

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

LICENSEE'S RESPONSE TO
APPEAL BOARD MEMORANDUM AND ORDER
DATED JUNE 30, 1982

By Memorandum and Order dated June 30, 1982, the Atomic Safety and Licensing Appeal Board sought the approval of the Commission to undertake sua sponte a review of three safety-related matters which have arisen since the issuance of the Atomic Safety and Licensing Board's Partial Initial Decision on Plant Design and Procedures and which, in the view of the Appeal Board appear relevant to the TMI-1 reactor and are important to public health and safety. The Appeal Board also propounded, subject to the Commission's approval, specific questions on each of the three matters to be answered by Licensee in the form of affidavits.

The issues proposed to be reviewed by the Appeal Board are neither issues considered in the restart hearing nor issues which have been raised by any party on appeal. They are thus

not presently within the scope of the Appeal Board's limited mandate "to hear initial appeals in this proceeding." Commission Order, CLI-81-19, August 20, 1981. Nor do the Commission's regulations confer additional authority on the Appeal Board to consider new issues. The TMI-1 restart hearing is not a proceeding on an application for an operating license and the authority conferred on the Appeal Board by 10 CFR 2.785(b) to raise sua sponte safety matters not in issue in the hearing below is not applicable to this proceeding. See Appeal Board Memorandum and Order at page 2. Thus the question presented to the Commission by the Appeal Board request is whether to expand the Appeal Board review to encompass the three matters identified by the Appeal Board.

We believe the Commission can safely rely on the Director of Nuclear Reactor Regulation to pursue vigorously and resolve each of the safety concerns identified by the Appeal Board and to recommend to the Commission any remedial measures for TMI-1 and other operating reactors, which he considers to be required in the interest of the public health and safety. In Licensee's view the Commission should not encumber and possibly lengthen the Appeal Board review, which already encompasses over 120 exceptions on plant design issues filed by the parties, with new matters which are currently the subject of review by the NRC Staff. Appeal Board involvement in the review is specially inappropriate with respect to matters which are the subject of on-going Staff reviews that have not yet been completed, as is

the case with each of the three matters identified by the Appeal Board.

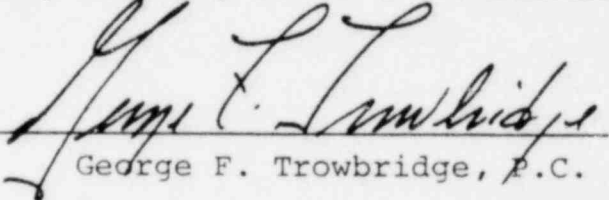
We particularly question the Appeal Board's request to review the steam generator tube repair program proposed by Licensee and currently under review by the NRC Staff. To begin with, as stated by the Appeal Board, steam generator tube corrosion is not directly relevant to the TMI-2 accident. The repair program thus has no nexus to the issues in the TMI-1 restart hearing. Nevertheless the Appeal Board proposes to inquire in detail into the repair program, including the methods of qualification testing developed for the tube expansion technique, the results of the qualification testing, the results of inspections to determine any corrosion damage to reactor internals, and the progress of the tube repair programs. Periodic reports would be required by Licensee as to the latter. This review is apparently intended to be conducted in parallel with the Staff review of the same matters presently in progress and involving extensive discussions and documentation by Licensee and others. Thus in addition to unnecessarily encumbering the appellate review with new matter, the Appeal Board review seems certain to complicate and delay Staff review of a repair program essential to the restart of TMI-1.

In conclusion, Licensee urges that the Commission instruct the Appeal Board not to pursue a sua sponte review of the matters raised in the Memorandum and Order of June 30, 1982. This is a special proceeding and not an initial licensing action. There is

absolutely no reason why new issues relating to this operating license, and which were not the subject of this special proceeding, should be drawn out of the normal channels of regulation by the Commission and its Staff in order to undergo contemporaneous review by an adjudicatory tribunal. In this case, the Appeal Board does not stand in the Commission's place.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By 
George F. Trowbridge, P.C.

Dated: July 6, 1982

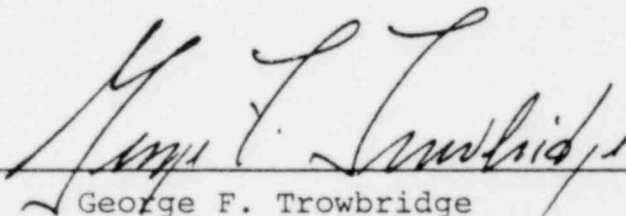
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Response to Appeal Board Memorandum and Order Dated June 30, 1982," dated July 6, 1982, were served upon those persons on the attached Service List by deposit in the United States mail, postage prepaid, or as indicated by asterisk, by personal service, this 6th day of July, 1982.


George F. Trowbridge

Dated: July 6, 1982

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