

June 12, 1987

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USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'87 JUN 17 P5:44

BEFORE THE ADMINISTRATIVE LAW JUDGE

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

In the Matter of	)	
	)	Docket No. 50-320
GPU NUCLEAR CORPORATION	)	(Civil Penalty)
	)	License No. DPR-73
(Three Mile Island Nuclear Station	)	EA 84-137
Unit No. 2)	)	

NRC STAFF MOTION TO COMPEL  
PRODUCTION OF DOCUMENTS

The NRC Staff moves the Administrative Law Judge to issue an order requiring GPU Nuclear Corporation (GPUNC) to produce for examination and copying within seven days of the issue of his order:

"All documents relating to the interpretation and application of Bechtel Directive 2-1 by (a) Bechtel's Department of Internal Audits, (b) Bechtel's Law Department or other legal advisors, and (c) Charles W. Sanford, Bahman Kanga, Richard Wheeler, and any Bechtel management personnel employed at TMI-2 at any time during the period May 1982 through March 1983."

I. INTRODUCTION AND BACKGROUND

On April 28, 1987, the NRC Staff, pursuant to 10 C.F.R. § 2.741 requested that GPUNC produce documents relating to Bechtel Directive 2-1. The text of the Staff request is quoted supra. On June 2, 1987, GPUNC objected to this Staff request and declined to produce the requested documents. 1/

1/ The Staff's Request and GPUNC's Response are attached for expediency.

## II. DISCUSSION

10 C.F.R. § 2.741 provides for the discovery and production for inspection and copying of documents which are within the scope of 10 C.F.R. § 2.740. That Section, (2.740(b)(1)), provides, in general, that the scope of discovery reaches any matter which is relevant to the subject of the proceeding. The Administrative Law Judge is familiar with the history of this proceeding, so what follows is a recitation of only those facts germane to this request for an order compelling discovery.

In the summer of 1982 Mr. Parks requested a secretary at the TMI-2 site to type some resumes during non-office hours, resumes which were to be typed on the stationary of a corporation named Quiltec. That typing and Mr. Parks' relation to Quiltec later became the subject of a Bechtel-GPUNC investigation by Mr. H. Lee Hofmann, an internal auditor from Bechtel headquarters, which became the second count in the NRC August 12, 1985 Notice of Violation and Proposed Imposition of Civil Penalty. GPUNC and Bechtel assert that the basis for investigating the resume typing-Parks-Quiltec matter was Bechtel Directive No. 2-1, a Bechtel policy on the conduct of employees. During the Bechtel investigation of these matters, Charles W. Sanford, then a Vice President for Bechtel, told Mr. Parks he had committed a serious breach of company policy for which he might be fired. Richard Wheeler, Mr. Park's Bechtel supervisor, subsequently told Mr. Parks that he would not be fired for his actions. In bringing the subject NOV and Civil Penalty action, the Staff found that the Bechtel investigation of Mr. Parks was retaliation for his raising of safety concerns at the TMI-2 site.

On April 20, 1987 the Staff sought documents relating to the interpretation and application of Directive 2-1 by (a) Bechtel's Department of Internal Audits, and Law Department and (b) Messrs. Sanford, Bahman, Kanga, Wheeler and the Bechtel management at the TMI-2 site from May 1982 through March 1987. The relevance of the requested documents is self evident. It was Directive 2-1 which was the basis of the Bechtel-GPUNC investigation of Mr. Parks. And it was the investigation of Mr. Parks which was count two in NRC's civil penalty which GPUNC is now contesting.

GPUNC objected to the request

"as vague. The phrase "documents relating to the . . . applications of Bechtel Directive [2-1]" is ambiguous and could be construed as calling for documents describing how Directive 2-1 should be applied or as calling for documents actually applying the Directive. To the extent the latter is intended, GPUN objects to the request as burdensome."

GPU response page 4.

The suggestion that the Staff's request is vague cannot be taken seriously. GPUNC has accurately paraphrased what the Staff seeks. The Staff seeks to discover how Directive 2-1 was interpreted by Bechtel's corporate headquarters and at the TMI-2 site, and how Directive 2-1 was actually in historical fact applied by Bechtel's corporate headquarters and by named individuals and other management at the TMI-2 site. Such information goes directly to whether Directive 2-1 was consistently and appropriately applied to Mr. Parks. GPUNC's response, quoted above, makes it quite clear that GPUNC knows and understands what the Staff seeks. GPUNC simply will not produce.

GPUNC's suggestion that the request is burdensome misses the legal mark. There has been very extensive discovery by both parties to this proceeding seeking papers and memories almost five years old which is a burden to both parties. But the present unanswered Staff request is not an "undue burden" (10 C.F.R. § 2.740(c)), especially as it goes to the very basis of count two of the NRC Notice of Violation, the contesting of which is the subject of this proceeding. GPUNC's allegation that response would require a "corporate-wide search of all Bechtel files" is specious. The Staff's request is limited to two Bechtel corporate headquarters offices and personnel at the TMI-2 site.

GPUNC objects as the request called for privileged attorney-client communication. No serious credit can be given to this GPUNC argument. To assert this privilege successfully, GPUNC must identify each document for which it claims privilege and demonstrate that the information contained therein is confidential. See, United States v. Exxon Corporation, 87 FRD 624, 637-639 (D.C. 1980). GPUNC has not even feigned to make out a case of attorney-client privilege. Moreover, it is doubtful that such privilege would apply to interpretations and application of a corporate-wide policy.

GPUNC alleges that the Staff request is too broad. Looking at the 1985 Directive 2-1 we note that it encompasses "Business Ethics, Conflicts of Interest and Security of Information". The NRC Staff request should be construed not to request documents on security of information and the Administrative Law Judge's Order compelling production should be so limiting.

It is the Staff's view that the NRC Rules require that GPUNC seek a protective order under 10 C.F.R. § 2.740(c) prior to refusing to make discovery. This was addressed in Consumers Power Company (Palisades Nuclear Power Facility), 12 NRC 117, (1980), Hon. Ivan W. Smith Administrative Law Judge presiding.

The Directive 2-1 which GPUNC produced is dated March 22, 1985. It is clear from the context of this litigation that the Directive 2-1 which applied in 1983 is the Directive sought by the Staff. If the 1983 and 1985 versions are the same, GPUNC should so state; and if not GPUNC should produce the 1983 version.

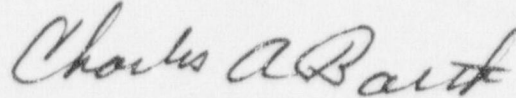
The Staff requests that the Judge rule expeditiously upon this request. Interpretation and application of Directive 2-1 by Bechtel are the very crux of the Staff's deposition of Mr. Hofmann who conducted the Bechtel investigation of Mr. Parks in 1983. That deposition is now scheduled for June 25, 1987. The Staff needs, and is entitled, to review and examine the interpretation and actual application of Directive 2-1, excluding its coverage of security of information.

### III. SUMMARY AND CONCLUSION

The Bechtel Directive 2-1 which led to the investigation of Mr. Parks in 1983, which investigation led to count two of the NRC' Notice of Violation, and how that Directive was interpreted and applied by Bechtel's headquarters and at the TMI-2 site, are relevant to this proceeding and the documents in the Staff's request number two dated April 28, 1987 should be promptly produced for examination and copying by the Staff.

GPUNC's arguments of vagueness, corporate-wide search burden, and attorney-client privileges are specious, without foundation and should be rejected.

Respectfully submitted,

A handwritten signature in cursive script, reading "Charles A. Barth". The signature is written in dark ink and is positioned above the printed name and title.

Charles A. Barth  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 12th day of June, 1987