

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

THE ATOMIC SAFETY AND LICENSING BOARD

Mr. John F. Wolf, Chairman
Dr. Oscar H. Paris, Member
Mr. Frederick J. Shon, Member



In the Matter of)
METROPOLITAN EDISON CO. ET AL.) Docket No. 50-320-OLA
(Three Mile Island Nuclear Station,)
Unit 2) (July 15, 1980)

MEMORANDUM AND ORDER

Pursuant to an order dated May 23, 1980, a special prehearing conference was held, beginning at 2 p.m., Monday, July 7, 1980 in the above entitled matter in Courtroom No. 2, U.S. Federal Building and Courthouse at Third and Walnut Streets, Harrisburg, Pennsylvania.

The hearing's purpose was to consider preliminary matters such as standing, contentions and a schedule for hearings. The hearings will focus on changes in the technical specifications of TMI-2 operating license ordered by the Director, Office of Nuclear Reactor Regulation (45 Fed. Reg. 11282, February 20, 1980.)

Discussions were had, during the prehearing conference, regarding the standing of several petitioners to intervene and the acceptability of certain contentions as well as the possibility of consolidating others.

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It was announced during the hearing that the motion of the Commonwealth of Pennsylvania to be admitted to these proceedings as an interested State was granted. (7/7/80 Tr. 7) Counsel for the Commonwealth will advise the Board at a later hearing the issues it will be interested in and whether or not it will engage in cross-examination when those issues are raised.

Other than the action taken in regard to admitting the Commonwealth of Pennsylvania as an interested state, the Board held in abeyance any decision regarding standing and the acceptability of the various contentions. It is understood that the parties expect to meet on Friday, July 11, 1980 to seek agreement on standing and contention matters as well as acceptable dates for further hearings. The results of that meeting are to be communicated to this Board.

In its "Supplement to Request for Hearing by the Environmental Coalition on Nuclear Power" under paragraph II it was stated: ECNP moves that all issues in contention in this proceeding be considered within the context of the set of clean-up options that will pertain at TMI-2 during "recovery" operations. ECNP requests that this issue be certified to the Commissioners since we assert that it differs significantly from the dictum in the Commissioners May 13, 1980 Order which stated that:

"Any hearings held should focus on the changes to the technical specifications and not on the TMI Unit 2 cleanup or whether TMI 2 should be allowed to operate again."

After a discussion of the "motion" ECNP's representative Dr. Johnsrud stated that she would not withdraw the motion entirely but "would reserve any action on it pending a need as the proceeding goes forward." (7/7/80 Tr. 44) Without passing on merits of the motion, the Chairman ruled that she might do so.

The Venting Matter

In an order for temporary modification of license dated June 12, 1980 the Nuclear Regulatory Commission, citing 161b and 189a of the Atomic Energy Act of 1954, as amended, 10 CFR Section 2.204 and 50.54(b) of its regulations, amended section 2.1.2 of the Appendix B technical specification to permit a more rapid purge of Kr-85 from the containment atmosphere.

Part IV of the order provided as follows:

"The licensee or any person whose interest may be affected may within thirty days file a request for a hearing with respect to this order in accordance with the provisions of 10 CFR 2.714. In the event a hearing is held, the issues shall be: (1) whether the temporary technical specification modification imposed herewith (described in Part III above) is in the interest of the public health and safety; and (2) whether this order should be sustained. A request for a hearing will not stay the effectiveness of this order. In the event a hearing is held, it shall be consolidated with any hearing held in regard to Commission orders in this docket dated February 11, and May 12, 1980."

Subsequently three petitions for hearing were filed. A telephone conference call was held by the Board with representatives of the licensee, the Staff and three pro se petitioners on July 30, 1980. A second conference call was made on July 2, 1980 again with representatives of the licensee and staff but only two of the pro se petitioners. The missing pro se petitioner was Mary H. Douglas.

At the hearing in Harrisburg on July 8, 1980 in Courtroom No. 1, Public Utilities Commission, Commonwealth Avenue and North Street, Harrisburg, Pennsylvania only one pro se petitioner, Mr. Steven Sholly, appeared.

The representatives of the licensee, the Staff and Mr. Steven Sholly had come to the hearing prepared to offer evidence. However, at the outset of the hearing Mr. Sholly announced that he was withdrawing his motion for a temporary suspension of the TMI-2 containment venting pending a hearing. He said, inter alia:

***I do not feel that it would be useful of anybody's time or energy at this point to go forward with this motion. (7/8/80 Tr. 7)

I formally withdraw the motion at this point. (7/8/80 Tr. 9)

There were no objections by any of the parties present to Mr. Sholly's announced withdrawal.

In view of all the circumstances present, especially the fact that at least 50% of the venting had been completed as the Board was sitting on July 8, 1980 and a more rapid purge was at that time being put into effect, it was the Board's conclusion that no effective relief could be granted even if Mr. Sholly's motion for a temporary suspension proved meritorious. Accordingly Mr. Sholly's request to withdraw his motion was granted. Granting the request to withdraw is confirmed by this order.

Since petitioners Karen Lee Miller and Mary H. Douglas were not present at the Harrisburg conferences on either July 7, 1980, or July 8, 1980, it was clear that it would be necessary to dismiss both the Douglas and Miller petitions for failure to prosecute.

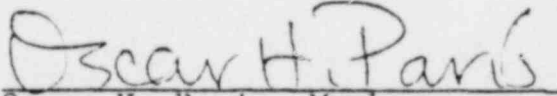
The Board in this order dismisses Karen Lee Miller petition for failure to prosecute. The petition of Mary H. Douglas is dismissed for failure to prosecute.

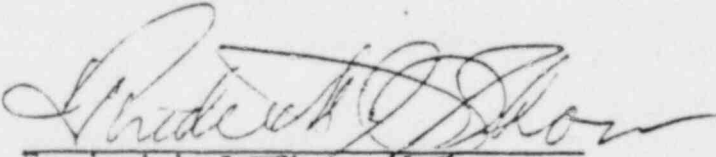
There being no issues for adjudication before the Board in the venting matter, the July 8, 1980 conference on said matter was discontinued since there was no basis for exercising the jurisdiction which the Commission had delegated to this Board

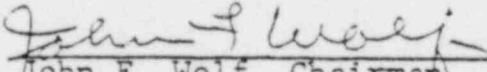
in the Nuclear Regulatory Commission's Order for Temporary
Modification of License.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Oscar H. Paris, Member


Frederick J. Shon, Member


John F. Wolf, Chairman

Dated at Bethesda, Maryland
this 15th day of July 1980.