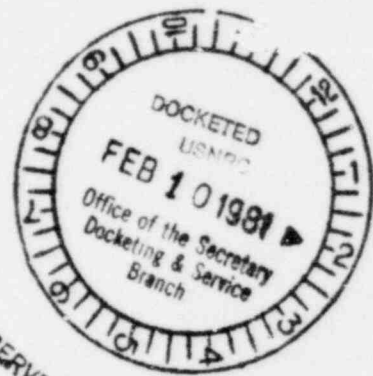




UNITED STATES
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD PANEL
WASHINGTON, D.C. 20555



Docket No. 50-289
(Restart)

February 9, 1981

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MEMORANDUM FOR: Chairman Ahearne
Commissioner Gilinsky
Commissioner Hendrie
Commissioner Bradford

FROM: TMI-1 Licensing Board

SUBJECT: TMI-1 RESTART - CHAIRMAN AHEARNE'S
MEMORANDUM OF JANUARY 22, 1981;
CHAIRMAN AHEARNE AND COMMISSIONER
HENDRIE'S MEMORANDUM OF JANUARY 28, 1981

This is a reply to Chairman Ahearne's memorandum of January 22, 1981 asking whether there are any actions the Commission could take which would expedite the hearing. We also reply to Chairman Ahearne and Commissioner Hendrie's January 28 memorandum requesting the best estimate of the future schedule of the proceeding. Both memoranda are attached.

The memoranda were discussed at a special session of the hearing held February 3 at Harrisburg. Tr. 11,290-11,431. Most of the parties attended. Bound into the transcript of that session are written comments by the Licensee (following Tr. 11,294 and Tr. 11,315), the Staff (following Tr. 11,339) and the Commonwealth of Pennsylvania (following Tr. 11,399).

Best Estimate of Schedule

Assuming no additional expedition of the hearing, the Board's best estimate of the schedule to the initial decision is:



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<u>Event</u>	<u>Date</u>
Hearing closes	About April 30
Proposed findings on plant modification and design issues	May 1
Replies to proposed findings on plant modification and design issues.	June 1
Proposed findings on all other issues and supplemental proposed findings on plant modification and design issues	June 1 or 30 days after hearing closes
Replies to proposed findings on other issues and replies to supplemental proposed findings on plant modification and design issues	July 1 or 60 days after hearing closes
Initial decision	September 1 or 120 days after close of the hearing

The Board depends upon the Licensee and the Staff for the estimate of the hearing schedule because party readiness, not the speed of the hearing process, may control. The Staff estimates that the hearing will close between April 15 and May 30. The Licensee estimates that the hearing will close late April. The schedule above accepts April 30 as the close of the hearing but, as we discuss below, there are uncertainties which may extend the hearing beyond that date.

The schedule for proposed findings (May 1) and reply findings (June 1) relating to plant modification and design issues has been agreed to by the Staff, Licensee and most of the affected Intervenors.^{1/} The Commonwealth of Pennsylvania indicates

^{1/} Union of Concerned Scientists points out, however, that their agreement to this schedule depends upon an early hearing on remaining plant modification and design issues.

that it may have difficulty in meeting these deadlines but expects that it will do so.

The 60 days allocated for the initial decision depends in part upon the quality of the proposed and reply findings.

The Board will adopt proposed findings substantially verbatim if they are complete, accurate, balanced and supported by the preponderance of the reliable, probative and substantial evidence of record. The Licensee predicts that the proposed findings and replies may be at least 2,000 pages in length.

Upon the Board's recommendation, the Staff and Licensee have agreed to submit joint proposed findings on procedural and background matters with notice to other parties. If they are complete and accurate we may adopt the proposed procedural findings in order to save decision-writing time.

To meet the schedule for the issuance of the initial decision, the Board must have professional writing assistance. Recently we lost the services of our legal clerk and advisor who had served with the Board since the beginning of the proceeding. We have requested his return to assist the Board until the initial decision issues.

Actions Which Would Expedite the Hearing

The Licensee does not recommend that the Commission decide open issues or that it now clarify policies. The Licensee may later propose that the Commission become involved in resolving a dispute between the Licensee and the Staff on the imposition of Near Term Operating License (NTOL) requirements or other pre-restart requirements not required by the August 9, 1979 Order and Notice of Hearing. For now, however, the Licensee would prefer to develop a more complete evidentiary record to permit the Board to have an opportunity to hear evidence and argument on the specific NTOL requirements.

The Licensee has recently filed motions with the Commission which would modify the August 9, 1979 Order to permit hot functional testing of plant systems and equipment prior to startup using non-nuclear heat; to change the provision for the expedited 35-day review of the Board's recommended decision; and to assure that the Commission would retain the right to change implementation schedules for Licensee consistent with its treatment of other operating reactors.

None of these modifications would affect the conduct of the evidentiary hearing by the Board.

The Licensee has the greatest interest in expediting the proceeding and has the best information and judgment on how best to handle its procedural and substantive adjudicatory burdens. Therefore we defer to the Licensee's position on receiving expediting assistance from the Commission. The Board does not now recommend that the Commission consider open issues, that it clarify policies, or that it change procedural aspects of the hearing order, except for financial capability issues which we discuss below. The entire hearing has been structured around the present hearing order. To change now could cause additional delay.

Financial Capability Issues

The NRC Staff has concluded in its Safety Evaluation Report that the relationship between corporate finance and the technical departments of Licensee is such that financial considerations should not have an improper influence on technical decisions. For this and other reasons the Staff suggests that the Commission may desire to eliminate the financial issue from those issues which must be litigated prior to reaching a decision on the restart of TMI-1.

Counsel for the Commonwealth, representing the Governor of Pennsylvania, observed that the Pennsylvania Utility Commission is the agency primarily responsible for financial issues in this proceeding. However, the Governor has his own position on these issues. While the Commonwealth believes it is important for the Licensee to demonstrate its financial ability to operate TMI-1 simultaneously with the cleanup of Unit 2, the Commonwealth also states that the return of TMI-1 to commercial operation would improve rather than impair Licensee's financial health. Return of the unit would produce operating revenues. Returning it to the rate base would tend to increase the Licensee's status in terms of credit and its ability to obtain capital. Therefore the Commonwealth supports the Staff's conclusion that considering financial issues after restart would not pose a safety hazard.

Counsel for the Pennsylvania Utility Commission reports that the Utility Commission has the Staff's proposal to litigate financial issues after restart under consideration. He will report when his Commission arrives at a decision.

The Licensee, of course, would welcome having financial issues removed from the hearing.

The Intervenors see financial capability as an important safety issue. Therefore they oppose permitting restart before financial issues are decided.

The Licensing Board cannot identify any need in the short term to require that long-term financial capability be demonstrated before restart. In the priority listed, we recommend:

1. The Commission should accept certification by the Staff that the Licensee has enough funds for safe start up and short-term operation. The Commission should clarify that long-term financial capability issues may be litigated after restart, or
2. The Commission should grant discretion to the Licensing Board to determine the short-term/long-term financial litigation requirements after a brief preliminary evidentiary hearing,^{2/} or
3. The Commission should remove financial issues from the order of hearing, but direct the Staff to monitor continuously the Licensee's financial resources as long as is necessary.

Low-Power Testing

The Staff recommended to the Board that we recommend to the Commission that the Commission modify its Order to authorize operation of TMI-1 at power levels up to 5% once the Director of NRR is satisfied that the Licensee has implemented the items the Staff considers necessary to provide reasonable assurance that the facility can be operated safely at such levels. Following Tr. 11,339. The Board would not consider

^{2/} The Board has already received testimony on the general budgeting process and results for GPU's nuclear operations for 1981. Mr. Arnold's testimony on February 3; Tr. 11,462-77.

this proposal at the February 3 session because there is an inadequate evidentiary record and because other parties had no opportunity to prepare.

The Intervenor strongly oppose low-power operation before hearing the issue. The NRC Staff does not intend on its own to bring its recommendation to the Commission. The Licensee already has a request before the Commission for full-power operation prior to completion of the hearing. The Intervenor urge the Board not even to bring the Staff's recommendation to the Commission's attention.

We believe that the Intervenor's position is naive. There already has been widespread publicity about the Staff's proposal and the Commission will doubtless hear of it. Therefore to make this report complete and to assure that information to the Commission on the recommendation is received with awareness of the Intervenor's views, we invite the Commission's attention to the Staff's recommendation. Following Tr. 11,339. We stress that the Intervenor have had no opportunity to express their views on the merits of low-power operation.

Other Considerations for Expediting

As we noted above, the Licensee had no request with respect to the substantive or procedural contents of the Commission's August 9, 1979 Hearing Order. However, the Licensee suggested that:

The Board put very directly to the Commission the question as to whether the priorities applied by the Staff to this proceeding are consistent with the Commission's expectations in issuing the August 9 Order or in the interest expressed in Chairman Ahearne's Memorandum in expediting the TMI-1 hearing.

In recent weeks the Board has slightly shortened the hearing week because no witnesses were available to testify. We do not consider this time off to be a delay, however. The Board and the parties needed an opportunity to study prepared testimony and otherwise to prepare for evidentiary sessions. However, these voids in the hearing schedule suggest that the pace of the hearing may depend more upon the readiness of the parties than upon the Board's capacity to hear the issues.

The Licensee states that it is ready to proceed on all issues remaining in the proceeding except for those involving still uncertain Near Term Operating License requirements and some off-site emergency planning issues where the Commonwealth of Pennsylvania and FEMA are unprepared and uncertain. The NRC Staff still has many open items in its Safety Evaluation Report on safety issues. We cannot predict when these items will be resolved. In addition, the Staff has many open items in its SER supplement on CLI 80-5 (management capability) issues. For this reason it proposes a split presentation on these issues. E.g., Tr. 11,916-18.

Therefore the Board endorses the Licensee's inquiry as to whether the priorities applied by the Staff to this proceeding are consistent with the Commission's expectations for an expedited proceeding.^{3/}

Emergency Planning

The Commonwealth of Pennsylvania noted that off-site emergency planning is the most significant remaining set of issues in terms of hearing time. There are more than 100 off-site emergency planning contentions. The Commonwealth believes that the Commission's directions in the August 9, 1979 Hearing Order are not clear enough and it requests that the Commission clarify the standards for judging emergency planning in the following respects:

- (a) How should the new emergency planning regulations and NUREG-0654 be applied to TMI-1?
- (b) Is full FEMA approval considered to be a re-start requirement or is a "reasonable progress" standard more appropriate?

^{3/} We have not inquired whether the Staff's difficulty in preparing for the balance of the proceeding may be a result of inadequate information from the Licensee.

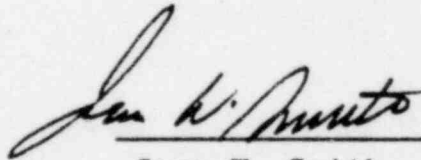
- (c) What is meant by the requirement to "Assess the relationship of State/Local plans to the Licensee plans so as to assure the capability to take emergency actions." (Short-term item 3(d), August 9, 1979 Order.)
- (d) Clarify the distinction in the August 9, 1979 Order between short-term item 3(d) and long-term item 4(b)(capability for emergency actions to a distance of 10 miles around the site).

It is not yet necessary to forward the Commonwealth's clarification request to the Commission. For now we prefer to retain jurisdiction. We will try to clarify and decide emergency planning issues and we are in the process of requesting briefs from the parties on the questions raised by the Commonwealth. However, it is possible that, if there are continuing uncertainties as to these questions, we may return to the Commission for directions.

In the meantime, however, much has happened in the area of emergency planning since the Commission's Order of August 9, 1979 and the Commission on its own may wish to review its Order on that issue.

Respectfully submitted,

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

 , Chairman
Ivan W. Smith
ADMINISTRATIVE JUDGE

Attachments: 2
As stated



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

January 22, 1981

CHAIRMAN

MEMORANDUM FOR: Chairman, ASLBP
FROM: John Ahearne
SUBJECT: TMI-1 HEARING

Several Commissioners are interested in whether the TMI-1 hearing can be expedited. (As you know, the current pace is far slower than the Commissioners had originally hoped.) Therefore, please ask the Chairman of the TMI-1 Board whether there are any actions the Commission could take which would expedite the hearing. These could include:

- Commission deciding open issues.
- Commission clarifying policies.
- Commission modifying existing orders.
- Commission directing staff to take some action.

Please understand that I am not requesting any information from the Board Chairman the furnishing of which would be inconsistent with his duties as presiding officer. I would appreciate a response by COB January 31.

By copy of this memorandum I am requesting the Docketing and Services Branch, Office of the Secretary, to serve copies of the memorandum on the Board and the parties in the subject proceeding.

cc: Commissioner Gilinsky
Commissioner Hendrie
Commissioner Bradford
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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555



January 28, 1981

TO: The TMI-I Restart Atomic Safety and
Licensing Board and Counsel of Record

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Before responding to Mr. Dieckamp's December 1, 1980 letter, we would like additional information from the Licensing Board and the parties. We would appreciate your response to the following questions by February 12, 1981:

1. The Licensing Board, after appropriate consultation with the parties, should provide us with its best estimate of the future schedule of the proceeding. The response should include the projected dates for (a) concluding the evidentiary hearing; (b) filing of proposed findings of fact; and (c) issuance of the Board's decision.
2. The parties (particularly the Staff and Metropolitan Edison) should provide us with reports on the time by which Metropolitan Edison could be expected to be in compliance with each of the following items should such compliance be required ultimately for restart: (a) the items contained in the August 9, 1979 (CLI-80-8, 10 NRC 141) and March 6, 1980 (CLI-80-5, 11 NRC 408) Commission Orders; (b) the items relating to near term operating licenses contained in NUREG-0694, "TMI-Related Requirements for New Operating Licenses" as revised by NUREG-0737, "Clarification of TMI Action Plan Requirements"; and (c) any other item which the parties believe Metropolitan Edison should be required to implement.

Your responses should be served upon all parties to the proceeding.

John F. Ahearne
John F. Ahearne
Chairman

Joseph M. Hendrie
Joseph M. Hendrie
Commissioner

cc: Commissioner Gilinsky
Commissioner Bradford
SECY

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