

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 FIRST SET OF
CEA INTERROGATORIES TO LICENSEE

CEA filed a First Set of Chesapeake Energy Alliance Interrogatories to Licensee on February 25, 1980. Licensee objects in their entirety to Interrogatory Nos. 5-1, 5-2, 5-3 and 5-6, including the correspondingly numbered interrogatories relating to each of the other contentions, and to all of the remaining interrogatories relating to Contention 12. Licensee objects in part to Interrogatory Nos. 5-11, 5-12, 6-8, 6-9, 6-10, 7-8, 8-7, 8-8, 8-9, 8-10, 8-11, 9-7, 9-10 and 13-11. The basis for Licensee's objections is explained below.

A. Objections to Interrogatories
in Their Entirety

Interrogatory Nos. 5-1, 6-1, etc.

Licensee objects to these interrogatories, which request Licensee's position on CEA contentions, along with the identity of all documents supporting that position. CEA's request is irrelevant to the ultimate disposition of the issues and, at the very least, is premature, as the Licensee has not completed its evaluation of CEA contentions or the underlying facts. Requiring Licensee to respond to this request would force it to adopt a position without adequate information and to disclose at a preliminary stage a tentative evaluation of CEA contentions. In addition, these interrogatories constitute an attempt by CEA to ascertain the manner in which Licensee is preparing for the hearing. An answer by Licensee would necessitate divulgence of the mental impressions, conclusions and opinions of Licensee's counsel and other representatives and, as such, is protected from disclosure.

Licensee's objection is reinforced in this proceeding by the fact that these interrogatories have been posed before the discovery process has been allowed to fulfill one of the central purposes of discovery contemplated by the Licensing Board, namely the clarification of intervenor contentions and the addition of basis and specificity thereto. On January 18, 1980, Licensee served CEA with a set of interrogatories designed

to accomplish just this purpose. No response to any of these interrogatories has been received to date. It is unreasonable for CEA to ask Licensee for its position on CEA's contentions which remain so undefined.

Interrogatory Nos. 5-2, 6-2, etc.

These interrogatories request Licensee to identify those aspects of CEA's contentions considered by Licensee to be matters of controversy, to state opposing positions as perceived by Licensee, and to summarize documents supporting either argument. These interrogatories are in substance requesting the evaluation, opinion and strategy of Licensee's counsel and other representatives with respect to CEA's contentions. In order to answer these interrogatories, Licensee would be required to divulge its attorney's evaluation of the strengths and weaknesses of CEA's contentions. Such an evaluation constitutes the most explicit form of an attorney's work product, and is protected from discovery.

Interrogator, Nos. 5-3, 6-3, etc.

These interrogatories request any and all documents that provide evidence and/or support to CEA's contentions. CEA is asking counsel for Licensee to do CEA's legal work by formulating a theory of the case, evaluating the relevance of all available evidence, and sifting that evidence for documents

which, in the judgment of counsel, are particularly valuable. Not only do these interrogatories require speculation on the part of Licensee as to CEA's strategy and legal position in formulating its contentions, but it also requires disclosure by Licensee's counsel of his opinions and conclusions on the relevance of evidence to that strategy and legal position. Such opinions and conclusions are not subject to disclosure.

Interrogatory Nos. 5-6, 6-6, etc.

These interrogatories ask Licensee to identify "the critical or central parameters" of CEA's contentions as they are perceived and understood by Licensee, and to summarize its position on and evaluation of the importance of each such parameter. In order to answer these interrogatories, Licensee would be forced to disclose an evaluation by Licensee's counsel of the strengths and weaknesses of CEA's contentions and of Licensee's strategy in responding to CEA's contentions. Mental impressions, conclusions and opinions of counsel are not discoverable.

Interrogatory Nos. 12-7 through 12-14.

CEA Contention 12 has been rejected by the Licensing Board and Licensee therefore objects to interrogatories relating to this contention. To the extent that CEA may have intended to adopt UCS Contention 13, as permitted by the Licensing Board,

and now bases these interrogatories on the UCS contention, Licensee objects to the interrogatories as outside the scope of that contention.

B. Partial Objections to Interrogatories

Interrogatory Nos. 5-11, 5-12, 6-8, 6-9, 6-10 and 7-8.

Licensee objects to so much of these interrogatories as calls upon Licensee to provide mathematical probability estimates of accidents or other occurrences. Licensee has not performed such probability estimates and does not intend to perform such estimates in the development of its testimony in this proceeding or for any other purpose. The legal principles governing discovery do not require Licensee to undertake this highly burdensome task at the request of an intervenor.

Licensee further objects to these contentions insofar as they attempt, by requiring Licensee to identify all conceivable accident or other scenarios, to shift to Licensee the burden which CEA properly has to provide with specificity the basis for its contentions. Licensee again notes that Licensee served interrogatories on CEA on January 18 which were designed to obtain the specific bases of CEA's contentions and has as yet received no response.

Licensee will, however, address in its responses to these interrogatories, to the extent such information is presently available, those accidents or occurrences which Licensee has considered or plans to consider in support of Licensee's position that recovery operations at TMI-2 will not endanger the operation of TMI-1.

Interrogatory No. 8-7.

This interrogatory requests the identification of all documents that have been prepared or commissioned by or for Licensee concerning its management strength and capability. It is unlimited as to the scope of Licensee's activities covered by the interrogatory. CEA's Contention 8, however, is by its own terms limited to Licensee's management capability as evidenced by its previous management of TMI-2 and to a claim that Licensee must demonstrate its capability to clean up TMI-2. Thus Licensee's first objection is that the interrogatory goes beyond the scope of CEA's contention.

This interrogatory also calls for the identification of documents without limitation as to time. Taken literally it encompasses all such documents, from the beginning of Licensee's existence. Licensee's second objection therefore is that the interrogatory is unduly burdensome.

Licensee further objects to CEA's request for a detailed summary of all documents identified. The request is

unduly and unnecessarily burdensome. Documents identified pursuant to this interrogatory will be placed in Licensee's Discovery Reading Room and will be available for inspection and copying.

Licensee will limit its response to this interrogatory to documents relating to Licensee's management of TMI-2 and its capability to clean up TMI-2.

Interrogatory No. 8-8.

Interrogatory No. 8-8 requests that Licensee identify any and all aspects of its management capability in respect of which Licensee, NRC, or any other party has uncovered evidence of inadequacy or deficiency. For the reasons stated in its objections to Interrogatory No. 8-7 Licensee objects to this interrogatory as beyond the scope of Contention 8 and will limit its response to the identification of criticisms which have been made as to Licensee's management of TMI-2 and capability to clean up TMI-2.

This interrogatory also asks Licensee, with respect to each aspect of management capability identified, to describe in detail what measures have been or will be taken to remedy the inadequacy or deficiency, and to provide a full and complete justification of how Licensee can demonstrate its remedial action will correct the management inadequacy or deficiency. Licensee will provide CEA, by reference or otherwise, with a

description of changes made to Licensee's management organization and programs. However, Licensee objects to CEA's request for Licensee's "full and complete justification as to how Licensee can demonstrate that the remedial action will indeed correct the management inadequacy or deficiency." CEA is free to make any evaluations and draw any conclusions it chooses in evaluating criticisms of Licensee's management and changes proposed by Licensee.

Interrogatory No. 8-9.

This interrogatory requests Licensee to identify and summarize documents pertaining to any investigations of the perceptions and attitudes of Licensee's present or past employees of Licensee's management capability and practice. Licensee objects to the interrogatory as beyond the scope of Contention 3 and will limit its response to investigations of perceptions and attitudes relevant to the management and clean up of TMI-2.

Licensee asks its departing employees to complete questionnaires on their experience while in Licensee's employ. Responses to such questionnaires may contain comments bearing on Licensee's management capability. The cover page of each questionnaire, however, contains the following endorsement. "Any information you provide will be kept confidential." For this reason Licensee objects to production of individual questionnaires or the identification of named persons with individual comments.

Interrogatory No. 8-10.

CEA asks Licensee to state whether it has conducted or caused to be conducted any systematic investigations into the attitudes and perceptions of employees who left Licensee's employ since March 28, 1979. Licensee's objections to this interrogatory and Licensee's limitations on its response are the same as for Interrogatory No. 8-9.

Interrogatory No. 8-11.

This interrogatory asks Licensee to identify any labor unions with which Licensee's employees are affiliated, to describe these unions' grievance process, to summarize the grievances filed since TMI-1 came on line and the disposition of these grievances, to identify and provide any labor/management meeting minutes, to identify in detail any formal or informal grievance procedure available to Licensee employees to current management and/or safety problems, and to provide a summary of grievances filed under this procedure. Licensee will answer CEA's request for the identification of any labor unions with which Licensee's employees are affiliated. However, Licensee objects to the remaining requests contained in Interrogatory No. 8-11 as unduly burdensome out of all proportion to the likelihood that the documents and information sought would provide or lead to the production of relevant and material evidence concerning Licensee's management of TMI-2.

Interrogatory No. 9-7.

Licensee objects to this interrogatory, calling for the identification of a mass of documents, many of which contain outdated information, as unduly burdensome out of all proportion to the relevance and materiality of the documents to Contention 9. Licensee will, however, provide CEA with a copy of the latest financial statement for General Public Utilities Corporation and its operating subsidiaries. In addition the documents which will be identified in response to Interrogatory 9-8 will provide a very substantial amount of information as to Licensee's financial status and projections. These documents will consist principally of testimony and exhibits provided by Licensee to the Pennsylvania Public Utility Commission in connection with the current rate proceeding.

Interrogatory No. 9-10.

Licensee objects to this interrogatory on the ground that it is unduly burdensome and calls for an impermissible degree of speculation by Licensee. Part (a) postulates a revocation by the PUC of Licensee's "standing as a public utility" without further explanation of the nature of the revocation or identification of other actions by the PUC assumed to accompany the revocation. Part (b) calls for the financial impact of excluding TMI-1 from the rate base until it is permitted to restart, with no time period given for such exclusion and no


indication of other rate actions which are assumed to be taken by the PUC in connection with such exclusion. Licensee will, however, identify material presented to the PUC in the current rate proceeding showing the portion of Licensee's current base revenues attributable to TMI-1

Interrogatory No. 13-11.

Interrogatory No. 13-11 asks Licensee to describe in detail any and all communications and dialog between Licensee and professionals with experience and research into operator mindset in situations analogous to nuclear power plant control rooms. This interrogatory also asks Licensee to provide a thorough justification as to why such communications have not been considered necessary or valuable, if no such communications and dialog have taken place. Licensee will answer Interrogatory No. 13-11 by identifying communications and dialogs, if any, between Licensee and professionals with experience and research into operator mindset. If Licensee has not conducted such communications, it is not obligated under the rules of discovery to "provide a thorough justification" for this decision. CEA is free to draw any and all conclusions from Licensee's activities it chooses. Licensee therefore objects to the second half of Interrogatory No. 13-11.

Respectfully submitted,

SHAW, BITTMAN, POTTS & TROWBRIDGE


George F. Trowbridge

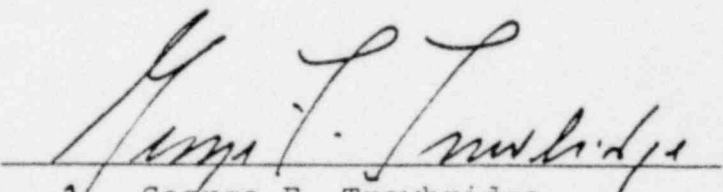
Dated: March 14, 1980

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Objections to First Set of CEA Interrogatories to Licensee," dated March 14, 1980, were served upon those persons on the attached Service List by deposit in the United States mail, postage prepaid, this 14th day of March, 1980.


George F. Trowbridge

Dated: March 14, 1980

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