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Atomic Safety and Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

In the Matter of Metropolitan Edison Company
(Three Mile Island Nuclear Station, Unit No. 1)
Docket No. 50-289 (Restart - Management Phase)

Dear Chairman Edles and Administrative Judges Kohl and Johnson:

By this letter, TMIA hereby withdraws its appeal of the Atomic Safety and Licensing Board's Partial Initial Decision on the Remanded Issue of the Dieckamp Mailgram, LBP-85-30, 21 NRC ____ (Aug. 19, 1985), for which a Notice of Appeal was filed September 1, 1985.

TMIA has been forced to withdraw its appeal due to an inability to continue funding this case. As this Board may be aware, TMIA recently has been involved in emergency litigation before the U.S Court of Appeals for the Third Circuit and the U.S. Supreme Court involving the restart of TMI-1. This recent litigation has not only required the full time efforts of TMIA's counsel, but has drained the organization of resources which would be required to continue the appeal of the Dieckamp Mailgram PID.

Despite the fact that TMIA is withdrawing its appeal, it should be made clear that TMIA vigorously disagress with the Licensing Board's interpretation of facts and in no way adopts or accepts the Licensing Board's findings and conclusions.

In fact, TMIA believes the Licensing Board's has grossly distorted the record of this case. TMIA has provided a discussion of some of the record evidence available on certain key issues presented to the Licensing Board on remand, which demonstrates egregious instances of the Board's misrepresentation of testimony and evidence. This discussion is by no means exhaustive, but will hopefully serve to illustrate the serious deficiencies with the Board's decision.

Despite the Board's casual description of the pressure spike as an event "with seemingly minimal consequences," PID at 13, the pressure spike was a major incident during the accident. It occurred about 10 hours after the trip of the reactor at 4:00 a.m. This pressure spike actuated containment building sprays, which

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operate under a logic of actuation only when two of three independent sensors detect high pressure. Stipulation of Parties on Mailgram Evidence. JME 1-C (142) at 22. Coincident with these events, some individuals in the Unit 2 control room at the time of the spike heard a loud thud or noise. See, e.g., JME 1-C (122) at 112. One person in the control room described it as "shock waves." JME 1-C (8) at 5. Additionally, an ES or Engineering Safeguards signal was received at that time and many visual and some audio alarms were actuated. See, e.g., Tr. 29,476 (Mehler); JME 1-C (142) at 22; (143) at 54.

At the time of the spike's occurance, operating personnel were also aware of incore temperatures in the range of 2500 degrees F, which indicated that ECCS criteria had been exceeded and that temperatures had reached the point where the zirconium cladding was reacting with steam to produce significanct amounts of hydrogen. JME 1-A; See, e.g., JME 1-C (67) at 39. Expert witnesses testified that flammable hydrogen is reached when hydrogen reaches a volume of four percent of the total containment building, and that the only method by which this amount of hydrogen could be produced within 10 hours of the accident's initiation is through a zirconium-steam reaction. Tr. 28,200 (Lowe); Tr. 28,200 (Linenberger/Lowe); Zebroski, ff. Tr. 28,441 at 7; Tr. 28,530 (Zebroski). See also, JME 1-C (6) at 195.

Clearly, the operators' awareness of these temperatures would lead them to an analysis of the condition of the reactor as one in which hydrogen could be produced up to and beyond flammable limits. The operational staff's awareness of incore temperatures beyond 2200 degrees aided them in analyzing the pressure spike correctly as a hydrogen burn or explosion at the time it occurred. See, also, JME 1-C (4) at 59-68, 73-74, 130. It is clear that operating personnel viewed the spike as an indication that their efforts to cool the reactor had been hindered and were unsuccessful.

As the Appeal Board noted in ALAB-772, Joseph Chwastyk, Brian Mehler and Ted Illjes were three whose prior testimony and interviews appeared on their face to be "some evidence" that the significance of the pressure spike was understood on March 28.

Entirely consistent with his prior interviews, Chwastyk testified that he made the assumption that everybody in the control room was aware of the spike simply because it was a "major variance" from what had been taking place previously. Tr. 29,126 (Chwastyk). Mehler agreed that everyone in the control room knew about the sprays and believed that Miller knew about the spike as well. Tr. 29,482-483 (Mehler); JME 1-C (89) at 29. He stated that both he and Chwastyk were "highly concerned and a little scared" by the high pressure. JME 1-C (98) at 11. Tr. 29,484 (Mehler). Chwastyk has stated, "it scared the hell out of me." JME 1-C (99) at 20-21.

Chwastyk and Mehler discussed the fact that actuation of the containment sprays indicated that the pressure spike was a real

pressure excursion since at least two out of three independent sensors needed to record pressure to 28 psi to activate the sprays. Tr. 29,103 (Chwastyk); 29,480, 29,487 (Mehler). Chwastyk testified that his conversation with Mehler further convinced him that the spike was real. Tr. 29,317 (Chwastyk).

Chwastyk also immediately sent someone back to inform Gary Miller that they had "some sort of problem." Tr. 29,131 (Chwastyk).

Chwastyk then directed the operators to secure the containment sprays after the pressure dropped. Tr. 29,127, 29,227-228 (Chwastyk). See, JME 1-C (32) at 30; JME 1-C (35) at 9, 10; JME 1-C (117) at 9-10. He also ordered certain checks be made to verify containment integrity and to determine other parameters. Tr. 29,127-128 (Chwastyk); JME 1-C (117) at 32-36. Mehler confirmed that an order was given to check to determine if the containment was breached by the pressure spike. Tr. 29,486 (Mehler). See, also, JME 1-C (126) at 11-13.

A radiation check was conducted at about 2:05 p.m. on March 28 "around the Unit 2 reactor building". The radiation check was recorded on a log by radiation technician Beverly Good, whose reponsibility it was to record such checks. TMIA Exh. 32B; Tr. 31,337-339. Thomas Mulleavy, who at the time of the accident was Radiation Protection Supervisor, testified that radiation checks were performed by his group on orders from the operations personnel. Tr. 31,332-333. A statement by Leland Rogers, the Babcock & Wilcox site representative, indicates that this radiation check was conducted in response to the pressure spike. JME 1-C (51) at 22.

Within minutes after the spike, after the equipment was secured, Chwastyk himself went back into the shift supervisor's office to speak to Miller about the spike. He testified that he told Miller that he believed the spike was a real pressure increase, based primarily on the fact that the spray pumps had activated. He also told Miller about Fred Scheimann's cycling of the electromatic valve with the spike, and the loud noise reported to him, leading to the conclusion that there had been some kind of explosion in the containment building. Tr. 29,131-132 (Chwastyk); JME 1-C (99) at 8-17.

Chwastyk explained to Miller his analysis of the pressure spike in a "moving conversation" which took the two of them from the shift supervisor's office into the control room, in front of the reactor building pressure and secondary side plant parameters. Tr. 29,147; 29,279-280 (Chwastyk). It appears that Miller was looking at parameters in order to verify what Chwastyk was telling him about the pressure spike or explosion in the reactor building. Tr. 29,170; 29,322 (Chwastyk).

Chwastyk has consistently testified that immediately after the pressure spike he requested and received permission from Miller to draw a bubble in the pressurizer. Tr. at 29,142; 29,288; 29,322;

29,363 (Chwastyk); JME 1-C (88) at 18; JME 1-C (117) at 24-27; 62, 67, 69-71, 105-106. He testified in a deposition in this proceeding that he did this in order to "flood the core" . Tr. 29,143-145; 29,294 (Chwastyk). He defined his objective as getting the reactor coolant system into a status in which he and other operations personnel would have a better idea of what was occurring with the reactor itself and the reactor coolant system. Tr. 29,145 (Chwastyk). In particular, Chwastyk explained that by establishing a level in the pressurizer by drawing the bubble, there would be better indication as to the water level in the primary coolant system. Tr. 29,322-324; Tr. 29,147 (Chwastyk).

Chwastyk described the evolution of drawing a bubble as: closing the block valve, turning on the pressurizer heaters, initiating high pressure injection, each step of which was accomplished a short time after he received permission to draw a bubble in the pressurizer. These were all the necesessary steps to repressurizing the reactor coolant system from its previous state, Chwastyk explained. Tr. 29,148; 29,151; 29,382-383 (Chwastyk).

Chwastyk stated that these steps to draw a bubble in the pressurizer, or repressurize, were part of their overall goal that day to stabilize the system. Such steps were only contemplated on March 28, 1979 with consideration and forethought since drawing a bubble at that time was a serious departure from the previous way in which they had attempted to stabilize the reactor. Tr. 29,381-383 (Chwastyk).

The Nuclear Safety Analysis Center ("NSAC") study of the TMI-2 accident corroborates Chwastyk's testimony about the evolution or operating mode employed by plant personnel to stabilize the reactor after the pressure spike. This study, based entirely on objective data, divided the accident into six major phases, that is "into intervals representing various operating modes that occurred during the accident." JME 1-C (63) at App. TH-2. NSAC defined "Phase 6" as starting with the closure of the relief block valve began at 3:08 p.m. and ending at 7:50 p.m. with the successful starting of one of the reactor coolant pumps. JME 1-C (63) at App. TH 85 et seq. See, Tr. 28,691-693 (Dieckamp).

Mehler's prior testimony is consistent. Mehler confirms that the primary concern of site personnel after the pressure spike was recovering from a damaged core. JME 1-C (68) at 10-11; Tr. 29506-507. He also testified previously that he believed that the decision to repressurize the reactor during the afternoon of March 28 was made sometime during the period of 2:00 to 4:00 p.m. JME 1-C (68) at 11; Tr. 29,505 (Mehler).

Chwastyk stated explicitly at the hearing, and in earlier interviews with the NRC, that after this, he understood that a zirconium-water reaction had taken place, indicating more serious core damage than he had originally conceived. Tr. 29,158-159; 29,293-294; 29,326-328; 29,331; 29,351 (Chwastyk). Chwastyk defined "core damage" as a loss of some amount of cladding material, but more importantly that the core damage may be

continuing. Tr. 29,175; 29, 179;29,293-294; 29,326-327; 29,331; 29,346 (Chwastyk). He also testified that his immediate concern after the spike was to ensure that the core was covered. He stated that after the event, he could not look at the indicators previously available to him with the same confidence that the core was being adequately cooled. Tr. 29,326-329 (Chwastyk).

Chwastyk has in less detail in previous intervews testified to substantially the same evaluation of the status of the reactor after the pressure spike. JME 1-C (99) at 20-21; JME 1-C (117) at 24, 32.

Corroborating this testimony is the testimony of Ted Illjes, whom Chwastyk briefed along with the other operators coming on shift after the spike. Chwastyk told the operators about the pressure spike and hydrogen burn to ensure they would understand the steps being taken for the "recovery". Tr. 29,167; 29,308-309 (Chwastyk). Illjes testified that he remembered a briefing about the pressure spike on March 28 and additionally a discussion about hydrogen, and recalled discussion on the evening of March 28 in which the occurrence of the pressure spike was correlated with recycling of the EMOV. Tr. 29,595-598, 29,600 (Illjes); Illjes, JME 1-C (36) at 3-6; JME 1-C (127) at 4-9. Illjes testified at two different times to the NRC that he remembered discussions about a hydrogen or noncondesnable bubble in the reactor vessel head. Tr. 29601-2; JME 1-C (36), (127), supra. While Illjes's memory had failed regarding these events by the time of the hearing, he did acknowledge that his early testimony about such discussions was consistent. Tr. 29,610 (Illjes).

Illjes testified in this hearing that he tends to remember events by correlating them to evolutions which occurred at the plant. Illjes in his prior testimony to the NRC correlated discussions about hydrogen, the pressure spike or noncondensible gas with specific evolutions taking place on March 28. Tr. 29,573-29,757 (Illjes).

Operator Chuck Mell, one of those briefed by Chwastyk along with Illjes, has also testified in earlier interviews that he recalled a conversation about a noncondensible bubble on the evening of March 28 after the reactor coolant pump was started. Tr. 29,616 (Illjes); JME 1-C (69) at 17, 23. Illjes had similar recollections. JME 1-C (36) at 9-11; JME 1-C (127) at 6-10. And Ed Frederick, on duty from the beginning of the accident, recalled non-condensibles on March 28. JME 1-C (71) at 13-14.

(Note that the Board is simply wrong in stating at PID at 12: "It is beyond any dispute that the existence of the noncondensible hydrogen bubble in the reactor vessel head did not become a matter of concern until Messrs. Lowe, Crimmins, and Moore calculated the volume of hydrogen in the reactor vessel very late on March 29 and in the early morning hours of March 30.")

NRC Inspector Plumlee recalled a definite awareness of

hydrogen on March 28. See, JME 1-C (140) at 3, 59-75, 95-101, 1-6-112, 118-122, 147, 199-200, 203, 205-206. See also, JME 1-C (139).

Chwastyk, Mehler and Illjes' interviews were available to Dieckamp prior to May 9. Clearly, they indicated that the operational staff interpreted the pressure spike to be an explosion and took steps to repressurize the reactor, a serious departure from their previous strategy, in response to the spike. At the very least, these interviews indicate "some evidence" that the spike was properly understood to have been caused by a hydrogen burn.

However, the Board does not even accept Dieckamp's analysis of these interviews which even he acknowledges today to be "some evidence" of a proper interpretation of the spike. Dieckamp ff Tr. 28,316 at 13-15. Dieckamp's position currently is that although Chwastyk, Mehler and Illjes' interviews constitute "some evidence", they do not constitute sufficient evidence to convince him that Chwastyk, Mehler and Illjes properly understood the pressure spike. Tr. 28,757. This of course is not what Deickamp said in his Mailgram, and distorts the issue remanded to the Licensing Board, i.e., whether there was any evidence of a proper interpretation of the spike and whether licensee improperly withheld information about the spike or hydrogen burn.

The Board's analysis of the Chwastyk Mehler and Illjes' interviews is extremely misleading. For example, it is clear that a fair reading of Mehler's interviews would indicate that he was absolutely certain that March 28 was the date he was given an instruction not to activate equipment in the reactor building in order to avoid sparks after the spike occurred, until a New York Times article appeared discussing his testimony to this effect before the Special Inquiry Group. JME 1-C-89; TMIA Mailgram Exh. 17.

Mehler then apparently changed his testimony stating that he was unsure of the date of the instruction after his conversations with others. Tr. 29,521-511; JME 1-C-98. However Mehler then and currently still remembers that the instruction was given on the day when he started the backstop and lift pumps, and the only day he remembers doing this is March 28. Tr. 29,509-510; 29,534 (Mehler); Tr. 28,796 (Dieckamp).

The arbitrary nature of the Board's analysis is perhaps best illustrated by its finding that Mehler's testimony is to be believed because it became "increasingly accurate" over time due to "after acquired information." Yet it finds that Chwastyk and Illjes' "increasingly accurante" testimony in light of "after acquired information" "not to be believed." See PID at 10, 11, 45.

Additionally, the Licensing Board entirely misrepresented the testimony and events surrounding the cooborative statements of other plant workers which indicate that knowledge of the hydrogen

explosion was widespread on March 28.

During discovery in this proceeding, TMIA propounded a number of interrogatories to GPUN concerning operational personnel and management's awareness on March 28, 1979 of the hydrogen burn or explosion. Licensee chose to answer these interrogatories by distributing a questionnaire to present and former GPU and B&W employees and managers involved in some manner in the accident. TMIA Ex. 32A at 1-2. These questionnaires were distributed under cover of a letter from GPUN Licensing Manager Jack Thorpe which stated that answers to the questionnaires would be used in the restart hearings for TMI-1. Id. at Att. 2.

Twenty-one persons answered "yes" to a questionnaire that they were aware or informed on Wednesday, March 28, 1979, of the hydrogen explosion or combustion which occurred in the TMI-2 containment building. Most of these individuals at a later time retracted their affirmative answers after being contacted by licensee attorney Richard Lloyd. These retractions are for the most part short statements stating without explanation that the individual misread or did not understand the questionnaire at the time he or she was completing them. TMIA Ex. 32A at 3; Attachment 3.

The Board heard testimony from six of these individuals. The first, Thomas Mulleavy, testified that he did learn of an explosion in the containment building at 1:50 p.m. on March 28, but in contradiction to his original questionnaire answer, he did not identify the explosion as a hydrogen burn at the time. Mulleavy, who was a radiation protection supervisor, was in the Unit 2 control room at the time of the explosion. He learned of the pressure spike when he heard a noise which sounded like an oil burner going on. Tr. 31,324 (Mulleavy).

He testified, further, that someone told him that it sounded like an explosion in the reactor building, and then called his attention to the pressure spike strip recorder. He viewed the spike which rose rapidly and then returned straight back down. Ibid. Mulleavy stated that he did not report the explosion to anyone because he believed the operations personnel in the control room, about 15 or so, were trained individuals who he had confidence could handle the problem. Tr. 31,326-328 (Mulleavy). He confirmed, however, that it seemed a significant event at the time it occurred. Tr. 31,328

Joseph DeMan, currently a training department instructor, indicated on his questionnaire that on March 28, 1979, he was informed of the pressure spike and the hydrogen burn. TMIA Ex. 33 B. DeMan was, on March 28, a radiological control foreman whose duty it was to direct the activity of health physics technicians. Tr. 31,343-345 (DeMan).

At the time of his testimony DeMan not only could not remember whether or not he remained in the Unit 2 control room through the time of the pressure spike at 2:00 p.m, ibid., but

claimed that he became aware of the hydrogen burn from "reading various reports" sometime prior to his deposition taken by TMIA on October 5, 1984. Moreover, DeMan said he came to believe he answered the questionnaire incorrectly after speaking to company attorney Lloyd. Tr. 31,350-351 (DeMan). DeMan disavowed his deposition testimony of October 5, 1984 in which he stated that he did not know whether the hydrogen burn or explosion occurred before or after the accident. Tr. 31,352 (DeMan).

Deman's various testimony changes throughout this proceeding seriously undermined his credibility. DeMan testified in an earlier deposition that he learned of the pressure spike between 1979 and 1981, from an individual who mentioned it "in passing." Tr. 31,354-356 (DeMan). DeMan also testified at the time of his deposition that he learned about the spike sometime before moving to the training department. Tr. 31,355 (DeMan). His testimony was further impeached by the fact that he testified to the Senate Committee investigating the TMI-2 accident on October 16, 1979, that he learned about the pressure spike in the March 28 to March 30,1979 time period. Tr. 31,356 (DeMan).

DeMan provided no plausible reason for his varying, inconsistent, and incredible explanations for his mistakes in answering the questionnaire. Incredibly, his only attempt to explain was that he psychologically blocked the date of the hydrogen burn from his memory. Tr. 31,357 (DeMan).

The third witness who answered affirmatively on his questionnaire that he was aware on March 28 of the hydrogen burn, was Curtis Conrad. Conrad, currently a layout man with Met-Ed in Reading, was at the time of the accident an auxiliary operator C assigned to Unit 2. Tr. 31,362 (Conrad). He stated the following in his questionnaire:

> 1) On March 28 he was informed of the pressure spike through "information ...relayed [to him] by [his] foreman";
>
> 2) He was not aware of a thud or thump caused by the explosion although he was in the vicinity of TMI-2 at that time;
>
> 3) He was informed on March 29 at 9:00 a.m. by his foreman of the hydrogen burn which occurred on March 28 in the Unit 2 reactor building;
>
> 4) He was informed on March 28 of the acutation of the containment sprays;
>
> 5) He was aware on March 28 of the alarms actuated by the pressure spike or hydrogen burn.

TMIA Ex. 33 D.

Yet at this hearing Conrad changed his story entirely. He

stated that he was at the Observation Center at the time of the spike, which is not "in the vicinity of TMI-2". Tr. 31,367 (Conrad).

Conrad also asserted that he does not know if he has learned of the particular pressure spike in question. But at his deposition he testified that he learned of the pressure spike one to two weeks after the accident. Tr. 31,372-31,373 (Conrad). Further, at the time of the hearing Conrad said that he came to believe after speaking to Lloyd that he did not learn of a hydrogen burn or explosion in the containment building occurring on March 28 but instead only learned at some later time of a hydrogen burn in the reactor vessel. Tr. 31,378-31,380 (Conrad).

Moreover, Conrad now says that he learned about this hydrogen burn through the newspapers and not through a foreman. Tr. 31,381 (Conrad). Conrad appeared so incredible that the Board had to call a bench conference in the midst of Conrad's testimony to point this out to counsel. T. 31,377; 31,379 (Conrad).

The fourth witness was David Zeiter, currently a Radiation Chemistry Supervisor, TMI-1, and at the time of the accident a radiation chemistry technician. Tr. 31,392 (Zeiter). Zeiter answered the following to the GPUN questionnaire:

> 1) He was informed on March 28 by other workers of the spike at the time of the spike;
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> 2) He said he was aware on March 28 of the hydrogen burn;
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> 3) He learned of the actuation of the containment sprays; and
>
> 4) he was aware of an instruction given not to activate electrical equipment in the reactor building for fear of causing a spark or hydrogen explosion. TMIA Mailgram Exhibit 33D.

While Zeiter claims that he filled out the questionnaire with care, Tr. 31,399 (Zeiter), he testified that he answerred each of the above questions incorrectly. Tr. 31,400-406 (Zeiter). He claims that he learned of the pressure spike only a few weeks before the hearing from a company attorney. Tr. 31,402-403 (Zeiter).

He claims he learned of the hydrogen explosion in the containment building only within the last weeks, in conversations with company attorneys and other employees. Tr. 31,407-408 (Zeiter). Zeiter's only explanation of why he answered the questionnaire affirmatively, when in fact he did know about either the spike or the hydrogen burn is that he confused the spike and hydrogen explosion with the clearly distinct hydrogen bubble.

A fifth witness who originally answered that he had learned of the hydrogen burn on March 28, was A.P. Rochino. He was Engineering Mechanics Manager at the time of the TMI-2 accident. In July, 1979, he participated in the containment shock wave study which focused on the temperature effects of the pressure spike and/or hydrogen burn. TMIA Exs. 35 and 36. As such, he reviewed the hydrogen burn and pressure spike event in some depth. Moreover, he reviewed a draft report on the actuation of containment sprays at the time of the spike. TMIA Ex. 37; Tr. 31,420; 31,422-424 (Rochino).

In his questionnaire Rochino answered the following:

> 1) He was informed at 8:00 p.m. on March 28 of the pressure spike by means of "telephone communications which was continously (sic) going on between TMI-1 and Mountain Lakes Bldg...";
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> 2) He was informed of the hydrogen explosion or combustion on March 28, 1979 at 8:00 p.m. "by telephone...", apparently by means of open lines between TMI-1 and Mountain Lakes;
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> 3) He did not remember whether or not he was informed or aware of actuation of the containment sprays or an instruction not to activate equipment in the reactor building for fear of causing a spark or hydrogen burn. TMIA Mailgram Exh. 33E.

At the time of this hearing, Rochino testified that he was not at work at 8:00 p.m. on March 28 but instead only worked his usual 8:00 to 5:00 work day on March 28 and 29. Tr. 31,426-427 (Rochino). His position is that he meant to say that he learned of the pressure spike and hydrogen burn on March 30 when Wilson set up a group to maintain a nightly vigil by means of a squawk box or speaker phone. Tr. 31,427; 31,432; 31,439 (Rochino). He also stated that he mistakenly had characterized the telephone communications as between Unit 1 and Mountain Lakes, meaning instead that communications were between Mountain Lakes and the TMI site. Tr. 31,432 (Rochino).

Rochino is an engineer who is in a fairly high position in the GPUSC/GPUN hierarchy. By his own admission, he is a careful and precise engineer, and as would be expected, he completed the questionnaire carefully at the time he received it. It strains credulity to suggest that Rochino made so many different mistakes throughout the questionnaire if he were devoting even minimal attention to the it. Tr. 31,428-429; 31,431 (Rochino).

Moreover, it is clear that Rochino was intimately familiar with the subject matter of the questionnaire. It is not credible that Rochino would have reviewed and perhaps commented on detailed papers on the effects of the spike and hydrogen burn, and then been unable to answer a question about the date on which he became aware of the spike and hydrogen burn.

Furthermore, the answers to questions 1 and 3 are identical, demonstrating some certainty in Rochino's mind about awareness of the pressure spike and hydrogen burn on March 28. Tr. 31,430 (Rochino); TMIA Ex. 33 E.

The final witness on this subject was Robert Boyer, currently a TMI-1 shift supervisor and at the time of the accident, Unit 1 a control room operator. Tr. 31,548-549 (Boyer). He resonded to the questionnaire as follows:

> 1) He learned of the pressure spike when he returned to work on March 29 after being off work the 28th, and was informed by operational personnel of TMI-2 conditions;
>
> 2) He was informed about the hydrogen burn when he returned to work on March 29 for his regularly-scheduled shift and was briefed by operations; and
>
> 3) He recalls a briefing by operations personnel about the pressure spike, the actuation of the containment spary and the hydrogen burn when he returned to work on March 29. TMIA Mailgram Exh. 33F.

After being contacted by company attorney Lloyd, Mr. Boyer changed his story. Since then he has had other conversations with licensee attorneys to prepare for his deposition and this hearing. Tr. 31,561-562 (Boyer). By the time of the hearing, he had little memory about any of these events. Tr. 31,557-560 (Boyer).

At the hearing Boyer could not remember whether, at the time he was briefed on March 29 of TMI-2 conditions, whether he was informed about the pressure spike, actuation of containment spray or the hydrogen burn. He could not remember how or when he learned of the pressure spike, or how or when he learned of the hydrogen burn. And he has simply no memory now of the pressure spike or related events. Tr. 31,551-552; 31,556-558; 31,560 (Boyer).

The record of this case also supports the conclusion that Station Superintendent Gary Miller was not only aware of the pressure spike, but his knowledge of plant conditions including an awareness of superheated temperatures enabled him to understand that a hydrogen explosion was the cause.

Miller acknowledges that he heard the "thud" in the control room at the time of the spike, and recalls some discussion about a ventilation damper shifting. Tr. 30,186-187. (Miller). See, also, JME 1-C (83) at 31.

Chwastyk testified that in the course of a "moving conversation" with Miller as Miller prepared to leave the plant for the Lt. Governor's office Miller said to him something like "let's

not get everybody all excited about it." This indicated to Chwastyk that Miller not only was aware of the spike, but wanted to investigate the matter, and make a determination about what had in fact happened. Tr. 29,159; 29,281 (Chwastyk)

Chwastyk further testified that Ross was present at the time of this conversation with Miller, and agreed with Miller's advice. Chwastyk also believed that Ross understood the significance of the information which Chwastyk was relating to Miller, as well as Miller's reasoning for ensuring that others in the control room not get excited. Tr. 29,424-426 (Chwastyk).

Mehler has also testified that Miller was aware of the pressure spike. JME 1-C (89) at 29; Tr. 29,483 (Mehler).

Other operators in the control room agreed with Chwastyk and Mehler that Miller was aware of the pressure spike, or one of the events accompanying the pressure spike, such as actuation of the containment sprays, the alarms or ES signal, in addition to the "thud." For example, Marshall assumed Miller was aware of actuation of the containment sprays from his position in the control room. TMIA Ex.32G, supra. Zewe has stated that he believed no one in the control room could have missed the spike or the actuation of the sprays, including Miller. JME 1-C (75) at 257, 260. NRC Inspector J. Higgins testified that he believed Miller told him that he knew of the pressure spike on March 28. JME 1-C (19) at 24.

Despite overwhelming evidence to the contrary, Miller also claims that he was unaware of both the alarms and the ES signal at the time of the pressure spike. Tr. 30,195-196; 30,198-199 (Miller). See, also,, JME 1-C (33) at 3-4, JME 1-C (124) at 54, JME 1-C (81) at 41-43 (Ross). Miller's position is particularly incredible, given that there were a large number of alarms which were actuated at the time of the pressure spike. Tr. 29,476 (Mehler); TMIA Ex. 21; Broughton, ff. Tr. 31,225; Tr. 31,228-232, 31,234 (Broughton). Moreover, as Miller himself acknowlwedges receipt of an ES signal is a significant event. JME 1-C (122) at 125.

Miller was also informed of thermocouple temperature readings which were taken on March 28. From these readings, he should have, and did properly interpret the pressure spike as a hydrogen burn at the time it occurred.

Miller stated in early interviews to the NRC that he relied on incore temperature readings in his assessment of the condition of the reactor on March 28. He used the 2500 degree figure as a "gross indicator," of superheated conditions. JME 1-C (23) at 56. Miller stated to the NRC, "...the bottom line here was that they're hot, they were hot enough that they scared you," and "...we just knew we didn't have a control, we were out of control." Ibid. See PID at 97 to 98. He also stated that he requested the readings, "... because they were the only indicator [of] what was going on in the core I had that was direct." Id. at 75.

Ross too stated that he believed Miller interpreted the incore thermocouple temperatures to indicate "the bottom line ...the core is hot, or it is at least hot." JME 1-C (33) at 42. These were Miller's evaluations which he drew from a small set of approximately five to 10 readings.

For some inexplicable reason, the Licensing Board accepts as truth Miller's admittedly "poor present memory" that he did not understand the significance of temperature readings, rather than attaching obvious significance to his earlier admissions concerning their importance at the time. See testimony at PID at 97-98.

It is clear that the arbitrary choice of testimony the Board is willing to accept is directly related to the importance of the testimony's link to Dieckamp. The Board does not dispute the importance of Chwastyk's testimony. See e.g. PID at 49, 60. As anyone objective observer of the hearings could surely testify, Chwastyk was one of the most honest, least confused witnesses who appeared, Judge Smith's wholly inappropriate and incorrect remark to the contrary. PID at 74.

Yet the most clearly incredible testimony the Licensing Board accepts without hesitation.

Further, the Licensing Board's viciously attacks TMIA for suggesting the untruthfulness of testimony, some of it blatantly contradictory, rendered in this proceeding. PID at 15, 112. Calling TMIA's "charges . . .disruptive, unfounded, and professionally reckless," the Board declares, "By our count TMIA, either directly or by strong implication, accurses fifteen of the 24 witnesses who testified before us of lying and invites an inference of perjury by even more witnesses." PID at 15.

First, it must be noted that GPUN counsel Blake admitted in a deposition in this proceeding that he made statements to TMIA representative Louise Bradford raising questions about the credibility of his own "questionnaire" witnesses then being deposed by TMIA. The Licensing Board refused to allow introduction of Blake's testimony into evidence in this proceeding. This was part of a pattern engaged in by the Board of excluding direct testimony which would have aided TMIA's case. See, e.g., the attached motion filed earlier in this proceeding regarding the exclusion of TMIA's proposed testimony of former NRC Commissioners Bradford and Gilinsky.

Second, Licensee's employees have a fairly sordid history of providing dishonest testimony regarding events which could impact disfavorably on the company. It should be remembered that with the exception of Harold Hartman, no operator or manager was willing to provide honest accounts of leak rate falsification at Unit 2 until the matter was in the hands of the Department of Justice. Similarly, Judge Milhollin did not hesitate in concluding that a large number of company employees, including

management, provided "noncredible" testimony under oath during the reopend "cheating" hearings.

This decision is a very sad comment on the integrity of the Licensing Board hearing process. As before, it may remain only for the Department of Justice, reportedly investigating the NRC Staff for criminal activity connected with its investigation of information flow during the accident, to get to the bottom of this matter.

Other than referring the Appeal Board to the above-referenced citations and TMIA's Findings of Fact and Conclusions of Law with the hope the Appeal Board can take this matter under sua sponte review, TMIA unfortunately can do no more to pursue its appeal at this time.

Very sincerely,

Joanne Doroshow

Joanne Doroshow
Attorney for TMIA

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Appeal Board

Administrative Judges:

Gary J. Edles, Chairman
Dr. John H. Buck
Christine N. Kohl

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

THREE MILE ISLAND ALERT'S MOTION FOR DIRECTED CERTIFICATION ON EXCLUSION OF TESTIMONY OF FORMER NRC COMMISSIONERS PETER BRADFORD AND VICTOR GILINSKY

Three Mile Island Alert ("TMIA"), pursuant to 10 CFR 2.771, petitions this Atomic Safety and Licensing Appeal Board ("Appeal Board") to consider and reverse an order of the Atomic Safety and Licensing Board ("Licensing Board") which foreclosed TMIA from presenting the testimony of former Nuclear Regulatory Commission ("NRC" or "Commission") Commissioners Victor Gilinsky and Peter Bradford and yet permitted licensee's presentation of factual and opinion testimony on the same matters.

Further, TMIA requests that the Appeal Board determine whether the Ethics in Government Act of 1978, 18 U.S.C. §207 applies to the proposed opinion testimony of former Commissioners Gilinsky and Bradford to foreclose its introduction into evidence in this proceeding.

In support of this motion, TMIA submits the accompanying Memorandum of Points and Authorities. It also refers the

the Appeal Board to the following portions of the record below: TMIA's Motion for Leave to Present the Testimony of Victor Gilinsky; TMIA's Motion to Admit Deposition of Peter Bradford as Testimony of Unavailable Witness; Peter Bradford's Deposition of October 23, 1984; Licensee General Public Utilities Nuclear ("GPU") responses to TMIA's motions; the transcript of the November 9, 1984 Prehearing Conference containing the Licensing Board's order denying both of TMIA's motions to present the testimony of Dr. Gilinsky and Mr. Bradford; and the transcripts of the November 14 and November 15, 1984 hearings on the Dieckamp Mailgram issue.

TMIA requests expedited consideration of this interlocutory appeal in order that the error may be corrected prior to the close of the hearings on the Dieckamp Mailgram issue, currently scheduled to end approximately December 4, 1984.

Respectfully submitted,

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Dated: November 19, 1984

Attorneys for Three Mile Island Alert

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Appeal Board

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

THREE MILE ISLAND ALERT'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR CERTIFICATION OF ORDER BARRING GILINSKY AND BRADFORD TESTIMONY

Three Mile Island Alert ("TMIA"), pursuant to 10 CFR 2.771, petitions this Atomic Safety and Licensing Appeal Board ("Appeal Board") to consider and reverse a November 9, 1984 order of the Atomic Safety and Licensing Board ("Licensing Board") which bars TMIA's introduction into evidence of testimony of former Nuclear Regulatory Commission ("NRC" or "Commission") Commissioners Peter Bradford and Victor Gilinsky on the Dieckamp Mailgram issue.

At the same time, the Board has permitted licensee General Public Utilities Nuclear ("GPU") to present opinion and factual testimony on the same matters, including the testimony of Herman Dieckamp, William Lowe and Edwin Zebroski.

This ruling of the Licensing Board affects the structure of the proceeding in a pervasive and unusual manner and presents novel questions of policy and law whose resolution will protect the public interest and avoid undue prejudice to TMIA's interest in this proceeding.

As set forth below, TMIA requests that the Appeal Board consider and reverse the Board's rulings which bar the introduction of former Commissioners Bradford and Gilinsky's testimony on relevant issues before the Board.

I. BACKGROUND.

On May 24, 1984, the Appeal Board remanded for consideration by the Board the circumstances under which on May 9, 1984 GPU President Herman Dieckamp sent a mailgram to Congressman Morris Udall in which he stated that "(t)here is no evidence that anyone interpreted the pressure spike and initiation of containment sprays in terms of core damage"at the time of their occurrence, and that there is no evidence that anyone withheld information.

The Appeal Board's concern was whether the statements in the mailgram were accurate, and if not, who or what was the source of the information which Mr. Dieckamp conveyed in the mailgram. The Appeal Board criticized the Licensing Board for its reliance on the NRC Staff's report on GPU reporting failure, NUREG-0760, which the Appeal Board characterized as "wholly conclusory." ALAB-772 at 131-133.

The Appeal Board also stated explicitly that it remanded the mailgram issue to the Board for further hearing on the "significance of Dieckamp's mailgram vis-a-vis licensee's competence to manage TMI-1 safely." Id. at 133.

The Licensing Board, after a prehearing conference on the scope of the remanded and reopened issues, stated that the issues before it were whether Mr. Dieckamp knew or should have have known that the statements in the mailgram were false or

inaccurate; and whether he should have corrected the statements once he knew that the statements were false or inaccurate. In addition, the Board accepted the issue of whether Mr. Dieckamp "made any effort to discover the facts . . . " Memorandum and Order Following Prehearing Conference at 8 (July 9, 1984).

TMIA proposed to present the testimony of former Commissioner Peter Bradford, currently Chairman of the Maine Public Utilities Commission, on the following;

(1) The operating structure of the Commission and the NRC Staff Emergency Response Center at the time of the TMI-2 accident;

(2) Mr. Dieckamp and GPU's obligation at the time of the accident to report information about the pressure spike, the containment sprays, generation or combustion of hydrogen, core damage and in-core thermocouple temperatures in excess of 2500 degrees which would indicate core damage and hydrogen generation/ burn and their obligation to dc an investigation or inquiry to ensure the accuracy and completeness of all information communicated to the Commission and NRC Staff about these matters;

(3) Whether the information available to Mr. Dieckamp and GPU at the time of sending the mailgram was sufficient evidence that licensee personnel understood the significance of the pressure spike at the time it occurred so that it should have been acknowledged as "some evidence" in Mr. Dieckamp's mailgram;

(4) Whether Mr. Dieckamp should have obtained the information now available on the public record by May 9, 1979 so that he would have known on that date that the statements made in his

mailgram were false at the time he made them;

(5) the adequacy of NUREG-0760, the NRC Staff's report on GPU reporting failures, insofar as the report addresses licensee's understanding and appreciation of the pressure spike at the time it occurred and the withholding of information about the pressure spike and evidence of core damage.

(6) Mr. Bradford's opinion of Mr. Dieckamp's integrity and licensee's corporate integrity and competence in light of licensee and Mr. Dieckamp's consistent position over the last five and one-half years that there is no evidence that anyone interpreted the pressure spike in terms of core damage or that anyone withheld any information.

On October 23, 1984, upon adequate notice to all parties, TMIA took the deposition of Peter Bradford. Attorneys for both the licensee and NRC Staff cross-examined former Commissioner Bradford at the deposition. On November 1, 1984, TMIA moved to introduce the deposition testimony of Peter Bradford as the testimony of an unavailable witness insofar as his business responsibilities as Chariman of the Main Public Utilities Commission prevents his attendance during the scheduled time for hearing of the Dieckamp Mailgram issue.[1]

During the deposition TMIA established the following foundation for the opinion testimony it requested from Mr. Bradford:

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[1] See Schedule for hearings before the Maine Public Utilities Commission on "Investigation of Seabrook Involvements by Maine Utilities," Docket No. 84-113, attached and incorporated herein as Exhibit 1. (continued)

(1) Mr. Bradford was an NRC Commissioner at the time of the TMI-2 accident, is a graduate of law school, has knowledge of NRC regulations on reporting of information to the NRC at the time of the accident, and has specific knowledge of the NRC requirements for reporting of information during and after the accident;

(2) Mr. Bradford's explanation of how the Commission and the NRC Staff operated to respond to the TMI-2 accident and the information which they needed and required to perform their duties;

(3) Mr. Bradford's specific knowledge of the facts of the TMI-2 accident and reporting of information on the accident, a portion of which is evident from his questioning of Mr. Dieckamp at an October 14, 1981, Commission meeting which addressed specifically Mr. Dieckamp's mailgram; and

(4) Mr. Bradford's specific knowledge and analysis of NUREG-0760, including his analysis at the time he was Commissioner and his current analysis given newly-discovered evidence, on licensee's understanding and appreciation of the pressure spike at the time it occurred.

Mr. Bradford in his deposition testified to the following:

(1) Licensee officials, including Mr. Dieckamp, were required to provide the NRC with detailed information about specific plant conditions in order to permit the Commission and the NRC Staff to make informed decisions concerning the accident,

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(continued)

TMIA requests that the Appeal Board take official notice of the hearing schedule of the Maine Public Utilities Commission of which Mr. Bradford is currently Chairman.

including any decision to recommend evacuation to the Commonwealth of Pennsylvania;

(2) His opinion was that if the licensee had provided to the NRC information about site and GPU Service Corporation personnel's knowledge about the pressure spike, the generation and combustion of hydrogen, and in-core temperature readings in excess of 2200 degrees F, the Commission and NRC Staff would have ordered a precautionary evacuation given that they took steps to do so on much less dramatic information on Friday, March 30, 1979;

(3) Mr. Dieckamp, as GPU President, should have had available to him evidence, including additional evidence uncovered during the discovery portion of this proceeding, which indicated that site personnel did interpret the pressure spike in terms of core damage and that there was withholding of information about the pressure spike and associated conclusions;

(4) Mr. Dieckamp, if he did not have available to him this information, should have done an inquiry to discover this evidence prior to sending the mailgram;

(5) The fact that Mr. Dieckamp would write a mailgram which contained false statements, apparently without doing an adequate investigation to ensure its accuracy, does not reflect well on Mr. Dieckamp's integrity.

This last opinion was based, in addition, on the fact that Mr. Dieckamp maintained this position at an October 14, 1981 meeting under questioning about the mailgram from then-Commissioner Bradford. During an exchange with Mr. Dieckamp at this meeting on the "mailgram," Mr. Bradford was able to make a

first-hand evaluation of Mr. Dieckamp's credibility.

Moreover, Mr. Bradford testified as to the inadquacy of the IE investigation and report on GPU reporting failures. The NRC Staff is again presenting the testimony of the director of that investigation, Norman Moseley, to testify about the investigation and a portion of the report. Mr. Bradford's testimony is relevant to rebut the testimony of Mr. Moseley as to the soundness of the report and its conclusions.[2]

On November 1, 1984, TMIA filed a motion for leave to present both factual and opinion testimony of former NRC Commissioner Victor Gilinsky on the Dieckamp Mailgram issue. TMIA represented to the Board and the parties the general outline of its intended questioning of Dr. Gilinsky, and that although it believed he had relevant testimony TMIA did not have the authority to represent Dr. Gilinsky or present pre-filed testimony on his behalf. TMIA further stated that it wished to present the testimony of Dr. Gilinsky on the following matters relevant to the Dieckamp Mailgram issue before the Board:

(1) On May 7, 1971, Dr. Gilinsky attended a site tour by the Subcommittee on Energy and the Environment of the Committee on Interior and Insular Affairs of the U.S. House of Representatives, whose chairman is Representative Morris Udall. During that tour, Dr. Gilinsky spoke to Mr. Dieckamp about the

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[2] TMIA also proposed to introduce two memoranda Mr. Bradford wrote during the time he was Commissioner in which he analyzed the evidence presented in NUREG-0760 concerning licensee's knowledge and understanding of the pressure spike at the time it occurred. These two memoranda, as Mr. Bradford's testimony about the inadequacy of NUREG-0760, were presented to rebut the NRC Staff and licensee's argument that the conclusions of NUREG-0760 support a finding for licensee on this issue. See Moseley Prefiled Written Testimony.

pressure spike, reporting of the pressure spike to the Commission and reporting of information generally to the Commission. The site visit and representation made on the site tour that site and NRC personnel observed the pressure spike at the time it occurred, became the subject of the New York Times article of May 8, 1979, to which Mr. Dieckamp responded by means of his May 9, 1979 mailgram. Dr. Gilinsky's testimony as to a conversation with Mr. Dieckamp about the subject of the mailgram, only two days before the mailgram was sent, is relevant to Mr. Dieckamp's state of mind at the time he sent the mailgram. It is also relevant to Mr. Dieckamp's motive for sending the mailgram to Dr. Gilinsky, the sole NRC Commissioner to whom the mailgram was sent.

(2) Dr. Gilinsky's interpretation and understanding of the relevant "no evidence . . . " portion of the mailgram is probative of Mr. Dieckamp's intent in sending the mailgram. An individual who sends an official document in the nature of the mailgram does so with an expectation as to how the document will be understood by the recipient. Therefore, Dr. Gilinsky's understanding of the meaning and purpose of the mailgram is relevant to the issue of Mr. Dieckamp's state of mind at the time he sent the mailgram.

(3) After the accident, Dr. Gilinsky had dicussions with Mr. Dieckamp and discussions with other licensee officials of which Mr. Dieckamp was aware, at Commission meetings, concerning licensee's appreciation of the pressure spike; reporting of the pressure spike, hydrogen burn and core damage to the NRC, and the Dieckamp mailgram. Dr. Gilinsky's observa-

tion of Mr. Dieckamp at these meetings and his analysis of the facts before Mr. Dieckamp and the accuracy of his mailgram is probative of whether the statements in the mailgram are false and whether Mr. Dieckamp knew or should have known they were false at the time he sent the mailgram.

(4) Dr. Gilinsky, as senior Commissioner at the time of the TMI accident, can testify as to the licensee and Mr. Dieckamp's obligation to report to the Commission the specific conditions of the reactor during the accident; the materiality of this information to the Commission's decisions about the accident; and his and other Commissioner's probable response to information about the pressure spike, hydrogen burn, in-core thermocouple temperatures in excess of 2500 degrees F and core damage if this information had been reported to the NRC in a timely fashion.

This testimony defines Mr. Dieckamp's obligation to ensure that any information he reported to the Commission about the accident or licensee's reporting failures was fully accurate and complete. It also will demonstrate that the evidence Mr. Dieckamp now contends was not material or of sufficient reliability to acknowledge in his mailgram was in fact "some evidence" which demonstrated that licensee personnel understood the significance of the pressure spike, which should have been reported to the Commission.

At the November 9 Prehearing Conference the Licensing Board denied TMIA's motion to admit the deposition testimony of Mr. Bradford or his testimony at the hearing on matters to which he testified in his deposition. The grounds stated by

the Board for denial of his deposition and hearing testimony were:

(1) Mr. Bradford is in fact available and can be subpoenaed to appear in this proceeding. Tr. at 27852.

(2) Mr. Bradford's testimony, both factual and opinion, is unreliable because Mr. Bradford in his deposition indicated that he did not know the issue to which he was speaking and the use to which his testimony would be put. Tr. at 27850. In addition, TMIA did not establish an adequate foundation for this opinion testimony. Ibid.

(3) Mr. Bradford has no expertise to offer the Board in its determination of this issue so his testimony is irrelevant. Id. at 27851.

(4) The Ethics in Government Act of 1978 has a fairness and reliability aspect within the Board's jurisdiction. The Act therefore provides that admission of Commissioner Bradford's testimony would be unfair to other parties and would be unreliable testimony. The Board based this determination on its judgment that the "only purpose we can see for offering former Commissioner Bradford's testimony is to "lend his status to your /TMIA's/ views" and that using his "status" was not fair to the other parties. Ibid.

The Licensing Board ruled that it would not permit the oral testimony of Dr. Gilinsky on the grounds:

(1) His opinion testimony was not relevant to any matter before the Board. Id. at 27855.

(2) Presentation and introduction of Dr. Gilinsky's opinion testimony is "against the intent of the Ethics in

Government Act" and implementing regulations. Id. at 27855, 27866.

(3) Presentation and introduction of Dr. Gilinsky's factual testimony without prefiling testimony would violate licensee's right to notice of this testimony. Further, presentation of Dr. Gilinsky's testimony for the first time at the time of the hearing "flies in the face of any regulated organized hearing." Id. at 27856.

(4) TMIA has failed to establish with specificity the substance of Dr. Gilinsky's proposed testimony or to establish that he has relevant and material evidence to offer on the issue before the Board. Id. at 27856, 27863-64.

(5) TMIA has refused to disclose to the Licensing Board all information it possesses about Dr. Gilinsky's proposed testimony. Id. at 27864.

The Board denied an oral request for directed certification to the Appeal Board of the Licensing Board's rulings barring the introduction of the Gilinsky and Bradford testimony. Id. at 27874-75.

Over TMIA's objections, the Licensing Board admitted into evidence at the hearing the following testimony of licensee witnesses;

(1) Mr. Lowe's opinion testimony that site personnel would not have deliberately concealed information about the pressure spike from their management and his opinion of Mr. Dieckamp's integrity. Tr. at 28146-28151.

(2) Mr. Dieckamp's testimony about the meaning of the mailgram. Tr. at 28303-28305;

(3) Mr. Dieckamp's testimony about his statements before

the Commission on October 14, 1981. Tr. at 28306-28307;

(4) Mr. Dieckamp's opinion testimony about his own integrity. Tr. at 28308-28310;

(5) Mr. Dieckamp's analysis of the various investigative reports and of the inverviews conducted in the course of those investigations. Tr. at 28308-28310.

The Board based its ruling to accept admission of Mr. Dieckamp's analysis of the various investigative reports and interviews on the fact that "latitude should be given to Mr. Dieckamp to state in his own words why he believes what he does. We see no evidentiary prejudice to you /~TMIA~/. We see it as a sense of fairness." Tr. at 28313.

In all cases TMIA objected to introduction of the testimony cited above on the ground that if it were foreclosed from presenting testimony from the NRC perspective on what Mr. Dieckamp knew or should have known about the accuracy of statements in his mailgram, similarly, the licensee should be foreclosed from offering opinion testimony on the ultimate issue before the Board.

Through this motion, TMIA requests this Appeal Board to consider and reverse the Licensing Board's ruling which bars introduction of the two former Commissioners' factual and opinion testimony.

II. TMIA HAS MET THE STANDARD FOR DIRECTED CERTIFICATION TO THIS APPEAL BOARD.

The standard to determine whether the Appeal Board should undertake discretionary interlocutory review is whether the Licensing Board ruling: 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 manner. Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-405, 5 N.R.C. 1190, 1192 (1977).[3]

Section V(f)(4) of Appendix A to 10 C.F.R. Part 2 provides the following standard for directed certification:

> A question may be certified to the Commission of the Appeal Board, as appropriate, for determination when a major or novel question of policy, law or procedure is involved which cannot be resolved except by the Commission or the Appeal Board and when a prompt and final decision is important for the protection of the public interest, or to avoid undue delay or serious prejudice to the interests of a party.

The questions which TMIA requests the Appeal Board to determine are the following:

(1) Whether the proposed testimony of former Commissioners Bradford and Gilinsky is relevant to the Dieckamp Mailgram issue before the Licensing Board and should be permitted:

(2) Whether the opinion testimony of former Commissioners Bradford and Gilinsky is barred by the Ethics in Government Act;

(3) Whether the testimony of former Commissioner Gilinsky may be presented without prefiling written testimony; and

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[3] See also Puget Sound Power and Light Co. (Skagit Nuclear Power Project, Units 1 and 2), ALAB-572, 10 NRC 693,694 (1979); Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit 1), ALAB-588, 11 NRC 533,534 (1980); Houston Lighting and Power Co. (Allens Creek Generating Station, Unit No. 1), ALAB-635, 13 NRC 309,310 (1981).

(4) Whether former Commissioner Bradford is an unavailable witness such that his deposition testimony may be introduced in lieu of his live testimony at the hearing.

The Board's foreclosure of the testimony of the two former Commissioners' testimony effectively serves to permit only the licensee to present evidence, from the company's perspective, on Mr. Dieckamp's obligation to report information to the Commission and the accuracy of his mailgram. Similarly, it effectively permits only the licensee's testimony as to the ultimate issue before the Board, that is Mr. Dieckamp's integrity and the significance of the mailgram in terms of corporate integrity.

The Board's rulings thereby affect the basic structure of the proceeding in a pervasive manner. The Board acknowledged this in stating that its rulings seriously affected TMIA's presentation of its case. Tr. at 27874.

Moreover the Board's application of the Ethics in Government Act to bar the testimony of two former NRC officials is a legal question of first impression for the agency. As such this issue involves a novel and important issue whose resolution is required to protect the public interest and to avoid undue and serious prejudice to TMIA's interest. Certainly the Appeal Board should rule on whether or not the Act, which TMIA contends <u>on its face</u> does not apply to testimony under oath of former NRC Commissioners, should be applied in this case.

Therefore, the second basis for the Board's rulings should be decided on appeal as a novel question of law which requires interpretation by the Appeal Board.

III. THE PROPOSED TESTIMONY OF FORMER NRC COMMISSIONERS GILINSKY AND BRADFORD IS RELEVANT AND PROBATIVE EVIDENCE.

The issues before this Atomic Safety and Licensing Board ("Licensing Board") are:

(1) whether Mr. Dieckamp knew or should have known that his mailgram contained false or inaccurate statements at the time he wrote it; and

(2) whether he should have corrected false and inaccurate statements in the mailgram at any time after he sent it.

A. Mr. Dieckamp's obligation in sending the mailgram.

One can determine the issue of whether Mr. Dieckamp "should have known" of the false statements in the mailgram only by first defining Mr. Dieckamp's obligation to ensure the accuracy of the statementshe made in his mailgram. Mr. Dieckamp's obligation can only be defined in terms of his responsibility as GPU President to ensure all statements he made to the NRC were complete, accuract and truthfu; and in accordance with licensee's reporting responsibilities. See, e.g., Section 206 of the Energy Reorganization Act of 1974, 10 CFR 50.10, 55.31, 20.403, and 6.8.1 of TMI-2 Tech. Specs.

Two statements in Mr. Dieckamp's mailgram are under scrutiny, One is " /t/here is no evidence that anyone

interpreted the 'pressure spike' or the spray initiation in terms of reactor core damage at the time of the spike . . .". The second is "[t]here is no evidence . . . that anyone withheld any information. "Withhold" is defined as "to desist or refrain from granting, giving or allowing: keep in one's possession or control: keep back." Webster's Third International Dictionary (1961 ed.). In the context of the mailgram the second statement means licensee did not withhold information within its possession which it was obligated to provide to the NRC.

In order to determine whether or not this second statement in Mr. Dieckamp's mailgram is factually accurate licensee's obligation to provide information to the NRC during and after the accident must be defined. Mr. Dieckamp's statement in the mailgram about licensee's compliance with its obligation to provide the NRC with information is accurate only if it has complied with all reporting obligations. Similarly, one cannot determine whether Mr. Dieckamp fully complied with his obligation in sending the mailgram, that is whether he "should have known" statements in the mailgram were inaccurate without defining what investigation or inquiry Mr. Dieckamp should have done to ensure its accuracy.

Former Commissioner Bradford testified that he believed Mr. Dieckamp and licensee should have done an adequate investigation to ensure the accuracy of the mailgram. Further, he

testified that Mr. Dieckamp (and licensee) should have had available the exhibits which he reviewed in the course of his testimony, which indicated statements in the mailgram were incorrect and that licensee personnel did interpret the pressure spike in terms of core damage at the time of the spike.

TMIA's theory of Mr. Dieckamp's obligation in writing the mailgram considering the mailgram would be received and considered by the Commission, is that :

(1) He had a responsibility to do an adequate investigation of the facts concerning licensee's understanding of the pressure spike and containment sprays in terms of core damage prior to sending the mailgram; and

(2) He had a responsibility to correct the misstatement that there was "no evidence" upon learning of the various interviews and documents constituting "some evidence" of licensee personnel's understanding of the pressure spike on March 28.

Therefore, both Mr. Bradford's testimony and Dr. Gilinsky's proposed testimony is relevant to defining licensee's reporting obligation to the Commission.

The Board has stated that neither Commissioner has any special expertise regarding the reporting obligations of the licensee during the accident since the NRC regulations are clear as to these obligations. The entire thrust of the Dieckamp Mailgram issue before the Board is the

is alleging clear reporting responsibility of licensee. Further licensee's compliance or failure to comply with this clear reporting duty has been investigated in at least two different NRC investigations and one Congressional investigation.

Further, the NRC regulations are not clear as to the precise information which must be reported or the quality of information which must be reported. Insofar as the Dieckamp Mailgram itself has itself been studied as a possible reporting failure there have been conflicting interpretations of whether or not the information contained in the mailgram can constitute a reporting violation insofar as it was not required in the license application. NUREG-0760 at 45.

The NRC Commissioners who needed and required information to respond to the accident are clearly the best interpreters of the NRC regulations and best judges of what information was material information to the Commission which should have been reported.

B. The evidence of appreciation of the pressure spike is of the type which should have been reported to the NRC and is of a quality to constitute "some evidence" which Mr. Dieckamp should have acknowledged in his mailgram.

The testimony of licensee witnesses is offered to demonstrate that the information possessed by licensee at the time of the accident, and shortly thereafter, was not evidence of sufficient quality or accuracy that it needed to be reported to the NRC or acknowledged by Mr. Dieckamp in the mailgram.

Dr. Edwin Zebroski's testimony admitted into evidence explained

1. The extent to which there was a rapid learning curve evident in the days immediately after the accident, in respect to organizing and integrating the large volume of plant data and in sorting out different views and speculation as to the extent and nature of the damage of the reactor . . . and

2. The extent to which . . . uncertainties remained for months after the accident, reflecting the limited general state of knowledge of severe core accidents at that time.

Zebroski, ff. Tr. ___ (November 16, 1984) at 2.

Thomas Van Witbeck's testimony admitted into evidence was offered to indicate that his "appreciation for the significance of the pressure spike as a measure of core damage . . . was not gained until /~he~/ was exposed to calculations of the volume of H2 involved which was . . . in the period April 2nd through April 4th."

Van Witbeck, ff. Tr. 28261 at 3.

The purpose of their testimony is to demonstrate even experts did not understand the extent of core damage at TMI-2 until extensive research had been completed on the accident. The implication is that site personnel, who were not accident experts, could not have understood the significance of the pressure spike. The purpose of this testimony is also to demonstrate that whatever understanding site personnel had of the pressure spike in terms of core damage were vague, unsupported and undocumented understandings which do not rise to the level of "some understanding."

Mr. Dieckamp's testimony, admitted into evidence, is that Mehler, Chwastyk and Illjes' testimony does not rise to the level of "some evidence" required to be acknowledged in his mailgram:

> I continue to believe that the evidence and independent analysis therefore support the thrust of the mailgram statement. In making this statement I realize that the mailgram phrase "no evidence" can if taken literally indicate a measure of absolute knowledge that goes beyond the reasonable basis that I possess for my judgment and my belief. By the same token, they do not rise to the level of substance necessary to justify a responsible questioning of my integrity.

Dieckamp, ff. Tr. 28316, at 19-20.

Licensee has permitted to introduce testimony from licensee and consultant witnesses as to whether the information concerning site personnel's understanding of the pressure spike is sufficient to rise to the level of "some evidence" of understanding of the pressure spike required to be acknowledged in Mr. Dieckamp's mailgram and required to be reported to the NRC.

TMIA proposes, through the testimony of former Commissioners Bradford and Gilinsky to demonstrate that the Mehler, Chwastyk and Illjes' interviews, as well as other evidence uncovered during the discovery portion of this proceeding, rises to the level of "some evidence" which was material to the Commission in responding to the accident. As such material information, Mr. Dieckamp was required to acknowledge

it in his mailgram and the licensee was required to report it to the Commission.

C. The Bradford and Gilinsky opinions on Mr. Dieckamp's integrity and the Licensee's integrity in light of the evidence on the public record is probative evidence which the Board must consider.

The Board has barred Mr. Bradford and Dr. Gilinsky's opinions on the ultimate issue before it -- how the inaccuracies contained in the Dieckamp mailgram reflect on his and licensee's integrity. Yet it has permitted licensee witnesses to testify on this issue, including Mr. Dieckamp himself.

Certainly Mr. Bradford and Dr. Gilinsky's opinions do not in any way bind the Board but they do provide probative evidence that the Board should consider.

D. Former Commissioners Bradford and Gilinsky have relevant analyses to offer the Board of the evidence before it, including the adequacy of the NRC's investigation into licensee's knowledge of the pressure spike and analyses of whether the interviews and documentary evidence uncovered during discovery indicate the inaccuracy of the statements in Mr. Dieckamp's mailgram.

The Board foreclosed admission into evidence of Mr. Bradford's and Dr. Gilinsky's analyses of the relevant evidence on the ground that they offered no evidence but only analysis which TMIA counsel could make themselves. However, the Board did admit into evidence Mr. Dieckamp's analysis of the record evidence because he stood as the corporate official accused of misconduct.

Clearly it is a violation of TMIA's due process rights to permit licensee testimony on an issue but bar TMIA's presentation of relevant evidence. More importantly, however, the analyses of two former Commissioners as to whether or not there was evidence which indicated site personnel understood the significance of the pressure spike at the time it occurred is relevant opinion testimony, given their depth of understanding of NRC requirements and the facts of the TMI-2 accident. Further, their evaluation of NUREG-0760 is probative of what weight this Board should give Mr. Moseley's proferred testimony.

IV. THE ETHICS IN GOVERNMENT ACT DOES NOT BAR THE TESTIMONY OF FORMER COMMISSIONERS BRADFORD AND GILINSKY.

Section 207(a) provides in relevant part:

> Disqualification of former officers and employees; disqualification of partners of current officers and employees.
>
> (a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States . . . after his employment has ceased, knowingly . . . with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to
>
> (1) any department, agency, . . . and
>
> (2) in connection with any judicial or other proceeding . . . in which the United States is a party, and
>
> (3) in which he participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the

> rendering of advice, investigation or otherwise, while so employed . . . shall be fined not more than $10,000 or imprisoned for not more than two years or both.

18 U.S.C. § 207(a).

The implementing regulations to which the Board refers in its rulings are those of the Government Ethics Office which provide as follows:

> Testimony and statements under oath or subject to penalty of perjury.
>
> (a) Statutory basis. Section 207(h) provides:
>
> "Nothing in this section shall prevent a former officer or employee from giving testimony under oath, or from making statements required to be made under penalty of perjury.
>
> (b) Applicability. A former Government employee may testify before any court, board, commission, or legislative body with respect to matters of fact within the personal knowledge of the former Government employee. This provision does not, however, allow a former Government employee, otherwise barred under 18 U.S.C. 207(a), (b) or (c) to testify on behalf of another as an expert witness except: (1) to the extent that the former employee may testify from personal knowledge as to the occurrences which are relevant to the issues in the proceeding.

5 CFR 737.19.

The Ethics in Government Act on its face does not apply to the testimony under oath of these witnesses in this NRC proceeding. First, neither former Commissioner falls within the prohibition of 18 U.S.C. § 207(a). Neither through his testimony "intends to influence [the NRC] by oral or written communication on behalf of TMIA. This provision of the Act applies

to attorneys or agents for parties in adjudicatory proceedings, but not mere witnesses." See In re Asbestos Cases, 514 F. Supp. 914, 917 n.2 (D.Va. 1981).

The purpose of the statute has been clearly stated in the Act's legislative history. The Act's objective is that "former officers shall not be permitted to exercise undue influence over former colleagues, still in office in matters pending before the agencies . . ." S.Rep. No. 95-170, 95th Cong., 2nd Sess., reprinted in 1978 U.S.Code Cong.&Ad.News 4248. Former government officials are not permitted to "utilize information on specific cases gained during government service for their own benefit or that of private clients." Id. at 4247.

The Act strengthened the provisions of the pre-existing ethics legislation in order to resolve the "revolving door" problem, that is, officials, "who become advocates for and advisors to the outside interests they previously supervised as government employees." Id. at 4248.

The Joint Explanatory Statement of the Committee on Conference states that this provision includes "appearances in any professional capacity, whether as attorney, consultant, expert witness, or otherwise." H.Con.R. No. 95-1756, 95th Cong., 2nd Sess., reprinted in 1978 U.S.Code Cong.&Ad.News 4390. The Act addresses those former employees and officials

who appear as agents, attorneys or professional representatives of private entities they formerly regulated.

Neither Mr. Bradford nor Dr. Gilinsky is testifying in any such capacity. Mr. Bradford made clear in his deposition that he was testifying pursuant to a request by TMIA counsel but that he had little idea how his testimony fit in TMIA's case and that he would honor a similar request by any other party. Similarly, Dr. Gilinsky is expected to testify as to matters within his personal knowledge as a former NRC Commissioner. Obviously, TMIA has not retained or otherwise hired either so as to trigger the application of the Act. In fact, TMIA has not prefiled written testimony on behalf of either former Commissioner because of the nature of its relationship with both. TMIA has simply requested their testimony in areas relevant to the issues before the Licensing Board.

Further, even if section 207(a) were found to apply to former Commissioners' Gilinsky and Bradford's testimony, section 207(h) excepts testimony under oath from the prohibition of section 207(a).[4]

The legislative history states that this section was intended to list "exceptions" to sections 207(a), (b) and (c). Id. at 4392.

---

[4] Section 207(h) provides in relevant part:

> (h) Nothing in this section shall prevent a former officer or employee from giving testimony under oath, or making statements required to be made under penalty of perjury.

GPU cites regulations promulgated by the Government Ethics Office to argue that opinions offered by Commissioner Bradford in his testimony may not be introduced. First, insofar as this regulation contravenes the clear meaning of section 207(h) it must fail since it cannot contradict its authorizing statute, which specifically excepts "testimony under oath" from section 207(a) prohibitions.

Second, the regulation on its face does not apply to the former Commissioners' testimony in that they are not testifying on TMIA's behalf as expert witnesses. They are testifying only insofar as they are qualified to offer opinions from their experience and knowledge as NRC Commissioners.

Third, the opinions which TMIA proposes to elicit are based on the Commissioners' personal knowledge, as that term is generally construed. The Board's novel interpretation of "personal knowledge" to exclude all knowledge gained from speaking to individuals with relevant information or from reading reports and documents has no basis in law. Both Mr. Bradford and Dr. Gilinsky have personal knowledge of the accident; licensee's reporting of information during the accident; the manner of operation of the agency during the accident; licensee's obligations to the Commission; and the actions the Commission and NRC Staff took in response to the information they received from licensee about the TMI-2 accident. They have also spoken to and personally observed Mr. Dieckamp in connection with these hearing issues. Therefore, all opinions

they would offer are based on their personal knowledge and admissible even if this regulation is found to apply.

Fourth, the regulations promulgated by the Government Ethics Office are merely guidance to the agencies. 5 CFR 737.1(a) Only the NRC's specific regulations implementing the Act are binding. These regulations do not restrict the application of section 207(h) as does 5 CFR 737.19, and therefore supersedes the Government Ethics Office regulations. See 10 CFR § 0.735-26-27. Given the specific NRC regulations which are silent as to any restrictions on the broad § 207(h) exception of "testimony under oath" from coverage of the Act, and this interpretation conforms to the plain meaning of §207(h) and the Act's legislative hisotry, the better interpretation is that 5 CFR §737.19 does not apply to testimony of former NRC officials in adjudicatory proceedings.

Finally, the Licensing Board does not have the authority to bar the former Commissioners' testimony on the ground that they, through their testimony, violate the "spirit" or "intent" of a criminal statute. The Act and implementing regulations provide that either criminal prosecution or administrative sanctions may be taken against individuals who violate the Act. However, outside of the administrative sanctions which the OPM regulations outline, there is no authority for the Licensing Board to bar such testimony. See generally 5 CFR 737.27. Further, insofar as the Licensing Board has

authority to bar such testimony it can do so only after providing an opportunity for the witness or party to protest the action. Ibid.[5]

V. FORMER COMMISSIONER BRADFORD IS UNAVAILABLE TO TESTIFY AND THEREFORE HIS DEPOSITION TESTIMONY SHOULD BE ADMITTED IN LIEU OF HIS LIVE TESTIMONY AT THE HEARING.

TMIA refers the Appeal Board to its argument in its Motion to Admit the Deposition of Peter Bradford as an Unavailable Witness. TMIA Motion at 1-5. TMIA also refers the Appeal Board to Exhibit 1 which confirms Mr. Bradford's representations at his deposition.

VI. TMIA HAS DEMONSTRATED THE RELEVANCE OF FORMER COMMISSIONER GILINSKY'S FACTUAL TESTIMONY SUCH THAT IT MAY BE HEARD WITHOUT REQUIREMENT THAT TMIA FILE PREFILED WRITTEN TESTIMONY.

Dr. Gilinsky's testimony is sought on three factual issues:

(1) His conversation with Mr. Dieckamp about the subject of the mailgram during the site tour on May 7, 1979;

(2) His interpretation of the mailgram;

(3) His observation of Mr. Dieckamp at Commission meetings.

The Board ruled that TMIA had not demonstrated the relevancy of Dr. Gilinsky's testimony on the Dieckamp Mailgram Issue and that TMIA had defaulted by failing to present prefiled, written testimony with the Board.

First, the relevance and materiality of the factual matters listed above dictate that the Board should permit the

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[5] The criminal provisions of the Ethics in Government Act must be strictly construed. Therefore the Licensing Board's interpretation of the "spirit" of the Act is impermissible and warrants reversal on that basis.

testimony of Dr. Gilinsky without prefiled written testimony. Licensee has had adequate opportunity to depose Dr. Gilinsky to determine the basis for his factual testimony. Further, licensee has other means to determine the substance of Dr. Gilinsky's testimony, including questioning of its officials and employees.

Finally, TMIA does not represent Dr. Gilinsky and is not authorized to state more than the specific areas in which he has relevant testimony. Dr. Gilinsky has stated his unwillingness to prefile written testimony on behalf of any party but did state that he would honor a subpoena to testify about those matters on which he held relevant information. TMIA's proffer of the relevant areas of his testimony is a sufficient showing of relevance to dictate that the Board permit his testimony at this hearing.

VII. CONCLUSION

In consideration of the above arguments TMIA requests that the Appeal Board reverse the rulings of the Licensing Board barring the introduction into evidence of the testimony of former Commissioners Bradford and Gilinsky on the grounds stated in the Board's November 9, 1984 Prehearing Order.

Respectfully submitted,

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Dated: November 19, 1984

Attorneys for Three Mile Island Alert

Exhibit 1

STATE OF MAINE
PUBLIC UTILITIES COMMISSION
242 State Street
State House Station 18
Augusta, Maine 04333
(207) 289-3831

October 31, 1984

Re: PUBLIC UTILITIES COMMISSION, Investigation of Seabrook Involvements by Maine Utilities, Docket No. 84-113

TO ALL PARTIES AND INTERESTED PERSONS:

Attached is the most recent schedule governing this proceeding. The schedule was attached to the Procedural Order issued on October 1, 1984 in the Central Maine Power rate case, Docket No. 84-120 and, I believe, was distributed to the participants present at the hearings in 84-113 at that time.

The parties should submit a suggested order of witnesses for the first two weeks of hearings on the Seabrook 2 issues no later than Friday, November 9, 1984.

Sincerely,

Joseph G. Donahue

Joseph G. Donahue
General Counsel

JGD/sn
Enclosure

10/31/84

10/1/84

Date	Seabrook Unit 1 Investigation* 84-113	Seabrook Unit 2 Investigation 84-113	HPS 84-80	CMP 84-120	CONTINENTAL 84-105
July 16-20			7/20 Company files		
July 23-27					
July 30-Aug. 3					
Aug. 6-10			8/7 Intervention; 8/10 Prehearing Conference		
Aug. 13-17					
Aug. 20-24					
Aug. 27-31	8/31 Companies file Direct			8/31 Company files	
Sept. 4-7	9/7 Staff files Direct				
Sept. 10-14	9/11 Intervenors file Direct		9/14 Data Requests due **		9/14 Data Requests Due**
Sept. 17-21	HEARINGS (9/17-21)			9/21 Intervention	
Sept. 24-28	HEARINGS (9/24-28)	9/28 Utilities file		9/25 Prehearing (8:30 a.m.)	
Oct. 1-5	HEARINGS (10/1-5)		10/5 Data Responses Due	10/5 Data Requests Due **	10/5 Data Responses Due
Oct. 9-12	HEARINGS (10/9-12)		HEARINGS (10/15-18)		
Oct. 15-19			HEARINGS (10/22-26)		
Oct. 22-26	10/26 Briefs	10/22 Data Requests Due***		10/26 Data Responses Due	
Oct. 29-Nov. 2	11/2 Reply Briefs				HEARINGS (10/29-11/2)
Nov. 5-9		11/7 Data Responses Due		HEARINGS (11/7-9)	
Nov. 13-16			11/13 S&I File Direct	HEARINGS (11/13-16)	11/16 S&I file Direct
Nov. 19-21		HEARINGS (11/19-21)	11/21 Data Requests Due		
Nov. 26-30			11/30 Data Responses Due		11/28 Data Requests Due**
Dec. 3-7		HEARINGS (12/3-7)			
Dec. 10-14		12/14 S&I File Direct	HEARINGS (12/10-14)	12/11 S&I File Direct	12/14 Data Responses Due
Dec. 17-21		12/19 Data Requests Due		12/21 Data Requests Due	
Dec. 24-28		12/28 Data Responses Due			
Dec. 31-Jan. 4				1/2 Data Responses Due	
Jan. 7-11****		HEARINGS (1/7-11)			HEARINGS (1/7-11)
Jan. 14-18		HEARINGS (1/14-18)	1/14 Company files Rebuttal		1/14 Rebuttal filed
Jan. 21-25			1/25 S&I file Surrebuttal	HEARINGS (1/21-25)	1/25 Surrebuttal filed
Jan. 28-Feb. 1		1/28 Rebuttal filed			HEARINGS (1/28-2/1)
Feb. 4-8		2/4 Surrebuttal filed	HEARINGS (2/4-8)	2/4 Co. files Rebuttal	
Feb. 11-15		HEARINGS (2/11-15)		2/15 S&I file Surrebuttal	
Feb. 18-22					2/22 Briefs
Feb. 25-Mar. 1				HEARINGS (2/25-3/1)	
Mar. 4-8		3/8 Briefs	3/8 Briefs		3/8 Reply Briefs
Mar. 11-15					
Mar. 18-22		3/22 Reply Briefs	3/22 Reply Briefs	3/22 Briefs	
Mar. 25-29					
Apr. 1-5				4/5 Reply Briefs	4/5 Examiners Report
Apr. 8-12			4/12 Examiners Report		4/12 Exceptions
Apr. 15-19			4/19 Exceptions		
Apr. 22-26				5/3 Examiners Report	4/30 Decision
Apr. 29-May 3			5/10 Decision	5/10 Exceptions	
May 6-10					
May 13-17				5/31 Decision	
May 20-24					
May 28-31					
June 3-June 7					
June 10-14					

* This Section of the schedule is particularly tight. All parties should be aware that it may not be met if the issues involved require extensive hearings or deliberation.

** Any data request submitted before the due date must be answered within three weeks. Objections to any data request must be made within seven days.

*** Any data request submitted before the date must be answered within two weeks. Objections to any data request must be made within seven days.

**** Note conflict in hearings this week.

"S&I" = Staff & Intervenors

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

I hereby certify that a copy of the foregoing Letter from Joanne Doroshow to Atomic Safety and Licensing Appeal Board, was served this 8th day of October, 1985, by first-class postage, or hand-delivered where possible.

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