

STAFF 8/22/84

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

RELATED CORRESPONDENCE

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETED  
USNRC

'84 AGO 23 P4:41

In the Matter of )  
METROPOLITAN EDISON COMPANY, ET AL. )  
(Three Mile Island Nuclear Station, )  
Unit No. 1) )

Docket No. 50-289 SP  
(Restart Remand on Management) BRANCH

NRC STAFF'S RESPONSE TO INTERVENOR THREE MILE  
ISLAND ALERT'S FIRST SET OF INTERROGATORIES  
TO NUCLEAR REGULATORY COMMISSION STAFF;  
AND NRC STAFF MOTION FOR A PROTECTIVE ORDER

I. INTRODUCTION

On August 3, 1984, Three Mile Island Alert (TMIA) submitted to the Licensing Board its First Set of Interrogatories to the NRC Staff<sup>\*/</sup> and, pursuant to 10 C.F.R. § 2.720(h)(2)(ii), requested that the interrogatories be answered by the Staff no later than August 23, 1984. Treating TMIA's submission to the Licensing Board as a motion, the NRC Staff hereby responds to TMIA's request.

II. DISCUSSION

Pursuant to 10 C.F.R. § 2.740(a) and § 2.720(h)(2)(ii), the Commission's regulations do not require the Staff to respond to interrogatories unless the Licensing Board finds that the answers are

<sup>\*/</sup> Intervenor Three Mile Island Alert's First Set of Interrogatories to Nuclear Regulatory Commission Staff, August 3, 1984 (TMIA's First Set of Interrogatories to Staff).

DSO

"necessary to a proper decision in the proceeding" and "not reasonably obtainable from any other source," and, on that basis, directs the Staff to respond. Although the Licensing Board has not requested Staff's views on whether TMIA is entitled to answers from the Staff to any of the submitted interrogatories, the Staff is providing this response in the interest of expediting the discovery phase of this remanded proceeding.

A. Objections

General Objections

The Staff notes initially that TMIA has not even attempted to establish that it is entitled under § 2.720(h)(2)(ii) of the Commission's Rules of Practice to have the Staff answer its interrogatories. TMIA does not explain why it believes the answers to its interrogatories are "necessary to a proper decision in the proceeding" and "are not reasonably obtainable from any other source." In fact, for the reasons which follow, the answers to many of TMIA's interrogatories are not necessary for a proper decision in this proceeding, but even if they are, the answers are reasonably obtainable from sources other than the NRC Staff.

First of all, TMIA apparently believes that the Appeal Board, in ALAB-772, remanded to the Licensing Board the entire issue of information flow. That is not the case. The only part of the broad information flow issue remanded to the Licensing Board in ALAB-772 is the Dieckamp mailgram issue. See ALAB-772, slip op. at 128-134, especially 132, n.103 and 134. Consistent with ALAB-772, the Licensing Board already has ruled that the remanded Dieckamp mailgram issue is

limited to (1) whether anyone interpreted the pressure spike and containment spray, at the time of the accident, in terms of core damage, (2) who or what was the source of the information that Dieckamp conveyed in the mailgram, and (3) whether, when and how any interpretation of core damage was communicated to Mr. Dieckamp. Memorandum and Order Following Prehearing Conference, July 9, 1984, at 7-8. The Staff therefore objects to providing answers to any of TMIA's interrogatories which seek to develop information flow matters in general. The scope of discovery on this issue should be limited to soliciting information on (1) what Mr. Dieckamp knew about the pressure spike, containment spray and core damage, (2) what others knew about those matters, and (3) whether, and if so how, others with such knowledge communicated their knowledge to Mr. Dieckamp. In short, any interrogatories not limited to those questions are not necessary to a proper decision on the Dieckamp mailgram issue, and the Staff objects to them on that basis.

Secondly, the information sought by many, if not all, of TMIA's First Set of Interrogatories to Staff is reasonably available from sources other than the Staff, namely public documents such as: NUREG-0760, Investigation into Information Flow During the Accident at Three Mile Island, January 1981 (Staff Ex. 50); the deposition of Herman M. Dieckamp, September 12, 1980; Reporting of Information Concerning the Accident at Three Mile Island, March 1981 ("Udall Report"); NUREG-0600, Investigation into the March 28, 1979 Three Mile Island Accident by Office of Inspection and Enforcement, Investigative Report No. 50-320/79-10, August 1979; Three Mile Island, A Report to the Commissioners and to the Public, January 1980 (Rogovin Report); Report

of the President's Commission on The Accident at Three Mile Island, October 30, 1979 (Kemeny Commission Report). To the extent that there is information responsive to TMIA's interrogatories, it can be found in these and other public documents, which TMIA can read and analyze for itself. Information which the Staff possesses on the Dieckamp mailgram issue is contained in such public documents. The Staff should not be required to perform TMIA's work for it in ferreting out the information in these public documents according to TMIA's desires. Therefore, because the Staff's information on the Dieckamp mailgram issue is contained in public documents to which TMIA already has access, if not actual possession, the Staff objects to all of TMIA's First Set of Interrogatories to Staff on the ground that the information sought is reasonably obtainable from other sources, namely public documents.

In addition to the general objections noted above, the Staff provides the following objections and responses to TMIA's First Set of Interrogatories to Staff.

Instruction A

The Staff objects to the instruction to provide information in the possession or under the control of present or former NRC commissioners. The Staff has no authority or control over present or former commissioners and cannot provide such information. Similarly, the Staff has no authority or control over persons in any Commission office which does not report to the Executive Director for Operations (e.g., investigators in the Commission's Office of Investigations). Such a discovery request therefore is not authorized by 10 C.F.R. § 2.720(h)(2)(ii). Finally, the

Staff has no authority or control over former employees. A request to the Staff for information from such persons is not authorized. As § 2.720(h)(2)(ii) provides, the Executive Director for Operations designates NRC personnel with knowledge of the facts to answer interrogatories requested by the Licensing Board. As noted above, and to the extent Instruction A requests information from persons other than the designated NRC personnel with knowledge of the facts, the Staff objects to Instruction A.

Instruction G(i)

For the reasons stated in response to Instruction A, supra, the Staff objects to the definition of "NRC" to the extent it is intended to request from the Staff information in the possession of commissioners or any other persons not subject to the authority and control of the Executive Director for Operations.

Interrogatory 1

The Staff objects to providing the requested information regarding any document sought by Intervenor TMIA's First Request for Production of Documents which the Staff objects to producing as irrelevant, not necessary to a proper decision, not reasonably calculated to lead to the discovery of admissible evidence, or otherwise objectionable. Staff's response to TMIA's First Request for Production of Documents will be served in due course.

Interrogatory 2

The Staff objects to this interrogatory on the grounds that it is not necessary to a proper decision in this proceeding, it is irrelevant, and it is not reasonably calculated to lead to the discovery of

admissible evidence with respect to the Dieckamp mailgram issue. In short, the reason(s) why the NRC requested data on core exit thermocouple temperature on March 28, 1979, is not relevant to (1) whether anyone interpreted the pressure spike and containment spray, at the time of the accident at TMI-2, in terms of core damage, or (2) the source(s) of information that Mr. Dieckamp conveyed in the mailgram, or (3) whether, when, and how any interpretation of core damage was communicated to Mr. Dieckamp. See Memorandum and Order following Prehearing Conference, July 9, 1984, at 7-8. In other words, the requested information is not relevant to Mr. Dieckamp's knowledge of the pressure spike, containment spray, and core damage, or others' knowledge of those matters, and any communications to Mr. Dieckamp of others' knowledge. In addition, the Staff objects to the request to explain "the reason(s) GPU failed to provide the NRC the requested information" on the ground that the answer is reasonably obtainable from GPU and public documents. See also Staff's general objections above.

### Interrogatory 3

The Staff objects to this interrogatory on the grounds that it is not necessary to a proper decision in this proceeding, it is irrelevant, and it is not reasonably calculated to lead to the discovery of admissible evidence. In short, the "lines and methods of communication" between NRC and GPU and between NRC and B&W are not relevant to the Dieckamp mailgram issue as described above. In addition, such information is reasonably obtainable from GPU and B&W respectively. See also Staff's general objections above.

Interrogatories 4 and 5

The Staff objects to these interrogatories on the grounds that they are not necessary to a proper decision in this proceeding, they are irrelevant, and they are not reasonably calculated to lead to the discovery of admissible evidence. In short, the date and time at which GPU informed the NRC of the identified events (a) through (m) are not relevant to the Dieckamp mailgram issue as described above. See also Staff's general objections above.

Interrogatory 9

The Staff objects to this interrogatory on the grounds that it is not necessary to a proper decision in this proceeding, it is irrelevant, and it is not reasonably calculated to lead to the discovery of admissible evidence. In addition, the Staff objects to this interrogatory on the ground that the information requested is reasonably obtainable from GPU. See also Staff's general objectives above.

Interrogatory 10

The Staff objects to this interrogatory on the grounds that it is not necessary to a proper decision in this proceeding, it is irrelevant, and it is not reasonably calculated to lead to the discovery of admissible evidence. In short, the basis for Mr. Miller's and Mr. Herbein's feelings on conditions at TMI-2 on March 28, 1979 is not relevant to the Dieckamp mailgram issue as described above. In addition, the requested information is reasonably available from Mr. Miller or Mr. Herbein or GPU. See also Staff's general objections above.

Interrogatory 18

The Staff objects to this interrogatory on the grounds that it is not necessary to a proper decision in this proceeding, it is irrelevant, and it is not reasonably calculated to lead to the discovery of admissible evidence. In addition, the Staff objects to this interrogatory on the ground that the requested information is reasonably available from GPU. See also Staff's general objections above.

Interrogatories 20 and 21

The Staff objects to these interrogatories on the grounds that they are not necessary to a proper decision in this proceeding, they are irrelevant, and they are not reasonably calculated to lead to the discovery of admissible evidence. In addition, the Staff objects to these interrogatories on the ground that the information requested is reasonably obtainable from GPU. See also Staff's general objections above.

Interrogatory 22

The Staff objects to this interrogatory on the grounds that it is not necessary to a proper decision in this proceeding, it is irrelevant, and it is not reasonably calculated to lead to the discovery of admissible evidence. In short, GPU's failure to report certain information, other than Mr. Dieckamp's possible failure to report that he or anyone interpreted the pressure spike and containment spray, at the time of the accident, in terms of core damage, is irrelevant to the Dieckamp mailgram issue. In addition, information related to any GPU failure to report information to the Commonwealth of Pennsylvania is reasonably obtainable from either the Commonwealth or GPU or both. See also Staff's general objections above.



Interrogatory 24

The Staff objects to this interrogatory on the grounds that it is not necessary to a proper decision in this proceeding, it is irrelevant, and it is not reasonably calculated to lead to the discovery of admissible evidence. In addition, the requested information is reasonably obtainable from GPU. See also Staff's general objections above.

B. Answers

Without waiving the general or specific objections noted above, the Staff voluntarily provides the following answers.

Interrogatories 2-21, 23, 24

The information on which the Staff relied with respect to the accuracy of the Dieckamp mailgram (see Staff Ex. 5 and Tr. 13,060-64 (Moseley)) is contained in numerous public reports of investigations of the TMI-2 accident, and the identified supporting background documents, which also are publicly available. Such documents include the following:

- (1) NUREG-0760, "Investigation into Information Flow During the Accident at Three Mile Island," January 1981 (Staff Exhibit 5), and background documents such as the deposition of Herman M. Dieckamp, September 12, 1980.
- (2) NUREG-0600, "Investigation Into the March 28, 1979 Three Mile Island Accident by Office of Inspection and Enforcement," August 1979, and background documents.
- (3) NUREG/CR 1250, "Three Mile Island, A Report to the Commissioners and to the Public," January 1980 ("Rogovin Report"), and background documents.
- (4) "Report of the President's Commission on the Accident at Three Mile Island," October 1979 ("Kemeny Commission Report"), and background documents.

- (5) "Analysis of Three Mile Island Unit 2 Accident," NSAC-80-1, revised March 1980, Nuclear Safety Analysis Center.
- (6) "Report to the United States Senate Nuclear Accident and Recovery at Three Mile Island A Special Investigation," Subcommittee on Nuclear Regulation for the Senate Committee on Environmental and Public Works, published in 1980.
- (7) "Accident at the Three Mile Island Nuclear Power Plant," Oversight Hearings Before a Task Force of the Subcommittee on Energy and the Environment of the Committee on Interior and Insular Affairs, House of Representatives, published in 1979.
- (8) "Report of the Governor's Commission on Three Mile Island" published February 26, 1980.
- (9) "Reporting of Information Concerning the Accident at Three Mile Island," A Report prepared by the Majority Staff of the Committee on Interior and Insular Affairs of the U.S. House of Representatives, Ninety-Seventh Congress, First Session, March 1981 ("Udall Report") (draft version).
- (10) Memorandum to Chairman Ahearne from Mitchell Rogovin and George T. Frampton, Jr., Questions Submitted by Congressman Udall, March 4, 1980.
- (11) NUREG/CR 1219, "Analysis of the Three Mile Island Accident and Alternative Sequences," January 1980.

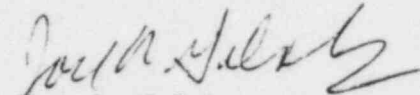
It is not possible for the Staff to provide more detailed and definitive answers to these interrogatories without an extensive review and analysis of the voluminous record which may contain the information which TMIA seeks. Given the public availability of this record, such a review and analysis can be undertaken by TMIA.

### III. MOTION FOR A PROTECTIVE ORDER

The Staff has objected to a number of TMIA's interrogatories on the ground that they seek information which is not necessary to a proper decision in this proceeding or which is reasonably obtainable from another source. See 10 C.F.R. § 2.720(h)(2)(ii). In addition, the Staff has objected to certain interrogatories on the grounds that the

information sought is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. See 10 C.F.R. § 2.740(b)(1). On the basis of those objections, and for good cause shown, the Staff hereby moves, pursuant to 10 C.F.R. § 2.740(c), for a protective order that the discovery to which the Staff has objected above not be had.

Respectfully submitted,



Jack R. Goldberg  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 22nd day of August, 1984

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETED  
USNRC

'84 AGO 23 P4:53

In the Matter of )  
METROPOLITAN EDISON COMPANY, ET AL. )  
(Three Mile Island Nuclear Station, )  
Unit No. 1) )

Docket No. 50-289  
(Restart Remand on  
Management)

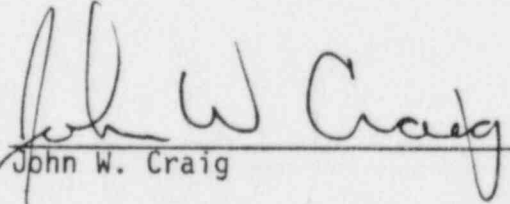
AFFIDAVIT OF JOHN W. CRAIG

I am a Senior Reactor Engineer in the Nuclear Reactor Commission's  
Office of Inspection and Enforcement, Division of Quality Assurance,  
Safeguards and Inspection Programs.

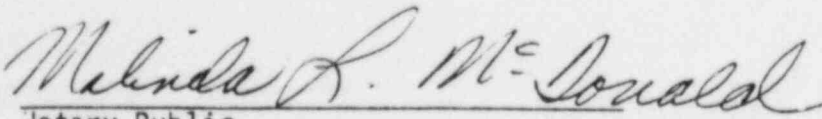
I have read the answer to TMIA's Interrogatories numbered 2-21, 23  
and 24. The answer given is true and accurate to the best of my knowledge.

I declare under penalty of perjury that the foregoing is true and  
correct.

Executed on August 17, 1984

  
John W. Craig

Subscribed and sworn to before me  
this 17th day of August 1984

  
Notary Public

My Commission Expires: 7/1/86

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

METROPOLITAN EDISON COMPANY, et al.

(Three Mile Island Nuclear Station  
Unit No. 1

)  
)  
)

Docket No. 50-289  
(Restart Remand on  
Management)

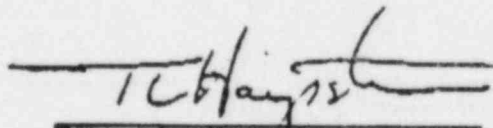
AFFIDAVIT OF TERRY L. HARPSTER

I am a Lead Reactor Engineer, Division of Engineering and Technical  
Programs, Engineering Programs Branch, Management Programs Section, Region I.

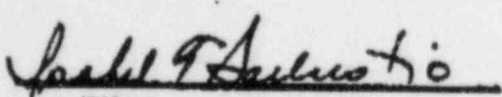
I have read the answer to TMIA's Interrogatories numbered 2-21, 23 and 24.  
The answer given is true and accurate to the best of my knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 8/22/84

  
Terry L. Harpster

Sworn to before me this  
22nd day of August, 1984

  
ISABEL T. SALLUSTIO, NOTARY PUBLIC  
UPPER MERION TWP., MONTGOMERY COUNTY  
MY COMMISSION EXPIRES NOV. 3, 1986  
Member, Pennsylvania Association of Notaries

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETED  
USNRC

In the Matter of )  
METROPOLITAN EDISON COMPANY, ET AL. )  
(Three Mile Island Nuclear Station, )  
Unit No. 1) )

'84 AGO 23 P4:53

Docket No. 50-289  
(Restart Remand & SERVICE  
on Management) NCH

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO INTERVENOR THREE MILE ISLAND ALERT'S FIRST SET OF INTERROGATORIES TO NUCLEAR REGULATORY COMMISSION STAFF; AND NRC STAFF MOTION FOR A PROTECTIVE ORDER" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 22nd day of August, 1984:

\*Ivan W. Smith  
Administrative Law Judge  
Atomic Safety & Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Mr. Thomas Gerusky  
Bureau of Radiation Protection  
Dept. of Environmental Resources  
P. O. Box 2063  
Harrisburg, PA 17120

\*Sheldon J. Wolfe  
Administrative Judge  
Atomic Safety & Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

George F. Trowbridge, Esq.  
Shaw, Pittman, Potts & Trowbridge  
1800 M Street, NW  
Washington, DC 20036

\*Mr. Gustave A. Linenberger, Jr.  
Administrative Judge  
Atomic Safety & Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Thomas Y. Au, Esq.  
Office of Chief Counsel  
Department of Environmental Resources  
505 Executive House, P.O. Box 2357  
Harrisburg, PA 17120

Ms. Marjorie Aamodt  
R.D. #5  
Coatesville, PA 19320

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

Mr. Marvin I. Lewis  
6504 Bradford Terrace  
Philadelphia, PA 19149

Mr. C. W. Smyth, Manager  
Licensing TMI-1  
Three Mile Island Nuclear Station  
P. O. Box 480  
Middletown, PA 17057

Ms. Jane Lee  
183 Valley Road  
Etters, PA 17319

Allen R. Carter, Chairman  
Joint Legislative Committee on Energy  
Post Office Box 142  
Suite 513  
Senate Gressette Building  
Columbia, South Carolina 29202

Chauncey Kepford  
Judith Johnsrud  
Environmental Coalition on Nuclear Power  
433 Orlando Avenue  
State College, PA 16801

Ms. Frieda Berryhill, Chairman  
Coalition for Nuclear Power Plant  
Postponement  
2610 Grendon Drive  
Wilmington, Delaware 19808

Mr. Henry D. Hukill  
Vice President  
GPU Nuclear Corporation  
Post Office Box 480  
Middletown, PA 17057

Michael McBride, Esq.  
LeBoeuf, Lamb, Leiby & McRae  
Suite 1100  
1333 New Hampshire Avenue, NW  
Washington, DC 20036

Mr. Steven C. Sholly  
Union of Concerned Scientists  
1346 Connecticut Avenue, NW  
Dupont Circle Building, Suite 1101  
Washington, DC 20036

William S. Jordan, III, Esq.  
Harmon, Weiss & Jordan  
2001 S Street, NW  
Suite 430  
Washington, DC 20009

Lynne Bernabei, Esq.  
Government Accountability Project  
1555 Connecticut Ave., NW  
Washington, DC 20009

Jordan D. Cunningham, Esq.  
Fox, Farr and Cunningham  
2320 North 2nd Street  
Harrisburg, PA 17110

Louise Bradford  
Three Mile Island Alert  
1011 Green Street  
Harrisburg, PA 17102

Ms. Elyn R. Weiss  
Harmon, Weiss & Jordan  
2001 S Street, NW  
Suite 430  
Washington, DC 20009

\*Gary J. Edles  
Atomic Safety & Licensing  
Appeal Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20036

\*Christine N. Kohl  
Atomic Safety & Licensing  
Appeal Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

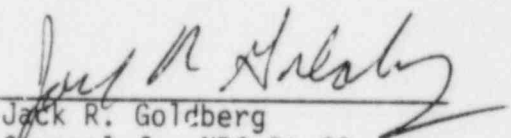
\*Dr. John H. Buck  
Atomic Safety & Licensing  
Appeal Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

\*Reginald L. Gotchy  
Atomic Safety & Licensing  
Appeal Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

\*Atomic Safety & Licensing Appeal Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

\*Atomic Safety & Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

\*Docketing & Service Section  
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

  
Jack R. Goldberg  
Counsel for NRC Staff