

January 21, 1980

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

LICENSEE'S OPPOSITION TO REQUESTS OF UCS FOR
RECONSIDERATION OR CERTIFICATION

The Union of Concerned Scientists ("UCS") initially filed a motion with the Licensing Board on January 4, 1980, requesting the Board to reconsider its rulings rejecting UCS Contention Nos. 20, 17 and 18, or, in the alternative, certifying the admissibility of these contentions to the Commission. On January 7, 1980, UCS filed a motion requesting leave to submit out of time a corrected version of the January 4 filing. Licensee does not object to UCS' request for leave to file a corrected version of its January 4 filing,^{1/} but opposes the

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While Licensee does not oppose the UCS request to file late a corrected version of its January 4 filing, the method used by UCS to compute the time within which to make filings is in error, and may mislead some of the other intervenors as to the proper method for computing time.

Section 2.701(c) of the Commission's Rules of Practice, 10 C.F.R. § 2.701(c), specifies that filings made by mail shall be deemed complete as of the time of deposit in the U. S. mails. Section 2.710 of the Commission's Rules of Practice, 10 C.F.R. § 2.710, describes the method for computation of time limits. It is there indicated that the date of filing, i.e. the date

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substance of the request for reconsideration or certification as unfounded.

UCS Contention No. 20

UCS argues that the reasons which favored accepting its Contention No. 13 also favor accepting its Contention No. 20 (UCS Request at 2-3). In support of this position, UCS asserts that Contention No. 13 is a health and safety attack to the Commission's practice of excluding consideration of accidents beyond the design basis, while Contention No. 20 applies similar reasoning with respect to the Commission's environmental responsibilities. The argument both mischaracterizes the nature of the Licensing Board's handling of UCS Contention No. 13 and misstates the Commission's environmental obligations under NEPA.

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upon which the filing is deposited in the U. S. mails, is not counted, and, similarly, if the computed due date is a Saturday, Sunday or legal holiday, that date too is skipped. Finally, section 2.710 states that when service is by mail, five days shall be added to the prescribed time. This does not mean five days are added from the day on which the filing is received, but, rather, five days are added to the date on which the filing is served by being deposited in the U. S. mails.

Applying these rules to the UCS filing indicates that its motion for reconsideration or certification should have been filed on January 2, 1980. That is, the First Special Prehearing Conference Order was served on December 18, 1979, and counting ten days from December 19 gives December 28, to which five days are added, resulting in a due date of Wednesday, January 2, 1980.

Since this is the first instance raising an issue as to the manner in which time is computed, Licensee does not object to UCS' January 4 filing as untimely, although in the future Licensee expects that all parties will calculate time in the manner specified by the Commission's Rules of Practice.

In admitting UCS Contention No. 13 for purposes of discovery, the Licensing Board afforded UCS an opportunity to come back and satisfy the Board that there is a credible accident scenario with the requisite nexus to the TMI-2 accident that is not bounded by the present design basis accidents. As a corollary to this opportunity afforded UCS, the Board also recognized that, in the absence of such a showing by UCS, Contention No. 13 lacked the necessary specificity to permit either Licensee or the NRC Staff to respond adequately.^{2/} Thus, by admitting UCS Contention No. 13 the Board has not yet accepted UCS' claim that the TMI-2 accident is prima facie evidence that the method by which the NRC Staff classifies accidents is faulty -- such a finding still depends upon a showing by UCS that credible accidents with the requisite nexus to the TMI-2 accident are not adequately analyzed by the NRC Staff.

In this context, it would be premature for the Licensing Board to admit a contention which alleges that the environmental consequences of credible accidents have not been considered adequately. Assuming UCS makes the necessary showing, there will be time enough at a later stage of this proceeding to consider the environmental consequences of such an accident, including all mitigating or protective measures that may be

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Licensee recognizes the Board's additional ruling that, regardless of the specificity provided by UCS, the Board itself expects to hear evidence on the manner in which the NRC Staff determines design basis accidents (First Special Pre-hearing Conference Order at 23).

taken to ameliorate those consequences.

Indeed, consideration of UCS Contention No. 13 may itself show that all credible accidents with the requisite nexus to the TMI-2 accident have been considered by the NRC Staff, or that the environmental consequences of such accidents are no greater than the design basis accidents previously evaluated. In either case there would be no need to then consider UCS Contention No. 20. In addition, Licensee continues to be of the view that the admissibility of the NEPA contention should await filing of the NRC Staff's environmental impact appraisal on the restart of TMI-1. For these reasons Licensee believes that the Board's handling of UCS Contention No. 20 is correct, and the UCS request for reconsideration or certification should be denied.

UCS Contention Nos. 17 and 18

UCS' requests for reconsideration of the Board's rulings with respect to Contention Nos. 17 and 18 are based on a significant misreading of the Licensing Board decision. Contrary to UCS' claim, the Board did not dismiss these contentions merely "on the ground that [they] lac[k] specificity" (UCS Request at 7). Rather, the Board accepted for litigation each of the specific examples identified by UCS. However, with respect to the cited examples, the Board also noted that each was adequately covered by another UCS contention already accepted by the Board and therefore need not be considered again.

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As to the balance of Contention Nos. 17 and 18, the claims that all unresolved safety issues be considered and that conformance with all applicable Regulatory Guides be assured are indeed so vague that it is not possible for Licensee to defend against the charge or for the Licensing Board to determine if the contentions satisfy the nexus test adopted by the Board and accepted by UCS. Significantly, in the face of this determination, UCS chose not to defend Contention Nos. 17 and 18 by explaining how the balance of the contentions relate to the TMI-2 accident. Instead, UCS merely repeats its unsubstantiated plea that these matters be considered in this restart proceeding. In the circumstances, the Board correctly rejected Contention Nos. 17 and 18, and UCS' request for reconsideration or certification should be denied.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By:


George F. Trowbridge

Dated January 21, 1980

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January 21, 1980

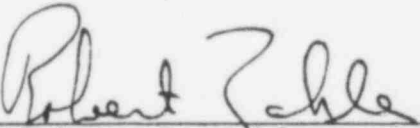
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Opposition to Requests of UCS for Reconsideration or Certification", were served upon those persons on the attached Service List by deposit in the United States mail, postage prepaid, this 21st day of January, 1980.



Robert E. Zahler

Dated: January 21, 1980

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