UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

ANSWER OF NUMEROUS FORMER MET ED EMPLOYEES
IN OPPOSITION TO TMIA MOTION FOR RECONSIDERATION

On March 13, 1985, Three Mile Island Alert ("TMIA") filed a Motion for Reconsideration of the Commission's Memorandum and Order served on February 26, 1985, CLI-85-2. TMIA asks the Commission to issue an order requiring the "continuation" of informal discovery concerning the alleged falsification of leak rate tests at TMI-2. TMIA Motion at 11-13. On behalf of numerous former employees of Metropolitan Edison Company who may be involved in hearings concerning the alleged leak rate falsification, we oppose TMIA's motion for continued informal discovery. Simply put, there is no legal basis for the relief requested for TMIA, and therefore the motion must be denied.

1. TMIA's motion necessarily assumes that there is a proceeding pending before the Commission in which discovery may be conducted. That assumption is wrong. In CLI-85-2 at 34, the Commission reversed the decision of the Atomic Safety and Licensing Appeal Board in ALAB-738, 18 N.R.C. 177 (1983), to

reopen the record for hearings on TMI-2 leak rates. Accordingly, the jurisdiction of the existing Atomic Safety and Licensing Board over that issue has been terminated. To be sure, the Commission has stated its intention to convene a new proceeding to consider TMI-2 leak rate falsification, but the order instituting a separate hearing has not yet been issued, and no Licensing Board has been appointed. There is, therefore, no proceeding now pending in which discovery may be ordered.

2. Because there is no proceeding pending, TMIA obviously is not currently a party entitled to conduct discovery. TMIA states that it "will participate in any hearings the Commission establishes". TMIA Motion at 12. Aside from the fact that the new proceeding has not yet been initiated, it is not a foregone conclusion that TMIA will be a party to it. Before TMIA may become a party and seek discovery, it will be required to comply with 10 C.F.R. § 2.714. Intervention by TMIA in the new proceeding may well be opposed. Until a Licensing Board is appointed and TMIA is admitted as a party, TMIA has no right to discovery, and there is no basis for any order directing discovery at this time.

3. Although a notice of hearing to institute a new proceeding has not been issued, the Commission has made clear that the employees who may have been involved in leak rate falsification "should receive notice of this hearing and be allowed to participate." CLI-85-2 at 35. Those employees who

become parties to the new hearing should be afforded the opportunity to participate in a pre-hearing conference, to be heard on the nature and extent of discovery, and to participate in any discovery thereafter ordered by the new Licensing Board. To order discovery to go ahead prior to the commencement of a new proceeding, as requested by TMIA, would deny due process to those individuals who will be most directly affected. Clearly, discovery concerning leak rate testing at TMI-2 must await a further order of the Commission, the appointment of a Licensing Board, and an opportunity for the affected individuals to appear before the Licensing Board and participate in the development of appropriate discovery procedures.

Conclusion

For the foregoing reasons, TMIA's request for an order directing the "continuation" of informal discovery concerning leak rate falsification at TMI-2 should be denied.

Respectfully submitted,

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March 20, 1985

CERTIFICATE OF SERVICE

I hereby certify that I have this 20th day of March 1985 served the foregoing "Answer of Numerous Former Met Ed Employees in Opposition to TMIA Motion for Reconsideration" by first-class mail, postage prepaid upon the following parties:

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