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October 29, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

LICENSEE'S REPLY TO UCS AND TMIA'S
COMMENTS IN RESPONSE TO CLI-84-18

In accordance with CLI-84-18 Licensee submits its reply to the comments filed by UCS and TMIA in response to that order.1/ For the most part the comments of both UCS and TMIA repeat

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1/ Licensee is not filing a reply to the comments of the Aamodts or the Commonwealth of Pennsylvania. Most of the Aamodt comments deal with matters outside the scope of CLI-84-18. The Commonwealth of Pennsylvania comments ignore most of the Staff findings in Supplement No. 5 to NUREG-0680, and the Commonwealth does not give even lip service to the Commission's direction that in commenting on CLI-84-18 the parties should address the traditional standards for reopening the hearing. The Commonwealth would apparently have the parties embark on lengthy discovery and hearings without a showing of significant new information likely to cause the Licensing Board to reach a different result.

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earlier comments filed by those organizations and are adequately addressed by the comments already filed by Licensee and the NRC Staff. Licensee confines these reply comments to those items where additional response appears to be in order. The reply comments follow the headings and sequence of the matters discussed in CLI-84-18.

ALAB-772

1. Training

Neither the UCS nor the TMIA comments address the threshhold issue before the Commission as to whether the Appeal Board erred in remanding the training issue for further hearings. The remand was unnecessary and incorrect. The Licensing Board recognized from the outset the importance of training, received voluminous testimony on the subject and met first hand not only with Licensee's expert consultants but with virtually all of Licensee's personnel in charge of the training program. The Board was fully capable of evaluating the information developed in the reopened hearing on cheating without recalling Licensee's consultants. It presented its extensive evaluation in its second management decision and, taking into account Licensee's commitments and additional conditions imposed by the Board, reaffirmed the adequacy of Licensee's training program.

In any event, should the Commission decide to continue the remanded hearing on cheating, the Commission has ample basis for lifting the immediately effective suspension ordered over five years ago and a legal obligation to do so. Both Licensee and the NRC Staff referenced in their comments a large number of evaluations and inspection reports which provide a solid basis for concluding that Licensee has a sound training program. Many of those evaluations are ignored by UCS and TMIA.

UCS is simply wrong in its legal position that in lifting the suspension the Commission can consider only a formal adjudicatory record. The decision to lift a suspension which was itself imposed without a hearing does not require a formal hearing and need not be based on a formal adjudicatory record. Due process requires at most that interested persons have an opportunity to comment on the material on which the Commission's decision relies. That opportunity has been fully provided. Licensee has previously addressed UCS's legal position in a brief entitled "Licensee's Reply to UCS Comments on TMI-1 Restart," dated August 10, 1984. For the convenience of the Commissioners a copy of Licensee's brief is enclosed as Attachment A.

The balance of UCS' and TMIA's comments on training largely repeats arguments previously filed with the Commission which are sufficiently countered by Licensee's October 9

comments.2/

2. Dieckamp Mailgram

UCS does not address the mailgram issue. TMIA's comments ignore the central point made by Licensee and the NRC Staff that the Board had before it the testimony of Mr. Moseley and that the basis for his testimony included his interview with Mr. Dieckamp. As to TMIA's emphasis on the question "whether Mr. Dieckamp should have known the facts and whether he made any effort to discover them," the Moseley interview brought out Mr. Dieckamp's deep involvement at the TMI site in the post-accident reconstruction and analyses, including operator interviews. The relevant excerpts from the Moseley testimony are enclosed as Attachment B.

2/ UCS does make one new argument alleging that the restoration to H of two weeks pay is inconsistent with written policies and assurances that the highest standards of integrity are enforced throughout Licensee's training program. Following the Licensing Board's decision in the reopened cheating hearing Licensee accepted the Board's conclusion that H had cheated on a company exam and so advised H. He was given the choice of accepting the two week suspension without pay recommended by the Board or of being removed from licensed operator duty. He chose the two week suspension as clearly the lesser penalty. Subsequently, at the insistence of the Commonwealth of Pennsylvania, Licensee agreed to remove H from licensed operator duties. Since this action resulted in a more severe penalty than the suspension without pay and considering the choice previously offered to H, Licensee concluded that the only fair course of action was to restore H's lost pay. Fairness to employees is hardly inconsistent with high standards of integrity.

3. TMI-1 Leak Rate Testing

Reviews of the evidence are unanimous that leak rate test manipulation or falsification did not occur at TMI-1. OI, in its report and supplement, "concluded that there was no systematic pattern of falsification of leak rate surveillance tests at TMI-1 during the time period in question nor can we prove that any individual operator knowingly and willfully attempted to manipulate leak rate surveillance test results." The staff has now concurred in these conclusions, stating, "[T]he evidence does not support a finding that there was any willful or systematic pattern of manipulation or falsification of leak rates at TMI-1." NUREG-0680, Supp. 5, at 4-14. The Stier report arrives at the same conclusion: "The overwhelming weight of the evidence demonstrates that TMI-1 personnel did not manipulate or otherwise improperly influence the outcome of reactor coolant inventory balance tests." Report of Edwin H. Stier, TMI-1: Reactor Coolant Inventory Balance Testing (Stier Report), at 9.

Notwithstanding the results of OI's investigation regarding leak rate manipulation or falsification at TMI-1, the Appeal Board, in ALAB-772, while itself recognizing that "[t]he overall conclusion of the [investigative] reports is favorable to Licensee [and] neither a systematic pattern of falsification nor a motive to falsify the leak rate data was discovered,"

nonetheless ignored its own conclusion and ordered the Licensing Board to review all leak rate testing practices at TMI-1. One can only presume that the Appeal Board did so, having already come to a conclusion on the basis of Board Notifications, now shown to have been inadvertently misleading, which had suggested the possibility of leak rate manipulation at TMI-1.

UCS and TMIA by way of their Comments now follow and compound the error of the Appeal Board. In the face of not only the OI report which was before the Appeal Board but also the Stier Report and NUREG-0680, Supp. 5 that have been issued since, all of which find no evidence of leak rate falsification or manipulation, UCS and TMIA nonetheless misstate facts and draw false inferences wrongly suggesting that such leak rate falsification in fact occurred. Without refuting each and every misstatement or improper inference, Licensee feels compelled nonetheless to correct by way of example a few of the false impressions left by UCS and TMIA.

Both UCS and TMIA suggest that the act of adding hydrogen to the make-up tank during a leak rate test was in and of itself nefarious. TMIA states: "[H]ydrogen additions [were made] in amounts which would have no other purpose but to effect a change in leak rate results." TMIA Petition for Revocation of License, at A-212. UCS similarly speaks of hydrogen additions during leak rate testing, "all of which affect leak

rate calculations." UCS Response to CLI-84-18, at 34. In truth, "there were legitimate operational reasons why hydrogen was added to the RCS MUT periodically" and "none of the [hydrogen] additions would have affected leak rates in such a way that if the additions were not made, the limits for RCS leakage would have been exceeded." NUREG-0680, Supp. 5, at 4-6. Thus, UCS and TMIA in their Comments mischaracterize the hydrogen addition issue to leave the false and misleading impression that hydrogen additions were per se improper and that leak rate tests were manipulated by the addition of hydrogen. They do so notwithstanding the clear and unambiguous evidence that hydrogen additions were made legitimately without any intent to alter leak rate test results.

Both TMIA and UCS also mischaracterize the practice at TMI-1 of discarding leak rate tests whose results bore no relation to actual plant conditions at the time of the test. Both intervenors imply that there was something evil or false associated with the discarding of these results and that the practice was designed to cover up excessive leakage. In fact, only those tests deemed "invalid" were not kept. "Invalid" tests were those which were "not indicative of actual plant conditions" and "were caused by several factors such as plant oscillations or transients during the test; operator actions, such as water additions or pumping of the reactor coolant drain

tank; computer input error by the operator performing the test; instrument errors; and possible problems with the computer program itself." NUREG-0680, Supp. 5, at 4-12. Far from attempting to conceal matters to conceal derogatory information about plant conditions, invalid tests were discarded because they were not indicative of true plant conditions. "[T]he evidence does not support a finding that operators were either performing those actions as a deliberate attempt to conceal actual leakage that was in violation of TS acceptance criteria or attempting to conceal this intention from the NRC." Id. at 4-13.

UCS also improperly suggests that leak rate falsification can be inferred from the acceptance of negative leak rates within one gpm as valid. At times during the operation of TMI-1, the standard deviation associated with the leak rate test ranged approximately from 0.2 to 0.7 gpm. As a result, assuming no unidentified leakage or a very low unidentified leakage, one would expect close to half of all leak rate tests to be negative. In other words, due to the inherent variability of the test, negative leak rates were simply indicative of low levels of unidentified leakage and their retention clearly does not suggest the falsification or manipulation of leak rate tests.

4. Mr. Husted

Licensee agrees with UCS that the Commission has the authority to require that individual Licensee personnel be separated from safety-related work upon a finding that the separation is required to protect the public health and safety. There could indeed be circumstances (not in Licensee's view present in the case of Mr. Husted) where the Commission would be justified in making the separation immediately effective in the interest of public safety to be followed promptly by an opportunity for hearing. We disagree however, with UCS's characterization of the Appeal Board's decision as a finding that removal of Mr. Husted from supervision of non-licensed operator training was necessary in order that operation of the plant will not unduly risk public health and safety. The Appeal Board certainly did not say so, much less explain the basis for any such finding.

ALAB-738

1. TMI-2 Leak Rate Testing

With respect to leak rate testing at TMI-2, Licensee feels obliged to respond to certain general comments made by intervenors. First and foremost, TMIA and UCS complain that Licensee has not admitted that TMI-2 leak rate tests were falsified.

TMIA characterizes this as "dishonest" and UCS says that Licensee "continues to deny that leak rate falsification took place." In fact, as intervenors are well aware, Licensee has not had the basis to admit or deny the allegations of leak rate falsification because the factual investigation of these allegations is not yet complete. During the pendency of the criminal case, neither Licensee nor the NRC was able to interview those individuals intimately involved in leak rate testing at TMI-2. At the completion of the criminal case, Licensee engaged Mr. Stier to conduct an independent investigation of leak rate practices. The investigation of TMI-2 practices is well under way and the results will be made public. Similarly, OI, now that the criminal case is over and it can freely speak to key personnel, is pursuing its own investigations of individuals. Once the facts have been gathered, analyzed and studied, Licensee and others will be in a position to tell whether or not leak rate falsification occurred at TMI-2.

In a similar vein, UCS objects that as part of the plea in the criminal case, Licensee did not admit that leak rate falsification occurred. As part of the plea agreement with the United States, Licensee admitted that the leak rate surveillance procedure at TMI-2 did not accurately measure unidentified leakage. Its investigations and those of others provided a factual basis on which to make that determination.

Licensee did not admit or deny that leak rate falsification occurred. In fact, it could not have intelligently commented on that issue since Licensee did not have access to those individuals who could provide answers to the falsification issues until after the criminal case was resolved. To complain that Licensee did not admit to charges which it did not know were true or false and to which it had not been asked to respond is preposterous. While disciplinary action as such has not been taken, Licensee has placed restrictions on the use of TMI-2 personnel in the restart of TMI-1 pending the completion of investigations.

UCS also complains that no disciplinary action has been taken against persons involved in or responsible for leak rate falsification. It is inconceivable that UCS can expect Licensee to take such actions before the true facts have been developed and without giving any affected employees the right to respond and confront any individuals speaking against them. Certainly, notions of fundamental fairness would require Licensee to give any affected employees these rights.

The common thrust of intervenors' comments with respect to TMI-2 leak rate testing is the failure of Licensee to admit that leak rate falsification and manipulation occurred. What these comments fail to acknowledge, however, is that no determinations on the question of falsification and manipulation can

be made until such time as the facts are fully developed. With the completion of the criminal case and the attendant new willingness of individuals to be interviewed, that process is proceeding as expeditiously as possible.

NUREG-0680, Supplement 5

Licensee's comments of October 9, 1984, provide a sufficient answer to most of the comments by TMIA and UCS on the matters covered in Supplement No. 5 to NUREG-0680.3/ The comments relating to Licensee's December 5, 1979, response to the NRC's October 25, 1979 Notice of Violation, however, call for additional answer.

The NRC Staff did conclude in Supplement No. 5 that certain statements made in Licensee's response, for which it holds Mr. Wallace and Mr. Arnold responsible, were not complete or accurate and were contrary to other information in the possession of Licensee at the time.

Licensee believes that the testimony and materials upon which the Staff relied do not support the conclusions there

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3/ The TMIA comments incorporate by reference a TMIA Motion to Reopen the Record on Clean Up Allegations filed separately on September 17, 1984, concerning allegations of harassment of TMI-2 employees. That motion fails, however, to acknowledge or address the Staff findings on this subject contained in Supplement No. 5.

reached. However, since that matter has been referred by the NRC to the Department of Justice for investigation, presumably the differences between the Staff and Licensee will be resolved during the course of the Department's investigation.

Since Mr. Wallace and Mr. Arnold are no longer associated with the operation of TMI-1, it is unnecessary and inappropriate to resolve these differences in the context of the TMI-1 restart proceeding. Licensee reiterates, however, the belief expressed in its October 9 comments that these two individuals deserve an appropriate opportunity to air the questions in an individual forum so as to remove any cloud on their actions.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

George F. Trowbridge, P.C.
Ernest L. Blake, Jr., P.C.

Counsel for Licensee

Dated: October 29, 1984

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Reply to UCS and TMIA's Comments in Response to CLI-84-18," dated October 29, 1984, were served upon those persons on the attached Service List by deposit in the United States mail, postage prepaid, or where indicated by an asterisk (*) by hand delivery, this 29th day of October, 1984.

George F. Trowbridge, P.C.

Dated: October 29, 1984

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