

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

In the Matter of)

METROPOLITAN EDISON COMPANY)

(Three Mile Island Nuclear
Station, Unit No. 1))

'83 APR 18 P5:16

Docket No. 50-289

(ReStart)

UNION OF CONCERNED SCIENTISTS
PRELIMINARY COMMENTS ON "REVIEW OF
B&W-GPU TRIAL COURT RECORD" AND
REQUEST FOR ADDITIONAL TIME

At the direction of the Commission, a team of NRC Staff personnel headed by Victor Stello, Director of the office of Inspection and Enforcement, undertook to review the trial transcript in the lawsuit between GPU and B&W related to liability for the TMI-2 accident. That case was settled after GPU had concluded presenting its evidence; B&W had only begin presenting its case. The trial record was about 7400 pages in length with some 600 exhibits. Commission Briefing on Staff Review of GPU v. B&W, Public Meeting, April 16, 1983 p.8. Hereinafter "Briefing."

Mr. Stello and his team, four in all, took three months of full time effort to perform this task. Briefing, p.14-15,17. Ten weeks was required just to read the transcript. Id. at 15. They did not review any of the exhibits that had been prepared but not introduced into the record. Id. at 18.

The 21 page report prepared by Mr. Stello is utterly inscrutable. While referencing without differentiation literally thousands of pages of transcript on certain subjects

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(see "Appendix C, Information Overview"), the report itself contains no citations whatever to support its conclusions^{*/}. Indeed, the report contains precious little discussion of the trial transcript at all; it simply states-over and over again variations on the general conclusion that nothing in the trial transcript changes the staff's earlier views, without informing the reader of what is in the trial transcript. It moves in confusing fashion from discussing the trial to discussing earlier conclusions, often leaving the reader wondering where the former leaves off and the latter begins.

Mr. Stello argues that it was not "reasonable" to expect his team to lay out the issues and explain how they were resolved because the task would be too difficult and time consuming. Briefing, p. 55-56. We sympathize with the difficulty of the task. The Commission should be aware however, that tasks at least this difficult and time-consuming are routinely required of intervenors (and other parties) in comparable and even shorter time frames. The transcript in

^{*/} Commissioner Roberts stated: "I like the format of the report. I don't want to read footnotes and citations of page of transcripts, and we either trust you people to do a decent job and come up with an honest report, or we don't." Briefing, p.88. Commissioner Roberts overlooks the fact that the staff is a party to the Restart proceeding; it's views are entitled to no greater "trust" than those of any other party.

the Restart proceeding is well over 20,000 pages in length, plus exhibits, and parties were required to prepare detailed findings of fact (UCS's alone were 250 pages long) doing exactly what Mr. Stello found unreasonable - laying out the testimony with transcript citations on each significant issue and providing a rationale based on the record for its appropriate resolution. UCS, for one, would have much appreciated the services of four people full time over 3 months to do that job; our resources were far less.

Such findings are required in order to allow the decision-maker to reach a rational decision. The report produced by Mr. Stello, in contrast, does not provide a basis for a rational decision. It must either be accepted on faith or not at all.

The parties were given two weeks, until April 18, 1983 to comment on the Stello Report. This time is obviously grossly insufficient. UCS has barely begun to review the transcripts which are available only in the Public Document Room during normal working hours. (Proposed Findings for the Appeal Board reopened hearing ordered by ALAB-708 related to means for decay heat removal were due on April 12, 1983. The two weeks would have been insufficients even if there were no other conflicting deadlines). Since Stello's report does not give transcript citations, we have no choice but to review all of the relevant material. Considering that Mr. Stello and his staff took three

months, the parties are surely entitled to much more than two weeks. UCS therefore requests an additional 6 weeks to comment on the Stello report and the effect of the trial transcripts on the issues relevant to restart of TMI-1.

The following additional preliminary comments are offered on the Stello report itself:

1. The rationale provided for failure to review exhibits not introduced at trial is unconvincing.

Mr. Stello states that he decided not to review the 80 depositions and 1767 exhibits prepared but not introduced because GPU had presumably presented its best issues and B&W had a full opportunity to respond. Stello report, p.3. considering that the trial was settled before B&W had presented the major part of its case, this conclusion is unwarranted. Mr. Arnold's opinion that no significant new information is contained in that material (Briefing p. 29-31) is hardly convincing; the President of GPU is surely not the best source of information on the nature of B&W's evidence.

2. The discussion of HPI initiation is at best confusing and at worst misleading.

Nowhere does the Stello report disclose that, as late as May, 1982, all three operators- Zewe, Frederick and Faust were apparently still telling the story that HPI had been initiated at 5:41. See attached pages 2801 - 2805, trial transcripts. The operators "insisted" this was the case when GPU added it to

the accident sequence. Tr. 2785, attached. While Stello discusses the general conclusions to the contrary of previous reports, no convincing explanation is offered for why one should disbelieve the contemporary, often-repeated recollection of all three operators, two of whom apparently only lost their recollection of this in the few months preceding the trial when it became disadvantageous for their employer in the context of the trial to have it concluded that HPI was initiated.

This issue is a complex one that is not even remotely adequately reviewed in the report which fails to note, for example, that the "analysis" now claimed to refute the operators' contemporary testimony was not even commissioned by GPU until mid-December, 1982.

3. There is an inherent conflict of interest presented in having the Staff review the trial transcript for the purpose of determining whether it affects the issues relevant to restart of TMI-1.

The Staff is an adversary party in the restart hearing. It has allied itself with GPU on virtually every issue and supports immediate restart. The correctness of its previous judgments are therefore unavoidably at issue when the staff is asked to review the trial transcript to advise the commission on whether any questions affecting restart are raised therein.

4. The "discussion" of the question of GPU's possible falsification of leak rate calculations constitutes a total evasion of this crucial issue. There is, in fact, no discussion at all of the relevant testimony.

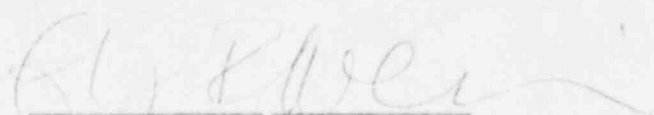
This is a matter, moreover, where the deposition and exhibits not introduced into trial would likely be critical, since B&W had not presented its case. Stello dismisses the issue by stating that the trial record material "does not add substantially to the information of which the NRC is already aware." Stello report at 18. Of course, no illumination of the nature of the information already available to NRC is provided.

The fact that this matter has been referred to the Justice Department in no way diminishes NRC's responsibility to ensure that GPU management and its operators are fit to operate TMI-1. This is one of the most important issues in the restart proceeding. If GPU systematically falsified leak rate information and operated TMI-2 when its license required it to be shut down, all of which B&W claimed, then GPU is not a fit licensee. This issue compels full scrutiny by the Commission. Stello's treatment of the question is astonishingly cavalier.

Conclusion

UCS requests an additional six weeks to provide comments on the Stello report and the GPU and B&W trial material.

Respectfully submitted



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Dated: April 18, 1983

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CERTIFICATE OF SERVICE

I hereby certify that copies of UNION OF CONCERNED SCIENTISTS PRELIMINARY COMMENTS ON "REVIEW OF B&W-GPU TRIAL COURT RECORD" AND REQUEST FOR ADDITIONAL TIME were mailed to the following by first-class mail, or by hand were indicated by asterisk, this 18th day of April, 1983.

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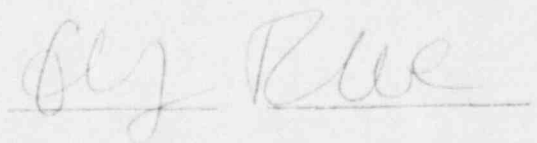
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1 on full at 5:40 at the time the reactor coolant pumps were
2 turned off, do you remember that?

3 A. Yes, sir.

4 Q. And isn't it a fact that sometime between the
5 time you had told people at Met.Ed, you and Mr. Frederick
6 and Mr. Faust, about the reinitiation of HPI at 5:40 at the
7 time that the reactor coolant pumps were turned off,
8 sometime between then and the time that you gave your
9 deposition in May of 1982, people, somebody had shown you
10 various studies that had been done after the accident in an
11 effort to determine whether or not high pressure injection
12 had been reinitiated at 5:40 and stayed on?

13 A. Yes, that is correct.

14 Q. And isn't it correct that as of May 1982 you had
15 not seen any -- it was your best recollection, independent
16 of any study that you had been shown but just as you sat
17 there in the deposition thinking back to the events as they
18 occurred on March 28, 1979, putting all of the studies out
19 of your mind and just thinking about your own memory, your
20 memory was that high pressure injection was reinitiated at
21 5:40?

22 A. What I stated to them is what I believed to be
23 true at that time.

24 Q. And what you remembered then, putting any
25 studies aside, just your own personal recollection, trying

1 to think back as to what actually happened that day, your
2 best recollection at that time in May 1982 three years
3 after the accident, was that high pressure injection was
4 reinitiated at 5:40; isn't that correct?

5 A. That's what I stated there.

6 Q. And that was the truth?

7 A. At the time it was, certainly.

8 Q. And isn't it also true that even then with all
9 the studies that you had been shown, you had not been shown
10 any study that indicated to you that HPI did not come on at
11 5:40 and then was turned off within five minutes afterwards?

12 A. Could I have that read back?

13 THE COURT: You may.

14 (Record read)

15 A. I don't remember.

16 (Continued on next page)

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1 Q. Let me read a question and answer at page 822,
2 starting about the middle of the page:

3 "Q. You told us that you have seen or heard
4 about certain analyses and certain studies that were made.

5 "A. Yes.

6 "Q. Putting those aside for the moment,
7 whatever they show they show, I am just asking you,
8 independent of those studies, just in terms of the
9 recollection that you personally have about this situation,
10 has your personal recollection ever changed since you gave
11 the testimony that we referred to earlier and made the
12 notations that we referred to earlier this morning?

13 "A. What I stated earlier is what I remember.

14 "Q. Well, I think I understand that answer,
15 but just so we can make it clear, do I understand correctly
16 that what you remember personally, sitting here today, is
17 that at the time the second set of reactor coolant pumps
18 were turned off, HPI was reinitiated at full flow?

19 "A. As I recall what I remembered March 28,
20 1979, that we did high pressure injection at or about the
21 time we secured the second two pumps."

22 Continuing: "But, I cannot void myself of
23 everything else that has happened and what is fact from
24 other sources. That is what I remember, yes, it hasn't
25 changed."

1 Were you asked that question and did you give
2 that answer?

3 A. What time was that?

4 Q. May 28, 1982.

5 A. I believe that is correct, yes.

6 Q. And the truth is, was then as you remembered it,
7 independent of the studies, whatever you had been shown,
8 the truth as you remembered it in May '82 was that you did
9 initiate HPI at 5:40?

10 A. Here again, I don't know. What I said there is
11 what I believed at the time.

12 Q. Then just one last question on this, reading
13 from page 837:

14 "Q. Did you see any studies that demonstrated
15 that HPI could not have come on at 1,000 gallons per minute
16 at 5:40, stayed on for five minutes or less at that rate,
17 and then continued after that point at a flow rate of 500
18 gallons per minute or less?

19 "A. I don't recall.

20 "Q. One way or the other?

21 "A. No. Your question doesn't recall anything
22 that -- any analysis relating to that that I can recall one
23 way or the other."

24 Do you remember being asked those questions and
25 giving those answers?

1 A. I believe I did, yes.

2 Q. So it is fair to say, isn't it, Mr. Zewe, that
3 in May, just six months ago, your recollection was,
4 independent of studies, that it had happened at 5:40 and
5 you hadn't seen or couldn't recall seeing any study that
6 showed that it could not have gone on at 5:40 and been on
7 five minutes or less, as the GPU chronology indicates?

8 A. Again, what I have stated there is what I
9 believed to be true at that time.

10 Q. Now, just a couple more questions, Mr. Zewe, on
11 this subject. You said that when the HPI first came on
12 automatically at a few minutes after 2 a lot of alarms went
13 off and some white lights and then there was some kind of
14 special diesel alarm that went off. Do you remember that?

15 A. Yes, sir.

16 Q. It made a different noise than everything else?

17 A. Yes, sir.

18 Q. Did you dispatch an auxiliary operator down to
19 someplace to turn it off because you couldn't turn it off
20 from the control room?

21 A. I had that done through the control room
22 operators, yes.

23 Q. Somebody sent somebody down to do whatever you
24 have to do to silence that special horn that was going,
25 right?

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1 reactor coolant pumps had been tripped, the operators had
2 manually initiated full high pressure injection?

3 A. Yes, it was.

4 Q. And you also, did you not, wanted the sequence
5 of events to reflect the fact in the status portion that
6 HPI was on at full with both pumps 1-A and 1-C running?

7 A. I don't recall if I made that statement or not
8 in relationship to the status of the pumps.

9 Q. Okay, but putting that aside for the moment, we
10 will come back to that in a second, it clearly was your
11 position in July that the sequence of events should state
12 that HPI was manually initiated at full at the time the
13 second set of pumps, reactor coolant pumps, were turned off
14 at 5:40, right?

15 A. Yes, sir.

16 Q. And that was Mr. Frederick's position and that
17 was Mr. Faust's position as well, right?

18 A. As I recall, we did -- the three of us agreed to
19 that fact, yes.

20 Q. And now we are in July, right?

21 A. Yes, it is.

22 Q. There came a time, did there not, when the
23 manual injection of HPI at 5:40 was in fact inserted into
24 the draft sequence of events?

25 A. As I recall, it was, yes.

1 Q. Directing your attention to Exhibit 689, do you
2 have that in front of you?

3 A. Yes, I do.

4 Q. That's up in the upper right hand corner it says
5 "REV-1," does it not?

6 A. Yes, it does.

7 Q. July 16, 1979, is that right? Have I got the
8 right date?

9 A. I can't read the date on this one.

10 THE COURT: There is a hole punched over the
11 date.

12 Q. Why don't we turn to page 27.

13 THE COURT: There you can see the 16th.

14 Q. Have you got page 27, Mr. Zewe?

15 A. Yes, I do.

16 Q. That says July 16, does it not?

17 A. Yes, it does.

18 Q. Do you see the entry at the top of the page
19 about the reactor coolant pumps being turned off?

20 A. Yes, I do.

21 Q. And right under that, now in the typed sequence
22 of events, it says, does it not, at 0141, "the operator
23 manually initiated high pressure injection to supply
24 additional cooling water to the reactor core. Makeup pump
25 1-C started. Makeup pumps 1-A and 1-C are operating."

1 Do you see that?

2 A. Yes, I do.

3 Q. Then do you see the handwritten notes in the
4 right there next to that entry?

5 A. Yes, I do.

6 Q. It says "Zewe, Faust and Frederick insist this
7 is the case;" correct?

8 A. That's what it looks like here, yes.

9 Q. Do you know whose writing that is?

10 A. Not offhand, no.

11 Q. Do you see the name in the upper right hand
12 corner of the front page, does that say "R. Long"?

13 A. Yes, it does.

14 Q. Was he someone who worked for Mr. Keaton?

15 A. I don't recall who Mr. Long worked for at this
16 time.

17 Q. He was part of the GPU organization?

18 A. Yes, he was.

19 Q. He was working on putting together this sequence
20 of events?

21 A. I don't recall Mr. Long's involvement in this
22 document at the time.

23 Q. It is correct, is it not, Mr. Zewe, that in July
24 1979 you and Mr. Faust and Mr. Frederick were insisting
25 that high pressure injection had been put on at 5:40 at the

1 time the two reactor coolant pumps were turned off?

2 A. That is correct.

3 (Continued on next page.)

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