

Tim

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11 Pop.*

AUG 26 1983

Note to: Herzel H.E. Plaine, OGC  
James J. Cummings, OIA  
Ben B. Hayes, OI  
Harold R. Denton, NRR  
Richard C. DeYoung, IE  
Thomas E. Murley, R-1

From: Jack R. Goldberg, ELD

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

The questions from Congressmen Udall and Markey concerning the Hartman Allegations have been finalized and Vic Stello has requested your concurrence on the attached copy of the Udall letter (identical letter sent to Markey, not enclosed) before cob Monday, August 29, 1983. Please return signed concurrence copy to Donna Smith (mail stop MNBB 6113). If you have any questions, please call me (x27619).

Thank you.

*Jack R. Goldberg*  
Jack R. Goldberg

cc: V. Stello

*Dr Murley - phone call will be fine -  
Donna*

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PDR ADDCK 05000289  
P PDR

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

Dear Mr. Chairman:

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 in Enclosure 1. 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.

Finally, in a letter to Chairman Udall dated June 1, 1983, then Acting Chairman Ahearne of the Commission answered questions 2 through 5 of Chairman Udall's February 25, 1983 letter, and stated that the answer to question 1 would be provided later. Enclosed herewith is the Commission's answer to that question.

Sincerely,

Nunzio J. Palladino  
Chairman

Enclosures: 8.

1. ~~Answers to August 1, 1983 Questions from Congressmen Udall and Markey~~
2. ~~Answer to Question 1 from Chairman Udall's February 25, 1983 letter~~
3. ~~Memorandum from Commissioner Gilinsky to William J. Dircks, May 31, 1983~~
4. Memorandum from William J. Dircks to Commissioner Gilinsky, June 10, 1983, with attachments
5. Memorandum from Commissioner Gilinsky to William J. Dircks, June 29, 1983
6. ~~Memorandum from William J. Dircks to Commissioner Gilinsky, July 19, 1983~~
7. NRC Staff's Memorandum on the Status of its TMI-1 Restart Review, July 21, 1983
8. Memorandum from William J. Dircks to the Commissioners, June 29, 1983

See Distribution on next page

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OFC :ELD :NRR :10/ /83  
NAME :JGoldberg :HDenton :11/ /83  
DATE :8/24/83 :8/ /83 :10/ /83

ANSWERS TO AUGUST 1, 1983 QUESTIONS FROM  
CONGRESSMEN UDALL AND MARKEY

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 EDO staff meetings, some of which included attendance by the Chairman and representatives from other Commission offices. While information concerning the Hartman allegations was generally disseminated (sic) 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:

The investigation into the Hartman allegations began on March 22, 1980, in response to the NRC's contact by Ira Rosen preceding his televised interview of Mr. Hartman on March 24, 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 (attached to the June 10, 1983 Memorandum from William J. Dircks to Commissioner Gilinsky), 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. 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 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:

Based upon consultations with the Department of Justice, we have concluded that there is in fact a disagreement between the Nuclear Regulatory Commission and the Department of Justice, concerning whether the Commission was advised in October 1981 that it could proceed with its investigation of the Hartman allegations. Communications between the two agencies concerning the Hartman matter were almost always oral. It appears that a misunderstanding may have emanated from these oral communications. As a result, the Department of Justice believed that the Nuclear Regulatory Commission understood in October 1981 that there was no objection to its proceeding with its civil investigation. In contrast, the Commission believed that the Department of Justice wished the Nuclear Regulatory Commission to continue to delay proceeding with its civil investigation, and the Commission was aware through inquiries

from late 1981 through early 1983 that the Department of Justice was continuing its investigation.<sup>1/</sup>

To avoid repetition of any like misunderstandings, the Department of Justice and the Nuclear Regulatory Commission will embark upon a review of referral procedures.

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?

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<sup>1/</sup> The Commission has just recently received a request from the Department of Justice to withhold documents related to an enforcement matter pending resolution of the ongoing grand jury proceeding.



Answer:

The paragraph which you quote in question 4 is a part of the management record in the restart proceeding. The entire management record is currently pending before both the Commission, in its immediate effectiveness review, and 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. Therefore, it would be inappropriate for the Commission to comment at this time on the accuracy or completeness of the quoted paragraph. It should be noted, however, that in a May 19, 1983, memorandum from the Executive Director for Operations to the Commission, the staff reported the results of an inspection and review program concerning the Hartman allegation of falsification of leak rate data. The Staff stated:

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.

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:

The two statements which are the subject of question 5 are a part of the record currently pending with both the Commission and the Appeal Board. As indicated above in answer to question 4, the Appeal Board is now considering whether the record should be reopened to hear additional evidence on a number of management issues, including the Hartman

allegations. It therefore would be inappropriate for the Commission to comment on the two statements cited in question 5. It should be noted as a matter of technical background information, however, that elevated discharge line temperatures are caused by leakage from either the safety or relief valves mounted on the pressurizer. As the leakage from these valves increases, so does the tailpipe temperature increase. The allowable leakage in the plant is controlled by two license conditions: a 1 gpm limit for unidentified leakage and a 10 gpm limit for identified leakage. This latter and larger limit is the controlling license condition for leakage from the safety and relief valves, as well as other identified sources. The data from TMI-2 shows that the elevated tailpipe temperatures occurred while the identified leakage was within the license condition limit of 10 gpm. The issue of discharge line temperature was a subject of the enforcement action taken by the NRC against Metropolitan Edison Company in October, 1979. As stated in the October 25, 1979 letter to Metropolitan Edison Company concerning Inspection Report 50-320/79-10, Metropolitan Edison Company was cited for its failure to follow procedural requirements for operation with the electromatic relief valve and safety valve discharge line temperature.

ANSWER TO QUESTION 1 FROM CHAIRMAN  
UDALL'S FEBRUARY 25, 1983

Question 1:

Has the Commission ever received a report on the alleged manipulation of the leak rate calculations performed in the weeks preceding the March 29, 1979 accident? What was the disposition of any such report?

Answer:

Until the end of March, 1983, the Commission never received any report on the alleged manipulation of leak rate calculations preceding the March 29, 1979 accident at TMI-2. As explained by Mr. Dircks in a Memorandum to the Commissioners dated June 29, 1983 (attached):

At a March 21, 1983 meeting between Mr. R. Arnold of GPU and members of the NRC team reviewing the B&W-GPU trial court record, Mr. Arnold referred to a GPU investigation into the Hartman allegations and noted that GPU was considering giving that investigation report to DOJ.<sup>1/</sup> The Report was subsequently forwarded by GPU to DOJ and through DOJ to the NRC with the request from DOJ that NRC maintain the Report in confidence. In early April of 1983, the NRC received a copy of the Report directly from GPU with no limits placed upon its use.

1/ The report is entitled "Results of Faegre & Benson Investigation of Allegations by Harold W. Hartman, Jr., Concerning Three Mile Island Unit 2," dated September 17, 1980, hereinafter "the Report."

Finally, on May 4, 1983, GPU distributed the Report to the Appeal Board and parties to the management phase of the TMI-1 restart proceeding.

The Report was discussed at a Commission meeting on March 30, 1983. The Commission requested the staff to determine whether any reporting requirements were violated by GPU's delay of nearly three years in submitting the Report to the Commission. In the June 29, 1983 memorandum from Mr. Dircks to the Commissioners, the Staff concluded that GPU (formerly Metropolitan Edison Company) should have made a more prompt board notification of that Report.

\*/ The Staff has acknowledged that "it might also be subject to criticism for not providing additional information on the Hartman matter. The Staff did not do so in order to avoid any possible interference with the DOJ investigation." June 29th memorandum at 7-8.

Tim -

Please review for factual accuracy the enclosed draft response + relay any comments directly to Jack Goldberg. Jim Allan suggested that you also run this by Keith before you respond.

Joe 8/23

Please return this copy to ME afterwards. Jim

Comments telephoned in  
by T.T.M. on  
8/24