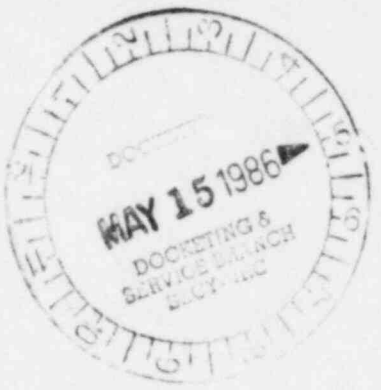
188

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



COMMISSIONERS:

Nunzio J. Palladino, Chairman
Thomas M. Roberts
James K. Asselstine
Frederick M. Bernthal
Lando W. Zech, Jr.

SERVED MAY 16 1986

In the Matter of	
GPU NUCLEAR	50-289 RA 50-289 EW
(Three Mile Island Nuclear Station, Unit 1)	(Special Proceeding)

ADVISORY OPINION AND NOTICE OF HEARING

CLI-86-09

Background

The Commission decided not to reopen the TMI-1 restart proceeding record on the issue of licensee officials Robert Arnold's and Edward Wallace's involvement in licensee's December 5, 1979 response to an October 25, 1979 NRC Notice of Violation because the significance of the issue, if any, was mooted by licensee's removal of Arnold and Wallace from TMI-1 operations. The Commission required licensee to notify it before returning either of these individuals to responsible positions at TMI-1. CLI-85-2, 21 NRC 282, 323 (1985).

CLI-85-19, 22 NRC ___ (1985), which was issued in response to Arnold's and Wallace's request for a hearing in order to clear them of any wrongdoing, invited interested persons to comment on whether there

DS02

was a reasonable basis to believe that Arnold or Wallace knowingly, willfully or with reckless disregard made a material false statement in licensee's December 5, 1979 NOV response. Seven sets of comments were submitted. In addition, Arnold and Wallace commented on those submissions and we have taken those comments into consideration.

Summary and Conclusion

Advisory Opinion

The Commission finds that there is no reasonable basis to conclude that Arnold made a knowing, willful, or reckless material false statement in the NOV response, and it does not view Arnold's involvement in the NOV as requiring any constraint on his employment in the regulated nuclear industry.

Mr. Arnold has stated that he did "not object to a continuation of the notification requirement" in CLI-85-2 regarding his possible return to TMI-1, and that he did not "know of any plans by GPU to offer him a position involving TMI-1." For these reasons, the condition imposed in CLI-85-2 is not changed by our finding.

Notice of Hearing

The evidence regarding Wallace's involvement in possible willful, knowing, or reckless material false statements is much more difficult to evaluate. The Commission understands that Wallace wants the Commission to withdraw the adverse implications about his integrity drawn in

various NRC documents in the TMI-1 restart proceeding, and to issue a statement to the effect that there are no constraints on his utilization in NRC-regulated activities. If a hearing is required to accomplish this, Wallace requests one. We grant Wallace's hearing request.

Analysis

A. Context of Alleged Material False Statements

In brief, the NOV alleged that (1) TMI-2 Emergency Procedure 2202-1.5 required that the block valve be closed if, among other things, the valve discharge line temperature exceeded 130°F, (2) the temperature had been 180°-200°F since October 1978, (3) a temperature of 283°F was noted at 5:21 on March 28, 1979, the day of the TMI-2 accident, and (4) the valve was not closed until 6:10 on March 28. The cover letter to the NOV pointed out that this was one of the more significant issues.

Licensee's NOV response stated that "Emergency Procedure 2202-1.5, 'Pressurizer System Failure,' was not violated during the period from October 1978 through March 28, 1979 notwithstanding the temperatures of the discharge line from the pilot operated (electromatic) relief valve ('PORV')." With regard to the failure to close the valve prior to March 28, licensee's response explained that the procedure 2202-1.5 described possible failures, a number of "symptoms," and immediate and follow-up actions. Licensee asserted that the existence of a single symptom -- elevated temperatures -- did not mean that the failure existed, but rather that conditions should be examined to determine whether the problem exists. Licensee stated that, while the

temperatures generally were 170° to 190°, they did not appear to have been caused by a leaking PORV. Licensee to support this assertion listed the following factors:

(1) The reactor coolant drain tank leak rate (which would have reflected leaks past the PORV) was essentially zero through January;

(2) The increase in the drain tank leak rate after January was accompanied by a sharp increase in the discharge line temperatures for the code relief valves;

(3) "These matters were discussed by the plant staff. Based on temperature reading , a determination was made that code relief valve RV1/. was leaking" and a work request was made to repair this valve;

(4) The higher temperatures on the PORV discharge line occurred even when the plant was in hot shutdown.

Licensee stated that "[t]hese values make it clear that discharge line temperatures did not, of themselves, establish that the PORV was leaking. More likely, the temperatures resulted from the heating of the line by conductivity from the pressurizer itself." In sum, licensee concluded that the 170°-190° temperatures were normal, and that the procedure should have been changed.

The NOV response also contained the statement that, "although Metropolitan Edison is concerned about this issue, there is no indication that this procedure or the history of the PORV discharge line temperatures delayed recognition that the PORV had stuck open during the course of the accident."

The following questions have been raised about the accuracy of licensee's NOV response. The response denied that the emergency procedure had been violated, yet licensee appears to have had information in its possession to the contrary. Some evidence even

indicates that licensee was unsure whether the PORV was leaking, yet consciously chose not to close the PORV block valve. It also appears questionable whether licensee had determined prior to the accident that the PORV was not leaking, contrary to the implication in the NOV response. Finally, there is evidence indicating that licensee had in its possession information contrary to the assertion that there was "no indication" that operators had been desensitized by the elevated tailpipe temperatures. For instance, a draft of the Keaten Task Force Report and a licensee report, TDR-054, both available at the time of the NOV response, indicated that operators had been desensitized.

We will now address the knowledge of Arnold and Wallace regarding this contrary information, and whether there is any basis to believe that either knowingly, willfully, or recklessly made material false statements.

B. Knowledge and Involvement of Arnold in Questioned Statements

An examination of the evidence involves determining what contrary information Arnold had at the time the NOV response was filed, and inferring from that whether he recklessly, willfully, or knowingly made a material false statement. The evidence as we evaluate it shows that Arnold knew of the following:

(1) That the emergency procedure was violated, in that he was aware that all the symptoms of a leaking PORV were present, the procedure required closing the block valve in this instance, but the block valve was not closed;

(2) That there was leakage from the top of the pressurizer, and that some operations personnel were not sure of the source of the leakage.

In addition, the following evidence provides a possible basis for inferring additional knowledge on Arnold's part:

(1) Arnold reviewed and signed the NOV response -- it could be inferred that he carefully studied it and acquainted himself with all relevant facts in licensee's possession, in particular

   (a) statements by Zewe, Faust, Frederick and Miller indicating a conscious management decision was made to violate the procedure, and

   (b) statements by Zewe indicating that elevated temperatures existed that may have delayed recognition that the PORV was stuck open;

(2) a draft of the Keaten Task Force Report stated that evidence indicated that the procedure was violated pursuant to a conscious management decision, and Arnold was listed on distribution for that draft prior to the NOV -- it could be inferred that he read the draft before signing the NOV;

(3) A draft of the Keaten Task Force report and a licensee report, TDR-054, both indicated that elevated temperatures existed and may have delayed recognition of the stuck open PORV. Arnold was listed on distribution of the draft Keaten Report and TDR-054 -- it could be inferred that he read them before signing the NOV.

While one can argue whether Arnold should have, or must have, known of this information, the only direct evidence in this regard is his acknowledgement that he may have been aware of Zewe's statements in (1)(b) above. The information in these statements is the same as in (3). He states he does not remember seeing the statements in the Keaten drafts or TDR-054. While inferences are highly judgmental, we do not believe it reasonable to infer that Arnold, given his high management position, new of the evidence in (1)(a), (2), or (3).

As we see it then, the major issue regarding Arnold involves the fact that he knew the procedure had been violated, yet the NOV response denied that it had been violated as alleged. Arnold now asserts that

the NOV response was directed at the literal language of the NOV, which in his view was that the procedure had been violated solely because of elevated discharge line temperatures. Arnold asserts that elevated temperatures alone did not require that the block valve be closed, and that this was the point being made in the NOV response.

It can be argued in hindsight that Arnold in the NOV response should have acknowledged that the procedure was violated, even if not for the reasons alleged in the NOV.[1] The NOV cover letter identified violation of this emergency procedure as one of the more significant issues, and Arnold was aware of staff's conclusion in NUREG-0600 that all the symptoms of a leaking PORV were present. Hence it can be argued that Arnold should have known that the NOV intended to address all the symptoms of a leaking PORV.

However, in the absence of persuasive evidence indicating that Arnold was aware of a conscious management decision to violate the procedure, we cannot say that the argument that he was responding to the literal language of the NOV is inherently unreasonable. Hence we conclude that there is no reasonable basis to conclude that Arnold made a reckless, willful, knowing material false statement when he responded to the literal language of the NOV and denied that the procedure had been violated as alleged.

---

[1] This would be particularly true if it could be established that Arnold was aware of the information indicating that there had been a conscious management decision to violate the procedure.

With regard to the assertion in the NOV response that it had been determined by licensee that a code safety, not the PORV, was leaking, it is now questionable whether a determination had in fact been made that the PORV was not leaking. The question regarding Arnold, however, is whether he acted with reckless disregard for the truth in accepting Wallace's representations to this effect, given that Arnold knew that there was some question regarding whether the PORV was leaking. The arguments given by Wallace are not facially unreasonable, and in our view it was reasonable for a manager in Arnold's position to have accepted Wallace's assertions without personally checking them.

With regard to the other statement at issue in the NOV response -- the "no indication" of delayed recognition -- we also conclude that the available evidence does not reasonably indicate that Arnold knowingly, willfully, or with reckless disregard made a material false statement in accepting Wallace's representations. Arnold apparently was aware of statements by operators that can be read as implying that they were desensitized. While we agree with Arnold that the phrase "no indication" was "ill-chosen," the statements by the operators do not clearly say they were desensitized, and Arnold's explanation that he felt they did not recognize the open PORV for other reasons (e.g., expected discharge temperatures greater than 300°) is reasonable. In the absence of persuasive evidence that he was aware of contrary information, we cannot reasonably conclude that he exhibited a reckless disregard for the truth in connection with this statement.

Based on its review of the evidence, the Commission finds that there is no reasonable basis for concluding that Arnold knowingly,

willfully, or recklessly made a material false statement to the NRC. Accordingly, the Commission finds that there are no constraints beyond the condition imposed in CLI-85-2 on Arnold's employment in NRC-licensed activities.

C. Knowledge of and Involvement of Wallace in Questioned Statements

As with Arnold, an examination of the evidence concerning Wallace involves determining what information he had that may have contradicted the NOV response, and inferring from that whether he recklessly, willfully, or knowingly made a material false statement.

Based on its review of the evidence, the Commission cannot, as Wallace requests, clear his name without additional evidence. However, the Commission emphasizes that no final judgment has been made, and it may be that a full hearing will not support the position that he engaged in wrongdoing.

The Commission has therefore decided to grant Wallace's request for a hearing. The hearing is to address the following questions:

(1) Does any part of the following statements -- including the accompanying explanation -- in licensee's December 5, 1979 NOV response constitute a material false statement:

> Metropolitan Edison believes that Emergency Procedure 2202.1.5, "Pressurizer System Failure", [sic] was not violated during the period from October 1978 through March 28, 1979 notwithstanding the temperatures of the discharge line from the pilot operated (electromatic) relief valve ("PORV"). Although this procedure was understood by the plant staff, it is not clearly written and does not reflect actual plant conditions. It will be changed. However, although Metropolitan Edison is concerned about the issue, there is no

indication that this procedure or the history of the PORV discharge line temperatures delayed recognition that the PORV had stuck open during the course of the accident.

(2) If there was a material false statement, what knowledge and involvement, if any, did Wallace have in making that statement?

(3) If Wallace knew of or was involved in making a material false statement, does that knowledge or involvement indicate willful, knowing or reckless conduct?

(4) If Wallace engaged in willful, knowing or reckless conduct, should there be any constraints on his employment in NRC-regulated activities? (His performance to date may be considered in this connection.)

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the regulations in Title 10, Code of Federal Regulations, Part 2, notice is hereby given that a hearing will be held before an Administrative Law Judge to be appointed by the Chief Administrative Judge, Atomic Safety and Licensing Board Panel. The Administrative Law Judge will set the time and place for the hearing and shall hold prehearing conferences as necessary. The scope of the hearing will be as set forth above. The hearing will be conducted pursuant to the procedures contained in 10 CFR Part 2, Subpart G. Any petitions to intervene by persons who responded by filing comments in response to CLI-85-19 shall be filed in accordance with 10 CFR 2.714 and, to be timely, shall be filed within 45 days of the date of this Notice. No other interventions shall be permitted except upon a balancing of the factors in 10 CFR 2.714(a)(1). NRC staff shall participate as a party. Any party who advocates that Wallace made a knowing, willful, or reckless material false statement in the NOV response shall have the burden of going forward and persuasion. If no person intervenes against Wallace and NRC staff does not advocate a

position against Wallace, then the proceeding shall be terminated and the TMI-1 notification requirement as to Wallace shall be removed.

Pursuant to 10 CFR 2.785, the Commission authorizes an Atomic Safety and Licensing Appeal Board to exercise the authority and perform the review functions which would otherwise be exercised and performed by the Commission.

The CLI-85-2 Notification Requirement

The Commission will not lift the notification requirement imposed in CLI-85-2. For Arnold, there are no current plans to return Arnold to TMI-1 operations and Arnold does not object to continuation of the condition. For Wallace, any further action regarding the condition must await the conclusion of a hearing.

Chairman Palladino and Commissioner Asselstine disapproved this Order in part. Their separate views are attached. The separate views of Commissioner Roberts are also attached.

It is so ORDERED.

For the Commission[2]

SAMUEL J. CHILK
Secretary of the Commission

Dated at Washington, D.C.
this 15th day of May, 1986.

---

[2]Commissioner Asselstine was absent when this Order was affirmed. He had previously disapproved the Order in part and had he been present he would have affirmed his prior vote.

Separate Views of Chairman Palladino

I believe that the Commission should hold a hearing for Mr. Arnold as well as Mr. Wallace.

The evidence demonstrates a reasonable basis to conclude that there was a material false statement, in that the licensee possessed significant information contrary to the statements in the NOV response. Moreover, there is information cited by the NRC staff that Mr. Arnold knew that the emergency procedure had been violated notwithstanding that the NOV response denied the violation. Whether this conduct constitutes reckless behavior is a matter of judgment; a hearing would be of value to fully resolve the issue.

Also noteworthy is the fact that Mr. Arnold's explanation for his denial that the emergency procedure had been violated is not the explanation provided by Mr. Wallace in his interview by the Office of Investigations. A hearing could address this apparent difference as well.

Finally, I believe that a hearing would provide a clearer basis for Commission conclusions with respect to Mr. Arnold and would be in the public interest.

SEPARATE VIEWS OF COMMISSIONER ASSELSTINE

I agree in part and disagree in part with the Commission's order. I agree with that portion of the order which grants Mr. Wallace a hearing and sets out the procedures for that hearing. However, I cannot support the Commission's decision to absolve Mr. Arnold without holding a hearing. There appears to be enough information available to raise questions about the extent of Mr. Arnold's knowledge. That information should be the subject of a hearing.

In addition, as I explained in my separate views on CLI-85-19, I do not believe that Mr. Arnold's involvement in the preparation of Metropolitan Edison's response to the Commission's NOV is the only relevant issue remaining. See, 21 NRC at 890. I would have included two other issues for consideration: TMI leak rate falsifications and the Parks discrimination issue.

TMR

Separate Views of Commissioner Roberts

We find that there is no reasonable basis for concluding that Mr. Arnold knowingly, willfully, or recklessly made a material false statement. However, because he did not ask that it be removed, we leave in place the requirement that the NRC be notified prior to Mr. Arnold's return to responsible duties at TMI-1. I see no reason for our continuing to require notification prior to Mr. Arnold's return to responsible duties at TMI-1. I would remove that single remaining and meaningless "constraint" on Mr. Arnold's employment in NRC-licensed activities. That is what we said we intended to do if we determined there was not a reasonable basis for an unfavorable conclusion. CLI-85-19, 22 NRC 889.