UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

TMIA COMMENTS ON IMMEDIATE EFFECTIVENESS OF PARTIAL INITIAL DECISION (REOPENED PROCEEDING)

I. INTRODUCTION

On September 11. 1981, TMIA requested the Commission to stay the immediate effectiveness of the Atomic Safety and Licensing Board (the Board)'s partial initial decision on management issues dated August 27, 1981 14 NRC 1221 (PID). After issuance of this PID, the Board reopened the hearings to examine further management issues, resulting in a supplemental PID dated July 27, 1982. Based on the supplemental PID, TMIA reaffirms its request for a stay of the immediate effectiveness of the August 27, 1981 PID, and additionally requests a stay of the immediate effectiveness of the July 27, 1982 PID for the reasons stated below.

II. STANDARDS FOR ASSESSMENT OF STAY REQUEST

In its Memorandum in Support of Request for Stay Pending Administrative Review, dated September 11, 1981, TMIA outlined the standard by which the Commission should evaluate a stay request. Under 10 CFR §2.764, the Commission shall order a stay "if it determines that it is in the public's interest to do so, based on a consideration

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of the gravity of the substantive issue, a likelihood that it has been resolvedincorrectly below, the degree to which correct resolution of the issue will be prejudiced by operation pending review, and other relevant public interest factors." TMIA incorporates the reasons presented in its Septmeber 11, 1981 memorandum, as they are still pertinent. But in addition, the Commission should recognize that the substantive issue has become substantially more serious based on the evidence presented in the reopened proceedings. This evidence, and the findings of the Special Master who presided over the hearings, compel the conclusion that Licensee's post-accident training and testing program can not be relied upon to insure that TMI-1 can be operated safety. The evidence demonstrated not only that post-accident cheating was widespread at TMI, but also that operator training at TMI has enormous deficiencies, that the Licensee has not learned from its past mistakes, and continues to instill an attitude within the entire operations staff of disrespect for the training and testing program, and for the entire NRC regulatory process. The evidence is quite clear that the conditions set out in the Commission's August 9, 1979 Order, CLI-79-9, 10 NRC 141, have not been met, and can not permit a finding of reasonable assurance that TMI-1 could be safely operated.

In addition, the July 27, 1982 PID is fraught with major errors, making it even less likely that the Board's decision supporting restart could withstand appellate scrutiny. These errors are discussed below.

II. THE BOARD'S REVERSAL OF THE SPECIAL MASTER'S FINDINGS

In determining whether this decision would withstand appellate scrutiny, the primary issue to consider is whether the finding and conclusions are supported by substantial evidence. 5 USC §556 (d), Universal Camera Corporation v. National Labor Relation Board, 340 US 474 (1951); Rivas v. Weinberger, 475 F.2d 255 (5th Cir, 1973); Nadiak v. C.A.B., 305 F.2d 588(5th Cir., 1962); Willaport Oysters, Inc. V. Ewing, 174 F.2d 676 (9th Cir., 1949); Culcahy Packing Co., v. N.L.R.B., 116 F.2d 369 (8th Cir., 1940). In making this determination, this Commission, as a reviewing body, must consider not only the record itself, but also the report of the Special Master, which the Board renounces on a number of issues. TMIA recognizes that, as in most administrative proceedings, the findings of a trial examiner, or special master in this case, are not binding on the agency. However, it is a well established principle of administrative law that the findings and conclusions of the judge who presided over the adiministrative hearings may not be ignored, and "the evidence supporting a conclusion may be less substantial when an impartial, experienced examiner who has observed the witnesses and lived with the case has drawn conclusionsdifferent from the Board's than when he has reached the same conclusions. Universal Camera, Inc, supra., at 496.

The law supporting this basic administrative law principle is even stronger when the hearing judge's findings rest directly on his own personal observation of a witness's demeanor. In such a case, findings and conclusions reversing the Special Master become significantly less substantial, or "tenuous at best." Ward v. N.L.R.B.,

462 F.2d 8, 12 (5th Cir., 1972); Loomis Courier Service, Inc. v. N.L.R.B., 595 F.2d 491 (9th Cir., 1979); Omni International Hotels v. N.L.R.B., 606 F.2d 570 (5th Cir., 1979); Henley V. U.S., 379 F.Supp. 1044 (M.D. Pa., 1974); Dolan V. Celebrezze, 381 F.2d 231 (2d Cir., 1967).

In this case, the Board reverses a number of Judge Milhollin's findings and conclusions, particularly those which are damaging to the Licensee, and which could not be used to support a restart decision. Many of these findings turn directly on witness credibility, or concern issues which Judge Milhollin has particular expertise in evaluating.

The irony is that the Board itself selected Judge Milhollin to preside over the reopened proceedings because of their "informed confidence in his ability and fairness," and because of his expertise in the field of education and examination at high academic levels. The Board even recognizes the thoroughness, and careful reasoning and documentation of the Special Master's Report (SMR). ¶2034. Apart from the purely legal considerations, common sense would dictate that Judge Milhollin's expertise in the fields of education and examination, and nuclear regulation make him more competent than the Board in assessing the evidence.

But in addition, Judge Milhollin did not utilize his expertise as a mere reviewer of the printed evidence. Judge Milhollin presided over the hearings, took an active role in examining the witnesses, and observed witness demeanor. He heard a number of witnesses directly contradict each other under oath, and thus was forced to make a number of credibility determination in his findings.

The Board, however, reversed a number of Judge Milhollin's

credibility findings, changing major conclusions. Two instances stand out.

One concerned the Special Master's finding that Mr. Michael Ross, TMI-1 Manager of Operations,had deliberately kept an NRC proctor out of the exam room during the April 1981 NRC exam, and improperly broadened or attempted to broaden the answer keys to make grading more lenient on particular questions. Mr. Ross had already been characterized by the Board as perhaps the most important person of the TMI-1 operatingteam with respect to public health and safety. ¶ 2192. The other instance concerned the Special Master's finding that Mr. Husted, a TMI training instructor, solicited Mr. P, a shift supervisor, for an answer during the same April NRC exam. Training instructors , of course, have more impact on operator attitude toward the training and testing program than perhaps any other individual at the plant. The implications of the Special Master 's findings on these two issues are obviously enormous. The Board reverses Judge Milhollin's findings, concluding that Ross committed no wrongdoing, and that Husted did not solicit P. The Board finds Husted competent to continue instructing, despite its own conclusion that "Mr. Husted refused to cooperate with the NRC investigators... and later when he provided some information, he continued to withhold information within his knowledge and he provided an incredibly inconsistent account of his reasons during the hearing. ¶ 2165.

With regard to Mr. Ross, TMIA agrees entirely with Judge Milhollin's analysis in the SMR, ¶137-178. His findings are based substantially upon an evaluation of the credibility of the witnesses who testified, particularly Ross and Mr. YY. The facts are as follow: Ross

participated in a review of test questions and proposed answer keys with the NRC proctor and two trainig instructors, during the "B" set of NRC exams on April 23 and 24, 1981. The utility officials had all taken the "A" set of exams on April 21 and 22, 1981- thus, all were license candidates. A number of current operators, Ross' subordinates, testified that sometime during or after the two day review, Ross participted in a conversation with them, saying such things as "don't worry, you did all right." or "I took care of that job," after which everyone "chuckled." SMR, ¶ 143. These operators testified that they thought Ross intended to cheer them up, or express merely that he made the answers more "fair." Mr. YY, however, heard the same conversation. YY is no longer employed at TMI. He testified, unequivocally and in contradiction to the Board's analysis in ¶ 2201, that based on his knowledge of Ross, he believed Ross meant that he had kept the proctor out of the room to facilitate cheating. Tr. 26,015, 26, 016. (YY).

Unlike the Board, Judge Milhollin had the unique opportunity to observe Mr. Ross's demeanor as a witness standing accused of gross and improper conduct. Judge Milhollin also had a chance to assess Ross's credibility in the context of other witness' testimony on the same subject, including that of YY, Mr. Bruce Wilson (the proctor), Mr. Ross's subordinates who would very understandably not wish to "point the finger" at their boss (using the Board's own words in ¶ 2043), and other Licensee employees. On this basis, and by thoroughly analyzing the entire evidentiary record, Judge Milhollin reached his conclusions, finding, among other things that Ross was a totally non-credible witness. SMR, ¶ 147.

The Board asserts no reasonable basis to support its conclusion

that Ross's testimony should be considered credible. ¶¶ 2208, 2209. Ross had a tremendously strong motive for giving false testimony on this point. But the Board, for example, fails to conclude that he knew the exam room was unproctored. Yet, he was situated in a room right next to the exam room so that he could see that the exam room was unproctored, whether or not one can reasonably infer he knew from the proctor himself, with whom he was working, that the room was unproctored.

Judge Milhollin also found that YY's testimony was honest and forthright. Yet the Board, who never observed YY's demeanor, finds has accusations noncredible, contradictory, and unreliable. ¶ 2205. To buttress its argument, the Board misconstrues much of YY's testimony. For example, the Board in ¶ 2203 says that YY "seems to state that any unfair advantage to the test candidates was an incidental result of normal procedures." To the contrary, YY never said that he believed improperly broadening answer keys was "normal." Further, the Board does not support its assertions with evidence of malice by YY towards Ross, or any reason why YY would not be truthful. In fact, YY's credibility is strengthened when one considers the risks YY took by voluntarily contacting the NRC when he did, and the personal jeopardy he has been in since the initial call, evidenced by his insistence on total confidentiality. Judge Milhollin's analysis speaks for itself. The Board fails to give an adequate explanation of the grounds for reversing his credibility determinations. General Dynamics Corporation, Quincy Shipbuilding Division v. Occupational Safety and Health Review Commisssion, 599 F.2d 453 (1st Cir., 1979).

In addition, while the Board recognizes the possibility that Ross could have been bragging to his subordinates that he had broadered the answer keys, ¶¶ 2201, 2202, it fails to discuss the evidence on that issue,as if bragging could be considered acceptable behavior. The Board fails to consider the implications of the highest level management official inside the plant, untruthfully bragging to his subordinates that he had engaged in wrongdoing. At the very least, this is hardly an attitude which would encourage respect for the company's training and testing program, let alone what it says about Ross' integrity.

Similarly, the Board's dismissal of the alleged solicitation of P by Husted during the April NRC exam, in a 50% unproctored room in which they sat alone, is equally unsupported by the facts which turn directly on credibility evaluations. The evidence reveals that two highly professional and totally credible NRC investigators, Messrs. Ward and Baci, were told by P during the NRC's investigation, that Husted solicited him. Both Ward and Baci appeared at the hearings, and Ward recited the events as they happened. Baci disagreed with none of Ward's testimony. Ward had concluded that P was forthright at the time, based on P's demeanor. Tr. 25,320 (Ward).

But P changed his story during the hearings, and denied not only that the solicitation occurred, but also that he ever told this to the NRC investigators. Tr. 26,691-2 (P). Judge Milhollin does extensive analysis of P's credibility, includingobservations of P's demeanor, and finds that P was not forthright in his testimony. Husted, who denies the solicitation, is found by Judge Milhollin

and by the Board to be entirely noncredible and uncooperative. ¶ 2165. But the Board refuses to even consider P's or Husted's credibility with regard to this incident. ¶ 2158.

Moreover, the Board concludes that Mr. Ward's story is uncorroborated and entitled to no weight, since Mr. Baci, who sat beside him at the hearing, did not speak on this issue. ¶¶ 2153, 2154. This is absurd. The Board provides absolutely no explanation why a credible investigator like Mr. Baci would sit in silence beside another investigator as he testifies falsely about an incident involving both of them. The Board completely fails to disclose the factual basis for this conclusion, violating the principles of S.E.C. v. Chenery Corporation, 318 US 80 (1943). The Board grossly errs in finding Mr. Ward's testimony uncorroborated.

While Mr. Ward's testimony is technically hearsay, it is well established in administrative proceedings that hearsay can be accepted as reliable, probative evidence if other better evidence in unavailable. Willaport Oysters, Inc., supra ; N.L.R.B. v. Service Wool Heel Co., 124 F.2d 470 (1st Cir., 1941), N.L.R.B. v. Remington Rand, 94 F.2d 862, (2d Cir., 1938). Both P and Husted are non-credible witnesses. Husted in particular has evidenced such complete disrespect for the NRC regulatory process that the Board concludes, "his attitude may be a partial explanation of why there was disrespect for the training program and the examinations." ¶ 2167. In such a circumstance, it is clear that Mr. Ward's testimony should be accepted and the slate should not be wiped clean for P and Mr. Husted. ¶2157.

Thus, Judge Milhollin's findings on both these issues depend heavily upon credibility determinations. The Board arbitrarily reverses these findings, and does not provide adequate, independent

reasons for doing so. It is highly likely that upon review, the Board's findings will be rejected, implicating both these management officials in serious misconduct.

III. THE BOARD DRAWS ARBITRARY AND CAPRICIOUS CONCLUSIONS

As in the first management PID, the Board decision contains many conclusions which are arbitrary and capricious and thus will not withstand appellate scrutiny. Helvering v. Taylor, 293 US 507 (1935). The Board consistently fails to discuss pertinent evidence on salient issues, makes arbitrary findings which are contrary to the evidence in the record or which rely on irrelevant evidence, or fails to draw reasonable inferences from facts contained in the record.

For example, the Board concludes that G and H, who engaged in widespread cheating on weekly quizzes, do not have a poor understanding of the course material and thus, their competence as operators is not a problem. ¶ 2119. The Board citesno evidence to support this conclusion, and entirely ignores the evidence in the record and detailed analysis by Judge Milhollin proving that indeed, G and H both have a terribly poor understanding of the course material. See, for example, SMR, ¶¶ 242-245.

The Board recognizes cooperation by individuals W and GG on a weekly quiz, but infers that W, one of the individuals caught cheating on the April NRC exam, copied from operator GG and thus finds GG's conduct "understandable." ¶ 2135. The Board does not support this inference with any evidence, and in fact, the record suggests the opposite conclusion. Lic.Ex. 661,66m show that the first word of one of GG's responses was crossed-out before the

answer was given while the same was not true for W. Tr. 24,569 (Wilson). In addition, W. who is no longer with the company and already admitted to cooperating with O on the April exam and on other weekly quizzes, Tr. 26,099, 26,153 (W), denied copying from GG. Tr. 26, 145-6(W).

Much of the evidence developed at the hearings concerned rumors of cheating. The Board's use of rumor evidence is entirely inconsistent. For example, the Board relies on rumor evidence to support a major conclusion that most or all instances of cheating have been revealed, suggesting that actual instances of cheating were likely reported as rumors. This was so company witnesses could avoid pointing "accusing fingers at each other." ¶ 2043. In other words, the Board suggests that rumors in fact identify actual events. But when the Board actually discusses these rumors, it finds them "entirely unreliable and the worst type of hearsay," ¶ 2172, and refuses to attach any evidentiary weight whatsoever to cheating rumors regarding Mr. U- the individual around whom most cheating rumors revealed during these proceedings centered. This inconsistency is wholly arbitrary.

Allegations against Mr. U concerned not only rumor testimony, however. The highiy credible witness, Mr. OO, testified that U approached him outside the exam room with an implicit offer of help during the April NRC exam. ¶ 2177. The Board contradicts Judge Milhollin and refuses to find that U did this, based on Mr. OO's "subj ective interpretation of U's unstated purpose." ¶2177. But the Board fails to discuss an overwhelming amount of circumstantial evidence which supports OO's story. For example, a number of operators testified that they heard that U was stationed

outside the exam room to perform this very function. Tr. 26,534 (I); Tr. 26,486-7 (KK); Tr. 26,217-19 (O); Tr. 26,168-8 (W). U stayed in the vicinity of the exam room- he says to study for an oral exam given months later. But other operators testified that they couldn't imagine doing this after experiencing two grueling days of written exams, such as those U had just taken. Tr. 25, 713 (GG); Tr. 25,771 (G). U himself fails to deny that he may have provided an answer in this menner- but the Board gives U's non-denial virtually no weight, mentioning it only as an after thought in ¶ 2178. The Board's analysis of the evidence on this issue is completely arbitrary.

The Board states, without any support and of course without ever having observed any of the witnesses, that the testimony of the operators was thorough and that they performed well. This conclusion is directly contradicted by numerous examples in the record, and in fact, Judge Milhollin found that the following operators gave weak or noncredible testimony: A, ¶ 24; G and H, ¶ 205, 215 ; I, ¶ 24; P, ¶ 107; U, ¶ 119, 122; and GG, ¶ 93.

A highly significant issue which the Board treats in a wholly arbitrary and capricious manner, concerns the cheating incident in 1979 where Unit 2 Supervisor of Operations, Mr. VV, turned in Mr. O's work, in Mr. O's handwriting, as his own on a license requalification exam. VV had a long history of poor training performance and disrespect for the training and testing program at TMI. (It should be noted that Licensee, to this day, refuses to characterize VV's behavior as cheating, and while the Board find this "highly disturbing", it attaches no significance to it. ¶ 2298, footnote 246). Certainly, the incident was an early

indication of the need for better procedures and a better attitude toward testing, and should have been used by management as an example to show its intolerance for this type of behavior.

The issue concerns whether VV was disciplined and if so, how widely known such discipline was within the operation staff. As GPU Nuclear President Robert Arnold himself stated in testimony, discipline should instruct the individual and instruct the organization. SMR, ¶ 231. However, the evidence revealed that in fact, although Mr. VV was reassigned to another position around that time, the move was not disciplinary or even connected with his performance in the training program, that VV himself was not told he was being disciplined and considered the move a lateral transfer, and that the incident was not common knowledge among the Unit 1 operations staff. SMR, ¶ 232. In contradiction to all the evidence in the record, and with no factual support whatsoever, the Board concludes "it is likely that most of VV's peers in middle management saw his reassignment as a demotion, or at least as an impediment to advancement." ¶ 2784. (The Board's term "middle management" is undefined). Further, the Board seems to believe in any event, VV should not have been demoted or punished, since he would have been humiliated and besides, his "skills and experience were sorely needed." ¶ 2285, 2286. Again, the Board provides no support for this arbitrary and inappropriate conclusion, and in fact, it steps beyond Licensee's own assertions.

Perhaps even more significant to this entire inquiry is that the company made a material false statement to the NRC in

certifying VV for license renewal, knowing that O's improper assistance contributed to completion of VV's requalification program. ¶ 2287. This, or course, had been covered-up by the Licensee, and in fact, Mr. Arnold stated that he may not have mentioned the entire VV/O incident at all, had it not involved Mr. O who was already implicated in the April 1981 incident. Tr. 23,870. (Arnold). Further, the Licensee has never admitted that a material false statement was even made. Yet somehow, the Board relies on this incident to support a conclusion that the Licensee has succeeded in its efforts to make a full disclosure on all matters of possible relevance to the cheating incidnets. ¶ 2050. The Board's analysis makes no sense.

Another major issue, that of management's constraints on the NRC investigation, revolved around management's insistence that it sit in on the NRC's interviews of operators during the cheating investigation. TMIA has maintained that the Licensee's motivation was not a healthy desire to stay on top of things, but rather a desire to maintain some measure of control over the unfolding events, which directly involved managements's possible wrongdoing. While the investigators felt that management's presence was an inhibiting factor, it was not until the second investigation that they were able to keep management out. The Board cites Licensee's unreliable, self-serving statement that the company did not intend to constrain the NRC's investigation, ¶ 2230, that the company practically had a "duty" to sit in on the interviews, ¶ 2232, and incorrectly states that Judge Milhollin did not find that the NRC investigation was actually constrained, ¶ 2231. In fact, Judge Milhollin concluded the opposite. SMR, ¶ 291. The Board then arbitrarily dismisses the entire issue as "without important

significance," ¶ 2234. The Board's analysis ignores the evidence, common sense, and the well-reasoned analysis by the Special Master on this issue.

The record is replete with many other examples where the Board draws arbitrary conclusions unsupported by the record and in contradiction to extensive, expert analysis by Judge Milhollin. Other examples include: their refusal to find a failure of instruction at TMI, with no supporting analysis, in the face of overwhelming direct evidence to the contrary. ¶ 2337; SMR, ¶238-251; satisfaction within the current Cat-T, or lessons learned program, instituted as a response to the Commission's August 9, 1979 Order, despite operator testimony that instructors still taught the course by force feeding answers and encouraging rote memorization, Tr. 25,983 (OO); Tr. 25, 905 (H).

The Board also makes a number of blatant statements which are not only unsupported by the record, but are made without any explanation in the decision itself. These include, "it seems that the rumors heard by OO fell into the cracks during the company investigation," ¶ 2261; "Licensee could scarcely afford to waste time in organizing its investigation," ¶ 2266; "We trust... that the VV incident was an anomaly and that the present management of TMI-1 would not condone the procedure involved in that incident." ¶ 2351. The list is endless. The Board's treatment of all these issues is entirely inadequate, and the Commission must recognize not only that the Board's arbitrary findings and conclusions will not be upheld on appeal, but that the evidence reveals severe problems respecting management attitude and integrity, and respecting the quality of Licensee's current training and testing program.

IV. THE BOARD'S DECISION IS INADEQUATE TO SUPPORT RESTART UNDER THE COMMISSION'S AUGUST 9, 1979 ORDER, 10 NRC 141

The operating license of this company was suspended in 1979 upon a determination by this Commission that there was no reasonable assurance TMI-1 could be operated safely. It determined that, at least, a number of short term actions had to be completed before any restart of Unit 1 would be considered. The Commission established the Atomic Safety and Licensing Board to conduct an adjudicatory hearing to decide if such actions had been completed satisfactorily to provide assurance that restarting Unit 1 would pose no threat to the public health and safety. But in light of this last PID, it is quite evident that the Board did not properly perform its function, violated the trust of the public and the Commission, and produced a decision so poor that allowing restart merely on the strength of it would risk irreparable injury to the public.

TMIA has already discussed a number of gross errors in the Board's decision. But in addition, the Board refused to make conclusive determinations on major safety items , because, it says, it did not retain the jurisdiction given to it by the Commission after issuance of its first PID. This jurisdictional issue arose a number of times in the July 27, 1982 PID, concerning such safety-related issues as the substantive content of the NRC exams. ¶2074, 2366. The Board is plainly wrong. It specifically left open a number of findings dealing with these issues contained in the first PID, pending the outcome of these proceedings. See footnotes 18-24, PID of August 27, 1981. Judge Milhollin did extensive analysis in this area, concluding that exams were weak in content, did not test operators on what they needed to know to safely operate a nuclear

power plant, particularly in light of TMI-2 lessons learned, and could be defeated not merely by cheating, but by rote memorization. The Commission can not close its eyes to this evidence. If the Board does not believe it has jurisdiction over these issues, then the Commission can not, in the face of overwhelming evidence of major problems in the substantive quality of Licensee's training and testing program, rely on this decision to provide reasonable assurance of safety.

Also, the Commission should use its common sense in evaluating the differences between the SMR and the PID. Judge Milhollin brought to the hearings expertise and fairness. He lived with the case and had a feel for it. He raised and discussed issues such as staff attitude, which the Board never even recognizes. SMR 282-284. He determined that a number of people lied under oath. He used his expertise to do extensive analysis on test questions and answers. Admittedly the Board had no expertise in this area, but instead of adopting Judge Milhollin's analysis and conclusions, it draws weak conclusions, stating "we are not in a position to judge." ¶ 2367, 2370, 2372. Then what was the purpose of appointing Judge Milhollin?

The Commission should also recognize, upon reading this PID, that the Board consistently looks for and finds ridiculous excuses for Licensee's wrongdoing or incompetence, and in those rare instances where it can not find excuses for them, it supports restart anyway.

For example, the Board excuses the Licensee in its support of an outrageously poor company investigation into cheating, due to the company's "naivete". ¶ 2042. The Board also excuses the overall

integrity of the operations staff, found to be inadequate by Judge Milhollin, because cheating evidence on the other 30-40 operators was not produced at the hearings. ¶ 2043.

The Board had no confidence that the Licensee could discipline G and H in an administratively acceptable manner, ¶2117, because Licensee still refuses to admit that G and H cheated. Although the Board itself"questions the logic of that stand," it excuses Licensee because its belief is sincere. ¶ 2057.

The Board excuses the development of widespread cheating at TMI, because management just did not think to guard against it, ¶2063, due to their own naivete. ¶2064,2065, 2066.

The Board also excuses Licensee management for causing or creating an atmosphere where cheating occurred, because they made an unusually open and candid acknowledgment of its responsibility and fault for cheating." ¶ 2063. It is interesting to note the Board's recognition that such open ess and candidness is unusual for this Licensee. The Board then uses the Licensee's admission as the foundation for its conclusion that things will be "acceptable" in the future. That Licensee admits these things now, in the face of overwhelming evidence, is hardly significant. Rather, the Board and the Commission should took to the past, when management must have known of the widespread disrespect for the NRC exam and the training program, yet permitted it to continue. This Licensee chose to run its training department in this manner, despite its obligation to the Commission and the public. That they now take responsibility is no excuse.

The Board finds that Mr. Husted may remain as a training instructor, despite their doubt whether he is able, or if able,

willing, to impart a sense of seriousness and responsibility to the TMI-1 operators, ¶2167, merely, it seems , because his technical competence has not been questioned. ¶2168. This example is illustrative of a consistent reluctance by the Board to remove a technically competent individual from a safety-related position, despite a history of poor ethical judgements or lack of candor. ¶ 2119 (G and H), ¶ 2135 (GG); ¶ 2144-45 (Shipman); ¶ 2285 (VV).

Perhaps the grossest example of this is the Board's failure to remove Gary Miller from his position as Director of GPU's Start-Up and Test Division, despite its own conclusion that Miller, with the concurrence of Met-Ed Vice-President John Herbein, and probably other senior TMI executives, made a material false statement to the NRC. Gary Miller was Emergency Director during the TMI-2 accident. Both he and Herbein, who was just recently removed as GPU's Vice-President for Nuclear Assurance, have been charged by a number of investigations for deliberately withholding vital information from State and Federal officials during the accident. Even the Board, which had previously exonerated these two individuals in its discussion of management's response to the accident in the August 27, 1981 PID, now recognizes problems with Miller's "ethical judgement." The Board recommends further investigation related not only to his material false statement, but also to his actions during the accident. ¶¶ 2317, 2318.

The Board concluded that Miller and Herbein, acting on behalf of and with the support of the Licensee, committed at least two criminal offenses. They violated 18 USC §1001, which forbids making material false statements to government agencies, and

18 USC § 371, the conspiracy statute. The Board's recommendation of further NRC investigation of this incident is pointless. The case should be referred immediately to the Department of Justice. Moreover, the Board's suggestion that Unit 1 be restarted with Gary Miller in such a highly critical and safety-related position, is an outrage, and a clear violation of its responsibility.

Finally, the Board found that Dr. Robert Long, then Director of Training and Education at GPU, misled the Board in testimony during the main restart proceeding regarding written training procedures which were seriously deficient. Dr. Long testified that a change in procedure had been made. In fact, the change had not been implemented, and the Board would not have discovered that fact had it not been for the reopened proceedings. This failure to comply with its own procedures is an example of a blatant lack of concern for safety-related practices by Licensee's training department. In addition, the Board found that Licensee's training department failed to implement a quality assurance and quality control program, ¶2070, and that "if the Licensee does not itself exercise the requisite quality control, quality assurance and feed-back mechanisms to assure high-quality training and testing, it is beyond the power of regulators and regulations to put an appropriate program in place." These findings, plus those already discussed, compel the conclusion that the training department is not now adequate,and does not meet the criteria of the August 9, 1979 Order. Directing restart under any condition is inappropriate.

V. CONCLUSION

For the above-stated reasons, we request that a stay be granted to protect the public health and safety until these issues can be properly resolved through the appeal process.

We further reinterate our request that the Commission exercise its option to review the merits of these particular issues, pursuant to 10 CFR § 2,764.

Respectfully submitted,

Louise Bradford

Dated: August 20, 1982

Louise Bradford, TMIA