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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY  
DOCKETING & SERVICE

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

LICENSEE'S RESPONSE TO TMIA'S MOTION  
TO PERMIT TMIA PARTICIPATION IN  
INTERVIEWS ON UNIT 2 LEAK RATE FALSIFICATION

On October 22, 1984, Intervenor Three Mile Island Alert ("TMIA") filed a Motion to Permit TMIA Participation in Licensee Interviews on Unit 2 Leak Rate Falsification. Licensee respectfully urges that TMIA's Motion be denied.

In its Memorandum and Order of September 19, 1984, this Licensing Board requested that the parties participate in informal voluntary discovery on the leak rate issues pending a formal discovery period to commence immediately following the proposed findings on the Dieckamp Mailgram and training issues. By letter of October 8, 1984, TMIA requested that Licensee produce documents relating to leak rate testing at both TMI-1 and TMI-2. TMIA also requested that it be kept apprised of all interviews intended to be conducted by Edwin Stier as part of his TMI-2 leak rate investigation and that TMIA "be permitted to participate and ask questions at the interviews." In its letter, TMIA properly characterized the Licensing Board's Order as

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"encourag[ing] [the parties] to begin informal discovery." By letter of October 11, 1984, Licensee, through counsel, responded to TMIA's requests, stating that a large number of documents responsive to TMIA's informal request were being collected and would be made available for TMIA's review.<sup>1/</sup> Licensee further stated that TMIA's request to participate in the Stier interviews must be denied since Mr. Stier felt strongly that to allow outside participation would compromise the independence and effectiveness of his investigation.

As this Licensing Board is well aware, GPU Nuclear retained Edwin H. Stier<sup>2/</sup> to conduct investigations into leak rate testing at TMI-1 and TMI-2. Mr. Stier was given complete independence to conduct these investigations as he saw fit. He was given "full access to all company records and personnel" and all "decisions on methods, approach and structure of the investigation and findings thereof [were to be his] own." See P. Clark to E. Stier letter of February 1, 1984, attached.<sup>3/</sup>

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- <sup>1/</sup> Thousands of documents responsive to the TMIA informal request are now being gathered and Licensee expects these to be made available to TMIA for its review in early November.
- <sup>2/</sup> Mr. Stier left his former law firm, Kirsten, Friedman & Cherin, on October 1, 1984. He is now in practice by himself, but Mr. Stier has retained the same staff to continue the leak rate investigation.
- <sup>3/</sup> In the title to its motion, TMIA has improperly characterized the TMI-2 interviews as "Licensee Interviews." The interviews are clearly "Stier Interviews," conducted as part of an independent investigation commissioned by GPU Nuclear.

Mr. Stier has completed his investigation of TMI-1 leak rate testing practices and is in the midst of the Unit 2 investigation. As part of either the TMI-1 or TMI-2 investigation, there has been no participation by outsiders or company personnel or their counsel in any interview conducted to date and no such participation is expected in the future.

However, TMLA now seeks to participate in Mr. Stier's remaining TMI-2 interviews, thereby disrupting the method and pattern already established by the completed interviews. The Stier Unit 2 investigation has been proceeding for some time. He has hired engineering consultants to assist with the technical analysis. Stier and his associates have devoted many hours of study of thousands of relevant documents and other background material concerning a very complex and difficult topic. It is only after acquiring this detailed knowledge that they are now deciding whom to interview, what questions to ask, how to conduct the interviews, in what order to conduct interviews, what format the interviews are to take, and other related issues. Mr. Stier assures us that this process must continue unhampered and unburdened by the potential presence of outsiders at interviews in order for his TMI-2 investigation to remain completely independent and thorough. See E. Stier to E. Blake letter of October 25, 1984, attached.

Mr. Stier also feels strongly that the presence and participation of third parties at any interviews could certainly

affect the cooperation of those witnesses. Any participation by witnesses with the Stier effort is, of course, completely voluntary on their part and it is imperative that nothing occur to discourage that cooperation. Were that cooperative spirit disturbed, the independence and thoroughness of the Stier investigation into TMI-2 leak rate testing might well suffer.<sup>4/</sup>

For all of the aforementioned reasons, Licensee felt compelled in its letter of October 11, 1984, to deny TMIA's informal request for participation in the Stier interviews. For the

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<sup>4/</sup> TMIA suggests that to allow its participation today in the Stier interviews might obviate the need later for additional depositions. One should note, however, that TMIA states in its Motion only that this need to take further depositions "may be eliminated" (emphasis added). Since TMIA up until this time has not had at its disposal the detailed background information available to the Stier group (including the documents now voluntarily being made available to TMIA), one would surely expect later requests for additional depositions by a better educated TMIA. Furthermore, one would hope that the Stier interviews, when made publicly available, would serve as a basis for deciding who, if anyone, needed to be further deposed, thus saving TMIA and Licensee valuable time and effort. Licensee thus would suggest that TMIA's notion that allowing it to participate in the Stier interviews now would save time is wishful thinking at best.

same reasons, Licensee now feels that TMIA's Motion to the Licensing Board to compel TMIA participation in the interviews must be denied.

Respectfully submitted,

*Ernest L. Blake, Jr.*

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**Nuclear**

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GPU Nuclear Corporation  
100 Interpace Parkway  
Parsippany, New Jersey 07054  
201 263-6500  
TELEX 136-482  
Writer's Direct Dial Number:

February 1, 1984

(201) 263-6797

Edwin H. Stier, Esquire  
Kirsten, Friedman & Cherin  
17 Academy Street  
Newark, New Jersey 07102

Dear Mr. Stier:

I am pleased that you have agreed to undertake an investigation for GPU Nuclear into the conduct of reactor coolant inventory balance measurements and responses thereto at TMI-1 and TMI-2.

With respect to TMI-2, the allegations made by Mr. Harold W. Hartman, Jr., a former employee of Metropolitan Edison Company, have been the subject of investigation by the United States Justice Department, which resulted in a Grand Jury returning an eleven-count indictment of Metropolitan Edison Company. The NRC also is investigating those allegations although it has temporarily suspended its investigation as a result of a request from the Department of Justice. TMI-1 reactor coolant inventory balance measurements are the subject matter of a current NRC investigation.

GPU Nuclear is commissioning your investigation because of its desire to:

1. Complete its understanding of what was being done relating to conduct of reactor coolant inventory balance tests and the reasons for those actions so it can assure that corrective action taken to date to preclude inadequate testing is sufficient, and
2. Fully understand the cause of any deficiencies in such activities including specifically whether they were the result of improper attitudes or inadequate performance by any of the staff.

The purpose of your investigation is to develop the fact basis to permit GPU Nuclear management to assess these two issues. In conducting your work, priority is to be given to determining and reporting first the facts applicable to equipment, procedures, and people involved in assuring safe operation of TMI-1.

Edwin H. Stier, Esquire  
Page 2  
February 1, 1984

While prior efforts by the company (such as the Faegre & Benson investigation) have provided information which has been useful, I believe that the effort you are undertaking is appropriate at this time to include consideration of information and possible sources beyond those included before.

In conducting your inquiry, you shall have full access to all company records and personnel. Within the scope defined herein, decisions on methods, approach, and structure of the investigation and findings thereof are to be your own. You are free and encouraged to contact others, including former GPU System employees no longer with GPU Nuclear, to develop your understanding.

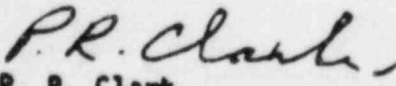
To help assure that the results of your investigation are fully available to the NRC and the public, you should advise those you contact that no attorney-client privilege attaches to your efforts and our communication.

Your investigation should be completed as expeditiously as possible consistent with developing the necessary facts, and I request you provide to me by February 28, 1984 a status report and written schedule for completion of your effort (which must include a comprehensive written report). This report will be provided to the NRC and to the Atomic Safety & Licensing Board to whom the Hartman allegations have been referred for hearing.

You will be reporting directly to me for this assignment.

The company will be notifying the NRC that it has arranged to have you proceed with this investigation.

Very truly yours,

  
P. R. Clark  
President

prk

cc: E. Blake, Esquire  
H. M. Dieckamp  
J. B. Liberman, Esquire  
J. F. Wilson, Esquire

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BRANCH

Edwin H. Stier  
Attorney-at-Law  
333 Littleton Road  
Suite 102  
Parsippany, N. J. 07054

October 25, 1984

Ernest Blake, Jr., Esq.  
Shaw, Pittman, Potts & Trowbridge  
1800 'M' Street, N. W.  
Washington, D. C. 20036

Re: TMI-2 Leak Rate Investigation

Dear Mr. Blake:

You have requested that I advise you of my views on the effect of other parties participating in interviews presently being conducted by my staff. In my judgement, the presence of parties other than members of my staff, the witnesses and their counsel is likely to seriously undermine our investigation.

I have been retained by GPU Nuclear Corporation to conduct this investigation in a manner independent of company involvement. Although I am an attorney, I have not been retained to represent GPU Nuclear Corporation. My role is similar in many ways to that of a special prosecutor conducting a grand jury investigation. In practical terms, that means I must have the final authority to determine the methods of investigation, to identify and deal with witnesses, to develop a record of the evidence, and to analyze the evidence and report on my conclusions free of external influence or interference.

Our approach has been to apply many of the same procedures and techniques that are traditionally used by law enforcement to conduct such investigations. From my experience, I know that it is critical to the success of investigations generally, and to this one in particular, that witnesses be confident that cooperation is not being sought to advocate for or against GPU Nuclear Corporation. In our interviews, we are asking witnesses to recall information from the distant past which may be detrimental to their professional futures. Therefore, reconstructing the behavior and motivations of those who were involved in the performance and supervision of leak rate tests at TMI-2 is a sensitive and difficult task.



The presence of representatives of the company or other parties to litigation involving the company will be a distracting influence and will discourage full cooperation on the part of witnesses. In my view, it may make the difference between success and failure in developing a complete and objective record.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Edwin H. Stier', with a long, sweeping horizontal flourish extending to the right.

Edwin H. Stier

EHS:cr

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Response to TMIA's Motion to Permit TMIA Participation in Interviews on Unit 2 Leak Rate Falsification" were served upon those persons on the attached Service List by deposit in the United States mail, postage prepaid, this 25th day of October, 1984, and by hand delivery upon those persons on the Service List marked by asterisks on this 25th day of October, 1984.

*Ernest L. Blake, Jr.*

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Ernest L. Blake, Jr., P.C.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

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