UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE COMMISSION

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

TMIA REPLY COMMENTS TO
NRC STAFF'S BRIEF IN RESPONSE TO
CLI-84-18

Pursuant to the Commission's Order of September 11, 1984, CLI-84-18, TMIA provides the following brief reply comments to the Staff's October 9, 1984 brief in response to the Commission Order.[1]

I. Licensee's Training and Testing Program -- Staff Brief, II.A.1.

Since the Staff does not oppose a reopening of the record on this issue,[2] conceding its importance, the Staff's misstatements in its discussion of the issue deserves only limited focus. Briefly, the Staff significantly misrepresents the basis for the Appeal Board's insistence that the record be reopened on this issue.

At p. 4 of its brief, the Staff attempts to characterize the

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[1] TMIA has chosen not to separately respond to Licensee's Comments on CLI-84-18. To the extent these comments differ at all from the Staff's views, the arguments were fully addressed by TMIA in its July 11, 1984 "TMIA Answer to Licensee's Petition for Review of ALAB-772."

[2] Staff Brief at p. 7

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Appeal Board's concerns as focusing solely on testimony of Licensee's consultants who testified during the main restart hearings, prior to the "cheating" hearings. The Staff argues that "while the Licensee's consultants had not considered the effect of the cheating incidents on the Licensee's training and testing program, the Licensing Board itself did so directly and concluded, in effect, that the new information did not change the Licensing Board's overall decision on the training issue." It is this very decision by the Licensing Board that the Appeal Board concluded was unsupported by the record as it currently stands. Indeed, the Appeal Board stated,

> The deficiencies in operator testing, as manifested by the cheating episodes, may be symptomatic of more extensive failures in licensee's overall training program. Whether those deficiencies still exist or have been sufficiently cured is not evident from the record. Indeed, the record in the reopened proceeding perhaps has raised more questions than it has answered satisfactorily. For example, does the training program actually enhance the operators' knowledge or simply encourage memorization for test-taking purposes? Are the licensee and NRC examinations an effective way to measure an operator's ability to run the plant? Do the format and content of the examinations encourage cheating?
>
> Moreover, we are troubled by the fact that one-fourth of those who took the April 1981 NRC examination (9 out of 36) either were directly involved in cheating of some sort or were implicated in a way that could not be satisfactorily be explained or resolved.... Several of these individuals were or are still in supervisory positions. Perhaps most disturbing is the testimony that a number of emplcyees (including training instructors) did not take the courses or examination process seriously.

ALAB-772, slip. op. at 63-64. (cites omitted). Clearly, the Appeal Board's decision was grounded in overwhelming evidence that as of 1981, the training and testing program as TMI was seriously deficient. Moreover, at a time when extensive cheating

and widespread disrespect for the Licensee's training department were rampant, the OARP Committee, Licensee's "experts," testified "unanimously" that "successful completion of [the NRC] examinations, coupled with training sufficient to allow success on those examinations was indicative of a capable licensed operator." 14 NPC 281, (PID), at Paragraph 272. It is now without question that the OARP's prior review of licensee's training and testing program contained glaring deficiencies. That Licensee and the Staff propose to again rely on the opinions of this same group of individuals, who took an even more cursory review of Licensee's program than before,[3] is simply staggering.

Moreover, the additional "evaluations and inspections of Licensee's current training and testing program which have been provided to the Commission by the Staff and Licensee, including SALP reports, INPO evaluations, NRC Inspection Reports, a Region I Operational Readiness Evaluation, and the recent Special Report of the Reconstituted OARP Committee," are each seriously deficient in their own right, and in any event fall far short of responding to the fundamental concerns expressed by the Appeal Board. Further, none of these reports has yet been tested in a hearing, and in light of the history of each of these groups regarding past training and testing evaluations, each must be

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[3] The Reconstituted OARP Committee Report adds the proviso that "there was not an opportunity to undertake an in-depth study of the type that was undertaken by the OARP review Committee in 1979-80." Special Report of the Reconstituted OARP Review Committee, June 12, 1984, at p. 3.

viewed with a good deal of skepticism.

II. The Dieckamp Mailgram -- Staff Brief, II.A.2.

The Staff's interpretation of ALAB-772 on this issue is simply wrong. It is not true that "the primary reason why the Appeal Board found the record deficient, and criticized the Licensing Board for unreasonably relying on the results of the Staff's investigation of this issue, was the Appeal Board's mistaken belief that the Staff may not have actually questioned Mr. Dieckamp himself about his state of knowledge at the time he sent the mailgram." Staff Brief at 7. (cite omitted).

The fact of the matter is that despite whether or not I&E questioned Dieckamp on the matter, the Licensing Board correctly noted on the record of the restart proceeding that "the I&E people really leave it dangling," and "as far as the Board is concerned, and as far as I would imagine the intervening parties and the public, it seems to me that there should be a further inquiry or further explanation." TMI-1 Restart Hearing, Tr. at 13,060. Yet not only did the Board fail to conduct a further inquiry, it never even questioned Mr. Dieckamp on the incident when he appeared as a witness later that month. See, Tr. at 13,438 et seq. After acknowledging its mistake in failing to pursue the issue thoroughly during the hearing, and even after considering reopening the record, PID at 503, the Board instead based its decision on an I&E report which it had already decided did not resolve the issue. One can hardly imagine an issue being treated in a more arbitrary manner.

The Appeal Board correctly attacked the credibility and reliability of NUREG-0760 on this issue, including its handling

of the "pressure spike" and related issues which prompted the Dieckamp mailgram. Its attacks were considerably broader than whether or not Dieckamp was expressly questioned on the mailgram's intent, finding the report "wholly conclusory" and "devoid of any explanation of why the staff believed some of those it interviewed, but not others ..." ALAB-772, slip. op. at 131. (emphasis in the original).

Moreover, the hearing process itself has, so far, been particularly fruitful. A good deal of new evidence never before disclosed to the various NRC and other accident investigators has surfaced. The Appeal Board's concern as to "fading memories" has so far proven to be of small consequence. Moreover, there is no reason why the Staff's argument in footnote 4 of its Brief, that "as a practical matter, the current schedule for a hearing on the remanded training issue is such that it likely will be completed this fall, perhaps before the Commission decides the issues raised in CLI-84-18 and before an actual restart decision," is not equally applicable to this issue which is in fact scheduled for hearing before the training issue.

III. TMI-1 Leak Rates -- Staff Brief, II.A.3

In footnote 6, the Staff virtually concedes that a hearing is needed on this issue. While the Staff could define no precise "motive" for Unit 1 operators to falsify, OI's investigation was unable to rule out the possibility that tests were intentionally falsified for some "unknown reason." This is precisely why a hearing is so critical. As explained in the August 13, 1984 Petition for Revocation of License of GPUN on the Basis of

Deficient Character, of which TMIA is one petitioner, there are a number of conceivable "motivations" to falsify, as well as to consistently violate leak rate testing procedures, which all agree was done. See, Petition, at A-212, et seq. In addition, it is now publicly known that the chief NRC investigators of this issue told the Commissioners on January 10, 1984 that the type of hydrogen additions which were made could not "logically be explained" with an innocent explanation. On this basis, the issue was referred to the Department of Justice for possible criminal prosecution.[4] Clearly, the Staff can not now deny the seriousness of the issue in terms of management integrity.

Moreover, that Licensee has physically "corrected" the problem by modifying the loop seal, and procedurally directed that all tests now be retained,[5] does absolutely nothing to correct the integrity issues raised by the problem -- which are, of course, precisely the issues before the Commission. These issues include whether or not particular operators or management made false statements under oath to NRC investigators during OI's investigation. See, e.g., Petition for Revocation, supra, at A-32 to 33. In addition, the health and safety implications of integrity problems raised by the Unit 1 leak rate issue are vast in light of the fact that most who are implicated remain Unit 1 operators and/or management.

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[4] The investigation was only not pursued because the statute of limitations had run. NRC Commission Meeting of January 10, 1984, Tr. at 54.

[5] Staff Brief at 10.

IV. Hartman Allegations Concerning TMI-2 Leak Rate testing Practices -- Staff Brief, II.B.

The Staff is flatly wrong to suggest that "a hearing on TMI-2 leak rate practices would, for the most part, focus on individuals who are not involved with the management or operation of TMI-1 and consequently would produce little information material to, or likely to change the Licensing Board decision on, any restart issue." Staff Brief at 12. Clearly, one of the central issues connected with Unit 2 leak rate falsification, and certainly the aspect of the case most likely to be focused upon by Licensee and presumably the Staff, is Licensee's response to the leak rate matter. While it can fairly be said that in the event of such hearings, Licensee would likely point to all the reasons why it believes such falsification would not be likely to recur, it can be similarly stated that Licensee's dishonest corporate response to the incidents, which has taken various forms from 1978 to the present, will provide one major aspect the intervenors' arguments to the contrary. Thus, the hearing issues would not merely "focus on individuals who are not involved with the management or operation of TMI-1."

It is also wrong to suggest, as the Staff does, that the Department of Justice exonerated all but the operators and middle management who were directly involved and/or had knowledge of the falsification. As a matter of fact, not one of these individuals wase indicted for the very reason the the Department of Justice intended to hold the corporation responsible by indicting it

instead.[6] Indeed, it is the integrity of a corporation's upper management which is most probative of corporate integrity -- the issue before the Commission.

V. NUREG-0680, Supp. 5 -- Staff Brief, II.C.

1. TMI-1 Leak Rate Falsification. TMIA's position on this issue has been adequately set forth in its Comments, and in Reply Comments, supra.

2. Hartman Allegations and Related Safety Concerns. TMIA's position on this issue has been adequately set forth in its Comments, and in Reply Comments, supra. It is significant to note the change in Staff position regarding the safety significance of the Unit 2 leak rate issue. During the main restart hearings, after the Staff had apparently already substantiated Hartman's allegations and referred the matter for criminal prosecution, its position at the restart hearings was quite the opposite of its current position stated at p. 18 of its Brief -- i.e., the matter "does address significant safety issues

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[6] See, United States v. Metropolitan Edison Company, U.S. District Court, Middle District of Pennsylvania, Criminal No. 83-00188, Transcript of Proceedings and Change of Plea and Sentencing, February 28 and 29, 1984, at Tr. 68, 69:

U.S. Attorney Queen: ... The company was obviously indicted for a reason. It was to serve notice on this and all other licensees that you can't sluff off the responsibility for corporate activity on a handful of scapegoat employees.

We could have indicted a number of people whose titles were mentioned in my statement of facts, and we would have obviously convicted them. It would not have served the public interest because every other licensee around the country would be on notice that the United States of America is glad to take a handful of control room operators and throw them to the dogs and let the company go unscathed.

* * * *

I think at the risk of debating back and forth, the proposition that this company be held responsible for its conduct is unavoidable....

and might well have led the Licensing Board to reach a different result with regard to the adequacy of previous TMI-1 staffing..."

It is also important to note that with regard to the issue of whether, before the accident, a shift supervisor requested permission from the load dispatcher to shut down the plant for repairs because of high leakage from the pressurizer safety and relief valves, the request denied, the Staff acknowledges that there is evidence, albeit "inconclusive," that this incident took place. Obviously, there should be hearings to develop conclusive evidence one way on another on whether this did occur.

3. BETA and RHR Reports. TMIA's position on this issue has been adequately set forth in its Comments, as well as in TMIA's Motion to Reopen the Record dated May 23, 1984.

4. Training. TMIA's position on this issue has been adequately set forth in its Comments, and in Reply Comments, supra. In addition, the Staff's position on the Floyd cheating incident is dramatically different than the position it took during the restart hearings. See, infra. This is the first express acknowledgement by the Staff that not only Miller and Herbein, but Arnold had knowledge of the certification letter. Staff Brief at 25. Arnold, it should be noted, is still with GPUSC and mentioned in a recent deposition that his activities are still somewhat connected with TMI-1 licensing.

5. Keaten Report. TMIA's position on this issue has been adequately set forth in its Comments. Three points should be emphasized, however. First, the Staff's Brief is self-contradictory. On the one hand, the Staff concludes that GPU

President Dieckamp must "shoulder" responsibility for the "inaccurate and incomplete" NOV response, while on the other hand exonerates him from any improprieties. Staff Brief at 27. Either Dieckamp was somehow responsible for this, or he wasn't, and if he was (and the evidence clearly supports this), he has no business remaining in his position with the company.

Second, both Arnold and Wallace, who were directly implicated in improper conduct, are still connected with nuclear licensing activities. Wallace is a senior manager at Oyster Creek, and as noted above, Arnold is vaguely connected with licensing activities in his position with the GPUSC. Dieckamp is, of course, GPU President. Third, the issue itself is considerably broader than the activities of just these three people. Virtually every senior manager at GPUN and TMI have stood by defending the company's denial of wrongdoing, even in the face of OI's referral to the Justice Department. These individuals include Kuhns, Dieckamp, Clark, Kitner, and the GPUN Vice-Presidents, including Long and Hukill. Clearly, the record should be reopened on this issue, consistently with the wishes of the Commonwealth of Pennsylvania.

6. Changes to the Lucien Report. TMIA's position on this issue has been adequately set forth in its Comments.

7. Alleged Harassment of Parks, King, Gischel. TMIA's position on this issue has been adequately set forth in its Comments, as supplemented by its Motion to Reopen the Record of September 17, 1984. It is significant that the Staff has not yet challenged the factual basis for the Motion. In light of this evidence, it is utterly disingenuous for the Staff to claim that

the allegations are "without merit", or that new "policies" can possibly solve the fundamental problems which these incidents, along with the harassment of King's secretary Joyce Wenger, reveal. Staff Brief at 30.

8. Change in Operator Testimony. TMIA's position on this issue has been adequately set forth in its Comments. Notably, the Staff again acknowledged the existence of evidence, albeit "inconclusive," that Licensee witnesses Zewe and Frederick intentionally misrepresented facts at the B&W trial. Staff Brief at 30. In addition, it is fairly obvious that whether or not the company's position at trial was translated directly through management, or through management's attorneys, the change in testimony by these individuals would not have occurred without an implicit recognition that had management approved.

9. Conclusion on NUREG-0680, Supp. 5 Issues. TMIA's position on this issue has been adequately set forth in its Comments, and the Petition for Revocation of License, supra.

10. Other Commission Questions Regarding NUREG-0680, Supp. 5.

As the Commission is well aware, the crux of the dilemma posed by the Staff's position in Supp. 5 is the artificial distinction the Staff draws between the pre- and post-1982 Licensee. There is no difference, and the Staff, if anybody, knows this. See, Petition for Revocation . If the Licensee failed to provide "reasonable assurance of no undue risk to the public health and safety" as of 1981, it must fail to provide this now unless the Staff bases its position entirely on the

resignation of Bob Arnold. But even the Staff recognizes that this one change can not so effect the performance of an entire corporation.

Rather, the Staff reasserts, without any explanation, that "GPU nuclear-related activities were reorganized under GPUN effective January 1, 1982." Staff Brief at33. If this were true, Licensee would never have gotten a supportive 1981 ASLB decision in the first place. It is precisely because the ASLB believed the company had so reorganized in 1980 that it felt "confident" of Licensee's "competence" in 1981. See, PID at paragraphs 46 to 67.

VI. Separated Individuals -- Staff Brief, II.D.

TMIA's position on this issue has been adequately set forth in its Comments.

VII. Removal of Husted -- Staff Brief, II.E.

TMIA's position on this issue has been adequately set forth in its Comments.

VIII. Appendix.

The Appendix to the Staff Brief is an attempt to set forth the so-called "new information" which the Staff claims, had it known during the restart hearings, would have provided grounds on which to challenge Licensee's integrity. Since the substance of this part of the Staff's Brief essentially supports TMIA's ultimate position, TMIA would not have normally chosen to critique this material. However, the Staff's claim that some of this information is "new" to it is so astounding, TMIA can not let these arguments go without comment.

First, as to TMI-2 leak rate falsification, the Staff for

the first time since Region I Inspector Tim Martin told the Commission on May 24, 1983 that he knew for a fact in 1980 that leak rates were falsified, attempts to defend itself against charges that it withheld this information from the Commissioners, the Licensing Board, the parties and the pubic. Essentially, the Staff bifurcates itself and proceeds to argue that the "licensing Staff directly evaluating Licensee's management in the original restart proceeding" should escape responsibility for the serious misrepresentations, particularly to the Licensing Board, concerning this issue.[7] In one of the most chickenhearted arguments yet presented regarding the Staff's utter failure to fulfill its legal responsibilities, the "licensing Staff" contends that

> only those Staff members who were involved in the suspended NRC investigation had any direct knowledge of information confirming Hartman's allegations or the extent to which Met-Ed management may have been involved. These individuals were under direction by DOJ not to discuss the matter with others.

Staff Brief at Appendix 3. Even if true, and there is no reason to believe it is, there is absolutely no justification in the history of NRC regulation for exonerating the Staff in this manner. I&E investigators in 1980 were the Staff, and their representatives at the hearing withheld this information. Moreover, there is no dispute that the "licensing Staff" had at least indirect knowledge of this evidence, and in any event, it

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[7] Presumably, then, only the "licensing Staff's" views are represented by the document to which these reply comments respond, despite the fact that it has been entitled "NRC Staff's Brief in Response to CLI-84-18."

is entirely unclear why "indirect" knowledge need not have been conveyed to the Commissioners and Licensing Board as well.

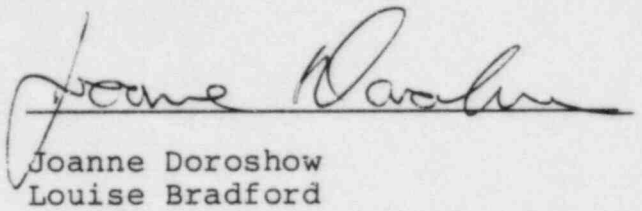
Even more disturbing, however, is the Staff's belated acknowledgement that Licensee engaged in a cover up of Jim Floyd's cheating and made a subsequent false certification to the NRC. Using an explanation which is flatly untrue, the Staff argues that the GPU v. B&W lawsuit record revealed "may documents" which indicated that Licensee's management cover-up Floyd's cheating and made a subsequent false certification to the NRC." Staff Brief at Appendix 8. Every one of these so-called new "documents," listed at Appendix 9, was discovered during the restart hearings and made part of the hearing record. Every bit of testimony mentioned by the Staff was first revealed in the restart depositions and hearings. Even the B&W Exhibits themselves contain notations of "TMIA Ex." numbers, presumably because Licensee provided these copies to B&W during trial discovery.

Is the Staff so threatened that it must outright lie in order to avoid conceding that its position during the restart hearings, which supported Licensee's actions entirely as well as the ASLB decision which not only found no cover-up but supported Licensee's "forthright" response to Floyd's cheating, was wrong, and TMIA's position was right? Is the Staff so afraid to acknowledge that TMIA, an intervenor, obtained this evidence on its own? TMIA finds this entire discussion unbelievable, particularly because Mr. Goldberg was the attorney who represented the Staff during the cheating hearings.

For the above stated reasons, the Staff's comments deserve limited consideration by the Commission.

Respectfully submitted,

Three Mile Island, Alert, Inc.

By 

Joanne Doroshow
Louise Bradford

Lynne Bernabei, Counsel for
TMIA

October 29, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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METROPOLITAN EDISON COMPANY	)	Docket No. 50-289
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CERTIFICATE OF SERVICE

I hereby certify that copies of TMIA REPLY COMMENTS TO NRC STAFF'S BRIEF IN RESPONSE TO CLI-84-18, was served this 29th day of October, 1984, by deposit in the U.S. mail, first class, postage prepaid, o hand delivered where possible, to all parties on the attached service list.

Joanne Doroshow

SERVICE LIST

Chairman Palladino
U.S. N.R.C.
Washington, D.C. 20555

Commissioner Asselstine
U.S. N.R.C.
Washington, D.C. 20555

Commissioner Bernthal
U.S. N.R.C.
Washington, D.C. 20555

Commissioner Roberts
U.S. N.R.C.
Washington, D.C. 20555

Commissioner Zech
U.S. N.R.C.
Washington, D.C. 20555

Judge Gary Edles, ASLAB
U.S. N.R.C.
Washington, D.C. 20555

Judge John H. Buck, ASLAB
U.S. N.R.C.
Washington, D.C. 20555

Judge Christine Kohl, ASLAB
U.S. N.R.C.
Washington, D.C. 20555

Ivan W. Smith, Esq., ASLB
U.S. N.R.C.
Washington, D.C. 20555

Sheldon Wolfe, Esq., ASLB
U.S. N.R.C.
Washington, D.C. 20515

Gustave A. Linenberger, Jr. ASLB
U.S. N.R.C.
Washington, D.C. 20555

Lynne Bernabei
Government Acountability Project
1555 Connecticut Ave. N.W.
Washington, D.C. 20009

Thomas Au, Esq.
Department of Environmental Resources
505 Executive House
P.O. Box 2357
Harrisburg, PA 17120

Bob Pollard
UCS
Dupont Circle Building
1346 Connecticut Ave.
Washington, D.C. 20036

Ellyn Weiss, Esq.
Harmon, Weiss & Jordon
2001 S St. N.W., Suite 430
Washington, D.C. 20009

Jack Goldberg
Office of Executive Legal Director
Washington, D.C. 20555 U.S NRC

George F. Trowbridge, Esq.
Shaw, Pittman, Potts & Trowbridge
1800 M St. N.W.
Washington, D.C. 20036

Ms. Marjorie Aamodt
R.D. 5
Coatesville, PA 19320

Docketing and Service
U.S. N.R.C.
Washington, D.C. 20555