

motion. We granted it on January 18, 1983, and established a new schedule calling for the submission of direct testimony by all parties by February 16, and the convening of the hearing on March 1.

The following day, January 19, 1983, UCS filed what it described as a "response to ALAB-708 and request for modification of schedule." The document (a) takes issue with some of the tentative conclusions set out in ALAB-708, (b) requests a modification in the schedule to permit UCS to file testimony on March 16, following receipt of testimony from the staff and the licensee, 1/ and (c) asks us to expand the scope of the reopened proceeding and seek certain additional information from the staff and licensee. 2/

1/ The UCS pleading, although filed on January 19, notes that it was "completed" before UCS was advised that the licensee's request for an extension of time had been granted. It is unclear, as a result, whether the March 16 date was chosen by UCS in contemplation of the original due date for the filing of testimony (January 26) or the new date (February 16).

2/ UCS urges us to (i) add a question directed specifically toward establishing whether adequate operator training and procedures exist for decay heat removal, including use of the boiler-condenser mode, feed and bleed, transition between boiler-condenser and feed and bleed, and use of the high point vents; and (ii) add a question specifically directed toward establishing whether the RELAP5 code is able to accurately predict plant behavior following a loss of main feedwater or small break loss of coolant accident at TMI-1, including the adequacy of decay heat removal using the boiler-condenser mode or feed and bleed and the effects of RCS high point vent operation. UCS Response of January 19, 1983, at 10-11.

Among other things, UCS requests that the staff provide witnesses from EG&G who can interpret the significance of their recently conducted Semiscale tests. UCS argues, in connection with this request, that "the staff has already demonstrated that it either misunderstands the implications of these tests or, in its zeal to support restart of TMI-1, chooses to mischaracterize them." ^{3/} The licensee and the staff oppose grant of UCS' motion. We shall deny the motion but shall, on our own initiative, postpone the hearing until March 7, 1983.

a. UCS' substantive comments. UCS devotes a considerable portion of its filing to setting forth its views regarding the tentative conclusions set out in our earlier order. Such views are premature. We have provided the parties with an opportunity to file briefs on the substantive issues following completion of the reopened hearing; such briefs must include any findings of fact or conclusions of law that the parties wish us to make. UCS should include at that time any views it may have regarding our tentative conclusions and we shall consider them in reaching our decision in this case.

b. Modification of schedule. Direct testimony is generally submitted by all parties at the same time. See 10 CFR 2.743(b). Ordinarily, a single document is submitted

^{3/} UCS Response of January 19, 1983, at 11.

containing both direct and anticipatory rebuttal testimony; an opportunity to supplement testimony may be authorized, upon a showing of good cause and need, to address genuine surprises. ^{4/} Such approach appears to have been followed successfully during the trial stage of the design phase of this case ^{5/} and we see no reason to depart from it now.

UCS' principal arguments in support of its request to file its testimony after the staff and licensee are its claims that it is not familiar with the RELAP5 computer code, has not reviewed the B&W Appendix K code in any detail, and cannot therefore present its direct testimony without knowing what the positions of the staff and the licensee regarding those codes will be. ^{6/} We note, however, that UCS had the opportunity to review the

^{4/} See Licensing Board Memorandum and Order of September 12, 1980. (unpublished)

^{5/} See Licensing Board Memorandum and Order of September 8, 1980. In the absence of objection from other parties, UCS was permitted to file its written testimony on Contention 5 following the receipt of staff and licensee testimony, however. See Licensing Board Memorandum and Order of September 12, 1980, supra.

^{6/} UCS also notes that it has other "pre-existing" obligations, such as submitting comments to the Commission by January 7, 1983. Such other commitments are insufficient, in our view, to warrant a delay in the reopened proceeding, particularly in light of our January 18 order authorizing a three week delay in the date for filing testimony. We also fail to see the relevance of such commitments to UCS' basic claim that it must see the arguments advanced by the staff and the licensee in order to present meaningful testimony.

information on both the B&W code and the RELAP5 code at an earlier stage. ^{7/} In addition, the earlier filings by the staff and the licensee spell out in some detail the positions and arguments likely to be developed on the record at the reopened hearing. In such circumstances, we are unpersuaded that UCS' ability to formulate its position and necessary supporting testimony, including anticipatory rebuttal, will be compromised by having to file on the same date as the staff and the licensee. If UCS can establish a need for the submission of written rebuttal testimony despite the opportunity for cross-examination at the hearing, it may seek leave to do so at the hearing.

c. Expansion of issues and request for EG&G witnesses. We see no need to expand the issues or require particular witnesses to testify. To begin with, as we noted earlier, the record appears to contain sufficient evidence to support a conclusion that the operations associated with feed and bleed are relatively simple. See ALAB-708, 16 NRC ____ (slip opinion at p. 34). No evidence beyond that called for in ALAB-708 need be submitted with respect to these matters. (The different, although related issue of operator

^{7/} A description of the B&W Appendix K computer codes is summarized in Licensee Exhibits 3 and 5, already in evidence, and UCS cross-examined the licensee's witness with respect to the application of the codes to the small break LOCA analysis as contained in Licensee Exhibit 5. See, e.g., Tr. 5126-5140. A description of the RELAP5 code was contained in Board Notification BN-82-107 (Oct. 22, 1982).

training will be taken up in the management phase of this case.) We also believe that our existing questions are sufficient to elicit needed information regarding the accuracy of the RELAP5 code to predict plant behavior. Finally, UCS' request that we require testimony from particular witnesses is premature. The staff, like other parties, has the right to offer witnesses of its own choosing. We expect the staff to provide fully knowledgeable witnesses. UCS, through cross-examination, may attempt to undermine a witness' testimony but we are not prepared at this stage to assume that the record will be inadequate to permit us to reach an informed decision without EG&G witnesses. Cf: South Carolina Electric & Gas Company (Virgil C. Summer Nuclear Station, Unit 1), ALAB-710, 17 NRC ____ (1983) (slip opinion at pp. 5-6).

d. Other matters. We have discovered that the Supreme Court will hear oral argument in Metropolitan Edison Co. v. PANE (No. 81-2399) at 10 a.m. on March 1, 1983. To avoid any conflict with this argument, we shall reschedule our hearing to begin on March 7, 1983, at 9:30 a.m.

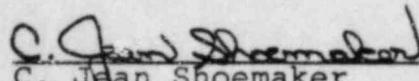
The written testimony shall include a brief summary or outline of the testimony and conclusions its sponsor seeks to support. The outline or summary will be bound into the transcripts but will not be a part of the testimony. Where testimony is presented by a panel of witnesses, it shall indicate the portion supported by each witness of the panel.

If there are corrections or modifications of the written testimony, parties shall provide corrected pages (except for last minute changes) to the reporter, the Board, and other parties.

The evidentiary hearing will begin at 9:30 a.m. on Monday, March 7, 1983. Briefs shall be in our hands no later than close of business, Monday, March 28, 1983.

It is so ORDERED.

FOR THE APPEAL BOARD


C. Jean Shoemaker
Secretary to the
Appeal Board