

RELATED CORRESPONDENCE
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

| | | |
|-----------------------------|---|--------------------------|
| In the Matter of |) | |
| |) | |
| METROPOLITAN EDISON COMPANY |) | Docket No. 50-289 |
| |) | (Steam Generator Repair) |
| (Three Mile Island Nuclear |) | |
| Station, Unit 1) |) | |

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

TMIA MOTION FOR RECONSIDERATION
OF PROTECTIVE ORDER

TMIA hereby moves the Board to reconsider the Protective Order which has been issued in the above referenced case. TMIA submits this motion in the belief that Licensee has abused, or has negligently misused the proprietary privilege by claiming that certain information is proprietary when in fact it is not. There is reason to believe that Licensee's claim of proprietary information is in certain instances not legitimate, and has been used to unjustifiably limit TMIA's rights to full information and public hearings. There is also reason to believe that Licensee is at least currently confused as to what is and is not proprietary.

Further, this motion is timely because TMIA only discovered grounds for this motion while researching documents used to respond to Licensee and the Staff motions for summary disposition, served this day.

The Board imposed this Order before having examined the proprietary nature of particular facts and information claimed to be proprietary by Licensee. TMIA has refused all service of non-proprietary versions of documents because of the burdensome and unfair conditions which the protective order would place on TMIA members who have access to the documents and information which TMIA

has used to prepare this case. (See, TMIA's Motion to Compel). TMIA believes its position entirely legitimate, particularly in light of the fact that Licensee itself has difficulty keeping track of what information is proprietary. During the course of discovery, TMIA was "accidentally" served with documents containing alleged proprietary matter. Licensee took back these documents, returning them several days later with certain words and pages removed. TMIA has now discovered that in fact Licensee has at least in several circumstances abused this privilege. TMIA has significant concern that the pre-hearing conference and hearings will be shut off from public observation on erroneous and thus unlawful grounds. Thus, TMIA requests that the Board conduct an immediate examination of whether information claimed to be proprietary by the Licensee is in fact such, and fully determine this before any in camera hearings are held.

Examples of Abuse of the Proprietary Privilege

In the course of preparing TMIA's response to Licensee and the Staff motions for summary disposition, TMIA noticed significant discrepancies between different versions of Licensee's TDR 007 regarding information claimed to be proprietary.

TMIA was served with two versions of TDR 007. One was served before discovery ("A"), and one was served in response to discovery requests ("B"). TMIA also examined the public version of 007, located in the Public Document Room in Harrisburg ("C"). The following chart describes the discrepancies which TMIA noticed in the course of reviewing these documents:

| <u>Described in A</u> | <u>Page</u> | <u>Described in C</u> | <u>Described in B</u> |
|-----------------------|-------------|-----------------------|-----------------------|
| Immunol X-236 | | Immunol X-236 | |
| Precoat | v | Precoat | Proprietary |
| 30° chomfer | 2-15 | (page missing) | Proprietary |
| ordnance transfer | 2-21 | (page missing) | Proprietary |
| Figure 2-12 a,b | 2-90,2-91 | (pages missing) | Proprietary |

This chart raises the question whether other documents which we have been served with during discovery, for which we have no comparative versions, contain information which can not legitimately be considered proprietary. Since so much information, including the statistical data base for qualification testings, is claimed to be proprietary, it seems likely Licensee will ask that all, if not large segments, of the prehearing conference and subsequent hearings, to be held in camera. In light of this newly discovered information, the Board is obligated to resolve this issue before closing otherwise public hearings.

The Sunshine Act

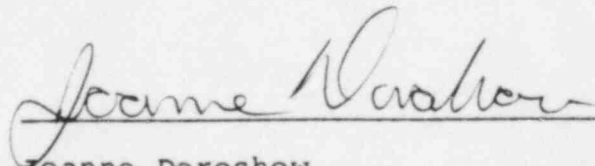
Closing these hearings and prehearing conferences on erroneous grounds, without good cause, clearly violates the spirit and intent, if not the actual requirements of the "Government in Sunshine Act,

5 U.S.C. §522b (1976), which requires that "every meeting of any agency shall be open to public observation."

Licensing Board proceedings are within the purview of the "Sunshine Act." The ASLB Panel is plainly a "subdivision" of the agency, the NRC, subject to the Act. Members of the ASLB Panel are "members" within the meaning of 552b(a)(3). Further, ASLB Panel members on this Board are jointly conducting "agency business" within the meaning of 552(b), and are accordingly subject to the Sunshine Act's requirement that "every meeting of any agency shall be open to public observation."

The purpose of the Sunshine Act is to promote informed public participation. It is clear that this purpose will be entirely frustrated if hearings are closed on erroneous grounds. It is the obligation of this Board to determine whether good cause can be asserted to hold in camera hearings before TMIA's rights, and the rights of the public, are violated.

Respectfully submitted,


Joanne Doroshow
Louise Bradford
TMIA

April 3, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

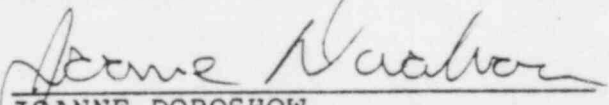
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

84 APR -3 P2:15
Docket No. 50-289
CRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of the attached TMIA MOTION FOR EXTENSION OF TIME; TMIA RESPONSE TO LICENSEE AND STAFF MOTIONS FOR SUMMARY DISPOSITION; TMIA MOTION FOR APPOINTMENT OF EXPERT, OR IN THE ALTERNATIVE, FOR INTERVENOR FUNDING; AND TMIA MOTION FOR RECONSIDERATION OF PROTECTIVE ORDER dated April 3, 1984, were served this 3rd day of April 1984, by deposit in the U.S. Mail, first class, postage prepaid, or, hand delivered where possible on April 3, 1984, to those on the attached service list.


JOANNE DOROSHOW

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

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