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USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'84 SEP 20 P3:58

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

METROPOLITAN EDISON COMPANY, ET AL.

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

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

NRC STAFF'S RESPONSE TO INTERVENOR UNION OF  
CONCERNED SCIENTISTS' FIRST SET OF INTERROGATORIES  
TO NUCLEAR REGULATORY COMMISSION STAFF; MOTION TO  
REQUIRE THE NRC STAFF TO ANSWER UCS' FIRST SET OF  
INTERROGATORIES; AND NRC STAFF MOTION FOR A PROTECTIVE ORDER

I. INTRODUCTION

On September 4, 1984, the Union of Concerned Scientists (UCS) submitted to the Licensing Board its First Set of Interrogatories to the NRC Staff<sup>1/</sup> and filed contemporaneously therewith a Motion to require the Staff to answer those interrogatories.<sup>2/</sup> The NRC Staff hereby responds to UCS' First Set of Interrogatories to Staff and to UCS' Motion.<sup>3/</sup>

1/ Union of Concerned Scientists' First Set of Interrogatories to NRC Staff, September 4, 1984 (UCS' First Set of Interrogatories to Staff).

2/ Union of Concerned Scientists' Motion to Require the NRC Staff to Answer UCS' First Set of Interrogatories, September 4, 1984 (UCS' Motion).

3/ Staff counsel has contacted counsel for UCS in an attempt to work out a limitation, acceptable to both UCS and the Staff, on the scope of these interrogatories. Such contacts failed to produce a mutually agreeable compromise.

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## II. DISCUSSION

Pursuant to 10 C.F.R. § 2.740(a) and § 2.720(h)(2)(ii), the Commission's regulations do not require the Staff to respond to interrogatories unless the Licensing Board finds that the answers are "necessary to a proper decision in the proceeding" and "not reasonably obtainable from any other source," and, on that basis, directs the Staff to respond. UCS' Motion generally fails to establish that either criterion is met here.

### A. Objections

#### General Objections

UCS asserts that answers to its interrogatories are "necessary to a proper decision in the proceeding." Essentially, UCS claims that the interrogatories probe the credibility of and basis for NRC Staff testimony. UCS also claims that the answers "are not reasonably obtainable from any other source." In fact, for the reasons which follow, the answers to many of UCS' interrogatories are not necessary for a proper decision in this proceeding, but even if they are, several of the answers are reasonably obtainable from sources other than the NRC Staff.

First of all, the subject matters of UCS' interrogatories far exceed the scope of this remanded proceeding. The entire issue of the adequacy of operator training, which was litigated extensively before the Licensing Board, and which is the subject of two Licensing Board decisions, has not been reopened. Rather, the Appeal Board, in ALAB-772, expressly remanded to the Licensing Board only the following training issue:

We . . . remand to the Licensing Board that part of this proceeding devoted to training, for further hearing on the views of licensee's outside consultants (including the OARP Review Committee) in light of both the weaknesses demonstrated in licensee's training and testing program and the subsequent changes therein.

ALAB-772 at 76-77.

Thus, contrary to the thrust of UCS's interrogatories, the purpose of the remanded proceeding is to obtain the views of licensee's consultants on the adequacy of licensee's training program, taking into account the demonstrated deficiencies and subsequent changes in the program. As noted by the Licensing Board, "the right of the other parties to confront those views necessarily broadens the scope of the hearing on training to broader aspects of cheating and other deficiencies noted in ALAB-772 . . . ." Memorandum and Order Following Prehearing Conference, July 9, 1984, at 2-3. Nevertheless, "the undisturbed findings of the Licensing Board on the training program and the Appeal Board's findings not included in the remand are res judicata in the remanded proceeding." Id. at 3.

The Licensing Board has also ruled that the adequacy of the NRC operator licensing examination is not included as an issue on remand, except that the parties are not precluded from challenging the evidence presented by Licensee's consultants "to the extent that they continue to rely upon the NRC examination as a measure of operator competence, but any such determination must be made in the context of the particular evidentiary situation." Id. at 6 (emphasis added). This limitation was reaffirmed in the Licensing Board's subsequent ruling in its Memorandum and Order on Licensee's July 31, 1984 Comments On Lead Intervenors and Motion to Partially Exclude UCS From Management Phase, August 30, 1984, at 3-4. There, the Board reiterated that ALAB-772 "does not require or

permit a relitigation of the sufficiency of the NRC operators' licensing examination." In short, any interrogatories not limited to the training issue, as set forth above, are not necessary to a proper decision on the remanded training issue, and the Staff objects to them on that basis.

Secondly, the time span encompassed by the interrogatories far exceeds the scope of this proceeding. Several interrogatories ask for information from March 29, 1979 to the present (e.g., Interrogatories 4, 5 and 6), or are not limited at all in terms of time. At most, the interrogatories should be limited in time to the period since the close of the record in this proceeding, since the Staff has already presented, at both the original hearing and the hearing on cheating, extensive evidence on many of the topics about which UCS now seeks discovery from the Staff.

Finally, the information sought by several of UCS' First Set of Interrogatories which inquire into various areas of training at TMI-1 is reasonably available from sources other than the Staff, namely, public documents such as NUREG-0680, Supplement 5, NRC Staff Inspection Reports, and SALP Reports, all of which are publicly available and which are part of the docket in this proceeding.

In addition to the general objections noted above, the Staff provides the following objections and responses to UCS' First Set of Interrogatories.

#### Instruction A

The Staff objects to the instruction to provide information in the possession or under the control of present or former NRC commissioners. The Staff has no authority or control over present or former

Commissioners and cannot provide such information. Similarly, the staff has no authority or control over persons in any Commission Office which does not report to the Executive Director for Operations (e.g., investigators in the Commission's Office of Investigations). Such a discovery request therefore is not authorized by 10 C.F.R. § 2.720(h)(2)(ii). Finally, the Staff has no authority or control over former employees. A request to the Staff for information from such persons is not authorized. As § 2.720(h)(2)(ii) provides, the Executive Director for Operations designates NRC personnel with knowledge of the facts to answer interrogatories requested by the Licensing Board. As noted above, and to the extent Instruction A requests information from persons other than the designated NRC personnel with knowledge of the facts, the Staff objects to Instruction A.

Instruction G(i)

For the reasons stated in response to Instruction A, supra, the Staff objects to the definition of "NRC" to the extent it is intended to request from the Staff information in the possession of commissioners or any other persons not subject to the authority and control of the Executive Director for Operations.

Interrogatory 1

The Staff objects to providing the requested information regarding any document sought by Intervenor UCS' First Request for Production of Documents which the Staff objects to producing as irrelevant, not necessary to a proper decision, not reasonably calculated to lead to the

discovery of admissible evidence, or otherwise objectionable. Staff's response to UCS' First Request for Production of Documents will be served in due course.

Interrogatory 2

At present, the Staff has not determined whom it will call as witnesses on the remanded training issue. When a decision is made on the identity of the Staff witness or witnesses, information responsive to this interrogatory will be provided to UCS.

Interrogatories 3 and 4

The Staff objects to these interrogatories on the grounds that they are not necessary to a proper decision in this proceeding, they seek to elicit information which is irrelevant, and they are not reasonably calculated to lead to the discovery of admissible evidence.

In short, the issue of the development and sufficiency of the NRC operator examinations is not before the Licensing Board in this remanded proceeding. As the Licensing Board itself has pointed out, a relitigation of the sufficiency of the NRC examinations is neither required nor permitted by ALAB-772. Memorandum and Order Following Prehearing Conference, July 9, 1984, at 6. The Board has already ruled that, to the extent that Licensee's consultants continue to rely on the NRC examination as a measure of operator competence, the consultants' reliance may be challenged, but such determination "must be made in the context of the particular evidentiary situation." Id. Clearly, such sweeping interrogatories on the sufficiency of the NRC examinations are not the proper subject of discovery; rather, the appropriateness of inquiring into the

area must be made in the context of the particular evidentiary situation, and limited to the nature of Licensee's consultants' reliance. See also the Staff's general objections above.

Interrogatory 5

The Staff objects to this interrogatory on the grounds that it is not necessary to a proper decision in this proceeding, it seeks to elicit information which is irrelevant, and it is not reasonably calculated to lead to the discovery of admissible evidence. The details of actions taken by the NRC Staff to review the GPU training program are not relevant to the training issue as defined by the Appeal Board and Licensing Board. UCS claims that it needs the answer to this interrogatory to "challenge" the Staff testimony on the training issue. UCS Motion at 3-4. Such a challenge must await the Staff's testimony and any right UCS has to cross-examine the Staff witnesses. Actions taken by the Staff to review the GPU training program have no relevance to the limited training issue remanded by the Appeal Board, unless the Staff relies on such actions in presenting its testimony on the adequacy of Licensee's consultants' testimony. Moreover, the information sought by this interrogatory is available in Supplement 5 to NUREG-0680, a document which has been served on the parties to this proceeding. See also Staff's general objections above.

Interrogatory 6

The Staff objects to this interrogatory on the grounds that it is not necessary to a proper decision in this proceeding, it seeks to elicit information which is irrelevant, and it is not reasonably

calculated to lead to the discovery of admissible evidence. This interrogatory relates to the development and sufficiency of the NRC operator examinations, issues which are outside the scope of the remanded proceeding. UCS' attempts to justify this interrogatory by asserting that it bears on the propriety of Licensee reliance upon the NRC examinations. UCS' Motion at 2. As set forth above, Licensee's reliance on NRC examinations may be challenged, but a determination will only be made "in the context of the particular evidentiary situation," not through such a broad discovery request. See also Staff's general objections above.

Interrogatories 8 and 9

The Staff objects to these interrogatories on the grounds that they are not necessary to a proper decision in this proceeding, they seek to elicit information which is irrelevant, and they are not reasonably calculated to lead to the discovery of admissible evidence. These interrogatories relate to actions the Staff has taken to interview TMI-1 operators to get their views on the adequacy of the TMI-1 training program. These actions are not relevant to the training issue as defined by the Appeal Board and Licensing Board. In addition, the questions are unduly burdensome in that such interviews or communications take place on very frequent and regular bases, and the interrogatories could be construed to refer to all such communications. See also Staff's general objections above.

Interrogatories 10 and 11

The Staff objects to these interrogatories on the ground that they are not necessary to a proper decision in this proceeding, they seek to



elicit information which is irrelevant, and they are not reasonably calculated to lead to the discovery of admissible evidence. These interrogatories ask whether the NRC believes that the OARP relied too heavily on memorization. The adequacy of the OARP program has already been litigated and is res judicata. It is not relevant to the training issue as defined by the Appeal Board and Licensing Board. See also Staff's general objections above.

Interrogatories 12, 13, 14, 15, 16, 17, 18, 20, 21 and 23

The Staff objects to these interrogatories on the ground that they are not necessary to a proper decision in this proceeding, they seek to elicit information which is irrelevant, and they are not reasonably calculated to lead to the discovery of admissible evidence. The actions taken by the NRC Staff to review and evaluate the GPU training program, and the Staff's opinions concerning the program, are not relevant to the training issue as defined by the Appeal Board and Licensing Board. See also Staff's general objections above.

B. Answers

Without waiving the general or specific objections noted above, the Staff voluntarily provides the following answers.<sup>4/</sup>

Interrogatory 7

7. The Staff has testified that it intends to compare the performance level of TMI-1 license candidates with a perceived industry norm. See ALAB-772 at 74.

- a. What does the Staff perceive as the industry norm for performance on each of the types of examinations administered by the NRC Staff?

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<sup>4/</sup> The executed affidavit of Frederick R. Allenspach is attached hereto. The executed affidavit of Bruce A. Boger will be provided to the parties shortly.

Response

- a. The Staff tabulates operator licensing information on a quarterly basis. This information includes pass/fail statistics on the various types of examinations administered by the NRC. These statistics would serve as the basis for the perceived industry norm. According to the third quarter FY 1984 data, the industry norm for passing a given examination was as follows:

Total RO	written: 77%	oral: 92%	simulator: 95%
Total SRO	written: 78%	oral: 92%	simulator: 81%

- b. What is the basis for the Staff's opinion as to the industry norm in each case?

Response

- b. The Staff strives to give consistent examinations across all examiners in all regions. Use of the Examiner Standards by all examiners and regional office/examiner oversight activities are two of the means by which consistency is achieved and monitored. Accordingly, the Staff feels that performance on the various NRC examinations can be compiled and used as a representative industry norm.
- c. Who undertook the analysis necessary to determine the industry norm. Please identify all individuals and contractors involved in this work and all documents relevant to that determination.

Response

- c. The formulation of operator licensing information data was an outgrowth of the process established by the Staff to monitor the decentralization of the operator licensing function. No formal analysis was performed.

- d. What is the significance of the perceived industry norm?

Response

- d. The industry norm can be used to track the relative performance of license candidates over time and across regions. The information could be used to reflect items such as weaknesses in training programs and consistency of examinations.

- e. Does the Staff believe that performance equal to the perceived industry norm is sufficient to ensure that the operators are prepared to operate the plant safely?

Response

- e. No. Comparison of performance to the industry norm is only one element used in the Staff's assessment of licensee training program effectiveness. Other information on licensed operator on-the-job performance, such as LER's, must also be factored into the Staff's evaluation on training program effectiveness. Moreover, the Examiner Standards create an examination structure that gives the Staff reasonable assurance that candidates who pass the examination will be safe and competent operators.

- f. If the answer to #e is "yes", explain the basis for that belief.

Response

Not applicable.

Interrogatory 19

State what the Staff has done to review the accuracy of the facts and opinions presented in the Special Report of the Reconstituted OARP Committee, June 12, 1984. Identify the reviewer(s) and provide all written documentation of the review.

Response

The staff has not yet reviewed the Special Report of the Reconstituted OARP Committee, June 12, 1984 to determine the accuracy of the facts and opinions presented therein. The Staff is awaiting the prefiled testimony of the Reconstituted OARP Committee before conducting its review. Since no detailed review has been made, no documentation of any review exists.

Interrogatory 22

Does the staff believe that the current assignments of Dr. Robert Long, Dr. Richard Coe, Samuel Newton and Edward Frederick are appropriate in view of their past roles in the TMI-1 training program? Provide the basis for your answer.

Response

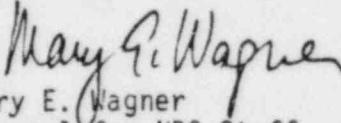
The staff position on individual integrity is described in Section 13.2 of Supplement 5 to NUREG-0680. Additionally, Section 11.3 contains information on the status of Edward Frederick.

III. MOTION FOR A PROTECTIVE ORDER

The Staff has objected to a number of UCS' interrogatories on the ground that they seek information which is not necessary to a proper decision in this proceeding and which is reasonably obtainable from another source. See 10 C.F.R. § 2.720(h)(2)(ii). In addition, the Staff has objected to certain interrogatories on the grounds that the information sought is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. See 10 C.F.R. § 2.740(b)(1). On the basis of those objections, and for good cause shown, the Staff hereby moves, pursuant to 10 C.F.R. § 2.740(c), for

a protective order that the discovery to which the Staff has objected above not be had. Accordingly, UCS' Motion to require the Staff to answer its interrogatories should be denied.

Respectfully submitted,

  
Mary E. Wagner  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 18th day of September, 1984

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

METROPOLITAN EDISON COMPANY, ET AL. )

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

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

AFFIDAVIT OF FREDERICK R. ALLENSPACH

I am a Management Systems Engineer, Division of Human Factors  
Safety, Office of Nuclear Reactor Regulation.

I have read the answers to UCS' Interrogatories numbered 2, 19  
and 22. The answer given are true and accurate to the best of my  
knowledge.

I declare under penalty of perjury that the foregoing is true and  
correct.

Frederick R. Allenspach  
Frederick R. Allenspach

Subscribed and sworn to before me  
this 18<sup>th</sup> day of September, 1984

Malinda L. McDonald  
Notary Public

My commission expires: 7/1/86

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

EXTRACTED  
USNRC

'84 SEP 20 P3:59

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

PROCEEDINGS  
RECORDING & SERVICE  
BRANCH

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

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO INTERVENOR UNION OF CONCERNED SCIENTISTS' FIRST SET OF INTERROGATORIES TO NUCLEAR REGULATORY COMMISSION STAFF; MOTION TO REQUIRE THE NRC STAFF TO ANSWER UCS' FIRST SET OF INTERROGATORIES; AND NRC STAFF MOTION FOR A PROTECTIVE ORDER" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 18th day of September, 1984:

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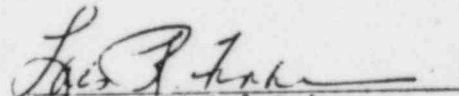
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