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RELATED CORRESPONDENCE

TMIA - 10/25/84  
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USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'84 OCT 29 P12:2

Before the Atomic Safety and Licensing Board

In the Matter of )  
 )  
METROPOLITAN EDISON COMPANY )  
 )  
(Three Mile Island Nuclear )  
Station, Unit 1 )  
\_\_\_\_\_ )

Docket No. 59-289 - SP

THREE MILE ISLAND ALERT'S RESPONSE  
TO NRC STAFF'S INTERROGATORIES TO TMIA

GENERAL OBJECTION

Three Mile Island Alert ("TMIA") objects to Instruction 2 which states that if TMIA has any question concerning the meaning or interpretation of any word or phrase contained in the NRC Staff's Interrogatories it is to contact NRC Staff Counsel for clarification. TMIA has interpreted all interrogatories in accordance with their dictionary or plain meaning.

Interrogatory No. 1(a)

TMIA counsel and David Gamble provided information upon which TMIA relied in answering these interrogatories. TMIA counsel are identified and their business addresses are listed on each pleading filed by TMIA.

Mr. Gamble's business address is P.O. Box 9290, Alexandria, Virginia, 22304-9998. Mr. Gamble is currently a Supervisory Criminal Investigator (Special Agent), Contract Fraud Division, Defense Criminal Investigative Service.

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TMIA counsel provided information for all interrogatory responses. Mr. Gamble provided information used in responses to Interrogatories 3, 4, 6, 7, 8, 9, 10, 15, 16 and 17.

Interrogatory 2

TMIA will list the documents on which it relied in answering the interrogatories in the body of each interrogatory response.

Interrogatory No. 3(a) and 3(b)

Yes.

1. The NRC Staff has applied an unduly narrow definition of material false statement. A material false statement can be an omission as well as an affirmatively false statement.

It also may be a negligent false statement. (P. 45, VII.1)

2. The NRC Staff unduly narrowed the issue from whether Mr. Dieckamp's mailgram constituted a reporting failure to the question of whether or not it constituted a material false statement. Ibid.

3. The NRC Staff wrongfully concluded that the Dieckamp Mailgram, because it was not made in a license application and was not a statement of fact required under Section 182 of the Atomic Energy Act was not a material false statement. Id.; May 21, 1979 Interior Committee Questions for NRC Commissioners With Commissioners' Individual Responses, Kennedy Answer 1 (Page 5) and Dieckamp Mailgram to Kennedy, Accident at the Three Mile Island Nuclear Powerplant, Oversight Hearings, Subcommittee on Energy and the Environment, Committee on Interior and Insular Affairs, Part II, at 190-191.

4. The NRC Staff did not determine whether or not the Dieckamp Mailgram contained false statements, and if so, whether those false statements constituted material false statements. Id.; See generally evidence cited below regarding site personnel's interpretation of spike in terms of hydrogen production and core damage. In addition, TMIA counsel's discussion with NRC investigators T. Harpster and J. Craig on August 30, 1984, casts doubt on the basis for the NRC Staff's conclusions as stated in NUREG-0760.

5. "None of the conflicts (in testimony) examined were the result of lying." Gamble to Moseley Memorandum, Jan. 26, 1981; Majority Staff of Committee on Interior and Insular Affairs Report, Reporting of Information Concerning the Accident at Three Mile Island, March, 1981 ("Udall Report"); Depositions taken by TMIA in the course of discovery of Mehler, Chwastyk, Illjes, Porter, Yeager, Lentz, Moore, Abramovici, Bensel, Ross, Miller, Kunder, McGovern, Marshall, Faust, Herbein, Arnold, Dieckamp and Broughton.

6. P. 10-11, conclusions 2, 3, 5, 6, and 8. Ibid.

7. P. 19, lines 1 and 2: "...the significance of super-heated steam was not understood on March 28 1979 by the people on site." Udall Report at 22-38; Depositions cited above.

8. P. 23, first full paragraph, lines 1-6: "...It was not until late the next evening of Thursday, March 29, 1979, that the significance of the containment pressure spike was generally known, and it was not until early in the morning of Friday, March 30, 1979, that the Station Manager was aware the pressure

spike had been real. The investigators believe that, because the pressure spike was not generally recognized as being "real" on March 28, 1979, it was generally ignored." All depositions cited above; Questionnaires of M. Pelen, J. DeMan, Lorraine Beeman, J.K. Lionarons, D. Smith; D. Zeiter; A.P. Rochino, R. Benner, R. Boyer, G. Cvijic, D. Kemble, T. Mulleavy, R. Natale, D. Reich, T. Riggensbach, J. Gingrich, M. Joyce, E. Hahn, and C. Conrad; Depositions of Rochino, Mulleavy, Reich, Conrad, Gingrich, DeMan, and Boyer; Blake Deposition acknowledging inconsistency of witnesses' testimony; Exhibits attached to Rochino Deposition; Keaten Notes; Alarm Printout; NSAC Analysis of TMI-2 Accident; TMI-2 Training Materials on Accident; Marshall Notes of Interview, March 29, 1979; Prior Interviews of all individuals cited above as well as all interviews cited in the Dieckamp Mailgram Stipulation; Crimmins Questionnaire.

9. P. 23, first full paragraph, last seven lines: "(two shift supervisors) have testified that they thought the spike was real; however, the investigators conclude that (they) did not explain or discuss this belief with their supervisors on March 28, 1979. They appear to have directed their attention away from the spike to other plant activities after a brief time period...."; p. 27, last line, to 28, line 4: "...Chwastyk did not direct that the integrity of the containment (known to contain substantial amounts of radioactivity) be checked on March 28, 1979...Miller did not give Chwastyk permission to establish a bubble in the pressurizer before he (Miller) returned from briefing the Lt. Governor..."; Udall Report at

66-88; Leland Rogers' Statement of 3/28/79 Unit II Transient, June 12, 1979; all Licensee responses to TMIA's Interrogatories 43 and 43 in TMIA's First Set of Interrogatories and First Request for Production to Licensee; Log of Check of Unit 2 Reactor Building taken at 2:08 p.m. on 3/28/79; Depositions of Chwastyk, Mehler, Ross, Herbein, Mulleavy, taken in the course of discovery on the Dieckamp Mailgram issue.

10. Page 24, lines 8-13: "...hydrogen was not believed to be the cause of the pressure spike...Hydrogen was not discussed on March 28, 1979." Ibid; September 17, 1980 Memorandum from E. Wallace to Arnold with attachments; Keaten Notes; Prior Chwastyk, Mehler and Illjes Interviews; Plumlee Interviews.

11. Page 28, first full paragraph, lines 3-8: "...Chwastyk's recollection of the cause of the spike is in error...hydrogen was not discussed as a cause for the pressure spike on March 28, 1979; there was no acknowledged cause for the spike on that date. It is concluded that the order not to restart electrical equipment was given on some day subsequent to March 28, 1979; p. 29, lines 1-6, re order not to restart electrical equipment given on some day subsequent to March 28, 1979; Ibid; Mehler Deposition; Illjes Exhibit 1 to Illjes Deposition;

12. Page 33, paragraph 4, lines 13-16, p. 45, first full paragraph, lines 6-7 and last 8 lines: "Because there was not an effective system for accumulating and passing on information, many of the key staff members did not become aware of the important information related to events that occurred prior to their

arrival." Ibid.; Moore Notes; Abramovici Deposition and Notes; M.Morrell Notes; Lentz Deposition re thermocouple readings taken by I. Porter; Licensee Response to Interrogatory No. 3 in TMIA's First Set of Interrogatories to GPU.

13. Page 35, lines 2-15: record demonstrates lack of evaluation for key indicators within think tank; two shift supervisors who believed pressure spike was real did not pass on information to others in organization. Ibid.; NSAC Analysis of Accident; Training Materials on Accident.

14. Page 44, first full paragraph, lines 13-15: "...They also believed that conditions were improving." Depositions of Chwastyk, Mehler, Ross, Kunder, Miller, Herbein, Arnold, Dieckamp, Yeager and Lentz; NSAC Analysis of Accident; Moore Notes; Keaten Notes; Abramovici Notes; Cherry to Dieckamp Memorandum of March 29, 1979; 9/17/80 Memorandum from E. Wallace to Arnold with attachments; WWL's Activities re TMI-2 Accident; Original of Wide Range and Narrow Range Pressure Spike.

15. Mr. Gamble's criticisms of the Draft Report are contained in his Memorandum of January 26, 1981. All references in that memorandum are to the Draft Report. At such time as Mr. Gamble is allowed access to the Draft Report, he will be able to cite specific pages and line numbers.

The basis for Mr. Gamble's criticisms are his reading of the report, his general knowledge gained as a criminal investigator at the NRC, and knowledge he gained in participating in the following investigations of Three Mile Island:

(a) investigation leading to issuance of NUREG-0600;

- (b) Special Inquiry Group investigation into the TMI-2 Accident;
- (c) Joint OIA-IE investigation into falsification of leak rate tests at TMI-2;
- (d) Investigation which led to issuance of NUREG-0760; and
- (e) OIA investigation of IE Investigators' alleged failure to report hydrogen explosion in containment on March 28, 1979.

Interrogatory Nos. 4 and 5

TMIA objects to responding to this interrogatory on the ground that it requests information which is not relevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding this objection, TMIA answers as follows:

Mr. Gamble identified the deficiencies listed in response to Interrogatory No. 3 above in the week between January 17 and January 21, 1984 when he reviewed the Draft Report for the first time. He communicated these deficiencies and criticisms to Roger Fortuna and James Cummings of OIA during that week; identified them to Norman Moseley, IE on January 21, 1981; and identified them to Marian Mo, OGC, and Richard Hoefling, ELD, on January 26, 1981.

Interrogatory No. 6

(a) TMIA objects to this interrogatory on the ground that it requests information which is not relevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding this objection TMIA answers as follows:  
Mr. Gamble's Memorandum contains within the criticisms listed suggestions and recommendations for correction.

(b) See TMIA response to Interrogatories 4 and 5 above.

Interrogatory No. 7

TMIA believes that Conclusions, 3, 5, 6, and 8 are incorrect; Recommendation No. 1 is incorrect; and the findings and conclusions criticized in TMIA Response to Interrogatory No. 3 should be changed or otherwise corrected. See also Gamble Memorandum.

Interrogatory Nos. 8, 10, 11 and 12

See generally Gamble Memorandum.

In addition:

1. NUREG-0760 failed to address the flow of information from site personnel to GPUSC and GPU headquarters in Parsippany/Mountain Lakes and to Mr. Dieckamp. In most cases the investigators did not interview the GPUSC engineers sent to the site on March 28 and March 29; GPUSC and GPU management in Parsippany/Mountain Lakes other than Arnold and Dieckamp.

2. NUREG-0760 failed properly to weigh individuals' testimony in light of the consistency of their prior and current statements; the lines of communications which existed on the first three days of the Accident; the NSAC and other analyses which indicated the strategies employed by site personnel to bring the reactor to a stable condition; witnesses' motives and biases; witnesses' functions within the organizations; witnesses' prior training and technical experience; and other available documentary evidence which supported or eroded their credibility.



3. NUREG-0760 arbitrarily fails to address any evidence from any day other than March 28, 1979. L. Bernabei discussion with J. Craig and T. Harpster, August 30, 1984.

4. NUREG-0760 fails to address the gaps or inconsistencies in important events or reactor parameters, including the second set of 51 incore thermocouple readings; Kunder, Miller, Herbein and Dieckamp's lack of memory about March 28 after visit to Lt. Governor's Office; inability of site personnel to remember date of instruction not to activate electrical equipment.

5. NUREG-0760 fails to examine adequately the input of B&W personnel, GPU and GPUSC management, and GPU consultants on March 28 or 29, and fails to examine information flowing to Commonwealth of Pennsylvania authorities.

Mr. Gamble has identified the following as inadequacies or deficiencies in the NRC investigation which led to the issuance of NUREG-0760:

1. Investigators were improperly limited in the questions which they were allowed to ask during interviews.

2. The presence of company counsel was not properly controlled in order that counsel did not interfere with or "chill" interviews. In addition, the NRC gave undue deference to company counsel.

3. Management levels of the NRC made agreements with company counsel as to limitations on areas of questioning and limitations of responses without the knowledge of or concurrence of NRC investigators.

4. The investigators failed to document all interviews, as, for example, the interview conducted of E. Brunner.

5. The investigation did not focus on the agency's failures in terms of information flow during the Accident.

6. NRC investigators completed drafts of NUREG-0760 prior to conducting any interviews, so as to predetermine the conclusions of the investigation.

7. At least two of the main NRC investigators, Norman Moseley and Ronald Haynes, had potential conflicts of interest in that they were involved in NRC responsibilities in the early days of the TMI-2 Accident.

8. Limitations were put on the role of investigators by failing adequately to brief investigators, limiting the role of OIA investigator(s) to giving oaths, and attempting to limit the questions which could be asked of witnesses.

9. The investigators attempted to avoid a conclusion which would imply that Met-Ed had engaged in any wrongdoing in its reporting failures during the Accident, including avoidance of the word "willful."

Mr. Gamble identified all the above stated deficiencies early in the investigation. He discussed the failure to document certain interviews with NRC employees with Mr. Moseley, Mr. Fortuna and Mr. Cummings. He discussed the limitation on investigators' questioning with Mr. Cummings and Victor Stello. He discussed the agreement of NRC management with company counsel with Peter Baci, another OIA investigator, Mr. Fortuna and Mr. Cummings.

He discussed the issue of writing drafts of the report prior to conducting interviews in April or May, 1980 with Mr. Moseley, Mr. Cummings and Mr. Fortuna.

Mr. Gamble will be able better to identify the persons to whom and the time when he identified deficiencies and inadequacies in the investigation which led to the issuance of NUREG-0760 at such time as he is allowed access to his former OIA files.

Interrogatory Nos. 9 and 15

TMIA and Mr. Gamble have stated in response to other interrogatories all criticisms of NUREG-0760 and the investigation leading to NUREG-0760 which are relevant to the subject matter of this proceeding.

Interrogatory No. 13

TMIA objects to this interrogatory on the ground that it requests information which is not relevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding this objection TMIA answers that the proposed corrections are implicit in the criticisms made in response to Interrogatories 8 and 10 above. See also Gamble Memorandum.

Interrogatory No. 14

See TMIA objection to Interrogatory No. 13 above. Notwithstanding this objection, TMIA answers as follows: If the NRC had conducted an adequate investigation into licensee reporting failures, in general, and the Dieckamp Mailgram issue, in particular, it would have uncovered much of the documentary and testimonial evidence uncovered by TMIA in discovery in these proceedings.

TMIA believes that given this additional evidence, the NRC Staff would have reached different conclusions on the Dieckamp Mailgram issue as well as on the willfulness of GPU in withholding information during the Accident.

Interrogatory No. 16

The only occasion on which Mr. Gamble had an opportunity to discuss his criticisms of the draft of NUREG-0760 was in his meeting with Mr. Moseley on January 21, 1981. Mr. Cummings directed Mr. Gamble to hold this discussion with Mr. Moseley. Mr. Gamble was unable to review or comment on other occasions because of his duties in regard to other OIA investigations.

Mr. Gamble discussed his criticisms of the investigation which led to the issuance of NUREG-0760 with Mr. Moseley, Mr. Cummings, Mr. Fortuna, and Mr. Stello numerous times. He will be able better to identify the meetings or discussions after he is allowed access to his OIA files.

Interrogatory No. 17

(a) Mr. Gamble will be both a fact and expert witness.

(b) TMIA has not yet prepared Mr. Gamble's prefiled testimony. It is expected that Mr. Gamble's testimony will be prefiled, in accordance with the Licensing Board's order, on November 1, 1984.

(c) At this time TMIA does not know which documents it will enter into evidence in connection with Mr. Gamble's testimony other than the Gamble Memorandum previously provided. The NRC Staff has represented that it will attempt to provide Mr. Gamble with access to OIA files to permit him to prepare his testimony. At such time as Mr. Gamble has had an adequate time to review OIA

files TMIA will inform the Staff as to those documents which it will introduce with Mr. Gamble's testimony.

In addition to the Gamble Memorandum TMIA is likely to enter into evidence an Ahearne Memorandum of March 21, 1980 outlining the OIA role in the NUREG-0760 investigation.

(d) See TMIA response to subpart (c) above.

(e) Mr. Gamble is a criminal investigator and an attorney. He has served as a criminal investigator both with the NRC and with the Defense Criminal Investigative Service.

Respectfully submitted,

Dated: October 25, 1984

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UNITED STATES OF AMERICA  
 NUCLEAR REGULATORY COMMISSION

DOCKETED  
 USNRC

Before the Atomic Safety and Licensing Board

'84 OCT 29 P12:28

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

OFFICE OF SECRETARY  
 DOCKETING & SERVICE  
 BRANCH

I hereby certify that a copy of the foregoing Three Mile Island Alert's Response to NRC Staff's Interrogatories to TMIA has been served this 25th day of October, 1984, by mailing a copy first class, postage prepaid, to the following:

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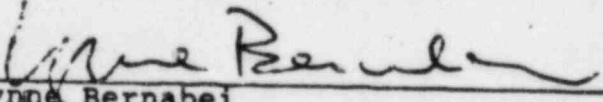
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| Administrative Judge<br>Ivan W. Smith, Chairman<br>Atomic Safety & Licensing Board<br>U.S. Nuclear Regulatory Commission<br>Washington, D.C. 20555     | Thomas Au, Esq.<br>Office of Chief Counsel<br>Department of Environmental<br>Resources<br>505 Executive House<br>P.O. Box 2357<br>Harrisburg, PA 17120 |
| Administrative Judge<br>Sheldon J. Wolfe<br>Atomic Safety & Licensing Board<br>U.S. Nuclear Regulatory Commission<br>Washington, D.C. 20555            | John A. Levin, Esq.<br>Assistant Counsel<br>Pennsylvania Public Utility<br>Commission<br>P.O. Box 3265<br>Harrisburg, PA 17120                         |
| Administrative Judge<br>Gustave A. Linenberger, Jr.<br>Atomic Safety & Licensing Board<br>U.S. Nuclear Regulatory Commission<br>Washington, D.C. 20555 | Ernest L. Blake, Jr.<br>Shaw, Pittman, Potts & Trowbridge<br>1800 M Street, N.W.<br>Washington, D.C. 20036   |
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| Atomic Safety & Licensing Board<br>Panel<br>U.S. Nuclear Regulatory Commission<br>Washington, D.C. 20555   | Mr. and Mrs. Norman Aamodt<br>R.D. 5<br>Coatesville, PA 19320  |
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