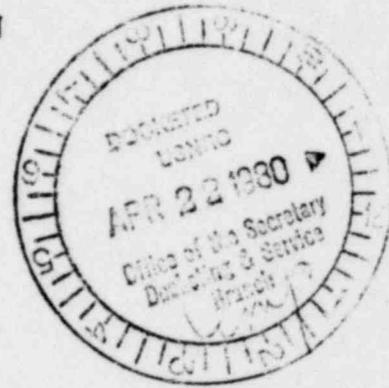


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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



In the Matter of)
METROPOLITAN EDISON COMPANY)
(Three Mile Island Nuclear)
Station, Unit No. 1))

Docket No. 50-289
(Restart)

MEMORANDUM AND ORDER ON SHOLLY MOTION TO COMPEL
ANSWERS BY LICENSEE TO CONTENTION 16 INTERROGATORIES

(April 21, 1980)

This ruling addresses those portions of intervenor Sholly's Motion to Compel, dated March 19, 1980, which relate to the contention 16 interrogatories. The licensee filed an answer to Mr. Sholly's Motion to Compel on March 31, 1980.

Sholly contention 16 states:

It is contended that Unit 1 is not adequately protected against sabotage by an "insider", i.e., someone working on the island. It is further contended that the so-called two-man rule requiring that no one person be allowed in a Type I vital area without another person accompanying him has not yet been implemented. It is further contended that under circumstances where the Unit 2 facility will be undergoing decontamination and restoration, and at least 1,500 persons have unescorted access to the island, the internal security situation is unmanageable and represents an undue risk to public health and safety because certain sabotage events have the potential for severe off-site consequences. It is contended that until an adequate internal security system is established, Unit 1 should not be permitted to restart.

The scope of this contention has been the subject of confusion in the past, some of which apparently persists. It is our view that it is in part a result of this confusion that Mr. Sholly and the licensee have not been able to resolve their discovery dispute on their own. Below we attempt to set some guidelines on the scope of permissible discovery on this contention, and direct the licensee and Mr. Sholly (with the optional participation of the NRC staff) to attempt to work out a discovery arrangement on this contention within ten (10) days following the service of this order.

From the beginning, the board has viewed Sholly contention 16 as being limited to the issue of the adequacy of the security protecting Unit 1 from sabotage by someone on Three Mile Island as a result of the recovery work. See Second Special Prehearing Conference Order (January 11, 1980), at pp. 2-5; and Third Special Prehearing Conference Order (January 25, 1980), at pp. 19-20.

Mr. Sholly, based on the discussion in his Motion to Compel, is of the view that the contention includes not only a direct breach of Unit 1's physical security by a saboteur, but also sabotage of Unit 2 causing a Unit 2 accident which in turn will impact on the safe operation of Unit 1. We rule that the contention is not broad enough to embrace this concept of indirect effect on Unit 1 by sabotage of Unit 2. Such a contention could be impossibly broad, and clearly would go well beyond the litigation of adequacy of security. It would involve a large number of health and safety

issues related to the adequacy of the design features of Unit 1 to protect it from a wide range of postulated accidents at Unit 2 (caused by sabotage in Mr. Sholly's allegation). The ability of Unit 1 to withstand impacts from outside occurrences, e.g., airplane crashes, explosions, tornadoes, etc., is not the subject of this hearing because there is no nexus to the TMI-2 accident. Such matters were treated as part of the initial licensing of Unit 1.

On the other hand, it appears to us that the licensee is reading the scope of the contention and/or the scope of permissible discovery (as opposed to evidence at the hearing) too narrowly. Licensee, in an introductory portion of its answer to Mr. Sholly's Motion to Compel, states correctly that the subject of contention 16 is the threat to Unit 1's industrial security posed by insiders, the potential for which is allegedly increased by the greater numbers of recovery personnel on the island. However, licensee has objected totally to some of Mr. Sholly's interrogatories which appear to us in many instances to include permissible requests for information reasonably calculated to lead to the discovery of admissible evidence. Some of the interrogatories also appear to seek information beyond that necessary for the scope of the contention. Rather than a blanket objection to such interrogatories, the most expeditious course might have been for the parties to negotiate a compromise, or failing that, for licensee to object in part and answer in part.

The long and the short of it is that we do not have sufficient information at this juncture to be able to recast the interrogatories to assure that they do not seek information beyond even the liberal "reasonably calculated to lead to" discovery standard. However, we are unwilling to cut off Mr. Sholly's right to inquire into many of the matters raised by the disputed interrogatories. Therefore, we direct Mr. Sholly and the licensee to attempt to resolve their dispute in the light of this order, and to inform the board of the results within ten days following the service of this order. If it appears necessary thereafter, or if Mr. Sholly or the licensee so requests, the board will consider either a telephone conference call (with just the two parties involved and the staff), or a special prehearing conference for the purpose of guiding discovery on this issue.

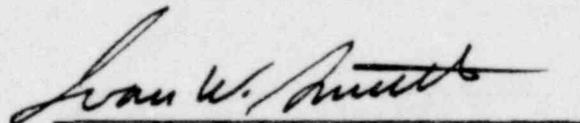
It appears to us at this time that Mr. Sholly's right to discover information on his contention will include access to confidential security information, limited to the security protection of Unit 1 from insiders on Three Mile Island as a result of the restoration work. Accordingly, the parties should work out procedures for such limited access, consistent with the requirements and guidance of ALAB-410,^{1/} including protective orders and the inspection of non-confidential security plan material (e.g., table of contents, summary) so that Mr. Sholly can intelligently decide what confidential material to request. It is our preliminary

^{1/} Pacific Gas and Electric Co. (Diablo Canyon, Units 1 and 2),
5 NRC 1398 (1977).

ruling that parties other than Mr. Sholly, the licensee and the staff will not be permitted access to confidential security information. This may necessitate separate, in camera, evidentiary hearing sessions on this subject.

We are concerned that the extent of disclosure of confidential security information be only that which is necessary, given the standards for the scope of permissible discovery and the scope of the contention. It is in part for this reason that we have taken the unusual step of declining to rule on the specific interrogatories in dispute at this time. Mr. Sholly and the licensee, now that they are aware of our observations that each of them is incorrect in their separate views on the permissible scope of discovery on contention 16, are in a better position than the board to attempt to resolve their dispute in the first instance. We are confident that they will negotiate in good faith. We trust that Mr. Sholly will be sensitive to the need to avoid unnecessary disclosure of security information by licensee and that the licensee will be sensitive to Mr. Sholly's right to have access to such information to the extent it is relevant to the contention, and consistent with the requirements of ALAB-410, supra.

THE ATOMIC SAFETY AND
LICENSING BOARD


Ivan W. Smith, Chairman

Bethesda, Maryland

April 21, 1980