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April 13, 1984

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
METROPOLITAN EDISON COMPANY, ET AL.	)	Docket No. 50-289-OLA
	)	ASLBP 83-491-04-OLA
(Three Mile Island Nuclear Station, Unit No. 1)	)	(Steam Generator Repair)

LICENSEE'S ANSWER TO TMIA MOTION
FOR RECONSIDERATION OF PROTECTIVE ORDER

On March 2, 1984, the Licensing Board granted Licensee's request for a protective order which would enable Licensee to provide proprietary information to TMIA under condition that TMIA maintain it in confidentiality. A month later, on April 3, TMIA filed a motion for reconsideration of that protective order. The motion is untimely and without merit, and should be denied

TMIA's posture in bringing the instant motion before the Board should be viewed, at best, in a questionable light. From the outset, Licensee has taken every conceivable step to expedite the provision of proprietary information to TMIA. Licensee, which is obligated to others who are not parties to this proceeding to maintain the confidentiality of the information,

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first offered to make the information available to TMIA, without delay, on condition that TMIA voluntarily agree to protect the information. Licensee proposed that TMIA sign a proprietary agreement, not unlike agreements customarily entered into in similar circumstances in other proceedings. TMIA refused.

TMIA then filed a motion to compel Licensee to turn over all of its proprietary information, without an obligation for TMIA to maintain it in confidence and without regard to its relevance to the subject matter of this hearing. In response, Licensee reiterated its willingness to turn over all such material, provided it was germane to the hearing and maintained under suitable protective order. The Board issued such a protective order at Licensee's request. On the very day the Board announced to the parties via conference telephone call its intention to issue such an order, Licensee immediately took steps to hand deliver the material to TMIA in Harrisburg, Pennsylvania. TMIA refused to accept delivery of the documents.

Much of the proprietary information was contained in documents which had not been previously submitted to the docket, and was therefore not precisely identified and segregated from the non-proprietary information. While the above described activities were taking place, Licensee, by working with B&W, the owner of much of the proprietary information, was attempting to identify as narrowly as possible the specific proprietary words

and phrases within the referenced documents so that non-proprietary versions of the documents which were as complete as possible could be provided to TMIA without a protective order. It was an ongoing process, with Licensee and B&W working as rapidly as possible to facilitate delivery. In many cases documents previously provided were rereviewed in an attempt to reduce the extent of the proprietary information, and the later, more complete versions of the documents were provided to TMIA. In the rush to provide as much information to TMIA as possible on an expedited basis, mistakes were occassionally made. On one or two occasions TMIA was inadvertently given some information that should have been held back as proprietary, and Licensee immediately corrected the oversights as soon as they were discovered.

The net result of all of these efforts was that, by the time the protective order was issued by the Board, TMIA had been provided with nonproprietary versions of all but one of the subject documents. It comes as a great surprise to Licensee that, under these circumstances, TMIA is now accusing Licensee of abusing the proprietary privilege. Inasmuch as TMIA refused delivery of the proprietary information because it did not wish to take minimal precautions which the Board has determined to be well within the reasonable scope of the duties and responsibilities of a party, Memorandum and Order at 4-5, March 2, 1984, Licensee can only conclude that TMIA's pattern

of conduct more closely resembles a delaying tactic than a good faith effort to obtain information in furtherance of the conduct of this proceeding.

The motion is clearly untimely. It has been over a month since TMIA was informed of the protective order and refused delivery of the proprietary documents. The versions of the document which TMIA cites as indicating inconsistent treatment of proprietary information have been in TMIA's possession or available to it for a far longer time. Moreover, TMIA was informed of the inconsistency well over a month ago when Licensee undertook to correct it.

The grounds enumerated by TMIA for reconsideration are without merit. TMIA's chart of Licensee's alleged examples of abuse of the proprietary privilege1/ points out a single incident where B&W inadvertantly failed to remove some of the proprietary data contained in the version of TDR-007 served on TMIA before discovery. All other references to the proprietary information contained in that document were properly expunged.

As noted by TMIA's chart, the oversight was corrected in subsequently released non-proprietary versions of TDR-007. That document, like many of the other proprietary documents referenced during discovery, contains a great deal of

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1/ TMIA's chart comparing the different versions of TDR-007 in its possession violates the spirit, if not the letter, of the Board's protective order by placing on the public record information deemed by its owners to be proprietary.

proprietary information. Licensee has made every effort to minimize the inadvertant release of proprietary information to TMIA. While Licensee did on occasion have to reclaim certain reference documents in order to excise proprietary information that was accidently released to TMIA, that in no way constituted an abuse of privilege as suggested by TMIA. In light of the magnitude of discovery and the difficulties associated with the production of non-proprietary documents created to facilitate open discovery, inadvertent releases do not amount to an abuse or waiver of Licensee's or B&W's right or need to protect the proprietary information contained in the documents referenced during the course of these proceedings.

There is no purpose to be served by the granting of TMIA's motion. TMIA has had access, and in fact still does have access, to all of the subject proprietary information. No party is prejudiced by the protective order. On the other hand, the granting of TMIA's motion to reconsider the issuance of the protective order would have an enormous potential for severe prejudice to Licensee, by possible unwarranted delay of the hearings, as well as the obvious prejudice to the owners of the proprietary information.

Finally, it should be noted that TMIA has erroneously interpreted the Government in Sunshine Act, 5 U.S.C. § 552b (1976). Contrary to TMIA's assertion, the Sunshine Act does not apply to in camera hearings before an NRC Atomic Safety and

Licensing Board. See, e.g., United States v. Rankin, 616 F.2d 1168 (10th Cir. 1980); Hunt v. Nuclear Regulatory Commission, 611 F.2d 332 (10th Cir. 1979), cert. denied, 445 U.S. 906 (1980). Thus, limited in camera hearings, if any, that might be necessary pursuant to the Board's protective order would not run afoul of the Sunshine Act.

For the aforementioned reasons, TMIA's Motion for Reconsideration of Protective Order should be denied.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

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Dated: April 13, 1984