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September 13, 1984

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 SP
	)	(Restart Remand on
(Three Mile Island Nuclear	)	Management)
Station, Unit No. 1)	)	

LICENSEE'S ANSWER TO TMIA'S MOTION TO COMPEL RESPONSES TO TMIA'S FIRST SET OF INTERROGATORIES

I. INTRODUCTION

On July 31, 1984, Intervenor Three Mile Island Alert, Inc. (TMIA) filed its First Set of Interrogatories to GPU Nuclear Corporation and its First Request for Production. Shortly thereafter, as a courtesy to TMIA and in the spirit of cooperation, Licensee informed TMIA that it intended to request a protective order with respect to a number of discovery requests as exceeding the scope of the remanded hearing, and that it was willing to discuss its objections. To facilitate this discussion, Licensee provided in advance of meeting with TMIA a draft of the protective order it intended to request.

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On August 13, 1984, Licensee and TMIA met to discuss Licensee's objections, but were unable to reconcile their positions as to scope. However, Licensee and TMIA agreed to several clarifications in TMIA's discovery request, to the mutual benefit of both parties.

On August 15, 1984, Licensee moved for a protective order limiting the scope of TMIA's discovery request, and for an extension of time until September 4, 1984, to respond to TMIA's interrogatories. On August 27 1984, the Licensing Board informed Licensee that Licensee's request for an extension of time was granted. On August 29, 1984, TMIA notified Licensee that it was repudiating the clarifications to which TMIA and Licensee had agreed.

On August 30, 1984, the Board held a conference call during which it discussed its tentative rulings on Licensee's motion. The Board ruled on Licensee's motion by Memorandum and Order dated August 31, 1984, and served on September 4, 1984. On September 4, 1984, Licensee submitted its responses to TMIA's discovery requests, without benefit of the Licensing Board's Memorandum and Order. Licensee indicated that supplemental responses were forthcoming.

On September 7, 1984, with an excess of invective, TMIA filed a Motion to Compel Responses to TMIA's First Set of Interrogatories and First Request for Production; Motion for Reasonable Attorney Fees and Costs Incurred in Bringing this

Motion; and Motion for Three Week Extension of Discovery Period. As discussed below, Licensee submits that TMIA's motions are baseless and should be denied.

II. TMIA'S MOTION TO COMPEL

Despite Licensee's indication that it would promptly file supplemental responses, TMIA has filed a motion to compel responses to those discovery requests covered by Licensee's request for a protective order to the extent such request was denied by the Licensing Board. No motion to compel is necessary. Licensee has in fact already filed its supplemental responses.

TMIA's motion apparently also requests that Licensee be required to respond to nine discovery requests as originally phrased by TMIA.1/ The revisions which had been agreed upon

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1/ TMIA's counsel withdrew its consent to the agreed revisions on August 29, two working days before Licensee's discovery responses were due. In describing the reasons for withdrawing from the agreement, TMIA has made several misrepresentations. First, TMIA claims that at the meeting on August 13 Licensee's counsel made a "promise to withdraw objections of overbreadth or burdensomeness." Licensee made no such promise. TMIA's counsel's representation that a promise was made is not even consistent with her letter to Licensee's counsel dated August 29, 1984, which simply infers from the fact that agreement occurred that such a promise was implicit in the negotiations. Secondly, TMIA's counsel misrepresents by omission the extent to which Licensee retained the right to object to the revised discovery requests. Licensee's counsel advised TMIA's counsel on August 21, 1984, that Licensee would make a good faith effort to answer the revised discovery requests and reserved only the right, in the event such effort did not prove to be wholly successful, to object to further efforts as burdensome and unreasonable.

were mostly for the purpose of clarifying (not as TMIA now claims, narrowing) the discovery requests to state more accurately what documents or information TMIA wished to have and to restate requests which, when read literally, called for documents and information which were irrelevant to the issues in the proceeding even as those issues were conceived by TMIA.2/

2/ For example, TMIA's Document Request No. 7 and Interrogatory No. 42 originally asked for documents relating to and a description of "any checks of plant conditions and/or containment after observance of the pressure spike...." Checks of plant conditions, however, are still being made. TMIA agreed that it was not interested in all checks of plant conditions to date, but rather in checks of such conditions made within four hours of the spike.

With respect to Interrogatory No. 2(c), TMIA originally asked for the precise time each method of communication at TMI-2 was established. Literally, this interrogatory asked for the date on which telephones were first installed at TMI-2. TMIA agreed that it was really interested in learning when the methods of communication were first used on the day of the accident, and when any new methods or lines of communication were added during the accident. Accordingly, the parties agreed on a reworded Interrogatory No. 2(c) and to similar changes in Interrogatory Nos. 2(d), 2(g), and 2(h).

With respect to Interrogatory No. 2(f), TMIA asked for identification of all persons who learned of communications that occurred on March 28, 1979. Licensee indicated that because communications were discussed in great detail in a number of interviews and reports, a complete answer would call for the identification of everybody who had ever read such a report or transcript. TMIA indicated that it was really interested in the identification of individuals who overheard a communication or who learned of the communication directly from the participants.

Interrogatory Nos. 4-7 also addressed communications, were similar in form to Interrogatory No. 2, and were equally

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To the extent that the information requested by TMIA's original discovery requests differs from the information requested by the revised versions, Licensee has expressly objected to the discovery requests as both irrelevant and unreasonably burdensome. Licensee here repeats that objection. It is impossible, however, for Licensee to respond further to TMIA's motion to compel without any identification by TMIA of the information responsive to the original discovery request which TMIA considers relevant to the proceeding.

III. TMIA'S MOTION FOR EXTENSION

TMIA also seeks an extension in the discovery period. Licensee would have no objection to such an extension to the extent delays in its response to the TMIA discovery request has

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(Continued)

unanswerable. Accordingly, Licensee and TMIA agreed to approximately the same changes as applied to Interrogatory No. 2. In addition, TMIA asked that wherever one of these interrogatories asked about a "method" of communication, the interrogatory be broadened to address "methods or lines" of communication. Licensee permitted this change.

Finally, with respect to Interrogatory No. 9, Licensee permitted correction of what TMIA advanced was an error on its part. Interrogatory No. 9 asked about concern for the presence of hydrogen in the reactor, instead of in containment. Licensee accepted the correction. TMIA also clarified that by the phrase "member of the emergency organization" it was referring to members of the "think tank," and that it was only interested in such members' communications on March 28 through March 30, 1979.

actually impeded discovery and trial preparation by TMIA. Licensee notes, however, that TMIA has more than enough in the way of discovery to get started on any follow-up discovery efforts and has made no showing of prejudice due to the delays in certain discreet categories of discovery responses.

TMIA's counsel is disingenuous in stating that she expected full responses by September 4 to all discovery requests covered by Licensee's request for a protective order to the extent that request was denied by the Board. Licensee's counsel informed TMIA's counsel at their meeting on August 13 that Licensee estimated that full responses to all of the interrogatories would take from four to six months. It was primarily for this reason that Licensee promptly sought a protective order instead of simply objecting to the interrogatories at the time responses were due, as it was entitled to do, and then subsequently joining issue with any TMIA motion to compel. It was unreasonable to expect that Licensee would undertake the mammoth job of gathering all of the information requested by TMIA without a Board ruling on the proper scope of discovery.3/

3/ While TMIA had every reason to expect that Licensee would have to supplement its September 4 answers to discovery requests to the extent the protective order was not granted, Licensee was perhaps mistaken in making the same assumptions as to the Board's expectations. Licensee's counsel regrets his failure to advise the Board explicitly during the conference call on August 30 of Licensee's intent to supplement its September 4 responses to the extent required by the Board's ruling on the protective order.

TMIA's complaint as to the location of documents produced by Licensee is unwarranted and should not in itself be cause for an extension of the discovery period. Contrary to TMIA's assertions, Licensee followed the same practice of producing documents for TMIA in the Harrisburg area as it had throughout the TMI-1 restart hearing and in the recent Steam Generator Repair hearing. Licensee assumed that TMIA would as in the past use its members located in the Harrisburg area to review documents. TMIA's counsel has indeed now requested that documents relating to the training issue be produced in Harrisburg. Even as to the documents relating to the mailgram issue, as late as September 7 Ms. Louise Bradford called Licensee's representative to make arrangements to inspect the documents in Harrisburg. TMIA's counsel thus not only failed to advise Licensee's counsel that TMIA wanted a change in past practices as to document location, but failed to advise TMIA members as well. Licensee has acted promptly to bring the mailgram documents to Washington on receipt of TMIA's request.

IV. TMIA'S MOTION FOR ATTORNEY'S FEES

Finally, TMIA's request for attorney's fees is frivolous. There is no basis in Licensee's actions or the Commission's regulations warranting the granting of attorney's fees. Licensee has made every attempt to cooperate with TMIA and accommodate its requests.

V. CONCLUSION

For all of the reasons above, Licensee submits that TMIA's Motion to Compel, Motion for Attorney's Fees, and Motion for Extension of Discovery Period should be denied in toto.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

George F. Trowbridge, P.C.
David R. Lewis

Counsel for Licensee

Dated: September 13, 1984

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	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Answer to TMIA's Motion to Compel Responses to TMIA's First Set of Interrogatories," dated September 13, 1984, were served on those persons on the attached Service List by deposit in the United States mail, postage prepaid, this 13th day of September, 1984.

George F. Trowbridge, P.C.

Dated: September 13, 1984

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