



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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April 2, 1979

MEMORANDUM FOR: Commissioner Bradford
Commissioner Ahearne

FROM: *EB* Leonard Bickwit, Jr., General Counsel

SUBJECT: REVIEW MECHANISM FOR MATTERS RELATED
TO THE THREE MILE ISLAND INCIDENT

Attached is a very useful memorandum from Carl Stoiber which might serve as a basis for your discussions on possible review mechanisms.

Attachment: Stoiber memo Bickwit, 4/2/79

cc: Chairman Hendrie
Commissioner Gilinsky
Commissioner Kennedy
OPE
SECY

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April 2, 1979

TMI Incident

Memorandum for: Leonard Bickwit, Jr.
General Counsel

From:  Carlton Stoiber
Assistant General Counsel

Subject: An Inquiry into Matters Related to the
Three-Mile Island Incident

This paper contains some extremely preliminary thoughts about what issues the Commission should consider in approaching the demands for an investigation into the recent incident at the Three-Mile Island Nuclear Power Plant which will inevitably follow the immediate crisis.

The analysis falls into two parts: first, what are the desiderata of such an inquiry; and second, what options are available for deciding what persons, agencies or other groups might appropriately be tasked with conducting such an inquiry?

A. Desirable Attributes of the Review Mechanism

(1) Independence

It is important that the persons or groups conducting the inquiry not be linked (or appear to be linked) with the nuclear industry, avowed nuclear opponents, the NRC or the White House. These bodies have already staked out certain positions in this area; and the credibility of any review could only be damaged if those performing it are subject to justified criticism about their motives or ability to examine the evidence with an open mind.

(2) Competence

Of course, whatever body conducts the inquiry must have (or be able to obtain) substantial scientific and engineering expertise to make the type of judgments it is called upon to make.

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Insofar as the group's charter extends to matters of law or administration, it must have the resources to conduct those kinds of reviews as well.

(3) Perspective

Although the review will have a substantial technical aspect, the real matters at issue go far beyond mere scientific and engineering judgments. Therefore, the group must have a broader perspective on national policy in the energy and governmental field, as well as the technical competence mentioned in (2) above.

(4) Reasonable Time-Table

There will be an understandable urgency about obtaining the results of any inquiry which is set in motion. However, the chronology of the review should provide sufficient time for a detailed investigation. Otherwise a hurried and incomplete product will be more harmful than helpful. However, a fixed deadline for the group's report is needed, to insure timeliness.

(5) Specific Charter

The scope of the review effort must be spelled out in some detail. If only a narrow technical review is wanted, that should be clear from the outset, to enable selection of the proper body to conduct the investigation. If a broader inquiry is envisaged, a different mechanism might be more appropriate. The following alternatives might be included in such a review:

- (a) Consideration of the specific handling of the incident at the Three-Mile Island facility. This inquiry would focus on the response of the utility, the NRC, and other responsible agencies and officials, to determine whether proper decisions were taken, and in timely fashion.
- (b) Review of the structure and staffing of NRC (and possibly other agencies) to determine whether the agency is organized properly for dealing with this kind of emergency.

- (c) Review of the adequacy of federal law to provide for this type of emergency, with the mandate to suggest any changes in statutory provisions to resolve difficulties.
- (d) Study of the handling of generic issues in the nuclear safety field, to determine whether current approaches to resolving these issues is adequate, or whether some different approach should be adopted.

Of course, the focus of the inquiry could be far broader, or much narrower than the topics suggested above. The proposed charter of the review group is the most important factor in deciding where the responsibility for conducting the inquiry is to be placed.

(6) Nature of the Charter

An issue which is fully as important as the specific contents of the charter for the inquiry is the legal character of the effort. There are several possibilities here:

- (a) Presidentially mandated study--Such an effort could be undertaken relatively quickly, depending on what group or agency is selected. Such a review would have the valuable attribute of proceeding from the order of the Chief Executive. However, because the conduct of independent agencies and state government agencies are involved, a broader legal base might be useful.
- (b) Statutorily mandated study--Delay in the commencement of the review would be the chief weakness of this alternative. However, the gain in broad support for the effort could be worthwhile. Of course, an ex post facto congressional ratification of a study already underway is not unknown in the federal government. (E.g., ...)
- (c) Commission mandated study--This approach is burdened by the fact that the NRC is a chief actor in this crisis, whose judgments and performance are subject to review. A Commission call for a review by outside bodies might or might not be heeded.

B. Possible Choices of Parties to Conduct the Inquiry

Having discussed briefly some of the factors which might be relevant to determining the nature of any inquiry, it is necessary to canvass the various possibilities for assigning the review. There are numerous groups or agencies which might be called upon here; all have some strengths and weaknesses, which will be briefly noted below.

(1) Internal NRC Study

As stated before, because the NRC is implicated in the incident being reviewed, the need for a perception of independence would not be met by an internal review. Of course such a review will be conducted as a matter of course for the NRC's own benefit. However, in this situation a broader inquiry is also necessary.

(2) Office of Science and Technology Policy

OSTP also suffers from linkage with a major player in the incident--the White House. Also, it is unclear whether OSTP has sufficient resources for such an effort, in the midst of other chores.

(3) General Accounting Office/ Congressional Budget Office

GAO certainly possesses the reputation for independence which the Congress would feel essential to such an effort. However, the GAO's resources are currently strained and delay could result. CBO has a fine reputation for what it does, but its charter is somewhat narrower (being largely confined to budget and macro-economic policy) than would be suitable for this review. The competence of both of these congressional offices for such a highly-technical inquiry is also unclear.

(4) Advisory Committee on Reactor Safeguards

As an NRC advisory committee, the ACRS suffers from the independence problem discussed in connection with some other form of internal NRC review.

(5) Professional Societies

If the inquiry is envisaged as a rather narrow technical inquiry, then some of the national scientific or engineering societies might have the ability to convene a panel of experts to conduct the review. However, if the matters to be investigated go beyond these subjects of narrow import, the perspective of professional societies might be considered too narrow.

(6) National Science Foundation

I am not sure, however I do not believe that the NSF typically accepts assignments such as the one under consideration. It also shares the weakness of perspective mentioned with regard to professional societies.

(7) Private Consulting Firms

There are companies which are available for the conduct of certain well-defined issues or problems in the science and technology field. The Rand and Mitre Corporations come to mind in this context. However, the breadth of the issues concerned in this matter suggest the need for a governmental perspective, at least at some point in the process.

(8) Quasi-governmental Organizations

The British call these critters "quangos", and I would suppose one might consider the Brookings Institution and other organizations in this category. However, Brookings lacks the technical component essential to this inquiry; and I am not aware of other similarly-situated organizations which might possess such competence.

(9) Presidential Commission

In my personal view, this last alternative should be given strong consideration in the present circumstances. This device, which the British use frequently to produce the so-called "White Papers" used to develop Parliamentary policy, has an accepted usage on this side of the Atlantic also. For example, the Hoover and Warren Commissions

performed extremely valuable service; the Commissions on the Reform of Marijuana Law and that on the Causes of Violence in America produced more equivocal results. However, this device has important features which recommend it in the present circumstances. If the members of any commission selected are recognized as men and women of judgment and probity, the confidence of the public in the results of the review can be bolstered tremendously. Since a major reason for any review is the need to ensure some public confidence in the process, this desideratum is of potentially great significance. Also, the independence of the body can be insured, as well as its competence, if the proper individuals are selected and sufficient resources provided. The perspective of such a Commission can also be made adequately wide by the selection of persons with broad public policy experience and viewpoint. The visibility and importance this effort will have suggests that such persons will be willing to serve in such a capacity. With a specific charter and a reasonable charter, such a Presidential Commission on Nuclear Safety could perform a service that no other institution presently established could perform.

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