

February 8, 1980

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
) (Restart)
(Three Mile Island Nuclear)
Station, Unit No. 1))

LICENSEE'S OBJECTIONS TO THE SECOND SET OF
INTERROGATORIES FROM STEVEN C. SHOLLY

Intervenor Steven C. Sholly has served a second set of interrogatories (dated February 5, 1980) on Licensee. Pursuant to 10 C.F.R. §§ 2.740(c) and 2.740b(b), Licensee objects to all but the last interrogatory. With respect to those interrogatories relating to Licensee's Emergency Plan, Licensee objects because the interrogatories were not served within the time authorized by the Licensing Board.^{1/} With respect to those interrogatories relating to Licensee's Security Plan, Licensee objects to all but the last because the interrogatories are outside the scope of Mr. Sholly's Contention No. 16 and therefore impermissibly seek material irrelevant to the subject matter of this proceeding.

A. Emergency Plan Interrogatories

In its First Special Prehearing Conference Order (dated

^{1/} Licensee has not objected to those interrogatories on emergency planning contained in Mr. Sholly's first set of interrogatories.

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December 18, 1979), the Licensing Board ruled that "[g]eneral discovery shall be completed no more than sixty days after the service of this order" (p. 66; emphasis in original). As explicitly described by the Licensing Board Chairman during the Special Prehearing Conference, this directive means that interrogatories must be filed early enough so that the answering party, taking the time afforded it to respond under the Commission's regulations, will complete its response within the 60 days permitted for general discovery. See Tr. at 857.

A simple calculation provides the last date on which interrogatories could be served by mail in compliance with this ruling. Sixty days from December 18, 1979 (the date of the First Special Prehearing Conference Order) gives February 16, 1980 -- a Saturday. Since the following Monday is a federal holiday, general discovery ends as of February 19, 1980. Section 2.740b(b) of the Commission's Rules states that responses to interrogatories are to be provided within 14 days after service. Pursuant to Section 2.710, five days can be added when service is by mail. Thus, for interrogatories to have been timely filed they must have been served by February 1, 1980.

The certificate of service attached to Mr. Sholly's second set of interrogatories indicates that it was delivered to John Wilson at the TMI site on February 5, 1980, and, in accordance with Licensee's offer, was served by mail on Licensee's counsel and all other parties on February 6, 1980. Thus, Mr. Sholly's second set of interrogatories are untimely.

The only issue that remains is whether the Licensing Board's Memorandum and Order Extending Time for Discovery Responses and Setting Prehearing Conference (dated February 1, 1980) extended the time within which Mr. Sholly could file his interrogatories. Licensee thinks not. On the issue of discovery timing, the Board ruled (p. 2):

For now the board is acting consistent with Licensee's position. The board extends the deadline for responding to discovery requests from February 16, to March 17, 1980. The deadline for initially making discovery request, however, will remain for now at February 16. [Emphasis added.]

Given the First Prehearing Conference Order and the Chairman's remarks during the Prehearing Conference, Licensee understands the last sentence of this ruling to be that discovery can be requested up to February 16, so long as the responding party can comply by that date. Thus, for example, the depositions noticed by TMIA -- which constitute a request for discovery -- can continue up to February 16, since the depositions would be completed as of that date. However, where the discovery device chosen is interrogatories, the last sentence of the Board's ruling does not extend the time to make such requests until February 16, since the responding party could not complete its answers within that time consistent with the response time allowed by the Commission's regulations.

For this reason, Licensee objects to answering Mr. Sholly's interrogatories designated 08-013 through 08-033. We note that if the Licensing Board authorizes "follow-up" dis-

covery, Mr. Sholly may avail himself of that option. However, the instant interrogatories could not possibly be viewed as "follow-up" discovery, since Mr. Sholly has not yet received Licensee's responses to his first set of interrogatories.

B. Security Plan Interrogatories

Since Licensee had objected to Mr. Sholly's Contention No. 16, and since Contention No. 16 was not admitted until the Board's order of January 11, 1980, subsequently clarified by the Board's Order of January 25, 1980, we do not object to his interrogatories addressing that contention on grounds of lateness. However, review of the interrogatories propounded by Mr. Sholly indicate that, but for one exception, they are outside the scope of his contention as allowed and explained by the Board and therefore objectionable.

As explained by the Licensing Board in its Third Special Prehearing Conference Order (dated January 25, 1980), "[t]he scope of [Mr. Sholly's contention] as admitted includes activities in connection with the decontamination and restoration of Unit 2 allegedly posing an internal security threat to safe operation of Unit 1" (p. 20). The Board noted that this included an internal security threat to Unit 1 from personnel associated with decontamination and restoration of Unit 2, regardless of whether those personnel were located in Unit 2 or Unit 1 (id.). Significantly, however, the Board stated that the contention did not cover the broad issue of Unit 1 internal security (id. at 19). Despite this ruling, all but one of Mr. Sholly's interrogatories addresses the general matter of internal security and not that

aspect related solely to the ongoing work at Unit 2.

Interrogatory 16-001. This interrogatory relates to security during a Site or General Emergency and not to security issues posed by Unit 2 work. Licensee therefore objects.

Interrogatory 16-002. This interrogatory does not even relate to Unit 1 security. Rather, it addresses Unit 2 security. Licensee therefore objects.

Interrogatory 16-003. This interrogatory relates to the screening of potential security guards and not to security issues posed by Unit 2 work. Licensee therefore objects.

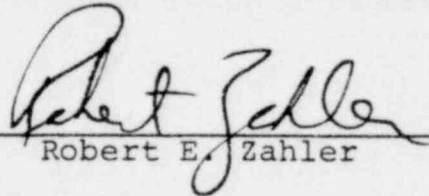
Interrogatory 16-005. Licensee objects to the breadth of this interrogatory because it clearly calls for material beyond the scope of Mr. Sholly's contention. Licensee will, however, identify those nonproprietary documents which relate to the alleged internal security threat to Unit 1 from the decontamination and restoration of Unit 2.

Interrogatory 16-006. Since the issue of security force separation may relate to Mr. Sholly's contention, Licensee does not object to this interrogatory.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By: _____


Robert E. Zahler

Dated: February 8, 1980

February 8, 1980

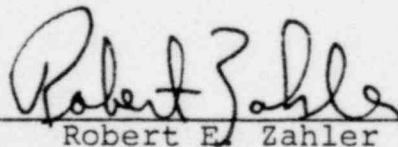
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Objections to the Second Set of Interrogatories from Steven C. Sholly", were served upon those persons on the attached Service List by deposit in the United States mail, postage prepaid, this 8th day of February, 1980.


Robert E. Zahler

Dated: February 8, 1980

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