

# SHAW, PITTMAN, POTTS & TROWBRIDGE

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

1800 M STREET, N. W.  
WASHINGTON, D. C. 20036

(202) 822-1000

TELECOPIER

(202) 822-1099 & 822-1199

RAPIFAX 100

(202) 822-1072

TELEX

89-2693 (SHAWLAW WSH)

CABLE "SHAWLAW"

VIRGINIA OFFICE

1501 FARM CREDIT DRIVE

MCLEAN, VIRGINIA 22102

JOHN F. DEALY\*

RICHARD S. BEATTY

ROBERT E. CONN

COUNSEL

KENNETH J. HAUTMAN  
DAVID LAWRENCE MILLER  
FREDERICK L. KLEIN  
STEVEN P. PITLER  
RICHARD J. PARRINO  
ELLEN A. FREDEL  
MARIE N. DOLAND\*  
THOMAS C. HILL  
L. DUANE CHEEK  
MICHAEL K. MADDEN  
RALPH A. TAYLOR JR.  
HANNAH E. M. LIEBERMAN  
JUDITH A. SANDLER  
ANDREW D. ELLIS  
RICHARD A. SAMP  
THOMAS E. CROCKER, JR.  
VICKI R. HARDING  
PETER J. FERRARA  
HELEN TORELLI  
MARTHA BOONE ROWAN\*\*  
KENNETH R. MILLER  
JOHN H. MORE  
PAUL S. PILECKI  
PAUL A. GAUKLER\*\*  
WENDELL A. WHITE  
STANLEY M. BARG  
LESLIE K. SMITH  
KATHERINE P. CHEEK  
TRAVIS T. BROWN, JR.  
STEPHEN B. HEIMANN  
PAMELA H. ANDERSON  
ALEXANDER D. TOMASZCZUK  
JEFFREY J. A. GIBBS  
LAURENCE W. COHEN  
DEREK W. LINDEN

SYLVIA M. LOTRECK  
JEFFREY R. SNYDER\*\*  
DARYL ANNE LANDER  
PHILIP D. PORTER  
MICHAEL A. SWIGER  
ELLEN SHERIFF  
ANITA J. FINKELSTEIN  
DAVID R. SAHR  
C. BOWDOIN TRAIN  
JEFFREY W. KAMPELMAN  
KENNETH A. GALLO  
DAVID R. LEWIS  
A. PATRICK LEIGHTON III  
JEFFREY G. BERMAN  
KEVIN FLYNN  
KENNETH D. AUERBACH  
ALAN D. WASSERMAN  
RICHARD K. A. BECKER  
WILBERT WASHINGTON II  
DOROTHEA W. DICKERMAN  
JONATHAN T. GAIN  
DOUGLAS L. HILLEBOE\*  
RICHARD I. ANSBACHER\*  
JOYCE L. OLIVER  
THOMAS J. CATLIOTA  
EVANS HUBER\*  
JUDY WEISBURGH  
ETHAN J. FRIEDMAN  
PAUL M. BANGSER\*  
ROSE ANN SULLIVAN\*  
BARBARA BULGER HANNIGAN\*  
JOSEPH E. KENDALL  
ROBERT M. D. GIOVANNI  
JOHN N. NASSIROS III\*  
DIANE S. SHAPIRO\*

\* NOT ADMITTED IN D.C.  
\* ADMITTED IN VIRGINIA

March 22, 1985

WRITER'S DIRECT DIAL NUMBER

(202) 822-1051

Gary J. Edles  
Administrative Judge  
Chairman, Atomic Safety and  
Licensing Appeal Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dr. W. Reed Johnson  
Administrative Judge  
Atomic Safety and Licensing  
Appeal Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dr. Reginald L. Gotchy  
Administrative Judge  
Atomic Safety and Licensing  
Appeal Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

In the Matter of  
Metropolitan Edison Company, Et Al.  
(Three Mile Island Nuclear Station, Unit No. 1)  
Docket No. 50-289 OLA

Dear Administrative Judges:

On March 15, 1985, intervenor Three Mile Island Alert, Inc. ("TMIA") filed a "Notice to Commission, Appeal Board, Licensing Board and Parties and Request for Investigation and Clarification." TMIA asserted that Licensee has requested a change to the TMI-1 technical specifications to allow tubes with greater than 40% through-wall cracks to remain in service without being plugged. TMIA asked that an "investigation" be ordered to determine

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whether, in light of TMIA's currently pending appeal, Licensee made a "material false statement by omission" by not notifying "the Commission and the Appeal and Licensing Boards" of its "request to change the tech specs." TMIA also asked the Appeal Board to direct Licensee to provide a "full written explanation as to what necessitated this request for change."

To clarify an apparent misunderstanding at the outset, Licensee has not requested a change in the Technical Specifications. By letters dated January 31 and March 1, 1985, Licensee requested approval from the NRC staff of a revision of the repair criteria or limit for determining whether a steam generator tube has to be taken out of service by plugging. Provision for entertaining and evaluating such a request is incorporated into the wording of Technical Specification 4.19.4.a.6 of the TMI-1 operating license, and a Technical Specification amendment is therefore not required. Licensee's request does not involve an unreviewed safety question as defined in 10 C.F.R. § 50.59, and Licensee has provided analyses demonstrating that the margin of safety with the proposed repair limit is no less than that of the licensing basis for the current repair limit.

In any event, irrespective of whether a Technical Specification change was requested, the reason Licensee has not notified the Appeal Board of its request for approval of the proposed repair limit is that the repair limit bears no relationship to the subject matter of this proceeding. Thus, there is no requirement, or even a remotely rational basis, for such notification. TMIA's pending appeal involves the hearing below on Licensee's request for approval of a specific technique for repairing steam generator tubes. The proceeding does not involve the criteria for determining which tubes require plugging or other repair. The Licensing Board squarely ruled on this very point when it rejected, as being beyond the scope of this proceeding, that portion of one of TMIA's proposed contentions which sought to question the number and selection of tubes to be plugged:

The Commission's Notice of Opportunity For Hearing did limit contentions to matters within the scope of the amendment under considerations. 48 Fed. Reg. 24231 (May 31, 1983). The amendment requested by the Licensee was to revise the technical specifications to recognize steam generator tube repair techniques (kinetic expansion repair), other than plugging. Those portions of this subpart which question (a) the number of tubes requiring plugging, (b) the choice of tubes to be plugged, and (c) the

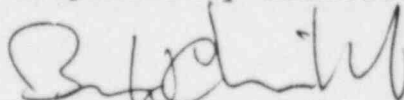
failure to plug 66 degraded tubes do indeed exceed the scope of this proceeding and thus are rejected. We do not have jurisdiction to explore matters beyond those which are embraced by the Notice Of Opportunity For Hearing.

Memorandum and Order, January 9, 1984 at 4 (citations omitted). TMIA did not appeal this prehearing ruling of the Licensing Board.

Other aspects of TMIA's Notice also require clarification. TMIA stated at page 2 of its Notice that the latest eddy current tests "indicate that the steam generator tubes are continuing to crack." This is a separate issue, and TMIA has not claimed that Licensee has failed to provide adequate notification on that issue. Lest there be any confusion, however, I would note that Licensee has timely provided the Appeal Board with the correspondence and reports on that matter, both by letters to the Appeal Board and in its answer to TMIA's pending motion to reopen the record. TMIA also suggests at page 3 of its Notice that Licensee is anticipating "continued cracking." This is incorrect. As demonstrated in Licensee's January 14, 1985 Answer to Reopen the Record at 9-15, reinitiation of the cracking has not occurred, and the conditions which caused the cracking have been eliminated.

Because Licensee's request for staff approval of the proposed repair limit is not within the scope of this proceeding, the requests in TMIA's March 15, 1985 Notice should be denied.

Respectfully submitted,



Bruce W. Churchill  
Counsel for Applicant

cc: Nunzio J. Palladino, Chairman  
Thomas M. Roberts, Commissioner  
James K. Asselstine, Commissioner  
Frederick Bernthal, Commissioner  
Lando W. Zech, Jr., Commissioner

Service List (attached)

RELATED CORRESPONDENCE  
CLASSIFIED  
USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Appeal Board 25 01:30

In the Matter of )  
 )  
METROPOLITAN EDISON COMPANY, ET AL. ) Docket No. 50-289-OLA  
 ) (Steam Generator Repair)  
(Three Mile Island Nuclear Station, )  
Unit No. 1) )

SERVICE LIST

Gary J. Edles  
Administrative Judge  
Chairman, Atomic Safety and  
Licensing Appeal Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Dr. W. Reed Johnson  
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Atomic Safety and Licensing  
Appeal Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Dr. Reginald L. Gotchy  
Administrative Judge  
Atomic Safety and Licensing  
Appeal Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Sheldon J. Wolfe  
Administrative Judge  
Chairman, Atomic Safety and  
Licensing Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Dr. David L. Hetrick  
Administrative Judge  
Atomic Safety and Licensing Board  
College of Engineering  
Dept. of Nuclear and Energy Engr.  
The University of Arizona  
Tucson, Arizona 85721

Dr. James C. Lamb, III  
Administrative Judge  
Atomic Safety and Licensing  
Board  
313 Woodhaven Road  
Chapel Hill, N.C. 27514

Mary E. Wagner, Esq.  
Office of Executive Legal Director  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Atomic Safety and Licensing  
Appeal Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Docketing and Service Section (3)  
Office of the Secretary  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Joanne Doroshow, Esq.  
Louise Bradford  
Three Mile Island Alert, Inc.  
315 Peffer Street  
Harrisburg, PA 17102

ASLAB Service List  
Page Two  
TMI-1

Thomas Y. Au  
Assistant Counsel  
Commonwealth of Pennsylvania  
Department of Environmental  
Resources  
Bureau of Regulatory Counsel  
Room 505 Executive House  
P. O. Box 2357  
Harrisburg, PA 17120