

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

**ADJUDICATORY ITEM**

June 2, 1978

SECY-A-78-47

**COMMISSIONER ACTION**

For: The Commission

From: James L. Kelley  
Acting General Counsel

Subject: REVIEW OF ALAB-474 (Metropolitan Edison  
Company, et al.)

Purpose: To inform the Commission of an Appeal  
Board decision on which no petition for  
review has been filed and which, in my  
opinion, should not be reviewed.

Facility: Three Mile Island Nuclear Station,  
Unit No. 2

Review Time  
Expires: June 7, 1978

Discussion: At oral argument held March 23, the  
Appeal Board granted the intervenors,  
represented by Dr. Chauncey Kepford,  
leave to file a motion to reopen the  
record of the Three Mile Island Unit 2  
proceeding on the issue of emergency  
planning. The intervenors' motion was  
filed April 16, thirteen days late. Over  
objections of the Staff and the licensee,  
the Appeal Board in ALAB-474 decided to  
hold the motion in abeyance until the  
Appeal Board completes its review of the  
existing record on emergency planning.

SECY NOTE: Identical to Advance Copies distributed to Commission Offices on  
June 2, 1978.

Contact:  
Mark E. Chopko, GC  
634-1465

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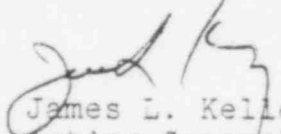
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Even though the motion was not timely and the Board found that the explanations for the late filing were unsatisfactory, the Board decided that emergency planning was such an important safety issue that concerns related to it should not be brushed aside on procedural grounds.<sup>1/</sup>

I agree that the most appropriate course for the Appeal Board is to hold the motion in abeyance. In so doing, the Board is insuring that the public interest does not suffer merely because the intervenors have been inexcusably late in presenting the issue. The substantive merits of the motion will be carried with the appeal of the Licensing Board's initial decision authorizing the issuance of an operating license which will be the subject of a later Appeal Board decision. At this time, I see no reason for Commission action.

Recommendation:

No Commission review.

  
James L. Kelley  
Acting General Counsel

Attachment:  
ALAB-474

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<sup>1/</sup> The greatest part of the Appeal Board decision is a comment on the tone of Dr. Kepford's filing which is disrespectful toward the Board, the staff, the Commonwealth of Pennsylvania, and the licensee.

Commissioners' comments should be provided directly to the Office of the Secretary by c.o.b. Wednesday, June 7, 1978.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT June 6, 1978, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

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NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Alan S. Rosenthal, Chairman  
Dr. W. Reed Johnson  
Jerome E. Sharfman



SERVED MAY 3 1978

In the Matter of )

METROPOLITAN EDISON COMPANY, )  
et al. )

Docket No. 50-320

(Three Mile Island Nuclear )  
Station, Unit No. 2) )

Mr. Chauncey R. Kepford, State College, Pennsylvania,  
for the intervenors, Citizens for a Safe Environment  
and York Committee for a Safe Environment.

Mr. Ernest L. Blake, Jr., Washington, D.C., for the  
applicants, Metropolitan Edison Company, et al.

Ms. Karin W. Carter, Assistant Attorney General of  
Pennsylvania, Harrisburg, Pennsylvania, for the  
Commonwealth of Pennsylvania.

Mr. Henry J. McGurran for the Nuclear Regulatory  
Commission staff.

MEMORANDUM AND ORDER

May 5, 1978

(ALAB - 474)

This proceeding is before us on the intervenors' <sup>1/</sup>  
appeal from the December 19, 1977 initial decision of the

1/ Citizens for a Safe E  
for a Safe Environmer

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