

UNITED STATES  
NUCLEAR REGULATORY

March 13, 1985

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BEFORE THE COMMISSION

In OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH  
METROPOLITAN EDISON COMPANY,  
(Three Mile Island Nuclear  
Station, Unit No. 1)

Docket No. 50-289  
(Restart)

COMMONWEALTH OF PENNSYLVANIA'S  
MOTION FOR RECONSIDERATION OF  
COMMISSION ORDER CLI-85-2

I. INTRODUCTION

On February 25, 1985, the Commission issued an order which, inter alia:  
1) overturned the Atomic Safety and Licensing Appeal Board's decision (ALAB-772) to require further hearings into leak rate testing practices at TMI-1 and TMI-2;  
2) proposed a "new proceeding" to consider action on those "possibly involved" in leak rate falsification, "except for those individuals who were identified as not involved by the statement of the United States Attorney"; and 3) stated that "After considering the other issues raised by the parties, the commission finds that no further hearings are warranted in the restart proceeding."

The Commonwealth disagrees with this order and requests that it be reconsidered and reversed. Further hearings in this proceeding are essential to answer questions that are basic to the health and safety of those who live within the vicinity of Three Mile Island and to their environment, and to the integrity of this proceeding and how this Commission regulates the nuclear industry.

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On August 15, 1984, Governor Thornburgh appeared before this Commission and said that no Unit 1 restart vote should be scheduled "unless and until funding has been assured to complete the radiation cleanup of the damaged Unit 2 facility on TMI, and unless and until this Commission has provided adequate assurances that Unit 1 can be operated without threat to the health or safety of the people of central Pennsylvania or the integrity of our environment". Statement of Governor Thornburgh, August 15, 1984.

During the nearly seven months that have passed since the Governor's appearance, real progress has been made in both of these areas. The nuclear industry finally has come forward with its first contribution to the Unit 2 cleanup under a commitment it made to the Governor in 1981. The emergency response system for the TMI area has been improved, and certification is under consideration by FEMA. ASLB deliberations on the steam generator tube repair program have been completed.

Despite this progress, the Commission still cannot provide adequate assurances, which the Governor requested last August and many times before, that Unit 1 be operated without threat to the public health and safety or the environment. If the Commission's February 25 order is allowed to stand, it will virtually guarantee that the record never will be sufficiently complete to justify a restart vote and that the public never will receive the safety assurances it deserves from this Commission.

The Commonwealth requests reconsideration on the following unresolved issues, each of which is critical to any conclusion that TMI-1 can be operated safely.

(1) Leak rate falsification at TMI-2 and leak rate testing at TMI-1. The Commission voted to cancel scheduled hearings on these issues in its February 25 order.

(2) The adequacy of operator training. The proceedings on this issue are presently clouded by multiple parties' requests that Administrative Law Judge Smith disqualify himself for lack of impartiality and for bias. The Commission proposed on February 25 that the ASLB proceed to a decision on training issues without first addressing issues of Judge Smith's conduct.

(3) The changes in recommendations by the NRC Staff on whether GPU management is competent to operate TMI-1. The Commonwealth commented on the issue of the inconsistent Staff recommendations on October 1, 1984. The Commission decision, at p. 67, says that issues material to the staffs' changes in position are either currently pending, already fully litigated, or no longer significant to the operation of TMI-1. To the contrary, the issues that the Commission says are "no longer significant" concern a major issue of management integrity--namely TMI-2 leak rate test falsification--and, therefore, are material to the operation of TMI-1.

(4) The role of top management at GPU in responding to the Commission's October 25, 1979 Notice of Violation ("NOV"), and in preparing the Keaten Task Force report. The Commission, at page 83, held that hearings on these related issues were not warranted because of the removal of Messrs. Arnold and Wallace.

Each of these issues is discussed fully below.

1. Leak Rate Falsification and Testing

The Governor stated last August: "Before any decision is made, a fundamental question not yet answered in a public forum should be resolved through an open hearing of the Atomic Safety and Licensing Board. That question is whether an act that led to a federal criminal indictment and subsequent guilty plea, the intentional and systematic falsification of leak rate results at Unit 2, was directed or condoned by any members of the current management of Unit 1."

That question has yet to be aired and resolved in a public forum because Metropolitan Edison Company pleaded guilty rather than go to trial. The Commission had suspended its own hearing into the matter to await a criminal trial that never took place. The Commission, for reasons that are not apparent, continues to resist the commencement of such an evidentiary hearing as part of the restart proceeding.

The substitute proceeding this order proposes on leak rate falsification is flawed on two counts: its completion has not been made a pre-condition of restart, and it exempts from examination virtually all of GPU's officers and directors on the basis of a qualified and carefully worded statement from the U.S. Attorney who prosecuted the Met Ed case.

The statement, issued in the context of plea bargaining, reads as follows:

"However, the evidence presented to the grand jury and developed by the United States Attorney does not indicate that any of the following persons participated in, directed, condoned or was aware of the acts or omissions that are the subject of the indictment..."

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While this limited statement might appear to have cleared from responsibility the 24 persons whose names follow it, neither the public nor the Commission can be certain of that. Since there was no public trial, it is not known what evidence was or was not "presented to the grand jury," nor what evidence was or was not "developed by the United States Attorney." It is not even known whether the 24 persons on this list were actually asked, under oath, if they were involved in the falsification episode.

This Commission's decision flies in the face of the Commission's 1979 order that the decision on management competence and integrity was going to be made on the record developed at a hearing before a licensing board. Now the Commission, reversing the Atomic Safety and Licensing Appeals Board, has ruled that no new hearing is necessary. To date there has been no public investigation on TMI-2 leak rate falsification; the Office of Investigation has not completed its investigation and the grand jury information is not available.

We will never know how deep into the GPU organization the leak rate falsification problem reaches unless the Licensing Board has the opportunity to consider the issue. The Board could very well decide that further managerial, personnel, or organizational changes are necessary after reviewing a complete hearing record on the leak rate practices. For example, serious questions remain about the role of Michael Ross, who is now the operations manager at TMI-1. The Commonwealth has learned that Mr. Ross was on duty at TMI-2 on numerous occasions prior to the 1979 accident, at the time that the leak rate falsification problem was prevalent. The Commission's decision, at 25, only speculates as to the possibility of Mr. Ross's knowledge and involvement in Unit



2 leak rate practices. There has been no definitive statement clearing Mr. Ross from involvement in leak rate testing at TMI-2.

Additional questions about leak rate falsification are raised by an investigation commissioned by GPU itself, the Stier investigation of TMI-2, which began a year ago but has not been completed. Mr. Stier has briefed GPU management on his preliminary findings. On February 7, 1985, GPU Nuclear sent a letter to its employees stating that the patterns of behavior with regard to the TMI-2 leak rate tests prior to March, 1979 were "not acceptable". According to Stier, this behavior was known by most, if not all, of those involved in the leak rate tests. It seems inconceivable that the managers of TMI-2, including Mr. Ross, were not aware of this unacceptable conduct. Mr. Stier's letter undermines the Commission's speculation concerning Mr. Ross. Without further inquiry, neither the Commonwealth, nor the Commission can authoritatively conclude that no one currently within TMI-1 management had such knowledge or had participated in this wrongdoing. The limited information available does not allow the Commonwealth, the Commission, or the public to reach such a conclusion.

Additionally, hearings are necessary on possible irregularities in leak rate testing at TMI-1. The Appeal Board remanded this issue to the ASLB to consider significant new evidence which had developed since 1981 of irregularities in leak rate testing. This evidence includes claims of ignorance of the NRC requirement that all test records be maintained, and claims of ignorance by both operating staff and management of the existence and significance for leak rate calculations of a "loop seal" in the instrumental system. These problems add up

to more than the procedural problems that the Commission's order suggests. Whether these problems have been properly resolved by current management is very significant to TMI-1 restart. Further investigation of TMI-1 leak rate testing may reveal other problems. Until formal discovery is completed and an evidentiary hearing is conducted, there can be no assurance that TMI-1 can be operated safely.

In summary, the Commonwealth urges the Commission to order the immediate opening of hearings by the ASLB on leak rate falsification and tests at TMI Unit 1 as well as Unit 2, and to withhold Commission judgment on these matters and their relevance to the Unit 1 restart proceeding until those hearings have been completed and the record thoroughly reviewed.

## 2. Training Issues

The Commission's decision directs the Licensing Board to issue a decision on the training issue, but the Commission does not promise to wait for the ASLB decision on that issue before voting on restart. To the Commonwealth and all other parties except the Licensee, it is not at all clear that the hearings that have recently concluded have been adequate. The fairness of these hearings has been seriously undermined by ASLB Administrative Law Judge Smith's conduct. Every party to the restart proceeding, except for the Licensee, has either made or supported a request that Judge Smith be disqualified for the appearance of partiality and for bias. On December 27, 1984, Judge Smith wrote a letter to United States District Judge Sylvia Rambo requesting that Judge Rambo be lenient in sentencing James Floyd, a TMI operator found guilty of cheating on his licensing examination. Judge Smith's letter, which dealt with an issue intima-

tely connected with the training issue, makes it impossible for him to render a fair and objective decision on the training issue. See Statement by the Commonwealth of Pennsylvania in Support of its Motion to Disqualify Administrative Law Judge Ivan W. Smith, March 6, 1985.

Therefore, the Commonwealth cannot be assured that operator training at TMI has been raised to a standard that would justify a restart vote until this judge has been removed and replaced; until the new judge has reviewed the record to decide whether and to what extent new hearings are necessary; and until the new judge has reached a fair and impartial finding, based on a thorough and accurate record, that certifies the training as sound.

### 3. Change in Staff Findings

In 1981 the Staff certified that Metropolitan Edison has the requisite competence and integrity to operate TMI-1. In 1983, however, the Staff withdrew its earlier certification. In July, 1984, the Staff stated that GPU Nuclear had the requisite competence and integrity, but also said that had it known in 1981 of the Licensee's pattern of activity since 1979, the Staff would likely have concluded that the Licensee had not met the standard of reasonable assurance of no undue risk to the public health and safety. The items that would have led the Staff to a different conclusion include: the cheating episodes; the deliberate falsification of leak rate tests at TMI Unit 2 prior to the accident and the resulting criminal conviction of the Licensee for failure to even have a valid leak rate test; failures in the Licensee's pre-accident and post-accident training programs; evidence of contractor discrimination against an employee who raised safety concerns; evidence of widespread failures to follow safety proce-



dures in TMI-2 cleanup; and Licensee's response to the October 25, 1979 Notice of Violation which resulted from the TMI accident. The Commission rightfully criticized the Staff for not fully explaining its 1984 statement. The Commission, however, did not reopen the hearings on the question of Licensee's management competence and integrity.

The Staff's change in position presents a compelling case for questioning how the NRC judges management. The Staff's original favorable opinion of Licensee management was a prerequisite to the ASLB's favorable opinion of management. The Staff's refusal to identify specific portions of its previous testimony which it would no longer present leaves the record unreliable with respect to confidence in GPU management. The Commission, therefore, has no reliable basis on which to make a judgment on GPU management competence and integrity. The Staff has provided no basis for its 1984 conclusion that the Licensee's management is capable of operating TMI-1, aside from discussion of the Licensee's changes in organization.

Without additional inquiry, the public has no opportunity to examine:

1. which prior judgments the Staff would change, and why;
2. what organizational components of GPU management it considers to be crucial to the safe operation of TMI-1;
3. what evidence supports the Staff's current view of GPU management;
4. what remedial actions have been taken by GPU management in response to the past misconduct, and whether these remedies are institutionally effective; and

5. what events or conduct would cause the Staff to again withdraw its favorable opinion of management.

Given the outstanding issues which have not been resolved, the Commonwealth and the public do not have a definitive statement concerning the Staff's view of Licensee management integrity. This issue must be resolved in conjunction with hearings on leak rate testing at TMI-1 and TMI-2.

4. The Keaten Report

The Commonwealth has serious concerns about the changes to the "Keaten Report," and the implications that a full inquiry on the Keaten Report may have for the current GPU management. The Commission's decision lightly dismisses all allegations of manipulation of this report, which was to have independently assessed the causes of the TMI-2 accident. The Commonwealth believes that before the NRC can vote on TMI-1 restart the Commission should conclude definitively that no one at current GPU management was involved in the manipulation of the Keaten Report in order to avoid an adverse result in the GPU v. Babcock & Wilcox litigation, or in order to avoid statutory liability in response to an NRC Notice of Violation issued October 25, 1979. The Commonwealth does not believe that the issue of management integrity with respect to the Keaten Report can be dismissed without inquiry and urges the Commission to direct the Licensing Board to review this matter to determine whether anyone in current TMI-1 management was involved in the Keaten Report manipulation and whether current management practices at TMI will make the recurrence of this episode unlikely.

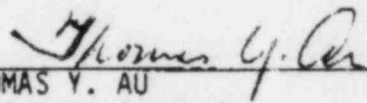
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CONCLUSION

Any decisions on TMI-1 restart should be made on the merits and in a manner that fosters public confidence and support. Unless and until all outstanding safety questions have been thoroughly addressed and resolved, it would be contrary to the public interest for the Commission to schedule any vote on TMI-1 restart.

Respectfully submitted,

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Before the Commission

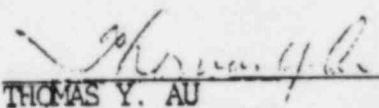
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CERTIFICATE OF SERVICE

I hereby certify that copies of the Motion for Reconsideration of Commission Order CLI-85-2 have been served on the persons listed on the attached Service List by First Class U.S. Mail\* this 13th day of March, 1985.

  
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