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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'82 SEP 13 A11:23

ATOMIC SAFETY AND LICENSING APPEAL BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Administrative Judges:

Gary J. Edles, Chairman
Dr. John H. Buck
Christine N. Kohl

SERVED SEP 13 1982

_____)
In the Matter of)

METROPOLITAN EDISON COMPANY)

(Three Mile Island Nuclear)
Station, Unit No. 1))

) Docket No. 50-289 - SP

) (Management Phase)

ORDER

September 10, 1982

Before us are two requests -- one from intervenor TMIA, the other from intervenor Marjorie M. Aamodt -- seeking, respectively, a partial and complete suspension of briefing. In addition, TMIA requests an extension of the date for filing its brief in support of exceptions from September 20 to October 15, 1982, and an enlargement of the page limitation from 70 to 140 pages. By orders issued on September 2 and 7 (unpublished), we called for expeditious replies to these motions. We also suggested that some parties consider a division of responsibility for presentation of issues in order to obviate an enlargement of the page limitation, and we urged all parties to cooperate in developing a briefing schedule acceptable to all, which they could then recommend to us for consideration.

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We have received replies to the motions from the licensee, NRC staff, the Union of Concerned Scientists (UCS), and the Aamodts. For the reasons explained below, we deny the motions to suspend the briefing schedule, grant a 10-day extension of time for filing opening briefs, and deny the request for enlargement of the page limitation without prejudice to resubmission at a later time, if necessary.

1. Suspension of briefing.

a. TMIA requests a suspension of briefing on its exceptions 20-55 regarding safety-related maintenance practices. The basis of this request is a staff Board Notification, BN-82-83 (August 13, 1982), which identifies certain inadequate corrective maintenance actions at TMI-2 and indicates that Region I will inspect the TMI-1 maintenance system to determine if similar problems exist there. TMIA seeks deferral of briefing on this issue until the TMI-1 "investigation" is completed and the staff's report is released to the parties. The licensee and staff both oppose suspension, noting that the NRC inspection to which BN-82-83 refers has already been conducted and that the staff has determined that the maintenance problems identified at TMI-2 are not generic to TMI-1. See Inspection Report 50-289/82-10 at 10-12 (attached to NRC Staff's Consolidated Reply (September 8, 1982), served on all parties).

We deny TMIA's motion to suspend briefing on its exceptions 20-55. The asserted justification for the suspension has already occurred, mooted the request. Further, we point out that, as a general rule, we are not inclined to suspend the appellate process each time a staff inspection reveals an incident potentially bearing on an issue in a case. The staff routinely inspects licensed activities and is required to keep the adjudicatory boards (and the parties) apprised of significant developments in pending cases through the Board Notification system. See Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 & 2), ALAB-551, 9 NRC 704 (1979). The parties as well have an obligation to alert licensing and appeal boards to such new developments. Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1, 2 and 3), ALAB-677, 15 NRC __, __ (June 10, 1982) (slip opinion at 13). Accordingly, during the course of our consideration of a case, we ordinarily receive numerous such information items. But new developments in and of themselves cannot provide a justification for suspension of the appellate review process; otherwise, every case would inevitably be delayed. Instead, we evaluate on a case-by-case basis all such information brought to our attention and deal with the serious problems as they arise within the review process, as appropriate.

b. Mrs. Aamodt requests essentially a total deferral of briefing on all management issues, pending disposition of a motion to reopen she filed recently with the Licensing Board. The latter motion seeks further hearings on matters addressed in another Board Notification, BN-82-84 (August 17, 1982). In Inspection Report 50-289/82-07 (attached to BN-82-84), the staff states that, while conducting a review of radiation worker training records on May 5, 1982, the licensee's Radiological Assessor observed that certain examinations and their answer keys had been left unattended. The Radiological Assessor immediately reported these observations to senior licensee management and, several days later, to the NRC staff. Both the staff and licensee oppose the motion before us, and UCS supports it.

We deny Mrs. Aamodt's motion to suspend briefing. According to the Inspection Report, the staff has reviewed the matter and concluded that licensee's corrective measures, for what is apparently an isolated incident occurring in only one training section, are adequate. Further, this incident relates to just a few of the Aamodts' many exceptions. In these circumstances, we see no present basis for suspending all briefing. In the event that the record is reopened for further exploration of this matter, however, we will determine at that time what action is

appropriate vis-a-vis our appellate review. 1/

2. Briefing schedule and page limitation.

a. As noted, TMIA requests almost a four-week extension of time in which to file its brief in support of exceptions. It contends that this additional time is necessary because of the complexity and "massive" size of the record in this case. UCS supports the request and the licensee opposes it. 2/ The staff has no objection to an extension of one week, and the Aamodts have no objection to an extension until September 30.

We have decided to extend the time for filing all opening briefs in support of exceptions until September 30, 1982. One of the two initial decisions involved in this phase and the Special Master's report have been available for some time. We advised the parties over 10 months ago to begin work on the portion of their briefs relating to those early decisions and noted that requests for extensions would be disfavored. Order of November 3, 1981 (unpublished). We

1/ We express no opinion on either the merits of the request to reopen or the Licensing Board's jurisdiction to rule on it.

2/ Licensee and TMIA (in a later filing) have informed us that the parties were unable to agree on a briefing schedule acceptable to all.

are also aware, however, of the overall length of the record, the need for time to analyze the relationship between the two earlier decisions and the last decision issued July 27, 1982, and the competing demands on the parties' time by other aspects of this same proceeding. ^{3/} Balancing these factors, we believe that granting an extra 10 days for briefing is warranted.

b. TMIA also requests a waiver of the 70-page limit on briefs (10 CFR 2.762(e)) and seeks to file a brief twice that size. It argues in general terms that consolidation of its 242 exceptions to the two partial initial decisions into major topic areas and development of its argument on all issues into one 70-page document are "proving to be overwhelmingly difficult." The licensee and staff oppose the request. The Aamodts take no position, expressing only a preference for briefing their own exceptions within the page limit, rather than attempting to divide the responsibility for the presentation of issues raised by other appellants as well.

We deny TMIA's motion. Its short, generalized explanation does not provide sufficient "good cause," as 10 CFR 2.762(e) requires, to warrant doubling the page limit.

^{3/} In this regard, however, we note that TMIA has not been a participant in the emergency planning and design phases on appeal.

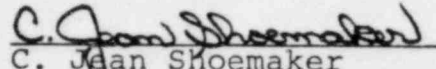
The mere fact that a brief must address matters in two decisions does not by itself mean that the brief need be twice as long as ordinarily permitted under the Commission's rules. Indeed, in establishing the 70-page limit for appellate briefs, the Commission took into account that Licensing Board proceedings usually involve voluminous records and often culminate in several partial initial decisions. Moreover, it is clear from TMIA's motion that its request for an increase in the number of pages is related to its request for more time. Our grant of a 10-day extension will thus provide TMIA the additional time in which to refine and consolidate its arguments. After making such reasonable efforts, if TMIA still finds it necessary to request a waiver of the prescribed page limit for briefs, it may so move. But we remind TMIA (and any other party) that such a request must specify the amount of the enlargement sought, set forth in detail why it is necessary, and be made at least seven days before the date the brief is due. See 10 CFR 2.762(e).

The motions of TMIA and the Aamodts to suspend briefing are denied. TMIA's motion to exceed the 70-page brief limit is denied without prejudice. TMIA's motion for an extension of time in which to file its brief is granted in part; the

time for filing all briefs in support of exceptions is extended to September 30, 1982.

It is so ORDERED.

FOR THE APPEAL BOARD


C. Jean Shoemaker
Secretary to the
Appeal Board

Separate statement of Mr. Edles. I join fully in the Board's decision to deny the requests of TMIA and the Aamodts to suspend briefing indefinitely and extend the page limitation, and the analysis of those matters. I would, however, grant TMIA's request for an extension of the due date for filing briefs to October 15. I would do so for two reasons.

First, the additional time would -- I hope -- permit a more careful honing of the issues and arguments. This is important in view of our decision to deny TMIA's request to enlarge the page limitation. Additional time should encourage fewer, more thoughtful pages. I fully expect that TMIA -- and others -- will make a dedicated effort to fine tune the briefs so as to bring them within the 70 page limit.

Second, the additional time should have no bearing on the critical issues of whether -- or when -- TMI-1 is permitted to restart. Those issues are squarely and exclusively before the Commission as part of its immediate effectiveness review. See CLI-81-34, 14 NRC 1097 (1981). While I believe that this Board must insure a fair resolution of all appellate issues as promptly as possible, I would balance all the factors in this specific instance in favor of a grant of a bit more time to permit intervenors to address the numerous and serious issues somewhat more carefully and thoughtfully.

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