

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Administrative Judges:

Gary J. Edles, Chairman
Dr. John H. Buck
Christine N. Kohl

June 13, 1984

In the Matter of)	
METROPOLITAN EDISON COMPANY, <u>et al.</u>)	
(Three Mile Island Nuclear Generating Station, Unit 1))	Docket No. 50-289 SP (Management Phase)
)	

ORDER

Licensee has requested that we stay our recent decision in ALAB-772, 19 NRC ___ (May 24, 1984). In that decision, we reopened the record and remanded for further hearing on several specified issues. We dismiss licensee's request for a stay of that decision.

The scope of our authority in this special proceeding is limited. When the Commission originally instituted this hearing, it expressly reserved to itself all authority to dispose of any appeals. CLI-79-8, 10 NRC 141, 147 (1979). The Commission later determined that the length and complexity of the record developed before the Licensing Board dictated that initial appeals on the merits be heard by an appeal board. CLI-81-19, 14 NRC 304, 305 (1981). Consequently, this and several other appeal boards were established for that purpose. The Commission stressed in

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CLI-81-19 that it still reserved for itself any decision that would authorize the restart of TMI-1. Id. at 305-06.

In CLI-81-34, 14 NRC 1097, 1098 (1981), the Commission elaborated further on the authority delegated to us, specifically with regard to the authority to stay the Licensing Board's decisions.

The Commission is the exclusive administrative body with the power to determine whether Unit One may restart during the pendency of any possible appeals of a Board decision before the Atomic Safety and Licensing Appeal Board. Parties may not file papers with the Appeal Board either supporting or opposing a stay of any such decision during the pendency of any such appeals. Therefore, any party which has a position on whether, in light of the Licensing Board's decision, Unit One should be allowed to restart during the pendency of any such appeals should so argue in its comments submitted to the Commission.

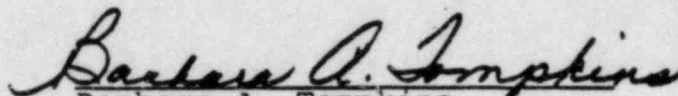
The Commission has decided against Appeal Board stay authority because this case differs significantly from normal initial operating license cases. Here, a decision by the Commission rather than granting effectiveness to a Licensing Board decision, would be determining, based on that decision and other factors, whether the concerns which prompted its original immediate suspension order of August, 1979, justify a continuation of that suspension. If they do not, and the Commission therefore can no longer find that the "public health, safety and interest" mandates the suspension, then the Commission is required by law -- whatever the nature of the Licensing Board's decision -- to lift that suspension immediately. This is a matter peculiarly within the Commission's knowledge and involving the most discretionary aspects of its enforcement authority.

Accordingly, we have decided that Appeal Board stay proceedings are not well suited to this case.

The same reasoning obviously applies to any asserted authority to stay one of our own decisions. Such a decision would necessarily have implications for a decision on the restart of TMI-1. That is a question the Commission has reserved for itself. Therefore, any request for a stay of ALAB-772 is more properly addressed to the Commission.¹

Licensee's motion for a stay of ALAB-772 is dismissed.
It is so ORDERED.

FOR THE APPEAL BOARD


Barbara A. Tompkins
Secretary to the
Appeal Board

Dr. Buck did not participate in this order.

¹ The Commission on its own took this course in effectively staying our earlier decision in ALAB-738, 18 NRC 177 (1983). Commission Order of October 7, 1983 (unpublished). In ALAB-738, as in ALAB-772, we ordered the record to be reopened and remanded for further hearing on a specific issue. The Commission has indefinitely stayed that hearing.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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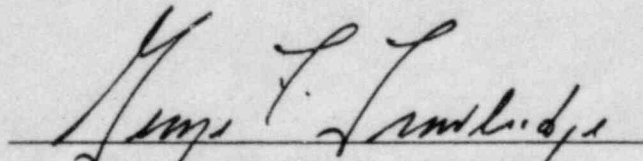
BEFORE THE COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Request for Stay (ALAB-772)," dated June 13, 1984, were served on those persons on the attached Service List by deposit in the United States mail, postage prepaid, or by hand delivery as indicated by one asterisk (*), or by express mail as indicated by two asterisks (**), this 13th day of June, 1984.


George F. Trowbridge, P.C.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

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

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