

SEP 29 1982

50289

The Honorable William Proxmire
United States Senate
Washington, DC 20510

Dear Senator Proxmire:

A letter to you dated August 20, 1982 from Joanne Doroshow, Esq., of Three Mile Island Alert (TMIA), which your office sent to NRC headquarters, has been forwarded to me for response.

In the letter, Ms. Doroshow expresses concern about the recent partial initial decision (PID) by an NRC Atomic Safety and Licensing Board examining the restart of TMI-Unit 1. That July 27, 1982 PID, which concerned issues pertaining to the quality of Licensee's management and its operating personnel as they were affected by information on cheating on an NRC operators' licensing examination, was favorable to restart. Ms. Doroshow takes issue with the Licensing Board's decision, specifically with the fact that the Licensing Board did not accept many of the recommended findings of the Special Master who had conducted the evidentiary hearing on cheating incidents.

Special Master Gary L. Milhollin was appointed by the Licensing Board to preside over a reopened hearing on the cheating matter. After extensive hearings, the Special Master presented his conclusions to the Licensing Board in the form of a Report. Under NRC regulations, such a report is advisory only. 10 CFR 2.722(a)(3). The Licensing Board evaluated the Special Master's Report against its own independent review of the entire evidentiary record in the reopened proceeding. PID ¶ 2034. As Ms. Doroshow points out, the Licensing Board PID differs in several respects from the Special Master's Report. Ms. Doroshow prefers the Special Master's Report to the Licensing Board's PID.

TMIA, of which Ms. Doroshow is a member, is an intervenor in the TMI-Unit 1 restart proceedings, and has participated actively in those proceedings, including the cheating hearings. The Commission has established administrative procedures by which intervenors who are dissatisfied with a licensing board decision can appeal that decision. TMIA has followed this procedure, and has filed with the Atomic Safety and Licensing Appeal Board a total of 159 "exceptions" to the Licensing Board's July 27 PID. These "exceptions", or points of appeal, may be briefed and argued by TMIA before an Appeal Board panel authorized to hear them. Since the matter is currently on appeal it would be inappropriate to comment here on the merits of TMIA's exceptions except to note that those exceptions raise many of the same concerns which Ms. Doroshow raised in her letter to you and will be considered by the Appeal Board in the course of TMIA's appeal.

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In her letter, Ms. Doroshow also urges you to "insist that the NRC deny restart authorization" until all questions regarding the training and testing program of the Licensee are resolved. In this regard, it should be noted that, while the Licensing Board PID is favorable to restart, the Licensing Board itself cannot authorize restart. The decision as to whether, based on the Licensing Board's July 27 PID and other PIDs on TMI Restart, TMI-1 should be permitted to operate is currently before the Commission. The Commission has solicited the views of the parties on whether TMI-1 should be authorized to operate in light of the Licensing Board's initial decisions. TMIA has submitted its views against restart to the Commission again raising many of the same concerns as those raised by Ms. Doroshow in her letter to you.

Finally, Ms. Doroshow criticizes the Licensing Board's support of restart despite its conclusion that a Licensee employee, with the concurrence of a Met-Ed Vice President, made a false statement to the NRC in connection with the license recertification of another employee. Ms. Doroshow asserts that the Licensing Board concluded that Mr. Gary Miller, in his capacity as TMI Station Manager, and Mr. John Herbein, then a Met-Ed Vice President,* "committed at least two criminal offenses," and cites two provisions of the U.S. Code which she claims were violated. Ms. Doroshow does not cite to the Licensing Board PID for support of this alleged conclusion; indeed, a review of the PID shows that the Licensing Board made no conclusions as to whether the "false certification" constituted criminal behavior or not. Rather, the Licensing Board recommended that the Commission order the Staff to conduct an investigation into the circumstances surrounding the certification. PID at ¶ 2312. The Staff, on its own initiative, has undertaken such an investigation, which is currently underway.

Sincerely,

(Signed) T. A. Rehm

William J. Dircks
Executive Director for
Operations

* Mr. Miller is being transferred by Licensee to non-nuclear responsibilities, effective October 1, 1982; Mr. Herbein is no longer employed by Licensee.

*See previous NRC 318
for concurrences.

ORB#4:DL
RJacobs* 9/17/82

C-ORB#4:DL
JStolz* 9/17/82

EDO
WJDircks
9/27/82

OCA
9/27/82

OFFICE	EDO	D:WRR	DB:WRR	OELD*	OELD	D:DL	AD-OR:DL
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DATE	9/1/82	9/21/82	9/21/82	9/20/82	9/20/82	9/21/82	9/17/82

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Sincerely,

Harold R. Denton, Director
Nuclear Reactor Regulation

cc: W. Dircks

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: OELD	: OELD	: OELD
NAME : HDenton	: ECase	: Murray
: Christenbury	: Gray	: Wagner
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United States Senate

September 1, 1982

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Ruth Fleisher

Respectfully referred to:

Nuclear Regulatory Commission
Congressional Liaison
Washington, D.C. 20555

Please respond to the attached inquiry in
duplicate and return the enclosure. Thank
you for your cooperation.

Bill Brantner

U.S.S.

TMIA: THREE MILE ISLAND ALERT, INC.

315 Peffer St., Harrisburg, Penna. 17102 (717) 233-7897

August 20, 1982

The Honorable William Proxmire
United States Senate
Washington, D.C. 20510

Dear Senator Proxmire:

As a member of Congress who is concerned about nuclear issues, you should be extremely concerned about a recent NRC decision which could seriously endanger the citizens of central Pennsylvania.

On July 27, 1982, an NRC Atomic Safety and Licensing Board (ASLB) examining the possible restart of TMI-Unit 1 issued its third and final "partial initial decision." This decision addressed post-accident cheating by operators on licensing exams, GPU/Met-Ed management involvement in and response to the cheating incidents, and the general quality of the company's and the NRC's training and testing program, which was blamed for contributing to the severity of the accident. The ASLB's decision, supporting restart, challenges the scathing report of NRC Special Master Gary L. Milhollin, the Administrative Judge who presided over the month-long hearings on these issues. Judge Milhollin found that several management personnel had engaged in cheating and other misconduct, and that

The number, and the responsibility, of the persons on the Licensee's operations staff who were compromised by the evidence in this case was such that the overall integrity of the operations staff was shown to be inadequate. Although the Licensee did not encourage or condone the cheating on the NRC examination, it permitted an attitude to develop which caused the cheating to occur. The cooperation on the weekly quizzes was caused by the conditions under which the quizzes were given, and the Licensee was responsible for those conditions. The Licensee's response to the cheating on the weekly quizzes was inadequate and its testimony at the hearing on that subject was not credible The Licensee's training and testing program was poorly administered, weak in content, ineffective in its method of instruction, and not an adequate response to the Commission's Order of August 9, 1979 [which sets out the conditions for restart]." Special Master's Report, ¶ 338.

The evidence supporting these conclusions is overwhelming, and frightening -- and it all developed after the accident.

In addition, the ASLB supports restart despite its own conclusion that in August, 1979, Station Superintendent Gary Miller, with the concurrence of Met-Ed's Vice President John Herbein and probably other senior TMI executives, made a material false statement to the NRC in connection with the license certification of an individual who had cheated on his operator licensing

exam. The cheater was TMI-2 Supervisor of Operations, and the incident had been covered up by the company until these hearings.

You may be aware that Gary Miller, currently head of GPU's Start-Up and Test Division, was Emergency Director during the TMI-2 accident, and has been blamed by virtually every accident investigation for his incompetence in handling events that day. Both Miller and John Herbein, who was just recently removed as GPU's Vice President for Nuclear Assurance, have been charged by a number of investigations for deliberately withholding vital information from State and Federal officials during the accident.

Even the ASLB, which had previously exonerated these two individuals, now recognizes "problems" with Miller's "ethical judgment," and recommends further investigation related not only to his material false statement, but also to his actions during the accident. Partial Initial Decision, §§ 2317, 2318.

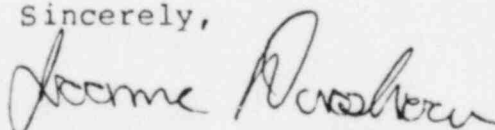
The ASLB has concluded that Miller and Herbein, acting on behalf of and with the support of the company, committed at least two criminal offenses. They violated 18 U.S.C. § 1001, which forbids making material false statements to government agencies, and 18 U.S.C. § 371, the conspiracy statute. The ASLB's recommendation of further NRC investigation of this incident is pointless. The case should be referred immediately to the Department of Justice. Moreover, suggesting the Unit 1 be restarted with Gary Miller in such a highly critical and safety-related position, is an outrage.

The people in this area have had enough. They have experienced the trauma of the worst commercial nuclear accident ever. They have read and studied the documents telling what really happened that day, and remember the misleading press statements issued by the utility and the State. They have no confidence in the company at all. They are alienated by the NRC and have lost confidence in government's concern for their health and safety.

As a member of Congress, the institutional body which established the NRC and its process, you have a responsibility to do something. You must insist that the NRC deny restart authorization until all questions concerning the training and testing program, and the company's involvement in the material false statement, are resolved, and appropriate sanctions are imposed. We urge you to demand that the Department of Justice prosecute Miller, Herbein, and other company officials for their criminal acts. And we ask that Congress itself investigate the grave miscarriage of justice that has happened here, of which all public officials should be ashamed.

Please do something now. We are counting on you.

Sincerely,



Joanne Doroshov, Esq.
Three Mile Island Alert