

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

Docket No. 50-289  
(Restart)

NRC STAFF'S ANSWER TO AAMODT'S MOTION TO REOPEN THE RECORD

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May 13, 1983

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Unit No. 1) )

NRC STAFF'S ANSWER TO AAMODT'S MOTION TO REOPEN THE RECORD

I. INTRODUCTION

On or about April 16, 1983, intervenors Norman O. and Marjorie M. Aamodt filed with the Commission a document entitled "Aamodt Comments Concerning NRC Staff Review of GPU v. B&W Court Trial Transcript and Motions to Reopen Record of Restart Proceeding" (Aamodt Comments). The Aamodt Comments contain, inter alia, four separately numbered motions to the Commission (Aamodt Comments at 25-26). One of those motions, designated motion one by the Aamodts, requested that the record in this proceeding be reopened. By order dated May 5, 1983, the Commission referred the Aamodts' Motion to reopen the record to the Appeal Board for its consideration.<sup>1/</sup> For the reasons set forth below, the Staff opposes the Aamodts' motion to reopen the record.

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<sup>1/</sup> On May 3, 1983 the Staff filed with the Commission "NRC Staff Motion For An Extension of Time to Respond to Aamodt Motion to Reopen Record of Restart Proceeding", which also was referred to the Appeal Board. On May 5, 1983 the Appeal Board granted the Staff's motion for an extension of time, until May 13, 1983, to reply to the Aamodt motion to reopen.

## II. DISCUSSION

The Aamodts move to reopen the record in the restart proceeding "to receive information revealed in GPU v. B&W in order to reevaluate GPU Nuclear management capability and integrity." Aamodt Comments at 4. The Aamodts argue that new and significant information in the GPU v. B&W record "challenge the Licensing Board's conclusions that GPU Nuclear management integrity is adequate to the task of safe operation of TMI-1" and therefore the restart record should be reopened to consider the new information. Id. at 2. Specifically, the Aamodts claim that the GPU v. B&W record reveals new and significant information concerning the following matters: (1) the Hartman allegations concerning the falsification of leak rate data at TMI-2 (Id. at 5-8); (2) the 1978 TMI in-house management audit (Id. at 8-9); (3) the credibility of Robert Arnold, President of GPU Nuclear Corporation (Id. at 9-10); (4) the B&W-GPU interface concerning plant procedures (Id. at 10-13); and (5) operator capability to handle emergencies (Id. at 13-14).<sup>2/</sup>

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<sup>2/</sup> The Staff does not concede that the GPU v. B&W record reveals the information as alleged by the Aamodts. Indeed, Licensee disputes the accuracy of the Aamodts' claims concerning the content of the GPU v. B&W record. See, e.g., Licensee's Reply to Aamodts' Motion to Reopen Record of Restart Proceeding, May 9, 1983, at 8-10. For the purposes of Staff's response, contained herein, to the Aamodts' arguments on reopening, the Staff has assumed that the Aamodts' characterization of the GPU v. B&W record is accurate.

As discussed below, the Aamodts' motion fails to meet the well-established standards for reopening a record. In Kansas Gas and Electric Company (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320, 338 (1978), the Appeal Board made it clear that the proponent of a motion to reopen bears a heavy burden. The movant must demonstrate that: (1) the motion is timely, (2) the motion is directed to a significant safety or environmental issue,<sup>3/</sup> and (3) a different result would have been reached initially had the material submitted in support of the motion been considered.<sup>4/</sup> These standards were reiterated in Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 804 (1979), where, in contrast to the case at hand, the motion to reopen was filed after the record was closed, but prior to issuance of a decision by the licensing board.<sup>5/</sup> Thus, the motion to reopen must be timely and not based on information that reasonably could have been raised prior to the close of the record,

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<sup>3/</sup> See, Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-598, 11 NRC 846, 887 (1980); Georgia Power Co. (Alvin W. Vogtle Nuclear Power Plant, Units 1 and 2), ALAB-291, 2 NRC 404, 409 (1975); Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973).

<sup>4/</sup> See Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-227, 8 AEC 416, 418 (1974). In this connection, the Appeal Board has recently observed that the proponent of a motion to reopen must establish the existence of newly discovered evidence having a material bearing on the proper result in the case. Duke Power Co. (McGuire Nuclear Station, Units 1 and 2), ALAB-669, 15 NRC 453, 465 (1982).

<sup>5/</sup> See also Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-644, 13 NRC 903 (1981).

it must involve a significant matter, and it must be such that the outcome of the case is likely to be affected by the alleged new information.

A. The Hartman Allegations Concerning Falsification of Leak Rate Data at TMI-2

The Aamodts assert that the Hartman testimony in the GPU v. B&W trial concerning the falsification of leak rate data at TMI-2 provides significant new information warranting reopening of the TMI-1 restart proceeding. Aamodt Comments at 5. An examination of the uncontroverted evidence in the restart proceeding demonstrates, however, that the issues of the Hartman allegations concerning falsification of leak rate data was made a part of the restart record to the extent it was permissible to do so.<sup>6/</sup> As the Staff explained in Staff Exhibit 4 (NUREG-0680, Supp. No. 1) at 37 and Staff Exhibit 13 (NUREG-0680, Supp. No. 2) at 9-10, at the request of the Department of Justice, the NRC suspended its investigation of the Hartman allegations and agreed not to discuss the details of the matter until the DOJ investigation was completed. At this time, the DOJ investigation is still in progress, including a Grand Jury which is currently hearing testimony on the matter. Thus the Hartman allegations themselves are not new and the Aamodts have not presented any new evidence on the merits of the Hartman allegations.

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<sup>6/</sup> The Licensing Board, in its management partial initial decision, noted its limited knowledge of the leak rate matter and the ongoing DOJ investigation and stated that it had no basis to conclude that restart should not be permitted until the DOJ investigation is complete. 14 NRC 381, 557.

With respect to the significance of the Hartman allegations, the Staff recently advised the Commission that it was taking actions to ensure that this matter does not present any health and safety concerns which require resolution before restart. NRC Staff Comments on the Analysis of GPU v. B&W Transcript, April 18, 1983. The Staff stated:

The Hartman allegations, among other things, touch upon the competence and integrity of TMI management. Thus, to insure that these allegations do not present health and safety concerns which require resolution prior to restart, the Staff is initiating actions to revalidate the NRC Staff position, supporting TMI-1 restart, on the management integrity issue. These actions include an evaluation of the effectiveness of the steps GPU has taken to insure adherence to station operating procedures and a review of current TMI-1 personnel and their current responsibilities vis-a-vis their responsibilities during the time frame of the Hartman allegations. Upon completion of this effort, now estimated to be mid-June, the NRC Staff will advise the Commission of the results.

In addition, the Staff will review its position on management and cheating issues in light of any additional information it obtains from DOJ after the DOJ investigation is completed.\* Subject to DOJ agreement, the Staff will promptly make appropriate notifications of any significant new information that it obtains.\*\*

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\*/ The Staff also will seek DOJ clearance to make appropriate notifications concerning relevant documents currently in the possession of the Staff prior to the completion of the DOJ investigation if such notifications do not compromise the DOJ investigation.

\*\* Based on the additional information obtained, the Staff will initiate enforcement action if appropriate.

Id. at 4-5.<sup>7/</sup> On April 20, 1983, the Staff initiated an inspection and review program which consisted of a special, announced inspection by

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<sup>7/</sup> In a memorandum to Chairman Palladino dated April 26, 1983, the Staff provided the details of the actions it was taking and advised the Commission that it anticipated completion of the effort by May 6, 1983. See Staff's Note to Parties, April 27, 1983.

Regional inspectors, the Senior Resident Inspector, and NRR Licensee Qualification Engineers. The onsite inspection alone involved 380 inspection hours. The inspection and review program is now essentially complete. However, during the course of that review effort, the inspection team became aware of two recently completed studies, conducted for the licensee, which could affect the Staff's findings. The Staff felt it was important to thoroughly review those studies as part of its review effort. Accordingly, in a memorandum to Chairman Palladino dated May 6, 1983, the Staff advised the Commission that the inspection team had enlarged the scope of its activities to include the review of those studies. The team began the additional review on May 6, 1983, and we anticipate that the Staff's review will be completed shortly.

Based on the results of the Staff's revalidation program thus far, it cannot be said, at this time, that the Hartman allegations per se raise a significant safety issue warranting reopening the restart record.<sup>8/</sup> As the Staff recently stated to the Commission, one of the focuses of the revalidation effort is to determine what personnel are now at TMI-1 who were at TMI-2 at the time of the Hartman allegations, and whether there are procedures now in place that would prevent any incidents similar to the alleged falsification of leak rate data. NRC Staff's Answer to Marvin I. Lewis' Request for Relief Concerning Leak

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<sup>8/</sup> However, the two consultants' reports mentioned above themselves may contain significant new information which could affect the Appeal Board's resolution of the management issues in the restart proceeding. The Licensee has agreed to provide copies of the two reports to the Commission, the Appeal Board, and the parties.

Rate Issue, May 9, 1983, at 3. The Staff conducted a review of existing personnel at TMI-1 and in the GPU corporate management and support structure vis-a-vis their positions prior to the TMI-2 accident. The objective of the review was to identify those individuals now involved with the TMI-1 management, support and operating organizations who may have had some involvement with the alleged leak rate data falsification and whose assignment in the present TMI-1 organization could raise possible questions regarding the integrity of TMI-1 organizations and personnel. The inspectors' preliminary conclusion is that of all the individuals in the present TMI-1 organization and the supporting corporate structure, only one, a shift supervisor, was likely to have had a direct connection with pre-accident leak rate testing at TMI-2. In view of the changed organizational structure for TMI-1, as compared to the pre-accident organization, the changes in personnel responsible for plant operation, and the emphasis observed on procedure adherence, the inspectors believe that problems such as are alleged by Hartman to have occurred in the leak rate testing at TMI-2 are unlikely to occur at TMI-1. A full report on the matter of management and operations personnel, now assigned to TMI-1, who worked at TMI-2 at the time of the alleged leak rate data falsification, will be included in the NRC Staff's report on its revalidation efforts.

In summary, the Aamodts have not met their burden of establishing that the Hartman allegations involve a new and significant issue warranting reopening of the restart record. Furthermore, preliminary results of the Staff's revalidation program indicate that problems such as are alleged by Hartman to have occurred in the leak rate testing at TMI-2 are unlikely to occur at TMI-1.

B. The 1978 TMI In-House Management Audit

Aamodts' second basis for reopening the TMI-1 restart record is the 1978 TMI in-house management audit. Aamodt Comments at 8-9. The results of that audit are contained in a document entitled "Three Mile Island Management Audit, January 9-20, 1978" ("1978 Audit Report") which was attached to a February 14, 1978 memorandum from the audit team to J.G. Herbein.<sup>9/</sup>

The 1978 Audit Report is neither "new" nor "newly discovered" evidence. It was produced by Licensee in discovery in this proceeding and made available to all parties, including the Aamodts, in March, 1980 by placing it in Licensee's "Discovery Reading Room." See item 13 in response to Interrogatory No. 8-7 in Licensee's Response to First Set of Interrogatories of Chesapeake Energy Alliance, March 31, 1980, at 14-16. Thus the Aamodts' Motion to Reopen the record to consider the 1978 Audit Report is untimely.

With respect to the significance of the 1978 Audit Report, an examination of the document establishes that it does not address issues in the restart proceeding.<sup>10/</sup> The management issues specified by the Commission for litigation in the restart proceeding encompass Licensee's

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<sup>9/</sup> Counsel for Licensee has informed Counsel for the Staff that the February 14, 1978, memorandum and 1978 Audit Report are being forwarded to the Appeal Board and parties for reference.

<sup>10/</sup> In support of their argument that the restart record should be reopened on the basis of the 1978 management audit, the Aamodts take certain of the statements contained in the Report out of context. The Aamodts quote from the 1978 Audit Report that, "Training in the Operations Department is at the present time a  
(FOOTNOTE CONTINUED ON NEXT PAGE)

present managerial and technical capability and resources and its current training and operations staff. See, e.g., short-term items 1(e) and 6, CLI-79-8, 10 NRC 141, 144-45 (1979); see also the specific management issues which the Commission ordered be examined in the restart proceeding in CLI-80-5, 11 NRC 408 (1980). Licensee's present management, technical and operations organization is entirely different from that which was examined during the 1978 management audit. See Management PID ¶¶ 46-276. The 1978 TMI Audit Report addresses Licensee's pre-accident organization before the reorganization which produced Licensee's current organization and which was the subject of the management issues in the restart proceeding. For this reason, Staff witnesses in the management phase of the restart proceeding, after a recent review of the 1978 Audit Report, concluded that it does not affect their testimony in this proceeding. Affidavits of Lawrence P. Crocker, Frederick R. Allenspach, and Richard R. Keimig, attached. The 1978 Audit Report is not even relevant to the management issues in the restart proceeding. Consequently, there is no basis to reopen the record to consider the 1978 Audit Report.

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10/ (FOOTNOTE CONTINUED FROM PREVIOUS PAGE)  
serious matter" and they point out that the Audit Report states "that the quality of the operations personnel was in a continuous downhill trend due to lack of training." Aamodt Comments at 8, citing B&W Ex. 843. The paragraph from which those statements are quoted continues:

The training that is being given on Unit 2 is very ineffective and of much lower quality than that given on Unit 1. The Training Department personnel do not have the time to learn Unit 2 properly in order to teach it effectively.

1978 Audit Report at W 45229. Thus the statements quoted by the Aamodts out of context relate to TMI Unit 2, not TMI Unit 1, the subject of the restart proceeding.

In conclusion, the 1978 Audit Report is neither new nor significant; therefore the Aamodt motion to reopen the record on the basis of that document should be denied.<sup>11/</sup>

C. The Credibility of Robert Arnold, President of GPU Nuclear Corporation

The Aamodts cite as a basis to reopen this record the GPU v. B&W court's statement that it found certain prior testimony of Robert Arnold, President of GPU Nuclear Corporation, misleading. Aamodt Comments at 9-10. The Aamodts do not explain, however, how that statement constitutes significant new information that likely would affect the resolution of any issues in the restart proceeding. As the Aamodts themselves point out, Special Master Milhollin thought that one part of Mr. Arnold's testimony in the restart proceeding (concerning why Mr. Arnold did not ask O and W why they cheated) was not forthright. Id. at 10. That view was specifically considered by the Licensing Board. Cheating PID ¶¶ 2235-2236. The Aamodts' remedy for their dissatisfaction with the Licensing Board's reliance on Mr. Arnold's testimony in resolving issues in the restart proceeding, therefore, lies in their pursuit of the matter in the appellate phase of the proceeding, not in reopening the record. In fact, the Aamodts have pursued the issue of Mr. Arnold's candor in the proceeding. See e.g., Aamodt Brief of Exceptions Taken on August 27, 1981, July 27, 1982 Partial Initial

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<sup>11/</sup> The Staff does not believe that the Commission intended the restart proceeding to be a forum for the parties to litigate the quality of Licensee's old management organization which existed at a time which is more than one year prior to the accident at TMI-2 and which no longer exists.

Decisions (Management Issues/Training/Integrity), dated September 30, 1982, at ¶¶ 77-78. That issue therefore should properly be resolved by the Appeal Board in connection with the intervenors' appeals on the merits.<sup>12/</sup> There simply is no basis provided by the Aamodts for reopening the record on Mr. Arnold's candor.

D. B&W-GPU Interface Concerning Plant Procedures

The Aamodts also assert as a basis for reopening the record that the GPU v. B&W record contains information that "could be expected to lead to a more adequate resolution of deficiencies in training of TMI-1 operators than provided by the Licensing Board from the record of the Restart Proceeding." Aamodt Comments at 10. Specifically, Aamodts' argument is that B&W "is the repository of all pertinent operating information specific to the TMI plants" (Aamodt Comments at 13) and, therefore, B&W should participate in Licensee's operator training and certification program (Id. at 12) and the "NRC should obtain the subject matter for the TMI licensing exams from B&W" (Id. at 13). As stated in the attached Affidavit of Bruce A. Boger, the Aamodts' statement that B&W is the best source of pertinent plant-specific operating information is incorrect. As further stated in Mr. Boger's affidavit, although the NRC encourages licensees to use vendor personnel in their training of operators, NRC regulations do not require the use of vendors in the

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<sup>12/</sup> The Aamodts assert that the trial court found Mr. Arnold to be evasive in one instance and complain that the Licensing Board tolerated allegedly unnecessary elaboration in testimony by TMI management officials in the restart hearing. Aamodt Comments at 10. Such arguments and complaints are simply not material to whether the record should be reopened in the restart proceeding.

training of operators. Furthermore, as Mr. Boger points out, only the licensee, by regulation, is responsible for operator training and certification, while the NRC is responsible for licensing reactor operators.

In conclusion, as the attached affidavit of Mr. Boger establishes, there is no basis to reopen the record on the "B&W-GPU Interface Concerning Plant Procedures" as asserted by the Aamodts.

E. Operator Capability for Handling Emergencies

The Aamodts claim that the GPU v. B&W transcript calls into question the Licensing Board's decision that the operators are able to respond to emergencies with no undue risk to the public. Aamodt Comments at 13. The Aamodts then assert that the "only appropriate resolution" is "provision of off-site decision centers manned by nuclear experts where all pertinent data is displayed." Id. at 14. The Aamodts argue that TMJ-1 should not be permitted to restart without such an off-site decision center. Id.

As concluded by the Licensing Board in this proceeding, subject to the satisfaction of the conditions of restart which were imposed by the Licensing Board, the Licensee has satisfied all the NRC requirements, as well as short-term order item 3 of CLI-79-8, 10 NRC 141, 144 (1979), which relate to emergency response facilities and which are required prior to restart. Emergency Planning PID ¶¶ 2007-2010, 14 NRC 1211, 1703-06 (1981). Furthermore, as established in the attached affidavit of Falk

Kantor, the Licensee has established, or will have established pursuant to a schedule acceptable to the NRC Staff, each of the emergency response facilities required by NRC regulations, including a Technical Support Center with plant parameter readout capability, for the gathering of experts and analysts. The Aamodts therefore have not provided any significant new information which could affect the resolution of the management issues relating to emergency response facilities.<sup>13/</sup>

### III. CONCLUSION

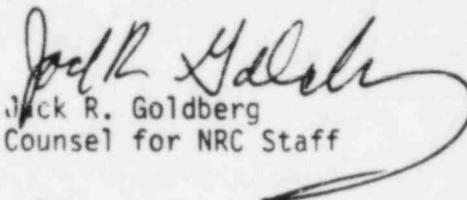
For the reasons stated above, the Aamodts' motion to reopen the record of the TMI-1 restart proceeding should be denied. With respect to the Hartman allegations per se, the Aamodts have not raised a new

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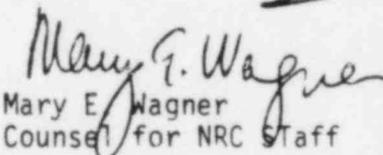
<sup>13/</sup> While the Aamodts' motion to reopen the record is couched in terms of management issues, to the extent that it might be viewed as directed to emergency planning issues, the Staff would note that, with one exception (the timing of the staffing of Licensee's nearsite Emergency Operations Facility) the Licensing Board's resolution of emergency planning issues, as modified by the Appeal Board's decisions in ALAB-697 and ALAB-698, as further modified by the Commission in CLI-83-7 (March 22, 1983), has been left undisturbed by the Commission. The time for petitions for Commission review of the Appeal Board's decisions in ALAB-697 and ALAB-698 has long since passed. 10 CFR § 2.786(b). In these circumstances, it would appear that the Appeal Board lacks jurisdiction to reopen the record on emergency planning issues. See Virginia Electric & Power Company (North Anna Nuclear Power Station, Units 1 & 2), ALAB-551, 9 NRC 704, 707, 708 (1979).

significant safety issue warranting reopening the record at this time. The Staff promptly will advise the Appeal Board of the results of its revalidation program.

Respectfully submitted



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Dated at Bethesda, Maryland  
this 13th day of May, 1983.