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

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February 13, 1986

OFFICE
DOCKETING
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MEMORANDUM FOR: William L. Clements, Chief
Docketing and Services Branch

FROM: James L. Kelley *James L. Kelley*
Administrative Judge
Atomic Safety and Licensing Board Panel

SUBJECT: INQUIRY INTO THREE MILE ISLAND UNIT 2
LEAK RATE DATA FALSIFICATION

This memorandum is to inform you that the letter dated December 31, 1985 from Judges Kelley, Kline and Bright together with CLI-85-18 was mailed during the time period of January 27, 1986 through February 13, 1986 to the attached list of persons for the second time.

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PDR ADOCK 05000320
G PDR

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Updated (2/86) Addresses Of Personnel
Notified a Second Time of Commission Proceeding
Regarding TMI-2 Leak Rate Testing Irregularities

All letters were mailed by Certified Mail, Return Receipt Requested,
except the letter to Mr. J. M. Boyd which was sent c/o Ernest L. Blake, Esq.
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David A. Neumann
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UNITED STATES
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD PANEL
WASHINGTON, D.C. 20555

December 31, 1985

David A. Neumann
278 Pine Street
Middletown, PA 17057

Dear Ms. or Sir:

This letter is being sent to about one hundred and twenty present and former employees of GPU Nuclear and Metropolitan Edison Company who worked at Unit 2 of the Three Mile Island Nuclear Station ("TMI-2") between February 2, 1978, when commercial operation commenced, and March 28, 1979, the date of the accident. Review of available records indicates that that group of people, including yourself, represent all those who were involved in, or were likely to have had knowledge of, reactor coolant system leak rate data, testing or reports at TMI-2.

As you may know, several years ago Harold Hartman, a control room operator at TMI-2 prior to the accident, alleged that leak rate tests were purposely manipulated and records of such tests falsified or destroyed prior to the accident to cover up the fact that over an extended period of time the results of the tests exceeded technical specification limits. Subsequent investigations have tended to substantiate Hartman's allegations. The Nuclear Regulatory Commission has now decided to conduct a hearing to develop the facts concerning any falsifications of leak rate data at TMI-2. This hearing is designed solely to gather information, particularly the involvement of particular individuals in leak rate data falsification who may now or in the future work at a licensed nuclear facility.

A copy of a Commission "Order and Notice of Hearing" dated December 18, 1985 is attached to this letter. The Order spells out in more detail the background of this matter and the ground rules for the hearing. By way of brief summary, a three-member Presiding Board will conduct the hearing which will focus on a series of issues specified by the Commission, including, for example, whether operators manipulated data during leak rate surveillance testing in order to improperly influence test results. Following the hearing, the Presiding Board will issue a recommended decision based on the hearing record which will identify persons who participated in, knew of and condoned, or allowed data falsifications by culpable neglect.

On the basis of the Presiding Board's recommended decision and any other relevant information, the NRC Staff will make recommendations to the Commission. The Commission will then determine what further steps, if any, should be taken with regard to those involved in falsification. If, as a result of its review, the Commission institutes formal enforcement proceedings or takes any licensing action, the facts found by the Presiding Board and Commission in the hearing will not be binding in the subsequent enforcement or licensing proceeding.

Participation as a party in the hearing is voluntary. The Board would like to emphasize, however, that we seek the fullest possible development of the record and therefore the participation of all persons having knowledge of relevant facts. You

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should be aware that should you decide not to participate as a party, you may nevertheless be subpoenaed as a witness.

Participation as a party in the hearing is governed by paragraph C.2 of the Commission's Order, which states that:

Any person who has an interest which may be affected by this hearing may petition to intervene. Petitions to intervene shall include the name of the party, how the party's interest may be affected by the proceeding, and how the party expects to contribute to the development of an adequate record. Petitions are to be filed within 45 days of the date of this Order and Notice of Hearing. Petitions shall be granted if the Presiding Board determines that the petitioner has an interest that may be affected and petitioner will likely contribute to development of an adequate record.

A petition to intervene need not be lengthy or detailed. For example, it would suffice to state that you were involved with leak rate data in the relevant period, that you have some knowledge concerning manipulation of leak rate data, or that your future professional status may ultimately be affected by the proceeding. It is not necessary for you to state everything you know at this initial stage.

Please note the 45-day deadline in the Commission's Order. This means that YOUR PETITION TO INTERVENE MUST BE POSTMARKED NO LATER THAN JANUARY 30, 1986. Petitions should be addressed to:

Presiding Board
TMI Leak Rate Data Proceeding
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

COPY TO:
Jack R. Goldberg, Esq.
Office of Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

THE PRESIDING BOARD

James L. Kelley
James L. Kelley, Chairman
ADMINISTRATIVE JUDGE

Jerry R. Kline
Jerry R. Kline
ADMINISTRATIVE JUDGE

Glenn O. Bright
Glenn O. Bright
ADMINISTRATIVE JUDGE *by JRC*

Attachment:
As Stated

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Nunzio J. Palladino, Chairman
Thomas M. Roberts
James K. Asselstine
Frederick M. Bernthal
Lando W. Zech, Jr.

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In the Matter of

INQUIRY INTO THREE MILE ISLAND
UNIT 2 LEAK RATE DATA
FALSIFICATION

Docket No. LRP

ORDER AND NOTICE OF HEARING

CLI-85- 18

In an Order issued February 25, 1985, CLI-85-2, 21 NRC 282, the Commission stated that it would institute a separate hearing apart from the Three Mile Island, Unit 1 restart proceeding to develop the facts surrounding the reactor coolant system ("RCS") leak rate data falsifications at Three Mile Island, Unit 2 (TMI-2) prior to the March 28, 1979 accident, in sufficient detail to determine the ultimate status of those likely involved, which includes those segregated from TMI-1 and those now working at other facilities. The Commission herein specifies the procedures to govern the separate hearing, which will be a legislative format hearing designed solely to gather information. This order also identifies the steps to be taken, after the Presiding Board issues a recommended decision setting forth the facts, in order for the Commission determine what action, if any, will be taken.

8, p.

On February 29, 1984, Metropolitan Edison Company entered into a plea agreement with the United States which ended the criminal prosecution. Metropolitan Edison pleaded guilty to one count of the indictment charging it with failure to establish, implement, and maintain an accurate and meaningful reactor coolant system water inventory balance procedure to demonstrate that unidentified leakage was within the allowable limits. The Company also pleaded no contest to six other counts of the indictment, including those which charged the Company with improper manipulation of TMI-2 leak rate tests to generate results that would fulfill the Company's license requirements. In urging the Court to accept the plea agreement, U.S. Attorney David Queen stated the evidence developed in the Grand Jury inquiry did not indicate that any of the directors and officers of GPU Nuclear from its inception in 1982 (as successor to Metropolitan Edison) to the date of the indictment, or any of the directors of Metropolitan Edison "participated in, directed, condoned, or was aware of the acts or admissions that are the subject of the indictment."¹

After the Court accepted the plea agreement, the Department of Justice on behalf of the Commission asked the Court to provide the NRC access to

¹The individuals thereby cleared by the U.S. Attorney are William G. Kuhns, Herman M. Dieckamp, Robert C. Arnold, James S. Bartman, Shepard Bartnoff, Frederick D. Hafer, Richard Heward, Henry D. Hukill, Edwin E. Kintner, James R. Leva, Bernard H. Cherry, Philip R. Clark, Verner H. Condon, Walter M. Crietz, Robert Fasulo, Ivan R. Finfrock, William L. Gifford, Robert L. Long, Frank Manganaro, Ernest M. Schleicher, Floyd J. Smith, William A. Verrochi, Raymond Werts, and Richard F. Wilson.

by control room operators (CROs), shift foremen, shift supervisors and on-site and off-site management? Following the discovery by an NRC inspector in October 1978 that Technical Specification 3.4.6.2 requirements were not properly interpreted or implemented, what corrective action was taken by management personnel? Was the corrective action taken sufficient to insure compliance with the Technical Specification 3.4.6.2 by the personnel performing and reviewing the leak rate surveillance tests?

(b) What difficulties, if any, were operators experiencing when conducting leak rate surveillance tests required by Technical Specification 4.4.6.2.d? Who knew about these difficulties? What corrective actions were taken? Did operators feel pressure to obtain leak rate surveillance test results which did not exceed technical specification limits? If so, what type of pressure was perceived or exerted and who was responsible?

(c) Were unacceptable leak rate surveillance test results required by Technical Specification 4.4.6.2.d discarded? If so, who knew of, condoned or directed this practice? Were unacceptable leak rate surveillance test results discarded in an attempt to hide them from the NRC?

(d) Did operators manipulate data or take other actions during leak rate surveillance testing in an attempt to improperly influence test results? Who performed, condoned, directed or was knowledgeable of data manipulation or other improper actions during leak rate surveillance testing? This would include, but is not limited to the following:

(i) inputting the wrong data into the plant computer;

falsifications that occurred at the TMI-2 reactor from February 2, 1978 until March 28, 1979.

(f) The Presiding Board is not to entertain issues other than those set forth in (a)-(d) above without the prior authorization of the Commission.

C. Procedures

1. The Chief Administrative Judge, Atomic Safety and Licensing Board Panel, is to appoint a three-person Presiding Board to rule on petitions to intervene, to conduct any prehearing procedures and the hearing, and to render a recommended decision setting forth the facts surrounding the falsifications and identifying those individuals who participated in, or knew of and condoned, or by their dereliction or culpable neglect allowed the leak rate falsifications at TMI-2.

2. Any person who has an interest which may be affected by this hearing may petition to intervene. Petitions to intervene shall include the name of the party, how the party's interest may be affected by the proceeding, and how the party expects to contribute to the development of an adequate record. Petitions are to be filed within 45 days of the date of this Order and Notice of Hearing. Petitions shall be granted if the Presiding Board determines that the petitioner has an interest that may be affected and petitioner will likely contribute to development of an adequate record.

(b) No discovery will be conducted. Instead, it is the Commission's intent that the hearing itself serve as the fact-finding mechanism.

(c) The Presiding Board may issue subpoenas if necessary to compel attendance of witnesses. The Presiding Board will make available to the parties lists of the individuals that it intends to call as witnesses. Parties will be invited by the Presiding Board to submit recommendations regarding whether additional individuals should be called to testify.

(d) Before each witness testifies, the Presiding Board will invite the parties to submit questions in writing to the Presiding Board which they believe should be posed to the witness. The Presiding Board has the discretion to use the questions suggested by the parties.

(e) After the hearing has been completed, the Presiding Board is to invite the parties to file proposed findings of fact and conclusions of law.


(f) The Presiding Board is to issue a recommended decision which sets forth its findings on who participated in, had knowledge of and condoned, or by their dereliction or culpable neglect allowed the leak rate falsifications, and the facts surrounding any such involvement in sufficient detail to determine the involvement of any individual who may now work, or in the future work, at a nuclear facility. The Board's decision shall address each of the issues set out in Part B of this Order. The Presiding Board is not to make recommendations regarding whether any actions should be taken.

consideration of whether to remove TMI-1 employment constraints and whether to initiate formal enforcement action or take any licensing action with regard to involved individuals. If as a result of its review the Commission institutes a formal enforcement proceeding³ or takes any licensing action, the facts found by the Presiding Board and Commission in the hearing ordered here will not be binding in the subsequent enforcement or licensing proceeding.

It is so ORDERED.

Commissioners Asselstine and Bernthal disapproved this Order and provided separate views.

For the Commission⁴


 SAMUEL J. CHILK
 Secretary of the Commission

Dated at Washington, D.C.

this 18th day of December, 1985.

³Because the leak rate falsification events to be addressed in this Board hearing are more than five years old, the five-year statute of limitations set forth in 28 U.S.C. § 2462 may bar the NRC from subsequently instituting an enforcement proceeding for involvement in the events that are the subject of this hearing. However, the information developed in the hearing may be used for other purposes, for example, in evaluating whether an individual's operator license should be renewed.

⁴Commissioner Bernthal was absent when this order was affirmed. He had previously disapproved the Order and had he been present he would have affirmed his prior vote.

SEPARATE VIEWS OF COMMISSIONER ASSELSTINE

I cannot agree with the hearing procedures established by the Commission in this order.

First, the Commission should simply hold an adjudicatory hearing on this issue rather than setting up some sort of ersatz legislative proceeding. Since the Commission will not do that, however, they should at least have modified some of the more unreasonable provisions. At a minimum any party to the TMI-1 Restart proceeding who wishes to participate in this proceeding should be automatically admitted as a party without having to establish standing. Further, holding the "hearing" in the Washington, D.C. area seems to needlessly make participation in this proceeding more difficult than it should be.

Second, the Commission should not exclude consideration of the involvement of all upper-level GPUN management. I explained in more detail my reasons for believing that the scope of this hearing should not be limited in my dissenting views on CLI 85-2 so I will not repeat them here. Suffice it to say that in my view relying solely on the statement of the U.S. Attorney at a court hearing on a bargained plea agreement is not a valid justification for ignoring management responsibility for the leak rate falsifications.

SEPARATE VIEWS OF COMMISSIONER BERNTHAL

I dissented from the path the majority chose in respect to the number and scope of additional hearings in relation to the Commission's restart of TMI-1. I continue to believe that the overriding consideration in the denouement of the TMI-1 restart proceeding is public confidence--the need for the public to be provided, to the extent reasonably possible, with all the facts relevant to the TMI accident and its aftermath.

I consider this hearing as ordered by the Commission unlikely to prove adequate for that important purpose.