

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD



In the Matter of)

METROPOLITAN EDISON COMPANY)

(Three Mile Island Nuclear Generating)
Station, Unit 1))

Docket No. 50-289
(Restart)

RESPONSE OF O, VV, AND W IN OPPOSITION
TO AAMODTS' "MOTIONS FOR PROVISION
OF INFORMATION AND TO LIFT ORDER OF
CONFIDENTIALITY OF REOPENED HEARING"

On June 20, 1983, the Aamodts filed a document entitled "Motions For Provision of Information And To Lift Order of Confidentiality of Reopened Hearing". The individuals referred to as O, VV, and W hereby oppose the Aamodt's Motion insofar as it seeks to lift the requirement of confidentiality.^{1/}

^{1/} Despite the fact that counsel for O, VV, and W drafted and negotiated the stipulation concerning confidentiality with the Aamodts and all other parties, and despite the fact that counsel for O and VV (Mr. McBride) and counsel for W (Mr. Cole) are on the Commission's service list in this proceeding for the purpose, inter alia, of participating with respect to the confidentiality issue, the Aamodts did not serve their Motion on the undersigned counsel. We have asked the Aamodts on a number of occasions that they serve us with their pleadings and other filings. Because they have again failed to do so, we request that the Appeal Board remind the Aamodts of their responsibility to serve counsel for O and VV, and counsel for W, with copies of all pleadings and other documents filed with the Commission.

The Aamodts' Motion to lift the requirement of confidentiality should be denied. The Aamodts voluntarily agreed to the stipulation that imposed the requirement of confidentiality on the parties and witnesses herein.^{2/} For the Appeal Board to even consider relieving them from the stipulation, a substantial change in circumstances must be shown. No such change has been suggested, much less demonstrated.

The Appeal Board must recognize the unfairness that attaches to the Aamodts' request. O and W refused to testify, invoking their privilege against self-incrimination, unless they were afforded confidentiality. They waived their Fifth Amendment privilege only after all parties agreed to the stipulation^{3/}. For the Commission now to release the Aamodts from their obligations under the stipulation would be to deprive O, VV, and W of the only benefit

^{2/} Metropolitan Edison Company (Three Mile Island Nuclear Generating Station, Unit 1), ALAB-658, 14 N.R.C. 981, 982 (App. Bd. 1981); see also unpublished Appeal Board order herein dated November 13, 1981. For the convenience of the Appeal Board, a copy of the Stipulation and Special Master Milhollin's order enforcing it are attached.

^{3/} Paragraph 10 of the Stipulation states, in relevant part:

"The individuals designated as 'O', 'VV' and 'W' hereby waive any objections previously stated in this proceeding to further testimony in this proceeding by each of them, subject to the other provisions of this stipulation."

they gained from the stipulation. To do so would constitute a grave violation of their rights. Under no circumstances will they acquiesce in a loss of the confidentiality to which they are entitled.

CONCLUSION

The Aamodts' Motion to lift the requirement of confidentiality in this proceeding should be denied.

Respectfully submitted,

Harry H. Voigt

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June 27, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

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Docket No. 50-289
(Restart)

To Service List:

Enclosed is a copy of a confidentiality Stipulation and related Order agreed to by the parties and approved by Judge Milhollin on November 12, 1981, which Licensee is serving at Judge Milhollin's request.

Sincerely,

Ernest L. Blake, Jr.
Ernest L. Blake, Jr.
Counsel for Licensee

Enclosures

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

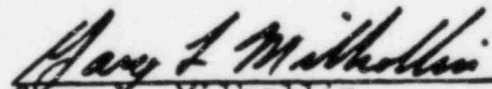
In the Matter of
METROPOLITAN EDISON COMPANY
(Three Mile Island Nuclear
Station, Unit 1)

DOCKET NO. 50-289

(Restart)
(Reopened Proceeding)

ORDER

It is hereby ordered by Gary L. Milhollin, Administrative Judge and Special Master that for the duration of these proceedings all parties signatory to the attached Stipulation will be bound thereby and subject thereto. Any violations of said Stipulation should be reported to Judge Milhollin, and may be dealt with in any manner by Judge Milhollin pursuant to the enforcement powers invested in him by the Atomic Safety and Licensing Board.



Gary L. Milhollin
Administrative Judge and
Special Master

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of
METROPOLITAN EDISON COMPANY
(Three Mile Island Nuclear
Station, Unit I)

DOCKET NO. 50-289

(Restart)
(Reopened Proceeding)

STIPULATION

The parties to this reopened proceeding, on their own behalf or by counsel, as indicated below, stipulate that

1. With the additional information provided pursuant to paragraph 3 below, it appears that the lettering system adopted by Licensee and used by the parties to date is capable of permitting an adequate evidentiary hearing on the issues in this proceeding and should be retained and used throughout this proceeding, including any appeals, except that the stipulation shall not pertain to the identity of any individual who has voluntarily agreed or hereafter agrees to make his/her identity known in this proceeding.

2. A Protective Order should be issued requiring non-disclosure of any name of any person who is identified by letter rather than by name, should that person's name be disclosed during this proceeding, including any appeals.

3. Subject to the Protective Order referred to in paragraph 2 above, Licensee shall provide to the Special

Master, counsel for the NRC staff, counsel for the Commonwealth, Mrs. Aamodt and counsel for the Aamodts and the two undersigned representatives of TMIA, a key which identifies by name and job title all Licensee employees and ex-employees (excepting "YY") which heretofore have been designated by letter or number. This key shall be provided exclusively for use by participants in this captioned proceeding before the Special Master and appeals therefrom. The key provided shall be retained by the undersigned representatives and counsel for their use and the use of those assisting them in the course of this proceeding. In order to assure the effectiveness of this stipulation, no copies of the keys shall be made and their use by those other than the undersigned shall be restricted to the absolute minimum necessary for hearing preparation and for subsequent appeals. Licensee further agrees to drop the lettering system throughout the proceeding for all employees other than its past and present control room operators, shift foremen, shift supervisors, shift technical advisors, and individual "VV" and with respect to these individuals, each individual's job classification will be identified. Licensee further agrees to review all documents it has provided in the course of discovery and to provide as soon as possible to all participants in the proceedings, subject to the Protective Order referred to in paragraph 2 above, material (other than names and job classifications) which has been deleted, such as dates, in furtherance of the lettering system.

4. If those persons identified in the Licensee's lettering system as "O", "VV" and "W" (and such other persons as may be subsequently determined by the Special Master to merit an in camera proceeding for their testimony) are called to testify in this reopened proceeding, their testimony will be taken in camera, without public notice, and at a place to be agreed on by the parties and the Special Master, so as to minimize risk of disclosure of their identities.

5. When in camera sessions of this proceeding are scheduled, the parties shall not disclose the fact, time and place of such sessions to anyone, before or during the session.

6. Such in camera sessions will be conducted before Special Master Milhollin.

7. The testimony in the in camera sessions would continue the use of the lettered system and the transcripts of in camera sessions would be made available to the public without restriction.

8. Should the name of any person who is identified by letter or by number in the Licensee's lettering system be disclosed during testimony of any witness, that person's name will be excised from the record and will not be disclosed by any party or the NRC staff.

9. The NRC staff or any of its employees or subordinate bodies will not disclose the name of any person

identified by letter in the Licensee's lettering system in use in this proceeding without the consent of that person.

10. The individuals designated as "O", "VV" and "W" hereby waive any objections previously stated in this proceeding to further testimony in this proceeding by each of them, subject to the other provisions of this stipulation. The involved individuals and the Licensee agree that they will withdraw their appeal of the Licensing Board's November 6, 1981 decision, except for those portions of the opinion characterizing conduct of counsel.

Respectfully submitted,

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Approved:

Gary L. Milhollin

Gary L. Milhollin

Administrative Judge and

Special Master

Date Approved:

Nov. 12, 1981

UNITED STATES OF AMERICA
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METROPOLITAN EDISON COMPANY

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

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) (Restart)
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CERTIFICATE OF SERVICE

I hereby certify that copies of the "Order," and "Stipulation" dated November 12, 1981, were served this 13th day of November, 1981, by hand delivery upon the persons identified by one asterisk and by deposit in the United States mail, first class, postage prepaid, to the other parties on the attached Service List.

Deborah B. Bauser
Deborah B. Bauser

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METROPOLITAN EDISON COMPANY)

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Docket No. 50-289
(Restart)

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