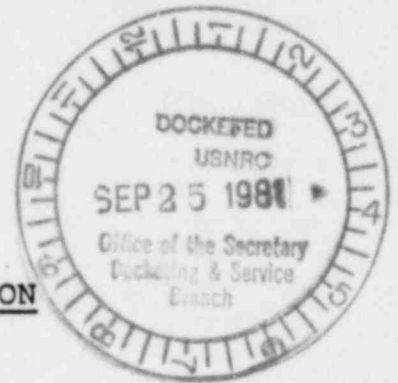


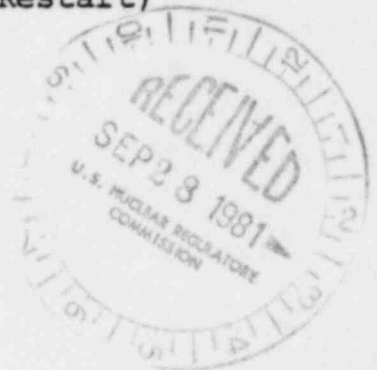
UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION



BEFORE THE NUCLEAR REGULATORY COMMISSION

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

Docket No. 50-289
 (Restart)



LICENSEE'S REPLY TO TMIA REQUEST
 FOR STAY PENDING REVIEW

Introduction

On September 11, 1981, Three Mile Island Alert (TMIA) filed a document entitled "Request for Stay Pending Appeal," requesting the Commission to stay the Licensing Board's Partial Initial Decision (Procedural Background and Management Issues), dated August 27, 1981, pending administrative appeals. TMIA states that its request is made pursuant to the Commission's Order dated August 20, 1981 (CLI-81-19) and to 10 CFR Section 2.764. For reasons explained below Licensee believes that TMIA has improperly invoked Section 2.764 of the Commission's Rules of Practice. Accordingly, Licensee treats TMIA's filing as the submission of comments pursuant to the Commission's August 20 Order on whether the Licensing Board's decision on management issues should be made immediately effective.

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The basic issue before the Commission is whether, upon completion of the Licensing Board's complete decision, the Commission should lift the immediately effective suspension of TMI-1's operating authority imposed by its orders of July 2 and August 9, 1979.^{1/} That issue is governed by the terms of the Commission's August 9, 1979 Order and Notice of Hearing, not by Section 2.764 governing the issuance the amendment of construction permits and operating licenses.

In its August 9, 1979 Order the Commission reaffirmed the immediately effective suspension of TMI-1's operating authority and appointed a Licensing Board to conduct a public hearing on the question of restart. In that Order the Commission stated: "If the Licensing Board should issue a decision authorizing resumption of operation . . . the Commission will issue an order . . . deciding whether the provision of this order requiring the licensee to remain shut down shall remain immediately effective." The August 9, 1979 Order further stated: "The Commission shall issue an order lifting immediate effectiveness if it determines that the public health, safety and interest no longer require immediate effectiveness."

^{1/} See NRC Staff Comments on Immediate Effectiveness with respect to Licensing Board Decision on Management Competence/Operator Training, dated September 11, 1981. Licensee agrees with the Staff that under the Commission's August 9, 1979 Order and Notice of Hearing the Commission has reserved to itself the determination as to whether to lift the suspension of TMI-1's operating authority. Should the Commission decide to do so it would be appropriate for the Commission to make immediately effective the Licensing Board's decision on which the Commission has relied. This would have the legal effect of making immediately effective any short-term or long-term restart conditions imposed by the Licensing Board's decision.

In determining the question of lifting the immediate effectiveness of its July 2 and August 9, 1979 Orders the Commission should bear in mind, as stated in the Staff's comments on immediate effectiveness, that the "ordering of an immediate suspension of an operating license, without opportunity for a prior hearing, is an extraordinary remedy which is justified only so long as the facts supporting that action exist." Licensee therefore proposes, as does the Staff, that the Commission review the Licensing Board's decision in the light of the bases for suspension recited in the August 9, 1979 Order to determine whether its concerns have been adequately addressed.

The Commission should not, and probably cannot in the time allotted for its immediate effectiveness review, examine in detail each and every exception taken by TMIA to the Partial Initial Decision or which may be taken by others to the complete decision. That will be the function of the Appeal Board. The Commission should instead examine the Licensing Board's decision to determine whether with respect to any of its bases for suspension there are important remaining concerns which in themselves would warrant the suspension of an operating license and therefore the continuation of the TMI-1 suspension.

Errors Alleged by TMIA

TMIA's substantive objections to the partial initial decision fall into two main categories, namely (1) exceptions to the Board's findings and conclusions on TMIA Contention 5 and (2) complaints as to the scope of the Board's examination of certain management issues enumerated in the Commission's Order of March 6, 1980 (CLI-80-5).

TMIA's exceptions to the Board's findings and contentions on TMIA Contention 5, relating to allegations of poor past maintenance practices, proposed cut in maintenance budget, and overtime policies, deserve little comment. They largely deal with the Board's unwillingness to adopt the inferences and conclusions which TMIA would have the Board draw from testimony in the hearing and which it urged on the Board in its proposed findings. The Board's decision speaks adequately for itself on these issues.^{2/} Moreover, assuming arguendo that there were merit to some of the exceptions, none of the exceptions in Licensee's view rise to the level of concerns which would in themselves justify the suspension of an operating license or the continuation of the TMI-1 suspension.

As to TMIA's complaints about the scope of the Board's examination of certain management issues identified in the Commission's March 23, 1980 Order, we observe at the outset that the

^{2/} Should the Commission deem it appropriate to delve further into TMIA's exceptions by examining the transcript of the hearing, Licensee has for the convenience of the Commission attached to the Commissioners' copies of these comments its proposed findings and reply findings relating to TMIA Contention 5 with related citations to the transcript.

complaints come poorly from an intervenor who failed to participate in cross-examination of the numerous witnesses who testified on these issues^{3/} and who gave little or no help to the Board during the hearing in suggesting lines of inquiry.

TMIA first faults the Board on Commission Order Item 6 (Financial/Technical Interface) for relying "almost exclusively" on the testimony of Mr. Herman Dieckamp, President of GPU, and on Staff testimony based upon interviews with GPU management individuals, which TMIA characterizes as self-serving and inherently unreliable. No other testimony addressed to Order Item 6 was presented and no party other than Licensee or Staff submitted proposed findings on this issue. (PID ¶ 388) TMIA conducted no cross-examination of either Licensee or Staff witnesses, and cross-examination of Mr. Dieckamp by other parties reinforced the Board's conclusion that this issue was uncontested. (PID ¶ 388 and fn. 29)

TMIA's point does not seem to be that there were other more reliable witnesses who should have been called--certainly none have been suggested by TMIA. Rather TMIA appears to complain that the

^{3/} TMIA's complaints concern Commission Order Items 6 (Financial/Technical Interface), 1 (Licensee's Management Structure) and 10 (Licensee's Management Response to the TMI-2 Accident). TMIA conducted no cross-examination on Order Items 6 and 1. TMIA's representative did cross-examine Licensee's witness Keaton in connection with Order Item 10, primarily as to Mr. Herbein's decision on the day of the accident to remain off-site and the fact that he along with Messrs. Miller and Kundar went to Harrisburg for a meeting with the Lieutenant Governor. (Tr. 16527-47)

Board did not factor into its decision testimony presented in connection with TMIA Contention 5 on overtime practices and a proposed 1979 budget cut which, in TMIA's view, negate the conclusion that financial decisions will have no improper impact upon technical decisions. TMIA complains in particular that this testimony while addressed to TMIA Contention 5 was not discussed by the Board in the context of the technical/financial interface.

The short answer is that the Board did consider at length in other parts of its decision TMIA's allegations with respect to overtime practices and the 1979 proposed budget cut and rejected TMIA's allegations. In respect to both the proposed budget cut and overtime practice the Board found that "Licensee has not disregarded the importance of safety-related maintenance in safely operating a nuclear plant by proposing a drastic cut in the maintenance budget or by extensively using overtime in performing safety-related maintenance." (PID ¶ 348) In respect to the proposed budget cut the Board specifically found that there was no "basis to conclude that the proposed budget cuts demonstrated an underlying management philosophy of compromising safety in favor of profits as alleged by TMIA." (PID ¶ 324) In respect to overtime policy the Board stated: "TMIA alleges that Licensee's overtime practice and policy (before the new IE policy was adopted) demonstrates that top management put profits ahead of safety; that therefore it is significant because it shows inherently bad management. The record does not support TMIA's conclusion." (PID ¶ 343) TMIA is simply wrong in asserting that the Board did not consider

evidence on the proposed budget cut and overtime policy in the context of financial/technical interface.

TMIA next faults the Board in its consideration of Order Item 1 (Management Structure) on two main counts: (1) the Board's failure "to inquire well beyond the self-serving, rubber stamp endorsements of the Licensee and Staff witnesses" and (2) TMIA's claim that the Board "has been clearly derelict in its duty to meaningfully analyze" the competence of corporate level and on-site managers individually discussed in the Board's decision (PID ¶¶ 129 through 162) by "conducting a thorough examination" of the individuals and by "comparing their past histories to their present qualifications." We comment separately in the following paragraphs on TMIA's two criticisms.

The Board heard evidence on corporate level and on-site management structure from four Staff witnesses, from Mr. Robert Arnold, President of GPU Nuclear Corporation, and Mr. Henry D. Hukill, Vice President of TMI-1, and from two independent witnesses, Mr. William S. Lee and Mr. William Wegner (PID ¶¶ 60, 70). Mr. Lee is President and Chief Operating Officer of Duke Power Company and Chairman of the Board of Directors of the Institute of Nuclear Power Operations. (PID ¶ 56) Mr. Wegner is a nuclear engineer who served for 25 years as Deputy to the Director of the Naval Reactors program, Admiral Rickover, and who upon his retirement in 1979 formed a consulting firm, Basic Energy Technology Associates. (PID ¶ 57) No other party offered testimony on the subject. TMIA conducted no cross-examination of any of the Licensee

or Staff witnesses on management structure and at no time suggested to the Board either that any other witness be called or that any particular line of inquiry should be pursued.

The Board's decision specifically assesses the qualifications of the witnesses it heard. (PID ¶¶ 56, 57, 64, 129 through 162) Importantly, the Board did not content itself with merely receiving and reviewing prepared testimony by Licensee witnesses, but itself examined Licensee's managers on a wide array of technical and management subjects. (PID ¶ 125) Further, on its own initiative the Board encouraged the Staff witnesses to report any misgivings about the quality of Licensee's management and to recommend further areas of inquiry to complete the record on management issues. (PID ¶ 122) Similarly, the Board pushed Mr. Wegner to give his subjective evaluation of Licensee's management personnel. (PID ¶ 123) The Board frequently permitted cross-examination beyond the scope of the direct examination to explore management attitude and broader management issues. (PID ¶ 125) Contrary to TMIA's complaint, the Board took a very active role in seeing to it that management issues, including management structure, were thoroughly explored.

TMIA's criticism of the extent of Board examination into the competence and past history of Licensee's managers is equally ill-founded. With the Board's encouragement, Licensee produced as witnesses most of the management personnel who would have an important influence upon the safe operation of TMI-1. (PID ¶ 125)

In an unusual step the Board detailed in its decision the qualifications of some 19 management individuals, all of whom appeared as witnesses before the Board. (PID ¶¶ 126, 129 through 162) Except in connection with its Contention 5, TMIA did virtually no cross-examination of these witnesses.

TMIA's particular criticism is that the Board did not adequately investigate and analyze the past experience of management personnel in considering their present qualifications. Although making the assertion that this criticism applies to all 19 of the managers discussed in the Board's decision, TMIA singles out only two individuals -- Mr. Daniel M. Shovlin, Manager of Plant Maintenance, and Mr. John Herbein, Vice President of the Nuclear Assurance Division (discussed by TMIA under the heading of Order Item 10 - Management Response to the TMI-2 Accident). The Board did in fact examine Licensee's past maintenance practices under the direction of Mr. Shovlin and found that there was no evidence that Licensee had improperly deferred safety-related maintenance (PID ¶ 300) and that while there was evidence of problems in Licensee's past maintenance record keeping, none of the problems disclosed safety problems in the actual work. (PID ¶ 314) There was no need for further discussion of Mr. Shovlin's past experience. Mr. Herbein was one of Licensee's witnesses whose qualifications were discussed by the Board. (PID ¶¶ 140-142) TMIA would have had the Board on its own initiative inquire into Mr. Herbein's actions following the TMI-2 accident, including allegations of withholding of information. The Board did in fact receive testimony from Staff witness Moseley on the latter subject

and explained in detail its reasons for not pursuing the matter further sua sponte. (PID ¶¶ 470-97) Throughout the proceeding before and after Mr. Moseley's appearance, the Board reminded the parties, particularly TMIA, that they could present witnesses on the disclosure issue, including the Udall Committee staff report, if they had a sponsoring witness and presented it on a timely basis. (PID ¶¶ 470, 490) TMIA not only chose to decline this invitation but failed to conduct any cross-examination of Mr. Herbein when he appeared as a witness.

TMIA's final complaint is that the Board conducted an insufficient inquiry into Order Item 10 (Management Response to the TMI-2 Accident). In addition to further inquiry into the role of Mr. Herbein, discussed above, TMIA would have had the Board take "a thorough look at those management individuals" whom TMIA claims were "cited as incompetent" by NRC, Congressional and President's Commission investigations. TMIA neither provides the identify of these other individuals nor suggests that they have important roles in the operation of TMI-1.

As noted by the Board, in the broadest sense of Order Item 10 the entire proceeding has been addressing the lessons learned from the TMI-2 accident and Licensee's responses to the accident. These, the Board explains, are dealt with in other sections of its decision, such as training, management organization, emergency planning, etc. (PID ¶ 466) The Board decided wisely not to consider a minute-by-minute recap of the TMI-2 accident but to look for any particular actions on the part of Licensee which reflected positively or negatively on Licensee's management competence. Thus, in addition to hearing extensive testimony on management's

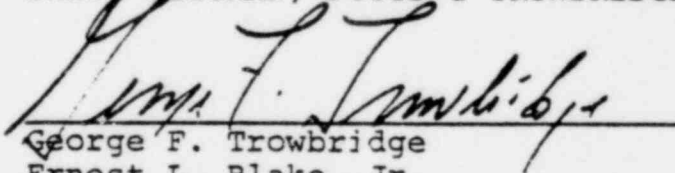
actions to cope with the TMI-2 accident immediately and in the weeks following the accident, the Board looked particularly at other indicia of management attitude. (PID ¶ 463) Thus, on its own initiative, the Board inquired of Mr. Arnold as to Licensee's own evaluation of the performance of individuals during the accident and actions taken by Licensee as a result of that evaluation. (PID ¶ 463; Tr. 11597-608) The Board also took a special interest in Licensee's response to the I&E inspection report (NUREG-0600) following the accident and found that response to be an indication of a responsible management attitude by Licensee towards its nuclear-related activities. (PID ¶ 468)

We have already mentioned that the Board heard and had a first-hand opportunity to question and evaluate most of the management personnel who will be responsible for the safe operation of TMI-1, including many who were deeply involved in Licensee's response to the TMI-2 accident. The Board's own favorable evaluation of the attitude and competence of these individuals is summarized in paragraphs 126-28 of its decision.

Licensee submits that the Board has approached the issue of management response to the TMI-2 accident in a highly responsible manner.

Respectfully submitted,

SHAW, BITTMAN, POTTS & TROWBRIDGE



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Dated: September 25, 1981

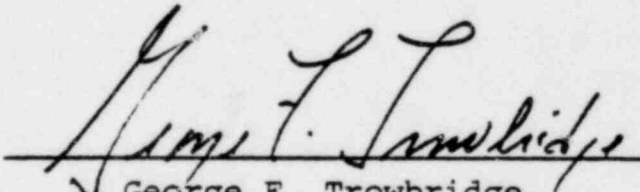
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Reply to TMIA Request for Stay Pending Review," dated September 25, 1981, were served by hand on Chairman Palladino, Commissioners Gilinsky, Ahearne, Bradford and Roberts, and the Secretary of the Nuclear Regulatory Commission, by delivery to the offices of the Nuclear Regulatory Commission, 1717 H Street, N.W., Washington, D.C.; and were served by deposit in the United States mail, postage prepaid, upon those persons on the attached Service List, this 25th day of September, 1981.


George F. Trowbridge

Dated: September 25, 1981

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

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