



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSIONERS

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

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OFFICE OF SECRETARY
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AAMODT COMMENTS THAT SUPPORT
POSTPONEMENT OF THE COMMISSION DECISION
ON RESTART TO RECEIVE THE OPINIONS OF THE BOARD AND PARTIES
CONCERNING THE ISSUES OF THE REOPENED HEARING
ON CHEATING

By an Order dated November 30, 1981, the Secretary of the Commission invited the parties to file comments with the Commission on whether the Licensing Board's decision of December 14, 1981 should be made immediately effective. The order further stated that the parties should include in their comments whether the Commission's decision on restart should be deferred for an additional reason: to consider the Licensing Board's opinions developed from the reopened hearing on the cheating incident at TMI-Unit 1. Comments concerning the immediate effectiveness of the December 14, 1981 decision have been postponed until January 28, 1982 by an Order of the Commission, however the comments concerning the Commission's consideration of the Board's opinions on the cheating issue are due by January 13, 1982 and are included herein.

The Aamodts request that the Commission postpone their decision on TMI-Unit 1 Restart until the Commission has received the Licensing Board's opinions on the implications of the cheating hearing and until the Commission has received and considered the comments of the parties on the Board's opinions. The reasons for requesting postponement are set-forth in the numbered paragraphs which follow.

1. Before the Board issued their August 27, 1981 decision on management issues, the Board and the parties were informed that two senior reactor operators at TMI-Unit 1 had cheated on the April, 1981 NRC licensing examination. The Board considered that this cheating incident raised considerable doubt that the evidence developed during the TMI-Unit 1 restart proceeding was sufficient concerning the matters of management integrity, its training and testing program, and the numbers, competency and integrity of TMI-Unit 1 licensed operators. (Memorandum and Order, August 20, 1981, p. 2, ASLB). In issuing their decision on management issues, the Board stated that the information on the cheating issue could alter their findings and conclusions set forth in the decision. (PID, August 27, 1981, paragraphs 43-45, 548 (c).) After consideration of pleadings by the parties, the Board reopened the hearing, noting that no party opposed the reopening and that the Board would have reopened sua sponte. (Memorandum and Order, September 14, 1981, ASLB, p. 1 and 2). The Board allowed that the information on the cheating incident that was before them presented significant new and relevant information which could alter their findings and conclusions in the PID, depending upon the facts developed in the reopened proceeding.

Therefore, the Commission use of the conclusions of the Board as stated in the PID of August 27, 1981 is invalid until the Board has had the opportunity to modify these conclusions depending upon the facts developed in the reopened hearing on cheating.

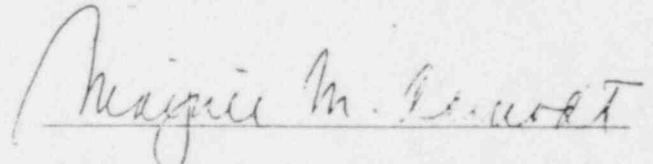
2. Although the cheating hearing was procedurally inadequate to develop a complete record on the cheating incident, evidence was developed that management of TMI-Unit I was woefully inadequate and deliberately negligent in testing and certifying their operators. The Licensee has admitted these glaring inadequacies in their findings from the reopened hearing, served on January 5, 1982. (Licensee's Proposed Findings of Fact and Conclusions of Law on Issues Raised in Reopened TMI-1 Restart Proceeding, paragraph 413, a through d). Other areas of serious concern to the issues of the Board's decision on management were clearly implied by the evidence; they are that cheating was extensive and that training was inadequate for the operators to confidently pass the NRC licensing examination. These issues, although of vital importance to the subject of the TMI-1 Restart proceeding, were not adequately litigated. The Board did not allow the parties to participate in developing any testimony concerning the adequacy of training, and Licensee's counsel prepared witnesses called by the intervenors to establish the extent, mode and reasons for cheating. In the case of training, the Board, itself, developed some record of inadequacy, which controverts conclusions in the PID. On the issue of cheating, the Commission and the parties have been denied by Licensee's counsel and by the conduct of the hearing, an integral record. The Special Master discussed the Licensee's violation of the sequestration order off the record at Licensee's request. These facts, which were developed in the reopened hearing, are significant and need to be brought to the attention of the Commission by the Board and the parties.

Therefore, the facts developed in the reopened hearing on cheating are important and contrary to the safe operation of TMI- Unit 1 by the present management.

3. The Special Master who presided over the reopened hearing expects to submit his findings to the Board at the end of January. It would be expected that the Board would issue their opinion and modify any findings and conclusions in the PID shortly thereafter. The Board's opinion would not be expected to be issued ^{much} later than the deadline that the Commission has set for the parties to file comments concerning the immediate effectiveness of the Board's decision of December 14, 1981 (concerning hardware/plant design, emergency planning and the separation of TMI-1 and 2); that deadline is now January 28, 1982 with reply comments by February 4, 1982.

Therefore, the Commission's postponement of their decision concerning the restart of TMI-1 until the issuance of the Board's opinions of the implications of the findings and conclusions of the reopened hearing on cheating would not cause a substantial delay in the Commission's decision.

Respectfully submitted,



Marjorie M. Aamodt

January 9, 1982