

RELATED CORRESPONDENCE

UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

DOCKETED
 USNRC

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| In the Matter of |) | |
| |) | |
| METROPOLITAN EDISON COMPANY |) | Docket No. 50-289 ⁸⁴ SP SEP -7 11:14 |
| |) | (Restart - Management Phase) |
| (Three Mile Island Nuclear |) | |
| Station, Unit No. 1) |) | |

THREE MILE ISLAND ALERT'S RESPONSE TO LICENSEE'S
 SECOND SET OF INTERROGATORIES TO INTERVENOR
 THREE MILE ISLAND ALERT, INC.

Three Mile Island Alert ("TMIA") files this response to Licensee's Second Set of Interrogatories based on the information currently available to it. Because licensee General Public Utilities Nuclear Corporation ("GPU") has not yet responded to TMIA's First Set of Interrogatories or First Request for Production, TMIA does not have access to that information in formulating a response to GPU's interrogatories.

INSTRUCTIONS

TMIA will refer to the following investigations and/or reports throughout its responses to the interrogatories. Licensee has access to all such investigative reports and investigative materials, including interviews. Therefore TMIA will not provide information other than the name of the investigative report, the name of the person interviewed, and the date of the interview. In addition, TMIA will not provide in response to any interrogatory the page number of the document identified since the burden of deriving or ascertaining the page number is substantially the same

for GPU as for TMIA. See generally, Rule 33 (c), Fed.R.Civ.P.

1. "Reporting of Information Concerning the Accident at Three Mile Island," The Staff of the House Committee on Interior and Insular Affairs, January, 1981 ("Udall Report").

2. U.S. Nuclear Regulatory Commission, NUREG-0600, "Investigations Into the March 28, 1979 Three Mile Island Accident by the Office of Inspection and Enforcement", Investigative Report No. 50-320/79-10, August 1979. ("NUREG-0600")

3. U.S. Nuclear Regulatory Commission, "Three Mile Island, A Report to the Commissioners and to the Public", Special Inquiry Group (Rogovin Report), January 24, 1980. ("SIG")

4. U.S. Nuclear Regulatory Commission, NUREG-0760, "Investigation into Information Flow During the Accident at Three Mile Island," January, 1981. ("NUREG-10760")

5. President's Commission on Three Mile Island, "The Report of the President's Commission on Three Mile Island," October 31, 1979. ("Kemeny")

6. Subcommittee on Energy and the Environment of the Committee on Interior and Insular Affairs, "Accident at the Three Mile Island Nuclear Power Plant," Part 1, May 9, 10, 11 and 15, 1979; and Part 2, May 21 and 24, 1979. ("E&E, Part 1" and "E&E, Part 2" respectively).

7. Report on The Three Mile Island Accident, Subcommittee on Nuclear Regulation of the Senate Committee on Environment and Public Works. ("Senate").

SPECIFIC INTERROGATORIES

Interrogatory No. 1

TMIA is not prepared, prior to receipt of discovery responses

from GPU and depositions of current and former GPU operators and managers, to identify its expected list of witnesses. At such time as it receives GPU's discovery responses and completes depositions of GPU personnel, TMIA will supplement this response.

Interrogatory No. 2

All documents which TMIA has within its custody and control pertaining to the subjects listed in subparts (a) through (f) are documents which are filed in the NRC Public Document Room. They include NRC investigative reports, Congressional investigative reports, GPU investigative interviews, and the investigative materials gathered in the course of those investigations.

The burden of deriving or ascertaining the information requested in this interrogatory is substantially the same for GPU, the party seeking the information, as TMIA, the party from whom the information is sought. Therefore, TMIA refers GPU to all those investigative reports, investigative materials and interviews, and resulting communications between the NRC and the House and Senate oversight committees to the NRC concerning reporting of information during the Three Mile Island Accident which are maintained at the NRC Public Document Room. See Rule 33(c), Fed.R.Civ.P.

To the extent the interrogatory seeks information as to TMIA counsel's investigation into the facts surrounding the Dieckamp mailgram issue, this information is privileged from disclosure under the work product doctrine.

Interrogatory No. 3

TMIA is not prepared, prior to receipt of discovery responses from GPU and depositions of current and former GPU operators

and managers to identify documents it intends to offer as exhibits during the reopened hearing or which it intends to use during cross-examination of licensee or NRC witnesses.

TMIA-also objects to production of information concerning those documents it intends to use during cross-examination of adverse witnesses on the grounds it is privileged from disclosure under the work product doctrine.

Interrogatory No. 4 (a) and 4(b)

TMIA's response to this interrogatory includes all the information currently within its possession or control. At this time TMIA is unable to provide a complete response because it has not received GPU's responses to TMIA's First Set of Interrogatories and First Request for Production and has not held depositions of GPU operators and managers with relevant knowledge of this issue.

The following individuals were aware of the pressure spike, spray actuation or thud on March 28, 1979. Included under the name of each individual are those interviews, statements, depositions or other testimony given prior to May 9, 1979 indicating that individual's knowledge.

1. Hugh McGovern: Bubba Marshall's Notes of 3/29/79
2. Ed Frederick.
3. Craig Faust: GPU Faust Interview - 3/30/79
GPU Faust Interview - 4/6/79
4. Joseph Scheimann.
5. Ivan Porter.
6. William Zewe: GPU Zewe Interview - 4/23/79
7. Joseph Chwastyk.
8. Gary Miller: Statement to James Higgins - 4/30/79

Raymond Statement - 5/8/79

9. George Kunder.
10. Mike Ross.
11. Brian Mehler.
12. Theodore Illjes.
13. Charles Mell.
14. Leland Rogers.

TMIA also believes that the following individuals may have been aware of the pressure spike, spray actuation or thud if they were in the control room:

15. James Higgins.
16. Donald Neely.
17. James Seelinger
18. Joseph Logan.
19. John Flint.

Interrogatory No. 4(c)

The following interviews discuss the awareness of the individuals listed above of the pressure spike, spray actuation or thud. The statements are listed by the individual who gave the interview and/or statement.

| | |
|------------|-----------------------|
| Faust: | GPU - 3/30/79, 4/6/79 |
| | E&E, Part 1 - 5/11/79 |
| | SIG - 9/11/79 |
| | SIG - 9/30/79 |
| Frederick: | E&E, Part 1 - 5/11/79 |
| | SIG - 9/11/79 |
| Porter: | NUREG-0600 - 5/29/79 |
| Scheimann: | NUREG-0760 - 10/9/80 |

Ross: NUREG-0600 - 5/19/79
NUREG-0760 - 9/24/80

Raymond: NUREG-0760 - 10/7/80
Raymond Statement - 5/8/79

Higgins: NUREG-0760 - 10/7/80

Kunder: NUREG-0600 - 4/25/79 and 5/23/79

Rogers: Rogers 6/12/79 Memo*
NUREG-0760 - 9/2/80

Illjes: NUREG-0600 - 5/23/79

McGovern: Marshall Statement - 3/29/79

Mell: Senate Report - 8/22/79

Miller: Kemeny - 5/31/79
E&E, Part 2 - 6/14/79
Senate - 9/28/79
NUREG-0760 - 9/5/80

Chwastyk: NUREG-0600 - 5/21/79
SIG - 10/11/79 and 10/30/79
NUREG-0760 - 9/4/80

Mehler: NUREG-0600 - 5/17/79 and 7/6/79
SIG - 10/11/79 and 10/30/79
NUREG-0760 - 9/3/80

Zewe: GPU - 4/23/79

* Leland Rogers June 12, 1979 Memorandum entitled "Statement of the 3/28/79 Unit 2 Transient" has previously been produced to GPU Counsel Ernest Blake.

Numerous other interviews conducted in the course of compiling NUREG-0760 contain relevant information. TMIA refers GPU to all such interviews conducted during the course of that investigation, since the burden of deriving the information sought by this interrogatory is substantially the same for GPU as it is for TMIA. Rule 33(c), Fed.R.Civ.P.

Interrogatory No. 5

(a) Joseph Chwastyk; Brian Mehler; Leland Rogers; and Ivan Porter.

TMIA also believes that Gary Miller associated the pressure spike, spray actuation or "thud" with a hydrogen combustion or explosion.

(b) Chwastyk, Mehler, Rogers' and Porter's interviews and statements identified in response to Interrogatory No. 4 above explain those individuals' interpretation of the pressure spike in terms of the generation, combustion or explosion of hydrogen or of combustible gas which could only be interpreted as hydrogen.

Mr. Miller's testimony that he was not aware of the pressure spike and was not aware of the generation or combustion of hydrogen is not credible, given the numerous contradictions between his testimony and the testimony of other individuals in the control room on March 28, 1979.

In particular, TMIA relies on the testimony of Mr. Chwastyk that he told Mr. Miller that they should not cycle the electromagnetic relief valve because of the explosion; that he obtained permission from Mr. Miller to "draw the bubble" shortly after the

pressure spike occurred; that he made checks of the containment to see if it were breached after the pressure spike occurred; and that Mr. Miller probably gave directions not to activate equipment in the containment for fear of causing a spark which might ignite the hydrogen generated in the containment.

TMIA also relies on the testimony of Mr. Mehler that Mr. Miller gave a direction on March 28, shortly after occurrence of the pressure spike, not to activate oil pumps in the containment to avoid causing a spark; and that there was a general awareness in the control room on March 28 of the pressure spike and the hydrogen explosion.

Both Mr. Chwastyk's testimony and Mr. Mehler's testimony is documented in the interviews listed in TMIA's response to Interrogatory No. 4 above.

See also July 6, 1979 Memorandum of telephone conversation between Dr. Henry Myers, Science Advisor, House Subcommittee on Energy and the Environment, and Mr. Mehler.

Interrogatory No. 6

See generally, TMIA response to Interrogatory No. 5 above. TMIA is unable to respond more fully at this time prior to receipt of GPU's responses to TMIA's First Set of Interrogatories and First Request for Production, and depositions of GPU operators and managers with knowledge of this issue.

Interrogatory No. 7

- (a) March 28, 1979; Gary Miller.
- (b) Mr. Mehler; Mr. Chwastyk; Mr. Miller; and Mr. Ross.
- (c) See Mehler and Chwastyk interviews listed in TMIA's response to Interrogatory No. 4 above. See also Udall Report at 77-88.

Interrogatory No. 8

TMIA does not have sufficient information at the current time to respond to this interrogatory because it has not yet received GPU's Responses to TMIA's First Set of Interrogatories and First Request for Production, and has not deposed those GPU operators and managers with knowledge of this issue.

Interrogatory No. 9

Mr. Dieckamp should have known at some time prior to May 9, 1979 that operators in the control room on March 28, 1979 interpreted the pressure spike or spray actuation to indicate the generation, combustion or ignition of hydrogen and resulting core damage.

It is clear that a number of GPU and B&W personnel in the control room on March 28, 1979 interpreted the pressure spike and spray actuation to indicate the generation, combustion or ignition of hydrogen and/or core damage. By consulting any of these individuals, Mr. Dieckamp would have learned about the status of their knowledge on March 28, 1979.

In addition, Mr. Dieckamp should have consulted Mr. Floyd who apparently made the statement during the congressional subcommittee's visit to the site on May 8, 1979 that certain individuals in the control room on March 28, 1979 interpreted the pressure spike to indicate a real increase in pressure, the combustion or ignition of hydrogen, or other combustible gas, and/or core damage. In addition, Mr. Dieckamp should not have made any statements on behalf of GPU as a corporation to Congressman Udall, the House Interior Committee or any NRC Commissioner

without ensuring that his statements were factually correct and forthright.

Interrogatory No. 10

(a) The Dieckamp mailgram contains false and misleading statements.

(b) Two false and misleading statements are the following:

(i) "There 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..."

(ii) "There is no evidence...that anyone withheld any information."

It is clear that on May 9, 1979 there was both documentary evidence and the knowledge or memory of GPU and B&W personnel in the control room of TMI-2 on March 28, 1979 which indicated that on that date some individuals interpreted the pressure spike which occurred at approximately 1:50 p.m. to indicate the combustion of hydrogen and core damage.

Further it is clear that this information or awareness on the part of certain GPU personnel was not reported to the NRC until March 30, 1979.

The documents on which TMIA relies are listed in response to TMIA's responses to Interrogatory Nos. 2, 4, and 5 above, and include additionally those investigative interviews and materials gathered in the course of the NUREG-0760 investigation; the SIG investigation; and the GPU investigation.

Interrogatory No. 11

(a) TMIA does not accept the assumption of this interrogatory that Mr. Dieckamp did not know on May 9, 1979 that he made inaccurate or misleading statements in his mailgram to Congressman Udall. Therefore it is unable to respond to the question of whether Mr. Dieckamp should have corrected such inaccurate or misleading statements.

Notwithstanding TMIA's objection to the interrogatory, TMIA responds that it believes Mr. Dieckamp should as a general rule at the earliest possible opportunity correct any misstatements or inaccurate or misleading statements he makes, on behalf of GPU, to Congressman Udall, the House Interior Committee, the NRC or any office of the NRC, and the public.

(b) See TMIA response to subpart (a) above.

Further, TMIA has not at this time received GPU's responses to TMIA's First Set of Interrogatories and First Request for Production, nor had the opportunity to depose current and former GPU personnel with information relevant to this issue.

Therefore, TMIA is currently not able to respond to this interrogatory.

(c) See TMIA response to subpart (b) above. [TMIA has read Interrogatory No. 11(c) to read, in relevant part "Explain precisely the basis for your answers to Interrogatories 11(a) and 11(b) above.]

Interrogatory No. 12

(a) Mr. Dieckamp, as GPU President, has held a leadership role in the licensee corporation both prior to and after the

accident. In this position, he often served as spokesman for the licensee on issues of importance for the safe operation of TMI and of material importance to the NRC, the Commonwealth of Pennsylvania, the U.S. Congress and its oversight committees, and the public.

Mr. Dieckamp failed either to ensure that all statements he made in his mailgram to Congressman Udall and Commissioner Gilinsky were accurate and not misleading; or failed to consult with the necessary licensee employees and managers to ensure that the information and/or statements he made were accurate and not misleading; or deliberately or recklessly made statements which were not accurate and true in significant respects.

Mr. Dieckamp's deliberate, reckless or negligent misstatements in the mailgram reflect on GPU's competence to operate TMI-I safely within the current regulatory framework in which licensees have primary responsibility to provide accurate, timely and comprehensive information to the NRC. If Mr. Dieckamp deliberately or recklessly made such misstatements this indicates that GPU's top management lacks the requisite honesty, character and integrity to operate TMI-2 under any set of license conditions or other requirements the NRC could impose on it.

Mr. Dieckamp's failure to ensure that the statements he made in the mailgram were accurate, taking the case most favorable to GPU, is significant in context of the historical lack of integrity on the part of GPU management from prior to the accident to the present.

Further, Mr. Dieckamp's failure to correct the misstatements made in the mailgram at any time, and GPU's current position that no misstatements were made, are indicative of the inability or deliberate refusal of GPU to acknowledge or identify past mistakes and to correct them.

Mr. Dieckamp's other failings as GPU President make his misstatements in the mailgram and his failure to correct such misstatements more serious. These failings include, inter alia, his failure as GPU President to ensure proper reporting of information to the NRC and the Commonwealth of Pennsylvania during the accident and to ensure disclosure of the Faegre & Benson, BETA and RHR reports to the NRC; his failure to take adequate disciplinary action against all those persons making material false statements to the NRC concerning Mr. Floyd's certification; his permitting a post-accident environment to continue in which operator cheating could occur; and his failure to ensure that licensee's response to the NRC's NOV contained no inaccurate, incomplete or questionable statements.

Finally, Mr. Dieckamp and GPU's refusal to admit that Mr. Dieckamp or GPU acted improperly in making misstatements in the mailgram or in failing to disclose certain information to the NRC and the Commonwealth of Pennsylvania during the accident indicates that GPU will under all circumstances refuse to admit its own mistakes and failings. TMIA infers that GPU will act in a similar way in the future with respect to its failings and mistakes.

(b) TMIA has explained the basis for its response to subpart (a) above.

TMIA refers GPU to all documents listed in response to Interrogatories 2, 4 and 5 above; and all documents relating to reporting failures during the accident; licensee's failure to disclose Faegre & Benson, BETA and RHR to the NRC; licensee's improper, inaccurate and deficient response to the NRC's NOV; licensee inaction against individuals involved in the cheating incidents and in the material false statement made to the NRC concerning Mr. Floyd's certification; and the cheating incidents themselves. See also NUREG-0680, Supp. 5, 8021, 13-5, 13-13.

The information requested by the interrogatory can be as readily ascertained and derived from the above cited documents by GPU as by TMIA. Rule 33(c), Fed.R.Civ.P.

Interrogatory No. 13

The information requested by this interrogatory relates to the mental processes of TMIA attorneys and requests information on statements of potential TMIA witnesses. TMIA objects to production of the information on the ground that it is privileged under the work product doctrine.

Interrogatory No. 14

Undersigned TMIA counsel; NRC Staff, through NUREG-0600, NUREG-0760, and NUREG-0680; Dr. Henry Myers, through the Udall Report.

Interrogatory No. 15

TMIA refers GPU to the documents listed in TMIA's response to Interrogatories Nos. 2, 4, and 5 above. The information requested by this interrogatory is as easily ascertained by GPU as by TMIA from these documents. Rule 33(c), Fed.R.Civ.P.

Interrogatory No. 16 and 17

Undersigned TMIA counsel.

Interrogatory No. 18

See TMIA response to Interrogatory Nos. 1,4 and 5 above.

TMIA also refers GPU to all interviews conducted of PU, B&W or NRC personnel in connection with any of the investigations listed in the "Instruction" portion of TMIA's response. The information requested by this interrogatory can be as easily ascertained by GPU from these documents as by TMIA. Rule 33(c), Fed.R.Civ.P.

Interrogatory No. 19

TMIA objects to this interrogatory on the ground that it seeks information which is not relevant to any issue in this reopened hearing and is not reasonably calculated to lead to the discovery of admissible evidence.

TMIA also objects to this interrogatory on the ground that insofar as it seeks to discover TMIA counsel's trial preparation and trial strategy, it is privileged from disclosure under the work product doctrine.

Respectfully submitted,

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Dated: September 5, 1984

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RELATED CORRESPONDENCE

Before the Atomic Safety and Licensing Board

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METROPOLITAN EDISON COMPANY) Docket No. 50-289 SP
(Three Mile Island Nuclear) (Restart - Management Phase)
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September 5, 1984

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SECOND SET OF INTERROGATORIES TO INTERVENOR
THREE MILE ISLAND ALERT, INC.

Service List

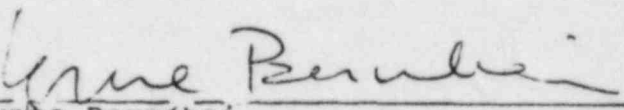
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