

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

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COMMISSIONERS:

Nunzio J. Palladino, Chairman
Victor Gilinsky
John F. Ahearne
Thomas M. Roberts
James K. Asselstine

OFFICE OF SECRETARY
OF HEARING & SERVICE
BRANCH

SERVED OCT 25 1982

In the Matter of)

METROPOLITAN EDISON COMPANY)

(Three Mile Island Nuclear)
Station, Unit No. 1))

) Docket No. 50-289 SP
) (Restart)

ORDER
(CLI-82-32)

The Appeal Board in ALAB-685 held that it had jurisdiction to pose questions to the Licensee and NRC Staff on the status of compliance with various restart requirements imposed by the Licensing Board. Although no party has appealed ALAB-685 and the Commission has decided not to review it sua sponte, the Commission believes that some guidance should be given to the Appeal Board.

The Commission has reaffirmed its August 9, 1979 statement that "[s]atisfactory completion of the required actions will be determined by the Director of Nuclear Reactor Regulation." CLI-79-8, 10 NRC 141, 148. The Commission intends for this adjudicatory proceeding to determine (1) what short-term and long-term actions are necessary and sufficient to adequately protect the public

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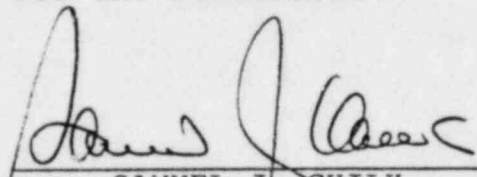
health and safety, and (2) whether Licensee has made "reasonable progress" toward completion of long-term items at the time of the Licensing Board's decision. Whether Licensee has satisfactorily completed short-term and long-term items will be determined by the NRC staff and the Commission outside of this adjudicatory proceeding. Accordingly, the Appeal Board is not to concern itself with the current status of compliance.

Commissioner Gilinsky dissents from this opinion. The separate views of Commissioners Gilinsky and Roberts are attached.

It is so ORDERED.



For the Commission*


 SAMUEL J. CHILK
 Secretary of the Commission

Dated at Washington, D.C.

this 22 day of October, 1982.

* Commissioner Gilinsky, who had previously indicated his disapproval, was not present when this Order was affirmed. Had Commissioner Gilinsky been present he would have affirmed his prior vote.

SEPARATE VIEW OF COMMISSIONER ROBERTS

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While agreeing with the position taken in the instant Commission Order, I would have gone further and ruled that the Appeal Board does not have the authority to review sua sponte the entire Licensing Board record in this special proceeding.

SEPARATE VIEWS OF COMMISSIONER GILINSKY

Even if the Appeal Board had erred in asking questions about the status of the restart requirements, this matter would not merit the Commission's intervention.