TMI-1

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE GOVERNOR
HARRISBURG

December 16, 1983

Dr. Nunzio J. Palladino
Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Chairman:

In view of recent events, Gov. Thornburgh asked me to share with you this reiteration of his administration's position regarding proposals for the restart of the Unit 1 nuclear generating facility on Three Mile Island.

Sincerely,

Frank Wright

Dr. Frank Wright
Secretary for Policy
and Planning

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CORRESPONDENCE PDR

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COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE GOVERNOR
HARRISBURG

December 15, 1983

Honorable Arlen Specter
United States Senate
Room 331, Russell Office Building
Washington, D.C. 20500

Dear Sen. Specter:

I want to thank you for this opportunity to reiterate Gov. Thornburgh's views concerning the question of restart of Three Mile Island Unit 1.

I particularly want to note that your interest and concern for the safety of those who live in the shadow of Three Mile Island is well-known here in central Pennsylvania, and I commend you for your continuing efforts on their behalf.

As you know, Gov. Thornburgh repeatedly has stated that he will remain opposed to the restart of TMI Unit 1 until and unless he receives adequate assurances that it can be operated safely, and until and unless there is a funding mechanism in place for completing the radiation cleanup at TMI Unit 2.

The governor told the chairman of the Nuclear Regulatory Commission (NRC) last June that these conditions had not been met and that he was particularly concerned at that time about a variety of outstanding questions which could directly relate to the safety issue.

He felt then, and he continues to feel, that all such questions, including those related to competence and integrity, should be resolved prior to restart, not the other way around.

In a written response dated July 14, 1983, Commission Chairman Nunzio J. Palladino assured Gov. Thornburgh that the NRC would make no decisions regarding the restart of Unit 1 until such issues had, indeed, been addressed.

While the Governor's Office has yet to receive any official communication from the NRC regarding a staff plan to reverse this order, we are aware of published reports in which the staff seemed to propose, in effect, restarting Unit 1 first and answering the outstanding questions later.

We were somewhat reassured by subsequent reports quoting Chairman Palladino as saying that no restart decision is imminent, although the staff procedural recommendation appeared in the same news accounts to be on the commission's agenda. The governor continues to feel that such a procedure not only would be totally inappropriate, but inconsistent with the spirit of Chairman Palladino's statement of July 14.

Some progress in resolving restart issues has indeed been made since the governor expressed his reservations of last June. GPU Nuclear signed an agreement with the commonwealth, for example, stipulating that it would not allow TMI-1 to be operated by any individuals found to have cheated on their qualifying examinations. Yet, several other important issues remain to be resolved, particularly those relating to competence and integrity.

The governor believes that public safety must be the primary concern and principal objective of the operators and regulators of nuclear power facilities. He believes the NRC should reject any proposal to separate competence and integrity issues from TMI-1 restart, but rather resolve these issues prior to any decision on the future of Unit 1.

Copies of the Governor's letter of June 2 and Chairman Palladino's response of July 14 are attached for your record.

Sincerely,

Frank Wright

Dr. Frank Wright
Secretary for Policy
and Planning

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

CHAIRMAN

July 14, 1983

The Honorable Richard Thornburgh
Governor of Pennsylvania
Harrisburg, PA 17120

Dear Governor Thornburgh:

This responds to your letter of June 2, 1983 regarding Three Mile Island, Unit 1. In that letter you expressed your concerns with regard to three issues that you believed should be resolved before the Commission takes any action with regard to restart:

(1) the possibility that TMI-1 would be operated by persons found to have cheated on their qualifying examination;

(2) the possibility that the cleanup at TMI-2 may not be proceeding as safely as it should; and

(3) the possibility that the levels of operator competence and integrity at TMI may not be as high as those which the public is entitled to expect.

With regard to your first concern, you further explained that it would be inappropriate for the Commission to act on restart prior to hearing the Commonwealth's appeal on the operator cheating issue. We note the stipulation between the Commonwealth and GPU Nuclear, filed July 11, 1983, and the appended Motion to Withdraw Appeal, in which the Commonwealth agreed to withdraw its appeal and the licensee agreed to specified conditions concerning TMI-1. The Commission plans to consider the integrity of the individuals responsible for operating TMI-1 prior to authorizing any restart.

With regard to your second concern involving the cleanup operations, the Commission is investigating the allegations of unsafe practices at TMI-2. The Commission has decided that the allegations of unsafe practices at TMI-2, together with other allegations that the NRC is investigating, raise questions which preclude a final restart decision for TMI-1 at this time. The Commission does not plan to act on restart of Unit 1 until it is satisfied from the relevant parts of those investigations that Unit 1 can be safely operated.

Finally, the NRC staff itself has raised additional questions about management competence and integrity. The staff is undertaking further review of these matters. The parties to the TMI-1 restart proceeding will be provided an opportunity to comment on the resulting staff reports to the Commission before the Commission reaches a final decision on restart. The Commission will not make a final decision on restart until those questions are addressed.

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Commissioner Gilinsky adds: "Nothing is more important to a decision on whether to permit TMI-1 to restart than a favorable assessment of the integrity of GPU's top management. My own conclusion at this point, which is set forth at greater length in the enclosed draft separate opinion, is that there is sufficient information in the record to conclude that the top management of the Company -- and by that I mean the Chairman of the Board of GPU, the President of GPU, and the President of GPU Nuclear -- should be changed."

Commissioners Roberts and I believe Commissioner Gilinsky's decision to be premature. My responding views are also enclosed.

Sincerely

Nunzio J. Palladino

Nunzio J. Palladino

Enclosures:
As stated

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE GOVERNOR
HARRISBURG

THE GOVERNOR

June 2, 1983

Dr. Nunzio J. Palladino
Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Chairman:

I am writing because of suggestions that the time has come for your commission to authorize restart of the Unit 1 nuclear generation station at Three Mile Island.

Nearly four years ago, I asked this commission to postpone any decision regarding Unit 1 restart because a number of serious health, safety, environmental, operational, management and other issues had yet to be resolved. I believe the commission acted in the public interest at that time by postponing its restart decision.

Nearly two and one-half years later, on Nov. 24, 1981, I repeated to this commission my concern that any action by the NRC to allow restart of TMI Unit 1 be preceded by adequate assurances that this facility can be operated safely.

Today, more than four years after the March 28, 1979 accident at the nearby TMI Unit 2 facility, I must advise you that while progress has been made, adequate safety assurances have not been fully provided with regard to Unit 1, either to me or to the people of this area.

My reservations are now principally focused on the possibility, to which this Commonwealth has objected, that TMI-1 would be operated by persons found to have cheated on their qualifying examinations, the possibility, raised by engineering technicians and others, that the radiation cleanup of the damaged TMI-Unit 2 may not be proceeding as safely as it should, and the possibility, raised last month by the NRC staff itself, that the levels of operator competence and integrity at TMI may not be as high as those which the public is entitled to expect.

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Left unresc ed, these kinds of questi also could seriously jeopardize the substantial progress we have made in ensuring that the Unit 2 cleanup will be adequately funded under the cost-sharing plan I advanced in 1981.

I believe, in fact, that all of these concerns bear on the safety assurances I have directed this Commonwealth to seek since 1979.

A prompt, thorough and effective investigation and public resolution of those issues raised in the Commonwealth's appeal of August 20, 1982, and those raised by your staff and by workers at the plant itself, is absolutely essential before this commission seriously entertains any action with regard to restart.

Before these issues are resolved, I would find it disturbing, indeed, for the commission to take action on restart. I would find it particularly inappropriate for the commission to take such action prior to hearing this Commonwealth's appeal on the operator cheating issue.

On behalf of all who live within the shadow of Three Mile Island, all who believe that public health and safety must be the first concern of those who see a future for commercial nuclear power, and on behalf of the integrity of the commission and the regulatory process it represents, I once again urge you and your colleagues to postpone any decision on restart until these issues have been satisfactorily addressed and resolved.

Sincerely,

Dick Thornburgh
Governor

cc: Commissioner Gilinsky
Commissioner Ahearne
Commissioner Roberts
Commissioner Asselstine

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

CHAIRMAN

PDR

March 19, 1984

The Honorable Arlen Specter
United States Senate
Washington, DC 20510

Dear Senator Specter:

This responds to your letters of December 8 and 18, 1983. Your letters expressed concern over the possibility of a decision on the restart of Three Mile Island, Unit 1 (TMI-1) prior to further evidentiary hearings on management competence and integrity. Your letters then take issue with the length of time the TMI-1 proceeding has taken. The Commission's current views and plans regarding TMI-1 restart are set forth in the attached Notice to the Parties, which was issued on January 27, 1984. In addition, I believe it would be helpful in addressing your concerns to place the issue before the Commission in proper perspective.

The adjudicatory proceeding to determine whether TMI-1 should be allowed to restart, begun in 1979, is still underway. While there are no evidentiary hearings currently in progress, a Commission Atomic Safety and Licensing Appeal Board is in the process of reviewing the Licensing Board's decision on the management issues and the cheating incidents. This process is termed the "merits review," and any decision by the Appeal Board will then be considered by the Commission.

The Appeal Board has concluded that sufficient information has already been provided to justify reopening the hearing record on the subject of the Hartman allegations regarding the TMI-2 leak rate falsification. The Commission stayed that decision to preserve the status quo and took review to determine whether the reopened hearing should be stayed until after the Office of Investigations completes its TMI-2 leak rate investigation. While that matter was pending before the Commission, the Department of Justice requested the NRC to postpone its investigation until after the criminal trial against Metropolitan Edison Company, and the Commission agreed to cooperate with the Department. Since the criminal proceeding has been recently terminated, the Commission is in the process of determining what steps should be taken next.

The question presently before the Commission on management issues is whether those issues justify continuing the immediate effectiveness of the original shutdown order prior to completion of the merits review. In resolving this question, the Commission must decide whether it now has sufficient information to conclude that the management problems which led to the issuance of the immediately effective shutdown orders have been corrected and there is reasonable assurance that the plant can and will be operated safely. While the Commission can, as part of this review of whether or not to lift immediate effectiveness, require the temporary separation of certain individuals from nuclear operations, it cannot permanently revoke the TMI-1

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license or permanently bar individuals from working at TMI on the basis of the review of immediate effectiveness alone. The decisions the Commission can reach on the basis of this review of whether or not to lift immediate effectiveness are either to authorize restart, with any appropriate conditions, prior to completion of the merits review, or to allow the merits process to be completed prior to making a final decision.

Sincerely,

Nunzio J. Palladino

Enclosure:
As stated

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

OFFICE OF THE SECRETARY

DOCKETED USNRC

'84 JAN 27 P4:15

January 27, 1984

50-289

SERVED JAN 27 1984

MEMORANDUM FOR: Parties to the TMI-1 Restart Proceeding

FROM: Samuel J. Chilk, Secretary

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.

(15)

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 PENDENCY 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 ongoing investigations and proceedings, however, the Commission always has remedies at its disposal.

Indeed, 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 criminal indictments 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, inappropriately presented in the context of martial discipline and analogy.

The responsibility of the Commission 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 presently licensed to generate electricity, under the same senior management personnel in question here today, and under the same NRC that is responsible 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. Moreover, I believe that the Commission has, by its 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, without somehow rendering 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.

1/27/84

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

handwringing 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 issue, 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.

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

OFFICE OF THE
SECRETARY

February 13, 1984

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

DOCKET NUMBER
PROD. & UTIL. FAC. 50-289 Restart

SERVED FEB 14 1984

MEMORANDUM FOR: Parties to the TMI-1 Restart Proceeding

FROM: William L. Clements, WLC Acting Chief, Docketing and Service Branch

SUBJECT: REVISED VIEWS OF COMMISSIONER BERNTHAL ON MANAGEMENT INTEGRITY

On January 27, 1984, the Secretary to the Commission issued a Memorandum entitled "TENTATIVE COMMISSION VIEWS AND PLAN FOR RESOLUTION OF MANAGEMENT INTEGRITY ISSUES PRIOR TO RESTART". Attached to that Memorandum were the views of Chairman Palladino and Commissioners Gilinsky, Asselstine and Bernthal. Commissioner Bernthal has since revised his Additional Views; they are attached for your information.

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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.

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

CHAIRMAN

March 19, 1984

The Honorable Richard Thornburgh
Governor of Pennsylvania
Harrisburg, Pennsylvania 17109

Dear Governor Thornburgh:

I am writing to respond to your letter of January 24, 1984, and the statement of your position as transmitted to us by Dr. Wright in a letter dated December 16, 1983. These letters present your position regarding the restart of Three Mile Island, Unit 1 (TMI-1).

The Commission's current views and plans regarding TMI-1 restart are set forth in the attached Notice to the Parties, which was issued on January 27, 1984. The Notice to the Parties is not intended to be a full explanation of the Commission's position on restart. As stated in the Notice, it was issued only to keep the parties informed, and the current views and plans discussed in the Notice 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.

Your letter suggests that establishment of a funding mechanism for completing the cleanup of TMI-2 should be a prerequisite for restart of TMI-1. While we believe that adequate protection of public health and safety is currently being maintained, the Commission is concerned about the slow pace of the cleanup. We do not believe, however, that holding up the restart of TMI-1 because of uncertainties about TMI-2 cleanup funding will help resolve those funding problems. In addition, the Commission has concluded that it does not have the legal authority to condition restart of TMI-1 on a funding solution for the cleanup of TMI-2.

Nevertheless, we continue to examine alternatives that would help bring about a safe and expeditious cleanup, and we will review what can be done when we address the TMI-1 restart issue. In recent Congressional testimony I have suggested the consideration of new approaches, such as that used for the cleanup of West Valley. I would also like to explore the possibility of obtaining superfund financing for TMI-2 cleanup.

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Commissioner Asselstine does not believe that the Commission should request additional legislation, such as legislation similar to the West Valley Demonstration Act, to provide large-scale Federal funding for the cleanup of TMI-2. In his view, any legislative proposals of that type should come from other Federal agencies that have more direct responsibilities for such initiatives. Commissioner Asselstine also believes that the likelihood of favorable Congressional action on a Federal funding program for the TMI-2 cleanup is not high. Furthermore, he is concerned that a Commission legislative proposal for Federal funding of the cleanup would serve as a disincentive to obtaining the additional voluntary financial commitments that are an essential part of your plan for funding the cleanup.

The Commission agrees that issues of management competence and integrity should be resolved prior to a decision on restart, and is trying to do so. The adjudicatory proceeding to determine whether TMI-1 should be allowed to restart, begun in 1979, is still underway. While there are no evidentiary hearings currently in progress, the Commission's Atomic Safety and Licensing Appeal Board is in the process of reviewing the Licensing Board's decision on the management issues and the cheating incidents. This process is termed the "merits review," and any decision by the Appeal Board will then be considered by the Commission.

The question presently before the Commission on management issues is whether those issues justify continuing the immediate effectiveness of the original shutdown orders prior to completion of the merits review. In resolving this question, the Commission must decide whether it now has sufficient information to conclude that the management problems which led to the issuance of the immediately effective shutdown orders have been corrected and there is reasonable assurance that the plant can and will be operated safely.

While the Commission can, as part of this review of whether or not to lift immediate effectiveness, require the temporary separation of certain individuals from nuclear operations, it cannot permanently revoke the TMI-1 license or permanently bar individuals from working at TMI on the basis of the review of immediate effectiveness alone. The decisions the Commission can reach on the basis of this review of whether or not to lift immediate effectiveness are either to authorize restart, with any appropriate conditions, prior to completion of the merits review, or to allow the merits process to be completed prior to making a final decision.

As indicated in the attached Notice to the Parties, our purpose is not to separate competence and integrity issues from the restart decision but rather to resolve them. A decision on restart, when it is finally made, will be accompanied by an explanation of the manner in which the Commission took account of the issues of integrity and competence, as well as hardware.

Sincerely,

Nunzio J. Palladino

Nunzio J. Palladino

Attachment:
As stated

ARLEN SPECTER
PENNSYLVANIA

COMMITTEES:
JUDICIARY
APPROPRIATIONS
VETERANS' AFFAIRS

United States Senate

WASHINGTON, D.C. 20510

December 8, 1983

The Honorable Nunzio J. Palladino
Chairman
U.S. Nuclear Regulatory Commission
1717 H Street, N.W.
Washington, D. C. 20555

Dear Mr. Chairman:

I am very much concerned by the report that the staff of the Nuclear Regulatory Commission has recommended that Three Mile Island Unit 1 be authorized to operate at 25% power with commencement as early as January 1984. Any such action would be unjustified and contrary to appropriate assurances to safety which the public has a right to expect.

That authorization would contradict assurances which I have received from the Commission's General Counsel who responded on November 23, 1983 to my earlier letters stating that "The Commission intends to assure the questions about GPU's management competence and integrity are adequately resolved prior to making a decision on restart."

As you know, I had written on July 29 and November 17, 1983, urging that the Commission give assurances that there be no restart of TMI-1 until the record was reopened and adjudicatory hearings held on unresolved management issues, including the Hartman allegations and other issues enumerated in NUREG 1020, the material false statements concerning operator cheating, and General Public Utilities' failure to adhere to NRC quality assurance requirements in the course of the clean-up of TMI-2.

In the absence of hearings on this state of the record and in light of the recent indictment of Met Ed for criminal misconduct in its operation of TMI, as well as the more then seven ongoing investigations by the NRC Office of Investigations into TMI management integrity issues, how can the Commission even consider authorizing the restart of TMI Unit 1 with so many unresolved questions about the integrity and competency of the corporate managers?

I am also very much concerned about the operation of the Nuclear Regulatory Commission itself on this important matter. These issues have been pending for a protracted period of time and really should have been resolved long ago. From all points of view, including management at GPU, there should be a completion of the investigation so that wrongdoing would be exposed or exoneration would be presented, whatever is warranted by the facts. I have been involved in many complex investigations and know that these matters can be concluded at a much faster pace. Would you please let me know when you anticipate concluding the inquiries on the issues raised?

The accident and its aftermath have caused great erosion of public confidence in the NRC as well as GPU. This confidence can be restored and doubts surrounding GPU management competence and integrity resolved only through evidentiary hearings. These hearings must be held promptly before a decision on restart is considered.

Sincerely,

Arlen Specter

AS:jb

Judy

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

November 23, 1983

The Honorable Arlen Specter
United States Senate
Washington, D.C. 20510

Dear Senator Specter:

Thank you for your letter of November 17, 1983 concerning the restart of Three Mile Island Unit 1. We have also provided a copy of that letter to the parties to the restart proceeding.

In your letter you point to several recent developments and urge the Commission to reopen the record and hold hearings on the management competence and integrity of General Public Utilities (GPU). The Commission intends to assure that the questions about GPU's competence and integrity are adequately resolved prior to making any decision on restart. We will outline the steps currently underway below.

On August 31, 1983 the Appeal Board reopened the management record for further formal evidentiary hearings on the so-called Hartman allegations. On October 7, 1983 the Commission took limited review of that decision and requested the views of the parties on whether it should stay the hearing until after the Office of Investigations has completed its investigation. The Commission also requested comments on whether the other pending investigations relating to GPU management competence and integrity should be completed before any action by the Board on the issues raised in those allegations. The Commission stayed the reopened hearings to preserve the status quo until it further addressed the matter.

The Commission has recently received the parties' comments on that issue. The Commission is in the process of evaluating those comments, and, after doing so, will decide whether the investigations should be completed prior to holding any hearings on these matters.

The Commission also stated in an October 7 Notice to the Parties that it is willing to consider alternative substantive approaches to the management issues in its restart decision. To that end the Commission scheduled the November 28 meeting to hear from GPU, to be followed by a meeting on December 5, 1983 to hear from the other parties. After hearing from the

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parties the Commission hopes to provide further guidance to the parties on the method of resolution of the management competence and integrity issues.

Sincerely,

Herzel H. E. Plaine
General Counsel

ARLEN SPECTER
Pennsylvania

COMMITTEES:
JUDICIARY
APPROPRIATIONS
VETERANS' AFFAIRS

United States Senate

WASHINGTON, D.C. 20510

December 18, 1983

Hon. Nunzio Palladino
Chairman, Nuclear Regulatory Commission
1717 H Street, NW
Washington, D.C. 20555

Dear Chairman Palladino:

Based on the testimony from a hearing which I conducted last Friday, December 16, 1983, I am writing to urge the NRC to hold promptly the necessary hearings to resolve the outstanding issues regarding TMI. At that hearing, some twenty-five witnesses testified representing citizens' groups, the NRC, GPU, state senators, the State Chamber of Commerce, county commissioners and mayors.

That hearing disclosed:
1) enormous public worry about the recommendation of the NRC staff to restart TMI Unit 1 before pending inquiries on safety and company competency and integrity are concluded;
2) substantial concern by GPU and nuclear industry proponents about the future of nuclear energy in light of the long delays in resolving the TMI matter;
3) serious questions about the competency of the NRC to perform its Congressional Mandate as embodied in the applicable Federal Statutes.

As the record unfolded, there have been a multiplicity of proceedings involving the NRC itself, the NRC Office of Investigation, the NRC Special Inquiry Group, the Atomic Safety and Licensing Board, the Atomic Safety and Licensing Appeal Board and the Special Master.

A significant part of the hearing focused on why the TMI investigation has not been concluded since almost five years have elapsed since the incident of March 28, 1979. Mr. Denton of the NRC staff testified:

"It is inexplicable why it has taken five years to get here."

It is totally unacceptable, as mildly as I can put it, to have no rational justification for the intolerable delay.

A major outstanding question has been the continuation of Mr. Fuhrs and Mr. Dieckamp in GPU's management. When I spoke to them last Tuesday, December 13, 1983, I was astonished to find that no one from the NRC had ever questioned either of them about their knowledge of or involvement in falsification of records, operator cheating or other allegations of wrongdoing. In the intervening two days until the hearing of December 16, 1983, there was finally some limited questioning of Mr. Fuhrs and Mr. Dieckamp by NRC representatives. It certainly is a curious coincidence that no one questioned those GPU officials for more than four years and eight months, but did so in the two days between their appearances at my office and my hearing. I am not suggesting in any way that either Mr. Fuhrs or Mr. Dieckamp were involved in any wrongdoing; but I do believe they, as well as all interested parties, were entitled to have that matter resolved at an early date.

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On the basis of this record, it is my judgment that the NRC is guilty of nonfeasance in failing to act properly to discharge its statutory duties on the TMI incident. This is the most important issue in the history of the nuclear industry which the NRC is charged with regulating, and it is and has been entitled to priority treatment.

The people of central Pennsylvania, the public generally, the company, the industry and the Congress are entitled to answers on the TMI incident which have been pending for almost five years. The NRC should complete the hearing process and let the chips fall where they may so that those at fault will be ousted and the innocent exonerated.

At Friday's hearing, your counsel confirmed that the NRC itself could hold the necessary hearings and render the relevant judgments. I urge that the NRC itself hold such hearings and make those judgments under an appropriately tight time-table.

Sincerely,

Arlen Specter

AS/sq

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE GOVERNOR
HARRISBURG

DOCKETED
USNRC

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THE GOVERNOR

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

January 24, 1984

Dr. Nunzio J. Palladino
Chairman
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Dear Mr. Chairman:

The Commonwealth is in receipt of NRC staff's response to GPU's management proposal and I want to take this opportunity to reiterate my views concerning the question of restart of Three Mile Island Unit 1.

As you know, I have repeatedly stated that I will remain opposed to the restart of TMI Unit 1 until and unless I receive adequate assurances that Unit 1 can be operated safely, and until and unless there is a funding mechanism in place for completing the radiation cleanup at TMI Unit 2.

In my letter to you of June 2, 1983, I expressed my view that a variety of questions, including those related to management competence and integrity, should be resolved prior to restart, not the other way around.

In your written response dated July 14, 1983, you provided assurances that the NRC would make no decisions regarding the restart of Unit 1 until such issues had, indeed, been addressed.

I believe that the NRC staff's recommendation, which would permit the conditional restart of TMI-1 in the face of unresolved issues related to competence and integrity, would be inappropriate and inconsistent with the spirit of your statement of July 14.

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Public safety must be the primary concern and principal objective of the operators and regulators of nuclear power facilities. In the interest of public safety, the NRC should reject any proposal to separate competence and integrity issues from TMI-1 restart, but rather resolve these issues prior to any decision on the future of Unit 1.

Sincerely yours,

Dick Thornburgh
Governor