

ADJUDICATORY ITEM  
CONSENT CALENDAR ITEM

August 12, 1980

SECY-A-80-119

For: The Commissioners

From: Leonard Bickwit, Jr.  
General Counsel

Subject: CERTIFICATION FROM LICENSING BOARD IN TMI  
RE-START PROCEEDING CONCERNING PROCEDURAL  
ASSISTANCE TO INTERVENORS

Purpose:

Discussion:

5 [REDACTED]

Whe [REDACTED] The Licensing Board in the TMI re-start proceeding certified the issue of whether the Commission would authorize it to provide procedural assistance to intervenors, particular free transcripts, in the proceeding. [REDACTED]

[REDACTED]

5 [REDACTED]

The Board's certification (Attachment B) notes that the recently-adopted procedural assistance rules, 10 C.F.R. §§ 2.708(d), 2.712(f) and 2.750(c), see 45 Fed. Reg. 49535 (July 25, 1980) apply only to an "adjudicatory proceeding on an application for a license or an amendment thereto," and that the re-start proceeding does not fall into this category.

[REDACTED]

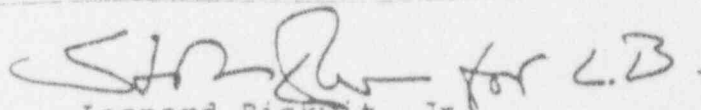
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in accordance with the Freedom of Information  
Act, exemptions 5  
FOIA- 92-436

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Recommendation:

  
Leonard Bickwit, Jr.  
General Counsel

Attachments:  
As stated

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Wednesday, August 27, 1980.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT August 20, 1980, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an Open Meeting during the Week of September 1, 1980. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

DISTRIBUTION

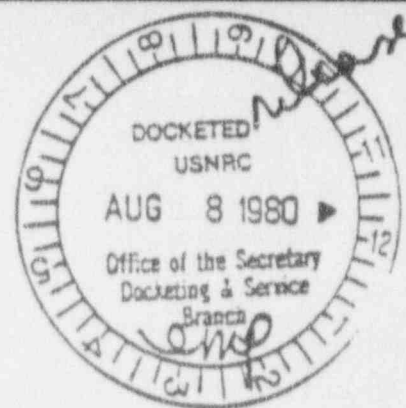
Commissioners  
Commission Staff Offices  
Secretariat

ATTACHMENT A

ATTACHMENT B

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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

(Restart)

CERTIFICATION TO THE COMMISSION

(August 8, 1980)

The immediately effective rule, Procedural Assistance in Adjudicatory Licensing Proceedings, 45 FR 49535, July 25, 1980, authorizes presiding officers to arrange for free transcripts upon the request by parties other than an applicant "... in any adjudicatory proceeding on an application for a license or an amendment thereto...." 45 FR 49537. One intervening party in this proceeding <sup>1/</sup> has made a request under the rule and the board has learned informally that other parties intend also to request transcripts.

In anticipation of such requests, the board consulted with the Docketing and Service Section, Office of the Secretary and with Commission attorneys involved in drafting the Procedural

1/ Sholly Motion to Board for Routine Free Distribution of Hearing Transcripts Pursuant to Notice, 45 FR 49535-49537, dated July 30, 1980.

Assistance Rule, who pointed out that the Three Mile Island Unit No. 1 restart proceeding is probably not covered by the rule because it is not a proceeding on an application for a license or license amendment. We agree with this interpretation and believe that we are without authority to grant requests for free transcripts in this proceeding.

The purpose of this certification is to bring to the attention of the Commission the fact that the terms of the Procedural Assistance Rule exclude this proceeding, and to request that the provisions of the rule be extended to apply to this proceeding.

Neither the licensee nor the NRC staff has yet responded to the intervenor's request for free transcripts but neither objects to this certification. By this certification we request only the authority to consider requests for free transcripts, we do not certify the requests themselves.

In the board's Certification to the Commission on Psychological Distress Issues, February 22, 1980, LBP-80-8, 11 NRC 297, we reported to the Commission in connection with the Commission's stated interest in considering intervenor funding in this proceeding, that we had no recommendation to make on that issue. We stated that our views on intervenor assistance are "... individual and philosophical, and not likely to be helpful to the Commission." 11 NRC at 309. This is still the case. In making this request,

we are seeking only to be permitted to employ the means provided in the Procedural Assistance Rule to assist the board in producing a complete and reliable evidentiary record without undue delay.

The board requests the Commission to consider the following points:

1. Traditionally board members (and sometimes the staff) lend transcripts to intervenors during the hearings to avoid delays caused by confusion over earlier events in the hearing and to improve the quality of the record. This results in some inconvenience to the board whose efficiency is impaired by the need to share transcripts. In this proceeding there are many parties without resources to purchase transcripts and not enough transcripts to lend.

2. In its August 9, 1979 Order and Notice of Hearing, CLI-79-8, 10 NRC 141, the Commission directed the board to conduct the proceeding expeditiously and to avoid delay caused by unneeded cross-examination. Id. at 147. The board has issued specific instructions to intervenors to limit cross-examination to that necessary for a full and true disclosure of the facts, and we have outlined strict procedures intended to accomplish that result.<sup>2/</sup> The intervenors themselves have, on at least seven

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<sup>2/</sup> Memorandum and Order on Prehearing Conference of May 13, 1980, dated May 22, 1980, pp. 9-11, and Memorandum and Order, dated May 5, 1980, pp. 5-7.



occasions, met at their own expense to arrive at consolidation agreements, to designate lead intervenors, and to arrange for the efficient use of cross-examination.<sup>3/</sup>

Transcripts are fundamental tools used in effective cross-examination. They may be essential to efficient cross-examination. Transcripts can be effectively used by intervenors to assist each other to be efficient where they have consolidated contentions or have designated lead intervenors on particular issues. If they do not have transcripts, the board may be less able to limit cross-examination to efficient and productive non-repetitive questioning.

3. The quality of cross-examination, and for that matter, direct examination, is improved by informed examiners.

4. The board has already instructed the parties that it intends to apply the provisions of 10 CFR 2.754(a) to this proceeding, i.e., the parties will be required to file proposed findings of fact, conclusions of law and proposed form of order or decision; that any failure to do so may be construed by the board to be a default according to Section 2.754(b). Tr. 1973-78. Access to transcripts is very important to the prompt filing of accurate proposed findings. If intervenors must share the few transcript copies presently made available in public document rooms, either proposed findings will be delayed, or if not delayed, they will be reduced in accuracy -- probably both.

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<sup>3/</sup> Sholly Report to the Board on Consolidation Proposal, dated July 29, 1980.



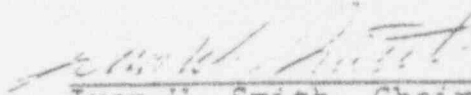
5. When we speak of transcripts being useful in developing a complete and reliable record without undue delay, we are not referring to contentions relating to the personal interests of individual intervenors in the proceeding. Many of the contentions are parallel to mandatory issues required to be considered in the notice of hearing and all are within the scope of the hearing. We cannot identify any contentions relating solely to an intervenor's private interest, all are related to a broader public interest. The board believes that it will be assisted in arriving at a more reliable initial decision in this proceeding by intervenors equipped with fundamental litigation tools, particularly transcripts.

6. Even from the point of view of those interested in an early restart of TMI-1, we cannot identify any disadvantage to providing transcripts to intervenors in this proceeding. The board has the authority to insist upon an efficient hearing and we have used this authority. We will not permit access to transcripts to become an implement for delay. To the contrary, we will regard transcripts as a reason for not accepting some traditional delays. With a shorter hearing and record, with greater efficiency in preparing findings and the initial decision, much if not all of the cost of providing transcripts will be recovered.

CONCLUSION

The board requests the Commission to extend the provisions of the Procedural Assistance Rule to this proceeding for the purpose of assisting the board in developing a complete and reliable record without undue delay.

THE ATOMIC SAFETY AND  
LICENSING BOARD



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Ivan W. Smith, Chairman

Bethesda, Maryland

August 8, 1980