



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

OFFICE OF THE
COMMISSIONER

September 7, 1984

MEMORANDUM FOR: Andy Bates, SECY
FROM: Pat Davis, OCM PD
SUBJECT: TMI-1 ORDER - DISSENT

Attached are Commissioner Asselstine's dissenting views on the Commission's order taking review of ALAB-772. Please see that they are attached to the order when it goes out.

cc: Reamer
Cutchin
Sohinki
Parler
OGC
OPE

Dissenting Views of Commissioner Asselstine

I cannot agree with the Commission's order taking review of ALAB-772 and other miscellaneous TMI Restart issues. The Appeal Board decision should be allowed to stand, and the Commission should merely remand the other issues it has decided to review to the Licensing Board. The Licensing Board can then determine whether new information warrants holding a hearing.

The Appeal Board decision on management issues (ALAB-772) is a particularly thoughtful and well-done review of the Licensing Board's decision. The Commission has not and indeed cannot point to anything in the Appeal Board decision which is either clearly erroneous or an abuse of discretion, neither is there any important question of law or policy involved. These are the proper triggers for Commission review. 10 CFR 2.786. Instead, the Commission, without finding that the Appeal Board erred, is requiring parties who have already prevailed before the Appeal Board to again meet the heavy burden of showing why the record should be reopened.

Further, the Commission has required the parties, in effect, to set out contentions they want to put forth at a hearing and the evidentiary bases for those contentions. The Commission intends not only to rule on whether the record should be reopened and remanded to the Licensing Board, but it also intends to rule on what specific contentions the Licensing Board may hear, if any. As I have said in the past, this is

the kind of ruling best left in the hands of licensing boards which are perfectly capable of, and in fact were specifically set up for, handling such fact-specific adjudicatory rulings.

The Commission has also decided to solicit comments on whether the record should be reopened on the Hartman issues (ALAB-738) and based upon the staff's latest evaluation of licensee management--NUREG-0680, Supp. No. 5. There has been so much new information on the management issue since the close of the Licensing Board record that the Licensing Board record clearly is stale. The following statement of the staff, standing alone, demonstrates the staleness of the Licensing Board record:

"The pattern of activity by Met-Ed, had it been known by the staff at the time the staff formulated its positions on management in the restart proceeding would likely have resulted in a conclusion by the staff that Met Ed had not met the standard of reasonable assurance of no undue risk to the public health and safety."
NUREG-0680, Supp. No. 5, p. 2-2.

The Commission ought simply to acknowledge the obvious, reopen the record, and remand the case to the Licensing Board for a determination on whether further hearings on these issues would be useful. The parties to this proceeding have been asked repeatedly to comment on all this new information, and have repeatedly expressed opinions about the need to, or lack of a need to, reopen the record for a hearing. Obtaining further comments on this issue is nothing more than procedural window dressing and is a waste of time and energy for all concerned.

The Commission ought to decide finally whether the TMI-1 Restart decision is to be based on a formal adjudicatory record or on an informal record. If the Commission really thinks a formal record is necessary, as it said it did five years ago, it ought to stop playing procedural games, reopen the record and get these hearings moving. If the Commission instead intends to make its decision based partially on the informal record developed since the close of the Licensing Board record and not wait for the results of any hearings, the Commission ought to just make that decision and move on. Today's order accomplishes nothing but delay in either case.