

TMI-file

August 18, 1983

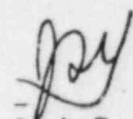
Note to: Herzel H.E. Plaine, OGC
James J. Cummings, OIA
Ben B. Hayes, OI
Harold R. Denton, NRR
Richard C. DeYoung, I&E
Thomas E. Murley, Reg. I

From: Jack R. Goldberg, ELD

SUBJECT: CHAIRMAN'S RESPONSE TO AUGUST 1, 1983 LETTER FROM CONGRESSMEN
UDALL AND MARI EY

Vic Stello has the lead on preparing a letter for the Chairman's signature responding to questions from Congressmen Udall and Markey concerning the Hartman allegations. Vic has asked me to provide you with the attached draft response for your comments. (OGC will be providing information for response to question 3.) Please provide your comments to me (x27619 or mail stop MNBB 9604) or to Vic as soon as possible.

Thank you.



Jack R. Goldberg

cc: Vic Stello
Jim Murray
Ed Christenbury

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The Honorable Morris K. Udall, Chairman
Committee on Interior and
Insular Affairs
U.S. House of Representatives
Washington, DC 20515

The Honorable Edward J. Markey, Chairman
Subcommittee on Oversight
and Investigations
Committee on Interior
and Insular Affairs
U.S. House of Representatives
Washington, DC 20515

Dear Chairmen Udall and Markey:

Your letter of August 1, 1983, to me requests the Commission's response to a number of questions regarding the allegations that leak rate calculations were falsified at Three Mile Island Unit 2 prior to the 1979 accident. Responses to your specific questions are provided below. In addition, recent memoranda from William J. Dircks, Executive Director for Operations, to Commissioner Gilinsky, address some of the same questions you have asked. They are enclosed for your information and are referenced, when appropriate, in responding to your specific questions.

Question 1.

When did NRC staff first reach a conclusion as to the substance of the Hartman allegations concerning leak rate falsification at TMI-2? What was the basis for any such conclusions? When and by what means were the Executive Director for Operations and the Commission informed of the conclusions? Please provide a complete list of persons who, prior to May 1983, had reached or known of conclusions concerning falsification of leak rate records.

Answer:

The NRC staff has never reached a conclusion as to the substance of the Hartman allegations concerning leak rate falsification at TMI-2. In the

attached June 10, 1983, Memorandum to Commissioner Gilinsky, William J. Dircks stated as follows:

Because the Hartman investigation was suspended, a final staff position on this matter was never formulated. This remains true today. As you are aware the Commission has directed that the Hartman investigation be reinitiated. Until the results of this investigation are complete, we will not take a final staff position on this matter.

With respect to when and the means by which the Executive Director for Operations and the Commission were informed about the Hartman allegations and the staff's investigation into them, Victor Stello, Jr. stated in his June 10, 1983, Memorandum to William J. Dircks (attached to the June 10, 1983, Memorandum from William J. Dircks to Commissioner Gilinsky) as follows:

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

With respect to persons who, prior to May 1983, had reached or known of conclusions concerning falsification of leak rate records, Mr. Stello's June 10th memorandum states that in the time frame of the spring of 1980, at least one investigator, namely Mr. Thomas T. Martin, had reached conclusions concerning the Hartman allegations, and that "such conclusions may have been passed on to others and may have formed part

of the bases for the conclusion that some of the allegations had merit and that referral to DOJ was appropriate." Mr. Stello's memorandum continues:

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

Mr. Stello also states in his June 10th memorandum as follows:

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

In summary, I believe that senior members of ELD, IE, Region I, NRR, OIA, the EDO and the Commission were aware in March/April 1980 that, although no final staff conclusions had been reached, leak rate test results had likely been falsified prior to March 28, 1979 accident at TMI-2 and that this particular Hartman allegation represented a potentially serious matter.

Question 2.

After concluding in 1980 that TMI-2 leak rates had been falsified, the NRC staff apparently did not inform the ASLB, the Appeal Board, the Commission or the Department of Justice. How does the Commission explain or answer the following:

- a) the staff's failure to inform the Commission, prior to 1980, of Hartman's leak rate allegations made to the Office of Inspection and Enforcement in May, 1979, and then repeated to the NRC's Special Inquiry Group in October, 1979?

Answer:

See generally the answer to question 1 above. As stated there, the Staff did not conclude in 1980 that TMI-2 leak rates had been falsified. The staff probably did not inform the Commission prior to 1980 of the Hartman leak rate allegations because at that time they were unsubstantiated allegations which were a part of the overall investigation into the accident at Unit 2 and, along with all the other voluminous information that was being generated by that effort, would be reported to the Commission as a part of the resulting report.

Question 2.b).

what prompted the Commission to initiate, in early 1980, an inquiry into the Hartman allegations?

Answer:

In a Memorandum and Order dated May 28, 1980 (attached to the June 10, 1983 Memorandum from William J. Dircks to Commissioner Gilinsky), the Commission briefly summarized the history of the investigation into the Hartman allegations and their referral to the Department of Justice.

The Commission stated (at page 6):

Mr. Hartman's allegations first came to the Commission's attention on May 22, 1979 during an interview with members of the NRC Office of Inspection & Enforcement team investigating the accident at TMI-2. At that time, in subsequent interviews with NRC, and in a deposition by the Special Inquiry Group taken October 29, 1979, Mr. Hartman alleged that (1) results of reactor coolant surveillance leak rate tests were falsified, (2) emergency feedwater pump test criteria were altered, and (3) the estimated control rod positions for attainment of criticality were re-calculated in order to meet procedural requirements. The allegations, if true, could lead to criminal prosecution.

On or about March 22, 1980 NRC inspectors talked to Mr. Hartman at his home, where he repeated the same allegations. On March 26, NRC

inspectors Martin, Christopher, and Sinclair taped an interview with Mr. Hartman and took his sworn statement. The NRC then took steps to verify Mr. Hartman's allegations by examining existing documentation and other records.

During the latter part of March the NRC's Office of Inspector and Auditor exchanged a few preliminary phone calls with the Department of Justice, informing them of the possibility of a referral for criminal prosecution. Finally, on April 2, 1980, representatives of the NRC met with members of the Department of Justice to brief them on all of the information in its possession, in accordance with the Atomic Energy Act. 42 U.S.C. 2271. At that time, the NRC brought its own investigation to a halt.

The investigation into the Hartman allegations also was prompted by Mr. Hartman's appearance on television, at which time Mr. Stello, then Director of the Office of Inspection and Enforcement, first became aware of the Hartman allegations. In Mr. Stello's June 10, 1983, Memorandum to William J. Dircks (attached), he stated:

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

Question 2.c).

The failure of the Office of Inspection and/or the Office of Inspector and Auditor to conduct an investigation after allegations concerning leak rate falsification were made in May 1979 and October 1979?

Answer:

There was no failure by I&E or OIA to investigate the allegations of leak rate falsification, although the investigation should have begun sooner. As described in the Commission's May 28, 1980 Memorandum and Order at 6, quoted above in response to Question 2.b), following Mr. Hartman's allegations in May and October, 1979, NRC inspectors

interviewed Mr. Hartman at his home in March, 1980, and, also in March 1980, taped an interview with Mr. Hartman and took his sworn statement. Following those interviews, the NRC examined various documents and records to verify Mr. Hartman's allegations. Then, during the latter part of March 1980, OIA informed the Department of Justice of the possibility of a referral of the matter for criminal prosecution and, when the Department of Justice accepted the referral in April 1980, the NRC, at the request of the Department of Justice, suspended its investigation of the Hartman allegations. Thus, I&E and OIA did investigate the Hartman allegations.

As indicated, however, the investigation was not begun as soon as it should have been. An investigation was not begun immediately after the allegations were made in May 1979 for several reasons. First, the substance of the Hartman allegations, which concern events prior to the accident in March, 1979, was considered beyond the scope of the then ongoing investigation by I&E into events during and immediately after the accident, and did not add any relevant information to the body of knowledge being developed for that purpose. Second, the I&E investigators at that time knew that the President had appointed the Kemeny Commission to investigate thoroughly the accident at Unit 2 and also knew that the Commission had determined to establish the Special Inquiry Group to investigate the accident. Finally, aware that the Special Inquiry Group would broadly investigate the accident, the I&E investigators intended to provide, and in fact did provide, the Special Inquiry Group with all the information they had developed during their investigation, including the Hartman allegations.

On October 29, 1979, the NRC's Mr. Harold L. Ornstein, detailed to the Special Inquiry Group and assigned to investigate TMI operator training, deposed Mr. Hartman. On December 3, 1979, Mr. Ornstein prepared a draft written description of Mr. Hartman's allegations for inclusion in the SIG's report, but that draft was not included in the final SIG report. (See the answer to question 2.e), below.)

Question 2. d).

the lapses between: (1) the time when the NRC learned of the Hartman allegations and the time when the NRC inquiry into these allegations was initiated; and (2) the time when NRC staff had concluded that leak rate calculations had been falsified and the time when the Commission learned of this conclusion. Has OIA investigated, or does it plan to investigate, whether NRC personnel improperly withheld information? Who does the Commission believe is responsible for these incidents of apparent withholding of information?

Answer:

See the answers to questions 1, 2.a), 2.b) and 2.c) above. The Commission does not believe that any NRC personnel improperly withheld information from the Commission about the Hartman allegations, and does not believe that there is any basis to direct OIA to investigate whether there was any improper withholding of information.

Question 2.e).

Why was the substance of the "Ornstein Draft" concerning Hartman's allegations not included in the report of the Special Inquiry Group?

Answer:

The Commission does not know why the "Ornstein Draft" was not included in the report of the Special Inquiry Group. The Commission will inquire to attempt to obtain an answer to the question and, if one is obtained, will provide it separately.

Question 2.f).

Were representatives or employees of General Public Utilities (or Metropolitan Edison) permitted to observe and sit in on interviews conducted by the NRC in 1980 concerning Hartman's allegations? If yes, why was this allowed and under whose authority was it permitted?

Answer:

Yes, representatives of Metropolitan Edison Company, in most cases an attorney, were permitted to observe and sit in on interviews conducted by the NRC in 1980 concerning the Hartman allegations. This was permitted because, at that time, the standard practice of NRC investigators was to ask interviewees if they wished to have a representative of their employer present during the interview and, if they responded affirmatively, the interview was conducted accordingly. There was no written policy in 1980 on this aspect of investigations. The practices of the NRC investigators at that time may have varied depending on their background and the circumstances of the particular investigation. Since there was no NRC policy then on the presence of third parties during interviews, the presence of third parties was not considered unacceptable. The Commission presently is considering the preparation of written

*Per H. Church
I.E. Steel*

guidance for investigators on the presence of third parties during interviews and has established the Advisory Committee on the Rights of Licensee Employees which is considering the matter and will report its findings and recommendations to the Commission in the near future.

Question 3.

The NRC and the Department of Justice apparently have a difference of opinion as to whether, in October 1981, DOJ informed the NRC that it was free to resume its investigation of the Hartman allegations. Please explain how the Commission reconciles this difference of opinion.

Answer:

Question 4.

In a 1981 filing before the Atomic Safety and Licensing Board, the staff: (1) stated that the Department of Justice prohibited the staff from disclosing details of the Hartman allegations with the board; (2) stated that there was no direct relationship between the Hartman allegations and the TMI-2 accident, and; (3) failed to state that the leak rate calculations had been falsified. The staff wrote:

NRC's investigative effort was suspended pending the conclusion of the DOJ investigation, at their request, to avoid parallel administrative and criminal proceedings. The DOJ investigation is still ongoing, and the NRC does not possess any information as to when it may be completed. NRC personnel involved in the suspended investigation have been requested by DOJ not to discuss the details of the matter The NRC will resume its investigation of the concern when DOJ has completed its investigation of the matter. However, the staff has reviewed the information that it had obtained to date on the matter, and has concluded on the basis of information thus far obtained that there appears to be no direct connection with the Unit 2 accident.*

* See Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1) (LBP-81-32, 14 NRC 381, 557, para. 504 (August 27, 1981), emphasis added.

Does the Commission believe that the above quoted paragraph written by the NRC staff provided the ASLB with accurate and complete information? If not, how does the Commission plan to reevaluate the board's decision on management competence in light of new information?

Answer:

The paragraph which you quote in question 4 is a part of the management record in the restart proceeding. Because the entire record is currently pending before the Appeal Board, including specifically the question as to whether the record should be reopened in order to hear additional evidence on a number of management issues, including the Hartman allegations, it would be inappropriate for the Commission to comment at this time on the accuracy or completeness of the quoted paragraph. With respect to the Licensing Board's decision on management

competence in light of new information, the NRC staff is in the midst of a program to review the new information to determine whether it affects the resolution of any of the issues in the restart proceeding. The staff recently provided a status report of its efforts in this regard in "NRC Staff's Memorandum on the Status of its TMI-1 Restart Review" which was filed with the Appeal Board on July 21, 1983. Furthermore, as mentioned above, the Appeal Board is considering whether the management record should be reopened for additional evidence. (The Appeal Board heard oral argument on July 28, 1983, on three motions to reopen the management record.)

Question 5.

How does the Commission explain the apparent discrepancy between the statement in Inspection Report 50-320/79-10 dated October 25, 1979, concerning the relationship between the effect of elevated discharge line temperatures upon the course of the TMI-2 accident, and the staff's statement, quoted in question 4 above, which implies that the elevated discharge pipe temperatures were not a significant factor in the accident.

Answer:

There is no discrepancy between the two statements. The October 25, 1979, letter to Metropolitan Edison Company concerning Inspection Report 50-320/79-10 states as follows:

Failure to follow procedural requirements for operation with the electromatic relief valve and safety valve discharge line temperature within your procedural requirements had a significant impact on the course of the accident on March 28, 1979. Following this procedure would have resulted in closure of the block valve which would have isolated the relief valve and prevented the accident. Furthermore, this elevated temperature condition had been in existence for several months and apparently conditioned your operating staff such that the abnormality on March 28 was

obscured or rationalized away resulting in delayed closure of the isolation valve until after fuel damage had occurred. This failure is considered to be one of the more significant issues. Other examples of failure to follow procedures, cited in Appendix A, that occurred prior to and during the accident reveal weaknesses in controls which are mandatory for safe nuclear power plant operation.

This statement correctly establishes a causal connection between the continued elevated discharge line temperature and the course of the accident at TMI-2 in 1979. The statement you quote from NUREG-0680, Supp. No. 2, in question 4, however, does not refer to discharge line temperatures. The statement you quote states that the staff had concluded that, based on the information about the Hartman allegations that it had, there appeared to be no direct connection between the Hartman allegations of falsification of leak rate data and the Unit 2 accident. It should be noted that elevated discharge line temperatures can be caused by identified leak rates which were within the allowable limits of the TMI-2 license condition of an identified leak rate of 10 gpm.

Sincerely,

Nunzio J. Palladino

Enclosures:

1. Memorandum from Commissioner Gilinsky to William J. Dircks, May 31, 1983
2. Memorandum from William J. Dircks to Commissioner Gilinsky, June 10, 1983, with attachments
3. Memorandum from Commissioner Gilinsky to William J. Dircks, June 29, 1983
4. Memorandum from William J. Dircks to Commissioner Gilinsky, July 19, 1983