

October 10, 1979

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of )  
METROPOLITAN EDISON COMPANY )  
(Three Mile Island Nuclear )  
Station, Unit No. 1) )

Docket No. 50-289

LICENSEE'S ANSWER TO MOTION TO  
MODIFY MEMORANDUM AND ORDER  
SETTING SPECIAL PREHEARING CONFERENCE,  
AND SUPPLEMENTS THERETO,  
BY CHESAPEAKE ENERGY ALLIANCE, INC.

Chesapeake Energy Alliance, Inc. ("CEA") has filed a Motion to Modify Memorandum and Order Setting Special Prehearing Conference, dated September 27, 1979, and a Supplement and Second Supplement to the Motion, each of which are dated September 28, 1979. For the reasons stated in this answer, Metropolitan Edison Company ("Licensee") opposes CEA's Motion, as supplemented.

First, Licensee does not agree that the Board's schedule, as set forth in its Memorandum and Order of September 21, 1979, should be delayed pending publication of the final Kemeny Commission Report, as CEA contends. The Kemeny Report will be one of several extensive investigative analyses of the TMI-2 accident published in the months ahead. Although these studies will undoubtedly contribute additional perspectives regarding

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the TMI-2 accident, it does not follow that the Board should postpone its schedule for filing of contentions. The Board's schedule is consistent with the tentative schedule attached to the Commission's August 9, 1979 Order and Notice of Hearing, and with the Commission's instructions to "conduct the proceeding expeditiously," and "as early as possible publish an appropriate schedule and attempt to meet it." (Order and Notice of Hearing, p. 10). The Commission was well aware at the time of issuance of its Order and Notice of Hearing of the schedule established by Executive Order 12130 (April 11, 1979), for completion of the Kemeny Commission report and of other official investigative reports, such as the report of the NRC/TMI Special Inquiry Group. If new information comes to light affording, in CEA's view, a basis for intervention on additional contentions after the normal time for filing, there are accepted procedural avenues available to CEA. See, e.g., 10 C.F.R. § 2.714.

Similarly, the Board should deny CEA's request to delay the filing of contentions pending opportunity by CEA to read and understand NUREG-0600, NUREG-0578, Licensee's Report In Response to NRC Staff Recommended Requirements For Restart Of Three Mile Island Nuclear Station, Unit 1, or other documents not yet issued which may prove relevant to the proceeding. The events surrounding the accident at TMI-2 have over the last six months been widely reported in the press and

and technical publications, in public meetings of the Nuclear Regulatory Commission and the Advisory Committee on Reactor Safety, in numerous Congressional hearings, and in reports by the NRC Staff, the Licensee, EPRI and by others. Other petitioners to intervene have used this vast source of information to develop their contentions. It may well be that in the special circumstances of this proceeding documents which are not yet or have only very recently become available will provide good cause for the supplementation of contentions presently advanced. To define the boundaries of discovery and to permit the preparation of testimony for the hearing it is essential, however, that contentions which can be formulated on the basis of presently available information be promptly advanced.

If, as suggested by CEA's supplemental motions, CEA is now, more than six months after the TMI-2 accident, only at an early stage in its understanding of PWR technology in general and of the TMI-2 accident in particular, its ability to frame contentions and to make significant contributions to the hearing may be limited. Due process does not, however, require a delay in the hearing process while CEA catches up with other petitioners.

Second, CEA's original Motion (at pp. 2-3) asks the Board to "provide for delivery of all petitions to intervene and related motions to the intervenors in the proceeding" and

to "provide for a special conference among those intervenors who are challenging the re-opening of TMI-1." We believe there is merit in CEA's first request that at least copies of all contentions be provided to all petitioners to assist in efforts to consolidate contentions. We are advised by the Office of the Secretary, Docketing and Service Section, that copies of draft contentions received by that Office as well as future filings by petitioners and parties will be routinely served on all petitioners whose petitions have been previously docketed. There is thus no need for a Board order to accomplish this distribution of contentions. As to CEA's second request, we fail to see why CEA cannot undertake to contact other intervenors in order to exchange information and discuss whatever issues are deemed by them to be appropriate, without further instruction from the Board.<sup>1/</sup> Accordingly, we view CEA's request to be unwarranted.

Third, in its first Supplement, CEA asks for (1) access to Commission technical staff and "seminars" to explain various Commission documents to the parties prior to the filing date for draft contentions, and (2) a staff study of intervenor resources and possible compensatory "mechanisms" for parties

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<sup>1/</sup> We note that the Board has already asked the parties to begin discussions concerning issues to be addressed in the hearing. (See pp. 24-25 of the Board's September 21, 1979 Memorandum and Order.) In addition, the Special Prehearing Conference scheduled for November 8-9 will provide a further opportunity for discussion and refinement of issues.

found to have inadequate resources.

We do not presume to comment on whether, and to what extent, the Staff should expend its resources to educate and assist other parties to this proceeding through "seminars"; however, we do raise objection with CEA's suggestion that the proceeding be delayed to accommodate this. We further note that the Commission's August 9 Order and Notice of Hearing (p. 11) already provides that parties will have "informal access to NRC Staff considerations of the issues involved in this hearing in the manner in which such access is permitted in reactor licensing proceedings." As to a Staff study of intervenor resources and possible compensatory mechanisms, we find no basis in the Commission's August 9 Order and Notice of Hearing for such procedure, and are aware of nothing in the Commission's Rules of Practice or in prior holdings which suggests that any such procedural steps are required or appropriate.<sup>2/</sup>

Finally, in answer to CEA's Second Supplement to its original Motion, we submit that the Commission's rules, in § 2.711(a), already permit time extensions for filing where

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<sup>2/</sup> Insofar as the first Supplement's cloudy reference to possible compensatory "mechanisms" is intended to include financial assistance, we note that the Commission's Order and Notice of Hearing contemplates the possibility of financial assistance only in connection with contentions, if allowed, based on psychological distress. There is no indication that the Commission meant to depart from its long-standing policy of denying financial assistance in other areas. See Nuclear Regulatory Commission (Financial Assistance to Participants in Commission Proceedings), CLI-76-23, 4 NRC 494 (1976).

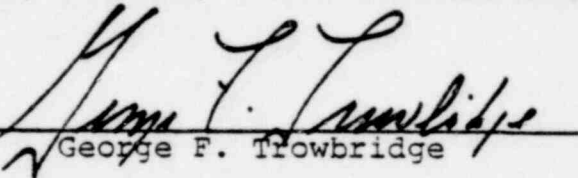
"good cause" is demonstrated, and that no additional procedural "provisions" need be devised by the Board at this time.

Conclusion

For the reasons stated, the Board should deny CEA's Motion, as supplemented.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By   
George F. Trowbridge

Dated: October 10, 1979

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October 10, 1979

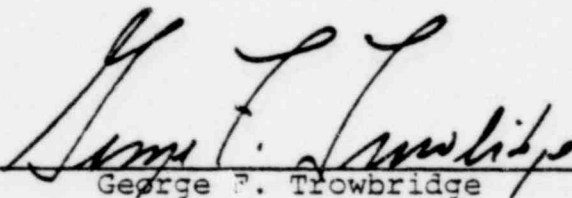
UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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Station, Unit No. 1)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Answer to Motion to Modify Memorandum and Order Setting Special Pre-hearing Conference, and Supplements Thereto, by Chesapeake Energy Alliance, Inc.," dated October 10, 1979, were served upon those persons on the attached Service List by deposit in the United States mail, postage prepaid, this 10th day of October, 1979.

  
George P. Trowbridge

Dated: October 10, 1979

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NUCLEAR REGULATORY COMMISSION

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In the Matter of )

METROPOLITAN EDISON COMPANY )

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

) Docket No. 50-289  
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