

December 10, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBEFORE THE ATOMIC SAFETY AND LICENSING BOARDDOCKETED
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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCHIn the Matter of)
)
)METROPOLITAN EDISON COMPANY)
)
)(Three Mile Island Nuclear)
Station, Unit No. 1))
)Docket No. 50-289 SP
(Restart - Management Phase)UCS' OPPOSITION TO LICENSEE SUGGESTION FOR BOARD WITNESSES

In a letter of November 26, 1984, Licensee expressed surprise that the Staff's testimony does not address the actual content of the TMI-1 training program, and it suggested that the Board may want to call Staff members as its own witnesses on the subject. UCS strongly objects to any such action.

As Licensee acknowledges, it has long been aware of the Staff's view of the scope of this proceeding. At every opportunity, the Staff has emphasized that it believes the hearing is limited to the views of the Reconstituted OARP Committee. On that basis alone, the scope of the Staff's testimony could come as no surprise to Licensee.

Moreover, the Staff has been specific as to the scope of its testimony since at least October 25, 1984. On that date, the Staff served its Revised Second Supplemental Response to UCS'

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First Set of Interrogatories. In that filing, the Staff stated that, "the Staff views on the current training program are not material to the remanded training issue. Therefore, Staff's testimony will be limited to an evaluation of the methodology used by the Reconstituted OARP Review Committee in responding to the questions and issues raised by the Appeal Board remand of May 24, 1984." There was no surprise, and Licensee cannot be heard to complain at this late date.

More important, Licensee's own statements establish that its suggestion to call Board witnesses is frivolous. As the Appeal Board has ruled, Board witnesses "should not be called upon to supplement an adjudicatory record except in "that most extraordinary situation in which it is demonstrated beyond question that a board simply cannot otherwise reach an informed decision on the issue involved." South Carolina Electric and Gas Company, ALAB-663, 14 N.R.C. 1140, 1146 (1981). According to Licensee, its own testimony "thoroughly address[es] the merits of the issue." Thus, there is no basis for the finding necessary to support the calling of Board witnesses.

That is particularly true where the witnesses would not be independent consultants, as is normally the case, but representatives of the Staff, which is an adversary party in this case. To allow an adversary to present its views in this manner

would seriously prejudice the rights of parties whose positions are different from either the Staff's ultimate position in the case or the position taken in any such testimony.

In the conference call this morning, Judge Smith suggested that there may be distinctions between this case and others that might justify a Board decision to call Staff witnesses on its own motion despite the adversary nature of the Staff's position. To the extent that the Board would need further information to reach the independent determination that it must make in this case, this proposition may be correct. Of course, the Board would be obligated to seek balanced information either from independent parties or from parties both opposed to and supporting restart, rather than from only one of the adversaries.

Regardless of whether, in some circumstances, the Board may call Staff members as its own witnesses, the fundamental principle remains that the Board may not do so unless "it is demonstrated beyond question that a board simply cannot otherwise reach an informed decision on the issue involved." South Carolina Electric and Gas Company, ALAB-663, 14 N.R.C. at 11. That point has not been reached in this case. Licensee itself indicates that it believes that the information that is has provided is sufficient to support a decision.

There is also nothing inherent in the distinction between this case and others that would justify the Board's calling its own witnesses when the position of the very party suggesting such witnesses indicates that the witnesses are not necessary to

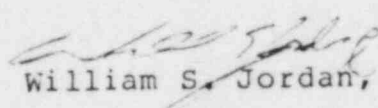
support a Board decision on the issues at hand. The only possible justification for calling Staff witnesses on issues on which they have long said they would not testify would be an explicit directive to that effect in ALAB-772, or some more generally applicable principle that the Staff should testify on all issues in all cases. There is no such explicit directive in ALAB-772. Indeed, the only explicit directive is that the Board hear the views of Licensee's outside consultants, ALAB-772, Slip. op. at 77, which is consistent with the scope of the Staff's testimony as it now stands. The Appeal Board gave no indication that there was any need for the Board to hear further from the Staff. There is also no general requirement that the Staff testify on all issues, nor is there any general principle requiring that Board decisions be supported by Staff testimony. Accordingly, there is nothing peculiar to this case that would justify calling Board witnesses when the well-established standard for doing so clearly is not met.

Finally, any decision to call Staff witnesses on new issues at this late date would grossly violate the due process rights of UCS and other intervenors unless they were given the discovery opportunities that they originally had in the case, but which had no need to pursue because the Staff had limited its testimony. Judge Smith expressed concern that intervenors might "mousetrap" the Licensee in arguments about the Staff's testimony. Permitting Staff witnesses to be called now on issues that the intervenors had no need to address with the Staff would be a far

more egregious mousetrapping. UCS has tailored its discovery and preparation in light of the Staff's consistent position and its response to discovery. Should the Staff be called to present its views on issues for which UCS had no reason to prepare, UCS would be entitled to further discovery. Thus, even if its proposal were not frivolous, Licensee's suggestion that it could be accommodated within the current schedule is incorrect.

Should the Board decide to call Staff members as Board witnesses or otherwise to require testimony on issues beyond what is covered in the Staff's testimony, UCS requests that the Board certify that decision to the Appeal Board for immediate review. This would be appropriate because such a decision would violate otherwise applicable principles and because it would seriously disrupt the parties' preparation for and participation in the remanded hearing on training issues.

Respectfully submitted,


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Dated: December 10, 1984

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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 copies of the UCS' OPPOSITION TO LICENSEE SUGGESTION FOR BOARD WITNESSES, were served on those indicated on the accompanying Service List. Service was made by deposit in The United States mail, first class, postage prepaid, on November 15, 1984, except those indicated by an asterisk were served by hand.


William S. Jordan, III

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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METROPOLITAN EDISON COMPANY)	Docket No. 50-289
)	(Restart Remand on
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Station, Unit No. 1))	
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* Hand Delivered