October 24, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

LICENSEE'S RESPONSE TO THREE MILE ISLAND ALERT'S MOTION TO COMPEL LICENSEE RESPONSE TO ITS FOURTH SET OF INTERROGATORIES AND FOURTH REQUEST FOR PRODUCTION

On September 27, 1984, Three Mile Island Alert (TMIA) filed its Fourth Set of Interrogatories to Licensee. Licensee filed its answers and objections on October 9, 1984. On October 17, 1984, TMIA filed a motion to compel. Licensee responds as follows.

Interrogatory No. 21

At the outset, Licensee notes that TMIA has entitled its motion "Three Mile Island Alert's Motion to Compel Licensee Response to its . . . Fourth Request for Production." However, no "Fourth Request for Production" was ever made. In the same vein, TMIA states that "GPU has failed to produce documents responsive to Interrogatory No. 21." TMIA Motion at 8. Interrogatory No. 21, however, was not a request for production of

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documents. For these reasons, Licensee finds TMIA's claim that Licensee failed to produce documents incredible. Nevertheless, Licensee has obtained and placed in the Discovery Room copies of Mr. Moore's and Mr. Abramovici's notes.1/

Interrogatory Nos. 1-4, 7-13, and 20

In its Motion, TMIA also seeks an order compelling responses to Interrogatory Nos. 1 through 4, 7 through 13, and 20, collectively. TMIA Motion at 5. TMIA asserts that these are interrogatories to which Licensee objected as seeking information on thermocouples. TMIA asserts that inquiry about thermocouples is permissible under the Licensing Board's ruling during the September 17, 1984 Prehearing Conference.

TMIA mischaracterizes Licensee's objection. Licensee's General Objection 1 did not just object to interrogatories seeking information on thermocouples, but objected to broad interrogatories seeking information which was not confined to topics reasonably related to the Dieckamp Mailgram. In this regard, it is notable that TMIA's Interrogatory Nos. 1, 3, 4, 7 and 20 were not limited to knowledge of or communications about thermocouples or to permissible topics of inquiry. Each of these interrogatories, in whole or part, addressed knowledge of

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1/ Licensee committed in an October 12, 1984 letter to place the Moore notes in the Discovery Room, and did so on October 15, 1984. TMIA has copied the Moore notes. The Abramovici notes were requested in TMIA's letter of October 16; these notes have been produced as stated in Licensee's response of October 22 to TMIA's October 16 letter.

and communications about general and unspecified plant conditions.

Interrogatory Nos. 3(b), 4, and 20 are the most egregious. They seek the substance of communications on any and all plant conditions. Note instruction D of TMIA's Fourth Set of Interrogatories. These extremely broad, irrelevant, and oppressive interrogatories are exactly the type of inquiry that the Board ruled impermissible in granting Licensee's motion for protective order. See Memorandum and Order Ruling on First GPU-TMIA Discovery Dispute (Aug. 31, 1984).

TMIA now apparently seeks reconsideration of that ruling, but provides no basis for such motion. With respect to Interrogatory Nos. 3 and 4, TMIA argues that identification of the substance of these communications reveals methods and lines of communications. The argument is frivolous; and Licensee has already identified the methods and lines of communications on March 28 through March 30, including providing information which TMIA's counsel agreed would resolve questions concerning communications. In addition, Licensee has provided information on specific relevant communications.

With respect to Interrogatory No. 20, TMIA suggests that its interrogatory is simply designed to reveal whether the pressure spike information on the computer printout of alarms was communicated to several individuals.2/ Interrogatory No.

2/ TMIA states that Mr. Lentz "appears" to have obtained a copy of the alarm printout for "a period of the accident." TMIA Motion at 8 n.3.

20, however, was not limited to (indeed made no reference to) information on the alarm printout related to the pressure spike, but asked for identification of "all data" collected by Mr. Lentz and "all information communicated." TMIA made no attempt to reveal the relevance of its interrogatory or the information in which it was really interested. Instead, TMIA asked a very vague, extremely broad interrogatory, which was not confined to data or communications reasonably related to the Dieckamp Mailgram. Licensee's objection was entirely appropriate. Moreover, Mr. Lentz had responded to Licensee's questionnaire, which TMIA reviewed and in which Mr. Lentz stated that he made no communications related to the pressure spike.

Licensee also disagrees with TMIA's interpretation of the Board's ruling during the September 17, 1984 Prehearing Conference. At the Prehearing Conference, the Board only ruled on Licensee's Request to Modify TMIA's Subpoenas Duces Tecum (Sept. 14, 1984). In so doing, the Licensing Board indicated that Licensee's knowledge on March 28 of incore thermocouple readings was a proper subject of inquiry during depositions, but that Licensee was not required to conduct "a new discovery, a new search effort." Tr. at 27,349, 27,356. TMIA was permitted to inquire into Licensee's knowledge of thermocouples during extensive depositions, and did so. TMIA, however, now demands that Licensee conduct just the type of new discovery effort that the Board ruled previously Licensee need not conduct.

TMIA attempts to finesse the Board's ruling by asserting that it has "tailored" its interrogatories to address a relevant group of people in order to avoid requiring Licensee to redo past discovery. Licensee finds this assertion disingenuous for several reasons. First, several of the interrogatories are not tailored. For example, Interrogatory Nos. 11-13 ask for the substance of "all communications." Second, even with respect to interrogatories that name individuals of interest to TMIA, TMIA informed Licensee during negotiations that it would view as unresponsive answers elicited only from the persons named in those particular interrogatories. TMIA stated that Licensee should survey everybody who might have knowledge of the named persons' knowledge on the 28th or who might have communicated with those persons.3/ In other words, TMIA expects Licensee to conduct an investigative effort of the same dimension as that previously conducted by Licensee with reference to the pressure spike. Finally, TMIA filed a Fifth Set of Interrogatories one week after it filed the Fourth Set. TMIA's Fifth Set of Interrogatories clearly indicates that TMIA expects Licensee to redo its survey of hundreds of present and former employees -- a burdensome and expensive undertaking indeed.

3/ During negotiations, Licensee indicated its willingness to inquire of those persons named in the interrogatories, provided they had not been previously deposed, about their knowledge on the 28th of the incore thermocouple readings and related communications on that day.

TMIA interrogatories also ignore the Licensing Board's guidance that inquiry into thermocouples be limited to knowledge on March 28th, absent some connection between subsequent knowledge and knowledge on the first day of the accident. Tr. at 27,374-27,375. Interrogatory Nos. 1, 3, 7, 9, 10, 12, and 13 are not so limited. The Board agreed that inquiry into the briefing received by the shifts reporting in the early morning of the 29th might reveal knowledge of persons on duty on the 28th. TMIA, however, has made no attempt to phrase its interrogatories to make this or similar connection. In fact, Interrogatory Nos. 12 and 13 apply to communications on any date, even up to the present.

Scope of permissible inquiry aside, TMIA also ignores Licensee's other objections to these interrogatories. Foremost, Licensee objected to responding to these interrogatories to the extent they sought information of persons already deposed or sought information already solicited by Licensee's questionnaires. Such an exercise is clearly unnecessary and oppressive. TMIA does not address Licensee's objection to inquiry of previously deposed persons; and TMIA does not appear to argue with the premise that Licensee need not provide information already addressed by the questionnaires.4/ These objections

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4/ With respect to Interrogatory No. 3, TMIA asserts that the questionnaires do not address all the information requested in this interrogatory. Since paragraph (b) of the interrogatory asks for the substance of all communications on the 28th, regardless of relevance, this assertion is

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applied to Interrogatory Nos. 1-4, 7-13, and 20.

In sum, TMIA's interrogatories are extremely broad and onerous--seeking knowledge and communications on plant conditions with little or no limitation. They are also oppressive in repeating questions already asked by TMIA during depositions or by Licensee in its questionnaire.

Licensee's efforts to answer TMIA's discovery requests have been mammoth. Licensee has surveyed over 400 persons, produced over 40,000 documents, and made many key individuals available for deposition. TMIA, however, simply wants to litigate the accident in its entirety and the withholding of information in general. It refuses to recognize the limits of this "relatively limited" inquiry. Metropolitan Edison Co. (Three Mile Island Nuclear Generating Station, Unit No. 1), ALAB-772, 19 N.R.C. ____, slip op. at 134 (May 24, 1984).

Licensee has indicated to TMIA that it is willing to ask the individuals that are named in the interrogatories and that have not been deposed to describe their knowledge on March 28 of incore thermocouple readings and to describe related communications on that day. Licensee is still willing to undertake

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true. However, TMIA's further assertion that the questionnaires do not address communications with persons outside GPU or responsive actions taken is simply incorrect. With respect to the pressure spike, hydrogen combustion, and spray actuation, the questionnaires do address responsive actions and all communications. See Licensee's questionnaire, questions 1(d), 2(c), 2(f), 3(a), 4(a), 5(a), 5(e), 5(g), 6(d), 6(e), and 7.

this inquiry. Licensee is also willing to attempt to ask those individua'- listed in Interrogatory No. 20 whether they were informed on the 28th of any data Mr. Lentz collected related to the pressure spike. But TMIA's demand that all its interrogatories -- overly broad, irrelevant, and oppressive -- be answered is patently unreasonable and should be denied.

Interrogatory No. 22

Interrogatory No. 22 asks Licensee to identify all duties and responsibilities of Richard Bensel on the 28th, and "all activities" of Mr. Bensel on that day. TMIA, however, has already deposed Mr. Bensel and asked him these questions, despite Licensee's objection on relevance. TMIA does not deny this, but expresses dissatisfaction with Mr. Bensel's response that during the afternoon of the 28th he was "standing by."5/

TMIA has received a response to its question in its deposition of Mr. Bensel, although TMIA would have preferred another answer. In addition, Mr. Bensel has previously described his duties and activities on the 28th in NRC Interviews on May 7, 1979 and July 5, 1979. TMIA's demand that Licensee now reiterate the substance of the deposition and interviews is unreasonable. Licensee should not be required to digest the deposition and interviews for TMIA. TMIA is fully capable of extracting the information.

5/ TMIA asked Mr. Bensel during the deposition: "You were standing by?" Mr. Bensel replied: "That's probably about it." The phrase "standing by," with which TMIA now expresses dissatisfaction, was the phrase suggested and used by TMIA in the questioning.

Conclusion

For all of the foregoing reasons, Licensee submits that TMIA's Motion to Compel Licensee Response to TMIA's Fourth Set of Interrogatories should be denied.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

Ernest L. Blake Jr.

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David R. Lewis

Counsel for Licensee

Dated: October 24, 1984

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NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Licensee's Response to Three Mile Island Alert's Motion to Compel Licensee Response to its Fourth Set of Interrogatories and Fourth Request for Production," dated October 24, 1984, were served on those persons on the attached Service List by deposit in the United States mail, postage prepaid, or where indicated by an asterisk (*) by hand delivery, this 24th day of October, 1984.

Respectfully submitted,

Ernest L. Blake, Jr.

Ernest L. Blake, Jr., P.C.

DATED: October 24, 1984

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