

November 28, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of)
)
METROPOLITAN EDISON COMPANY)
)
(Three Mile Island Nuclear)
Station, Unit No. 1))

Docket No. 50-289 *SP*
(Restart Remand
on Management)

LICENSEE'S REPLY TO TMIA MOTION
FOR DIRECTED CERTIFICATION

At a prehearing conference held on November 9, 1984, in connection with the Dieckamp mailgram issue, the Licensing Board ruled against TMIA's motions, both dated November 1, 1984, to admit in evidence the deposition of former Commissioner Peter A. Bradford and to permit the testimony of former Commissioner Victor Gilinsky without prefiling written testimony. On November 19, 1984, TMIA filed with the Appeal Board a motion to consider and reverse the Licensing Board's rulings.

Licensee opposed before the Licensing Board TMIA's November 1 motions with respect to the deposition of Mr. Bradford and the testimony of Dr. Gilinsky and for the same

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reasons opposes TMIA's request to consider and reverse the Licensing Board's rulings. Licensee's objections to the TMIA motions were fully set forth in Licensee's Response to TMIA's Motion to Admit Deposition of Peter A. Bradford as Testimony and Licensee's Response to TMIA's Motion for Leave to Present Testimony of Victor Gilinsky on Dieckamp Mailgram Issue Without Prefiling Written Testimony, both dated November 8, 1984. Copies of Licensee's November 8 responses are attached hereto for the convenience of the Appeal Board and Licensee will not repeat in this filing the arguments already presented to the Licensing Board. This reply will confine itself to new matters contained in TMIA's motion for directed certification.

1. TMIA argues that because the Licensing Board has admitted testimony by Mr. Dieckamp bearing on the accuracy of his mailgram and his integrity, the Licensing Board should also have allowed opinion testimony by Mr. Bradford and Dr. Gilinsky on the ultimate issues in the proceeding. The distinction between Mr. Dieckamp's testimony and the proposed testimony of the former Commissioners is clear. The Licensing Board has emphasized that the issue before it is the issue of Mr. Dieckamp's personal integrity. (Tr. 28,314) The question of Mr. Dieckamp's personal integrity obviously involves the question of his knowledge and analysis of accident events and perceptions. On that question Mr. Dieckamp is an indispensable witness. Mr. Bradford and Dr. Gilinsky have nothing to offer

but their personal analyses of the very facts and documents the Licensing Board will be called upon to analyze and decide. TMIA has not established that they have anything to offer as to Mr. Dieckamp's state of mind.

2. TMIA also argues that because the Licensing Board has admitted testimony by Mr. Lowe which included his opinion of Mr. Dieckamp's character and integrity, Mr. Bradford and Dr. Gilinsky should be permitted to give their opinions on the same subject. The situations are entirely different. Mr. Lowe testified to his close association with Mr. Dieckamp over a period of years and especially in the hectic month following the accident. He was well qualified as a character witness. The only stated contacts between Dr. Gilinsky and Mr. Dieckamp were an alleged discussion at the May 7, 1979 briefing of the Udall Committee at TMI and subsequent "discussions" which, judging by TMIA's motion to the Appeal Board, consisted solely of discussions in the course of public Commission meetings. (Memorandum in Support of Motion for Directed Certification, p. 8) The only stated contacts by Mr. Bradford with Mr. Dieckamp were at Commission meetings.

3. TMIA continues to ignore the prejudice to Licensee in not having prefiled testimony by Dr. Gilinsky, stating that Dr. Gilinsky was unwilling to prefile testimony on TMIA's behalf. Dr. Gilinsky could hardly have objected, however, to a request directed to him by the Licensing Board itself asking for

prefiled testimony, either at the instance of Licensee or on the Board's own initiative. TMIA effectively precluded this possibility by waiting until the deadline set by the Licensing Board for written prefiled testimony before requesting an exception for Dr. Gilinsky. (See in more detail attached Licensee's Response to TMIA's Motion for Leave to Present Testimony of Victor Gilinsky on Dieckamp Mailgram Issue Without Prefiling Written Testimony, p. 2)

4. TMIA offers Mr. Bradford's deposition in part to rebut the soundness and conclusions of the Staff's investigation and report (NUREG-0760) on accident information flow, including the Dieckamp mailgram. The Licensing Board has already ruled, however, that NUREG-0760 is to be admitted in evidence only for facts contained in the report and that the parties may not rely on its conclusions as evidence in the proceeding. (Tr. 29,015-17) There is no call for Mr. Bradford's second-hand knowledge and opinion on the soundness of the Staff investigation.

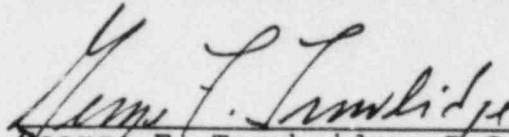
5. TMIA characterizes the Licensing Board's rulings as "the Board's application of the Ethics in Government Act to bar the testimony of two former NRC officials." (Memorandum in Support of Motion for Directed Certification, p. 14) In fact the Board expressly declined to interpret the Ethics in Government Act. Instead, while supporting its rulings as consistent with the basic intent behind the Act and its regulations, the

Board based its rulings on elementary principles of fairness and the inadmissability of testimony by witnesses offering their status as prior Government officials but not the expertise to justify the admissibility of their opinions. (Tr. 27,842, 27,843, 27,848, 27,851-2, 27,855, 27,865)

Licensee respectfully requests that the Appeal Board deny TMIA's motion for directed certification of the Licensing Board's rulings.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE


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Counsel for Licensee

Dated: November 28, 1984