

079

RELATED CORRESPONDENCE

STAFF 9/24/84
DOCKET
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'84 SEP 26 AIO:30

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

Docket No. 50-289 -5P
(Restart Remand on
Management)

NRC STAFF'S RESPONSE TO INTERVENOR THREE
MILE ISLAND ALERT'S SECOND SET OF
INTERROGATORIES TO NUCLEAR REGULATORY COMMISSION
STAFF; AND NRC STAFF MOTION FOR A PROTECTIVE ORDER

I. INTRODUCTION

On September 4, 1984, Three Mile Island Alert (TMIA) submitted to the Licensing Board its Second Set of Interrogatories to the NRC Staff^{1/} and requested that the interrogatories be answered by the Staff no later than September 18, 1984. Treating TMIA's submission to the Licensing Board as a motion, the NRC Staff hereby responds to TMIA's request.^{2/}

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

1/ Intervenor Three Mile Island Alert's Second Set of Interrogatories to Nuclear Regulatory Commission Staff, September 4, 1984 (TMIA's Second Set of Interrogatories to Staff).

2/ This Response does not account for any rulings resulting from a prehearing conference held on September 24, 1984 between the parties to resolve pending discovery disputes.

8409270415 840924
PDR ADOCK 05000289
G PDR

DS07

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. Although the Licensing Board has not requested Staff's views on whether TMIA is entitled to answers from the Staff to any of the submitted interrogatories, the Staff is providing this response in the interest of expediting the discovery phase of the remanded proceeding.

A. Objections

General Objections

The Staff notes initially that TMIA has not even attempted to establish that it is entitled under § 2.720(h)(2)(ii) of the Commission's Rules of Practice to have the Staff answer its interrogatories. TMIA does not explain why it believes the answers to its interrogatories are "necessary to a proper decision in the proceeding" and "are not reasonably obtainable from any other source." In fact, for the reasons which follow, the answers to many of TMIA's interrogatories are not necessary for a proper decision in this proceeding, but even if they are, the answers are reasonably obtainable from sources other than the NRC Staff.

First of all, the subject matters of a number of TMIA's 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 TMIA'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, 1981, 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.

Secondly, the time span encompassed by some of the interrogatories (Interrogatories 2, 3, and 4) far exceeds the scope of this proceeding. TMIA seeks information from March 29, 1979 to the present. At most, such interrogatories, if otherwise proper, should be limited to the time period since the close of the record on the earlier hearings on training and cheating, since in those hearings the Staff presented extensive testimony on many of the topics about which TMIA now seeks discovery from the Staff.

Finally, the information sought by those of TMIA's Second 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 SAI.P 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 specific objections and responses to TMIA's Second 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 this interrogatory on the grounds that it is not necessary to a proper decision on the remanded training issue, it seeks to elicit information which is irrelevant, and it is not reasonably calculated to lead to the discovery of admissible evidence. All NRC requirements "relating in any way to GPU's operator training program" are not relevant to the training issue as defined by the Appeal Board and Licensing Board, i.e., the views of Licensee's consultants on Licensee's training and testing program in light of deficiencies revealed by the cheating incidents. Neither is such a request reasonably calculated to lead to the discovery of admissible evidence on the views of Licensee's consultants. Also, a request to identify all NRC requirements "related in any way" to GPU's operator training program is vague, overly broad, and unduly burdensome. Finally, any such requirements are contained in publicly available documents (e.g., 10 C.F.R. Parts 0-199). See also Staff's general objections above.

Interrogatory 2

The Staff objects to this interrogatory on the grounds that it is not necessary to a proper decision on the remanded training issue, it

seeks to elicit information which is irrelevant, and it is not reasonably calculated to lead to the discovery of admissible evidence. Evaluations of GPU's operator training program made by the NRC since 1979 are not relevant to the remanded training issue as defined by the Appeal Board and Licensing Board. Evaluations of GPU's operator training program made by NRC have no relevance to the limited training issue remanded by the Appeal Board, unless the NRC Staff relies on such evaluations in presenting its testimony on the adequacy of Licensee's consultants' testimony.^{3/} Moreover, the information sought by this interrogatory is available in Supplement 5 to NUREG-0680, which has been served on the parties to this proceeding. See also Staff's general objections above.

Interrogatory 3

The Staff objects to this interrogatory on the ground that it is not necessary to a proper decision on the remanded training issue, 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 without limitation to all deficiencies or weaknesses regarding GPU's training program from 1979 to the present. It therefore is overly broad since it is not reasonably limited in time or scope to the remanded training issue. Moreover, deficiencies

^{3/} The Staff notes that the virtually identical interrogatory previously was asked of the Staff by UCS. See Interrogatory No. 5 of the Union of Concerned Scientists' First Set of Interrogatories to NRC Staff, September 4, 1984, and 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, dated September 18, 1984, at 7.

in the GPU training program which have been identified by the Staff are the subject of inspection reports, SALP reports and other publicly available documents which previously were provided to all parties in this proceeding. See also Staff's general objections above.

Interrogatory 4

The Staff objects to this interrogatory on the ground that it is not necessary to a proper decision on the remanded training issue, it seeks to elicit information which is irrelevant, and it is not reasonably calculated to lead to the discovery of admissible evidence. In addition, the Staff objects to this interrogatory on the ground that the information requested is reasonably obtainable from other sources such as GPU and publicly available documents such as Commission, Appeal Board, and Licensing Board orders and decisions in this proceeding, and NRC inspection reports and GPU responses thereto. See also Staff's general objections above.

Interrogatory 5(f)

The Staff objects to this interrogatory on the ground that the information sought, namely the substance of communications already had between Staff counsel and Staff witnesses (see Staff's answer to Interrogatory 5(e) below) is privileged as attorney/client communications and an expression of the mental impressions, conclusions, opinions and legal theories of an attorney of a party concerning the proceeding. 10 C.F.R. § 2.740(b)(2).

B. Answers

Without waiving the general or specific objections noted above, the Staff voluntarily provides the following answers.

Interrogatory 5

Identify all persons the NRC Staff intends to call as a witness on the remanded issues of the Dieckamp mailgram and the adequacy of GPU's training program. For each person identified, identify the following:

- (a) the nature and substance of his testimony;

Answer

(a) At present, the Counsel for NRC Staff represents that Staff intends to call Norman C. Moseley as a witness on the remanded issue of the Dieckamp mailgram. Mr. Moseley will reaffirm, and explain the basis for, his testimony on that issue in the earlier hearings. (See Tr. 13,060-64 (Moseley)). The Staff, at the present time, has not determined whom it will call as witness(es) on the remanded training issue. When a decision is made on the identity of the Staff witness(es), information responsive to this interrogatory will be provided to TMIA.

- (b) his qualification, access to information or other reason that he is being asked to testify as to the information identified in response to subpart (a) above;

Answer

(b) The qualifications of Mr. Moseley are contained in the transcript of the earlier proceedings following Tr. 13,024. His "access to information" is addressed in answer to Interrogatory 5(d) below. Staff Counsel represents that Mr. Moseley was asked to testify for the Staff on the Dieckamp mailgram issue because he interviewed Mr. Dieckamp on this issue and he previously testified for the Staff on this issue.

- (c) his position or relationship to GPU or the NRC staff at any time from the time of the accident to the present; including but not limited to any contracts, consulting arrangements, advisory positions or other relationship with GPU or the NRC Staff he has held;

Answer

(c) From the time of the accident until mid-November 1980, Mr. Moseley served as Director, Division of Reactor Operations Inspections, Office of Inspection and Enforcement, NRC. In mid-November 1980, Mr. Moseley assumed responsibility as Director of the Division of Program Development and Appraisal in the Office of Inspection and Enforcement. Since February, 1982, he has been employed by the Institute for Nuclear Power Operations, Atlanta, Georgia.

- (d) all documents he has reviewed or will review to prepare his testimony;

Answer

(d) Mr. Moseley has reviewed or will be reviewing the following public documents: NUREG-0760, Investigation into Information Flow During the Accident at Three Mile Island, January 1981 (Staff Ex. 5); the Dieckamp mailgram; the interview of Herman Dieckamp, September 12, 1980; ALAB-772 (Section IV.B.3.); Mr. Moseley's testimony at the earlier proceeding (Tr. 13,023-64 (Moseley)); a portion of the Licensing Board's Partial Initial Decision on Management Issues in this proceeding (14 NRC 381, 537-58 (1981)); and interrogatories and responses to interrogatories on the remanded Dieckamp mailgram issue filed in this proceeding.

- (e) all persons whom he has consulted or will consult to prepare his testimony;

Answer

(e) To prepare his testimony, Mr. Moseley has consulted and will consult with Jack R. Goldberg and Lois R. Finkelstein, Counsel for NRC Staff. Mr. Moseley also may consult with members of NRC Staff John W. Craig and/or Terry L. Harpster. At present, Mr. Moseley has not consulted with either Mr. Craig or Mr. Harpster.

- (g) all documents he intends to rely on or to use in support of any opinions, evaluations, conclusions, or recommendations he has included in his testimony;

Answer

(g) The documents on which Mr. Moseley intends to rely or which he intends to use in support of any opinions, evaluations, conclusions, or recommendations included in his testimony are set forth in the Response to subpart (d) above.

- (h) the current location and custodian of all documents identified in response to subparts (d) and (g) above;

Answer

(h) Staff Counsel represents that the documents identified in response to subparts (d) and (g) above are publicly available.

Interrogatory 6

Identify and produce all documents which the NRC Staff intends to introduce in the hearing or through prefiled testimony on the remanded issues of the Dieckamp mailgram and the adequacy of GPU's training program.

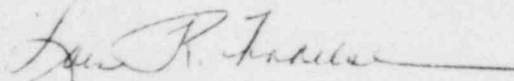
Answer

Counsel for NRC Staff represents that the only document which the NRC Staff presently intends to introduce in the hearing or through prefiled testimony on the remanded Dieckamp mailgram issue is the transcript of Mr. Moseley's interview of Mr. Dieckamp on September 12, 1980. This document is in the NRC's Public Document Room.

III. MOTION FOR A PROTECTIVE ORDER

The Staff has objected to a number of TMIA's interrogatories on the ground that they seek information which is not necessary to a proper decision in this proceeding or 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)(i). On the basis of those objections, and for good cause shown, the Staff hereby moves, pursuant to 10 C.F.R. § 2.720(c), for a protective order that the discovery to which the Staff has objected above not be had.

Respectfully submitted,



Lois R. Finkelstein
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 24th 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)

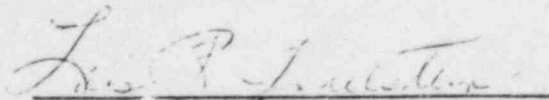
AFFIDAVIT OF LOIS R. FINKELSTEIN

I, Lois R. Finkelstein, do depose and state that:

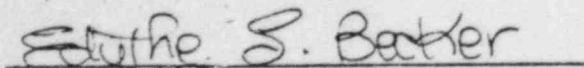
1. I am employed as a litigation attorney in the Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555. I presently serve as a counsel for the NRC Staff in the TMI-1 restart proceeding and, in that capacity I am currently assisting in the NRC Staff's preparation for hearing on the remanded management issues.

2. I have read the answers to TMIA's Interrogatories numbered 5(a), (b), (h), and 6. The answers given are true and accurate to the best of my knowledge.

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


Lois R. Finkelstein

Subscribed and sworn to before me
this 21st day of September, 1984


Notary Public

My commission expires: 7/1/86

ORIGINAL AFFIDAVIT WITH RAISED
SEAL AVAILABLE FOR INSPECTION

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)

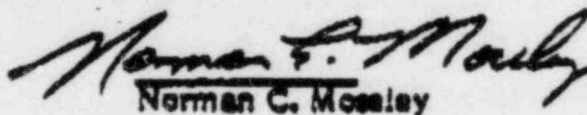
Docket No. 50-289
(Restart Remand
on Management)

AFFIDAVIT OF NORMAN C. MOSELEY


I am a Department Manager, Start-up Evaluations, Construction Project Evaluations Division, Institute for Nuclear Power Operations. I previously was employed by the Nuclear Regulatory Commission's Office of Inspection and Enforcement. On September 12, 1980, I interviewed Mr. Dieckamp on the mailgram issue and previously testified on that issue for the NRC Staff in the TMI-1 restart proceeding.

I have read the answers to TMI's Interrogatories numbered 3(c), (d), (e), (g). The answers given are true and accurate to the best of my knowledge.

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


Norman C. Moseley

Subscribed and sworn to before me
this 12 day of Sept, 1980


Notary Public

My commission expires

Notary Public Georgia State at Large
My Commission Expires April 10, 1988

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)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO INTERVENOR THREE MILE ISLAND ALERT'S SECOND SET OF INTERROGATORIES TO NUCLEAR REGULATORY COMMISSION STAFF; 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 24th day of September, 1984:

*Ivan W. Smith
Administrative Law Judge
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Mr. Thomas Gerusky
Bureau of Radiation Protection
Dept. of Environmental Resources
P. O. Box 2063
Harrisburg, PA 17120

*Sheldon J. Wolfe
Administrative Judge
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

George F. Trowbridge, Esq.
Shaw, Pittman, Potts & Trowbridge
1800 M Street, NW
Washington, DC 20036

*Mr. Gustave A. Linenberger, Jr.
Administrative Judge
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Thomas Y. Au, Esq.
Office of Chief Counsel
Department of Environmental Resources
505 Executive House, P.O. Box 2357
Harrisburg, PA 17120

Ms. Marjorie Aamodt
R.D. #5
Coatesville, PA 19320

Michael W. Maupin, Esq.
Hunton & Williams
707 East Main Street
P.O. Box 1535
Richmond, VA 23212

Mr. Marvin I. Lewis
6504 Bradford Terrace
Philadelphia, PA 19149

Mr. C. W. Smyth, Manager
Licensing TMI-1
Three Mile Island Nuclear Station
P. O. Box 480
Middletown, PA 17057

Ms. Jane Lee
183 Valley Road
Etters, PA 17319

Allen R. Carter, Chairman
Joint Legislative Committee on Energy
Post Office Box 142
Suite 513
Senate Gressette Building
Columbia, South Carolina 29202

Chauncey Kepford
Judith Johnsrud
Environmental Coalition on Nuclear Power
433 Orlando Avenue
State College, PA 16801

Ms. Frieda Berryhill, Chairman
Coalition for Nuclear Power Plant
Postponement
2610 Grendon Drive
Wilmington, Delaware 19808

Mr. Henry D. Hukill
Vice President
GPU Nuclear Corporation
Post Office Box 480
Middletown, PA 17057

Michael McBride, Esq.
LeBoeuf, Lamb, Leiby & McRae
Suite 1100
1333 New Hampshire Avenue, NW
Washington, DC 20036

*Reginald L. Gotchy
Atomic Safety & Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

William S. Jordan, III, Esq.
Harmon, Weiss & Jordan
2001 S Street, NW
Suite 430
Washington, DC 20009

Lynne Bernabei, Esq.
Government Accountability Project
1555 Connecticut Ave., NW
Washington, DC 20009

Jordan D. Cunningham, Esq.
Fox, Farr and Cunningham
2320 North 2nd Street
Harrisburg, PA 17110

Louise Bradford
Three Mile Island Alert
1011 Green Street
Harrisburg, PA 17102

Ms. Ellyn R. Weiss
Harmon, Weiss & Jordan
2001 S Street, NW
Suite 430
Washington, DC 20009

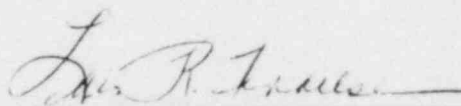
*Gary J. Edles
Atomic Safety & Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
Washington, DC 20036

*Christine N. Kohl
Atomic Safety & Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

*Atomic Safety & Licensing Appeal Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

*Atomic Safety & Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

*Docketing & Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555



Lois R. Finkelstein
Counsel for NRC Staff