

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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



In the Matter of)	
)	
METROPOLITAN EDISON COMPANY)	Docket No. 50-289
)	(Restart)
)	
(Three Mile Island Nuclear)	
Station, Unit No. 1))	

MEMORANDUM ON THE NEED FOR PREPARING A FINAL
ENVIRONMENTAL STATEMENT PRIOR TO RESTART OF TMI-1
(March 12, 1980)

In this proceeding, several intervenors in their proposed contentions and the supporting briefs have urged requirement of a Final Environmental Statement (FES) prior to restart of TMI-1.^{1/} Subsequent to the initial requests for an FES, the NRC staff announced that it would prepare an environmental impact appraisal (EIA) in connection with the proposed restart. If the staff's analysis indicates significant environmental impacts, the staff would then issue an environmental impact statement (EIS) or a supplement to the earlier statement. Tr. 373.

^{1/} An FES is the term employed in NRC practice for the final environmental impact statement (EIS) prepared pursuant to section 102(2)(C) of the National Environmental Policy Act, (NEPA, 42 U.S.C. §4332(C)). Presumably the intervenors are advocating that the EIS process contemplated by NEPA and implemented by 10 CFR Part 51 of the Commission's regulations be followed. This would involve issuance of a draft EIS, and following a period for comments by governmental agencies and members of the public, issuance of a final EIS. It is likely that if an EIS is prepared it could be in the form of draft and final supplements to the FES previously issued by the Atomic Energy Commission in December 1972 in connection with, inter alia, the issuance of an operating license for TMI-1.

The EIA is defined by 10 CFR §51.2 as "a document which provides the basis for a negative declaration," while a negative declaration is defined as "a statement that the Commission has determined not to prepare an environmental impact statement for a particular action." In practice, however, the preparation of a proposed EIA permits the staff to determine whether an EIS is required. Tr. 374, 10 CFR 51.5.

The NRC staff is the Commission's component which, at least in the first instance, is responsible for determining whether or not an EIS is required. Should it decide that an EIS is not required, it will make available for public inspection the EIA setting forth the basis for that determination. Until the staff has issued an EIA or EIS we will take no action on whether an EIS is required.

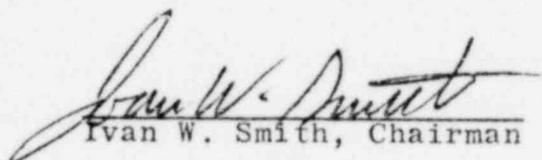
While we do not reach the question today, the board wishes to make it known early in the proceeding that we have strong doubts that the Commission, in providing for this hearing as an exercise of its discretion, intended to include the question of the need for and content of an EIS as part of this board's mandate. The Commission's Order and Notice of Hearing, CLI-79-8, 10 NRC 141 (August 9, 1979), includes both general concerns and specific issues for the short-term (prior to restart) and the long-term. None of these issues and concerns either expressly or by implication indicate that this board should examine

whether an EIS is required. Indeed, the proposed schedule for the hearing attached to the Commission's Notice of Hearing (10 NRC at 152) makes no provision for the issuance of an EIA, draft EIS or final EIS. This board's jurisdiction and power is limited to that conferred upon it by the Commission's Order and Notice of Hearing of August 9, 1979 as it may be amended by subsequent rulings of the Commission. Carolina Power and Light Co. (Shearon Harris, Units 1, 2, 3 and 4), ALAB-577, 11 NRC _____, slip op. at 13 (January 29, 1980); Public Service Co. of Indiana (Marble Hill, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976); Consumers Power Co. (Midland, Units 1 and 2), ALAB-235, 8 AEC 645, 646 (1974).

This proceeding is of a special, if not unique, nature. The Commission has chosen to involve itself in this proceeding in an extraordinarily direct fashion at the outset (in setting forth the scope of the proceeding), and in the ongoing proceeding (through directed certification of the psychological stress issue), and at the end (in reviewing directly the board's decision). In such circumstances, this board will be particularly chary of exercising dominion over the broad and time consuming issues relevant to the need for and scope of an EIS in the absence of some clear indication that the Commission has invited us to do so.

In the related circumstances of the Commission's heavy involvement in regulating the activities related to the TMI-2 clean-up and restoration work, it has had no difficulty in clearly mandating the preparation of both individual and programmatic environmental impact appraisals and statements. See Commission Statement of Policy and Notice of Intent to Prepare a Programmatic Environmental Impact Statement, November 21, 1979; 44 Fed. Reg. 67738 (November 27, 1979); Metropolitan Edison Co. (Three Mile Island, Unit 2), Commission Memorandum and Order, October 16, 1979. This comparison makes the Commission's silence on the requirement for an EIA or EIS in our proceeding particularly noteworthy.

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Ivan W. Smith, Chairman

Bethesda, Maryland

March 12, 1980.