

permitting TMI-1 to restart only when all critical safety concerns underlying the original suspension order have been met. In the following respects, the PID demonstrates that the concerns expressed in the Commission's August 9, 1979 and March 6, 1980 Orders have not been adequately resolved with respect to the integrity and the competence of certain members of Licensee's operations staff.

In its August 9, 1979 Order, the Commission identified particular safety concerns, including questions about the management capabilities of the Licensee, necessary to be resolved prior to restart. The Commission amplified on these standards in its Order of March 6, 1980. Of particular relevance was the issue of whether the operations and technical staff of Unit 1 is qualified to operate Unit 1 safely.

- A. The Licensing Board Would Allow The Licensee To Operate TMI-1 With Operators Who Lack The Requisite Integrity To Perform Their Duties Safely.

The Commonwealth recommended in its proposed findings of fact and conclusions of law that five individuals should not be permitted to operate TMI-1.² These recommendations are based on the principle that an individual who has demonstrated lack of honesty should not be entrusted with the responsibility of operating a nuclear power plant. High-level management officials of the Licensee agreed in sworn testimony before the reopened hearing that integrity is essential to the safe operation of a nuclear power plant. Tr. 23,611-12; 23,616 (R. Arnold); Tr. 23,983; 24,082 (H. Hukill).

2. These individuals are G, H, GG, DD, and U. See Commonwealth of Pennsylvania's Proposed Findings of Fact and Conclusions of Law on Issues Raised in Reopened Hearing on Operator Cheating (January 18, 1982) at 47. (Pursuant to a Stipulation of Confidentiality among the parties, Licensee's operators were identified by letter designations. Confidentiality was subsequently waived or otherwise deemed inappropriate with respect to certain individuals.)

While this concept is difficult to challenge from any perspective, the Commonwealth has a particularly focused interest in the integrity of Licensee's operations staff. During an emergency, the Commonwealth receives critical public health-related information from Licensee's operations staff in the reactor control room. On the basis of this information, the Governor and other Commonwealth officials make key public protective action decisions, such as whether to order evacuation. Thus, the Commonwealth's ability to fulfill its responsibility of making rational public health and safety decisions depends on its ability to receive trusted, reliable information from Licensee's operations staff.

The Licensing Board itself appears to agree with this principle of demanding the integrity of Licensee's operations staff in the future. In its criticism of Licensee's procedures for certifying candidates as eligible to sit for NRC licensing examinations, the Board states:

the senior management official charged with signing the certification to the NRC is obligated to review the candidate's personnel file and to take into consideration any information reflecting on the candidate's integrity and attitude.

2351. Such steps, when implemented, should eliminate the possibility of certifying candidates for the NRC examination who have cheated on internal examinations on one or more occasions.

PID ¶¶2350-51 (emphasis added). See also id. ¶2059. Obviously, the Board has concluded that integrity and attitude, in addition to knowledge and competence, are essential attributes for a reactor operator.

Yet the Board failed to apply this important principle retrospectively. The Board found on the basis of the evidence heard in the reopened hearing that control room operators G and H were guilty of cheating on internal

company examinations.³ PID ¶¶2096-2121. Yet the Board simultaneously found that an acceptable remedy would be a "two-week suspension without pay in lieu of an action against their licenses." Id. ¶2120. The Board explains this result by stating, in part:

We do not believe that the overall results demonstrate a poor understanding of the course material. We have, then, a question of ethics, not of competence. G and H have passed their NRC examinations under properly monitored conditions.

PID ¶2119 (emphasis added). The Board's conclusion is inconsistent with its own statements on the importance of attitude and integrity in granting a license to a nuclear power plant reactor operator.⁴ The Commonwealth is at a loss to understand why in the future an operator who has cheated would not even be permitted to sit for the NRC examination, while operators who have cheated in the past would still be allowed to operate TMI-1.

In addition to cheating, operators G and H also appear to have provided untruthful testimony before an NRC Hearing Examiner (as well as an internal company investigation). See PID ¶¶2114-15. It is disturbing that the Licensing Board failed to appreciate the significance of rendering false or misleading testimony in an NRC proceeding. Again, such conduct calls into question the fundamental integrity of the persons in question.

The Board did not find, as urged by the Commonwealth, that individuals U and DD were guilty of cheating. Where the Licensing Board views a marginal factual record differently from the Commonwealth, the Commonwealth does not take exception to the Board's adjudication.

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3. The Commonwealth notes that control room operators were tested repeatedly and that the testing sequence negatively affected operator morale and cast suspicion over the competence and integrity of the operators as a group. The acknowledgement of these difficulties does not, however, imply that the Commonwealth tolerates cheating on the examinations in any way.
 4. It may also be argued that cheating is an indication of lack of knowledge or competence, since the person(s) involved felt it necessary to cheat to pass the examination.

Yet even based on the Board's findings of fact, it is difficult to comprehend the lack of sanctions applied against DD (Mr. Husted). Mr. Husted, in addition to holding a Senior Reactor Operator's License, is a training instructor at TMI-1. Thus, Mr. Husted's attitudes are particularly significant, since these attitudes may readily be transferred to other operators. Although the Board found no direct evidence that Mr. Husted cheated, it directly found that Mr. Husted provided "incredible" testimony at the hearing. PID ¶2165. In addition, the Board concluded that Husted:

refused to cooperate with the NRC investigators. Moreover, later when he provided some information, he continued to withhold information within his knowledge; and he provided an incredibly inconsistent account of his reasons during the hearing.

* * *

His testimony on the matter was not only unbelievable, but it gave the sense that he didn't care whether he was believed or not.

PID ¶¶2165-66. Moreover, the Board concluded that

"if Mr. Husted is representative of the TMI-1 training department, his attitude may be a partial explanation of why there was disrespect for the training program and the examinations.

* * *

we question whether he is able, or if able, willing, to impart a sense of seriousness and responsibility to the TMI-1 operators.

PID ¶2167.

Despite these far-reaching findings, the Board recommends no sanction against Mr. Husted, who remains a training instructor at TMI. The Board explains this result by stating that "Mr. Husted's conduct during the investigation and his testimony is not related to his status as a licensed reactor operator." PID ¶2168. This directly contradicts the Board's opinion that, prospectively, attitude and integrity are clearly related

to licensed reactor operator status. Integrity and attitude are equally clearly related to Mr. Husted's status as a training instructor. The management audit of Licensee's training department proposed by the Board should not only focus on Mr. Husted (PID ¶2168); the audit should formulate specific recommendations as to whether Mr. Husted should be retained.

The Commonwealth has no quarrel with the Board's argument that license suspension or revocation actions with respect to individuals must be consistent with principles of due process and established NRC regulations. See PID ¶2116. If such is the case, proceedings may be instituted in accordance with 10 C.F.R. §55.40. This does not mean, however, that operators subject to such proceedings may operate the plant in the interim. The Commission clearly has the authority, where public health and safety is jeopardized, to take license suspension action in advance of any required hearing. 42 U.S.C. §2137, 5 U.S.C. §558(c).

B. Flaws In Licensee's Operator Training Program Should Be Corrected Prior To Restart.

The Commonwealth proposed no findings of fact regarding the implications of the operator cheating incidents in terms of Licensee's operator training program. During the initial management phase of the hearing, however, the Commonwealth voiced concerns regarding Licensee's training and staffing practices. These concerns ultimately were resolved through negotiation of license conditions with the Licensee. The Commonwealth made clear, however, that it expected major concerns about the training program to be remedied prior to restart.

Having deferred to the Special Master and Licensing Board to make findings of fact on this issue in the reopened proceeding, the Commonwealth

is compelled to confront the implications of those findings. If the Board's findings are accepted as correct, the deficiencies in Licensee's operator training program should be corrected prior to restart. This result is mandated by the fact that operator retraining was included as a short-term item in the Commission's August 9, 1979 Order and Notice of Hearing, i.e. an item that must be satisfied prior to restart.

The Board proposes four conditions on the restart of TMI-1 to remedy the deficiencies it identified in Licensee's operator training program. These conditions are to be fulfilled within two years after restart authorization. PID ¶2347. Conditions (1), (3), and (4) are clearly prospective remedies.⁵ The Commonwealth does not comprehend, however, why the second condition should not be required prior to restart (particularly in light of the Board's findings regarding Mr. Husted):

- (2) Licensee shall establish criteria for qualifications of training instructors to ensure a high level of competence in instruction, including knowledge of subjects taught, skill in presentation of knowledge, and preparation, administration, and evaluation of examinations.

The Board's findings that major improvements were necessary in Licensee's training program are important. The Board questioned the

5. These conditions state:

- (1) There shall be a two-year probationary period during which the Licensee's qualification and requalification testing and training program shall be subjected to an in-depth audit by independent auditors, approved by the Director of NRR, such auditors to have had no role in the TMI-1 restart proceedings.
- (3) Licensee shall develop and implement an internal auditing procedure, based on unscheduled ("surprise") direct observation of the training and testing program at the point of delivery, such audits to be conducted by the Manager of Training and the Supervisor of Operator Training and not delegated.
- (4) Licensee shall develop and implement a procedure for routine sampling and review of examination answers for evidence of cheating, using a review process approved by the NRC Staff.

"quality assurance and quality control over the delivery of instruction at TMI-1" and raised doubts about the "quality of instruction (including delivery of instructional material, composition of examinations, and grading)." PID ¶¶2332, 2334. These criticisms are fundamental to Licensee's training program. Based on his analysis of the same findings, the Special Master concluded that Licensee's training program did not constitute an adequate response to the Commission's August 9, 1979 Order and Notice of Hearing. Report of the Special Master (April 28, 1982) ¶¶251, 336.

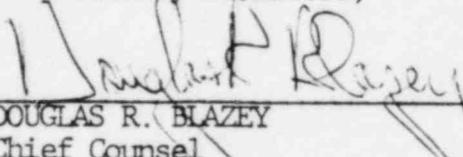
There is a clear difference of opinion between the Special Master and the Licensing Board regarding a question of Licensee's compliance with one of the restart conditions established by the Commission. Such a substantial difference of judgment should be resolved prior to restart.

III. CONCLUSION

The Commonwealth believes that the above-discussed judgments reached by the Licensing Board on the basis of its own findings of fact, constitute an abuse of discretion. The issues presented involve matters of public health and safety that are too important to be left to resolution after restart.

The Commonwealth urges the Commission not to grant immediate effectiveness to the July 27, 1982 PID.

Respectfully submitted,



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Dated: August 20, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

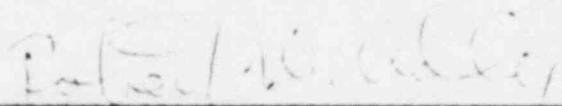
BEFORE THE COMMISSION

In the Matter of:

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

CERTIFICATE OF SERVICE

Copies of the attached "Commonwealth of Pennsylvania's Comments on the Immediate Effectiveness of the ASLB Partial Initial Decision (Reopened Proceeding), July 27, 1982" were served on the parties on the attached service list, this 20th day of August, 1982, by first class mail, postage prepaid.



ROBERT W. ADLER
Assistant Counsel
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Dated: August 20, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

METROPOLITAN EDISON COMPANY,)
(Three Mile Island Nuclear)
Station, Unit No. 1))

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

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BEFORE THE
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the Matter of:

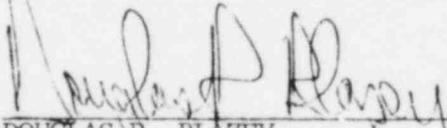
METROPOLITAN EDISON COMPANY,)
(Three Mile Island Nuclear) Docket No. 50-289
Station, Unit No. 1) (Restart)

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NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the above-captioned matter. In accordance with §2.713(a), 10 C.F.R. Part 2, the following information is provided:

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Dated at Harrisburg, Pennsylvania
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