

October 15, 1984

RELATED CORRESPONDENCE  
UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

'84 OCT 16 A10:12

Before the Atomic Safety and Licensing Board

DOCKETING & SERVICE  
BRANCH

In the matter of )

METROPOLITAN EDISON COMPANY )

(Three Mile Island Nuclear )

Docket No. 50-289 SP

(Restart-Management  
Phase)

Licensee's Motion to Quash  
Subpoena and Subpoena Duces Tecum  
to William Lowe

On October 11 or 12, 1984, TMIA applied to the Licensing Board for a subpoena and subpoena duces tecum to William Lowe for the purpose of requiring Mr. Lowe to appear and produce documents at deposition. Licensee counsel first learned of TMIA's application through a call from Mr. Lowe late Friday, October 12, that he had been served. The subpoena commands Mr. Lowe to appear for a deposition on Friday October 19, 1984. Licensee moves to quash Mr. Lowe's subpoena.

Mr. William Lowe at the time of the March, 1979 accident at TMI-2 was a consultant to Licensee and a member of Licensee's General Office Review Board, a safety oversight committee. Today, Mr. Lowe maintains those positions vis-a-vis Licensee. It is Mr. Lowe who has been credited by investigators of the

8410160757 841015  
PDR ADOCK 05000289  
G PDR

DS03

accident with appreciation of the significance of the pressure spike in terms of core damage, which appreciation occurred during the night of March 29, 1979. Licensee on September 18, 1984, identified Mr. Lowe as a witness in response to TMIA's first request for identification of Licensee's witnesses.

Discovery in this proceeding closes today, October 15. TMIA is aware of this discovery schedule. Despite this schedule and their knowledge of it, TMIA seeks to subpoena Mr. Lowe for a deposition beyond the discovery period without either motion or any contact with Licensee counsel. There is no reason that TMIA could not have deposed Mr. Lowe within the allowed discovery period. A number of individuals have been deposed and Licensee has cooperated in making its employees available on a schedule agreed upon by counsel. Licensee would have done so in the case of Mr. Lowe. Now, however, discovery is over and Licensee needs to prepare testimony for the four individuals who have been proposed as Licensee witnesses, and otherwise prepare for hearing.

As the one apparent thread of basis for this late-filed deposition request, TMIA in its application for subpoena attempts to link a need to depose Mr. Lowe to Licensee's identification of two other witnesses on October 5, 1983. The perceived link is inexplicable and untenable.

Further, Licensee notes that TMIA continues to fail to identify the subject matter of the deposition with reasonable specificity or to follow the Commission's regulations to

provide the name of the officer before whom the deposition is to be taken, or to reflect that Board's rulings on scope of this proceeding. There is no way to read Mr. Lowe's subpoena as a reasonable attempt to alert Mr. Lowe as to the areas in which he should appropriately be prepared for examination or the documents he should prepare to produce. On information and belief, Mr. Lowe received the subpoena just before he was to leave his office in Washington late in the day Friday, October 12, and is out of town this week through Thursday on previously scheduled business. Without disrupting this schedule, there is no way he could prepare to be deposed by October 19. Even without this schedule conflict, it is doubtful he could be prepared to be responsive to his subpoena duces tecum. The subpoena should be quashed on these grounds as well.

As the Board earlier has observed, the discovery schedule was set to allow a reasonable period for the parties to conduct discovery. Necessarily, choices have to be made by any party as to how best to utilize the time available. TMIA has chosen to use the period as it apparently believed best. It must live with those choices, including the choice not to depose Mr. Lowe.

Respectfully submitted,

Ernest L. Blake, Jr.

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

October 15, 1984

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 SP
	)	
(Three Mile Island Nuclear		(Restart-Management
Station, Unit No. 1)	)	Phase)

CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Motion to Quash Subpoena and Subpoena Duces Tecum to William Lowe," dated October 15, 1984, were served on those persons on the attached Service List by deposit in the United States mail, postage prepaid, or where indicated by an asterisk (\*) by hand delivery, this 15th day of October, 1984.

Ernest L. Blake, Jr.

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

Counsel for Licensee

October 15, 1984

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

SERVICE LIST

Nunzio J. Palladino, Chairman  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Thomas M. Roberts, Commissioner  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

James K. Asselstine, Commissioner  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Frederick Bernthal, Commissioner  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Lando W. Zeck, Jr., Commissioner  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Administrative Judge  
Gary J. Edles, Chairman  
Atomic Safety & Licensing Appeal  
Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Administrative Judge  
John H. Buck  
Atomic Safety & Licensing Appeal  
Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Administrative Judge  
Christine N. Kohl  
Atomic Safety & Licensing Appeal  
Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

\* Administrative Judge  
Ivan W. Smith, Chairman  
Atomic Safety & Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

\* Administrative Judge  
Sheldon J. Wolfe  
Atomic Safety & Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555



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

Docketing and Service Section (3)  
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Atomic Safety & Licensing Board  
Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Atomic Safety & Licensing Appeal  
Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Jack R. Goldberg, Esq. (4)  
Office of the Executive Legal  
Director  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Thomas Y. Au, Esq.  
Office of Chief Counsel  
Department of Environmental  
Resources  
505 Executive House  
P.O. Box 2357  
Harrisburg, PA 17120

William T. Russell  
Deputy Director, Division  
of Human Factors Safety  
Office of NRR  
Mail Stop AR5200  
U.S. NRC  
Washington, D.C. 20555

Mr. Henry D. Hukill  
Vice President  
GPU Nuclear Corporation  
P.O. Box 480  
Middletown, PA 17057

Mr. and Mrs. Norman Aamodt  
R.D. 5  
Coatesville, PA 19320

Ms. Louise Bradford  
TMI ALERT  
1011 Green Street  
Harrisburg, PA 17102

\* Joanne Doroshow, Esquire  
The Christic Institute  
1324 North Capitol Street  
Washington, D.C. 20002

\* Lynne Bernabei, Esq.  
Government Accountability  
Project  
1555 Connecticut Avenue  
Washington, D.C. 20009

Ellyn R. Weiss, Esq.  
Harmon, Weiss & Jordan  
2001 S Street, N.W., Suite 430  
Washington, D.C. 20009

Michael F. McBride, Esq.  
LeBoeuf, Lamb, Leiby & MacRae  
1333 New Hampshire Avenue, N.W.  
Suite 1100  
Washington, D.C. 20036

Michael W. Maupin, Esq.  
Hunton & Williams  
707 East Main Street  
P.O. Box 1535  
Richmond, VA 23212