490.

DOCKETED
USNRC

'84 JUN -6 A10:01

June 4, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

LICENSEE'S ANSWER TO TMIA MOTION TO REOPEN
THE RECORD ON TRAINING PROGRAM IRREGULARITIES
AND REPORTABILITY OF BETA AND RHR CONSULTANT REPORTS

On May 23, 1984, TMIA filed a motion with the Appeal Board seeking to reopen the TMI-1 restart proceeding. The motion seeks to litigate the training program existent at TMI prior to the March, 1979 accident at TMI-2, the significance of the 1983 BETA and RHR Reports, and the adequacy of Licensee's disclosure of these matters. The purpose of such litigation would be to reevaluate Licensee's corporate character or integrity. Licensee opposes the TMIA Motion.

In response to previous motions to reopen filed in this docket, the Appeal Board in ALAB-738 succinctly summarized the

8406060407 840604
PDR ADOCK 05000289
Q PDR

DS03

"heavy" burden placed upon the proponent of a motion to reopen the record.1/

> The criteria that a motion to reopen must satisfy have evolved over the last decade into a well defined tripartite test.
>
> (1) Is the motion timely? (2) Does it address significant safety (or environmental) issues? (3) Might a different result have been reached had the newly proferred material been considered initially?
>
> Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-598, 11 N.R.C. 876, 879 (1980). See Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 N.R.C. 320, 338 (1978); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 A.E.C. 520, 523 (1973).

Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), ALAB-738, 18 N.R.C. 177, 180 (1983). This burden is not reduced because the Appeal Board has decided to reopen

---

1/ Whether the TMIA Motion now properly rests before the Appeal Board in view of the issuance of the management decision in this case, ALAB-772, is unclear. We would expect the Appeal Board to rule on the Motion because it has retained jurisdiction over the management case pending remand in ALAB-772 of several discreet issues. Cf. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), ALAB-699, 16 N.R.C. 1324, 1327 (1982) (licensing board has authority to reopen until it has issued a complete decision); compare Virginia Electric & Power Co.) (North Anna Nuclear Power Station, Units 1 and 2), ALAB-551, 9 N.R.C. 704, 705 (1979) (once Appeal Board has terminated its review, its jurisdiction comes to an end). In any event, Licensee requests that any referral of the Motion to the Licensing Board include the referral of Licensee's Answer, as well.

the proceeding on other matters. See Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-756, 18 N.R.C. 1340, 1344 (1983) (application of tripartite test to motion to reopen on construction QA issue notwithstanding fact that record previously reopened on issue of design QA). The TMIA Motion is not based on significant new information, nor would the Licensing Board have reached a different result had this information been considered initially. Accordingly, the TMIA Motion should be denied.

I. Pre-Accident Training Practices

The TMIA Motion does not make a timeliness argument in support of the alleged need to reopen the hearing on pre-accident training practices, other than to state generally that it received the exhibits supporting the Commission's investigation into past training irregularities, Report No. Q-1-84-004, in mid-May. The absence of a timeliness argument is surprising, in view of the obvious untimeliness of this portion of the motion to reopen.

The substantive adequacy of training at TMI was litigated before the Licensing Board in 1981. TMIA was not sufficiently interested in this issue to have a contention on training. However, it attended and participated in the hearings devoted to training issues. TMIA cannot seriously be suggesting that until now, it has not realized that there might have been

deficiencies in the pre-accident training program at TMI. In fact, TMIA does not explicitly state this. However, it does say that pre-accident training practices raise "much larger questions in terms of overall management integrity"; presumably, it contends that these "much larger questions" are new. TMIA Motion at 13.

In support of its motion to reopen on pre-accident training practices, TMIA points to documents that surfaced in the B&W litigation that discuss pre-accident training practices and asserted deficiencies. TMIA Motion at 10-22. Most of the documents referred to by TMIA have been publicly available for some time: the Keaten Report was provided to TMIA in November, 1981; the Book Memorandum was closed-out by the Office of Investigations in a May, 1983 investigation report, Q-1-83-014, which was provided to TMIA on June 27, 1983 (see Board Notification 83-71A); the 1977 and 1978 Tsaggaris memoranda referred to by TMIA were previously cited by TMIA in its July, 1983 Interim Comments on the B&W Trial Record. The only arguably "new" evidence is the redundant, 1976 Tsaggaris memorandum and the Noll memorandum. See Exhibits 1 and 2 of backup materials to OI Report Q-1-84-004. TMIA's own work substantiates this fact: its discussion of past training deficiencies is remarkably similar to a portion of a pleading filed with the Commission in July 1, 1983. See attached pages from TMIA Interim Comments on B&W Trial Record. TMIA states, "All of the above

discussed deficiencies raise serious questions about management's commitment to resolve problems of which it is fully aware." TMIA Motion at 16. Even if this statement were true (which Licensee disputes), TMIA offers no explanation as to why these questions are surfacing now. Although the untimeliness of TMIA's Motion is not absolutely dispositive, its extreme lateness certainly suggests that TMIA's "heavy" burden has not been met.

Moreover, without regard to the untimeliness of the TMIA Motion on training inadequacies, TMIA's Motion does not contain any significant new information. There is no question that the "quality of training" at TMI is a central element in establishing GPU Nuclear's qualifications to operate TMI-1. TMIA Motion at 7. The testimony in the restart proceeding unequivocally established the attention paid by Licensee after the TMI-2 accident to the substantive adequacy of the training program at TMI. See Metropolitan Edison Company (Three Mile Island, Unit 1), LBP-81-32, 14 N.R.C. 381 at 441-79 (¶¶163-276). TMIA admits that this issue was litigated in enormous detail during the restart proceeding. "Without question, Licensee's training department has been the subject of intense scrutiny in the restart hearing because of the widely held belief that inadequate training contributed significantly to the seriousness of the accident." TMIA Motion at 8, citing the Report of the President's Commission on the Accident at Three Mile Island,

Vol. 1 at pp. 45-50; <u>see</u> LBP-81-32, 14 N.R.C. at 442 (¶ 168). A comparison of the very pages of the Kemeny Commission Report referred to by TMIA with the allegedly "new" information about training referred to by TMIA establishes that, even where the specific facts are not contained in the Kemeny Report, their significance certainly is.2/

TMIA appears to be arguing that the information it cites casts an important new light on the Licensing Board (and Appeal Board) findings on training. Notwithstanding TMIA's effort to fit the information about past training practices, the import of which has been well known for five years, into an allegedly new "integrity" context, the plain fact is that TMIA's "integrity" argument is baseless. Contrary to what TMIA may believe, a new argument, however accusatory, does not constitute new information.

Moreover, TMIA is incorrect and, given the nature of the accusation, grievously so, when it states that "Licensee has misrepresented the most serious aspects of these [past training] deficiencies to the Commission and to the public." TMIA Motion at 9. TMIA's stated basis for Licensee's alleged

---

2/ Moreover, one of the specific deficiencies identified by TMIA was the decision by senior plant managers prior to the TMI-2 accident not to retain an operator's license. TMIA Motion at 17-18. This particular deficiency is explicitly identified on page 50 of the Kemeny Commission Report, one of the very pages cited by TMIA.

misrepresentation is the confidence Licensee expressed in its testimony in the restart proceeding that its new training organization and programs were adequate. Id. If TMIA is suggesting that Licensee's testimony either was required to describe pre-accident training practices or that, given these past practices, Licensee cannot institute an adequate training program and its testimony should have so stated, neither of these arguments is valid. Moreover there is no reason why such an argument could not have been raised during the 1981 hearings or in findings and exceptions related to the 1981 PID.3/

3/ TMIA also states, "management misrepresented the seriousness of training programs to the NRC," TMIA Motion at 18-19 and n.8. TMIA's support for this accusation is Licensee's statement in its December 5, 1979 response to NRC's Notice of Violation that the TMI operators had an above average performance record on the licensed operator exams. Licensee does not understand how TMIA can in good faith label this statement a misrepresentation. In the first place, the statement is accurate. In addition, an almost identical statement is contained in the Kemeny Report at the pages referred to by TMIA in its Motion. Kemeny Report at 49 ("TMI operator license candidates had higher scores than the national average on NRC licensing examinations and operating tests. Nevertheless, the training of the operators proved to be inadequate for responding to the accident."). Furthermore, Licensee's December 5, 1979 letter also recognized "the need to significantly upgrade our nuclear program," and identified training as one specific area requiring revision and expansion.

Licensee notes that TMIA's character attack on Licensee is undermined by TMIA's own July 1, 1983 Interim Comments to the Commission on the B&W Trial Record. In its Interim Comments, TMIA referred to Licensee's December 5, 1979 response to the NRC's Notice of Violation and stated that in it, Licensee "downplays the seriousness of the training department problem." TMIA Interim Comments at 53 and 33. Whether or not Licensee concurs with this characterization, it is clearly different

(Continued Next Page)

Certainly, they do not substantiate the charge of misrepresentation that TMIA cavalierly seizes upon to characterize Licensee's viewpoint, with which it takes issue.4/

(Continued)

from the misrepresentation label TMIA now invokes. Yet this change, which constitutes a serious attack on Licensee's integrity, is not supported by any additional factual basis. Compare id. at 53 and 33 with TMIA Motion at 18-19.

4/ TMIA readily indicts Licensee and its senior managers, suggesting that they lack competence and/or integrity. Yet its basis for doing so suggests that TMIA considers itself not subject to a standard of accuracy, much less the high standards of conduct that it (rightfully) expects from Licensee. Thus, TMIA suggests that Dr. Robert Long, Licensee's Vice President of Nuclear Assurance, is either ignorant or is consciously misleading the NRC Staff when, in his Office of Investigations interview, he stated his recollection that the Keaten Task Force did not spend a great deal of effort on training. See TMIA Motion at 21. TMIA challenges this recollection by stating, "Yet of all sections in the final task force report, the 'training section' was one of the longest." Id. A review of the Keaten Report establishes that not only is training not listed in the Report's table of contents, but the Report devotes only two of its total of forty-five pages to the subject of training. See GPU Accident Review Task Force Final Summary Report (Dec. 15, 1980), filed with the Commission, Appeal Board and parties by Licensee's counsel on November 14, 1981. Thus, Training is only "one of the longest" sections because the major sections of the report, designated as A through G, are divided up into numerous subsections, of which Training is one. This "longest" subsection is one of nine subsections contained in Section B of the Report, which discusses various aspects of the issue, Rationale for the Control Room and Staff Personnel Response. Using the verification gauge of the size of the discussion relied upon by TMIA -- the length of the discussion -- it is TMIA and not Licensee that has "misrepresented" the record. It is evident from a review of Table 1 of the Keaten Report, a copy of which is attached, that the task force's focus was not on training.

Pre-March, 1979 training practices were not litigated during the restart proceeding because, as TMIA recognizes, it was well understood that significant changes to Licensee's training program were necessary. In particular, the Commission's August 9, 1979 Order required the retraining of licensed operators. _See_ LBP-81-32, 14 N.R.C. 381 at 451 (¶ 196). Moreover, Licensee was intent upon entirely reorganizing and changing the content of its TMI training program. _Id_. at 443 (¶ 169). Licensee therefore did not present testimony on past training activities, which were obsolete. Rather, Licensee's case focused on the new training organization and programs which were instituted at TMI to respond to the lessons Licensee and the industry had learned from the TMI-2 accident. This was appropriate in view of the fact that the purpose of the restart proceeding was to establish Licensee's post-accident capability to operate TMI-1 safely. _Cf_. ALAB-772, slip op. at 11 n.7 (the focus of the restart proceeding is on Licensee's ability to operate TMI-1 safely in the future). No party, including TMIA, complained about this focus. Licensee's training efforts, and corresponding testimony, were directed at establishing that this was in fact the case. The fact that a licensed operator was critical of the training program in 1978, for example, was and still is not material. _See_ TMIA Motion at 12, n.6. As the Appeal Board stated in response to an Aamodt motion to reopen the record on the basis of a 1978 audit of training at TMI,

> Moreover, the significance of the audit to this proceeding is not apparent. Its findings do suggest much room for improvement in TMI management in 1978. But as a result of the accident at Unit 2 and the extensive hearings below, licensee's present management and training program are substantially different from that in 1978. See LBP-81-32, supra, 14 NRC at 403-79. The Aamodts fail to explain how consideration now of this report -- critical of a management organization that no longer exists -- might affect the outcome of this proceeding.

ALAB-738, 18 N.R.C. 177, 195 (1983). The Appeal Board's analysis is directly applicable to the pre-accident training information on which TMIA's Motion is based.

In summary, Licensee's decision not to present testimony on pre-accident training was not unreasonable, much less evidence of a lack of integrity. Moreover, had TMIA been interested in this subject, the restart proceeding afforded it the opportunity, which it chose not to exercise, of pursuing the future implications of licensee's past training practices. (In the maintenance area, TMIA did pursue a comparable contention. See LBP-81-32, 14 N.R.C. at 479-501 (¶¶ 277-348); ALAB-772, slip op. at 95-113.) The TMIA Motion to reopen the record on past training deficiencies and TMIA's characterization of the import of those deficiencies utterly fails to satisfy the tripartite test for reopening a record. Accordingly, the motion should be rejected.

II. The BETA and RHR Reports

Over a year ago, TMIA filed a motion to reopen the record on the basis of the BETA and RHR Reports and the timeliness of Licensee's disclosure of these documents. See Three Mile Island Alert Motion to Reopen the Record, May 23, 1983. The Appeal Board denied the motion, noting that it was premature to consider these matters because the NRC Staff investigations were still underway. ALAB-738, 18 N.R.C. 177, 197 (1983). However, the Appeal Board also found that "TMIA has failed to call to our attention anything so far that might have made a difference in the Licensing Board's decision." Id. In the Appeal Board's judgment, some portions of these reports were critical of TMI management; other portions were favorable. Id. "Significantly, the specific focus of the BETA Report is on ways to cut costs and improve the efficiency of operations, not on safety matters." Id. at 198. With respect to the RHR Report, the Appeal Board noted that it represented "only the initial stage of a much larger consulting activity," was not consciously "one-sided", was not designed to address management integrity directly, and was potentially confusing. Id. The Appeal Board therefore concluded:

> Given the limitations in both reports and -- more important -- the fact that the ground covered therein (including the criticisms) was well traversed at the hearing below, we are unable to conclude that any of the matter called to our attention might have made a difference in the Licensing

> Board's decision. Further, we would not want to discourage any licensee from undertaking such reviews of its management and operations (and disclosing their results) for fear of reopening a closed record.

ALAB-738, 18 N.R.C. 177, 198-99; see also NUREG-0680, Supp. No. 4 at 2-1 to 2-2 (NRC investigators could identify in RHR and BETA Reports "no information which raised significant safety or regulatory concern."

We believe the Appeal Board's prior consideration of the significance of the BETA and RHR Reports relates both to the reopening the record on the substance of the reports themselves and on the matter of the timeliness of their disclosure by Licensee. This is because both of these issues hinge on the materiality or significance of the reports themselves. At issue today, however, is only the second question, namely, whether the new TMIA Motion is simply traversing old ground, or whether it establishes that there is significant new information about the reportability of the BETA and RHR Reports which might have altered the Licensing Board (or Appeal Board) decision on Licensee's management capability.

In view of the recent issuance of the backup materials supporting the Office of Investigation Report on the reportability of the RHR and BETA Reports, Licensee does not dispute the timeliness of this portion of the TMIA Motion. However, these materials certainly do not contain significant new information which justify reopening the TMI-1 record. To the

contrary, OI interviews of members of Licensee management, which indicate these individuals' perceptions of the RHR and BETA Reports, are consistent with the legal position Licensee has taken as to the significance of the reports, viz., that they are not "material". The OI Report backup materials therefore substantiate Licensee's good faith in disclosing the BETA and RHR reports when it did, and refute TMIA's accusations about Licensee's integrity. This conclusion is buttressed by the conclusions reached by OI after conducting its major investigative effort into the reportability issue.

The crux of TMIA's argument on the reportability of the BETA and RHR Reports is its view that, "No reasonably unbiased investigator could find other than a serious lack of integrity by Licensee's management on the basis of the evidence obtained in this [OI] investigation." TMIA Motion at 26. The asserted basis for this stinging indictment is Licensee's alleged "past failure to comply with reporting requirements, demonstrating clear lack of responsible performance by current management relating directly to its integrity", id., and Licensee's continued perception that it was not obligated to disclose to the Appeal Board and the parties to the restart proceeding the RHR and BETA Reports. Id.

Rather than repeating here in full its understanding of a licensee's affirmative disclosure requirements, Licensee refers the Appeal Board to Attachment 10 to its Response to the

Commission's Order of October 7, 1983. (A copy of the Response (see page 8) and Attachment 10, previously provided to the parties, is appended to the Appeal Board's copies of this Answer.) In summary, a licensee must routinely disclose to the NRC Staff and, while a proceeding is underway, must notify the tribunal and the parties about information that is "relevant and material" to the decision or matter at issue. Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-143, 6 A.E.C. 623 (1973) (emphasis added); see also Virginia Electric & Power Co. (North Anna Power Station, Units 1 and 2), ALAB-324, 3 N.R.C. 347, aff'd in part, rev'd in part, CLI-76-22, 4 N.R.C. 480 (1976), aff'd, 571 F.2d 1289 (4th Cir. 1978) (material false statements under Section 186 of the Atomic Energy Act, 42 U.S.C. § 2236). Because all "material" information is, by definition, relevant, the real issue is the definition and application of the difficult legal concept of materiality. The NRC's recently revised Enforcement Policy states that material information has the "capability to influence a reasonable agency expert." 49 Fed. Reg. 8583 (1984). Unfortunately, this definition does not fully resolve the inquiry because the term "influence" is not unambiguous. In Licensee's view, "influence" must mean that the information has a significant impact on the expert; otherwise, materiality would be indistinguishable from the extremely broad concept of relevancy. See TSC Industries, Inc. v. Northway, Inc., 426

U.S. 438, 449 (1976) (materiality must have a "substantial likelihood" of affecting the decision maker's decision). Clearly, however, if the information is redundant with information of which the Staff or tribunal already is fully aware, it cannot have any independent influence.

TMIA first argues that Licensee is disingenuous or somehow culpable in maintaining that the safety significance (or, actually, insignificance) of the BETA and RHR Reports is pertinent to the issue of reportability. TMIA Motion at 26-28. In Licensee's view, TMIA's argument succeeds only in establishing TMIA's lack of understanding of the NRC's affirmative disclosure requirements and of the legal concept of materiality. Licensee does not dispute TMIA's suggestion that GPU Nuclear management interviewed by OI refer repeatedly to their perception that the subject reports lacked safety significance. Licensee's managers believe that information without safety significance cannot be material to the NRC Staff or to NRC tribunals, which are concerned only with issues of health and safety consequence. Even if one were to challenge this view, Licensee's integrity can hardly be questioned for holding it.

TMIA next reviews selected portions of the exhibits supporting the OI investigative report, focusing on statements by Messrs. Dieckamp, Arnold, Clark, Hukill and Long about the immateriality of the BETA and RHR Reports. For the most part, Licensee does not dispute TMIA's characterization of Licensee's

position on the (non)reportability of the BETA and RHR Reports.5/ See TMIA Motion at 28-37. However, Licensee does not concur with the significance TMIA appears to attach to Licensee's recognition that the NRC Staff (OELD) took issue with Licensee's view of the reportability of these reports. Id. at

---

5/ Licensee does strongly disagree with TMIA statement that "RHR's findings as to the quality of the training program were quite similar to [Judge] Milhollin's." TMIA Motion at 33. In the first place, RHR did not make findings on training. As TMIA well knows, RHR surveyed operators' attitudes. See ALAB-738, supra, 18 N.R.C. at 198. As to the record basis for this assertion, See TMIA Motion at 33 n. 13, Licensee has already responded to it in great detail, and the Board has rejected a previous TMIA motion to reopen on these arguments about the substance of the RHR Report. See Licensee's Response to Three Mile Island Alert Motion to Reopen the Record, June 7, 1983, at 9-16; ALAB-738, supra, 18 N.R.C. at 198-99.

Licensee also finds TMIA's citation to a statement by Mr. Arnold misleading. While Mr. Arnold did indicate that he expected that the BETA Report would be made public eventually, because of the State utility commission's interest in efficiency, see TMIA Motion at 37, he also made clear that this publication would occur "at some point in time" in the future. OI Report 1-83-013, Exh. 1 at 28-29. Contrary to TMIA's suggestion, this statement supports the view that Licensee never intended to conceal the BETA findings from the public; it simply did not consider the report NRC-reportable.

Licensee finds particularly objectionable TMIA's assertions about Licensee's views on the substantive adequacy of training. See TMIA Motion at 33-35. Licensee notes that all lawyers appearing before the NRC, including those appearing on behalf of TMIA, are bound to accurately represent the facts and the positions of the parties, in accordance with the Canons of Ethics. See Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-505, 8 N.R.C. 527 (1978) (counsel chastised for misstating legal posture of an opposing party); Tennesee Valley Authority (Hartsville Nuclear Plant, Units 1A, 2A, 1B and 2B), ALAB-409, 5 N.R.C. 1391 (1977) (counsel criticized for improperly misquoting an NRC regulation).

31. TMIA appears to be suggesting that OELD's view that these documents were reportable somehow made them so. Licensee disagrees.6/ In any event, TMIA does not even suggest a basis, nor is there one, for its claim that "Licensee has either misrepresented its positions to the Licensing and Appeal Board, or to OI. In either case, it indicates a serious integrity problem." TMIA Motion at 36. In many arenas, such wholly unsupported accusations would be stamped as libel.

TMIA next argues that Licensee "had inappropriate motives for withholding the reports." TMIA Motion at 41; see id. at 37-42. The considerable evidence supporting OI's investigation, as well as the investigative report itself, simply do not support this accusation.7/ Moreover, Licensee does not believe

---

6/ TMIA also appears to suggest that Licensee knew that it should have disclosed these reports. TMIA Motion at 36-37. As a basis for this suggestion, TMIA quotes GPU Nuclear President Philip R. Clark out of context. Mr. Clark's statement makes clear that Licensee did not think the reports had to be disclosed. Mr. Clark was simply reflecting the company's subsequent reaction to the controversy over the reportability of the RHR and BETA Reports. See OI Report 1-83-013, Exh. 2 at 34-35.

7/ See, e.g., OI Report No. 1-83-013, Exh. 1 (testimony of Robert C. Arnold) at 17-18, 24-29, 38-40, 55 (Arnold's understanding of reporting standard and its application to BETA and RHR Reports; concerns about public disclosure of operators' and other employees' confidences); Exh. 2 (testimony of Philip R. Clark) at 6-8, 14, 16-22, 29-31, 34-36, 44-46 (Clark's views that BETA Report an efficiency study, and RHR Report an examination of operator attitudes and morale; confidentiality of RHR data; sensitivity to BETA Report staffing reduction recommendations; reportability of reports); Exh. 11 (testimony of Henry D. Hukill) at 12, 18-19, 20-22, 25-26, 35-37, 42-45, 49-53

(Continued Next Page)

the very excerpts selected by TMIA from the investigative interviews, even when taken out of context, support this view, either. See, e.g., Hukill statement that he was not concerned about the publicity impact of the reports' disclosure, although he knew that they, as most TMI subjects, probably would get negative publicity. TMIA Motion at 41, citing OI Investigative Report Exhibit 11 at 51.

TMIA is correct that Licensee publicly released the RHR and BETA Reports because of the staff's view, not Licensee's, that it was necessary to do so. However, this fact does not reflect negatively on Licensee. Rather, it confirms Licensee's belief that it was not required to disclose these reports. Licensee continues to believe its original position on disclosure was correct and, therefore, continues to abide by it. See

---

(Continued)

(purpose of BETA and RHR Reports; reportability; motivation in disclosing reports to NRC Staff; perception of reports' contents, materiality); Exh. 19 (testimony of Robert L. Long) at 5-8, 23-25, 33-35 (purpose of RHR Report to assess operators' attitudes; reportability); Exh. 21 (testimony of Herman M. Dieckamp) at 6-8, 11-13, 15-20, 22-27 (sensitivity re confidentiality of RHR work; purpose of RHR and BETA reports; reportability of reports); see also Exh. 3 (testimony of Richard W. Bass of BETA) at 19-24 (BETA Report did not affect health and safety issues); Exh. 4 (testimony of William Wegner of BETA) at 41-44 (re same); Ex. 14 (attached memorandum from NRC Region I staff member Donald L. Caphton to his Director, Thomas T. Martin) ("[t]he subject matter was not believed to have safety impact, yet if taken out of context, would appear to have safety impact); compare Exh. 29 (memorandum from Harold R. Denton to Ben B. Hayes re meaning of phrase, no information of "safety or regulatory concern" in BETA, RHR and INPO reports).

TMIA Motion at 43. This is simply Licensee's good faith understanding of the law. If Licensee's understanding is incorrect, it certainly would not refuse to comply with the articulated standard it was told to satisfy.8/ At this juncture, however, having reviewed NRC case law on affirmative disclosure requirements and material false statements, as well as related case law, Licensee continues to believe its application of these concepts to the facts at issue here was correct. Thus, whether Licensee "does not understand the criteria and its responsibilities for reporting critical information to the Commission" is a legal issue in dispute among the parties. TMIA Motion at 43. However, there is absolutely no basis, nor does TMIA provide any, for the TMIA factual assertion that Licensee "will continue to choose [sic] to deliberately withhold such information if adverse publicity, or action by the Commission, could result." Id.

In summary, TMIA makes a completely specious allegation about Licensee's integrity because Licensee has taken a different, but perfectly legitimate legal position from that position favored by TMIA. TMIA's integrity allegation is not supported by the new materials which sparked it. To the contrary, based on these materials, the OI investigation "did not disclose any

---

8/ Cf. OI testimony of Philip R. Clark regarding Licensee's effort to obtain guidance from the NRC on a standard for affirmative disclosure. OI Report 1-83-013, Exh. 2 at 20-21.

evidence of a deliberate attempt or conscious management decision by GPUN to withhold the information in the BETA and RHR reports from the NRC," OI Report 1-83-013 at 4, nor did it otherwise find evidence that impugned Licensee's character. Such an allegation utterly fails to satisfy the tripartite test for reopening an NRC proceeding.

Because TMIA has failed to make the requisite showing required to reopen the TMI-1 restart proceeding to litigate pre-accident training practices, the RHR and BETA Reports and the adequacy of Licensee's disclosure of these matters, its Motion should be denied.

Respectfully submitted,

Ernest L. Blake, Jr.

Ernest L. Blake, Jr., P.C.
Deborah B. Bauser
SHAW, PITTMAN, POTTS & TROWBRIDGE
1800 M Street, N.W.
Washington, D.C. 20036
(202) 822-1000

Counsel for Licensee

Dated: June 4, 1984