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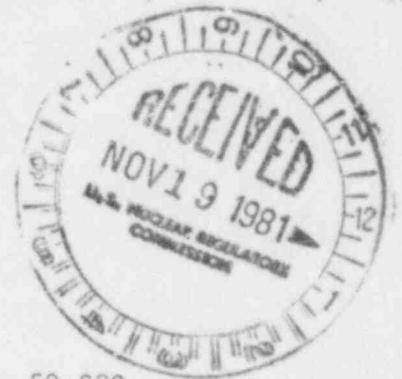
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'81 NOV 18 AIO:14

ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges:
Ivan W. Smith, Chairman
Dr. Walter H. Jordan
Dr. Linda W. Little

OFFICE OF SECRETARY
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BRANCH



In the Matter of)
)
METROPOLITAN EDISON COMPANY)
)
(Three Mile Island Nuclear)
Station, Unit 1))

Docket No. 50-289
(Restart)
(Reopened Proceeding)
November 17, 1981

MEMORANDUM AND ORDER

In its order of November 13, 1981 the Appeal Board acknowledged receipt of the notification of the withdrawal of the appeals of the Licensee and the involved individuals from our November 6 order on the issue of confidentiality. Noting that we have not yet approved the underlying basis for the withdrawal, i.e., the November 12 stipulation among the affected parties, and that we have not indicated that Judge Milhollin has acted in the Board's behalf in approving the stipulation, the Appeal Board is awaiting our further action before formally disposing of the two appeals.

We have examined the November 12 stipulation and we have informally discussed with Judge Milhollin his plans for proceeding under the stipulation. The stipulation is a logical approach and has our approval. It is consistent with our November 6 order affirming his order of October 22 on the matter of confidentiality. His approval of the stipulation is within

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the delegation of authority to him in our various orders appointing him and setting out the issues to be heard by him.

In denying the request of the involved individuals to review the portion of our decision relating to conduct of counsel the Appeal Board has not awaited any further action by this Board, nor is there any reason why the Appeal Board should have delayed its denial. The result however is that the matter has been closed without redress to counsel who apparently believe that our comments on their briefing before us were unwarranted.

Perhaps a clarification of our comments will be helpful. When we discussed counsel's silence on Exception (2) to the Privacy Act, we used, e.g., the terms: "non-disclosure" and "represented to the Board". We did not intend, as may be inferred, any pejorative implication of concealment or overt misrepresentation. We intended only to indicate dissatisfaction with what we saw to be an inadequately helpful presentation considering that the appellant/movants had the burden of proof in their requests for confidentiality, the Privacy Act had not been briefed before the Special Master, and all concerned knew that this Board might be required to make a speedy decision on the issue to preserve the appellant/movant's appeal rights.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Ivan W. Smith, Chairman
ADMINISTRATIVE LAW JUDGE

Bethesda, Maryland

November 17, 1981