

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING BOARD

DOCKETED
USNRC

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)

INQUIRY INTO THREE MILE ISLAND)
UNIT 2 LEAK RATE DATA)
FALSIFICATION)

Docket No. LRP

RESPONSE OF EMPLOYEES TO
AAMODT RESPONSE TO OI REPORT AND
MOTION FOR SUMMARY DISPOSITION

With an apparent disregard for the Commission Order and Notice of Hearing instituting this proceeding, CLI-85-18, 22 N.R.C. 877 (1985) ("Order"), and for the fundamental dictates of fairness that should govern this inquiry, the Aamodts, by the Aamodt Response to OI Report and Motion for Summary Disposition ("Aamodt Motion") filed on June 30, 1986, have moved the Presiding Board "to summarily dispose of the issue of the involvement of the operators at TMI-2 in the falsification of leak rate tests and reports by finding that all operators were involved in/aware of the leak rate falsifications." Aamodt Motion at 5. This motion is intended to "allow the Board and parties to focus on the investigation of supervisors and managers." Id. at 3. However, as discussed below, the Aamodt Motion would circumvent the purpose and scope of this proceeding, as explicitly set forth in the Order, by summarily

determining material facts in dispute, denying the Employees their right to a hearing on the allegations of their misconduct, and addressing issues not authorized by the Order. Thus, the motion should be denied.

Material Facts in Dispute

The purpose of this proceeding is to develop the facts surrounding the alleged falsification of TMI-2 leak rate data "in sufficient detail to determine the involvement of any individual who may now work, or in the future work, at a nuclear facility licensed by the Commission." 22 N.R.C. at 880. In an extremely presumptuous manner, the Aamodt Motion purports already to have developed these facts in sufficient detail to determine that all of the operators were involved in the alleged falsification. The findings of fact set forth in and supporting the motion are ostensibly based on evidence presented in the OI and NRR Reports, yet as the Aamodt Motion acknowledges, the OI Report determined that six operators were not involved in the alleged falsification of TMI-2 leak rate data. Aamodt Motion at 1. In addition, even if one accepts the conclusions of OI concerning other individual operators which we do not -- there remain substantial questions concerning the purpose and intent of each individual. Thus, on the face of the motion, there are material facts in dispute.

In any event, the Presiding Board cannot adopt any findings of fact until it has invited all of the parties to this

proceeding to file their own proposed findings of fact and conclusions of law after the completion of the hearing. 22 N.R.C. at 883. At that time, the Employees will file proposed findings of fact, which will be supported by the record, that will challenge many of the conclusions reached by OI and NRR in their Reports.

Right to a Hearing

The summary determination of material facts in dispute would effectively deny the Employees their right to a hearing on the allegations of TMI-2 leak rate data falsification. The Employees recognize that this proceeding is discretionary and that it will not be used to deny any individual the statutory right to a hearing if a formal enforcement or licensing action is initiated as a result of this proceeding. CLI-86-03, 23 N.R.C. 51, 51-52. However, this proceeding will be used by the Commission to decide whether it should initiate a formal enforcement or licensing action. 22 N.R.C. at 883-84; 23 N.R.C. at 51. Thus, it is in the interest of fundamental fairness that the Employees receive the hearing authorized by the Order. This hearing will permit them to present, for the first time in seven years of NRC, GPUN, and federal grand jury investigations, evidence explaining the events and circumstances associated with the allegations of their misconduct. The witnesses proposed by the Employees must testify, and the questions asked by the Employees must be

answered, before the Presiding Board can adopt valid findings of fact.

Scope of the Hearing

The Aamodt Motion urges the Presiding Board to focus on the involvement of management in the alleged falsification of TMI-2 leak rate data by summarily determining material facts in dispute. This objective is consistent with the apparent intent of the Aamodts in intervening in this proceeding. In support of their Petition for Leave to Intervene filed on February 8, they submitted the Aamodt Comments Concerning NRC Staff Review of GPU v. B&W Court Trial Transcript and Motions to Reopen Record of Restart Proceeding (April 16, 1983) in Docket No. 50-289-SP (Restart) ("Aamodt Comments"). The Aamodt Comments addressed the involvement of management and, specifically, that of Mr. Robert C. Arnold, in its motion to reopen the record in the TMI-1 restart proceeding. The Employees opposed the Aamodt Petition for Leave to Intervene in part on the basis of that interest in Mr. Arnold, who is "outside the scope of [this] hearing." 22 N.R.C. at 881; see Response of Numerous 1978-79 Employees of Metropolitan Edison Company to Aamodt Petition for Leave to Intervene (February 25, 1986) at 4.

The tenor and content of the Aamodt Motion confirm that the Aamodts are still intent on investigating the involvement of management in the allegations of leak rate data falsification. Aamodt Motion at 3-5. Such an investigation is outside the scope of this proceeding. The Aamodts request that the

Presiding Board subpoena the minutes of the meetings of the Met Ed Board of Directors from March 1978 to March 1979. However, in instituting this proceeding, the Commission accepted the determination of U.S. Attorney David Dart Queen that these Directors were not involved in the alleged falsification. 22 N.R.C. at 879, 881. The Aamodts also request that the Presiding Board subpoena Mr. Michael J. Ross. Like the Met Ed Directors, Mr. Ross is outside the scope of this proceeding, id. at 881, because the Presiding Board is directed not to address "any issue regarding any alleged knowledge or involvement" of these individuals. Id.

Aamodt Response to OI Report

In reply to the Aamodt response to the OI Report, the Employees respectfully reiterate their objection, which the Presiding Board correctly inferred in its Order of July 3, to the addition of this Report to the record of this proceeding. See Response of Employees to Memorandum and Order of February 14, 1986 (March 3, 1986) at 4; Response of Employees to Part II.C. of Memorandum and Order of March 26, 1986 (April 18, 1986) at 4; Response of Employees to Memorandum and Order of May 22, 1986 (June 6, 1986) at 1-2.

Conclusion

For the foregoing reasons, the Aamodt Motion should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served copies of "Response of Employees to Aamodt Response to OI Report and Motion for Summary Disposition" by deposit in the United States mail, first class, postage prepaid to the following persons this 18th day of July 1986:

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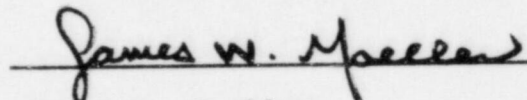
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