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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

'85 DEC 19 P3:13

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

GPU NUCLEAR

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

50-289RA
50-289EW
(Special Proceeding)

ORDER

CLI-85-19

The NRC staff in NUREG-0680, Supp. No. 5 concluded that Metropolitan Edison Co., the former licensee at Three Mile Island, Unit 1 ("TMI-1"), may have knowingly provided false information in the December 5, 1979 response to the NRC's October 25, 1979 Notice of Violation ("NOV"). In response to motions to reopen the record of the restart proceeding on this issue, the Commission found the issue no longer significant to TMI-1 restart, because Robert Arnold and Edward Wallace -- the two individuals primarily responsible for the response -- were no longer associated with TMI-1 activities. The Commission required licensee "to notify the Commission before returning either of these individuals to responsible positions at TMI-1." CLI-85-2, 21 NRC 282, 323 (1985).

Subsequent to issuance of that order, Arnold and Wallace requested "a separate hearing to determine whether the adverse implications about the undersigned's management integrity are factually substantiated." They maintained that the NRC's statements "have damaged [their] good name, reputation, and honor and [their] opportunity to work and to obtain professional advancement." While Arnold and Wallace are primarily concerned about the conclusions regarding the licensee's December 5, 1979 response to the NOV, they also requested that the hearing address "any other issues raised by the Commission or its agencies that the Commission judges to be a constraint on [their] utilization for activities regulated by the Commission."

The NRC staff in NUREG-0680, Supp. No. 5 discussed the potential involvement of individuals, including Arnold and Wallace, in several matters that raised questions about the integrity of GPU Nuclear's Management. Wallace was not potentially involved in any issue other than the December 5, 1979 NOV response. Arnold, on the other hand, was potentially involved in four issues: TMI-2 leak rate falsification, the false certification of James Floyd, the discrimination against Richard Parks, and the response to the NOV. The Commission will discuss below whether or not it views any or all of these issues to constitute a constraint on the employment of Arnold or Wallace in activities regulated by the Commission.

The Commission is not aware of any information implicating Arnold in TMI-2 leak rate falsifications. In fact, the U.S. Attorney

specifically cleared Arnold, among others, in his statement at the TMI-2 leak rate falsification sentencing hearing. See 21 NRC at 305. The Commission has instituted a separate hearing "to develop the facts surrounding the falsifications in sufficient detail to determine the involvement of any individual who may now work, or in the future work, at a nuclear facility licensed by the Commission". CLI-85-18, 22 NRC ____ (December 18, 1985). However, that hearing will not address those cleared by the U.S. Attorney, which includes Arnold, because "agency resources should (not) be used to duplicate the work of the Grand Jury where the result of that inquiry is known." 21 NRC at 306. Accordingly, the Commission finds that the TMI-2 leak rate falsification issue is not a constraint on Arnold's employment in activities regulated by the Commission.

With regard to the false certification of Floyd, the Commission has taken enforcement action in that matter, and Floyd has been criminally convicted. No enforcement action was taken, or is under consideration against Arnold. Further in CLI-85-2, no finding was made directly implicating Arnold in wrongdoing, nor was any condition imposed affecting Arnold as a result of this matter. This issue therefore is not a constraint on Mr. Arnold's employment in activities regulated by the Commission. See 21 NRC at 320-21.

Concerning the discrimination against Parks, the Commission, in CLI-85-2 concluded that this issue did not meet the standards for reopening because Bechtel, the contractor, must bear primary responsibility, and because there was no showing of a widespread pattern

of discrimination. The Commission also found that the removal of Mr. Arnold, "the major GPUN official involved," removed any overlap between TMI-2, where the discrimination occurred, and TMI-1. The Commission in that connection did not impose any constraints on Mr. Arnold's employment. The NRC has proposed imposing a civil penalty against the licensee because of its responsibility for the discrimination. In reviewing this civil penalty, the Commission again determined that no action against Mr. Arnold was warranted. Accordingly, this issue is not a constraint on Mr. Arnold's employment in activities regulated by the Commission.

Therefore, the only remaining issue which may be viewed as a constraint on Arnold's and Wallace's employment is the notification requirement in CLI-85-2 which grew out of the December 5, 1979 response to the NOV. The Commission has determined that the most appropriate method to resolve the issues relating to the NOV is to invite written submissions from interested persons, particularly the parties to the TMI-1 restart proceeding.¹ The NRC staff is to submit comments. Comments are to be submitted by January 24, 1986.

¹The Commission is handling the Arnold and Wallace request for the hearing outside of the TMI-1 restart proceeding because the outcome of their request can no longer have any bearing on whether TMI-1 should be permitted to operate. If Arnold and Wallace have engaged in wrongdoing, the remedy would be to retain or strengthen the condition in CLI-85-2, not to revoke or suspend GPU Nuclear's license to operate TMI-1.

The Commission encourages commenters to address the following questions:

- (1) Does any part of the following statements in licensee's December 5, 1979 NOV response constitute a material false statement:

Metropolitan Edison believes that Emergency Procedure 2202-1.5, "Pressurizer System Failure", [sic] was not violated during the period from October 1978 through March 28, 1979 notwithstanding the temperatures of the discharge line from the pilot operated (electromatic) relief valve ("PORV"). Although this procedure was understood by the plant staff, it is not clearly written and does not reflect actual plant conditions. It will be changed. However, although Metropolitan Edison is concerned about the issue, there is no indication that this procedure or the history of the PORV discharge line temperatures delayed recognition that the PORV had stuck open during the course of the accident.

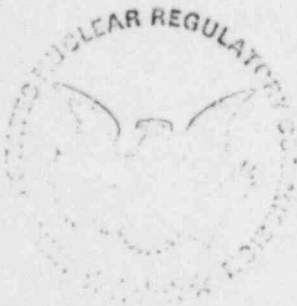
- (2) If there was a material false statement, what knowledge and involvement, if any, did Arnold and Wallace have in making that statement?
- (3) If Arnold or Wallace knew of or were involved in making a material false statement, does that knowledge or involvement indicate willful or reckless conduct by either of them.

The Commission is interested in the facts; mere argument or speculation about knowledge or involvement will not be adequate. If based on the information submitted by the commenters or otherwise available to it, the Commission determines that there is information which could form a reasonable basis for concluding that either Wallace or Arnold willfully, knowingly, or with a reckless disregard for the truth made a material false statement to the NRC, it will consider initiating an adjudicatory hearing to resolve whether to retain the

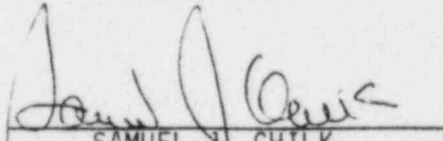
notification requirement in CLI-85-2. If, on the other hand, the determination is to the contrary, the Commission intends to issue an order lifting the notification requirement imposed in CLI-85-2.

It is so ORDERED.

Both Commissioners Asselstine and Bernthal approved the Order in part and disapproved it in part. Each provided separate views.



For the Commission²


SAMUEL J. CHILK
Secretary of the Commission

Dated at Washington, D.C.

this 19th day of December, 1985.

²Commissioner Asselstine was absent when this order was affirmed. He had previously approved the Order in part and disapproved it in part. Had he been present he would have affirmed his prior vote.

SEPARATE VIEWS OF COMMISSIONER ASSELSTINE

I agree in general with the Commission's order as it relates to the Arnold and Wallace hearing requests on the issue of their involvement in the response to the NRC's October 25, 1979 Notice of Violation. However, I do not agree with the Commission's conclusion, at least as it relates to Arnold, that there is no other issue which could be a constraint on the ability of the utility to use Arnold in activities regulated by the Commission. It appears to me that there are at least two other issues which could have a bearing on that question - the TMI leak rate issue and the discrimination against Parks. The Commission has never really come to grips with either of these issues, either as they relate to TMI-1 Restart or as they relate to Arnold.

The Commission absolves the upper-level management of GPU from responsibility for the TMI leak rate falsifications based upon the statement of the U.S. Attorney who prosecuted the utility. Unfortunately, the Commission has no idea upon what information the U.S. Attorney based his conclusion. The grand jury information is secret and the Commission never conducted its own investigation of the Hartman allegations on TMI-2 leak rate. As I said in my separate views on the Commission's decision not to reopen the TMI hearing, the Commission should just hold a hearing on the issue and resolve any doubts about the involvement of individuals. See, 21 NRC at 348. If they will not do that, they should treat the leak rate issue, at least for purposes of the Arnold hearing request, exactly like they are treating the NOV; they should include the leak rate issue in the somewhat modified summary disposition proceeding established by the Commission's order.

The Commission should also include the Parks discrimination issue as a possible subject of the hearing. One of the bases for the Commission's decision not to reopen the TMI-1 Restart proceeding on this issue was the fact that "Robert Arnold, the major GPUN official involved, is no longer associated with TMI-1 activities." 21 NRC at 329. Thus, the extent of Arnold's involvement has never been fully explored. The Commission should at least consider whatever information is available about his involvement and treat this issue like they are treating the NOV issue.

Rather than trying once again to skirt the leak rate and the Parks issues, the Commission should confront them, at least as they relate to Arnold. The Commission should give all interested parties an opportunity to present whatever facts are available on Arnold's involvement in all three of these matters. The Commission should then determine whether there is sufficient information to warrant holding a hearing.

SEPARATE VIEWS OF COMMISSIONER BERNTHAL

Messrs. Arnold and Wallace have requested a hearing to attempt to clear their names regarding any matter which the Commission believes may impact their ability to be employed at TMI-1. I agree with the order insofar as it provides the opportunity for anyone having knowledge of the involvement of either individual in a possible willful material false statement to come forward now. However, while I have no preconceptions about the issue, it is also true that Mr. Arnold's name has, in the past, been associated with the alleged harassment of Richard Parks. Further, it should be recalled that in my views regarding CLI-85-2 (21 NRC 282), I called for further hearings regarding the Parks matter as a matter of sound policy. It appears to me only fair, given the request of Messrs. Arnold and Wallace, that in addition to the NOV response, Mr. Arnold be provided the opportunity once and for all, to confront evidence anyone might possess which could implicate him in harassment of Richard Parks. I would therefore have required interested members of the public (and NRC Staff) to present whatever evidence they might have which bears on either matter.