Lic 7/14/80

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 RESPONSE TO MOTION
TO COMPEL BY TMIA

Three Mile Island Alert ("TMIA") filed on June 18, 1980, a second set of follow-on discovery interrogatories. Licensee objected to the interrogatories on June 27, 1980, and TMIA moved to compel responses on July 7, 1980. Licensee's objection and TMIA's motion to compel adequately frame the dispute between the parties. Listed below are four additional points raised by the motion to compel:

1. The crux of TMIA's argument appears to be that, given the extent of the data produced during discovery, TMIA could not earlier have reviewed the material and framed follow-on interrogatories. The short answer to this claim is that TMIA should have protected its interests by alerting Licensee and the Board of this concern through a timely filed motion seeking an extension of time within which to submit follow-on discovery. Had this procedure been used, TMIA could have notified the Board in April of its need for more time to review Licensee's discovery responses. The Board could then have set a reasonable schedule for the filing of

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follow-on discovery. In this manner a date certain would have been set for TMIA to complete its discovery. However, instead of following this procedure, TMIA reserved for itself the decision of what constituted reasonable progress in reviewing Licensee's earlier discovery responses. It is not possible for this Board to now determine whether TMIA has diligently pursued its discovery obligations. In addition, by not properly seeking an extension of time, TMIA is only now at this late date in the proceeding first presenting to the Board its position as to the "availability" of information.

2. TMIA's definition of "availability" as the "time the discovering party actually gains knowledge of the new information upon which it bases its request" is at odds with prior statements by the intervenors as to the meaning of "availability". At the last prehearing conference, Ms. Weiss, speaking on behalf of the intervenors, discussed the concept of "availability". See Tr. at 1832-34. While it was recognized that defining "availability" would require case-by-case consideration, Ms. Weiss did state that "time ought not to begin to run until we are in receipt of a document", and that the intervenors "would define availability as either service plus five days, * * * or the time at which the document is in the hands of the party receiving it * * *" (Tr. at 1832). The Board has previously taken cognizance of this discussion. See Memorandum and Order of May 22, 1980, at p. 14. Despite these statements, TMIA now argues that if the Board intended "availability" to mean date of service, it should have stated so expressly.

3. In its motion to compel, TMIA implies that Licensee's "responses" and computer "summaries" were somehow less than what was requested; that the responses at issue were not typical either in "quantity or quality". TMIA is mistaken. Interrogatory Nos. 5-6, 5-7 and 7-9 were specific as to what was sought[1/] and Licensee provided precisely what was requested. That the information was voluminous is only because TMIA did not place reasonable time limits on its request, seeking instead information developed over long periods of time. TMIA is following a similar approach in follow-on Interrogatory No. 2 which seeks all documentation on work-related accidents, sick calls, and infirmary records from October 1, 1977 to March 30, 1979.

4. In support of follow-on Interrogatory No. 4, TMIA claims that the request is based on Interrogatory No. 7-9 and could not have been filed earlier because the information was not entered into the log books until May 27, 1980. This argument misperceives the scope of Interrogatory No. 7-9 which sought Licensee's Maintenance Log Book. The request was fully satisfied by making available the Log Book as of March 31, 1980, the date on which Licensee responded to TMIA's Seventh Set of Interrogatories. TMIA's interrogatory did not request that the Log Book be supplemented with

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1/ Interrogatory No. 5-6 sought a specific report, the Corrective Maintenance Component History Reports - Unit 1, for the periods January 1, 1977 to September 28, 1978 and March 28, 1979 to January 1, 1980. Interrogatory No. 5-7 sought four specific summary reports, only three of which are maintained by Licensee. And, Interrogatory No. 7-9 sought the Maintenance Log for TMI Unit 1.

additional information.[2/] Had such a request been made, Licensee would have been able to alert TMIA to the entry of new information and follow-on discovery could have been made promptly. Under TMIA's view of things, discovery will never end in this proceeding. By its nature the Maintenance Log Book is continually being revised. If TMIA can draft follow-on interrogatories on those revisions it can file interrogatories without limit. The better view is that, so long as revisions to the Maintenance Log Book do not render earlier provided information incorrect, follow-on discovery must be limited to the information in the Log Book as of March 31, 1980. There is no injustice or inequity in this position. Courts and agencies routinely establish a discovery cutoff date. Such a date must be set if the proceeding is to move from the discovery stage to the hearing stage. Only upon a showing that significant and substantial new information has been disclosed should discovery be permitted beyond the cutoff date. In this instance there is no showing by TMIA that the information it seeks is not merely cumulative of information already in its possession.

2/ Nor does 10 C.F.R. § 2.740(e) require that supplementary information be supplied in these circumstances. The information sought does not relate to persons having knowledge of discoverable matters or expert witnesses; does not indicate a prior response was incorrect or constitutes a knowing concealment; and is not covered by a prior Board order or agreement of the parties.

For all these reasons, the Board should not compel responses to TMIA's second set of follow-on interrogatories.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By: Robert E. Zahler
Robert E. Zahler

Dated: July 14, 1980

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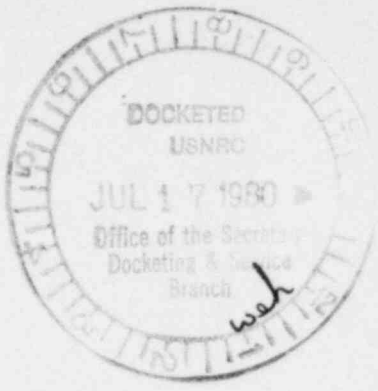
CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Response to Motion to Compel by TMIA" were served upon those persons on the attached Service List by deposit in the United States mail, postage prepaid, this 14th day of July, 1980.

Robert Zahler

Robert E. Zahler

Dated: July 14, 1980



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