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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

BEFORE THE COMMISSION

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

LICENSEE'S OPPOSITION TO TMIA MOTION TO
LIFT THE COMMISSION'S STAY OF ALAB-738

On June 25, 1984, TMIA moved the Commission to lift the stay of ALAB-738 which the Commission imposed on October 7, 1983. (TMIA Motion to Lift Stay on Reopened Hearings and Response to Licensee Request For Stay). There is no basis whatsoever for now lifting that stay since the reasons for its imposition still exist and no significant events have occurred to change the advisability of staying the remand of Unit 2 leak rate issues.

On August 31, 1983, in ALAB-738, the Atomic Safety and Licensing Appeal Board ordered the record on the management phase of this proceeding reopened and remanded to the Licensing Board for the purpose of exploring the so-called Hartman allegations concerning pre-accident leak rate testing practices at TMI-2. 18 N.R.C. 177 (1983). This was ordered notwithstanding the staff's request to the Appeal Board to defer ruling pending the outcome of a separate inquiry into the same leak rate issues by the NRC Office of Investigations (OI). Id. at 190. On October 7, 1983, the Commission ordered that the remanded hearing specified in ALAB-738 be stayed. The Commission did so "[t]o conserve agency resources and avoid duplication of effort",

recognizing that "[t]he Commission's Office of Investigations (OI) is now investigating the Hartman allegations."

TMIA suggests initially that the Commission's stay should be lifted because, given the fact that a related criminal case against Metropolitan Edison Company (Met-Ed) has been completed, individual operators should now be able to cooperate in NRC proceedings. During the pendency of the Justice Department investigation of the Hartman allegations and the resultant indictment of Met-Ed, individual operators, on advice of counsel, let it be known that they would assert Constitutional rights and privileges and would resist attempts to be interviewed. Although it is certainly true that the criminal case against Met-Ed is now over and presumably individual operators may be more willing to cooperate and participate in OI interviews, the Commission's concerns of duplication and waste of agency resources still exist as they did on October 7, 1982. While an impediment to the OI investigation is now lifted, that OI investigation which the Commission felt should precede any possible adjudicatory hearing has not been completed to Licensee's knowledge. The completion of the criminal case may thus clear the way for an OI investigation but provides no basis for now lifting the stay of ALAB-738.

TMIA next suggests that OI has substantially completed its investigation of Unit 2 leak rate issues and that the Commission's stay should accordingly be lifted. Licensee is unaware that OI is nearing completion of a full-blown investigation of Unit 2

practices. In fact, at the pre-hearing conference on Unit 1 leak rate practices held recently on June 28, 1984 (three days after TMIA filed the instant motion asserting that OI's investigation is "substantially completed"), TMIA's representative stated "there does not seem to be an adequate OI investigation in the works at this point" (Transcript at 12,274). TMIA appears to be arguing contrary facts to the Licensing Board and to the Commission.

As far as Licensee knows, no operators have been interviewed or deposed by OI on TMI-2 leak rate practices. If TMIA is suggesting that the scope of the Unit 2 leak rate issue is properly limited to determining that no licensed operators potentially involved in allegations of leak rate irregularities at Unit 2 are currently licensed operators at Unit 1, Licensee would agree that that limited issue could now be disposed of. However, if the proceeding is to encompass a broader scope, then OI's investigation into Unit 2 leak rate practices appears to be far from complete. We cannot imagine a complete inquiry of TMI-2 leak rate practices without interviews of those involved.

There is no urgency--if there is a need at all in the context of Unit 1 restart--to explore further the Unit 2 practices. It is important to bear in mind that ultimately it is leak rate practices at Unit 1, the facility to be restarted, which are critical. OI has, of course, completed its investigation of Unit 1 leak rate practices and determined there was neither a systematic pattern of falsification nor a motive to falsify leak rate testing data at Unit 1. Furthermore, none of the Unit 2

operators who were involved in leak rate testing at that Unit are today involved in operating TMI-1. No TMI-2 licensed operator will operate at TMI-1 with the exception of Michael Ross, current TMI-1 Operations Supervisor who was assigned to Unit 1 but licensed at both TMI-1 and TMI-2 in the pre-accident period. (See Letter of Herman Dieckamp, President, GPU Corp., to Chairman Nunzio J. Palladino, NRC, June 10, 1983; Statement of GPU to the NRC, November 28, 1983). With respect to Mr. Ross, the OI report on Unit 1 states that he is not "implicated" in any improprieties either at TMI-1 or TMI-2. Finally, the United States Attorney for the Middle District of Pennsylvania, David Dart Queen, stated at the time of the plea agreement announcement in the criminal case against Met-Ed that no director or officer of GPU Nuclear Corp. from the time of its organization to the present, ever "participated in, directed, condoned or was aware of the acts or omissions that are the subject of the indictment." (Transcript of plea proceedings in United States vs. Metropolitan Edison Corp., Criminal No. 83-00188, the United States District Court for the Middle District of Pennsylvania, February 28, 1984, at 16). In sum, no individual involved in Unit 1 leak rate testing today has been implicated in any leak rate testing falsification allegations at either TMI-1 or TMI-2.

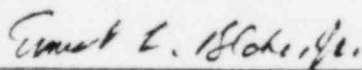
Finally, TMIA suggests that ALAB-738 is a final order of the Commission which must remain in effect and that the remanded hearing called for must still occur under any circumstances. This position is unsound. The Commission had forty days from the

Appeal Board's decision of August 31, 1983 to review ALAB-738. 10 CFR §2.786 (1983). Within that time period, the Commission ordered that the decision be stayed. The forty-day review period was thus tolled, and has not expired. Accordingly, the Commission may still review sua sponte the Appeal Board's decision and could well decide that there is no sense in continuing with an adjudicatory hearing on Unit 2 leak rate issues as part of the Unit 1 restart proceeding. Thus TMIA's final argument, that ALAB-738 is a final Commission order that must eventually be dealt with, is also erroneous.

For the foregoing reasons, Licensee respectfully suggests that no valid reasons whatsoever have been provided by TMIA which would warrant the Commission lifting its stay of ALAB-738. The basis for that stay remains unchanged. At a minimum, the Commission should await the outcome of the OI report on Unit 2 leak rate practices before lifting the stay. And before lifting the stay the Commission should ask itself whether adjudication of TMI-2 leak rate practices in the context of the Unit 1 restart hearing serves a useful purpose.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE



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

Dated: July 10, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Opposition to TMIA Motion to Lift the Commission's Stay of ALAB-738," dated July 10, 1984, were served on those on the attached Service List by deposit in the United States mail, postage prepaid this 10th day of July, 1984.

DATED: July 10, 1984

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

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission

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

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