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Administrative Law 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

Administrative Judge
Gustave A. Linenberger, Jr.
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

Gentlemen:

By letter dated February 4, 1985, TMIA wrote to the Licensing Board to inform the Board of what it characterized as a "serious misrepresentation" by Licensee. TMIA referred to footnote 21 of Licensee's Proposed Findings. In that footnote, Licensee noted that because the Dieckamp mailgram issue has been perpetuated at the considerable urging of Congressman Udall and Dr. Henry Myers, it was curious that the Udall Committee Staff in its own report made no finding on the accuracy of the mailgram. TMIA asserts two grounds for its charges of misrepresentation.

TMIA's first ground is that Licensee is making the "representation that Congressman Udall, the NRC oversight committee which he chairs, or the committee staff in some manner improperly promoted the issue as a matter of concern to this Board." TMIA Letter at 2. Licensee made no such representation. Licensee stated only that which was supported by record citation -- that inquiry into the Dieckamp mailgram issue was conducted by the Special Inquiry Group and then by NRC I&E at the express

Administrative Law Judge Ivan W. Smith
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Administrative Judge Gustave A. Linenberger, Jr.
February 6, 1985
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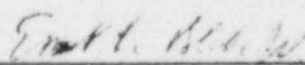
urging of Congressman Udall and Dr. Henry Myers. Licensee's point was simple. In considering the significance of the Udall Report to the Dieckamp mailgram issue, the Board should recognize that despite this considerable interest, the Committee Staff did not make a finding that the Dieckamp mailgram was inaccurate.

TMIA next complains that Licensee misrepresents a joint stipulation of the parties when it "suggests that TMIA made some kind of agreement to drop Dr. Myers as a witness and withdraw his testimony in this proceeding in order to avoid answering interrogatories about information or support Dr. Myers provided to TMIA." TMIA argues in effect that the stipulation was no more than an agreement to admit into evidence the Udall Report, and that Licensee's interrogatories were merely incidentally mooted.

Licensee is not in a position to misrepresent the stipulation; the stipulation is in evidence and speaks for itself. Licensee is free in argument to characterize elements of the stipulation; it has done so fairly in its findings. The stipulation has several elements including agreement that Dr. Myers would not appear as a witness and that the Udall report (together with other relevant reports such as NUREG 0600, NUREG 0760 and SIG) would be admitted into evidence. This is why Licensee employed the term inter alia in footnote 21 when it described the withdrawal of interrogatories as part of the stipulation. As the stipulation reveals, Licensee specifically agreed to withdraw identified interrogatories. The withdrawal of these interrogatories was not an incident of or afterthought to the stipulation, as TMIA suggests, but rather was a material part of the agreement. The execution of the stipulation in fact was timed to obviate Licensee's filing of a related Motion to Compel Discovery. Moreover, TMIA's counsel checked, prior to agreeing to the stipulation, that all of the interrogatories in question were specifically enumerated in the stipulation. This is hardly consistent with TMIA's presently avowed disinterest in the interrogatories.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE


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

cc: Service List