

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

Before the Atomic Safety and Licensing Board

'84 NOV -5 11:39

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

THREE MILE ISLAND ALERT'S MOTION FOR LEAVE TO PRESENT
TESTIMONY OF VICTOR GILINSKY ON DIECKAMP MAILGRAM
ISSUE WITHOUT PREFILING WRITTEN TESTIMONY

Three Mile Island Alert ("TMIA") moves this Atomic Safety and Licensing Board for leave, pursuant to 10 CFR 2.743, to present the testimony of former Nuclear Regulatory Commissioner Victor Gilinsky without prefiling written testimony.

TMIA proffers that Dr. Gilinsky's testimony is material to the Dieckamp Mailgram issue and outlines below the intended areas of questioning of Dr. Gilinsky.

I. AGENCY RULES GRANT ALL PARTIES THE RIGHT TO PRESENT ORAL AND DOCUMENTARY EVIDENCE REQUIRED FOR FULL AND TRUE DISCLOSURE OF THE FACTS.

Every party to an adjudicatory proceeding before the NRC has "the right to present such oral or documentary evidence . . . as may be required for full and true disclosure of the facts." 10 CFR 2.743(a). As explained in Section II, infra, Dr. Gilinsky's testimony is sought as relevant and material to the Dieckamp Mailgram issue before this Board, specifically Mr. Dieckamp's state of mind at the time he sent the mailgram; whether Mr. Dieckamp knew or should have known that the mailgram contained

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misstatements; and the meaning of Mr. Dieckamp's statement in the mailgram that "(t)here is no evidence that anyone interpreted the 'pressure spike' and the spray initiation in terms of reactor core damage at the time of the spike nor that anyone withheld any information."

Upon being contacted by TMIA counsel to determine whether he would be willing to testify in these proceedings, Dr. Gilinsky stated that he would testify pursuant to a legally-valid subpoena. He also stated that because he only recently left his term as a member of the Commission and in this role participated in decisions on the TMI-1 restart proceedings, he did not believe that it was appropriate for him to file testimony for any party in the proceeding. He indicated, however, that he would honor a legally-valid subpoena to appear and testify in the TMI-restart hearings in those areas the Licensing Board deemed relevant to the issue before it.

TMIA requests therefore that it be granted leave to call Dr. Gilinsky to testify on the Dieckamp Mailgram issue without prefiling written testimony.

The Commission's regulations provide that the Licensing Board may permit parties to present oral direct testimony without prefiling testimony on the basis of a party's objections. 10 CFR 2.743(b). The rules thereby envision a situation in which for good cause a party may present the oral testimony of a witness without prefiling written testimony. In fact it is frequently the case that a party will subpoena and present the oral testimony of witnesses who have material evidence but have not been retained as experts by that party and do not prepare

written testimony for the proceeding.

No party will be prejudiced by the presentation of Dr. Gilinsky's oral direct testimony since TMIA has put all parties on notice of the areas in which it intends to question Dr. Gilinsky, in Section II, infra.

Most important is the fact that Dr. Gilinsky's testimony is required for a full development of the relevant facts on the Dieckamp Mailgram issue. He spoke to Mr. Dieckamp during the congressional site tour on May 7, 1979, about licensee's knowledge of the pressure spike and reporting of the pressure spike to the NRC. Dr. Gilinsky also spoke to Mr. Dieckamp in a more general sense about what he believed licensee's reporting responsibilities to the NRC were at the time of the accident. Mr. Dieckamp addressed the mailgram to Congressman Udall, and sent a carbon copy to then-Commissioner Gilinsky. Therefore, Dr. Gilinsky can provide critical information about Mr. Dieckamp's state of mind in the days preceding the mailgram, and about the meaning of the mailgram apparent to him, one of the two specified addressees of the mailgram.

Further, Dr. Gilinsky spoke to Mr. Dieckamp on May 7, 1979, and communicated with licensee including Mr. Dieckamp on numerous other occasions after the accident about the Dieckamp Mailgram and related reporting failures. Dr. Gilinsky therefore can present important testimony about whether Mr. Dieckamp should have known that his mailgram contained misstatements at the time he sent it and whether he should have made inquiries

to ensure the accuracy of all statements in the mailgram.

II. OUTLINE OF TMIA'S QUESTIONING OF FORMER COMMISSIONER GILINSKY.

TMIA proffers that it intends to question former Commissioner Gilinsky in the following areas:

1. On May 7, 1979, Dr. Gilinsky attended a site tour by the Subcommittee on Energy and the Environment of the Committee on Interior and Insular Affairs of the House of Representatives. During that tour, Dr. Gilinsky spoke to Mr. Dieckamp about the pressure spike, reporting of the pressure spike to the Commission and reporting of information to the Commission. The site visit became the subject of the New York Times article of May 8, 1979 to which Mr. Dieckamp responded by means of his May 9, 1979 mailgram.

2. Mr. Dieckamp mailed a copy of the mailgram to Dr. Gilinsky. He was the sole Commissioner sent such a copy. Dr. Gilinsky's understanding and interpretation of the relevant portion of the mailgram is probative of Mr. Dieckamp's intent in sending the mailgram and state of mind at the time of sending the mailgram.

3. After the accident, Dr. Gilinsky had discussions with Mr. Dieckamp, and discussions with other licensee officials of which Mr. Dieckamp was aware, concerning the reporting of the pressure spike, the hydrogen burn, and core damage to the NRC.

Testimony about these conversations, is probative of whether Mr. Dieckamp "should have known" at the time he sent the mailgram that it contained false statements and of Mr.

Dieckamp's state of mind at the time he sent the mailgram.

4. Dr. Gilinsky, as the senior Commissioner at the time of the TMI accident, can testify as to the information the licensee was obligated to report to the Commission and had been forewarned it had an obligation to report to the Commission. Further, he can testify as to the information the Commission relied on in making decisions about the accident. Moreover, he can testify as to how he, as Commissioner, and the full Commission would have reacted to information about key parameters of the reactor's condition if they were promptly reported to the Commission, including the pressure spike, the hydrogen burn, in-core thermocouple temperatures in excess of 2500 degrees F, and core damage.

This testimony is relevant to Mr. Dieckamp's understanding of his responsibility to provide full and complete information to the Commission about important reactor parameters at the time of the accident. It is also relevant to his understanding of his obligation to provide complete information to the Commission after the accident regarding licensee's knowledge of important reactor parameters during the accident. Mr. Dieckamp's understanding of his duties, during the accident and its aftermath, is probative of whether he should have known at the time of sending the mailgram that it contained misstatements and whether he should have inquired adequately to ensure the accuracy of the mailgram. It is also probative of whether Mr. Dieckamp should have corrected the mailgram when he learned it contained false statements.

III. CONCLUSION.

In consideration of the above arguments and the outline of intended questioning of Dr. Gilinsky, TMIA requests leave of this Board to present the testimony of Dr. Gilinsky in the areas outlined above without prefiling written testimony.

Respectfully submitted,

Joanne Doroshow / JB

Joanne Doroshow
The Christic Institute
1324 North Capitol Street
Washington, D.C. 20002
(202) 797-8106

Lynne Bernabei

Lynne Bernabei
Government Accountability Project
1555 Connecticut Ave. N.W.
Washington, D.C. 20036
(202) 232-8550

Dated: November 1, 1984

Attorneys for Three Mile Island
Alert

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Before the Atomic Safety and Licensing Board

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

AFFIDAVIT OF JOANNE DOROSHOW

I, Joanne Doroshow, being first duly sworn, depose and say that I am a member of Three Mile Island Alert, Inc., and represent that organization in the above-captioned proceedings, and that:

TMIA's Response to Licensee's First Set of Interrogatories,
TMIA's Response to Licensee's Second Set of Interrogatories,
TMIA's Response to Licensee's Third Set of Interrogatories,
TMIA's Supplemental Response to Licensee's Second Set of Interrogatories,

TMIA's Second Supplemental Response to Licensee's Second Set of Interrogatories,

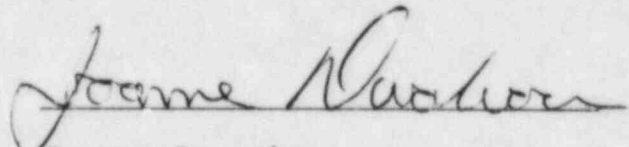
TMIA's Supplemental Response to Licensee's First Set of Interrogatories,

TMIA's Response to Licensee's Fourth Set of Interrogatories,

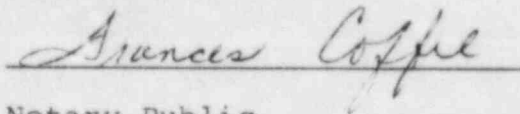
and,

TMIA's Response to NRC Staff's Interrogatories and Document Request to TMIA.

are true and correct to the best of my knowledge and belief.


Joanne Doroshov

Sworn to and subscribed
before me this 31st
day of October 1984.


Notary Public

My Commission Expires February 14, 1988

My Commission Expires: _____

RELATED CORRESPONDENCE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

DOCKETED
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METROPOLITAN EDISON COMPANY) Docket No. 50-289 SP
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I hereby certify that a copy of the foregoing TMIA's Motion to File Deposition of Peter Bradford as Testimony; TMIA's Motion for Leave to Present Gilinsky Testimony Without Prefiling Written Testimony; Prefiled Testimony of David Gamble; Affidavit of David Gamble; Affidavit of Joanne Doroshow have been served this 1st day of November, 1984, by mailing a copy, first class, postage prepaid, to the following:

SERVICE LIST

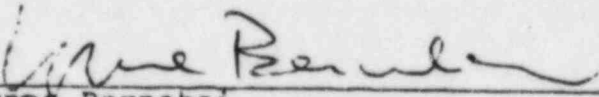
Administrative Judge Ivan W. Smith, Chairman Atomic Safety & Licensing Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Thomas Au, Esq. Office of Chief Counsel Department of Environmental Resources 505 Executive House P.O. Box 2357 Harrisburg, PA 17120
Administrative Judge Sheldon J. Wolfe Atomic Safety & Licensing Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555	John A. Levin, Esq. Assistant Counsel Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17120
Administrative Judge Gustave A. Linenberger, Jr. Atomic Safety & Licensing Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Ernest L. Blake, Jr. Shaw, Pittman, Potts & Trowbridge 1800 M Street, N.W. Washington, D.C. 20036
Docketing and Service Section (3) Office of the Secretary U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Mr. Henry D. Hukill Vice President GPU Nuclear Corporation P.O. Box 480 Middletown, PA 17057
Atomic Safety & Licensing Board Panel U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Mr. and Mrs. Norman Aamodt R.D. 5 Coatesville, PA 19320
Atomic Safety & Licensing Appeal Board Panel U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Ms. Louise Bradford TMI ALERT 1011 Green Street Harrisburg, PA 17102
Jack R. Goldberg, Esq. Office of the Executive Legal Director U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Joanne Doroshow, Esq. The Christic Institute 1324 North Capitol Street Washington, D.C. 20002

Michael F. McBride, Esq.
LeBoeuf, Lamb, Leiby & MacRae
1333 New Hampshire Avenue, N.W.
Suite 1100,
Washington, D.C. 20036

Michael W. Maupin, Esq.
Hunton & Williams
707 East Main Street
Post Office Box 1535
Richmond, VA 23212

Ellyn R. Weiss, Esq.
William S. Jordan, III, Esq.
Harmon, Weiss & Jordan
2001 S Street, Northwest
Suite 430
Washington, D.C. 20009

TMI-PIRC Legal Fund
1037 Maclay
Harrisburg, Penn. 17103



Lynne Bernabei
