

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

Before the Atomic Safety and Licensing Board

'84 SEP 14 A9:31

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

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Docket No. 50-289 SP
(Restart - Management Phase)

THREE MILE ISLAND ALERT'S MOTION TO
SET DISCOVERY AND HEARING SCHEDULE
AND TO LIFT STAY ON TMI-L LEAK RATE
FALSIFICATION ISSUE

TMIA requests that this Atomic Safety and Licensing Board (Licensing Board") set a discovery and hearing schedule for the two issues of the Hartman allegations of falsification of leak rate data for TMI-2, and the alleged falsification of leak rate data for TMI-1.

TMIA further requests a lengthening of the discovery period for the two issues currently being litigated and a continuation of the hearing date.

Finally, TMIA formally requests that the Board lift the stay it has imposed on litigation of TMI-1 leak rate data falsification.

I BACKGROUND.

On September 7, 1984, the Nuclear Regulatory Commission ("Commission") announced it would take review of both Appeal Board decisions which reopened the record on licensee General Public Utilities Nuclear's ("GPU") management integrity, ALAB-738 and ALAB-772. On August 31, 1983, the Atomic Safety and Licensing Appeal Board ("Appeal Board") reopened the record in ALAB-738 on the "Hartman allegations" of falsified leak rates for TMI-2. On May 24, 1984, the Appeal Board in ALAB-772 reopened the record on three issues: (1) the Dieckamp mailgram; (2) training; and (3) alleged falsification of leak rate data for TMI-1.¹

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On September 7, 1984, Chairman Nunzio Palladino stated that he predicted the Commission would require three to five months to complete its review of the two Appeal Board decisions and reach a final decision. In the meantime the Commission ruled the hearing should go forward on the four issues on which the Appeal Board had ordered hearings. In so ruling, the Commission effectively granted TMIA's motion to lift the stay on the "Hartman allegations."

Currently pending before this Board is TMIA's motion for extension of time of the discovery period and continuation of the hearing date for the two issues of training and the Dieckamp mailgram.

II THE COMMISSION'S DECISION MANDATES LIFTING OF THE LICENSING BOARD'S STAY ON THE ISSUE OF FALSIFICATION OF LEAK RATE DATA FOR TMI-1.

This Board based its stay of litigation of the alleged falsification of TMI-1 leak rate data on the Commission stay of the Hartman allegations and the Appeal Board's dicta that the two issues should be heard together. ALAB-772 at 154. Both cases have been removed by the Commission's decision of September 7, 1984. The Commission lifted the stay on the Hartman allegations. Therefore the hearing is to go forward on this issue immediately. The Appeal Board dicta suggesting that both leak rate data issues should be heard together require this Board to lift its stay of the second leak rate issue concerning Unit 1.

Since it is likely that some witnesses will be knowledgeable about both issues and that testimony on the issues will overlap, it will be more expeditious to litigate the two issues together. Therefore, considering the Commission's decision on September 7, the Appeal Board's

¹On October 7, 1983 the Commission stayed litigation of the Hartman allegations. On July 9, 1984, in its Memorandum and Order Following Prehearing Conference, this Board, believing the two issues should be heard together, stayed litigation of the issue of falsification of TMI-1 leak rate data. Memorandum and Order, at 7.

dicta, and the convenience of the parties, TMIA requests that the Licensing Board lift its stay on the TMI-1 leak rate falsification issue.

III ESTABLISHMENT OF A NEW INTEGRATED DISCOVERY AND HEARING SCHEDULE FOR ALL FOUR ISSUES.

TMIA requests this Board establish a new discovery and hearing schedule for all four issues currently before it in reopened management integrity hearings. Establishment of a single and coordinated schedule for discovery and hearing of all four issues will alleviate the burden on all parties and the Board of preparing simultaneously for discovery and hearing on four different issues, and will resolve the current discovery disputes between the parties. Specifically TMIA recommends the following discovery and hearing schedule for all four issues currently before this Board:

- (1) The discovery period for all issues be extended to December 31, 1984;
- (2) Prefiled testimony on all issues be filed by January 14, 1985;
- (3) Hearing on all four issues should begin on February 6, 1985 and continue until hearing on all issues is completed. ²

Moreover, currently pending before this Board is TMIA's motion to compel responses to its First Set of Interrogatories and First Request for Production and TMIA's Motion for an extension of the discovery period in light of GPU's continuing obstruction of TMIA's legitimate discovery requests. TMIA counsel, at the date of writing this motion has not had any opportunity to review the documents GPU has agreed to produce in response to TMIA's First Request for Production, since these documents were only recently relocated to Washington. Further, as

²If the Commission should determine that litigation of any one of the four issues is not required through its review of the two Appeal Board decisions, all parties and this Board would be relieved of the burden of hearings on those issues.

stated in TMIA's Motion to Compel, GPU has effectively failed to respond to a number of interrogatories except by reference to documents to which TMIA counsel had had no access up to this point.

GPU has further failed to answer in any manner a large number of interrogatories which this Board, in its August 30, 1984 order ruled GPU was obligated to answer. (The Board denied GPU's Motion for Protective Order regarding these interrogatories.) GPU's failure to answer these interrogatories or to request any further extension of time to respond is in direct violation of this Board's August 30, 1984 order.

By September 11, 1984, TMIA has yet to receive any response to its First Request for Production to GPU or a majority of its interrogatories in its First Set of Interrogatories to GPU. As stated in its motion, TMIA believes that GPU has thereby prejudiced TMIA's preparation for depositions currently scheduled to proceed beginning on September 19, 1984.

If this Board were to establish a single schedule for discovery and hearing on the four issues in these reopened hearings it would effectively extend the discovery period for the training and Dieckamp mailgram issues. In this way it would prevent serious prejudice to TMIA's preparation and give all parties adequate time for discovery and preparation of their cases.

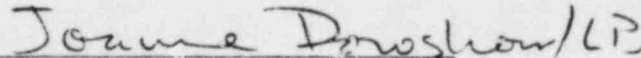
It is clear that no party, including GPU has the resources to proceed with discovery on two new issues and prepare adequately for the hearings currently scheduled to begin in November. GPU has requested and been granted extensions of time to respond to TMIA's discovery requests on the training and Dieckamp mailgram issues. Even with these extensions, GPU was unable to answer a large number of interrogatories. Further, GPU has admitted that responding to TMIA's discovery requests

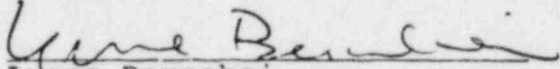
has consumed a large amount of time on the part of GPU attorneys and GPU management. See Licensee's Response to Three Mile Island Alert's First Set of Interrogatories and First Request for Production (September 4, 1984), at 2-3.

IV CONCLUSION.

In consideration of the foregoing arguments, TMIA requests that this Board lift its stay on the alleged falsification of leak rate data for TMI-1 and set a schedule for litigation of the four issues currently admitted in these reopened management integrity hearings as recommended above by TMIA.

Respectfully submitted,


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