

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
FOR RECONSIDERATION OF AAMODT INTERROGATORIES
AND DEPOSITION REGARDING CONTENTION NO. 2

By Motion for Reconsideration served on April 24, 1980, the Aamodt Family asks that the Licensing Board reconsider several rulings in its Order dated April 9, 1980, on an earlier Aamodt motion to compel Licensee answers to interrogatories. Licensee opposes this request.

Interrogatories 22 through 26. The Aamodts ask that the Board reverse its Order denying intervenors' motion^{*/} to compel answers to these interrogatories, contained in the Aamodts' Fourth (Sic; Fifth) Set of Interrogatories, dated February 25, 1980, because the Aamodt Family does not agree with the

^{*/} The Aamodts' Motion to Compel was entitled, "Aamodt Response to Licensee's Objections to Contention 2," dated March 21, 1980.

Board's reasoning that the information sought in Interrogatories 22 through 26 is beyond the scope of Aamodt Contention No. 2 and therefore, that answering these interrogatories would impermissibly expand the scope of the contention. The Aamodts do not proffer any new, previously undisclosed facts which compel this conclusion. They simply reiterate their original argument that data on actual shift lengths, Licensee's justification for particular shift lengths, names of operators on shifts over the operating life of Unit 1, and other related information is subject matter properly within the scope of discovery.

Aamodt Contention No. 2 is slowly but surely expanding beyond its original scope. As the Board recently stated, Interrogatories 22 through 26 pertain to actual operation of the plant, not to operator training. See Order of April 9, 1980. Aamodt Contention No. 2, however, challenges the technical competency of TMI Unit 1 operators. Obviously, plant operations is not absolutely unrelated to technical training of plant operators. However, rules applicable to operators on the job, such as shift lengths, concern the effectiveness of Licensee's procedures for plant operations. Contrary to the Aamodts' assertion in their recent Motion for Reconsideration, Interrogatories 22 through 26, as drafted, do not focus upon operator training in any manner. Rather, they are aimed at disputing the validity of actual working conditions at the plant, namely, shift lengths. Further, they are overly broad under any reasonable interpretation of Aamodt Contention 2. For example, Licensee sees no relevance whatsoever of Interrogatory 22(b), which

requests the number of hours on duty at the commencement of the TMI-2 accident of not only operators, but every person on duty, including those in the control room, maintenance and guards, and of Interrogatory No. 25, which asks for the longest shift any person was allowed to work at Unit 1 or 2 prior to the accident. This information does not shed light on the training which operators should receive in order to have the technical capability necessary for the job. Finally, if the Aamodts are correct in their assertion that data on shift lengths is encompassed under the "umbrella" of measures taken by Licensee to train operators to cope with stressful situations, Licensee has already responded to this inquiry in its Response to Interrogatory No. 16 of the Fourth Set (Sic; Fifth Set) of Interrogatories from the Aamodt Family, dated April 14, 1980.

Interrogatory No. 36. In their Motion for Reconsideration, the Aamodt Family restates in a different manner the request for depositions set forth originally in their Fourth (Sic; Fifth) Set of Interrogatories, and subsequently modified in their Motion to Compel.*/ The Aamodts now seek to depose ten unidentified**/employees

*/ This practice is familiar to the Board and the troublesome aspects were carefully explained by Chairman Smith to the Aamodt Family during the course of the February 13, 1980 Special Prehearing Conference:

We just can't do business that way. We will completely collapse if we allow people over and over again, if they get turned down one time to add new ideas, new thoughts, new bases...Intervenors have to make their point timely and well; you can't make your point in a skeletal fashion and then embellish it as you hear objections to it...And not only that, it is just, frankly, against the rules of the Commission...We cannot take away the due process of rights of the licensee... Tr. at 1601, 1604, 1606.

**/The process for selection of these individuals and the time it might take remains unclear. Presumably, the Aamodts still insist on obtaining a complete listing of all employees in both TMI Units from which, by some undisclosed method they would randomly select those they desire to depose.

of the Licensee at each TMI unit, at each job level in the following four categories: management, control room, guards, and maintenance. Having previously and at some length stated its objections to the Aamodts' deposition/interrogatory request, Licensee need not repeat in detail its bases for opposing Interrogatory No. 36. In summary, Licensee objects to the form and the timing, the vagueness, and the unlimited scope of this request. See Licensee's Response to the Motions to Compel Filed by the Aamodts, dated March 28, 1980 at 6-8.

Section 2.740a of the Commission's Rules of Practice governs the instant discovery request by the Aamodts. Subsection 2.740a(f) provides that a party seeking to take depositions on written interrogatories must serve copies of the interrogatories on all other parties. Thus, contrary to the Aamodts' understanding, it is not their "right" to refuse to formulate and serve interrogatories prior to taking a deposition. Based on the Aamodts' most recent adaptation of Interrogatory No. 36, it appears that the Aamodt Family intends, albeit it unwittingly, to strip Licensee of most if not all of the due process protections provided in the administrative discovery process, as reflected in the NRC's discovery rules. Specifically, the Aamodts propose to utilize a written interrogatory format, for reasons of economy, without allowing Licensee to thoughtfully consider its answers to questions propounded by the Aamodt Family, as is provided in the Rules of Practice. 10 CFR 2.740a(f). At the same time, for undisclosed reasons, the Aamodts intend to benefit from the advantages of taking oral depositions, e.g., seeking extemporaneous answers, considering the deponent's credibility, and asking additional questions as information is uncovered, without

allowing Licensee the opportunity to let the record reflect cross-examination questions and objections to the Aamodts' questions. 10 CFR 2.740a(c). In sum, in addition to being improper and contrary to the NRC's Rules of Practice, the deposition/interrogatory procedure most recently proposed by the Aamodt Family would not promote in any way the full and fair disclosure of the facts.

Respectfully submitted,
SHAW, PITTMAN, POTTS & TROWBRIDGE

By Ernest L. Blake, Jr.
Ernest L. Blake, Jr.

Dated: May 5, 1980.

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