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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges:
Ivan W. Smith, Chairman
Sheldon J. Wolfe, Alternate Chairman
Gustave A. Linenberger, Jr.

In the Matter of	)	Docket No. 50-289-SP
	)	
METROPOLITAN EDISON COMPANY	)	(ASLBP 79-429-09-SP)
	)	
(Three Mile Island Nuclear Station, Unit No. 1)	)	(Restart Remand on Management)

September 7, 1984

MEMORANDUM AND ORDER ON
TMIA'S SEPTEMBER 4, 1984 MOTION FOR
RECONSIDERATION OR MOTION FOR DIRECTED CERTIFICATION

As outlined in our Memorandum and Order Ruling on First GPU-TMIA Discovery Dispute, August 31, 1984, TMIA seeks from the Licensee a large amount of information about plant conditions at TMI-2 during the accident on March 28, 1979. This information is said to be relevant to the Dieckamp-mailgram issue. Licensee sought a protective order limiting the response to information more closely related to hydrogen combustion, pressure spike and initiation of containment spray. In general we granted the protective relief with respect to persons other than Mr. Dieckamp but denied it with respect to information transmitted to, held by and transmitted by Mr. Dieckamp. To provide maximum lead time, the Chairman informed the affected parties of the Board's rulings in a telephone conference call on August 30, the day before the written order which was served on September 4.

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Based upon the Chairman's explanation during the August 30 telephone conference, TMIA by motion of September 4 now seeks the Board's reconsideration of its ruling, or in the alternative, requests that the issue be certified to the Appeal Board. We deny both motions.[1]

TMIA's motion for reconsideration is denied because it contains no material factual arguments not presented in its response to the Licensee's motion for a protective order. Also its new legal argument could and should have been made in its earlier response, and, in any event, the legal argument does not persuade the Board that it has made a mistake in not wholly denying the request for a protective order.

The alternative motion to certify the issue[2] to the Appeal Board is denied because it meets neither standard correctly cited by TMIA in its motion. As TMIA stated:

> The basic rule is that the Appeal Board will undertake discretionary interlocutory review when the ruling by the Licensing Board either (1) threatens the party adversely affected by it with immediate and serious irreparable harm, which, as a practical matter, could not be alleviated by later appeal, or (2) affects the basic structure of the proceeding in a pervasive or unusual matter. Public Service Company of

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1 All affected parties were informed by telephone on September 6, 1984 that the motions will be denied without awaiting any answers.

2 The question which TMIA requests be certified to the Appeal Board is:

> Whether TMIA has the right to discovery, pursuant to 10 C.F.R. 2.740(b)(1), concerning GPU employees', operators', and management's knowledge of plant conditions and events occurring on March 28, 1979, the first day of the accident, other than their knowledge of the pressure spike, hydrogen explosion, activation of containment sprays, or core damage.

Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-405, 4 N.R.C. 1190, 1192 (1977). [Footnote omitted]

TMIA Motion at 7.

TMIA cannot suffer irreparable harm which cannot be alleviated by later appeal in this discovery dispute. If our protective ruling has affected the nature of the proceeding at all, which we doubt, it affects only a view of that proceeding held by TMIA but solidly rejected by the Board. See August 31 Order at 2-3.

Motions are denied.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Ivan W. Smith, Chairman
ADMINISTRATIVE LAW JUDGE

Bethesda, Maryland

September 7, 1984