LIC September 1, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

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

LICENSEE'S REPLY TO COMMENTS OF OTHER PARTIES ON IMMEDIATE EFFECTIVENESS OF LICENSING BOARD'S PARTIAL INITIAL DECISION (REOPENED PROCEEDING) DATED JULY 27, 1982

By Order dated March 10, 1982, as amended by its Order dated August 11, 1982, the Commission invited parties to comment on the question of immediate effectiveness of the Licensing Board's Partial Initial Decision (Reopened Proceeding) dated July 27, 1982 ("July 27, 1982 PID" or "PID"). Licensee filed its Comments on August 20, 1982. Licensee now responds to the comments filed by TMIA, the Aamodts, UCS and the Commonwealth of Pennsylvania. We address first in an introduction procedural matters raised by the comments of TMIA and UCS. We then address in turn the substantive comments of the parties.

I. INTRODUCTION

A. Legal Standard Applicable to Immediate Effectiveness Decision

TMIA has again1/ filed its Comments in the form of a motion to stay the effectiveness of the Licensing Board's decision pursuant to 10 C.F.R. § 2.764 and seeks to invoke the standards contained in subsection 2.764(f)(2)(i) for evaluating stay requests. As Licensee has previously pointed out,2/ subsection 2.764(f)(2)(i) applies only to the issuance of initial operating licenses and not to the question of lifting the immediately effective suspension imposed by the Commission's Orders of July 2 and August 9, 1979.3/

The standards governing the Commission's decision on immediate effectiveness have already been explicitly established by the Commission in its Order and Notice of Hearing dated August 9, 1979. In pertinent part that Order provided:

1/ See TMIA Request for Stay Pending Review, dated September 11, 1981, of Licensing Board's first Partial Initial Decision (Procedural Background and Management Issues).

2/ See Licensee's Reply to TMIA Request for Stay Pending Review, dated September 25, 1981.

3/ In a previous filing UCS also sought to invoke the provisions of 10 C.F.R. § 2.764(f)(2)(i) with respect to the Commission's immediate effectiveness review. Union of Concerned Scientists' Comments on Immediate Effectiveness, dated January 28, 1982 (pertaining to the Licensing Board's partial initial decision on plant design and separation issues). UCS' legal arguments in support of its position were also misplaced. See Licensee's Reply to Union of Concerned Scientists' Comments on Immediate Effectiveness, dated February 2, 1982, at 4-7.

> The Commission shall issue an order lifting immediate effectiveness if it determines that the public health, safety or interest no longer require immediate effectiveness. The Commission's decision on that question shall not affect its direct appellate review of the merits of the Board's decision.

Two aspects of the Commission's August 9 Order deserve emphasis. First, the Commission's standard for lifting the immediately effective suspension is to be based on a determination that the public health, safety and interest no longer require immediate effectiveness. In Licensee's view this means simply that the Commission must decide whether the Licensing Board's decisions fail satisfactorily to resolve an issue of such concern as would warrant the imposition of an immediately effective suspension order and therefore the continuation of the suspension order already in effect.

Secondly, the Commission's August 9 Order makes clear that issues of a lesser concern raised by the parties can and will be dealt with in the course of the Commission's normal appellate process notwithstanding a Commission decision to lift the immediate effectiveness of the 1979 suspension orders. The Commission should not and cannot, in the time allotted for its immediate effectiveness review, examine each and every exception taken by the parties to the Licensing Board decisions. Licensee therefore urges that the Commission review the Licensing Board's decisions in the light of the bases for

suspension recited in its August 9, 1979 Order to determine whether its concerns have been sufficiently addressed to permit the resumption of operation of TMI-1 pending resolution of any remaining issues on appeal.

B. Timing of Commission Decision on Immediate Effectiveness

UCS proposes that the Commission await the completion of the Appeal Board review before acting on immediate effectiveness. The UCS proposal flies in the face of the Commission's commitment to decide the question of immediate effectiveness within 35 days after the Licensing Board's decisions and the Commission's recognition of its obligation to lift the immediately effective suspension of TMI-1's operating authority once the bases for suspension have been removed or rectified. See Licensee's Comments on Immediate Effectiveness of Partial Initial Decision (Reopened Proceeding), dated August 20, 1982.

UCS argues that if restart is authorized prior to Appeal Board resolution of the issues before it, "many of the issues concerning whether the plant can safely be restarted may effectively be mooted." UCS Comments at 1. No basis whatsoever for this assertion is provided. The Commission made clear in its August 9, 1979 Order that its decision on immediate effectiveness "shall not affect its direct appellate review of the merits of the [Licensing] Board's decision." While the initial responsibility for appellate review has since been

shifted to the Appeal Board, the Commission has made clear that any party may request Commission review of the Appeal Board's decisions. CLI-81-19, August 20, 1981. If the appellate process results in some change in the Licensing Board's decision, any necessary TMI-1 license modifications can be put promptly into place.

II. TMIA

A. Introduction

In its Comments, TMIA criticizes the Licensing Board's July 27, 1982 PID on essentially two grounds: (1) the Licensing Board's reversal of the Special Master's findings, particularly those which turn on witness credibility, is unjustified; and (2) some of the Board's findings are arbitrary and capricious because they are not supported by substantial evidence. Licensee finds both sets of claims unpersuasive because they consistently lack solid evidentiary support and at times are totally unsupported. Licensee has not responded to all such claims, however; just those on which TMIA itself has placed the most emphasis.

Before examining more closely TMIA's arguments, Licensee notes its concern over the frequency with which TMIA hurls sweeping, loosely-worded criticisms at Licensee and the Board without the slightest evidentiary support. For example, TMIA states that "post-accident cheating was widespread at TMI";

"operator training had enormous deficiencies"; "the July 27, 1982 PID is fraught with major errors"; and Licensee "continues to instill an attitude . . . of disrespect for the training and testing program, and for the entire NRC regulatory process." TMIA Comments at 2. These charges offer absolutely no guidance to the Commission in evaluating the July 27, 1982 PID or in deciding the issue of the PID's immediate effectiveness, and should be ignored.

B. Board Reversal of Special Master's Findings Based on Witness Credibility

In support of its assertion that the Board improperly reversed "a number of Judge Milhollin's findings and conclusions, particularly those which are damaging to the Licensee," TMIA Comments at 4, TMIA relies exclusively on the Board's findings with respect to two individuals, the Manager of Plant Operations, Mr. Ross, and an operator instructor, Mr. Husted. Id. at 4-10. The basis for TMIA's assertion is that with respect to these matters, the Special Master's findings "turn directly on witness credibility, or concern issues which Judge Milhollin has particular expertise in evaluating." Id. at 4. TMIA is simply wrong in stating that the Board has reversed findings of the Special Master which are based on witness credibility. Moreover, consistent with its approach in reviewing the entire reopened proceeding record, the Licensing Board's resolution of the issues raised concerning Messrs. Ross

and Husted rests soundly on citations to the hearing transcript and record evidence introduced during the proceeding.4/

Licensee must first put into proper perspective TMIA's citation to several federal court cases which hold, in essence, that when credibility of witnesses is at issue, the conclusions of the trial examiner, or as in this case, the Special Master, with respect to the testimonial probity of those witnesses, take on an added importance. See, e.g., Universal Camera Corp. v. NLRB, 340 U.S. 474, 496 (1951); Ward v. NLRB, 462 F.2d 8, 12 (5th Cir. 1972); accord, Loomis Courier Svs., Inc. v. NLRB, 595 F.2d 491, 496 (9th Cir. 1979).5/ The Suprme Court added in Universal Camera that "the findings of the examiner are to be considered along with the consistency and inherent probability of testimony." 340 U.S. at 496.

Licensee notes first that the Board applied this evidentiary standard, stating:

4/ Licensee recognizes the Special Master's background in legal education. Two members of the Board, Drs. Jordan and Little, also have had extensive careers in advanced education.

5/ TMIA misquotes the Ward case by suggesting that the Board's findings and conclusions reversing the Special Master on issues involving witness credibility become "significantly less substantial, or 'tenuous at best'." Ward v. NLRB, 462 F.2d at 12. In fact, the court in Ward held that when the NLRB reversed a trial examiner's finding on the sole basis of testimony of two interested witnesses, which testimony the examiner had found untrustworthy, the substantiality of the evidence supporting the Board's finding was "tenuous at best." Id.

> While of course we would afford some special weight to Judge Milhollin's direct observations of witness demeanor, where his conclusions are materially affected by witness demeanor, we have given especially careful consideration as to whether or not other, more objective credibility criteria are consistent with his conclusions.

PID at ¶ 2036. Thus, TMIA has no basis to complain. Licensee also points out that the cases cited by TMIA involve factual situations in which an administrative board either reversed a trial examiner's finding based entirely on the degree of credibility to be afforded an interested witness, see, e.g., Ward v. NLRB, supra, 462 F.2d at 12; reversed a finding of credibility based on extremely weak or equivocal evidence, see, e.g., Loomis Courier Svs., Inc. v. NLRB, supra, 595 F.2d at 499; Dolan v. Celebrezze, 381 F.2d 231, 233 (2d Cir. 1967); or made findings without considering all of the record evidence, see, e.g., Omni Int'l Hotels v. NLRB, 606 F.2d 570, 574-75 (5th Cir. 1979). However, as explained below, the Licensing Board's findings with respect to Messrs. Ross and Husted give due deference to Judge Milhollin's credibility determinations, are based on undisputed facts or factual inferences as well as on witness credibility determinations, and are the result of careful consideration of all relevant record evidence. Thus, the Board's findings here do no injustice to the cited federal court cases.

Turning to the Ross matter, TMIA argued to the Board, without success, that the Special Master's resolution of the Ross issue was based substantially upon an evaluation of the credibility of the witnesses who testified. See TMIA's Comments on Special Master's Report And Atomic Safety And Licensing Board's Tentative Final Draft Decision, May 24, 1982, at 3-5. A review of the Special Master's Report ("Report") establishes, however, that Judge Milhollin's findings with respect to Mr. Ross rely primarily on inferences drawn from his review of documentary and record evidence. See Report at ¶¶ 153-178. After analyzing the same evidence, the Licensing Board disagreed with these inferences.

Considering "[t]he allegations against [the Manager of Plant Operations to] have the most serious implications of the entire inquiry on cheating," PID at ¶ 2192, the Board examined the issues very carefully, reviewing in detail not only the transcripts of witnesses who testified on these matters and the Office of Inspection and Enforcement (OIE) investigative report which exonerated Mr. Ross, but also the operators' examination answers and the NRC Staff's answer keys which were at issue. See PID at ¶¶ 2192-2225. The Licensing Board was quite familiar with Mr. Ross, as he testified before the Board five times over many days on a wide variety of design, procedure and operator training issues. Id at ¶ 2192. The Board's assessment of the credibility of the unidentified informant, Mr. YY,

whose accusations formed the only basis for the charges against Mr. Ross, was based on its analysis of the reasonableness of Mr. YY's testimony, i.e., the "clear meaning" of it, and not, as TMIA suggests, on Mr. YY's demeanor. See TMIA Comments at 7.

Thus, TMIA is incorrect in stating that Mr. YY "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." Id. at 6. While TMIA correctly refers to two pages of the transcript which support this interpretation, TMIA simply ignores other testimony of Mr. YY to the contrary, which was cited by the Board and which formed the basis for the Board's conclusion that Mr. YY's testimony was internally contradictory. See PID at ¶¶ 2200-2205. TMIA references the Special Master's opportunity to assess witness credibility, such as the credibility of Mr. Bruce Wilson, the NRC Staff examiner and proctor. However, TMIA fails to mention the fact that it was Mr. Wilson's opinion in his statement to the OIE investigators that, based on his seven-year association with Mr. Ross, Mr. Ross would never countenance any plan to lure him (Mr. Wilson) from his proctoring. See NRC Staff Ex. 27 at 9. Similarly, while TMIA argues that the Board improperly concluded that Mr. Ross was unaware that an exam room was unproctored, TMIA cites no evidence in support of this assertion, and

ignores the testimony cited by the Board which establishes that Mr. Ross reasonably did not assume that the room was unproctored. See PID at ¶ 2209. TMIA provides no substantiation for its bald assertion that Mr. YY has been "in personal jeopardy" since he precipitated the investigation of Mr. Ross and that as a result, the credibility of Mr. YY is somehow strengthened. TMIA Comments at 7. TMIA also muddles the Board's findings in stating that the Board recognized the possibility that Mr. Ross was "untruthfully bragging to his subordinates that he had engaged in wrongdoing." Id. at 8. In fact, the worst interpretation the Board could place on Mr. YY's allegations, which interpretation was contradicted by other testimony of Mr. YY, was that Mr. "YY believed that Ross' statement truthfully implied cheating but that others could reasonably have inferred untruthful bragging," a far cry from TMIA's interpretation. PID at ¶ 2205.

In summary, contrary to TMIA's assertions, the Board's conclusions with regard to the very serious allegations by the unidentified informant, Mr. YY, against the TMI-1 Manager of Plant Operations, Mr. Ross, were carefully and fully articulated in the PID, were based on the record, and were supported by the overwhelming weight of the evidence.

In discussing the allegation concerning Mr. Husted, TMIA emphasizes the NRC's interview of Mr. P, the operator with whom Mr. Husted shared a testing room when he took the April, 1981

NRC exam and from whom Mr. Husted allegedly solicited an answer. See PID at ¶¶ 2148-49; Report at ¶¶ 101-11. TMIA correctly notes that Judge Milhollin's findings turn on his analyses of Messrs. P's and Husted's credibility, but incorrectly states that "the Board refuses even to consider P's or Husted's credibility with regard to this incident." TMIA Comments at 9. In fact, the Board specifically stated with respect to Messrs. P and Husted that "we give due consideration to Judge Milhollin's observations of witness demeanor . . . ." PID at ¶ 2150; see id. at ¶¶ 2036-38. Having examined closely the allegations against Messrs. P and Husted and having found them unsupported, the Board noted that "there should be no need to assess the credibility of either in denying those charges." PID at ¶ 2158. Nevertheless, because Judge Milhollin "points to other areas of [and testimony related to] asserted misconduct by each of them [Messrs. P and Husted] as support for [his] conclusions that P and Mr. Husted untruthfully denied Ward's charges," id., the Board also carefully analyzed those areas and found insufficient evidence to conclude that either of the two men was untruthful as to this matter.

TMIA also mischaracterizes the record with respect to Mr. Ward's charges, stating that "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. 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." TMIA Comments at 9. In fact, the Board did not find that Mr. Ward's testimony was "entitled to no weight"; only that the record contains no independent corroboration of his testimony because neither Mr. Ward nor Mr. Baci took notes of the disputed interview, see Tr. 25,464 (Ward), and the alleged admission by Mr. P was not included in the investigation report. Staff Ex. 27; PID at ¶ 2154. Neither did the Board find that Mr. Ward testified "falsely." Indeed, the Board specifically "accept[ed] Judge Milhollin's judgment that Mr. Ward is a truthful and sincere witness." PID at ¶ 2152. Thus, TMIA's claim that the Board assumed that Mr. Baci sat silently during false testimony is patently incorrect. Moreover, the Board clearly explained the basis for its decision to afford no evidentiary weight to Mr. Baci's silence, noting the absence of any prior stipulation with respect to a silent and a speaking witness. PID at ¶ 2153.

In sum, the Board closely considered Judge Milhollin's findings as to the credibility of Messrs. P and Husted; examined the testimony of Mr. Ward; reviewed all the undisputed facts surrounding the interview of Mr. P by Messrs. Ward and Baci; carefully weighed all of this evidence; and concluded that the slate should be wiped clean for Messrs. P and Husted

on this matter. PID at ¶ 2157. This decision is thorough, carefully crafted and well-supported.

C. Evidentiary Support For Board Conclusions

In section three of their Comments, TMIA claims that 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 references from facts contained in the record." TMIA Comments at 10. These charges are simply not supported, nor are they supportable.

TMIA begins by stating that the Board ignored evidence of record in finding that Messrs. G and H do not have a poor understanding of the course material. Id. This claim lacks any citation to the record and blithely ignores the Board's painstaking analyses of seven sets of G's and H's parallel answers -- four of which were found by Judge Milhollin to indicate cooperation, see Report at ¶¶ 29-66; PID at ¶¶ 2096-2119, and three of which were found by Judge Milhollin to illustrate lack of understanding, see Report at ¶¶ 242-45. Moreover, TMIA ignores the fact that Messrs. G and H passed their NRC examinations under properly monitored conditions. PID at ¶ 2119.

TMIA next complains about a lack of evidentiary support for the Board's inferred conclusion that Mr. W copied from

Mr. GG. TMIA Comments at 10. Apparently, TMIA disagrees with the Board's conclusion that Mr. GG did not copy from Mr. W. TMIA ignores the Board's analyses of the language and the spacing of Messrs. GG's and W's answers, PID at ¶ 2133, ignores the Board's acknowledgement that Mr. W was a known cheater, PID at ¶ 2134, and ignores the fact that Judge Milhollin was unable to conclude, on the basis of the crossed-out words on Mr. GG's answers, that Mr. GG had copied from either Mr. W or from Mr. MM (although elsewhere TMIA refers liberally to Judge Milhollin's Report). Report at ¶ 93; see Lic. Exs. 66L, 66M. The suggestion, therefore, that the Board failed to support its conclusion on this matter with any evidence is clearly unjustified.

TMIA's next claim involves the Board's allegedly inconsistent use of rumor evidence. TMIA Comments at 11. According to TMIA, the Board suggested that "rumors in fact identify actual events," id., yet found rumor evidence unreliable and gave no weight to rumor evidence with respect to Mr. U, see PID at ¶¶ 2043, 2172-73. In fact, no inconsistency exists, for the Board never suggested that rumors necessarily identify actual events. The Board merely recognized that there has been an active rumor mill at TMI, and to the extent that any incidents of cheating were perceived or imagined, they were probably passed among the operators as rumors. Thus, because the rumor testimony was repetitive and finite, and because all

rumors were investigated during the hearing, the Board concluded that the testimony on the extent of cheating was very thorough. This finding surely does not conflict with the undisputed conclusion that rumors are notoriously unreliable as proof of the facts asserted, nor does it conflict with the conclusion that rumors about Mr. U should not be relied on to incriminate him. PID at ¶¶ 2171, 2173.

With respect to Mr. U, TMIA continues to complain that the Board failed to discuss "an overwhelming amount of circumstantial evidence" which supports Mr. OO's story about Mr. U's offer of assistance. TMIA Comments at 11; see PID at ¶ 2177; Tr. 25,988-93, 25,998-99 (Mr. OO). To the contrary, before making any findings, the Board carefully discussed the rumors about Mr. U and the unrefuted evidence that Mr. U was assigned to study immediately after the NRC exams, see PID at ¶¶ 2171-78, 2186.

TMIA also complains about an unsupported Board finding on the quality of the operators' testimony. TMIA Comments at 12. However, TMIA's disagreement with the finding that "the testimony of the operators was thorough and that they performed well" misses the mark, for the Board did not make such a finding. Rather, the Board found that the thoroughness of the overall hearing testimony with respect to the extent of cheating was a product, in part, of the operators' testimony on rumors. PID at ¶ 2043. The Board also found that the

operators generally performed well on tests and quizzes despite "demoralizing and stressful circumstances". Id. These findings do not lack record support.

TMIA briefly addresses the 1979 TMI-2 incident concerning Messrs. VV and O. TMIA makes few substantive remarks here, arguing simply that the Board treated the matter in "a wholly arbitrary and capricious manner." TMIA Comments at 12. TMIA may not concur with the Licensing Board's resolution of the 1979 incident; however, TMIA is simply in error in stating that the Board failed to support its conclusions, many of which were adverse to Licensee, regarding this incident. In the PID at ¶¶ 2272-2320, the Board addressed the 1979 incident involving Messrs. VV and O and, based on the findings it reached, recommended to the Commission that it direct the Staff to conduct an investigation into the circumstances surrounding the incident. While TMIA disputes the Board's findings with respect to whether Mr. VV was in fact disciplined after the incident in question, the Board analyzed this question in detail and rejected TMIA's assertion that Mr. VV was not disciplined. See PID at ¶ 2284.

Licensee does not seek to minimize the seriousness of the Licensing Board's findings with respect to the 1979 incident concerning Messrs. VV and O and VV's subsequent operator certification. As Licensee stated in its Comments, Licensee will cooperate fully with any investigation into this incident

conducted by OIE. In addition, Licensee has instituted its own investigation into this matter. In view of the absence of any evidence of mismanagement or improper conduct by individuals now responsible for the operation of TMI-1,6/ the Board severed this incident from the matter of TMI-1's restart. TMIA's vituperative Comments notwithstanding, the facts fully support this immediate resolution and TMIA presents no facts to the contrary.

D. Board Jurisdiction

In addition to claims of Board "errors," TMIA claims that the Board improperly cited lack of jurisdiction and thus improperly "refused to make conclusive determinations on major safety items" such as the substantive content of the NRC exams. TMIA Comments at 16. TMIA points to footnotes 18-24 of the Board's August 27, 1981 PID as evidence that the Board specifically designated for this reopened proceeding the issue of the substantive content of the NRC exams. TMIA Comments at 16. TMIA is clearly wrong.

6/ The Licensing Board noted that the only individual involved in this matter with any potential responsibility for the restart of TMI-1 (or TMI-1 operations) was Mr. Miller, as the other individuals whose conduct was placed at issue by this incident no longer work for GPU Nuclear or have no responsibilities for TMI-1. See PID at ¶¶ 2316, 2320. Although no questions were raised about Mr. Miller's technical competence, PID at ¶ 2317, Licensee noted in its earlier Comments to the Commission that Mr. Miller will not be involved in the restart of TMI-1, as he will be transferring to a position in GPU's non-nuclear operations.

The only appropriate footnote cited is footnote 18,7/ which reads as follows:

> 18. As we have noted in ¶¶ 43-45, supra,8/ among other things, the validity of the NRC examination is called into question by the lack of safeguards and integrity in the testing process indicated in the preliminary Stello memorandum and OIA report on the investigation of cheating on the written examinations taken by Licensee's personnel. Accordingly, this finding is an example of ones which will be reconsidered by the Board after further information on the investigation of cheating is available.

TMIA has completely misread this footnote, for the Board has stated quite plainly that the validity of the NRC exam is questioned "by the lack of safeguards and integrity in the testing process," id., not by the substantive content of these exams.9/

7/ Footnotes 19, 21-24 simply refer to footnote 18, see 14 N.R.C. at 455, 467, 473, 477, 479, and footnote 20 deals with Licensee's addition of a simulator program to its training curriculum, a subject completely irrelevant to the issue at hand. See id. at 463.

8/ Paragraphs 43-45 discuss OIE's investigation of Messrs. O and W and the Board's retention of jurisdiction for this reopened proceeding. 14 N.R.C. at 402-03.

9/ The Board repeated its limited retention of jurisdiction by stating that it would not permit a relitigation of whether the substance of the NRC exams was technically adequate to assure that operators are qualified to operate the plant without endangering the health and safety of the public. The Board did agree to consider the substance of the exams in the context of whether the exams are amenable to defeat by some artifice or evasive device which would enable the candidates to pass the test by cheating, using crib sheets, coaching, or memorization of preidentified exam questions. See Board Memorandum and Order on October 2, 1981 Conference of the Parties Relative to

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The Board has heard evidence and has made findings in its Management PID on the substantive quality of the NRC exams.10/ In addition, the Board has passed along to the Commission in the July 27, 1982 PID its further concerns about the content of these exams. See PID at ¶¶ 2365-72. Thus, TMIA may bring this issue before the Commission in the formal course of appellate review.

E. Adequacy of Board Decision

Section IV of TMIA's Comments challenges the adequacy of the Board's decision on a number of issues. TMIA Comments at 16-20. At the outset, TMIA claims the Board unfairly favored Licensee. Contrary to TMIA's assertion, however, the Licensing Board's findings frequently are critical of Licensee and form the basis for the license conditions and the monetary fine recommended by the Board. Thus, for example, the Licensing Board's concerns about the sufficiency of quality control over Licensee's training and testing program, which were tempered by the very extensive favorable testimony received earlier in the proceeding by the Board on the substance of Licensee's training

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Reopened Proceeding, October 14, 1981, at 4; July 27, 1982 PID at ¶¶ 2073, 2363; Tr. 23,127-29 (Smith); Tr. 23,280 (Milhollin).

10/ See 14 N.R.C. at 455, 476-78.

and testing program, see August 27, 1981 PID at ¶¶ 238-239, 14 N.R.C. at 441-478, contributed to the imposition of the monetary penalty and the training and testing conditions set forth in ¶ 2421 of the PID. See PID at ¶¶ 2321-47, 2396-99, 2407, 2411. Contrary to TMIA, however, the Board did not find, and TMIA cites no evidence to support, the serious allegation that "management must have known of the widespread disrespect for the NRC exam and the training program, yet permitted it to continue." TMIA Comments at 18. Rather, the Board found that "[t]he cheating episodes are not a reflection on upper-level management's competence, good intentions and efforts." PID at ¶ 2400.

TMIA also asserts that the Board "excuses" the Licensee's "outrageously poor" investigation into cheating. TMIA Comments at 17. A review of the Board's findings clearly indicates, however, that while the Board did not find any deliberate effort by Licensee to avoid fully investigating the issues, see PID at ¶ 2246, and found the investigation adequate, id. at ¶ 2271, the Board also deemed the investigation lacking in certain specified respects. See PID at ¶¶ 2227-71. Similarly, the Licensing Board did not "excuse" Licensee for causing or creating an atmosphere where cheating occurred. TMIA Comments at 18. Nevertheless, the Board did acknowledge Licensee's candid self-criticisms in this area, and reviewed the adequacy of the measures taken by Licensee to avoid any similar incidents in the future. See PID at ¶¶ 2061-2071, 2396-2410.

In conclusion, TMIA's Comments to the Commission simply reiterate, in a generalized form, various of the arguments TMIA has previously asserted in its submittals to the Licensing Board and which, no doubt, TMIA will restate before the Appeal Board in support of its exceptions to the July 27, 1982 PID. However, none of these issues was ignored by the Board in its decision; in fact, all were addressed in great detail. Although TMIA clearly believes that the TMI-1 license suspension should not be lifted, its Comments do not support continuation of this severe sanction in the face of the Licensing Board's resolution to the contrary.

III. THE AAMODTS

A. INTRODUCTION

Before addressing the specific Aamodt Comments, Licensee has several general comments which apply to the Aamodts' entire filing. First, the Aamodts claim to be commenting on the July 27, 1982 PID, yet they frequently discuss findings from the August 27, 1981 PID; 14 N.R.C. 381 (1981). See, e.g., Aamodt Comments at 15-21 (¶¶ 32-45). For example, the Aamodts discuss such matters as training of unlicensed personnel, id. at 16 (¶ 32); TMI-1 managers' familiarity with plant design, id. at 16-17 (¶ 33); TMI organization charts, id. at 18 (¶ 37); and actions of Messrs. Herbein and Miller immediately after the accident, id. (¶ 36). Such matters have absolutely no

relationship to the issues litigated in this reopened proceeding. Furthermore, the Aamodts supplement their discussion of these extraneous matters with citations not only to their own findings filed in June, 1981 and considered by the Board in its Management PID, but to their late-filed findings in this reopened proceeding, which findings were never admitted by the Special Master.11/ See Aamodt Comments at 16-21 (¶¶ 32-45), 24-27 (¶¶ 61-71). A discussion of these findings is clearly outside the appropriate scope for comments on the July 27, 1982 PID.

As to the legitimate Aamodt Comments on the PID, while they contain numerous criticisms of many of the Board's findings, Licensee notes the absence of any claim that the Board failed to address all appropriate issues. Also absent is any claim that the Board failed to consider carefully and

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11/ On January 20, 1982, two days after their findings were due pursuant to an oral extension of time granted by the Licensing Board, the Aamodts filed a Motion for Admissibility of Findings. This motion was denied by the Special Master's Memorandum and Order Denying Aamodts Motion for Admissibility of Findings, dated February 11, 1982. A subsequent Aamodt Motion for Reconsideration of Aamodt Motion for Admissibility of Findings of January 20, 1982 and Admissibility of Additional Findings, dated March 1, 1982, was also denied by the Special Master by Memorandum and Order, dated April 14, 1982.

Licensee does not, of course, object to the Aamodts setting fourth ideas that have been set forth in prior filings -- even late-filed ones. Licensee only objects to the Aamodts' practice, as evidenced in these Comments, of making bald assertions with no supporting record citations, and relying for evidentiary support on late-filed findings which themselves may or may not contain record citations.

thoroughly all relevant record evidence before making its findings.

The Aamodts register extreme surprise that the Board did not adopt Judge Milhollin's findings wholesale. See Aamodt Comments at 6 (¶ 12). They also find it incredible that the Board should choose to "independently arrive at its own factual conclusions . . . ." Id. at 6-7, citing PID at ¶ 2037. The Aamodts apparently misunderstand that Judge Milhollin was appointed Special Master, technical advisor and informal assistant under 10 C.F.R. § 2.722, and as such, his Report is "advisory only." 10 C.F.R. § 2.722(a)(2) (emphasis added); see PID at ¶ 2035. Thus, notwithstanding the fact that the Board praised Judge Milhollin's abilities and the high quality of his Report, see PID at ¶ 2034; the Board has the power -- indeed, is legally obligated -- to exercise final authority with respect to all issues heard by the Special Master. 10 C.F.R. § 2.722 (a)(2). See also Licensee's Reply to Comments of TMIA, at pp. 7-8, supra (discussion of weight afforded Special Master's witness credibility determinations).

The Aamodts also unjustifiably attack the integrity of the Licensing Board's decision. Consider, for example, the Aamodts' claims that "Judge Milhollin's severe and wide criticisms challenged the integrity of the Board's earlier decision and favored a decision against restart. We find this to be the only reasonable explanation of the Board's failure to

accept Judge Milhollin's findings." Aamodt Comments at 7-8 (¶ 14). Consider the statement: "We can only conclude that the Board has used the ruse of naivete to cover its blatant attempt at distortion of the evidence to favor restart." Id. at 8 (¶ 15). Note also the phrase: "The Board . . . consider[ed] Judge Milhollin's findings and [sought] any alternative explanations which would favor the Licensee . . . ." Id. (¶ 16). Such statements serve no useful purpose -- indeed, they reveal a naivete and a carelessness of thought that calls into question the validity of all the Aamodt Comments.

In addition to such comments about the Board, there are a number of highly inflammatory statements about Licensee, frequently unsupported by any citations to the record, which form the basis for subsequent conclusions reached by the Aamodts. These premises are false; consequently, the comments proceeding from them are equally faulty.

Thus, for example, the Aamodts state that "Licensee management, including upper-management, made a number of false statements and misrepresentations throughout the proceeding." Aamodt Comments at 2. No explanation or supporting reference is provided. In subsequent discussion, the Aamodts state that specific members of Licensee's management -- Mr. Robert Arnold, Dr. Robert Long and Mr. Samuel Newton, the GPU Nuclear President, Vice President of Nuclear Assurance and Supervisor of Training, TMI, respectively -- made false statements and

concealed information. Aamodt Comments at 24 (¶¶ 62-63), 28 (¶ 74). In support of these grave charges, the Aamodts not only rely on their own late-filed findings, but refer to portions of those findings which simply do not support the proposition for which the Aamodts are now citing them.12/

12/ Without arguing the merits of the Aamodts' interpretation of the record, with which Licensee strenuously disagrees, Licensee simply records here four of the nine Aamodt proposed findings which, in the Aamodts' view, support their assertion that Mr. Robert Arnold and Dr. Robert Long made false statements and concealed information: (1) "Management personnel, shift supervisions [sic] and foreman were aware of rumors of cheating, if not actual instances of cheating. Tr. 26,464 (WW)." Aamodt Findings, March 4, 1982, at ¶ 254. (2) "The Licensee's witness, Dr. Long, was at TMI-2 in the recovery phase after the incident. Long ff. 12,140 at 8. However, Dr. Long's answers during cross-examination lacked authenticity. Dr. Long did not recall whether the RWP instructor to whom he spoke was Mr. LaVie or Mr. Moore. Tr. 24,941. He did not recall which of these two individuals thought the RWP test answer key may have been seen. Tr. 24,941-42. He did not know at what point in time this happened. Id. These and Dr. Long's pre-filed testimony which corraborates [sic] Mr. William's experience, should be pursued with the appropriate witnesses, Mr. LaVie, Mr. Moore and others." Id. at ¶ 270. (3) "Metropolitan Edison management persisted in offering representation to interviewees during the NRC investigations until OIE exercised their right to exclude management. Staff Ex. 27 [OIE Investigative Report], at 6." Id. at ¶ 274. (4) "Dr. Long testified in the reopened hearing that he did not know the details of test administration for TMI-1. Tr. 24,948 (Long), but expressed the opinion that "open-book" format was used infrequently. Tr. 29,947 (Long). The operators testified, contrary to Dr. Long's testimony, that "open-book" format was frequently used or the format was not specified allowing operators to use reference material. This looseness in administration of tests at TMI led to cooperation among the operators in obtaining answers. Tr. 26,452, 458-90 (WW); 25,696 (GG); 26,807 (U); 25,968-69, 71 (OO); 26,608 (T). Paragraph 254 supra." Id. at ¶ 286.

The remaining paragraphs of their late-filed March, 1982 proposed findings on which the Aamodts rely to support their allegation of false representations by senior Licensee manage-

(Continued Next Page)

While the Aamodts also refer to their Comments and Reply Comments to the Licensing Board on the Report of the Special Master, which argue these same points, the Licensing Board rejected the Aamodts' views of Licensee's management, finding among other things that "[a]lthough we criticize some aspects of the Licensee's investigation, we believe that Licensee sincerely tried to uncover and report every instance of cheating," PID at ¶ 2042; "[w]e find no evidence that Licensee's management encouraged or condoned cheating on the relevant NRC or company-administered examimations," id. at ¶ 2047; "[i]n general we have concluded that where Licensee has seen the need and the justification for personnel action, it has taken it," id. at ¶ 2057; and, "[t]he cheating episodes are not a reflection on upper-level management's competence, good intentions and efforts," id. at 2400.

Similarly, the Aamodts argue that Licensee's training department management deliberately facilitated the operators' cheating on the NRC exam by increasing the number of testing rooms "through the ruse of providing smoking and non-smoking

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(Continued)

ment all refer to the Aamodts' unreasonable, albeit imaginative interpretation of Licensee's effort to correct a chart introduced previously into the record which was subsequently discovered to contain several errors. From this effort, the Aamodts find Licensee deliberately deceptive and reflecting an attitude of coverup. See Aamodt March, 1982 late-filed proposed findings at ¶¶ 277-81.

rooms," by not assisting the NRC staff in proctoring the exam and by providing small examination rooms. Aamodt Comments at 27 (¶ 71). There are simply no facts in the record to support this far-fetched theory, which the Aamodts unsuccessfully advanced before both the Special Master and the Licensing Board.

The Aamodts also impugn the character of Mr. Ross, the TMI-1 Manager of Plant Operations, against whom allegations were levelled and wholly rejected by the Board, see PID at ¶ 2225; based on another highly interpretative theory of the evidence previously advanced by the Aamodts and rejected by the Board. Aamodt Comments at 26 (¶ 69). In point of fact, Mr. Ross' testimony is fully consistent with the Office of Inspector and Auditor investigation report, Staff Ex. 24, both of which are completely at odds with the Aamodts' interpretation.

In the section of the comments entitled "The Board's Findings from the Reopened Proceeding," the Aamodts provide a litany of specific negative findings by the Board with respect to the extent of cheating, Licensee's response to cheating, and management responsibility for cheating. These findings are intended to undercut the validity of certain more general Board findings and to support Aamodt conclusions that the TMI-1 operations staff lacked integrity, Aamodt Comments at 9(a) (¶ 19); see Report at ¶ 325; and that TMI-1 should not be

allowed to restart with a problem-ridden management, Aamodt Comments at 11 (¶ 23). Licensee takes issue with many of these comments because of the Aamodts' overly simplistic approach to the matters; they merely ignore a great deal of exculpatory evidence which supports the Board's ultimate conclusions.

For example, the Aamodts note the limitations of the cheating inquiries and claim that "the mechanism for detecting cheating (scrutinizing exams for obvious parallelisms) would only detect those who took no care to conceal their cheating. It probably would not detect verbal exchanges, for instance, the solicitors of Messrs. Shipman and WW." Aamodt Comments at 9(a). The Board agreed with the Aamodts to the extent that it could not conclude with certainty that all possible cheating had been revealed. PID at ¶ 2041. Nevertheless, while not mentioned by the Aamodts, the Board recognized that searching for parallel answers was not the only means of ferreting out cheating. "The hearing itself was a form of investigation," PID at ¶ 2042; Licensee conducted an investigation; outside consultants of the Staff and of Licensee reviewed quiz and exam answers; the Board itself searched the quiz and exam answers; and the operators testified extensively and repeatedly about a finite number of rumors. PID at ¶¶ 2042-43. Thus, the Board is justifiably comfortable that almost all, if not all of the cheating of any importance has been identified. Id. at ¶ 2041.

The Aamodts also list, under the heading "Licensee's Response to Cheating," four unfavorable Board findings with respect to Licensee's investigation of cheating. Aamodt Comments at 10 (¶ 21). The Aamodts' unspoken conclusion is, of course, that Licensee's investigation was therefore inadequate. However, the Aamodts again conveniently ignore the Board's overriding positive conclusions that the investigation was well conceived and designed, PID at ¶¶ 2054, 2268, and that despite the weaknesses so readily noted by the Aamodts, the investigation was, on balance, adequate. Id.

On pages 11 through 13 of their Comments, the Aamodts continue to paraphrase from the July 27, 1982 PID, offering no additional considerations not advanced by the Board in its own decision. Licensee notes instances of liberal interpretation, at best, of the facts. For example, while the Licensing Board noted "weaknesses" in the quality of instruction for licensed operators, which led to the Board's recommended imposition of the license condition that criteria for qualifications of training instructors be established, PID at ¶ 2421(2), the Board did not state that "[t]he quality of instruction for licensed operators is poor." Aamodt Comments at 12 (¶ 26(5)), citing PID at ¶ 2085. To the contrary, the Board concluded that restart authorization should not be withdrawn based on the evidence adduced during the reopened proceeding, including the quality of instruction and of operator competence at TMI-1.

See PID at ¶ 2085. Similarly, while the Board expressed concern about the NRC Staff's reliance upon licensees in its generic examination preparation and review process since such reliance presents a potential for compromising the independence, integrity and validity of the NRC exams, the Board did not find that the NRC staff examination process "cannot measure the adequacy of Licensee's program." Aamodt Comments at 13 (¶ 28(5)), citing PID at ¶¶ 2372-77. Rather, the Board noted, "Whenever the examination process is neither independent nor external, its audit value is impaired and there is the potential for abuse and for diminished credibility." See PID at ¶ 2377.

The next section of the Aamodts' Comments challenges the Licensing Board's conclusion that, with the addition of the conditions recommended by the Board, Licensee's operator training program is satisfactory. See Aamodt Comments at 14-16 (¶ 30-31). The Aamodt Comments themselves reflect the variety of bases for the Board's conclusions, including the Board's consideration of the subject matter taught to the operators, course content, the NRC operator license examinations, the re-examinations taken by the licensed operators, the organizational structure and the credentials and experience of the TMI Training Department, and the views of the highly qualified independent experts who reviewed Licensee's post-TMI-2 accident intensive operator training program, the Operator Accelerated

Retraining Program. Aamodt Comments at 14-15 (¶ 30). The adequacy of the operator training program at TMI-1 is described in detail by the Licensing Board in its initial management decision of August 27, 1981, in which the Board concluded that "[o]n the basis of the extensive record developed on training, the Board finds that Licensee has in place at TMI-1 a comprehensive and acceptable training program." 14 N.R.C. at 478. The Aamodts are here simply harking back to their initial disagreement with the Board's resolution of their contentions, see 14 N.R.C. at 465-478, which was the subject of Immediate Effectiveness Comments to the Commission in January and February of 1982. In addition, the Aamodts' observation about the limited value of organizational charts, see Aamodt Comments at 14 (¶ 30); is particularly inappropriate, where the Licensing Board had the opportunity to hear testimony from almost all members of GPU Nuclear's management, including key members of the TMI operator training program. This exposure is clearly reflected in the August 27, 1981 Management PID. See 14 N.R.C. at 428-41.

At pages 16-21 (¶¶ 32-45) of these Comments, the Aamodts discuss issues extraneous to the reopened proceeding. Licensee would only note that the Aamodts have inappropriately labeled this portion of their Comments "Our Findings of the Effect of the Reopened Proceeding on the Board's First Decision." Aamodt Comments at 17. In fact, the Aamodts do not attempt to discuss

any such "effect." They merely criticize several of the Board's Management PID findings and resurrect some of their own year-old Management PID proposed findings. See, e.g., Aamodt Comments at 19-21 (¶¶ 38, 40, 41,44).

The Aamodts next raise what Licensee believes was truly a non-issue in the reopened proceeding; namely, whether there are a sufficient number of operators to man the TMI-1 control room. See Aamodt Comments at 23-24 (¶¶ 57-60). Licensee has repeatedly reaffirmed its commitment to meet the Licensing Board's restart condition oncerning staffing, which is set out in the Management PID. 14 N.R.C. at 580-81. See PID at ¶ 2410. No basis is given for the Aamodts' reference to "the high attrition rate at TMI and the dwindling number of licensed operators, particularly senior operators." Aamodt Comments at 23 (¶ 57). In fact, since October, 1981, 6 more reactor operators and 7 more senior reactor operators (3 new SRO's and 4 former RO's) have been licensed at TMI, and only 4 operators (2 RO's and 2 SRO's) have left since last October. Currently, there are a total of 34 licensed operators (15 RO's and 19 SRO's) at TMI-1.

On pages 24-30 of their Comments, (¶¶ 61-88) the Aamodts again resurrect some of their favorite findings with respect to the July 27, 1982 PID, including those that were untimely.

Except for the findings that were filed late, these findings and comments have been considered by the Board13/ prior to issuance of its July 27, 1982 PID. Thus, these repeated references shed no additional light on the validity of the July 27, 1982 PID, nor do they aid the Commission in deciding the immediate effectiveness issue.

The Aamodts here allege, among other things, that Licensee failed promptly to notify the Special Master pursuant to his oral request, of any occurrence extraneous to the reopened proceeding that might delay the TMI-1 start-up; viz., the repair of leaks in TMI-1 steam generator tubes. Aamodt Comments at 24 (¶ 64), citing Aamodt Proposed Findings of Fact and Conclusions of Law on Issues Raised in Reopened TMI-1 Restart Proceeding, at ¶¶ 13-14. The Aamodts are wrong. As explained in detail in Licensee's Answer to Aamodts' Motion for Reconsideration of Aamodt Motion For Admissibility of Finding of January 20, 1982 and Admissibility of Additional Findings, dated March 19, 1982, at 4-5, the very day that counsel for Licensee had sufficient information to report the delay due to repairs of the steam generator tubes, counsel informed Judge Milhollin and all those on the TMI-1 service list.

13/ Licensee already has specifically considered and refuted some of these findings; see, e.g., Licensee's Reply To Comments of Other Parties on the Special Master's Report and the Atomic Safety and Licensing Board's Tentative Final Draft, dated June 1, 1982, at ¶¶ 28-32 (discussion about Mr. Ross), repeated in Aamodt Comments at 25-26 (¶¶ 67-69).

On pages 31-32 of their Comments, the Aamodts discuss matters which they describe as "evidence [which] did not fit under any issue of the proceeding." Aamodt Comments at 31 (¶ 89). Licensee concurs with this assessment of the Aamodts -- the issues of selection and screening of personnel and operator fatigue were clearly beyond the scope of the reopened proceeding; accordingly, they are inappropriate subjects for Comments to the Commission. See PID at ¶ 2032 regarding broad issue of reopened hearings. Licensee notes, however, that the specific qualifications of persons in key management positions in GPU Nuclear were reviewed in detail by the Licensing Board in its initial management decision and that the generic subject of overtime work for operators and the associated issue of fatigue has recently received attention by the Commission. See Revised Policy on Factors Causing Fatigue of Operating Personnel at Nuclear Reactors, 47 Fed. Reg. 23,836 (June 1, 1982). Licensee's commitment with respect to shift staffing, stated as a license condition in the August 27, 1981 Management PID, includes the requirement that Licensee consider the current and applicable NRC criteria or guidance on overtime policies in manning its operations shifts. See 14 N.R.C. at 580-81.

IV. UCS

UCS was not a participant in the reopened hearing or, for that matter, in the initial management phase of the restart proceeding. Moreover, it is unclear whether UCS is even familiar with the record in the reopened proceeding. In neither its Comments to the Licensing Board on the Special Master's Report, nor its Comments to the Commission on Immediate Effectiveness, has UCS provided a single citation to or made any analysis of the reopened hearing record. Rather, UCS merely paraphrases and adopts selected elements of the Special Master's Report and ignores the bases stated in the Licensing Board's recommended decision for rejecting substantial portions of that Report. Nevertheless, UCS urges the Commission not to make effective the Licensing Board's July 27, 1982 PID. The UCS comments are simply of no value to the Commission in evaluating the Board's resolution of matters raised in that hearing and in deciding whether the PID should be made immediately effective.

UCS' position, simply stated, is that based on the premise that the training of TMI-1 operators has been inadequate, the Licensing Board, in reviewing certain plant design and procedure issues, erred in placing any reliance upon operator action. It bases its premise solely on the Special Master's Report without analysis of the underlying record, and then

complains that the Licensing Board did not deal seriously with its comments on the Special Master's Report. To the contrary, the Board fully acknowledged UCS' position in the PID. See PID at ¶¶ 2408-10. The Board simply disagreed with the premise of UCS' position. In the Board's view, the TMI-1 operators have not been found to be incompetent, having been repeatedly tested and trained. While there was a failure of quality assurance of the integrity of the examination process and quality assurance of instruction, the Board did not find that the instructors had failed to instruct or that the students failed to learn. Also, the Board reaffirmed that its prior proposed license condition relating to operator staffing would be met. See PID at ¶ 2410. In sum, finding no basis for UCS' concerns, the Board rejected them.

V. THE COMMONWEALTH OF PENNSYLVANIA

On August 20, 1982, the Commonwealth of Pennsylvania provided its comments on the immediate effectiveness of the Board's July 27, 1982 PID.14/ The Commonwealth on two grounds opposes granting immediate effectiveness to the PID.

14/ The same date, the Commonwealth filed with the Appeal Board exceptions to the Board's decision. The Commonwealth's exceptions track its differences with the Board's PID expressed in the instant comments on immediate effectiveness.

As the first ground, the Commonwealth differs with the Board's determinations regarding three individual operators and would require additional steps be taken as to these three prior to authorizing plant operation. The three individual operators of concern to the Commonwealth are Messrs. G, H and DD (Mr. Husted). Messrs. G and H are licensed reactor operators who stand shifts as control room operators; Mr. Husted is a licensed senior reactor operator who works as a training instructor.

The Board concluded that while Messrs. G and H have demonstrated the requisite competence and understanding of subject matter, they cheated on several Licensee-administered weekly quizzes. The Board attributed their behavior on these quizzes in part to an undisciplined training and examination environment and to the fact that the official importance of these quizzes was never effectively impressed upon the operators. There were no allegations that they ever cheated on an NRC exam or on the Company-administered mock NRC examinations. Under all the circumstances (see PID ¶¶ 2116-2121, quoted extensively at pages 4-5 of Licensee's August 20 Comments to the Commission on Immediate Effectiveness), the Board proposed that Messrs. G and H should voluntarily accept a two-week suspension without pay in lieu of an action against their NRC operator licenses.

The Commonwealth's position is that individual proceedings should be instituted against Messrs. G and H in accordance with 10 C.F.R. § 55.40, that pending the outcome of such proceedings Messrs. G and H should not be allowed to operate the plant, and that unless such a process is followed TMI-1 should not be allowed to restart.

Throughout the reopened hearing and in its post-hearing findings, Licensee argued its conclusion that Messrs. G and H had not cheated. With the Board's collegial determination based on the evidence that in its opinion these individuals did cheat, Licensee has, however, reassessed its position. As we reflected in our Comments on Immediate Effectiveness of August 20, Licensee accepted the Board's decision and has filed no exceptions to that decision. G and H elected to accept the Board's two-week suspension without pay proposal, and the two-week suspension has been served. Further, Licensee's management including Mr. Hukill, Vice President of TMI-1, since the issuance of the PID has communicated in the most candid terms directly and in writing to Messrs. G and H Licensee's imperative need for straightforwardness and honesty in its employees. Messrs. G and H have been advised of the existing uncertainty as to their reliability and attitude toward Company standards and requirements, including the NRC licensing process. Further, the onus has been placed squarely on them to demonstrate in all their activities, behavior and attitudes

which are beyond reproach. To this end, they have been advised that over the next year their supervisors and management will be closely evaluating these aspects of their performance. Mr. Ross, Manager of Operations, personally will meet periodically with each of these operators to ensure there is a common understanding between them and management as to Licensee's assessment of their performance and attitude. In short, Licensee recognizes the basis for the Commonwealth's uncertainty regarding these two operators and has already taken effective and appropriate steps to meet that concern.

In the case of Mr. Husted, the Board found he did not cheat. However, the Board did express dissatisfaction with the attitude he exhibited in his conduct during the NRC investigations and as a witness at the hearing. In the Board's view the attitudinal problem is not related to his licensed operator status, but could detract from his value as a training instructor. While it imposed no direct sanction on Mr. Husted, the Board urged that new requirements on Licensee's training program generally include particular attention to Mr. Husted, specifically his qualifications and the effectiveness of his instruction.

The Commonwealth accepts the Board's decision that Mr. Husted did not cheat. Commonwealth Comments at 4. Nevertheless, its position is that -- like Messrs. G and H -- an individual proceeding under 10 C.F.R. § 55.40 should be

instituted against Mr. Husted, in the interim Mr. Husted should not be utilized as a licensed operator, and unless this process is followed, TMI-1 should not be allowed to operate.15/

Mr. Husted's attitude and demeanor in the course of the NRC investigation and as a witness in the hearing did not go unnoticed nor has it gone unaddressed by Licensee. As Licensee itself has characterized Mr. Husted's appearance as a witness, he appeared flippant and at times to regard questions in a less than serious manner. Licensee's Findings of January 1982, ¶ 89. By the same token, Licensee is unwilling to equate a poor attitude, or its appearance, with a lack of integrity.

Since the hearing record closed and the sequestration order lifted, Licensee has taken a number of steps with regard to Mr. Husted's attitude. He has been required to explain and discuss his conduct with Mr. Hukill, Dr. Long, Vice President Nuclear Assurance, Dr. Knief, who heads TMI training, and Mr. Newton, who heads operator training. He has been advised in no uncertain terms that the attitudinal problems he evidenced

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15/ The Commonwealth also would require that auditing of the Licensee's training department required by Board condition result in specific recommendations as to whether Mr. Husted should be retained as an instructor. Commonwealth Comments at 6. Because the Commonwealth would not make fulfillment of the audit condition a precedent to TMI-1 operation, this aspect of the Commonwealth's comments need not be decided by the Commission in reaching a decision on immediate effectiveness. Further, we note that the Commonwealth has raised this point in its Exception (4) to the Licensing Board's PID, filed on August 20, 1982 with the Appeal Board.

during the NRC investigation and the hearing have no place in Licensee's organization. His interaction with trainees and other instructors presently is being scrutinized and evaluated by Mr. Newton; Mr. Hukill has himself sat in and observed Mr. Husted's classroom conduct; and Mr. Ross, head of TMI-1 operations, is also observing Mr. Husted for any attitudinal problems.

In the light of the Board's decision and the steps which Licensee has already taken and has planned specifically for Messrs. G, H and Husted, Licensee believes that instituting additional individual proceedings under Part 55 to consider license revocation or suspension for these individuals, as the Commonwealth has suggested, is unwarranted. Recognizing, however, that some possibility of such a proceeding existed, Licensee in earlier comments to the Licensing Board (acknowledged by the Board in its PID at ¶ 2116, but overlooked by the Commonwealth) volunteered that if such proceedings were to be instituted, Licensee would relieve affected individuals of licensed duties pending the outcome of those proceedings. In any event, if the Commission decides to institute individual proceedings or actions regarding these three persons, there is no reason to delay restart authorization for the entire plant.

The second ground advanced by the Commonwealth for opposing immediate lifting of the suspension on TMI-1 operation is that the Board's condition (PID ¶ 2421, Condition (2))

requiring Licensee to develop instructor criteria should be fulfilled prior to restart, not subsequent to plant operation as the Board would allow. In our Comments on Immediate Effectiveness of August 20, Licensee reported that general criteria for qualifications of training instructors already exist and that detailed, specific instructor qualification criteria are being developed, with priority being given to licensed operator training and retraining instructors. Licensee commits herein to complete and provide to NRR for its pre-restart approval, detailed, specific qualification criteria for licensed operator training and retraining instructors.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By Ernest L. Blake, Jr.

George F. Trowbridge, P.C.
Ernest L. Blake, Jr., P.C.
Deborah B. Bauser
Bonnie S. Gottlieb

Counsel for Licensee

1800 M Street, N.W.
Washington, D.C. 20036

(202) 822-1000

LIC September 1, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

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

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing LICENSEE'S REPLY TO COMMENTS OF OTHER PARTIES ON IMMEDIATE EFFECTIVENESS OF LICENSING BOARD'S PARTIAL INITIAL DECISION (REOPENED PROCEEDING) DATED JULY 27, 1982, was served this 1st day of September, 1982, by hand delivery to those persons on the attached Service List designated by an asterisk (*) preceding their names, and by deposit in the United States mail, postage prepaid, addressed to all other persons on the attached Service List.

Ernest L. Blake, Jr.

Ernest L. Blake, Jr.

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)	)	

SERVICE LIST

* Nunzio J. Palladino, Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

* Victor Gilinsky, Commissioner
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

* John F. Ahearne, Commissioner
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

* Thomas M. Roberts, Commissioner
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

* James K. Asselstine, Commissioner
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Administrative Judge Ivan W. Smith
Chairman, Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Administrative Judge Walter H. Jordan
Atomic Safety and Licensing Board
881 West Outer Drive
Oak Ridge, Tennessee 37830

Administrative Judge Linda W. Little
Atomic Safety and Licensing Board
5000 Hermitage Drive
Raleigh, North Carolina 27612

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

Administrative Judge John H. Buck
Atomic Safety and Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Administrative Judge Christine N. Kohl
Atomic Safety and Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

Joseph Gray, Esquire (4)
Office of the Executive Legal Director
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

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

Robert Adler Esquire
Karin W. Carter, Esquire
Assistant Attorney General
Commonwealth of Pennsylvania
505 Executive House
P. O. Box 2357
Harrisburg, PA 17120

John A. Levin, Esquire
Assistant Counsel
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17120

Jordan D. Cunningham, Esquire
Fox, Farr & Cunningham
2320 North Second Street
Harrisburg, PA 17110

William S. Jordan, III, Esquire
Harmon & Weiss
1725 Eye Street, N.W., Suite 506
Washington, D.C. 20006

Michael F. McBride, Esquire
LeBoeuf, Lamb, Leiby & MacRae
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

David E. Cole, Esquire
Smith & Smith, P.C.
2931 Front Street
Harrisburg, PA 17110

Michael W. Maupin, Esquire
Hunton & Williams
707 East Main Street
P. O. Box 1535
Richmond, VA 23212

Ellyn R. Weiss, Esquire
Harmon & Weiss
1725 Eye Street, N.W., Suite 506
Washington, D.C. 20006

Steven C. Sholly
Union of Concerned Scientists
1346 Connecticut Avenue, N.W. #1101
Washington, D.C. 20036

ANGRY/TMI PIRC
1037 Maclay Street
Harrisburg, PA 17103

Mr. and Mrs. Norman Aamodt
R.D. 5
Coatesville, PA 19320

Louise Bradford
TMI ALERT
1011 Green Street
Harrisburg, PA 17102

Chauncey Kepford
Judith J. Johnsrud
Environmental Coalition on Nuclear Power
433 Orlando Avenue
State College, PA 16801