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May 31, 1983

The Honorable D. L. Jensen  
Assistant Attorney General  
Criminal Division  
U.S. Department of Justice  
Washington, D.C. 20530

Dear Mr. Jensen:

Your May 17, 1983, letter to Chairman Palladino raises a number of questions with respect to the communications between our two agencies which I would like to address.

First, you state that "...the Department requested the NRC to curb its investigative efforts somewhat for a limited period of time to maximize the effectiveness of the grand jury proceedings." At several meetings with Department attorneys in late April 1980, the NRC was clearly and unambiguously requested to stop (emphasis added) all phases of its investigation into the Hartman allegations so as not to possibly impinge on the Department of Justice's (DOJ) investigation.

Second, your letter goes on to state "It is not correct to state, however, that the Department prevented the NRC from pursuing its inquiry into the so-called Hartman allegations." In this regard the NRC recognized from the outset that the DOJ did not have authority to literally prevent the NRC from pursuing its inquiry into the Hartman allegations. However, it is correct to state that at meetings in April 1980, Department attorneys vigorously objected to NRC continuing the investigation. Department attorneys made it quite clear that if NRC did not accede, then DOJ would consider such a decision to be tantamount to hindering/impeding their investigation.

Third, your letter states "However, in October 1981 a Criminal Division attorney advised Mr. James Cummings of the NRC that the NRC should feel free to proceed with interviews of any of those employees, except three specifically identified individuals. Mr. Cummings was advised further that those three individuals could be interviewed by the NRC at any time after November 1981." I disagree.

By way of background, on October 13, 1981, I met at Main Justice with Department attorneys Richard, Lippe and Reynolds. This meeting was initiated by me to determine the status of the Hartman matter prior to the Three Mile Island (TMI) restart hearings. Mr. Victor Stello, then Director of NRC's Office of Inspection and Enforcement, was also present at this meeting. NRC was informed as follows:

The Federal Rules of Criminal Procedure regarding grand jury testimony proscribed DOJ from providing any detailed information regarding the

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In DOJ's opinion the grand jury process had uncovered no new substantive information over and above that which the NRC had found in its preliminary investigation;

The DOJ was not aware of any evidence presented to the grand jury which would indicate any new public health and safety issues not already known to the NRC by virtue of its preliminary investigation;

Department Attorneys expected a decision would be made by November 1, 1981, on whether to continue the DOJ investigation. They further expressed the belief that by this time most, if not all, of the substantive investigation would be completed particularly with respect to grand jury witnesses and NRC could then proceed with its investigation. However, they said they would contact U.S. Attorney Carlton O'Malley, Middle District of Pennsylvania to verify the status of the investigation and to obtain his concurrence with respect to NRC reinstating its investigation;

A DOJ decision not to pursue the investigation any further should not be interpreted by NRC to mean that the DOJ investigation found no evidence of wrongdoing;

If DOJ decided not to pursue this matter then, at NRC's request, DOJ would be willing to petition the court for release of grand jury testimony to NRC. DOJ was pessimistic that the courts would agree to this release; and

DOJ regretted they had not been able to bring this matter to a speedy resolution but were not apologetic for this situation as they felt substantial time and manpower had been devoted to the case.

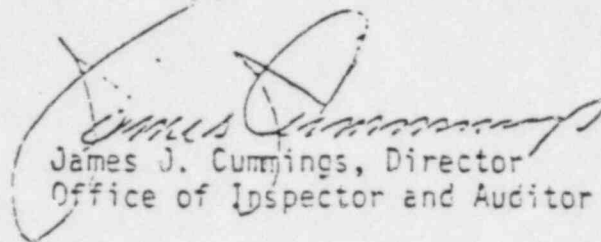
Following the October 13, 1981 meeting, my office called Department attorneys on a regular basis, however, no final decision was forthcoming. Mr. O'Malley's hospitalization, the appointment of a new United States Attorney for the Middle District of Pennsylvania and the reassignment of the case were undoubtedly factors which contributed to this situation. On March 1, 1983, I met at Harrisburg, Pa, with Assistant U.S. Attorney James West. At this meeting I outlined NRC's interest in the overall Hartman allegations and told him that NRC was considering reinstating its investigation. Mr. West was very responsive to NRC's interest in this matter and advised me that his office and the Federal Bureau of Investigation were giving this matter priority attention and that he hoped the case might be resolved by June or July 1983. Mr. West requested that, if possible, NRC not reinstitute its investigation or take any enforcement action in this matter until his office had an opportunity to resolve the matter. Mr. West's request is totally consistent with the position taken by DOJ throughout this investigation. In fact, your May 17 letter is the first notification NRC has received that the Department no longer objects to NRC reinstating its investigation of the Hartman matter.

Finally, putting aside the communications issue, I am concerned that with the exception of Mr. West, no one in the Department, has committed to a prospective completion date for this investigation. This matter was referred to the Department in April 1980 and, to our knowledge, has no complex

interstate aspects or sophisticated criminal schemes to be uncovered which could reasonably justify an investigative period in excess of three years. The NRC is close to the point where a significant decision must be made with regard to the TMI restart. To ensure this decision is responsible, well reasoned, and in the public's interest, it is desirable that all available data be factored into the agency's decision making process.

I hope this letter clarifies some of the issues and concerns expressed in your letter of May 17, 1983.

Sincerely,



James J. Cummings, Director  
Office of Inspector and Auditor

bcc: Commission (5)  
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May 23, 1983

The Honorable Nunzio Palladino  
 Chairman  
 United States Nuclear Regulatory Commission  
 Washington, D. C. 20555

Dear Mr. Chairman:

I am writing with regard to statements made at the Subcommittee's March 25 hearing in response to Mr. Seiberling's questions concerning the NRC's investigation into allegations that leak rate calculations had been improperly conducted at TMI-2 prior to the accident. On March 25 you testified that the NRC had been requested not to continue its inquiry into the matter while it was under investigation by a grand jury.

This testimony conflicts with statements in the May 17 letter to you from Assistant Attorney General D. Lowell Jensen. Of particular concern is that, contrary to the March 25 testimony, Mr. Jensen has stated that the NRC had been advised in October 1981 that the NRC should feel free to proceed with interviews of any but three of the TMI employees who had been subject to subpoena by the grand jury, and that those three individuals could be interviewed by the NRC anytime after early November 1981.

The failure of the NRC to have vigorously pursued this matter, which first surfaced in May 1979 and which may bear on the Commission's forthcoming decision on TMI-1 restart, creates doubt as to whether significant matters relevant to that decision have been adequately investigated.

Accordingly, I would appreciate an explanation of the conflict between the March 25 testimony and Mr. Jensen's May 17 letter.

Sincerely,

*M. Udall*

MORRIS K. UDALL  
 Chairman

*Replied  
 5/24/83  
 12/20/83*

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# COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

U.S. HOUSE OF REPRESENTATIVES  
WASHINGTON, D.C. 20515

August 1, 1983

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Honorable Nunzio J. Palladino  
 Chairman  
 U.S. Nuclear Regulatory Commission  
 1717 H Street, N.W.  
 Washington, D.C. 20555

Dear Mr. Chairman:

We are writing with regard to the Commission's handling of allegations that leak rate calculations were falsified at Three Mile Island Unit 2 prior to the 1979 accident. Some of the issues were broached during the Subcommittee on Oversight and Investigations' hearing on June 23, 1983, and are part of the Committee on Interior and Insular Affairs' ongoing investigation into the accident at TMI. We would appreciate the Commission's response to the following questions:

1. When did NRC staff first reach a conclusion as to the substance of the Hartman allegations concerning leak rate falsification at TMI-2? What was the basis for any such conclusions? When and by what means were the Executive Director for Operations and the Commission informed of the conclusions? Please provide a complete list of persons who, prior to May 1983, had reached or known of conclusions concerning falsification of leak rate records.
2. After concluding in 1980 that TMI-2 leak rates had been falsified, the NRC staff apparently did not inform the ASLB, the Appeal Board, the Commission or the Department of Justice. How does the Commission explain or answer the following:
  - a) the staff's failure to inform the Commission, prior to 1980, of Hartman's leak rate allegations made to the Office of Inspection and Enforcement in May, 1979, and then repeated to the NRC's Special Inquiry Group in October, 1979?
  - b) what prompted the Commission to initiate, in early 1980, an inquiry into the Hartman allegations?
  - c) the failure of the Office of Inspection and/or

8/4...To EDO to Prepare Response for Signature of Chairman  
 and Comm Review...Date due Comm: Aug 16...Cpys to: RF  
 EDO, OCA to Ack...83-2136

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Honorable Nunzio J. Palladino  
August 1, 1983  
Page Two

the Office of Inspector and Auditor to conduct an investigation after allegations concerning leak rate falsification were made in May 1979 and October 1979?

- d) the lapses between: (1) the time when the NRC learned of the Hartman allegations and the time when the NRC inquiry into these allegations was initiated; and (2) the time when NRC staff had concluded that leak rate calculations had been falsified and the time when the Commission learned of this conclusion. Has OIA investigated, or does it plan to investigate, whether NRC personnel improperly withheld information? Who does the Commission believe is responsible for these incidents of apparent withholding of information?
  - e) Why was the substance of the "Ornstein Draft" concerning Hartman's allegations not included in the report of the Special Inquiry Group?
  - f) Were representatives or employees of General Public Utilities (or Metropolitan Edison) permitted to observe and sit in on interviews conducted by the NRC in 1980 concerning Hartman's allegations? If yes, why was this allowed and under whose authority was it permitted?
3. The NRC and the Department of Justice apparently have a difference of opinion as to whether, in October 1981, DOJ informed the NRC that it was free to resume its investigation of the Hartman allegations. Please explain how the Commission reconciles this difference of opinion.
4. In a 1981 filing before the Atomic Safety and Licensing Board, the staff: (1) stated that the Department of Justice prohibited the staff from disclosing details of the Hartman allegations with the board; (2) stated that there was no direct relationship between the Hartman allegations and the TMI-2 accident, and; (3) failed to state that the leak rate calculations had been falsified. The staff wrote:

NRC's investigative effort was suspended pending the conclusion of the DOJ investigation, at their request, to avoid parallel administrative and criminal proceedings. The DOJ investigation is still ongoing, and the NRC does not possess any

Honorable Nunzio J. Palladino  
August 1, 1983  
Page Three

information as to when it may be completed. NRC personnel involved in the suspended investigation have been requested by DOJ not to discuss the details of the matter....The NRC will resume its investigation of the concern when DOJ has completed its investigation of the matter. However, the staff has reviewed the information that it had obtained to date on the matter, and has concluded on the basis of information thus far obtained that there appears to be no direct connection with the Unit 2 accident.\*

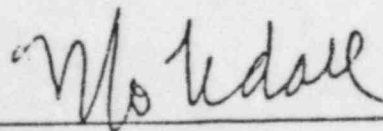
\*See Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1) LBP-81-32, 14 NRC 381, 557, para. 504 (August 27, 1981), emphasis added.

Does the Commission believe that the above quoted paragraph written by the NRC staff provided the ASLB with accurate and complete information? If not, how does the Commission plan to reevaluate the board's decision on management competence in light of new information?

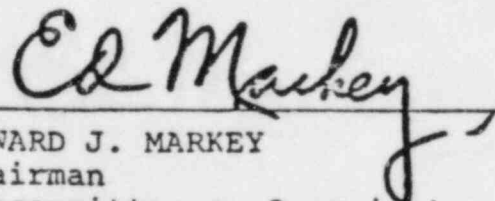
5. How does the Commission explain the apparent discrepancy between the statement in Inspection Report 50-320/79-10 dated October 25, 1979, concerning the relationship between the effect of elevated discharge line temperatures upon the course of the TMI-2 accident, and the staff's statement, quoted in question 4 above, which implies that the elevated discharge pipe temperatures were not a significant factor in the accident.

In advance, thank you for your assistance in answering our questions.

Sincerely,



MORRIS K. UDALL  
Chairman  
Committee on Interior and  
Insular Affairs



EDWARD J. MARKEY  
Chairman  
Subcommittee on Oversight  
and Investigations