

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

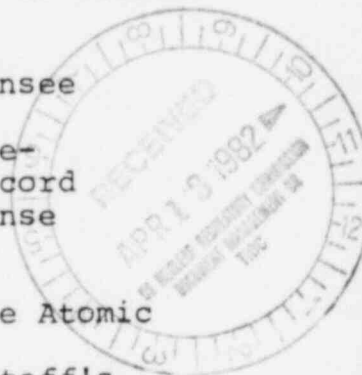
In the Matter of	)	
	)	
METROPOLITAN EDISON COMPANY	)	Docket No. 50-289
	)	(Restart)
(Three Mile Island Nuclear	)	
Station, Unit No. 1)	)	

NOTICE OF WITHDRAWAL OF  
LICENSEE EXCEPTION NO. 2

Licensee Exception No. 2, filed with the Atomic Safety and Licensing Appeal Board on February 8, 1982, states as follows:

The decision by the Licensing Board to require as a condition for restart that Licensee suspend work in the Unit 1 area of the fuel handling building during any Unit 2 fuel movements is not supported by evidence in the record and is inappropriate for inclusion as a license condition. See PID §§ 1256, 1326(a).

On February 22, 1982, Licensee filed with the Atomic Safety and Licensing Board a ". . . Reply to the NRC Staff's Response to Licensing Board's Directive to Report Details of its Enforcement Plan in the Form of a Supplemental Initial Decision" ("Licensee's Reply"). Among the matters addressed in Licensee's Reply was the Staff's proposal for implementing the Licensing Board's finding that during any Unit 2 fuel movements Licensee will suspend work in the Unit 1 area of the fuel handling building -- the subject of Licensee Exception No. 2. In the reply, Licensee proposed for the Licensing Board's consideration a modification of this requirement which would



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correct a misunderstanding of the record. Licensee further indicated that if its proposed modification to the license condition were adopted, Licensee's Exception No. 2 could be withdrawn.

Anticipating a favorable resolution of the matter with the Staff and the Licensing Board, Licensee filed on March 1, 1982, a motion to suspend briefing on its Exception No. 2. In an Order dated March 4, 1982, the Appeal Board granted a 30-day deferral of the briefing schedule on this exception -- requiring that Licensee's brief be filed by April 9, 1982. In its Order, the Appeal Board raised the question as to whether any requests for changes in the Licensing Board's decision should now be addressed to the Appeal Board, rather than to the Licensing Board. Concern was expressed about the opportunity for other parties, such as the Commonwealth of Pennsylvania, to present their views on any changes in the decision.<sup>1/</sup> The Appeal Board recognized, however, that the issues included in Licensee's Exception No. 2 were part of the conditions under consideration by the Licensing Board and, to that extent, may not yet be suitable for appellate resolution.

On March 10, 1982, the Staff filed its ". . . Response to Licensee's Reply to the Staff's Enforcement Plan." There the Staff set forth yet a third edition of this proposed license

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<sup>1/</sup> In a Memorandum and Order dated March 2, 1982, the Licensing Board announced an opportunity for the Staff and any other party to file a response to Licensee's Reply.

condition (the Staff's proposal of February 1, and Licensee's of February 22 having been abandoned). The new proposal had been discussed among counsel for the Staff, the Commonwealth and Licensee, and all three parties endorsed the proposal for adoption by the Licensing Board.

In its "Memorandum and Order Modifying and Approving NRC Staff's Plan of Implementation," April 5, 1982, the Licensing Board adopted the modified proposed condition as its own. The Licensing Board, however, also recognized the question of jurisdiction. The Licensing Board observed that the change goes to the decision itself, not just to the Staff's implementation plan. Because it specifically retained jurisdiction to approve the Staff's implementation plan, however, the Licensing Board proceeded as if it continued to have jurisdiction to decide not to implement an order which it no longer supported.

On the basis of the Licensing Board's Memorandum and Order, Licensee hereby withdraws its Exception No. 2. No further brief is contemplated on the issues associated with that exception. Further, in the unique circumstances presented here -- with a partial initial decision followed by a supplement planned for in the original decision -- the Licensing Board was correct in its treatment of the jurisdictional question. If the Appeal Board disagrees, however, Licensee respectfully requests that it issue an order modifying

the Licensing Board's decision consistent with that Board's  
Memorandum and Order of April 5, 1982.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

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Dated: April 9, 1982

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Notice of Withdrawal of Licensee Exception No. 2" were served this 9th day of April, 1982, by deposit in the U.S. mail, first class, postage prepaid, to the other parties on the attached Service List.

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

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Docket No. 50-289  
(Restart)

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