UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
631 PARK AVENUE
KING OF PRUSSIA, PENNSYLVANIA 19406

T. Martin

September 12, 1983

MEMORANDUM FOR: Thomas E. Murley, Regional Administrator

FROM: Jay M. Gutierrez, Regional Counsel

SUBJECT: TMI-1 RESTART: REOPEN HEARING ON MANAGEMENT ISSUES

By a Memorandum and Order dated August 31, 1983, the Atomic Safety and Licensing Appeal Board reopened the TMI-1 Restart record relative to the Management Phase of this proceeding. The Appeal Board granted the motions of the Aamodts and TMIA insofar as they sought to reopen the record for further hearing on the Hartman allegations. Although the mechanics of scheduling and conducting a hearing were remanded to the Licensing Board, the Appeal Board noted the following areas which it felt should be the subjects of a hearing:

"a. The focus on the Hartman allegations thus far has been on whether new operating procedures are adequate to prevent a recurrence of the problems described by Hartman. See, e.g., SER, Supp. No. 2 (Staff Exhibit 13), at 10; C.Tr. 52. The individuals implicated by Hartman's charges, however, should not be overlooked, particularly if they are now employed in connection with TMI-1. Even if they no longer work for licensees or have no duties at TMI-1, these persons are still in a position to shed light on the matter.

b. The Faegre & Benson Report includes a fairly comprehensive technical analysis of the leak rate problem, and we assume it will be offered into evidence. The report seems to show that oscillations and lack of control of plant parameters existed for approximately a year and may have been a significant cause of the operators' alleged inability to obtain consistent leak rate data. See generally Faegre & Benson Report, Vol. Two, at 93-107. Because of its limited scope, however, the report does not contain any meaningful information about management efforts to identify and correct the oscillation problem. We believe it would be useful to obtain such information, because the ability to operate a plant without substantial oscillations in vital plant parameters bears on management competence. Thus, Hartman's allegations raise questions about not only management integrity, but also management willingness and ability to resolve important operational deficiencies.

The Appeal Board thought the hearing should provide answers to such specific questions as: Did the incidents described by Hartman in fact occur? If so, who knew about them? Who authorized them? Who looked the other way? Did the operators and any other individuals involved assume their actions were acceptable operating procedures? On the other hand, did they assume otherwise and hope they would not get caught or be reprimanded?

The Appeal Board stated that it is premature to litigate such other staff open items as the impact of the B&W trial record, the Parks and King allegations of retaliation against whistleblowers at the TMI-2 clean-up operation, concerns raised by the recent BETA and RHR management audits, and the timeliness of licensee's submission of those reports.

Finally, the Appeal Board was critical of Inspection Report No. 50-289/83-10 and called into question the credibility of certain conclusions reached in that report. In this regard, see pages 24 and 40 of the enclosed opinion. Should you have any questions relative to this opinion please advise.

Jay M. Gutierrez
Regional Counsel

Enclosure:
As Stated

cc: (w/Encl.)
J. Allan
T. Martin
R. Starostecki
R. Keimig
K. Abraham
F. Brenneman

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Administrative Judges:

Gary J. Edles, Chairman
Dr. John H. Buck
Christine N. Kohl

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

Marjorie M. Aamodt and Norman O. Aamodt, Coatesville, Pennsylvania, intervenors pro se.

Louise Bradford and Joanne Doroshow, Harrisburg, Pennsylvania, for intervenor Three Mile Island Alert.

Ellyn R. Weiss, Washington, D.C., for intervenor Union of Concerned Scientists.

Douglas R. Blazey and Robert W. Adler, Harrisburg, Pennsylvania, for the Commonwealth of Pennsylvania.

Ernest L. Blake, Jr., and George F. Trowbridge, Washington, D.C., for licensee Metropolitan Edison Company.

Jack R. Goldberg and Mary E. Wagner for the Nuclear Regulatory Commission staff.

* On August 13, 1981, the Commission authorized the issuance of an amendment transferring the license to operate TMI-1 from Metropolitan Edison Company to GPU Nuclear Corporation. See CLI-81-17, 14 NRC 299. Because no one has asked for a substitution of parties, we will continue to show Metropolitan Edison in the caption, consistent with all prior decisions and orders in this proceeding.

MEMORANDUM AND ORDER

August 31, 1983

(ALAB-738)

Intervenors Marjorie M. Aamodt and Norman O. Aamodt and Three Mile Island Alert (TMIA) collectively have filed three motions to reopen the record in the management phase of this proceeding. They base their motions on various reports and other information that assertedly have come to light recently and bear upon the Licensing Board's partial initial decisions concerning management competence and integrity, which are now before us on appeal. See LBP-81-32, 14 NRC 381 (1981), and LBP-82-56, 16 NRC 281 (1982). Intervenor Union of Concerned Scientists and the Commonwealth of Pennsylvania, responding to our request for additional comments on certain matters ostensibly relating to the motions, generally support reopening. Licensee opposes each of the motions. The NRC staff opposes some of the relief requested but asks us to defer ruling on other issues and to await the completion of several ongoing staff inquiries.

For the reasons set forth below, we grant the motions insofar as they seek reopening for further hearing on the so-called Hartman allegations of falsification of leak rate data. In all other respects, the motions are denied.

I.

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-590, 11 NRC 876, 879 (1980). See Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320, 338 (1973); 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.

II.

The Aamodts' first motion to reopen concerns information revealed in Board Notification BN-82-84 (August 17, 1982).[1] Attached to the Board Notification was an

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[1] The Aamodts filed this motion with the Licensing Board. In ALAB-699, 16 NRC 1324 (1982), we agreed with that Board that it lacked jurisdiction over the motion and that it should be referred to us.

inspection report that discussed the discovery in May 1982 by licensee's Radiological Assessor of several unattended radiation worker examinations and their answer keys. Although this apparently occurred on two occasions over a three-day period, the NRC staff inspector concluded that licensee's corrective actions were adequate and that it appeared to be an isolated incident. Inspection Report No. 50-289/82-07 (July 1, 1982) at 17. The Aamodts suggest, however, that this matter raises questions about licensee's training program, warranting further hearing. They also assert that the "withholding" of information about this incident for over three months casts doubt on the integrity of both licensee's management and the NRC staff.

In their second motion to reopen, the Aamodts list five categories of assertedly new and significant evidence. This information came to light, according to the Aamodts, in the now-settled civil lawsuit brought as a result of the accident at TMI-2 by licensee's parent corporation against the manufacturer of the TMI reactors, Babcock & Wilcox (B&W). See General Public Utilities Corp. v. The Babcock & Wilcox Co., No. 80-CIV-1683 (S.D.N.Y. filed March 25, 1980) (hereinafter "B&W trial").[2]

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[2] The Aamodts' motion to reopen is contained within their comments to the Commission on the adequacy of the
(Footnote Continued)

The first such information is the testimony at the B&W trial of Harold W. Hartman, Jr., a former TMI-2 control room operator. Hartman testified that the technical specification for unidentified leak rates at that facility, one gallon per minute (gpm), was exceeded and the corresponding data were falsified for a period of several months before the accident. The Aamodts contend that it is not unlikely that licensee's management (specifically Robert Arnold, now president of GPU Nuclear Corporation, the new entity responsible for TMI) knew of this matter. In their view, the Hartman testimony shows a lack of management integrity and thus could have provided the Licensing Board with the evidence necessary to find management involvement in the instances of cheating on operator license examinations already explored at hearing. See LBP-82-56, supra, 16 NRC at 292-93.

The second piece of new information, by the Aamodts' account, is a 1978 in-house audit of TMI management. Among the deficiencies noted was training, an area contributing to the accident and explored at the restart hearing. Third is the B&W trial court's "[c]hastisement of Robert Arnold for

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(Footnote Continued)
staff review of the B&W trial record. The Commission referred the motion to reopen to us for disposition by Order of May 5, 1983 (unpublished), at 3-4. Accordingly, we address here only those arguments directed to the motion to reopen for further hearing on the five categories of information specified.

[m]isleading [t]estimony." Aamodt . . . Motions to Reopen (April 16, 1983) at 9. The Aamodts contend that Arnold displayed a similar lack of forthrightness at the hearing on the cheating incidents and that the Licensing Board erred in not giving it greater weight. In their opinion, the new evidence -- i.e., the B&W trial court's perception of Arnold's candor -- supports their position on management involvement in cheating.

The Aamodts' fourth category of new and significant information concerns evidence presented at the B&W trial showing B&W's superior technical resources. In short, this "new evidence" assertedly supports the Aamodts' apparent belief that B&W, rather than licensee and the NRC, should be principally responsible for training and administering operator examinations, respectively. Finally, according to the Aamodts, new evidence gleaned from the B&W trial transcript casts doubt on the Licensing Board's findings concerning operator ability to respond in an emergency. See, e.g., LBP-81-32, supra, 14 NRC at 474-75. The Aamodts urge the creation of a backup decision center, staffed by B&W experts and equipped with the capability to tap into all significant control room instrumentation.

TMIA's motion to reopen is based primarily on the staff's recent action to "revalidate" its position on licensee's management integrity. See pp. 11-12, infra. As part of that effort, the staff prepared Inspection Report

No. 50-289/83-10 (May 17, 1983), which covers a number of areas at issue in the management phase of this proceeding. Included is a discussion of the Hartman allegations, based on a review of job titles (not personal interviews) to determine if any individuals who might have been involved in falsification of TMI-2 leak rate data are now involved in TMI-1 management. In a May 19, 1983, memorandum to the Commission, the NRC's Executive Director for Operations, William J. Dircks, identified the following five matters that the revalidation effort and Inspection Report did not address and thus are still considered "open issues": (1) the veracity of the Hartman allegations; (2) statements in the B&W trial transcript; (3) allegations by two men employed in the TMI-2 cleanup operation (Richard Parks and Lawrence King) about retaliation against "whistleblowers"; (4) concerns raised by two 1983 management audits by outside consultants (the BETA and RHR Reports);[3] and (5) the timeliness of licensee's submission of the BETA and RHR Reports and other documents to the Commission and this

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[3] See Basic Energy Technology Associates, Inc., "A Review of Current and Projected Expenditures and Manpower Utilization for GPU Nuclear Corporation" (February 28, 1983) ("BETA Report"); P. D'Arcy & J. Sauer, "Priority Concerns of Licensed Nuclear Operators at TMI and Oyster Creek and Suggested Action Steps" (March 15, 1983) ("RHR Report").

Board, and its implications for management integrity. TMIA seeks reopening to explore each of these five issues.[4]

TMIA also specifies several more areas warranting examination: the credibility of Inspection Report No. 50-289/83-10, especially its treatment of the Hartman allegations and the BETA and RHR Reports; the credibility of an earlier staff review of the B&W trial record, headed by Victor Stello; and allegations by other whistleblowers besides Parks and King, and the significance of a Department of Labor finding of management retaliation against Parks.[5] Clearly though, TMIA's chief concern is that the BETA and RHR reports have seriously undermined earlier testimony on a number of areas related to overall management competence and integrity (such as maintenance, training, and operator attitudes).

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[4] TMIA also supports the Aamodts' second motion to reopen.

[5] TMIA also mentions Board Notification BN-83-71 (May 18, 1983) concerning alleged falsification of operator training records in 1977. In supplementary comments, the Aamodts as well refer to this matter. Aamodt Response to Appeal Board Order of June 16, 1983 (July 2, 1983) at 12-13. The NRC's Office of Investigations recently concluded its inquiry into the matter, finding no support for the allegations. See Board Notification BN-83-71A (June 27, 1983). Neither TMIA nor the Aamodts specifically seek reopening on this point or provide additional material information beyond that revealed in BN-83-71A.

The Hartman allegations of falsified leak rate data, raised by both TMIA and the Aamodts, unquestionably constitute the most disturbing basis on which the requests to reopen are premised. We turn to this matter first.

A.

1. A brief chronology of the events surrounding the Hartman allegations themselves is in order. Allegations of falsification of leak rate data first came to the NRC's attention during a May 22, 1979, interview with Hartman conducted by staff from the Office of Inspection and Enforcement who were investigating the TMI-2 accident ("I&E Interview"). In a deposition taken on October 29, 1979, by Harold L. Ornstein on behalf of the Rogovin Special Inquiry Group, Hartman reiterated his claims ("Ornstein Deposition"). In March 1980 a New York City television station aired a story including portions of its own similar interview with Hartman. At about the same time, I&E interviewed Hartman again and examined existing documentation in an effort to verify the charges. See Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 2), CLI-80-22, 11 NRC 724, 728 (1980). On April 2, 1980, the matter was referred to the U.S. Department of Justice (DOJ) for criminal investigation and the NRC halted its own investigation. Ibid. Two weeks later licensee hired a Minneapolis law firm to conduct an inquiry. The

latter submitted its report to licensee in September 1980 ("Faegre & Benson Report").[6]

As part of its evidentiary presentation before the Licensing Board, the staff prepared a Safety Evaluation Report (SER). Two supplements to the SER, issued in November 1980 and March 1981, each made a passing reference to the allegations of falsified leak rate data, noting the pending DOJ investigation and suspension of any further NRC inquiry. No other evidence on the matter was adduced at the hearing. Consequently, in LBP-81-32 the Licensing Board noted its limited information and made an overall finding of no deficiencies in corporate management, subject to the DOJ investigation. 14 NRC at 557-58. In the meantime, the Justice Department had convened two successive federal Grand Juries to investigate the Hartman allegations. The second such investigation is still pending.

Aware of the then-ongoing B&W trial (see p. 4, supra), NRC Chairman Palladino in December 1982 requested the staff to review that trial record for information that could affect the Commission's restart decision. On January 24, 1983, before all of the evidence for both sides had been presented, the parties to that action reached a settlement. The staff, however, completed its review of the nonetheless

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[6] Also known as the "Rockwell Report."

substantial trial transcript and exhibits and submitted a report to the Commission on March 28, 1983 ("Stello Report"). The report concluded that the B&W trial record did not add substantially to the information already known about the Hartman allegations. Stello Report at 17-18.[7] But in subsequent comments to the Commission, the staff indicated it was "revalidating" its position on the management integrity issue -- having previously found no deficiencies in that regard -- at least in part because of the Hartman allegations. NRC Staff's Comments on the Analysis of GPU v. B&W Transcript (April 18, 1983) at 4. On May 4, 1983, at the request of staff counsel, licensee submitted the 1980 Faegre & Benson Report to us and the other parties in this proceeding. In the meantime, as part of the revalidation process, the staff completed Inspection Report No. 50-289/83-10, but listed the veracity of the Hartman allegations among the "open issues" in the May 19 Dircks memorandum. See p. 7, supra. At a May 24, 1983, Commission briefing on the staff revalidation, Tim Martin, Director, Division of Engineering and Technical Programs,

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[7] Basically, the part of the B&W trial transcript dealing with the Hartman allegations here at issue consists of portions of a deposition of Hartman taken on July 16, 1982, and entered into the B&W record at Tr. 7008-95.

NRC Region I (and a former NRC inspector who interviewed Hartman in March 1980), stated:

> I can tell you for a fact that the records were falsified, that much we knew. What caused those records to be falsified, what was the motivation for those records to be falsified, that I can't tell you because I was not allowed to get far enough into it to find out.

C.Tr. 14.[8]

It is apparent from this chronology that the entire Hartman matter essentially lay dormant, for purposes of this proceeding, from April 1980, when it was referred to the Justice Department, until relatively recently, when examination of the B&W trial record led to renewed interest.

2. The allegations themselves can be summarized fairly briefly.[9] The technical specifications for TMI-2 establish a maximum rate of one gpm for unidentified leakage from the reactor coolant system. Tests to measure leakage are to be taken every 72 hours. If the specified rate is exceeded and cannot be limited within four hours, the plant must be

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[8] "C.Tr." is used to denote the transcript of the Commission's May 24 meeting.

[9] The source of this summary is the Hartman deposition as read into the B&W trial record at Tr. 7008-95. See note 7, supra. This is the principal evidence concerning falsification of leak rate data upon which both TMIA and the Aamodts rely in support of their motions to reopen. Other documents provided by the staff and licensee, however, are consistent with this account of the circumstances surrounding the charges. See, e.g., I&E Interview; Ornstein Deposition; Faegre & Benson Report, Vols. One and Four.

placed in "Hot Standby" in the next six hours and "Cold Shutdown" in the following 30 hours. For several months before the March 1979 TMI-2 accident, Hartman states that it was difficult to get a "good" (i.e., less than one gpm) leak rate at the facility.[10] This coincided with leaking safety valves on the pressurizer, as well as substantial oscillations in various plant parameters. Hartman claims that, pursuant to directions from a shift supervisor and a shift foreman, he and at least one other identified control room operator on several occasions redid leakage tests until they obtained a good rate. This involved the addition of hydrogen or water to the system, in small increments and without recording this action in the control room logs. Hartman says he assumed other unnamed operators and supervisors took similar action because they had talked to him about it. He and others threw out bad test results, with the knowledge of supervisory personnel. Hartman asserts further that he discussed the problem of bad leak rate data with at least one supervisor, who advised him that

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[10] We note that in a letter and Notice of Violation issued October 25, 1979, the staff concluded that from March 22-28, 1979, unidentified leakage at TMI-2 remained above one gpm and the plant was not placed in "Cold Shutdown." Notice of Violation at 10. The fine for this technical specification violation was included in a total fine of $155,000 for numerous other violations relating to the TMI-2 accident. Licensee did not challenge the leak rate finding.

people were working on it, including modifying the computer program used for the data calculations. Consequently, Hartman assumed that personnel on other shifts and management were aware of his concerns.

3. In addressing the three-prong Diablo Canyon standard for reopening (see p. 3, supra), licensee argues only that the Aamodts' motion is not timely.[11] Licensee states that Hartman's allegations are not new, having been broadcast on a New York television station in March 1980 and publicized in Harrisburg newspapers at about the same time. Licensee also notes that, in December 1981 at the reopened hearing on cheating, Mrs. Aamodt said that she had read the I&E interview with Hartman. See Tr. 26,346-47. Further, licensee argues that the staff's SER, Supplement No. 1 (November 1980), "certainly provided sufficient information to allow the Aamodts to pursue the matter at that time." Licensee's Reply to Aamodts' Motion (May 9, 1983) at 4. Consequently, in licensee's view, "[t]he Aamodts are inexcusably late in seeking to reopen the record on the basis of the Hartman allegations and have provided no new

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[11] Licensee did not respond to TMIA's motion to reopen insofar as it concerns the Hartman allegations. Licensee contends that TMIA's motion actually discusses only the BETA and RHR reports and, hence, licensee has limited its response accordingly. Licensee's Response to TMIA Motion to Reopen the Record (June 7, 1983) at 3.

information not available throughout the course of the restart proceeding." Id. at 6. Licensee is silent as to whether the Hartman allegations address a significant safety issue and whether the Licensing Board might have reached a different result had this matter been considered initially.

The staff's position is somewhat curious. First it argues, as does licensee, that the Hartman allegations are not new and thus the Aamodts' motion is not timely. NRC Staff's Answer to Aamodt's Motion (May 13, 1983) at 4, 7. The staff also contends that this is not a significant issue because changes in personnel at TMI-1 are such that the leak rate problems alleged to have occurred at TMI-2 are unlikely to occur at TMI-1. Id. at 7. See Inspection Report No. 50-289/83-10 at 10-6. Then the staff states that,

> although the Hartman allegations themselves provide no basis for changing any aspect of any previously-stated Staff position on management issues, further development of the open issues identified in the Revalidation Memorandum [(one of which is the veracity of the Hartman allegations)] is required before the Staff can conclude whether or not one or more of those matters will provide a basis for a change in the Staff's position on any of the management-related issues in this proceeding.

NRC Staff's Answer to TMIA Motion to Reopen (June 13, 1983) at 6. The staff continues: "[the Hartman allegations] could affect the resolution of the management issues involving the technical and character qualifications of Licensee's management, operations and technical staff." Id. at 7. But instead of reopening the record now to achieve

that resolution, the staff urges us to defer ruling on TMIA's motion "until further development of the open issues permits a sound determination of their significance." Id. at 11.

a. We reject licensee's and the staff's arguments that the motions to reopen on the Hartman allegations could have been filed earlier and thus are untimely. It is true that the allegations, first made in the May 1979 I&E Interview, are not "new." But even assuming that intervenors had knowledge of Hartman's claims then or at any time before the Licensing Board issued LBP-81-32,[12] the staff, in rather cryptic comments in its November 1980 and March 1981 supplements to the SER, clearly discouraged any other party from pursuing this at the hearing below. Supplement No. 1 stated that the NRC's initial inquiry into the matter of improper collection of leak rate data was "suspended" so as not to interfere with pending Justice Department and Grand

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[12] The basis for such an assumption is not evident. Licensee points to a March 1980 television broadcast in New York City and unspecified Harrisburg newspaper accounts of the Hartman allegations. We are unwilling to find on either basis that intervenors or any other member of the community surrounding TMI was put on notice of the allegations.

We also note that neither the I&E Interview nor any other pertinent document was provided to the Licensing Board and, in fact, did not come to our attention until licensee submitted the Faegre & Benson Report to us several months ago.

Jury proceedings. As a result, the staff could "draw no conclusions on this item" until the DOJ investigation was completed. SER, Supp. No. 1 (Staff Exhibit 4), at 37. Supplement No. 2 stated that the DOJ inquiry was still ongoing and that involved NRC personnel had "been requested by DOJ not to discuss the details of the matter." SER, Supp. No. 2 (Staff Exhibit 13), at 9. The staff also noted, however, that it would "resume its investigation" when the Justice Department concluded, and that in any event it believed, on the basis of a preliminary review of the allegations, that any management deficiencies have been corrected and that "the identified concerns appear to be only of historical significance." Id. at 9, 10.[13] The message was manifest: the Hartman allegations would not be investigated further because the Justice Department was conducting its own inquiry.[14] Furthermore, the clear implication was that the NRC's investigation would resume

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[13] The focus of both SER supplements was on alleged failures to adhere to procedures. There was no suggestion that would have alerted the parties -- save a reference to "management philosophy" in Supplement No. 1 -- to possible management involvement in the alleged wrongdoing.

[14] Although the SER suggests otherwise, there was no legal bar to the NRC's continued, parallel investigation of the Hartman allegations. See Securities and Exchange Commission v. Dresser Industries, Inc., 628 F.2d 1368 (D.C. Cir. 1980) (en banc), cert. denied, 449 U.S. 993 (1980); TMI-2, CLI-80-22, supra, 11 NRC at 729-30.

later and could be pursued then at hearing, if necessary. See also C.Tr. 16-17.

It is thus understandable that neither the other parties nor the Licensing Board pursued the matter at the hearing below. See LBP-81-32, supra, 14 NRC at 557-58.[15] The first time that it became apparent to intervenors that Hartman's allegations were not "off limits" and could be pursued at hearing was upon examination of the B&W trial record. That proceeding demonstrated that the pendency of the DOJ investigation does not necessarily preclude other types of inquiries into the same matter.[16] In these circumstances, it would be fundamentally unfair to find that intervenors could and should have raised the Hartman allegations earlier. Had they tried to do so, we have no doubt that the staff and licensee would have interposed

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[15] At the December 1981 reopened hearing on cheating, Mrs. Aamodt noted difficulty in reaching Hartman and his inability to "speak with anyone in this hearing because of his involvement in [the Grand Jury] investigation." Tr. 26,347.

Licensee, as well, did nothing to prompt the full airing of Hartman's charges. Although it had commissioned an outside study of the matter, it did not disclose the resulting 1980 Faegre & Benson Report to the staff, the other parties, or any adjudicatory board until the spring of 1983. See note 38, infra.

[16] In addition to the Hartman deposition read into the B&W trial record, the deposition of another former TMI-2 control room operator, Theodore F. Illjes, was taken, also addressing the leak rate data problem.

forceful objections on the basis of the Grand Jury proceeding.[17]

b. Whether the Hartman allegations raise significant safety issues need not detain us long. Alleged violation of technical specifications, noncompliance with proper operating procedures, and destruction and falsification of records at Unit 2 before the accident -- all assertedly under the auspices of at least first level management -- obviously have serious implications for the proposed restart of Unit 1. The facts that the NRC staff referred this matter to the Justice Department for criminal investigation and that the Department has presented it to two Grand Juries underscore its significance.

Moreover, among the matters the Commission directed the Licensing Board to examine in this phase of the proceeding was Issue 10 --

> whether the actions of Metropolitan Edison's corporate or plant management (or any part or individual member thereof) in connection with the accident at Unit 2 reveal deficiencies in the corporate or plant management that must be corrected before Unit 1 can be operated safely[.]

CLI-80-5, 11 NRC 408, 409 (1980). The staff early on viewed

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[17] In any event, we have long recognized that "a matter may be of such gravity that the motion to reopen should be granted notwithstanding that it might have been presented earlier." Vermont Yankee, supra, 6 AEC at 523. As demonstrated below, this is such a case.

the Hartman allegations as within the scope of this issue, and no one now claims otherwise.[18] In its first supplement to the SER, the staff stated: "The allegations raised concerns regarding the principles of compliance with operating procedures and management philosophy and actions." SER, Supp. No. 1 (Staff Exhibit 4), at 37. Nothing in the information that has been revealed so far -- though certainly not dispositive of any issue -- has alleviated those concerns.[19] In fact, the Faegre & Benson Report, Ornstein Interview, and Illjes deposition (see note 16, supra) are generally consistent with Hartman's I&E Interview. Plainly, they demonstrate the need for additional inquiry.

c. Determining if there might have been a different outcome below, had the newly proffered evidence been considered, is generally the most difficult of the three reopening criteria to decide. That task arises here in a

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[18] Issue 13 -- "such other specific issues as the Board deems relevant to the resolution of the issues set forth in this order" -- also provides a basis for including the Hartman allegations within the scope of the proceeding. CLI-80-5, supra, 11 NRC at 409.

[19] In SER Supplement No. 2, the staff described the Hartman allegations as having only "historical significance." SER, Supp. No. 2 (Staff Exhibit 13), at 10. The staff has recently recanted on this point and now says only that licensee's actions in response to the allegations were adequate. NRC Staff's Comments on the Analysis of the GPU v. B&W Transcript, supra, at 3 n.5.

somewhat different context than is ordinarily the case and is less troublesome.[20]

The Hartman allegations highlight a gap in the record that the Licensing Board explicitly acknowledged through its conditional finding of no unremedied deficiencies in licensee's management. The Board stated:

> In overall summary of CLI-80-5 issue (10), we have noted our lack of knowledge about the Department of Justice investigation. Subject to this matter, . . . we find no deficiencies in the corporate or plant management, arising from our inquiry into management's response to the accident, that have not been corrected and which must be corrected before there is reasonable assurance that Unit 1 can be operated safely.

LBP-81-32, supra, 14 NRC at 557 (emphasis added).[21] Thus, in effect, the record on this point has never closed. The Board's decision to qualify its finding of management competence and integrity, because of the ongoing investigation, is tantamount to a determination that consideration of the Hartman allegations might well have

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[20] Neither licensee nor the staff argues that intervenors have failed to meet their burden on this point.

[21] At the same time, the Board also stated that its limited information about the allegations provided "no basis to conclude that restart [(a decision entrusted to the Commission itself)] should not be permitted until the DOJ investigation is complete." LBP-81-32, supra, 14 NRC at 557 (emphasis added).

made a difference in the outcome.[22] We would agree.

Moreover, we cannot make any final judgment on appeal as to licensee's management competence and integrity without an adequate record. The Hartman allegations fall within the scope of the issues the Commission has directed be resolved through the hearing process. See pp. 19-20, supra. The absence of a materially complete record precludes us from reaching any conclusion on those issues, one way or the other.[23] "The Commission's primary commitment . . . to a fair and thorough hearing and decision" in this case requires no less than an exploration of Hartman's charges at hearing. CLI-79-8, 10 NRC 141, 147 (1979).[24]

4. The staff's request that we defer ruling, pending the outcome of its overall management revalidation review and a separate inquiry by the Office of Investigations (OI) specifically into the Hartman allegations, does not present a satisfactory alternative. By the staff's own admission, completion of the revalidation review is "'many months

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[22] For example, additional license conditions might have been imposed.

[23] Similarly, in another part of this same proceeding, we reopened the record for supplementation on the issue of decay heat removal. See ALAB-708, 16 NRC 1770 (1982).

[24] We note that the Commission directed the Licensing Board to "exercise its authority to seek to ensure that it receives all information necessary to a thorough investigation and resolution of the questions before it." CLI-79-8, supra, 10 NRC at 147.

away.'" NRC Staff's Memorandum on the Status of Its TMI-1 Restart Review (July 21, 1983) at 2. The OI investigation of the Hartman allegations is estimated to be complete by December 1983 but, in the staff's view, it may nevertheless be constrained by the pending Grand Jury proceeding. Id. at 2-3. It is already more than four years since Hartman first made his allegations of falsification of leak rate data to NRC inspectors, and three years since this agency halted its investigation and referred the matter to DOJ. One Grand Jury has expired without action, and another is still sitting, with no prospect of imminent decision.[25] In short, by next year we may be exactly where we are today -- "square one." Further deferral of inquiry into a matter clearly within the scope of this adjudicatory proceeding -- to await the outcome of an investigation that should have been undertaken and completed at least three years ago -- would be unconscionable, as well as contrary to the Commission's expressed desire that this proceeding be conducted expeditiously. See CLI-79-8, supra, 10 NRC at 147.

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[25] Apparently the Grand Jury has until spring 1984, when the statute of limitations on the possible crimes involved expires, to hand down an indictment. See letter from J. Scinto (Deputy Director, Hearing Division, NRC Office of Executive Legal Director) to Appeal Board (August 4, 1983) at 1.

Moreover, recent staff action pursuant to its revalidation effort provides no meaningful substantive basis for abiding the outcome of the various ongoing investigations. In Inspection Report No. 50-289/83-10, the staff discusses the alleged falsification of leak rate data, but notes that it restricted its inquiry into the matter to a review of present and former job titles. No individuals in the TMI-1 organization were interviewed and no job descriptions or other company records were examined. Consequently, the report includes "findings" based wholly on the staff's speculation and are thus highly suspect.[26]

In other circumstances, we are reluctant to interfere with staff reviews and investigations. But here, too much valuable time has been wasted. Evidence and witnesses' memories are getting stale. See Dresser, note 14, supra, 628 F.2d at 1377. It simply is time to move forward on the

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[26] As only one example, the report notes that the present Manager of Plant Operations at TMI-1 may have been aware of TMI-2 leak rate testing difficulties because he held a dual license to operate both units. It also notes that he could have been involved in such testing if he had ever filled in at TMI-2 as a shift supervisor. Without ever interviewing that individual (or others in a position to know) or examining personnel records, the inspectors simply concluded that it was "unlikely" that he had any "direct" connection with TMI-2 leak rate testing irregularities. Inspection Report No. 50-289/83-10, supra, at 10-5, 10-6. Such conclusory statements create a lack of confidence in the staff review and certainly provide no reliable basis on which a decision of any nature can be based.

Hartman allegations, as our independent responsibility to protect the public health and safety under the Atomic Energy Act requires. See id. at 1375, 1377, 1380; TMI-2, CLI-80-22, supra, 11 NRC at 730.

We believe the most fruitful way to achieve this is within the adjudicatory setting and with the active participation of all parties.[27] We also believe that the Licensing Board in this case is better equipped than we to preside over a reopened hearing on the Hartman allegations. We therefore remand the case to that Board for further hearing on a schedule that permits this matter to be explored and resolved fully and as expeditiously as possible. (In the meantime, we will continue our consideration of the appeals of other aspects of the management phase of the proceeding. An order scheduling oral argument will be issued soon.)

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[27] As we have pointed out at note 14, supra, the pendency of the Grand Jury proceeding does not legally bar parallel administrative action. There is also apparently no reason to continue deferring to the Justice Department on the basis of comity. See C.Tr. 26. Moreover, the Commission has recently adopted a policy statement addressing the relationship of ongoing NRC investigations and adjudicatory proceedings that involve the same subject matter. The policy recognizes that both can proceed simultaneously and establishes procedures to deal with conflicts that may arise concerning the public disclosure of investigatory information. 48 Fed. Reg. 36,358 (1983).

We entrust the mechanics of the reopened hearing to the Licensing Board's expertise. However, our review of the material recently submitted to us in connection with the Hartman allegations -- which the Licensing Board has not yet had an opportunity to scrutinize -- prompts us to note several areas that should be pursued at the hearing.

a. The focus on the Hartman allegations thus far has been on whether new operating procedures are adequate to prevent a recurrence of the problems described by Hartman. See, e.g., SER, Supp. No. 2 (Staff Exhibit 13), at 10; C.Tr. 52. The individuals implicated by Hartman's charges, however, should not be overlooked, particularly if they are now employed in connection with TMI-1. Even if they no longer work for licensee or have no duties at TMI-1, these persons are still in a position to shed light on the matter.[28]

b. The Faegre & Benson Report includes a fairly comprehensive technical analysis of the leak rate problem,

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[28] Among the specific questions to ask are: Did the incidents described by Hartman in fact occur? If so, who knew about them? Who authorized them? Who looked the other way? Did the operators and any other individuals involved assume their actions were acceptable operating procedures? On the other hand, did they assume otherwise and hope they would not get caught or be reprimanded?

and we assume it will be offered into evidence.[29] The report seems to show that oscillations and lack of control of plant parameters existed for approximately a year and may have been a significant cause of the operators' alleged inability to obtain consistent leak rate data. See generally Faegre & Benson Report, Vol. Two, at 93-107.[30] Because of its limited scope, however, the report does not contain any meaningful information about management efforts to identify and correct the oscillation problem.[31] We believe it would be useful to obtain such information, because the ability to operate a plant without substantial oscillations in vital plant parameters bears on management competence.[32] Thus, Hartman's allegations raise questions

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[29] Because a number of key plant personnel declined requests for interviews, the report does not include an analysis of possible management involvement in the falsification of leak rate data. Faegre & Benson Report, Vol. One, at 13.

[30] Another factor that seems to account for the asserted difficulty in getting a "good" leak rate at TMI-2 is the one gpm unidentified leakage technical specification limit itself. Because the leakage pathways at the two units are classified differently, the TMI-2 limit is more stringent than that for TMI-1 and curiously does not allow for evaporative losses. See id., Vol. Two, at 14-16.

[31] Several of Hartman's statements include references to a supervisor's general comment that people were "working on" the leak rate data problems of concern to Hartman. See, e.g., B&W trial Tr. 7055, 7058.

[32] The Faegre & Benson Report, Vol. One, at 57 reaches the same conclusion.

(Footnote Continued)

about not only management integrity, but also management willingness and ability to resolve important operational deficiencies.

B.

The Aamodts' earlier motion to reopen concerns the May 1982 discovery of unattended radiation worker examinations and answer keys, revealed in Board Notification BN-82-84 and Inspection Report No. 50-289/82-07. See pp. 3-4, supra. The motion itself is timely, as both the staff and licensee concede. We agree with them, however, that this new information is neither significant nor likely to have affected the Licensing Board's decision. We therefore deny the motion.

The motion contains rather generalized complaints about management integrity. It refers to portions of the Special Master's report and the Licensing Board's subsequent partial

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(Footnote Continued)
We recognize that licensee "has instituted major organizational and staffing changes in order to provide additional safety review and operational advice regarding TMI-1." LBP-81-32, supra, 14 NRC at 519. See generally id. at 519-28, 558-63. Presumably, the new procedures are designed to detect and remedy problems such as substantial oscillations in plant parameters. Our review of the pending appeals will consider the adequacy of these changes. But in order to achieve a complete hearing on the Hartman allegations, we believe it is also necessary to reopen to examine management's specific response to all aspects of the leak rate data problem raised by Hartman.

initial decision in the reopened hearing on cheating. The referenced material concerns the Aamodts' earlier allegations of cheating on radiation worker permit tests. The Aamodts' only witness in support of these allegations was found by both the Special Master and the Licensing Board to be not credible, and thus the allegations, not proven. LBP-82-34B, 15 NRC 918, 988-89 (1982); LBP-82-56, supra, 16 NRC at 333. Our attention has been directed to nothing that casts doubt on these judgments.

In supplemental comments submitted after oral argument on the motion, the Aamodts refer to a March 17, 1982, Notice of Violation concerning unauthorized entry to a high radiation area at TMI-1. Even if this information had been provided in a timely manner, the Aamodts have failed to establish a specific nexus between the subject of that notice and the unattended examinations and answer keys discussed in BN-82-84.[33]

The inspection report itself also provides no basis for granting the motion. Although there were two instances in

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[33] Although the notice was made public in April 1982, before the incidents on which the Aamodts base their request to reopen, the information was thus also available well before the Aamodts filed this motion to reopen.

We also note that a May 4, 1982, letter from H. Hukill (Director, TMI-1) to R. Haynes (NRC Region I Administrator) described the various corrective actions taken by licensee in response to the notice.

three days of examinations being left unattended, the report concludes that this was apparently "an isolated incident attributable to a single individual's practices." Several corrective measures were undertaken, including use of new examinations, storage of copies in locked containers when not in use, and reprimand of the involved supervisor.[34] These actions were described in an internal TMI memorandum within about two weeks of the initial incident. Based on a review of all these measures, the NRC inspector determined that no further action (including a formal Notice of Violation) was necessary. Inspection Report No. 50-289/82-07, supra, at 17. We have no reason to conclude otherwise.

We reject the Aamodts' claim that these incidents show licensee's inability to prevent a compromise of its training and testing program. On the contrary, we believe that the series of events described in Inspection Report No. 50-289/82-07 is evidence that the system is working. Irregularities were discovered by licensee itself and promptly corrected. This is fully consistent with the evidence presented to the Special Master by Dr. Robert L.

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[34] Licensee elaborates on the corrective action and informs us that this individual later resigned. Licensee Answer to Aamodt Motion (September 20, 1982) at 3-4, 8-9. We remind licensee that information of this nature is more properly provided in affidavit form.

Long, now Vice President of Nuclear Assurance for licensee. His testimony was that "specific methods . . . for ensuring that exams are secured" would be provided; his staff would "take measures to protect the efficacy of the exams [they] administer"; cheating and similar misconduct is to be reported promptly and will result in appropriate disciplinary action by responsible management; and GPU Nuclear requires "strict compliance" with these policies. Long, fol. Tr. 24,925, at 25-28. Licensee did not promise that problems of this nature would never occur, nor could it. Where there is human involvement, it is not possible to speak in absolutes.

As for the Aamodts' charge that both the staff and licensee unduly withheld information concerning this matter, we disagree. The incidents themselves and licensee's corrective action were disclosed within days by licensee to the staff during a routine inspection conducted May 11 - June 8, 1982. The inspection report is dated July 1 and was placed in the public docket rooms (including Harrisburg) on July 22. The Board Notification was issued to us and the parties on August 17. Although we frequently remind the staff of its obligation to issue board notifications as promptly as possible, we do not regard the time lapses set

out above as unreasonable, given inherent bureaucratic delays and the nature of the matter involved.[35]

C.

The Aamodts' second motion seeks reopening for hearing on four matters in addition to the Hartman allegations already discussed above. We deny the motion on all four counts.

1. The Aamodts contend that a 1978 in-house management audit at TMI, an exhibit at the B&W trial, constitutes "new and exceedingly germane" evidence. Aamodt . . . Motions to Reopen, supra, at 8. Of particular relevance, in intervenors' view, is the audit's discussion of training deficiencies. Both the staff and licensee point out that this audit was made available to all parties during prehearing discovery in March 1980. NRC Staff's Answer to Aamodt's Motion, supra, at 8; Licensee's Reply to Aamodts' Motion, supra, at 7. It therefore does not constitute new evidence and the Aamodts are unjustifiably late in seeking reopening on this basis. Moreover, the significance of the audit to this proceeding is not apparent. Its findings do suggest much room for improvement in TMI management in 1978.

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[35] Our judgment on this motion should not be perceived as reflecting our views on licensee's overall training program or on the cheating inquiry. Those matters will be taken up in our consideration of the merits of the pending appeals.

But as a result of the accident at Unit 2 and the extensive hearings below, licensee's present management and training program are substantially different from that in 1978. See LBP-81-32, supra, 14 NRC at 403-79.[36] The Aamodts fail to explain how consideration now of this report -- critical of a management organization that no longer exists -- might affect the outcome of this proceeding.

2. The Aamodts suggest that certain comments made by the judge presiding at the B&W trial are new evidence, casting what they consider to be further doubt on the credibility of Robert Arnold, president of GPU Nuclear. Aamodt . . . Motions to Reopen, supra, at 9, 10. We reject the notion, however, that these comments -- even if accurately stated by the Aamodts -- might have some bearing on the resolution of this case.[37] Arnold testified extensively before the Special Master and Licensing Board,

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[36] In affidavits attached to the staff's reply to the motion, three staff witnesses aver that they have reviewed the 1978 audit and that it would not alter their previous testimony on present TMI management. Affidavits of Lawrence P. Crocker (May 5, 1983), Frederick R. Allenspach (May 4, 1983), and Richard R. Keimig (May 5, 1983), attached to NRC Staff's Answer to Aamodt's Motion, supra.

[37] We have reviewed the B&W trial transcript pages cited by the Aamodts (Tr. 1555, 1690-99, 1741) and do not fully agree with their characterization of the judge's remarks.

and thus both had the op rtunity to observe his demeanor and weigh the credibilit of his testimony given in this very proceeding. The Li nsing Board's ultimate judgment on this score is a matter t be taken up when we consider the intervenors' pending app ls. In this circumstance, we believe that it would be nappropriate to give weight to the comments of a judge duri trial in a different proceeding, involving different part s and issues, particularly when that litigation ended in stipulated settlement before the judge heard all the evide ce and issued a formal opinion.

3. The B&W trial re ord, in the Aamodts' view, establishes the superior echnical resources of B&W. Although it is unclear ex ctly what the new and significant evidence undergirding the motion is, the Aamodts assert that it could lead to a re adequate resolution of the deficiencies in training xplored at the hearing below. Their apparent view is th B&W, rather than licensee and the NRC, should bear prin pal responsibility for training and testing at TMI.

We agree with licens and the staff that the Aamodts have provided no basis fo reopening the record on this point. In the first plac licensee concedes that B&W's expertise in certain area is superior to its own and notes that extensive testimony s adduced below concerning B&W's participation in various pects of licensee's training program. Licensee's Repl to Aamodts' Motion, supra, at 10.

The staff emphasizes that, while the NRC encourages the use of vendor personnel in training, it is not required, inasmuch as the nuclear steam supply system vendor typically cannot provide all necessary information on plant components supplied by other manufacturers. Ultimately, the utility, as the holder of an NRC license, must bear principal responsibility for operation and thus training. Further, the NRC cannot legally delegate its operator licensing authority to a private company like B&W. See Affidavit of Bruce A. Boger (May 12, 1983), attached to NRC Staff's Answer to Aamodt's Motion, supra. The information on B&W's superior resources that the Aamodts seek to admit into the record would not alter any of these factors.

4. According to the Aamodts, the B&W trial record "calls into question the Board's decision that the operators were able to handle emergencies with no undue risk to the public." Aamodt . . . Motion to Reopen Record, supra, at 13. They claim that comments by GPU counsel at the B&W trial show that various stresses in the control room will reduce the operators' ability to cope during an emergency, contrary to the Licensing Board's findings. See LBP-81-32, supra, 14 NRC at 474-75. The Aamodts urge the establishment of an offsite decision center with remote readout capability from the control room as a means of ameliorating this situation.

The comments of counsel upon which the Aamodts rely constitute no new or significant information concerning operator ability to act in an emergency. That an emergency will create a certain amount of stress in the control room is neither a revelation nor a matter that can be eliminated entirely. The Licensing Board fully considered it and concluded that licensee has "consciously factored [this] into its program for preparation of operators" and has undertaken sufficient measures "to alleviate or minimize the potential for stress in operators under critical situations." Id. at 475. The cited portions of the B&W trial transcript (Tr. 33, 65, 79, 80) do not undermine this finding. As for the Aamodts' suggestion of a fully equipped offsite decision center, the staff expects licensee's onsite Technical Support Center and offsite Emergency Operations Facility to have computer terminals displaying all critical plant parameters following the first refueling outage after restart (if authorized). Affidavit of Falk Kantor (May 12, 1983) at 3, attached to NRC Staff's Answer to Aamodt's Motion, supra. Whether this should be a prerequisite to restart is a matter for the Commission to decide in the course of its "immediate effectiveness" review.

D.

As discussed earlier (see pp. 6-8, supra), TMIA's motion seeks reopening on, in addition to the Hartman allegations, the following four "open" items in the staff's

revalidation effort: statements in the B&W trial record; the Parks and King allegations of retaliation against whistleblowers at the TMI-2 cleanup operation; concerns raised by the recent BETA and RHR management audits; and the timeliness of licensee's submission of the BETA and RHR Reports and other documents.[38] We agree with the staff that it is premature to reopen the record at this point for further hearing on any of these four items. As explained in greater detail below, TMIA has failed to call to our attention anything so far that might have made a difference in the Licensing Board's decision. Moreover, the staff review in each instance (including that of OI) is still under way and may yet disclose other related information that does warrant further hearing.[39] If that proves to be

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[38] We assume that among the "other documents" that the staff is considering in this regard is the Faegre & Benson Report, dated September 1980 but not submitted to the staff, parties, or any adjudicatory board until spring 1983.

[39] See, e.g., Board Notification BN-83-117 (August 4, 1983), where the staff advises us that certain documents uncovered during its review of the B&W record relate to present management's role in responding to the TMI-2 accident and thus may be relevant to the resolution of Issue (10). The matter is being referred to OI for investigation.

In this connection, we distinguish the staff's still ongoing review of the Hartman allegations. As explained above, deferral of our ruling on the motion and of further hearing is not satisfactory, given the already protracted delays in that investigation. The four items discussed here are of considerably more recent vintage and we are thus more

(Footnote Continued)

the case, intervenors may then seek again to satisfy the Diablo Canyon criteria for reopening.

This is not to say that the four matters on which TMIA bases its motion to reopen are unimportant. For example, reprisals against whistleblower-employees -- if they are proven and if a nexus to TMI-1 management is suggested -- certainly reflect negatively on management integrity and would provide a basis for further exploration. See Board Notification BN-83-46 (April 11, 1983).[40] The untimely

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(Footnote Continued)
amenable to letting the staff complete its review.

TMIA mistakenly believes that permitting the staff to advise us of its evaluation of these open issues constitutes an improper ex parte communication. TMIA Motion to Reopen the Record (May 23, 1983) at 6. In the first place, the results of such staff reviews are communicated to the adjudicatory boards through public filings, served on all parties. Any party is free to seek reopening (or other appropriate relief) on the basis of the newly disclosed information. There is nothing ex parte or otherwise violative of a party's hearing rights about that. Moreover, all parties, including the staff, are obliged to bring any significant new information to the boards' attention. Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1, 2 and 3), ALAB-677, 15 NRC 1387, 1394 (1982).

40 We note that one of the alleged whistleblowers, Parks, is actually an employee of Bechtel, the principal contractor for the TMI-2 cleanup operation, and recently reached a settlement of his complaint. See Preliminary Notification of Event PNO-TMI-83-06 (July 27, 1983). One of TMIA's other bases for reopening is an earlier Department of Labor finding in favor of Parks. Presumably this is a matter that the pending OI investigation will take into account, along with Labor's disposition of the Kerr complaint. We understand that the latter was initially denied and is now on appeal within that agency.

provision of significant information is also an important measure of a licensee's character, particularly if it is found to constitute a "material false statement." See Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), CLI-76-22, 4 NRC 480, 488-93 (1976).

As for the BETA and RHR Reports, we agree with TMIA that some portions of each are critical of TMI management. But other selective excerpts reflect favorably upon licensee. Significantly, the specific focus of the BETA Report is on ways to cut costs and improve the efficiency of operations, not on safety matters. BETA Report at 1. A follow-up letter from the principal author of the BETA Report, William Wegner (provided to the parties and us at the same time as the report), stresses this fact and explains the relationship of the report to testimony he gave before the Licensing Board in 1981.

> [T]he latest BETA review did not address the same issues [as the 1980 review] even though many of the same functional areas were reviewed. The predictive nature of my 1981 testimony was in almost all cases fully substantiated by the 1982 review. Where expectations fell short it was in the area of efficiency rather than matters relating to safety or competence.

Letter from W. Wegner to R. Arnold (May 13, 1983) at 4. See generally Wegner, fol. Tr. 13,284. A co-author of the RHR Report on operator attitudes states that his work represents only the initial stage of a much larger consulting activity and is "one-sided." The survey and resulting data, which

combined TMI and another licensee facility (Oyster Creek), were not designed to address management integrity directly, and he acknowledges that some questions and their responses may have been confusing. Letter from P. D'Arcy to R. Arnold (May 13, 1983). Given the limitations in both reports and -- more important -- the fact that the ground covered therein (including the criticisms) was well traversed at the hearing below, we are unable to conclude that any of the matter called to our attention might have made a difference in the Licensing Board's decision. Further, we would not want to discourage any licensee from undertaking such reviews of its management and operations (and disclosing their results) for fear of reopening a closed record. Our perusal of the BETA Report, in particular, shows it to be an extremely useful document, upon which licensee can rely to improve its operation overall.

The other three bases on which TMIA's motion rests also fail to support reopening of the record. First, we are inclined to agree with TMIA that Inspection Report No. 50-289/83-10 is not a very credible document. See p. 24, supra. But so far that document is not in evidence and thus its credibility is not in issue. If the document is introduced into evidence at the reopened hearing, TMIA is, of course, free to challenge and discredit it at that time. Similarly, the credibility of the Stello Report on the B&W trial (see pp. 10-11, supra) is also not at issue here.

Moreover, the Commission itself has requested the more thorough review of the B&W record now under way, essentially mooting the adequacy of the Stello Report as an issue. Finally, TMIA's reference to allegations by whistleblowers other than Parks and King are completely undocumented.

In conclusion, the motions of the Aamodts and TMIA are granted insofar as they seek reopening of the record for further hearing on the Hartman allegations. We remand this matter to the Licensing Board for hearing consistent with the views expressed in this opinion. Otherwise, the motions to reopen are denied.

It is so ORDERED.

FOR THE APPEAL BOARD

C. Jean Shoemaker
Secretary to the
Appeal Board