

LIC November 5, 1982

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'82 NOV -8 A10:53

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

OFFICE OF SECRETARY
PLANNING & SERVICE
BRANCH

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

LICENSEE'S REQUEST FOR FURTHER
PAGE LIMITATION WAIVER

By letter to the Appeal Board dated October 14, 1982, Licensee indicated its intention to respond in one consolidated brief to four separate appellate briefs totalling approximately 170 pages.^{1/} At that time, in the initial organizing and drafting stages, Licensee indicated its intention to abide by the 70-page limitation on briefs and the normal briefing schedule. Two weeks later, after completing most of its draft. Licensee asked for a 10-day extension of time and a waiver of the page limitation to accommodate what it then anticipated would be a 150-page brief. Licensee Request for Extension of Time and Page Limitation Waiver,

1/ It should be noted that the 170-page figure is illusory. Many of appellants' arguments are supported only by citations to proposed findings which total another 100 pages of argument. Thus, Licensee is responding not to 170, but effectively to 270 pages of argument.

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dated October 27, 1982. The Appeal Board granted Licensee's request for an extension of time and permitted the filing of a 110-page brief, noting, however, that Licensee could timely request a further waiver of page limitation if, despite reasonable efforts, it could not make all of its arguments within 110 pages. Order of Atomic Safety and Licensing Appeal Board, dated November 1, 1982. Licensee has made more than reasonable efforts to trim its arguments to 110 pages. For example, we largely ignore in our brief attacks by appellants on the adequacy of related NRC investigations and the adequacy of NRC exams, leaving these issues to the NRC Staff response. However, having now completed an entire draft, Licensee finds that it must request a further waiver of page limitation and permission to file a 170-page brief. The reasons for this length are several.

First, the appellants' briefs to which Licensee is responding do not follow the format contemplated by the Commission's regulations, i.e., a statement of each exception followed by the reasons for assertion of error supported by precise record citations. See 10 C.F.R. § 2.762(a). Rather, these briefs contain poorly organized, shotgun arguments divorced from any exceptions. See, e.g., Aamodt Brief ¶¶ 17-19, 21-30; TMIA Brief, pp. 39-41, 66. In particular, the Aamodts' brief refers to only seven exceptions; the arguments, however, span many, many more subjects than are encompassed in those seven

exceptions. Thus, Licensee must devote pages to restating the appellants' arguments in a logical order so that the Appeal Board can understand more readily the issues raised.

Second, the appellants' briefs contain very few legal arguments or applications of legal principles to the facts of record. Rather, these briefs more closely resemble proposed findings of fact in that they are full of disputed factual findings on some very complex matters. Licensee has had difficulty making factual arguments in a limited space because brevity has often eclipsed clarity and precision. Thus, Licensee's brief necessarily has had to be expanded to give proper treatment to its factual presentations.

Licensee's problems have been exacerbated by the tendency of the appellants to assert facts based on mischaracterizations of the record or lacking record citation altogether. To correct these factual misstatements often has required painstakingly detailed analyses of the record, and has added still more pages.

If Licensee were to limit its consideration to properly supported arguments, and were to ignore arguments raised for the first time on appeal or those divorced from exceptions,^{2/} the effort to respond and the length of our brief would be reduced considerably. Such a position, however, involves

^{2/} For instance, TMIA challenges for the first time on appeal Management Issue 6 dealing with the relationship between financial and technical decision-making. See TMIA Brief at 18-19, 22-23. The Aamodts claim in their appellate brief that the Board failed to develop any significant record on training of nonlicensed personnel, yet this issue was not contained in any of the Aamodt exceptions. Aamodt Brief at ¶ 34.

more risk than Licensee believes prudent in a case of first impression and enormous importance like this one. Thus, out of an abundance of caution, and mindful of the Appeal Board's sua sponte responsibilities, Licensee has responded -- albeit as briefly as possible -- to the various arguments raised, while merely noting the procedural deficiencies.

For the foregoing reasons, and in accordance with 10 C.F.R. § 2.762(c), Licensee requests that it be granted a waiver of the page limitation to allow its filing of a 170-page consolidated responsive brief. No other party will be prejudiced by this request. Because the schedule allows only four days for NRC Staff review of Licensee's response before the Staff must file its brief, however, Licensee advised the Staff of this request and counsel is authorized to state that the Staff has no objection.

Respectfully submitted,

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DATED: November 5, 1982.

LIC November 5, 1982

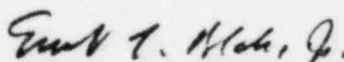
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy copy of the foregoing LICENSEE'S REQUEST FOR FURTHER PAGE LIMITATION WAIVER was served this 5th day of November, 1982, by hand delivery to those persons on the attached Service List designated by an asterisk (*) preceding their names, and by deposit in the United States mail, postage prepaid, addressed to each other person on the attached Service List.



Ernest L. Blake, Jr.

DATED: November 5, 1982.

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NUCLEAR REGULATORY COMMISSION

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