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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE COMMISSION

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

OFFICE OF SECRETARY
DOCKETING & SERVICE
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Docket No. 50-289
(Restart)

NRC STAFF'S ANSWER TO TMIA MOTION
TO LIFT STAY ON REOPENED HEARINGS

Jack R. Goldberg
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July 9, 1984

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I. INTRODUCTION

On August 31, 1983, the Appeal Board reopened the management record on the Hartman allegations of falsification of leak rate records at TMI-2. ALAB-738, 18 NRC 177 (1983). By Order dated October 7, 1983, the Commission stayed that reopening until further order of the Commission. TMIA now moves the Commission to lift the stay of the reopened hearing on the Hartman allegations.^{1/} The Staff opposes TMIA's request that the stay be lifted at this time.

II. DISCUSSION

The basis for the Commission's stay of any hearings on the Hartman allegations was that the Office of Investigations (OI) had not completed its investigation of the matter. That sound basis remains valid today.

^{1/} TMIA Motion to Lift Stay on Reopened Hearings and Response to Licensee Request for Stay, June 25, 1984 (TMIA Motion).

As the Staff stated in its response to the Commission's request for comments on the stay of ALAB-738:

The Staff supports a Commission order staying the Licensing Board hearing on the Hartman allegations of falsification of leak rate data at TMI-2 until after OI completes its investigation into that matter. In the Staff's view, completion of OI's investigation and an evaluation of its resulting Report of Investigation is necessary in order to determine whether a hearing on the Hartman allegations is warranted and, if so, what the appropriate scope of such a hearing, and what the precise issues to be litigated in such a hearing, should be. In fact, even if there were no stay of the Licensing Board hearing on the Hartman allegations, the Staff believes that the hearing itself could not proceed as a practical matter until after OI has completed its investigation and the results of that investigation are available for use in the hearing. Indeed, the Staff has intended on relying on the results of OI's investigation as a key, and the first, ingredient in arriving at a Staff position on the implications of Hartman's allegations for restart. In short, these significant practical considerations strongly support a stay of a hearing on the Hartman allegations until after OI completes its ongoing investigation into that matter.

NRC Staff's Response to the Commission's October 7, 1983 Order, October 27, 1983 at 2-3 (footnotes omitted). The Staff continues to believe that until OI has completed its investigation of the Hartman allegations and issued its resulting report, the stay of the reopening on that matter should continue. This is especially true now that the Commission has decided that the Hartman allegations do not have to be resolved before restart. Tentative Commission Views and Plan for Resolution of Management Integrity Issues Prior to Restart, January 27, 1984.

Furthermore, there is now an additional reason to continue the Stay of the hearing on the Hartman allegations. The Commission has before it Licensee's request for a stay of the hearings ordered by the Appeal Board in ALAB-772, as well as Licensee's Petition for Review of ALAB-772, dated June 22, 1984. The Staff believes that the Commission should

decide at one time, in view of ALAB-738, ALAB-772 and the parties' comments on the stays of those decisions which already have been provided to the Commission, whether any further hearings are required in this proceeding and, if so, what the scope of such hearings should be. Therefore, in the interest of adjudicatory economy and efficiency, the Commission should continue the stay of the hearing on the Hartman allegations until it decides whether and to what extent any further hearings should be held.

TMIA cites four reasons why the stay should be lifted at this time: (1) the completion of the criminal proceeding on the Hartman allegations, (2) TMIA's understanding that OI has "substantially completed" its investigation on Unit 2 leak rate falsification, (3) the desire to discuss the Unit 2 leak rate issue at the June 28, 1984 prehearing conference, and (4) the Appeal Board's ruling in ALAB-738 that there is not an adequate record on the Unit 2 leak rate issue. TMIA Motion at 1-3. None of these reasons warrant lifting the stay at this time.

With respect to (1), the criminal proceeding per se was not the reason for the Commission's stay of ALAB-738. Rather, the stay was based primarily on the fact that OI had not completed its investigation. Therefore completion of the criminal proceeding does not remove the basis for the stay.^{2/}

^{2/} The Staff notes that by Order dated June 25, 1984, the U.S. District Court for the Middle District of Pennsylvania denied the Commission's request for the grand jury record.

Neither does reason (2) support lifting the stay at this time. The Staff does not know whether further investigation of the Hartman allegations may be required by the Commission of OI in view of the unavailability of the grand jury records.^{3/} It is not clear to the Staff, therefore, that the OI investigation has been "substantially completed." Even if the OI investigation is substantially complete, however, the OI Report of Investigation on TMI-2 leak rate allegations is not yet available.^{4/} TMIA reason (2), therefore, does not support a lift of the stay at this time.

With respect to (3), the June 28th prehearing conference has been held and that reason, therefore, is now moot. As for reason (4), clearly the Commission was aware of the Appeal Board's views expressed in ALAB-738 when the Commission decided in its Order of October 7th to review and stay ALAB-738. That reason, therefore, does not now provide a basis to lift the stay.

In summary, the reasons which supported a stay of ALAB-738 remain valid. None of TMIA's arguments provides a basis for lifting the stay at this time.

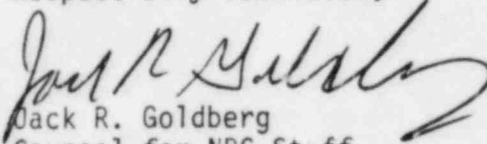
^{3/} See note 2, supra.

^{4/} On June 22, 1984, OI issued a report on additional issues related to Hartman's allegations of falsification of leak rate data at TMI-2. As stated in that report, OI will be issuing a separate report addressed to the issue of falsification of leak rate data. "Investigative Evaluation of Remaining Allegations Relating to Harold Hartman", at 10.

III. CONCLUSION

For the reasons set forth above, the Commission should not lift the stay of the hearing on the Hartman allegations at this time. Rather, the Commission should continue the stay until it decides whether and to what extent further hearings should be held.

Respectfully submitted,


Jack R. Goldberg
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 9th day of July, 1984

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO TMIA MOTION TO LIFT STAY ON REOPENED HEARINGS" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 9th day of July, 1984:

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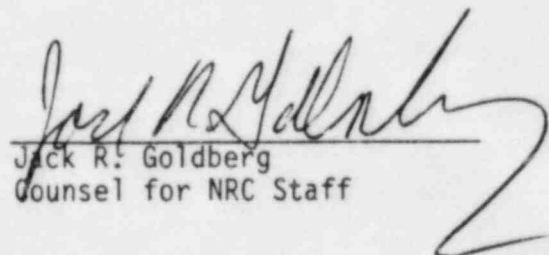
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