

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))



TMIA'S MOTION TO COMPEL
DISCOVERY OF LICENSEE

On June 18, 1980, TMIA served upon Licensee follow-on interrogatories based on new information discovered in documents previously provided. Particularly, these follow-up interrogatories are based on the evaluation of Licensee's response to TMIA Interrogatory 5-6 (a 904 page computer "summary"), 5-7 (1137 page computer summary representing the regular and overtime hours for each hourly employee for the 18 month period before the TMI-2 accident) and 7-9 (the actual maintenance log consisting of 7 volumes, each approximately 500 pages long).

Licensee objected to these interrogatories on June 27, 1980 "on the grounds of untimeliness and, as to Interrogatory No. 2, as irrelevant."

Pursuant to the Board's Order of May 5, 1980, TMIA now moves the Board for an Order compelling Licensee to respond to "TMIA's Follow-Up Interrogatories To Licensee (Second Set)."

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The Board Order of May 5, 1980, provides a "schedule for discovery requests . . . based upon new information." TMIA believes that the information which forms the basis for these follow-up interrogatories is "new information."

It is first important to note that Licensee's responses to TMIA Interrogatories 5-6, 5-7 and 7-9 are not typical responses in either quantity or quality. TMIA has spent 590 man-hours at the discovery room dissecting the 1727 odd pages of computer "summaries" and 3500 pages of log entries for relevant data. Follow-up discovery could not be done until this evaluation process was completed.

Likewise, TMIA had no idea of what was contained in the log books, computer summaries or the other documents to which the computer summary would refer.

For instance, Interrogatories 1 and 3 are based on the evaluation of Work Requests 25166, 24159, 24218, 21857, 25110 and 24511 on June 11, 12 and 16, 1980. TMIA did not leisurely pull these work requests out on the above dates for evaluation. Rather, TMIA was unindated with 40,000 work requests in January. TMIA requested the computer "summaries" in March to aid its search efforts. An evaluation of the 590 page "summary" resulted in the identification of over 1,000 work requests. In the process of evaluating these 1,000 work requests, the questions concerning "purging" and "M. Ross's leak list" arose. That was June 10, 11 and 16, 1980.

Using Licensee's interpretation of the February 29, 1980 Order, follow-on discovery would have been due March 14, 1980 (see February 29, 1980 Order, pg.

23) because the original 40,000 work requests were "provided" in January. However, such a conclusion would be manifestly unfair, violate the realities of the discovery process and amount to a denial of TMIA's due process rights.

TMIA confronted a similar task in evaluating Licensee's "response" to Interrogatory 5-7. The 1137 page computer summary summarized the regular and overtime hours for each hourly employee on the Island. After choosing the 190 odd employees most likely to have worked excessive overtime, TMIA examined each employee for the one and a half (1 1/2) year period before the accident.

At this point in the evaluation process, TMIA had no way of knowing what would result from its search. On June 9, 1980, TMIA finished this time-consuming process and telephoned the results to Dr. Robert Coleman, Psychology Professor at Penn State Capital Campus.

It is at this time, June 9, 1980, that Dr. Coleman suggested evaluating the sick call reports, accident reports and infirmary reports to further confirm the results obtained from the computer summary search. This recommendation by Dr. Coleman and the results of the computer summary are the "new information" on which TMIA based Interrogatory 2.

Interrogatory 2 is relevant in that it will be used to further prove that "just to complete essential maintenance in the short time available, employees were worked to a point where they were no longer effective because of fatigue (see TMIA revised Contention 5). TMIA has uncovered significant evidence on this contention by evaluating the computer summaries (see second installment of

information in response to Licensee's interrogatories dated June 30, 1980). The documents requested in Interrogatory 2 will corroborate this evidence. Also, by exposing the adverse effects of excessive overtime, TMIA will further prove management's incompetency in requiring Licensee's hourly employees to work excessive overtime.

TMIA requested in Interrogatory 7-9 Licensee's actual maintenance logs. Upon five days notice, TMIA was allowed to inspect these logs. On June 14, 1980, TMIA received Volume 4 and 5 for further evaluation (Volume 4 and 5 had been evaluated previously). As a result, TMIA discovered a significant number of recently completed work requests. Work Request 19507 (initiated March 3, 1980) was completed on May 27, 1980. Likewise, Work Request 22589 was completed on the same date. TMIA could not have submitted follow-up discovery requests by April 15, 1980 when the entries were not made in the log books until May 27, 1980. This data, which forms the basis for Interrogatory 4, is "new information" within the purview of the May 5, 1980 Order: "Specific discovery requests based upon new information, whether in the SER, staff's Class 9 response or elsewhere, must be made directly to the party being discovered no later than ten days after the availability of such information."

TMIA believes that the date of "availability" can only be defined to mean the time the discovering party actually gains knowledge of the new information upon which it bases its request. As evident by the above discussion, any other interpretation would effectively eliminate any additional discovery by TMIA.

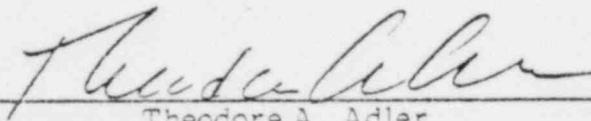
Licensee recommends "availability" should mean date of service. First, if the Board had intended to use date of service, it could have done so expressly. Secondly, the time period for follow-up would have lapsed long before TMIA could have possibly completed its initial evaluation of Licensee's responses. In the case of Interrogatory 4, the time would have lapsed six weeks before the entries were made in the log book. Such an interpretation is fundamentally unfair and an effective denial of TMIA's due process rights.

Therefore, TMIA requests that the Board recognize that these interrogatories are subject to the May 5, 1980 Order and compel Licensee to respond to TMIA's interrogatories.

Respectfully submitted,

WIDOFF, REAGER, SELKOWITZ & ADLER, P.C.

By:



Theodore A. Adler

P. O. Box 1547
Harrisburg, PA 17105
(717) 763-1383

Dated: July 7, 1980

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing document, TMIA's Motion To Compel Discovery Of Licensee, to be placed in the United States mail, first-class, postage prepaid, addressed to the persons listed below:

Ivan W. Smith, Chairman
Atomic Safety & Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Walter H. Jordan
881 West Outer Drive
Oak Ridge, TN 37830

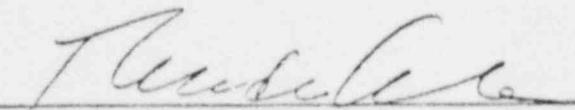
Dr. Linda W. Little
5000 Hermitage Drive
Raleigh, NC 27612

George F. Trowbridge, Esquire
Shaw, Pittman, Potts & Trowbridge
1800 M Street, N.W.
Washington, DC 20006

Docketing and Service Section
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, DC 20555




Theodore A. Adler

Dated: July 7, 1980