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

MEMORANDUM AND ORDER ON AAMODTS' MARCH 20, 1980
MOTIONS TO COMPEL LICENSEE TO RESPOND
TO DISCOVERY REQUESTS

(April 9, 1980)

On March 20, 1980 the Aamodt family intervenors filed three papers each styled as "responses" to various licensee's objections to Aamodt interrogatories.^{1/} There is no provision for responses to objections to discovery requests in the Commission's rules.

The Aamodt family is intervening in this proceeding pro se. So that the Aamodts may be spared the burden of filing additional papers, the board directed the licensee to regard the "responses" as motions to compel discovery. In its response dated March 28, 1980, the licensee did regard the Aamodts' filings to be motions to compel.

^{1/} Aamodt Response to Licensee's Objections to Second Set of Interrogatories, March 20, 1980; Aamodt Response to Licensee's Objections to Third (sic sixth) Set of Interrogatories, March 20, 1980; Aamodt Response to Licensee's Objections to Contention 2 Interrogatories, March 20, 1980.

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Second Set of Interrogatories on Aamodt Contention No. 8

Aamodt Contention No. 8 contends that TMI-1 should not be opened until the management of radwaste has been totally resolved. The board accepted this contention limited to the scope of short-term recommendation 5 of the Commission's Order and Notice of Hearing, August 9, 1979, pp. 6-7, Tr. 453-57. This short-term recommendation would require the licensee to demonstrate that its waste management capability is adequate to assure safe operation of TMI-1. Specifically, the TMI-1 waste handling capability is not to be relied on by [cleanup restoration] operations at TMI-2. There is no nexus between the normal operating radwaste capacity of unit one and the accident at unit two except for the connection set forth in the Commission's Order. We have not regarded this contention or the mandatory issue set forth in the Commission's Order to authorize an inquiry into the basic operating radwaste capability of the TMI-1 facility. This was covered in the earlier licensing proceedings. Rather, we view Contention 8 to be directed to the sufficiency (without having an effect upon radwaste capacity of TMI-1) of the radwaste capability available for the restoration and clean-up operations at TMI-2.

In the Aamodt interrogatory to licensee regarding Contention 8 (February 22, 1980) the Aamodts request a full and complete record of radiation emission data accumulated

from the TMI-1 operation. Licensee has objected to this interrogatory on the basis that it is beyond the scope of this proceeding. We agree with the licensee. If, as is suggested by the Aamodts' interrogatories on Contention 8, there is not enough TMI-1 radwaste capacity to handle waste from TMI-1 in normal operation, that would be the subject of another proceeding. As we noted above, the TMI-1 radwaste capacity may not be relied upon in the TMI-2 restoration operation. Therefore the board rules that licensee is not required to respond to "Aamodt Interrogatory Of Licensee Regarding Contention 8-Second Set" February 22, 1980.

Aamodts' Third (sic Sixth) Set of Interrogatories
on Aamodt Contention No. 4

Aamodts' Contention No. 4, as accepted, asserts that the licensee has not made provision for the timely dissemination of information in the event of releases of airborne radioactive gases or particulates. Fourth Prehearing Conference Order, February 29, 1980, p. 5. Three interrogatories, asserted to be related to that contention are now before the board under the relevant paper deemed to be Aamodts' motion to compel discovery:

4. How will a plume be monitored beyond the 10 mile EPZ?
5. How has the emergency plan addressed the protection of the population beyond the 10 mile EPZ, for instance "sheltering" suggested in NUREG-0396?

6. Why has the emergency plan failed to provide interface with the counties through which the evacuees will pass?

In accepting Contention 4 the board considered it to raise an issue concerning the adequacy of the information made available to the public. More particularly, as indicated by the first and third sentences of the contention, the emphasis is upon the timeliness of the information to the public. This view of the contention was borne out by the only explanation that the Aamodts have provided to the board as to what is meant by the contention. In the filing of February 2, 1980 on emergency planning contentions, page 2, the Aamodts stress that the information must be transmitted immediately and simultaneously to the interested agencies and that all data must be included. The interrogatories objected to by the licensee, as we note above, relate to methods of plume monitoring, sheltering beyond the 10 mile EPZ, and general emergency plan interfaces. Their scope greatly exceeds the scope of Aamodt Contention 4. Licensee is not required to respond to interrogatories 4, 5 and 6 of Aamodts' Third (sic sixth) Set of Interrogatories.

Motion to Compel Licensee's Response to
Contention 2 Interrogatories

Aamodt interrogatory 4 under the Contention 2 set of interrogatories requests copies of tests proposed to be

administered to operators and senior operators of TMI-1. Licensee promises to provide copies of the tests after they are given in April or May of 1980, but not before. The Aamodts' "Motion to Compel" anticipates that the test copies would be distributed to the service list and apparently be made available in public discovery reading rooms before the test, but somehow not made available to the candidates for the tests. This interrogatory requires no discussion. Licensee is not required to provide the copies of the operator tests until after the testing.

Aamodt Contention 2 is a general contention concerning the vocational testing and the upgrading of the skills and qualifications of licensee's technicians and management.

Aamodt interrogatory 16 on its Contention 2 set of interrogatories seeks to learn:

16. Do you plan to introduce "stress" into simulator training and/or operator performance testing?

a. If so, how do you plan to do this?

By way of background, in the First Special Prehearing Conference Order (p.32) the board rejected Aamodt Contention No. 1 which would require a program of psychological testing and counselling for TMI-1 operator personnel and candidates for such employment. Employees and applicants for employment would be psychologically screened to identify, for example,

hostility and substance abuse. That contention, we believed, was without adequate basis and outside the scope of the proceeding. In objecting to Aamodts' interrogatory 16, licensee argues that it pertains to the rejected Contention 1; not to the subject matter of Contention 2 which was accepted by the board.

We disagree with the licensee. Testing and training reactor operators under conditions of operating stress is not the same as providing psychological testing and counselling related to hostility, confusion, and substance abuse and other psychic characteristics deemed inconsistent or contrary to the safe operation of nuclear plants as was the thrust of rejected Contention 1.

Performance under stress may be an appropriate part of the training of psychologically healthy operator recruits and in the retraining of incumbent operators. Even if this is not so, an issue as to whether this should be so is appropriate. Therefore we direct the licensee to respond to interrogatory 16 on Aamodt Contention 2. This directive was communicated to the parties by the board's interim order of April 4, 1980.

Interrogatory 21 under Contention 2 inquires as to what licensee plans to do about "repair tags on control room consoles." Licensee argues and objects to the question on

the grounds that it is irrelevant to Aamodts' Contention 2. The matter has become moot because the licensee, while maintaining its objection, responded factually to the interrogatory. Licensee's Response to Motion to Compel, March 28, 1980, p. 5.

Interrogatories 22 and 23 relate to the length of shifts chosen for operators and recommendations for limiting maximum time on duty. These interrogatories go to the actual operation of the control room by TMI-1 operators and not to their upgrading, vocational testing or certification by an independent engineering firm as envisioned by Contention 2. No response is required.

Interrogatories 24, 25 and 26 continue the theme of interrogatories 22 and 23 in that they are requesting actual data on the length of shifts of operators and supervisors at TMI-1 and TMI-2 for the month of March, 1979. The interrogatories do not relate to Aamodt Contention 2 for the reasons we discuss with respect to interrogatories 22 and 23. Licensee is not required to answer interrogatories 24, 25, and 26.

Interrogatory 36 in its entirety states:

36. Deposition of ten (or less) employees at TMI-1 and 2 at each job level, selected by intervenor in a statistically random manner is requested.

In the Aamodts' filing of March 20, 1980 on its Contention 2 interrogatories, Aamodts now request a complete list of all

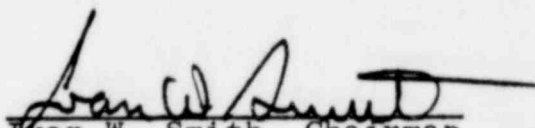
of licensee's employees identified by job category. By using a written questionnaire to all employees, the Aamodts would select ten of the employees to depose.

Licensee in its response to Aamodts' "Motion to Compel" lists many reasons why it should not comply with this "interrogatory," virtually all of which are fatal to the interrogatory. The deadline for deposition notices was February 25, 1980. Interrogatory 36 was served February 25, but the interrogatory is not a notice for the taking of depositions. It was a vague suggestion with which licensee could not have complied. Now in its clarification of March 20, Aamodts suggest, to begin with, written interrogatories to all of licensee's employees to determine which ten of the employees they wish later to depose. This of course would delay the taking of any depositions for an undetermined and necessarily substantial length of time. Moreover the provision for issuing interrogatories before depositions was not anticipated by the board's schedule nor has good cause been shown by the Aamodts as to why the schedule would be changed to accommodate their request. As licensee observes, (p.8), the proposed written interrogatories to licensee's

employees have not even been formulated, or if they have been, the interrogatories have not been provided to licensee.

Aamodts' "motion to compel response" to Interrogatory 36 is therefore denied.

THE ATOMIC SAFETY AND
LICENSING BOARD



Ivan W. Smith, Chairman

Bethesda, Maryland
April 9, 1980