

RUSSELL B. LONG
LOUISIANA

United States Senate

WASHINGTON, D.C. 20510

February 28, 1984

Mr. Carlton Kammerer
Director, Office of Congressional Affairs
Nuclear Regulatory Commission
1717 "H" Street, N.W.
Washington, D.C. 20505

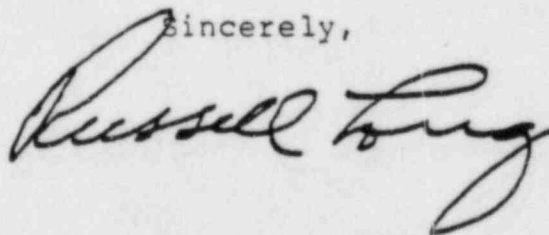
Dear Mr. Kammerer:

I am enclosing a copy of the correspondence which I have received from Ms. Evelyn B. Graham.

I would appreciate it if you would provide me with a report on this matter.

With best wishes, I am

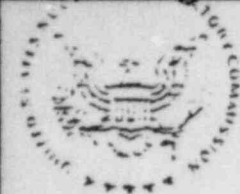
Sincerely,



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Enclosure

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UNITED STATES
 NUCLEAR REGULATORY COMMISSION
 WASHINGTON, D.C. 20555

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 SECRETARY

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MEMORANDUM FOR: Parties to the TMI-1 Restart Proceeding

FROM: Samuel J. Chalk, Secretary *SC*

SUBJECT: TENTATIVE COMMISSION VIEWS AND PLAN FOR
 RESOLUTION OF MANAGEMENT INTEGRITY
 ISSUES PRIOR TO RESTART

On October 7, 1983, the Commission issued a Notice to the Parties setting forth "the Commission's current estimate for completing reviews of the various issues that might possibly affect the decision whether to restart TMI Unit 1." The Commission stated in the Notice that, given the estimated time necessary to resolve those issues, it was "prepared to consider alternative approaches for dealing with the management competence and integrity issues."

The Commission subsequently had an open meeting on November 28, 1983 to hear from GPU on such an alternative approach, i.e., GPU's June 10, 1983 management organization proposal, as modified. The Commission heard from the other parties on December 5, 1983 on GPU's proposal.

The Commission has also provided the parties an opportunity to comment on staff's response to the GPU proposal, and as a separate matter, an opportunity to comment on a list of integrity issues in the TMI-1 restart proceeding.

The Commission has decided to inform the parties to the restart proceeding of its current views on certain critical management integrity issues and the Commission's plans for reaching a final restart decision. These views and plan are those of a Commission majority. The additional views of Chairman Palladino and Commissioner Bernthal and the separate views of Commissioners Gilinsky and Asselstine are attached.

The Commission emphasizes that this memorandum is provided only to keep the parties informed. It is not a restart decision and does not authorize restart. As explained further below, these current views and plans are subject to change, based on consideration of parties' comments on the list of integrity issues and other matters, and on any other important new information.

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Current Views

The Commission has tentatively concluded that, in principle, temporary separation from nuclear operation of some GPU employees and other actions, including those proposed by the licensee, can serve as an interim solution to the management integrity issues raised by the "open items," pending resolution of those items. In this regard, the Commission presently believes that the only ongoing investigation which may require further resolution before a decision on the management issues is the Unit 1 leak rate investigation. The Commission intends to obtain additional information regarding that matter before making a restart decision.

With regard to specific individuals, the Commission's view, based on currently available information, is that neither Chairman of the Board William Kuhns nor President of GPU Herman Dieckamp will have to be temporarily or permanently separated from nuclear operations prior to restart. The Commission may, however, require restrictions beyond those proposed by the licensee. This may include requiring that certain additional individuals be separated from nuclear operations pending completion of the ongoing NRC investigations of integrity issues or of the TMI-2 leak rate criminal trial.

Plan for Restart Decision

After reviewing further information concerning the TMI-1 leak rate matter and the parties' comments both on the list of integrity issues and on staff's response to the GPU proposal, the Commission will issue a tentative draft decision on the management issues for comment by the parties. After reviewing the parties' comments on the draft decision, the Commission will then issue a final decision on management issues. The Commission believes that this process provides the possibility for reaching a decision on whether to lift the immediate effectiveness of the original shutdown orders.

The Commission's process for making a decision on the management issues will not affect the ongoing Appeal Board merits review of those issues, or affect the other ongoing investigations. Those investigations will continue and any individuals involved in wrongdoing will be subject to possible enforcement proceedings, as appropriate. The Commission's decision will prescribe the conditions that will apply for any individuals who are to be separated from nuclear operations.

The Commission still has under consideration resolution of the hardware issues in the TMI-1 restart proceeding, and whether or not the license amendment concerning the steam generator repair involves a "significant hazards consideration." Those issues are being addressed separately.

Given present planning, the Commission intends to follow this approach and hopes to issue a decision on whether to lift the immediate effectiveness of the 1979 shutdown orders by June, 1984.

Attachments:
As stated

ADDITIONAL VIEWS OF CHAIRMAN PALLADINO

I VOTED FOR TODAY'S ACTION BECAUSE I BELIEVE IT OFFERS A REASONABLE APPROACH TO MAKING THAT LONG-DELAYED DECISION ON WHETHER OR NOT TO ALLOW RESTART.

WHEN THE COMMISSION MAKES THAT DECISION, WHICH I HOPE WILL BE BY JUNE 1984, IT WILL BE CALLED UPON TO JUDGE THE COMPETENCE AND INTEGRITY OF THE MANAGEMENT OF TMI, UNIT 1.

A QUESTION WE ADDRESSED IN TODAY'S ACTION IS WHETHER OR NOT IT IS NECESSARY TO AWAIT THE COMPLETION OF THE CRIMINAL TRIAL AGAINST METROPOLITAN EDISON BEFORE WE ATTEMPT TO REACH A JUDGMENT ON COMPETENCY AND INTEGRITY. I BELIEVE THAT A JUDGMENT CAN BE REACHED BEFORE COMPLETION OF THE TRIAL IF CERTAIN GPU EMPLOYEES ARE TEMPORARILY SEPARATED FROM NUCLEAR OPERATIONS AT TMI-1 DURING THE TRIAL. WE WILL DESIGNATE THOSE PEOPLE, AS WELL AS THE CONDITIONS FOR THEIR SEPARATION, IF WE MAKE A DECISION TO ALLOW RESTART.

WE ALSO ADDRESSED TODAY WHETHER OR NOT IT WAS NECESSARY TO SEPARATE THE MOST SENIOR MANAGEMENT OF GPU, THE CHAIRMAN AND THE PRESIDENT OF GPU, IN ORDER TO MAKE A DECISION ON WHETHER OR NOT TO ALLOW RESTART. MY VIEW IS THAT THE PENDING OF THE OPEN ITEMS INCLUDING THE CRIMINAL TRIAL DOES NOT PROVIDE AN ADEQUATE JUSTIFICATION TO REQUIRE THEIR

SEPARATION FROM NUCLEAR OPERATIONS. THE DECISION IS YET TO BE MADE ON WHETHER OR NOT THE TMI-1 ORGANIZATION POSSESSES THE REQUISITE MANAGEMENT COMPETENCE AND INTEGRITY TO OPERATE THE PLANT.

COMMISSIONER BERNTHAL'S ADDITIONAL VIEWS

It is evident from the Commission's memorandum to the parties, and I am sure from public representations of several Members of the Commission, that the central question addressed in this memorandum is the fitness for further duty, so to speak, of certain high-level management individuals, who have been in their positions of responsibility throughout the troubled history of the Three Mile Island facility. I should add that, beyond these two individuals, no clear difference between my position and that of any of my colleagues on the Commission has yet been defined.

While one may question the judgment of the governing board of licensee in permitting such an issue to distract for so long from the real questions of licensee preparedness and competence to resume operation of the undamaged TMI-1 reactor, the responsibility of the NRC must go beyond opinions and perceptions. The NRC must not lose sight of its fundamental responsibilities and obligations. It must provide first and foremost for the public health and safety by evaluating competence and, to the extent that it touches on public health and safety, integrity of licensee management. Second, it must consider the rights of the licensee and the public that licensee serves. In the matter of Messrs. Kuhns and Dieckamp, there is currently no evidence bearing adversely on their integrity or competence, which would dictate their removal from their present positions. Should any such new evidence come to light as a result of further investigations and proceedings, however, the Commission always has remedies at its disposal.

At least half of my dissenting colleagues have clearly stated many times for the public record their judgment on Mr. Kuhns and Dieckamp, even before the indictment now lying against licensee (not against Mr. Kuhns and Dieckamp), had ever been handed down by the Department of Justice. Therefore, the question of the outstanding indictment against licensee was and is apparently not the underlying issue.

Rather, the issue has frequently been represented as responsibility of the commander for the actions of his subordinates. I do not believe that it is the province of the NRC to make such judgments in the absence of reasonable evidence, and based only on such facile metaphors and representations, as though the analogy and language of martial discipline were appropriate to this matter.

The responsibility of the Commission in this case is simple and straightforward. It is to ask and answer the single question: Can the current personnel of the reorganized General Public Utilities nuclear division be expected to operate TMI-1 consistent with the NRC's standards and regulations providing for the public health and safety.

Indeed, it would be highly inconsistent and incongruous if the Commission now, in considering this single question, were to require removal of Mr. Kuhns and Dieckamp on the grounds of the NRC's public health and safety responsibilities, while it has, to my knowledge, never even seriously considered such action with respect to the continued operation of the Oyster Creek nuclear power plant, a plant that is permitted to generate electricity today, under the same senior management personnel in question here today, and under the same NRC that is responsible here today for meeting the requirements of law and judgments in protection of public health and safety for TMI-1. I, for

one, would be hard pressed to argue that high-level GPU management should be removed or quarantined from the TMI-1 operations, but not from those at Oyster Creek. Indeed, I believe that the entire Commission has, by their very inaction over the last several years in respect to the operation at Oyster Creek, already agreed with the premise of my decision today.

Integrity is the most important and valuable personal trait any of us possesses. It is, in my judgment, unwise and unjust for anyone, especially those who are in positions of public trust, to impugn the integrity of any individual without substantial evidence that his or her integrity has been compromised. Nor is there any evidence that these two individuals are incompetent or otherwise unfit to perform their responsibilities as executives of General Public Utilities, or that their continuing to do so would somehow render the operation of either Oyster Creek or Three Mile Island Unit-1 unsafe.

In summary, the Commission has a duty to the public served by licensee, and to licensee to determine whether the hardware and personnel of GPU and specifically of TMI-1 are qualified, competent, and prepared to allow the plant to resume operations, consistent with the Commission's responsibility to protect public health and safety. With respect to the top-level management of GPU, it is high time that the Commission spoke to that issue. This action today does so. It does not address in detail, nor have I yet reached a conclusion on any of the other outstanding personnel, hardware, and procedural issues related to TMI-1 restart.

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SEPARATE VIEWS OF COMMISSIONER GILINSKY
TMI-1 RESTART - MANAGEMENT INTEGRITY ISSUES

It goes without saying that I do not agree with the three Commissioners who have embraced GPU's proposal for dealing with the management integrity issue--the critical issue in this case in view of the numerous instances of wrongdoing by the Company. The Commission majority has, in effect, brushed aside this central question. The majority's approach would leave in place the Chairman of the Board of Directors and the President of the Company, the two chief executive officers who have been in direct control of the operations of GPU and its subordinate companies since before the accident. The three Commissioners have argued that these individuals were and are removed from day-to-day operations and that they have not been shown to be involved personally and directly in the wrongdoing committed by GPU. Nor would the majority hold them accountable for GPU's grudging response to instances of cheating and lying by its staff. This is sharply at odds with NRC's tenet that the actions and example of the top utility managers are key to safe plant operation.

There is an altogether unseemly contrast between the Commission's solicitude for the persons at the top of the corporate pyramid and its microscopic examination of, and

handwriting over, the lapses of minor actors in the TMI accident. (It is impossible to adequately convey this upside down view without quoting from the transcripts of closed Commission meetings. I can only hope they will be released before long.) In reality, persons at the working level by and large do what is expected of them. The climate for rightdoing or wrongdoing is set by those at the top.

The Commission majority has also brushed aside the criminal indictment of the Company that operated the TMI plant and which is still headed by the same chief executive officer. The majority argues that that Company, Metropolitan Edison, has been replaced as licensee by GPU Nuclear, but this is little more than a paper change. The majority also argues that since no criminal indictments have been brought against individuals, there is nothing for the Commission to take into account in its restart decision. While the possibility has been raised that several GPU employees may be "quarantined" pending the outcome of the criminal trial, it is clear that the Commission majority has decided that no outcome of the trial can affect their decision since no individual verdicts will be rendered. This ignores the fact that the criminal indictment of the entire Company is a far more serious matter than would be individual indictments of operators or supervisors, and that such an indictment weighs more heavily against the Company's management.

The Commissioners' split over this decision involves far more than a different interpretation of the facts; it amounts to a vastly different view of the responsibilities of this agency in assuring that nuclear power plants are operated by competent and trustworthy organizations. The majority has adopted the narrowest interpretation of those responsibilities. What the NRC should have learned from its experience with Three Mile Island and other problem plants is that timid regulation is to no one's advantage; in the long run, not even that of the utilities.

DISSENTING VIEWS OF COMMISSIONER ASSELSTINE

I do not agree with the majority's decision to proceed with a plan that would allow the restart of TMI Unit 1 prior to the completion of five NRC investigations relating to the integrity of the licensee's management. Stripped to its essentials, the majority's decision amounts to an acceptance with few, if any, modifications of the GPU proposal for restarting TMI-1 before completion of the management integrity investigations. As the NRC staff has recognized, this approach will permit the restart of TMI-1 before the Commission has the information needed to reach a final conclusion on whether the present management of the GPU Nuclear Corporation has the proper character to operate the plant safely. Although there are conditions under which I could approve restart of TMI-1 in advance of the completion of the management integrity investigations, those conditions are not met by the majority's plan.

Last year, the NRC renewed or began five investigations bearing directly on the integrity of GPU management. These investigations covered: (1) the Hartman allegations that leak rate tests for TMI Unit 2 were falsified; (2) information on possible leak rate test falsification for TMI Unit 1; (3) the Parks, Gischel, King allegations that GPU management or others attempted to intimidate or harass individuals who questioned whether procedural requirements relating to the clean-up of TMI-2 were being followed; (4) GPU involvement in a material false statement violation for failure to provide copies of internal GPU reports, including the RHR and BETA reports, to the NRC; and (5) GPU management involvement in modifications to the draft Keaten report. The first of these items--the falsification of leak rate tests at TMI Unit 2--is also the

subject of the first criminal indictment of a utility for violating NRC safety requirements in the history of the commercial nuclear power program.

In the case of the TMI-2 leak rate falsification issue, the agency already possesses sufficient information to lead senior members of the NRC staff to conclude that such test falsifications likely did occur, but we do not have access to the information developed by the Department of Justice investigation that served as the basis for the criminal indictment of the utility. As the Department of Justice has recognized, the information supporting the indictment may well be of value to the NRC in evaluating the significance of the leak rate test falsification issue for present TMI-1 management. Given the Justice Department's request that we not interview some 43 individuals who were involved with the operation of TMI-2 at the time of the suspect leak rate tests, it is clear that our investigation of the TMI-2 leak rate falsification issue cannot be completed until after the conclusion of the criminal trial. It also appears likely that this Department of Justice request will limit our ability to complete the TMI-1 leak rate investigation, the Parks, Gischel, King investigation and the investigation of the Keaten report as well. In the case of the TMI-1 leak rate investigation, in particular, the NRC Office of Investigations staff responsible for conducting the investigation have concluded that the TMI-1 leak rate falsification issue cannot be resolved without interviewing a number of individuals on the Justice Department list. This means that investigations of the TMI-1 operators will likely continue beyond the June 1984 date targeted by the majority for restart of TMI-1. Quite apart from the management integrity issues, the NRC staff has expressed safety concerns about the operation of TMI-1 with operators who are under the stress of a continuing NRC investigation.

The GPU plan embraced by the majority attempts to deal with the problem of the incomplete investigations by: (1) preventing those who were assigned to regular duty as TMI-2 licensed operators at the time of the accident from serving on TMI-1 licensed operators; (2) providing some additional internal GPU oversight of TMI-1 operations; and (3) requiring the resignation of Robert Arnold as President and a Director of the GPU Nuclear Corporation. However, even the NRC staff acknowledges that the GPU plan leaves in place at least seven or eight individuals in the GPU-TMI-1 organization who are potentially involved in the areas under investigation, including persons in responsible high-level management positions in the Company. As the staff notes in its comments on the GPU plan:

If restart is approved prior to completion of the various investigations, the possibility exists that subsequent investigations or court proceedings will produce negative information bearing directly on persons in responsible management positions. This might require further reorganization [of the licensee's organization] or shutdown [of the plant] . . .

The majority's endorsement of the GPU plan amounts to an assumption either that the investigations when eventually completed will find no wrongdoing by the TMI-1 organization other than the former TMI-2 operators, or that any wrongdoing will reflect only on a few individuals and will not call into question the overall management integrity of the TMI-1 organization. At the present time, the information available to the Commission simply does not support such an optimistic assumption. Indeed, as the NRC staff notes, there is every possibility that the investigations will lead to the opposite result. Given this state of affairs, I cannot support the majority's restart plan or the wishful thinking that underlies it.

As I mentioned at the outset, there are conditions under which I could support restart of TMI-1 prior to the completion of the criminal proceedings and the NRC investigations. One acceptable option would be to bring in an outside organization, with an established record of competence and integrity in the operation of commercial nuclear power plants, to manage the operation of TMI-1.

A second option would be the removal, until the completion of the NRC investigations and any subsequent hearings that may be required, of the remaining individuals in the GPU TMI-1 organization who are potentially involved in the matters under investigation. Like Commissioner Gilinsky, I would pay particular attention to those individuals in responsible management positions. In the years since the Three Mile Island accident, the Commission has repeatedly stressed the critical role of management in the safe operation of nuclear power plants. It is most unfortunate that, when put to the test, the Commission has failed to sustain this principle with its actions.