

May 29, 1985

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

DOCKETED  
USNRC

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

'85 MAY 29 P12:46

Docket No. 50-28960  
(Restart)  
RECORDS & SERVICE  
BRANCH

LICENSEE'S ANSWER TO TMIA'S  
MOTION TO REOPEN THE RECORD FOR THE  
PURPOSE OF RECEIVING ADDITIONAL INFORMATION

On May 22, 1985, TMIA filed TMIA's Motion to Reopen the Record for the Purpose of Receiving Additional Information ("TMIA Motion") and accompanying TMIA's Brief in Support of Its Motion to Reopen the Record for the Purpose of Receiving Additional Information ("TMIA Brief"). TMIA maintains that "newly acquired evidence" constitutes a sufficient basis for reopening the record of the TMI-1 restart proceeding. As Licensee shows below, TMIA's new facts are neither newly acquired nor significant. Accordingly, the TMIA Motion should be denied.

The standard for reopening a record is well-established within this agency. "Under Commission practice, reopening is required when new evidence is shown to be timely, safety significant, and sufficiently material to have changed the result initially taken." San Luis Obispo Mothers for Peace v. Nuclear Regulatory Commission, 751 F.2d 1287 (D.C. Cir. 1984)

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(emphasis in original), citing Kansas Gas & Elec. Co. (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 N.R.C. 320, 338 (1978). TMIA's evidence utterly fails to meet this standard.

The TMIA Motion is based on two allegedly new pieces of information. The first is the emergency procedures review test taken in 1979 by two individuals, known as Messrs. O and VV, neither of whom have worked at TMI-1 or for GPU Nuclear Corporation for some time. The test in question was a senior reactor operator ("SRO") weekly requalification training test on emergency procedures. Mr. O, one of the two individuals who cheated on the NRC license examination in April of 1981, received a grade of 91.3% on the test. Mr. VV, the individual who was found to have cheated in July, 1979 by improperly receiving assistance from Mr. O in an effort to satisfy his license requalification requirements, received a 68.6% on the test.<sup>1/</sup> By comparing the last page of Mr. VV's test with the seventh page of Mr. O's test, it appears that the answer on both tests to question five was written by Mr. O. In June, 1984, these tests, along with a reference to the evidence of cheating, were provided to the parties by Licensee. See Notice to the Commission, Appeal Board, Licensing Board and Parties from counsel for Licensee, dated June 1, 1984. TMIA argues that this information raises questions about Licensee

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<sup>1/</sup> Mr. VV's failing grade was reflected in an exhibit, TMIA Exhibit 66, which was part of the hearing on cheating.

management's credibility and integrity. TMIA Motion at (unnumbered) page 3.

As a preliminary matter, the TMIA Motion is virtually one year late and, for that reason alone, should be rejected out-of-hand.<sup>2/</sup> TMIA's assertion that this information was "heretofore unavailable" flies in the face of TMIA's own motion, which acknowledges its availability since June, 1984. Compare TMIA Brief at 1 (unnumbered) page with TMIA Motion at (unnumbered) page 3 and TMIA Brief at (unnumbered) page 4.<sup>3/</sup>

Furthermore, even if this information were new, it has no safety significance to operation of TMI-1 nor would it have affected, much less materially changed, the outcome of the restart proceeding. Neither Mr. O nor Mr. VV works for GPU Nuclear Corporation today. Mr. O has not worked at TMI since the

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<sup>2/</sup> See San Luis Obispo Motions for Peace, supra, 751 F.2d at 1318-1319.

<sup>3/</sup> Without any supporting evidence, TMIA maintains that Licensee "withheld this information until May of 1984" when it produced the information for the grand jury investigation of Mr. VV. TMIA Brief at 4-5; TMIA Motion at (unnumbered) page 3. Extremely serious charges of this kind, involving acts of moral turpitude, certainly ought not be made without a substantial factual basis. See, e.g., Fed. R. Civ. P. 11 (sanctions "shall" be imposed by court for a party's wholly unsubstantiated statements). As indicated in Licensee's Notice transmitting the tests in question, these tests simply were not discovered by Licensee until the document review precipitated by the VV grand jury investigation. During the cheating hearings, numerous exams were produced. However, in accordance with an agreement reached by Licensee and TMIA, no exams prior to 1980 were provided or reviewed unless the exams involved a known incident of misconduct. See October 3, 1981 TMIA Interrogatories to Licensee (As Modified by Agreement). The tests on which TMIA's motion is based do not fit either of these categories. TMIA's assertions are outrageous and wrong.

discovery of his cheating in August, 1981.<sup>4/</sup> Mr. VV left Licensee's employ in April, 1983. See Board notification from counsel for Licensee, dated May 6, 1983. Moreover, at most, additional evidence of improper conduct by Mr. O or Mr. VV would simply have added to the substantial evidence of this fact accumulated in the TMI-1 restart proceeding. It would not have materially altered the existent findings in any way.

As well, the indirect causes of cheating that occurred at TMI were thoroughly litigated in both the proceeding before the Special Master and the reopened proceeding before the Licensing Board on training. See, e.g., Metropolitan Edison Co. (Three Mile Island Nuclear Generating Station, Unit 1), LBP-85-\_\_\_, 21 N.R.C. \_\_\_ (May 2, 1985) ("Training PID"), III.B, slip op. at 37-72. As the Appeal Board observed in ALAB-772, and as Licensee has repeatedly acknowledged, it is now well understood that prior to the discovery of cheating at TMI, procedures were not in place to prevent and check for such misconduct. See, e.g., Metropolitan Edison Co. (Three Mile Island Nuclear Generating Station, Unit 1), ALAB-772, 19 N.R.C. 1193, 1212 n.15 (1984). Evidence as to why this was so, and what was done about it, has been the subject of extensive litigation in which TMIA participated. In its May 2, 1985 Partial Initial Decision ("PID"), referring to Licensee's current stringent exam

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<sup>4/</sup> TMIA also refers to Mr. Gary Miller, Superintendent of TMI during the accident, and his appreciation of Mr. O's misconduct. As TMIA knows, Mr. Miller also no longer works for GPU Nuclear. See TMIA Motion, Exhibit C at page 3-4.



security practices, the Licensing Board concluded, "We cannot envision a way to improve them." Training PID, slip op. at 64. In short, no current problem exists on this score, nor does TMIA point to one.

TMIA argues that its "new" evidence undercuts the Licensing Board's recent finding that, "Employees of Licensee who failed to prevent the cheating acknowledged their failures and their responsibility to prevent cheating." TMIA Motion at (unnumbered) page 3, citing Training PID at 214. TMIA offers no explanation for its conclusion, and there is no apparent basis for it. The tests in question involve individuals who are not current Licensee employees. The tests appear to establish misconduct involving two individuals in 1979, a time during which procedures were admittedly lax. As the Board observed, Licensee has fully acknowledged its failures and responsibility for this situation. TMIA's "new evidence" would not alter in any way any of these facts or adjudicatory findings.

In short, the first piece of information on which the TMIA Motion is based is neither new nor safety significant to resumed operation of TMI-1, and it would not have changed the result reached by the Licensing Board. Thus, it fails each of the three prongs of the legal standard for reopening a record in an NRC adjudicatory proceeding.

TMIA's second ground for reopening the record also falls short. TMIA's claim is not timely,<sup>5/</sup> and it fails to identify

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<sup>5/</sup> The Office of Investigation ("OI") investigation report, H-82-002, on which TMIA's argument is based was publicly

significant new information, or information that would materially affect the outcome of the restart proceeding.

TMIA argues that the OI Report of Investigation, H-82-002, issued in February, 1985, contains information that also would have resulted in the Licensing Board not concluding that Licensee employees who failed to prevent cheating have acknowledged their failures and their responsibility. TMIA Motion at (unnumbered) page 5; TMIA Brief at 2-4. In particular, TMIA points to alleged evidence of (i) Licensee's attempt to keep from the NRC that fact that Mr. VV cheated on a 1979 requalification examination;<sup>6/</sup> and (ii) Licensee's failure to declare a clear policy against Mr. VV's conduct. TMIA Motion at 4; TMIA Brief at 2-4. Again, TMIA fails to address the fact that none of the principal players involved in the 1979 certification of Mr. VV to the NRC continue to work at TMI-1 or for GPU Nuclear Corporation. This includes Messrs. VV, O, Miller, Herbein and Arnold. See Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), CLI-85-2, slip op. at

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(Continued)

released on February 1, 1985 and served on the parties, including TMIA, in March, 1985. Whether or not TMIA should have earlier filed a motion based on the OI Report, what is significant here, as Licensee discusses above, is that the information contained in that Report on which TMIA now relies has been available to TMIA for some time.

6/ It was Robert Arnold, then President of GPU Nuclear, who brought this matter to the NRC's attention. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), LBP-82-56, 16 N.R.C. 281, 355 (1982).

60-61. It is therefore difficult to imagine how TMIA's claims, even if new, could affect operation of TMI-1.

Moreover, assuming arguendo that the information relied on by TMIA supports TMIA's assertions, neither of these propositions are new, nor are they materially different from findings already made on this very issue by the Licensing Board. As to Licensee's alleged attempt to keep from the NRC, in its August 3, 1979 certification letter and in a subsequent VV license renewal application, <sup>7/</sup> Mr. VV's misconduct, this action was described in detail by the Licensing Board in its July, 1982 PID. See Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), LBP-82-56, 16 N.R.C. 281, 348-355 (1982). Indeed, it was the Licensing Board's finding that Mr. VV had been falsely certified to the NRC as having achieved a grade of 89.1% on one section of his requalification exam which led it to specifically recommend an NRC investigation -- ultimately, H-82-002 -- into the August 3, 1979 certification. Id. at 353-354.

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<sup>7/</sup> The two documents referred to by TMIA are attachments 4 and 27 of the OI Report of Investigation. See TMIA Motion at (unnumbered) page 4. The VV certification was discussed in detail in the so-called Speaker Report, Licensee's independent investigation of this matter. The complete Speaker Report was provided to the parties in March, 1983. Included as exhibits to the Speaker Report and discussed therein are attachments 4 and 27 of the OI Report. TMIA also refers to a memo from G. P. Miller to E. Blake and an August 20, 1979 memo to TMI-2 department heads. TMIA Motion at (unnumbered) page 4; TMIA Brief at (unnumbered) page 2. The handwritten version of the former document and the latter document also are exhibits in the Speaker Report. See Speaker Report, Vol. 1, Exhs. 1, 1A, 24; Vol. 3, pp. 15-16; Vol. 4, Exh. A.

Similarly, the Licensing Board specifically found that Licensee did not declare a clear policy against Mr. VV's conduct. Id. at 3461. However in its view, this decision was not improper:

We infer that Judge Milhollin and intervenor TMIA believe that VV's reassignment should have been called a demotion, and that the demotion should have been specifically known to VV and to the entire operations staff. These actions, of course, would have humiliated VV. We have rarely seen competent managers attempt to solve their personnel problems in this manner, either in government, industry, commerce or academia. Moreover, a humiliation would have been very destructive, we believe, to VV's effectiveness, particularly in his ability to work with others. It would not have made a contribution to safety. In sum, we view Mr. Arnold's reassignment of VV to be an appropriate reallocation of company personnel resources.

Id. at 347-348. TMIA's argument that Mr. VV's temporary assignment to the TMI-2 accident assessment group establishes the absence of a demotion was an argument previously made by TMIA. See TMIA Brief at (unnumbered) page 2; TMIA Proposed Findings of Fact and Conclusions of Law on Issues Raised in Reopened TMI-1 Restart Proceeding, January 15, 1982, at 18-20. The fact that the memorandum reflecting Mr. VV's job transfer indicated that the change would allow Licensee to make the best use of Mr. VV's talent and knowledge of the plant squares with the Board's finding that Licensee did not publicly demote Mr. VV but "prudently matched VV's abilities to the right job for him." LBP-82-56, supra, 16 N.R.C. at 347-348. Furthermore, the memorandum has been available to TMIA since March, 1983.

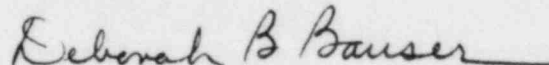


See, n.7, supra. In short, there is nothing new about TMIA's facts or arguments.

Thus, TMIA's "new" assertions concerning the 1979 VV certification, which was the subject of an OI Report of Investigation released in February, 1985, are based on no new evidence and are no more than restatements of specific findings made or arguments considered by the Licensing Board in the July, 1982 PID. As such, they fail to meet the requisite standard for reopening the adjudicatory record of the TMI-1 restart proceeding.

Because TMIA has failed to establish any basis for reopening the record in the TMI-1 restart proceeding, the TMIA Motion should be denied.

Respectfully submitted,



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Dated: May 29, 1985

May 29, 1985

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETED  
USNRC

'85 MAY 29 P12:46

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

Docket No. 50-289  
(Restart-Management Remand)

OFFICE OF SECRETARY  
DOCKETING & SERVICE

CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Answer to TMIA's Motion to Reopen the Record for the Purpose of Receiving Additional Information" were served this 29th day of May, 1985, by hand delivery upon the parties identified by one asterisk, by Federal Express upon the parties identified by two asterisks and by deposit in the U.S. mail, first class, postage prepaid, to the other parties on the attached Service List.

*Deborah B. Bauser*  
Deborah B. Bauser

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
	)	(Restart Remand
(Three Mile Island Nuclear	)	on Management)
Station, Unit No. 1)	)	

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