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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

SECRET
DOCKETING & SER. DIV.
BRANCH

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 THREE MILE
ISLAND ALERT MOTION TO REOPEN THE RECORD

I. INTRODUCTION

On May 23, 1984, Three Mile Island Alert (TMIA) moved the Atomic Safety and Licensing Appeal Board (Appeal Board) to reopen the record on training program irregularities and the reportability to the NRC of the BETA and RHR consultant reports.^{1/} TMIA argues that new evidence on these issues, resulting from investigative reports recently released by the Commission's Office of Investigations (OI), evidence "serious integrity problems" by Licensee's management. TMIA Motion at 1. For the reasons set forth below, TMIA has not met its burden of demonstrating that the standards for reopening the record have been met, and its motion should be denied.

1/ TMIA Motion to Reopen the Record on Training Program Irregularities and Reportability of BETA and RHR Consultant Reports, May 23, 1984 (TMIA Motion).

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II. DISCUSSION

The two grounds asserted by TMIA in support of its motion do not satisfy the well-established standards for reopening the record. See Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-598, 11 NRC 876, 879 (1980); Kansas Gas and Electric Company (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320 (1978). In Diablo Canyon and Wolf Creek, the Appeal Board made it clear that the proponent of a motion to reopen bears a heavy burden. The movant must demonstrate that: (1) the motion is timely, (2) the motion addresses a significant safety or environmental issue, and (3) a different result would have been reached initially had the material submitted in support of the motion been considered. These standards were reiterated in Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 804 (1979), where, in contrast to the case at hand, the motion to reopen was filed after the record was closed, but prior to issuance of a decision by the Licensing Board. Thus, the motion to reopen must be timely and not based on information that reasonably could have been raised prior to the close of the record, it must involve a significant matter, and it must be such that the outcome of the case is likely to be affected by the alleged new information.

The Staff does not question the timeliness of TMIA's Motion.^{2/} However, as discussed below, TMIA's Motion does not raise any significant

^{2/} The Motion is based on two investigative reports released by the Commission in early May of this year: Report No. Q-1-84-004, "General Public Utilities Nuclear (GPUN) Possible Training Irregularities"; and Case No. 1-83-013, "General Public Utilities Nuclear - Alleged Failure to Provide BETA and RHR Consultant Reports to the NRC In A More Timely Fashion."

safety issue and fails to demonstrate that, had the material submitted in support of the motion been considered, a different result would have been reached initially. Moreover, the Staff has concluded, after its own assessment of the material in the two OI reports, that reopening is not warranted.

A. Training Irregularities

TMIA's Motion to reopen the restart record because of training irregularities is based on its assertion that Licensee's training problems were "long-standing and well-recognized for years before the accident, and that management was either unwilling or unable to correct them until after the accident" and, further, was unwilling to be forthright with the NRC concerning the training problems. TMIA Motion at 9. In support of its position, TMIA relies on two categories of information set forth in the OI report: (1) instances of alleged training irregularities (TMIA Motion at 14-19) and (2) management's involvement in the preparation of the so-called "Keaten Report" (TMIA Motion at 19-22).

As to the alleged training irregularities, TMIA lists a number of Licensee memoranda, written in 1977 and 1978, which indicate that during that time-frame the requalification training program suffered attendance problems and deficiencies in quality. TMIA asserts that Licensee failed to comply with NRC training requirements and that this failure had been well-recognized by management for some time prior to the accident, citing the fact that certain individuals in Licensee management received copies of these memoranda. Assuming that any individual who received the memoranda had knowledge of such training problems TMIA's argument still must fail. The individuals receiving these documents are, by and large,

no longer in management positions at TMI-1,^{3/} and there has been a large influx of new management since the accident. Accordingly, TMIA has not established that the information on which it relies, if known to the Licensing Board, would have had any effect on the result reached initially, much less resulted in a different decision by the Board with regard to the adequacy of the post accident management structure and personnel.

Moreover, the instances of training irregularities relied on by TMIA all relate to the state of training at TMI prior to the accident at TMI-2. In contrast, the issue litigated before the Licensing Board in this proceeding is forward-looking in its nature: "Is the instruction adequate to prepare the operators to operate the plant safely?" LBP-82-56, 16 NRC 281, 363 (¶ 2343). Thus, the focus of the Board's inquiry properly was whether Licensee's post-accident operator training and testing prepared the operators to safely operate the plant. For that reason, the various cheating episodes which occurred after Licensee had restructured its

^{3/} TMIA relies on three documents in support of its argument. See TMIA Motion at 10-12. The first, an April 27, 1976 memorandum from A. Tsaggaris, Supervisor of Training - Nuclear, was directed to J.G. Herbein, J.J. Colitz, and G.P. Miller. As the OI investigative report of this matter shows, of these four individuals only Mr. Colitz is still at TMI (as Plant Engineering Director). Mr. Herbein and Mr. Tsaggaris are no longer employed by GPU Nuclear; Mr. Miller is employed by Metropolitan Edison Company. The second document is an undated note from Larry Noll to George Kunder. Mr. Noll is a Shift Supervisor at TMI-2; Mr. Kunder is Manager Safety Review Group, TMI-2. See OI Report No. Q-1-83-015. The third memorandum is a note dated June 17, 1977 from Unit 1 Shift foreman T.L. Book to Unit 1 Superintendent James P. O'Hanlon. Mr. Book and Mr. O'Hanlon are no longer employed by GPU. See BN-83-71A, and attachments. Mr. O'Hanlon sent copies of the note to G.P. Miller, A. Tsaggaris, D. Goodman, D. Zechman and G. Kunder. Staff is informed that Mr. Goodman is no longer employed by GPU Nuclear and Mr. Zechman is Technician Training Manager, TMI.

training program in response to the accident were appropriately considered by the Licensing Board in the reopened hearing. TMIA argues, however, that the cited training irregularities which occurred before the accident now should be considered by the Board in determining whether Licensee's post-accident training program is adequate, and that the Board would have reached a different conclusion had the new evidence been considered initially. No effective link is drawn by TMIA as to why these pre-accident incidents (occurring in 1976 through 1978) would have any bearing, much less change the prior decision of the Licensing Board, on the adequacy of Licensee's current training program.

TMIA also alleges that GPU's own internal investigation of the accident at TMI-2 (the so-called "Keaten" investigation) reflects a continuing "course of deception" on the part of GPU. TMIA Motion at 19, et. seq. In fact, OI's report does not support this allegation. The question investigated by OI was "the extent to which General Public Utilities' (GPU) internal investigation report of the March 28, 1979 accident . . . included the problems identified in the TSAGGARIS memorandum^{4/} and certain other negative information regarding the training program at Three Mile Island." Report No. Q-1-84-004, at 1. OI concluded that "[t]he investigation determined the TSAGGARIS memorandum did not

4/ The TSAGGARIS memorandum, dated April 27, 1976, concerned problems in Licensee's requalification program related to poor lesson attendance, delay in completing makeup lessons and insufficient time spent in the control room. After a recitation of the deficiencies in the program, the memorandum stated: "We are required by federal law to meet certain requirements for licensed individuals and in several cases we do not meet them."

come to light during the KEATEN Task Force investigation and, thus, did not influence the task force reports." Id. at 4. The Staff has reviewed the OI reports, has determined that OI's conclusion is supported by the interviews of those involved in preparing the Keaten report, and that TMIA has cited no evidence that would lead to a contrary conclusion. Accordingly, TMIA's motion to reopen on the basis of management's involvement in the Keaten report is based solely on conjecture and should be denied.

While the information relating to training cited by TMIA would not have resulted in a different result being reached initially by the Licensing Board, TMIA may have the opportunity to present to the Board some of the information which forms the basis for the instant motion. The Appeal Board, in ALAB-772 (May 24, 1984), has reopened the record in this proceeding on the issue, inter alia, of training and testing. In particular, the Appeal Board found that the impact of the findings in the reopened proceeding (involving cheating and related incidents) on the Licensing Board's earlier conclusions on Licensee's training program was not given full consideration. ALAB-772, slip op. at 155. To the extent that TMIA can relate the new evidence it cites to the issues considered in the remanded proceeding, meeting the usual standards for the introduction of evidence in such a proceeding, TMIA will have the opportunity to bring such evidence before the Licensing Board for its consideration.

In conclusion, TMIA has failed to establish that the criteria for reopening the record to consider training program irregularities are satisfied.

B. Failure to Provide BETA and RHR Consultant Reports

TMIA also cites GPU's failure to promptly notify the Commission or the Appeal Board of information contained in the BETA and RHR reports^{5/} as grounds for reopening the record in this proceeding. TMIA motion at 23 et seq. However, the Commission's Office of Investigations investigated the circumstances surrounding the failure to promptly notify the NRC of the contents of the BETA and RHR reports. See Report of Investigation, Case Number 1-83-013, April 16, 1984. As stated in OI's investigative report:

The investigation did not disclose any evidence of a deliberate attempt or conscious management decision by GPUN to withhold the information in the BETA and RHR reports from the NRC. Further, GPUN does not view their reluctance to release the reports to the Board as contradictory to the action of the VP, TMI-1, wherein he disclosed the reports to the NRC Region I Inspection Team. Corporate management did not consider that release a formal submittal or disclosure but rather as simply making the information in the reports available to the NRC.

The NRC Staff has reviewed the OI report on reportability of BETA/RHR, and concludes that the information in that report, if considered by the Board below, would not have led to a different result being reached

^{5/} With respect to the contents of the BETA and RHR reports, the NRC Staff has concluded that the information in those reports, if considered by the Board below, would not have led to a different result being reached initially. See NUREG-0680, Supp. No. 4 (October 1983). An earlier motion to reopen the record on the contents of the BETA and RHR reports was denied by the Appeal Board. ALAB-738, 18 NRC 177, 198-99 (1983).

initially.^{6/} Although the Staff has determined that Licensee can be considered to have failed to meet its duty to make a board notification and its obligations under section 186 of the Atomic Energy Act by failing to provide the BETA and RHR reports more promptly,^{7/} there is no indication that there was a deliberate attempt or conscious management decision to withhold the information in the BETA and RHR reports from the NRC. OI's investigation found no evidence of willfulness on the part of Licensee. Investigation Report 1-83-028, at 4. While the absence of willfulness does not bear on whether there was a material false statement, see Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), CLI-76-22, 4 NRC 480, 482-83 (1976), it does bear on the question of whether Licensee's failure to promptly notify the NRC of new information which is relevant and material is indicative of lack of integrity on the part of Licensee. Absent any indication of a willful or knowing withholding or misstatement, there is simply no support for TMIA's position that the record should be reopened on the reportability of the BETA and RHR reports.

As for TMIA's argument that Licensee "continues to argue with the NRC about what its reporting responsibilities are", TMIA Motion at 26,

^{6/} While the Staff has reached the conclusion that the information in OI's report on the reportability of the BETA/RHR reports would not have affected the result below, the Staff reiterates that it has not yet formulated an overall position on the broader issue of management integrity. That position, which is awaiting the completion of all of the OI investigations, will be presented in a supplement to the Staff's SER which will consider the BETA/RHR matter as part of that broader issue. In addition, there may be enforcement implications arising from the BETA/RHR matter.

^{7/} Memorandum from William J. Dircks to the Commissioners, June 22, 1983.

any current uncertainty on Licensee's part as to what should properly be a Board Notification would not affect the outcome of the Licensing Board's decision.

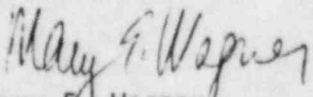
TMIA also argues that there is evidence of improper motives for withholding the reports, i.e., that there would be a negative public reaction and the newspapers would blow them up out of proportion. TMIA Motion at 41-42. But TMIA cites only evidence that individuals at GPU were aware that there would likely be a strong public reaction, not evidence that this awareness influenced in any way GPU's determination as to whether to turn the reports over to the NRC.

Accordingly, the OI Report on the reportability of the BETA and RHR reports does not present significant new evidence which, if considered originally, would have affected the outcome of the Licensing Board's decision. TMIA's Motion to reopen the record on the issue of the reportability of the BETA and RHR reports should be denied.

III. CONCLUSION

For the reasons set forth above, TMIA's Motion should be denied in all respects.

Respectfully submitted,


Mary E. Wagner
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 7th day of June, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO THREE MILE ISLAND ALERT MOTION TO REOPEN THE RECORD" 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 7th day of June, 1984:

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