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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:  
Sheldon J. Wolfe, Chairman  
Oscar H. Paris  
Glenn O. Bright

DOCKETED  
USNRC

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In the Matter of

GENERAL PUBLIC UTILITIES NUCLEAR  
CORPORATION, et al.

(Three Mile Island Nuclear Station,  
Unit 2)

Docket Nos. 50-320-OLA  
(Disposal of Accident-  
Generated Water)

(ASLBP No. 87-554-04-OLA)

April 15, 1988

MEMORANDUM AND ORDER

(Denying In Part SVA/TMIA's Motion Served On March 30, 1988;  
Scheduling Summary Disposition)

MEMORANDUM

I. Background

In a motion served on March 30, 1988, the Joint Intervenors requested that the Board order that GPU Nuclear (Licensee) provide additional information and clarify its intentions to install, test and conduct experiments with the evaporator prior to hearings. Citing a local newspaper article of March 22 and the Licensee's press release received on that date, the Joint Intervenors assert that, because GPU intends to install and to test the evaporator either prior to the hearings or prior to receiving a change to the Technical Specifications,

they request that the Presiding Judge order GPU to provide the following information:

- 1) a schedule for the installation and testing of the evaporator,
- 2) prior identification and scheduling of all changes to be made as a result of installation of the evaporator at the site,
- 3) the objectives of any tests to be undertaken, and
- 4) the results and data which contributed to those results of any tests undertaken prior to purchase and which will be undertaken in the future.

On April 7, the Licensee filed an answer opposing the granting of the instant motion. The Staff did not file a response -- hereafter, if the Staff decides not to respond to another parties' submission, it shall promptly notify the Board.

## II. Discussion

The Joint Intervenors assert that the installation and testing of this equipment, undisclosed to them until after the final date for requesting discovery, is related to issues under review in the hearing, and that information developed as a result of the installation and testing of the equipment could be used as a basis for requesting summary disposition.<sup>1</sup> They, in effect, request that summary disposition procedures not be invoked until this information is furnished.

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<sup>1</sup> We note that, in the Memorandum and Order of January 5, 1988 (unpublished), we had ordered that each party should advise the  
(Footnote Continued)

Cutting through the various arguments and counterarguments, it is clear that information currently available to the Licensee has been provided previously and that the Joint Intervenors have not shown any good reason why summary disposition procedures should not be invoked at this time. The Licensee states that, in its answers to the Joint Intervenors' interrogatories, it has responded to requests for information 1)<sup>2</sup> and 3)<sup>3</sup>, supra. The Licensee also states that it cannot respond to request for information 2) because any information gained as a result of installation clearly will not be available until installation occurs, and that it cannot respond to request for information 4) because no tests were conducted prior to the purchase of the evaporator system and because the results of future tests obviously are not available.<sup>4</sup> Further, the Joint Intervenors do not tell us why

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(Footnote Continued)

Board on or before February 8 whether it would file a motion for summary disposition. Only the Staff and the Licensee responded on January 22 and January 29, respectively, that they would file motions for summary disposition.

<sup>2</sup> See Licensee's Answers to SVA/TMIA Second Set of Interrogatories To GPU Nuclear of March 30, 1988. The Licensee's answer to Interrogatory 17 indicates that there is no firm schedule for installation and testing but that such installation and testing would take place some time after the completion of the final design and fabrication which is expected in the fourth quarter of 1988.

<sup>3</sup> See Attachment A to Licensee's Answers to SVA/TMIA's Interrogatories to GPU Nuclear Corporation of February 19, 1988, which sets forth the purposes of the various tests.

<sup>4</sup> However, good cause having been shown, we direct that the Licensee must seasonably provide the requested information when it becomes available.

the information not yet available is necessary for the adjudication of the seven contentions admitted in whole or in part as issues in controversy -- i.e., they do not identify those contentions whose resolution turns on the results of future installation and testing. We, of course, will not speculate whether all or which ones of the contentions are ripe for summary disposition -- this selection is for the movants to make and the Board will render the ultimate decision after its review of all the summary disposition submissions. Accordingly, we agree with the Licensee that we should schedule the filing of motions for summary disposition. In their answers opposing the motions for summary disposition, the Joint Intervenors are free to set forth specific facts showing that there are genuine issues of material fact which warrant denial of the motions in whole or in part and require a hearing.

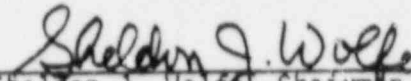
#### ORDER

1. The Joint Intervenors' instant motion is denied to the extent that it requests that summary disposition procedures not be invoked. However, as reflected in footnote 4, supra, the Licensee shall provide in a timely manner the requested information when it becomes available.

2. Pursuant to 10 C.F.R. §2.749, the Licensee and the Staff shall file their motions for summary disposition by no later than May 16, 1988, and the Joint Intervenors shall file their opposing answers (and the Commonwealth of Pennsylvania, as an Interested State, may file, if it so desires, an answer supporting or opposing the motions) by no later

than thirty-five (35) days after service of the Licensee's and the Staff's motions for summary disposition.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

  
Sheldon J. Wolfe, Chairman  
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland  
this 15th day of April, 1988.