

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  
(Three Mile Island Nuclear  
Station, Unit No. 1)

Docket No. 50-289 SP  
(Restart)

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SEP 18 1980

MEMORANDUM AND ORDER  
(September 17, 1980)

There have been substantial delays in this proceeding. In November 1979 the NRC staff predicted that its Safety Evaluation Report (SER) would issue in January 1980. Tr. 553. The SER, served June 16, 1980, remains incomplete in several large and essential areas: management capability and resources, financial qualifications, lessons learned Category A Items, and emergency planning. It is therefore not possible to schedule an evidentiary hearing on those issues.

On August 15 the staff confirmed its commitment to go to hearing in mid-October 1980 on issues and contentions pertaining to core cooling, equipment design and modification and separation of TMI-1 from TMI-2.<sup>1/</sup> Also on August 15 the board

<sup>1/</sup> Letter Cutchin to board, August 15, 1980, Tr. 2432.

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announced that the hearing would begin on October 15 on those issues and contentions. The board's order also provided that written testimony on these issues must be served no later than September 15. This scheduling (written testimony thirty days in advance of the hearing) has been discussed and approved by the parties, (e.g. staff's agreement on May 13 at Tr. 1870), and was made a part of the board's memorandum and order of May 22, 1980. The staff stated that it would be able to file written testimony by mid-September at the prehearing conference on August 13. Tr. 2431-32.

At mid-afternoon on September 15 the staff informed the board and the affected parties that it was able to file written direct testimonies on only ten of the thirty-one contentions or major subcontentions due that day; that testimonies on the remaining 21 contentions would be ready for filing in groups of eight each on September 25 and October 2, and five on November 30.

This latest failure by the staff to meet its schedule predictions has once again raised the board's concern that the Commission should be informed that the expeditious hearing anticipated in the August 9, 1979 Order and Notice of Hearing (10 NRC 141, 147) will not be realized.

At the prehearing conference on August 13 the staff reported that it will publish its SER supplements on management and lessons-learned Category A issues on about November 1,

(Tr. 2432, 2450) and on financial issues on about December 1. Tr. 2432. These were very uncertain estimates. Tr. 2432. Any confidence we may have had in these predictions has been shaken by the staff's inability to meet the September 15 deadline. The staff has not even made a prediction on emergency planning issues. Tr. 2407-21.

When it became apparent from the staff's report on August 13 that the staff would not soon be ready to proceed to hearing on management, financial, and emergency planning issues, the board, in very emphatic terms, advised the staff that the Commission is not receiving the information it deserves in this case, and that the Commission has a right to be informed that the proceeding is threatened with further delay. Tr. 2535-40.<sup>2/</sup> As far as the board can determine, the staff has made no such report to the Commission.

We have emphasized to the staff that it, rather than the board, should report to the Commission the reasons for the delays in its SER supplements because we understand that the problem is one of priorities. Counsel for the staff, with commendable candor, has conceded that the highest priority once

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<sup>2/</sup> We gave similar advice to the staff at the prehearing conference on May 13, 1980. Tr. 1815-16. In our memorandum and order of May 22, 1980 (p.11) on that conference we ruled that the staff must make a report to the Commission if uncertainty persists.

assigned to this proceeding by the staff has been displaced by the priorities assigned to other Commission proceedings, particularly those on short-term operating licenses. Tr. 2430, 2435-37.

The priorities for the allocation of staff resources among the various NRC responsibilities is a matter between the staff and the Commission. As the Appeal Board pointed out in Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 206-07 (1978), we cannot force the staff to file its papers on a set day, nor can we proceed to hearing without the staff. Although we can inquire into the reasons for delay, only the Commission has the power to rectify the situation if delay turns out to be unreasonable.

We had hoped that the staff would administratively (but publicly if possible) seek the Commission's guidance on its priorities. The Commission obviously had a very high priority in mind when it issued its August 9, 1979 hearing order and the schedule appended to it. The staff having failed to inform the Commission, it now becomes the board's responsibility to inquire into the possibility and extent of further delay in

this proceeding, and, if we believe the delay unreasonable, to report that fact to the Commission.<sup>3/</sup> Floating Nuclear, Id. at 207.

Therefore the staff is directed to report to the board the schedule it intends to follow in preparing for the remainder of this proceeding and the reasons for the schedule. The board, in directing the staff to report, assumes that the staff will in fact meet the schedule for filing testimony on contentions and issues on September 25, and October 2, as set forth in its September 15 Request for and Extension of Time to File Testimony. Testimonies filed on the September 25, and October 2 dates will not likely cause further delay and we do not require any further explanation for that scheduling.

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<sup>3/</sup> When informed during a telephone conference call that the board would require the staff to report the reasons for delay, staff counsel, on behalf of his clients, requested the opportunity to make a voluntary report to the Commission without a board order if the technical staff so elected. In view of the board's two earlier recommendations to the staff that it report to the Commission and in view of our announced intention to inform the Commission, we would not regard a staff report to the Commission now to be wholly voluntary. However, we continue to believe that the staff has an independent duty to inform the Commission of its change of priorities. The staff does not require leave of the board to report to the Commission on this subject. Such a report might satisfy our inquiry and, if possible, should be served in this proceeding.

Contrary to the board's informal ruling during the telephone conference call of September 16, however, the NRC staff should report more thoroughly on the reasons for the delay in filing testimony it now predicts for November 30.<sup>4/</sup>

A complete report on the staff expectations on emergency planning, management, financial and lessons-learned Category A issues shall also be made. If the reasons for delay over earlier predictions involve a change in staff priorities, an explanation of those priorities shall be made which shall include the standards employed for assigning the priority to this proceeding vis-a-vis other proceedings.

The board is also interested in an explanation from the technical staff as to why it could not have reported until the closing hours of the due date that it was unable to meet the September 15 filing date for written testimony. Counsel for the staff forewarned the board, licensee and UCS on September 11 that some testimony may not be filed on time, but counsel was unable to inform the board and the parties as to which testimony would be late until the afternoon of September 15. As counsel for staff recognized during the September 11 telephone conference, it was a matter of personal and professional

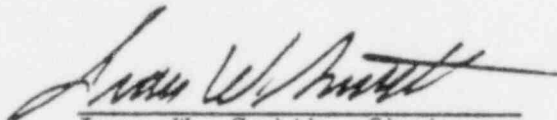
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<sup>4/</sup> Testimony on contentions, UCS-7, ANGRY-V(B), Sholly-6(b), Sholly 15, ANGRY V(C).

courtesy to provide timely warning to those affected that the deadline could not be met. As a result of the technical staff's failure, some intervenors, particularly UCS, needlessly rushed to complete testimony by the close of business on September 15. It would seem that the technical staff should have known days or even weeks before September 15 that the testimony it now schedules for, say, November 30 could not have been filed by September 15.

So that the preparation of this report will not in itself result in further delay, the report may be made as late as October 10, 1980. This arrangement was discussed with staff counsel during the September 16 conference call. In addition to the staff's written report, a representative of the technical staff fully informed on the report shall attend the opening session of the evidentiary hearings on October 15 to answer possible board questions.

THE ATOMIC SAFETY AND  
LICENSING BOARD

  
Ivan W. Smith, Chairman

Bethesda, Maryland  
September 17, 1980