

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Joseph M. Hendrie, Chairman
Victor Gilinsky
Peter A. Bradford
John F. Ahearne



In the Matter of
METROPOLITAN EDISON COMPANY, ET AL.
(Three Mile Island Nuclear Station,
Unit 1)

Docket No. 50-289
(Restart)

SERVED MAR 23 1981



ORDER

(CLI-81-3)

I. Background

On December 1, 1980 the President of General Public Utilities (GPU), Herman Dieckamp, wrote the Commission requesting it to reconsider and modify its Orders of July 2, 1979, and August 9, 1979, CLI-79-8, 10 CFR 141, pertaining to the restart of Three Mile Island Unit One. Specifically, GPU requested the Commission to modify those orders to permit GPU to restart TMI-Unit 1 prior to the completion of the ongoing adjudicatory hearings. GPU proposed that the Director of the Commission's Office of Nuclear Reactor Regulation be permitted to authorize restart upon determining that Metropolitan Edison has taken all of the actions required of other Babcock and Wilcox (B&W) reactor licensees before B&W reactors were permitted to resume operation following the shut-down orders issued by the Commission in the Spring of 1979. In addition, the Director would be required to determine that Metropolitan Edison had performed satisfactorily those tasks listed in

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Section II of the Commission's Order that are to be completed prior to restart. Finally, the Director would be required to determine that Unit One was in compliance with the "lessons learned" actions applicable to other B&W plants that have been imposed by the Commission following the accident. GPU emphasized that the restart hearings had taken far longer than the Commission originally contemplated and that the delay in authorizing restart was penalizing the residents of its service areas and its investors.

In addition, Metropolitan Edison has filed three motions with the Commission. On January 26, 1981, it advised the Commission that it had filed an application for an amendment to its operating license which would transfer from Metropolitan Edison to GPU Nuclear Corporation (GPUNC) the authority to possess, use and operate the TMI-1 facility. On that date it filed a motion requesting the Commission to modify its July 2, 1979 Order as appropriate to extend to GPUNC the present restriction on Metropolitan Edison that Unit One be maintained in a cold shutdown condition. On January 26 it also filed a motion requesting the Commission to amend its August 9, 1979 and March 6, 1980 Orders, CLI-80-5, 11 NRC 408, to authorize the TMI-1 Restart Licensing Board to consider the qualifications of GPUNC, rather than Metropolitan Edison, to restart and operate TMI-1.

A February 3, 1981 motion requested the Commission to (1) amend the July 2 and August 9, 1979 Orders to permit hot functional testing of the TMI-1 systems and equipment using non-nuclear heat; (2) modify Section VI of the August 9, 1979 Order to provide that the Commission decision on the effectiveness of a licensing board decision authorizing restart be made within 35 days after issuance of the decision rather than 35 days after issuance of the

decision and certification by the Director, Office of Nuclear Reactor Regulation, that those short-term actions required for restart have been completed; and (3) that the August 9 Order be modified to make clear that the Commission has the flexibility to defer until after restart licensee's implementation dates for NUREG-0737 action items where such deferral is consistent with implementation schedules for other operating reactors.

The Commission has received views from the parties to the proceeding on each of the GPU/Metropolitan Edison motions. In addition, Commissioner Ahearne on January 22, 1981 requested the Chairman of the Atomic Safety and Licensing Board conducting this proceeding to provide the Commission with the Board's views on actions the Commission might take to expedite the proceeding. On January 28, 1981, Chairman Hendrie and Commissioner Ahearne requested the Licensing Board to provide, after appropriate consultation with the parties, its best estimate of the future schedule for the proceeding. The parties were also asked to provide their best estimates on when Metropolitan Edison could be expected to be in compliance with a number of specified items which could be required for restart. These requests were considered at a special session of the restart hearing held on February 3, and the Licensing Board submitted its response on February 9. The NRC staff and Metropolitan Edison subsequently provided estimates on when the licensee might be expected to be in compliance with the various items.

II. Rulings on the Motions

1. The December 1, 1980 GPU Request That Restart Not Be Tied To Completion Of The Hearing

The intervenors in the proceeding urged the Commission to deny the motion. Procedurally, they argued that the motion to reconsider the July 2 and August 9 orders is untimely and that the licensee has presented no new facts that would cause the Commission to alter its Orders. On the merits, intervenors argued, inter alia, that Unit 1 is not ready to be restarted now and will not be prepared for restart for some time. They noted that modifications to the plant must be completed and the entire facility must be inspected by the NRC staff prior to restart. The operators of the reactor must be requalified and relicensed. It is intervenors' view that by the time all of these tasks can be accomplished, the adjudicatory proceedings will be nearly or totally completed, and therefore it is unnecessary to grant the GPU request. The Commonwealth of Pennsylvania took the position that rather than grant the motion, all efforts should be taken to expedite the hearing process consistent with a full and fair adjudication of the issues. The NRC staff took the position that the Commission has the legal authority to take the action that GPU proposes, but took no position on whether the motion should be granted. The staff believed that the policy issue whether the public interest would be served by permitting operation of the facility prior to the completion of the hearing is best left to the Commission for resolution.

The Commission has reviewed the submissions of the parties, the proposed hearing schedule submitted by the Board, and the status reports on Metropolitan Edison's compliance with various items that could be required for restart.

The Commission has denied the GPU request of December 1 because it is unable to find that authorizing restart prior to the completion of the hearing would serve the public interest.

2. Metropolitan Edison's Request That The July 2 And August 9 Orders Be Modified To Substitute GPU Nuclear Corporation for Metropolitan Edison

In its response to these motions, the NRC staff requested the Commission to defer its rulings until the staff had the opportunity to complete its review of Metropolitan Edison's proposed amendments to its operating license. The Commission agrees with the staff that it would be premature to act at this time on the motions and will defer action until it has heard further from the staff.

3. Metropolitan Edison's Request That It Be Authorized To Commence Hot Functional Testing

No party to the proceeding objected to Metropolitan Edison's request and the Commission has decided to permit Metropolitan Edison to begin hot functional testing using non-nuclear heat, subject to any appropriate NRC staff review. ^{1/}

In so ruling, the Commission is not now taking a position on a staff proposal, called to our attention by the Board, to allow low power testing

^{1/} The NRC staff has indicated that the licensee must review, in accordance with the requirements of Section 6 of the Technical Specifications for TMI-1, the hot functional testing to be performed to determine whether such activities involve an unreviewed safety question or a change in the facility's technical specifications. Staff noted that if the review produces an affirmative answer, the licensee must submit an application for amendment of its operating license. Should the staff determine that an amendment is required, it should evaluate its suitability to the same extent as any other amendment application.

prior to the completion of the hearing, if certain findings are made by the Director, Office of Nuclear Reactor Regulation. We defer ruling on that question until we have had a chance to view other developments in this matter, including the progress of the hot functional testing program.

4. Metropolitan Edison's Request That The Commission Decision On The Effectiveness Of A Licensing Board Decision Be Made Within 35 Days After Issuance Of The Decision

No party opposed the request. The Commission believes the request is reasonable and consistent with the Commission's original intent. The request therefore is granted.

5. Metropolitan Edison's Request That The Commission, Where Appropriate, Defer Until After Restart Implementation Dates For NUREG-0737 Action Items Where Such Deferral Is Consistent With Implementation Schedules For Operating Reactors

The NRC staff has filed testimony in the restart hearing proposing that the licensee be required to implement a number of NUREG-0737 actions on the same schedules that are presently set for operating reactors, although it has generally taken the position that the licensee is to be treated as an applicant for an operating license. In its February 3 motion, licensee asserted that it is prepared to meet the same implementation schedules that are required for operating reactors, but expressed the concern that developments subsequent to the close of the hearing record (for example, delays in the procurement of necessary materials and equipment) may make it impossible for it to meet present schedules on all action items. It therefore requested the

Commission to modify the August 9, 1979 Order to make clear that the Commission retains the flexibility to defer until after restart, upon the recommendation of the Director of the Office of Nuclear Reactor Regulation, licensee's implementation dates for NUREG-0737 action items where such deferral is consistent with implementation schedules for operating reactors.

The staff did not object to Metropolitan Edison's request, noting that such deferral would be granted by the Commission only after it had heard staff recommendations.

The Commission in its August 9, 1979 Order provided the Licensing Board with the discretion to determine, subject to Commission review, what matters must be resolved prior to restart. In the Order the Commission did not indicate whether Metropolitan Edison is to be treated as a licensee of an operating reactor or as an applicant for an operating license. The Commission believes that Unit One should be grouped with reactors which have received operating licenses, rather than with the units with pending operating license applications. It emphasizes though that it expects the Board to find to the contrary when the record so dictates. Moreover, the Board should not reopen testimony or otherwise delay the proceeding in any way in order to apply this concept.

The Commission notes in this regard that whether Metropolitan Edison is treated as a licensee or an applicant, there may be items where due dates cannot be met for one reason or another, regardless of which category Unit One is placed in. It is this prospect which prompts the licensee's motion. Where developments occur which affect the ability of the licensee to comply with requirements recommended by the Board or proposed to be imposed by

the Commission, the Commission will consider those developments on a case-by-case basis in reaching its decisions on immediate effectiveness and ultimate review of the Board's decision. Notwithstanding language in the original order which could be read to the contrary, we intend to retain our flexibility in this regard. To that extent, the licensee's motion is granted.

III. Expediting the Hearing

The Commission has considered various means to expedite the hearing schedule and is taking one action with that objective in mind. The NRC staff has concluded that the relationship between corporate finance and the technical departments of the licensee is such that financial considerations should not have an improper influence on technical decisions. For this and other reasons, the staff has recommended that financial qualification need not be litigated prior to reaching a decision on the restart of TMI-1. Counsel for the Commonwealth of Pennsylvania, representing the Governor of that State, believes that while it is important for the licensee to demonstrate its financial ability to operate TMI-1 simultaneously with the cleanup of Unit 2, the Commonwealth believes that the return of TMI-1 to commercial operation would improve, rather than impair, the licensee's financial health. For example, return of the unit would produce operating revenues and return of the unit to the utility's rate base also might increase the licensee's credit rating and its ability to obtain capital. Therefore, the Commonwealth supports the staff position. The Pennsylvania Public Utility Commission also does not object to the staff proposal.

Metropolitan Edison, of course, would not object to removing financial issues from the proceeding. The intervenors take a contrary position, arguing that financial capability is an important safety issue that should be litigated prior to restart.

The Commission has considered the parties' views and determined that, contrary to the position it took in its August 9 Order, the issue of the licensee's financial qualifications should not be litigated in this proceeding. The Commission does not believe that, in this particular case, litigation of the issue would be productive. In fact the Commission is of the view that the treatment of financial qualifications in the licensing process as a general matter needs reexamination and is undertaking that examination at this time.

Although the Commission is taking the financial qualification issue out of the hearing, the staff is directed to continue to monitor the licensee's financial resources as long as is necessary and to report any health and safety implications to the Commission. 2/

The Licensing Board has also indicated at various times that the proceeding might be expedited if staff gave the proceeding a higher priority and devoted more resources to it. The Commission has always considered the restart hearing to be one of staff's highest priority items and directs the Executive Director of Operations to ensure that sufficient resources

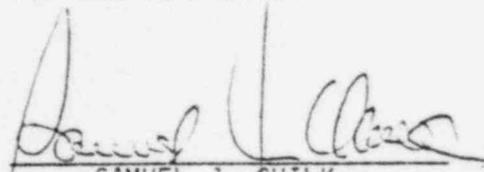
2/ Commissioner Bradford would not have removed financial qualifications as an issue in this proceeding without first giving those parties sponsoring contentions on this subject an opportunity to describe, in response to the staff SER, what they expected to establish in the course of their presentation or on cross-examination.

are devoted to this matter so that staff documents, including SER supplements and testimony, may be thorough and timely filed.

It is so ORDERED.*



For the Commission


SAMUEL J. CHILK
Secretary of the Commission

Dated at Washington, D.C.

this 23rd day of March, 1981.

* Section 201 of the Energy Reorganization Act, 42 U.S.C. 5841, provides that action of the Commission shall be determined by a "majority vote of the members present." Commissioner Bradford was not present at the meeting at which this Order was approved. Had he been present he would have voted to issue this Order. Accordingly, the formal vote of the Commission is 3-0.