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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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OFFICE OF SECRETARY  
DOCKETING & SERVICE  
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BEFORE THE COMMISSION

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

LICENSEE'S COMMENTS ON IMMEDIATE EFFECTIVENESS  
OF PARTIAL INITIAL DECISION  
(REOPENED PROCEEDING) DATED JULY 27, 1982

On July 27, 1982, the Licensing Board issued a Partial Initial Decision covering issues in the proceeding reopened by the Licensing Board's Order of September 14, 1981. The decision concluded "that in consideration of the findings, recommendations, and conclusions set out [in the decision] the issues in the proceeding . . . have been resolved in favor of restarting Three Mile Island Unit 1." The decision further stated that the conclusions of the Board's previous Partial Initial Decisions of August 27, 1981, and December 14, 1981, remain in effect.

Thus all three Licensing Board partial initial decisions support restart of TMI-1. Licensee urges the Commission accordingly to decide promptly to make those decisions immediately effective and to lift the immediate effectiveness of the

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suspension of TMI-1's operating authority imposed by the Commission's Orders of July 2 and August 9, 1979.

In the Commission's Order of July 2, 1979, it stated that:

"In view of the variety of issues raised by the accident at the Three Mile Island Unit No. 2 facility, the Commission presently lacks the requisite reasonable assurance that the same licensee's Three Mile Island Unit No. 1 facility . . . can be operated without endangering the health and safety of the public. Accordingly, we direct that the Unit No. 1 facility, presently in a shutdown condition, shall remain shut down until further order of the Commission itself."

The Commission's Order of August 9, 1979, enumerated the specific issues to be examined by the Atomic Safety and Licensing Board.

That examination has, at long last, been completed and, contingent upon compliance with the Board's recommendations and NRR verification, the Board has determined that TMI-1 can be operated safely. The uncertainties that led to the 1979 Orders have been removed or remedied.

In the Commission's Order (CLI-81-34) of December 23, 1981, it recognized that when the basis for its original suspension of operation of Unit 1 no longer existed, then "the Commission is required by law . . . to lift that suspension immediately." All bases for the suspension have now been resolved and the Commission is, therefore, obligated to make the ASLB's decision immediately effective.

The urgent nature of the Commission's responsibilities was recognized in the Commission's August 9, 1979 Order which

not only directed the Licensing Board to conduct the hearing expeditiously but committed the Commission in its review of that decision to shorten where feasible the time limits otherwise provided by the Commission's regulations. In particular, that order, as amended by the Commission's Order of March 23, 1981 (CLI-81-3), stated the Commission would make a restart decision and announcement within 35 days after issuance of the Licensing Board's decision.

It is time to bring to a conclusion a licensing proceeding which has lasted over three years.

Licensee recognizes that there may be other matters, such as the steam generator repair program, which are outside the scope of the restart hearing and which may require the attention and approval of the Commission before actual restart. These matters are wholly apart from the issues in this proceeding. They should be dealt with separately and should not delay the Commission's decision on immediate effectiveness of the ASLB's decisions.

Delay in the Commission's decision on immediate effectiveness of the ASLB decision would not only prolong uncertainty but would have the effect of postponing the time for, and resolution of, any appeals to the courts from the NRC's decision. Licensee anticipates that one or more intervenors in the proceeding will seek judicial review, including possible stay requests, of the Commission's decision in the Court of Appeals.

Whenever the Commission acts on the issue of restart, the decision will constitute a final agency action which controls the time within which appeals must be taken on issues considered in the restart hearing. It is important that this appeal process begin and end as soon as possible to resolve any appellate controversies which could affect restart.

Licensee's specific comments on the July 27 Partial Initial Decision are limited to the Recommendations, Penalty, and Conditions enumerated in Section V (¶¶ 2419-2422) of the decision. However, Licensee has carefully and thoroughly reviewed in detail the ASLB PID of July 27, 1982 to assure that all issues identified in that Decision have been, or are being, effectively addressed.

1. Recommendations with respect to G and H (PID ¶ 2419(1)). In its decision the Board found that Licensee's operators G and H cheated in certain instances on Company-administered operator tests. After considering possible sanctions against G and H, including initiation by NRC of proceedings to modify or suspend their individual operator licenses, the Board proposed that G and H, as well as Licensee, voluntarily accept a two-week suspension without pay in lieu of an action against their licenses. The Board explained its proposal in paragraphs 2118 through 2121 of its decision as follows:

"2118. We have however fashioned a remedy which is within our jurisdiction which we propose after considering several mitigating factors. As we discuss below, we hold the

Licensee accountable for permitting an undisciplined training and examination environment. While G and H cheated on their own volition, we believe that there should have been a clear and emphatically enforced policy of requiring absolute honesty on every examination. Also, we recognize that the examinations were administered by the company, not the NRC. They were semi-official in that they were required by the Commission's hearing order and regulations, but we cannot discern that the official importance of the examinations was ever effectively impressed upon the operators.

"2119. The Board has examined the answers to the quizzes involved in the G and H incidents. The proportion of answers produced by cheating is relatively small. We do not believe that the overall results demonstrate a poor understanding of the course material. We have, then, a question of ethics, not of competence. G and H have passed their NRC examinations under properly monitored conditions.

"2120. The Board therefore proposes that G and H voluntarily accept a two-week suspension without pay in lieu of an action against their licenses. The suspension may be at any time G, H and the Licensee deem best. Two weeks is not the result of an exact mathematical calculation; it is the product of our collegial judgment. It is a remedy which is within our jurisdiction and is appropriate because it is fair, final, simple, and responsive to the G and H cheating episodes. In terms of the very large numbers often associated with nuclear power plants, two weeks' pay for a reactor operator does not seem to be very important. But, as to G and H, and, we regret, their families, the effect will be felt and remembered. Moreover, this action will have an adverse effect on their careers. A portion of the monetary penalty imposed by the Board upon the Licensee is directly attributable to their actions.

"2121. Accordingly, the Board recommends to the Commission that, in accordance with 10 CFR Part 2, Subpart B, and 10 CFR 55.40, a proceeding be initiated to consider the modification or suspension of the operators' licenses of G and H.<sup>230/</sup> If, during the Commission's immediate effectiveness review, the Licensee reports to the Commission that G, H, and the Licensee accept the Board's proposal, this recommendation should be considered void." (Footnote omitted)

G and H have both advised Licensee that they elect the two-weeks suspension without pay proposed by the Licensing Board. Licensee for its part has also accepted the ASLB's proposal. G and H completed their two-week suspensions without pay on August 17, 1982.

2. Recommendations with respect to the certification of VV (PID and August 3, 1982 Addendum ¶¶ 2419(2) and (5) and 2422). Licensee will cooperate fully with any NRC Staff investigation instituted pursuant to the recommendations of the Licensing Board into the August 3, 1979 certification of VV to the NRC for operator's license renewal. Licensee has issued instructions to its personnel to assure preservation of all records pertaining to the investigation.

In keeping with the Licensing Board's view that both Licensee and the Staff have independent responsibilities to investigate matters of this character, Licensee has instituted an investigation of the circumstances surrounding this certification. A qualified external professional who has not been associated with the TMI-1 restart proceedings is being used for this effort.

Pending completion of these investigations, Licensee withholds comment on the Licensing Board's conclusion that Mr. Miller, with Mr. Herbein's knowledge and assent, falsely certified information to the NRC in connection with the certification of VV. Mr. Herbein did not participate in the reopened

hearing and had no opportunity to explain to the Board his role in the certification of WV. The Licensing Board also recognized Mr. Miller should be given the opportunity to explain the questions raised by the Board in its decision.

The Licensing Board has proposed as a condition of restart that until further order in this proceeding any participation of Mr. Miller in the start-up, testing or operation of TMI-1 should be under the direct supervision of an appropriate qualified official of GPU Nuclear Corporation.

Mr. Miller, in his position as Director of Start-up and Test, is responsible for establishing and providing general management of the program for conduct of start-up testing for GPU Nuclear. The start-up testing program is directed toward demonstration of compliance with acceptance criteria provided by GPUN Engineering, and nonconformances must be reviewed and approved by appropriate technical people external to the Start-up and Test Department. Nevertheless, to remove any shadow of doubt on this issue, Licensee is conducting a review of any judgments or decisions made by Mr. Miller in conjunction with TMI-1 restart testing to date to verify the correctness of those judgments and decisions.

Licensee's management has for some months been discussing with Mr. Miller a transfer to GPU's nonnuclear operations. Mr. Miller's transfer out of GPU's nuclear activities will take place on October 1, 1982. Thus the restrictions proposed by the Licensing Board will have no further applicability.

3. Penalties (PID §§ 2419(3) and 2420). The Licensing Board's decision imposes on Licensee a fine of \$100,000. In the alternative, if the Licensing Board is found not to have jurisdiction to impose such a fine, the Board recommends that the fine be imposed by the Commission. The basis for the proposed fine is Licensee's "negligent failure to safeguard the integrity of its examination process, failure to establish an attitude of respect for the company and NRC-administered examinations, failure to assure the quality of training instruction and negligence in the procedures for the certification of candidates for the NRC licensing examinations." The Board's August 3, 1982 Addendum to its decision explains that no part of the proposed penalty is related to the certification of VV to the NRC in August, 1979.

As explained in paragraph 2413 of the Licensing Board's decision\* the proposed fine is not intended to be a condition precedent to restart but a long-term remedial action. Both the appropriateness of the fine and the Board's jurisdiction to impose it may, therefore, be the subject of the regular appellate process. Accordingly, the Commission is not called upon at this time to pass on the matter of the fine in considering restart authorization. Nevertheless, Licensee takes this occasion to

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\* "2413. We recognize that the Licensee was not notified that a penalty might be assessed and has had no opportunity to address it. As noted, we find that it is a long-term remedial action. Therefore, it need not be imposed before restart. Whether it is appropriate and whether we have jurisdiction to impose it may, therefore, be the subject of the regular appellate process. If our jurisdiction should be found wanting, this action should be regarded as the Board's recommendation."

advise the Commission that Licensee will not appeal the matter of the proposed fine to the Appeal Board.

While Licensee recognizes that the Licensing Board's imposition or recommendation of a fine may be subject to procedural challenge, Licensee does not plan to object to Commission consideration of a monetary penalty up to the amount proposed by the Licensing Board. Licensee itself was the first to acknowledge some of the deficiencies found by the Board in its training, testing and certification programs and had adequate opportunity in the reopened hearing to present evidence on the subject. Licensee does, however, take this opportunity to put before the Commission circumstances not reflected in the record of the reopened hearing, and which Licensee believes should be taken into account when considering the proposed fine, namely the steps described in section 4 below which Licensee has taken on its own initiative to remedy deficiencies identified during the course of the reviews, investigations, and testimony presented during the reopened hearings.

4. Licensee conditions (PID ¶ 2421). Licensee accepts each of the conditions recommended by the Licensing Board in paragraph 2421 pertaining to Licensee's testing and training program. In fact, several specific improvements in the administration of the training program have been instituted. All of these initiatives are responsive to the concerns identified by the Licensing Board in its recent PID.

Condition (1):

"There shall be a two-year probationary period during which the Licensee's qualification and requalification testing and training program shall be subjected to an in-depth audit by independent auditors, approved by the Director of NRR, such auditors to have had no role in the TMI-1 restart proceedings."

In June of 1982, GPU contracted with Data-Design Laboratories, an independent engineering service corporation headquartered in California, to perform an assessment of the effectiveness of training at TMI, specifically focusing on a number of the TMI training programs, including the licensed operator training program. DDL's audit, which is currently ongoing and scheduled for completion in August, includes a comparison of the TMI programs with INPO's training guidelines. DDL is reviewing the technical content, administration and delivery of training, as well as the results of the training programs. A written report will be submitted by DDL to GPU Nuclear Corporation which will include findings, conclusions and recommendations that are the wholly independent work of DDL. This report will serve as a current benchmark by which to evaluate the TMI Training Department as subsequent audits are conducted.

Licensee believes that the DDL audit is consistent with the intent of this restart condition, viz., verification of the efficacy of the operator training and testing program by an independent auditor that has had no role in the TMI-1 restart proceeding. Licensee proposes that NRR review the qualifications and the work product of DDL with respect to their appropriateness to conduct the further Board ordered independent training audit.

Condition (2):

"Licensee shall establish criteria for qualifications of training instructors to ensure a high level of competence in instruction, including knowledge of subjects taught, skill in presentation of knowledge, and preparation, administration, and evaluation of examinations."

Licensee has established general criteria for qualifications of training instructors, including that they complete training directed toward assuring a high level of competence in instruction, skill in presentation of knowledge, and preparation, administration, and evaluation of examinations. In addition, Licensee has in progress the development of detailed, specific instructor qualification criteria for the various training program components with priority being given to those associated with licensed training and retraining. Our process for qualification of instructors is currently undergoing review by DDL as part of the previously described audit.

Condition (3):

"Licensee shall develop and implement an internal auditing procedure, based on unscheduled ('surprise') direct observation of the training and testing program at the point of delivery, such audits to be conducted by the Manager of Training and the Supervisor of Operator Training and not delegated."

Although not reflected in the restart hearing record, since mid-1980, Training Department section heads, such as the Operator Training Manager (formerly titled Supervisor of Operator Training) and the Manager of Technician Training, have been

required to evaluate one instructor from another section of the Training Department each month. In addition, group supervisors within certain sections of the Department have conducted such evaluations on a periodic basis. These evaluations, based on direct observation of instructors while they are teaching, are formally recorded and reviewed by the instructors' supervision and by the Manager of Training. The Manager of Training also has been evaluating instructors, selecting and reviewing two or three instructors each month.

Although the internal auditing procedure already established by Licensee is somewhat different from the procedure outlined by the Licensing Board in paragraph 2421, condition three, Licensee believes that it nevertheless indicates an independent recognition by Licensee of the merit of an instructor review program. This internal auditing program will be supplemented by a multi-tier review program, the details of which are still being formulated by Licensee, which will meet the Licensing Board's third restart condition. The expanded internal audit program for licensed operators will be in place by October 1, 1982.

Condition (4):

"Licensee shall develop and implement a procedure for routine sampling and review of examination answers for evidence of cheating, using a review process approved by the NRC Staff."

Licensee will submit a procedure for routine sampling

and review of examination answers for evidence of cheating to NRR by September 24, 1982. The procedure will be revised as necessary to conform with any NRC comments.

Several other Licensee actions are responsive to the training and testing issues raised in the reopened restart proceeding. Since approximately October of 1981, the Operator Training Manager has substantively reviewed, edited and approved all exams, tests and quizzes administered by operator instructors prior to their administration. (This responsibility has been delegated only when the Operator Training Manager has not been at TMI.) Licensee has thereby provided an additional check on the substantive quality of tests and quizzes administered to licensed and nonlicensed TMI operators. The instructor development course which Licensee requires all of its instructors to attend has been revised to include consideration of the new exam administrative procedure in place at TMI, and the instructor manual has been revised to include an extensive appendix on exam construction, administration and grading. Prior to the July 27 PID, Licensee began planning a course on the preparation, administration and evaluation of exams. Finally, the Manager of Operator Training has a permanent administrative assistant who is responsible for maintaining the training records for the operator training programs, thereby providing an independent tracking mechanism to instructors, as well as to

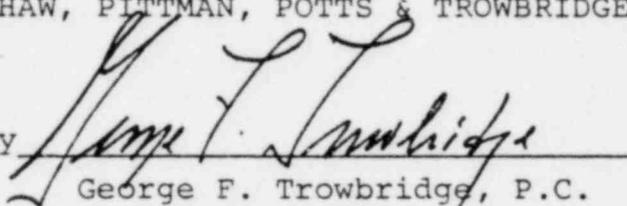
training and operations management, for assuring that operators meet the requisite training requirements.

In summary, Licensee not only accepts the conditions recommended by the Licensing Board in paragraph 2421 of the July 27, 1982 PID, but has already instituted programs consistent with these conditions which will improve and monitor the quality of training at TMI.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By

  
George F. Trowbridge, P.C.

Dated: August 20, 1982

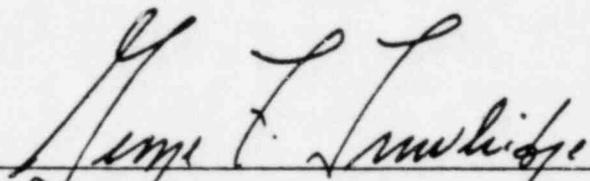
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Comments on Immediate Effectiveness of Partial Initial Decision (Reopened Proceeding) Dated July 27, 1982, dated August 20, 1982, were served upon those parties on the attached Service List by deposit in the United States mail, postage prepaid, this 20th day of August, 1982.

  
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 George F. Trowbridge, P.C.

Dated: August 20, 1982

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