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)	)	

UCS COMMENTS ON APPEAL
BOARD ORDER OF
JUNE 16, 1983

In an order dated June 16, 1983, the Appeal Board described three pending motions to reopen the record on issues relating to management competence and integrity and established an oral argument date. The Board also invited the comments of the parties on three more recent matters not expressly raised in the motions but which may have a bearing on their disposition: NRC Staff Member Martin's disclosure to the Commission on May 24, 1983, that the Staff has been aware since 1980 that leak rates for TMI-2 were falsified, the NRC Executive Director's proposal to allow restart without fully resolving the implications of the leak rate falsification by reassigning certain potentially involved individuals and, last, GPU's proposal to make

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temporary reassignment of a number of individuals prior to restart.

As the Board is aware, UCS did not make filings in response to the motions to reopen the record. We have, however, filed comments directly with the Commission on the implicatios of Martin's disclosure and on the Staff proposal for restart. Union of Concerned Scientists' Comments on Commission Briefing of May 24, 1983 (Leak Rate Falsification) and Objection to Ex Parte Communication, June 3, 1983; Union of Concerned Scientists' Comments on Dircks' Memorandum, "Completion of TMI-1 Restart Review", June 7, 1983, June 14, 1983. Copies of these submissions are attached and incorporated herein. With respect to the leak rate falsification issue, so much has transpired at the Commission level after the expiration of the period for comment on the TMIA motion that UCS believes that we should not be excluded from oral argument. In addition, UCS expressly objected in our attached June 3 comments to the Commission to the continuous pattern of ex parte communication between the Staff, GPU and the Commission which has characterized this proceeding for the past year at least. We stated that the parties are entitled to a reasonable opportunity to confront the evidence. Under the circumstances, our filings to the Commission can be construed as support for the motions to reopen, at lease insofar as they relate to the leak rate falsification. Due to the Commission's misguided (and, we believe, unlawful) practice of accepting on an ex parte basis what can only be characterized as new evidence bearing directly on issues pending before the Appeal Board, this proceeding has become a procedural nightmare. No legalistic distinction between the so-called "immediate effectiveness" review and the appeal of the substantive issues can obscure the plain fact that, at this point, the fundamental principle that decision-making must be on the record subject to reasonable confrontation by adverse parties is being systematically flouted.

UCS believes that the Appeal Board must order the record reopened on management competence and integrity to consider the full implications of the new material related to leak rate falsification, the BETA and RHR reports, the Paris, King and Gischel allegations and the failure of GPU to promptly inform the Boards about the BETA and RHR reports.

As to the latter, it should be noted that the Executive Legal Director has now concluded that the reports contain information relevant to the issues in the restart proceeding, raising questions about the soundness of the record on a number of issues, including training, maintenance, waste management and health physics. Memorandum from Guy W. Cunningham to Harold R. Denton, "TMI-1 Board Notification -- BETA and RHR Reports," June 14,, 1983, p.2. In addition, ELD concluded that GPU violated its duty to promptly transmit this material to the Appeal Board and its obligations under Section 186 of the Atomic Energy Act. ELD concluded that this "may" be "a material false statement by omission." Id. at n.7, p.4.

The attached submissions to the Commission discuss the implications of the Martin disclosure of May 24, 1983, that leak rates had, in fact, been falsified, and the Staff proposal to proceed with restart nonetheless. The points made therein will not be reiterated. It should be emphasized that the fundamental premise of both the Staff proposal and GPU's variation is that the specific misdeeds of individuals can be decoupled from the integrity of the organization as a whole -- that there is virtually no point at which cheating and falsification reach a level where one must conclude that the corporate organization ultimately responsible for the actions of the individual is disqualified from holding a license. Indeed, these proposals implicitly assume that there is no requirement for corporate integrity. If restart can be justified in the face of these allegations by temporarily reassigning

individuals, the concept of corporate and management accountability has effectively been nullified. We have little doubt that adoption of this transparent expedient would be seen by GPU employees for what it is: confirmation of the fact that the NRC requirements are extremely flexible when enforcement might jeopardize plant operation. Such a message is precisely the wrong one to send.

As the Board will note, the Staff's proposal also begins with the predetermined conclusion that no management-level personnel are involved in or responsible for the systematic falsification of leak rate calculations. Dircks' Memorandum, June 7, 1983, p.4. Thus, Staff begins its inquiry with a predetermined conclusion as to what may be the crucial issue in the proceeding. The Appeal Board must keep in mind that 1) the leak rate falsification occurred continuously over a period of months and must have involved a large number of people either directly or undirectly; 2) the underlying issue was whether the plant would have to shut down because it was in violation of its license. It strains credulity to believe that a matter of such grave consequences and long duration would not have come to the attention of management; 3) if management were unaware of this situation, they had lost control of their own operation; 4) upper level management still insists, as Mr. Diekamp stated to the Commission on May 24, 1983, that leak rates were not falsified, despite the 1980 report of its own consultants, Faegre and Benson, which supported Hartman's allegations in pertinent part. Management has made no attempt to find out who is implicated and has taken no steps to discipline anyone. Indeed, it did not permit its own consultants to interview any GPU employees. Under these circumstances, no reasonably unbiased investigator would exclude management from consideration at the threshold.

GPU's proposal, insofar as it is clear at this point, suffers from the

same pervasive underlying flaw as NRC's; it assumes that the corporate entity can in some metaphysical way be separated from the misdeeds of the people who constitute the corporation. No such separation can be made. The Staff appeared to concede as much when it briefed the Commission on June 21. Mr. Dircks said:

> Again, the difficulty of this integrity issue is so complex, the responsibility for the accident back in 1979, the corporation essentially, as it exists today, I guess has had no inclination to come forward with any admission of responsibiility for their activities in that accident. Does their refusal to say anything in that regard bear back on the integrity of the institution?
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> Well, I think that's why in the interest of getting all this on the table, I would like to mention that because when we talk about treating this integrity issue on an individual basis versus the institutional basis, I want to emphasize that you just do not make a clean-cut split.
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> Comm. Tr., June 21, 1983, p.11

Indeed, the Staff was unable despite repeated questioning to provide a rational basis for the corporate/individual separation or for exonerating management. Each time they were pressed, they either changed the subject or suggested to the Commission that, unless their proposal were adopted, extensive investigations would be required before restart. Id. at 11, 13, 16-22. This "logic" makes it apparent that the overriding goal of the proposal is to provide an excuse for restart, not a rational plan for addressing these serious questions.

Conclusion

UCS believes that the Appeal Board has little choice but to reopen the record. It can hardly be expected to rule on management competence and integrity on the basis of a record which does not include consideration of the systematic falsification of leak rate calculations prior to the TMI-2 accident and GPU's response thereafter, the BETA and RHR reports which contain evidence that the poor training and management practices prior to the accident still persist, and the evidence that workers at the TMI-2 cleanup have been subjected to retaliation and removal for insisting upon compliance with procedures. These issues have been raised in a timely fashion, are directed to a significant safety-related issue (management competence and integrity) and would dictate a different result from that reached by the ASLB. The standards for reopening are met. Kansas City Gas and Electric Co. (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320, 328 (1978).

Respectfully submitted,

Ellyn R. Weiss by J. M. K.

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Dated: July 1, 1983