

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

Docket No. 50-289
(Restart)

NRC STAFF'S ANSWER TO AAMODT MOTION
FOR REOPENING TO EXAMINE LEAK RATE
FALSIFICATION AT UNIT 1

DESIGNATED ORIGINAL

Certified By

WJG 20507

February 9, 1984

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I. INTRODUCTION

On January 24, 1984, the Aamodts moved to reopen the management record to examine the issue of reactor coolant system leak rate falsification at TMI-1. Aamodt Motion for Reopening to Examine Leak Rate Falsification at Unit 1, January 23, 1984 (Aamodt Motion). The Aamodts seek to reopen "to provide for the correction of the record concerning the leak rate falsification at Unit 1 and to examine the circumstances surrounding the matter." Aamodt Motion at 4. For the reasons discussed below, the Staff believes that the issue of leak rate testing irregularities at TMI Unit 1 should be considered to be within the scope of the reopened and remanded proceeding on the Hartman allegations of falsification of leak rate data at TMI Unit 2. If, however, the Appeal Board determines that the matter of TMI-1 leak rate irregularities is not encompassed in the reopened proceeding, then the Aamodt Motion should be resolved, as discussed below by the Staff, on the basis of the well-established criteria for reopening a record.

II. DISCUSSION

On August 31, 1983, the Appeal Board reopened the management record in this proceeding and remanded to the Licensing Board the issue of the Hartman allegations of falsification of leak rate data at TMI-2 before the accident. ALAB-738, 18 NRC 177, 183-92 (1983). By Order dated October 7, 1983, however, the Commission stayed the Licensing Board proceeding until further order of the Commission. (Order, October 7, 1983). Shortly after the Appeal Board reopened the record on Unit 2 leak rate falsification, the Staff raised the issue of possible leak rate testing irregularities at TMI-1 in Board Notification B.N.-83-138 (September 2, 1983). This issue was addressed further by the Staff, and additional information was provided, in Board Notifications B.N.-83-138A (September 23, 1983), 138B (October 6, 1983) and 138C (October 25, 1983) and in a letter from Staff Counsel to the Licensing Board dated November 18, 1983.^{1/} The Aamodts now move to reopen the record on leak rate falsification at TMI Unit 1.

A. The Reopened Proceeding on the Hartman Allegations

Although the Hartman allegations of falsification of leak rate data focus on leak rate measurement practices at TMI-2, the Staff believes that the reopened proceeding on the Hartman allegations, assuming the Commission's stay is lifted, should include consideration of evidence of leak rate data falsification at TMI-1, as well as TMI-2. In Board Notification B.N.-83-183A, the Staff stated that, contrary to a statement in NUREG-0680, Supp. No. 2 (March 1981):

^{1/} The issue of leak rate testing irregularities at TMI-1 is the subject of an ongoing investigation by the Commission's Office of Investigations. See B.N. 83-138B (October 6, 1983).

The NRC staff now concludes that there were indications of practices at TMI-1 related to RCS leak rate testing similar to those alleged at TMI-2.

The Staff considers the issue of falsification of leak rate data at TMI-1 to be within the scope of the reopened proceeding on the Hartman allegations for several reasons. First, the subject matter of the possible falsification of records is identical at both Unit 1 and Unit 2, namely RCS leak rates. Secondly, in the Unit 1 restart proceeding, the falsification of leak rate data at Unit 1 is equally, if not more, relevant to the restart of TMI-1 as such a practice at Unit 2. Thirdly, the Appeal Board reopened the record because of allegations of falsification of leak rate data. The fact that the particular allegations on which the Appeal Board based its ruling involved Unit 2 does not mean that possibly similar practices at Unit 1 cannot be examined. The focus of the Appeal Board in its ruling was on possible improper practices which may have a bearing on the integrity of Licensee's management and operating personnel. That Hartman's specific allegations of improper practices were limited to Unit 2 does not change the fundamental issue on remand. Indeed, in the Staff's view, only artificial and highly technical or legal reasons could be cited for distinguishing falsification of leak rate data at Unit 1 from that at Unit 2. Finally, ignoring evidence of leak rate data irregularities at Unit 1 would render incomplete and inadequate any "remedy" to the Hartman allegations and claims of leak rate falsification, which remedy might consist of assuring that individuals implicated in leak rate falsification are not permitted to be involved in the operation or management of Unit 1. For these reasons, the Staff believes that the Appeal Board should rule that the reopened proceeding on the Hartman allegations encompasses falsification of leak rate data both at Unit 1 and Unit 2.

B. Analysis of Aamodts' Motion to Reopen the Record on Leak Rate Falsification at TMI-1

If it is determined that leak rate falsification at Unit 1 is not encompassed within the scope of the reopened proceeding on the Hartman allegations of leak rate falsification, then the Aamodt Motion must be resolved on the basis of the Commission's well-established criteria for reopening a record. As this Appeal Board has stated:

The criteria that a motion to reopen must satisfy have evolved over the last decade into a well-defined tripartite test.

- (1) Is the motion timely?
- (2) Does it address significant safety (or environmental) issues?
- (3) Might a different result have been reached had the newly proffered material been considered initially?

Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-598, 11 NRC 876, 879 (1980). See Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320, 338 (1978); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973). Although the basic standard is settled, applying it to a particular motion to reopen often proves a disproportionately greater task. Thus, we have characterized the burden of such a motion's proponent as a "heavy" one. Wolf Creek, supra, 7 NRC at 338.

ALAB-738, supra, at 180.

The Staff does not challenge the timeliness of the Aamodt Motion. With respect to the significance of the TMI-1 leak rate issue and whether a different result might have been reached had the new information been considered initially, the Staff believes, as it stated with respect to the Aamodt and TMIA motions to reopen the record on the Hartman allegations,^{2/} that these questions cannot be answered practically

^{2/} NRC Staff's Answer to Aamodt's Motion to Reopen the Record, May 13, 1983; NRC Staff's Answer to Three Mile Island Alert Motion to Reopen the Record and Staff Motion to Defer Ruling on TMIA's Motion to Reopen, June 13, 1983.

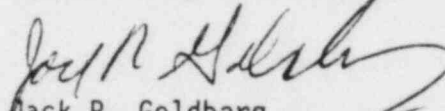
and fully until OI completes its investigation into leak rate practices at TMI-1. The Staff recognizes, however, that the Appeal Board disagreed with the similar position taken by the Staff in connection with the earlier motions to reopen the record on the Hartman allegations (ALAB-738, supra, at 190-91) and that the Appeal Board determined that reopening with respect to the Hartman allegations was warranted. The matter of leak rate falsification at Unit 1 is at least as significant (if not more so)^{3/} to the propriety of Unit 1 operation as the Hartman allegations of falsification at Unit 2. If, as found by the Appeal Board, the standards of significance and potential effect on the ultimate decision are met by the Hartman allegations, those standards clearly are met by evidence of similar leak rate irregularities at Unit 1. The Staff therefore believes that the Aamodt Motion to reopen the record on the issue of leak rate falsification at TMI-1 meets the standards for reopening a record as applied by this Appeal Board in ALAB-738, supra, and that any hearing on leak rate improprieties should encompass both the Hartman allegations regarding Unit 2 and leak rate practices at Unit 1.

^{3/} Both the Staff and the Commission majority appear to agree that the issue of TMI-1 leak rate falsification is potentially more significant for the restart of TMI-1 than the Hartman allegations, since both the Staff and the Commission would require completion of the OI investigation into TMI-1 leak rate practices, but not TMI-2 practices, before any operation at TMI-1. See Memorandum for the Commission from William J. Dircks ("Staff Response to GPU's June 10, 1983 Management Organization Proposal and Any Subsequent Changes as of November 28, 1983"), January 3, 1983; Memorandum for the Parties to the TMI-1 Restart Proceeding ("Tentative Commission Views and Plan for Resolution of Management Integrity Issues Prior to Restart"), January 27, 1983.

III. CONCLUSION

The issue of leak rate testing irregularities at TMI-1, the subject of the Aamodt Motion, should be considered to be within the scope of the reopened and remanded proceeding on the Hartman allegations of falsification of leak rate data. If, however, it is determined that leak rate testing irregularities at TMI-1 are not encompassed by the reopened proceeding, then the Staff believes that, although the full significance, with respect to the reopening standards, of any TMI-1 leak rate testing irregularities cannot be evaluated until after OI completes its investigation, the Aamodt Motion meets the standards for reopening a record as applied by this Appeal Board in ALAB-738.

Respectfully submitted,


Jack R. Goldberg
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 9th day of February, 1984

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO AAMODT MOTION FOR REOPENING TO EXAMINE LEAK RATE FALSIFICATION AT UNIT 1" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 9th day of February, 1984:

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