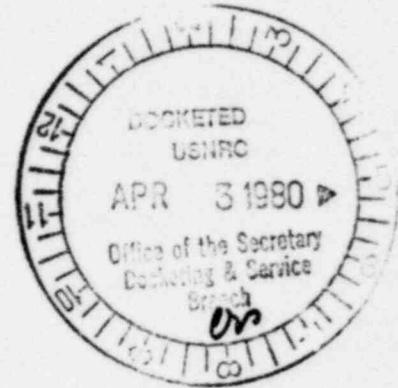


UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION
 ATOMIC SAFETY AND LICENSING BOARD

Ivan W. Smith, Chairman
 Dr. Walter H. Jordan
 Dr. Linda W. Little



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

MEMORANDUM AND ORDER ON UCS MARCH 24, 1980
 MOTION TO COMPEL LICENSEE TO ANSWER UCS INTERROGATORY 179
 (April 2, 1980)

UCS interrogatory 179 to licensee states:

The licensee has stated that it does not have final positions on the merits of the UCS contentions. Please provide the licensee's present position on each UCS contention.

The board will not enforce UCS interrogatory 179. While we agree entirely with UCS's argument that discovery of an opposing party's position is a basic and important part of the discovery process, UCS's motion is so broad that it is, in effect, a premature request for a trial brief from licensee. Moreover, because of its very breadth we cannot discern that UCS needs the answer now to prepare for hearing with respect to each of its contentions.

UCS expresses a concern that if it is not informed of licensee's present position on each of its contentions now, it

will be required to go to hearing without licensee ever revealing its position on the merits of UCS's claim. This is an unwarranted fear. After discovery and before the hearing, the board will, by requiring trial briefs or by other method, require a full and timely disclosure of each party's position on each issue affecting that party. Our authority to control the course of discovery, and to schedule the disclosure of litigative positions is very broad. See generally, Part 1, Manual for Complex Litigation, Sec. 2.00 et seq. and 3.00 et seq. It is our judgment that, in this proceeding with so many parties participating on so many issues, to require an interim trial brief would be disruptive, inefficient, unnecessarily burdensome, distracting, duplicative, and of questionable affirmative value.^{1/}

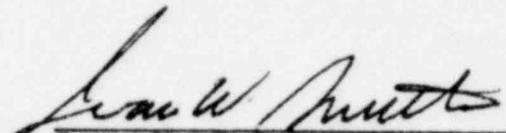
A problem inherent in every complex discovery program is that adversaries must discover on nearly simultaneous discovery schedules. We have provided for this, in part, by permitting follow-on discovery. When we finally require

^{1/} On April 1 we enforced licensee's interrogatory 8-1 to UCS. UCS's interrogatory 179 and licensee's interrogatory 8-1 are similar in that each seeks its adversary's litigative position on issue(s). The differences which quickly come to mind are greater than this similarity however. Licensee's inquiry is specific. The licensee's need, considering the breadth of UCS's contention 8 and considering licensee's burden in this proceeding is obvious. Licensee's interrogatory was on UCS's own contention. UCS's request is premature; while licensee needs the information now. UCS's response to licensee's request would not be duplicative since UCS did not wish to respond either now or later.

parties to reveal their prehearing positions on the issues, if a party finds itself genuinely surprised despite its diligent discovery efforts, the board can then consider the problem in context upon appropriate motion.

UCS motion to enforce interrogatory 179 is denied.

THE ATOMIC SAFETY AND
LICENSING BOARD


Ivan W. Smith, Chairman

Bethesda, Maryland

April 2, 1980