

404

DOCKETED February 4, 1985
USNRC

FEB -5 10:02

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE ADMINISTRATIVE LAW JUDGE IVAN SMITH

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

Docket No. 50-289
(Restart)

SP

LICENSEE'S MOTION TO STRIKE UCS' REPLY
TO LICENSEE AND STAFF RESPONSES TO
DISQUALIFICATION MOTIONS

On January 31, 1985, Union of Concerned Scientists (UCS) moved for leave to file a reply to the Licensee and Staff responses to the disqualification motions filed by UCS, the Commonwealth of Pennsylvania and TMIA.^{1/} Simultaneously with its

1/ The asserted purpose of the UCS reply is "to assure that the record is complete with respect to the extrajudicial nature of the disqualifying actions taken by Judge Smith." In fact the UCS reply ignores sources for Judge Smith's information both about the conviction of Mr. Floyd and the treatment of G and H. As to Mr. Floyd the Licensing Board was informed of his indictment by Licensee's Notice dated June 19, 1984. His conviction in a Federal District Court

(Continued next page)

8502050735 850204
PDR ADOCK 05000289
G PDR

DSO 3

motion for leave to file a reply, UCS also filed its reply to the Licensee and Staff responses. For the reasons discussed below, leave to file the reply should be denied, and the reply itself should be stricken from the record.

The Commission's rules of practice governing the type of reply filed by UCS are clear. UCS does not have a right to file a reply to answers to their motions; such a reply may only be made upon prior application for and the granting of leave to file by the presiding body. See 10 C.F.R. 2.730(c); Detroit Edison Company (Enrico Fermi Atomic Plant, Unit 2), ALAB-469, 7 N.R.C. 470, 471 (1978); Arizona Public Service Company, et al. (Palo Verde Nuclear Generating Station, Units 1 and 3), LBP-83-36, 18 N.R.C. 45, 50 (1983). Leave to file a reply "will be granted sparingly," and then only upon a strong showing of good cause". Texas Utilities Generating Company, et al. (Comanche Peak Steam Electric Station, Units 1 and 2),

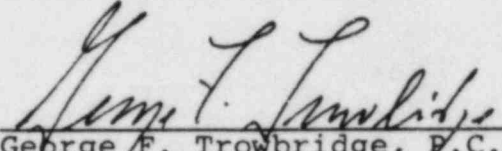
(Continued)

is a matter of which Judge Smith was clearly entitled to take judicial notice. 10 C.F.R. 2.743(i). It was not in any event the kind of personal knowledge acquired outside the proceeding which might form a basis for disqualification on grounds of bias or prejudice. As to G and H, Judge Smith was served with copies of Licensee's Notices of October 7, 1982 and June 10, 1983, regarding Messrs. G and H's status, as well as a copy of a related Stipulation between Licensee and the Commonwealth dated July 6, 1983. See also ALAB-772, 19 N.R.C. 1193, 1212-13 (1984). Receipt of officially served documents does not constitute an extrajudicial source.

LBP-81-22, 14 N.R.C. 150, 157 (1981); Commonwealth Edison Company (Byron Station, Units 1 and 2), LBP-81-30A, 14 N.R.C. 364, 372 (1981). If a motion for leave to file a reply brief is made, "the reply brief should not be attached to the motion but should only be submitted after permission to file is granted." Public Service Company of Oklahoma Associated Electric Cooperative, Inc. (Black Fox Station, Units 1 & 2), LBP-76-38, 4 N.R.C. 435, 441 (1976). UCS has failed to meet these standards.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE



George F. Trowbridge, P.C.
Ernest L. Blake, Jr., P.C.
Counsel for Licensee

Dated: February 4, 1985

February 4, 1985

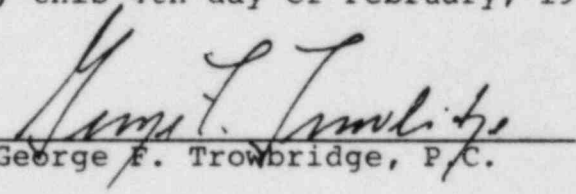
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE ADMINISTRATIVE LAW JUDGE IVAN SMITH

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Motion to Strike UCS' Reply to Licensee and Staff Responses to Disqualification Motions," dated February 4, 1985, were served upon those persons on the attached Service List by deposit in the United States mail, postage prepaid, or where indicated by an asterisk (*), by hand delivery, this 4th day of February, 1985.


George F. Trowbridge, P.C.

Dated: February 4, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE ADMINISTRATIVE LAW JUDGE IVAN SMITH

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

SERVICE LIST

Nunzio J. Palladino, Chairman U.S. Nuclear Regulatory Commission Washington, D.C. 20555	*Administrative Judge Gustave A. Linenberger, Jr. Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555
Thomas M. Roberts, Commissioner U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Administrative Judge Gary J. Edles Chairman, Atomic Safety and Licensing Appeal Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555
James K. Asselstine, Commissioner U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Administrative Judge John H. Buck Atomic Safety and Licensing Appeal Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555
Frederick Bernthal, Commissioner U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Administrative Judge Christine N. Kohl Atomic Safety and Licensing Appeal Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555
Lando W. Zeck, Jr., Commissioner U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Docketing and Service Section (3) Office of the Secretary U.S. Nuclear Regulatory Commission Washington, D.C. 20555
* Administrative Judge Ivan W. Smith Chairman, Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555	
* Administrative Judge Sheldon J. Wolfe Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555	

SERVICE LIST
PAGE 2

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Appeal Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

*Jack R. Goldberg, Esquire
Office of Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

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

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

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

Mr. and Mrs. Norman Aamodt
R. D. 5
Coatesville, PA. 19320

Mrs. Louise Bradford
TMI ALERT
1011 Green Street
Harrisburg, PA. 17102

Joanne Doroshow, Esquire
The Christic Institute
1324 North Capitol Street
Washington, D.C. 20002

Lynne Bernabei, Esquire
Government Accountability
Project
1555 Connecticut Avenue
Washington, D.C. 20036

Ellyn R. Weiss, Esquire
Harmon, Weiss & Jordan
2001 S Street, N.W., #430
Washington, D.C. 20009

William T. Russell
Deputy Director, Division of
Human Factors Safety
Office of NRR
Mail Stop AR 5200
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555