

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
ET AL.)	
(Three Mile Island, Unit 1))	

NRC STAFF RESPONSE TO UNION OF CONCERNED SCIENTISTS
MOTION FOR AN ORDER TO COMPEL THE NRC
STAFF TO RESPOND TO INTERROGATORIES

On December 21, 1979, the Union of Concerned Scientists (UCS) filed its first set of interrogatories to the Staff. The Staff, in turn, filed its answers to these interrogatories on January 10, 1980. UCS, dissatisfied with the Staff's response, filed a pleading entitled "Union of Concerned Scientists Motion For An Order To Compel The NRC Staff To Respond To Interrogatories," dated January 25, 1980 (Motion).

I.

Title 10, Part 2 of the Code of Federal Regulations (Code) governs the procedures applicable to discovery of the Staff conducted in preparation for NRC proceedings. 10 C.F.R. §2.740 encompasses the general provisions relating to discovery. Section 2.740(f)(1) allows the propounder of interrogatories to move for an order compelling a response to its interrogatories within ten days after the date of a response or failure to respond by the party to whom the interrogatories were addressed.^{1/} Section 2.740(f)(3) expressly states, however, that

^{1/} Even if §2.740(f)(1) applied to the Staff, which it does not (see text and accompanying note 2, *infra*), UCS has failed to file its Motion in a timely manner, namely within 10 days of the Staff's response to its interrogatories. The Staff filed its answers to UCS' interrogatories on January 10, 1980. UCS filed its Motion on January 25, 1980, fifteen days after the Staff's response and five days too late.

section 2.740 does not apply to requests for the testimony or interrogatories of the Staff pursuant to §2.720(h)(2).^{2/} Therefore, UCS has filed its motion without the benefit of legal authorization pursuant to the applicable NRC regulations.

Moreover, if UCS had properly addressed its interrogatories to the Staff in accordance with section 2.720(h)(2)(ii), a motion for an order to compel would be unnecessary. Section 2.720(h)(2)(ii) requires that:

. . . a party may file with the presiding officer written interrogatories to be answered by NRC personnel with knowledge of the facts designated by the Executive Director for Operations. Upon a finding by the presiding officer that answers to the interrogatories are necessary to a proper decision in the proceeding and that answers to the interrogatories are not reasonably obtainable from any other source, the presiding officer may require that the staff answer the interrogatories.

UCS did not file its interrogatories with the Licensing Board and thus failed to trigger the two-fold determination by the Board that (1) answers to the interrogatories are necessary to a proper decision in the proceeding and (2) answers to the interrogatories are not reasonably obtainable from any other source. Upon a positive determination on both counts the Board might require the Staff to provide answers to the interrogatories. Because UCS failed to

^{2/} Section 2.740(f)(3) states that

. . . [t]his section does not apply to requests for the testimony or interrogatories of the staff pursuant to §2.720(h)(2) . . . , except for paragraphs (c) and (e) of this section.

Paragraph (c) relates to protective orders and paragraph (e) concerns supplementation of responses.

follow this procedure, which would have resulted in a Board **ruling** that would, in essence, have compelled the Staff to respond to interrogatories deemed appropriate by the Board, UCS' motion for an order to compel is **without** legal foundation and must be denied.

II.

To state that the UCS' motion is legally impermissible and **should not** be granted is not, however, to suggest that the Staff does not intend to **make every** effort to voluntarily assist in the discovery process and to fully **cooperate** in the production of information relevant and necessary for the parties to properly present and litigate their case. While certain of the Staff's **recent** answers to UCS' interrogatories were either not provided or were only **partially** complete, the Staff nonetheless did attempt to answer each question **in** good faith using the information it had available to it at the time. **Moreover**, as the Staff conducts further studies and as more information **becomes** available, it will make every effort to provide more complete and responsive answers to these interrogatories.

It should be understood, however, that various Staff positions **currently** remain undeveloped. These positions therefore have yet to be **written, reviewed** administratively and printed for publication. Although the **Staff** is now attempting to complete its analyses as quickly as possible, **it should** be recognized that the Staff does not have a legal duty to devise **positions** as yet unformulated or complete analyses or research as yet **unaccomplished** in order to respond to interrogatories. See Boston Edison Company (Pilgrim

Nuclear Generating Station, Unit 2), [BP-75-30, 1 NRC 579, 583, 584 (1975) (party ordinarily not required "to make research and compilation of data not readily known to him"); La Chemise Lacoste v. Alligator Company, Inc., 60 F.R.D. 164, 171 (D. Del. 1973) (party should not be required to enter upon extensive independent research).

Moreover, the need for the Staff to fully complete its review and analyses before asserting its position in an adjudicatory proceeding was recognized by the Commission in its October 10, 1979 Interim Statement of Policy and Procedure. 44 Fed. Reg. 58559 (October 10, 1979). In this statement, the Commission authorized the Staff to "present evidence on the implications of the accident [at Three Mile Island] for resolution of proceedings now before Atomic Safety and Licensing Boards." Ibid. However, in so doing, the Commission also stated that the "Staff [was] free to conclude on a case-by-case basis that further consideration [was] required before it [was] prepared to speak to a particular issue or in a particular proceeding, and it [could] appropriately communicate any such conclusion to the Commission's adjudicatory boards." Ibid.

In the present proceeding because of personnel limitations, the Staff has experienced substantial difficulty in completing the analyses and research necessary to fully and responsively reply to UCS' interrogatories. However, such review is continuing, and as soon as manpower and resources permit, the Staff will answer fully all interrogatories propounded by the UCS, as to which no objection has been interposed.

Accordingly, based upon this representation, it is the view of the Staff that the Motion filed by UCS for an order to compel discovery is neither necessary or appropriate and should be denied.

Respectfully submitted,


for Lisa N. Singer
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 8th day of February, 1980

Walter W. Cohen, Consumer Advocate
Department of Justice
Strawberry Square, 14th Floor
Harrisburg, Pennsylvania 17127

Robert L. Knupp, Esq.
Assistant Solicitor
Knupp and Andrews
P.O. Box P
407 N. Front Street
Harrisburg, Pennsylvania 17108

John E. Minnich, Chairman
Dauphin Co. Board of Commissioners
Dauphin County Courthouse
Front and Market Sts.
Harrisburg, Pennsylvania 17101

- * Atomic Safety and Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555
- * Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555
- * Docketing and Service Section
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Robert Q. Pollard
Chesapeake Energy Alliance
609 Montpelier Street
Baltimore, Maryland 21218

Chauncey Kepford
Judith H. Johnsrud
Environmental Coalition on Nuclear Power
433 Orlando Avenue
State College, Pennsylvania 16801

Ms. Frieda Berryhill, Chairman
Coalition for Nuclear Power Plant
Postponement
2610 Grendon Drive
Wilmington, Delaware 19808

Holly S. Keck
Anti-Nuclear Group Representing
York
245 W. Philadelphia Street
York, Pennsylvania 17404

John Levin, Esq.
Pennsylvania Public Utilities Comm.
Box 3265
Harrisburg, Pennsylvania 17120

Jordan D. Cunningham, Esq.
Fox, Farr and Cunningham
2320 North 2nd Street
Harrisburg, Pennsylvania 17110

Ms. Kathy McCaughin
Three Mile Island Alert, Inc.
23 South 21st Street
Harrisburg, Pennsylvania 17104

Ms. Marjorie M. Aamodt
R.D. #5
Coatesville, Pennsylvania 19320

Ms. Karen Sheldon
Sheldon, Harmon, Roisman & Weiss
1725 I Street, N. W.
Suite 506
Washington, D. C. 20006



James M. Cutchin, IV
Counsel for NRC Staff