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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

ATOMIC SAFETY AND LICENSING BOARD

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Before Administrative Judges:
Sheldon J. Wolfe, Chairman
Frederick J. Shon
Dr. Oscar H. Paris

OFFICE OF SECRETARY
DOCKETING & SERVICE
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In the Matter of

GPU NUCLEAR CORPORATION, et al.

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

Docket No. 50-289-OLA-1
50-289-OLA-2

(Steam Generator Plugging
Criteria)

April 2, 1986

ORDER
(Memorializing Special Prehearing Conference)

The 10 CFR §2.751a special prehearing conference, in the case of Metropolitan Edison Co., et al. (Three Mile Island Nuclear Station, Unit No. 1), Docket No. 50-289-OLA-1,¹ was held on March 27, 1986, pursuant to this Board's Memorandum and Order and pursuant to this Board's Notice of Hearing on Issuance of Amendment to Facility Operating License. These two issuances were dated February 12, 1986. This proposed amendment, Technical Specification Change Request (TSCR) 148, would

¹ During an off-the-record conversation between the Board, the parties and the reporter, the caption for the two cases, as consolidated, was changed as is reflected in the caption for this Order.

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maintain the 40% throughwall limit on the secondary side of tubes but would replace the 40% limit on the primary side of tubes with a sliding scale which goes from 40% to 70% throughwall depending upon the size of the defect. The Licensee applied for this amendment on November 6, 1985 and the Commission published a Notice of Opportunity for Prior Hearing on January 6, 1986 (Tr. 3).

Attendees at the conference were: Mary Wagner, Esq. and Mitzi Young, Esq., counsel for the NRC Staff; Bruce Churchill, Esq., Wilbert Washington, II, Esq., and Alan Wasserman, Esq., counsel for the Licensee; Joanne Doroshow, Esq., representing Three Mile Island Alert (TMIA); Thomas Au, Esq., counsel for the Commonwealth of Pennsylvania. On March 25, 1986, in case No. OLA-1, the Commonwealth had filed a Motion to Participate as an Interested State Pursuant to 10 CFR 2.715(c). Mr. Au stated the Commonwealth would not file contentions, would take the contentions of other parties as they stand, would cross-examine witnesses, and might file proposed findings of fact and exceptions. There being no objection, the Commonwealth's Motion was granted (Tr. 4-6).

The Board granted TMIA's petition for leave to intervene in case No. OLA-1, because, pursuant to our Memorandum and Order of February 12, 1986, TMIA on February 24 had submitted an appropriate affidavit of one of its members setting forth her name and address which established the necessary proximity to TMI-1 and specified her authorization for the filing of the petition for leave to intervene. TMIA submitted five

contentions on March 10, 1986 and the Staff and the Licensee responded on March 20 (Tr. 6).

The Board noted for the record that, in a conference call on March 21, 1986 to Ms. Wagner, Ms. Doroshow and Mr. Wasserman, it had advised the parties to be prepared to discuss a companion case which bore the same docket number as case OLA-1 but was identified as case OLA-2. In case OLA-2, the Licensee, on February 4, 1986, applied for an amendment to the steam generator tube specification. That proposed amendment, TSCR 153, would in substance change the repair criteria to allow the Licensee not to repair tubes under certain circumstances, if a tube has a defect up to 50% tube wall penetration. On February 28, 1986, the Commission published a Notice of Opportunity for Hearing (51 Fed. Reg. 7157), but a final determination had not been made by the Commission as of the date of the conference whether or not the amendment request involves a significant hazards consideration (Tr. 6-8).

On March 10, 1986, TMIA filed a Motion to Broaden the Hearing Scope—it requested that the two cases (now OLA-1 and OLA-2) be consolidated and heard in this proceeding. TMIA attached to this Motion a request for hearing also dated March 10, which set forth five contentions which were substantially identical to those proposed in OLA-1, and which incorporated by reference the aspects set forth in the OLA-1 case. TMIA also submitted an appropriate affidavit of one of its members (Tr. 8). In its Response of March 20 to TMIA's request for hearing, the Licensee did not challenge (and Mr. Wasserman confirmed this in the March 21 conference call) TMIA's standing/interest and did not state that TMIA

failed to meet the "aspects" requirement of §2.714(a) of our Rules of Practice. The Licensee's Response, however, opposed the admissibility of the contentions proposed by TMIA in the OLA-2 case (Tr. 8-9).

Ms. Wagner advised during the conference call that the Staff would file a submission advising that it neither questions TMIA's standing/interest nor contends that TMIA has not met the "aspects" requirement of §2.714(a) in case No. OLA-2. Ms. Wagner agreed to telephone Ms. Doroshow and Mr. Wasserman on March 24 to advise whether or not the Staff's response to the proposed contentions in OLA-2 varied from its earlier response to the proposed contentions in OLA-1, and would make certain that the Staff's written response would be received by Ms. Doroshow on March 26. Ms. Doroshow agreed to this procedure, and Ms. Wagner did speak to Ms. Doroshow and Mr. Wasserman on March 24. On March 25, the Staff filed its Response to TMIA's request for hearing and filed its Response to TMIA's Motion to Broaden the Hearing Scope, which TMIA received on March 26 (Tr. 9-11).

In light of an appropriate affidavit having been submitted by one of TMIA's members dated March 6, 1986, and because the aspects of the subject matter in this OLA-2 case as to which TMIA wishes to intervene, were incorporated by reference from the request for hearing in the OLA-1 case, the Board granted TMIA's petition for leave to intervene in the OLA-2 case. The Board conditionally granted TMIA's request for hearing inasmuch as whether a hearing will be held in the OLA-2 case will depend

on whether at least one of TMIA's contentions will be admitted as an issue in controversy² (Tr. 11).

On behalf of the Commonwealth of Pennsylvania, Mr. Au orally moved for leave to participate as an interested State in OLA-2 on the same basis set forth in its OLA-1 motion. Absent objection, the Board granted the State's motion to participate (Tr. 11-12).

With respect to TMIA's proposed Contention 2 in OLA-2, Ms. Doroshow substituted the word "is" in lieu of the word "in" so that the phrase now reads "is inaccurate and inconclusive". Further, she deleted the words "is uncertain" appearing in the last line of that contention. With respect to TMIA's proposed Contention 5 in OLA-1, Ms. Doroshow deleted the words "contain an operational degradation allowance to" (Tr. 13).

In order to expedite the resolution of these two cases, the Board stated that it would hear arguments in both cases on the five identical proposed contentions, that thereafter the Board would recess to determine which, if any, of the contentions were admissible and to decide whether the two cases should be consolidated, that the Board would then advise which contentions were admissible, and that at a later date the Board would issue an order setting forth its reasons for

² In its Memorandum and Order of February 12, 1986 (unpublished) and its Notice of Hearing on that same date, the Board also conditionally granted TMIA's request for hearing in OLA-1.

admitting or denying certain of the contentions³ (Tr. 12). Since the proposed contentions in each case were identical, first TMIA and then the Licensee and the Staff argued the admissibility or inadmissibility of the contentions as though a single set of five contentions had been submitted for both cases.⁴

After conferring and considering the parties' arguments in OLA-1 and OLA-2, the Board admitted TMIA's proposed Contentions 1, 2 as clarified, and 5 as reworded.⁵ The Board rejected proposed

³ The Board also stated that it was aware of the possibility that other petitions for leave to intervene in OLA-2 might be filed by the due date of March 31, 1986 as set by the Commission in its Notice of Opportunity for Hearing published on February 28, 1986, and that such petitions would have to be considered. (Tr. 12)

⁴ Except with respect to proposed Contention 5, as reworded, the Commonwealth of Pennsylvania had no comments to make during the course of this argument (Tr. 46, 70, 83, 87. See Tr. 119).

⁵ Contention 2, as clarified, reads as follows:

Neither the Licensee nor the NRC Staff has demonstrated that allowing degraded tubes to remain in service under the proposed revised plugging criteria will provide reasonable assurance that TMI-1 can operate without endangering the public health and safety, because the testing technique relied upon to define degraded tubes is inaccurate and inconclusive, in light of the particular method of degradation characterized by intergranular attack (IGA) and pitting (Tr. 77).

Contention 5, as reworded, reads as follows:

Neither the Licensee nor the Staff has demonstrated that allowing degraded tubes to remain in service under the proposed revised plugging criteria will meet GDCs 14, 15 and 31 in that it is inconsistent with Regulatory Guide

(Footnote Continued)

Contention 3. It also rejected proposed Contention 4, and, in order that the parties would be immediately aware of our thinking on at least this one contention, the Board stated that it had concluded this contention was subsumed within Contention 1 which had been admitted (Tr. 120-21).

The Board granted TMIA's motion to consolidate the two cases but only through the discovery period. If there are no other petitions for leave to intervene in OLA-2, the Board may make the consolidation final, subject to the proviso that the cases might be separated at a later stage if the consolidation would significantly delay the ultimate decision in OLA-1. Moreover, the two cases will remain independent proceedings and have two independent docket numbers, and the Board will issue either two separate initial decisions or an initial decision that rules on each case separately (Tr. 121-22).

The Board directed that the discovery period would begin on March 28 and would be completed within forty-five (45) days -- i.e. by May 12, 1986. The time for a party's written response to a request for production of documents etc. under §2.741 is reduced from thirty (30) days to twenty (20) days. The parties shall make every effort informally to engage in and expedite the discovery process. Within seven (7) days after the completion of discovery on May 12, any party

(Footnote Continued)

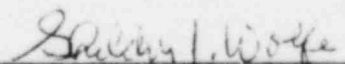
1.121, which provides that plugging criteria take into account variations in tube thickness due to possible corrosion (Tr. 117).

wishing to move for summary disposition shall so notify the Board and the other parties and file such a motion for summary disposition by May 27, 1986. The response time is twenty (20) days as set forth in §2.749. If no party advises by May 19 that a motion for summary disposition is being filed, the Board will proceed to issue an order setting the date, time and place for the hearing (Tr. 123-30).

Pursuant to 10 CFR §2.751a(d), objections may be filed by the Licensee, TMIA and by Pennsylvania within five (5) days after service of this Order, except that the Staff may file objections within ten (10) days after service.

It is so ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD



Sheldon J. Wolfe, Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 2nd day of April, 1986.