

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of)
METROPOLITAN EDISON COMPANY, ET AL.)
(Three Mile Island Nuclear Station,)
Unit No. 1))

Docket No. 50-289
(Restart)

NRC STAFF'S RESPONSE TO LICENSEE'S OBJECTION TO
QUESTION III.E OF THE APPEAL BOARD'S ORDER OF JULY 14, 1982

August 20, 1982

James M. Cutchin, IV
Counsel for NRC Staff

DESIGNATED ORIGINAL

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I. INTRODUCTION AND BACKGROUND

In an unpublished Order dated July 14, 1982 the Atomic Safety and Licensing Appeal Board appointed to hear appeals on plant design and procedures and separation issues in the captioned proceeding directed the Licensee and the NRC Staff to answer certain questions arising from its review of such issues. On July 26, 1982 the Licensee filed both an objection to one of the questions addressed to it (Question III.E concerning environmental qualification of equipment) and comments on a number of other questions addressed to the Licensee and the Staff which appeared to the Licensee either to be outside the scope of the issues on appeal or to involve compliance matters reserved to the NRC Staff and the Commission.^{1/} Licensee's Objection to and Comments on Appeal Board Order dated July 14, 1982 (July 26, 1982).

^{1/} Rather than objecting to and seeking reconsideration of such questions directed to the NRC Staff, the Staff provided responses to all of the questions directed to it. See "NRC Staff's Response to Appeal Board's Order of July 14, 1982" dated August 9, 1982.

In a Memorandum and Order dated August 2, 1982 (ALAB-685, 16 NRC ___) the Appeal Board suspended until further notice Licensee's obligation to answer Question III.E and offered parties an opportunity (1) to file a written reply to Licensee's objection by no later than August 20, 1982 and (2) to address Licensee's objection at oral argument.^{2/}

The Staff's written response in support of the Licensee's objection to the Appeal Board's Question III.E is set forth below.^{3/}

II. DISCUSSION

The Licensee objects to Question III.E as involving matters both outside the scope of this special proceeding (and thus extending beyond the evidentiary record) and governed by NRC regulations of generic applicability to plants with operating licenses. The Appeal Board in Question III.E, among other things, asked the Licensee for information about the current status of compliance by the Licensee with CLI-80-21 regarding qualification of safety equipment for a harsh environment. The

^{2/} The Licensee also had requested that in the event the Appeal Board disagreed with its objection, the matter be certified to the Commission. Because of its temporary suspension of Licensee's obligation to respond to Question III.E the Appeal Board has deferred a ruling on Licensee's request for certification.

^{3/} The Appeal Board summarily denied Licensee's request that time be set aside at oral argument for discussion of any differences among the parties and the Appeal Board as to the scope of that Board's review responsibilities.

Board stated that this information should address all of the parameters addressed by IE Bulletin 79-01B and its Supplements, such as temperature, pressure, chemical spray, radiation, aging and humidity and that information concerning the environmental qualification of the various components of the emergency feedwater system, including an estimate of the schedule for full qualification of this system, should be provided.

The Staff agrees with the Licensee that to answer Question III.E the Licensee would have to provide information that goes well beyond the information now included in the evidentiary record. The TMI-1 Restart Proceeding is a special proceeding initiated primarily to determine whether TMI-1 can be operated safely in light of the underlying concerns arising out of the TMI-2 accident that caused the Commission to direct that a hearing be held. CLI-79-8, 10 NRC 141, 142-146. The Licensing Board focused on environmental qualification of electrical equipment at TMI-1 to perform its safety functions when exposed to radiation or submergence levels experienced at TMI-2. PID, ¶ 1151. The environmental qualification program being conducted in response to CLI-80-21 is much broader in scope and addresses more environmental conditions.

The Staff also believes that rulemaking on the subject of environmental qualification has overtaken events in the TMI-1 Restart Proceeding. The Commission has by rule suspended the June 30, 1982 deadline for completion of environmental qualification of safety-related electrical equipment that is now contained in the technical specifications for TMI-1 and other reactors with operating licenses. 10 CFR § 50.49. As

the Licensee has pointed out, the Commission itself in connection with suspending the deadline has determined that operation of plants including TMI-1, pending completion of the program for environmental qualification of equipment, will not present undue risk to the health and safety of the public. 47 Fed. Reg. 28363 (June 30, 1982).

Promulgation of a final rule establishing the scope of the program and a new deadline for its completion is imminent. Id. The Staff believes that, because the rulemaking on 10 CFR 50.49 is controlling with respect to environmental qualification matters,^{4/} the Appeal Board should decline further to consider in this proceeding issues involving environmental qualification of electrical equipment.

Another aspect of the Licensee's objection to Question III.E is that it calls for a report on the status of Licensee's compliance on a matter on which the Staff has been directed to report to the Commission. The Staff notes that, in response to the Licensee's more general objection to the scope of the Appeal Board's review, the Appeal Board has asserted that it does not believe that the Commission intended to relieve it of authority to review the entire record of the proceeding sua sponte regardless of the matters appealed. However, as the Appeal Board agreed in ALAB-685, this is a special proceeding. In this special proceeding the Commission has established special procedures for certain types of issues. For example,

^{4/} Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 82 (1974).

as the Commission stated in CLI-79-8 "[s]atisfactory completion of the required actions [by Licensee] will be determined by the Director of Nuclear Reactor Regulation."^{5/} 10 NRC 148 (1979). SECY-82-250, the attachment to which was appended to the Appeal Board's order of July 14th, was submitted to the Commission in response to the request of Chairman Palladino that the Commission be provided a plan and schedule for certification by the Director of NRR to the Commission that all short-term requirements have been completed and that reasonable progress has been made on long-term requirements. Memorandum from Chairman Palladino to the Executive Director for Operations, "TMI-1 Restart", dated March 16, 1982 (copy enclosed). In addition, in CLI-81-3 the Commission made clear that it alone has authority to grant, upon the the recommendation of the Director of NRR, relief, including deferral of deadlines for completion of NUREG-0737 action items, from compliance with requirements recommended by the Licensing Board or proposed for imposition by the Commission itself. 13 NRC 291, 295-296 (1981). As recently as July 27, 1982 Chairman Palladino confirmed that NUREG-0737 requirement deferrals would be handled by the Commission after hearing Staff recommendations, as outlined in CLI-81-3. Memorandum from Chairman Palladino to the Executive Director for Operations, "TMI-1 Restart

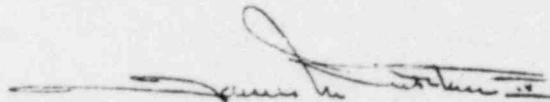
^{5/} However, the Licensing Board was given authority to require the Staff to inform it of the details of its plans for enforcing actions required by the Board and to approve or disapprove those plans. 10 NRC 148. The Staff reported the details of its enforcement plan to the Licensing Board on February 1, 1982 and the Licensing Board in a Memorandum and Order dated April 5, 1982 approved the Staff's plan with modifications.

Certification (SECY-82-250)", dated July 27, 1982 (copy enclosed). Thus, the Staff believes that for any specific issue the entire structure developed by the Commission for review and determination of various matters must be carefully assessed to ascertain whether the specific issue to be considered is within the review function that has been delegated to the Appeal Board in this case.

III. CONCLUSION

For the reasons set forth above the Staff believes that questions involving Licensee's compliance with CLI-80-21 are not appropriate for Appeal Board review in this case and that the Licensee should not be required to answer Question III.E of the Appeal Board's Order of July 14, 1982.

Respectfully submitted,



James M. Cutchin, IV
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 20th day of August, 1982



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

March 16, 1982

OFFICE OF THE
CHAIRMAN

MEMORANDUM FOR: William J. Dircks, Executive Director
for Operations

FROM: Nunzio J. Palladino *NJP*

SUBJECT: TMI-1 RESTART

Restart cannot occur under the Commission's August 9, 1979 Order on TMI-1 until the Director of Nuclear Reactor Regulation can certify to the Commission that all short-term requirements imposed by the Licensing Board and the Commission have been completed and that reasonable progress has been made on long-term requirements. This action may involve a signoff of hundreds of individual items, an intensive effort by the NRC staff. I request that you provide the Commission a plan and schedule to accomplish certification of licensee compliance with restart requirements. Your response should be provided by June 3, 1982.

cc: Commissioner Gilinsky
Commissioner Bradford
Commissioner Ahearne
Commissioner Roberts
SECY

REC'D CH. 200 3/16/82
Date.....
Time..... 12:40 P