

July 27, 1983

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 COMMENTS ON EDO MEMORANDUM
DATED JULY 15, 1983

On July 15, 1983, the Executive Director for Operations transmitted to the Commission a memorandum describing the Staff's proposals to implement the Commission's guidance of June 28, 1983, on the Staff's completion of the TMI-1 restart review. The memorandum informs the Commission that completion of the Staff review, including an ultimate Staff position on management integrity "realistically appears to the staff to be many months away" and that "a Commission decision on restart in September does not appear realistic to the staff if the Commission intends to have a staff position on management integrity prior to that Commission decision". The memorandum further includes a Staff proposal "that the

Commission should give serious consideration to whether an evidentiary hearing on management competence and integrity should be held prior to the restart of TMI-1." We discuss below both the matter of the Staff's review schedule and proposal for further hearings.

Staff Review Schedule

It is clear from the July 15 memorandum that the critical path item in the Staff's schedule is the Staff's review of the B&W litigation documents. This is the only item for which the Staff even attempts an explanation of the "many months" required for completion of its review. The Staff gave no reason why the Staff review of other "open items" cannot be completed prior to September consistent with the Commission's June 28 instruction that the Commission "continues to place a high priority on completing its TMI-1 immediate effectiveness restart review as early as practicable." Further, except for noting with respect to the Hartman allegations that the grand jury proceeding "conceivably" may place constraints and cause delay in OI's investigation, the Staff gave no indication that its review of the other open items might be delayed by ongoing OI investigations which will serve as inputs to the Staff review. Shortly after the July 15 memorandum, however,

Staff counsel forwarded to the Appeal Board a report, dated July 21, 1983, on the status of its TMI-1 restart review. In that report the Staff has provided estimated dates for the completion of OI investigations relating to several Staff open items which are totally inconsistent with the review schedule presented by the Staff at its meeting with the Commission on June 21, 1983, and which would indeed account for many months of delay in completion of the Staff's review. The status report gives no explanation or justification of the new OI investigation schedules, and in Licensee's view the schedules are wholly inconsistent with the priority placed by the Commission on completing its TMI-1 immediate effectiveness restart review.

As to the B&W litigation documents, the Staff has to date identified only a single item (the so-called Book memorandum) which it thought might have a bearing on management integrity and with respect to which it requested an OI investigation. That investigation is complete and the matter in question turned out to be of no consequence.^{1/}

The Staff estimate of "many months" to complete its review simply assumes, without explanation, that there will be other items requiring investigation and evaluation. No basis for this assumption is stated. In fact the July 15 memorandum simply refers loosely and without definition to

^{1/} See Board Notification 83-71A, dated June 27, 1983, and its attachments.

"possible integrity issues" raised by the document review and to an evaluation of their impact "if any" on the integrity of TMI-1 individuals. It ignores the fact that a previous review of the B&W litigation documents, including exhibits and depositions introduced in the trial, by the Stello team produced no new information of substance.

Even if the Staff assumption proves to be correct, however, and there are other items in the B&W litigation documents which require Staff attention, it does not follow that a restart decision need await completion of the Staff's investigations and evaluations. The July 15 memorandum promises that "the integrity issues resulting from the GPU v. B&W record review can be identified by September, 1983." The Commission has already directed the Staff in its June 28 memorandum to report to the Commission any significant information identified during the review as soon as it is identified. The Commission should insist that the Staff comply with its instruction in order that the Commission itself may judge whether the matter is of sufficient importance to justify a delay in restart pending further Staff investigation.

In Licensee's view the Commission has already been remiss in not insisting on more information from the Staff about the Staff's "open items" and the basis for the Staff's conclusion that it has now become necessary for the Staff to

revalidate its position on the issue of management integrity. As matters now stand, not only is Licensee left in the dark as to any new material facts which in the Staff's view may justify a delay in the restart decision, but so is the Commission. The Commission should no longer tolerate the perpetuation of a situation in which the Staff has as a practical matter stymied a Commission decision on restart without identifying to the Commission or to the parties any factual basis for this result.

Proposed Hearing

The July 15 memorandum concludes with a gratuitous suggestion, unrelated to Staff implementation of the Commission's June 28 memorandum, that "the Staff believes that the Commission should give serious consideration to whether an evidentiary hearing on management competence and integrity should be held prior to the restart of TMI-1." The sole reasons given by the Staff for its proposal are:

1. The Staff's ultimate position on management integrity will be the subject of substantial criticism by one or more of the parties to the restart proceeding and that a request for a hearing on management integrity is likely;

2. There are already pending before the Appeal Board three motions to reopen the management/cheating record;
3. The controversial nature of the subject of management integrity and the lack of any precise standards for judging the integrity of individuals and institutions;
4. A decision now to hold a further evidentiary hearing on management competence and integrity "may well expedite the inevitable."

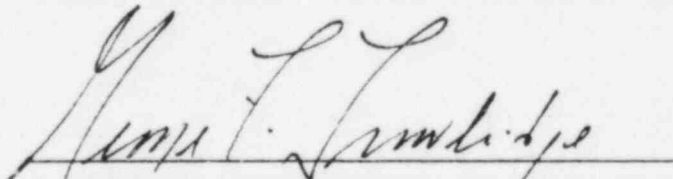
As to the Staff's first two reasons, the fact that one or more parties to the restart proceeding may request or have requested a further hearing is hardly dispositive of the question as to whether such a hearing is necessary or even appropriate. As to the Staff's third reason, the inherently controversial nature of the subject of management integrity and the lack of precise standards for judging integrity are not a sound reason for holding additional hearings. Hearings can be appropriate in circumstances where complicated factual questions are in dispute (which the Staff does not assert to be the case here), but they are not a proper mechanism to enable the Commission to formulate its standards on management integrity. The Staff's final

suggestion that a decision now to hold a hearing may "expedite the inevitable" would simply have the Commission prejudge the question of further hearings without establishing any need for the hearing, at the cost of extensive delay in the restart of TMI-1. Again, the Staff has failed to identify any material information which would justify either reopening the restart hearing or delaying a restart decision.

The Staff is well aware of the severe burden which NRC case law places on any party desiring to reopen a hearing and the established criteria on which decisions to reopen should be based. The Staff has in fact in its responses before the Appeal Board to motions to reopen the record urged these criteria upon the Appeal Board. It offers no explanation of why different criteria should be applied by the Commission.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

A handwritten signature in dark ink, appearing to read "George F. Trowbridge", is written over a horizontal line.

George F. Trowbridge, P.C.

Ernest L. Blake, Jr., P.C.

Dated: July 27, 1983

July 27, 1983

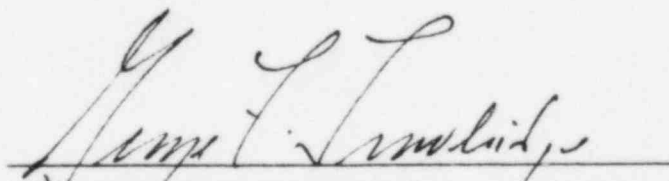
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Comments on EDO Memorandum Dated July 15, 1983," dated July 27, 1983, were served on those persons on the attached Service List by deposit in the United States mail, postage prepaid, or where indicated by an asterisk (*) by hand delivery, this 27th day of July, 1983.


George F. Trowbridge, P.C.

Dated: July 27, 1983

BEFORE THE COMMISSION

Docket No. 50-289
(Restart)

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