

DOCKETED
USNRC

September 14, 1984

'84 SEP 17 P12:11

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
METROPOLITAN EDISON COMPANY, <u>ET AL.</u>)	Docket No. 50-289 SP
)	(Restart-Management Remand)
(Three Mile Island Nuclear)	
Station, Unit No. 1))	

LICENSEE'S MOTION TO COMPEL DISCOVERY ON
LICENSEE'S FIRST SET OF INTERROGATORIES AND
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO UCS

On August 16, 1984, Licensee served Intervenor UCS with its first set of discovery requests entitled "Licensee's First Set of Interrogatories and First Request for Production of Documents to UCS." UCS filed its response to Licensee's discovery request on September 4, 1984. Pursuant to 10 C.F.R. § 2.740(f), and for the reasons set forth below, Licensee Metropolitan Edison Company, et al., hereby moves the Atomic Safety and Licensing Board to compel Intervenor Union of Concerned Scientists (UCS) to respond in full to Interrogatories U-4, U-5, U-6, U-9, U-10, U-11, U-12, U-16, U-17, U-18, U-19, U-20 and U-24, (with references to page numbers), as requested of UCS in "Licensee's First Set of Interrogatories and First Request for Production of Documents to UCS" dated August 16, 1984.

8409180195 840914
PDR ADDOCK 05000289
PDR
G

I. DISCUSSION

It is well settled that discovery in adjudicatory proceedings is intended to insure that the parties to the proceedings will have access to all relevant information prior to the hearing thereby promoting greater fairness in adjudication and the expeditious conduct of the hearing itself. See Pennsylvania Power and Light Company and Allegheny Electric Cooperative, Inc. (Susquehanna Steam Electric Station Units 1 and 2), ALAB-613, 12 N.R.C. 317 (1980). In Susquehanna, the Atomic Safety and Licensing Appeal Board discussed in great length the discovery responsibilities of an intervenor in an adjudicatory proceeding. The Appeal Board there noted that:

Discovery is the descriptive term for procedures available to help litigants learn the nature of an adversary's case in advance of trial. . . . An important reason for allowing discovery is to eliminate, so far as possible, the element of surprise in modern litigation. The underlying concept is to shorten the actual trial, with its attendant expense and inconvenience for all concerned, while increasing the parties' ability to develop a complete record for decisional purposes.

Susquehanna, supra at 322.

In accordance with these principles, 10 C.F.R. § 2.740b(b) requires that a party responding to a discovery request shall answer each such request separately and fully unless it is properly objected to by the responding party. 10 C.F.R. § 2740(f) further provides that an incomplete response shall be

treated as a failure to answer or respond to an interrogating party's discovery request. As the Appeal Board recently noted in Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), ALAB-678, 15 N.R.C. 1400, 1421 (1982), responses to discovery requests should be complete such that the interrogating party should not have to sift through documents or other materials to obtain a complete answer. Hence, responses to discovery requests which fail to properly identify the specific location and portions of those documents cited in response to said discovery requests are insufficient. Accordingly, the interrogating party, upon receiving insufficient responses to its discovery requests, may move the Licensing Board for an order compelling fully responsive answers pursuant to 10 C.F.R. § 2.740(f).

As can be seen from the responses to the interrogatories and document requests propounded by Licensee, UCS has failed in its duty to fully respond to several of Licensee's discovery requests; UCS has thereby undermined Licensee's ability to prepare and conduct its case in an expeditious manner.

II. DISCOVERY REQUESTS

Interrogatories U-4 and U-5.

U-4. Identify the concerns UCS has about the adequacy of the licensed operator training program at TMI.

U-5. Identify the basis for each of the concerns identified in response to Interrogatory U-4.

UCS, in response to Interrogatory U-5, subpart 4, states that it is concerned with the adequacy of the licensed operator training program because of the large number of continuing changes to the TMI-1 plant procedures without indicating how the training program has failed to keep pace with changing plant procedures. UCS also fails to specify which procedural and design changes it is referring to in its response.

UCS' response to Interrogatories U-4 and U-5 is also insufficient in that it fails to specify which page numbers of the referenced "Special Report" it relies upon and it fails to delineate which of the "combination" of cited materials serve as the basis for its concern about whether the licensed operator training program is being properly implemented. UCS' response furthermore fails to identify those portions of the Special Report of the Reconstituted OARP Review Committee, June 12, 1984 ("Special Report"), that it relies upon to support its concern over the correctness and first-hand knowledge of the Committee's observations. UCS' response is therefore incomplete as it would impermissably place Licensee in a position in which it would have to complete UCS' research for it in order to ascertain the basis for the answer provided. See Byron, supra.

Interrogatory U-6.

U-6. Identify the remedy that UCS considers appropriate to respond to each of the concerns identified in response to Interrogatory U-4.

UCS' response to Interrogatory U-6 is insufficient because aside from stating that it would recommend another "independent" analysis of the training program it merely proffers a list of grievances rather than a list of suggested remedies that UCS would deem appropriate. Absent this information, Licensee is greatly hampered in its attempt to ascertain what steps Licensee purportedly should have taken to improve its licensed operator training program in light of the concerns enumerated in response to Interrogatory U-4, and is concomitantly limited in its ability to fully develop its case free of unfair surprise should UCS withhold its concerns regarding any proper remedies until the full evidentiary hearing.

Interrogatories U-9, U-10 and U-11.

U-9. Identify the specific subject-area(s) in Licensee's licensed operator training program that UCS believes require enhancement.

U-10. For each subject-area identified in response to Interrogatory U-9, explain the basis for UCS' view that training in that area should be enhanced.

U-11. Explain how, in UCS' view, each of the subjects identified in response to Interrogatory U-9 should be enhanced.

UCS' answer to Interrogatories U-9, 10 and 11 is not responsive to the questions propounded by Licensee, therein making it impossible for Licensee to ascertain which subject areas UCS believes are insufficient. UCS' answer merely states that UCS does not possess sufficient information to permit it to respond to Interrogatories U-9, 10 and 11. In order to allow Licensee to prepare its case free from unfair surprise at the full evidentiary hearings, Licensee must be properly apprised of any alleged deficiencies that it must defend against before the commencement of said hearings.

Interrogatory U-12.

U-12. In UCS' view, does the format of Licensee's exams encourage cheating? Provide the basis for your answer.

UCS' answer to Interrogatory U-12 is unresponsive to the propounded question. The answer proffered by UCS focuses on the fact that certain pupils employed memorization as a primary means of preparation. UCS' answer does not address the subject matter of Interrogatory U-12: whether the format of Licensee's exam encourages cheating. UCS' evasive answer thus makes it impossible for Licensee to ascertain what alleged deficiencies in the format of its training program it must defend with regard to that format's alleged encouragement of cheating.

Moreover, Licensee cannot determine from UCS' answer what relationship it is trying to represent between the cited tendency to memorize key words and the encouragement of cheating. As such, UCS' response is insufficient in that it is both unresponsive and unclear.

Interrogatory U-16.

U-16. Does UCS believe that the licensed operators are capable of safely operating TMI-1 during normal operation or accident conditions? If not, explain the basis for your answer, especially as it relates to any perceived deficiencies in the training program.

Interrogatory U-17.

U-17. Identify any documents on which UCS relies to support its position in response to Interrogatory U-16.

UCS' response to Interrogatories U-16 and U-17 are insufficient because UCS failed to discharge its duty to respond fully to Licensee's discovery requests when it failed to identify which pages of the decision of the Special Master, the Licensing Board and the transcript citations therein it relied upon as the basis for its response to Interrogatory U-16. See Byron, supra.

Interrogatory U-18.

U-18. What capabilities, if any, would you require operators to have that you believe they presently lack?

UCS' answer is wholly unresponsive to the question propounded in Interrogatory U-18. UCS merely replies that the present evidentiary record is insufficient to allow it to determine which skills the licensed operators have and which they lack. This evades the question which does not seek UCS' opinion of the evidentiary record, but instead requests UCS to provide Licensee with some idea of the capabilities it believes licensed operators should have that the licensed operators at TMI-1 allegedly do not have. This information is of inescapable value to Licensee's preparation of its case and therefore must not be sequestered behind the cloak of indetermination proffered by UCS in response to Interrogatory U-18.

Interrogatory U-19.

U-19. In UCS' opinion, do Licensee's exams reliably measure the operators' ability to safely operate TMI-1? If not, why not?

UCS' answer to Interrogatory U-19 refers to certain exams "as described on the evidentiary record" without identifying the requested page citations that must be provided to fulfill its obligation to respond fully to Licensee's discovery

requests. Absent those citations, Licensee cannot ascertain the basis for UCS' response. It is clearly UCS' duty under the rules of discovery as practiced in NRC proceedings to provide the specifications requested by Licensee. See Byron, supra. UCS should be compelled to answer Interrogatory 19 with all relevant citations included.

Interrogatory U-20.

U-20. Identify each deficiency UCS believes exists in Licensee's examinations.

UCS' answer to Interrogatory U-20 is incomplete in that it fails to indicate which pages of the Special Master's decision are relevant. See Byron, supra.

Interrogatory U-24.

U-24. Identify each specific portion (i.e., particular page(s) and particular statement(s) of the RHR Report on which UCS relies in formulating its response to Interrogatory U-23.

UCS' response to Interrogatory U-24 is incomplete because: 1) it refers to "many other specific findings contained in the RHR Report" without identifying the requested pages and statements referred to; 2) it does not indicate which of the referenced findings of the Special Master are supported by the aforementioned unidentified findings in the RHR Report; and 3) it does not identify which "conditions persist" that were

purportedly identified in the aforementioned findings of the Special Master. Until UCS provides this information, Licensee will be unable to fully comprehend UCS' response to Interrogatory U-24, and will be prevented from judiciously preparing its case as Licensee will be unable to consider those referenced but unidentified materials which UCS clearly considers relevant to the disposition of this issue.

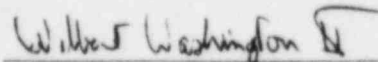
III. DUTY TO SUPPLEMENT

Finally, with respect to Interrogatories U-14, U-15, U-16, U-20, U-25 and U-26, UCS may not now know its views on the matters identified in these interrogatories. However, Licensee notes that UCS has an obligation to provide answers to these interrogatories as soon as the answers are known to UCS. Licensee's Second Set of Interrogatories and Second Request for Production of Documents, September 12, 1984 at 2. Licensee notes now its objection to the currently nonresponsive answers provided by UCS to these interrogatories, if the answers are not properly supplemented.

CONCLUSION

For all the aforesaid reasons, Licensee respectfully requests that the Licensing Board compel UCS to immediately and fully answer the aforementioned interrogatories and to identify the referenced portions of the documents referenced therein.

Respectfully submitted,



Ernest L. Blake, Jr., P.C.
Deborah B. Bauser
Wilbert Washington II

SHAW, PITTMAN, POTTS & TROWBRIDGE
1800 M Street, N.W.
Washington, D.C. 20036
Telephone: (202) 822-1000

Counsel for Licensee

Dated: September 14, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'84 SEP 17 P12:13

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
LICENSING & REGULATION
BRANCH

In the Matter of)	
)	
METROPOLITAN EDISON COMPANY)	Docket No. 50-289 SP
)	(Restart-Management Remand)
(Three Mile Island Nuclear)	
Station, Unit No. 1))	

AFFIDAVIT OF SAMUEL L. NEWTON

County of Dauphin)	
)	ss
State of Pennsylvania)	

Samuel L. Newton, being duly sworn according to law, deposes and says that he is Manager, Plant Training, TMI, and that the answers to Interrogatories 3c, d, e, 5, 6, 8, 9, 11, 13, 14, contained in "Licensee's Answers to Union of Concerned Scientists' First Set of Interrogatories to General Public Utilities (Training)," dated September 12, 1984, are true and correct to the best of his information, knowledge and belief.

Samuel L. Newton
Name of Affiant

Sworn to and subscribed to
before me this [13th]]
day of [September] 1984

Paula Jean Berry
Notary Public

My Commission expires June 17, 1985

RELATED CORRESPONDENCE

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'84 SEP 17 P12:13

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
METROPOLITAN EDISON COMPANY)
)
(Three Mile Island Nuclear)
Station, Unit No. 1))

Office of Secretariat
Docketing & Service
Branch
Docket No. 50-289 SP
(Restart-Management Remand)

AFFIDAVIT OF BRUCE P LEONARD

County of Dauphin)
) ss
State of Pennsylvania)

Bruce P. Leonard, being duly sworn according to law, deposes and says that he is Operator Training Manager, TMI, and that the answers to Interrogatories 3c, d, e, 5, 6, 8, 9, 11, 13, 14, contained in "Licensee's Answers to Union of Concerned Scientists' First Set of Interrogatories to General Public Utilities (Training)," dated September 12, 1984, are true and correct to the best of his information, knowledge and belief.

Bruce P. Leonard
Name Affiant

Sworn to and subscribed to
before me this [13th]
day of [September] 1984

Darla Jean Berry
Notary Public

My Commission expires June 17, 1985

DARLA JEAN BERRY, NOTARY PUBLIC
MIDDLETOWN BORO. DAUPHIN COUNTY
MY COMMISSION EXPIRES JUNE 17, 1985

September 13, 1984

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'84 SEP 17 P12:14

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

FEDERAL BUREAU OF INVESTIGATION
DOCKETING & SERVICE BRANCH

In the Matter of)	
)	
METROPOLITAN EDISON COMPANY)	Docket No. 50-289 SP
)	(Restart-Management Remand)
(Three Mile Island Nuclear)	
Station, Unit No. 1))	

AFFIDAVIT OF DEBORAH B. BAUSER

District)	
of)	ss
Columbia)	

Deborah B. Bauser, being duly sworn according to law, deposes and says that she is counsel to General Public Utilities Nuclear Corporation and that the answers to Interrogatories 1 and 2, contained in "Licensee's Answers to Union of Concerned Scientists' First Set of Interrogatories to General Public Utilities (Training)," dated September 12, 1984, are true and correct to the best of her information, knowledge and belief.

Deborah B. Bauser
Deborah B. Bauser

Sworn to and subscribed to
before me this 13th day of
September, 1984.

Elaine Mae Council
Notary Public

My Commission expires June 30, 1987.

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'84 SEP 17 P12:14

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OF SECURITY
REGULATING & SERVICES
BRANCH

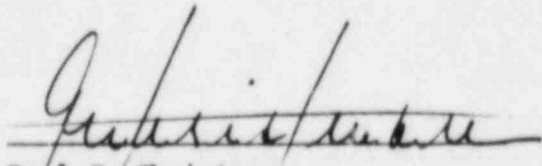
In the Matter of)
)
METROPOLITAN EDISON COMPANY)
)
(Three Mile Island Nuclear)
Station Unit No. 1))

Docket No. 50-289 SP
(Restart-Management Remand)

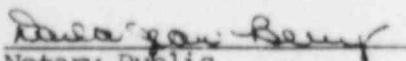
AFFIDAVIT OF PAUL G. CHRISTMAN

County of Dauphin)
) ss
State of Pennsylvania)

Paul G. Christman, being duly sworn according to law, deposes and says that he is Manager, Plant Administration, and that the answer to Interrogatories 3a and 3b, contained in "Licensee's Answers to Union of Concerned Scientists' First Set of Interrogatories to General Public Utilities (Training)", dated September 12, 1984, are true and correct to the best of his information, knowledge and belief.


Paul G. Christman

Sworn to and subscribed to
before me this 3rd day of
September, 1984.


Notary Public

My Commission Expires June 17, 1985
SARLA JEAN BERRY NOTARY PUBLIC
WIDDELTOWN BORO DAUPHIN COUNTY

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

'84 SEP 17 P12:14

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
METROPOLITAN EDISON COMPANY)
)
(Three Mile Island Nuclear)
Station Unit No. 1))

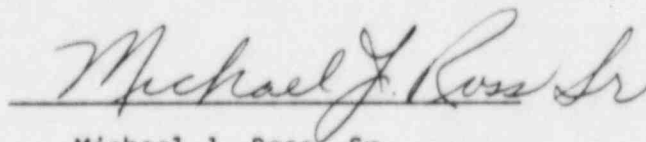
OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Docket No. 50-289 SP
(Restart-Management Remand)


AFFIDAVIT OF MICHAEL J. ROSS, SR.

County of Dauphin)
) ss
State of Pennsylvania)

Michael J. Ross, Sr., being duly sworn according to law, deposes and says that he is Manager, Plant Operations, and that the answer to Interrogatory 7, contained in "Licensee's Answers to Union of Concerned Scientists' First Set of Interrogatories to General Public Utilities (Training)", dated September 12, 1984, are true and correct to the best of his information, knowledge and belief.


Michael J. Ross, Sr.

Sworn to and subscribed to
before me this 13th day of
September, 1984.


Notary Public

My Commission Expires June 17, 1985.

DARLA JEAN BERRY, NOTARY PUBLIC
MIDDLETOWN BORO, DAUPHIN COUNTY
MY COMMISSION EXPIRES JUNE 17, 1985