

BEFORE THE COMMISSIONERS:

Nunzio J. Palladino, Chairman
Victor Gilinsky
John P. Ahearne
Thomas M. Roberts
James K. Asselstine

CORRECTED COPY

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

Docket No. 50-289 SP
(Restart)

AAMODT RESPONSE TO COMMENTS OF PUBLIC AND PARTIES
NOVEMBER 9, 1982 IN HARRISBURG

I. Comments of the Public.

After reading each comment, we view them in total as the vote of a jury which has carefully followed the course of the restart proceeding. They noted the major deficiencies at TMI: incompetent and untrustworthy management, unprepared operators and the poor physical condition of the plant. Considering the potential for a serious accident with such a combination, the public then turned to the emergency plans and found them impossible to accomplish. The jury voted, in excess of 90%, against restart of TMI - 1.

The public has not been fooled by the labored arguments of the Board in defense of the Licensee. They are suspicious of promises to do better. They know that "symbolic" fines will not result in a competent and trustworthy management. They know that establishing criteria for instructors should have been accomplished over three years ago.

The majority of the comments of the public were sufficient reward for our intervention of over three years. Even the presentation of Kay Taylor* on behalf of the Pennsylvania Farmers Association demanded that "the equipment and materials used in Unit 1 reactor meet the highest standards, and that employees in charge of operating the reactor be carefully tested and evaluated for competence and experience before approval is given for restart." (Tr. 82)

*supporting restart

8212020401 821130
PDR ADOCK 05000289
G PDR

of PFA, Newpher, who informed us that Ms. Taylor's presentation was her own idea, but, since it did not counter PFA policy, she was allowed to present it on behalf of the organization. Members of PFA, some years ago prior to the TMI-2 accident, voted statewide by at least 51% in favor of safe nuclear power generation. Mr. Newpher stated that he simply trusted that the government would not approve the operation of TMI-1 if it would adversely affect the farmers. He was unaware of any emergency plans for farmers; he was of the opinion that farmers would not be interested in such plans and would, in any event, remain to take care of their animals. Mr. Newpher's innocence was disturbing, however, we are gratified that we were able to bring members of the TMI-1 area agricultural community into the restart proceeding. These witnesses had experienced the TMI-2 accident and expressed many reservations concerning the plans for farmers as well as the restart of TMI-1.

In sum, all public commentators are asking you to assure that TMI-1 can be safely operated. In view of the state of the TMI training program, the incompetency and crookedness of GPU Nuclear management, and the physical condition of the TMI-1 plant, you cannot do that by December 10, the date set for your decision. We read the public opinion as 100% against a decision to restart at the present time. The jury has spoken.

II. Concerning the Comments of the Parties.

1. We disagree concerning the effect of observance of witness demeanor on the Special Master's Decision. Tr. 102, 148

TMIA believes that the divergence between the Board's and the Special Master's decisions was due to the Special Master's advantage in being present at the hearing to observe the demeanor of the witnesses. (Tr. 102) The Special Master did note the demeanor of several witnesses, however he never depended on these observations as evidence in drawing his conclusions. As an example, consider the Special Master's decision concerning Michael Ross which the Board completely overturned.

The Special Master depended on YY's testimony (SMR** #142), the testimony of others (Id. #143), Ross's failure to deny YY's testimony (Id. #144), incredible testimony of Ross (Id. #146-47, 149), and logical deduction based on the above (Id. #150-51), in which the relative demeanor of the witnesses was simply noted, in passing (Id. #151, lines

** Special Master's Report

17, 18), in stating emphatically: "The conclusion must be that Mr. Ross intentionally kept the proctor away in order to aid the candidates." (Id. #152)

Then, in addition to the evidence referenced above, the Special Master examined twelve changes to the answer keys to find evidence if any were unfairly broadened. (Id. #153-175) There were many more changes than just these twelve; changes in the key for the "B" set of examinations were not considered at all. The twelve changes were presented as examples. (Id. #153, 176) The Special Master found evidence that the "good faith" of the reviewers (Ross, etc.) was at issue on two questions. (Id. #177)

In the case of one of the changes, the Special Master showed how the reviewers misrepresented the training program; in the case of the other change, the reviewers were virtually the only candidates who stood to gain from the change. (Id. #177)

The Board, in discussing this evidence (July PID #2212-2224), misstated that the Special Master's conclusion was based solely on these two questions and failed to acknowledge that these were only examples from a limited investigation of the matter. The Board accorded the matter no significance, however the Special Master considered the two instances to be examples which confirmed other evidence (YY's testimony, Ross' incredible testimony, etc.) The Special Master looked at the evidence as a whole whereas the Board looked only to explain away each piece.

The Board failed to be objective; the Special Master was objective. In that objectivity, the Special Master considered all evidence; including the credibility of the testimony; concerning this evaluation of testimony, observance of demeanor was, in a few cases, a small part.

The NRC's assertion that "the Special Master looked at that (demeanor) almost to the exclusion of some of the direct evidence on some of the issues, and that is where the Licensing Board carefully evaluated the direct evidence on the issues" (Tr. 148) is totally without basis in fact.

Footnote 1 - In studying the Board's discussion, it should be noted that the Board could not "find from this record which answer is correct" (#2220); "The candidates were about evenly split on including boric acid in their answers." (#2221); and there was a difference "between the chemistry lectures in training ... and actual plant practice" (#2222). How can an objective Board have concluded in the face of this and other evidence that "Although we are concerned about weaknesses in the quality of instruction, and have imposed conditions directed to that concern, we have not found that the instructors have failed to instruct. Nor have we found that the students failed to learn." (#2450)

2. We disagree concerning NRC Staff's observation that the findings were consistent with the Licensing Board's decision.
Tr. 146

The NRC Staff never conceded that the blatantly similar answers of G and H must be due to cheating. The Staff recommended no action about the VV-0 false certification. The Staff were not suspicious of the 36 word identical answers of GG, MM and W, nor of Operator U providing an answer. The Board acknowledged all these cases of cheating, identified by the Special Master. Staff's attorney, Mr. Goldberg even referred on one occasion during the Reopened Proceeding to the "alleged" cheating of Operators O and W who had already confessed to cheating extensively on the NRC exam and an independent audit.

The Staff did not find, as the Board did, that Mr. Shipman was probably not truthful under oath, or that the Licensee lacked competence in managing its investigation, or that Licensee's attorney (Wilson) was "naive", that Licensee management was accountable for the "loose" administration of training and testing, or negligent for failing to foster respect for examinations, or that the TMI training instructors' competence and attitude were questionable, or that quality assurance concepts were needed in the training program.

The Staff did not find, as the Board did, that Licensee management had been negligent in their certification of operators, or that training management (Newton, Long) misrepresented testing procedures under oath, and that the integrity of Licensee's training program failed because of improper management.

The Staff did not find, as the Board did, that the NRC examination process is neither independent nor external of Licensee's training program, and, thus, cannot measure the adequacy of Licensee's program, or that there are problems with the substantive content of the exams, and that the validity of the exam is questionable.

The references for the Board's findings referenced above are in AAOBT COMMENTS, August 20, 1982, pages 8 - 13.

It is our opinion that the Staff was useless in protecting the public interest both in the main and reopened hearing in the areas of our contentions.

We believe that the Commission should find out why the Staff failed to find what the Board found (due to the Special Master). We found the actions of the Staff in the Reopened Proceeding to be totally preposterous in view of their responsibility to protect the

public. As indicated in our comments (id. #50), we urged you to order an investigation of the management of the Staff's participation in the Reopened Proceeding and the management of the Office of Inspection and Enforcement. (See Aamodt Findings, March 4, 1982, #111-168)

We believe that the NRC's definition of what constitutes "cheating" should be investigated. Mr. Goldberg's explanation in response to Commissioner Gilinsky's question (Tr. 160) was, as characterized by the questioner, appalling. We are becoming quite certain that what Mr. Aamodt described as a "gut feeling" (Tr. 122) and what we termed a "haunting suspicion" (Aamodt Findings, March 4, 1982 #168, 159-168) may very well be true:

168. (We) cannot help but develop the haunting suspicion that the NRC investigations were purposefully limited both in scope and depth because full exposure of the extent of cheating at TMI would have shown a situation where the "team" concept was applied to all examinations, even NRC licensing examinations, that this pervasive cheating had been supported by management from the beginning of operation at TMI, and that this kind of cheating was commonplace throughout the nuclear industry for years, and that NRC condoned it.

3. We disagree with the Commonwealth of Pennsylvania's implied assertion that distribution of a public information brochure, not subjected to the scrutiny of the parties, provides adequate emergency planning for the farmers. Tr. 133

4. We disagree with Licensee's (Ross) assertion that they have appropriate staffing levels, that all operators have been (or will be) examined by NRC using revised procedures, that necessary programs are in place to provide competent operators, that simulator training has been increased, that examinations are administered on the simulator to test emergency response, and that operator attitude and morale have improved and are good and high. Tr. 19-22)

Concerning Staffing Levels: Where is the evidence? Numbers on charts do not indicate experience or training. TMI-1 operators left in droves during 1981, a large number after the revelation of cheating. Before this attrition, NRC found that TMI-1 had barely enough operators. Now, evidently, trainees have been recruited and are being shunted through 'training' and NRC testing. What about experience with the TMI-1 reactor? Ross testified that he would like senior operators with 5 years of experience and ROs with 4 years experience at TMI-1. (Aamodt Findings,

What are NRC's revised procedures? There was no evidence of such procedures for examination of licensed operators produced in either hearing.

What are necessary programs claimed now to be in place? Are we sure that they are adequate to provide competent operators as claimed? If they were necessary, why weren't they in place beforehand?

Concerning simulator training: The amount of simulator training described is precisely what has been in effect according to Licensee's own testimony in the main hearing. How can this be an increase? The fact of the matter is that the "week" is actually 20 hours on hands manipulation of the simulator.

The examinations at the simulator to test emergency response was an idea strongly rejected by both the Licensee and Board. (August 27 PID #543-548) What certainty is there that Licensee has undertaken such testing seriously?

Concerning Operators' attitudes and morale: The Licensee offered such testimony in the main hearing, and the Board ruled that this issue was satisfactorily resolved. (Id. #267) After the Reopened Hearing, the Board felt that the issue of operator attitude had not been resolved. (July 27 PID #2058) What brought about the change? There has been no evidence, other than Ross' word, nor any opportunity to question Ross.

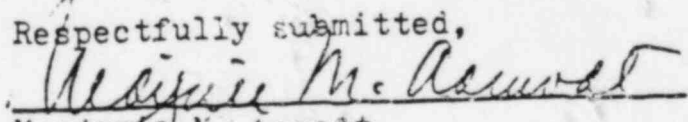
The comments by Ross are totally without evidentiary basis. Can the Commission use such self-serving comments in making their decision?

5. We disagree with Arnold's comments which assert that controls to protect the integrity of the examinations were put in place.
Tr. 24

In May, 1982 Radiation Worker Permit tests were found, with their answer keys, lying on open shelves in the training area. Two reports were made to upper-management and finally a report to onsite NRC personnel before the situation was corrected. This is the subject of a motion, September 1, 1982, before the Appeal Board.

November 29, 1982

Respectfully submitted,


Marjorie M. Aamodt

Samuel J. Chilk
Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Kunzio J. Palladino, Chairman
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Victor Gilinsky, Commissioner
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

John F. Ahearne, Commissioner
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Thomas M. Roberts, Commissioner
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

James K. Asselstine, Commissioner
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Ivan W. Smith, Administrative Judge
Atomic Safety & Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Atomic Safety & Licensing Board Panel
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Gary J. Edles, Chairman
Atomic Safety & Licensing Appeal Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Atomic Safety & Licensing Appeal Board
Panel
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Jack Goldberg, Esq. Joseph Gray, Esq.
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

George F. Trowbridge, Esq.
Shaw, Pittman, Potts & Trowbridge
1800 M Street, NW
Washington, D. C. 20036

Robert Adler, Esq.
505 Executive House
P. O. Box 2357
Harrisburg, PA 17120

Docketing and Service Section
Office of the Secretary
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Ms. Jane Lee
R. D. 3, Box 3521
Etters, PA 17319

Ms. Louise Bradford
TMIA
1011 Green Street
Harrisburg, PA 17102

Ellyn R. Weiss, Esq.
Harmon & Weiss
1725 Eye Street, NW, Suite 506
Washington, D. C. 20006

Gary L. Milhollin, Esq.
4412 Greenwich Parkway, NW
Washington, D. C. 20007