



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

November 23, 1979

MEMORANDUM FOR: Chairman Hendrie
Commissioner Gilinsky
Commissioner Kennedy
Commissioner Bradford
Commissioner Ahearne

FROM: *LB* Leonard Bickwit, Jr., General Counsel

SUBJECT: TMI UNIT ONE PROCEEDING -- MANAGEMENT
COMPETENCE

This responds to the request for our views on whether the Commission should serve as the hearing board on the management competence issues that will arise in the TMI Unit One proceeding. We have reviewed the Administrative Procedure Act and determined that there is no legal bar to the Commission serving as the hearing board on those issues. However, we recommend against that course for a number of reasons.

First, the conduct of the hearing will entail numerous rulings on admissibility of written and oral testimony, scope of examination and cross-examination, and permissible types of cross-examination. It is our view that the Commission is not well suited to preside in such adjudicatory hearings. The Commissioners are not well versed in the rules of evidence, and generally have had little, if any, experience in conducting adjudicatory hearings. Second, serving as presiding officers would require an inordinant amount of Commissioner time. The Commission would undoubtedly be required to rule upon several prehearing motions, and the hearing itself could run on for several weeks. Third, it is unlikely that the hearing itself will serve as the forum for any significant policy debate over the level of technical or management competence required to operate a nuclear power plant. The utility will make the best case that it can that it is qualified to operate even under the most strict standards and those opposed to operation will make the best case that they can that the utility is incompetent even under minimal standards. The policy debate will come later when the record is examined and a decision has to be made. In light of the time that would be required to prepare for and to conduct the hearing, we do not believe this would be the most efficient utilization of Commission resources. Finally, the Commission has already split the proceeding, since special procedures already

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apply to resolution of safety issues prior to plant startup , and to consideration of psychological impacts. Lifting out other issues for special consideration will complicate matters further.

There are alternative means of ensuring a comprehensive hearing record is developed while also affording the Commission the opportunity to address the management competence issue at an early date. The Commission could issue an order delineating competency related issues which the parties would be requested to address during the Licensing Board hearing. This could focus the hearing and accommodate specific concerns of individual Commissioners.

The Commission could also use such an order to establish expedited procedures which would ensure that the management competence issue would reach the Commission at an early date. The Commission could direct the Board to receive testimony on the competence issue before it heard testimony on other issues. Upon completion of this testimony, the parties would submit proposed findings of fact to the Board. The Board would then issue a partial initial decision limited to that issue. That opinion would then be reviewed by the Commission. This option does, however, further fragment the proceeding and would cause some delay.

At present the Board has received the contentions of the parties, heard oral argument on contentions, and scheduled written briefs on some contentions in dispute. However, there seems to be no legal dispute regarding the admissibility of the contentions dealing with management competence, and a special prehearing conference order ruling on contentions is expected to be issued by the Board in about two weeks. Hearings are anticipated to begin in February, 1980. A Commission order delineating competency related issues to be addressed should not delay this course of events, although it is possible that a further round of contentions and some minor delays would result if the issues raised by the Commission did not fall within the Board's and parties' original concept of management competence. On the other hand, an early partial initial decision on management competence would likely delay initial decision on start-up by about 30-45 days, because the hearings would probably need to be recessed in order for parties' counsel to prepare proposed findings and for the Board to write a decision.

We believe the approaches discussed above are responsive to Commissioner Gilinsky's concerns but would eliminate the need for the Commission itself to spend endless hours listening to testimony.

cc: OPE
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