

656

SHAW, PITTMAN, POTTS & TROWBRIDGE

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

1800 M STREET, N. W.
WASHINGTON, D. C. 20036

October 22, 1984

TELEX
89-2693 (SHAWLAW WSH)
CABLE "SHAWLAW"

TELEPHONE
(202) 822-1000
WRITER'S DIRECT DIAL NUMBER

(202) 822-1084

TELECOPIER
(202) 822-1099 & 822-1199

RAPIFAX 100
(202) 822-1072

Lynne Bernabei, Esq.
Government Accountability
Project
1555 Connecticut Avenue, N.W.
Washington, D.C. 20036

In the Matter of
Metropolitan Edison Company
(Three Mile Island Nuclear Station, Unit 1)
Docket No. 50-289 *SP*

Dear Lynne:

This is in response to your letter of October 16, 1984. I am compelled to observe at the outset that its tone (e.g. your willingness to jump to conclusions and to use terms like "deliberate circumvention", "bad faith" and "deliberately withheld") severely tests Licensee's capability to follow the Board's direction to the parties to apply a spirit of cooperation and to minimize disputes.

Some review of the general background here is in order. TMIA and Licensee are preparing for hearing on the Dieckamp mailgram issue which the Appeal Board characterized as a "relatively narrow issue." In response to TMIA's discovery on this relatively narrow issue, Licensee has produced tens of thousands of pages of documents and attended almost 30 depositions of its employees and ex-employees. After first being produced in Harrisburg, the many documents were transported to and made available in D.C. to accommodate TMIA not only during normal work hours, but as well at night and on weekends. In contrast, Licensee's lone request for a copy of TMIA documents was made initially on October 2 and still is not fulfilled although it involved only six documents.

I am particularly disturbed by your suggestion that one of Shaw, Pittman's paralegals, Ms. DeBow, deliberately withheld a document you allegedly requested on October 8, 1984. I have

Letter to Lynne Bernabei, Esq.

October 22, 1984

Page 2

reviewed the circumstances and discussed this with Ms. DeBow. I am convinced your charges are misplaced and inappropriate. My experience over some years with Ms. DeBow leads me to regard her as conscientious and dependable and not given to the type of behavior you would attribute to her.

Some background on your specific allegation concerning Ms. DeBow's actions is appropriate. On Friday afternoon, October 5, following the last deposition that week in Harrisburg, you requested of me that Licensee's Discovery Room be made available to you on Monday, October 8. I noted that because Monday was a federal holiday which our firm observed, I did not know whether I could at that late date get someone familiar with the documents to come into the office to meet your request. I agreed, however, to try and because it was a holiday sought specifically both the length of time you wanted someone available and the time. Your responses were "a couple of hours" and "from 12 to 2". Since the place where TMIA holds its depositions does not have a phone I was allowed to use, I stopped in Harrisburg at a public phone on my way back to D.C. and called Mr. Lewis in my office to see if arrangements could be made to accommodate you.

In fact, Mr. Lewis did locate a person to come into the office on that Monday and the person was available from 12 to 2. Your office was notified by Mr. Lewis. On Monday, we never heard from you during this period. Our records reflect you first called and spoke with our receptionist just before 2:30, at which time the person who had been available was no longer so. There ensued several conversations involving you, our receptionist and Ms. DeBow at her home. Confronted with your threat that if documents weren't made available that day, the deposition schedule couldn't be maintained (and, thus, to Ms. DeBow the hearing schedule was in doubt), Ms. DeBow elected to leave home and come to the office to accommodate you for what you represented would take only about 20 minutes. During the ensuing more than two hours that Ms. DeBow subsequently spent answering your document requests, she provided you with thousands of pages of documents, more than two thousand of which were copied at your further request and provided the next day.

Your specific charge is that Ms. DeBow deliberately withheld an interview of Mr. Abramovici despite your request that day. Attached are copies of three documents. The first is your request handed to Ms. DeBow on October 8 for documents you desired to review. You will note the only request involving Mr. Abramovici is for his questionnaire, which

Letter to Lynne Bernabei, Esq.
October 22, 1984
Page 3

apparently was provided. (The words "Brahma Bee" and "Abramovici" which appear at the bottom of the second page I am informed were jotted down sometime well after October 8 (probably October 16) when Mr. John Wilson's office in New Jersey inquired of Ms. DeBow whether the set of Discovery Room documents included an Abramovici interview. The second attached document is Ms. DeBow's notes of additional documents you requested be produced on October 8. The third document is the Document Request Form completed for your copying request that day. Neither of these latter two documents refer to an Abramovici interview. Based on my experience and recent discussions with Ms. DeBow and my review of the enclosed documents, I believe you are wrong and I personally would appreciate your reconsidering the charge and apologizing to Ms. DeBow.

As to Licensee's inquiry regarding additional documents relevant to the Dieckamp mailgram issue, I give up. My best attempts to understand your answers and resolve the questions are characterized by you as misstatements. Further exchanges would not appear to be fruitful.

As to your comments on Licensee's responses to TMIA's fourth set of discovery, Licensee's Third Supplemental Response to TMIA's First Set and Licensee's response to your fifth set, I note initially my disappointment that our attempts to iron out differences on the fourth set failed and have received your motion to compel. We will respond either by further attempts to resolve the differences informally, or by written answer. We are compiling additional information on the third supplemental response as we agreed to do the night of October 16, and presumably that matter is closed. We have not discussed at all the fifth set responses but we are prepared to do so as soon as you are ready.

The remaining items in your letter requiring response concern matters which arose during the Lentz and Abramovici depositions on October 15 in Harrisburg. Because I was not at these depositions, I have asked Mr. Wilson, who did attend them, to respond to your comments. His response follows.

"Mr. Lentz, in response to the GPU Nuclear questionnaire, indicated that he did have documents. I contacted Mr. Lentz on August 31, 1984, and after a discussion with Mr. Lentz about those documents, Mr. Lentz stated that he would forward all his material for me to review as to being responsive to the document discovery request of TMIA. Upon receipt of the documents, I removed them from

Letter to Lynne Bernabei, Esq.

October 22, 1984

Page 4

their mailer and tagged for reproduction those documents which were responsive to the discovery request (containment spray actuation, pressure spike, and generation and subsequent combustion of hydrogen). A copy of the responsive documents were provided in Licensee's initial production of documents in the Discovery Room. Meanwhile, Mr. Lentz's documents were kept intact in their original mailer. During the week of October 8, in anticipation of returning the documents to Mr. Lentz, I had two additional copies of all the documents reproduced for the retention of the material as sent. Those documents not produced in discovery were clearly not discoverable under the document request and protective order. On October 14, I returned to Mr. Lentz his original package of documents. Mr. Lentz's deposition transcript will state how Mr. Lentz characterized delivery of those documents to the company. Ms. Bernabei's representation that I indicated that I would produce the Lentz notes from March 28, 1979 during the deposition is an absolute misrepresentation. On the contrary, I simply offered a copy of those notes to Ms. Bernabei as a professional courtesy since she did not want to mark Mr. Lentz's original notes.

"In response to the GPU Nuclear questionnaire, Mr. Abramovici indicated that he did not have any documents and therefore no follow-up was made with him. Further, Mr. Abramovici did not state during his deposition that his notes may indicate that he was told about 2500° temperatures and actuation of containment spray on March 28, although he did state that his recollection was that he had heard incore thermocouple readings were high and that the source of such information was either Mr. Bensel or Mr. Kunder, but most likely Mr. Bensel. Regarding containment spray, Mr. Abramovici also stated during the deposition that he heard about it early on. There was no indication from the notes that Mr. Abramovici showed to me prior to the deposition (which consisted only of his notes from March 28, 1979) that the notes contained any information which was the subject of document discovery. Copies of Mr. Abramovici's notes for the 28th and 29th have been obtained and it is noted that on the top of one page, which bears the number 3 in a circle, there is a mention of 'H2 concentration unknown'.

"I do not know what request Ms. Bernabei has made for an Abramovici interview from the Discovery Room. However, on October 16, 1984, a paralegal from my firm, Janet

SHAW, PITTMAN, POTTS & TROWBRIDGE

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

Letter to Lynne Bernabei, Esq.

October 22, 1984

Page 5

Gingrich, confirmed that his interview was in the Discovery Room. Ms. Bernabei's characterization that I denied on the record that GPU had failed to produce the interview again is a misrepresentation and the transcript will speak for itself."

In response to your further request, a copy of Mr. Abramovici's notes of March 28 and 29 are being made available in the Discovery Room.

I close with the sincerest of requests that the name-calling and charges cease and that we try hard to reduce the time needed to be expended on exchanges such as this, and that we get on responsibly with the hearing process.

Sincerely,

Ernest L. Blake, Jr.

Ernest L. Blake, Jr. P.C.
Counsel for Licensee

cc: Service List

ATTACHMENT I

Copying request

Questionnaires

00006

G. Light + Light ✓

J. Hunt Lawton ✓

Dale Lauderdale ✓

Charles Rippon ✓

00129 Douglas Spate, II ✓

Daryl Wilt ✓

00164 J. ~~Abram~~ Abramovic ✓

00166 Richard Lantz Lantz ✓

00171 Ed Wallace ✓

Thomas Crimmins, J ✓

00174 R. Wong Wong ✓

J.A. Fischer ✓

00179 M. Morrell ✓

201 R.W. Kestel ✓

~~Carl Brackke~~

~~W.F. Sch~~

~~R.~~ V.P. Oriundi ✓

L. Bernabici
copied 10/9/84

total
1838

Box 2 - Donald Berry
later questionnaires - Margaret Pelem

Dreckamp - Kemery (late Aug '79)
- have ^{any other} 816 + 0760
at '79 Oct '80

- J. Moore - #306 ¹⁰⁴
- R. Arnold - #192 } only ~~one~~ need
is ~~an~~ interview - March - May '70
- G. Broughton - #304, 305 only June 11, 1979
- Bensel - #156, 157
- Gary Capodanno - #296
- Donald Craneberger - #293
- Joseph De mah - #70, 71, 72, 97
ME-13

all others except
Mlet-Ed Wrenn - 3/29 or
3/30/79

Juanita Gingrich - check out 13 DRL
#145, ME-6, 245
Flare 5/22/79

Beverly Cood, #103, 164 only May 7, 1979

Sp. John Hilbrish - #286

~~Pete + Kate + Kanton~~ #297

George Lehman - #294

Richard ~~Went~~ Lantz - 298 other than 6/1/79 DRL

Margaret Pelen - #114 #115

John Thorge - #290 - nothing

Richard Wilson - #292

Lynn Wright #179

W Creitz DRL
Instrument no 6 → C. Yaege

717 948 8712

Wretta
263-6635

Brahma Bee
Abramavici

ATTACHMENT 2

copied 10/9/84
203 pages

- ① TmIA (1st set)
D-6 Lentz (9/17/84) supp.
- ② TmIA (1st set) D-6 Diekmann 9/28/84 supp
- ③ TmIA (1st) D-6 (10),
D-6 (HD-29)
D-6 (HD-30)
D-6 (HD-39)
D-6 Brawn (1)

D-10 (1)
(3)
(4)
(5)
(6)
- ④ TmIA 1st I -12
- ⑤ Questionnaires 10/2/84 (supp)
- ⑥ Questionnaires Supp 9/28/84 (supp).
copy only 00384
9/25/84 (supp) - copy 9/14/84 Thorpe to Hahn/t.
9/19/84 supp - entire file
9/21/84 supp - 0078 Kenneth A Lebo
- ⑦ TmIA 1st Doc #1
D-1 (6)
D-1 (8)
D-1 (10)
D-1 (15)
D-1 (17)

ATTACHMENT 3

Re: TMI DISCOVERY ROOM
 Remanded

Hand is of
 10/8/84

DOCUMENT REPRODUCTION REQUEST

DOCUMENT NO.	TYPE COPY (Check one)		TOTAL PAGES	COPIES PER PAGE	TOTAL COPIES	COST COPY	TOTAL COST
	XEROX	MICROFILM TO PAPER					
First Set I-12	X						
First Set D-10(1)	Y						
D-10(3)	X						
D-10(4)	X						
D-10(5)	Y						
D-10(6)	Y						
1st Set D-1(6)	X						
D-1(8)	Y						
D-1(10)	X						
D-1(15)	X						
D-1(16)	X						
D-1(17)	X						
D-1(18)	X						

Received \$ _____ By _____

Signed G. B. Benu
 Date 10/8/84
 Mailing Address GAI
1550
1st Ave

Re: TMI DISCOVERY ROOM
 Remanded

DOCUMENT REPRODUCTION REQUEST

DOCUMENT NO.	TYPE COPY (Check one)			TOTAL PAGES	COPIES PER PAGE	TOTAL COPIES	COST COPY	TOTAL COST
	XEROX	MICROFILM TO PAPER	OTHER					
First set D-6 (HID-10)	X							
D-6 (HID-29)	X							
D-6 (HID-30)	Y							
D-6 (HID-39)	Y							
TMA (First set) D-6								
Diagrams 9/22/84								
D-6 next 2 (revised 9/17/84)	X							
D-6 (1), (2), (3), (4), (5)								

Received \$ _____ By _____

Signed W. J. D. ...
 Date 10/8/84
 Mailing Address GAP
555 ...

Re: TMI DISCOVERY ROOM
 Remanded

DOCUMENT REPRODUCTION REQUEST

DOCUMENT NO.	TYPE COPY (Check one)		TOTAL PAGES	COPIES PER PAGE	TOTAL COPIES	COST COPY	TOTAL COST
	XEROX	MICROFILM TO PAPER					
Questionnaire with Brenneisen (rec'd 4/15/84) (entire folder)	X						
Questionnaire placed in Bureau's file 9/21/84 (P. 8) Please the Bureau	X						
Questionnaires placed in PIC on 9/25 - Hahn letter of 9/14/84	X						
Questionnaire placed in PR on 9/26/84 OO 384 - F. S. order							

Signed by the PIC
 Date 10/8/84
 Mailing Address GAP

Received \$ By

