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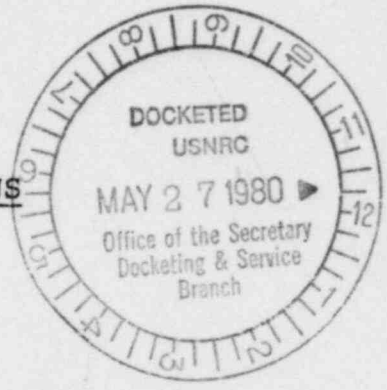
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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 MOTION TO REQUIRE
FURTHER SPECIFICATION OF CONTENTIONS

I. Introduction

At the May 13, 1980 Special Prehearing Conference, in presenting its recommendation for a pre-hearing schedule, Licensee proposed that the Board set a date certain in the near future, independent of the issuance of the Safety Evaulation Report ("SER"), for the further specification of particular contentions. Licensee herein describes its proposal in greater detail, identifies the contentions as to which further specificity is needed, and discusses the need for further specificity in each case.

As the Board observed at the Special Prehearing Conference, Tr. 1863-64, Licensee's proposal for the further specification of certain identified contentions is wholly distinct from the Board's proposal for the general "reconsideration" of all contentions. As the Board described its proposal:

> [W]e want a representation * * * that the individual respective intervenor has, indeed, looked at that contention, has taken into account the events since that contention was filed and accepted, and that the intervenor still believes in the contention, still believes the contention has merit, or if it doesn't have merit as drafted, should be narrowed.

Tr. 1865. Chairman Smith explained the purpose of the Board's proposed "reconsideration" requirement:

> The main purpose of this requirement was to require intervenors to stand back for a moment and consider, reflect on their cases, and not allow to go to hearing something that they really don't want to be heard.

Tr. 1861-62. The Board's proposal is thus "an information requirement and a consideration requirement," applicable to all contentions, not a substantive requirement that any particular contention be narrowed. Tr. 1862.

In contrast, Licensee's proposal for the further specification of contentions is applicable only to certain identified contentions. Those contentions can be divided into two groups. The first group consists of those contentions which the Board admitted with the understanding that they would be further specified during or after discovery. The second group of contentions consists of those where, in response to Licensee's interrogatories designed to ascertain the bases for the contentions, the intervenors have stated that they do not know or have not yet developed the requested information in support of the contentions. Tr. 1849-50.

Licensee's proposal is based upon Licensee's need to prepare for the hearing in this proceeding. As the Board

observed at the May 13 Special Prehearing Conference, the Board applied a "broad," "liberal" standard in its initial ruling on all contentions, which the Board discussed in its December 18 Special Prehearing Conference Order. Tr. 1843-44, 1853. First Special Prehearing Conference Order (12/18/79), at pp.8-10. However, the NRC's rules of procedure presume that intervenors have factual bases for their contentions. Memorandum and Order On Licensee's Motion To Compel Discovery of CEA (4/16/80), at p.3. Though the specific facts on which a contention is based need not be fully developed when the contention is initially proposed, it is now very late in the pre-hearing process. If Licensee is to prepare carefully to litigate the specific allegations of the intervenors' contentions, considerations of fundamental fairness and due process require that Licensee be timely informed of the specific bases for those contentions. The Board has repeatedly reminded the parties of this general obligation. Tr. 1842-44. See, e.g., First Special Prehearing Conference Order (12/18/79), at p.10; Memorandum and Order Compelling UCS To Answer Licensee's Interrogatory No. 8-1 (4/1/80), at p.3; Memorandum and Order On Licensee's Motion To Compel of TMIA (4/11/80), at p.2; Memorandum and Order On Licensee's Motion To Compel Discovery of ECNP (4/11/80), at p.2; Memorandum and Order On Licensee's Second Motion To Compel Discovery of TMIA (5/1/80), at pp.2, 3.

Licensee has already begun to draft testimony in some areas, in preparation for the hearing, and is thus already painfully aware of the need for further specificity as to

certain contentions. Licensee therefore requests that the Board set a date certain in the near future - Licensee suggests June 30, 1980 - as the date by which further specificity must be supplied with respect to the identified contentions.[1] Licensee does not believe it is necessary to tie any such date to the issuance of the SER. It is now very late in this proceeding. All intervenors have had the opportunity to discover specific facts to support their contentions, including those contentions which the Board indicated must be further specified. The period for general discovery has ended. Licensee therefore will have no general opportunity to further pursue answers to its interrogatories seeking the bases for contentions to which intervenors responded that they did not know or had not developed the requested information. The identified contentions are therefore ripe for the addition of further specificity.

Moreover, although Licensee requests that any date set by the Board in response to Licensee's motion be independent of the issuance of the SER or any other document, Licensee notes

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1 At the May 13 Special Prehearing Conference, Licensee proposed that the Board set a date certain for the further specification of all identified contentions with the exception of emergency planning contentions, which would be due within a stated period after service of the June revision of the Emergency Plan. Tr. 1920. At that time, Licensee envisioned that further specified contentions (other than emergency planning contentions) would be submitted substantially earlier than June 30. Licensee now believes that a Board order requiring the further specification of all identified contentions by June 30, 1980 would be more appropriate.

that June 30, 1980 would be after the projected issuance of the SER, Tr. 1806, the Licensee's revised Emergency Plan, Tr. 1920, and the Staff's statement in response to the Board's questions on Class 9 accidents. Order Extending Time for NRC Staff To Respond To The Board's Class 9 Inquiry (5/1/80). Further, neither the Staff nor Licensee expect the SER to include significant material not already available to the intervenors, Tr. 1870, 1980, and many contentions raise particular matters which will not be addressed in the SER at all. Tr. 1826-27, 1981. Finally, in the event that new information should later become available, the Commission's rules of practice and the Board's orders in this proceeding allow for the timely development of such information and for its incorporation into the proceeding. See, e.g., Tr. 21-22, 33, 38-39, 1848, 1919, 1921, and particularly, Memorandum and Order Ruling On Intervenors' Requests For Extensions of Time To File Revised Emergency Planning Contentions (1/8/80), at p.5 n.2 (Board applies its general rule on timely filing of revised contentions based upon new information to revision of emergency planning contentions) and at p.7 (Board instructs parties on format of future revisions of contentions; ruling clearly not limited solely to revisions of emergency planning contentions).

Finally, Licensee proposes that any intervenor who does not respond with further specification of an identified contention by the date set by the Board should be confined at the hearing to the litigation of the specificity of the

contention itself, as admitted, including any written bases for the contention submitted to the Board, as well as any specific facts which the intervenor expressly identified and provided as support for the contention in the course of discovery. Thus, if the Board adopts Licensee's proposal, any intervenor who wishes to litigate an identified contention only to the extent of the specificity that the intervenor has already provided to Licensee need not redraft that contention.

II. Contentions Which Board Ordered To Be Redrafted, Revised, or Further Specified By Discovery

The following contentions are those which the Board admitted with the understanding that they would be further specified during or after discovery.[2]

Aamodt Contention 5

"The board also accepts Mrs. Aamodt's Contention No. 5 regarding care or relocation of livestock. The contention is not now sufficiently specific for litigation; Mrs. Aamodt will be expected to revise the contention for specificity after discovery." Interim Order On Late Filed Emergency Planning Contentions (2/15/80), p.2.

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2 On May 9, 1980, Licensee filed a "Motion For Sanctions Against ECNP." In arguing the motion at the Special Prehearing Conference on May 13, Dr. Kepford indicated that ECNP probably would file a written response to the motion. Tr. 1946. That response will be due May 27. In light of these matters pending before the Board, Licensee has not included in this list those ECNP contentions which the Board has indicated must be redrafted, revised, or further specified by discovery.

ANGRY Contention 5(D)

"ANGRY's Contention 5(D) is objected to by the licensee on the basis of specificity. It would require rapid filtration of large volumes of contaminated gases and fluids in effluent pathways. The contention is lacking in specificity but the board will accept it with the understanding that ANGRY must specify in the course of discovery." First Special Prehearing Conference Order (12/18/79), pp.36-37.

Newberry Contention 3(d)(9)

"Contention 3(d)(9) is accepted. However the board shares the staff's view that there is inadequate basis for the assertion that local municipalities are not aware of their responsibilities to develop emergency plans. Newberry should specify the basis of this statement." Fourth Special Prehearing Conference Order (2/29/80), p.13.

Sholly Contention 8(c) (ANGRY and Sholly consolidated)

"Mr. Sholly's Contention 8 C challenges licensee's failure to consider local conditions in adopting the 10-mile plume EPZ. We accept the contention over licensee's objection, but we agree with the staff that the contention should be made more specific in the course of discovery." Third Special Prehearing Conference Order (1/25/80), p.8.

"Mr. Sholly's contention, [8(C)], filed by Mr. Sholly on December 17, 1979, was admitted in our Third Special Prehearing Conference Order (at p.8) with the proviso that it be made more specific in the course of discovery. To clarify a potential ambiguity in our prior ruling, if the contention is not better specified it will not be accepted as an issue for evidentiary consideration." Fourth Special Prehearing Conference Order (2/29/80), p.31.

The NRC staff's response points out that Sholly Contention 8(C) does not expressly contest the use of a 10-mile EPZ in the State's plans in addition to the licensee's plans. However, we will permit future specification of Sholly Contention 8(C) to include pertinent emergency plans of governmental entities upon which overall emergency planning in the event of an accident at TMI-1 may depend." Fourth Special Prehearing Conference Order (2/29/80), p.31 n.14.

"[O]ur prior ruling of February 29, 1980 gave * * * [ANGRY] the opportunity, in consolidation with Mr. Sholly's contention 8(c), to jointly advance a final contention (at the appropriate future time in the schedule for final contentions) setting forth the specific local conditions which must be taken into account. See the February 29, 1980 order at p.29, n.12." Memorandum and Order On Pending Motions For Reconsideration of ANGRY, Lewis and Aamodt (5/8/80), p.2.

Sholly Contention 8T

"Mr. Sholly's Contention 8T is, as he acknowledges in his response, 'somewhat vague.' But the board believes the subject matter is important and, over the licensee's objection, we accept the contention. Mr. Sholly offers to provide greater detail and specificity. This is required and should be provided as soon as practicable before the close of discovery." Third Special Prehearing Conference Order (1/25/80), p.9.

Sholly Contention 14

"Mr. Sholly Contention No. 14 brings into question the management and administrative capabilities of licensee. Both the licensee and the staff agree that the subject matter is within the scope of the proceeding but would require greater specificity. Mr. Sholly has agreed that, in the course of discovery, the contention will be further defined. Tr. 557. With this commitment the board accepts the contention." First Special Prehearing Conference Order (12/18/79), p.35.

Sholly Contention 16 (TMIA and Sholly working together on this contention)

"The board admits Sholly Contention 16. In doing so, we interpret the contention to be limited to industrial security with respect to "insiders" at the Unit 2 and Unit 1 facilities as it could affect safe operation of Unit 1. This is consistent with the scope of this restart proceeding, the interpretation suggested by the staff, and the apparent thrust of Mr. Sholly's concern. We believe the contention is specific enough to be admitted, but agree with the staff that further specificity can be achieved through the discovery process." Second Special Prehearing Conference Order (1/11/80), p.2.

UCS Contention 9

"There is a pattern in many of the contentions where the petitioner asserts an example said to be related to the accident and from there seeks to enlarge the contention to embrace all possibilities in the class of events or circumstances represented by the example. For example, UCS in its Contention 9 specifies that there was no system to inform the operators that the auxiliary feedwater system valves were open. From this UCS seeks to justify a contention that operators should be informed when any safety system has been disabled. * * * [P]ractical evidentiary considerations and due process require that there be some reasonable bounding of the example-type contentions * * * The discovery process should be used to refine these contentions so that only those circumstances reasonably related to the accident are identified for hearing." First Special Prehearing Conference Order (12/18/79), pp.9-10.

UCS Contention 10

There is a pattern in many of the contentions where the petitioner asserts an example said to be related to the accident and from there seeks to enlarge the contention to embrace all possibilities in the class of events or circumstances represented by the example. * * *[5] * * * [P]ractical evidentiary considerations and due process require that there be some reasonable bounding of the example-type contentions * * * The discovery process should be used to refine these contentions so that only those circumstances reasonably related to the accident are identified for hearing."

"5/ Other samples are in UCS Contention 10 where premature shutting off of the ECCS is alleged to base a contention that no operator action should prevent the completion of a safety function once initiated."

First Special Prehearing Conference Order (12/18/79), pp.9-10.

UCS Contention 13 (ANGRY and CEA permitted to adopt this)[3]

"[W]e do not see how the licensee or staff can precisely respond to such a broad charge. Moreover, we recognize that Robert D. Pollard is the technical advisor to the Union of Concerned Scientists and that UCS has other people with expertise in the field of nuclear safety. UCS can better specify its concerns. We are, as of now, admitting the contention for the purposes of discovery. We believe that UCS can further define its contention, yet keep it within the scope of this proceeding and relate it to the accident at TMI-2." First Special Prehearing Conference Order (12/18/7), p.22.

"[A]s admitted for discovery by the board, UCS Contention 13 requires UCS, through discovery, to identify specific accident sequences with a reasonable nexus to the TMI-2 accident as a prerequisite to litigation of the safety analysis of such accidents.[10]"

"10/ If UCS and the intervenors who have been permitted to adopt UCS Contention 13 do not do this, all that will remain of Contention 13 will be evidence addressing the general method by which the staff has determined whether accidents within the scope of this proceeding fall within or outside the design basis."
Third Special Prehearing Conference Order (1/25/80), p.18.

"It is also important to note that in denying its contention, the board permitted ANGRY to adopt UCS Contention 13. As noted in our First Special Prehearing Conference Order (at pp.21-23), ANGRY can utilize discovery on that contention, along with the staff's response to our directive (at p.17) to specify whether any specific "Class 9" accident sequence should now be considered, to focus on specific accident sequences within the overall broad concern expressed in ANGRY's rejected Contention 6." Third Special Prehearing Conference Order (1/25/80), pp. 15-16.

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3 The Board's quoted language in note 10 at page 18 of the Third Special Prehearing Conference Order indicates that the Board expects not only UCS, but also those parties adopting UCS Contention 13, "to identify specific accident sequences with a reasonable nexus to the TMI-2 accident as a prerequisite to litigation of the safety analysis of such accidents."

Board notes that UCS Contention 13 was admitted "with a carefully charted approach to greater specificity." Third Special Prehearing Conference Order (1/25/80), p.17.

As the Board correctly observed at the May 13 Special Prehearing Conference, this part of Licensee's motion is essentially a request that the Board now implement and enforce certain of its prior orders, in service to fundamental fairness and due process, so that Licensee may carefully prepare to litigate the specific allegations of intervenors' contentions. Tr. 1853.

III. Contentions As To Which Licensee Seeks Further Specificity, Based On Discovery Responses

Licensee also seeks a Board order compelling further specification of CEA Contentions 5, 6, 7, and 8, and TMIA Contentions 6 and 7.[4] These contentions are those where, in response to Licensee's interrogatories designed to ascertain the bases for the contentions, the intervenors have stated that

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4 TMIA has moved to withdraw its Contentions 1 and 2. See Motion To Withdraw TMIA Contentions One and Two (5/5/80). The present status of those contentions is unclear. Accordingly Licensee does not here seek a Board order compelling further specification of TMIA Contentions 1 and 2.

At the May 13 Special Prehearing Conference, Licensee briefly described the inadequacies of TMIA's latest responses to Licensee's interrogatories on TMIA Contention 5, in a discussion among the Board, Licensee, and TMIA. Tr. 1981-2000, especially 1982-84. Licensee understands that, pursuant to an agreement reached after that conference, TMIA will be filing further responses to Licensee's interrogatories on Contention 5. Licensee therefore does not here seek a Board order compelling further specification of TMIA Contention 5.

they do not know or have not yet developed the requested information in support of the contentions.[5]

Licensee first sets forth the text of the contention, then summarizes Licensee's interrogatories on the contention, along with the intervenor's responses.

CEA Contention 5

CEA contends that the short term actions are inadequate in that they do not include provisions for denying restart of TMI-1 until the radioactively contaminated water from TMI-2 is fully decontaminated and disposed of in a manner that provides for no possible interference from that contaminated water with storage space that might be required in the event of a TMI-1 accident (as in 2(a) above), and that also provides for no possible accident in the decontamination and disposal of the TMI-2 radioactive water that might impact on the operation and emergency provisions of TMI-1.

On January 18, 1980, Licensee filed its "First Set of Interrogatories To Intervenor Chesapeake Energy Alliance, Inc." "CEA's Response To Licensee's First Set of Interrogatories," filed March 17, 1980, was the subject of the Board's Memorandum and Order On Licensee's Motion To Compel Discovery of CEA (4/16/80). On April 26, 1980, in response to the Board's order, CEA filed its "Further Response To Licensee's First Set of Interrogatories."

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5 In light of "Licensee's Motion For Sanctions Against ECNP" (5/9/80), discussed in note 2, supra, Licensee does not here seek a Board order requiring further specification of ECNP's contentions on the grounds that ECNP has failed to respond to Licensee's interrogatories.

Licensee's interrogatories 5-1(a), 5-1(b), and 5-1(c) ask CEA to identify the potential Unit 1 accidents assumed in the contention, to estimate the quantity of waste water requiring storage at Unit 1 which CEA contends would be generated by each identified accident scenario, and to describe the mechanism by which each identified scenario would generate the specific quantity of wastewater described. In "CEA's Further Response" to Licensee's interrogatories 5-1(a), 5-1(b), and 5"1(c), CEA states only that "CEA is not presently able to identify specific TMI-1 accidents that would require use of TMI-2 [sic; TMI-1] storage space."

Licensee's interrogatory 5-2 asks CEA to describe the potential accidents during decontamination and clean-up at Unit 2 which CEA contends might impact on the operation of Unit 1. In "CEA's Further Response" to interrogatory 5-2, CEA states only that "CEA is not presently able to identify specific potential accidents at TMI-2 during decontamination and clean-up."

Licensee's interrogatories 5-3, 5-3(a), 5-3(b), and 5-3(c) ask CEA to identify each risk to the safe operation of Unit 1 which CEA contends is associated with the Unit 2 accidents described in its response to interrogatory 5-2, specifying the facts, documents, and persons on which CEA relies to support its contention. "CEA's Further Response" to these interrogatories is a reference to "CEA's Further Response" to interrogatory 5-2, where CEA stated that "CEA is not presently able

to identify specific potential accidents at TMI-2 during decontamination and clean-up."

Licensee's interrogatory 5-5 asks CEA to describe the basis for CEA's claim that a delay in the ultimate disposal of processed TMI-2 wastewater may interfere with emergency storage facilities that may be needed in the event of an accident at Unit 1. Licensee has not yet received CEA's supplemental response to interrogatory 5-5, as ordered by the Board at the 13 Special Prehearing Conference, Tr. 1952, ruling on "Licensee's Second Motion To Compel Discovery of CEA" (5/12/80). Accordingly, Licensee reiterates its request that CEA supply the basis for its claim.

CEA Contention 6

CEA contends that under no circumstances should TMI-1 be permitted to restart while TMI-2 continues to 'leak' contaminated water. CEA contends that as long as TMI-2 continues to generate surplus radioactive water that TMI-2 continues to pose the threat of returning to an active emergency status, posing potentially severe conflict with the operation of TMI-1.

Licensee's interrogatory 6-3(b) asks CEA to explain with particularity the risk to safe operation of Unit 1 posed by the defined "emergency status." CEA's March 17 answer to interrogatory 6-3(b) was wholly unresponsive, and a further response was ordered by the Board in its Memorandum and Order On Licensee's Motion To Compel Discovery of CEA (4/16/80), at p.7. Nonetheless, "CEA's Further Response" did not include a further response to interrogatory 6-3(b). Licensee has not yet received CEA's supplemental response to interrogatory 6-3(b),

as ordered by the Board at the May 13 Special Prehearing Conference, Tr. 1952. Accordingly, Licensee reiterates its request that CEA specify the basis for its claim.

Licensee's interrogatory 6-3(c) asks CEA whether the risk identified in response to interrogatory 6-3(b) is the same as the "potentially severe conflict" referred to in the last sentence of Contention 6, and asks CEA to explain what it means by "severe conflict with the operation of TMI-1." CEA's March 17 answer to interrogatory 6-3 (c) was incomplete and meaningless. A further response was ordered by the Board in its Memorandum and Order On Licensee's Motion To Compel Discovery of CEA (4/16/80), at p.7. Still, "CEA's Further Response" did not include a further response to interrogatory 6-3(c). Licensee has not yet received CEA's supplemental response to interrogatory 6-3(c), as ordered by the Board, Tr. 1952. Licensee therefore reiterates its request that CEA supply the basis for its claim.

CEA Contention 7

CEA contends that, absent specifications by the Commission, or plans prepared by the licensee, there is inadequate information to determine whether radiation monitoring provisions will be adequate to discriminate between effluents of TMI-1 and TMI-2. CEA contends that such specifications or plans must be made available to intervenor so that the plans or specifications can be evaluated to determine if they are adequate to discriminate between effluents of TMI-1 and TMI-2.

Licensee's interrogatories 7-1(a), 7-1(b), 7-1(c), and 7-1(d) ask CEA to describe in detail the inadequacies of the physical separation between Units 1 and 2 to resolve the concerns identified in Contention 7, indicating - with respect to the inadequacies - the facts, documents, and persons upon which CEA relies. In "CEA's Further Response" to Licensee's interrogatories 7-1(a), 7-1(b), 7-1(c), and 7-1(d), CEA states only that "CEA is not presently able to specify particular inadequacies in the proposed physical separation of TMI-1 and TMI-2."

Similarly, Licensee's interrogatories 7-2(a), 7-2(b), 7-2(c), and 7-2(d) ask CEA to describe in detail the inadequacies of the Staff's physical separation safety evaluation to resolve the concerns identified in Contention 7, indicating - with respect to the inadequacies - the facts, documents, and persons upon which CEA relies. In "CEA's Further Response" to interrogatories 7-2(a), 7-2(b), 7-2(c), and 7-2(d), CEA states only that "CEA is not presently able to specify any particular inadequacies in the Safety Evaluation performed by NRC Staff."

CEA Contention 8

The history of licensee's management of TMI-2 shows clear evidence of the inadequacy of licensee's management capability (see, for example, instances cited by Steven Sholly in Contention 14 of his Final Contentions). CEA contends that licensee has not shown any clear and convincing evidence of any significant changes in its management practices, and that the burden of proof rightfully lies with the licensee, given the 3/28/79 accident, to present such clear and convincing

evidence. CEA contends that licensee must first be required to demonstrate its capability to clean up the damage from the accident of 3/28/79 before it is allowed to subject the public to the risk of another such accident.

Licensee's interrogatories 8-1, 8-1(a), 8-1(b), and 8-1(c) ask CEA to identify all alleged "evidence of the inadequacy of licensee's management capability" (other than the specific items referenced in a through k which are set forth as a basis for Sholly Contention 14), indicating the facts, documents and persons on which CEA relies. In "CEA's Further Response" to interrogatories 8-1, 8-1(a), 8-1(b), and 8-1(c), CEA states only that "CEA is not presently able to identify other specific examples of the inadequacy of licensee's management capability."

CEA's Contentions 5, 6, 7, and 8 have thus been only slightly further specified through CEA's responses to Licensee's interrogatories. CEA's responses have generally been limited to CEA's definition of terms used in its contentions, coupled with CEA's statements that it does not have or has not yet developed the information requested, and - in a few instances - a one-line reference to Licensee's or Staff's responses to CEA's interrogatories. As indicated above, some of CEA's responses to Licensee's interrogatories are still outstanding. CEA therefore has not supplied the specific factual basis for its Contentions 5, 6, 7, and 8, which Licensee's interrogatories were designed to elicit.

TMIA Contention 6

It is contended that Met-Ed does not have the financial capability to:

(1) comply with technical changes that may be demanded as a result of the accident at Unit 2, and

(2) comply with regulations of the NRC requiring the expenditure of additional sums of money either for mandated design changes or changes in the financial protection requirements of 10 C.F.R. Part 140.

On January 14, 1980, Licensee filed its "First Set of Interrogatories To Intervenor Three Mile Island Alert, Inc." TMIA's responses to those interrogatories were due March 17, 1980. On April 14, 1980, Licensee received "TMIA's Answers To Interrogatories of Licensee" (dated April 3, 1980), after Licensee had received the Board's Memorandum and Order On Licensee's Motion To Compel Discovery of TMIA (4/11/80).

Licensee's interrogatories 6-1, 6-1(a), 6-1(b), and 6-1(c) ask TMIA to identify all "technical changes that may be demanded as a result of the accident at Unit 2" (other than those cited in the Commission's August 9, 1979 Order) with which TMIA contends Met-Ed does not have the financial capability to comply, indicating the facts, documents, and persons on which TMIA relies. In TMIA's answer to these interrogatories, dated April 3, 1980, TMIA states that it cannot specify the changes which will be required until the SER is released, that the only information and documents on which it relies are those of record in the PUC proceeding, and that it presently "has no independent cost analyses."

Licensee's interrogatories 6-2, 6-2(a), 6-2(b), and 6-2(c) ask TMIA to state all estimates which TMIA has of the cost to Met-Ed of complying with the "technical changes" identified in response to interrogatory 6-1, indicating the facts, documents, and persons on which TMIA relies. TMIA's response to these interrogatories is "See answer to 6-2 above."

Licensee's interrogatories 6-4, 6-4(a), 6-4(b), and 6-4(c) ask TMIA to state all estimates which TMIA has of the cost to Met-Ed of complying with all NRC regulations requiring design changes with which TMIA contends Met-Ed does not have the financial capability to comply, indicating the facts, documents, and persons on which TMIA relies. TMIA's response to these interrogatories, dated April 3, is "TMIA has no estimates at the present time except those provided by the Company in the PUC proceedings."

Licensee's interrogatories 6-6, 6-6(a), 6-6(b), and 6-6(c) ask TMIA to state all estimates which TMIA has of the cost to Met-Ed of complying with any "changes in the financial protection requirements of 10 C.F.R. Part 140" with which TMIA contends Met Ed does not have the financial capability to comply, indicating the facts, documents, and persons on which TMIA relies. TMIA's response to these interrogatories, dated April 3, is "TMIA has no cost estimates at the present time."

Licensee's interrogatories 6-8, 6-8(a), 6-8(b), and 6-8(c) ask TMIA to identify every occasion on which TMIA contends Met-Ed "has been unable to meet its energy obligations to the

PJM interconnect" because of problems with Unit 2, indicating the facts, documents, and persons on which TMIA relies. TMIA's response to these interrogatories, dated April 3, is "There have been no occasions of inability to meet financial obligations up to now, so far as TMIA is aware. Continued large purchases, however, will add to the financial strain being experienced and make it even more difficult to raise capital for clean-up, construction, repair and modification of TMI."

Licensee's interrogatories 6-9, 6-9(a), 6-9(b), 6-9(c), and 6-9(d) ask TMIA to describe in detail the manner in which TMIA contends that "the licensee's ability to borrow money" will be affected by "the licensee's deferred energy balance owed PJM," including the nature and amount of the "deferred energy balance," indicating the facts, documents, and persons on which TMIA relies. TMIA's response to these interrogatories, dated April 3, is:

> Licensee has testified extensively on this issue and about its growing deferred energy balance in the PUC proceedings. As the need for borrowed money increases to cover that balance, Licensee's ability to borrow will be affected. TMIA relies, at this point, on data and testimony submitted in the PUC proceedings and obviously available to Licensee. Preparation of documents or data by TMIA has not yet been done.

TMIA's Contention 6 has thus been only slightly further specified through TMIA's responses to Licensee's interrogatories. Generally, TMIA's responses to interrogatories seeking the bases for this contention have been broad references to the

record in the PUC proceeding. However, Licensee here seeks further specification of TMIA Contention 6 only to the extent that TMIA intends to rely on data other than that on the record in the PUC proceeding, in support of its contention in this proceeding.

TMIA Contention 7

It is contended that the licensee will be unable to adequately deal with a design basis accident of class one through eight if one should occur at Unit 1 while decontamination continues at Unit 2. The Unit 2 containment building and vessel today house in excess of half a million gallons of highly contaminated wastewater, and another 250,000 gallons are stored in auxiliary storage buildings on the island. Presently, there is no approved timetable for the safe decontamination of Unit 2. It is contended that the wastewater storage capability of Unit 1 if an accident were to occur, would be insufficient, since a large portion of this capacity may ultimately be committed to the safe decontamination of Unit 2. Furthermore, even if no accident should occur at Unit 1 there is a possibility of an accident occurring at Unit 2 during decontamination which would result in the diversion of all Unit 1 storage capacity to Unit 2, thereby leaving Unit 1 unable to cope with any type of accident that would produce abnormal amounts of radioactive wastewater. If an accident of the magnitude of that which occurred at Unit 2 were to occur at Unit 1, wastewater storage facilities at Unit 2 would have to be borrowed, just as Unit 1 facilities have been borrowed to deal with the accident at Unit 2. Since there is presently insufficient storage capacity on the island to deal with a Unit 2 accident at Unit 1 it is an unreasonable and unacceptable risk to the public health and safety to reopen Unit 1 until Unit 2 has been safely decontaminated. The short term actions proposed by the licensee do not adequately deal with the scenarios described herein.

Licensee's interrogatories 7-4(a), 7-4(b), 7-4(c), and 7-4(d) ask TMIA to specify the portion of the wastewater storage capacity of Unit 1 which TMIA contends "may ultimately be committed to the safe decontamination of Unit #2," indicating the facts, documents, and persons on which TMIA relies.

TMIA's response to these interrogatories, dated April 3, is "TMIA presently does not have the information requested, other than that information publicly available. If additional information is developed, it will be made available to Licensee."

Licensee's interrogatories 7-6, 7-6(a), 7-6(b), 7-6(c), and 7-6(d) ask TMIA to identify all accidents which TMIA contends might occur "at Unit #2 during decontamination which would result in the diversion of all Unit #1 storage capacity to Unit #2, thereby leaving Unit #1 unable to cope with any type of accident that would produce abnormal amounts of radioactive wastewater," indicating the facts, documents, and persons on which TMIA relies. TMIA's response to these interrogatories, dated April 3, is "TMIA presently does not have the information requested, other than that information publicly available. If additional information is developed, it will be made available to Licensee."

Licensee's interrogatories 7-11, 7-11(a), 7-11(b), and 7-11(c) ask TMIA to describe in detail the nature of the "unreasonable and unacceptable risk to the public health and safety" which TMIA contends will be posed if Unit 1 is reopened before Unit 2 has been completely decontaminated, indicating the facts, documents, and persons on which TMIA relies. TMIA's response to these interrogatorries, dated April 3, is "TMIA presently has not developed the risk assessment requested. When it is developed, it will be made available to Licensee."

Licensee's interrogatories 7-13(a), 7-13(b), 7-13(c), and 7-13(d) ask TMIA to describe in detail the inadequacies of the physical separation of Units 1 and 2 to resolve the concerns identified in Contention 7, indicating the facts, documents, and persons on which TMIA relies. In TMIA's response to these interrogatories, dated April 3, TMIA states, "Because of the lack of funds, TMIA has not been able to retain an expert to review these elements of the Restart Report [specific citations given by Licensee]. When and if that is done, the results of the evaluation will be made available to Licensee."

Licensee's interrogatories 7-14(a), 7-14(b), 7-14(c), and 7-14(d) ask TMIA to describe in detail the inadequacies of the storage capacities and capabilities of Units 1 and 2, as proposed by the Met-Ed in the Restart Report [specific citation provided], to resolve the concerns identified in TMIA Contention 7, indicating the facts, documents, and persons on which TMIA relies. TMIA's response to these interrogatories, dated April 3, is "See answer to 7-13 above."

Like TMIA's Contention 6, TMIA's Contention 7 has been only slightly further specified through TMIA's responses to Licensee's interrogatories. TMIA's responses have generally been confined to TMIA's definition of terms used in its Contention 7, coupled with TMIA's statement that it does not have or has not yet developed the information requested, but will provide the information to Licensee when and if TMIA gets the information. TMIA has not supplied the specific factual

bases for its contention which Licensee's interrogatories were designed to elicit.

While Licensee fully expects TMIA's counsel to timely honor its commitments to provide particular additional information to Licensee with respect to Contention 7 (as well as other contentions), if that information becomes available, considerations of fundamental fairness and due process require that TMIA further specify its its Contention 7 at this time, so that Licensee may begin to prepare its case on the contention.

IV. Conclusion

As the Board has itself stated, the Board applied a liberal standard in initially ruling on the admissibility of contentions in this proceeding. The Board admitted a number of contentions on the express provision that they would be further specified in the course of or after discovery.

Licensee timely filed interrogatories on all intervenors whose contentions are the subject of this motion, designed to elicit the specific factual bases for the contentions. While the answers to Licensee's interrogatories were often adequately responsive, several intervenors responded that they do not know or have not developed the requested information in support of their contentions.

Though the specific facts on which a contention is based need not be fully developed when the contention is initially proposed, it is now very late in the pre-hearing process. The period for general discovery has ended. If Licensee is to prepare carefully to litigate the specific allegations of the intervenors' contentions, considerations of fundamental fairness and due process require that Licensee be timely informed of the specific bases for those contentions.

Accordingly, Licensee moves the Board for an order requiring, by June 30, 1980, the further specification of those contentions which the Board has previously ordered must be specified, including Aamodt Contention 5, ANGRY Contention 5(D), Newberry Contention 3(d)(9), Sholly Contention 8(C),

Sholly Contention 8T, Sholly Contention 14, Sholly Contention 16, UCS Contention 9, UCS Contention 10, and UCS Contention 13 (which the Board permitted ANGRY and CEA to adopt).

Licensee further moves the Board for an order requiring, by June 30, 1980, the further specification of CEA Contentions 5, 6, 7 and 8 and TMIA Contentions 6 (to the extent that TMIA intends to rely on data not of record in the PUC proceeding) and 7.

Finally, Licensee proposes that any intervenor who does not further specify his or her contention, in accordance with any Board order which may issue pursuant to this motion, should be precluded at the hearing from litigating any specific matters (other than "new information" not previously available, admitted by Board order) which were not expressly included in the contention itself, as admitted, or any written bases for the contention submitted to the Board, or any specific facts which the intervenor expressly identified and provided as support for the contention in the course of discovery.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By: George F. Trowbridge

Dated: May 23, 1980

May 23, 1980

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)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Motion To Require Further Specification of Contentions" were served upon those persons on the attached Service List by deposit in the United States mail, postage prepaid, this 23rd day of May, 1980.

Delissa A. Ridgway

Dated: May 23, 1980

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