

Marvin I. Lewis  
6504 Bradford Terrace  
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Ivan W. Smith, Chairman

Dr. Walter H. Jordan

Dr. Linda W. Little

Dear Sir and Drs.,

In the matter of Three Mile Island #1  
Docket No 50-289.

"Motions for correction of the Order shall be filed within 10 days after its service." In light of this Statement on Page 67 of the Board's Order of 12-~~28~~-79, I am filing the following motions, basis and comments. Most importantly to me, I appreciate that the Board has used its discretion to allow me to participate albeit in a limited manner. I am flattered by the Board's comments on my participation to date. P.58. Considering that the nuclear fuel cycle will eventually cause the premature deaths of millions of people by the NRC's own admission (Reginald L. Gotchy in this Docket, TMI#2 on July 5, 1977), and (Letter by Dr Walter H. Jordan stating that the Radon value in Table S-3 was off by an error of 100,000 too low.), and considering that the latest calculations show that the accident at TMI #2 will cause orders of magnitude more deaths than the HEW estimate of .1 death, (Karl Z. Morgan at a news Conference in Washington, D.C. organized by Bob Alvarez of the Environmental Policy Center shortly after the Hew report was published), I feel that my efforts will never be enough.

Further, the kind comments by the Board concerning my participation do not change my observation that the NRC does not fulfil its Atomic Energy Act mandate to protect the health and safety of the public. This observation is shared by the Kemeney Commission. P.20.

"NRC's primary focus is on licensing and insufficient attention has been paid to the ongoing process of assuring nuclear safety." In light of the 12-~~28~~-79 Order and the above facts, I present the following motions to the Board:

Motion 1. I request that the Board correct the record by admitting my revised contention on fuel rods.

Revised Contention on Fuel Rods:

Fuel rods failed in TMI#2 during the accident on 3/28.

Fuel rods will fail at TMI#1 during a similar accident.

Fuel rods have been shown to have deficiencies in a recent court case. To mitigate a similar accident at TMI#1, fuel rods must meet at least present requirements.

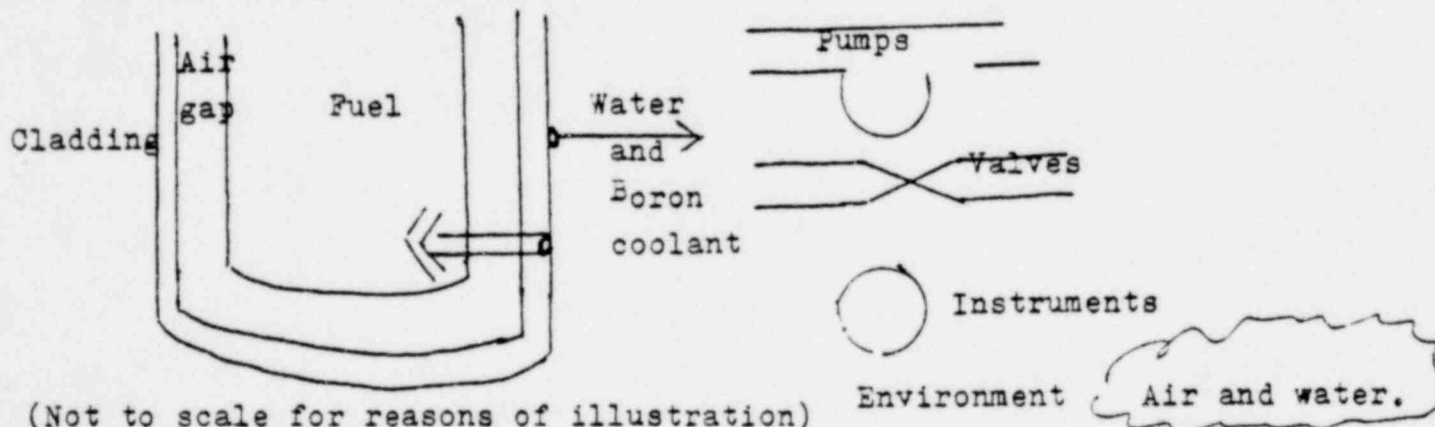
Although there may be other deficiencies in the fuel rods, I am limiting my contention to the above specifics.

My fuel rod contention meets all the very same tests as applied to allow my contention B, "Lewis Contention." I am restating my fuel rod contention in similar form to "Lewis Contention" to show more easily that it meets the same tests. This reworded fuel rod contention clearly meets the tests used by the Board for accepting the "Lewis Contention."

A. It "is not advanced by any other party."

Although other parties have proposed "reactor coolant pressure boundary" contentions (Steve Sholley Contention #2) and "non-safety related components" (UCS Contention #14), no other party has brought to the fore specific deficiencies related to the fuel rods and fuel pellets. Further these other parties would have to expand their contentions in an unforeseen and artificial manner to attack the fuel rod deficiencies in a parallel manner to my approach. Further, the Board and I do not have any authority or financial ability (according to the Staff's statements on intervenor funding by the Board) to help these other intervenors investigate fuel problems.

Also Sholley's Contention #2 which refers to GDC 14 is written specifically to include those components from the surface of the fuel rod outward toward the environment.



(Not to scale for reasons of illustration)

Mr. Sholley's Contention #2 speaks specifically of components and phenomena associated with the arrow going to the right. (Observed pressures, pumps, valves etc.)

My fuel rod contention speaks of components and materials associated with the arrow going to the left. (Cladding defects, wrapping etc.)

UCS Contention #14 might have been expanded to include fuel rod defects, but several obstacles stand in the way of expanding the UCS Contention #14 to include fuel rod defects.

- (1) UCS may not have the financial capability to expand their area of inquiry.
- (2) Mr. Lewis does not have the financial capability to "sell" UCS

on expanding their Contention # 14 . Inotherwords, I can't afford to use up hours of expensive phone time in hopes of talking UCS into accëpting this fuel rod contention.

- (3) UCS Contention #14 was originally written also to include similar considerations as Mr Sholley's. Inotherwords, UCS Contention #14 and Mr Sholley's Contention #2 are both looking at components outside the fuel rods as shown by the arrow going<sup>to</sup> the right in the illustration above.

- 44) Most importantly, UCS Contention #14 has been restricted by the Board to the "core cooling system" only. (Page 23 ,12-13-79 Order.)

Finally, I come to the Board's (Chairman Smith's) suggestion of giving my fuel rod contention to the Staff. When Chairman Smith asked me about this in the Prehearing , I feared a 'lawyer's trick.' By this, I mean that Chairman Smith had ruled 3 times in the preceedings that I could not bring up a certain point of NRC conduct describing NRC attitude and epidomizing NRC attitude toward intervenors. I really beleived that if I pointedout this verbotten NRC attitude , I would be in contempt of the Board's previous rulings. To get around this dilemma, I answered in as abbreviated a manner as possible. I now expand on some of the many reasons that the Staff - with no reflection on their competency- would be severely hampered in the investigation of fuel rod defects.

Also , the Board has demonstrated its openness by accepting me as a limited intervenor so that I no longer fear a 'lawyer's trick ' from Chairman Smith.

The reasons that the Staff would be hampered in its investigation of fuel rod defects include

- (1) NRC attitude- I shall not belabor this point with pages of examples. The Kemeney Commission Report qoute from Page 1 of this submittal will suffice.
- (2) The Staff will have to meet with people who have found out or suspect that
  - (a) the Government supplied confidants, lovers, etc. for the purpose of thwarting legitimate union activity.
  - (b) the Government was directly or indirectly involved in covering up the facts of a death.
  - (c) The NRC has a habit of warning people of consequences rather than getting information when it is offered. ( Phone conversation between M. Lewis and Vince Steblo concerning Boyce Grier letter to M.Lewis. Also see entire Marble Hill Docket and violations.)

I do not wish this to sound like I am impugning the Staff's competence. Ms Mulkey, Singer, Tipton have all been helpful even before I was accepted as an intervenor. J. Tourtelotte was probably acting under the orders of his superiors in his actions toward me. I also follow orders of my superiors so I hold no grudge against J. Tourtelotte. Nonetheless, considering the circumstances and background of any fuel rod investigation, government investigation would be at a distinct disadvantage to citizen intervenor inquiry.

(B) The Board stated that the Lewis 'contention was 'important.'

"Importance" thereby becomes a test for acceptance of a contention. The discussion of the "importance" of fuel rods to an accident at TMI#2 demonstrates that the fuel rod contention fulfils the test of importance as follows:

Demonstrating that the integrity and design of fuel rods were important to and accident sequence at TMI#2 is difficult from actual evidence because we still have not opened up TMI#2 and cannot say how the fuel rods were involved. Nonetheless, it is obvious and easy to show the importance of fuel rods in a TMI#2 accident scenario in a general way.

Fuel rods are prime movers in PEA's and PCMA's ( power excursion accidents and power cooling mismatch accidents.)

The next point (or lack of it ) that a minor or major PEA or PCMA occurred at TMI#2.

Rep James Weaver (D Or) stated on the floor of Congress that his Committee's investigation showed to him that nobody could tell what was happening during the accident. ( This was during the Committee of the Whole discussing amendments to the NRC Authorization Bill.) Now , not disregarding the fine work that James Weaver is doing, I believe that the utility could have observed a significant PEA or PCMA. ( I am defining a significant PEA or PCMA as an order of magnitude increase in thermal output.) This still leaves the question or possibility of undetected - but destructive - PCMA's or PEA's during the accident where the prime cause of the addition destructiveness is related to the fuel rod defects.



The relationship of fuel rods to PEA's and PCMA's is clearly and graphically stated in AEC's National Reactor Testing Station internal report ,PTR 738. As pointed out by James Weaver(D Or), the Board cannot tell so far whether there was any minor - but destructive - PCMA or PEA which could originate from fuel rod defects during the TMI#2 accident.

I requested the chemical analyses of certain waters at TMI#2 from various offices in the NRC on several occasions. Very truthfully, these NRC people told me that they did not have said analyses. Although said analyses would not have been definitive as to whether a PCMA or PEA did occur , they may have provided a clue.

I, however, have found evidence that the fuel rods were deficient. I wish to present this to the Board, have said evidence answered by the Staff and Licensee , and argue the possibility of fuel rod effects during the accident. The Board can then decide whether the fuel rod problem is sufficient to continue suspension or require further action. In light of this correction above , I shall also have to present evidence that at least a minor PCMA or PEA could have occurred - detected or undetected - during the accident at TMI#2.

This is not to say that a major PEA or PCMA did not occur nor could not occur during the accident. I am merely pointing out that the thrust of my evidence will be in the area of minor PEA's or PCMA's since could have gone undetected according to the statements of James Weaver recently in Congress.

I have been repeatedly told that contentions are analogous to allegations and I should not include evidence in contentions. Unhappily, I must provide some scenario as basis for my fuel rod contention. Since my scenario is similar to some design basis accidents ( although Class 9 accidents can also be caused by faulty fuel rods (PTR 738)), I do not believe that I am providing new evidence in presenting scenario's closely aligned to (plagiarized from ?) Design Basis Accidents in PSAR and FSAR.

I present only 2 possible accident scenario's out of a myriad.

(1) If the fuel rods are slightly warped for any reason, further heating during an accident enough to stop the reinsertion of control rods during a SCRAM related to a TMI accident. Although this could happen to well qualified fuel rods, previously damaged or out of specification fuel rods would be even more likely to be damaged. If the worth of the control rod was adequate or if enough control rods were stopped from reinserting, a significant PEA could occur.

Further , even a minor PEA or PCMA would be enough to endanger the health and safety of the public much more greatly in a TMI#2 accident than if no PEA or PCMA occurred.

Even more significantly , only the opening of the TMI#2 containment will definitely answer what fuel rod effects played a part in the accident.

(2) Due to the heating and other accident regimes , the fuel rods have great damage. Proper fuel rods should have more dimensional stability over time during an accident. Considering the value of every split second during a TMI#2 accident, every effort must be expended to maximize the integrity of the fuel rods during the accident. We cannot throw away time which is preciousy needed to reinsert control rods, start ECCS pumps, and have operators react correctly. Adequate fuel rods should help provide a precious split second more time to react in an accident. Improper fuel rods ( bent, damaged , improperly manufactured) can be a major contributor to worsening the effects of an accident thru premature failure.

So ends my argument to accept my corrected fuel rod contention.

Motion 2. I request the Board to correct the record by admitting my revised contention on Control Room Design.

Revised Contention on Control Room Design.

Control room design was a major problem during the TMI#2 accident. Control Room Design will continue to be a major problem during a similar accident at TMI#1.

To mitigate a similar accident at TMI#1 , control room design must be improved to the point of well known nuclear technology. Existing nuclear technology refers to the article by Carol Wilson in the Bulletin of Atomic Scientists.

Basis:

I am restating my control room contention in similar form to the "Lewis Contention " to show that it meets some of the same tests. My control room contention meets some - but not all as in the case of my fuel rod contention - of the very same tests which were applied to accept the "Lewis Contention."

Now , my control room contention meets the test of "importance" without belaboring why since similar contentions have been accepted. It however does not fully meet the test of exclusiveness, "not advanced by any other party" P. 59 of Order, 12-18-79. As far as exclusiveness, I do wish to point out that I am the only intervenor so far who has attempting to show that the Control Room Design does not even meet the criteria used in Atomic submarines for decades. In nuclear submarines, one man controls the reactor with all gauges within easy viewing by merely turning his head. Gauges are not placed behind instrument panels as in the case of TMI#2 (Kemeney Commission Report P. 11)

"There are some key indicators placed in locations where operators cannot see them."

The major differences between my fuel rod contention and the control room design contention is that

- A. Other parties do have control room design contentions. These intervenors might still be willing to accept my particular worry.
- B. Whereas in my fuel rod contention the NRC would have to investigate areas where people would be very antagonistic to them, the NRC should be interacting with very pronuclear types who should be very friendly to the NRC when investigating this particular worry about the control room being a poorer design than even decades old nuclear subs.

Therefore, I suggest these several possible reliefs to the Board.

Alternate Motion 2. I request that the Board choose one or more of the following reliefs if the Board refuses Motion 2.

2.a. The Board accepts the original Control Room Design Contention accepts me to argue it.

2.b. The Board directs that the other intervenors investigate my concern about the Control Room Design. This is , of course , a very unfair approach since neither I nor the Board have money to provide financial assistance to the other intervenors.

2.c. The Board directs that the Staff calls Carol Wilson- or equivalent specialist such as Hyman Rickover - to give expert testimony on the Navy vs the utility approach to Control Room Design, and that I be allowed to cross examine that Staff witness in this additional matter .

A Title-Issue demonstrating NRC's continuing Policy of keeping information from the Public until the time is past for Effective Public Participation.

I have been lucky and resourceful enough to be placed upon the NRC's Office of Public Affairs "for immediate release" distribution list that includes the D.C. and Region 1 offices. These NRC releases have been helpful and informative; however, they are lacking in timeliness and getting to the right people.

1. I have attempted to get others of the anti-nuclear persuasion on this distribution list with limited success.

2. The releases often arrive post facto or so close to the event that the public cannot possibly schedule participation. I enclose a "immediate release" dated 12-19-79 which I received 12-22-79 for a meeting 12-21-79.

Obviously this scheduling eliminated effective public participation and limited the press briefing to the NRC's and the suspended licensee's viewpoints.

This is only one example to show this kind of restrictive timing. I shan't burden the record with a litany of such examples.

Instead I am asking relief in the form of a motion.

Motion 3. I request that the Board direct that the Office of Public Affairs include the intervenors in this Docket 50-289 in the for immediate release distribution list for all such releases having any relationship to this docket. I also request that the Board direct that such releases be mailed early enough so that that information doesn't arrive post facto.

Basis : The Board is not required by rule or law to agree to my motion. However, fairness dictates that intervenors be as informed as possible concerning NRC actions in this docket.

Please note: I do not specifically accuse the NRC of purposely attempting to limit participation by the public. I only point out that the result of NRC present policy is to limit effective public participation.



A Final Comment on "inadequate and digressive statements of interest. "

The Board may believe that due to the restrictions of the Scope, the Board must allow the operation of an unsafe nuke because the safety violations are outside the Scope. This is where my "inadequate and digressive statements " are directed. I am merely trying to show that this proceeding does not exist in a vacuum bounded by the scope of the August 9 order. I have attempted to show in a most inadequate manner that laws and considerations beyond NEPA and AEA do impact upon these proceedings. I have attempted to show that a decision of the Board may not contradict the body of U.S. and International Law. My reference to slaves in the Civil War days was to demonstrate how the very same laws today are used to protect blacks as were ignored in Civil War days to allow cruel and unusual treatment to be used to enslave blacks. Similarly, laws were changed in Nazi Germany for the purpose of enslaving and eliminating minorities. German magistrates found themselves required to enforce unfair and cruel Nazi-inspired laws.

Nonetheless, the Nuremberg Tribunal found that enforcing inhuman and inhumane law and obeying illegal and inhumane orders was itself a crime. This principle of international law was upheld recently in the conviction of Lt Calley.

Again, I point out these examples to demonstrate to the Board my belief that the Board has no authority to lift the suspension of an obviously dangerous nuclear power plant no matter what the August 9 Order states. No order of the Commission can legitimize the breaking of any US or International Law or Principle. The plea, "I did as I was ordered , " is not a defense.



# UNITED STATES NUCLEAR REGULATORY COMMISSION

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FOR IMMEDIATE RELEASE  
December 19, 1979

## NOTE FOR EDITORS AND NEWS DIRECTORS:

A review of General Public Utilities' and Metropolitan Edison Company's program to protect workers at Three Mile Island Unit 2 from exposures to radiation will be discussed at a Nuclear Regulatory Commission staff press briefing in Middletown, Pennsylvania, on Friday, December 21. It will begin at 11 a.m. in the Liberty Fire Company Meeting Room at Adelia and Emaus Streets.

The results of the review by a special panel, appointed by Harold Denton, Director of the NRC's Office of Nuclear Reactor Regulation, will be presented by the panel's chairman C. B. Meinhold of Brookhaven (New York) National Laboratory. He will be accompanied by John Collins, Deputy Director of the NRC's Recovery Operations Office at Three Mile Island.

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CERTIFICATE OF SERVICE

I do hereby certify that I served a true and correct copy of the foregoing document on the below listed parties by first-class mailing:

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*12/27/78*

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