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September 26, 1983

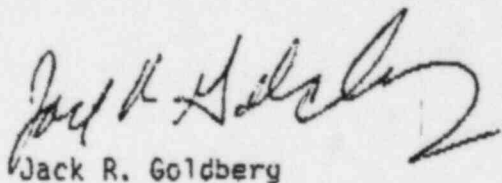
Note to: Herzog H.E. Plaine, OGC
Guy H. Cunningham III, ELD
James J. Cummings, OIA
Ben B. Hayes, OI
Harold R. Denton, NRR
Richard C. DeYoung, IE
Thomas E. Murley, R-1 ✓

From: Jack R. Goldberg, ELD

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

Attached is the latest draft of the answers to the questions by Udall and Markey concerning the Hartman allegations. The draft differs from the prior concurrence draft (see my note to you dated September 14, 1983) only in the answers to Questions 1 and 2f, by adding the parenthetical "(SIG)" after "Special Inquiry Group" on page 4 of Attachment 1, and by changing the cover letter to reflect the inclusion as attachments of Board Notifications 83-138 and 83-138A. Please return the signed concurrence copy to Donna Smith by cob September 28, 1983 (by courier to MNBB 6113). If you have any questions, please call me (x27619).

Thank you.


Jack R. Goldberg

cc: V. Stello

cc: J. Allan ✓
T. Martin ✓
J. Gutierrez
K. Christopher
9/26/83-TEM

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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 final conclusion as to the substance of the Hartman allegations concerning leak rate falsification at TMI-2 but had concluded that leak rate test results had likely been falsified. 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 CDO 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.

It should be added that although the NRC staff has never reached a final conclusion as to the substance of the Hartman allegations concerning leak rate falsification, the staff had reached the following conclusions, all of which are reflected in the official staff documents cited:

- (1) The Hartman allegations concerning falsification of leak rate data warranted investigation. NUREG-0680, Supp. No. 1, p. 37 (November 1980).

- (2) The Hartman allegations concerning falsification of leak rate data warranted referral to the Department of Justice for possible criminal prosecution. NUREG-0680, Supp. No. 1, p. 37 (November 1980).
- (3) On the basis of the information available in March 1981, there appeared to be no direct connection between the Hartman allegations of falsification of leak rate data and the Unit 2 accident. NUREG-0680, Supp. No. 2, p. 9 (March 1981). (This remains the staff's conclusion).
- (4) In March 1981, there was no indication of practices at Unit 1 similar to those alleged at Unit 2. NUREG-0680, Supp. No. 2, p. 10 (March 1981). This conclusion recently has been shown to be incorrect. See Board Notifications 83-138 and 83-138A (attached).

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 (SIG) 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 all cases an attorney acceptable to the interviewee, and in some cases also a union representative at the request of the interviewee, were permitted to observe and sit in on interviews conducted by the NRC in 1980 concerning the Hartman allegations. The presence of an attorney retained by the Metropolitan Edison Company was allowed under the authority of

Victor Stello, Jr., then Director of the Office of Inspection and Enforcement, based on a legal opinion he obtained from the Office of the Executive Legal Director. Mr. Stello was advised by the Office of the Executive Legal Director that if the interviewee stated that the attorney was his chosen representative, then the NRC investigators were to proceed with the interview with the attorney present. ^{1/} Mr. Stello was advised that it was up to the attorney present to decide for himself whether his relationships with Met. Ed. and the individual interviewee gave rise to a conflict of interest, and that such an issue was one to be resolved by the attorney under the applicable Code of Professional Responsibility. ^{2/} Based on this legal advice, Mr. Stello directed the investigators that if an interviewee stated that the attorney present represented the interviewee, then the investigator was to proceed with the interview with the attorney present. There was no written policy in 1980 on this aspect of investigations. 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.

^{1/} This advice was based, in part, on Section 555(b) of the Administrative Procedure Act, 5 U.S.C. §555(b), which provides in pertinent part:

A person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative.

^{2/} In fact, during one interview, the attorney stated that he could no longer represent the interviewee because of his relationship with Met. Ed. At that point, the interview was concluded after the interviewee declined to answer further questions. From that point on, the operators at TMI declined to be interviewed without subpoena.

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.

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.?

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 the Commission in its immediate effectiveness review. In addition, the Appeal Board recently has reopened the management record for the receipt of additional evidence on the Hartman allegations. (ALAB-738, August 31, 1983, enclosed) 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 has reopened the management record for additional evidence on the Hartman allegations.

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 has reopened the record on management issues for the receipt of additional evidence on 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. The former 1 gpm limit for unidentified leakage controls the leakage that is the subject of the Hartman allegation. The 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.

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FAX IMMEDIATELY TO

Thomas F. Murley Regional Administrator R-I

Dr. Murley - please sign concurrence page and have faxed to me
Donna

Please return to Donna 6113 MNBB

10 - Pages + cover

cc: J. Allan ✓
T. Martin ✓
J. Gutierrez
9/15/83-TEM.