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USNRC

May 19, 1982

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
METROPOLITAN EDISON COMPANY	)	Docket No. 50-289
(Three Mile Island Nuclear	)	(Restart)
Station, Unit No. 1)	)	(Reopened Proceeding)

GARY P. MILLER'S COMMENTS  
ON THE SPECIAL MASTER'S REPORT

In its Memorandum and Order Regarding Licensee's Motion to Reopen the Record, dated May 5, 1982, this Board recognized the standing of "any Licensee employee referred to in the Special Master's Report" to comment. Gary P. Miller is an employee of the Licensee and is referred to in the Report of the Special Master, dated April 28, 1982 (the Report). He files the comments set out below on certain conclusions reached by the Special Master in paragraphs 224 through 227, 234 through 237 and 335 of the Report. These comments will not deal directly with the ultimate question before the Board, namely the adequacy of Licensee's present management to operate TMI-1. They will deal only with the two respects in which the Report reflects adversely on Mr. Miller's integrity. Both involve the 1979 VV-O episode. The first deals with Mr. Miller's testimony about O's knowledge, the second with the August 3, 1979 letter from Mr. Miller to NRC.

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Mr. Miller, of course, is not a party to this proceeding. In filing these comments, Mr. Miller does not waive any position he may wish to take either in any future phase of this proceeding or in any future proceeding.

A.

The 1979 Episode: O's Knowledge

One issue before the Special Master was whether O knew that he was helping VV complete a make-up examination. Mr. Miller testified that after he had interviewed O, he was convinced that O had no such knowledge. Miller, ff. Tr. 24,358 at 4. The Special Master found it "difficult to see how Mr. Miller could have accepted that denial." Report, para. 227. The critical portion of the Special Master's analysis of the issue is set out below. We shall refer further to the underlined portions.

In the portion of Mr. Miller's testimony which sets forth Mr. Miller's reasons for accepting O's denial, Mr. Miller lists the reputation of O, the absence of a cover sheet, and the fact that VV was O's supervisor. He does not, however, state what VV said about O's knowledge. Nor do Licensee's Proposed Findings assert that VV told Miller anything about O's knowledge. These omissions, in light of VV's testimony at the hearing, are very significant. Mr. Miller's position on O boils down to the following view of the facts: VV, who was O's supervisor and pressed for time, went to the shift supervisor's office late in the evening to look up answers to an examination; O, who was VV's subordinate, was there; VV, who was far more knowledgeable than O, and who disrespected the training program, asked O for help. VV handed O some question sheets with markings which identified them as part of an examination; O "had the same

questions and answers"; after O had provided the answers VV placed O's pages together with his own under the examination cover sheet; and, during all the time this was going on, VV never told O the purpose of it, despite the fact that VV told Mr. Miller that VV considered the entire procedure as perfectly acceptable, and thus, VV would have had no motive for not telling O the purpose. I cannot find that this view of the facts is credible; VV had neither the motive nor the inclination to appear, late at night, for the purpose of running O through a mysterious exercise in answering examination questions. Things like that do not happen. The most plausible explanation for Mr. Miller's decision not to discipline O is the reluctance anyone would feel in disciplining a subordinate for following the orders of his superior. If that is the explanation for Mr. Miller's position, it would have been better for him to admit it, rather than advancing his theory about O's lack of knowledge.

Report, para. 227 (Citations omitted; emphasis added except in the twenty-seventh line).

In short, however it is read, the Special Master concludes that Mr. Miller misrepresented in this proceeding the basis for his 1979 actions.

A careful review of the record, however, reveals that in reaching his conclusion the Special Master (a) found as facts matters not supported by the record and (b) attributed to Mr. Miller three pieces of information, obviously important to the Special Master, that Mr. Miller did not know in 1979. These shortcomings are reflected in the items that are underlined in the material quoted above. We shall deal briefly with each of them.

1. VV's view of O's knowledge. -- The Special Master finds it "very significant" that Miller did not "state what VV said about O's knowledge" and that the Licensee did not assert in its Proposed Findings that VV told Miller anything about O's knowledge. The implication seems to be that VV in fact told Miller his view about O's knowledge. The Board can search the record, however, and it will find no indication that Miller asked VV, or that VV told Miller, anything about O's knowledge. Miller's contemporaneous record of his discussion with VV gives no indication that he ever asked VV that question or that VV ever volunteered any information on the subject. E.g. Staff Ex. 26, Enclosure (3).

In any event, we see no inconsistency between O's explanation, which Mr. Miller believed, and VV's statement at the hearing that he did not know what was in O's mind.

2. "Late in the evening." -- The Special Master, in the analysis quoted above, attributes to Mr. Miller the knowledge that VV went to the shift supervisor's office "late in the evening." Nothing in the record indicates that Mr. Miller had that knowledge, either when he conducted his 1979 investigation or when he testified.

3. The question sheets were "part of an examination." -- The Special Master quite plainly concluded that O must have known he was answering an examination for VV because the question sheets had examination markings on them. Both Miller and O acknowledged that the notations on the answer sheets indicated that the pages had come from what was at one time or

another a test. Both also testified, however, that in the circumstances that was a purely neutral fact. As O put it, the notation "SRO 10 points" could indicate a quiz but did not have to. Tr. 26,182(O). He said that in light of the notation, one would assume that the page had come from a "test," but the notation did not mean that the person who had the paper was "taking the test." Tr. 26,270 (O). O said that he had answered such questions "all the time." Tr. 26,194 (O). O also said: "To me, it was just another set of questions that somebody wanted some answers to. It never even fazed me." Tr. 26,191(O). Mr. Miller testified that such pages were used in studying for exams, Tr. 24,399 (Miller), and that he had used them for that purpose, Tr. 24, 400 (Miller).

In the last analysis, the Special Master's view of the Miller explanation is that it was irrational -- "incredible," to use the Special Master's characterization. On the contrary, the explanations Miller and O gave for the significance of the notation on the answer sheets were consistent and entirely plausible.

4. O "had the same questions and answers." -- This part of his analysis, more than any other, reflects the extent to which the Special Master had to reject the evidence in order to conclude that Mr. Miller's testimony was not credible. The statement that O "had the same questions and answers" was said to have been made by VV to an NRC investigator over the telephone in July 1981. The record of this telephone conversation is on page 40 of Staff Exhibit 26. If the Board



were simply to review paragraph 227 of the Report, without more, it could find this a very damaging piece of evidence indeed. Certainly if O were already taking the same examination VV gave him, he should have recognized that VV must also have been taking it.

But the Special Master neglects to describe other portions of the record indicating time and again that VV's statement to the NRC investigator was entitled to little weight. In the same interview, for example, VV stated that "he did not ask O to do any work or answer any questions for him." Staff Ex. 26, at 40. The Special Master attached no weight to that representation, because, of course, VV changed it later. But VV also changed his representation about O's having "the same questions and answers." At the hearing, VV was asked about the statement in the investigator's report. VV said "I guess I meant that I gave him the questions that I wanted answered." Tr. 26,641 (VV). Asked whether he knew if O took the same quizzes VV did, VV said: "No, sir, I do not." Id. The next question was: "You do not know if he had seen these questions before?" VV's answer was: "No, sir." Id.

Later in the hearing, the Special Master tried his hand at questioning VV about the representation in the NRC investigation report. VV said:

These words you just quoted from a telephone conversation which I had, the statement was accurate as it was made on the telephone and it was to the best of my recall on the spur of the moment. However, I think I should say now, after having had time to go back and think about it at greater length, whether he had the

same questions and answers I do not know until I handed him my question sheet. Then I knew he had the same questions.

Tr. 26,677 (VV).

The Special Master tried again. VV said:

I tried to recall as best I could, standing there with the phone at my ear, having not had any forewarning of what I was going to be thinking about. Now going back in retrospect, I do not know whether that is a true statement or not.

Tr. 26,678 (VV).

And again:

Q. Well then, would you say that the most probably explanation is that Mr. O did have the questions and answers?

A. He had the answers, obviously, because it was readily available information. Whether he happened to have the questions before I presented them to him, I do not know.

Tr. 26,679 (VV).

O was also asked about the statement VV made to the NRC investigator. He answered:

I do not know if I did or not. I am sure I have had similar type questions. You know, this particular sheet, I could not -- could not say if I have or not.

Tr. 26,192 (O).

Asked again about the representation, O said:

No, I am not sure, other than he meant similar type questions. I am not sure what he meant. You know, we answer questions like this all the time. I do not know if he meant similar questions or these exact questions or what.

Tr. 26,193 (O).

It is clear, then, that the Special Master's recitation that "O 'had the same questions and answers'" is an incomplete representation of the state of the record.

Moreover, quite aside from the Special Master's reliance on the VV representation to NRC, he attributes knowledge of VV's statement to Mr. Miller. Mr. Miller had no knowledge whatever of VV's representation to NRC (which was made in 1981), or of VV's views on whether O already had the questions, when he analyzed O's role in the matter during 1979.

5. VV had no motive for not telling O the purpose. -- This is an extraordinary conclusion. Again, it is well to remember that the Special Master found Mr. Miller's views "incredible." Yet, the Special Master has taken a situation in which VV was O's superior, and thus could choose whether or not to tell O the purpose of answering the questions, and concluded that a rational man could have acted only one way in the circumstances: He would necessarily -- indeed he must -- have told O the purpose for the answers. In short, the Special Master took a situation in which VV might have acted in either of two ways and, in the face of testimony uniformly to the effect that he acted in one way, concluded that VV could only have acted in the other. In truth, the more likely conclusion, given the circumstances, is that VV did not tell O what the answers were for.

Only two other conclusions of the Special Master need be dealt with. First, he found it "incredible" that VV "could have wanted these answers written out by O to help VV do his



job." Report, para. 226. O testified, however, that VV could have needed the answers written out because he was "giving exams to people in Unit 2." Tr. 26,191 (O). Second, the Special Master concludes that because VV had high technical competence, it was implausible -- and should have seemed implausible to O -- that he would ask O to answer questions for him. On the contrary, it seems perfectly natural that a man in a hurry to leave on vacation, no matter how competent he might be, would want someone else to go through the mechanical task of writing the answers down. Tr. 26,661 (VV).

The Special Master, of course, had the benefit of viewing the 1979 episode in light of the events of 1981. Mr. Miller did not have that benefit. He was required to testify in 1981 why he acted as he did in 1979, in an apparently isolated episode, when he interviewed VV and O. O told Mr. Miller that he did not know why VV had him answer the questions. Mr. Miller's experience with O was that he was honest. He accepted O's representation.

Above all, the documents created contemporaneously with the 1979 episode, which reflect Mr. Miller's investigation and conclusions, bear out the testimony Mr. Miller gave before the Special Master. That investigation was carried out, and those documentary reflections were created, in 1979, long before the 1981 cheating episode arose. The Special Master has apparently concluded that Mr. Miller misrepresented his views in the 1979 documents in anticipation of the type of future inquiry that

has in fact resulted. In our view, that simply is not a rational conclusion.

B.

The August 3, 1979 Letter

The Special Master found in paragraph 236 of the Report (and repeated in paragraph 335) that

Management's failure to disclose the cheating to the NRC was deliberate, improper, and resulted in a false statement in the letter upon which NRC relied in renewing VV's license.

The Special Master noted that the letter mentioned nothing about "cheating" and, in fact, represented that VV had obtained a score of 89.1 on Section A of the retest, when some of the answers to the questions on that Section had actually been written by O. The Special Master addressed the reason why the letter might have treated the 89.1 score as it did and concluded that "the only purpose which I can discern was to conceal the fact that VV, who was a member of Licensee's management, had been guilty of wrongdoing." Report, para. 235.

Thus, the Special Master in effect found that the letter was designed to deceive NRC by covering up an incident of "cheating."

The Special Master does not analyze whether the VV-O episode constituted "cheating;" he proceeds from that premise. That is not, however, the way either Mr. Miller or the Licensee viewed the matter. This is a critically important point, because if Mr. Miller did not believe cheating was involved, he could not have intended to conceal "cheating" from NRC.

Mr. Miller testified that while he considered VV's actions to reflect bad judgment, he did not consider it to be "cheating." Tr. 24,408 (Miller). He said that had he considered it "cheating," he would not have recertified VV. Tr. 24,457 (Miller). Mr. Miller also testified that no one in the Licensee's training group disagreed with him. Tr. 24,408 (Miller).

Was Mr. Miller's conclusion an unreasonable one? To answer this question, the Board need only take one simple step. The Board should examine Section A of VV's re-examination. A copy is included at the third page of Enclosure (3) to Staff Exhibit 26. In that Section of the examination, VV's answers and O's answers are included in the same document. Unfortunately, the original of Section A is not in the record. It shows that VV's writing is in blue and O's writing in black. In any event, the Board should compare the handwriting. In fairness, we should note that VV testified, in a different context, that his printing and his writing are quite different. Tr. 26,658 (VV). Still, the Board will conclude, we believe, that VV could not seriously have thought he would fool anyone by submitting Section A as it appears in the record. VV said he did not intend to deceive the Licensee, Tr. 26,660 (VV), and Mr. Miller believed him, Miller, ff. Tr. 24,358 at 5.

How did NRC characterize the episode? To be sure, Mr. Crocker of NRC termed the VV-O matter "cheating" in his direct testimony. Crocker, ff. Tr. 25,081 at 4. He stuck by that characterization at the hearing, Tr. 25,092 (Crocker), but he also said:

[T]rying to put myself, I guess, in Licensee's shoes in July of 1979, I do not see that there was a cheating problem as such that existed there, and I would be reasonably certain that Licensee did not feel that there was a cheating problem that existed at that time.

Tr. 25,091 (Crocker).

On the question of whether Licensee should have described the VV-O episode to NRC, Crocker equivocated. He said at first that he "guessed" the Licensee should have provided the information. Tr. 25,102 (Crocker). But he then said:

Now, they could very well have looked at it and decided that, in spite of all this, that he still was a suitable candidate for a license. I do not know how they judged it, sir. I do not think that there was any obligation that the Licensee would have to inform the NRC of what amounted to internal problems in a company when they came in for the license certification. (Emphasis added.)

Tr. 25,102 (Crocker).

The Special Master insisted on a clear answer. Crocker then testified:

I do not believe that there is any requirement that the Licensee provide the NRC with a blow by blow description of the individuals and any problems they may have had along the line. Basically when they are certifying them for the license, if the guy technically is capable of passing the examination in all probability and that the Licensee has enough trust in the individual to let him operate a plant if he does get a license -- but I do not think that there is any requirement that they go back into great detail as to the individuals [sic] history.

Id.

It is well to remember just what the purpose of the letter was. It was submitted pursuant to the Licensee's Administrative Procedure 1006, which is included in the Record as part of TMIA Exhibit 65. Section 2.6 of the Administrative Procedure deals with the accelerated requalification program. It says that when (1) a license holder is able satisfactorily to pass an equivalent written or oral examination and (2) certification of his satisfactory rating is sent to the NRC, he shall resume his on-shift responsibilities. Thus, the sole purpose of the August 3 letter was to certify that VV, who had been in an accelerated requalification program, had obtained a satisfactory rating on his accelerated requalification tests.

To put the matter in context, the VV-0 episode, viewed from the perspective of 1981, may seem like a precursor of the 1981 events. In 1979, however, when the letter was sent to NRC, the VV-0 affair was an isolated event. Insofar as the record shows, no one at the Licensee believed that VV's conduct constituted "cheating." It would be unreasonable to conclude, on this record, that VV seriously thought he would deceive anyone. As Mr. Crocker characterized the matter:

[I]n July of '79 Licensee had some big problems that were running around, and I frankly do not consider this that big a problem.

Tr. 25,096 (Crocker).

Whatever else might be said about the letter, it is unreasonable to ascribe to Mr. Miller -- as the Special Master did -- an intent to conceal "cheating" from NRC.



Why was the 89.1 grade on Section A, which was answered in part by O, treated as it was in the August 3 letter? The letter was drafted in Licensee's Training Department and sent to Mr. Miller to be approved, typed and signed. Tr. 24,413 (Miller). Mr. Miller sent it to "company personnel internally for their help in review of the letter prior to its being signed." Tr. 24,414 (Miller). Mr. Miller knew that Section A had been answered in part by O. But he also knew that he had told the Training Department to have VV retested on the Section A material "to insure validity of this section. . . ." Staff Ex. 26, Enclosure (1) at 4; Tr. 24,415 (Miller). Mr. Miller testified at the hearing that in fact VV had been tested on the Section A material and it had been determined "that he had adequate knowledge of that area." Id. Since Mr. Miller had concluded that VV had not attempted to deceive the Licensee when he submitted O's answers, Mr. Miller concluded that "the handwriting was not an issue as far as his technical competence of that area." Id. We repeat, the purpose of the letter was to comply with AP 1006, which is described above, and it did so; VV had completed an accelerated requalification program successfully. The Special Master concluded:

Apparently, the intention behind the statement was not to certify someone as competent on that section [A] who was not--if one believes that VV was in fact tested orally.

Report, para. 235.

The answer, then, is that the August 3 letter to NRC was simply not accurate in this respect. In retrospect, it should

not have suggested that VV had passed Section A. But the point of the letter, it bears repeating, was to report to NRC that VV was now requalified, and that was true. More important, the record does not support the conclusion that Mr. Miller wished to certify someone who was not technically competent or that he intended to conceal "cheating" from NRC.

C.

Conclusion

In light of the foregoing, Mr. Miller requests that the Board reject the findings in the Report to the extent that they (a) find incredible Mr. Miller's conclusion that O did not know the purpose of his answering questions for VV, (b) suggest that Mr. Miller's testimony on that subject was untrue and (c) find that Mr. Miller intended to conceal "cheating" or "wrongdoing" from NRC when he signed the August 3, 1979 letter to NRC.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a Notice of Appearance and Gary P. Miller's Comments On The Special Master's Report upon each of the persons named below by (a) sending four copies by express overnight service to the Chairman, (b) sending one copy (or the number indicated) by express overnight service to each person whose name is marked with an asterisk, and (c) sending one copy (or the number indicated) by first class mail to each other person (other than members of the Board) listed below:

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