

350

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
(Restart)

DOCKETED
USNRC

85 APR -2 110:05

OFFICE OF SECRETARY
DOCKET AND SERVICE
BRANCH

sf

NRC STAFF'S ANSWER TO COMMONWEALTH OF
PENNSYLVANIA'S MOTION FOR RECONSIDERATION
OF COMMISSION ORDER CLI-85-2

Lois R. Finkelstein
Counsel for NRC Staff

April 1, 1985

8504030365 850401
PDR ADOCK 05000289
G PDR

DS07

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
(Restart)

DOCKETED
USNRC

85 APR -2 10:05

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

NRC STAFF'S ANSWER TO COMMONWEALTH OF
PENNSYLVANIA'S MOTION FOR RECONSIDERATION
OF COMMISSION ORDER CLI-85-2

Lois R. Finkelstein
Counsel for NRC Staff

April 1, 1985

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. DISCUSSION	2
A. Leak Rate Falsifications at TMI-2 and Leak Rate Testing Practices at TMI-1	2
B. Adequacy of Operator Training	6
C. Changes in the Staff's Recommendations	8
D. The Role of Licensee's Top Management in Changes to the Keaten Report	11
III. CONCLUSION	12

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
(Restart)

DOCKETED
USNRC
85 APR -2 410:05
OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

NRC STAFF'S ANSWER TO COMMONWEALTH OF
PENNSYLVANIA'S MOTION FOR RECONSIDERATION
OF COMMISSION ORDER CLI-85-2

I. INTRODUCTION

On March 13, 1985, the Commonwealth of Pennsylvania (Commonwealth) filed a pleading ^{1/} seeking reconsideration of Commission Order CLI-85-2. The Commonwealth asserts that further hearings in the restart proceeding "are essential to answer questions that are basic to the health and safety of those who live within the vicinity of Three Mile Island and to their environment, and to the integrity of this proceeding and how this Commission regulates the nuclear industry." Commonwealth Motion at 1. Specifically, the Commonwealth seeks reconsideration of the following issues, which the Commonwealth argues are "critical" to the safe operation of Unit 1: (1) leak rate falsifications at TMI-2 and leak rate testing practices at TMI-1; (2) the adequacy of operator training;

^{1/} Commonwealth of Pennsylvania's Motion for Reconsideration of Commission Order CLI-85-2, March 13, 1985 (Commonwealth Motion).

(3) changes in the Staff's recommendations concerning Licensee's competence to operate TMI-1; and, (4) the role of GPU's top management in changes to the Keaten Report and Licensee's December 5, 1979 response to the NRC's October 25, 1979 Notice of Violation. Id. at 2-3.

For the reasons set forth below, the Commonwealth's Motion should be denied. ^{2/}

II. DISCUSSION

A. Leak Rate Falsifications at TMI-2 and Leak Rate Testing Practices at TMI-1

The Commonwealth argues that a hearing on TMI-2 leak rate falsifications apart from the restart proceeding is inappropriate for the following two reasons: (1) the completion of this new proceeding has not been made a condition precedent to restart; and, (2) the new proceeding excepts from consideration "virtually all of GPU's officers and directors on the basis of a qualified and carefully worded statement" from the United States Attorney who prosecuted the criminal case against Metropolitan Edison for leak rate falsifications at TMI-2. Commonwealth Motion at 4. Specifically, the Commonwealth asserts that even though the United States Attorney's statement appears to have cleared from responsibility those individuals whose names are included in that state-

^{2/} In a separate motion filed on March 13, 1985, Three Mile Island Alert also requested reconsideration of CLI-85-2. TMIA's Motion for Reconsideration of Commission's Order of February 25, 1985, March 13, 1985. The Staff will file a separate answer to TMIA's motion for reconsideration.

ment, neither the Commonwealth nor the Commission can conclude, without further inquiry, that no one currently within TMI-1 management had knowledge of, or had participated in, the falsification of leak rate tests at TMI-2. ^{3/} Id. at 5-6. The Commonwealth's argument is without merit.

In addition to deciding that no further hearings are warranted in the restart proceeding, the Commission, in CLI-85-2, decided to institute a new proceeding to consider what action to take regarding those individuals possibly involved in leak rate falsification at Unit 2. CLI-85-2 at 34-36. The Commission, however, excepted from such consideration those individuals specifically cleared by the United States Attorney in his Statement of Facts read into the record as a part of the United States v. Metropolitan Edison Co. (Criminal No. 83-00185) trial settlement and those individuals found not to be implicated by the NRC's Office of Investigations (OI) in its investigation of leak rate practices at TMI-1. Id. 35-36.

The Commission, concluding as it did that pre-accident leak rate falsifications at TMI-2 do not currently raise a significant issue for the safe operation of TMI-1, carefully identified and considered those

^{3/} The Commonwealth notes in its motion that, to date, the NRC's Office of Investigations (OI) has not completed its investigation into TMI-2 leak rate falsification and that the record of the grand jury proceeding which led to the indictment of Metropolitan Edison is not available. Commonwealth Motion at 5. The Staff notes that on August 15, 1984, OI issued its report on leak rate falsifications at TMI-2. See Three Mile Island Nuclear Generating Station, Unit 2/ Alleged Falsification of Leak Rate Falsification Test Data (1-83-010). OI, however, continues to investigate the role of specific individuals in TMI-2 leak rate falsification.

individuals licensed at TMI-2 prior to the accident who likely knew of, condoned, or participated in, the falsifications at TMI-2 and who presently are employed in responsible positions at, or directly associated with the operation of, TMI-1. CLI-85-2 at 21-31. Of those individuals licensed at TMI-2 prior to the accident, only Messrs. Michael Ross and Brian Mehler, ^{4/} are presently in management or operational positions at TMI-2. As to Mr. Ross, the Commission concluded that it is "highly unlikely" that he "knew of or was involved in leak rate falsifications at TMI-2." Id. at 25. The Commission's conclusion that the only evidence linking Mr. Ross with TMI-2 leak rate falsifications is that he was cross-licensed on TMI-2, id., is consistent with the facts as determined by the Staff and described in NUREG-0680, Supp. No. 5 at 5-6. ^{5/}

To suggest, as the Commonwealth apparently does, that all of TMI-2 management, including Mr. Ross, was aware of an unacceptable pattern of conduct with regard to leak rate tests prior to March 1979 is likewise without foundation. First, the evidence developed by the OI investigation demonstrates that Mr. Ross neither knew of nor participated in the falsification of leak rate tests at TMI-2. Id. at 25, quoting OI Supplemental Report 1-83-028 at 2. Secondly, the Commission concluded

^{4/} As manager of the Radwaste Department, Mr. Mehler is not directly involved in operating the TMI-1 reactor. Accordingly, the Commission concluded that retaining Mr. Mehler in this position does not now present undue risk to public health and safety. CLI-85-2 at 25-26.

^{5/} Prior to the accident, Mr. Ross spent very little time in the TMI-2 control room. The evidence indicates that Mr. Ross stood the minimum required watch to maintain his TMI-2 license, i.e. four hours per month. NUREG-0680, Supp. No. 5 at 5-6.

that there was no direct evidence implicating Licensee's upper level management in leak rate falsifications at TMI-2. Id. at 28-29. In this regard, the Staff believes that it was appropriate and reasonable for this Commission to rely on a statement made by the United States Attorney to a United States District Court judge. Moreover, in view of the already extensive review of Licensee's fitness to operate TMI-1 in the management phase of this proceeding, the Staff believes, as does the Commission, that a hearing which included the possible involvement of individuals specifically exonerated by the United States Attorney or the NRC's Office of Investigations would serve only to duplicate the work of the grand jury and OI. See id. at 36.

With regard to leak rate testing practices at TMI-1, the Commonwealth argues that in view of irregularities in testing practices identified since 1981, there is no assurance, absent formal discovery and an evidentiary hearing, that TMI-1 can be operated safely. Commonwealth Motion at 6-7. The Commonwealth asserts that the proper resolution of these problems by current Licensee management is "very significant" to the restart of TMI-1. Id. at 7. The Staff does not believe that these irregularities raise a significant safety issue warranting reopening the record.

In view of the undisputed facts and the thoroughness of the OI investigation into leak rate practices at TMI-1, it is erroneous to conclude that further hearings on this matter would produce significant new information. See CLI-85-2 at 45. Specifically, the evidence developed by OI neither establishes a motive or a need to falsify leak rate results nor supports a finding that operators were deliberately discarding what

were deemed invalid leak rate test results in an effort to conceal actual leakage or to mislead the NRC. Id. at 45-47. In addition, this evidence fails to support a finding of deliberate leak rate manipulation at TMI-1. Id. at 49. Finally, the Commission was correct in concluding that absent the intentional addition of hydrogen to the makeup tank to falsify leak rate test results, the method by which this may be accomplished is of little importance to the restart proceeding. Id. at 47-49.

In summary, the Staff believes that none of the assertions made by the Commonwealth regarding leak rate falsifications at TMI-2 and leak rate testing practices at TMI-1 present significant safety issues which likely would result in a different Licensing Board decision. Therefore, reopening the record on these issues is not warranted, and there is no basis on which the Commission should reconsider its decision in that regard.

B. Adequacy of Operator Training

The Commonwealth asserts that notwithstanding the Commission's direction to the Licensing Board, in CLI-85-2, to issue a decision on the adequacy of Licensee's operator training and testing program, "the Commission does not promise to wait for the [Licensing Board's] decision on that issue before voting on restart." Commonwealth Motion at 7. The Commonwealth believes that it is not entirely clear that the recently concluded hearings on the training issue were adequate. Id. Specifically, the Commonwealth argues that Judge Smith's December 29, 1984 letter to U.S. District Court Judge Rambo urging leniency in the

sentencing of James R. Floyd "makes it impossible" for Judge Smith to issue a fair and impartial decision on the training issue. Id. at 8. Furthermore, the Commonwealth argues that until Judge Smith has been removed and replaced by a new judge who certifies that Licensee's training program is sound, it has no assurance that "operator training at TMI has been raised to a standard that would justify a restart vote." Id. As discussed below, there is no merit to the Commonwealth's arguments.

First of all, the Commission has not decided whether the Licensing Board's decisions on the training issue must be issued prior to a restart decision. CLI-85-2 at 5-6. ^{6/} There is, therefore, no Commission decision on this issue to be reconsidered. The Commonwealth's arguments on this issue, therefore, are simply additional arguments on an issue which has not yet been decided. Since the Commonwealth, along with all other parties, had the opportunity to address the need for a hearing on training in response to CLI-84-18, there is no reason why these additional arguments even should be considered at this time.

Secondly, with respect to the Commonwealth's arguments regarding Judge Smith, the Commission has now decided, based on its vote publicly announced on March 26, 1985, that Judge Smith should not be disqualified from presiding over the TMI-1 restart proceeding. There is, thus,

^{6/} However, finding that the training issue is more significant than the Dieckamp mailgram issue, the Commission, in CLI-85-2, directed the Licensing Board to render a decision on the adequacy of Licensee's training and testing program at TMI-1 before issuing one on the Dieckamp mailgram. CLI-85-2 at 9. Additionally, the Commission requested the Licensing Board to provide the Commission, if possible, with the Licensing Board's ultimate conclusion on the training issue before its complete partial initial decision. Id.

no basis to conclude that the training hearing was inadequate due to Judge Smith's involvement.

In conclusion, the Commonwealth has presented no bases for reconsideration of the Commission's decision regarding operator training.

C. Changes in the Staff's Recommendations

TMIA argues that the Staff's failure to identify what testimony it gave in the original restart proceeding that it would no longer present ^{7/} leaves the record unreliable with respect to confidence in GPU management. Commonwealth Motion at 9. Specifically, the Commonwealth asserts that absent a basis for the Staff's conclusion in 1984 that Licensee possesses the requisite competence and integrity to operate TMI-1 without undue risk to public health and safety, there is no reliable basis on which to assess Licensee's management competence and integrity. Id. at 9.

Contrary to these assertions, it is erroneous to conclude that the Commission has no basis on which to assess Licensee's management

^{7/} The Staff did not fail to identify what testimony it would no longer present. As the Staff pointed out in its brief in response to CLI-84-18, the issue of management integrity per se was not explicitly addressed in the original restart proceeding and therefore was not the subject of testimony by the Staff or any other party. NRC Staff's Brief in Response to CLI-84-18, October 9, 1984 at 32 n.18. Accordingly, there was no Staff testimony on integrity per se which could be changed on the basis of open issues that related to Licensee's management integrity. See id. Furthermore, the Staff stated that there was no inconsistency between the Staff's present position on the integrity of Licensee's current management and Staff's testimony in the restart proceeding on the then-existing Licensee organization and management competence. Id. at 33. Consequently, there is no merit to the Commonwealth's claim that the Staff failed to identify what Staff testimony it would change.

integrity. As explicitly set forth in CLI-85-2 and the information cited therein, the Commission had extensive information, including comments from the parties filed on numerous occasions, on which to base its conclusion that there are no outstanding significant management issues to be resolved in the restart proceeding.

The Commonwealth argues further that without additional inquiry, the public has no opportunity to examine five areas, namely: (1) which of its prior judgments the Staff would change, and why; (2) what organizational components of Licensee's management the Staff considers critical to the safe operation of TMI-1; (3) what evidence supports the Staff's current view of Licensee's management; (4) what remedies have been taken by Licensee management in response to past misconduct, and whether they are institutionally effective; and, (5) what actions would cause the Staff to withdraw its favorable opinion of management. Commonwealth Motion at 9-10. The Commonwealth is incorrect.

With respect to question (1) above, as explained in the Staff's brief in response to CLI-84-18, the Staff would not change any of its prior testimony. NRC Staff's Brief in Response to CLI-84-18, October 9, 1984 at 32 n.18, 33; see note 6 supra. With respect to question (2), the Staff believes that the identification by the Staff of organizational components of Licensee's management which the Staff considers crucial to the safe operation of TMI-1, is not directly affected by the integrity issues which are the subject of CLI-85-2. Those integrity issues raised questions concerning the integrity of individuals who no longer hold management positions with GPU Nuclear, as fully explained in CLI-85-2. Therefore, there is no issue involving "organizational components of GPU

management" in CLI-85-2 on which there can be any "reconsideration." As for question (3), the Staff discussed in detail, not only in NUREG-0680, Supp. No. 5, but also in its brief in response to CLI-84-18, the evidence on which the Staff relied in finding no undue risk to public health and safety with current Licensee management and personnel.

With respect to question (4), there is no merit to the argument that absent further inquiry, the public has no opportunity to examine remedial actions taken by Licensee management in response to past misconduct. This issue is discussed not only by the Commission in CLI-85-2 but also by the Staff in NUREG-0680, Supp. No. 5. For example, Licensee elected three outside directors to the GPU Nuclear Board of Directors which comprise a Nuclear Safety and Compliance Committee. This Board is charged with, among other things, issuing reports concerning the operation and maintenance of GPU system nuclear units. CLI-85-2 at 13-14. Additionally, since the close of the record in 1981, GPU Nuclear elected a new Chairman and a new President. Id. The effectiveness of these remedies is likewise discussed in CLI-85-2 and NUREG-0680, Supp. No. 5.

Finally, with respect to question (5), the Commonwealth asserts that without further hearings, the public has no opportunity to examine what events or conduct would cause the Staff to again withdraw its favorable opinion of Licensee's management. Inasmuch as such an inquiry calls not for material facts but rather for mere speculation, it provides no basis for reopening the record or for reconsidering CLI-85-2.

In summary, the Commonwealth's assertions concerning the Staff's so-called change in position regarding the Licensee's management do not warrant reconsideration of CLI-85-2.

D. The Role of Licensee's Top Management in Changes to the Keaten Report

The Commonwealth asserts that the Commission, in CLI-85-2, lightly dismissed all allegations that changes to the Keaten Report were made to avoid liability in the GPU v. Babcock & Wilcox litigation or to avoid liability in response to the NRC's October 25, 1979 Notice of Violation. Commonwealth Motion at 10. In particular, the Commonwealth urges the Commission to direct the Licensing Board to consider the following two issues: (1) whether anyone in current TMI-1 management participated in making changes to the Keaten Report; and, (2) whether current management practices at TMI-1 preclude a repetition of this episode. Id. at 10. The Commonwealth's concerns about changes to the Keaten Report provide no basis for reconsideration of CLI-85-2.

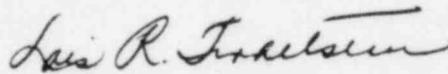
The Commission's analysis of changes to the Keaten Report in CLI-85-2 clearly supports the conclusion that those changes, even if designed to enhance Licensee's litigative position as alleged, fail to raise a significant safety issue which would cause a different result to be reached on any issue in the restart proceeding. While the Commonwealth believes that changes to the Keaten Report have implications for the current Licensee management and hence for a decision on restart, the Commonwealth fails to identify how the Commission erred in dealing with this issue. Absent the presentation of specific information showing how the Commission erred or the provision of significant new information, the

Commonwealth's concerns in these regards provide no basis to reconsider CLI-85-2.

III. CONCLUSION

For the reasons set forth above, the Commonwealth's Motion for Reconsideration of CLI-85-2 should be denied.

Respectfully submitted,



Lois R. Finkelstein
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 1st day of April, 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
(Restart)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO COMMONWEALTH OF PENNSYLVANIA'S MOTION FOR RECONSIDERATION OF COMMISSION ORDER CLI-85-2" 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 1st day of April, 1985:

*Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555

*Herzel H. E. Plaine, General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

*Gary J. Edles, Chairman
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

*Christine N. Kohl
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

*Ivan Smith
Administrative Law Judge
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

*Sheldon J. Wolfe
Administrative Judge
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

*Mr. Gustave A. Linenberger, Jr.
Administrative Judge
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20036

Thomas Y. Au, Esq.
Office of Chief Counsel
Department of Environmental Resources
505 Executive House
P. O. Box 2357
Harrisburg, PA 17120

Mr. Marvin I. Lewis
6504 Bradford Terrace
Philadelphia, PA 19149

Mr. C. W. Smyth, Manager
Licensing TMI-1
Three Mile Island Nuclear Station
P. O. Box 480
Middletown, PA 17057

Ms. Marjorie Aamodt
200 North Church Street
Parkesburg, PA 19365

Allen R. Carter, Chairman
Joint Legislative Committee on Energy
Post Office Box 142
Suite 513
Senate Gressette Building
Columbia, South Carolina 29202

Chauncey Kepford
Judith Johnsrud
Environmental Coalition on Nuclear Power
433 Orlando Avenue
State College, PA 16801

Ms. Frieda Berryhill, Chairman
Coalition for Nuclear Power Plant
Postponement
2610 Grendon Drive
Wilmington, Delaware 19808

Mr. Henry D. Hukill
Vice President
GPU Nuclear Corporation
Post Office Box 480
Middletown, PA 17057

Michael McBride, Esq.
LeBoeuf, Lamb, Leiby & McRae
Suite 1100
1333 New Hampshire Avenue, NW
Washington, DC 20036

Louise Bradford
Three Mile Island Alert
1011 Green Street
Harrisburg, PA 17102

William S. Jordan, III, Esq.
Harmon, Weiss & Jordan
20001 S Street, NW
Suite 430
Washington, DC 20009

Lynne Bernabei, Esq.
Government Accountability Project
1555 Connecticut Ave., NW
Washington, DC 20009

Jordan D. Cunningham, Esq.
Fox, Farr and Cunningham
2320 North 2nd Street
Harrisburg, PA 17110

Ms. Ellyn R. Weiss, Esq.
Harmon, Weiss & Jordan
2001 S Street, NW
Suite 430
Washington, DC 20009

*Reginald L. Gotchy
Atomic Safety & Licensing Appeal
Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Ms. Jane Lee
183 Valley Road
Etters, PA 17319

Michael W. Maupin, Esq.
Hunton & Williams
707 East Main Street
P.O. Box 1535
Richmond, VA 23212

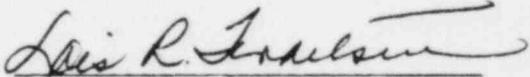
Mr. Thomas Gerusky
Bureau of Radiation Protection
Dept. of Environmental Resources
P.O. Box 2063
Harrisburg, PA 17120

George F. Trowbridge, Esq.
Shaw, Pittman, Potts & Trowbridge
1800 M Street, NW
Washington, DC 20036

*Atomic Safety & Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

*Atomic Safety and Licensing Appeal
Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

*Docketing & Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555


Lois R. Finkelstein
Counsel for NRC Staff