



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

MAY 10 1983

MEMORANDUM FOR: William J. Dircks  
Executive Director for Operations

FROM: Victor Stello, Jr., Deputy Executive Director  
Regional Operations and Generic Requirements

SUBJECT: HARTMAN ALLEGATIONS AND RELATED MATTERS

In a memorandum dated May 31, 1983 to you from Commissioner Gilinsky, certain information was requested concerning Tim Martin's statement at the May 24, 1983 Commission briefing that, with regard to the Hartman allegations, records were falsified. This memorandum transmits my response to certain questions raised.

Response to Questions 2(a) and 2(c):

I was unaware of Tim Martin's conclusion stated at the May 24, 1983 Commission meeting that "I can tell you for a fact that the records were falsified, that much we knew." I am also unaware that this particular conclusion was conveyed to any other senior staff member or the Commission. However, the facts underlying this conclusion, derived from the partial investigation of the Hartman allegations, were discussed with various senior staff members and the Commission as described below

In summary, I believe that senior members of ELD, IE, Region I, NRR, OIA, the EDO and the Commission were aware in March/April 1980 that, although no final staff conclusions had been reached, leak rate test results had likely been falsified prior to the March 28, 1979 accident at TMI-2 and that this particular Hartman allegation represented a potentially serious matter. There were three basic allegations made by Mr. Hartman which were (1) results of reactor coolant surveillance leak rate tests were falsified, (2) emergency feedwater pump test criteria were altered and (3) the estimated control rod positions for attainment of criticality were recalculated in order to meet procedural requirements.

Following Mr. Hartman's appearance on television, members of IE, Region I and OIA initiated an investigation into these allegations on March 22, 1980. The investigators' initial results appeared to confirm Mr. Hartman's allegation that leak rate test results had been falsified prior to March 28, 1979. These initial results carried with them a potential for criminal prosecution. Accordingly, the Department of Justice (DOJ) was notified, and, at its request, the NRC investigation was suspended on April 28, 1980.

8306290184

CF

XA

The Commission, EDO, OIA, ELD, NRR, IE and Region I were aware of the DOJ referral of the allegation concerning leak rate test falsification and the potential seriousness of Hartman allegation. Due to the sensitivity of this matter, my discussions with various Commissioners and senior staff consisted of oral conversations and briefings. General status of ongoing investigations were reported at weekly EDO staff meetings, some of which included attendance by the Chairman and representatives from other Commission offices. While information concerning the Hartman allegations was generally disseminated orally, the Commission's understanding of this matter is reflected in a writing, specifically its Memorandum and Order of May 28, 1980 which referred to falsified test results and the ongoing Grand Jury investigation. A copy of that Memorandum and Order is enclosed. See specifically page 6. Further, this matter is specifically discussed in Supplement 1 of NUREG-0680, issued November 1980, and Supplement 2 of NUREG-0680, issued March 1981. All of these documents received wide distribution throughout the agency.

Consequently, the Commission and various NRC senior staff had been generally aware, in the spring of 1980, of the Hartman allegation regarding leak rates and that it had potential for criminal prosecution. It appears that, in that time frame, at least one investigator (i.e., Mr. Martin) had reached more firm and specific conclusions concerning the Hartman allegations. Such conclusions may have been passed on to others and may have formed part of the bases for the conclusion that some of the allegations had merit and that referral to DOJ was appropriate.

However, to the extent that firm and specific conclusions were passed on, these conclusions were not adopted by senior staff members. Such conclusions were preliminary as they were based upon an incomplete and ongoing investigation, which had been called to a halt. Such conclusions also had minimal safety significance at that time since TMI-1 was not likely to resume operation in the near future. The essential decision at that point in time was the appropriateness of a referral to DOJ and, for that purpose, it was not necessary to go beyond the conclusions reached by senior staff that, based upon the investigation conducted thus far, the Hartman allegations appeared to have sufficient basis to warrant referral.

Response to Questions 3 and 4:

As part of their effort to obtain background information with regard to the leak rate matter, the review team members conducting the review of the B&W-GPU lawsuit documents, except myself, met with Donald Kirkpatrick of the NRC staff. As I was already aware of the leak rate matter by virtue of my position as Director of the Office of Inspection and Enforcement in 1980, I did not attend the meeting with Mr. Kirkpatrick. Mr. Kirkpatrick was one of the original NRC investigators pursuing the Hartman allegations in 1980 prior to referral to the Department of Justice. Mr. Kirkpatrick briefed the attending review team members on the results of the investigation with which he was familiar. The review team did not speak to Tim Martin regarding the

Hartman matter. Consequently, the review team members were not apprised of any of Mr. Martin's views at that time.

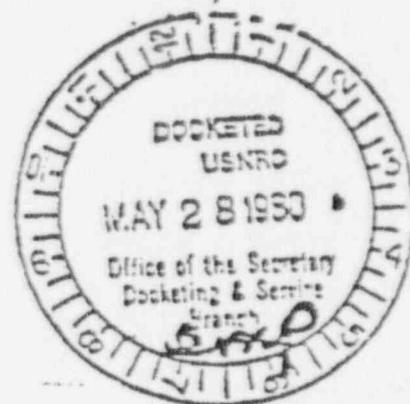
  
Victor Stello, Jr.  
Deputy Executive Director  
Regional Operations and  
Generic Requirements

Enclosure:  
Memorandum and Order of May 28, 1980

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

John F. Ahearne, Chairman  
Victor Gilinsky  
Richard T. Kennedy  
Joseph M. Hendrie  
Peter A. Bradford



In the Matter of  
METROPOLITAN EDISON COMPANY  
(Three Mile Nuclear Station,  
Unit No. 2)

Docket No. 50-320

MEMORANDUM AND ORDER

On May 2, 1980, the NRC's Director of the Office of Inspection and Enforcement issued subpoenas to six Metropolitan Edison employees <sup>1/</sup> calling upon them to appear and give testimony on May 20 and May 21, 1980, concerning their knowledge of three particular events which occurred on March 28, 1979, the first day of the Three Mile Island, Unit 2, accident. The subjects at issue were: (a) the calculated dose rate of 10 rem/hr in Goldsboro, Pennsylvania; (b) elevated in-core thermocouple readings; and (c) the pressure spike in the containment vessel.

As explained in more detail below the subpoenas were issued for the purpose of determining whether particular information bearing upon the seriousness of the then ongoing accident at TMI-2 should have been reported to the Commission more promptly, and what enforcement action is appropriate under the circumstances.

<sup>1/</sup> The persons subpoenaed were Messrs. McGovern, Mehler, Wright, Chwastyk, Kunder, and Zewe.

~~800020487~~

We now have before us a motion to quash the subpoenas <sup>2/</sup> on the ground that the Commission's referral of some TMI matters to the Department of Justice for criminal proceedings precludes the Commission from pursuing its civil investigation during the pendency of the Grand Jury investigation currently underway in the Middle District of Pennsylvania. It is also contended that the subpoenas are unduly burdensome in light of the many investigations of the IMI accident which have already been conducted. For the reasons discussed below, we deny the motion to quash. The matters referred by the Commission to the Department of Justice for criminal proceedings are separate and distinct from the subjects covered by the subpoenas issued by the Director of the Office of Inspection and Enforcement, and that referral does not bar the Commission from pursuing its general health and safety and civil enforcement responsibilities through issuance of the subpoenas here. Moreover, while we are sensitive to the fact that the six persons under subpoena have previously been questioned, some on several occasions, regarding the TMI-2 accident, they are in fact knowledgeable about the three areas covered by the subpoenas and those areas need to be clarified before the Commission settles upon possible civil enforcement actions.

1. The Director's Subpoenas

The Director's subpoenas were issued pursuant to Section 161(c) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2201(c)), to assist the Commission in determining whether three pieces of information bearing heavily

---

<sup>2/</sup> By agreement, the return date of the subpoenas has been changed to May 29 and May 30. In agreeing to the new return dates counsel for the movants specifically kept the motion to quash as a live issue before us and has not waived any right to contest the validity of the subpoenas.

upon the expected seriousness of the then ongoing TMI-2 accident ought to have been more promptly reported to the Commission, and, if so, what civil enforcement action should be taken. The investigation into these incidents is a continuation of the NRC's ongoing investigation into the events surrounding the accident at Three Mile Island which resulted in a civil penalty assessment against Metropolitan Edison on October 25, 1979. In his Notice of Violation detailing the bases of the civil penalties, the Director of I&E explained that additional enforcement action, including further civil penalties and orders to suspend, modify, or revoke the operating license, were under review "with regard to the reportability of several items of information following the onset of the accident, including specifically the calculated dose rate of 10-40 R/hr in Goldsboro, the elevated in-core thermocouple indications and the pressure spike in the containment vessel." Letter, Victor Stello to Robert Arnold, dated October 25, 1979.

The Director's decision to defer pressing further enforcement action on those items pending further review and investigation was taken in response to the Commission's direction following an October 25 meeting at which the Director briefed the Commission on the enforcement actions he proposed to take against Metropolitan Edison Company. The Commission was of the view that the facts surrounding those three matters had not been established with sufficient clarity and should not be pursued by way of a civil penalty or license revocation action at that time. <sup>3/</sup> The Commission instructed the Director to await completion of

---

<sup>3/</sup> For example, 10 CFR 20.403 imposes immediate notification requirements on Commission licensees for certain specified events. Under Section 234 of the Atomic Energy Act, 42 U.S.C. 2282, the Commission is empowered to assess civil penalties for violation of such Commission regulations. Additionally, Section 186 of the Atomic Energy Act, 42 U.S.C. 2236, provides the Commission with license revocation powers for failure to observe Commission regulations.

the Report of the President's Commission on the Accident at Three Mile Island ("Kemeny Report"), and of the Report of the Commission's Special Inquiry Group ("Rogovin Report") to see what light those reports shed, before proceeding further.

After completion of the Rogovin Report earlier this year, and the completion of a Supplemental Report on March 4, 1980, looking at the transfer of information on the day of the accident in response to a series of questions raised by Congressman Udall, the Commission directed its Office of Investigation and Enforcement to complete its investigation which had been held in abeyance. See Memorandum, Chairman Ahearne to William J. Dircks, dtd. March 21, 1980. The Commission explained its plans to Congressman Udall as follows:

The Commission has devoted substantial time to the question of Met Ed's conduct during the TMI-2 accident one year ago. Last fall the NRC assessed a civil penalty against Met Ed. However, one area was left open, that related to information transfer. Last fall the Commission concluded that area should be examined after the Presidential Commission and the NRC Special Inquiry Group had completed their work. Shortly before the Special Inquiry Group submitted its report, you sent us the first of two sets of questions relating to information transfer. As a result, the Commission continued to defer the I&E review and asked the Special Inquiry Group to examine its records further for information pertaining to your questions and to conduct such further inquiry as it believed warranted. Finally, Dr. Myers of your staff has provided us with a review of this issue.

The Special Inquiry Group has reported on its reexamination in detail, indicating that it finds no direct evidence suggesting intentional withholding of information but that it was not appropriate for the Special Inquiry Group to reach conclusions as to enforcement questions. . . . We have concluded that the appropriate action is to now direct I&E to complete the investigation. This will focus upon the question of whether a further civil penalty of Met Ed is justified in light of the facts pertaining to information transfer.

The letter also noted that should the investigation suggest the possibility of criminal prosecution, the case would be referred to the Department of Justice.

In carrying out the Commission's directive, the Director of I&E contacted a number of Met Ed employees concerning their knowledge of the pertinent events on the day of the accident. Six of the individuals contacted, Hugh McGovern, Lynn Wright, Brian Mehler, Joseph Chwastyk, George Kunder, and William Zewe, refused to be interviewed absent a subpoena. The Director's subpoenas followed.

Only two of the six individuals subpoenaed by the Director are among the fourteen persons who have been ordered to appear before the Grand Jury.<sup>4/</sup> Based on past testimony and interviews, the Commission believes that each of these six individuals has direct knowledge relating to the transfer of information on March 28, 1979 and can contribute to establishing whether further enforcement action is appropriate.

## 2. Criminal Referral of Hartman Allegations

The Grand Jury investigation now pending in the Middle District of Pennsylvania was triggered by the Commission's referral to the Department of Justice of a wholly separate and distinct matter -- its investigation of allegations by Harold Hartman, a control room operator at TMI-2, that over a period of several months prior to the TMI-2 accident, employees at TMI-2 may have falsified the results of certain tests.

---

<sup>4/</sup> These two, Hugh McGovern and Lynn Wright, are both control room operators with no supervisory responsibility. The other four, Messrs. Mehler, Chwastyk, Zewe and Kunder, are shift supervisors at TMI. On May 27 movant filed a Supplement to Motion to Quash Subpoenas advising us that John S. Herbein, Vice-President, Metropolitan Edison Company, has also been subpoenaed by the Grand Jury. The list of documents called for by the Herbein subpoena relate to the Hartman allegations described infra and are not a basis for granting the motion to quash.

Mr. Hartman's allegations first came to the Commission's attention on May 22, 1979 during an interview with members of the NRC Office of Inspection & Enforcement team investigating the accident at TMI-2. At that time, in subsequent interviews with NRC, and in a deposition by the Special Inquiry Group taken October 29, 1979, Mr. Hartman alleged that (1) results of reactor coolant surveillance leak rate tests were falsified, (2) emergency feedwater pump test criteria were altered, and (3) the estimated control rod positions for attainment of criticality were re-calculated in order to meet procedural requirements. The allegations, if true, could lead to criminal prosecution.

On or about March 22, 1980 NRC inspectors talked to Mr. Hartman at his home, where he repeated the same allegations. On March 26, NRC inspectors Martin, Christopher, and Sinclair taped an interview with Mr. Hartman and took his sworn statement. The NRC then took steps to verify Mr. Hartman's allegations by examining existing documentation and other records.

During the latter part of March the NRC's Office of Inspector and Auditor exchanged a few preliminary phone calls with the Department of Justice, informing them of the possibility of a referral for criminal prosecution. Finally, on April 2, 1980, representatives of the NRC met with members of the Department of Justice to brief them on all of the information in its possession, in accordance with the Atomic Energy Act. 42 U.S.C. 2271. At that time, the NRC brought its own investigation to a halt.

We understand from movants' counsel who is also counsel for those under subpoena by the Grand Jury, that the Grand Jury has subpoenaed thirteen present employees and one former employee of TMI-2. Two of the six persons subpoenaed by our Director of I&E, Messrs. Wright and McGovern, are among those subpoenaed by the Grand Jury. We further understand from movants' counsel that Mr. Wright

has already testified and has been excused by the Grand Jury. A date for Mr. McGovern's Grand Jury appearance has not yet been set.

### 3. Legal Analysis

As the facts make clear, the Commission's ongoing investigation regarding the reporting of events that occurred on the first day of the TMI-2 accident is separate and distinct from the Hartman allegations referred to the Department of Justice for possible criminal prosecution. Mr. Hartman's allegations go only to events prior to the accident on March 28, 1979. He was not even present at the TMI-2 site on the day of the accident.

Given these facts there is no basis for requiring the Commission to await completion of the Grand Jury investigation before proceeding further on the Commission's civil investigation. The leading case on concurrent criminal and civil investigation is United States v. LaSalle National Bank, 437 U.S. 298 (1978). There the Supreme Court ruled that a summons issued by the Internal Revenue Service was entitled to be enforced so long as it was issued in good faith pursuant to a legitimate Internal Revenue Service investigation, and prior to a recommendation by the Service to the Department of Justice for a criminal prosecution "which reasonably would relate to the subject matter of the summons." Id. at 318. See also Garden State National Bank v. United States, 607 F.2d 61 (3d Cir. 1979). This test for the enforceability of agency subpoenas reflected the policy interests that the civil investigation should be allowed to proceed so long as it was not used to broaden the Justice Department's right of criminal litigation discovery, or to infringe on the role of the grand jury as the principal tool of criminal accusation. It is clear from

what we have said earlier that the Director's subpoenas plainly meet the standards established by the Supreme Court for the enforceability of agency subpoenas. <sup>5/</sup> His investigation is being carried out in good faith pursuant to the Commission's authority under Section 161 of the Atomic Energy Act, and has the legitimate purposes of establishing whether further civil enforcement action should be taken in connection with the TMI-2 accident. That ongoing investigation into the first day of the TMI-2 accident is not reasonably related to the Hartman allegations which the Commission has referred to the Department of Justice for possible criminal prosecution, and which triggered the Grand Jury investigation now in progress. By allowing its Director of Inspection and Enforcement to proceed with his investigation, the Commission is neither infringing the accusatory role of the Grand Jury, nor acting as a funnel of information to expand the Justice Department's criminal discovery rights.

Indeed, if the Commission's congressionally mandated authority to investigate matters touching the public health and safety is to be effectively blocked every time a Grand Jury is convened on a matter involving the same nuclear power plant, the Commission will be unduly hampered in carrying out its mandate to protect the public health and safety. The Commission depends upon its licensee reporting accurately and promptly to the NRC. If we do not have an investigation and enforcement mechanism to ensure that reporting, the Commission will be unable to assure compliance with its rules and regulations.

---

<sup>5/</sup> If anything, the Commission's power to conduct concurrent investigations is broader than that of the IRS since the Atomic Energy Act is "a regulatory scheme which is virtually unique in the degree to which broad responsibility is reposed in the administering agency, free of close prescription in its charter as to how it shall proceed in achieving the statutory objectives." Siegel v. Atomic Energy Commission, 400 F.2d 778 (D.C. Cir. 1968). Moreover, unlike the IRS' subpoena power which is directed at determining the tax liability of a particular person and thus has "interrelated criminal and civil elements", United States v. LaSalle, supra, 437 U.S. at 310, the Commission's subpoena power is much more general in scope. 42 U.S.C. 2201.

We also reject the second ground asserted for quashing the subpoenas, the claim that they are overly burdensome given the many investigations of the TMI-2 accident that have already taken place. While we are sensitive to the claim that a person should not be subjected to rounds of questioning on the same matter, we have satisfied ourselves that there are important areas of questions, limited in time and subject matter to the specific areas covered by the subpoenas, which have not yet been answered and are legitimate concerns of the Commission in its enforcement responsibilities. Finally, we note that only one of the six persons the Commission has subpoenaed is currently under subpoena by the Grand Jury, and his appearance date before that body has not been set. We do not believe the Director's subpoenas are unduly burdensome.

The motion to quash the Director's subpoenas is denied.\*

It is so ORDERED.

For the Commission



SAMUEL J. CHILK  
Secretary of the Commission

Dated at Washington, D.C.

this 28th day of May, 1980.

\*Section 201 of the Energy Reorganization Act, 42 U.S.C. §841 provides that action of the Commission shall be determined by a "majority vote of the members present." Commissioners Hendrie and Bradford were not present at the meeting at which this Order was approved. If they had been present at the meeting they would have voted with the majority. Accordingly, the formal vote of the Commission was 3-0 in favor of the Order.