

GOVERNMENT ACCOUNTABILITY PROJECT

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October 16, 1984

BRANCH

Ernest L. Blake, Esquire
Shaw, Pittman, Potts & Trowbridge
1800 M Street N.W.
Washington, D.C. 20036

50-289 SP

Dear Ernie:

I am writing to respond to your letters of October 11 and October 12, 1984, concerning discovery on the Dieckamp mailgram issue. I will also address additional discovery problems which suggest that you have withheld documents clearly relevant to this issue and within GPU's possession and control.

First, with regard to your letter of October 11, I wish once again to state our position regarding those documents within our possession and control which we believe we are obliged to produce in discovery. As I stated in my letter to Mr. Lewis on October 8, 1984, TMIA has access only to those documents which are publicly available, that is all NRC interviews conducted within the course of the NUREG-0600 and NUREG-0760 investigations; the Kemeny Commission investigation; the Special Inquiry Group investigation; the Senate investigation; and the GPU investigation. TMIA has all such interviews within its possession and control by means of TMIA's search of the NRC's Public Document Room or by means of GPU's production of documents in this proceeding. I understood and continue to understand that GPU has produced all interviews conducted in the course of its own investigation into the accident (1979); the NRC's two investigations into the accident and GPU's reporting failures during the accident (1979 and 1980); the Special Inquiry Group or Rogovin interviews (1979); the Senate investigation into the accident (1979); and the Kemeny Commission interviews. At this point I have little idea of whether the interviews, which number literally in the hundreds, were produced by GPU in the course of discovery, or by the NRC's Public Document Room. In any event, I have stated to you that GPU can assume that TMIA has within its possession and control all interviews conducted in the course of those six investigations.

Further, I have agreed to produce to Dave Lewis a number of interviews which apparently GPU has never obtained or has lost. These include the Kemeny Commission interview of John Herbein; the Senate Committee interviews of Mell and G. Miller; the 1980 NRC interview of Leland Rogers; and the 1980 NRC interview of Raymond.

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I will attempt within the next few days to obtain copies of those interviews. As you well know, all those interviews are available in the NRC's PDR and have been available to GPU in the past. In fact, I find it highly unlikely that you cannot yourself obtain the interviews from those GPU and NRC individuals who were interviewed.

The list of documents in your letter of October 11, 1984, substantially misstates my prior representations. I have not stated that the only Kemeny Commission interviews to which TMIA has access are those which licensee has provided TMIA. Similarly, I have stated in conversations with you that regardless of whether I have listed specific interviews conducted in the course of the NUREG-0760 or NUREG-0600, the Special Inquiry Group, the Kemeny Commission, or the Senate investigations, GPU should assume that TMIA has access to those interviews. These interviews are a much larger set of documents than those listed in subparts (1) and (2) of your letter. Please do not continue to misstate TMIA's position.

With regard to your letter of October 12, 1984, I wish to repeat my comments on negotiations today concerning licensee's response to TMIA's fourth set of discovery. First, TMIA believes licensee's failure to answer questions on in-core temperature readings when the Board clearly ruled at a prehearing conference that this was a permitted area of inquiry was a deliberate circumvention of the Board's order. Similarly, your failure to answer TMIA's questions regarding licensee's experience with electrical malfunctions, after I discussed the questions with you and Mr. Lewis, and you in fact aided in phrasing language for the interrogatories which you believed was understandable and clear, I interpret as bad faith.

Secondly, GPU's Third Supplemental Response to TMIA's First Set of Interrogatories and Request for Production is still inadequate. I would like to discuss a more adequate response by GPU to these interrogatories.

Finally, I discovered in the course of depositions of Richard Lentz and Julien Abramovici yesterday, October 15, that GPU had deliberately withheld documents which were within the scope of TMIA's discovery requests, clearly discoverable, and produced by the witnesses to GPU attorneys. First, GPU attorney, John Wilson, had within his possession at Mr. Lentz's deposition, a copy of Mr. Lentz's handwritten notes for March 28, 1979. Similar notes written by Mr. Moore and Mr. Keaton on March 28, 1979 have been produced in discovery. Mr. Lentz stated in his deposition that he had produced these handwritten notes to the company in response to TMIA's discovery requests. He produced the original notes to TMIA counsel at the deposition as well. Mr. Wilson, at a later time in the deposition, pulled from his briefcase a copy of these handwritten notes and indicated that he would then produce them to TMIA counsel.

Of course by that time Mr. Lentz had already produced them so this gesture was not necessary.

Second, I personally requested on Monday, October 8, 1984, at your offices a copy of all interviews conducted of Mr. Abramovici, who as you well knew was deposed yesterday, October 15. At that time I made it absolutely clear to your paralegal, Rebecca Debow, that I needed the documents in order to prepare for depositions which were then scheduled to begin on October 12 in Harrisburg. GPU failed to produce Mr. Abramovici's NRC interview of June 11, 1979. In asking Mr. Abramovici whether he had been interviewed by the NRC, I discovered that he had been interviewed and his interview transcribed. At that point I requested that he produce for me a copy of his interview, which he did. Mr. Wilson, at that point, pulled out his own copy of the Abramovici interview, and denied on the record that GPU had failed to produce the interview to me.

Third, I discovered in Mr. Abramovici's interview that he had taken notes for March 28 and perhaps for March 29, 1979, of certain briefings he and other GPUSC engineers had been given at TMIA. According to Mr. Abramovici, his notes may indicate that he was told about 2500 degree temperatures on March 28 and that he was told about actuation of containment sprays on March 28 or March 29. Yet GPU had apparently not requested of him his notes or other relevant documents. Mr. Abramovici's testimony during his deposition indicated that he produced copies of these notes for the NRC. Clearly, Mr. Wilson, who had Mr. Abramovici's interview, and presumably you as well, knew that Mr. Abramovici had notes from the first two days of the accident and that they were relevant to the issues in this proceeding.

I request that you make available Mr. Abramovici's notes, and also that you give me some explanation of why his interview; Mr. Lentz's notes; and Mr. Abramovici's notes were not produced at a prior time.

I would also like to raise two additional matters which I believe we will need to discuss either today or tomorrow. This morning I received Licensee's Motion to Quash the Subpoena of William Lowe and Licensee's Response to TMIA's Fifth Set of Interrogatories. The latter pleading contains a number of misrepresentations about TMIA's position as well as a certain amount of new information which I believe warrants additional discovery. The new information essentially provides additional information about Mr. Dieckamp's actions on March 28, 1979, and is of clear relevance to this proceeding.

In addition, the basis for TMIA's request to depose Mr. Lowe outside the discovery period is licensee's announcement that it would call two additional witnesses concerning licensee's knowledge of hydrogen production and the hydrogen explosion on March 28, 1979. Up until announcement of these two additional witnesses, of which TMIA learned on October 11, 1984, it was expected that Mr. Lowe would testify that it was he, as licensee's consultant, who determined that there had been a hydrogen explosion and

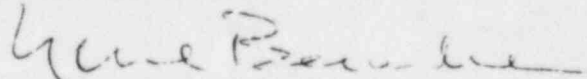
that he made this determination based on his analysis of the pressure spike data during the late evening of March 29, 1979. GPU has maintained this position throughout its responses to TMIA's discovery and in its document production regarding Mr. Lowe's testimony.

Therefore, TMIA was surprised to learn that Mr. Zebrowski and Mr. Van Whitbeck, who apparently had little to do with Mr. Lowe's calculations on the evening of March 29, 1979, also have knowledge and information about licensee's knowledge and information concerning the production of hydrogen. Given that licensee is proposing that they testify as to licensee and presumably Mr. Dieckamp's state of knowledge about these matters, TMIA believes it has the right to depose Mr. Lowe to determine what relationship he had with these two new witnesses and what the basis for his knowledge and information is, if different in any respect from theirs.

In addition, yesterday Mr. Abramovici testified that Mr. Lowe and other licensee personnel discussed the production of hydrogen in an afternoon meeting of Thursday, March 29, 1979, and recommended taking actions to deal with this problem. This is new information on which TMIA has the right to depose Mr. Lowe, since it is clearly in conflict with licensee's prior position and apparently with Mr. Lowe's position as well, as stated by licensee.

Prior to filing TMIA's formal response to licensee's Motion to Quash, I am suggesting that you reconsider your motion given my representations on the necessity for Mr. Lowe's deposition. Please inform me by tomorrow of your position so that I know whether or not to file a response to your Motion to Quash.

Sincerely yours,



Lynne Bernabei



LB:jl

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