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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

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BEFORE THE COMMISSION

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

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Docket No. 50-289 SP
(Restart)

NRC STAFF'S ANSWER TO THE AAMODTS'
MOTIONS TO ADDRESS FALSE STATEMENTS IN
RESPONSE TO AAMODT MOTION OF JANUARY 15, 1985

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March 28, 1985

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I. INTRODUCTION

By motion dated March 6, 1985, ^{1/} the Aamodts seek permission to reply to the Licensee and Staff responses to the January 15, 1985 Aamodt Motion for Reconsideration of Commission Order CLI-84-22 and Opening of a Hearing. The Aamodts allege that the Licensee and Staff responses are

^{1/} Motions to Address False Statements in Responses to Aamodt Motion of January 15, 1985, dated March 6, 1985 (Aamodt Motions). The Certificate of Service accompanying the Aamodt Motions states that Counsel for NRC Staff was served by mail on March 6, 1985. This was corrected to March 8 by the Aamodts' Errata to Aamodts Filing of March 5, 1985 (sic). Counsel for NRC Staff did not receive the Aamodt Motions by that means, however. Rather, Counsel for NRC Staff received a copy of the Aamodt Motions on the afternoon of March 12, 1985 through the Regulatory Information Distribution Systems (RIDS), the Commission's internal document distribution system. The Aamodts filed a second errata entitled Errata, Aamodt Motion March 6, 1985. This errata, inter alia, substituted new pages 6, 7, 8, 9 and 12 for the originals. The Staff has responded to the Aamodt Motions as amended by the two errata and also, when warranted, to allegations in the original pages.

"totally dishonest." Aamodt Motions at 2. Based on their assertions, the Aamodts move (1) for permission to reply to the Licensee and Staff responses to Aamodts' January 15, 1985 Motion, (2) to strike allegedly false and misleading statements from Staff's and Licensee's responses, (3) that the Staff be reprimanded for an alleged "attempt to obstruct justice in the Restart Proceeding," (4) that the Staff be reprimanded for its alleged "abrogation of duty concerning health effects in TMI area residents," and (5) that the Commission initiate an investigation "of the policy which has directed the Staff's false response to the Aamodt Motion." Aamodt Motions at 19. For the reasons which follow, the allegations in the Aamodt Motions are lacking of any merit, and for the reasons which follow, should be denied.

II. BACKGROUND

By motion dated June 21, 1984, ^{2/} Intervenors Marjorie and Norman Aamodt (Aamodts) requested, inter alia, that the Commission order an investigation of the Licensee's reporting of radioactive releases during the TMI-2 accident. The Aamodts alleged that, based on their own informal "survey" of residents in the area of TMI-2 at the time of the accident, certain adverse health effects, traceable to radioactive releases from TMI-2 during the days immediately after the accident at TMI-2, are demonstrated among those residents. Aamodts' Initial Motion

^{2/} Aamodt Motions For Investigation of Licensee's Reports of Radioactive Releases During the Initial Days of the TMI-2 Accident and Postponement of Restart Decision Pending Resolution of This Investigation, June 21, 1984 (Aamodts' Initial Motion).

at 1. The Aamodts claimed that their interviews show a higher than average cancer death rate among residents, numerous other radiation-related health effects, and plant growth abnormalities. The Aamodts concluded that these "observations," based upon their own survey, constitute "compelling evidence of release of airborne radioactive material during the accident at TMI-2 orders of magnitude greater than have been acknowledged by the Licensee, the NRC Staff or the Commonwealth of Pennsylvania." Id. The Aamodts used these same observations as the basis for their further conclusion that it is "likely" that Licensee intentionally destroyed records of airborne releases of radioactive materials, intentionally minimized estimates of core damage and resultant source terms during the TMI-2 accident, and has continued to deceive the public. Id. at 1-2.

Responses were filed by the Staff and Licensee. Licensee and Staff both opposed the Aamodts' Initial Motion. In summary, the Staff's position was that claims of adverse health effects from radiation releases during the TMI-2 accident had previously been investigated by several independent bodies and found to be unsubstantiated, the Aamodts had not presented any other "evidence" to support their "belief" that Licensee has repeatedly deceived the public, and that the Aamodts had failed to demonstrate that any further investigation, either of levels of radioactive releases during the TMI-2 accident, of alleged health effects from such releases, or of alleged Licensee deception in reporting such releases, was warranted.

In CLI-84-22, the Commission denied the Aamodts' Initial Motion. The Commission found that the Aamodts had not presented sufficient

reliable information to show that previous, more comprehensive and scientific studies of the TMI-2 accident radiation releases are erroneous. CLI-84-22, 20 NRC 1573, 1575. The Commission concluded that further investigation by the NRC into the matter was not warranted. CLI-84-22, 20 NRC at 1575.

On January 15, 1985, the Aamodts filed a pleading ^{3/} seeking, inter alia, reconsideration of Commission Order CLI-84-22. Responses to this pleading were filed by the Staff and Licensee. Licensee and Staff opposed the request for reconsideration. In particular, the Staff's position was that none of the alleged "gross errors" cited by the Aamodts had merit and the "significant new" information cited by Aamodts in support of their Motion for Reconsideration was neither new nor significant. See NRC Staff Reply to Aamodt Motion for Reconsideration of Commission Order CLI-84-22 and Opening of a Hearing, February 4, 1985 (Staff's Reply). On February 12, 1985, following the filing of Staff's Reply to the Aamodts' Motion for Reconsideration, Marjorie Aamodt sent a letter to Counsel for NRC Staff claiming that there were two errors in Staff's February 4th response and requesting that the Staff correct its response. By letter dated February 25, 1985, Counsel for NRC Staff responded to Mrs. Aamodt's letter by explaining why there were no errors in Staff's response and, consequently, no reason to correct

^{3/} Aamodt Motion For Reconsideration of Commission Order CLI-84-22 and Opening of a Hearing, January 15, 1985 (Aamodts' Motion for Reconsideration).

Staff's response. ^{4/} Finally, on March 6, 1985, the Aamodts filed the Aamodt Motions to which the Staff is now replying.

With this background summarized, the Staff will address each of the Aamodts' current allegations of impropriety by the Staff.

III. DISCUSSION

A. The Aamodts' Motion for Permission to Reply to the Licensee and Staff Responses Should be Denied

The Commission's Rules of Practice explicitly prohibit moving parties from replying to answers to motions absent prior approval. 10 C.F.R. § 2.730(c). Although the Aamodts do not explicitly provide good cause in support of their motion for permission to reply, it is obvious that they believe good cause for filing a reply is established by the alleged false statements in Licensee's and Staff's responses. As a general proposition, the Staff would agree that evidence of deliberately false statements in an answer to a motion, without more, provides a sufficient basis upon which to find good cause for the filing of a reply by the moving party for the purpose of correcting the false statements. In this case, however, the Aamodts' allegations are not supported by any reasonable interpretation of the facts and nothing more than a cursory review of the Aamodt Motions and the parties'

^{4/} In the current Aamodt Motions, the Aamodts claim that they responded to Staff Counsel's February 25, 1985 letter to Marjorie Aamodt, and attach an unsigned, March 5, 1985 letter from Marjorie Aamodt to Counsel for NRC Staff. The only copy of that letter received by the Staff was the unsigned copy attached to the Aamodt Motions.

previous filings on the issue of health effects from the TMI-2 accident is needed to conclude that there is no justification for permitting such a reply. ^{5/}

B. The Aamodts' Allegations on Staff Dishonesty, Deception, and Other Improper Conduct are Incorrect and Without Merit

1. The Staff's Interpretation of Gerusky's Change in Testimony Is Not Dishonest as Alleged by the Aamodts

The Aamodts claim that the Staff's response to the Aamodts' Motion for Reconsideration is dishonest and the Staff's objections to the reconsideration of CLI-84-22 are irrational and insincere. Aamodt Motions at 3. Specifically, the Aamodts allege that "[t]here is no way... that the Staff could believe" that Mr. Thomas Gerusky, Director, Pennsylvania Bureau of Radiation Protection (BRP), in an October 1, 1980 interview, "corrected" his May 3, 1979 testimony that on the morning of the accident Licensee personnel had told him, before 8:00 a.m., that offsite measurements had been taken at Goldsboro which confirmed that

^{5/} Although the Aamodts' allegations are obviously without merit, the Staff has responded to each of the allegations in more detail than is perhaps necessary in order to assure that the record is as clear as possible.

there was no radiation release. ^{6/} Id. at 6-7. The Aamodts further allege that "the NRC Staff attempted to shake Gerusky loose from his May 3, 1979 testimony." Id. at 7. The Aamodts claim that notwithstanding the Staff's "outright attempts to influence" Mr. Gerusky's recall on October 1, 1980 through the use of a Pennsylvania Emergency Management Agency (PEMA) log, a "thorough search" of nine pages excerpted from the October 1, 1980 interview transcript (pp. 33-41) (Attachment F to Errata to Aamodt Motion, March 6, 1985) does not provide any evidence that Mr. Gerusky changed his testimony. Errata, Aamodt Motion March 6, 1985 at 7. The Aamodts claim further that the Staff did not "identify precisely" where in the transcript of the October 1, 1980 interview Mr. Gerusky corrected his May 3, 1979 testimony. Id. Accordingly, the Aamodts argue that the Staff's analysis of Mr. Gerusky's October 1, 1980 testimony is "wrong and dishonest." Id. at 8. There is no merit to the claim of dishonesty, nor was the Staff wrong, much less deliberately so (see note 8, infra) as discussed below.

^{6/} As a basis for reconsidering CLI-84-22, the Aamodts alleged that Licensee personnel "lied" to Commonwealth of Pennsylvania personnel at the Bureau of Radiation Protection on the morning of March 28, 1979 concerning offsite radiation measurements at Goldsboro. Aamodts' Motion for Reconsideration at 4; see Aamodt Motions at 3. As support for their allegation, the Aamodts relied on a working draft prepared in the course of the Staff's investigation into information flow which led to the publication of NUREG-0760. Addressing the reportability of an offsite exposure rate that had been predicted for Goldsboro on the day of the accident, this draft referenced a May 3, 1979 interview of Mr. Gerusky, Director of the Pennsylvania Bureau of Radiation Protection in which Mr. Gerusky stated that Commonwealth personnel had been informed, before 8:00 a.m., that there were "no radiation levels onsite or in Goldsboro that would indicate any kind of a leak."

To suggest, as the Aamodts do, that the Staff essentially coerced Mr. Gerusky into changing his May 3, 1979 testimony eighteen months after the accident, on October 1, 1980, is incorrect. The Staff never "attempted to shake Gerusky loose from his May 3, 1979 testimony" through the use of the PEMA log or by any other means. See Errata, Aamodt Motion March 6, 1985 at 7. Indeed, when Mr. Gerusky was asked to identify at what time PEMA was notified of the first offsite dose projection, ^{7/} he responded, "they [PEMA] have it in their logs what that time was...." NPC Interview of Thomas Gerusky (October 1, 1980) at 35. When questioned by Mr. Hoefling of the NRC as to how much time transpired between the time the BRP was notified of the predicted dose rate at Goldsboro and the time the BRP received the actual Goldsboro measurements, Mr. Gerusky responded:

I don't know. I think in reconstructing it, or at least the telephone -- the PEMA telephone duty log indicated it may have been an hour, which suprised me a little bit the first time I heard that, six months ago at another one of these briefings.

Id. at 41.

As the foregoing excerpt illustrates, it is incorrect to conclude, as the Aamodts do, that the Staff "confronted" Mr. Gerusky with the PEMA log in an attempt to influence his recall. A review of the transcript of

^{7/} The first offsite radiation dose projections were completed after 7 a.m. by a site engineer using data from inplant instrumentation, and they were reported to the BRP at approximately 7:45. See NUREG-0760, at 31 and 32; "Investigation into the March 28, 1979 Three Mile Island Accident by the Office of Inspection and Enforcement" (NUREG-0600), August 1979, beginning at page II-A-1, particularly items #63, 70, 77, 90, 91, 94, 98, 100, 102, 104, 107, 110, 112 and 136; cf. Special Inquiry Group, "Three Mile Island: A Report to the Commissioners and the Public," January 1980, at 894.

Mr. Gerusky's October 1, 1980 interview demonstrates that the only references made to the PEMA log were those made by Mr. Gerusky himself.

In response to the Aamodts' claim that Licensee personnel lied to Commonwealth personnel at the Bureau of Radiation Protection (BRP) on the morning of March 28, 1979 by "claiming, contrary to the fact, that surveillance teams had been dispatched and had verified that a significant release had not occurred," Aamodts' Motion for Reconsideration at 4, the Staff stated:

However, Mr. Gerusky has acknowledged that his statement, quoted in Attachment 4 to the Aamodt Motion, reflects an error in his recollection, and this error was corrected by Mr. Gerusky in an October 1, 1980 interview by the NRC Staff, where Mr. Gerusky indicated that it was about 9:00 a.m. when the Goldsboro measurement was reported to the Commonwealth. See October 1, 1980 transcript of NRC Staff Interview of Thomas Gerusky, excerpts of which are attached to Licensee's Response to the Aamodt Motion dated January 25, 1985. The timing of Licensee's report is evidenced by the Pennsylvania Emergency Management Agency Log. Id.

Staff's Reply at 4. As support for the Staff's interpretation of Mr. Gerusky's October 1, 1980 interview statement, the Staff provided the following citation: "See October 1, 1980 transcript of NRC Staff Interview of Thomas Gerusky, excerpts of which are attached to Licensee's Response to Aamodt Motion dated January 25, 1985." Id. The Staff believed, in good faith, that the nine page excerpt appended to Licensee's Response supports the Staff's position that Mr. Gerusky modified his May 3, 1979 testimony in the October 1, 1980 NRC Staff

Interview. ^{8/} In particular, in response to a question posed to him by Mr. Gamble, Mr. Gerusky responded:

And I was asking questions while all this was going on, Maggie was asking questions. 'Do you have any people over there now monitoring?' 'No, we are starting to send people over.'

I was under the impression they were going to go over by helicopter, for some unknown reason. I don't believe they went over by helicopter. I thought there was a helicopter there and they were going over by helicopter and get the readings. They got the readings very quickly. At least the time was going by so darned fast. When we got the word back that they didn't have any detectable activity over there, it apparently was a lot longer period of time than I had anticipated, early on, anyway.

NRC Interview of Thomas Gerusky (October 1, 1980) at 35 (emphasis added).

In view of this statement and a similar statement ^{9/} made by Mr. Gerusky in the course of his 1980 interview, there is no justification to conclude, as the Aamodts do, that the Staff was wrong when it concluded that Mr. Gerusky corrected his earlier testimony on October 1,

^{8/} The Staff acknowledges that its characterization of Mr. Gerusky's October 1, 1980 testimony, quoted above from Staff's Reply at 4, inadvertently implies that Mr. Gerusky's October 1st testimony formally and specifically amended or retracted his May 3, 1979 testimony concerning the timing of the receipt of offsite radiation measurements at Goldsboro. The Staff did not intend to imply that this was the case. Rather, the Staff believes that a fair reading of the October 1st testimony is that Mr. Gerusky was uncertain of the time at which the Goldsboro measurements were taken but that it apparently was a lot longer period of time than he had earlier anticipated, and appeared to be about an hour later than the onsite readings. See NRC Interview of Thomas Gerusky (October 1, 1980) at 35-36, 41.

As further indication of Mr. Gerusky's degree of uncertainty, see pages 43-44 of the October 1, 1980 interview, attached as Attachment 1 to this pleading.

^{9/} See NRC Interview of Thomas Gerusky (October 1, 1980) at 43-44.

1980. ^{10/} Rather than quote out of context particular portions of Mr. Gerusky's October 1, 1980 interview, as apparently the Aamodts would have the Staff do, the Staff cited the entire nine page excerpt attached to Licensee's Response, which in its totality supports the Staff's position that the information reflected in the Gerusky interviews do not support the Aamodts' allegation that Licensee "lied" to the Pennsylvania BRP concerning radiation measurements at Goldsboro.

2. The Staff Did Not "Overlook" the Testimony of Other BRP Personnel

In addition to claiming that the Staff's interpretation of Mr. Gerusky's October 1, 1980 testimony is dishonest, the Aamodts allege that the Staff overlooked the May 3, 1979 testimony of William Dornsife, a nuclear engineer, and Margaret Reilly, a health physicist. Aamodt Motions at 9. The Aamodts argue that the testimony of these BRP personnel either (1) corroborates Mr. Gerusky's original claim that, on the day of the accident, Licensee "personnel reported offsite surveillance prior to 8:00 a.m.," or (2) demonstrates that Messrs. Gerusky and Dornsife and Ms. Reilly "collaborated to fabricate this assertion."

^{10/} It should be noted that the NRC Staff, in NUREG-0760, did not address the question of whether Licensee told BRP of readings at Goldsboro before such readings were actually taken. It should also be noted that Mr. William Fisher, who prepared the working draft cited by the Aamodts, cannot say with certainty whether knowledge of the October 1, 1980 interviews of Messrs. Gerusky and Dornsife and Ms. Reilly would have caused him to rewrite the draft, but believes that those interviews at least would have caused him to reconsider the statement that the Licensee "countered the report to BRP with nonexistent Goldsboro survey results."

Errata, Aamodt Motion March 5, 1985 at 9. This allegation is wholly without merit:

In its reply to the Aamodts' Motion for Reconsideration, the Staff did not specifically mention the statements made by BRP personnel Mr. Dornsife and Ms. Reilly during the May 3, 1979 interview, but instead focused on the statements made by BRP official Thomas Gerusky during that interview. Focusing on Mr. Gerusky's testimony in replying to the Aamodts was entirely appropriate in view of the fact that the Aamodts themselves did not allude to Mr. Dornsife or Ms. Reilly in their Motion. Indeed, the sole support for the Aamodt claim that Licensee personnel "lied" to the Commonwealth was their reference to a working draft prepared in the course of a 1980 investigation which resulted in NUREG-0760 (Attachment 4 to the Aamodts Motion For Reconsideration). This draft was attached by the Aamodts to their pleading without any meaningful analysis or discussion. The only BRP personnel mentioned in that Attachment was Mr. Gerusky, and accordingly the Staff's response was addressed to Mr. Gerusky's testimony as excerpted in the draft. Thus, the Aamodts' claim that the Staff "conveniently overlooked" the testimony of Dornsife and Reilly is without merit.

Moreover, when the Staff responded to the Aamodts' Motion for Reconsideration, it was aware of Mr. Dornsife's May 3, 1979 statement that the BRP had no notes for the period between 8:00 a.m. and 8:30 a.m. on the day of the accident. However, the Staff does not conclude, as the Aamodts do, that the absence of any notes during this time period demonstrates that "[t]here were no significant communications between 8:00 and

8:30 a.m." Errata, Aamodt Motion March 6, 1985 at 9. Indeed, the 8:15 a.m. PEMA log entry ^{11/} directly refutes the Aamodt conclusion.

Neither did the Staff believe, as the Aamodts do, that the absence of notes between 8:00 a.m. and 8:30 a.m., reflects that "[t]he times recalled by BRP personnel were accurate." Errata, Aamodt Motion March 6, 1985 at 9. Significantly, in response to a question posed to her by Mr. Gamble as to whether Ms. Reilly would have called PEMA shortly after receipt of information from Licensee, Ms. Reilly stated:

Q. Similarly, after you got the word that it was an erroneous reading or whatever, that it was off, did you also call PEMA immediately after that?

A. Within a short -- very shortly thereafter.

Q. So again if their log indicated when you called them, you would have heard just before?

A. Yeah.

NRC Interview of Margaret Reilly (October 1, 1980) at 23. In addition, when questioned by Mr. Moseley as to whether there were any notes, logs or records that relate to the information Commonwealth personnel at BRP received concerning the offsite dose projection at Goldsboro, Mr. Dornsife replied:

I believe PEMA may have something in their log concerning this particular call, because we called PEMA and told them to alert the counties, so they may have something in their log concerning this particular notification.

^{11/} "Call from M. Reilly, Bureau of Radiological Protection, stating that problem was isolated in Unit 2 steam generator, which was leaking. All releases have been contained. No outside implications. Advised to release imposed alerts for possible evacuation." Pennsylvania Emergency Management Agency, Action Log (March 27-28, 1979) at MSG No. 42.

NRC Interview of William Dornsife (October 1, 1980) at 26. Mr. Dornsife further testified when questioned as to whether PEMA would have more detailed information than the Pennsylvania BRP:

Yes, they probably would, because they were used to writing down everything they received, because they are primarily an information network.

Id. at 26-27.

Finally, Mr. Dornsife testified on May 3, 1979 that at the time he called Mr. Gary Miller in on the morning of March 28, 1979 to prepare himself to brief the Lieutenant Governor, Mr. Dornsife asked only for information concerning plant status. NRC Interview of Thomas M. Gerusky, Margaret A. Reilly, William P. Dornsife (May 3, 1979) at 15. The conversation was confined to "[w]hat had happened, what initiated the transient and what the status was now." Id. at 15-16. Although this conversation occurred subsequent to 8:30 a.m., see id. at 14, at which time BRP notes were available, Mr. Dornsife testified on October 1, 1980, that he was not aware of the 10 R/h predicted dose rate at Goldsboro until after he returned from the Lieutenant Governor's briefing at 1:00 or 2:00 p.m. NRC Interview of William Dornsife (October 1, 1980) at 25. Indeed, at the time the offsite dose rate projection was communicated to BRP personnel sometime prior to 8:00 a.m., at which time BRP notes also were available, Mr. Dornsife testified, on October 1, 1980, that he

was not involved in that particular interchange. I may have been--either I was doing something else or I was being briefed by Gary Miller at the time. I'm not sure. But I was not involved in that particular information being passed on or what the interplay was. There was primarily Margaret and Tom that were involved in that particular interchange.

Id. Accordingly, the Staff had no reason to conclude when it filed its reply that the absence of BRP notes for the period 8:00 a.m. to 8:30 a.m. would have hindered, in any way, Mr. Dornsife's preparation for the Lieutenant Governor's briefing.

In summary, the Aamodts' allegation that the Staff overlooked the testimony of other BRP personnel is unsupported speculation.

3. The Staff Gave Proper Weight to the Testimony of Two TMI Managers

In addition to claiming that the Staff overlooked the May 3, 1979 testimony of other BRP personnel in responding to the Aamodt Motions, the Aamodts claim that the Staff likewise dismissed the testimony of Mr. Gary Miller, TMI Station Manager, and Mr. Richard Dubiel, a health physics manager. Aamodt Motions at 10. In particular, the Aamodts assert that Messrs. Miller and Dubiel's May 1979 testimony before the House Committee on Interior and Insular Affairs that a surveillance team had been dispatched by helicopter to Goldsboro at approximately 7:40 on the morning of March 28, 1979, confirms the 1979 testimony of BRP personnel. Id. at 10-11. The Aamodts argue that while the Staff is aware of this, the Staff improperly dismissed the testimony of Messrs. Miller and Dubiel as "reflecting 'some natural inability to reconstruct the precise series of events based solely on the recollection of individuals.'" Id. at 11 quoting Staff Reply at 5 n.5. Further, the Aamodts argue that not only is the Staff's conclusion "preposterous," but also "[i]t is even more preposterous that the BRP personnel would have suffered the same 'natural inability' in precisely the same way about the same events." Id. As discussed below, the Aamodts' accusations are without foundation.

Having reviewed the testimony of Messrs. Miller and Dubiel, also cited by the Aamodts in Attachment 4 to their Motion for Reconsideration as evidence of Licensee deception on radiation monitoring in Goldsboro, the Staff concluded that the information reflected in these interviews did not support the Aamodts' allegation that Licensee "lied" to Commonwealth personnel at the BRP on the morning of March 28, 1979. Indeed, the Staff concluded when it filed its reply, and still does conclude, that the testimony of Messrs. Miller and Dubiel reflects their uncertainty about the timing of when a surveillance team was dispatched to, or arrived at, Goldsboro. In view of this testimony, it is not at all unreasonable, let alone "preposterous", to conclude, as the Staff did, "that attempts to reconstruct the chronology of events on March 29, in the months following the accident, not surprisingly reflected some natural inability to reconstruct the precise series of events based solely on the recollection of individuals." Staff Reply at 5 n.5.

Moreover, to suggest, as the Aamodts do, that the Staff "prefers" Mr. Dubiel's Special Inquiry Group testimony over his testimony before the House Committee is incorrect. Aamodt Motions at 12. The Staff made no such representation in its reply and does not do so today.

Finally, the Aamodts allege that Mr. Dubiel changed his testimony between the time he was interviewed by the House Committee and SIG. Errata, Aamodt Motion March 6, 1985 at 12. The Aamodts assert that the change, which they characterize as "not credible," was in some way brought about by the Staff. Id. These assertions are untrue. Mr. Dubiel consistently was unable to recall with certainty at what time

a surveillance team was dispatched to Goldsboro. The Staff simply did not then, nor at any time since, participate in any activities designed to bring about any change in Mr. Dubiel's testimony.

In summary, in responding to the Aamodts' Motion for Reconsideration, the Staff considered the testimony of Messrs. Miller and Dubiel. However, the Staff does not believe it supports Aamodts' allegations that Licensee lied to the Commonwealth of Pennsylvania.

4. The Aamodts' Statements Concerning the So-Called "Gamble Reports" and "Gamble Conclusions" Are Not Correct

The Aamodts make several statements about certain drafts of portions of NUREG-0760 which are incorrect and reflect a misunderstanding of the documents on which they rely.

The Aamodts state the following:

The development and content of NUREG-0760 has been an open question since 1981. Investigators questioned the appropriateness of NRC Staff non-investigators conducting depositions. OIA referred the matter to the Department of Justice in March 1981. Gamble, and another investigator Roger Fortuna, wrote in a memorandum of December 1, 1981 (Exhibit C) that "the facts warranted prosecution for willful misrepresentations, omissions, or violation of NRC regulations."

Aamodt Motions at 12. By these statements the Aamodts appear to be making, or at least implying, two points: (1) that in March, 1981, some "matter" regarding improprieties in the "development and content of NUREG-0760" was "referred to the Department of Justice for investigation" and (2) that David Gamble and Roger Fortuna wrote in a December 1, 1981 memorandum (Exhibit C to Aamodts' Motions) that "the facts [regarding the "matter," i.e., improprieties in the "development and content of NUREG-0760"] warranted prosecution for willful misrepresentations,

omissions, or violation of NRC regulations." Both points are not correct as can be seen by no more than a reading of the single document relied upon by the Aamodts for these claims. Exhibit C to the Aamodts' Motions is a December 1, 1981 Memorandum from Roger Fortuna and David Gamble to James J. Cummings, Director, Office of Inspection and Auditor, NRC, entitled "Questions of Withholding of Information During TMI Accident." The first sentence of that memorandum states:

On March 5, 1981, at the direction of the Commission, we met with representatives of the Criminal Division, U.S. Department of Justice (DOJ), to present the results of the Office of Inspection and Enforcement (IE) report entitled "Investigation into Information Flow during the Accident at Three Mile Island" (NUREG-0760, dated January 1981, hereinafter referred to as the "IE Report"), for their consideration as to whether the facts warranted prosecution for willful misrepresentations, omissions, or violation of NRC regulations.

This sentence makes it clear that NUREG-0760 was referred to DOJ in March 1981 not for DOJ consideration of any possible improprieties associated with the development or content of NUREG-0760, but for DOJ consideration of possible withholding of information by Metropolitan Edison Company during the accident at TMI--the subject of NUREG-0760. The Aamodts are wrong in their belief that NUREG-0760 was referred to DOJ in March 1981 for investigation of possible criminal activity associated with the development or content of NUREG-0760.

Secondly, Exhibit C does not state, as claimed by the Aamodts, that Messrs. Gamble and Fortuna expressed any opinion that any facts actually warranted prosecution for willful misrepresentations, omissions, or violation of NRC regulations. Rather, Messrs. Gamble and Fortuna provided DOJ with NUREG-0760 for DOJ's "consideration as to whether the facts warranted prosecution for willful misrepresentations, omissions, or

violation of NRC regulations." The Aamodts' omission of the phrase "consideration as to whether" from the sentence in Exhibit C from which they quoted renders the Aamodts' statement incorrect.

Also, the Aamodts apparently believe that the draft portions of NUREG-0760 on the Goldsboro radiation releases, which were attached to Mr. Gamble's testimony, were written by Mr. Gamble and represent Mr. Gamble's conclusions. This is suggested by the Aamodts reference to the "Gamble reports" and "Gamble conclusions" and such statements as the following:

The implication is that Gamble does not presently stand by the conclusions of his reports. First, Gamble did not testify concerning the contents because he was not permitted to do so. Second, the fact that Gamble provided the reports as part of his testimony indicates that he would stand by his conclusions, under oath, if given the opportunity.

Aamodt Motions at 13 (emphasis added). The Aamodts are wrong. The draft portions of NUREG-0760 on Goldsboro radiation releases which were attached to Mr. Gamble's testimony and which are relied upon by the Aamodts in connection with their motions regarding the health effects of the TMI-2 accident were written by William L. Fisher, one of the four members of the I&E investigative team which prepared NUREG-0760, as the record clearly reflects by Mr. Gamble's own testimony. See Gamble, ff. Tr. 30,512 at 3.

Moreover, Mr. Gamble did not testify about the contents of the Fisher drafts because their subject - Goldsboro radiation releases - was not material to the mailgram issue on which Mr. Gamble was testifying.

See Tr. 30,491-502. As Licensee correctly noted, ^{12/} the Fisher drafts were not admitted for the truth of the matters asserted therein ^{13/} but were admitted in evidence to support the theory advanced by TMIA and Mr. Gamble that the drafting of portions of NUREG-0760 before interviews were completed showed a prejudgment of the conclusions reached in NUREG-0760. ^{14/} The Aamodts apparently do not understand that the contents per se of the Fisher drafts was not at issue in the mailgram hearing in which Mr. Gamble testified and, consequently, there is no issue regarding whether Mr. Gamble would or would not "stand by" Mr. Fisher's (not Mr. Gamble's) conclusions.

In summary, the Aamodts' statements suggesting that (1) improprieties associated with the development or content of NUREG-0760 were referred to the Department of Justice in 1981, (2) Mr. Gamble and Mr. Fortuna concluded that certain facts associated with the development and content of NUREG-0760 warranted prosecution for willful misrepre-

^{12/} Licensee's Response to Aamodt Motion for Reconsideration of Commission Order CLI-84-22 and Opening of a Hearing, January 25, 1985, at 2 n.1.

^{13/} Licensee's noting this fact (see Tr. 30,491-502) in Licensee's Response, supra n.11, is the subject of another inexplicable attack by the Aamodts. See Aamodt Motions at 13.

^{14/} With respect to the merits of the theory that the existence of draft portions of NUREG-0760 before interviews were completed shows that conclusions were prejudged, it is significant that a comparison of the conclusions reached in the draft report on radiation releases in Goldsboro with the conclusions on that issue contained in the final report (NUREG-0760 at pp. 32, 50) demonstrates that certain significant draft conclusions were rejected. Thus, contrary to the theory advanced by TMIA and Mr. Gamble, there was no prejudgment of this issue.

sentations, omissions or violation of NRC regulations, (3) Mr. Gamble wrote the draft portions of NUREG-0760 concerning Goldsboro radiation releases which were attached to Mr. Gamble's testimony, and (4) Mr. Gamble was improperly not permitted to testify about the contents of the draft positions of NUREG-0760 concerning radiation releases, are all erroneous.

5. The Aamodts' Claims Regarding the Staff's Actions Concerning the Missing Pages of the Aamodts' June 21, 1984 Motion Are Erroneous

The Aamodts continue to make two claims concerning the pages of the Aamodts Initial (June 21, 1984) Motion which were not sent to the CDC by the Staff.

First, the Aamodts claim that the Staff deliberately provided a "false explanation for criminal behavior" when it stated that:

The Staff's intent to influence, according to the Aamodts, is shown by the fact that virtually every other page of the Aamodt June 21, 1984 Motion was not copied and sent to Dr. Caldwell.

The Staff did not intend its characterization of "virtually every other page" to constitute an "explanation" of its action. Rather, it was merely a shorthand characterization of the fact that numerous (but rarely two adjacent) pages of the Aamodt Motion were not copied and sent to the CDC. The context in which the characterization arose was in response to the Aamodts' claim that the Staff intentionally attempted to deceive the CDC by sending only certain pages of the Aamodt Motion to the CDC. If the sentence to which the Aamodts object is read in the context in which it appears, it becomes abundantly clear that the phrase "virtually every other page" was not being offered as an explanation for the Staff's

oversight, but rather to make the point that the document sent to CDC, with so many missing pages scattered throughout the document, could not rationally be intended to "deceive" anyone into believing that the complete document had been sent.

Second, the Aamodts' claim that the Staff attributed the "virtually every other page" characterization to them. As stated in a letter from Staff counsel to the Aamodts, the sentence "merely characterizes the claim in [the Aamodts'] January 15, 1985 motion for reconsideration that the Staff intentionally tried to deceive Dr. Caldwell of the Center for Disease Control by forwarding to him an incomplete copy of your June 21, 1984 motion." Letter dated February 25, 1985 from Mary E. Wagner to Marjorie M. Aamodt, attached as Exhibit D to Aamodt Motions. ^{15/} The characterization used was not intended to deceive anyone as to the nature of the Aamodts' assertion, which in any event stands on its own.

6. The Aamodts Are Wrong in Criticizing the Staff for Stating that the Health Effects of the TMI-2 Accident Were Not an Issue in the TMI-1 Restart Proceeding

The Aamodts allege that the Staff was wrong, "and deliberately so," when the Staff stated that the "health effects of the TMI-2 accident were not an issue in the TMI-1 restart proceeding." Aamodts' Motions at 15, quoting Staff's Reply at 11. In addition, in an apparent attempt to show that the quoted statement is wrong, the Aamodts point out that in 1981, the Licensing Board permitted the litigation of "an apparent increased

^{15/} As noted above, Mrs. Aamodt claims to have responded to that February 25, 1985 letter. See n.4, supra. No signed copy of a response was ever received by Staff counsel.

incidence of neonatal hypothyroidism in 1979." Aamodt Motions at 15. The Aamodts suggest that because it "is incomprehensible that the Staff was so poorly acquainted with the record of the hearing" (see id), the Staff must be "deliberately" wrong when it asserted to the Commission that the health effects of the TMI-2 accident were not an issue in the restart proceeding. The Aamodts are not correct.

It remains a fact that the health effects of the TMI-2 accident were not an issue in the TMI-1 restart proceeding; i.e., there was not a separately identified issue on the health effects of the TMI-2 accident. The Aamodts' reference to the litigation of an "apparent increased incidence of neonatal hypothyroidism" is a reference to evidence in the emergency planning phase of the proceeding that related to the issue of the adequacy of a particular ingestion Protective Action Guide (PAG)--more specifically, ECNP contention EP 11 which claimed an inadequacy in the state emergency plan due to the state's alleged failure to account for the special sensitivity of the fetus to radiation in its protective action criteria. The introduction of evidence on the incidence of neonatal hypothyroidism in an attempt to show such a special sensitivity does not render false the Staff's statement that the health effects of the TMI-2 accident were not an issue in the restart proceeding. In short, the health effects of the TMI-2 accident per se was not an issue identified by the Commission in any order, nor was it admitted for litigation in its own right as a result of any intervenor's contentions.

Furthermore, the Aamodts' suggestion that the Staff "deliberately" made a false statement to mislead the Commission is simply another example of the Aamodts' apparent disregard of the facts. In the Staff's

July 11, 1984 Response to the Aamodts' Initial Motion for an investigation of Licensee's reports of radioactive releases during the initial days of the TMI-2 accident, the Staff stated to the Commission:

The Aamodts also claim, erroneously, that despite repeated assertions by residents of the areas over which plumes passed that significant radiation effects were experienced by them, "not a single evaluation of these claims has appeared on the record of the Restart Proceeding." Id. at 3. While health effects claims were not evaluated in the management phase of the restart proceeding, there was extensive testimony, in the emergency planning phase of this proceeding, on claimed thyroid abnormalities and potential fetal health effects downwind of the plant (see, e.g., 14 NRC 1211, 1493, 1593-96). Those claims were found by the Licensing Board to be without merit. 16/

Thus, it was the Staff that pointed out that there was testimony in the restart proceeding on potential fetal health effects, correcting the Aamodts' erroneous claim that "not a single" evaluation of claims of significant radiation effects appeared in the record of the restart proceeding. Indeed, the Commission itself acknowledged Staff's pointing this out:

The staff further notes that while health effects claims were not evaluated in the management phase of the restart proceeding, there was extensive testimony in the emergency planning phase of the proceeding on alleged thyroid abnormalities and potential fetal health effects downwind of the plant, and those claims were found by the Licensing and Appeal Board to be without merit.

CLI-84-22 at 2. Thus, the Aamodts' assertion of wrongdoing is, once again, unsupported.

16/ NRC Staff Response to Aamodt Motions for Investigation of Licensee's Reports of Radioactive Releases During the Initial Days of the TMI-2 Accident and Postponement of Restart Decision Pending Resolution of this Investigation, July 11, 1984, at 3.

7. The Staff's Assertion that the Aamodts Have Not Shown Any Nexus Between the Alleged Increased Cancer Deaths and the TMI-2 Accident is Correct

The Aamodts accuse the Staff of making a deliberate misstatement when it said that the allegedly "verified" increased cancer mortality rate does not address any issue bearing on a TMI-1 restart decision, and claim the Staff was deliberately wrong in referring to increased cancer mortality as "alleged." Aamodt Motions at 15-18. Despite the Aamodts' continued assertion that the cancer mortality increase has been "verified", their claims of increased cancer mortalities are as yet unproven and the use of the word "alleged" cannot conceivably constitute wrongdoing on the part of the Staff. As for the Staff's position that no nexus has been shown between any alleged cancer increase and TMI-1 restart issues, it remains the Staff position that the Aamodts have not "demonstrated a relationship between the alleged increased cancer mortalities and the accident at TMI-2, licensee competence and integrity or any other issue in this proceeding." Staff Reply at 11.

The Aamodts take particular exception to the Staff's citing to the CDC review "as its authority on latency period," and to the fact that the Staff did not specifically refute the Aamodt critique of the latency portion of the CDC review. Aamodt Motions at 16. Again, the Staff finds it impossible to comprehend how the Staff position could constitute wrongdoing, either deliberate or unintentional. In its February 4th Reply, the Staff stated its agreement with the comments by CDC to the effect that the Aamodts' study does not take into account the fact that cancer occurs after a long latency period, and date of diagnosis is more

important than date of death. See Staff Reply at 10-11. The Staff's observation that no nexus has been shown by the Aamodts because of their failure to take into account a latency period is consistent with the CDC comments. That the Staff did not go on to address in that pleading the Aamodt "critique" of the CDC position cannot rationally support a claim of deliberate wrongdoing; rather, it reflects only the fact that the Staff simply did not feel it was necessary to say anything additional on the subject of the latency period for cancer. Thus, the Aamodt claims of deliberate wrongdoing are unsupported and without merit.

- C. The Aamodts' Motions to Strike Allegedly False and Misleading Statements from Staff's Response, that the Staff be Reprimanded for an Alleged Attempt to Obstruct Justice in the Restart Proceeding, that the Staff be Reprimanded for its Alleged Abrogation of Duty Concerning Health Effects in TMI Area Residents, and that the Commission Initiate an Investigation of the Policy which has Directed the Staff's False Response to the Aamodt Motion, All Should Be Denied

The Aamodts move to strike what they claim are false and misleading statements in the Staff's response to the Aamodts' motion for reconsideration of CLI-84-22. Aamodt Motions at 19. For the reasons discussed above, there were no false or misleading statements in Staff's Reply as alleged by the Aamodts. Indeed, the Aamodts' allegations are erroneous and, in the Staff's view, frequently reflect a disregard of the plain and simple facts. Accordingly, their motion to strike portions of Staff's Reply should be denied.

Based on their allegations of false and misleading statements in Staff's Reply, the Aamodts also move that the Staff be reprimanded for "obstruction of justice" in the restart proceeding, and for abrogation of duty concerning the health effects of the TMI-2 accident in TMIA area

residents. ^{17/} For the reasons discussed above, the Aamodts' requests that the Staff be reprimanded should be denied.

Finally, based on the same allegations of false and misleading statements, the Aamodts ask the Commission "to initiate an investigation by the Office of Internal [sic] Auditor of the policy which has directed the Staff's false response to the Aamodt Motion." Id. at 19. As the Staff has shown above, not only are there no false or misleading statements in Staff's Reply, the Aamodts' allegations, in some instances, are in reckless disregard of the facts. The Aamodts' motion is unsupported.

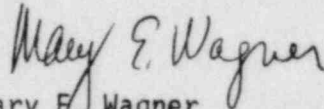
IV. CONCLUSION

For the reasons discussed above, the Aamodts' allegations concerning false and misleading statements and other improper conduct by the Staff are not only erroneous but, in some instances, reflect a disregard of the facts. The Aamodts' motion for leave to reply to the Licensee and Staff responses to Aamodts' Motion for Reconsideration should be denied. If their motion for leave to reply is granted, the Commission should deny the Aamodts' motions to strike allegedly false and misleading statements. In addition, the Commission should deny the Aamodts' motions to reprimand

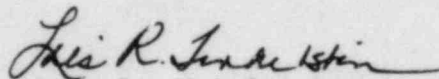
^{17/} The Staff's position on the Aamodts' substantive motion for an investigation of the health effects from radiation releases during the TMI-2 accident has been based on the Staff's considered judgment as to the need for further health effects studies in light of both the Aamodts' study and the various official studies that previously had been done. The Staff has no objection per se to further studies; however, the Staff does not believe that the Aamodts have shown further study to be necessary or that there is a nexus to TMI-1 restart issues.

the Staff and to initiate an investigation concerning Staff's Reply to Aamodts' Motion for Reconsideration.

Respectfully submitted,



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Lois R. Finkelstein
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Dated at Bethesda, Maryland
this 28th day of March, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

Docket No. 50-289

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO THE AAMODTS' MOTIONS TO ADDRESS FALSE STATEMENTS IN RESPONSE TO AAMODT MOTION OF JANUARY 15, 1985" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 28th day of March, 1985:

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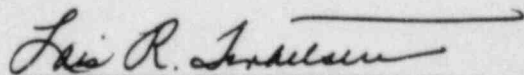
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