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RELATED CORRESPONDENCE

October 17, 1984  
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USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'84 OCT 18 A11:00

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

Licensee's Motion to Quash Subpoena  
and Subpoena Duces Tecum to  
Edwin Zebrowski

On October 11 or 12, 1984, TMIA applied to the Licensing Board for subpoenas to command Edwin Zebrowski to appear for deposition at 7:30 p.m. on November 13, 1984, and to produce documents to TMIA on November 1, 1984. Licensee moves to now quash both subpoenas to Dr. Edwin Zebrowski, although Licensee does not know as of this date whether Dr. Zebrowski has yet been served.

Dr. Zebrowski is Chief Nuclear Scientist in the Energy Study Center, a part of the Electric Power Research Institute in Palo Alto, California. In the days following the accident, Dr. Zebrowski was one of the many experts who came to TMI to assist Licensee. He was a co-leader in the Industry Advisory Group established by Mr. Dieckamp which functioned at TMI for a period of about a month following the accident.

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From TMIA's depositions of Licensee personnel conducted during the period from September 25 to October 5, it became apparent to Licensee that TMIA would attempt to show that Mr. Dieckamp was not an involved executive in the accident and did not take reasonable steps to apprise himself sufficiently of the facts concerning the accident to allow him to make the statements in the mailgram to Congressman Udall. Thus, Licensee decided to add two additional witnesses who could testify to Mr. Dieckamp's involvement at TMI, one of whom was Dr. Zebrowski. Licensee identified these two witnesses in a supplemental discovery response on Friday, October 5, 1984, after the requisite communications with the two witnesses.

TMIA complains about service of Licensee's supplemental response. Licensee has no explanation for the six-day mail time to cover several blocks in D.C. from Shaw, Pittman's offices to Ms. Bernabei's offices, nor do we know when TMIA's Ms. Doroshow or Ms. Bradford received their copies. In any event, Licensee counsel understood the identification of the witnesses came late in the discovery period and informed TMIA that he understood related discovery would extend beyond the October 15 cut-off for discovery.

TMIA counsel's next steps were highly inappropriate. Counsel asked Licensee's counsel for the addresses and telephone numbers of the two witnesses, and requested Licensee's counsel to determine when they might be on the East Coast prior

to November 15. Without a response to either request and without mentioning it to Licensee counsel, counsel for TMIA called Licensee's proposed witness Dr. Zebrowski. Dr. Zebrowski has informed Licensee counsel that only with considerable prodding did Ms. Bernabei identify to him her relationship to the instant proceeding. Then, despite his protestations that she contact Licensee counsel, she persevered. In response to her questions, he informed Ms. Bernabei that he was to be in Washington the week of November 12 to attend a conference and that the only period which at that time was not booked was the evening of November 13. TMIA then applied for a subpoena to depose Dr. Zebrowski at 7:30 at night on November 13.

Licensee moves to quash Dr. Zebrowski's subpoena on several grounds. First, while Licensee counsel informed TMIA counsel that in view of the timing of identification of these two witnesses, he understood discovery after October 15 would result, there was no mention of nor is it sensible to read into that reasonable position, concurrence with a deposition at night on the very eve of the hearing in a different city. As TMIA's application notes, following the last conference call with the Licensing Board -- and although no order has been issued -- there is an expectation that the hearing will commence on Wednesday, November 14 in Harrisburg. That TMIA now chooses to subpoena Dr. Zebrowski the night of November 13 to be deposed in another city certainly is not grounds for delaying the hearing; rather, the deposition should not take place

because of its conflict with the expected schedule. Consistent with the time it has taken to transcribe the twenty-five or so depositions which have been taken to date in this proceeding, the utility of such a deposition is questionable since it wouldn't even be available to the parties when the Dieckamp mailgram witnesses appear which all parties have agreed is the first issue to be heard.

Licensee has taken steps to schedule its witnesses to accommodate the Board's earlier ruling of "about November 15" for commencement of the hearing and the results of the recent conference call with the Board. Thus, Dr. Zebrowski presently plans to stay on the East Coast following his attendance at a conference in Washington which involves November 12 through November 15, and will be available to appear the morning of November 16. Mr. Lowe presently is scheduled to be out of the country for about ten days beginning November 16; Licensee intends to call Mr. Lowe on November 14 to assure his appearance consistent with his schedule. Mr. Van Whitbeck's and Mr. Dieckamp's appearances would be scheduled around the other two.

Finally, there is no reason why TMIA needs to depose Dr. Zebrowski at night on the eve of the hearing simply because that is the only time in his schedule convenient to TMIA. TMIA could have filed written interrogatories regarding Dr. Zebrowski's role or sought his deposition upon written interrogatory which could be accomplished given the 3,000-miles

separation-problem. They sought to do neither, but have elected rather an impractical discovery avenue which should be rejected.

Neither is their personal subpoena duces tecum to Dr. Zebrowski appropriate. First, it seeks literally every document EPRI has related to the TMI accident. This is patently absurd. Licensee expects this is tens if not hundreds of thousands of pages of material. It exceeds any notion of the scope of the limited issue on the Dieckamp mailgram. It is excessive, oppressive, unduly burdensome and overly expensive and should be quashed on these grounds alone.

Moreover, TMIA seeks by personal subpoena to be answered in Washington, D.C. Dr. Zebrowski's appearance with what can be expected to be a huge quantity of documents. TMIA counsel knows from talking with Dr. Zebrowski that he will not be in Washington on November 1. Further to the extent TMIA has not even tendered Dr. Zebrowski the cost of responding to the subpoena, assuming it were otherwise proper, the subpoena should be denied. In short, the subpoena duces tecum is technically deficient and should be quashed on those grounds as well.



Licensee advises the Board that it is seeking from Dr. Zebrowski documents upon which he expects to rely for his testimony and intends to make them available to TMIA. (Licensee has taken the same step with respect to Mr. Van Whitbeck, the second witness identified by Licensee on October 5, 1984).

Respectfully submitted,  
SHAW, PITTMAN, POTTS & TROWBRIDGE

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

October 17, 1984

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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USNRC

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Motion to Quash Subpoena and Subpoena Duces Tecum to Edwin Zebrowski," dated October 17, 1984, were served on those persons on the attached Service List by deposit in the United States mail, postage prepaid, or where indicated by an asterisk (\*) by hand delivery, this 17th day of October, 1984.

Respectfully submitted,

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

DATED: October 17, 1984

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

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