

LIC 1/13/82

DOCKETED  
1/15/82UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'82 JAN 15 P4:27

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCHBefore the Atomic Safety and Licensing Board

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

LICENSEE'S RESPONSE TO TMIA MOTION  
TO DIRECT EXECUTION OF AFFIDAVIT  
AND TO ENTER DOCUMENTS INTO EVIDENCE

By motion dated January 1 (served by hand on Licensee after normal business hours on January 4), 1982, TMIA moves that two letters from Licensee to the NRC Staff, dated December 4 and December 18, 1981, should be admitted into evidence in this re-opened hearing and that, if the December 18 letter is admitted, Licensee should generate a third document that, too, should be admitted into evidence. Licensee opposes TMIA's motion.

By letter of December 1, 1981, the NRC Staff requested Licensee to provide its plans for staffing the TMI-1 plant with licensed operators in the light of the results released in late November, 1981, on NRC's licensed operator reexaminations given to all TMI-1 operators in October. NRC's letter asked that Licensee respond within 10 days as to its immediate staffing plans

DS03

1/1

8201220298 820117  
PDR ADOCK 05000289  
G PDR

while the plant continued shutdown, and within 20 days as to its staffing plans for the restart of TMI-1. Licensee responded by letters of December 4, 1981 (the so-called 10-day letter), and December 18, 1981 (the so-called 20-day letter).

On December 1, 1981, during the reopened hearings, the parties including TMIA were provided with a copy of NRC's December 1 letter to Licensee. No one requested that the letter be made a part of the record. During the December 4 session of the hearings, the parties were provided information copies of Licensee's December 4 response (the 10-day letter) which outlined immediate staffing plans for TMI-1 until restart. No one sought to make this letter a part of the record. The reopened hearings were completed on December 10, 1981.<sup>\*/</sup> During a conference call with the Special Master on December 14, 1981, TMIA's representative inquired whether Licensee's December 4 letter was going to become part of the record. Following the Special Master's observation that that letter dealt with staffing only prior to and not following restart of the unit, the subject was dropped. On December 22, 1981, Licensee provided to all parties information copies of its December

---

<sup>\*/</sup> The hearings were adjourned but the record left open for the possible receipt of additional evidence. The sole reason the record was left open was to accommodate the possible receipt of additional evidence dealing with operator responses to an NRC licensed operator exam question concerning termination or throttling of HPI. TMIA's request at this juncture to admit three documents should be treated as a motion to reopen the record and subject to the high threshold showing which ordinarily obtains to a request to reopen. See Kansas Gas and Electric Company, et al. (Wolf Creek Generating Station, Unit No. 1) ALAB-462, 7 N.R.C. 320, 338 (1978) and cases cited therein. This is so, even though the record remains open for the possible receipt of other evidence which is unrelated to the documents which are the subject of TMIA's request.

18 letter to the Staff outlining shift staffing plans for the restart of TMI-1 based on anticipated available personnel.

Licensee first opposes TMIA's motion to admit the December 4 letter as untimely. TMIA has had that letter for a month. The reasons cited by TMIA for its relevance to this proceeding have existed and should have been apparent to TMIA for that entire period; no recent event prompts the motion now. TMIA refers to no recent event which now occasions their request. In the interim, the hearing has been completed and the findings based on the record have been filed in the case of Licensee (January 5), and are about to be filed in the case of other parties (January 15).

Licensee additionally opposes admission into evidence of the December 4 letter on grounds that it is beyond the scope of this proceeding and its admission would not lead to probative evidence. The December 4 letter deals exclusively with staffing plans for TMI-1 in its present shutdown condition. It is silent on staffing plans for restart of the unit, which is the subject of this proceeding. This letter was available to TMIA while the hearing was still underway and the time for moving its admission was then, not a month later.\*/-

---

\*/ Nor is TMIA's position bolstered by its assertions that the December 4 letter raises serious questions about certification of operators, competence of operators, and candor with the NRC Staff. TMIA apparently feels competent to judge, for example, Mr. G's substantive abilities as an operator based on a couple of hours of cross-examination of Mr. G on his past examination-taking techniques and prefers that judgment over Licensee's daily observation of Mr. G as an operator over some seven years. This is silly, particularly since TMIA's justification stems from a misreading of the transcript concerning Mr. G's knowledge of mechanisms for hydrogen generation; the record demonstrates Mr. G understood the mechanisms for

Licensee opposes admission of the December 18 letter, as well, on grounds that it is unnecessary and immaterial to the record in this proceeding, and will prompt further undue record reopenings in this proceeding.

The question of adequacy of licensed personnel staffing for the restart of TMI-1 consumed considerable hearing time and was the subject of lengthy detailed findings and explicit conditions by the Licensing Board in its Management PID (at, e.g., ¶¶ 556-582 and conditions 9(a) to 9(g)). During the reopened hearing on cheating and in response to the staffing facet of the broad issue addressed in this hearing, Licensee reconfirmed its commitment to meet the staffing conditions for restart imposed by the Licensing Board in the Management PID. Indeed, if the conditions are not met, the unit will not restart. In Licensee's view, given the explicit detailed conditions to be met, compliance with those conditions is a matter for Staff review and inspection. Although it involves people rather than machinery, this situation is analagous to the routine situations which exist in all NRC hearings and as well on other subjects in this hearing in particular. Through the hearing process, a licensing board hears evidence which leads to acceptance or rejection of standards, usually design standards. Once the approach is settled by the licensing board, and provided the parameters are sufficiently proscribed, it falls to the NRC

---

(continued)  
hydrogen generation, TMIA's contrary implication notwithstanding. Further, to assert Licensee was not candid (in view of the hearing record) with the NRC Staff in a letter which it provided to the Staff at the hearing, is ridiculous.

Staff to ensure compliance with the board's decision. Here, we have precise conditions which prescribe in detail what constitutes adequate staffing of licensed personnel to operate TMI-1. It is the Staff in its normal inspecting and approving role, which assures compliance with those conditions.

The Licensing Board appropriately included adequacy of staffing as a consideration in this reopened hearing. At the time the Board ordered the hearing reopened and as of the time the issues were set, the Board had no way of predicting the extent of cheating which the evidence might disclose, nor did the Board know what the outcome of the then-scheduled complete reexaminations of the TMI-1 operators might be, nor whether faced with these developments Licensee would seek relief or modification of the prior imposed conditions on manning. Had Licensee attempted to back away from its earlier commitments, any one of these developments could have required Board involvement. But this is not the case.

The December 18 letter addresses the specifics of Licensee's intended approach to satisfying the license conditions on staffing. It was a snapshot on that date and in response to an appropriate inquiry from the Staff whose responsibility it is to track Licensee's progress toward compliance with the Board's conditions, just as the Staff is doing on a number of other conditions in the Management PID as well as in the Design and Emergency Planning PID. It is another thing, however, to view the letter as prompting a reopening of the record and discussion in findings of that December

18 perspective. To do so will presumably set the precedent for again reopening the record and submitting additional findings following the scheduled reexamination of some operators early in February or, indeed, if another operator leaves Licensee's employ for any reason, or as additional operators are licensed. This is unnecessary and an abuse of the administrative process. The record will never be finalized if such a mechanism is employed. In Licensee's opinion, such detail which is constantly evolving must be left to the normally utilized vehicle of Staff review, particularly where such clear standards for compliance have been established by the Board.

Finally, TMIA cites the December 18 letter as important because "it bears upon the validity of Licensee's certification criteria and procedures, and may also bear upon the likelihood of individual cheating on earlier examinations that were not fully proctored." TMIA Motion, at 2-3. We are left to speculate as to bases for these claims of importance. If the December 18 letter were to be admitted, and the related third document as well which TMIA requests, for the first time in their findings we would see TMIA's asserted bases for their motion to admit the documents now. This puts the cart before the horse. Moreover, at most, admission of the December 18 letter into evidence would merely enable TMIA to speculate in its findings as to the bases for Licensee's not recommending four individuals for prompt reexamination in February (there being no evidence in the record) and based on that speculation, what TMIA gleans from its speculation. This

approach cannot be productive nor useful for the Special Master or the Board in reaching a decision.

For all the above reasons, Licensee opposes TMIA's motion.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE  
1800 M Street, N.W.  
Washington, D.C. 20036  
(202) 822-1000

By: Ernest L. Blake, Jr.  
Ernest L. Blake, Jr.

Counsel for Licensee



LIC 1/13/82

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing LICENSEE'S RESPONSE TO TMIA MOTION TO DIRECT EXECUTION OF AFFIDAVIT AND TO ENTER DOCUMENTS INTO EVIDENCE was served this 13th day of January, 1982, by deposit in the United States mail, postage prepaid, addressed to those persons on the attached Service List.

*Ernest L. Blake, Jr.*

\_\_\_\_\_  
Ernest L. Blake, Jr.



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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

SERVICE LIST

Administrative Judge  
Ivan W. Smith (2)  
Chairman, Atomic Safety and  
Licensing Board  
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

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

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

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

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

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

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

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

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

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

Chairman, Atomic Safety &  
Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Robert Q. Pollard  
609 Montpelier Street  
Baltimore, MD 21218

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

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

Ms. Louise Bradford  
TMI ALERT  
1011 Green Street  
Harrisburg, PA 17102

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

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

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

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

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

Marvin I. Lewis  
6504 Bradford Terrace  
Philadelphia, PA 19149

Mr. Norman Aamodt  
R. D. 5  
Coatesville, PA 19320