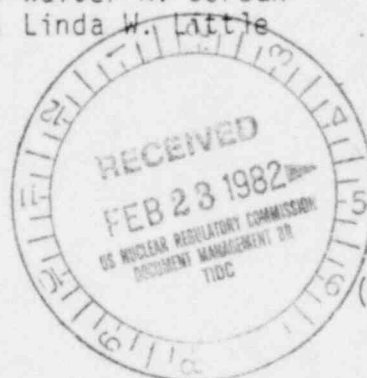


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USNRCUNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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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 No. 1))



SERVED FEB 22 1982

Docket No. 50-289

(Restart)
(Reopened Proceeding)

February 22, 1982

MEMORANDUM AND ORDER DENYING TMIA'S
MOTION TO DIRECT EXECUTION OF AFFIDAVIT
AND TO ENTER DOCUMENTS INTO EVIDENCE

By motion dated January 1, 1982 TMIA requested either the Board or the Special Master in the reopened proceeding to receive into evidence two documents and to require the execution of an affidavit by a Licensee official. As a matter of expediency, and with the agreement of the Special Master, the Board takes jurisdiction over the motion. Judge Milhollin agrees with our disposition of the motion. For the reasons set out in the respective answers of the Licensee (January 13) and the NRC Staff (January 25), the Board denies all aspects of TMIA's motion.

The motion centers around two letters. The first, dated December 4, 1981 from the Director of TMI-1 to the NRC Division of Licensing explains Licensee's immediate staffing plans for the unit prior to restart. The

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subject of pre-restart staffing as such is not directly relevant to either the main or reopened proceeding. TMIA's argument that the letter reflects the company's evaluation of the abilities of various individuals who appeared as witnesses -- an evaluation to be compared with their demeanor and testimony -- is too obscure to demonstrate any indirect relevance.

The motion as it relates to the December 4 letter is also untimely. Copies of the letter were provided to the parties on December 4 at the hearing. No party moved its admission until TMIA's instant motion. Proposed findings would have been due before the motion would have been ripe for consideration. Receiving the letter into evidence would require reopening the record with all of the attendant opportunities to the other parties to address the ramifications of the letter. Given its irrelevance, TMIA has made no showing whatever that the record should be reopened with respect to the first letter.

The second letter, dated December 18, 1981, also from the TMI-1 Director to the Division of Licensing, explains how the Licensee intends to comply with the staffing conditions of the Partial Initial Decision of August 27, 1981. PID ¶ 583, Condition 9. TMIA asserts that this letter is relevant to Issue 11 of the reopened proceeding which inquires into the "potential impact of NRC examinations, including retest and operator terminations on the adequacy of staffing of TMI-1 operations."

Issue 11 was submitted to the Board as an issue stipulated by the parties. Although, in its management PID, the Board intended to keep

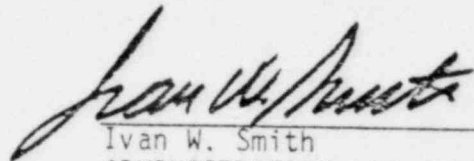
jurisdiction over the adequacy of the TMI-1 operating staff, it might not on its own have placed Issue 11 into contention in the reopened proceeding on cheating.

The sufficiency of the staffing conditions in the management PID was thoroughly litigated and argued by the parties. We did not intend to reopen that issue as such because it is not related to the reasons for reopening the evidentiary record, i.e., allegations of cheating and the possible defeatability of company and NRC-administered operator examinations. However, anticipating that resignations from the TMI-1 operating staff and possible failures on the NRC reexamination could bring into question Licensee's ability to meet the PID staffing conditions, the Board did not foreclose inquiry into the adequacy of Licensee's control-room staffing. Now that it is apparent that the Licensee does not intend to seek relief from the PID conditions, Issue 11 itself is only remotely relevant, if at all, to the reopened proceeding. There certainly is no basis to reopen the evidentiary record to receive nothing but a confirmation that the previously adjudicated conditions will remain in place.

TMIA's further argument that the December 18 letter is relevant to Licensee's certification criteria is not persuasive -- the letter itself would have no probative value respecting certification criteria. Moreover, the identity of those persons whom Licensee does not intend to certify to the NRC examinations, the subject of the proposed affidavit,

would tell us nothing about the certification criteria which could not have been litigated during the evidentiary hearing. TMIA's motion is denied.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

 , Chairman
Ivan W. Smith
ADMINISTRATIVE LAW JUDGE

Bethesda, Maryland

February 22, 1982