

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'82 SEP -9 A11:25

Before the Atomic Safety and Licensing Appeal Board

OFFICE OF SECRETARY
OF ENERGY
& SERVICE
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In the Matter of)	
)	
METROPOLITAN EDISON COMPANY)	Docket No. 50-289 SP
)	
(Three Mile Island Nuclear)	(Restart)
Station, Unit No. 1))	

LICENSEE'S ANSWER TO TMIA MOTION
FOR EXTENSION OF TIME ON FILING
BRIEF ON EXCEPTIONS AND FOR
WAIVER OF PAGE LIMITATION

By Motion dated September 1, 1982, TMIA has requested an extension of time to brief its exceptions and a waiver of the 70-page limit on its brief. TMIA's asserted bases are that it is required now to brief its exceptions to two different Partial Initial Decisions (PIDs) by the Licensing Board and that no party will be harmed. Licensee opposes TMIA's Motion.^{1/}

TMIA first argues that because it now is required to brief its exceptions to two different PIDs, the task is proving "overwhelmingly difficult" within the allotted 30-day period. TMIA requests that the allotted time be effectively doubled

1/ Pursuant to the Appeal Board's Order of September 2, 1982, all affected parties (Licensee, NRC Staff, TMIA, Aamodts, UCS and the Commonwealth of Pennsylvania) participated in a conference call initiated by TMIA on September 7, 1982, to discuss the briefing schedule. No agreement was reached. TMIA is apparently the only party seeking an extension at this time; it maintains that its requested time until October 15 cannot be shortened. Licensee noted its opposition for the reasons stated in this Answer. The NRC Staff noted its opposition to TMIA's request, but observed that it would not oppose a one-week extension, if requested. No other participant in the call opposes TMIA's request.

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from four work weeks to eight. What TMIA fails to mention, however, is that it has been almost a year since it filed its exceptions to one of those two decisions -- the initial management PID.^{2/} In granting what has amounted to a nine-month extension of time to brief those earlier exceptions, the Appeal Board at the time observed:

Because we expect all the parties to begin work on their briefs during the period of suspension, requests for extensions of briefing time will be disfavored.

Appeal Board Order of November 3, 1981 (unpublished).^{3/} At the time, TMIA was seeking a 30-day extension of time. The Appeal Board, however, believed it unwise to receive briefs piecemeal on management issues and thus extended the time for parties to brief exceptions to the initial management PID until briefs were due on the reopened phase of management issues.

^{2/} TMIA notes the management PIDs together total over 500 pages; the initial management PID, issued over a year ago, represents two-thirds of that figure.

^{3/} During the conference call, TMIA stated it had only the briefest start on this aspect of its brief on exceptions, citing conflicts of time with efforts in the reopened proceeding and the need to await the outcome of the reopened proceeding. Licensee notes the months of time -- for example, after filing findings and before the Special Master's Report issued -- available to TMIA over the last six months and the fact that their exceptions to the initial management PID -- e.g., on maintenance -- bear little or no relationship to the reopened proceeding.

The Appeal Board understood at the time that the reopened phase decision was anticipated in February, 1982. In fact, the Licensing Board's decision in the reopened hearing issued in late July and rather than a one-month extension (as TMIA requested) or a several-month extension (which the Appeal Board apparently expected), TMIA received a nine-month extension of time to prepare and file its brief in support of exceptions to the initial management PID. Under these circumstances, there seems scant cause to grant TMIA's request now to double the time allowed for briefs.

To the extent TMIA bases its request for extension of time on the need to consolidate its arguments into one document, the argument is shallow. Licensee notes that not one of TMIA's exceptions to the initial management PID runs to training, testing or cheating. The subject matters addressed in TMIA's earlier exceptions are different from those raised in the recent exceptions to the reopened phase PID. Consolidation of the briefs therefore should require minimal effort.

Finally, TMIA argues that "no party will be harmed by the granting of these extensions." TMIA Motion at 2. In support, TMIA states that the Commissioners, not the Appeal Board, are deciding the question of immediate effectiveness of the ASLB's PIDs and, in any event, the plant will not be ready to operate until 1983.

Licensee first points out that although it is indeed the Commissioners who will decide immediate effectiveness, the

timing of that decision is not established. TMIA itself, among others, currently has pending before the Commissioners a request that the Commission defer its decision on immediate effectiveness pending the outcome of the Appeal Board's review. For TMIA to make such a request of the Commissioners, and argue at the same time to the Appeal Board in an extension of time request that the Appeal Board's schedule of review is of no moment is, at least, inconsistent. Until the Commissioners act, and favorably, granting immediate effectiveness to the Licensing Board's decisions, Licensee must assume, and does in answering this Motion, that the Appeal Board's schedule and decision may provide the critical path to a decision on TMI-1's restart.

Nor does TMIA's observation that the plant will not be ready to operate until 1983 have any relevance to the timing of a decision on lifting the suspension in this proceeding. As Licensee and the Staff have argued to the Commission, lifting the suspension which was imposed in 1979 on TMI-1, and which has been the subject of this proceeding, is unrelated to the readiness of TMI-1 otherwise to operate. See NRC Staff Comments on Immediate Effectiveness With Respect to Licensing Board Decision on Cheating Incidents, dated August 20, 1982, at n.4; Licensee's Comments on Immediate Effectiveness of Partial Initial Decision (Reopened Proceeding) Dated July 27, 1982, dated August 20, 1982, at 3-4. Assuming arguendo that TMIA and others prevail in their arguments to the Commission

that a decision on immediate effectiveness should await the outcome of this Appeal Board's review, the impact on restart will be very real. Licensee anticipates that TMI-1 will be ready to restart, including dealing with the steam generator problem, during the first quarter of 1983. A Commission determination to await the appellate process will mean, however, additional, day-for-day, costly delay when one considers exceptions briefing time (October 20 -- Appellant; November 20 -- Licensee; December 1 -- NRC Staff); oral argument (additional 30 days -- early January); Appeal Board deliberation and drafting of decision (additional 3 months -- early April); petitions to Commission based on Appeal Board decision (additional 20 days -- late April); and Commission deliberation and decision (unknown).

Licensee opposes as well TMIA's request that the page limit be doubled from 70 to 140 pages. While the existing 70-page limit may be somewhat arbitrary (as opposed, for example, to 50 or 90), granting TMIA's request essentially on the bare grounds that this proceeding has a large record and long decisions, is wrong. TMIA's Motion evidences no attempt on TMIA's part to adhere to the page limit, and after failing in that bona fide attempt, to then seek reasonable relief. Rather, TMIA baldly asserts a need for twice the allowed number of pages. Nor is TMIA the only party with management exceptions. Licensee faces the prospect, if TMIA's request is granted on the bare bones argument that this is a big case,

that others may follow suit. Even without relief on the page limitation, Licensee could face some 280 pages of briefs to respond to in 30 days. Such a position is difficult, at best -- and the obvious answer, namely, to seek a large amount of additional time to respond, is no answer at all, since as we outline above we presently must regard the Appeal Board's review schedule as the critical path to TMI-1's restart. In short, Licensee strenuously opposes the instant request by TMIA for essentially a blank check on page limitation.

Respectfully submitted,

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