buck
Atomic Safety & Licensing Appeal Bd.
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Deborah Bauser, Esquire
Shaw, Pittman, Potts & Trowbridge
1800 M Street, N.W.
Washington, D.C. 20036

Administrative Judge
Christine N. Kohl
Atomic Safety & Licensing Appeal Bd.
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Ms. Louise Bradford
TMI Alert
1011 Green Street
Harrisburg, PA 17102

Administrative Judge
Evan W. Smith, Chairman
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Joanne Doroshaw, Esquire
The Christic Institute
1324 North Capitol Street
Washington, D.C. 20002

Administrative Judge
Sheldon J. Wolfe
Atomic Safety & Licensing Appeal Bd.
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. and Mrs. Norman Aamodt
200 North Church Street
Parkesburg, PA 19365

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

Lynne Bernabei, Esq.
Government Accountability Project
1555 Connecticut Ave.
Washington, D.C. 20009

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Michael F. McBride, Esq.
LeBoeuf, Lamb, Leiby & MacRae
1333 New Hampshire Ave, N.W. #1100
Washington, D.C. 20036

Michael W. Maupin, Esq.
Hunton & Williams
707 East Main Street
P.O. Box 1535
Richmond, VA 23212

Thomas Y. Au, Esq.
Office of Chief Counsel
Department of Environmental Resources
505 Executive Houses
P.O. Box 2357

Harrisburg, PA 17120