



## ADJUDICATORY ISSUE

October 5, 1983

(Affirmation)

SECY-83-408

COMMISSION LEVEL  
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For: The Commission

From: Herzel H. E. Plaine, General Counsel  
John E. Zerbe, Director, OPE

Subject: REVIEW OF ALAB-738 -- IN THE MATTER OF  
METROPOLITAN EDISON COMPANY

Facility: Three Mile Island Nuclear Station, Unit 1

Purpose: To advise the Commission of an Appeal Board  
decision [which, in our view,

Review Time Expires: October 10, 1983

Petitions for Review: None

Discussion: In ALAB-738 the Appeal Board addressed various motions to reopen the record that had been filed with it by the Aamodts and Three Mile Island Alert (TMIA), two intervenors in the restart proceeding. The Appeal Board reopened the record on Harold Hartman's allegations regarding leak rate falsifications at TMI-2 and remanded the matter to the Licensing Board for further hearings. The Appeal Board denied

CONTACTS:  
Trip Rothschild, OGC  
4-1465  
John Montgomery, OPE  
4-3295

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in accordance with the Freedom of Information  
Act, exemptions 5  
FOIA- 92-436

SECY NOTE: Copies of this paper were advanced to Commission  
Offices by OGC on 10/4/83.

the requests to reopen the record on other matters, some of which, like the Hartman allegations, are the subject of ongoing OI investigations (e.g. the Parks and King allegations, and reportability to the NRC of the BETA and RHR reports).

This Appeal Board decision therefore raises the fundamental issue discussed by OPE in its September 23, 1983 memorandum to the Commission -- whether the numerous open issues relating to management competence and integrity should be investigated by the Licensing Board, by OI, or concurrently by the Licensing Board and OI. [OGC and OPE believe that

EX. 5

I. The Generic Issue of How Open TMI Management Items Should be Handled

There are numerous open TMI management issues including the Hartman allegations, the Keaton Report, the reportability to the NRC of the RHR and BETA reports, possible leak rate falsification at TMI-1, the Parks/King allegations, and assessment of the information derived from the GPU v. B&W trial. The result of the Appeal Board's decision to reopen the record on one of those management items, the Hartman allegations, is that in that matter there will be concurrent fact-finding efforts by OI and the Licensing Board, unless the Commission takes review of ALAB-738.

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Accordingly, we believe that

[Redacted]

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Tentative Conclusion

[ OGC's and OPE's preliminary view is that.

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As noted below, we believe

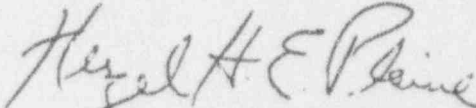
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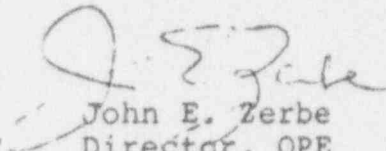
II. Treatment of the Hartman Allegations

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Herzel H. E. Plaine  
General Counsel

  
John E. Zerbe  
Director, OPE

Enclosures:

1. Analysis of Issues Addressed  
in ALAB-738
2. Draft Order

OGC has requested expedited Commissioner review and action on this paper, accordingly Commissioners' comments should be provided directly to the Office of the Secretary by c.o.b. Tuesday, October 11, 1983.

This paper is tentatively scheduled for affirmation at an Open Meeting during the Week of October 10, 1983. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

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Attachment 1

Withhold  
bracketed portions  
Release remainder

## ANALYSIS OF ISSUES ADDRESSED IN ALAB-738

### 1. Hartman Allegations

#### A. The parties' views

The Aamodts and TMIA requested that the record be reopened because of Harold Hartman's testimony in the GPU v. B&W trial. Hartman, a former TMI-2 control room operator, testified that the technical specifications for unidentified leak rates at that facility were exceeded and the corresponding data were falsified for a period of several months before the TMI-2 accident. The Aamodts argued that it was not unlikely that licensee's management (specifically Robert Arnold) knew of this matter. The Aamodts contend that the Hartman testimony demonstrates a lack of management integrity and could have provided the Licensing Board with evidence which could have altered its findings regarding management competence.

The licensee opposed reopening the record claiming that the requests were not timely. In its view, intervenors could have raised this issue much earlier because the Hartman allegations were made public in March 1980. The Licensee did not comment on whether the Hartman allegations address a significant safety issue or whether the Licensing Board might have reached a different result had this matter been considered initially -- the other two criteria used by the Commission in determining whether a record should be reopened.

The NRC staff agreed with the licensee that the motion is not timely, and also argued that the Hartman allegations do not raise a significant issue because changes in personnel are such that the leak rates problems alleged to have occurred at TMI-2 are unlikely to occur at TMI-1. However, the staff believes the allegations could affect the resolution of management issues in the restart proceeding. Despite this view, staff did not recommend reopening of the record. Instead, it urged the Board to defer ruling until the facts can be developed further by the NRC's Office of Investigations (OI) and their significance assessed.

B. The Appeal Board decision

The Appeal Board ordered a reopening of the record and remanded the matter to the Licensing Board for further hearings. The Appeal Board rejected the arguments that the motions were untimely, stating that the parties were clearly discouraged from pursuing the matter by NRC staff assertions to the Licensing Board that the matter could not be discussed during the pendency of the Federal Grand Jury investigation.

The Appeal Board also noted that the Licensing Board's favorable findings on GPU's management set forth in a partial initial decision on management competence had been qualified by statements that the findings were subject to the Hartman allegations.

The Appeal Board concluded that the qualification was tantamount to a determination by the Licensing Board that consideration of the Hartman allegations might well have made a difference in the outcome. The Appeal Board stated that it could not make any final judgment on management competence and integrity without a resolution of the Hartman allegations.

The Board rejected staff's recommendation that any reopening be deferred, asserting that the matter should have been resolved long ago and that litigation of the matter should proceed before the memories of the witnesses are further diminished by the passage of time.

Although the record would be reopened, the Appeal Board declared that it would not defer its consideration of the appeals on other management issues. It stated that it would soon issue an order scheduling oral argument on management matters.

C. Analysis

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2. Unattended Radiation Worker Examinations

The Aamodts sought reopening of the record based on licensee's May 1982 discovery of unattended radiation worker examinations and answer keys at TMI-1. In light of the earlier incidents of cheating by TMI-1 operators on NRC administered exams, the Aamodts asserted that the failure to protect adequately these exams and answer keys reflected adversely on management and warranted reopening of the record. The staff and the licensee opposed reopening because they did not consider the new information to be significant or likely to have affected the Licensing Board's decision.

The Appeal Board, after reviewing an NRC inspection report on the matter, rejected the Aamodt's claim that these incidents show licensee's inability to prevent a compromise of its

training and testing program. The Appeal Board noted that the licensee discovered the irregularities and promptly took disciplinary action. The Appeal Board concluded that the licensees' early detection of the unprotected exam material indicated that the system is working, and accordingly refused to reopen the record.

[ We find

and

[ recommend that

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### 3. Information Arising From GPU v. B&W Trial

In addition to questions raised by the Hartman testimony in the GPU v. B&W trial discussed earlier in this paper, the Aamodts suggest that other information contained in the GPU v. B&W trial record warrants reopening of the record.

#### A. 1978 Audit Report

The Aamodts argue that a 1978 in-house management audit on TMI, which provided new information on inadequacies in licensee's training program, provides a basis for reopening of the record. The Appeal Board rejected this assertion, stating that while the audit suggests much room for improvement in TMI management in 1978, it is not relevant because licensee's present management and training programs are substantially different from those of

1978. The Appeal Board noted that the Aamodts had failed to explain how consideration of this report might affect the outcome of this proceeding.

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B. VV Incident

The Aamodts suggest that comments made by the GPU v. B&W trial judge relating to the credibility of Robert Arnold's statements regarding the cheating incident involving VV cast doubt on Arnold's qualifications to serve as GPU Nuclear President.

The Appeal Board rejected the Aamodts' claim stating that Arnold testified extensively before the Special Master and the Licensing Board in the restart proceeding and that they had the opportunity to observe his demeanor and weigh the credibility of his testimony. Under the circumstances, the Appeal Board found that it would be inappropriate to give weight to the comments of a trial judge in a different proceeding, involving different parties and issues, particularly when the litigation ended in a stipulated settlement before the judge had heard all of the evidence and issued a formal opinion.

OGC believes that

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C. Superior B&W Resources

The Aamodts also argued that the GPU v. B&W trial demonstrated that B&W's technical resources were superior to those of GPU and therefore B&W, rather than licensee and the NRC, should bear principal responsibility for training and testing at TMI.

The Appeal Board rejected this argument noting that there was no dispute that B&W had superior resources, but stating that while the NRC encourages the use of vendor personnel in training, it is not required. The Board declared that the nuclear steam supply system vendor typically cannot provide all necessary information on plant components supplied by other manufacturers, and therefore should not be given ultimate responsibility for training. The Board also concluded that the licensee must bear the responsibility for training and the NRC cannot legally delegate its operator licensing authority to a private company like B&W.

D. Operators Capacity to Handle Emergencies

The Aamodts argued that the GPU v. B&W trial record calls into question the Licensing Board's conclusion that the operators will be able to handle emergencies with no undue risk to the public. The Aamodts noted that GPU counsel at the trial made comments which demonstrated that various stresses in the control room will reduce the operators' ability to cope during an emergency, contrary to the Licensing Board's findings. The Appeal Board found that this matter had been fully considered by the Licensing Board and concluded that the Aamodts failed to present new information which would warrant reopening of the record.

OGC and OPE agree with the Appeal Board's analysis and do not believe reopening of the record is warranted.

4. Open Items in the NRC Staff's Revalidation Effort

TMIA requested the Appeal Board to reopen the record on four open items in the staff's revalidation of management competence effort: statements in the B&W trial record; the Parks and King allegation of retaliation against whistleblowers at TMI-2; concerns raised by the BETA and RHR management audits; and the timeliness of licensee's submission of the BETA and RHR Reports

and other documents (e.g. the Faegre & Benson Reports on leak rate falsification at TMI-2) to the NRC.

The Appeal Board, agreeing with the NRC staff, rejected the request stating that it was premature to reopen the record at this point on any of these items. The Appeal Board noted that the NRC staff and OI review of these items was still underway and that, once those reviews are complete, intervenors will be free to request reopening of the record based on the information produced by those reviews.

The Appeal Board recognized that refusing to reopen the record until after staff investigations were complete differed from the approach it took on the Hartman allegations. It distinguished the situations by noting that the Hartman allegations were quite old and merited prompt hearing; the TMIA allegations related to matters of more recent vintage.

OGC and OPE find the Appeal Board rejection of the TMIA requests to be reasonable and do not believe that the TMIA claims warrant reopening of the record at this time.

Attachment 2