

ORIGINAL
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of:

METROPOLITAN EDISON COMPANY

(Three Mile Island Nuclear
Station, Unit No. 1)

Docket No. 50-289

Telephone Conference

Location: Bethesda, Maryland

Pages: 180 - 195

Date: Thursday, March 1, 1984

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY & LICENSING BOARD

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: In the matter of: : Docket No. 50-289
: : ASLBP 83-491-04 OLA
METROPOLITAN EDISON COMPANY : (Steam Generator Repair
: :
(Three Mile Island Nuclear : :
Station, Unit No. 1.) : :
: :
-----X

4350 East-West Highway
4350 East-West Building
Bethesda, Maryland

Thursday, March 1, 1984

The telephone conference call in the above-
entitled matter convened at 10:30 a.m., pursuant to notice.

BEFORE:

JUDGE SHELDON WOLFE, ESQ.
Chairman, Atomic Safety & Licensing Board Panel

JUDGE DAVID L. HETRICK,
Member, Atomic Safety & Licensing Board Panel

1 On behalf of the Applicant:

2 BRUCE CHURCHILL, ESQ.
3 Shaw, Pittman, Potts & Trowbridge
4 1800 M Street, NW
5 Washington, D.C. 20036

6 On behalf of the NRC Staff:

7 RICHARD RAWSON, ESO.
8 Office of the Executive Legal Director
9 U.S. Nuclear Regulatory Commission
10 Washington, D.C. 20555

11 On behalf of Intervenor TMIA:

12 JOANNE DOROSHOW
13 Three Mile Island Alert
14 315 Peffer Street
15 Harrisburg, Pennsylvania 17102

16 On behalf of Intervenor Lee, et al.:

17 NORMAN AAMODT
18 R.D. 5, Box 428
19 Coatesville, Pennsylvania 19320

20 Also Present:

21 WILL WASHINGTON
22
23
24
25

P R O C E E D I N G S

THE OPERATOR: Mr. Rawson?

MR. RAWSON: Yes.

THE OPERATOR: Mr. Washington?

MR. WASHINGTON: Yes.

THE OPERATOR: David Hetrick?

JUDGE HETRICK: Here.

THE OPERATOR: Norman Aamodt?

MR. AAMODT: Here.

THE OPERATOR: Bruce Churchill?

MR. CHURCHILL: Yes.

THE OPERATOR: Joanne Doroshow?

MS. DOROSHOW: Yes.

JUDGE WOLFE: All right. This is Judge Wolfe speaking. This is a conference call in the case of Metropolitan Edison Company, et al. (Three Mile Island Nuclear Station, Unit 1), ASLBP Docket No. 83-491-04 OLA (NRC Docket No. 50-289).

Ms. Doroshow requested that this conference call be transcribed, and it is being so transcribed.

Judge Lamb is unavailable to participate in the conference call.

Ms. Piley is the reporter of the reporting firm of Tayloe Associates.

1 I am making this conference call for the purposes
2 of speaking about addressing TMIA's Motion for Order
3 Compelling Discovery of January 25, 1984, and to address
4 the Licensee's Motion for Protective Order of February 6,
5 1984.

6 Before proceeding, I did want to seek clarification
7 from the Licensee.

8 Mr. Churchill?

9 MR. CHURCHILL: Yes.

10 JUDGE WOLFE: Mr. Churchill, I have a point of
11 clarification here with respect to your Motion for
12 Protective Order.

13 Is it your position that the Board should issue
14 the protective order now and determine later whether the
15 documents are privileged commercial information, as well as
16 to determine later whether they should be withheld from
17 public disclosure?

18 Or is it your position that in issuing the
19 protective order now, that the Board should determine that
20 the documents are privileged commercial information in
21 meeting the five criteria of 2.790, or that the Board should
22 wait until a later time after the review of the documents
23 to determine whether they should be withheld from
24 public disclosure.

25 Do you understand my question, Mr. Churchill?

1 MR. CHURCHILL: Yes, I do.

2 JUDGE WOLFE: It's not clear from your motion
3 what your position on that is. Shall I go back over it
4 once again?

5 MR. CHURCHILL: No, I understand the question,
6 your Honor.

7 The position is that we have always been willing
8 to turn the information over, and right from the very
9 beginning, and in a timely way, and we don't want anything
10 that could potentially delay the hearing to occur. And,
11 therefore, we are willing to have it turned over under
12 protective order issued by you, even if you haven't had an
13 opportunity yet to determine -- and go through all the
14 affidavits and determine whether or not the criteria have
15 been satisfied.

16 In other words, if the Intervenors needed to see
17 the information sooner rather than later, if you could just
18 issue the protective order now, then they could see the
19 information before you took the time necessary to make the
20 determination. That's the only thing. That's strictly a
21 timing problem.

22 JUDGE WOLFE: I see.

23 MR. CHURCHILL: Other than that, I don't have
24 any preference whatsoever whether your final determination
25 accompanies the protective order, or whether it waited.

1 I'm just trying to get the documents free as soon as
2 possible

3 JUDGE WOLFE: Section 2.790 has two steps in
4 it:

5 First, the Board must determine whether the
6 five criteria are met, and secondly, then to determine
7 whether or not there shall be public disclosure.

8 I take it your position is that, or you are
9 stating that your position is that in your motion you did
10 not ask the Board to determine at this time either that
11 the five criteria have been met, or that the documents
12 would not be subject to public disclosure?

13 MR. CHURCHILL: Yes, that isn't necessary for
14 the Board to do right now, because we are not talking
15 about public disclosure right now, per se. The only
16 immediate thing is for the Intervenor to be able to see
17 it if they want it.

18 Ultimately then the Intervenor is saying, "But
19 we challenge whether it should be withheld from the public
20 or not," and by doing that they forced us to file this
21 motion and have you make that determination. But that
22 isn't anything that affects the hearing right now.

23 JUDGE WOLFE: Yes. All right. I wasn't clear,
24 and your motion wasn't clear on that, either, what you were
25 speaking to, with respect to all of the five criteria or the

1 determination by the Board. I'm glad to be so apprised
2 that that is your position.

3 All right. The Board has conferred and we have
4 decided, first of all, to deny TMIA's Motion for Order
5 Compelling Discovery which was dated January 25, 1984.
6 And two, we have decided to grant the Licensee's Motion
7 for Protective Order of February 6, 1984.

8 A Memorandum and Order will be issued shortly
9 with respect to that ruling, and I wanted to place this
10 conference call to the parties in order to expedite this
11 proceeding.

12 Now, further, let me ask this, Mr. Churchill:

13 How soon after the issuance of this Memorandum
14 and Order and the issuance of a Protective Order
15 will this withheld proprietary data or portions of these
16 documents be made available to TMIA?

17 MR. CHURCHILL: We can do that today.

18 May I ask you a question, your Honor?

19 JUDGE WOLFE: Yes.

20 MR. CHURCHILL: In granting the motion for a
21 protective order, will it be essentially in the form of
22 the proposed form of order that we submitted to you?

23 JUDGE WOLFE: No, that was another point that I
24 wanted to get to. Let's reserve that just a second.

25 MR. CHURCHILL: Okay.

1 It's relevant to this, if by your telling us
2 right now this information will be under the Board's
3 protection.

4 JUDGE WOLFE: Yes.

5 MR. CHURCHILL: Even without seeing the order,
6 I think we would be able to get the documents to them today.

7 JUDGE WOLFE: Is that satisfactory, Ms. Doroshow,
8 to have the documents today?

9 MS. DOROSHAW: I am going to have to confer
10 with Ms. Bradshaw about the result of this conference
11 call. We are going to have to discuss further what we
12 would like done, and I would appreciate the opportunity to
13 do that and to get back to Mr. Churchill later in the day
14 to inform him as to what our plans are going to be.

15 JUDGE WOLFE: All that I'm advising is that we
16 are going to grant the Motion for Protective Order.
17 You two counsel work that out between yourselves as to
18 when you are going to -- when you, Ms. Doroshow, are going
19 to look at the documents or portions thereof that the
20 Licensee has withheld as being proprietary. I will leave
21 that to you, both of you.

22 Now I would advise Ms. Doroshow that TMIA may
23 move for a reasonable extension of time within which to
24 answer the Licensee and the Staff's Motion for Summary
25 Disposition, and you should not wait until the last moment

1 to move for this reasonable extension of time, Ms.
2 Doroshow.

3 Now, further, I have reviewed the protective
4 order, and I note that it preserves the confidentiality
5 of privileged documents during the evidentiary hearing,
6 and I would put the question to you for clarification,
7 Mr. Churchill, what about the preservation of confidentiality
8 in the course of summary disposition proceedings? How
9 about that?

10 MR. CHURCHILL: In our Motion for Summary
11 Disposition, your Honor, we were very careful not to put
12 in any confidential information.

13 JUDGE WOLFE: Yes, I am well aware of that,
14 but now that we are issuing the protective order and TMIA
15 will have access to these claimed proprietary documents,
16 it may well be -- I am not suggesting it, but I am just
17 anticipating what may happen, that after looking at these
18 claimed privileged documents in response to the Motion
19 for Summary Disposition, the TMIA may refer to these
20 privileged documents.

21 MR. CHURCHILL: Well, they certainly may refer
22 to them, your Honor, and the only thing that they would not
23 be allowed to do is write down privileged information. They
24 could not submit it in their filing that would go to the
25 Public Document Room. If they require the use of privileged

1 information, they would have to somehow excise that out of
2 the copy --

3 JUDGE WOLFE: Why? That's my point. It's not
4 covered in your protective order. As I say, your
5 protective order only relates to confidentiality during
6 the course of the evidentiary hearing --

7 MR. CHURCHILL: Oh, I see.

8 JUDGE WOLFE: Not as to summary disposition
9 proceedings.

10 MR. CHURCHILL: I have taken that to encompass
11 all of this --

12 JUDGE WOLFE: Yes. Well, I don't like to issue
13 protective orders and flail about thereafter at some
14 problem that arises. So you have the protective order --
15 do the parties have the protective order before them?

16 MS. DOROSHOW: I do not have it. I am at
17 somewhat of a disadvantage here because I am not in my
18 office, I am in Harrisburg. I don't have the documents.

19 JUDGE WOLFE: Well, what I am going to do -- and
20 I don't think it requires you to have the protective order
21 before you. And what I am going to do is change some
22 wording other than as to this subject matter that I have
23 just spoken of. I don't think it's material enough to go
24 into that division of wording, but I think as to paragraph 5
25 of the protective order, I am going to insert some language

1 preserving confidentiality with respect to summary
2 disposition briefs that in some fashion might have to
3 speak to and address documents or portions thereof that
4 are subject to the protective order.

5 So, in paragraph 5, I shall put in -- and I'll
6 read it as it presently exists and then I will read out to
7 you what the insertions are.

8 Paragraph 5 reads:

9 "Recipients shall not make any copies or in
10 any way reproduce, excerpt, transcribe or disclose the
11 proprietary information to be held in confidence hereunder,
12 except as necessary to provide members of the Board or
13 other parties copies of exhibits introduced into evidence
14 in accordance with numbered paragraph 8 below."

15 I am going to insert in the protective order
16 after the words "other parties with," I am going to insert
17 the words "summary disposition briefs and/or," so that as
18 revised by the Board, paragraph 5 will read:

19 "Recipients shall not make any copies or in
20 any way reproduce, excerpt, transcribe or disclose the
21 proprietary information to be held in confidence hereunder,
22 except as necessary to provide members of the Board or
23 other parties with summary disposition briefs and/or copies
24 of exhibits introduced into evidence in accordance with
25 numbered paragraph 8 below."

1 Now, I am turning now to paragraph 8, and
2 paragraph 8, in pertinent part, reads:

3 "In the event that recipients determine it is
4 necessary to use, introduce, or present the proprietary
5 information in evidentiary hearings in the above-captioned
6 proceeding, the recipients will provide reasonable notice
7 of their intent to the Board and the Licensee. All papers
8 filed in this proceeding, including testimony that
9 contain any protected information, shall be segregated
10 and shall be:".

11 I am going to make inserts as follows, so that
12 it will now read, paragraph 8:

13 "In the event that recipients determine it is
14 necessary to use, introduce, or present the proprietary
15 information in the summary disposition proceeding and/or
16 in evidentiary hearings in the above-captioned proceeding,
17 the recipients will provide reasonable notice of their
18 intent to the Board and the Licensee. All papers filed
19 in this proceeding (including summary disposition
20 submissions and testimony) that contain any protected
21 information shall be segregated and shall be:".

22 And then at the final page -- and this is
23 paragraph 8(b), where it says: "All hearing sessions
24 during which proprietary information will be discussed
25 or introduced shall be held in camera, and the transcript

1 of such sessions shall be" -- I have inserted the words
2 "prehearing and/or," so that it now reads:

3 "All hearings" -- excuse me. It now reads:

4 "All hearings" -- scratch that again.

5 It now reads:

6 "All prehearings and/or hearing sessions
7 during which proprietary information will be discussed
8 or introduced shall be held in camera and the transcript
9 of such sessions shall be sealed."

10 It would appear to me that with these revisions
11 that this covers what should be covered with respect to
12 summary disposition proceedings, and it would seem to me
13 that with respect to summary disposition briefs, if there
14 has to be some advertance to claimed documentation, that
15 there should be segregation of these briefs, or segregation
16 within the briefs, so I am just now certain how the parties
17 would suggest that that be handled. For example, suppose TMIA,
18 in its responding brief or answer to summary disposition,
19 finds it necessary to advert to certain claimed privileged
20 documentation; how should that be handled and what should
21 be the revision to paragraph 8(a) for the segregation of
22 this material?

23 What comes to my mind initially is that perhaps
24 Ms. Doroshow can file TMIA's responses, publicly file with
25 document service on all parties of her response, with the

1 portions that advert to privileged material, that that
2 material be excerpted, but then pursuant to paragraph 8(a)
3 she would then proceed to put in an envelope as provided
4 in paragraph 8(a) the complete response, including advertances
5 to privileged material, put all that in an envelope
6 bearing the name of the addressee and the statement "Private,
7 To Be Opened By Addressee Only."

8 Any suggestions beyond that? Anyone?

9 MR. CHURCHILL: I think that's a satisfactory
10 solution, your Honor.

11 MR. RAWSON: Judge, that procedure is the one
12 that I am used to, and that I know has been used by the
13 Staff in particular situations similar to this. It makes
14 eminent good sense to us.

15 JUDGE WOLFE: All right. Well, paragraph 8(a)
16 then -- let's see. All right. Well, I think -- do you
17 think that the wording of paragraph 8(a) with the insertions
18 that I made would cover that point? Or do you think that
19 paragraph 8(a) itself should be revised to set out more
20 specifically the procedures to be used on summary disposition
21 pleas?

22 MR. RAWSON: Judge Wolfe, I have to apologize. I
23 do not have a copy of the protective order in front of me,
24 either.

25 JUDGE WOLFE: Mr. Churchill?

1 MR. CHURCHILL: I think, your Honor, that with
2 this understanding, which is being transcribed, and the
3 language as it now stands with 8(a) as you modified it,
4 that that would be satisfactory. I don't think we would
5 have to do more.

6 JUDGE WOLFE: All right. With that understanding,
7 then, I won't have to make that revision to paragraph 8(a)
8 to speak to the segregation of any briefs that speak to
9 privileged material and require that excised briefs be
10 filed with our Docket Room and full briefs would be filed
11 privately in separate envelopes to be opened by the
12 addressee only.

13 All right. Let's see. All right, I hope to be
14 able to issue this Memorandum and Order either by tomorrow
15 or Monday, as well as to issue the revised protective
16 order.

17 MR. CHURCHILL: Your Honor, I would just like
18 to reiterate that on the basis of what you have told me,
19 what you have told us about the wording of the order,
20 we are willing to physically turn the proprietary documents
21 over to TMIA today, and will make arrangements to do that.
22 Ms. Doroshow said she wants to get back. I am in San
23 Francisco right now, I won't be reachable, but Ms. Doroshow,
24 would you call Will Washington with how you would want
25 that to be done? And he will make arrangements for the

1 documents to be delivered to you.

2 JUDGE WOLFE: Ms. Doroshow?

3 MS. DOROSHOW: Yes, I will notify Mr. Washington.

4 JUDGE WOLFE: I'm sorry, I didn't hear you.

5 MS. DOROSHOW: I will notify Mr. Washington
6 and we will make arrangements.

7 JUDGE WOLFE: All right. Anything to add, Judge
8 Hetrick?

9 JUDGE HETRICK: No, sir.

10 JUDGE WOLFE: Okay. Thank you very much,
11 and the conference call is concluded.

12 (Whereupon, at 11:00 a.m., the conference
13 call was adjourned.)

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CERTIFICATE OF PROCEEDINGS

This is to certify that the attached proceedings before the
NRC COMMISSION

In the matter of: Metropolitan Edison Co.

Date of Proceeding: 1 March 1984

Place of Proceeding: Washington, D. C.

were held as herein appears, and that this is the original
transcript for the file of the Commission.

Ann Riley

Official Reporter - Typed

Ann Riley

Official Reporter - Signature