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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the matter of
Metropolitan Edison Company

(TMI Nuclear Station
Unit no. 1)

DOCKETED
85 OCT 16 AM 12
Docket No. 50-235
(Restart)

Marvin I. Lewis's Response to Licensee's Response
To the Petition for a New Leak Rate Contention.

On October 4, 1985, licensee responded to Petitioner. The response was received on Oct. 10 by petitioner. Petitioner responds to correct certain statements in the Licensee's response.

"This Board has no jurisdiction to consider Petitioner's contention."

Of course this Board has jurisdiction. Only a part of the Order that set up this Board has been lifted with the Commission Order at CLI 85 -9, 21 NRC 1118 (1985.) That order did not disband this Board or eliminate its power to consider new evidence. The "Hearings on leak rate practices are not warranted" referred only to those leak rate hearings that were in progress or had been heard. The Commission, no matter how strong its powers, had never to my knowledge, attested to powers of clairvoyance. Therefore, the Commission properly was referring only to those hearings that it had knowledge of and not to all future hearings and especially those that were based on new evidence not before the Commissioners at the time of the order.

Therefore this Board does rightfully have the power and the duty to consider any new evidence that directly affects its remaining mandates as does this new leak rate contention.

Although true that Petitioner lives 90 some miles from TMI, petitioner was and is an intervenor. Radiation from the TMI accident was tracked much more than 90 miles from the scene. A major accident at TMI would affect the petitioner directly in his pocketbook and in his personal life. Petitioner has many friends and acquaintances that live in the TMI area as well as financial interests. Exclusion on the basis of some inconsistent standard for standing after petitioner has intervened successfully and said intervention has benefitted the record of this case would be a gross miscarriage of justice and administrative law.

Please remember that the Licensee and the Staff were required to repair the Radioactive waste gas manifold which was a major part of the Lewis Contention. My participation was not frivolous or trivial. The repair of the waste gas manifold does add some assurance to the safety of the public in the case of another similar accident at TMI. I respectfully point out that this contention is not frivolous or trivial. The matter of which I wish to contend directly affects the health and safety of the public, and there is no one else contending this issue.

Petitioner does not believe that the record has been closed on the present hearings. However to assure that all standards are met, Petitioner herewith argues that this contention meets the standards for reopening the record :

(1)timeliness, (2)safety of environmental significance, and (3) likelihood of changing the result. See , Kansas Gas and Electric Co. Wolf Creek Generating Station Unit no .1) AIA B 462 , 7 NRC 320, 337-39(1978).

a. Timeliness: This contention is based upon a Proposed Rule where the Comment Period has only expired on Sep 2, 1985. This proposed rule will affect the means that GDC 4 is regulated. The means will depend upon the measurement of the leak rate. Errors in the measurement of the leak rate at TMI were just let out to public knowledge on a memorandum from Ebnetor to Thompson both of the NRC dated Sep 6, 1985. My Petition was filed on Sep, 18, 1985. Intervenor's petition was filed within 12 days of the information becoming public knowledge and within two days of the receipt in the intervenor/petitioner's hands.

Petitioner has only his own typewriter. There is no outside typing help. Petitioner cannot imagine how to get more timely save to call each Board member by phone and petitioner really does not have that kind of money to spare.

b. Safety of environmental significance. This petition deals directly with GDC4 and the surveillance technique to minimise the possibility of a double ended guillotine pipe break. A double ended guillotining pipe break can and is a loss of coolant accident that can cause the deaths of up to 100,000 people. (Sandia National Labs Consequence Report) (Washington Post 11-1-82) Petitioner cannot imagine a greater environmental safety significance than the deaths of 100,000 people. 100,000 is far greater than the deaths allowed (13000) in the Commission's Severe Accident Policy Statement.

c. Likelihood of changing the result: Obviously if the Board finds that the present leak rate method of measurement would endanger 100,000 people's lives, any reasonable Board would do something. The relief could range from changing the Licensee's reliance on leak rate determination of piping soundness to closing down the reactor for a period of time until the present leak rate measurement situation is adjusted. From the clear evidence, the present situation is endangering the safety of the public and relief is needed immediately. Petitioner strongly recommends that and seeks the stop of operation of TMI#1 until this present petition is settled.

Although this is not a late filed contention as it is based upon evidence that has only just come out into the public view, petitioner argues that this contention nonetheless meets the criteria for admitting a latefiled contention.

a. Good Cause: The evidence that this petition was based upon was not available previously.

b. Other means to protect petitioner's interest. Statements in the submitted evidence show that the very leak rate measurement procedures and use are presently being performed at TMI with the acquiescence of the NRC. Relief is sought immediately before we wind up with a LOCA that kills 100,000 people.

c. Petitioner has a track record with this Board where his participation has been beneficial to the record and results. (Lewis Contention.) Petitioner is also the only person who had the wherewithal to bring this most important matter up to the Board for Consideration. Petitioner is a Registered Professional Engineer with knowledge in this area. Petitioner can more than reasonably be expected to assist in the development of a sound record.

d.

d. There are no existing parties which can represent the petitioner's interest. Petitioner would be most happy if any of the present parties would assume or join the petitioner in his contention. Petitioner's contention concerns the technical aspects of the use of the leak rate determination. All other parties have concentrated upon the criminal aspects and the regulatory aspects of management integrity of lack of it in the leak rate determinations and not the technical use of the leak rate to protect the health and safety of the public.

e. Petitioner does not plan to broaden any issue unnecessarily. Petitioner does not plan to delay the proceedings. In fact it is to Petitioner's benefit to speed the proceedings to a proper conclusion that would assure the health and safety of the public. The issue of leak rate is and has been before the Board. The only part of the leak rate that petitioner seeks to litigate is that part that has been missed and carries great significance to the health and safety of the public. If the record is closed without examining essential and important parts, the record is flawed and cannot stand and will be most easily reopened. Reopening a flawed record will only cause more delay than hearing a pertinent and necessary contention at this point.

Conclusion

For the reasons stated above, the Atomic Safety and Licensing Board should find that the litigation of the new leak rate contention is in the best interest of all concerned and speedily call a prehearing conference upon this new leak rate contention.

A PERSONAL REQUEST TO THE BOARD FROM THE PETITIONER.

Your Honors:

Statements in GEND INF 1047, the mass balance done by EG&G suggest that some of the core has been pumped from Unit II to Unit I and even been loosed into the environment. Petitioner is presently investigating this aspect as part of a contention to be filed concerning the clean up of Unit II.

However if some of the melted and degraded core has been transferred from Unit II to Unit I, this core can affect you directly. Most obviously, some of the degraded core could have gotten out into the environment. Some of the degraded core could have gotten into Unit I, and changed the characteristics of Unit I. Either way, the operation of Unit I and even being in the vicinity of Unit I endangers us all.

I respectfully suggest that the hearings on this contention, if allowed, be performed in Harrisburg proper or at least outside of the exclusion area of Unit I.

Respectfully Submitted,

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Re: Staff's Response just arrived. 10-11-85 3PM.

I have no objection to the Board asking the Commission. Otherwise I disagree with Staff. This will be sent to everyone on the distribution list. First class mail.

I do not agree that I do not have standing. I do. Radiation from the TMI accident reached Philadelphia. I sure do have some interest. Also I have met the requirements for reopening a record and a latefiled petition for a contention as stated above.

Lee H Bettenhausen is wrong that there is no safety significance and I would like to get him under X examination. He appears to have no knowledge of the proposed Rule about the LBB concept that I included in my petition. I don't know how he can ignore that and expect that his affidavit will have any force as his affidavit does not answer the specifics of my petition.

In fact the TMI#2 was able to operate out of spec despite the other leakage detection systems that Mr Bettenhausen says can be relied upon.