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# Three Mile Island: the battle of Unit 1

*What began as a brief refueling pause has stretched into six years  
as the restart of Three Mile Island's other reactor has become  
the focus of charges against the utility and the NRC.*

*by Edward J. Walsh*

THE UNIT 1 reactor at Three Mile Island has been out of service since the near meltdown at Unit 2 on March 28, 1979. The utility had expected Unit 1, coincidentally down for routine refueling at the time, to be back in operation within months. Opponents, however, initiated a series of political and legal challenges that resulted in the Nuclear Regulatory Commission's (NRC) reluctant intervention and suspension of the utility's license for the six years since the accident. The competence and integrity of both the utility and the commission have become critical issues in the protracted conflict.

Organized citizen protest against a Unit 1 restart in spring 1979 preceded Governor Richard Thornburgh's threat, in early summer, to take legal action against the NRC unless it intervened.<sup>1</sup> The utility's plans were then interrupted by the suspension of its license in August 1979, pending hearings, originally expected to be completed within two years, by the NRC's own Atomic Safety and Licensing Board. The discovery of a number of unanticipated vulnerabilities in both the utility and the NRC has forced the restart hearings to be reopened repeatedly.

In the summer of 1981, the Board, under the direction of Judge Ivan Smith, concluded nine months of hearings involving 11 intervenors and recommended that the suspension of the utility's license be lifted. Frustrated restart opponents felt that their arguments had been ignored. In late July, however, evidence of operator cheating on the utility's requalifying examinations surfaced and forced the reopening of the restart hearings, this time under the direction of Special Master Gary Milhollin, whose final report to the NRC was quite critical of the utility and urged prosecution. But Smith and the Board officially challenged many of Milhollin's findings and in July 1982 issued another recommendation endorsing restart of Unit 1. Opponents, supported by the Commonwealth of Pennsylvania, appealed this recommendation.

Additional evidence of utility vulnerabilities—combined with a growing perception of the NRC's pro-industry stance—prompted restart opponents to turn to the general public with a referendum on the issue in the May 1982 state elections. In the previous nine months, the head of cleanup operations at Unit 2 had quit because of frustration with his job, more than one-third of the utility's operators had failed their retake examinations in the wake of the cheat-

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ing scandal, and more than 15,000 leaking steam tubes were discovered in the Unit 1 reactor. Although Pennsylvania law only permits nonbinding referendums, the two-to-one vote against a Unit 1 restart became an important symbol for opponents.

Furthermore, a considerable amount of damaging evidence against the utility came out in court during its \$4 billion suit against Babcock and Wilcox, the reactor manufacturer, in late 1982 and early 1983.<sup>2</sup> The case was cut short when the utility agreed to settle for less than 1 percent of its original demand—and even that was to be in rebates on future equipment purchases—but restart opponents used the evidence to further undermine the nuclear industry's credibility. One month after the settlement, a federal grand jury announced that it was examining leak-rate falsification evidence, some of which had emerged in the Babcock and Wilcox suit. This would lead to further major problems for the utility.

In November 1983, the company first pleaded innocent to the grand jury charges of falsification of pre-accident leak rates at Unit 2, but in February 1984, before the case went to trial, it changed its plea to guilty or no contest in seven of the 11 charges. Restart opponents had been hoping that the case would be heard so that they could use relevant evidence in subsequent appeals of any affirmative NRC decision on restart. As a result of this plea, the company became the only nuclear utility in the nation to be convicted of a criminal offense. In announcing the plea bargain arrangement, the prosecuting attorney for the U.S. Department of Justice said, "the NRC's inquiry into the case has been a charade."

From the utility's perspective, however, the NRC review has been "excruciatingly thorough."<sup>3</sup> According to Douglas Bedell, the utility's manager of communications services, the hearings should never have been reopened for the cheating issue or subsequent problems. "Since the initial hearing board record closed in 1981," he said during an interview with the author last January, "a great deal of information came to the commission from routes other than the hearing board process which would have enabled it to review and resolve those issues itself." Bedell cited the complete restructuring of the utility's nuclear operations and the appointments of management-level personnel at Unit 1 who were not involved with the Unit 2 accident as examples of the sweeping changes which the company has achieved. Bedell strongly disagrees with those who consider Ivan Smith to be an industry lackey: "Judge Smith, from all we have seen of him, is a very independent-minded person."

In January, however, Governor Thornburgh publicly called for Smith's removal: "[He] has gone out of his way to prove himself incapable of fair and impartial decision-making in this complex and difficult matter."<sup>4</sup> The specific precipitant for Thornburgh's demand was a December 27, 1984 letter Smith had sent to U.S. Middle District Judge Sylvia Rambo requesting leniency in her sentencing of a former TMI employee convicted of cheating to requalify as a reactor operator. Two additional motions for Smith's removal as head of the panel considering the restart issues were subsequently filed by the Union of Concerned Scientists and the Harrisburg citizens protest group, Three Mile Island Alert.

Although the licensing board has not yet completed hearings on the utility's operator training program and the leakage falsification issues, the NRC held a public meeting in Washington, D.C. on January 16 to decide whether to vote in the near future on the Unit 1 restart. On the previous day, in Harrisburg, Larry Hochendoner, a local Dauphin County commissioner, called a press conference and urged listeners to register their opposition to the widely expected affirmative vote by the NRC: "We are united in our insistence that the NRC make the decision that our community wants it to make. By referendum, by editorial, by common conversation we have made it clear that we do not want TMI Unit 1 to be restarted." Scores of opponents traveled to Washington for the next day's public NRC meeting. As on numerous previous occasions when confronted by an aroused citizenry, powerful political opposition, and the likelihood of an appeal to the civil courts, the commissioners again delayed scheduling a definite date for their restart vote.

On February 13, however, the five NRC commissioners voted three to two against holding any further hearings on Unit 1. Nunzio Palladino, Lando Zach, and Thomas Roberts said that they had heard enough "over these six years to have identified and adjudicated all relevant, significant, disputed issues." The other two commissioners, James Asselstine and Fredrick Bernthal, argued that the NRC's investigation was not yet thorough enough. "By its decision today the commission has violated the trust of the people of central Pennsylvania," Asselstine said. On February 24, hundreds of area residents conducted a peaceful rally at the Three Mile Island gates to protest the NRC majority's decision to avoid further hearings and, presumably, to vote in favor of a Unit 1 restart.

The final verdict may rest with the civil courts, but the limits of the NRC's jurisdiction in such matters are still undefined. Chairman Palladino seems resigned to having only the penultimate word in the Unit 1 restart case. According to the minutes of a closed NRC meeting on January 16, 1984 — pried loose by a *Philadelphia Inquirer* Freedom of Information Act suit — Palladino complained to his fellow commissioners: "We are going to get beat no matter what we do. We are going to get beat on the head. We are going to go to trial, I'm sure." Although the NRC could reach a decision within the next couple of months, it is difficult

to predict when and by whom the ultimate decision will be made. Even if the commission decides that the unit can be restarted, opponents are certain to appeal. □

1. See Edward J. Walsh, "Three Mile Island: Meltdown of Democracy?" *Bulletin*, 39 (March 1983), pp. 57-60; "Resource Mobilization and Citizen Protest in Communities Around Three Mile Island," *Social Problems*, 29 (1981), pp. 1-21.
2. See Steven Brill, "Three Mile Island: How Davis, Polk Beat Kaye, Scholer," *The American Lawyer* (1983), pp. 1-12.
3. Interview with the author, Jan. 9, 1985.
4. *Harrisburg Patriot*, Jan. 10, 1985.

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