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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE COMMISSION

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

Docket No. 50-289
(Restart)

UNION OF CONCERNED SCIENTISTS' OPPOSITION
TO GPU PETITION FOR REVIEW OF ALAB-772

The rule governing Commission review of Appeal Board decisions, 10 CFR 2.786, requires, inter alia: 1) a concise statement why the decision or action is erroneous and 2) a concise statement why Commission review should be exercised. With respect to the criteria for Commission acceptance of review, the rule contains the following restrictions:

i. A petition for review of matters of law or policy will not ordinarily be granted unless it appears the case involves an important matter that could significantly affect the environment, the public health and safety . . . or otherwise raises important questions of public policy.

ii. A petition for review of matters of fact will not be granted unless it appears that the Atomic Safety and Licensing Appeal Board has resolved a factual issue necessary for decision in a clearly erroneous manner contrary to the resolution of that same issue by the Atomic Safety and Licensing Board.

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GPU's petition for review^{1/} makes no serious attempt to conform with the requirements of the rule. It fails to clearly enumerate the errors it believes were made by the Appeal Board, to categorize these as legal, factual or policy errors, or to make a case that the errors are so important and far-reaching in their implications as to warrant Commission review under the applicable rule.

On the first issue, the question of whether training is "adequate to prepare the operators to operate the plant safely," (ALAB-772, at 63), GPU asserts no factual inconsistencies between the ASLB and the Appeal Board, nor any legal or policy errors whatever, as clearly required by 10 CFR 2.786.^{2/} It simply quarrels with the Appeal Board's "judgment" regarding the adequacy of the record. (Licensee's Petition at 4) and asks the Commission to reinstate the ASLB decision. Such generalized argument manifestly fails to meet the requirements for Commission review.

Moreover, GPU mischaracterizes the Appeal Board decision as quibbling over the "perfection" of the record. Id. The following passage gives some indication of the nature of the unresolved questions:

Indeed, the record in the reopened proceeding perhaps has raised more questions than it has answered satisfactorily. For example, does the training program actually enhance the operators' knowledge or simply encourage memorization for test-taking purposes? Are the licensee and NRC examinations an effective way to measure an operator's ability to run the plant? Do the format and content of the examinations encourage cheating?
ALAB-772 at 63, footnote omitted.

^{1/} Licensee's Petition for Review of ALAB-772, June 22, 1984, (Licensee's Petition).

^{2/} Indeed, GPU asserts in its request to the Commission for a stay ALAB-772 that "[t]he decisions of the Appeal Board and Licensing Board do not differ on any finding of fact or law. . . ." Licensee's Request for Stay (ALAB-772), June 13, 1984, at 2.

The Commission is not in a position to answer these questions favorably to GPU on the basis of this record, any more than the Appeal Board could affirmatively answer them, and should allow the reopened hearings to go forward.

The second substantive issue decided adverse to GPU in ALAB-772 concerns reopening the record regarding whether the Dieckamp mailgram constitutes a misrepresentation indicating lack of integrity. Again, GPU asserts no factual inconsistency or legal or policy error warranting Commission review. It simply asserts that Mr. Dieckamp was "questioned" and asks the Commission to "reverse the Appeal Board's reopening on this matter. . . ." Licensee's Petition at 6. Unfortunately, Mr. Dieckamp was never questioned by an adverse party under oath before an independent tribunal. His questioning by Mr. Stello's I&E group is scarcely a substitute, particularly considering the pettifogging incomprehensibility of Stello's conclusions on the subject.^{3/} Mr. Dieckamp is President, Chief Operating Officer and a Director of GPU, as well as a Director of virtually all of the subsidiary boards. His integrity is key to the integrity of the entire corporate organization. See ALAB-772 at 133. The Commission has no record basis upon which to reverse the Appeal Board.

As to the third issue, possible TMI-1 leak rate falsification, GPU essentially asks for factual issues not yet addressed on the record to be summarily resolved in its favor, by reference to the OI reports, without ever giving the other side a hearing. As we discuss below, the OI report on Unit 1 leak rate is not vindication for GPU. Moreover, since GPU has already stated that it considers the Unit 1 leak rate issues to be subsumed within the

^{3/} Commissioner Ahearne called the Stello conclusions "specious." Chairman Palladino judged them "confusing." Transcript of closed Commission meeting, November 6, 1981 at 54. In Commissioner Gilinsky's view they were a "joke." Transcript of closed Commission meeting, June 21, 1983 at 20.

reopened proceedings on Unit 2 leak rate falsification,^{4/} and since it never appealed ALAB-738 which reopened the record concerning the Unit 2 leak rate falsification, it is not harmed in any conceivable way by the reopening of the record as to the Unit 1 leak rate question. Its position in seeking reversal of this portion of ALAB-772 is therefore logically inconsistent.

GPU professes to be unable to identify the new allegations concerning TMI-1 leak rate tests. As the Appeal Board noted, the OI reports on their face disclose:

- 1) a lack of understanding concerning record keeping requirements;
- 2) ignorance (over a period of several years) by both operating staff and management of the existence and significance for leak rate calculations of a 'loop seal' in the instrument system; and
- 3) inattention during the pre-accident period to work requests that would have highlighted the loop seal problem.

ALAB-772 at 153.

Moreover, the now-released interviews and documentation behind the OI reports show more. It is documented over and over again that TMI-1 operators routinely discarded unfavorable test results, contrary to requirements, yet accepted as valid tests showing a negative leak rate, although they were well aware that a negative leak rate is physically impossible and such tests could not be representative of actual plant conditions. Whether or not this practice constitutes criminal conduct, it obviously demonstrates a thorough disdain for the most basic safety-related surveillance requirements and a company-wide attitude elevating form over substance. Such questions bear directly on both integrity and competence.

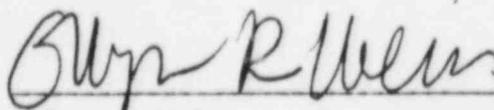
^{4/} Licensee's Petition, n. 11 at 7.

CONCLUSION

GPU claims that hearings to resolve these issues will have no benefit except to "those who not want a decision reached." Implicit in this assertion is the assumption that a "decision" could only conceivably be an approval of restart. In fact, we have a decision and it is against restart. The Appeal Board has given GPU another chance to establish that it meets the requirements to operate TMI-1. In our view, a favorable result is scarcely a foregone conclusion. These hearings do not deal with technicalities, but with central safety issues, prime among them: "is the instruction adequate to prepare the operators to operate the plant safely?" ALAB-772 at 63.

GPU has not stated a case for Commission review and it should not be accepted.

Respectfully submitted,



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Dated: July 12, 1984

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BRANCH
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CERTIFICATE OF SERVICE

I hereby certify that copies of "UNION OF CONCERNED SCIENTISTS' OPPOSITION TO CPU PETITION FOR REVIEW OF ALAB-772" have been served on the following persons by deposit in the United States mail, first class postage prepaid, this 12th day of July 1984, except as indicated by an asterisk.

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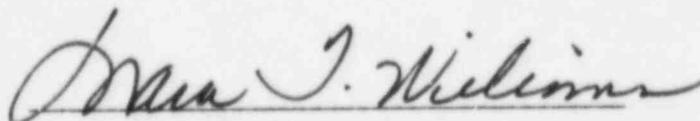
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