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October 15, 1984

RELATED CORRESPONDENCE
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board
REGULATORY BOARD
DOCKETING & SERVICE
BRANCH

In the matter of)
METROPOLITAN EDISON COMPANY)
(Three Mile Island Nuclear)

Docket No. 50-289 SP
(Restart-Management
Phase)

Licensee's Motion to Quash
Subpoena and Subpoena Duces Tecum
to William Lowe

On October 11 or 12, 1984, TMIA applied to the Licensing Board for a subpoena and subpoena duces tecum to William Lowe for the purpose of requiring Mr. Lowe to appear and produce documents at deposition. Licensee counsel first learned of TMIA's application through a call from Mr. Lowe late Friday, October 12, that he had been served. The subpoena commands Mr. Lowe to appear for a deposition on Friday October 19, 1984. Licensee moves to quash Mr. Lowe's subpoena.

Mr. William Lowe at the time of the March, 1979 accident at TMI-2 was a consultant to Licensee and a member of Licensee's General Office Review Board, a safety oversight committee. Today, Mr. Lowe maintains those positions vis-a-vis Licensee. It is Mr. Lowe who has been credited by investigators of the

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accident with appreciation of the significance of the pressure spike in terms of core damage, which appreciation occurred during the night of March 29, 1979. Licensee on September 18, 1984, identified Mr. Lowe as a witness in response to TMIA's first request for identification of Licensee's witnesses.

Discovery in this proceeding closes today, October 15. TMIA is aware of this discovery schedule. Despite this schedule and their knowledge of it, TMIA seeks to subpoena Mr. Lowe for a deposition beyond the discovery period without either motion or any contact with Licensee counsel. There is no reason that TMIA could not have deposed Mr. Lowe within the allowed discovery period. A number of individuals have been deposed and Licensee has cooperated in making its employees available on a schedule agreed upon by counsel. Licensee would have done so in the case of Mr. Lowe. Now, however, discovery is over and Licensee needs to prepare testimony for the four individuals who have been proposed as Licensee witnesses, and otherwise prepare for hearing.

As the one apparent thread of basis for this late-filed deposition request, TMIA in its application for subpoena attempts to link a need to depose Mr. Lowe to Licensee's identification of two other witnesses on October 5, 1983. The perceived link is inexplicable and untenable.

Further, Licensee notes that TMIA continues to fail to identify the subject matter of the deposition with reasonable specificity or to follow the Commission's regulations to

provide the name of the officer before whom the deposition is to be taken, or to reflect that Board's rulings on scope of this proceeding. There is no way to read Mr. Lowe's subpoena as a reasonable attempt to alert Mr. Lowe as to the areas in which he should appropriately be prepared for examination or the documents he should prepare to produce. On information and belief, Mr. Lowe received the subpoena just before he was to leave his office in Washington late in the day Friday, October 12, and is out of town this week through Thursday on previously scheduled business. Without disrupting this schedule, there is no way he could prepare to be deposed by October 19. Even without this schedule conflict, it is doubtful he could be prepared to be responsive to his subpoena duces tecum. The subpoena should be quashed on these grounds as well.

As the Board earlier has observed, the discovery schedule was set to allow a reasonable period for the parties to conduct discovery. Necessarily, choices have to be made by any party as to how best to utilize the time available. TMIA has chosen to use the period as it apparently believed best. It must live with those choices, including the choice not to depose Mr. Lowe.

Respectfully submitted,

Ernest L. Blake, Jr.

Ernest L. Blake, Jr. P.C. Counsel
for Licensee

October 15, 1984

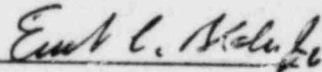
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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| In the matter of |) | |
| |) | |
| METROPOLITAN EDISON COMPANY |) | Docket No. 50-289 SP |
| |) | |
| (Three Mile Island Nuclear |) | (Restart-Management |
| Station, Unit No. 1) |) | Phase) |

CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Motion to Quash Subpoena and Subpoena Duces Tecum to William Lowe," dated October 15, 1984, were served on those persons on the attached Service List by deposit in the United States mail, postage pre-paid, or where indicated by an asterisk (*) by hand delivery, this 15th day of October, 1984.



Ernest L. Blake, Jr., P.C.

Counsel for Licensee

October 15, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter)
)
METROPOLITAN EDISON COMPANY) Docket No. 50-289 SP
) (Restraint Remand on Management)
(Three Mile Island Nuclear)
Station, Unit No. 1))

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