

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

AFFIDAVIT OF COUNSEL

I, Lynne Bernabei, being duly sworn, do depose and say:

L. I am an attorney for the Government Accountability Project ("GAP") and represent intervenor Three Mile Island Alert ("TMIA") in the above captioned proceedings.

I have prepared this affidavit to correct what I consider significant misrepresentations about a conversation I held on October 11, 1984 with Dr. Edwin Zebrowski, in Licensee's Motion to Quash Subpoena of Edwin Zebrowski.

I have reconstructed our conversation which I describe below from notes I maintained of the conversation and memory.

2. On the morning of October 11, 1984, I was first notified by General Public Utilities ("GPU") of its intention to call two additional witnesses on the "Dieckamp mailgram" issue. I learned of these two witnesses by means of a pleading mailed to me the prior week. (I have previously informed Mr. Blake in the early part of the week of October 8, 1984, that TMIA intended to call Dr. Gilinsky as a witness prior to TMIA's sending out a supplemental response to licensee's discovery requests. At no time did Mr. Blake or any

other GPU counsel inform me prior to October 11, however, that GPU intended to call two additional witnesses. Mr. Blake did not so inform me even though he knew that I would be in Harrisburg, along with Ms. Bradford and Ms. Doroshow for depositions in this proceeding on October 10, 1984. In addition, Mr. Blake was aware that the prior Monday was a federal holiday and that mail would not be delivered.)

3. At the time of receiving notification of these two additional witnesses I called Mr. Blake to ask whether Dr. Zebrowski or Mr. VanWhitbeck would be available in Washington for a deposition at any time prior to the time of their intended testimony and for their addresses and phone numbers. Mr. Blake said he did not know about their availability but that he would provide me with the witnesses' addresses and telephone numbers. (Mr. Blake, to this day, has not provided me any information about either witness' availability for a deposition on the East Coast.)

4. Although we spoke several other times throughout that morning and early afternoon Mr. Blake did not give me the addresses or phone numbers during these conversations but indicated he would "work on it" later in the afternoon.

Mr. Blake at no time told me that either Dr. Zebrowski or Mr. VanWhitbeck was represented by counsel or that he represented either witness. In fact, in a later conversation on Friday, October 12, Mr. Blake, in response to a direct question from me as to whether he represented Dr. Zebrowski, said that he did not.

5. At about 2:00 p.m., after receiving no response from Mr. Blake, I called Dr. Zebrowski at his EPRI office in Palo Alto, California. Upon reaching Dr. Zebrowski I identified myself as "Lynne Bernabei, the attorney for one of the intervenors in the Three Mile Island restart licensing hearings." I had previously met Dr. Zebrowski at a conference conducted by the Office of Technology Assessment and knew him to be familiar with the nuclear industry and presumably with NRC licensing hearings, in particular the TMI restart hearings.

6. After identifying myself to Dr. Zebrowski, I told him that since he had been proposed as a witness by GPU I wished to know his availability in Washington or on the East Coast for a deposition at some time prior to the start of the hearing, scheduled for November 15.

Dr. Zebrowski said at first that he intended to come to Washington on Sunday, November 11, but that he did not want to predict when he would be available. He suggested that we leave his deposition "on a basis to be determined as the opportunity arose."

7. I told Dr. Zebrowski that given the tight timetable for discovery that was not possible. I inquired once again of his availability at any time prior to the time of his intended testimony.

He indicated he would be involved in business meetings unrelated to the TMI proceeding on November 12 through November 14, but currently had no "obligations" on Tuesday evening, November 13.

8. Dr. Zebrowski then stated to me that his testimony was very limited. He further stated he had not wanted to testify and only agreed to do so after considerable effort on the part of the "lawyers."

Dr. Zebrowski went to state that he did not think the question before the Licensing Board was a legal question and repeated that he only reluctantly had agreed to participate in these hearings.

9. I assured Dr. Zebrowski that I had no intention of burdening him unnecessarily but that the parties to the TMI restart hearings had a right to discovery concerning his testimony after GPU had stated its intention to call him as a witness.

10. Dr. Zebrowski at that point asked me what my group's sources of funding were. I informed him that neither GAP nor TMIA were government funded organizations and that I believed his questions concerning our funding were inappropriate.

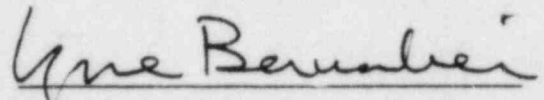
11. I then attempted to steer the conversation back to the subject at hand, his availability for a deposition. I asked him about the time he would be free of his meetings on Tuesday, November 13, and he told me that he was "currently" free in the 7:30 p.m. time frame.

12. Dr. Zebrowski then requested that I spell for him my name, which I did. He asked me for the names of others associated with TMIA. I gave him the names of Ms. Doroshov and Ms. Bradford. He asked me if these names would be familiar to "Blake" of "Potts or Trowbridge." I said that all

three of us were well known to Mr. Blake. I also reminded him that I had contacted him, as I stated at the beginning of the conversation, as an attorney of record for TMIA in the TMI restart hearings. I repeated that Mr. Blake was familiar with TMIA's desire and right to take his deposition.

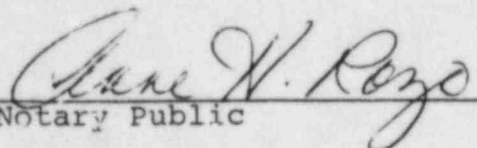
13. After completing my conversation with Dr. Zebrowski I completed an application for a subpoena and subpoena duces tecum for Dr. Zebrowski to appear for a deposition and to produce documents.

14. I informed Mr. Blake on Friday, October 12, that I had applied for, and that Judge Smith had signed, a subpoena for Dr. Zebrowski. Mr. Blake told me at that time that he was not representing Dr. Zebrowski.


Lynne Bernabei
Counsel for TMI Alert

District of Columbia) ss

Subscribed and sworn to before me
October 19, 1984


Notary Public

Commission Expires: ~~My~~ Commission expires June 14, 1985