

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

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

AFFIDAVIT OF COUNSEL  
LYNNE BERNABEI AND JOANNE DOROSHOW

Joanne Doroshow and Lynne Bernabei, being duly sworn, do  
depose and say:

1. The undersigned are attorneys representing Intervenor  
Three Mile Island Alert ("TMIA") in the reopened and remanded  
hearings on management integrity. The purpose of this affidavit  
is to support TMIA's Motion to Disqualify Ivan W. Smith.

2. All facts alleged in TMIA's Motion to Disqualify Ivan  
W. Smith are true and correct to the best of counsel's knowledge  
and belief.

3. The factual statements set forth below are derived  
from publicly available documents. When counsel were not present  
at any hearing referenced in the motion counsel have cited to the  
official transcript for that date.

4. The following are factual statements which TMIA counsel  
obtained from publicly available documents:

a) Judge Smith's December 27, 1984 letter to U.S. District  
Court Judge Sylvia Rambo, upon information and belief distributed  
to all parties at the January 2, 1985 hearing, TMIA's Motion at 4-5,

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b) Atomic Safety and Licensing Board Partial Initial Decisions, TMIA Motion at 2-4, 11-12.

c) Commonwealth of Pennsylvania Motion to Disqualify Administrative Law Judge Ivan W. Smith, January 11, 1985, TMIA Motion at 5.

d) Special Master Gary L. Milhollin Decision on cheating incidents, April 28, 1981; TMIA Motion at 3;

e) ALAB-772, May 24, 1984; TMIA Motion at 4;

f) Settlement Agreement between Licensee and Commonwealth of Pennsylvania, July 6, 1983; TMIA Motion at 3.

5. Upon information and belief the following factual statements were made at hearings on the training issue which have been held from December 18, 1984 through January 11 1985:

a) Judge Smith submitted a letter requesting leniency for Mr. Floyd after a request from Mr. Floyd's attorney, Tr. at 32600 (Jan. 4, 1985), TMIA Motion at 4;

b) GPUN initiated settlement negotiations which led to the July 6, 1983 settlement agreement between GPUN and the Commonwealth, Tr. at 32322 (Jan. 2, 1985), TMIA Motion at 3-4; and

c) Judge Smith's unwarranted attack on TMIA for causing a morale problem and poor operator attitude at TMI, Tr. at 32396-32401 (Jan. 3, 1985), TMIA Motion at 18-19.

6. Hearings on the Dieckamp Mailgram issue were held from November 14, 1984 to December 14, 1984, TMIA Motion at 4.

7. Judge Smith made the following statements during hearings, and the November 9, 1984 pre-hearing conference, on the Dieckamp Mailgram issue in which we represented TMIA:

a) On November 20, 1984, Judge Smith attacked Mr. Gamble as having a mechanical approach and his testimony as "naive and simple", Tr. at 29034-29035 (Nov. 20, 1984); TMIA Motion at 15;

b) Judge Smith later apologized for his inappropriate remarks, Tr. 29059 (Nov. 21, 1984), TMIA Motion at 15;

c) Judge Smith's attack on Mr. Gamble for what he (Smith) perceived as unethical or illegal investigative techniques, Tr. at 30684-30688 (Dec. 7, 1984), TMIA Motion at 16-17;

d) Judge Smith's unsubstantiated speculation about TMIA's improper motives, Tr. at 27841 (Nov. 9, 1984), TMIA Motion at 17;

e) Judge Smith's unsubstantiated charge that TMIA had misled proposed witnesses, Tr. at 27870 (Nov. 9, 1984), TMIA Motion at 18;

f) Judge Smith admonishes TMIA counsel for conferring during hearing, Tr. at 30958 (Dec. 11, 1984), TMIA Motion at 20;

g) Judge Smith's attack on TMIA counsel for placing objections on the record about format of findings, Tr. at 31707-31710 (Dec. 14, 1984) TMIA Motion at 20;

h) Judge Smith's definition of his responsibility as one to protect operators accused and/or found to have cheated, Tr. at 29092 (Nov. 21, 1984), TMIA Motion at 20-21; and

i) Judge Smith's attempt to elicit testimony favorable to licensee from witness Robert Boyer, Tr. at 31454-31455 (Rochino), 314f8, 31563-31564 (Boyer) (Dec. 13, 1984), TMIA Motion at 22-23.

Lynne Bernabei

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Joanne Doroshow

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Sworn and signed before me  
this 14th day of January, 1985.

Anne H. Roze  
Notary Public  
My Commission expires June 14, 1988



