



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

2/17/81

Testimony Inserts for  
Feb 3, 1981 TMI 1 Restart  
Hearing Transcript



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Statement by Licensee's Counsel on  
Memorandum from Chairman Ahearn and Commissioner Hendrie  
dated January 28, 1981

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With respect to the January 28 memorandum from Chairman Ahearn and Commissioner Hendrie, I explained to the Board last Wednesday my reading of that memorandum, namely, that the Board was requested to respond by February 12 to Paragraph No. 1 of the memorandum and that the parties (particularly the Staff and Licensee) should respond by the same date to Paragraph No. 2. Licensee expects to make a written response to Paragraph No. 2 and will serve copies of its response on the Board and other parties. I do not propose to discuss Paragraph No. 2 further at this time.

With respect to Paragraph No. 1 (which calls for projected dates for concluding the evidentiary hearing, filing of proposed findings of fact, and issuance of the Board's decision), my own projections are, at best, a guess, and my guesses up to this point have not been very good. I did not, for example, expect some of the issues relating to plant design and procedures to take as long as they have, and there is more yet to come on these issues. My best current projection is that the hearing will last at least until late in April. I arrived at this date by estimating how long I thought it should take to cover each of the remaining issues. It does not include contingency time for

gaps in the hearing process, the possible need to address additional questions generated in the course of the evidentiary hearing, or any significant contribution from Murphy's Law. I cannot, of course, write off the possibility that the hearing may last much longer. Licensee cannot predict the degree of Intervenor participation in the further hearings or the schedule on which the Staff will be able to file testimony. There is substantial uncertainty in our minds, also, as to the schedule on which FEMA and the Commonwealth of Pennsylvania will be prepared to present testimony on the issue of offsite emergency planning. The Board should look to the Commonwealth of Pennsylvania and to the NRC Staff for their best estimates in this area.

With respect to the schedule for proposed findings, we have welcomed the Board's suggestion that we submit phased findings on a basis which will permit the Board to begin preparing its decision soon after the close of the hearing. To this end, we will be working with NRC Staff counsel to see if we can submit to the Board at or before the end of the hearing joint proposed findings on introductory and procedural matters. We have also just filed with the Board a motion, in which the NRC Staff, UCS and Mr. Sholly have concurred, to set May 1 as the schedule for filing each party's proposed findings on the issues of plant design and operating procedures; and June 1 for the filing of reply findings on these issues. We have not yet tried to establish filing dates on other issues in the

proceeding, but will do so as the hearing progresses. Our objective will be to have the last of the proposed findings served not later than 30 days after the close of the hearing and reply findings not less than 30 days later.

I will not be so bold as to suggest how long the Board will need to issue its decision. Presumably, the early filing of phased findings will help reduce the decision making period. The Board must bear in mind, however, that we already have a hearing transcript of over 11,000 pages, and it would not surprise me to find that the total length of all proposed findings and reply findings from all of the parties comes to as much as a couple of thousand pages.

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Statement by Licensee's Counsel on  
Memorandum from Chairman Ahearn  
dated January 22, 1981

This statement comments on Chairman Ahearn's memorandum of January 22, inquiring of the Board whether there are any actions the Commission could take which would expedite the hearing.

Before doing so, I remind the Board that the Commission has before it a request by Mr. Dieckamp to reconsider its August 9, 1979 Order and Notice of Hearing, and in effect to de-couple the TMI-1 restart decision from the hearing process. I do not read Chairman Ahearn's memorandum as encompassing this subject, but I do not want my silence on the matter to suggest that Licensee has in any way backed away from Mr. Dieckamp's request.

Chairman Ahearn's memorandum suggests four possible areas in which the Commission might take some action. The first two possibilities are to have the Commission decide open issues or clarify policies relating to the proceeding. The Commission has already acted, although not very decisively, on two open matters -- namely, hydrogen control and psychological distress. I have no suggestions for further Commission action on either of these matters.

We have given consideration to the question of suggesting to the Board that it ask the Commission at this time to consider another open item, i.e. to step into the

developing dispute between the Licensee and the NRC Staff on the imposition of NTOL or other pre-restart requirements where implementation of these requirements is not required by the August 9 Order and would be earlier than for other operating reactors. We recognize, however, that the record of the hearing has not yet been developed to the point where the boundaries of the dispute have become clear and where the Board has had an opportunity to hear evidence and argument on all of the specific requirements. The Board might understandably feel that it was not yet in a position to make recommendations to the Commission. We expect to develop a more complete record, principally in connection with the testimony of Messrs. Ross and Capra in response to Board Question No. 2. At that time we may wish to propose Commission involvement in the resolution of the matter.

The third possibility identified in Chairman Ahearne's memorandum is that the Commission modify existing orders. We take this to mean primarily the Commission's August 9 Order prescribing hearing procedures. Back before the Commission issued its August 9 Order, Licensee urged on the Commission that if a public hearing was to be held while the immediately effective suspension of the TMI-1 operating authority remained in effect, the hearing need not and should not be a full adjudicatory hearing complete with discovery, cross-examination, proposed

findings, etc. We wish the Commission had not chosen a full adjudicatory hearing. But we do not believe it is practicable to now turn back the clock and change the entire ground rules under which this hearing has been conducted to date. Therefore, we have no suggestions to make for modifying the August 9 Order insofar as it relates to the procedural conduct of the hearing.

We do have three modifications to the August 9 Order which have been (will be) embodied in a motion to the Commission but which do not concern the conduct of the hearing by this Board. Copies of this motion have been (will be) provided to the Board and parties. The proposed modifications are entirely consistent with the basic purposes and requirements of the August 9 Order and, assuming Commission authorization to restart TMI-1 following completion of the current restart hearing, would save several months or more in returning TMI-1 to commercial operation.

Briefly, the first would modify the August 9 Order (which presently requires TMI-1 to be kept in a cold shut-down condition) to permit hot functional testing of plant systems and equipment (using non-nuclear heat) prior to start-up.

The second would have the Commission begin its expedited 35-day review of this Board's recommended decision, as contemplated in the August 9 Order,

promptly after issuance of the Board's decision instead of waiting for Staff certification that all required short-term actions have been completed. Any Commission authorization to restart TMI-1 would not, however, become effective until such certification.

Third, as to those requirements which the Staff has proposed be implemented on a schedule consistent with other operating reactors, the Commission would retain the right to change implementation schedules for Licensee consistent with its treatment of other operating reactors.

As I have said, none of these modifications would make any changes in the conduct of the evidentiary hearing by this Board.

The fourth possibility identified in Chairman Ahearne's memorandum is that the Commission might direct the Staff to take some action. Our only suggestion in this area is 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 the interest expressed in Chairman Ahearne's memorandum in expediting the TMI-1 hearing.