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STAFF
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING OFFICE OF SECRETARY
SECRETARY & SERVICE
BRANCH

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

Docket No. 50-289 -57
(Restart Remand
on Management)

NRC STAFF'S PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW IN THE FORM OF A
PARTIAL INITIAL DECISION ON THE DIECKAMP MAILGRAM

INTRODUCTION

The Staff has carefully reviewed Licensee's Proposed Findings of Fact and Conclusions of Law in the form of a Partial Initial Decision on the Dieckamp Mailgram Issue, January 28, 1985. ^{1/} The Staff believes that, in general, Licensee's proposed findings of fact are supported by, and accurately reflect, the evidentiary record. Consistent with the Licensing Board's direction that the parties consider and adopt the proposed findings of other parties with which they agree, and except as

1/ The Staff also has reviewed Three Mile Island Alert's Proposed Findings of Fact and Conclusions of Law on Dieckamp Mailgram Issue, February 8, 1985 (TMIA's proposed findings). The Staff believes that, as a general matter, TMIA's proposed findings are not supported by the evidence, or any reasonable inferences from the evidence. Therefore, the Staff believes that TMIA's proposed findings should not be adopted by the Licensing Board.

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discussed below, the Staff adopts Licensee's proposed findings of fact. ^{2/}

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Staff adopts Licensee's proposed findings of fact ¶¶ 1-10.
2. The Staff proposes, in lieu of Licensee's proposed finding ¶ 11, the following:

11. Mr. Dieckamp, in using the term "core damage" in the mailgram, was referring to the kind of significant damage that would be consistent with a major fraction of the zirconium having reacted with water or steam. Tr. 28,345 (Dieckamp); see also Tr. 28,757-58 (Dieckamp). ^{4a/} His frame of reference was the New York Times article, which he believed suggested that knowledge of the meaning of the pressure spike in terms of core damage could have influenced the decision to evacuate the populace from around Three Mile Island. Tr. 28,757 (Dieckamp). For this reason, Mr. Dieckamp was referring to the degree of core damage sufficient to have cast doubt on the ability to cool the core with confidence. Tr. 28,948 (Dieckamp).

^{4a/} Mr. Dieckamp's use of the term "core damage" to denote a kind of significant damage resulting from a reaction of the majority of fuel cladding with water or steam, as opposed to a less significant damage such as localized failed fuel, is consistent with the meaning attributed to that term by a number of witnesses. See, e.g., Tr. 28,555-57 (Zebroski); Tr. 29,940-41 (Moseley).

^{2/} Where the Staff proposes a finding identical to Licensee's except for the addition of certain citations, phrases or sentences, those additions are underlined to assist the Board in identifying Staff's proposed additions. Proposed deletions are included in brackets and are crossed out. Additional footnotes proposed by the Staff are numbered with letter suffixes to designate the proper order according to Licensee's proposed findings; e.g., Staff's proposed footnote 4a would appear between Licensee's proposed footnotes 4 and 5.

3. The Staff adopts Licensee's proposed findings of fact ¶¶ 12-57.

4. The Staff proposes an additional section II.D. as follows:

D. Whether, in the NRC Staff's view, Mr. Dieckamp believed the statements in his mailgram were true?

57A. With regard to whether Mr. Dieckamp believed the statements in his mailgram to Congressman Udall were true, the Staff presented the testimony of Norman C. Moseley. Mr. Moseley is presently employed by the Institute of Nuclear Power Operations in Atlanta, Georgia as Manager, Startup Department, Construction Project Evaluation Division.

Mr. Moseley was employed by the NRC and its predecessor, the Atomic Energy Commission, from May 1964 until January 1982, during which time he held the positions of Reactor Inspector, Senior Reactor Inspector, Branch Chief, Regional Director and Division Director. Moseley, ff. Tr. 29,816 at 1-2.

57B. Mr. Moseley was the lead investigator on the team that performed the Inspection and Enforcement (IE) investigation entitled "Investigation Into Information Flow During the Accident at Three Mile Island." The report of this investigation was issued by the NRC as NUREG-0760. As part of its investigative effort, the team was asked to assess whether Mr. Dieckamp's mailgram constituted a material false statement. This issue was pursued at length by Mr. Moseley and Mr. Terry Harpster in an interview with Mr. Dieckamp taken under oath on September 12, 1980. Id. at 2, 3; see JME 1(c)(123).

57C. Mr. Moseley previously appeared on February 18, 1981 as a witness for the Staff in the restart proceeding. At that time, he addressed the background, purpose and conclusions reached in NUREG-0760. Id. In addition, Mr. Moseley testified that, based on his interview with

Mr. Dieckamp on September 12, 1980, he believed that Mr. Dieckamp believed that the message Mr. Dieckamp was trying to convey in his mailgram was true. Id. at 3-4; Tr. 13,063-64 (Moseley). Reaffirming his prior testimony on this point, Mr. Moseley testified that based on his current knowledge and belief, he still believes that Mr. Dieckamp believed the information in the mailgram was true. Moseley, ff. Tr. 29,816 at 4.

57D. Mr. Moseley's conclusion was based upon his impression during the interview that Mr. Dieckamp was sincere and Mr. Moseley's own belief that no one present in the Unit 2 control room concluded on March 28, 1979 that hydrogen was the cause of the pressure spike. Indeed, Mr. Moseley concluded that on March 28, 1979, it was beyond the range of credible operator knowledge to infer that amounts of hydrogen sufficient to reach a flammable concentration in a two million cubic foot containment might exist at ten hours after the initiation of the event. Id. at 3-4. Based upon the entire evidentiary record, the Licensing Board agrees. In this regard, the Board notes that a number of the witnesses in this proceeding testified that based on their familiarity with the Final Safety Analysis Report (FSAR) for Unit 2 and/or the knowledge they possessed on March 28, 1979 concerning the generation of hydrogen, they would not have expected flammable concentrations of hydrogen to be generated under the severe loss of coolant accident conditions that existed at the time until months after the initiating event. Tr. 28,210-11 (Lowe); Tr. 29,935 (Moseley); Tr. 30,075 (Kunder); see also the TMI-2 graph "Reactor Building Hydrogen Concentration Following LOCA" reproduced in JME 1(c)(142) (NUREG-0760) at 58-1.

57E. Acting upon TMIA's application, the Licensing Board subpoenaed David H. Gamble. ^{10a/} TMIA sought to rebut Mr. Moseley's testimony with Mr. Gamble's. Mr. Gamble is presently employed by the Defense Criminal Investigative Service as a Supervisory Criminal Investigator (Special Agent). Gamble, ff. Tr. 30,522 at 1. Mr. Gamble was employed from 1978

^{10a/} The Staff opposed the original prefiled testimony of Mr. Gamble on the ground that it was irrelevant and immaterial to the Licensing Board's resolution of the remanded Dieckamp mailgram issue. Tr. 27,879; 28,089 (Goldberg). Specifically, Mr. Gamble criticized the adequacy of the Staff's investigation into information flow which led to NUREG-0760. Because the Board had indicated that it would not be relying on NUREG-0760 per se to resolve the Dieckamp mailgram issue, Tr. 29,808 (Judge Smith), the Staff believed that the litigation of the adequacy of the investigations into information transfer on the day of the accident was beyond the scope of this proceeding. Tr. 27,878 (Goldberg). In support of its position, the Staff cited the position of TMIA in this proceeding as stated in an October 29, 1984 letter from TMIA counsel to Licensee which provides, in relevant part, that

[t]he adequacy of various investigations or inquiries into the [TM] accident and information flow during the accident is not the issue before the Licensing Board. The issue is whether Mr. Dieckamp knew or should have known of misstatements which TMIA believe exist in his mailgram at the time he sent it and whether he should have corrected these misstatements after he sent the mailgram. The various reports, and the interview which provide support for them, are relevant only insofar as they provide factual support for the argument as to whether specific Met Ed personnel knew about and understood the pressure spike on March 28.

Id. The Board agreed with the Staff and ruled that "the adequacy of NUREG-0760 as a document and the adequacy of [the] investigation as such . . . is beyond the scope [of this proceeding]. Tr. 29,928 (Judge Smith). In addition, the Board ruled that because TMIA was offering Mr. Gamble's testimony as a general, undifferentiated criticism of the NUREG-0760 interviews, it was not "appropriate, reliable, or helpful" in resolving the mailgram issue. Tr. 29,029 (Judge Smith) The Board, therefore, directed TMIA to amend Mr. Gamble's prefiled testimony in accordance with the Board's rulings. It was the modified testimony of Mr. Gamble which the Board accepted.

to 1982 as a criminal investigator by NRC's Office of Inspector and Auditor (OIA) and from 1975 to 1978 as a personnel security specialist by NRC's Division of Security. During his employment with OIA, Mr. Gamble participated in the IE investigation which led to the issuance of NRC publication NUREG-0760. Id. at 1-2.

57F. Mr. Gamble testified that on April 18, 1980, fewer than three weeks after the commencement of the NUREG-0760 investigation and prior to the completion of any significant investigation, 10b/ Mr. Moseley directed the members of the investigative team to draft those portions of the investigative report concerning high core-exit temperatures, the calculated exposure rate of 40 rem/hr at Goldsboro, and the containment pressure spike. Gamble, ff. 30,522 at 3. In Mr. Gamble's opinion, this direction was made in contravention to the direction by Victor Stello, Director, IE, by memorandum dated April 1, 1980 to the investigative team, to initiate the investigation with an "open mind" and to make every effort "to impress upon everyone contributing to this assignment that they should not be influenced in this task by the previously stated IE conclusion." Id.; Staff Ex. 2 at 2. Moreover, Mr. Gamble alleged that drafting portions of the report in advance of interviews tended to predetermine conclusions reached by the task force team. Gamble, ff. 30,552 at 4.

10b/ Mr. Gamble clarified his testimony by stating that he equates "significant investigation with the interview process as opposed to the gathering of the background information." Tr. 30,549-50.

57G. On its face, Mr. Stello's memorandum provides that the investigative team should rely to the maximum extent practicable on material from other investigations, including interview transcripts and testimony, available as of April 1, 1980, "that may reflect in a significant way on the tendencies of the principal participants to initiate or accede to practices intended to alter information or to restrict the flow of information for any reason." Staff Mailgram Ex. 2 at 2; Tr. 30,528 (Gamble). In addition, Mr. Stello's memorandum directs the investigative team to conduct additional interviews where necessary to complete available evidence on matters not previously pursued or inadequately pursued. Staff Mailgram Ex. 2 at 2. Indeed, these are the same kinds of investigative techniques that Mr. Gamble considers necessary to begin and proceed through an investigation, Tr. 30,530-31 (Gamble), and which Mr. Gamble himself, as a principal investigator, utilized in the OIA investigation which led to the report entitled "IE Inspectors Alleged Failure to Report Information, Re: March 28, 1979 Hydrogen Explosion at TMI-2" (January 7, 1981). Tr. 30,599 (Gamble). Additionally, these techniques were commonly employed by the investigators who were part of the effort that was initiated by Mr. Stello's April 1, 1980 memorandum. See Tr. 30,532; 30,550 (Gamble).

57H. Nonetheless, Mr. Gamble believes that the investigators' review of existing information on the question of information flow was not successful. Tr. 30532 (Gamble). More specifically, Mr. Gamble testified that the absence of previously developed information in the final report demonstrates the investigators' failure to consider such information. Tr. 30,533 (Gamble). For example, Mr. Gamble pointed to

the information provided in 1979 by NRC Inspector Carl Plumlee concerning his awareness of hydrogen in the containment building on the day of the accident as the kind of significant information omitted from the final report. Tr. 30,534 (Gamble). Yet, Mr. Gamble conceded that the investigative team indeed interviewed Mr. Plumlee and that that information, in fact, is included in the final report. Tr. 30,536 (Gamble); JME 1(c)(142) at 29-31.

571. Further, on cross-examination by the Staff, Mr. Gamble testified that he had no evidence that portions of NUREG-0760, in fact, were generated in April 1980, Tr. 30,536; 30,554 (Gamble), or in any event, that those who authored the drafts had prejudged, in any way, the factual issues being addressed. See, e.g., Tr. 30,552-53 (Gamble). In any event, it is not clear whether team members assigned by Mr. Moseley in his April 18, 1980 memorandum to generate draft sections of the investigative report were assigned responsibility to draft the identical sections in the final report. Tr. 30,555 (Gamble). Indeed, Mr. Gamble does not believe that these drafts "directly became the final report." Tr. 30,548 (Gamble). Significantly, a comparison of the conclusions reached in the draft report on radiation releases in Goldsboro, Gamble, ff. Tr. 30,522 at Ex. 5; id. at Ex. 6, purportedly generated before the commencement of what Mr. Gamble characterized as significant investigative activity, with the conclusion on that issue contained in the final report, NUREG-0760, demonstrates that certain of the significant draft conclusions were rejected and therefore leads to the inescapable conclusion that there was no prejudgment of this issue. See JME 1(c)(142) at 32, 50.

57J. On the basis of the evidence in the record, the Licensing Board finds that, contrary to Mr. Gamble's allegations, Mr. Moseley's direction to generate draft portions of NUREG-0760 in advance of interviews was not made in contravention of Mr. Stello's memorandum and did not tend to predetermine conclusions reached by the investigative team. Rather, the drafts appear merely to be write-ups based on the extensive information which had previously been developed on the issues. In any event, prior to the issuance of the final version of NUREG-0760, the team conducted numerous probing interviews. These interviews, or "significant investigative activity" to use Mr. Gamble's phrase, in fact, were relied upon by the team to reach their final conclusions in NUREG-0760. Therefore, the Board finds that the existence of the drafts cited by Mr. Gamble are of no significance whatsoever.

57K. Mr. Gamble also stated that Mr. Moseley restricted the nature and the scope of questioning conducted during interviews as part of the investigative effort. More specifically, Mr. Gamble testified that Mr. Moseley directed that only one person at a time ask questions from a previously approved list of questions and that follow-on questions likewise be limited to those previously approved by Mr. Moseley. Gamble, ff. Tr. 30,522 at 4-5; Tr. 30,563-64 (Gamble). Mr. Gamble testified that Mr. Moseley further directed members of the investigative team to refrain from asking questions until the close of the interview. Tr. 30,562; 30,563-64 (Gamble). Directions such as these, according to Mr. Gamble, limited the development of a full interview and failed to take into account a deponent's responses or demeanor during an interview. Tr. 30,560 (Gamble).

57L. Notwithstanding Mr. Moseley's directions to the contrary, Mr. Gamble testified that he was often the only interviewer who asked questions beyond the scope of those previously approved. Gamble, ff. 30,522 at 4-5; Tr. 30,562 (Gamble). Mr. Gamble stated further that he frequently asked questions which he would have expected to have been asked by the principal 10c/ members of the investigative team. Tr. 30,579-80; 30,583 (Gamble). A review of the evidentiary record, however, demonstrates that numerous and repeated follow-up questions were asked by every one of the investigative team members present, with Mr. Gamble asking the fewest questions. See, e.g., JME 1(c) (109-113), id. (115-119), id. (122), id. (124-132), id. (134-138). In particular, the very interviews cited by Mr. Gamble in his filed testimony as evidence that he was the only member of the investigative team who asked follow-up questions and questions beyond the scope of those previously approved lead to a distinctly opposite conclusion and clearly reflect the absence of any basis for such an allegation. See id. (109), (124); (136). A review of the interviews relied upon by Mr. Gamble, as well as the other NUREG-0760 interviews, makes it clear that it was the other investigative team members, rather than Mr. Gamble, who frequently asked

10c/ Throughout his appearance in this proceeding, Mr. Gamble testified that he was not a principal member of the investigative team, e.g., Tr. 30,583 (Gamble), but rather was responsible for "protect[ing] the interests of the U.S. Department of Justice in any criminal matters that might arise during the investigation." Gamble, ff. Tr. 30,536 at 2; Tr. 30,764-65 (Gamble). Mr. Stello's memorandum of April 1, 1980, however, recognized Mr. Gamble to be an active working member of the investigative team. Staff Mailgram Ex. 2 at 2.

follow-up questions. Finally, Mr. Gamble conceded that Mr. Moseley followed up on questions posed by Mr. Gamble, Tr. 30,623 (Gamble), and that Mr. Moseley's questions "appeared to be well-founded . . . and designed to elicit the facts he was seeking." Tr. 30,806 (Gamble).

57M. With respect to Mr. Gamble's criticism regarding the use of a previously approved list of questions during interviews, it is significant that the issue of information flow was included as part of prior investigations into the accident at Unit 2 and was pursued in the interviews conducted at that time. Tr. 30,573 (Gamble). It was exactly this kind of previously generated information which Mr. Stello directed the investigative team to review, Staff Ex. 2 at 2, and which in fact was reviewed as Mr. Gamble stated in this proceeding. Tr. 30,550 (Gamble). Therefore, in view of the need to complete the investigation promptly, Staff Ex. 2 at 2, and the voluminous amount of information amassed prior to April 1, 1980 on the accident at Unit 2, and particularly on the issue of information flow, e.g., JME 1(c) (106); id. (107), it would not be inappropriate to draft questions to address matters which had not been adequately addressed in previous interviews. See id. Indeed, when beginning an investigation, Mr. Gamble, too, has in mind certain areas he wishes to cover and questions he wishes to ask. Tr. 30,544 (Gamble). Likewise, it would not be inappropriate for the investigative team to eliminate matters that had been adequately addressed in earlier investi-

gations and limit questioning to matters that needed further development, as the investigative team was instructed to do. Staff Ex. 2 at 2. 10d/

57N. Finally, Mr. Gamble advocated a process in which the five members of the investigative team would be free to ask any questions at any time during an interview. Tr. 30,567 (Gamble). Notwithstanding his agreement that such a process would raise issues of fairness and complexity, it was Mr. Gamble's opinion that the potential for confusion would be outweighed by the information elicited. Tr. 30,571. However, considering the need to complete the investigation promptly and the value of doing so in an efficient and orderly fashion, Tr. 30,567, Mr. Moseley's direction that only one team member at a time ask questions, if given, was both reasonable and justified. As Mr. Gamble conceded, the efficient conducting of interviews is an important part in the prompt completion of the investigation. Tr. 30,572 (Gamble).

57O. TMIA proposes that the Board find Mr. Gamble's criticisms of the NUREG-0760 investigation and resulting report incisive and determinative. TMIA's proposed findings ¶ 290. Based on Mr. Gamble's

10d/ One possible limitation, if any, on the scope of questioning may have resulted from the limited subject matter of subpoenas obtained by the investigative team to conduct certain interviews. On cross-examination by the Staff, Mr. Gamble testified that it would not have been unreasonable for the investigative team members to limit the scope of their questioning to the subject matter of the subpoenas. Tr. 30,575 (Gamble).

criticisms, TMIA proposes that the Board not accord NUREG-0760 any weight. Id. 10e/

57P. For the reasons discussed above, however, the Board finds that Mr. Gamble's testimony amounts to no more than inconsequential criticisms of the NUREG-0760 interviews which are wholly unsupported by the evidence. In fact, Mr. Gamble's own testimony and exhibits do not support his criticisms, but rather lead the Board to reach conclusions the opposite of what TMIA and Mr. Gamble would have the Board reach. In short, based upon all the evidence, the Board concludes that the NRC Staff's investigation into information flow was not inadequate as alleged by TMIA and Mr. Gamble.

5. The Staff adopts Licensee's proposed findings of fact ¶¶ 58 and 59.

6. The Staff proposes, in lieu of Licensee's proposed finding ¶ 60, the following:

60. In this proceeding, Mr. Chwastyk testified that he saw the actual pressure recorder going straight up. Tr. 29,124. He testified that initially he did not know what was happening.

10e/ TMIA argues, *inter alia*, that Mr. Moseley approached the NUREG-0760 interview of Mr. Dieckamp with a narrow definition of material false statement. TMIA Proposed Findings ¶ 277. As the Board explicitly ruled, Mr. Moseley's definition of material false statement is irrelevant to the considerations before the Board. Tr. 30,801 (Judge Smith). The Staff's position in this remanded proceeding that Mr. Dieckamp believed the statements in his mailgram were true is in no way on the definition of material false statement. Indeed, Mr. Moseley testified that his belief that Mr. Dieckamp believed the information in his mailgram was true was not limited to a consideration of the definition of material false statement. Tr. 29,940 (Moseley). Accordingly, TMIA's persistence in pursuing Mr. Moseley's definition of material false statement is contrary to the Board's ruling and wholly without merit.

Tr. 29,125. The spray pumps came on. Tr. 29,126. Mr. Chwastyk testified that the pressure came back down and looked like it was staying there, so he ordered the spray pumps shut down.

Mr. Chwastyk further testified that he ordered an external check of the reactor building and also ordered the control room operators to verify containment integrity. Tr. 29,127. He testified that eventually he came to the conclusion that the pressure spike did in fact indicate a real increase in pressure, based on the need for the pressure to be sensed at two separate locations in order for spray pumps to start. Tr. 29,130. Mr. Chwastyk testified that after discussing the cause of the spike with Brian Mehler (Tr. 29,166-67), he went back and discussed the pressure spike with Gary Miller. He testified that as best he can recall he impressed upon Miller that he thought there had been a real pressure increase and gave Miller the information upon which that conclusion was based -- spray pump actuation. Tr. 29,131. He does not recall mentioning hydrogen (Tr. 29,154, 29,280-81), hydrogen burn (Tr. 29,280-81), hydrogen explosion (Tr. 29,406), or core damage (Tr. 29,154, 29,180, 29,406), but to the best of his recollection mentioned that there had been an explosion. ^{11/} Tr. 29,357. Mr. Chwastyk's understanding of the pressure spike was that it was caused by a hydrogen buildup due to a

^{11/} Chwastyk explained, "I am not certain about the explosion, because the reason I say that, I think I discussed with Mr. Miller the fact of putting the simultaneous operation of the valve and the pressure spike together, which indicates an explosion of some sort. But I really don't recall it." Tr. 29,406 (Chwastyk).

zirconium-water reaction. Tr. 29,141. Mr. Chwastyk did not know for a fact, however, that there was core damage. 11a/ Tr. 29,189. According to Mr. Chwastyk, he asked and shortly thereafter received permission to draw a bubble in the pressurizer. Tr. 29,142-50; Tr. 29,288-89; JME 1(c)(88) at 7, 18; JME 1(c)(117) at 26. Chwastyk also testified that he ordered that electrical equipment not be operated. Tr. 29,152. He testified that a similar order was given later in the evening. Tr. 29,152, 29,154-55. Mr. Chwastyk testified that he discussed the pressure spike with an NRC representative, but cannot recall if he told him that there had been a hydrogen explosion. Tr. 29,166, 29,357. Mr. Chwastyk also testified that he discussed the pressure spike with operators who later came on shift. Tr. 29,167. He believes he told them the pressure spike indicated a real increase in pressure and may have discussed hydrogen and zirconium-water reaction. Tr. 29,168, 29,356.

Mr. Chwastyk's testimony during the hearing is that he understood the pressure spike on the day of the accident. He

11a/ In contrast to the meaning of the term "core damage" as it was used by Mr. Dieckamp in the mailgram, i.e., significant damage consistent with a major fraction of the fuel cladding reacting with water or steam, see ¶ 11 supra, Mr. Chwastyk uses the term "core damage" to include "a leaker as a result that it loses ten percent of its fuel." Tr. 29,177. Consequently, even if Mr. Chwastyk interpreted the pressure spike, in terms of core damage, as Mr. Chwastyk has defined that term, at the time of the spike, it would not necessarily constitute an interpretation of the spike, at the time of the spike, in terms of core damage as Mr. Dieckamp used that term in the mailgram.

was an important witness in this case and the Board observed him carefully. We accept Mr. Chwastyk's testimony to be what he believes today. That testimony, however, cannot be reconciled with the vast bulk of evidence on this subject which was adduced during the hearing. In addition, a review of his present testimony five years later reflects an evolution in his recollection of his understanding of the pressure spike at the time it occurred and in his confidence in that understanding.

7. The Staff adopts Licensee's proposed findings of fact ¶¶ 61-67.

8. The Staff proposes, in lieu of Licensee's proposed finding ¶ 68, the following:

68. Gary Miller has no memory of Chwastyk speaking to him on the 28th about the spike or correlation of the spike with the cycling of the electromatic relief valve. Tr. 30,203-04 (Miller). In previous statements, Miller has consistently stated that he remembers no such conversation. JME 1(c)(122) at 122-23; JME 1(c)(95) at 22. Regardless of what Mr. Chwastyk believes he told Mr. Miller, Mr. Chwastyk conceded that Mr. Miller gave no indication during the conversation that Mr. Miller believed the pressure spike was caused by a hydrogen burn (Tr. 29,281), was indicative of core damage (id.), or even that the pressure spike was real (Tr. 29,282). Indeed, Chwastyk himself has indicated uncertainty as to what he told Miller. Chwastyk's May 21, 1979 interview suggests that Chwastyk merely told Miller there had

been a rapid pressure rise when the EMOV was opened. See JME 1(c)(35) at 18. In his October 11, 1979 deposition, when asked whether he told Miller that he thought opening the valve caused an explosion, Chwastyk replied:

That's what I thought. Most definitely I did think that. Now, whether or not I related that to Gary then, now that I think about it, I don't really remember. I may have just gone back to Gary and asked permission again to redraw the bubble. I just can't remember if I related to him my thoughts at the time of the correlation of pressure spike in the operation of the valve.

JME 1(c)(88) at 21-22 (emphasis added).

Mr. Chwastyk was equally uncertain in his October 30, 1979 deposition. He stated that he told Mr. Miller that they had some type of explosion, but added:

Whether I said it was hydrogen or not, I'm not sure. But I remember distinctly putting together the operation of the valve and the spike, and I think I relayed those thoughts to Gary.

JME 1(c)(99) at 17 (emphasis added). When informed that Mr. Miller had no recollection of such a conversation, Mr. Chwastyk became even more equivocal:

Well, that could very well be true. Again, I can't absolutely -- if Gary said -- I may not have told him what I thought at the time, because I really wasn't certain.

Id. at 19-20 (emphasis added).

Mr. Chwastyk ended this deposition as follows:

Q: I just have one question to consolidate and clarify the record. Could you give us your best recollection of what it is that you told Gary Miller on Wednesday afternoon about your correlating the pressure spike with a possible explosion?

A: My best recollection is that I related to him what I had put together at the time, and that was the simultaneous operation of the valve with the pressure spike and the noise heard in the building. And I may have just inferred. I don't really remember that I said specifically that it was a hydrogen explosion or explosion or whatever. I just may have inferred that it may have caused a spike.

I don't remember that specifically. I do remember putting those three things together and relating those three things to Gary. Whether I said I thought it was a hydrogen explosion or if I just thought it was an explosion of some kind or even if I just inferred that those things caused the spike, I don't remember.

Q: I don't want to put words in your mouth. You recall making the inference, but you don't recall whether you conveyed that inference to Gary Miller; is that correct or incorrect?

A: My best recollection is that I did related [sic] that information to Gary. That's the best I can remember. How much of that information though, what information I gave him, I definitely don't remember. I do know that I gave him the information of the bank [sic], the valve opening simultaneously with the pressure spike.

Now, if I related that or if I put that together and told him that I thought it was a hydrogen explosion, if I thought it was an explosion at all, I don't remember.

Id. at 28-29 (emphasis added).

If Mr. Chwastyk had indeed interpreted the pressure spike in terms of core damage, as he today believes, it is hard to reconcile the fact that he did not communicate that important determination to his close co-worker, Brian Mehler, or to his plant manager, Gary Miller.

9. The Staff adopts Licensee's proposed findings of fact ¶¶ 69-122.

10. The Staff proposes, in lieu of Licensee's proposed finding ¶ 123, the following:

123. The information that was obtained in the months and years after the mailgram was sent consists primarily of interviews and depositions conducted by the Nuclear Regulatory Commission (through I&E or the Special Inquiry Group), by the President's Commission, by the Senate Subcommittee on Nuclear Regulation, and indeed, the testimony in this proceeding. The interviews and depositions taken over the years were not only made publicly available, but also, as evidence by the citations in the various investigative reports, generally shared among the investigative groups. In particular, the Report of the Majority Staff of the House Committee on Interior and Insular Affairs, JME 1(c)(143), which itself analyzed the pressure spike information, indicates that Representative Udall's staff not only conducted their own investigation, but also were intimately familiar with, the many investigative reports, interviews, and depositions compiled by other investigators and the conclusions reached by those investigators. Moreover, the various investigative reports themselves summarize the pertinent information in considerable detail. See NUREG-0600, JME 1(c)(62) at I-4-47 to I-4-51; Report of the Special Inquiry Group, JME 1(c)(106) at 42-43, 902-911; Memorandum from Rogovin/Frampton to Chairman Ahearne (March 4, 1980), JME 1(c)(107) at 1-6, 43-62; Report to the U.S. Senate, JME 1(c)(108) at 138-141;

NUREG-0760, JME 1(c)(142) at 22-31; and Report of the Majority Staff of the House Committee on Interior and Insular Affairs, JME 1(c)(144) at 54-98. Mr. Dieckamp certainly had a reasonable basis to believe that subsequently adduced evidence was available to the mailgram recipients -- Representative Udall and the NRC Commissioners. Indeed, [~~not-one-bit-of~~] no evidence [~~was~~] presented in this proceeding [~~to~~] suggests that any information available to Mr. Dieckamp was unavailable [~~or-known~~] to the mailgram recipients.

11. The Staff adopts Licensee's proposed findings of fact ¶¶ 124-130.

12. The Staff proposes, in lieu of Licensee's proposed finding of fact ¶ 131, the following, which, inter alia, deletes footnote 21 which is wholly unnecessary to the Board's decision:

131. The only report to reach a contrary conclusion was the Report Prepared by the Majority Staff of the Committee on Interior and Insular Affairs, "Reporting of Information Concerning the Accident at Three Mile Island" (March 1981) JME 1(c)(143). [~~Curiously,~~] Although it quoted the Dieckamp

mailgram, the Report made no explicit finding as to its accuracy. [21/]

13. The Staff adopts Licensee's proposed findings of fact ¶¶ 132 and 133.

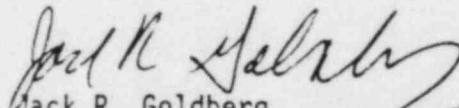
14. The Staff proposes, in lieu of Licensee's proposed finding of fact ¶ 134, the following:

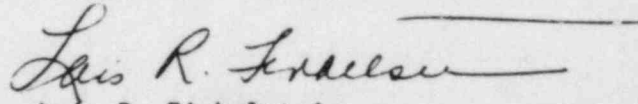
134. Mr. Dieckamp recognized the introductory phrase in the mailgram, "there is no evidence" [~~can-be-taken~~] literally [~~to~~] indicates a measure of absolute knowledge that goes beyond the [~~reasonable~~] basis that he possessed for his judgment and belief. Dieckamp, ff Tr. 28,316, at 17. If he were to write the mailgram today, he would delete that phrase. Tr. 28,357 (Dieckamp). Yet it is only this introductory phrase that, after the fact, has been made literally incorrect by some [~~obfuscating~~] evidence subsequently adduced. The thrust of Mr. Dieckamp's mailgram -- that no one interpreted the pressure spike or spray initiation in terms of core damage at the time of the spike -- remains Mr. Dieckamp's conclusion and a reasonable conclusion based on all the evidence. Dieckamp, ff Tr. 28,316, at 19. Given the fact that the mailgram was accurate when sent, that its thrust remains a reasonable conclusion today, and that all subsequently adduced contrary evidence was fully known by all concerned, it was [~~certainly~~] unnecessary for Mr. Dieckamp to inform the mailgram recipients that the prefatory phrase "there is no evidence" was not longer literal. The Board sees no purpose

to have been served by such correction. Nobody could reasonably misunderstand the import of that mailgram. To suggest that such a correction was necessary to avoid misunderstanding or to suggest not doing so as a basis for questioning Mr. Dieckamp's integrity is unjustified [~~and would-set-an-impossible-standard~~].

15. The Staff adopts Licensee's proposed conclusion.

Respectfully submitted,


Jack R. Goldberg
Counsel for NRC Staff


Lois R. Finkelstein
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 15th day of February, 1985

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

*85 FEB 26 A10:22

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

Docket No. 50-289
(Restart Remand
on Management)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN THE FORM OF A PARTIAL INITIAL DECISION ON THE DIECKAMP MAILGRAM" 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 15th day of February, 1985:

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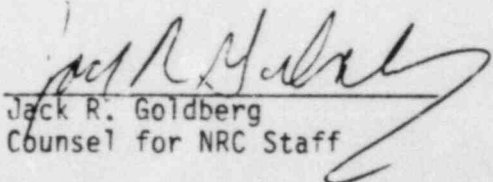
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