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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)
)	
(Three Mile Island Nuclear)	
Generating Station, Unit No. 1))	

LICENSEE'S RESPONSE TO AAMCDT MOTION
FOR REOPENING TO EXAMINE LEAK
RATE FALSIFICATION AT UNIT-1

On January 24, 1984, intervenors Norman and Marjorie Aamodt filed "Aamodt Motion for Reopening to Examine Leak Rate Falsification at Unit-1" ("Motion to Reopen"). The Aamodts seek to reopen the record in this restart proceeding "to examine the evidence concerning the leak rate report irregularities and falsifications at Unit 1." Motion to Reopen, at 9. The motion is bereft of supporting documentation or affidavits. It relies instead on exaggerated characterizations of certain summary statements made by the Staff to the Commission in several board notifications in September and October, 1983.

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The present posture of the TMI-1 Restart Proceeding must be borne in mind in addressing the Aamodt motion. The evidentiary record is closed and has been for some two years, with the exception of the reopened proceeding on the "Hartman allegations" ordered by the Appeal Board in ALAB-738. That reopened proceeding presently is stayed by the Commission's Order of October 7, 1983. While ALAB-738 is silent on whether pre-accident leak rate testing practices at TMI-1 as well as at TMI-2 were encompassed in the ordered reopened hearing, Licensee anticipated that other parties would argue that TMI-1 practices should be included and Licensee itself was prepared to proceed on that basis. That was the case even though Hartman himself made no allegations regarding TMI-1 practices and there clearly existed insufficient bases to reopen with respect to TMI-1 practices alone. Indeed, Licensee had envisioned that in the leak rate testing reopened hearing it would present evidence concerning personnel and practices at TMI-2 in 1978 and early 1979, a similar scope of evidence for Unit 1, and evidence also on present leak rate testing practices and personnel involved in restart and operation of TMI-1.

Since the Appeal Board's order reopening the record for further evidence on the Hartman allegations and the Commission's subsequent stay of that reopened hearing, there have been additional developments. Notably, Metropolitan Edison,

the former operator of TMI, has been indicted by a federal grand jury for alleged acts concerning leak rate testing practices at TMI-2; that indictment does not in any way address TMI-1. The Commission has acceded to a Department of Justice request to hold in abeyance NRC's pursuit of the Hartman allegations pending completion of the criminal case. At the same time, the NRC Staff apparently has completed an inspection of pre-accident TMI-1 leak rate testing practices and NRC's Office of Investigations is now actively conducting a related investigation. Licensee, like the Aamodts, is not privy to the results of either the staff's inspection or OI's investigation. Our only glimpses of the results have been the snapshots accorded by board notifications BN-83-138, BN-83-138A, BN-83-138B, and BN-83-138C.

As we discuss further below, it is Licensee's view that these board notifications by the staff do not provide a basis for reopening the record on TMI-1 leak rate testing. There are not sufficient facts concerning leak rate testing practices at TMI-1 now known to either the Aamodts or Licensee which would warrant reopening the record in this proceeding to take additional evidence concerning pre-accident TMI-1 leak rate testing practices or their implications for restart.

Licensee has looked into the concerns made known to it by the NRC Staff and has reported the results to the Commission,

Appeal Board, Licensing Board and parties. See Licensee's Response to Commission Order of October 7, 1983, Attachment 6. These concerns do not provide a basis for reopening the record. To the extent additional factual bases exist, elemental fairness dictates that Licensee be confronted with such facts and be provided an opportunity to respond before the record is reopened with the potential for extended additional hearings. At a minimum, the Appeal Board should await the results of NRC's present investigation, its disclosure (along with the inspection report) to the parties, and a meaningful opportunity for argument on the possible need to reopen.^{1/} Licensee does not address the timeliess of the Aamodt's motion nor do we contest the potential significance of the subject matter depending upon the factual circumstances. Licensee's position is that the Aamodts have not shouldered the considerable burden of showing that there now exists significant new factual information such that a different result would have been reached had the material been available and considered initially.

^{1/} The Appeal Board is not here faced with the non-schedule for completion of the Staff's investigative product which drew Appeal Board concern reflected in ALAB-738. The Commission, in a Memorandum from the Secretary, dated January 27, 1984, has indicated its intention to make an immediate effectiveness decision on the management issues in this proceeding by June, 1984, which will follow a tentative decision and a period for party comments. The Commission approach plainly contemplates the availability of a completed TMI-1 leak rate investigation in advance of issuing even a tentative decision. On information and belief, Licensee understands that investigation of TMI-1 leak rate testing is almost complete and the results should be available in the near future.

In their Motion to Reopen, the Aamodts refer repeatedly to "falsifications" and "tech spec violations" as if it had been conclusively established that (a) unidentified leak rate tests at Unit 1 were improperly conducted, and (b) leak rates at Unit 1 routinely exceeded technical specification limits. Thus they speak of "leak rate falsification at Unit 1 similar to practices alleged by Harold Wayne Hartman, Jr. at Unit 2," "leak rate irregularities and falsified reports," "leak rate falsification at Unit 1," "falsification of leak rate reports at Unit 1," "leak rates of radioactive water in excess of technical specifications," "a plant in violation of its technical specifications," participation by operators "in the crimes," and "a deliberate attempt to cover-up." Motion to Reopen, at 2-7. These allegations lack foundation and are sharply at odds with what is currently known about leak rate testing at Unit 1.

First, the Aamodts cite no evidence that Unit 1 personnel experienced difficulty in achieving acceptable leak rate results, much less that the plant's limiting conditions of operation ever exceeded technical specification limits. Where, as here, a nuclear plant's leak rates are well within limits, there are obviously no incentives to toy with leak rate testing or reporting. Second, contrary to general references by the Aamodts in their Motion, no evidence in fact is cited to support any "falsification" -- with its implication of fraudulent

state of mind -- of leak rate tests. Notwithstanding the lack of facts, the Aamodts baldly state: "By September 23, 1983, the Staff came to the conclusion that leak rate reports had been falsified at Unit 1 by practices similar to those used at Unit 2 prior to the accident." Motion to Reopen, at 2 (emphasis added). In reality the staff concluded "that there were indications of practices at TMI-1 related to RCS leak rate testing similar to those alleged at TMI-2." Board Notification 83-138A, September 23, 1983 (emphasis added). No evidence of leak rate falsification at TMI-1 is cited and the Aamodts' references to "falsification" of records carelessly misrepresent current knowledge about actual leak rate practices at Unit 1.

The Aamodts characterize the Staff's view of Licensee's disclosure of the results of its own followup investigation into Unit 1 leak rate test practices as "an attempt to influence" the ongoing investigation. Motion to Reopen, at 3. The implication, of course, is that Licensee improperly attempted to influence the investigation. The Staff has concluded no such thing, nor could it. In fact, the Murley Memorandum of October 7, 1983, relied on by the Aamodts, states that the Staff has "taken into account" the information provided by Licensee on leak rate testing at TMI-1.

In the concluding section of their Motion, the Aamodts without even purporting to rely on evidence speculate randomly

as to who at GPU "might be involved" in the Unit 1 leak rate allegations. Their targets vary from the specific (Michael Ross) to the general ("All TMI-1 personnel"). Motion to Reopen, at 7, 8. Suffice it to say that these defamatory allegations find no support in the evidence gathered to date.

Stripped of its inaccuracies and misrepresentations, the Aamodt Motion asks the Appeal Board to reopen the evidentiary record to air the Unit 1 pre-accident leak rate practices, not to take evidence on material now shown to warrant reopening. There exists no rational basis for reopening the record now, particularly where the Staff's inspection and OI's investigation results are not available, but can be expected in the near future.

The Motion to Reopen should be denied.

Respectfully submitted,

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Dated: February 8, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Response to Aamodt Motion for Reopening to Examine Leak Rate Falsification at Unit 1" were served this 8th day of February, 1984, by deposit in the U.S. mail, first class, postage prepaid, to the persons on the attached Service List.

Ernest L. Blake, Jr.
Ernest L. Blake, Jr., P.C.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Appeal Board

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

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