

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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1984

BEFORE THE COMMISSION

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

Docket No. 50-289 *SP*
(Restart)

TMIA MOTION TO REOPEN THE RECORD
ON CLEAN UP ALLEGATIONS

Introduction

On September 11, 1984, the Commission served its Order, CLI-84-18, which, inter alia, requires the parties to comment by October 1 whether the hearing ordered by the Appeal Board in ALAB-772 and ALAB-738 should be allowed to proceed, and "whether any of the information addressed in [NUREG - 0680] Supp. 5 requires further reopening of the record." In addition, the Commission appears to have removed jurisdiction from the Appeal Board and the Licensing Board for purposes of new motions to reopen on any issue discussed in Supp. 5, directing that such motion be filed solely with the Commission. CLI-84-18, footnote 4.

Without commenting at this time on any other potential issue raised by the September 11 order, TMIA files this motion to reopen the record in the interest of obtaining a fair consideration of the critical questions raised by the allegations of harassment by Unit 2 employees and management. It is TMIA's belief that the decisive nature of this issue demands separate consideration, apart from what is expected to be a confusing succession of responses to the September 11 order. To ensure that these crucial harassment issues not get lost in the chaos, TMIA files this motion separately, to be considered as one aspect of its comments on the September 11 Order.

In addition, as the Commission is aware, TMIA, along with a number of other joint petitioners, have asked that "character" hearings be immediately established to set in motion the process by which GPUN's license to operate its nuclear reactors can be revoked. Two additional sections of this petition will be filed this week, in which the matters contained in this motion are included.

TMIA has no way of determining when this petition will be eventually acted upon. Nor, of course, is there any guarantee the Commission will ultimately fulfill its statutory mandate to revoke GPUN's license. In the meantime, TMIA has a responsibility to see through its obligations in the IMI-1 restart case. TMIA sees its responsibilities as including bringing to Commission's attention matters which come within the scope of that proceeding, for which there is some basis for reopening that hearing record. This is one such matter.

The Commission should note that on May 23, 1983, TMIA submitted a Motion to reopen the Record on, inter alia, the allegations described in the instant motion. In ALAB-738, the Appeal Board denied, as premature, the motion on these allegations, and invited TMIA to resubmit its motion when more information (e.g. the OI investigation) was obtained. The Appeal Board

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expressed particular interest in the "whistleblower harassment" allegations, noting that such allegations, if substantiated, would satisfy the reopening criteria. ALAB-738, slip. op. at 37-40. As this motion will demonstrate, these allegations have now been substantiated. In light of the virtual direction from the Commission that this issue now be raised as it relates to a restart decision, TMIA files this motion pursuant to the Commission's Order.

A. Background.

On May 18, 1984, OI released a Report of Investigation entitled "Three Mile Island NGS, Unit 2, Allegations Regarding Discrimination for Raising Safety Related Concerns (H-83-002)" (hereinafter referred to as "Harassment Report"), which concerns "allegations" made by the former Three Mile Island, Unit 2 (TMI-2) Plant Engineering Director, Mr. Edwin Gischel; the former TMI-2 Site Operation Director, Mr. Lawrence P. King, and former Bechtel start-up and test engineer working at TMI-2, Mr. Richard D. Parks." Id., cover memo. No investigation was done on related allegations of harassment, intimidation and retaliation against Ms. Joyce Wenger, Mr. King's secretary. See Letter of Secretary of Labor, Donovan . Exhibits to this report were not released to the parties until June 11, 1984.

This investigation follows the September 1, 1983 release of OI's "interim report" entitled Three Mile Island NGS, Unit 2 Allegations Regarding Safety Related Modifications and QA Procedures (H-83-002) (hereinafter referred to as "Safety Report"). The Safety Report investigated the validity of the allegations of procedural violations, reported by the above-referenced workers, who claimed harassment and retaliatory action by management as a result of their reports. OI confirmed the factual basis for proceeding with the harassment investigation, and determined that "the allegations were not only substantiated, but (were) illustrative rather than exhaustive." Id. cover memo.

It should be noted that there have been subsequent attempts within the NRC to discredit the OI Safety Report. For example, while OI determined that "awareness by senior licensee management of the TMI Program Office (TMIPO) passive role on administrative control matter may have contributed to the licensee's procedural non-compliance". Id., the TMIPO itself conducted the Staff's review of the Safety Report, which is contained in SECY-84-36, dated 25 January, 1984. On the basis of this report, which found less overall significance to the safety allegations but did not challenge the factual finding of OI, and NRC enforcement action was instituted. See 3 February, 1984 Notice of Violation. However, neither SECY-84-36 nor the Notice of Violation findings were reviewed by OI prior to issuance. After an opportunity to finally review SECY-84-36 and the Notice of Violation, OI maintained the strength of its original position, concluding;

"The Staff appears to minimize the safety implications of each finding. We may agree that taken individually the findings may be minimized, however, we are convinced that these findings when taken collectively, did represent significant weaknesses in the licensee's management program and as such are, overall, of safety significance." See letter from Ben Hayes.

In addition to the above-referenced OI reports, GPU initiated its own investigation and hired Edwin H. Stier to conduct that investigation. Mr. Stier produced a report titled "TMI-2 Report, Management Safety Allegations." (hereinafter referred to as Stier Report) which was issued 16 November 1983.

The employment of Parks, King and Wenger was terminated in March 1983 at the height of the clean up controversy. All three filed Department of Labor complaints. The Department of Labor found that Richard Parks was illegally fired for reporting safety violations, and ordered him rehired by his employer, Bechtel. See Harassment Report, Ex. 102, Department of Labor, Wage and Hour Division, Report of Investigation of Complaint by Richard D. Parks of Bechtel North American Power Corporation, Three Mile Island, with attachments A-4, B-1 to B-7, C-1, C-2, D-1 and F-2. Joyce Wenger, who filed a Department of Labor complaint on 22 April, 1983, settled her suit with GPU and was rehired. Lawrence King lost before the Department of Labor, but has appealed and has also filed a complaint for damages in Federal court. See Harassment Report, Ex. 59, Lawrence Peter King Jr. and Gloria King v. GPU Nuclear, et. al., Civil Action No. 84-0913 (M.D. PA, filed July 9, 1984). Ed Gischel, who submitted an affidavit to the NRC on 2 April, 1984 alleging harassment and discrimination for raising safety concerns but whose employment was not terminated, did not file a Labor Department complaint. See Harassment Report, Ex. 1. cover memo p. 2.

B. Safety Violations.

As noted supra, in September 1983, OI completed an investigation of allegations by clean up workers that management was deliberately circumventing administrative procedures to avoid technical requirements and cutting corners to the detriment of safety. These allegations were substantially confirmed as described below.

In particular, OI investigated the Reactor Building Polar Crane Refurbishment Program which was conceived jointly by Licensee and Bechtel, co-managers of the clean up. On 19 July, 1982, GPU assigned Bechtel to "refurbish the reactor building polar crane in accordance with the Bechtel containment entry program" pursuant to 14 July, 1982 work request. See Affidavit of Richard Parks, accompanying 22 March 1984 Department of Labor complaint, p. 5. Bechtel was to restore the crane to its undamaged condition. Id., p. 5.

Bechtel produced a document outlining the engineering plan to fix the polar crane. Certain modifications fell under Licensee's administrative procedures, but no one at GPUN disapproved of allowing Bechtel to proceed with modification, or of testing the polar crane without obtaining GPUN approval. See Safety Report, Attachment D-10, Results of the Technical Examination of Alleged Procedural and Managerial Deficiencies at Three Mile Island Unit 2, at II-26.

OI determined that many recovery and clean up operations performed by Bechtel were not being conducted in accordance with applicable procedural requirements, and that dissatisfaction with this condition led the "whistle blowers" to publicly announce their concerns. These violations can be summarized as follows:

- violations of approved GPUN administrative procedures which were the legal means for TMI-2 to assure safety compliance of the work. Id., II-1, II-29.
- use of approved procedures to perform work by Bechtel, including circumvention of QA requirements, occurring since November 1981, through the polar crane refurbishment program. Id., II-4, II-30.

- violations of maintenance procedures used during the reactor building polar crane refurbishment program, e.g. use of the wrong procedure, and even when used, used incorrectly, and failure to classify work as to its safety significance. Id., II-4, II-12, II-13.
- modifications to the containment penetration which were not made in accordance with 10 CFR 50, App. A, Design Criteria, and were improperly approved without a license amendment on the basis of a technical specification interpretation. Id., II-23.
- modifications made to the TMI-2 facility that have been improperly classified as "Not Important to Safety" (NITS) thus downgrading the QA/QC for these modifications as alleged. Id., II-23.

OI also found that the responsible individual in the position of Director of TMI-2, B. A. Kanga, Deputy Director of TMI-2, John Barton, and the Director of Site Operations, Lawrence P. King, during April/May 1983 did not meet qualifications for Plant Manager. Id., III-2. Indeed, "(t)he OI team is concerned that the senior management structure at TMI-2 does not possess sufficient depth in the area of nuclear power plant operating experience." Id.

Additionally, OI found that there was deliberate circumvention of QA requirements. In particular, OI found:

- a lack of QA audits for Bechtel's scope of work. Id., III-7 et seq. Licensee's QA organization had not audited Bechtel's Recovery Programs Organization to assure compliance with procedures and Tech Specs. Id.
- Licensee's QA department had not effectively participated in the polar crane refurbishment program. Most significantly the polar crane refurbishment program never went through the safety classification process and therefore no quality assurance was independently applied to the activity since the degree of Licensee's QA involvement is determined by the classification of the activity's importance to safety. Id.
- Licensee misclassified work activities as "not important to safety" or NITS, and compromised the independence of the QA function required by 10 CFR, App. B, Criterion I (Org.) Id., III-8
- the QA department did not receive proper management support to ensure adequate corrective action was taken to QA identified findings. Id., III-9

OI determined that specific procedural violations occurred because of "the failure of the responsible parties involved to properly consider and/or comprehend how these procedures were to apply, and failure of the responsible TMI-2 managers to act sufficiently to assure that the procedures were properly implemented." Id. at II-29. In addition, OI determined that the "violations of Maintenance Procedures 1407-1 . . . in part occurred as a result of ineffective communications among the parties involved and a failure of the responsible parties involved to read the procedure or read and understand the procedure." Id., II-31.

The procedural violations outlined above were due to GPU's failure to exercise management controls and oversight over Bechtel. OI determined that Licensee inappropriately delegated to Bechtel a non-licensee, substantial responsibility for meeting safety requirements. Dependence on Bechtel led to Licensee's failure to carry through on its responsibilities for the clean up. Specifically OI concluded:

"Bechtel, a non-licensee with limited experience of NRC operating plant requirements, was essentially given operational responsibility for the recovery project. Senior licensee management was continually advised by TMI QA and in-house management of Bechtel's noncompliance with applicable procedural and safety misclassification, the failure of senior licensee management to responsibly monitor Bechtel's work and hold Bechtel accountable is the underlying cause of the TMI-2 procedural problems."

See Safety Report, cover memo.

The NRC relies upon licensees to exercise the requisite QA/QC and to comply with their procedures in order to assure the safety of the plant. The NRC further relies upon individual license holders to report violations of procedure, or any noncompliance on the part of their management which might result in a safety violation. Any attempt to impede the ability of individual license holders to report perceived safety violations, would clearly subvert the NRC's ability to effectively regulate the industry, and would place the health and safety of the public in jeopardy.

It is clear from the findings of the Safety Report that the concerns which forced the "whistle blowers" to go public were, collectively, of substantial safety significance. The "whistle blowers" had struggled for months to bring their concerns to the attention of GPU management, in hopes that they would be resolved. Not only were their concerns ignored by management, the "whistle blowers" were subjected to harassment which intensified when they persisted in voicing their legitimate concerns.

C. Parks.

Richard Parks worked at TMI-2 from June 1980 until December 1981, and returned in May 1982. In September 1982, after a "management reorganization to put Bechtel in charge of an integrated program with GPU for clean up activities," Parks was assigned to King's staff as an operations engineer with Site Operations (SO). See Stier Report, App. B, Tab 24, Parks Affidavit, p.3.

On February 18, 1983, after King assigned Parks the responsibility of reviewing the polar crane load test procedure. Parks submitted comments to management, Parks comments were critical of the organization's "lack of compliance with the modification control procedure, AP-1043, and the test manual, AP-1047". Id. Upper management refused to accept these comments and returned them to King to verify his concurrence. On 18 February, Parks met Ed Kitler, Supervisor of Startup and Test, on the parking lot at TMI. Kitler warned Parks that management was unhappy with Parks, he said: "You have upper management pissed off at you, to the point where I've been asked what has to be done to get you transferred off the site." Id.

That same day, Parks approached the NRC's Office of Nuclear Reactor Regulation (NRR) and reported the threat of reprisal, and was told that the NRC "would take a dim view" if he were suddenly transferred off site.

Parks and other members of the SO team continued to point out what they viewed as procedural noncompliances and other problems they detected in the clean up program. There then began a campaign to exclude SO members from meeting concerning the head lift and related activities. Id., p.21.

On 25 February, Parks again spoke with the NRC, he was told that NRC personnel had investigated his procedural noncompliance complaints and had found them to be groundless. At this point, King had already been suspended without pay, and Parks expressed his belief to Lake Barrett of the NRC, that King had been fired for raising the same safety concerns that he (Parks) had been raising. Id., p. 29. Parks was told by Barrett that the NRC could do nothing until action was taken against Parks by management. Id., p. 30.

When Parks was at home on the evening of March 9, King called him to warn him that management was attempting to implicate Parks in King's business interest in order to fire him. Id., p. 44. King reported that during a conversation with Robert Arnold, then President of GPUN, Arnold dwelt continually on the topic of Parks' possible involvement with Quiltec, King's consulting business. Id.

On March 10, Parks again went to the NRC and discussed the King-Arnold conversation. He told them that it was another attempt by "management to intimidate or remove from TMI anyone who tries to stop them from violating government or industry standards." NRC personnel told Parks that the NRC would not get involved because this was an employer-employee labor matter. Id., p. 45.

On March 22, Parks filed a complaint with the Department of Labor charging his management with reprisals and harassment after he and others revealed quality assurance violations and significant safety concerns about the TMI clean up and recovery operations. The Department of Labor found that Parks was illegally fired, and ordered him rehired by his employer, Bechtel. See Harassment Report, Ex. 102.

D. King.

In June of 1980, Lawrence P. King was hired by GPU as Plant Operations Director at TMI-2. He later became Site Operations Director of TMI-2. See Harassment Report, p. 55. The Site Operations staff respected King both for his technical ability and his professional integrity. Carl Hrbac, Project Engineer, Plant Engineering, said that King has very high standards in signing off on items and he is very professional and takes his professional and legal responsibilities seriously. See Stier Report, App. C, Hrbac, P. 14. Edwin Gischel, Plant Engineering Director, expressed similar sentiments with regard to King's professional integrity. See Harassment Report. Gischel Affidavit dated 2 April, pp. 11, 14.

King and his staff represented a threat to GPU's management plans to meet unrealistic deadlines for the head lift program at TMI-2. In order to rid themselves of that threat, GPU embarked upon a campaign to remove King from the clean up project, and seized upon King's interest in a consulting firm as a means of accomplishing that goal.

In 1981, King, his wife, Gloria, John Hoade and Benjamin Slone, a former TMI-2 employee, incorporated Quiltec, a technical consulting company. King was designated President to the company but maintained an advisory role because of his employment at TMI. See Stier Report, App. B, Tab 16, Items 5-8; App. C, Slone, P. 7.

Slone resigned his position with GPU in April 1982, and at that time it was generally known at TMI-2, that Slone and King were connected in a business enterprise, Id. App. C, Buchanan, p. 32; Id. Waszyk, p. 22; Gallagher, p. 4; Hrbac, p. 11; Kitler, p. 25; Lionarons, p. 5; Thiesing, p. 5. There was speculation that former GPU employees were taking jobs with Quiltec. Thiesing, Manager of Recovery Programs (Bechtel) and David Buchanan, Manager of Site Engineering, said that while they had heard of the connection between King and Quiltec some time in April 1982, they had discounted the information as a rumor. John Barton, denied having heard of King's outside business interest until it was brought to his attention by Thiesing on 22 February. However, other members of the organization feel that it is unlikely that Barton was ignorant of King's activities because King made no attempt to hide his connection with Quiltec. Id. Barton interview dated 14 September, p. 66. Hrbac felt that Barton must have known, since the rumors were so widespread and would certainly have reached Barton. Id. Hrbac, p. 12.

King continued to raise safety concerns and to support his staff in their safety concerns, but they were consistently ignored by King's superiors. Id. App. B, Tab 5, pp. 6, 7. In fact, Bahman Kanga, Director of TMI-2, routinely dismissed King's safety concerns as pettiness. Id., App. C, Kanga, pp. 13-17. Many of King's complaints were directed at Thiesing's department and relations between the two men were strained. See Harassment Report, p. 59.

In February 1983, Thiesing said he once again heard King's name connected with an outside business concern. Thiesing, a Bechtel employee, claims that he was concerned that GPU was losing engineering talent, and that concern prompted him to initiate an investigation into the possibility that GPU employees were leaving GPU to work for Quiltec. See Stier Report, App. C, Thiesing, pp. 7-10. Although Thiesing claims that he continued to believe that the reports of King's business interest were no more than rumor, he made no attempt to approach King directly to determine if the rumors were based on fact. Instead, he contacted Bechtel's Procurement Department, and requested they perform an extensive vendor check on "Quil Engineering". Thiesing did not inform procurement personnel of the reason he was interested in the company, and led them to believe that he wanted to use Quiltec at TMI. Id. pp. 10, 15, 16, 17.

On February 22, 1983, Thiesing received a report that Quiltec had been located and that King was the President of the company. Id. p. 20. When Thiesing received the information connecting King to Quiltec, he passed it on to Barton, who subsequently informed Philip Clark, Vice President GPUN, of the situation. Clark was already aware that King and other SO personnel had been raising safety concerns regarding the polar crane refurbishment, and that someone had reported those concerns to the NRC. Clark, however, did not feel that King was the informant. Id., Clark, p. 42. Clark relayed the King/Quiltec information to Robert Arnold who, upon confirming that former GPU employees were working for Quiltec and that King was President of the company, immediately suspended King without pay on 23 February. See Harassment Report, Arnold interview, p. 111. Arnold said he assumed that the information he had concerning King's connection with Quiltec was true and therefore was grounds for dismissal. Id., p. 103.

King was escorted off site immediately, he did not return to his office to collect his personal belongings before he left. Barton then instructed a security guard to monitor King's office for the remainder of the night to ensure that no one removed materials from the office. When asked why he took these precautions, Barton replied:

"I felt that if there was something in his office which he may want to remove that could be evidence of the Quiltec situation, he may not want to remove it in the presence of Troeblicher and I, but if any such material was there, he may ask one of his employees to come and retrieve it for him."

Id. Barton interview, pp. 77, 78.

Arnold had already decided that King's interest in Quiltec, which King freely admitted, provided adequate grounds for dismissal, therefore, there was no need to deny King access to his files for the reasons stated by Barton. It is far more likely that GPU management was aware that King's files contained documents which would support his claims that safety was being jeopardized at TMI-2, and that they feared that King would take those documents to the NRC or to the media. GPU's treatment of King's secretary when she claimed to have copies of King's correspondence in her home, is further evidence of GPU management's paranoia in this regard.

Arnold asserted conflict of interest as justification for King's firing, however, there is no written policy which defines this principle. Prior to involving himself in the Quiltec venture, King had carefully reviewed GPUN's conflict of interest policy statement and was confident that he would not be in violation of the policy as stated. Harassment Report, p. 8. Nor was King alone in this assumption. John Wilson, attorney for GPUN, had been directed by Arnold to investigate King's purported conflict of interest, See Stier Report, App. C, Arnold, p. 22, and as late as a week after King's 24 February firing, Wilson was unable to ". . . positively determine from the information that he knew that King definitely had a conflict of interest with the company." Id. Barton, p. 71.

King and Clark had a meeting scheduled for 25 February, but King was reluctant to keep the appointment since he was no longer being paid by GPUN. Clark and Arnold decided to reinstate King's pay. Arnold said that he decided to reinstate King's pay in order to encourage King to divulge his safety concerns so that the company could deal with them. Id. Arnold, p. . . Since King had been very vocal about his safety concerns for several months and the company had ignored them, Arnold's belated concern hardly seems genuine. Clark felt that it was advisable to get a little more information on Quiltec before taking final action against King. Id., Clark pp. 49, 50. However, since the decision to fire King had already been made, (Arnold admits to having made up his mind to fire King on 23 February, Id. Arnold, p. 42) any further investigation would almost certainly be designed to support the decision to fire King.

At the time King was suspended without pay, there was insufficient evidence to justify such an action.

Additionally, one must examine GPU's treatment of other middle management personnel accused of wrongdoing in order to assess whether the peremptory firing of King was discriminatory in nature. James Floyd, who was found guilty of cheating on a company requalification exam in 1979, See 27 July FOI, pp. 112-116, was retained in a critical management position for five years after the cheating incident occurred. GPUN continued to maintain Floyd in a management position at TMI-2, for two years after the ASLB found him guilty.

Floyd's cheating had definite safety implications, whereas King's alleged failure to encourage employees to remain with GPU, while perhaps costly to the company, does not rise to the level of a significant safety concern. It is clear that protection of the GPU corporate entity takes precedence over protection of public health and safety.

E. Gischel.

Edwin Gischel joined GPUN in June 1981, as Plant Engineering Director. Gischel suffered a stroke in July 1982 and returned to work on a part-time basis in October 1982. See Gischel affidavit, p. 6; Harassment Report, p. 2. He experienced vision impairment and short term memory loss as result of the stroke. Id. However, upon being examined by the company doctor in November 1982, his unrestricted access status was approved, and the doctor noted that Gischel was making a good recovery from the stroke. Harassment Report, p. 29.

There was no indication that Gischel's disabilities affected his work performance. Id. His evaluation report was signed by King and reviewed by Barton without comment. Id., p. 30. OI investigators specifically noted that during "intellectual interactions" with Gischel, and review of documents prepared by Gischel concerning the polar crane issue, it was observed that "Gischel could function positively in his employment, notwithstanding the vision/reading impairment." Harassment Report., p. 41.

Gischel, like King, has high professional standards, and although he was in an extremely vulnerable position at the time of the polar crane controversy, he refused to take the easy way out by ignoring the safety violations at TMI-2. Gischel persistently refused to sign off on the short cuts he saw at the plant. In an effort to silence him, GPUN launched a particularly vicious campaign, using information from Stress Control as a weapon to force Gischel's compliance or to remove him from TMI-2.

Soon after his arrival at TMI, Gischel described seeing "signs that there was a gap between publicly-stated safety commitment and reality," and during 1982, Gischel "began to see symptoms of widespread sloppiness" at Unit 2. Id., p. 4. According to Gischel, "the conflict over use of the polar crane already had begun during the spring of 1982," and Gischel "made (his) position known that (he) wouldn't accept any shortcuts to the polar crane refurbishment program." Id., p. 6.

Gischel "foresaw problems ahead." Id. He was told by Barton, to "stay out of the refurbishment program and that everything would be recertified before it was turned over to him." Id. Gischel predicted that this would make it "difficult to double check the certification later if ECM's and the administrative controls of AP-1043 and AP-1047 were not followed when work took place". Id., p. 6.

In October 1982, Gischel voluntarily sought advice from Stress Control. See Harassment Report, p. 16. He was assured by Dr. William Jenkins of Stress Control that confidentiality would be honored. Id. p. 156. After speaking with Gischel, Jenkins advised him to take a series of neuropsychological tests and urged Gischel to make an appointment with a doctor whom Jenkins recommended. Id., p. 16. Gischel initially set up an appointment but cancelled it after speaking with his personal physician who advised him that in his opinion the test was unnecessary and could be used against him by GPU. Id. pp, 13, 22.

In February 1983, Stress Control informed GPU management that Gischel refused to submit to a neuropsychological examination. Stress Control did not tell Gischel of their intention to inform management, nor did they seek his approval prior to their disclosure. After receiving the information from Stress Control, Arnold, from February to July 1983, made repeated attempts to force Gischel to submit to the examination and told Gischel that it was a condition of his continued employment at TMI-2.

Gischel appeared before the GPU Board of Directors in April 1983, and informed them of his safety concerns and the harassment to which he had been subjected. See Stier Report, App. B, Tab 2. William Kuhns, Board Chairman, expressed concern about the pressure on Gischel and the attempts to force him to submit to the examination, however, although Gischel had specifically alleged harassment by Barton, Kuhns made no attempt to investigate those charges. See Harassment Report Ex. Kuhns, p. 37. Both Arnold and Kuhns threatened Gischel with the loss of his job at TMI-2 if he did not submit to testing.

In April, Arnold informed Gischel that if he were to testify before the House Subcommittee on Energy and Environment, he would jeopardize his job at TMI-2. During a telephone conversation, Arnold led Gischel to believe that if he (Gischel) did not testify before the Subcommittee, Arnold would accept a letter from Gischel's personal physician attesting to Gischel's health. Arnold assured Gischel that William L. Gifford, Director of Public Relations, would help Gischel draft a suitable letter for the doctor to sign, which would resolve Arnold's concerns. Gifford and Gischel were unable to agree on a letter which was suitable to both parties and Gifford assigned John Wilson the task of working on a draft letter with Gischel. See Harassment Report, Gischel Statement dated 11 Jan. 1984, pp. 2, 3; Ex. 27.

Arnold denies having promised Gischel that he would be satisfied with a letter from Gischel's doctor in return for Gischel's promise not to testify before the Subcommittee. Arnold said that while he might have had a telephone conversation with Gischel during that time frame, he simply cannot recall it. Id. Arnold statement dated 14 Jan., p. 55. Nor can Arnold explain the draft letter requesting that Gischel's doctor provide assurance that Gischel has the ability to perform his job at TMI. Id., Ex. 27. Since Arnold had repeatedly stated that he would not accept assurances concerning Gischel's neuropsychological status from an internist, his sudden reversal of that position indicates that he intended to mislead Gischel. See Harassment Report, p. 42.

Clearly Arnold duped Gischel into not testifying before the Subcommittee, and having done so successfully, continued to use the threat of testing against Gischel until Gischel finally requested a transfer away from TMI in July 1983.

F. Wenger.

On April 22, Joyce Wenger, former secretary to King, filed a complaint with the Department of Labor, alleging that she had been harassed by GPU management and terminated without cause.

Wenger cannot properly be described as a "whistle blower", she has no technical expertise, and her only contact with the clean up was through her work for King. Yet it was her contact with and loyalty to King which caused GPU so much concern. The effort that GPU management expended in this attempt to prevent Wenger from possibly confirming King's safety allegations is out of proportion with the amount of knowledge Wenger actually possessed, and was a clear case of overkill.

Wenger had worked as King's secretary for several years, she was extremely loyal to King and had respect for his professional judgment. King often shared his safety concerns with Wenger and while she did not understand the technical details, she respected his judgment and shared his concerns. Wenger was also aware that site management had been ignoring King's safety concerns with regard to the head lift program. See Stier Report, App. B, Tab 30, Wenger Affidavit, p. 4.

On March 1, 1983, Robert Booker, Operations and Analysis Manager, and Kevin Gray, from the same department were in Wenger's office waiting for Joseph Chwastyk, who had temporarily been assigned King's job. Booker asked Wenger how King was doing and Wenger responding with an angry outburst in which, according to Booker, she made statements to the effect that Arnold did not care about safety and that he was more interested in his Swiss bank account. She purportedly went on to say that she was aware that "drug dogs" were being brought on site and that the company might be surprised where they found drugs. Booker stated that Wenger suggested that drugs might be discovered in the car of John Barton. See Stier Report, App. C, Booker, pp. 11-19. In addition, Booker reported that Wenger made statements to the effect that King had written a memo which would affirm his safety allegations and that, although the memo was missing from King's file, she had retained a copy at her home and the company would be in "big trouble" if they fired King. Wenger reportedly used coarse language which shocked Booker. Id., Barton, p. 88. He went immediately to Barton's office and reported the matter. Barton advised him to memorialize the incident, which he did. Id. App. B., Tab 276.

Later that day, Wenger was summoned to Barton's office where she was interrogated by three members of GPU management: Joseph Chwastyk, Manager of Operations of TMI-2; Stephen Babczak, Human Resources; and Barton. Wenger was not confronted by Booker, nor was she advised of her right to have someone accompany her during the interrogation. When questioned about her purported statement to Booker, Wenger indicated that she was not to be taken seriously with regard to the Arnold's bank account or the statement about "drug dogs". The statement about Arnold's Swiss account was a "standing joke", and Wenger said that she and King had frequently discussed guard dogs being brought on the site for the purpose of locating illicit drugs, and they had questioned the utility of this approach, since most TMI employees were aware that the dogs would be on site. Wenger further stated that she did not have any company documents in her home, but that she did have a copy of a memo which King had indicated was sensitive, the memo was on file in her office. Barton accepted Wenger's account and decided not to take action against her, but he was later instructed by Terry L. Myers, Human Resources Director, to suspend Wenger. Myers' instructions had come from Arnold. See Stier Report, App. C, Booker, pp. 14, 15; Barton, p. 93; Myers, p. 22. Later that same day, Wenger was suspended.

Subsequent to her suspension, Wenger was subjected to two more interrogations. On each occasion, Wenger was confronted by multiple interrogators, although she was never advised of her right to have someone accompany her during the interrogations. At no time during this sequence of events was Wenger confronted by Booker, nor was she allowed to review the Booker memo. On each occasion Wenger repeated her explanation of the incident with little variation. During each of these interrogations, Wenger was reduced to tears. Id., Booker, p. 26; Troebliker, pp. 31, 32.

Arnold claimed that the King and Wenger firings occurring on the same day was coincidence and they were unrelated. Id., Arnold, p. 90. However, Myers said that he (Myers) was bothered by Wenger's association with King because the King situation was related to safety items and she had a "... close emotional boss-employee relationship with King. We essentially felt it was better to remove her from the environment." When asked for whom it would be better, GPU or Wenger, Myers responded it would be better for both; it would be better for the company "simply because King's files were to be locked up. I'm sure she had access to those files. I think it possibly could have impaired any fair investigation if she in effect was enticed or felt that she had to get information out of his files for Mr. King." Id., Myers, p. 22. Myers made no comment as to the benefits he expected Wenger would realize from her suspension.

When asked if Arnold routinely became involved with the firing of secretaries, Myers said, "We kept Mr. Arnold as up to date as we could in regard to Miss Wenger simply because of her association with Mr. King, her potential association with the King case and the fact that Bob was personally involved with the Mr. King situation." Id. p. 32. Obviously, Arnold's assertion that the Wenger and King firings were not related is not true. In fact, Myers further stated: "I was still at that time relying on what decision may be made in the King case before I felt any determination could be finalized as far as Miss Wenger was concerned." Id., Myers, p. 29.

One of Stephen Babczak's responsibilities in his position with Human Resources was to make referrals to Stress Control, and on March 4, 1983, he contacted Stress Control to arrange an appointment for Wenger. Although she had initially agreed to meet with Dr. Jenkins of Stress Control, Wenger later declined to keep the appointment and wrote to Babczak informing him of her decision. See Stier Report, App. B, Tab 281. Babczak later stated that he should have insisted that Wenger keep the appointment, he felt that it was perfectly acceptable to use company authority to induce Wenger to meet with Jenkins. When questioned as to what he thought Jenkins was supposed to do with the information that he received from Wenger, Babczak replied:

"Well, it was my understanding that he was supposed to just collect that information and, of course, report to GPU if there was any thoughts that he had or opinions as far as whether or not it was affecting her, so we could make a decision whether or not it was convenient for us to keep her suspended for a period of time or if any allegations were true or there was any aspects that we felt she should be terminated."

Id., App. C, Babczak, pp. 22-26.

James Troebliker, Area Manager of Human Resources at TMI, feels that if an employee is directed by the company to go to Stress Control, then confidentiality does not attach to any disclosures that employee might make. He also felt that had Wenger gone to Stress Control, that the information developed during the session would have been communicated to GPU, he said:

"Again, there is no written policy but our practice has been when we refer an employee to Stress Control, that they do interface back with the company and what the employee problems are."

Id., Troebliker, p. 47.

Troebliker was able to recall a recent incident in which an employee maintained his status at TMI while receiving counseling from Stress Control and Stress Control provided information to the company about the employee's progress. Id., p. 49.

Wenger's employment was terminated on March 23, 1983. The stated reason for the termination was "lack of trustworthiness and inconsistencies in a management investigation." Several on site management personnel including Barton, disagreed with the decision to fire her. On March 25, GPU filed a Job Separation Summary with the Pennsylvania Bureau of Employment in which the reason for Wenger's termination were restated. As a result, Wenger was unable to claim benefits. Wenger filed a complaint with DOL and as a result of negotiations has since been reinstated in a different department at TMI. Id., App. B, Tab 277.

G. The Improper Relationship Between GPU and Stress Control.

In addition to the deliberate harassment of "whistle blowers", the various investigations revealed an improper relationship which exists between GPU and their contractor, Stress Control. Despite the denial of GPU Management and Stress Control personnel, testimony of GPU Human Resources personnel clearly indicates that Stress Control routinely violates the confidentiality of clients referred to them by GPU, and GPU personnel who become their clients through self referral, by making the company aware of the substance of disclosures made during counseling sessions. See Stier Report, App. C, Babczak, pp. 22, 25; Troebliker, pp. 47,49; Arnold, p. 83.

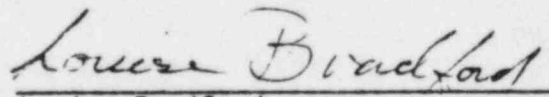
Conclusion

The safety violations identified by the "whistle blowers" and the subsequent harassment are the clearest demonstration since the accident, of the nexus between GPU's lack of competence and their lack of integrity. The safety violations occurred; they were substantiated by the OI investigation. The harassment of the employees who refused to remain silent did occur. Management at the highest levels including members of the so-called "new organization" were directly responsible for the harassment. Furthermore, GPU consistently suppressed the voices of concerned employees in a systematic fashion, persuading their contractor, Stress Control, to violate the ethics of their own profession by pretending to establish a confidential relationship with GPU employees who became their clients where in reality, they were little more than company spies.

As stated above, the NRC and the public rely upon individual license holders to report safety violations. The ability to do so is vital to the regulatory process. The action which GPU took against the "whistle blowers" were widely known at TMI even before the "whistle blowers" made their concerns public. By these actions, GPU has created an atmosphere of fear and intimidation making individual disclosures of safety violations impossible. Current GPU employees have been made aware that if they report safety violations they will be subjected to harassment and eventual loss of livelihood.

Respectfully submitted,

THREE MILE ISLAND ALERT, INC.


Louise Bradford

September 17, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'84 SEP 19 10:57

BRANCH

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

Docket No. 50-289
(Restart)

CERTIFICATE OF SERVICE

I hereby certify that copies of "TMI's MOTION TO REOPEN THE RECORD OF CLEAN UP ALLEGATIONS" have been served on the following persons by deposit in the United States mail, first class postage prepaid, this 17th day of September 1984, except as indicated by an asterisk.

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