

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

October 15, 1979

Ivan W. Smith, Chairman  
Dr. Walter H. Jordan  
Dr. Linda W. Little

In the Matter of  
METROPOLITAN EDISON COMPANY  
(Three Mile Island Nuclear  
Station, Unit No. 1)

Docket No. 50-289  
(Restart)



MEMORANDUM AND ORDER

By motion dated September 27, 1979 and supplements dated September 28 and 29, Chesapeake Energy Alliance (CEA) moves that the board's memorandum and order of September 21 setting the special prehearing conference be modified in several respects. The NRC staff and the licensee oppose the motion.

CEA's principal request is that the schedule in the board's order of September 21 be set back approximately two months to provide more time for petitioners to prepare contentions and to become informed on the procedural and technical aspects of this proceeding. CEA also requests that certain activities not contemplated by the board's order be added to the schedule.

CEA's request to delay the prehearing schedule is denied for the general reasons that the schedule in the board's order

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closely parallels the schedule recommended by the Commission in its Order and Notice of Hearing of August 9. No major circumstance is identified by CEA which was not known to the Commission when it issued its order. Additionally, this board, independent of the Commission's recommendations, believes that the schedule is reasonable. Nevertheless, the board is sympathetic to many of CEA's concerns, and we have considered each of its points.

We recognize, as CEA's representative states, that the alliance may not be familiar with NRC procedures, it may be limited in the time available to prepare for the proceeding and it may be limited in resources. Other petitioners doubtless have similar problems. To the extent permissible under the Commission's rules, and consistent with due process to all parties, the board will take these disadvantages into account as the proceeding moves along.

CEA may be unaware that, although the intervention rules and the board's order requires contentions to be filed before the special prehearing conference, NRC practice and other provisions of the rules provide that, for good cause, contentions can be later modified and new contentions may be added. The board will continue to hear arguments concerning the issues during the special prehearing conference now scheduled and during the prehearing conference following

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discovery. 10 CFR §2.751a and §2.752(c). Typically good cause may be found for adding or modifying contentions where information not previously available, but important to the proper resolution of the proceeding, later becomes available.

The fact that the Presidential Commission (Kemeny Commission) to Study the Three Mile Island Accident is due to report in October was considered by the board and known to the Commission when the schedules were established. If the Kemeny Commission report requires added contentions or other changes, the board will entertain appropriate motions and will itself consider the effect of the report upon this proceeding. In the meantime, anticipating that the Kemeny Commission report will contain information bearing upon this proceeding the board requests the NRC staff to give a high priority to providing petitioners and participating Commonwealth agencies with copies of the report promptly. If the full report is not timely available for distribution, the staff should consider providing copies of any executive summary.

CEA complains that copies of NUREG-0578, TMI-2 Lessons Learned Task Force Status Report, was not mailed to it by the staff with other materials intended to aid petitioners. We now understand that copies have since become available and sent to petitioners. But, in any event, NUREG-0578 was referred to in the Commission's Order and Notice of Hearing of

August 9 which was published August 15. Interested persons were notified that copies of the document were available for inspection in document rooms in Harrisburg and Washington, D.C., the latter location being within 45 miles of CEA's Baltimore headquarters. It may not have been convenient for any member of CEA to examine NUREG-0578 in a public document room, but we may not delay the proceeding on that account. Intervenors assume a responsibility to be productive parties to the proceeding. A strong effort to become informed on the issues as to which they seek to intervene may be a part of that responsibility.

In addition to NUREG-0578, the staff provided to petitioners copies of the I&E report of its TMI investigation (NUREG-0600), the NRC Staff Practice and Procedure Digest (NUREG-0386) and Parts 2, 20, 50 and 51 of the NRC regulations. Apparently the licensee sent petitioners a 100 page document referring to recommended requirements for the restart of TMI-1. CEA points to the length and complexity of these documents in its request for more time. CEA also requests an order requiring ready access to consultation with NRC staff members or other qualified persons, and requests that seminars be held to brief the parties on the staff documents.

We have not seen the licensee's document, but as to those sent by the staff we agree that some are lengthy. Much

of the material is technical, and it may be difficult for an inexperienced intervenor to master it all. The staff was not literally required to provide this material, nor was the licensee, although in a larger sense it can be said that to do so is a part of their overall responsibilities.

We have no easy answer to CEA's complaint. Much of the material yet to be produced in this proceeding will also be very technical. If each effort by the staff or the licensee to provide information to intervenors and to assure a complete public record is met by an order delaying the proceeding to meet the particular needs of an individual intervenor, the result may be to constrict the flow of information or unduly to prolong the proceeding. The public interest lies in encouraging a full disclosure of the underlying facts in a reasonably expeditious proceeding. Therefore we will not order a delay as a result of the staff's efforts to assist and the licensee's efforts to inform.

As the petitioners are now aware, the NRC staff, pursuant to its traditional practice and the board's order, is conducting negotiating and clarifying sessions with petitioners. The staff has committed itself to comply with the Commission's order to assure participants informal access to NRC staff considerations of the issues and to honor all reasonable requests for information on the Staff's position.<sup>1/</sup> The staff has not

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<sup>1/</sup> Staff response to CEA's motion, p. 7.

expressly agreed to provide counseling on NRC adjudicative procedures, but this may be an oversight. In other proceedings we have observed that legal counsel for the staff has provided information concerning NRC practice in response to specific questions. We urge the staff to continue this practice.<sup>2/</sup>

The board denies CEA's motion to order general instructional seminars as impractical and unnecessary. After it has reviewed materials available to it in light of its own special interest and contentions, CEA may make specific requests for advice from the staff. and at the special prehearing conference the board will also attempt to assist all petitioners concerning the procedures in this hearing.

In a rather complex paragraph, (Motion, p. 6) CEA moves for an order which, as we understand it, would require the NRC staff to evaluate the lack of intervenor resources as it affects their respective abilities to present their interests in the proceeding. If the proceedings are found to be adversely affected and if the intervenor's effectiveness is deemed diminished as a result of inadequate resources, CEA would require

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<sup>2/</sup> In fact we have observed the staff assist intervenors in drafting contentions in appropriate language even when the staff disagrees with the merits and suitability of the contentions. In the order of September 21 the staff was assigned the primary responsibility for negotiating both the suitability and the form of contentions.



a mechanism to offset this effect and disadvantage. CEA alludes to its lack of full-time staff, qualified legal counsel, technical expertise, clerical staff, and adequate photocopying equipment.

The board views this portion of CEA's motion to be an indirect request for intervenor funding. This is also the view of the NRC staff and licensee who oppose financial assistance to intervenors on the basis that it is contrary to expressed Commission policy. Staff and licensee are correct. The Commission on November 12, 1976 issued a "Statement of Considerations Terminating Rulemaking" on the possibility of financial assistance to participants in Commission proceedings. CLI-76-23; 4 NRC 494, 504-06. The Commission determined that a funding program is, in general, not appropriate at this time.

In holding open the possibility of funding on issues of psychological distress, the Commission exercised its discretion to consider an exception on that issue. By that exception, the Commission indicated that it had considered general financial assistance to intervenors but decided not to consider funding on all issues. Therefore the board denies CEA's request for a study of the need for funding because we are without authority to grant any funding.<sup>3/</sup>

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<sup>3/</sup> Several other petitioners including Mr. Sholly, Mr. Lewis and ECNP have requested intervenor funding. This order is dispositive of their requests. By motion dated October 5, 1979 Anti-Nuclear Group Representing York (ANGRY) moves the board to certify to the Commission the question of financial assistance to all intervenors regardless of issue. We will rule on ANGRY's motion in due course.

Despite the fact that the board must decline requests for intervenor funding, we believe that some authority remains to provide for certain assistance to intervenors where the purpose and effect is to avoid delay and to contribute to the efficient and orderly conduct of the proceeding.

Even though the regulations require that parties follow certain procedures and file a stated number of copies of documents when serving motions and other papers, it is rare, if ever, that intervenors lose on important issues or are dismissed from proceedings solely because of a technical failure to comply with the filing rules. What happens is that the board, staff counsel, or counsel for the utility somehow belatedly learns that a paper has been filed but not correctly served. The result is confusion, delay and wasted resources. Sometimes orders are issued in the mistaken belief that a party has no position on the matter and that error must then be corrected.

Therefore this board will explore means by which a reliable and affordable system of duplication of papers, filing, and other communication methods can be established. Under the assumption that the licensee has the greatest interest in avoiding delay in the proceeding the board will call upon counsel for licensee to address the problem and to propose solutions at the special prehearing conference. The board will also request counsel for NRC staff to comment upon whether it

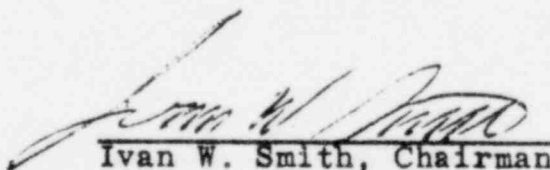


is practical and appropriate to make available a disinterested member of the staff of the Office of the Executive Legal Director to intervenors to answer procedural questions. This assistance would not be for the purpose of helping intervenors to prevail on issues in controversy but to assist the board in exercising its responsibilities under 10 CFR §2.718 and §2.756, and to respond to the Commission's expectation that the board will conduct the proceeding expeditiously. Order and Notice of Hearing, p. 10.

CEA requests that all petitioners be provided copies of all other petitioners' petitions and draft contentions so that they may discuss consolidation. On October 11 the board clerk mailed these filings to all petitioners and Commonwealth agencies.

CEA moves for an order permitting further modification of the board's order of September 21 if required in the public interest. Such an order is unnecessary and would be ineffective. Motions should be made for a specific purpose in the context of the asserted need for the relief sought. By the same reasoning we deny CEA's motion to provide now for later extensions of time.

THE ATOMIC SAFETY AND  
LICENSING BOARD

  
Ivan W. Smith, Chairman

Dated at Bethesda, Maryland

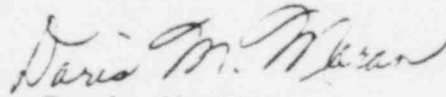
this 15th day of October, 1979.

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COURTESY NOTIFICATION

This is intended solely as a courtesy and convenience to provide extra time to those notified. Official service will be separate from the courtesy notification and will be made by the Office of the Secretary of the Commission.

I hereby certify that I have today mailed copies of the Board's MEMORANDUM AND ORDER, dated this date, to the persons designated on the attached Courtesy Notification List.



Doris M. Moran  
Clerk to the Board

Dated:  
October 15, 1979

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