June 13, 1984

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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 Station, Unit No. 1)	)	Phase)

LICENSEE'S REQUEST FOR STAY (ALAB-772)

On June 11, 1984, Licensee filed with the Commission notice of its intent to file a petition for review of ALAB-772, together with a request for extension of time within which to file the petition for review. The petition will request review of ALAB-772 insofar as it reopens and remands the management phase of this proceeding for further hearings by the Licensing Board on training, the Dieckamp mailgram and leak rate testing at TMI-1. Consistent with this notice and pursuant to 10 CFR 2.788, Licensee sought the same date from the Appeal Board a stay of the remand directed by the Appeal Board in ALAB-772 pending Commission action on the petition for review and such further stay as the Commission may order pending review. By Order of June 13, 1984, the Appeal Board dismissed Licensee's June 11 Request For Stay. (A copy of the Appeal Board Order, dated June 13, 1984, is attached.) The Appeal Board dismissed

D507

Licensee's stay request on grounds that any request for stay of ALAB-772 is more properly addressed to the Commission.[1/] In accordance with 10 CFR 2.788, Licensee requests that the Commission stay the remand directed in ALAB-772 pending action on the petition for review and such further stay as the Commission may order pending review.[2/]

As required by 10 CFR 2.788, Licensee sets forth below a concise statement of the grounds for stay, with reference to the factors specified in 10 CFR 2.788(e):

1. Likelihood of prevailing on the merits.

(a) Training. The decisions of the Appeal Board and Licensing Board do not differ on any findings of fact or law but only in the judgments derived from the record of this proceeding. In particular, the Licensing Board fully acknowledged the same weaknesses which the Appeal Board found in Licensee's training program as reflected in the reopened hearing on cheating. Contrary to the Appeal Board, however, the Licensing Board concluded that the commitments made by Licensee to correct those weaknesses and the additional conditions imposed by the Board (including an independent audit of Licensee's training program)

1/ Licensee's request was first sought from the Appeal Board, taking account of Section 2.788(f) of the Rules of Practice.

2/ Prompt Commission action is requested on Licensee's stay request. By Order of June 11, 1984, the Licensing Board has scheduled a prehearing conference on the remanded issues for June 28, 1984. On June 12, Licensee requested the Licensing Board to delay scheduling the prehearing conference pending the outcome of its request for stay.

were a sufficient response to those weaknesses. The Appeal Board's decision contains no suggestion that these commitments and conditions have not been fully implemented by Licensee. The difference in judgments between the Licensing Board and Appeal Board should be settled by the Commission and are likely, in Licensee's view, to be resolved in favor of the Licensing Board's decision.

(b) The Dieckamp Mailgram. The Licensing Board's decision reflects that it was aware that Mr. Dieckamp's mailgram to Congressman Udall in May, 1979, had been explored by investigators following the TMI-2 accident, that it heard directly from the head of an IE team that delved into this matter at Commission direction, that no party sought to question Mr. Dieckamp on this subject, and that it determined the matter was not worth any additional investigative efforts in the hearing context. LBP-81-32, 14 N.R.C. 381, 555-56 (1981). The Appeal Board on the other hand, while recognizing that it "may not be particularly fruitful," ALAB-772, slip. op. at 133, "believe[s] it may be worth some additional effort," Id. at 134, particularly since it is remanding anyway on training issues, Id.

Licensee does not believe, as stated above that a remand on training issues is called for, and

even if training were remanded, the threshold test for reopening and remanding on the mailgram issue should not be lessened for that reason. The Licensing Board's decision was reasonable in 1981 and makes even more sense now with the passage of time. The very IE investigative report, NUREG-0760, referred to by the Licensing Board (and flayed by the Appeal Board) was done at the Commission's request and was reviewed in public meetings with the Commission years ago. No further investigative effort was ordered by the Commission. Furthermore, the Appeal Board points to no evidence overlooked by the Licensing Board (". . . we do not suggest any wrongdoing by Dieckamp . . ." Id, at 133) and the available evidence on this subject was all known to the Commission in January, 1984, when the Commission specifically endorsed Mr. Dieckamp's continued participation in nuclear operations. Memorandum from the Secretary, dated January 27, 1984. Under these circumstances Licensee believes the Licensing Board's decision was reasonable and prudent, and additional resources and time to be expended on a remand of the mailgram matter ordered by the Appeal Board would be unnecessary, fruitless and inconsistent with prior Commission related actions.

(c) TMI-1 Leak Rate Testing. Licensee has been prepared to discuss current TMI-1 leak rate testing procedures in connection with the hearing reopened by the Appeal Board on leak rate testing at TMI-2. When and if the Commission lifts the stay it imposed on that reopened hearing, Licensee plans to introduce testimony which will show that the deficiencies in the TMI-2 practices and procedures have been addressed and corrected for TMI-1. The Appeal Board's decision, however, would reopen not just the question of current TMI-1 procedures but the procedures in effect over five years ago.

The Appeal Board's decision to reopen rests principally on Board Notifications by the NRC Staff to the effect that there were unspecified indications of the same leak rate testing practices at TMI-1 as at TMI-2. Since then, however, the specifics of the TMI-1 pre-accident testing procedures have become known through an OI investigation report which, as acknowledged by the Appeal Board, is favorable in its overall conclusions to Licensee. The OI report removes the serious implications which could have been read into the earlier Board Notifications.

The Appeal Board's decision does indicate that the Board remains disturbed by some aspects

of the TMI-1 leak rate testing. However, the Board did not find, nor do we believe the Board could reasonably have found, that these rose to the level of new information justifying in themselves a re-opening of the hearing.

2. Irreparable Injury.

If, as remains to be seen, the Commission decides that the decision on the restart of TMI-1 must await completion of the entire adjudicatory restart proceeding, Licensee will be irreparably injured by the delay in completion of the proceeding and consequent delay in restart occasioned by a reopened hearing and further appeals. Further delay for reopened hearings will result in 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. Licensee will also suffer irreparable injury, in the form of the effort and expense of preparing for and conducting further hearings, if the Commission grants Licensee's

motion for review and reverses the Appeal Board's decision.

3. Harm to Other Parties.

No other party will be injured by staying the reopening of the hearing pending Commission action on Licensee's petition for review.

4. Public Interest.

The public interest will best be served by avoiding any commitment of resources by the NRC, the Licensee and Intervenors to a reopened hearing pending a determination by the Commission as to whether that commitment of resources is necessary.

On balance the foregoing factors strongly argue in favor of Licensee's request for a stay.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

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Dated: June 13, 1984