

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of )  
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METROPOLITAN EDISON COMPANY )  
 )  
(Three Mile Island Nuclear )  
Station, Unit No. 1) )  
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OFFICE OF SECRETARY  
DOCKETING & SERVICE  
Docket No. 50-289 SP  
(Restart - Management Phase)

THREE MILE ISLAND ALERT'S RESPONSE TO LICENSEE'S  
MOTION TO QUASH SUBPOENA OF WILLIAM LOWE

On October 12, 1984, Chairman Ivan Smith of the Atomic Safety and Licensing Board ("Licensing Board") signed a subpoena and subpoena duces tecum for William Lowe whom licensee has proposed as a witness. Mr. Lowe was served on the afternoon of Friday, October 12, 1984 for a deposition to begin on October 19, 1984.

Three Mile Island Alert ("TMIA"), at the time of applying for a subpoena for Mr. Lowe, stated that it proposed to depose Mr. Lowe concerning matters related to the Dieckamp mailgram issue.

Licensee in its announcement of Mr. Lowe as a witness stated no more than Mr. Lowe would testify that he, as a licensee consultant, was the person who recognized the significance of the pressure spike in the late evening of March 29, 1979. Those of Mr. Lowe's documents made available in the Document Room relate largely to his calculations and analysis on the evening of March 29, 1979 to determine whether the spike indicated the production or combustion of hydrogen at 1:50 p.m. on March 28, 1979. Licensee has made no further supplementation of its response to indicate the nature and substance of Mr. Lowe's testimony.

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TMIA, through its examination of Mr. Lowe's documents and through depositions of Richard Bensel and James Moore largely discovered the outlines of Mr. Lowe's testimony regarding his analysis of the spike on the evening of March 29, 1979.

On October 11, 1984, for the first time, TMIA learned that licensee intended to call two additional witnesses, Dr. Zebrowski and Mr. VanWhitbeck. Both proposed witnesses worked separately from Mr. Lowe on different projects during the period beginning on March 29. Dr. Zebrowski worked on the National Safety Analysis Center ("NSAC") analysis of the accident. Mr. VanWhitbeck worked, according to deposition testimony taken in the course of this proceeding, on the Task Force set up by Mr. Dieckamp the early morning of March 29, 1979, to investigate the accident. Neither, to TMIA's knowledge, worked with Mr. Lowe on his calculations and analysis on the evening of March 29. Both witnesses are alleged to know something about the technical personnel's state of knowledge and Mr. Dieckamp's state of mind.

TMIA therefore seeks to depose Mr. Lowe concerning his analysis and his relationship or communication with these two additional witnesses. Certainly if it is not Mr. Lowe but others who realized the significance of the pressure spike, or if others have information different from Mr. Lowe's about the state of knowledge of Mr. Dieckamp and licensee, TMIA is entitled to test Mr. Lowe's relationship with these other witnesses and determine how and why his knowledge or information differs from theirs. Similarly, TMIA is entitled to learn what communications existed between Mr. Lowe and the two additional witnesses.

Moreover, newly-discovered evidence requires the deposition of Mr. Lowe. Mr. Abramovici, one of the group of five GPU Service Corporation engineers sent to the TMI site on March 28,

1979 was deposed on Monday, October 15, 1984 at Harrisburg. He testified that he was present at a meeting on the afternoon of Thursday, March 29, 1979, at which George Kunder discussed his concern that the reactor building contained hydrogen above the design limit. Present at the meeting was Richard Wilson, the GPUSC official who headed the Task Force set up by Mr. Dieckamp on the morning of March 29, 1979 based on information given Mr. Dieckamp by Mr. Arnold on March 28. Also present at the meeting was Mr. Lowe, who was retained by licensee as a consultant the previous day. Mr. Dieckamp also was present at the site in order to assist in a site tour for a Congressional delegation.

Apparently site personnel, as well as Mr. Lowe, discussed at that meeting the production of hydrogen and the option of putting into operation the hydrogen recombiner. In addition, Mr. Wilson is reported to have said at this meeting that licensee assumed that the core was seriously damaged.

TMIA believes it has the right to depose Mr. Lowe to determine his knowledge about this meeting and therefore the credibility of the licensee's position that no site personnel on March 28, 1979, interpreted the pressure spike to indicate the generation or combustion of hydrogen or to indicate core damage. It appears from Mr. Abramovici's testimony that licensee had determined that hydrogen had been produced in quantities above the design basis of four percent and that licensee was taking steps to reduce the hydrogen. Certainly the bases for licensee's conclusion and whether the pressure spike was a factor leading licensee to reach this conclusion is relevant evidence.

In addition, TMIA believes that if licensee did in fact

learn at an earlier time of the production of hydrogen and yet maintains at this hearing that it did not learn of the production of hydrogen until the late evening of March 29 or March 30, its and its consultant's credibility is damaged. Evidence concerning licensee and Mr. Lowe's credibility is relevant and critical to the Board's decision in this matter.

Therefore, TMIA requests that this Board deny licensee's motion to quash on the ground that the information sought from Mr. Lowe is relevant information of which TMIA has only recently learned Mr. Lowe has knowledge.

TMIA cannot further specify the areas of its inquiry other than in accordance with licensee's brief description of Mr. Lowe's intended testimony. Only if licensee further specifies Mr. Lowe's expected area of testimony can TMIA more particularly describe the subject matter of Mr. Lowe's deposition.

In addition, TMIA believes the record reflects that it acted expeditiously to take Mr. Lowe's testimony in deposition once it learned that Mr. Lowe had information beyond that originally represented by licensee as relevant to this proceeding. In particular Mr. Lowe has information regarding his relationship to and communication with the two new proposed licensee witnesses and information about the Thursday, March 29, 1979 afternoon meeting at which the production of hydrogen beyond design limits was discussed.

TMIA requests this Licensing Board deny licensee's motion to quash and order that Mr. Lowe's deposition and production of documents proceed in accordance with the subpoena and subpoena duces tecum issued.



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DATED: October 17, 1984

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

I hereby certify that a copy of the foregoing Three Mile Island Alert's Response to Licensee's Motion to Quash Subpoena of William Lowe has been served this 17th day of October 1984, by mailing a copy, first class postage prepaid to the following:

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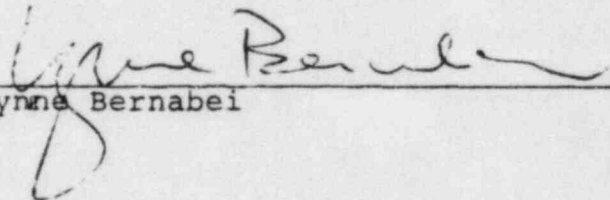
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