

SEPARATE VIEW OF COMMISSIONER ROBERTS

I do not believe that Commission orders ruling on legal questions in adjudicatory proceedings need to be accompanied by separate views responding to every dissenting opinion of every Commissioner in order to be sound and complete. When misleading and inaccurate statements about persons and companies unable to respond effectively to such statements are made in these dissenting opinions, however, I believe that accuracy and fairness require a response. Such is the case here. I would not have written this separate view but for statements made in Commissioner Gilinsky's view. With this end in mind, I will list a few facts the reader should remember when reading Commissioner Gilinsky's view.

The first deals with Commissioner Gilinsky's assertion that the Commission refuses to confront the issue of the competence of GPU to operate TMI Unit 1. It seems that whenever the Commission does not agree with the manner in which Commissioner Gilinsky wishes to resolve an issue, the Commission is subjected to the charge that it is not "confronting" the issue. Nothing could be farther from the truth on the question of GPU management competence. As Commissioner Gilinsky doubtless recalls, the issue of management competence was vigorously litigated in an adjudicatory hearing. The Licensing Board's initial decision on this issue alone comprised 339 pages. The Board concluded that GPU had demonstrated the managerial capability and technical resources to operate Unit 1 while maintaining Unit 2 in a safe configuration. When arguments were made that alleged cheating on the part of operators evidenced management incompetence, the NRC investigated the allegations and

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held an adjudicatory hearing on the issue. Again, the Licensing Board found there was no evidence that GPU's management encouraged or condoned cheating on NRC or company-administered examinations. Most recently, arguments have been made that the 1979 certification of a reactor operator as qualified to take the NRC examination when portions of a GPU examination taken by that operator were completed by another operator evidence management incompetence. The Commission has directed the Office of Investigations to look into this incident. The above actions hardly comprise the record of a Commission "refusing" to confront the management competence issue.

With regard to the \$100,000 fine, the Licensing Board which suggested the fine recognized itself that it might not have the authority to impose a monetary penalty. Not only did the Licensing Board not have the power to penalize monetarily GPU but none of the requirements of the Administrative Procedure Act, the Atomic Energy Act, and the Commission's Regulations were complied with by the Board. At this stage, it has not even been determined that there has been a violation of any legal requirement. To endorse or disavow a \$100,000 penalty at this time, without adherence to any of the applicable laws, would hardly be a reasoned and responsible decision.

With regard to the implication that GPU tolerated cheating, I would note that the two persons found by the Board to have cheated voluntarily resigned and that the two persons suspected of cheating by the Board have been suspended without pay for two weeks. Moreover, I quote from the Licensing Board opinion of July 27, 1982:

There is no evidence whatever that the large majority of the TMI-1 operators lacked competence and integrity. They have good cause to be unhappy with their treatment.

Although the Commission appropriately acted in the broader public interest, the effect of the Notice of Hearing in this case was to void the full-power operator licenses of all the TMI-1 control room staff without the scarcest element of due process. The need to take the second NRC reexamination in October 1981 wiped out the benefits fairly earned by the honest candidates who passed the April reexamination. The entire proceeding with respect to examination integrity, although necessary, has been demoralizing, unfair to the honest operators, and, we are concerned, it may have been a distraction from their duties as control room operators.

Partial Initial Decision (Reopened Proceeding), July 27, 1982, p. 180 (emphasis added).

With regard to Commissioner Gilinsky's assertion that the Commission has been timid regarding the Licensing Board's finding that "the Station Manager and a company Vice President knowingly falsely certified to the NRC that a reactor operator was qualified to have his operator's license renewed," I note first that the Commission has directed the Office of Investigations to look into this matter and second that this direction implements the recommendation of the Licensing Board. Furthermore, I would note that it is not clear that a material false statement has been committed. The Licensing Board, in noting that a number of uncertainties exist about the incident and that the Station Manager was not a party to the cheating proceeding in which the incident was raised, recommended that he be given an opportunity to answer questions. It also recommended that a number of other people be interviewed for more information. Again, Commissioner Gilinsky urges precipitous action on the part of the Commission before all the facts are known in reaching a serious conclusion.

Finally, as an aside, I note that I do not share the belief expressed by the Commission in the first paragraph on page 6.

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Today's decision is but another example of the Commission's refusal to confront the issue of whether GPU is competent to operate TMI Unit 1. The Commission cannot even bring itself to decide whether to endorse or to disavow the Licensing Board's symbolic fine of \$100,000 chastizing the company for its tolerance of cheating by its employees on NRC exams. The Commission has been equally timid with regard to the Licensing Board's finding that the TMI Station Manager and a company Vice President knowingly falsely certified to the NRC that a reactor operator was qualified to have his operator's license renewed. The Commission should have taken direct review of both matters, giving particular attention to the Special Master's recommendations.