

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges:
Ivan W. Smith, Chairman
Dr. Walter H. Jordan
Dr. Linda W. Little



SERVED JUN 10 1981

In the Matter of)
METROPOLITAN EDISON COMPANY)
(Three Mile Island Nuclear)
Station, Unit 1))

Docket No. 50-289

(Restart)

June 9, 1981

CONFIRMATORY MEMORANDUM AND ORDER
ON RULINGS MADE AT JUNE 4, 1981 HEARING SESSION

For the reasons stated on the record of the June 4, 1981 hearing session, the board ruled on several pending motions, as follows:

1. The motion of UCS to require further evidence on the subject of PORV block valve testing was denied. (Tr. 21, 836-38).
2. The motions of Mr. Sholly to take official notice of various matters, including portions of NUREG-0667 and a review of the B&W ICS analysis, were denied. (Tr. 21, 838-40).
3. The motion of UCS to take official notice of the failure rates for diesel generators reported in WASH-1400 was denied. (Tr. 21, 840-41).

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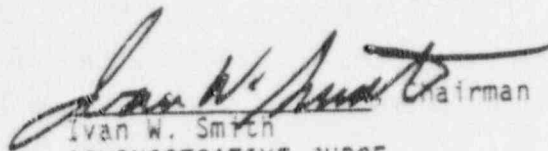


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In addition, the board admitted licensee's Restart Report, as amended through amendment number 25, into evidence as licensee exhibit 1. Due to the fact that the Restart Report had been recently amended, its admission into evidence was made subject to a timely objection or other request for relief. (Tr. 21, 830-35). Any such motions received by the Chairman after June 19, 1981 will be untimely. The timeliness of motions received by June 19 will be determined on an individual basis.

Copies of the transcript pages referenced above, Tr. 21, 830-41, are attached for the convenience of the parties.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Ivan W. Smith, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland
June 9, 1981

1 MR. ZAHLER: Other item on my list was putting
2 the Licensee's Restart Report into evidence.

3 MR. TROWBRIDGE: Mr. Chairman, we have the three
4 copies of the Restart Report, four volumes each in boxes in
5 the other room. They have been updated through the last and
6 final amendment, Amendment 25. We could dump them on the
7 reporter if she is able to handle them. If necessary, we
8 might go off the record and determine some other way of
9 delivering them.

10 CHAIRMAN SMITH: Of course the one in the hearing
11 room is a loaner copy from the licensee. We don't know if
12 that one is up to date or not. I doubt if it is.

13 MR. TROWBRIDGE: My understanding is that it does
14 not have either Amendment 24 or 25 yet.

15 CHAIRMAN SMITH: Nor does our copy in Bethesda.
16 Therefore, it would be helpful if one of those three, if we
17 could take it and be responsible for delivering it to the
18 Secretary when we finish it. So if you could deliver one o
19 the three.

20 You probably don't have a lot of those, do you?

21 MR. TROWBRIDGE: Just three copy of the Restart
22 Report in the other room which have been completed with the
23 new amendments put in and checked.

24 Your request is for an additional copy?

25 CHAIRMAN SMITH: Well, our request is either if

1 you have an additional copy, yes, it would be helpful. If
2 you do not have an additional, then if you could deliver one
3 of the three official exhibits to the Board for its use
4 during the decision and we would then return it to the
5 Commission, the Secretary, when we are completed with it.

6 MR. TROWBRIDGE: That is fine.

7 CHAIRMAN SMITH: The other two with coordination
8 with the reporter can be delivered to the Secretary.

9 CHAIRMAN SMITH: Let's do that. We will return
10 this one now, constructively as of now, and then if you
11 could follow that procedure, give one of the updated ones to
12 us. Dr. Little has one completed through 24. 25, as I
13 recall, is rather substantial, isn't it?

14 MR. TROWBRIDGE: Yes.

15 CHAIRMAN SMITH: I think it would be very helpful
16 if we could have one that we know to be complete and
17 accurate.

18 MR. TROWBRIDGE: I take it the Board has received
19 it in evidence.

20 MR. ADLER: Mr. Chairman, I have a couple of
21 comments to make on that. The Commonwealth of course
22 doesn't object to the Restart Report being introduced into
23 evidence. However, the Board is aware that it is a very
24 difficult document to keep up with all the information.
25 Amendments 24 and 25 have come very, very recently,

1 particularly Amendment 25. I know that Mr. Dornisife has not
2 had an opportunity to review Amendment 25.

3 In addition, I would point out that the Restart
4 Report affects probably every party and every issue in the
5 proceeding and many of the parties aren't here to object to
6 any new information that might be in Amendments 24 and 25.

7 So what I would propose is that we have perhaps
8 two weeks, that the Restart Report be introduced
9 conditionally and that the parties can file any written
10 comments or objections within that time period.

11 MR. TROWBRIDGE: Mr. Chairman, I think this falls
12 in the same category as the staff's Safety Evaluation
13 Reports or as the PSAR or FSAR would in the normal operating
14 license proceeding. That is, I think it is sufficient that
15 the Restate Report was prepared, was sent in under I believe
16 under oath and affidavit of the officials of the company and
17 that it belongs in evidence.

18 Now, like the SERs, if a party makes out a case
19 that this calls for reopening of the proceeding in some way,
20 that is always fair game. It shouldn't happen here because
21 the Restart Report really is a compilation of amendments to
22 it or a compilation of the commitments we have made to the
23 staff which are now reflected in SERs and testimony, but I
24 won't rule out the possibility that there is something to be
25 regarded as new material but I think it should go into

1 evidence.

2 CHAIRMAN SMITH: Well, I don't think there is an
3 objection to that. A motion to reopen a record normally
4 would require a larger showing than the request made by Mr.
5 Adler. Perhaps when we consider what the circumstances were
6 of Amendment 25 it might be that that showing is not so
7 great that there is no practical difference.

8 So I think the better approach is to receive it
9 into evidence, but a motion to reopen the record would have
10 to be judged upon the normal standards of timeliness. These
11 things cannot be weighted so accurately that I can't see
12 which is the prejudicial or which is nonprejudicial.

13 So it is received.

14 (The amended 4 Volumes of the
15 Licensee's Restart Report,
16 previously identified as
17 Licensee Exhibit No. 1, were
18 received into evidence.)

19 MR. ZAHLER: Mr. Chairman, I don't have anything
20 else on my list but for scheduling and some matters that
21 fall out of scheduling.

22 CHAIRMAN SMITH: Did you say you have 14 items. I
23 am only down to 11.

24 MR. ZAHLER: I think I said I had 13. One is
25 scheduling and there are two matters that are so

1 intrinsically wound up with scheduling that it doesn't pay
2 to discuss them unless we discuss scheduling.

3 CHAIRMAN SMITH: The Restart Report has already
4 been identified as Licensee Exhibit 1 at transcript 2,881.

5 Well, is it the pleasure of the parties to try to
6 wind up our business this evening?

7 MR. TROWBRIDGE: That would be our preference.

8 MS. GAIL BRADFORD: Yes.

9 MS. STRAUBE: Yes, sir.

10 CHAIRMAN SMITH: Everyone's.

11 MR. TROWBRIDGE: Could I ask the Board, is it the
12 Board's intention today to rule on the adequacy of the EIR?

13 CHAIRMAN SMITH: No. We do have some other
14 pending motions, however, that we want to rule on orally.

15 So let's take a 15-minute break and then we will
16 come back and talk about scheduling and clean up our other
17 motions.

18 (Whereupon, a recess was taken.)

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1 CHAIRMAN SMITH: We have some miscellaneous
2 matters to clear up. The Board is reconsidering its ruling
3 on licensee's Exhibit 1 because of the unnecessary
4 complexity to address the issues which have to be addressed
5 in a motion to reopen the evidentiary record, and because it
6 is not necessary to rule in that fashion. We are going to
7 receive in evidence, subject to a timely opportunity of any
8 party to ask for relief.

9 MR. TROWBRIDGE: Understood.

10 CHAIRMAN SMITH: It is a procedural problem, and
11 it will save a lot of writing.

12 (The document referred to,
13 previously marked for identi-
14 fication as Licensee's
15 Exhibit No. 1, was received
16 in evidence.)

17 CHAIRMAN SMITH: If you recall, on May 15, from
18 transcript pages 21,641 to 21,677, I served variously in the
19 absence of Dr. Little and Dr. Jordan as Special Master, and
20 also as the Chairman of the Board presiding, ruling on the
21 record when the Board is not in session.

22 I have read those transcript pages, and I have
23 recommended to the other two members of the Board that they
24 accurately reflect the evidence received, and I recommended
25 that the rulings that I made be adopted by the Board. The

1 Board now accepts those transcript pages as the record of
2 this proceeding, with the exception that Dr. Little wants to
3 know who Mr. Bennett was here on page 21,664. So we will
4 correct that transcript to show that it was Mr. Brenner who
5 was here, and not Mr. Bennett. Mr. Brenner was noted as
6 being Mr. Bennett.

7 The block valve motions, we are denying the Union
8 of Concerned Scientists' motion based upon three
9 considerations. One is the letter from Mr. Baxter that the
10 restart test planning specification indicates that the block
11 valve will be cycled with the PORV opened to confirm its
12 ability to close against flow, as he points that there is no
13 intent to pass solid water, or two-phased steam.
14 Another consideration is the evidentiary record which
15 reflects the role of the PORV and the block valve.

16 The third consideration is that it seems to be the
17 understanding of the parties that the test program is
18 beginning, and we see no value in pursuing the matter in an
19 evidentiary record right now. However, it is possible that
20 when we consider the issue on the merits, after we
21 considered the proposed findings, considered the function of
22 the PORV and the block valve, that we might, in our initial
23 decision or before, probably in our initial decision,
24 recommend to the Commission that the Commission direct the
25 staff to report to the Commission concerning the results of

1 tests which would be relevant to this proceeding.

2 As I say, this is a tentative ruling, but the
3 Board does have concerns about the issue. We just now
4 believe that for the three considerations that we named that
5 they will be resolved in the evidentiary record at this
6 time.

7 MR. ADLER: Could you possibly repeat the first
8 ground, I did not catch all of it.

9 CHAIRMAN SMITH: There are three considerations
10 which lead us to conclude that we will not require evidence
11 to be presented on the issue now. You want those three
12 repeated?

13 MR. ADLER: Just the first.

14 CHAIRMAN SMITH: The first one is Mr. Baxter's
15 letter of June 1st, 1981, that the block valve will be
16 cycled with the PORV open to confirm its ability to close
17 against flow.

18 MR. ADLER: Thank you.

19 DR. LITTLE: It was one of my main concerns that
20 the block valve and PORV that is actually in the TMI I be
21 demonstrated that it will indeed operate. The motions that
22 were raised concerning the adequacy of the flow range tests,
23 and so on, were of less concern considerably than that they
24 might reflect on the safety of the actual valve that is
25 there, and we want to make sure that that block valve is

1 indeed test prior to restart.

2 CHAIRMAN SMITH: In sum, our ruling on it reflects
3 our belief now that the problem is one that can be shifted
4 from the short-term consideration to the long-term
5 consideration, particularly when you look at the three
6 considerations that we have listed.

7 Official notice -- We have Mr. Sholly's motion of
8 April 28, 1981, to take official notice on portions of
9 NUREG-0667, and a motion of May 1st, 1981, with respect to a
10 ORNL review of the B&W analysis of integrated control
11 system, in which he is largely concerned about a comparison
12 of drafts with the original.

13 The other item is the Palisades civil penalty
14 case, where it was alleged that there is an open valve, and
15 he wishes to official notice that tech specs can be violated
16 by human error resulting in defeat of containment
17 isolation.

18 This, I might note parenthetically because we
19 will not get to it in our ruling, I am the Administrative
20 Law Judge presiding over that case, and indeed that is a
21 very currently contested issue, whether the facts he wishes
22 officially noticed are, in fact, undisputed.

23 The third category is the NER status report on
24 feedwater transients in B&W plants. As we advised the
25 parties earlier, we are denying the motion for official

1 notice. The basic problem with Mr. Sholly's motion is that
2 it is opposed, and when this happens, for all practical
3 purposes, the requests for official notice become very
4 similar to any other offer of evidence.

5 We may officially notice scientific facts within
6 the knowledge of the Commission as an expert body, but in
7 those instances there must be a full opportunity to each
8 party adversely affected to controvert the fact. In this
9 instance, not only do we have a failure of opportunity to
10 controvert the facts, which were to be officially noticed,
11 but they are not limited to the category of scientific facts
12 within the knowledge of the Commission as an expert body.
13 There are many items of opinion, and there is a wide array
14 of data.

15 There is also the type of official notice that we
16 can take in our proceedings, which equivalent to judicial
17 notice that may be taken by United States Courts, and those
18 facts must be facts which are not subject to reasonable
19 dispute, and that they are generally known, or capable of
20 accurate and ready determination by sources the accuracy of
21 which cannot reasonably be questioned. Of course, in this
22 instance, the facts which Mr. Sholly would have us
23 officially notice are reasonably disputed.

24 Apparently, Mr. Sholly did not intend to pursue
25 the offer over objections, because he does not address

1 either standard, nor does he discuss any opportunity to
2 controvert the facts he would have us officially notice, nor
3 does he discuss the issue of timeliness.

4 I understand that when Mr. Sholly was informed of
5 this ruling, he said that he wanted to offer this evidence
6 nevertheless, and to have it in the rejected evidence file.
7 I presume that he will do that when he receives a copy of
8 our ruling.

9 The UCS motion will have to fail. The motion from
10 UCS relates to failure rates for diesel generators as
11 reported in WASH-1400. I don't have those papers. Did the
12 staff file a paper in opposition to that official notice, or
13 did you make it orally?

14 MR. TOURTELLOTTE: No, we have not yet filed a
15 response. I think a response is due actually sometime after
16 today, and what we intended to do was simply to try to state
17 our position orally here today.

18 CHAIRMAN SMITH: Do you oppose it?

19 MR. TOURTELLOTTE: We oppose it, and we oppose it
20 for basically the same legal reasons as stated in our Sholly
21 brief.

22 CHAIRMAN SMITH: Of course, the licensee does, and
23 that goes back to the same problem, whenever there is
24 opposition to a request to take official notice, you run
25 into traditional evidentiary problems which pertain to the

1 WASH-1400 study, and in large degree those facts are fairly
2 disputable, there is no opportunity to controvert them, they
3 are not facts which can be taken within the institutional
4 knowledge of the Commission. For that reason, we must deny
5 the motion to take official notice.

6 However, the Board thinks a note of caution might
7 be appropriate here. Dr. Jordan, you will recall, was
8 somewhat concerned about the testimony on the reliability of
9 diesel generators, and he cross-examined on WASH-1400.
10 There is a possibility that when we begin to read the
11 proposed findings on the issue, that we might find that we
12 might have difficulty in resolving the issue, or deciding the
13 issue.

14 We have no inclination that way, but we are just
15 going from our memory, from the testimony, and the
16 difficulty with the testimony. When we read the proposed
17 findings, perhaps our concerns will be resolved, but perhaps
18 they might not be.

19 Now we have the question of the thyroid.

20 DR. JORDAN: This has to do with the Board Order
21 of May 14th, and my calculation of the thyroid dose, which
22 we asked for responses. We have received responses from the
23 staff and from the licensee. The licensee agreed, except
24 for possibly the value of the energy of disintegration. I
25 have no grief with the particular value I used, and it makes