

June 21, 1983

Note to: Harold Denton, Director
Office of Nuclear Reactor Regulation

From: Guy H. Cunningham, III
Executive Legal Director

SUBJECT: TMI-1 RESTART: APPEAL BOARD'S JUNE 16, 1983 ORDER
ON REOPENING THE RECORD

By Order dated June 16, 1983 (attached), the Appeal Board scheduled oral argument for July 20, 1983, on three pending motions to reopen the record:

- (1) Aamodts' September 3, 1982 motion to reopen on RWP exams;
- (2) Aamodts' April 16, 1983 motion to reopen on information in the GPU v. B&W record; and
- (3) TMIA's May 23, 1983 motion to reopen on the five "open issues" cited in Staff's May 19, 1983 revalidation memo.

The Appeal Board also requested written comments by July 1, 1983 on three matters which may have a bearing on reopening:

- (1) Tim Martin's comments at the Commission briefing that the Staff had been aware of leak rate falsification since 1980;
- (2) the EDO's June 7th memo separating individual integrity from the corporate institution; and
- (3) Licensee's June 10, 1983 letter concerning personnel changes to be made prior to restart.

Finally, the Appeal Board directed the Staff to file with it and the parties on or before July 13, 1983 "a memorandum outlining the progress of its revalidation."

With respect to the two Aamodt motions to reopen, it does not appear at this point that we will need additional Staff input.

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As for TMIA's motion to reopen, it is necessary for the Staff to include in its review of the open issues all the matters cited in Staff's response to TMIA's motion.^{1/} In that response, the Staff moved to defer a decision on reopening until the Staff can determine the significance of the open issues and their effect, if any, on the restart record.

In order to file comments by July 1 on the three subjects identified by the Appeal Board, we will need to work with your staff to provide the following:

- ° a clear explanation of the meaning of the June 7 Dircks memorandum, and what it encompasses
- ° a statement of the progress (or conclusions) of our evaluation of the proposed personnel changes in the June 10 Dieckamp letter to Chairman Palladino.

Regarding Tim Martin's statements, it appears that enough information has already been generated (in response to Commissioner Gilinsky's May 31 inquiry) so that we can prepare appropriate comments for submission by July 1.

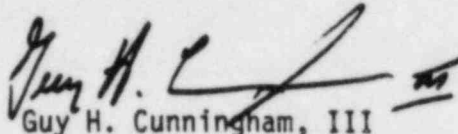
Furthermore, we will need from the Staff, for submission by July 13, a memorandum fully explaining its progress in evaluating the five open issues.

Two other matters also deserve prompt attention and resolution.^{2/} First, I&E Report No. 50-320/79-10, dated October 1979, found that failure to follow procedural requirements for operation of the electromatic relief valve and safety valve discharge line temperature within Met Ed's procedural requirements "had a significant impact on the course of the accident on March 28, 1979." Letter V. Stello, Jr. to Met Ed dated October __, 1979, at 2. In NUREG-0680 Supplement 2, introduced in evidence at the hearing on management issues, the Staff took the position that the Hartman allegation concerning the falsification of leak rate test data appears to have "no direct connection with the Unit 2 accident." Staff Ex. 13, at 10. The Staff must focus on the statement made in NUREG-0680, which represents the current Staff position before the Appeal Board, to determine whether it is still sound in view of the conclusions of the I&E report.

1/ Attached is a copy of the Staff's Answer to TMIA's Motion to Reopen the Record and Staff Motion to Defer Ruling on TMIA's Motion to Reopen, dated June 13, 1983. The brief highlights the matters on which the Staff will have to inform the Appeal Board, after it completes its review.

2/ The Appeal Board reminded us in its June 16th Order that the "staff and the licensee are obliged, of course, to keep us fully and promptly apprised of new developments that may affect the issues before us."

Second, there must be a prompt decision as to whether there is any valid reason for not promptly forwarding to the Appeal Board the Staff's legal opinions on reportability of the RHR/BETA Reports and the Rockwell Report.


Guy H. Cunningham, III
Executive Legal Director

cc w/enclosures:

- E. Case
- E. Christenbury
- J. Gray
- J. Goldberg
- M. Wagner
- H. Thompson
- D. Eisenhut
- T. Murley, RI
- R. Starostecki, RI
- R. Keimig, RI
- D. Caphton, RI
- G. Lainas
- J. Stolz
- J. Van Vliet

information revealed in the trial transcript of the GPU v. B&W lawsuit in federal district court in New York casts doubt on the Licensing Board's conclusion in LBP-81-32, 14 NRC 381 (1981), that GPU Nuclear management integrity is sufficient to permit the safe operation of TMI-1. Specifically, the Aamodts claim that the GPU v. B&W record reveals new information on the following matters: (1) the Hartman allegations concerning falsification of leak rate data at TMI-2;¹ (2) a 1978 TMI in-house management audit;² (3) the credibility of GPU Nuclear Corp. President Robert

¹ According to the Aamodts, Mr. Hartman testified that certain reports to the NRC concerning leak rates at TMI-2 were falsified for a period of three months prior to the TMI-2 accident, and that the falsification was widely known within the company. The Aamodts contend that the decision to falsify the leak rates must have been made by management in order to keep the plant in operation, and that this represents new evidence of a lack of management integrity. See Aamodt Comments Concerning NRC Staff Review of GPU v. B&W Court Trial Transcript and Motions to Reopen Record of Restart Proceeding (April 16, 1983) at 5-7 (hereinafter called "Aamodts' Motion").

² The audit was conducted by a team of four Metropolitan Edison employees to ascertain the need for improvement in the areas of management effectiveness and efficiency, productivity, and employee moral, among others. The audit team identified problem areas and made recommendations for corrective action. See Licensee's Reply to Aamodts' Motion to Reopen Record of Restart Proceeding (May 9, 1983) at 6-7. The NRC staff and licensee point out that the audit report has been publicly available since March 1980, when it was placed in the licensee's Discovery Reading Room. See *id.* at 7; NRC Staff's Answer to Aamodts' Motion to Reopen the Record (May 13, 1983) at 8.

Arnold;³ (4) operator capability to handle emergencies;⁴ and (5) the need for B&W to participate in the training of GPU employees because it is the best source of pertinent plant-specific operating information.⁵

Third, intervenor Three Mile Island Alert (TMIA) filed a request on May 23, 1983, to reopen the record to review the issue of management competence and integrity. TMIA asserts that the staff has consistently maintained that management integrity and competence issues were correctly resolved by the Licensing Board in favor of restart but that, in comments submitted to the Commission on April 18, 1983, addressing the GPU v. B&W trial record, the staff indicated for the first time that its previously held position was in need of revalidation. Specifically, TMIA points to five items that the staff considers "open" (i.e., unresolved) and that must be resolved before the staff would

³ The Aamodts claim that the federal district judge found Mr. Arnold's testimony less than forthright. They argue further that this information bears on the Licensing Board's decision to reject Administrative Judge Milhollin's conclusion that Mr. Arnold did not inquire about cheating incidents because he knew why the operators had cheated. Aamodts' Motion at 9-10.

⁴ The Aamodts contend that the trial transcript calls into question the Licensing Board's conclusion that the operators are able to respond to emergencies without undue risk to the public. Id. at 13-14.

⁵ Id. at 10-13.

be prepared to conclude that restart should be authorized.⁶ TMIA argues that the staff's recent change of position is particularly significant because of the reliance placed by the Licensing Board on the staff's earlier support for restart. TMIA asserts that each of these matters is highly relevant and material to a full and complete resolution of management and integrity issues.⁷

The licensee and the staff have responded to all three motions.⁸ In particular, the staff's answer to the TMIA motion expressly recognizes that certain information that has recently come to light may warrant further examination of the management-related issues in this proceeding. It states that

[t]he five open issues raise questions regarding the soundness of the restart record on management issues [footnote omitted]

⁶ These are: (1) the veracity of the Hartman allegations still under examination by the Department of Justice; (2) statements made during the GPU v. B&W trial; (3) allegations by two persons employed in the TMI-2 cleanup operation (King and Parks) about retaliation against whistleblowers, now under investigation by the NRC Office of Investigations; (4) concerns raised by the contents of two recent management audits by outside consultants; and (5) implications about management integrity stemming from the alleged failure of the licensee to notify the Commission and the adjudicatory boards promptly about the information contained in the consultants' reports.

⁷ Three Mile Island Alert Motion to Reopen the Record (May 23, 1983) at 4-6.

⁸ TMIA has also indicated that it supports the Aamodts' April 16, 1983, motion.

and acknowledges that it

presently does have sufficient doubt about the soundness of the restart record to recommend deferring a ruling on TMIA's motion to reopen the record.⁹

The staff believes that it must review the "open" issues further before it can form a conclusion as to whether it must change its position on any of the management issues. Consequently, it asks us to defer ruling on the motion to reopen until it has completed its own evaluation, but is unable to indicate when that might be.

We have decided to hold oral argument with respect to the three motions to reopen. Oral argument will be held at 9:30 a.m. on Wednesday, July 20, 1983, in the NRC public hearing room, fifth floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland. Parties to this case wishing to participate in the oral argument in support of their written submissions shall inform the Secretary to this Board, by letter mailed no later than June 30, 1983, of their interest in participation, and the name of the person who will argue on its behalf. We will allot argument time in a subsequent order.

Three matters not expressly raised in the motions may have a bearing on their disposition. First, Tim Martin of

⁹ NRC Staff's Answer to Three Mile Island Alert Motion to Reopen the Record and Staff Motion to Defer Ruling on TMIA's Motion to Reopen (June 13, 1983) at 7, 10.

the NRC staff commented at a recent Commission briefing on the staff revalidation of TMI-1 management competence that the staff has been aware since 1980 that the leak rates had been falsified.¹⁰ Second, the NRC's Executive Director for Operations has requested Commission approval for a series of proposed actions that are designed to facilitate the staff's review in connection with the pending Commission "immediate effectiveness" determination on restart. Among other things, the staff intends to "separate the issue of the past performance of individuals from the issue of the corporate institution, at least initially, and focus attention on individuals as an enforcement matter on a schedule separate from restart."¹¹ Third, in a letter dated June 10, 1983, the President of GPU Corporation advised NRC Chairman Palladino that numerous personnel changes will be made prior to restart. Among other things, employees will be reassigned so that "no TMI-2 licensed operator will operate TMI-1 (except for the manager of operations. . .);" personnel in certain key functions will be only those with no pre-accident involvement as exempt employees at TMI-1 or

¹⁰ Transcript of Commission Meeting (May 24, 1983) at 14-20.

¹¹ See Memorandum from William J. Dircks to the Commission (June 7, 1983) at 5, attached to the letter from Jack R. Goldberg, Counsel for NRC Staff, to the Appeal Board (June 8, 1983).

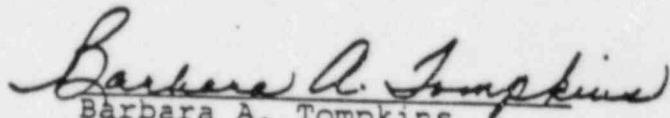
TMI-2; and responsibility for the operation of TMI-1 will be in the hands of the GPU Nuclear executive vice-president, instead of the president.¹²

It is not clear at present what bearing these three matters might have on our consideration or disposition of the motions to reopen. In the interest in obtaining a complete picture of recent changes and developments, however, these matters should be addressed in connection with the motions to reopen. Accordingly, appropriate comments may be filed by July 1, 1983.

The staff and the licensee are obliged, of course, to keep us fully and promptly apprised of new developments that may affect the issues before us. In any event, we direct the staff to file with us (and serve on all parties) on or before July 13, 1983, a memorandum outlining the progress of its revalidation.

It is so ORDERED.

FOR THE APPEAL BOARD



Barbara A. Tompkins
Secretary to the
Appeal Board

¹² See letter from H. Dieckamp to Chairman Nunzio J. Palladino (June 10, 1983), attached to the letter from Ernest L. Blake, Jr., counsel to licensee, to Samuel J. Chilk (June 10, 1983).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

Docket No. 50-289
(Restart)

NRC STAFF'S ANSWER TO THREE MILE ISLAND
ALERT MOTION TO REOPEN THE RECORD
AND STAFF MOTION TO DEFER RULING
ON TMIA'S MOTION TO REOPEN

Jack R. Goldberg
Counsel for NRC Staff

June 13, 1983

Mary E. Wagner
Counsel for NRC Staff

83-615-245

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I. INTRODUCTION

On May 23, 1983, Three Mile Island Alert ("TMIA") moved the Atomic Safety and Licensing Appeal Board ("Appeal Board") to reopen the record on the issue of Licensee management's competence and integrity. Three Mile Island Alert Motion to Reopen the Record, May 23, 1983 ("TMIA Motion"). The basis for the TMIA Motion is stated to be "the voluminous amount of new information which recently materialized regarding management competence and integrity issues, which raises so many significant questions that the NRC staff has chosen to withdraw its prior long-standing endorsement of Licensee management's competence and integrity." TMIA Motion at 1, citing the Memorandum from William J. Dircks to the Commissioners dated May 19, 1983 ("Revalidation Memorandum").

More specifically, TMIA's motion to reopen the restart record is based on the following grounds:

(1) The five open issues identified by the Staff in its Revalidation Memorandum. TMIA Motion at 5.

(2) "The credibility of Region I's Inspection Report No. 50-289/83-10, particularly with regard to the Hartman allegations and the BETA and RHR management audits." Id.

(3) "The credibility of Victor Stello's report(s) on the impact of the GPU v. B&W trial record on restart issues." Id.

(4) "The management implications regarding allegations made by other 'whistleblowers' besides Parks and King, and the significance of the Department of Labor finding that Parks was retaliated against by management for reporting safety violations." Id.

(5) "[E]vidence of falsification of operator test records." Id. at 8, citing Board Notification 83-71, May 18, 1983. (See Revalidation Memorandum at 2, n.1.)

(6) "Licensee's 1978 management audit." Id. at 9.

(7) Conflicts between the BETA report and BETA's (Mr. William Wegner's) testimony in the restart proceeding. Id. at 10-13.

(8) Conflicts between the contents of the BETA and RHR reports and the conclusion of the Licensing Board in the management PIDs. Id. at 13-18.

The Staff believes these asserted grounds for reopening the record fall into two categories: (a) those which do not provide a basis for reopening the restart record; and (b) those which may provide a basis for reopening but on which deferral of a ruling by the Appeal Board is

appropriate because of the absence at this time of sufficient facts to soundly determine the significance of the issues.^{1/}

II. DISCUSSION

A. Asserted Grounds Which Do Not Provide A Basis For Reopening

Two of TMIA's asserted grounds for reopening the restart record ((2) and (3) above) do not provide a basis for reopening. "The credibility of Region I's Inspection Report No. 50-289/83-10" ((2) above) does not satisfy the well-established standards for reopening the record. See Kansas Gas and Electric Company (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320 (1978).^{2/} More specifically,

^{1/} On June 7, 1983, Licensee filed Licensee's Response to Three Mile Island Alert Motion to Reopen the Record ("Licensee's Response"). Licensee opposes TMIA's motion, although Licensee addresses only one of the eight bases asserted by TMIA for reopening the record, namely "concerns expressed by TMIA regarding the BETA and RHR reports." Licensee's Response at 3. The Staff has considered Licensee's Response and does not believe it refutes TMIA's arguments for reopening the record. Therefore, TMIA's motion to reopen should not be denied on the basis of Licensee's Response. Rather, as stated herein, the Staff believes that a ruling on TMIA's motion should be deferred until the significance of the open issues can be determined.

^{2/} In Wolf Creek, the Appeal Board Board made it clear that the proponent of a motion to reopen bears a heavy burden. The movant must demonstrate that: (1) the motion is timely, (2) the motion is directed to a significant safety or environmental issue, and (3) a different result would have been reached initially had the material submitted in support of the motion been considered. These standards were reiterated in Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 804 (1979), where, in contrast to the case at hand, the motion to reopen was filed after the record was closed, but prior to issuance of a decision by the licensing board. Thus, the motion to reopen must be timely and not based on information that reasonably could have been raised prior to the close of the record, it must involve a significant matter, and it must be such that the outcome of the case is likely to be affected by the alleged new information.

the credibility of the Region I inspection report does not, per se, raise a significant safety or environmental issue. Neither would the content of that inspection report likely affect the resolution of any issue in the proceeding. Although TMIA or any other party could challenge the "credibility" of the inspection report if the record is reopened and the Staff relies on the report, the report is not now evidence in the proceeding and, therefore, an attack on its "credibility" is premature and, in any event, not a basis for reopening the record.

Similarly, the "credibility of victor Stello's report(s) on the impact of the GPU v. B&W trial record on restart issues" ((3) above) is not a basis for reopening the record. TMIA's position on the "credibility" of Mr. Stello's report is appropriate for inclusion in comments on that report which the Commission has solicited from all parties, but the report's "credibility" per se does not raise a significant safety or environmental issue which could likely affect the resolution of any issue in the proceeding. Therefore, reopening on this matter is not warranted.

In conclusion, neither the credibility of Region I's inspection report nor the credibility of Victor Stello's report provides a basis for reopening the record. The TMIA motion to reopen on these grounds therefore should be denied.^{3/}

^{3/} TMIA's Motion is also based on the Licensee's 1978 in-house management audit ((6) above). This same document was cited by the Aamodts as a basis for reopening the record. Aamodt Comments Concerning NRC Staff Review of GPU v. B&W Court Trial Transcript and Motions to Reopen Record of Restart Proceeding, filed on or about April 16, 1983, at 8-9. For the reasons stated in NRC Staff's Answer to Aamodt's Motion to Reopen the Record, May 13, 1983, at 8-10, the 1978 audit report is not new, relevant, or significant and consequently provides no basis to reopen the record.

B. Asserted Grounds Which May Warrant Reopening But On Which A Ruling Should Be Deferred

1. The Five Open Issues

TMIA requests the restart record to be reopened to examine the five open issues identified by the Staff in its May 19, 1983 Revalidation Memorandum ((1) above) as well as "evidence of falsification of operator test records," citing B.N. 83-71 ((5) above).^{4/} In the Revalidation Memorandum, the Staff stated:

Yesterday the staff transmitted Inspection Report No. 50-289/83-10 ("Report") based on the completed inspection and review effort.

The revalidation effort and the resulting inspection Report were not designed to address and did not address the following:

- 1) The veracity of the Hartman allegations being addressed by the DOJ. (This matter is still pending with the Department of Justice.)
- 2) Statements in the record of the GPU v. B&W court proceeding, except for "NRC Staff Comments on the Analysis of GPU v. B&W Transcript," April 18, 1983.

(V. Stello, Jr., Deputy Executive Director for Regional Operations & Generic Requirements, is currently examining additional documents relevant to the B&W-GPU investigation in response to the Commission's request in light of the Stello

^{4/} The management implications from the Department of Labor finding regarding Mr. Parks ((4) above) is included in open issue (3) of the Revalidation Memorandum. The Staff does not know what "other 'whistleblowers'" TMIA is referring to in (4) above and cannot respond further to this point.

The report, "Review of B&W-GPU Trial Court Record" of March 28, 1983.)

- 3) The Parks and King allegations. (The Office of Investigations has an ongoing investigation into TMI-2 allegations, including those of Parks and King.)
- 4) Any concerns raised by the contents of GPU consultant reports (BETA and RHR) which were not considered by the staff in revalidating its position (because of the absence of a direct nexus to the Hartman allegations) but which possibly could affect the staff's position (or Commission decision) on Licensees' management competence or integrity. (Complete copies of these reports have been forwarded to the Commission, Appeal Board and parties to the management phase of the restart proceeding.)
- 5) The issue of whether the Licensee failed to promptly notify the Commission or Appeal Board of relevant and material information contained in the BETA or RHR reports or any other documents, which failure may reflect on the Licensee's management integrity.

Of these five open issues, all except the first involve new information and developments not previously considered.

Based on the inspection team review and resulting Report, the staff concludes that the issues raised by the Hartman allegations should not by themselves be a bar to restart. However, because of all the open issues identified above which were not considered in the revalidation program and Report, the Staff can draw no conclusion regarding management integrity at this time.

*/ On May 17, 1983, we received from V. Stelio information relating to the integrity of the Licensee's program for the requalification of licensed operators. This information was not available at the time of the inspection and is under evaluation.

Revalidation Memorandum at 2-3. Thus, 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 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.

The five open issues raise questions regarding the soundness of the restart record on management issues.^{5/} For example, open issue (1) could affect the resolution of the management issues involving the technical and character qualifications of Licensee's management, operations and technical staff. See, e.g., short-term action issue 6 of CLI-79-8, 10 NRC 141 (1979) and issues (1) and (2) of CLI-80-5, 11 NRC 408 (1980). Open issue (2) thus far calls into question the soundness of the record on Licensee's training program and personnel. See, e.g., short-term action issues 1(e) and 6 of CLI-79-8. Open issue (3) includes allegations against Licensee's top level management. See Board Notification 83-46, April 11, 1983. Open issue

5/ On May 13, 1983, the Staff responded to the Aamodts' motion to reopen the record. The Aamodts' motion to reopen was based on several grounds including, inter alia, the Hartman allegations. The Staff stated in its response that although it did not believe that the Hartman allegations per se raised a significant safety issue warranting reopening the restart record, two Licensee consultants' reports discovered during the revalidation program themselves "may contain significant new information which could affect the Appeal Board's resolution of the management issues in the restart proceeding." NPC Staff's Answer to Aamodts' Motion to Reopen the Record, May 13, 1983, at 6, n.8. One of those consultants' reports, the BETA report (referred to in open issues 4 and 5 in the Revalidation Memorandum, supra) was prepared by the same consulting firm (BETA) and individual (Mr. William Wegner) who testified for Licensee on many issues in the management phase of the restart proceeding. See Licensee's Testimony of William Wegner (Independent Review by BETA of Licensee's Management Capability and Technical Resources), January 26, 1981, ff. Tr. 13,284. Apparent inconsistencies between Mr. Wegner's testimony and his recent report are cited by IMIA in its May 23, 1983, Motion to Reopen the Record at 10-13 and are being considered by the Staff among the open items (open issues 4 and 5, supra) which require further evaluation.

(4) raises questions about the soundness of the record on a number of issues, including those pertaining to training, maintenance, radwaste, and health physics. See e.g., short-term action issue 6 of CLI-79-8 and management issues (1), (2), (4) and (5) of CLI-80-5. Finally, open issue (5) may reflect generally on Licensee's management integrity. Therefore, because the full significance of the open issues cannot yet be evaluated, the Staff moves the Appeal Board to defer ruling on TMIA's Motion to Reopen the Record until further development of the open issues permits a sound determination of their significance and effect, if any, on the restart record and of whether a different result on any management issue might be reached.^{6/}

2. Conflicts Between the BETA and RHR Reports and the Record

TMIA moves to reopen the record on the ground of conflicts between the BETA report and BETA's (Mr. Wegner's) testimony in the restart proceeding^{7/} ((7) above) and conflicts between the contents of the BETA and RHR reports and the conclusions of the Licensing Board in the Management PIDs ((8) above). Although the Staff has not completed its analysis of the conflicts asserted by TMIA as well as other apparent

^{6/} By letter dated June 10, 1983, from Herman Dieckamp to Chairman Palladino, Licensee informed the Commission of certain steps it was taking "to provide additional assurances during the period necessary to resolve the open issues." The Staff will consider Licensee's June 10th letter in its evaluation of the open issues.

^{7/} See Licensee's Testimony of William Wegner (Independent Review by BETA of Licensee's Management Capability and Technical Resources), January 26, 1981, ff. Tr. 13,284. The Licensing Board relied heavily on Mr. Wegner's testimony in resolving many of the management issues in Licensee's favor. See, e.g., Management PID 11 57-70, 99, 118-119, 123, 467 (14 NRC 381 (1981)).

conflicts between the BETA and RHR reports and the evidence in the restart proceeding, it is possible that new and significant safety issues may be raised by these conflicts which warrant reopening the management record. Specifically, the Staff notes the following areas of apparent conflict between the BETA report and BETA's (Mr. Wegner's) testimony in the restart proceeding: maintenance (compare Wegner's BETA testimony, ff. Tr. 13,284, at 17-19 with BETA report at 23-24); radiation control (compare Wegner's BETA testimony at 19-29 with BETA report at 26-28); training (compare Wegner's BETA testimony at 12-14 with BETA report at 52-58). Also, the Staff notes the following areas of apparent conflict between the BETA and RHR reports and the conclusions of the Licensing Board in the Management PID: training (compare Management PID ¶ 276 with BETA report at 52-58); health physics and radiation control (compare Management PID ¶¶ 360-386 with BETA report at 26-28); licensed operator attitude and capability (compare Management PID ¶¶ 267, 272, 276 with RHR report at 5-7); licensed operating training and requalification (compare generally Management PID ¶ 163-276 with RHR report at 11, 27-29).^{8/} These conflicts, however, are inextricably intertwined with the open issues (addressed in part 1 above) on which further development is necessary before their significance can be deter-

^{8/} Note also the BETA observation that insufficient or improper supervision "exists to varying degrees at all levels in all divisions ..." BETA report at 106 (emphasis in original).

mined. Therefore, the Staff believes that a decision on reopening the record on these issues also should be deferred until the significance of the open issues can be determined. Accordingly, the Staff moves the Appeal Board to defer ruling on reopening on these grounds until further development of the five open issues.

The Staff is not suggesting that the Appeal Board's ruling on the TMIA Motion necessarily need await final resolution of all five of the identified open issues. It may be that enough information on some or all of the open issues will be developed to enable the Appeal Board to rule on TMIA's motion to reopen prior to the completion of the ongoing investigations and reviews. Although no prediction can be made now as to when that time will arrive, the Staff presently does have sufficient doubt about the soundness of the restart record to recommend deferring a ruling on TMIA's motion to reopen the record.

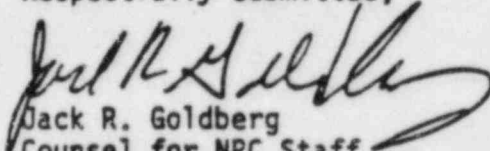
On June 7, 1983, the Executive Director for Operations informed the Commission of actions the Staff has initiated and of proposed actions which will enable the Staff to provide the Commission with its position on restart. Memorandum from William J. Dircks to the Commissioners, June 7, 1983, served on the Appeal Board and the parties on June 8, 1983. If the Commission finds the recommended actions acceptable, the Staff will provide the Commission an estimate of the schedules and resources necessary to complete them. Such estimate would also be furnished promptly to the Appeal Board. The Staff would keep the Appeal Board and the parties informed of the progress and results of the actions taken on the open issues.

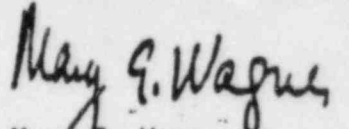
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III. CONCLUSION

For the reasons set forth above, TMIA's motion to reopen the restart record on the management issues should be denied with respect to grounds (2), (3) and (6) but a ruling on the other grounds should be deferred until further development of the open issues permits a sound determination of their significance.

Respectfully submitted,


Jack R. Goldberg
Counsel for NRC Staff


Mary E. Wagner
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 13th day of June, 1983

DP:
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