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March 22, 1985

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In the Matter of
Metropolitan Edison Company, Et Al.
(Three Mile Island Nuclear Station, Unit No. 1)
Docket No. 50-289 OLA

Dear Administrative Judges:

On March 15, 1985, intervenor Three Mile Island Alert, Inc. ("TMIA") filed a "Notice to Commission, Appeal Board, Licensing Board and Parties and Request for Investigation and Clarification." TMIA asserted that Licensee has requested a change to the TMI-1 technical specifications to allow tubes with greater than 40% through-wall cracks to remain in service without being plugged. TMIA asked that an "investigation" be ordered to determine

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whether, in light of TMIA's currently pending appeal, Licensee made a "material false statement by omission" by not notifying "the Commission and the Appeal and Licensing Boards" of its "request to change the tech specs." TMIA also asked the Appeal Board to direct Licensee to provide a "full written explanation as to what necessitated this request for change."

To clarify an apparent misunderstanding at the outset, Licensee has not requested a change in the Technical Specifications. By letters dated January 31 and March 1, 1985, Licensee requested approval from the NRC staff of a revision of the repair criteria or limit for determining whether a steam generator tube has to be taken out of service by plugging. Provision for entertaining and evaluating such a request is incorporated into the wording of Technical Specification 4.19.4.a.6 of the TMI-1 operating license, and a Technical Specification amendment is therefore not required. Licensee's request does not involve an unreviewed safety question as defined in 10 C.F.R. § 50.59, and Licensee has provided analyses demonstrating that the margin of safety with the proposed repair limit is no less than that of the licensing basis for the current repair limit.

In any event, irrespective of whether a Technical Specification change was requested, the reason Licensee has not notified the Appeal Board of its request for approval of the proposed repair limit is that the repair limit bears no relationship to the subject matter of this proceeding. Thus, there is no requirement, or even a remotely rational basis, for such notification. TMIA's pending appeal involves the hearing below on Licensee's request for approval of a specific technique for repairing steam generator tubes. The proceeding does not involve the criteria for determining which tubes require plugging or other repair. The Licensing Board squarely ruled on this very point when it rejected, as being beyond the scope of this proceeding, that portion of one of TMIA's proposed contentions which sought to question the number and selection of tubes to be plugged:

The Commission's Notice of Opportunity For Hearing did limit contentions to matters within the scope of the amendment under consideration. 48 Fed. Reg. 24231 (May 31, 1983). The amendment requested by the Licensee was to revise the technical specifications to recognize steam generator tube repair techniques (kinetic expansion repair), other than plugging. Those portions of this subpart which question (a) the number of tubes requiring plugging, (b) the choice of tubes to be plugged, and (c) the

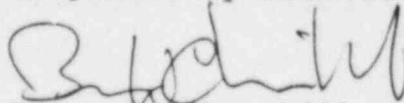
failure to plug 66 degraded tubes do indeed exceed the scope of this proceeding and thus are rejected. We do not have jurisdiction to explore matters beyond those which are embraced by the Notice Of Opportunity For Hearing.

Memorandum and Order, January 9, 1984 at 4 (citations omitted). TMIA did not appeal this prehearing ruling of the Licensing Board.

Other aspects of TMIA's Notice also require clarification. TMIA stated at page 2 of its Notice that the latest eddy current tests "indicate that the steam generator tubes are continuing to crack." This is a separate issue, and TMIA has not claimed that Licensee has failed to provide adequate notification on that issue. Lest there be any confusion, however, I would note that Licensee has timely provided the Appeal Board with the correspondence and reports on that matter, both by letters to the Appeal Board and in its answer to TMIA's pending motion to reopen the record. TMIA also suggests at page 3 of its Notice that Licensee is anticipating "continued cracking." This is incorrect. As demonstrated in Licensee's January 14, 1985 Answer to Reopen the Record at 9-15, reinitiation of the cracking has not occurred, and the conditions which caused the cracking have been eliminated.

Because Licensee's request for staff approval of the proposed repair limit is not within the scope of this proceeding, the requests in TMIA's March 15, 1985 Notice should be denied.

Respectfully submitted,



Bruce W. Churchill
Counsel for Applicant

cc: Nunzio J. Palladino, Chairman
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NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Appeal Board 25 01:30

In the Matter of)
)
METROPOLITAN EDISON COMPANY, ET AL.) Docket No. 50-289-OLA
) (Steam Generator Repair)
(Three Mile Island Nuclear Station,)
Unit No. 1))

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