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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)	
)	
METROPOLITAN EDISON COMPANY)	DOCKET NO. 50-289 SP
)	(Restart-Management
(Three Mile Island Nuclear)	Phase)
Station, Unit No. 1))	

LICENSEE'S COMMENTS ON ALAB-772
(MANAGEMENT PHASE)

Licensee has reviewed the Appeal Board's Decision of May 24, 1984 (ALAB-772), on the Management Phase of the TMI-1 restart hearing, with particular emphasis on the relationship of that decision to the Commission's planned decision on whether to lift the immediate effectiveness of the Commission's 1979 suspension orders.

We note at the outset that the Appeal Board reaches no conclusions which contradict those of the Licensing Board on any of the management issues but has found that the record of the hearing is inadequate to support the Licensing Board's decision in three areas. For this reason the Appeal Board has reopened and remanded the proceeding to the Licensing Board for

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further hearings on (1) the adequacy of Licensee's licensed operator training program, (2) leak-rate testing at TMI-1 and (3) the circumstances surrounding a 1979 Dieckamp mailgram.

The Appeal Board properly noted that its decision must be based on the hearing record and that in performing its adjudicatory hearing function, it could not properly take into account many of the reports and communications available to the Commission. ALAB-772, slip. op. at 10 n.6, 157.

In deciding whether to lift the suspension of TMI-1's operating authority, however, the Commission is not confined to the adjudicatory hearing record and may properly take into account other reliable information available to it.^{1/} All three of the matters on which the Appeal Board has reopened the record have been the subject of extensive materials available to the Commission and its staff since the close of the hearing

^{1/} Throughout this proceeding, the Commission has consistently reserved to itself decision as to the lifting of the immediate effectiveness order. Metropolitan Edison Company, CLI-79-8, 10 NRC 141, 149 (August 9, 1979); CLI-81-19, 14 NRC 304 (August 20, 1981); CLI-81-34, 14 NRC 1097, 1098 (December 23, 1981). Moreover, the decision as to the lifting of an immediate effectiveness order does not require formal adjudication, where the decision must be based exclusively on the record of formal hearings, but rather informal adjudication. Kerr-McGee Corp., CLI-82-2, 15 NRC 232 (1982), affirmed, City of West Chicago, Illinois v. United States Nuclear Regulatory Commission, 701 F.2d 632 (7th Cir. 1982), and the further sources cited in footnote 2, supra. Consequently, as an informal adjudication in an enforcement proceeding, the Commission may base its decision on reliable information not exclusively derived from a public hearing. Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402 (1971).

before the Licensing Board. The Commission has an obligation to summarily lift Licensee's suspension and restore the original rights under the license when it has sufficient information to do so.^{2/}

With respect to each of the topics which have been remanded to the Licensing Board, Licensee notes the following:

1. Licensed Operator Training. In ALAB-772, the Appeal Board does not fault the adequacy of the extensive record which supported the Licensing Board's determination in August, 1981 (LBP-81-32, 14 NRC 381 (1981)) that Licensee had in place at TMI-1 a comprehensive and acceptable training program, that Licensee's training was adequate and that Licensee had complied with the Commission's

2/ Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-79-7, 9 NRC 680 (1979), aff'd, Friends of the Earth, Inc. v. United States, 600 F.2d 753 (9th Cir. 1979); Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant), CLI-83-27, 18 NRC 1146 (1983); Public Service Company of Indiana (Marble Hill Nuclear Generating Station), CLI-80-10, 11 NRC 438 (1980); Consumers Power Company (Midland Plant), CLI-73-38, 6 AEC 1082 (1973); See Northwest Airlines, Inc. v. Civil Aeronautics Board, 539 F.2d 748 (D.C. Cir. 1976); Interstate Commerce Commission v. Oregon Pacific Industries, Inc., 420 U.S. 184, 193-194 (1975). The NRC Staff consistently has maintained this position. See, e.g., NRC Staff Comments on Immediate Effectiveness With Respect to Licensing Board Decision on Management Competence/Operator Training, September 11, 1981, at 6; NRC Staff Comments on Immediate Effectiveness With Respect to Licensing Board Decision on Cheating Incidents, August 20, 1982, at 4-5; Transcript of Oral Arguments Before the Commission (Immediate Effectiveness), October 14, 1981, Pt. II at 102-04.

August 9, 1979 and March 6, 1980 Orders insofar as they relate to training (*Id.* at 478-79 (¶276)).

That Licensing Board decision, however, explicitly was made subject to the outcome of evidence on cheating. See *Id.* at 403 (¶45). As to the adequacy of the subsequently reopened record on cheating, the Appeal Board generally agreed with the Licensing Board that "the overall inquiry (especially the hearing) was as thorough as possible." ALAB-772, slip. op. at 61.

The Appeal Board's finding of inadequacy with the record is simply the asserted failure of the Licensing Board subsequent to development of the cheating record to have sought, from the independent experts relied on for the initial record on training, further testimony as to their conclusions in the light of the cheating record. *Id.* at 65, 67.

The Commission has available to it from independent reviewers substantial information on Licensee's training program. These independent judgments are subsequent to disclosure of the cheating incidents and the deficiencies in Licensing's administration of training noted in the reopened hearing record. Thus, Licensee's training program

has been the subject of NRC reviews and inspections. See, for example, NRC Inspection Reports 82-19, 83-02, 83-10, 83-22, 83-29, 84-04; 1982 SALP (January 20, 1983); 1983 SALP (May 7, 1984); NUREG-0680, Supp. 4 (October, 1983); Operational Readiness Evaluation 84-05 (April 13, 1984); Licensed Operator Review and Summary (March 30, 1984). It has been the subject of an independent review by Design Data Laboratories (provided by Board Notification to Appeal Board on October 5, 1982), which recently was endorsed by Mr. Denton to conduct a two-year independent audit of Licensee training as required by the Licensing Board. It has been the subject of INPO evaluations in October, 1981 and May, 1983, which included assessments of training.

These reports have all been provided and are available for Commission consideration. Together they provide a solid basis for concluding that a sound training program has been in effect at TMI-1 which protects against cheating and corrects the deficiencies found by the Licensing Board, noted by the Appeal Board, and acknowledged by Licensee to have existed in the early post-accident training period. Moreover, since receiving

ALAB-772, Licensee has undertaken to promptly re-activate the OARP Review Committee to obtain their evaluation of the present training program.

Finally, the Commission also has available the results of retesting of TMI-1 operators in accordance with NRC's latest stringent examination administrative controls.

2. TMI-1 leak rate testing. In ALAB-772, the Appeal Board notes its prior reopening decision in ALAB-738 for hearing on pre-accident leak rate testing practices at TMI-2, further noting that the Commission stayed that reopened hearing in October, 1983. ALAB-772, slip op. at 149, 150 n. 114. The Appeal Board then proceeds to grant in ALAB-772 a motion to reopen as to TMI-1 leak rate practices. Id. at 151. Despite observing that the overall conclusion of recent NRC Investigative Reports (#1-83-028 and supplement) are favorable to Licensee, the Appeal Board nevertheless expresses its belief that they are the type of material best scrutinized by the Licensing Board as part of its review of all of the circumstances surrounding the leak rate practices at Unit 1. That may be so. It need not, however, control a Commission decision on restart. The Commission

can readily conclude on the basis of the recent OI Investigation Reports that questions of management integrity no longer exist as to this matter, even assuming the Commission agrees with the Appeal Board that some details of leak rate testing at TMI-1 warrant further hearings. The Appeal Board does not suggest that management integrity is questioned in the OI Report. Rather it cites factors on which the Commission has considerable other measures of Licensee. See ALAB-772, slip. op. at 153. But see, for example, 1982 SALP (January 20, 1983); 1983 SALP (May 7, 1984); NRC Inspection Reports 83-10, 83-25, 83-26, 84-08; INPO Evaluation (October, 1981 and May, 1983); NUREG-0680, Supp. 4 (October, 1983); NUREG-1066 (May, 1984); GPUN (P.R. Clark) ltr. to NRR (H. Denton), November 28, 1983 (Status of Personnel Changes); Management Review For Restart (May 11, 1984).

3. Dieckamp Mailgram. In ALAB-772, the Appeal Board faults the Licensing Board for not further exploring the circumstances surrounding a mailgram Mr. Dieckamp sent to Congressman Udall on May 9, 1979. ALAB-772, slip. op. at 128-34. Specifically, as to Mr. Dieckamp, the Appeal Board notes

that the Licensing Board did not question Mr. Dieckamp on this matter and further that it is not readily apparent that the NRC staff, upon whom the Board did rely (See NUREG-0760, particularly p. 24), ever interviewed him. Id. at 129-n.99, 132. The Commission already has available to it the information as to Mr. Dieckamp that the Appeal Board would seek by reopening the record.^{3/} As Licensee pointed out in its immediate effectiveness comments to the Commission in September, 1981, Mr. Dieckamp, in fact, was directly questioned by the staff in a deposition in September, 1980. That deposition which explored Mr. Dieckamp's knowledge and sources of that knowledge at the time he sent the 1979 mailgram is available to the Commission. Moreover, the Commission itself has questioned Mr. Dieckamp on the mailgram. Public Meeting, Presentation on TMI-1 Restart, October 14, 1981, at 10, 91-95 (morning session) and at 3-6 (afternoon session). Further,

^{3/} In addition to exploring Mr. Dieckamp's knowledge when he sent the mailgram in 1979, the Appeal Board would explore other individuals' knowledge and appreciation of the pressure spike on the day of the accident. See ALAB-772, slip op. at 132 n. 103, 134. Knowledge of others could be reexplored in a hearing, but it appears unnecessary to a determination as to Mr. Dieckamp's knowledge and the basis for his knowledge in May, 1979.

as Licensee has previously stated to the Commission, the earliest of the interviews of the two individuals in the control room on March 28 whose appreciation of the hydrogen spike came later to be known was not conducted by NRC I&E investigators until after Mr. Dieckamp's mailgram and the Company did not receive a transcript of this interview until months later. In the only interview of either of these two individuals which took place prior to the mailgram (conducted by GPU personnel on April 25th), no appreciation, on the day of the accident, of the pressure spike was reported. Thus, the Commission already has the information available on which to judge Mr. Dieckamp's knowledge in May, 1979, which the Appeal Board seeks through reopening.

Licensee is still reviewing the Appeal Board's Decision. However, based on review to date and for the reasons stated above, Licensee does not believe that Decision, including the Appeal Board's order to reopen on these discrete subjects, warrants any change in the Commission's tentative schedule for a decision on lifting immediate effectiveness. A reopened hearing may enhance the adjudicatory record in this proceeding; it is not necessary, however, for a Commission decision now to lift the immediate effectiveness of the Commission's 1979 suspension orders.

We are deeply concerned over the implications for a decision relative to restart of TMI-1 that are implicit in the Appeal Board's order. We can envision yet another delay of many months if the Commission accepts the option of awaiting the result of another reopened proceeding before acting. Licensee fully accepts the primacy of assuring public health and safety. Information available to the Commission is ample to provide the required reasonable assurance. Further delay for reopened hearings will not provide sufficient increased assurance to offset three adverse consequences to GPU and to its customers: promised rate relief to the citizens and businesses that it serves will be further postponed; the owners of GPU's facilities will be required to wait for an additional indefinite period before receiving a return on their investment; and, most important, the schedule for defueling and clean-up of TMI-2 will almost certainly be further delayed. In a broader sense, if the Commission is unable to bring this matter to the point of decision it must be of concern to all elements of the nuclear power industry and to those who rely on that industry for needed supplies of electric power.

The Commission had originally projected that the proceeding prior to a decision on restart would require 12 months. We are now approaching the sixth year. We question whether the benefits to the public associated with these repeated delays outweigh their costs. We believe that the Commission has the

information available to it now to permit it to make a sup-
portable decision in this matter and respectfully urge that it
act on that information.

Respectfully submitted,
SHAW, PITTMAN, POTTS & TROWBRIDGE

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
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Before the Commission

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

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Licensee's Comments on ALAB-772 (Management Phase) dated May 29, 1984, was served this 29th day of May, 1984, by hand delivery to those persons on the attached Service List designated by an asterisk (*) preceding their name, 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)
(Three Mile Island Nuclear)
Station, Unit No. 1))

Docket No. 50-289 SP
(Restart-Management
Phase)

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