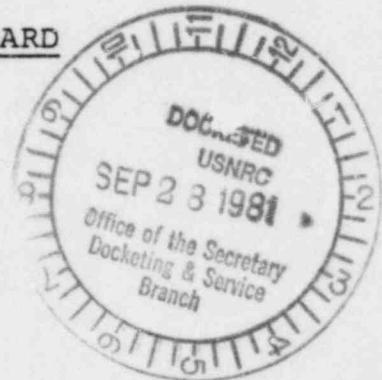


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBEFORE THE ATOMIC SAFETY AND LICENSING BOARD

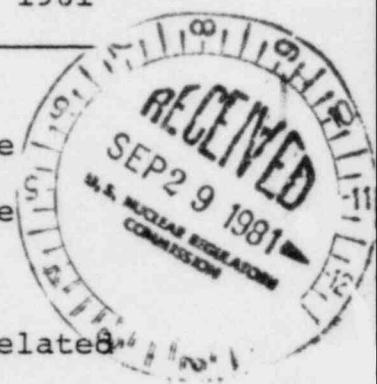
In the Matter of)
)
 METROPOLITAN EDISON COMPANY) Docket No. 50-289
) (Restart)
 (Three Mile Island Nuclear)
 Station, Unit No. 1)



LICENSEE'S RESPONSE TO BOARD ORDER DATED SEPTEMBER 14, 1981
 IN THE MATTER OF CONFIDENTIALITY

In its September 14, 1981 Memorandum and Order, the Board directed the Staff to serve on the Board and Judge Milhollin a number of documents, including unexpurgated copies of documents previously served on the parties, related to operating cheating. The Board also asked any party who believes that the requested information ought to be subject to confidentiality to present its arguments, supported by a written brief, so as to be received by the Board and Judge Milhollin by September 25, 1981. The Staff was advised that, pending the Board's ruling on confidentiality, the Staff could either withhold or disclose the documents to the parties under interim negotiated protective arrangements.

By letter dated September 18, 1981, the Staff provided the Board and Judge Milhollin with the requested documents. The Staff did not serve the documents on the parties, choosing instead to accept the option accorded to it of delaying service until the matter of confidentiality of the names of individuals



DSO3
 50/1

involved in the cheating incidents is resolved. In its letter, the Staff also proposed that the Board consider adoption of a protective order, a draft of which was attached to the Staff's letter. The proposed protective order essentially limits access to "private information" to individuals who participate in the reopened hearing on operator cheating. "Private information" is defined by the Staff as the names or other identifying characteristics of the two senior reactor operators who were involved in the NRC examination cheating incident.

By Memorandum and Order dated September 22, 1981, the Board indicated that, among other reasons, in the absence of a negotiated protective arrangement, it would not adopt the Staff's recommended protective order but would await the briefs on the question of confidentiality.

Licensee is not at this time claiming on behalf of the Licensee a legal entitlement to the nondisclosure of the identity of any of its present or past employees whose names may arise in the context of operator cheating incidents or rumors. Nor, in the short time available, has Licensee's research led it to believe there are solid grounds, under which individual employees would be legally entitled, in the context of this proceeding, to protection from public disclosure of their own identities or the names of other employees involved in or who have information

pertaining to operator cheating.^{1/} However, consistent with the Commission and the parties' interest in conducting a fair and complete hearing, Licensee believes that the Board and parties should try to avoid unnecessary distress and embarrassment to individual operators, as well as potential injury to individuals' reputations. With this goal in mind, Licensee has considered the possible methods available to the Board and Judge Milhollin which would both facilitate full disclosure of information which the Board and the parties are entitled to know while, at the same time, protect to the fullest extent possible the privacy and the reputations of Licensee's employees.

The protective order proposed by the Staff seeks to accomplish a degree of protection, but in its present form only to the two operators who cheated on the NRC examinations. The Staff's proposal does not address the more difficult problem of protecting individuals who may be named in the NRC documents as the subject of rumors or as alleged participants in other possible cheating incidents, such as the TMI-2 operator involved in the 1979 incident. Moreover, it does not deal at all with the problem of individuals identified in connection with

1/ Licensee and its employees may have a legal right pursuant to 10 CFR 2.790 and FOIA to insist that the NRC not disclose the identity of at least certain individuals named in the investigative reports furnished by the NRC Staff to the Board on September 18, 1981. As explained below, this would not solve the problem of individuals identified in Licensee documents or the need to find some mechanism by which individual operator examinations and related events can be discussed in open hearing without naming the individuals.

Company administered exams. In addition, full implementation of the Staff's proposed protective order would appear to require that all hearing sessions in which so-called private information may be discussed would have to be held in camera, with the associated awkwardness of such a procedure. Finally, Licensee understands that with respect at least to Company administered examinations, the Aamodts intend in discovery to review a large number of exams and to utilize outside volunteer services in this review -- a situation which does not lend itself easily to the drafting or enforcement of a protective order. For these reasons, Licensee does not believe that the Staff's recommended approach to protecting the identities of Licensee's employees is the best alternative available to the Board.

Licensee proposes therefore that litigation of operator cheating proceed, at least for the present, with the use of letter designations substituted for the names of individual TMI-1 operators keyed to the chart previously introduced in the hearing (ff. Tr. 20,577) summarizing operator examination results. The use of letter designations in lieu of operator names effectively allowed the parties and the Board members to question witnesses on a particular individual's performance in the examinations, without unnecessarily disclosing the names of individuals who, in that instance, failed certain examinations. That experience suggests that continuing this procedure in the reopened proceeding on operator cheating is a practicable and effective means of protecting individuals' privacy. Moreover, by using the previously-assigned letter designations,

the Board and the parties will be able to relate the new information in the record to the evidence already received on individual operators' examination results.

While Licensee recognizes that there may come a time during the reopened proceeding when it may become necessary to reveal the name or names of individuals involved in or who have information pertaining to operator cheating, we do not believe that it is necessary to do so at this juncture. Moreover, we are confident that for some individuals, public disclosure of their identity in the hearing, e.g., through their appearance as a witness, will pose no problem, either for the individual or for Licensee. Licensee therefore proposes that the Board utilize the letter designation method now, and resolve the issue of public disclosure of individuals' identity, including the need for protective orders or in camera sessions, in the specific context in which it arises when it is apparent that disclosure of identities to the parties is necessary.^{2/}

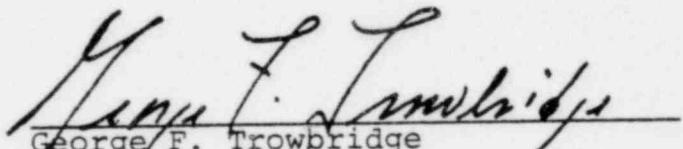
Finally, in response to matters discussed by the Board in footnote three of its September 22 Memorandum and Order, Licensee has advised the TMI-1 operators, as well as the individual employed at TMI-2 who was involved in the 1979 cheating incident, of our intention to request that the Board

2/ In order to expedite this process, Licensee offers to distribute promptly to the Board and interested parties copies of the material provided by the Staff to the Board on September 18, 1981, substituting letter designations for the names of individuals contained in these documents.

and parties use letter designations, rather than individuals' names, in considering the evidence on operator cheating, at least until it becomes apparent that disclosure of an individual's identity is necessary. Licensee has not discussed this matter with either of the two terminated employees who cheated on the NRC examinations.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE



George F. Trowbridge
Ernest L. Blake, Jr.
Deborah B. Bauser

Counsel for Applicants

1800 M Street, N.W.
Washington, D.C. 20036
Telephone: (202) 822-1000

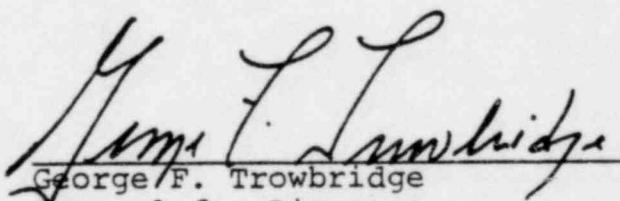
Dated: September 25, 1981

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
METROPOLITAN EDISON COMPANY) Docket No. 50-289 SP
) (Restart)
(Three Mile Island Nuclear)
Station, Unit No. 1)

CERTIFICATE OF SERVICE

I hereby certify that five (5) copies of the foregoing
"LICENSEE'S RESPONSE TO BOARD ORDER DATED SEPTEMBER 14, 1981
IN THE MATTER OF CONFIDENTIALITY" were hand delivered this
25th day of September, 1981, to Administrative Judge Ivan W.
Smith, U.S. Nuclear Regulatory Commission, Bethesda, Maryland
and were mailed by United States Mail, postage prepaid, to
those persons listed on the attached Service List and to
Prof. Gary L. Milhollin.


George F. Trowbridge
Counsel for Licensee

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)
METROPOLITAN EDISON COMPANY) Docket No. 50-289 SP
) (Restart)
(Three Mile Island Nuclear)
Station, Unit No. 1)

SERVICE LIST

Administrative Judge Ivan W. Smith
Chairman, Atomic Safety and
Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Administrative Judge Walter H. Jordan
Atomic Safety and Licensing Board
881 West Outer Drive
Oak Ridge, Tennessee 37830

Administrative Judge Linda W. Little
Atomic Safety and Licensing Board
5000 Hermitage Drive
Raleigh, North Carolina 27612

Administrative Judge Gary L. Milhollin
Atomic Safety and Licensing Board
1815 Jefferson Street
Madison, Wisconsin 53711

James R. Tourtellotte, Esquire (4)
Office of Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Docketing and Service Section (3)
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Alan S. Rosenthal, Chairman
Atomic Safety and Licensing Appeal
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Robert Adler, Esquire
Karin W. Carter, Esquire
Assistant Attorney General
505 Executive House
Post Office Box 2357
Harrisburg, PA 17120

Attorney General of New Jersey
Attn: Thomas J. Germine, Esq.
Deputy Attorney General
Division of Law - Room 316
1100 Raymond Boulevard
Newark, New Jersey 07102

John A. Levin, Esquire
Assistant Counsel
Pennsylvania Public Utility
Commission
Post Office Box 3265
Harrisburg, PA 17120

John E. Minnich
Chairman, Dauphin County Board
of Commissioners
Dauphin County Courthouse
Front and Market Streets
Harrisburg, PA 17101

Walter W. Cohen, Esquire
Consumer Advocate
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17127

Robert Q. Pollard
609 Montpelier Street
Baltimore, MD 21213

Jordan D. Cunningham, Esquire
Fox, Farr & Cunningham
2320 North Second Street
Harrisburg, PA 17110

Ms. Louise Bradford
TMI ALERT
315 Peffer Street
Harrisburg, PA 17102

Ellyn R. Weiss, Esquire
Harmon & Weiss
1725 Eye Street, N.W., Suite 506
Washington, D.C. 20006

Steven C. Sholly
Union of Concerned Scientists
1725 Eye Street, N.W., Suite 601
Washington, D.C. 20006

Ms. Gail Phelps
ANGRY
245 West Philadelphia Street
York, PA 17404

William S. Jordan, III, Esquire
Harmon & Weiss
1725 Eye Street, N.W., Suite 506
Washington, D.C. 20006

Chauncey Kepford
Judith H. Johnsrudd
Environmental Coalition on
Nuclear Power
433 Orlando Avenue
State College, PA 16801

Marvin I. Lewis
6504 Bradford Terrace
Philadelphia, PA 19149

Marjorie M. Aamodt
R. D. 5
Coatesville, PA 19320