UCS - October 30, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Nuclear Regulatory Commission

In the Matter of	)	
	)	
METROPOLITAN EDISON COMPANY	)	Docket No. 50-289 SP
	)	(Restart - Management Phase)
(Three Mile Island Nuclear Station, Unit No. 1)	)	
	)	

UNION OF CONCERNED SCIENTISTS'
REPLY TO STAFF AND GPU COMMENTS ON CLI-84-18.

INTRODUCTION

UCS finds nothing in the Staff or GPU comments on CLI-84-18 which modifies our views as stated in our original pleading. As a general matter, both parties, by focusing their arguments on putting the best light on the off-the-record material, all but concede that the adjudicatory record does not support a finding favorable to GPU, particularly on the training and operator competence issues. As UCS has fully explained, such reliance is not a lawful basis for restart. See UCS Comments on TMI-1 Restart Immediate Effectiveness, July 26, 1984, pp. 1-20. Since, as the Commission should be aware, we are now working more than full-time on preparing for the hearings themselves, UCS does not have the time to rebut GPU and the Staff on a point-by-point basis. The following will treat some of the more important points.

Training/Operator Competence

The Staff, like GPU, underplays the force of the Appeal Board's findings on the training and operator competence issue by giving an incomplete and strangely abstract statement of the Board's holding. In fact, the questions which, according to the Appeal Board, are unanswered on this record include those most basic to operator competence:

> [D]oes the training program actually enhance the operators' knowledge or simply encourage memorization for test-taking purposes? Are the licensee and NRC examinations an effective way to measure an operator's ability to run the plant? ALAB-772, Sl.op. at 63.

It is obvious from that statement of the issues that the case does not involve quibbling over the degree of perfection in the record, but instead is the result of a ruling, the basis of which no party has directly attacked, that the record in this case does not justify the necessary finding that the training of the TMI-1 operators has been sufficient to provide confidence that they can safely operate the plant.

The Staff's response, based on its misstatement of the thrust of the Appeal Board's ruling, is of little use. One could hardly disagree that a remand would not be warranted: "solely because Licensee's consultants in the original management hearing testified prior to the discovery of the cheating incidents, and consequently their testimony did not reflect the evidence on cheating and its impact on the adequacy of Licensee's training and testing program." (NRC Staff's

Brief in Response to CLI-84-18, October 9, 1984, p. 4, hereinafter "Staff Brief"). The fact is, however, that the remand was not ordered on such narrow grounds. The remand was ordered because the ASLB decision places primary and fundamental reliance as the basis for its finding of operator competence on the testimony of a panel of experts whose testimony about the implementation of the GPU training program was later proven to have been utterly divorced from reality. Even the ASLB found:

> In fact, the cheating incident and the reopened proceeding flowing from it appear to have been the first stimulus sufficient to cause Licensee to pull back the 'paper curtain' and actually view its training and testing program at its point of delivery. LBP 82-56, 16 NRC 281, 357 (1982).

In contrast to the ASLB, the Appeal Board recognized that such deficiencies on the record cannot be resolved by promises of future correction, since TMI-1 cannot be permitted to operate unless a finding can be made that the conditions for safe operation are met <u>now</u>:

> In sum, proper training is essential to the safe operation of the plant and requires the closest scrutining. This is especially so here where because of the role of operator error in the TMI-2 accident, training has been of key importance in this proceeding from the outset. <u>There is no substitute for a complete and convincing record</u>.
> ALAB-772, Sl.op. at 76, emphasis added.

The Staff claims further that, since the Appeal Board decision, GPU's experts (the so-called "Reconstituted OARP Review Committee) have now evaluated the cheating incidents and other deficiencies and have concluded that GPU's training and

testing program is adequate. Staff Brief, n.3 at 4. While it is true that the GPU experts "concluded" that the training program is adequate, it is not true that this conclusion was based on an evaluation of the deficiencies found by the Appeal Board. First, the Committee (of GPU experts) limited its review and its conclusions concerning whether they have been remedied to "deficiencies in the exam process, e.g. proctors, exam security, ground rules for exams, procedures for determining if individuals have cheated. "Licensee Answer to Interrogatory 28 of UCS' Second Set of Interrogatories to GPU. The Committee likewise believed that the only training deficiencies in the 1979-1981 time frame related to these "security" problems. Licensee Answer to UCS' Interrogatory 3-27. Thus, the Committee evaded the substantive deficiencies which were the very cause of the Appeal Board's remand. Its conclusions are therefore of little value.

Moreover, it is apparent that the Committee's "review" was largely a repackaged and conclusory summary of briefings and interviews with GPU managment. Subsequent depositions by UCS of the Committee members has amply confirmed this. Very little actual review of the training program took place. See UCS Brief at 13-20. This is perhaps not surprising considering that the Committee is in the position of defending its own previous glowing conclusions.

In any case, GPU's Reconstituted Report represents the best advocacy case of one adversary party. It is not on the record, its authors have not been questioned, its conclusions have not

been subject to rebuttal or probing of any kind. The Staff's argument completely ignores the plain fact that the training and operator competence portion of ALAB-772 cannot lawfully be reversed on the basis of off-the-record material. There is no principal of administrative law more clearly established than that on-the-record decisions cannot be made by use of off-the-record material. SAPL v. Costle, 572 F. 2d 872, 878, 881 (1st Cir. 1978).

This is not a question of "immediate effectiveness" where the Commission believes that it may use off-the-record material. At issue here is the ultimate merits decision in an on-the-record proceeding.

The Staff argues that because the ASLB did not change its overall decision on TMI-1, "it follows" that the standards for reopening are not met. Staff Brief, n. 2 at 4. The Staff overlooks the fact that the Appeal Board reversed the ASLB; the Staff's mere preference for the ASLB ruling hardly constitutes a reason for disregarding the Appeal Board. Moreover, as we have shown, the standards for reopening a record have no application where the Appeal Board reverses the ASLB on the basis of the current record not "newly discovered information." See Union of Concerned Scientists Response to CLI-84-18, Need for Evidentiary Hearings in TMI-1 Proceeding, Oct. 9, 1984, pp. 3-4, 7. (hereinafter "UCS Brief").

GPU also evades the thrust of the Appeal Board decision by putting forward the non sequitur that the "cheating incidents and poor administration of training tests... have little bearing on the substantive adequacy of the operators'

training." Licensee's comments in Response to CLI-84-18, p.5. (hereinafter "GPU Brief"). The relevance of the cheating hearings is that, in the course of discovering the scope and extent of cheating by individuals, the evidence also disclosed that the training and testing program was substantively inadequate in many ways:

> [T]he method of instruction emphasized the memorization of word formulas, rather than an understanding of concepts which the formulas stood for. Operators were taught words, without being taught what the words meant. Third, when operators showed that they were weak in a given area there was no apparent effort to actually teach them the materials in that area. On the second round of Category T make-ups for example instead of actually teaching the operators the subject matter, the questions were simply repeated from the first round. The operators were shown their first round tests, and then left to answer the second round on a take-home basis. Fourth many of the questions on the quizzes were unrelated to the candidates' ability to operate the reactor. This encouraged memorization and diminished the operators' respect for the training program. In sum, the Licensee's training program was poorly administered and, judging from the evidence presented before me, it was weak in content and ineffective in its method of instruction. I do not believe that the Licensee's training program responded adequately to the Commission's order of August 9, 1979.
> Report of the Special Master, 15 NRC 918, 1020 (1982).

The Licensing Board, while agreeing with the Special Master that the evidence raised these questions about the "quality of instruction," and "demonstrated areas of significant weakness" did not reach the ultimate conclusion that the Commission's requirements were not met. LBP-82-56, 16 NRC 281, 360-365 (1982). The Appeal Board, as noted above, concluded that the record does not establish that the deficiencies have been corrected and that such a finding must be based on the record. ALAB-772, Slip op at 63, 76.

Thus, in seeking consistently to portray the training and testing deficiencies shown by the cheating hearings as limited to questions of exam security, GPU grossly distorts the record and all of the relevant decisions.

Leak Rate Falsification

With respect to Unit 1 leak rate falsification, UCS has shown that the pattern of similarities between the practices at Unit 1 and Unit 2 are strongly suggestive that the falsification at Unit 2 extended to Unit 1, albeit on a smaller scale, and that the denials of operators have been given undue weight. See Union of Concerned Scientists' Response to CLI-84-18, Need for Evidentiary Hearings in TMI-1 Proceeding, October 9, 1984, pp. 34-40.

With respect to Unit 2 leak rate falsification, the Staff and GPU both continue to ignore the key facts which bear on the character of the current GPU: the current GPU has never held a single person accountable for the extraordinary widespread and systematic leak rate falsification. Incredibly, it continues instead to deny that falsification took place, as manifested in its final statements to the Federal Court in Pennsylvania (Id. at 46-47). These are obviously not the actions of a "new" management committed to purging itself of past attitudes.

Against this reality, the Staff's rationalization based on paper corporate reorganization are not convincing. Moreover, the Staff's claim that, because most of the individuals potentially implicated in falsification are not currently

involved with TMI-1 management or operation, a hearing would "produce little information" likely to change the decision on restart (Staff Brief at 12) reflects a disturbing lack of understanding of what is at stake. The persons in managment and operation who are potentially implicated in falsification have only been temporarily re-assigned. "Licensee desires to have the ability to use each of them within its nuclear activities without restriction at the earliest date possible." GPU Brief at 20.

Finally, GPU has for the first time provided some specification as to which pre-accident Met-Ed exempt personnel are working at Unit 1, of which there are a great many indeed in numerous responsible positions throughout the plant. In particular, as we read the Attachments to GPU's Brief, three shift foremen are currently Unit 1 Shift Supervisors (apparently shift supervisors are not classified as "operators"), the Supervisor of Management Control is now a Planning and Scheduling manager, many maintenance managers and supervisors have been retained (Attachment I(A). pp. 1-2), the QA/QC Training/Administration Program Supervisor was a Shift Foreman, as was a Safety Review Engineer (Id. at 5). GPU has provided only a list of the former Met-Ed exempt personnel (i.e. outside the bargaining unit) currently at TMI. Thus, the attachments do not trace the whereabouts of the unionized control room operators. It has already been shown that at least some of the Unit 2 operators have been assigned to Unit 1 in positions of clear importance to safety. UCS Brief, October 9, 1984, p. 47. We still do not know where the other TMI-2

operators are currently assigned. Nor do we know the current roles of GPU Service Corporation personnel, despite the fact that GPUSC controlled the plant until the end of 1978, during a period when leak rate falsification was a well established practice and that GPUSC continued to provide many safety oversight and technical functions thereafter.

It is, however, clear that to the extent the Commission believes that "those functions which provide an overview assessment, analysis or audit of plant activities, contain only personnel who, prior to the accident, had not been in a management, supervisory, or professional position at TMI-1 or 2" (CLI-84-18, n. 3), its understanding of GPU's committement is incorrect. The only personnel covered are Met-Ed exempt employees, and the functions covered are much more narrowly limited than the Commission stated. See GPU Brief at 18-19.

Staff Response to Commission Questions

The Commission directed in CLI-84-18 that if the Staff opposes reopening of the record on integrity/character, it shall justify this position in light of its announcement in NUREG-0680 Supp. 5 that, had it known "at the time" of the "pattern of activity on the part of Met-Ed," this "would likely have resulted in a conclusion by the Staff that the licensee had not met the standard of reasonable assurance of no undue risk to public health and safety." NUREG-0680, Supp. 5, p. 13-5.

The Staff's response simply evades the question. The question asks it to explain how, given its own admission that the decisional record in this case excludes information on integrity which the Staff concedes would have dictated a different result, it can argue that the record need not be reopened. To the extent that a response can be implied, it is that the decisional record is essentially irrelevant to the decision and that the Staff chooses instead to rely on the "new" GPU. Staff Brief at 32-33. This position is absurd; it would mean that the hearings in which all of the parties have participated have been a sham, since the adjudicatory record may simply be ignored at the whim of the Commission.

We note further that the Staff's position is fundamentally disingenious. The Staff now attempts to interpret its statement as limited to information known to the Staff "at the time the Staff testified." Staff Brief, p. 32, emphasis added. The Staff sat through the cheating hearings and heard all of the evidence on operator cheating, GPU's poor attitude toward training, the cheating and false certification of the TMI-2 Supervisor of Plant Operations, the failure to promptly report cheating and its subsequent coverup. NUREG-0680, Supp. 5, p. 13-5. The Staff therefore knew at the time of the hearings as did all of the parties, that this "pattern of activity" took place. Indeed, the Staff admits that no information outside the hearing record associated with postaccident cheating is identified in NUREG 0680, Supp. 5. Id. at note, Appendix, p. 4. It was all brought out during the cheating hearings. Yet the Staff chose to file proposed

findings which endorsed restart and took the litigative position as a party to the case that this evidence of lack of management integrity did not require a negative safety finding. Thus, its current contortions can most charitably be characterized as bureaucratic face-saving.

In the same category is the Staff's attempt to argue that it was not aware (or "fully aware") of the facts regarding TMI-2 leak rate falsification until its review of the GPU v. B & W lawsuit record. Staff Brief, Appendix, pp. 1, 3-4. It claims that while the "general thrust" of Hartman's allegation were known to the Staff, "only those Staff members who were involved in the suspended NRC investigation had ony direct knowledge of information confirming Hartman's allegations or the extent to which Met-Ed management may have been involved." id. at 3.

This attempt to minimize the Staff's awareness of te TMI-2 leak rate falsification, aside from obfuscating the issue by hiding behind vague phrases such as "fully aware" and "direct knowledge", does not accord with the facts. On June 10, 1983, Victor Stello, head of the Division of Inspection and Enforcement at the pertinent times, stated in a memorandum as follows:

> In summary, I believe that senior members of ELD, IE, Region 1 NRR, OIA, the EDO and the Commission were aware in March/April 1980 that although no final staff conclusions had been reached, leak rate test results had likely been falsified prior to the March 28, 1979 accident at TMI-2 and that this particular Hartman allegation represented a potentially serious matter.
>
> Victor Stello to William J. Dircks, "Hartman Allegations and Related Matters," June 10, 1983, p.1, A copy is attached.

Thus, even if the "licensing staff directly evaluating licensee's management" did not know all of the details of the leak rate falsification, it knew enough to know that leak rates had likely been falsified and that the matter had serious implications for integrity. This is clearly enough information for the staff to at least have notified the Boards and the parties that a serious question of integrity had arisen that could affect the outcome of the case. Beyond that, the staff should at a minimum have told the Board that it reserved reaching judgment on GPU's integrity pending resolution of this issue. Instead, the staff misrepresented and minimized what it knew by characterizing the Hartman allegations as having only "historical significance" and claiming that its preliminary review did not disclose adverse information affecting restart. NUREG-0680, Supp. 2, p. 10; ALAB-738, 18 NRC 177, 189 (1983).

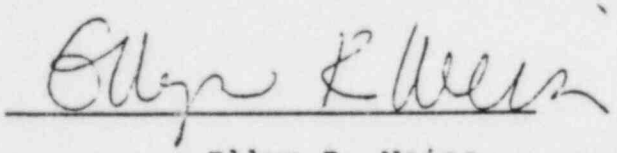
To the extent that the "licensing staff" did not know specific details, UCS submits that its ignorance was very probably intentional; that it chose to deliberately keep itself ignorant of damning information. The licensing staff apparently "knew" enough to feel confident in characterizing the issues (inaccurately) as having only "historical significance." How could it have reached this conclusion without some inquiry into the facts? In sum, the staff's protestations of ignorance are weak and unconvincing. At best, they portray a staff all too willing to disregard substantial, even if not yet conclusive, evidence of lack of integrity in order to support restart. If the Commission condones tis

behavior it is courting repetition of a sequence of events which has brought the integrity of the NRC itself into question.

CONCLUSION

The Staff and GPU Comments do not alter UCS's conclusion that operation of TMI-1 is not justified either on the record or by reference to off-the-record material.

Respectfully submitted,



Ellyn R. Weiss
General Counsel
Union of Concerned Scientists

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

JUN 10 1983

MEMORANDUM FOR: William J. Dircks
Executive Director for Operations

FROM: Victor Stello, Jr., Deputy Executive Director
Regional Operations and Generic Requirements

SUBJECT: HARTMAN ALLEGATIONS AND RELATED MATTERS

In a memorandum dated May 31, 1983 to you from Commissioner Gilinsky, certain information was requested concerning Tim Martin's statement at the May 24, 1983 Commission briefing that, with regard to the Hartman allegations, records were falsified. This memorandum transmits my response to certain questions raised.

Response to Questions 2(a) and 2(c):

I was unaware of Tim Martin's conclusion stated at the May 24, 1983 Commission meeting that "I can tell you for a fact that the records were falsified, that much we knew." I am also unaware that this particular conclusion was conveyed to any other senior staff member or the Commission. However, the facts underlying this conclusion, derived from the partial investigation of the Hartman allegations, were discussed with various senior staff members and the Commission as described below.

In summary, I believe that senior members of ELD, IE, Region I, NRR, OIA, the EDO and the Commission were aware in March/April 1980 that, although no final staff conclusions had been reached, leak rate test results had likely been falsified prior to the March 28, 1979 accident at TMI-2 and that this particular Hartman allegation represented a potentially serious matter. There were three basic allegations made by Mr. Hartman which were (1) results of reactor coolant surveillance leak rate tests were falsified, (2) emergency feedwater pump test criteria were altered and (3) the estimated control rod positions for attainment of criticality were recalculated in order to meet procedural requirements.

Following Mr. Hartman's appearance on television, members of IE, Region I and OIA initiated an investigation into these allegations on March 22, 1980. The investigators' initial results appeared to confirm Mr. Hartman's allegation that leak rate test results had been falsified prior to March 28, 1979. These initial results carried with them a potential for criminal prosecution. Accordingly, the Department of Justice (DOJ) was notified, and, at its request, the NRC investigation was suspended on April 28, 1980.

The Commission, EDO, OIA, ELD, NRR, IE and Region I were aware of the DOJ referral of the allegation concerning leak rate test falsification and the potential seriousness of Hartman allegation. Due to the sensitivity of this matter, my discussions with various Commissioners and senior staff consisted of oral conversations and briefings. General status of ongoing investigations were reported at weekly EDO staff meetings, some of which included attendance by the Chairman and representatives from other Commission offices. While information concerning the Hartman allegations was generally desseminated orally, the Commission's understanding of this matter is reflected in a writing, specifically its Memorandum and Order of May 28, 1980 which referred to falsified test results and the ongoing Grand Jury investigation. A copy of that Memorandum and Order is enclosed. See specifically page 6. Further, this matter is specifically discussed in Supplement 1 of NUREG-0680, issued November 1980, and Supplement 2 of NUREG-0680, issued March 1981. All of these documents received wide distribution throughout the agency.

Consequently, the Commission and various NRC senior staff had been generally aware, in the spring of 1980, of the Hartman allegation regarding leak rates and that it had potential for criminal prosecution. It appears that, in that time frame, at least one investigator (i.e., Mr. Martin) had reached more firm and specific conclusions concerning the Hartman allegations. Such conclusions may have been passed on to others and may have formed part of the bases for the conclusion that some of the allegations had merit and that referral to DOJ was appropriate.

However, to the extent that firm and specific conclusions were passed on, these conclusions were not adopted by senior staff members. Such conclusions were preliminary as they were based upon an incomplete and ongoing investigation, which had been called to a halt. Such conclusions also had minimal safety significance at that time since TMI-1 was not likely to resume operation in the near future. The essential decision at that point in time was the appropriateness of a referral to DOJ and, for that purpose, it was not necessary to go beyond the conclusions reached by senior staff that, based upon the investigation conducted thus far, the Hartman allegations appeared to have sufficient basis to warrant referral.

Response to Questions 3 and 4:

As part of their effort to obtain background information with regard to the leak rate matter, the review team members conducting the review of the B&W-GPU lawsuit documents, except myself, met with Donald Kirkpatrick of the NRC staff. As I was already aware of the leak rate matter by virtue of my position as Director of the Office of Inspection and Enforcement in 1980, I did not attend the meeting with Mr. Kirkpatrick. Mr. Kirkpatrick was one of the original NRC investigators pursuing the Hartman allegations in 1980 prior to referral to the Department of Justice. Mr. Kirkpatrick briefed the attending review team members on the results of the investigation with which he was familiar. The review team did not speak to Tim Martin regarding the

Hartman matter. Consequently, the review team members were not apprised of any of Mr. Martin's views at that time.

Victor Stello, Jr.
Deputy Executive Director
Regional Operations and
Generic Requirements

Enclosure:
Memorandum and Order of May 28, 1980

UCS - October 30, 1984

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that single copies of the UNION OF CONCERNED SCIENTISTS' REPLY TO STAFF AND GPU COMMENTS ON CLI-84-18, was served by deposit in the U.S. mail, first class postage prepaid, this 30th day of October 1984, except where noted otherwise by asterisks.

Ellyn R. Weiss
General Counsel
Union of Concerned Scientists

UCS - October 30, 1984

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