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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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USNRC

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

TMIA MOTION TO LIFT STAY ON REOPENED HEARINGS AND RESPONSE TO LICENSEE REQUEST FOR STAY

On October 7, 1984, the Commission indefinetely stayed ALAB-738, 18 NRC 177 (1983) which reopened the management record in this proceeding on allegations of pre-accident falsification of leak rate data at TMI-2. On November 7, 1983, Metropolitan Edison Company was indicted by the United States Department of Justice on eleven counts of pre-accident falsification of leak rate data and destruction of documents at Unit 2. On February 29, 1984, Licensee pled guilty to one count and no contest to six counts of that indictment. On May 24, 1984, the Appeal Board reopened the management record in this proceeding on, inter alia, allegations of leak rate falsification at Unit 1. ALAB-772. On June 13, 1984, Licensee filed with the Commission a request for stay of ALAB-772. A prehearing conference has been scheduled on the reopened proceedings for June 28.

TMIA opposes Licensee's request for stay and hereby moves that the stay on ALAB-738 be immediately lifted. As to the stay on ALAB-738, there is no reason to continue denying the parties an opportunity to develop a record on this issue. First, there are no longer criminal proceedings on-going or threatened on this issue.

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Whereas on October 7 there were legitimate questions as to whether operators would or could cooperate in NRC proceedings because of the then on-going grand jury investigation, these questions no longer exist.

Second, as to the basis orginially asserted by the Staff and the Commission that the hearings should not proceed until OI's investigation was complete on the issue, it is TMIA's understanding that OI has now substantially completed its investigation on Unit 2 leak rate falsification. It is also TMIA's understanding that the company has already commissioned a new investigation of these incidents. Thus, while both the Staff and the Licensee have proceeded to investigate this issue, the very parties who obtained reopening of the record have so far been denied any opportunity to do so. This is grossly unfair.

Third, the Licensing Board has scheduled a pre-hearing conference for June 28 on the issues reopened by ALAB-772. At that time, hearing issues will likel: ɔe discussed and a discovery process may be determined. Included in those discussion will be the Unit 1 leak rate issue. It would be a foolish waste of resounces for the Board and the parties not to be allowed to additionally discuss the Unit 2 leak rate issue at that time.

Finally, the Appeal Board has already determined that it will be unable to "make any final judgement on appeal as to licensee's management competence and integrity without an adequate record [on the Unit 2 leak rate issue]. 18 NRC at 190. This ruling was not appealed, the Commission has not reversed it, and thus it remains legally binding. Yet by its October 7 Order, a directive issued

purely on its own initiatve, the Commission has effectively reversed the effectiveness of the Appeal Board decision. Unless the order is lifted and hearings held in a timely fashion, its actions can be considered of a least questionable legality. The Commission must come to grips with the fact that the ALAB-738 ruling remains in effect despite what the Commission decides to so with ALAB-772.

Whatever legitimate grounds may have at one time existed to stay the "Hartman" hearings, there is no reason to continue denying the Licensing Board an opportunity to develop a record on this issue.

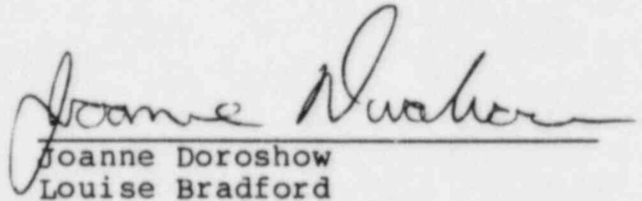
TMIA opposes Licensee's June 13, 1984 request for stay for the reasons outlined in UCS's opposition to be filed June 25, 1984. In addition, TMIA simply notes that a remanded hearing on training is clearly called for. The Appeal Board was entirely correct in finding serious deficiencies in the hearing record relied upon by the Licensing Board, such that there can be no assurance Licensee's training program is now reliable. Second, the Licensing Board's conclusion regarding the "Dieckamp mailgram" was, by its own admission deficient. The Board never questioned Dieckamp himself on the issue, despite earlier on the record observations regarding the necessity for doing so, and other observation such as that the I&E investigators leave the issue "dangling". Further, the Board did no objective evaluation of the evidence whatsoever.

Third, there are significant conflicts in testimony throughout OI's Unit 1 leak rate investigation by people in important, safety related positions at TMI-1 today. These conflicts go to the heart of the leak rate falisification issue. The possibility that certain

individuals in control of TMI-1's operation may have falsified data in the past, for whatever reason, and are now misrepresenting these material facts to NRC investigators, is a extremely serious issue which can only be resolved in the hearing process.

Respectfully submitted,

Three Mile Island Alert, Inc.



Joanne Doroshow
Louise Bradford

June 25, 1984

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CERTIFICATE OF SERVICE

I hereby certify that copies of the attached TMIA MOTION TO LIFT STAY ON REOPENED HEARINGS AND RESPONSE TO LICENSEE REQUEST FOR STAY dated June 25, 1984, were served this 25th day of June 1984, by deposit in the U.S. Mail, first class, postage prepaid, or, hand delivered where possible on June 25th to those on the attached service list.

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