

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

COMMISSIONERS:

Nunzio J. Palladino, Chairman
Victor Gilinsky
Thomas M. Roberts
James K. Asselstine
Frederick M. Bernthal

'84 MAY -4 P4:29

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

SERVED MAY 7 1984

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

Docket No. 50-289 SP
(Restart)

ORDER

CLI-84-7

On October 18, 1983 the Union of Concerned Scientists (UCS) moved the Commission to order that all long-term items required in this proceeding be completed prior to restart because of the length of time which has elapsed since this proceeding began. Both the licensee and the NRC staff opposed the UCS motion.

In the order establishing the restart proceeding, the Commission stated that it had "determined that satisfactory completion of certain short-term actions and resolution of various concerns ... are required to provide assurance that the facility can be operated without endangering the health and safety of the public." The Commission further

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"determined that certain additional long-term actions are ... required to be completed as promptly as practicable, and that reasonable progress on the completion of such items prior to restart is required" CLI-79-8, 10 NRC 141, 142 (1979).

The Commission has stated that "reasonable progress" is to be determined "at the time of the Licensing Board's decision." CLI-82-32, 16 NRC 1243 (1982). The issue of whether licensee has made reasonable progress toward completion of long-term items was litigated in the restart proceeding in accord with the procedures established for that proceeding. No party appealed from the Licensing Board's findings regarding licensee's progress on long-term requirements, either to the Appeal Board or to the Commission. UCS by filing this motion with the Commission almost five months after the Appeal Board issued its decision on the hardware issues, ALAB-729, 18 NRC ____ (1983), is apparently attempting to reopen a closed issue solely on the basis of the passage of time.

The Commission disagrees with UCS' underlying assertion that the passage of time by itself controls whether reasonable progress is being made toward completion of long-term items. Such a determination must be based on all the circumstances surrounding each individual item, including the evolution of the requirement, any technical disagreements regarding the requirement, efforts to date, and the current implementation schedule both at TMI-1 and other similar reactors.¹ The UCS motion

¹The Commission has stated, unless the record dictates otherwise, [Footnote Continued]

requesting the Commission to require completion of all long-term items before restart simply because of the lapse of time since this proceeding began is accordingly denied.

However, the Commission recognizes that over two years have passed since the Licensing Board issued its decision on the hardware issues, and the Commission did envision only a short lapse of time between the Licensing Board's decision and a decision on restart. The Commission has therefore sua sponte considered the circumstances surrounding the implementation schedule for the seven long-term items which staff indicated in its response to the UCS motion were not scheduled for completion prior to restart in order to determine whether licensee should be required to complete any of those items prior to restart. No party is now arguing that any of these items are necessary for safe operation in the short term, and the Commission has determined from its review of each of these items that the current schedule for completion is reasonable in view of the technical issues involved and, as indicated in staff's response to the UCS motion, because completion of required items at TMI-1 at restart will be comparable to the schedule of completion at other B&W reactors. The Commission has therefore decided not to require completion of any of these items prior to restart at this time. The Commission notes, however, that this decision does not modify the original 1979 order which required that long-term items be completed "as promptly as practical."

[Footnote Continued]

that TMI-1 is to be grouped with reactors which have received their operating licenses. CLI-81-3, 13 NRC 291 (1981).

Commissioner Gilinsky dissents from this decision.

It is so ORDERED.



For the Commission^{*}

A handwritten signature in cursive script, appearing to read "Samuel J. Chilk".

SAMUEL J. CHILK
Secretary of the Commission

Dated at Washington, D.C.

this 4th day of May, 1984.

* Commissioners Asselstine and Bernthal were not present when this order was affirmed but had previously indicated their approval.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
METROPOLITAN EDISON COMPANY, ET AL.) Docket No. 50-289
)
(Three Mile Island Unit No. 1) (Restart)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document(s) upon each person designated on the official service list compiled by the Office of the Secretary of the Commission in this proceeding in accordance with the requirements of Section 2.712 of 10 CFR Part 2 - Rules of Practice, of the Nuclear Regulatory Commission's Rules and Regulations.

Dated at Washington, D. C. this

7th day of May 1974.

Eugenia M. Pleasant
Office of the Secretary of the Commission

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

DOCKETED
USNRC

APR 26 1984

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

For: Parties to TMI-1 Restart Proceeding
From: Samuel J. Chilk
Secretary of the Commission
Subject: SCHEDULE IN TMI-1 RESTART PROCEEDING

SERVED APR 26 1984

In its January 27, 1984 Notice to the Parties, the Commission stated that it hoped to issue by June 1984 a decision on whether or not to lift the immediate effectiveness of the 1979 shutdown Order. The Commission has decided to make public the attached schedule. This schedule was written to lay out the necessary steps which must be completed for the Commission to make a decision on restart in June, and for planning and scheduling purposes alone has assumed that the relevant issues will be resolved so that the June decision date can be met.

The Commission has not prejudged any of the issues before it, and an unfavorable finding on any of the several issues requiring resolution will affect the schedule.

The schedule is optimistic, and adjustments may have to be made. The Commission plans to update the schedule as needed; the parties will be kept informed.

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DRAFT TMI-1 TARGET SCHEDULE

<u>Milestone</u>	<u>Lead</u>	<u>Expected</u>
Briefing on TMI-1 Leak Rate, and RHR/BETA Investigations ¹	OI	April 26 (Open/ Closed (TBD) meeting)
TMI-1 Leak Rate and RHR/BETA Reports made Public	SECY	April 26
Briefing on Staff Evaluation of TMI-1 Leak Rate Investi- gation; Oral Statement of Staff Position on Management (to be Confirmed in Writing)	EDO/NRR	April 26 (Open meeting)
Remaining Investigation Reports Available	OI	May 14
Briefing on Remaining Investigations	OI	May 22 (Open/ Closed (TBD) meeting)
Remaining Investigation Reports made Public	SECY	May 22
Staff Briefing on Impact of Remaining Investigation Reports on Management; Oral Statement of Staff Position (to be Confirmed in Writing)	EDO/NRR	May 22 (Open meeting)
Commission affirmation vote on Issuance of ALAB-729/744 Order	Commissioners/ SECY	May 23

¹We note this schedule does not address ALAB-738 as the Commission has already determined that resolution of the Hartman matter is not required for a restart decision.

Affirmation meeting - Draft of Management Order ² Issued for Parties' Comment	Commissioner OGC/OPE/SECY	May 25 (Open meeting)
Staff Briefing on UCS 2.206 EFW Petition; Certification Update	EDO/NRR	June 1 (Open meeting)
Comments on Draft Decision on Management	Parties	June 8
Commission Vote on Steam Generator No Significant Hazards Consideration Determination (if Hearing not Complete)	Commission	June 27 (Open meeting)
Commission Vote on Issuing Restart Decision Order ³	Commission	June 27 (Open meeting)

²Depending on timing of events, a restart decision order could include management and miscellaneous issues, or a separate management order could precede the actual restart decision order. The schedule now assumes a combined order.

³The Appeal Board's merits review on management is scheduled to be issued early in June. The Commission's restart decision order would account for the Appeal Board decision.

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(Three Mile Island Unit No. 1) (Restart)

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Dated at Washington, D. C. this

26th day of April 1974.

Peggy K. Downing
Office of the Secretary of the Commission

2 documents

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

April 24, 1984

DOCKETED
USNRC


DOCKET NUMBER 50-289
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'84 APR 25 11:21

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

MEMORANDUM FOR: Chairman Palladino
Commissioner Gilinsky
Commissioner Roberts
Commissioner Asselstine
Commissioner Bernthal

SERVED APR 25 1984

FROM:  Carlton Kammerer, Director
Office of Congressional Affairs

SUBJECT: COMMENTS ON THE LIST OF INTEGRITY ISSUES
IN THE TMI-1 RESTART PROCEEDING

Attached are comments received from Henry Myers and Jay Simpson of the Majority Staff of the House Interior Committee. By copy of this memorandum, SECY is requested to serve the comments on the Board and parties to the proceeding.

Attachment:
As stated

cc: EDO
OGC
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March 21, 1984

TO: Carl Kammerer

FROM: Henry Myers/Jay Simpson

RE: NRC STAFF COMMENTS ON THE COMMISSION'S JANUARY 20, 1984
LIST OF INTEGRITY ISSUES IN TMI-1 RESTART PROCEEDING

The following is in reference to Integrity Issues List Item I-E, p. 8-9, which concerns the May 9, 1979 mailgram sent by Mr. Dieckamp to Chairman Udall (with a copy to Commissioner Gilinsky [NUREC 0760, p. 117-1]). The mailgram contains the following statement:

"There is no evidence that anyone interpreted the 'Pressure Spike' and the spray initiation in terms of reactor core damage at the time of the spike nor that anyone withheld any information."

This portion of the mailgram contains two assertions of fact with respect to reporting of information on March 28, 1979. First, Mr. Dieckamp stated that there was no evidence that anyone interpreted the pressure spike in terms of reactor core damage. Second, Mr. Dieckamp stated that there was no evidence that anyone withheld any information.

QUESTIONS

1. Does the staff believe that the first of Mr. Dieckamp's assertions of fact is true?
2. Does the staff believe that the second of Mr. Dieckamp's assertions of fact is true?
3. Is it the NRC staff view that because the Commission did not "require" the information contained in Mr. Dieckamp's mailgram, any material false statements therein are not actionable under Sections 186 and 182?
4. Is it the staff position that a person has not made a false statement unless he/she knew the statement to be false at the time he/she made it? If so, how does the staff reconcile its position with the Commission's opinion in the North Anna case which stated: "A statement may be 'false' within the meaning of Section 186 of the Atomic Energy Act, 42 U.S.C. 2236, even if it is made without knowledge of its falsity; that is, scienter is not a necessary element of a 'false' statement for the purposes of this section"?
5. Does the staff agree with the licensing board (PID, para 501) statement that Mr. Dieckamp's statement was "literally false"?
6. Does the staff believe that the statements in Mr. Dieckamp's mailgram were "relevant to the regulatory process"?
7. Does the staff believe that the May 9 mailgram contains one

8. If the staff does believe the mailgram contains a material false statement, does the staff believe it constitutes an actionable violation of the Atomic Energy Act? Did the statement constitute such an actionable violation at the time it was made?
9. If, following the transmittal of the May 9 mailgram, Mr. Dieckamp found that he had made false statements in that mailgram, did he have an obligation to correct those false statements?
10. Has Mr. Dieckamp ever been interviewed by the NRC regarding the May 9 mailgram?

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Dated at Washington, D. C. this

25th day of April 1974.

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